



CITY OF LAGUNA HILLS CITY COUNCIL/PLANNING AGENCY

REGULAR MEETING AGENDA Tuesday, February 22, 2022 – 7:00 PM (Closed Session at 6:00 PM when scheduled)

Dave Wheeler, Mayor

Janine Heft, Mayor Pro Tempore
Erica Pezold, Council Member

Don Caskey, Council Member
Don Sedgwick, Council Member

Location: City Council Chamber, 24035 El Toro Road, Laguna Hills, CA 92653

Any person wishing to address the City Council/Planning Agency on any matter, whether or not it appears on this Agenda, is asked to complete a pink "Request to Speak" form available on the table at the back of the Chamber. The completed form is to be submitted to the City Clerk prior to an individual being heard by the City Council/Planning Agency. Completion of the form is voluntary. All persons may attend the meeting regardless of whether this form is completed.

Members of the public wishing to address the City Council can do so during the Public Comments portion of the Agenda with a time limitation of three minutes per person, an overall time limit of ten minutes for any one subject, and a total time limit of thirty minutes for Public Comments. If you are commenting on an Agenda item, your comments will be heard at the time that item is scheduled on the Agenda. If you are addressing the City Council on an item not listed on the Agenda, the City Council is prohibited by law from discussing or taking any action on that item.

Submission of Electronic Public Comments: While you may attend this meeting in person, those wishing to make electronic public comments may submit their comments by email to the City Clerk at publiccomments@lagunahillsCA.gov, by 5:00 p.m. on February 22, 2022. In the subject line of the email, please state your name and the item number you are commenting on. Any public comment received that does not specify a particular agenda item number will be announced during the general public comment portion of the agenda. If you wish to submit a public comment on more than one agenda item, please send a separate email for each item you are commenting on. All comments received by 5:00 p.m. on the date of the meeting will be provided to the City Council in advance to allow time for the Council Members to read them.

Announcement of Electronic Public Comments: During the applicable agenda item, the City Clerk will announce the name of the sender and subject matter of all email comments received by 5:00 p.m. on February 22, 2022. Email comments will NOT be read by the City Clerk during the meeting. Electronic public comments may only be submitted via email and comments via text and social media (Facebook, Twitter, etc.) will not be accepted. The email comments, including your name, will become part of the record of the City Council meeting and will be public information.

GENERAL BUSINESS - CONVENING AT 7:00 PM**CALL TO ORDER**

Resolution No. 96-04-09-1 established rules of decorum for public meetings held by the City of Laguna Hills. Resolution No. 96-04-09-1 is available on the table at the back of the City Council Chamber.

INVOCATION: Rev Pat McCaughan of St. George Episcopal

PLEDGE OF ALLEGIANCE: Council Member Pezold

ROLL CALL OF CITY COUNCIL MEMBERS**1. PRESENTATIONS AND PROCLAMATIONS****1.1 Laguna Hills High School Student Liaison**

Recommendation: That the City Council receive an oral report from Laguna Hills High School 2022 Spring Student Liaison Kaitlyn Heinecke.

1.2 Presentation of Proclamation for Red Cross Month

Recommendation: That the City Council issue a Proclamation declaring March as "Red Cross Month" and that Mayor Wheeler present the Proclamation to American Red Cross Southern California Region Executive Director, Becky Firey.

1.3 2021 Laguna Hills Deputy of the Year

Recommendation: That Mayor Dave Wheeler present a Certificate of Recognition to Deputy Colton Walsh, 2021 Laguna Hills Deputy of the Year.

2. SCHEDULE OF FUTURE EVENTS**2.1 Schedule of Future Events**

Recommendation: That the Assistant City Clerk announce the upcoming City events for the month of March 2022.

3. PUBLIC COMMENTS

This is the time to address the City Council on any matter not listed on this Agenda that is within the subject matter jurisdiction of the City Council. Public Comments are limited to three minutes per person, an overall time limit of ten minutes for any one subject, and a total time limit of thirty minutes.

4. CONSENT CALENDAR

All matters listed under "CONSENT CALENDAR" are considered to be routine and will be enacted by one motion approving the recommendation listed on the Agenda. There will be no separate discussion unless Members of the City Council or Staff request specific items be removed from the Consent Calendar.

4.1 Waive Reading in Full of all Ordinances and Resolutions on the Agenda

Recommendation: That the City Council waive reading in full of all ordinances and resolutions on the agenda and declare that said titles which appear on the public agenda shall be determined to have been read by title and further reading waived.

4.2 Approval of Minutes for February 8, 2022, Special Meeting

Recommendation: That the City Council approve the Minutes for the February 8, 2022, Special Meeting.

4.3 Approval of Minutes for February 8, 2022, Regular Meeting

Recommendation: That the City Council approve the Minutes for the February 8, 2022, Regular Meeting.

4.4 Ratification of February 22, 2022, Warrant Register

Recommendation: That the City Council ratify the accompanying Warrant Register for the period from January 28, 2022, to February 10, 2022, in the amount of \$995,216.64.

4.5 Second Quarter Financial & Treasurer's Report for Fiscal Year 2021-2022

Recommendation: That the City Council receive and file the Second Quarter Financial and Treasurer's Report for Fiscal Year 2021-2022.

4.6 Amendment to Fiscal Year 2021-2022 Operating Budget for 30TH Anniversary Activities

Recommendation: That the City Council adopt a Resolution entitled: "A Resolution of the City Council of the City of Laguna Hills, California, amending the Fiscal Year 2021-2022 Budget by increasing the General Government Department Operating Budget for 30th Anniversary activities."

4.7 Support for the Brand-Huang-Mendoza Tripartisan Land Use Initiative

Recommendation: That the City Council adopt a Resolution entitled: “A Resolution of the City Council of the City of Laguna Hills, California, Supporting the Brand-Huang-Mendoza Tripartisan Land Use Initiative to Amend Article XI of the Constitution of the State of California to make Zoning and Land Use Community Affairs, and Not of State Interest.”

4.8 30TH Anniversary Ad Hoc Committee Update on Banners

Recommendation: That the City Council review and approve the installation of 30th Anniversary banners, including a limited number of Moulton Museum banners.

ITEMS REMOVED FROM THE CONSENT CALENDAR**5. PLANNING AGENCY**

There are no Planning Agency Business Items for this meeting.

6. CITY COUNCIL PUBLIC HEARINGS**7. ADMINISTRATIVE REPORTS****7.1. City Manager****7.2. Community Development Director****7.2.1 Housing Element Update Workshop Date Options**

Recommendation: That the City Council select one or more dates and times for the Housing Element Update Workshop and schedule a Special Meeting of the City Council for that purpose.

7.3. Public Services**7.3.1 Nellie Gail Road Equestrian Crossing Update of Improvements and Consideration of a Raised Intersection**

Recommendation: That the City Council authorize Staff to survey Nellie Gail Ranch area residents to determine if there is support for constructing a Split Raised Intersection at the Nellie Gail Road Equestrian Crossing at the Nellie Gail Ranch Owners Association Equestrian Center Driveway.

7.4. Deputy City Manager/Community Services Director**7.4.1 Updated Community Center and Sports Complex Security Camera and Lighting Plan**

Recommendation: That the City Council review the Updated Community Center and Sports Complex Security Camera and Lighting Plan and direct Staff to prepare a Budget Amendment to increase camera installations and lighting improvements at the Community Center and Sports Complex as described in the report.

7.5. Finance Director**7.5.1 Review of American Rescue Plan Act and Proposed Projects List**

Recommendation: That the City Council appropriate the City's entire allocation of Coronavirus-related State and Local Fiscal Recovery Funds (SLFRF), as authorized under the American Rescue Plan Act (ARPA), for the provision of government services for projects as defined herein to the full extent of the "standard allowance", through the period of performance, and direct Staff to provide Budget Amendments as necessary to implement said projects.

8. MATTERS AGENDIZED AND PRESENTED BY CITY COUNCIL MEMBERS**9. CITY COUNCIL MEMBER COMMITTEE REPORTS****9.1. Committee Assignment Reports**

Recommendation: That the City Council receive oral reports on the following City Council Committee Assignments:

1. OC Mosquito and Vector Control District Board of Trustees
(Council Member Pezold) - February 17, 2022 Meeting.

10. CITY COUNCIL MEMBER COMMENTS**ADJOURNMENT**

The next Regular Meeting of the City Council/Planning Agency will be March 8, 2022, at 7:00 p.m., in the City Council Chamber, located at 24035 El Toro Road, Laguna Hills, California.

CERTIFICATION

I, Melissa Au-Yeung, City Clerk of the City of Laguna Hills, do hereby certify that a copy of the foregoing Agenda was posted at Laguna Hills City Hall, Laguna Hills Community Center, and the Courtyard at La Paz Center by February 17, 2022, at 5:00 p.m.



City Clerk

February 17, 2022

Date

In compliance with the Americans with Disabilities Act, if you need special assistance to participate in this meeting, you should contact the office of the City Clerk at (949) 707-2635. Notification 48 hours prior to the meeting will enable the City to make reasonable arrangements to assure accessibility to this meeting.

Materials related to an item on this Agenda submitted to the City Council after distribution of the agenda packet are available for public inspection in the City Clerk's Office at 24035 El Toro Road, Laguna Hills, California, during normal business hours.

City Council Members receive no additional compensation or stipend as a result of simultaneously convening meetings of the Laguna Hills Planning Agency.



City of Laguna Hills

City Council/Planning Agency

Staff Report

DATE: February 22, 2022
TO: Mayor and Council Members
FROM: Melissa Au-Yeung
Deputy City Manager
ISSUE: Presentation of Proclamation for Red Cross Month

RECOMMENDATION: That the City Council issue a Proclamation declaring March as "Red Cross Month" and that Mayor Wheeler present the Proclamation to American Red Cross Southern California Region Executive Director, Becky Firey.

SUMMARY:

The City received a request from the Southern California Region American Red Cross to issue a Proclamation declaring the month of March as "Red Cross Month". It is recommended that the City Council issue the Proclamation to be presented to American Red Cross Southern California Region Executive Director, Becky Firey, at the February 22, 2022, City Council meeting.

ATTACHMENTS:

- Proclamation - American Red Cross Month



CITY OF LAGUNA HILLS PROCLAMATION

AMERICAN RED CROSS MONTH MARCH 2022

WHEREAS, in times of crisis, people in Laguna Hills come together to care for one another. This humanitarian spirit is part of the foundation of our community and is exemplified by American Red Cross volunteers and donors; and

WHEREAS, in 1881, Clara Barton founded the American Red Cross, turning her steadfast dedication for helping others into a bold mission of preventing and alleviating people's suffering. Today, more than 140 years later, we honor the kindness and generosity of Red Cross volunteers here in Laguna Hills, who continue to carry out Clara's lifesaving legacy. They join the millions of people across the United States who volunteer, give blood, donate financially or learn vital life-preserving skills through the Red Cross; and

WHEREAS, in Laguna Hills, the contributions of local Red Cross volunteers give hope to the most vulnerable in their darkest hours — whether it's providing emergency shelter, food and comfort for families devastated by local disasters like home fires; donating essential blood for accident and burn victims, heart surgery and organ transplant patients, and those receiving treatment for leukemia, cancer or sickle cell disease; supporting service members and veterans, along with their families and caregivers, through the unique challenges of military life; helping to save the lives of others with first aid, CPR and other skills; or delivering international humanitarian aid; and

WHEREAS, their work to prevent and alleviate human suffering is vital to strengthening our community's resilience. We dedicate this month of March to all those who continue to advance the noble legacy of American Red Cross founder Clara Barton, who lived by her words, "You must never think of anything except the need, and how to meet it." We ask others to join in this commitment to give back in our community.

NOW, THEREFORE, I, Dave Wheeler, Mayor, on behalf of the City Council of the City of Laguna Hills, California, do hereby proclaim the month of March 2022, as "American Red Cross Month" and encourage all residents of Laguna Hills to reach out and support its humanitarian mission.

Dated this 22nd day of February 2022.

DAVE WHEELER, MAYOR



City of Laguna Hills

City Council/Planning Agency

Staff Report

DATE: February 22, 2022
TO: Mayor and Council Members
FROM: Captain Matthew Stiverson
Chief of Police Services
ISSUE: 2021 Laguna Hills Deputy of the Year

RECOMMENDATION: That Mayor Dave Wheeler present a Certificate of Recognition to Deputy Colton Walsh, 2021 Laguna Hills Deputy of the Year.

SUMMARY:

Deputy Colton Walsh began his patrol career with Laguna Hills Police Services in February of 2018. He quickly distinguished himself by his strong work ethic, consistently using high standards for law enforcement, providing great attention to detail, and presenting a calm demeanor. As an active member of our team, Colton expanded his knowledge and expertise by completing countless hours of professional training and earning the designations of Senior Explorer Advisor, Field Training Officer, Drug Recognition Expert, Critical Incident Response Team member, and Unmanned Aerial Vehicle (UAV or Drone) Pilot.

Colton excelled as a patrol deputy by managing dynamic high-risk incidents; completing numerous complex investigations; arresting offenders; and successfully engaging the public using proven community-oriented policing strategies. In February 2019, the need to select a new School Resource Officer arose. Colton's maturity, professionalism, and exceptional performance made it clear that he was the right person for this very important and ongoing assignment.

Colton quickly established a positive law enforcement presence on campus and robust critical incident response plans in collaboration with our school officials. He implemented a multifaceted approach to school safety, adding additional emphasis on

education and prevention, while building an environment of mutual trust and respect on campus. Colton facilitated several awareness and prevention programs designed to educate students, parents, and educators on topics such as drug abuse; bullying; sexual exploitation of children through the use of social media; pre-incident indicators of violence; stress and anxiety management; suicide prevention; parenting strong willed children; teen driver safety; and critical incident response. Colton's comprehensive approach has yielded exceptional results.

Colton's ability to develop trusting relationships allows him to receive valuable school safety and student welfare information on a regular basis. This has enabled Colton to remove illegal drugs and weapons from campus; diffuse volatile situations; rescue students from bullying and sexual abuse; and successfully divert students from gang activity.

Colton embodies servant leadership, having dedicated himself to the success of the department's Explorer Program, Post 449. He has committed countless hours to the program and his exceptional performance has made it clear that he was the right person for the job. In recognition of his outstanding leadership, he was recently selected to serve as a Tactical Training Officer at the Explorer Academy.

Colton truly cares about the public he serves and strives to make a positive difference in the lives of those he interacts with each and every day. As a result, he is not only well respected by his peers, supervisors, and school officials, he is admired by students and parents alike. Colton exemplifies servant leadership and is truly dedicated to the safety, security, and wellbeing of our community, which makes him deserving of this year's Deputy of the Year Award for Laguna Hills Police Services.

ATTACHMENTS:

- Certificate of Recognition – 2021 Deputy of the Year



CITY OF LAGUNA HILLS CERTIFICATE OF RECOGNITION

COLTON WALSH Deputy Sheriff City of Laguna Hills 2021 Deputy of the Year Orange County Sheriff's Department

WHEREAS, Deputy Colton Walsh has faithfully, professionally, and diligently served as a Deputy Sheriff for the City of Laguna Hills since February 2018; and

WHEREAS, Deputy Walsh has performed in an exemplary manner, expanding his knowledge and expertise by earning the designations of Senior Explorer Advisor, Field Training Officer, Drug Recognition Expert, Critical Incident Response Team member, and Unmanned Aerial Vehicle (UAV or Drone) Pilot; and

WHEREAS, Deputy Walsh has fostered a strong partnership between the Orange County Sheriff's Department, the City of Laguna Hills, and the Community; and

WHEREAS, Deputy Walsh was overwhelmingly selected by his peers and supervisors to be recognized for his dedication to duty by being named the 2021 Laguna Hills Deputy of the Year.

NOW, THEREFORE, I, Dave Wheeler, Mayor, on behalf of the City Council of the City of Laguna Hills, California, do hereby recognize, commend, and thank Deputy Colton Walsh for his distinguished and dedicated service to the City of Laguna Hills and urge all Laguna Hills citizens to join the City in this expression of our appreciation for his dedication to duty.

Dated this 22nd day of February 2022.

DAVE WHEELER, MAYOR



City of Laguna Hills

City Council/Planning Agency

Staff Report

DATE: February 22, 2022
TO: Mayor and Council Members
FROM: Jennifer Lee
 Assistant City Clerk
ISSUE: Schedule of Future Events

RECOMMENDATION: That the Assistant City Clerk announce the upcoming City events for the month of March 2022.

SUMMARY:

The following is a list of upcoming events for the City of Laguna Hills in the month of March 2022:

Nellie Gail Ranch Owners Association American Red Cross Blood Drive

Tuesday, March 8, 2022, 9:00 a.m. – 3:00 p.m., Nellie Gail Ranch Equestrian Center, 25281 Empty Saddle Drive

Regular City Council Meeting

Tuesday, March 8, 2022, 7:00 p.m., Laguna Hills Civic Center Council Chamber. This agenda includes the Village at Laguna Hills project.

Traffic Commission Meeting

Wednesday, March 16, 2022, 7:00 p.m., Laguna Hills Civic Center Council Chamber

Oakbrook Plaza American Red Cross Blood Drive

Tuesday, March 22, 2022, 9:00 a.m. – 3:00 p.m., Oakbrook Plaza, 24422 Avenida de la Carlota

Regular City Council Meeting

Tuesday, March 22, 2022, 7:00 p.m., Laguna Hills Civic Center Council Chamber



City of Laguna Hills

City Council/Planning Agency

Staff Report

DATE: February 22, 2022
TO: Mayor and Council Members
FROM: Melissa Au-Yeung
Deputy City Manager
ISSUE: Approval of Minutes for February 8, 2022, Special Meeting

RECOMMENDATION: That the City Council approve the Minutes for the February 8, 2022, Special Meeting.

ATTACHMENTS:

- 220208 CC Special Minutes

**CITY OF LAGUNA HILLS
CITY COUNCIL**

**SPECIAL MEETING
MINUTES
Tuesday, February 8, 2022**

CALL TO ORDER

The meeting was called to order at 4:00 p.m. by Mayor Wheeler.

ROLL CALL OF CITY COUNCIL MEMBERS

Attendee Name	Title	Status	Arrived
Dave Wheeler	Mayor	Present	
Janine Heft	Mayor Pro Tempore	Present	
Don Caskey	Council Member	Present	
Erica Pezold	Council Member	Present	
Don Sedgwick	Council Member	Late	4:03 p.m.

ANNOUNCEMENT OF CLOSED SESSION ITEM(S)

A. CONFERENCE WITH LEGAL COUNSEL - ANTICIPATED LITIGATION

Pursuant to Government Code Section 54956.9

Significant exposure to litigation pursuant to paragraph (2) of subdivision (d) and paragraph (5) of subdivision (e) of Government Code Section 54956.9: (1 potential case).

PUBLIC COMMENTS

There were no public comments on the closed session item.

ADJOURN TO CITY COUNCIL CONFERENCE ROOM OR COUNCIL CHAMBER

CONVENE INTO CLOSED SESSION

The City Council convened into closed session to consider the matter(s) listed above.

RECONVENE TO CITY COUNCIL CHAMBER

The City Council reconvened the City Council Meeting at 7:01 p.m. All Council Members were present.

CLOSED SESSION REPORT**A. CONFERENCE WITH LEGAL COUNSEL - ANTICIPATED LITIGATION**

Pursuant to Government Code Section 54956.9

Significant exposure to litigation pursuant to paragraph (2) of subdivision (d) and paragraph (5) of subdivision (e) of Government Code Section 54956.9: (1 potential case).

City Attorney Simonian stated that the City Council convened into closed session this evening pursuant to the authorities listed on the Agenda with no reportable action taken.

ADJOURNMENT

There being no further business before the City Council at this session, Mayor Wheeler declared the meeting adjourned at 7:02 p.m.

Melissa Au-Yeung, City Clerk

ATTEST:

Dave Wheeler, Mayor

Approved at meeting of February 22, 2022



City of Laguna Hills

City Council/Planning Agency

Staff Report

DATE: February 22, 2022
TO: Mayor and Council Members
FROM: Melissa Au-Yeung
Deputy City Manager
ISSUE: Approval of Minutes for February 8, 2022, Regular Meeting

RECOMMENDATION: That the City Council approve the Minutes for the February 8, 2022, Regular Meeting.

ATTACHMENTS:

- 220208 CC Minutes

**CITY OF LAGUNA HILLS
CITY COUNCIL/PLANNING AGENCY**

**REGULAR MEETING
MINUTES
Tuesday, February 8, 2022**

GENERAL BUSINESS - CONVENING AT 7:00 PM

CALL TO ORDER

The meeting was called to order at 7:02 p.m. by Mayor Wheeler.

INVOCATION: Pastor Ric Rodeheaver of Christ Community Church

PLEDGE OF ALLEGIANCE: Council Member Caskey

ROLL CALL OF CITY COUNCIL/PLANNING AGENCY MEMBERS

Attendee Name	Title	Status	Arrived
Dave Wheeler	Mayor/Chair	Present	
Janine Heft	Mayor Pro Tempore/Vice Chair	Present	
Don Caskey	Council/Agency Member	Present	
Erica Pezold	Council/Agency Member	Present	
Don Sedgwick	Council/Agency Member	Present	

1. PRESENTATIONS AND PROCLAMATIONS

1.1. Laguna Hills High School Student Liaison

1.1.1 Certificates of Recognition for Laguna Hills High School Student Liaisons Rena Cohen and Grant Dettmann for the 2021 Fall Semester

Recommendation: Mayor Wheeler presented Certificates of Recognition to Rena Cohen and Grant Dettmann recognizing their service as the Laguna Hills High School Student Liaisons for the 2021 fall semester.

1.1.2 Appointment of Laguna Hills High School Student Liaisons Austin Kays and Kaitlyn Heinecke for the 2022 Spring Semester

Recommendation: Mayor Wheeler presented Certificates of Appointment to Laguna Hills High School Student Liaisons Austin Kays and Kaitlyn Heinecke.

1.1.3 Laguna Hills High School Student Liaison

Recommendation: The City Council received an oral report from Laguna Hills High School Student 2022 Spring Liaison Austin Kays.

2. SCHEDULE OF FUTURE EVENTS**2.1 Schedule of Future Events**

Recommendation: Assistant City Clerk Lee announced the upcoming City events for the months of February and March 2022.

3. PUBLIC COMMENTS

The following individuals submitted electronic public comments that were received, forwarded to the Council/Agency prior to the meeting, and announced into the record by Assistant City Clerk Lee:

Brett McClellan, a Lomas Laguna Homeowners Association Director, submitted an email in favor of approval of Item 4.6 on the Consent Calendar indicating that the Lomas Laguna residents have responded overwhelmingly in favor of adopting the permit parking area.

Neel Patel, Parks and Recreation Commissioner, submitted an email in favor of approval of Item 4.6 on the Consent Calendar and inquired about “red zoning” a curb and the parking program penalties.

The following individual addressed the City Council/Planning Agency:

Rona Henry from Welcoming Neighbors Home Initiative inquired about posting of the revised Development Agreement for Item No. 4.7 on the Consent Calendar and if written public comments will be accepted on the item for the next scheduled hearing.

4. CONSENT CALENDAR

Motion to approve the Consent Calendar with Mayor Pro Tempore/Vice Chair Heft and Council/Agency Member Pezold removing Item No. 4.6.

RESULT:	APPROVED [UNANIMOUS]
MOVER:	Erica Pezold, Council/Agency Member
SECONDER:	Janine Heft, Mayor Pro Tempore/Vice Chair
AYES:	Dave Wheeler, Mayor/Chair; Janine Heft, Mayor Pro Tempore/Vice Chair; Don Caskey, Council/Agency Member; Erica Pezold, Council/Agency Member; Don Sedgwick, Council/Agency Member

4.1 Waive Reading in Full of all Ordinances and Resolutions on the Agenda

Recommendation: That the City Council waive reading in full of all ordinances and resolutions on the agenda and declare that said titles which appear on the public agenda shall be determined to have been read by title and further reading waived.

4.2 Approval of Minutes for January 25, 2022, Regular Meeting

Recommendation: That the City Council approve the Minutes for the January 25, 2022, Regular Meeting.

4.3 Ratification of February 8, 2022, Warrant Register

Recommendation: That the City Council ratify the accompanying Warrant Register for the period from January 14, 2022, to January 27, 2022, in the amount of \$1,103,271.69.

4.4 Amendment No. 1 to Office Lease for Suite 203 with Premier Group International for 24031 El Toro Road, Suite 203, Laguna Hills, California

Recommendation: That the City Council approve Amendment No. 1 to Office Lease with Premier Group International, a California corporation, for 24031 El Toro Road, Suite 203, Laguna Hills, California, and authorize the Interim City Manager to execute the Amendment.

4.5 Civic Center Second Quarter Financial Report for Fiscal Year 2021-2022

Recommendation: That the City Council receive and file the report.

4.7 Meeting Cancellation and Continuance of Hearing/Meeting Regarding the Proposed Village at Laguna Hills Project and Proposed Development Agreement (Case No. USE-0010-2019), a Request by MGP Fund X Laguna Hills, LLC to Modify the Previously Approved Five Lagunas Project to Continue to Redevelop the Former Laguna Hills Mall Site Located at 24155 Laguna Hills Mall, Including Adoption of the Fifth Addendum to the City of Laguna Hills General Plan Program Environmental Impact Report as Previously Addended (State Clearinghouse No. 20080811100) and Approval of Site Development Permit, Master Sign Program, Conditional Use Permits, Parking Use Permit, Vesting Tentative Tract Map, Precise Plan and Development Agreement

Recommendation: That the City Council/Planning Agency: 1) Cancel and continue the continued hearing/meeting regarding the proposed The Village at Laguna Hills Project, previously scheduled for February 8, 2022, to a Joint Meeting of the City Council/Planning Agency at the Regular Meeting of the City Council scheduled for March 8, 2022 at 7:00 p.m. (or as soon thereafter as possible), in the City Council Chamber, or at such earlier time and date as may be determined appropriate by the Interim City Manager; and 2) Direct the City Clerk to provide notice of the continued hearing/meeting as required by law.

4.8 Assembly Bill 1595 Letter of Support for Site Development of a Veterans Cemetery at Gypsum Canyon in Orange County.

Recommendation: That the City Council approve a letter of support for Assembly Bill 1595 for site development of a veterans cemetery at Gypsum Canyon in Orange County.

4.9 Support for the County of Orange and Orange County Law Enforcement Agencies in Their Effort to Eliminate the Threat of Fentanyl in Orange County Communities.

Recommendation: That the City Council adopt Resolution No. 2022-02-08-2: "A Resolution of the City Council of the City of Laguna Hills, California, supporting the County of Orange and Orange County Law Enforcement Agencies in their effort to eliminate the threat of Fentanyl in Orange County communities."

ITEMS REMOVED FROM THE CONSENT CALENDAR

4.6 Residential Permit Parking Area on Streets in the Lomas Laguna Residential Neighborhood South of Alicia Parkway

Mayor Pro Tempore Heft removed Item 4.6 from the Consent Calendar to recuse herself from voting on the item.

Council Member Pezold removed Item No. 4.6 from the Consent Calendar to express her appreciation to the residents for their work on the item.

Recommendation: That the City Council: 1) Find and determine that the proposed permit parking controls are not subject to the California Environmental Quality Act pursuant to Sections 15060(c)(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment) and 15060(c)(3) (the activity is not a project as defined in Section 15378) of the CEQA Guidelines, Cal. Code of Regs, Title 14, Chapter 3, because it has no potential for

resulting in physical change to the environment, directly or indirectly; and
2) Adopt Resolution No. 2022-02-08-1: "A Resolution of the City Council of the City of Laguna Hills, California, establishing a Residential Permit Parking Area on streets in the Lomas Laguna residential neighborhood south of Alicia Parkway".

RESULT:	APPROVED [4 TO 0]
MOVER:	Erica Pezold, Council Member
SECONDER:	Dave Wheeler, Mayor
AYES:	Dave Wheeler, Mayor; Don Caskey, Council Member; Erica Pezold, Council Member; Don Sedgwick, Council Member
RECUSED:	Janine Heft, Mayor Pro Tempore

5. PLANNING AGENCY

There were no separate Planning Agency Business Items.

Mayor Wheeler recessed the City Council Meeting at 7:21 p.m. and invited Interim City Manager Rosenfield to convene the Public Improvement Corporation (PIC) Meeting. Mayor Wheeler reconvened the City Council Meeting at 7:23 p.m. All Council Members were present in chamber.

6. CITY COUNCIL PUBLIC HEARINGS

There were no City Council public hearings.

7. ADMINISTRATIVE REPORTS

7.1. City Manager

8. MATTERS AGENDIZED AND PRESENTED BY CITY COUNCIL MEMBERS

8.1. Council Member Pezold

8.1.1 Discussion of Funding, or Equivalent Services, in Support of the Laguna Hills Chamber of Commerce

Council Member Pezold reviewed the information provided in the staff report, provided a PowerPoint presentation and responded to Council Member requests for additional information.

Recommendation: Council Member Pezold recommends that the City Council discuss options to support the Laguna Hills Chamber of Commerce.

A motion to table the item to a future meeting was made by Mayor Pro Tempore Heft, seconded by Council Member Sedgwick. The motion was subsequently withdrawn by Mayor Pro Tempore Heft. As a result, no action was taken on this motion.

A motion to table the item to the mid-year budget review discussion and to direct Staff and the City Attorney to work with the Laguna Hills Chamber of Commerce to create an outline of deal point terms, consistent with the parameters discussed, for consideration by the City Council was made by Council Member Pezold, seconded by Council Member Sedgwick.

RESULT:	APPROVED [UNANIMOUS]
MOVER:	Erica Pezold, Council Member
SECONDER:	Don Sedgwick, Council Member
AYES:	Dave Wheeler, Mayor; Janine Heft, Mayor Pro Tempore; Don Caskey, Council Member; Erica Pezold, Council Member; Don Sedgwick, Council Member

9. CITY COUNCIL MEMBER COMMITTEE REPORTS

9.1. Committee Assignment Reports

Recommendation: That the City Council receive oral reports on the following City Council Committee Assignments:

1. South OC Watershed Management Area Executive Committee
(Council Member Caskey) January 27, 2022 Meeting.

Council Member Caskey had no report.

2. Orange County and State Mayors Meeting
(Mayor Wheeler) February 3-4, 2022.

Mayor Wheeler provided an oral report.

10. CITY COUNCIL MEMBER COMMENTS

Council Member Sedgwick

Council Member Sedgwick expressed his thoughts and views on the recent incident that happened at a Laguna Hills High School basketball game.

Mayor Pro Tempore Heft

Mayor Pro Tempore Heft expressed her thoughts and views on the recent incident that happened at a Laguna Hills High School basketball game.

Mayor Pro Tempore Heft thanked Staff for providing a volunteer opportunity for her son to earn conservation hours towards obtaining his Life Scout rank.

Council Member Caskey

Council Member Caskey expressed his thoughts and views on the recent incident that happened at a Laguna Hills High School basketball game.

Council Member Caskey reported on his first meeting of the Southern California Association of Governments Housing Policy Leadership Academy (SCAG-HPLA).

Council Member Pezold

Council Member Pezold expressed her thoughts and views on the recent incident that happened at a Laguna Hills High School basketball game.

Mayor Wheeler

Mayor Wheeler expressed his thoughts and views on the recent incident that happened at a Laguna Hills High School basketball game.

ADJOURNMENT

There being no further business before the City Council at this session, Mayor Wheeler declared the meeting adjourned at 8:37 p.m.

Melissa Au-Yeung, City Clerk

ATTEST:

Dave Wheeler, Mayor

Approved at meeting of February 22, 2022



City of Laguna Hills

City Council/Planning Agency

Staff Report

DATE: February 22, 2022
TO: Mayor and Council Members
FROM: Janice Reyes
Finance Director
ISSUE: Ratification of February 22, 2022, Warrant Register

RECOMMENDATION: That the City Council ratify the accompanying Warrant Register for the period from January 28, 2022, to February 10, 2022, in the amount of \$995,216.64.

SUMMARY:

The City issues accounts payable disbursements on a regular basis and presents it to City Council for ratification at its next regularly scheduled City Council Meeting. The attached Warrant Register containing checks and electronic funds transfers for the period from January 28, 2022, to February 10, 2022, is being presented for ratification by the City Council. Payments have been reviewed and approved by the appropriate departmental staff. The Director of Finance certifies to the accuracy of the attached register and to the availability of monies for payment thereof.

ATTACHMENTS:

- Warrant Register - February 22, 2022
- Payables Detail Report - February 22, 2022



City of Laguna Hills, CA

Warrant Register - February 22, 2022

By Check Number

Date Range: 01/28/2022 - 02/10/2022

Check Number	Vendor Number	Vendor Name	Payment Date	Payment Amount
Payment Type: Regular				
8820317	A-0381	ADVANTEC CONSULTING ENGINEERS, INC.	02/03/2022	720.00
8820318	A-0138	ALL CITY MANAGEMENT, INC.	02/03/2022	682.36
8820319	A-0320	AMTEC	02/03/2022	500.00
8820320	A-0359	ANDERSON PENNA PARTNERS, INC.	02/03/2022	16,656.50
8820321	B-0437	BRINKS, INCORPORATED	02/03/2022	177.58
8820322	C-1139	COMPLETE OFFICE OF CALIFORNIA	02/03/2022	235.94
8820323	C-0023	COX COMMUNICATION	02/03/2022	214.76
8820324	C-1122	CROSTOWN ELECTRICAL & DATA, INC.	02/03/2022	3,644.70
8820325	D-0561	DOCU-TRUST	02/03/2022	130.50
8820326	E-0544	ECONOLITE SYSTEMS, INC	02/03/2022	600.00
8820327	J-1088	J THAYER COMPANY, INC	02/03/2022	827.05
8820328	J-1057	JAMEY CLARK, INC.	02/03/2022	1,225.29
8820329	M-1388	MOBILE MINI, INC.	02/03/2022	308.68
8820330	O-1546	OFFICE SOLUTIONS	02/03/2022	53.52
8820331	Q-1716	QUADIENT LEASING USA, INC.	02/03/2022	530.22
8820332	S-2296	SHUTE, MIHALY WEINBERGER LLP	02/03/2022	174.00
8820333	S-1949	SMART & FINAL	02/03/2022	218.16
8820334	S-2250	SPARKLETTS	02/03/2022	105.83
8820335	S-2308	SPECTRUM SPORTS MANAGEMENT, INC.	02/03/2022	10,000.00
8820336	Z-CD-0348	TAYLOR, ROB	02/03/2022	720.00
8820337	T-2698	TPX COMMUNICATIONS	02/03/2022	686.13
8820338	U-2165	UNDERGROUND SERVICE ALERT OF SOUTHERN CALIFORNIA	02/03/2022	112.30
8820339	W-2337	WEST COAST ARBORISTS, INC.	02/03/2022	10,122.00
8820340	A-0138	ALL CITY MANAGEMENT, INC.	02/10/2022	6,141.24
8820341	A-0304	AU-YEUNG, MELISSA	02/10/2022	743.13
8820342	B-0430	BASICS OF SKATEBOARDING	02/10/2022	735.00
8820343	B-0437	BRINKS, INCORPORATED	02/10/2022	177.58
8820344	C-1133	CALIFORNIA YELLOW CAB	02/10/2022	240.00
8820345	C-1179	CANON SOLUTIONS AMERICA	02/10/2022	35.71
8820346	C-1144	CHARLES ABBOTT ASSOCIATES, INC	02/10/2022	34,242.27
8820347	E-0553	CHRISTINA ELKINS	02/10/2022	1,058.40
8820348	C-0324	CITY OF MISSION VIEJO	02/10/2022	59,220.02
8820349	C-1021	CIVIC SOLUTIONS, INC.	02/10/2022	12,080.00
8820350	C-1139	COMPLETE OFFICE OF CALIFORNIA	02/10/2022	728.30
8820351	C-0023	COX COMMUNICATION	02/10/2022	214.25
8820352	E-0593	DALE BRUCE EISENBERG	02/10/2022	112.00
8820353	E-0554	ECONOMICS, INC.	02/10/2022	14,523.34
8820354	E-0607	EVER AFTER EVENT PRODUCTIONS, LLC	02/10/2022	470.40
8820355	E-0600	EWING IRRIGATION PRODUCTS, INC	02/10/2022	112.71
8820356	Z-CS-0380	GALVEZ, SHEYLA	02/10/2022	500.00
8820357	H-0959	HABASH, JOHN	02/10/2022	137.20
8820358	H-0894	HATTOX DESIGN GROUP, LLC	02/10/2022	3,720.00
8820359	H-0848	HDL, COREN & CONE	02/10/2022	2,828.28
8820360	I-0942	IRVINE RANCH WATER DISTRICT	02/10/2022	119.74
8820361	J-1057	JAMEY CLARK, INC.	02/10/2022	1,258.00
8820362	Z-CS-0298	JARMIE, CLIFF	02/10/2022	500.00
8820363	M-1388	MOBILE MINI, INC.	02/10/2022	217.80
8820364	M-1302	MOULTON NIGUEL WATER DISTRICT	02/10/2022	83.86
8820365	M-1535	MUSIC MOVES ACADEMY, INC.	02/10/2022	490.00
8820366	N-1493	NEXUSTEK	02/10/2022	925.00
8820367	Q-1707	QUEST DIAGNOSTICS	02/10/2022	18.87
8820368	R-1830	RALPHS GROCERY COMPANY	02/10/2022	41.04
8820369	R-1893	REYNOLDS, DAVID	02/10/2022	1,160.58

Attachment: Warrant Register - February 22, 2022 (2754 : Warrant Register, February 22, 2022)

Warrant Register - February 22, 2022

Check Number	Vendor Number	Vendor Name
8820370	R-1855	RICHARD FISHER ASSOCIATES
8820371	S-1902	SAN DIEGO GAS & ELECTRIC
8820372	S-1904	SOUTHERN CALIFORNIA EDISON
8820373	S-2250	SPARKLETTS
8820374	S-2095	STONE IMAGERY
8820375	S-2209	STUDIO TWO BLACK DIAMOND
8820376	S-2201	SUNSET PROPERTY SERVICES JONSET CORPORATION
8820377	W-2302	THOMSON REUTERS - WEST
8820378	V-2251	VIZUAL SYMPHONY, INC.
8820379	W-2448	WEST GATE CONTRACTOR

Date Range: 01/28/2022 - 02/10/2022

Payment Date	Payment Amount
02/10/2022	6,941.25
02/10/2022	11,862.61
02/10/2022	17.62
02/10/2022	144.78
02/10/2022	145.46
02/10/2022	827.44
02/10/2022	16,738.43
02/10/2022	279.94
02/10/2022	1,526.60
02/10/2022	16,500.00
Total Regular:	246,464.37

Attachment: Warrant Register - February 22, 2022 (2754 : Warrant Register, February 22, 2022)

Warrant Register - February 22, 2022

Date Range: 01/28/2022 - 02/10/2022

Check Number	Vendor Number	Vendor Name	Payment Date	Payment Amount
Payment Type: Bank Draft				
DFT0001877	C-1007	OCSD LAW ENFORCEMENT CONTRACT, OC TREASURER-TAX	02/04/2022	748,752.27
Total Bank Draft:				748,752.27

Bank Code AP Bank Summary

Payment Type	Payable Count	Payment Count	Discount	Payment
Regular Checks	79	63	0.00	246,464.37
Manual Checks	0	0	0.00	0.00
Voided Checks	0	0	0.00	0.00
Bank Drafts	1	1	0.00	748,752.27
EFT's	0	0	0.00	0.00
	80	64	0.00	995,216.64

Attachment: Warrant Register - February 22, 2022 (2754 : Warrant Register, February 22, 2022)

All Bank Codes Check Summary

Payment Type	Payable Count	Payment Count	Discount	Payment
Regular Checks	79	63	0.00	246,464.37
Manual Checks	0	0	0.00	0.00
Voided Checks	0	0	0.00	0.00
Bank Drafts	1	1	0.00	748,752.27
EFT's	0	0	0.00	0.00
	80	64	0.00	995,216.64

Fund Summary

Fund	Name	Period	Amount
998	POOL	2/2022	995,216.64
			995,216.64



City of Laguna Hills, CA

Payables Detail Report

By Fund

Payment Dates 01/28/2022 - 02/10/2022

Payment Date	Vendor Name	Payable Number	Description (Payable)	Account Number	Amount
Fund: 100 - GENERAL FUND					
02/03/2022	COX COMMUNICATION	011822	Cable, City Hall, Jan '22	100-195-630000	32.14
02/03/2022	COX COMMUNICATION	011922	WiFi, City Hall, Jan '22	100-195-630000	182.62
02/03/2022	DOCU-TRUST	045304	Offsite Data Storage, Jan '22	100-155-700030	130.50
02/03/2022	BRINKS, INCORPORATED	11808804	Courier Fee, Armored Transport, Jan '22	100-155-625000	177.58
02/03/2022	ANDERSON PENNA PARTNERS, INC.	119252	Inspection Services, Dec '21	100-356-700255	3,501.50
02/03/2022	ANDERSON PENNA PARTNERS, INC.	119254	Inspection Services, Dec '21	100-356-700255	13,155.00
02/03/2022	TPX COMMUNICATIONS	152512262-0	Communications Expense, Feb '22	100-195-630000	686.13
02/03/2022	J THAYER COMPANY, INC	1571689-0	Office Supplies, Comm Ctr, Jan '22	100-310-620500	827.05
02/03/2022	WEST COAST ARBORISTS, INC.	181777	Tree Trimming Services, Jan '22	100-355-720702	10,122.00
02/03/2022	SPECTRUM SPORTS MANAGEMENT, INC.	2022-10	Event Management Services, 1/2 Marathon	100-310-695507	10,000.00
02/03/2022	COMPLETE OFFICE OF CALIFORNIA	2636477-0	Computer Supplies, Jan '21	100-195-621000	235.94
02/03/2022	SHUTE, MIHALY WEINBERGER LLP	275477	Professional Services, Legal, Dec '21	100-155-700011	174.00
02/03/2022	AMTEC	3516-02-22	Rebate Report, Bond Issue	100-155-700050	500.00
02/03/2022	SMART & FINAL	3831400021002	Operating Supplies, Jan '22	100-155-622000	61.53
02/03/2022	SMART & FINAL	3831400030501	Office & Operating Supplies, Jan '22	100-155-622000	63.83
02/03/2022	SMART & FINAL	3831400030501	Office & Operating Supplies, Jan '22	100-195-620000	67.82
02/03/2022	SMART & FINAL	3831400030501	Office & Operating Supplies, Jan '22	100-195-622000	24.98
02/03/2022	SPARKLETTS	4228482 012822	Operating Supplies, Jan '22	100-195-622000	105.83
02/03/2022	CROSTOWN ELECTRICAL & DATA,	4296-22-001	Traffic Signal Maintenance, Jan '22	100-356-720420	3,644.70
02/03/2022	JAMEY CLARK, INC.	72933	Park Repairs, Public Services, Jan '22	100-355-720701	925.00
02/03/2022	JAMEY CLARK, INC.	72950	Park Repairs, Public Services, Jan '22	100-355-720701	300.29
02/03/2022	ALL CITY MANAGEMENT, INC.	75028	Crossing Guard Services, 12/17/21	100-420-720822	682.36
02/03/2022	MOBILE MINI, INC.	9012824272	Storage Rental, Community Center, 1/19 - 2/15/22	100-310-641000	225.71
02/03/2022	MOBILE MINI, INC.	9012876420	Storage Rental, Community Center, 1/25 - 2/21/22	100-310-641000	82.97
02/03/2022	ADVANTEC CONSULTING ENGINEERS, INC.	9801-0638-02	Engineering Services, USE-0055-2021, Dec '21	100-000-223000	720.00
02/03/2022	ADVANTEC CONSULTING ENGINEERS, INC.	9801-0638-02	Engineering Services, USE-0055-2021, Dec '21	100-000-452000	(720.00)
02/03/2022	ADVANTEC CONSULTING ENGINEERS, INC.	9801-0638-02	Engineering Services, USE-0055-2021, Dec '21	100-225-700201	720.00
02/03/2022	TAYLOR, ROB	CD-0797-BLDR-1036-202	Refund, C&D Deposit, R #9317	100-000-227001	720.00
02/03/2022	OFFICE SOLUTIONS	I-01963012	Operating Supplies, Jan '22	100-195-622000	14.36
02/03/2022	OFFICE SOLUTIONS	I-01964899	Office Supplies, Feb '22	100-195-620000	124.96
02/03/2022	OFFICE SOLUTIONS	I-01965241	Office Supplies, Feb '22	100-195-620000	12.82
02/03/2022	ECONOLITE SYSTEMS, INC	INV208379	Traffic Signal Maintenance, Jan '22	100-356-720420	600.00
02/03/2022	QUADIENT LEASING USA, INC.	N9244158	Lease - Mailing Equip, 11/28/21 - 2/27/22	100-195-641000	530.22
02/03/2022	OFFICE SOLUTIONS	PCR-197353	Office Supplies, Jan '22	100-195-620000	(69.89)
02/03/2022	OFFICE SOLUTIONS	PCR-197359	Office Supplies, Jan '22	100-195-620000	(28.73)
02/04/2022	OCS LAW ENFORCEMENT CONTRACT, OC TREASURER-TAX	SH 61375	Law Enforcement Services, Feb '22	100-420-720800	748,752.27
02/10/2022	COX COMMUNICATION	012822	WiFi, Community Center, Jan '22	100-195-630000	214.25
02/10/2022	IRVINE RANCH WATER DISTRICT	020222	Water Usage, Public Services, Jan '22	100-355-635000	119.74
02/10/2022	SAN DIEGO GAS & ELECTRIC	020222	Street Lights, Traffic Control, Jan '22	100-356-631400	11,862.61
02/10/2022	SOUTHERN CALIFORNIA EDISON	020222 - Acct #7006973C	Street Lights, Traffic Control, Jan '22	100-355-631000	17.62
02/10/2022	AU-YEUNG, MELISSA	020822	Travel Reimbursement, Cal Cities, Feb '22	100-155-612000	743.13
02/10/2022	REYNOLDS, DAVID	020922	Travel Reimbursement, Cal Cities, Feb '22	100-155-612000	1,160.58
02/10/2022	MUSIC MOVES ACADEMY, INC.	021022	Contract Instructor Services, Music	100-310-721500	490.00

Attachment: Payables Detail Report - February 22, 2022 (2754 : Warrant Register, February 22, 2022)

Payables Detail Report

Payment Dates: 01/28/2022 - 02/10/2022

Payment Date	Vendor Name	Payable Number	Description (Payable)	Account Number	Amount
02/10/2022	BASICS OF SKATEBOARDING	021022	Contract Instructor Services, Skateboard Instr	100-310-721500	735.00
02/10/2022	CHRISTINA ELKINS	021022	Contract Instructor Services, Dance	100-310-721500	1,058.40
02/10/2022	DALE BRUCE EISENBERG	021022	Contract Instructor Services, Aikido	100-310-721500	112.00
02/10/2022	HABASH, JOHN	021022	Contract Instructor Services, Dance	100-310-721500	137.20
02/10/2022	EVER AFTER EVENT PRODUCTIONS, LLC	021022	Contract Instructor, Dance	100-310-721500	470.40
02/10/2022	MOULTON NIGUEL WATER DISTRICT	021022	Water Usage, Public Services, Jan '22	100-355-635000	83.86
02/10/2022	BRINKS, INCORPORATED	11837466	Courier Fee, Armored Transport, Feb '22	100-155-625000	177.58
02/10/2022	SPARKLETTES	12194330 020222	Operating Supplies, Comm Ctr,	100-310-622005	144.78
02/10/2022	RALPHS GROCERY COMPANY	1321128170_22184358	Operating Supplies, Comm Svcs, Jan '22	100-310-622005	41.04
02/10/2022	VIZUAL SYMPHONY, INC.	14017	Contract Serv-Software Support, Jan '22	100-195-720050	1,526.60
02/10/2022	EWING IRRIGATION PRODUCTS, INC	16004420	Park Repairs, Public Services, Jan '22	100-355-720701	107.95
02/10/2022	EWING IRRIGATION PRODUCTS, INC	16004495	Park Repairs, Public Services, Jan '22	100-355-720701	4.76
02/10/2022	CITY OF MISSION VIEJO	20907	Animal Care Services, Jan-Mar '22	100-420-720401	59,220.02
02/10/2022	HATTOX DESIGN GROUP, LLC	2201103	Civic Center Improvements, CIP #505	100-600-790600	3,720.00
02/10/2022	NEXUSTEK	259456	Professional Services, Software Support, Jan '22	100-195-720050	925.00
02/10/2022	COMPLETE OFFICE OF CALIFORNIA	2636477-1	Computer Supplies, Feb '22	100-195-621000	82.96
02/10/2022	COMPLETE OFFICE OF CALIFORNIA	2638474-0	Computer Supplies, Feb '22	100-195-621000	645.34
02/10/2022	STONE IMAGERY	28012	Office Supplies, Feb '22	100-155-620000	145.46
02/10/2022	WEST GATE CONTRACTOR	33	Graffiti Removal, Public Services, Jan '22	100-355-720500	16,500.00
02/10/2022	CANON SOLUTIONS AMERICA	4038694800	Copier Usage, Community Services, Jan '22	100-195-641200	35.71
02/10/2022	RICHARD FISHER ASSOCIATES	4462	Professional Services, CIP #519, Jan	100-600-790600	6,941.25
02/10/2022	JAMEY CLARK, INC.	72964	Graffiti Removal, Public Services, Jan '22	100-355-720500	376.00
02/10/2022	JAMEY CLARK, INC.	72967	Park Repairs, Public Services, Feb '22	100-355-720701	882.00
02/10/2022	ALL CITY MANAGEMENT, INC.	74881	Crossing Guard Services, 1/9/22 - 1/22/22	100-420-720822	6,141.24
02/10/2022	THOMSON REUTERS - WEST	845772154	Subscription, City Clerk, Jan '22	100-155-626000	279.94
02/10/2022	MOBILE MINI, INC.	9012898032	Storage Rental, Community Center, 1/26 - 2/22/22	100-310-641000	217.80
02/10/2022	QUEST DIAGNOSTICS	9197010351	Pre-employment Drug Testing, Jan	100-195-617000	18.87
02/10/2022	CIVIC SOLUTIONS, INC.	97869	Contract Staffing Services, Jan '22	100-225-720512	10,800.00
02/10/2022	STUDIO TWO BLACK DIAMOND	98265	Printing Services, Jan '22	100-195-623000	295.34
02/10/2022	STUDIO TWO BLACK DIAMOND	98266	Printing Services, Jan '22	100-155-623000	107.14
02/10/2022	STUDIO TWO BLACK DIAMOND	98267	Printing Services, Jan '22	100-155-623000	236.40
02/10/2022	STUDIO TWO BLACK DIAMOND	98268	Printing Services, Jan '22	100-155-623000	188.56
02/10/2022	JARMIE, CLIFF	FRD-0258	Refund, Facility Deposit, R #1034386.002	100-000-222000	500.00
02/10/2022	GALVEZ, SHEYLA	FRD-0259	Refund, Facility Deposit, R #1034528.002	100-000-222000	500.00
02/10/2022	HDL, COREN & CONE	SIN014391	Property Tax Audit, Jan - Mar '22	100-155-700055	2,828.28
Fund 100 - GENERAL FUND Total:					928,080.30
Fund: 101 - MGP DEVELOPMENT APPLICATION - VALH PROJECT					
02/10/2022	CIVIC SOLUTIONS, INC.	97870	Consultant Services, USE-0010-2019, Jan '22	101-000-223000	1,280.00
02/10/2022	CIVIC SOLUTIONS, INC.	97870	Consultant Services, USE-0010-2019, Jan '22	101-000-450000	(1,280.00)
02/10/2022	CIVIC SOLUTIONS, INC.	97870	Consultant Services, USE-0010-2019, Jan '22	101-225-700000	1,280.00
Fund 101 - MGP DEVELOPMENT APPLICATION - VALH PROJECT Total:					1,280.00
Fund: 212 - MEASURE M					
02/03/2022	UNDERGROUND SERVICE ALERT OF SOUTHERN CALIFORNIA	120220371	Street Maintenance, Jan '22	212-355-720400	112.30
02/10/2022	SUNSET PROPERTY SERVICES JONSET CORPORATION	128023SP	Street Sweeping Services, Jan '22	212-355-720410	16,738.43

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Payables Detail Report

Payment Dates: 01/28/2022 - 02/10/2022

Payment Date	Vendor Name	Payable Number	Description (Payable)	Account Number	Amount
02/10/2022	CHARLES ABBOTT ASSOCIATES, INC	63710	Road Maintenance, Jan '22	212-355-720400	34,242.27
Fund 212 - MEASURE M Total:					51,093.00
Fund: 221 - SENIOR MOBILITY PROGRAM					
02/10/2022	CALIFORNIA YELLOW CAB	1406022	Senior Mobility Program, Jan '22	221-310-720000	240.00
Fund 221 - SENIOR MOBILITY PROGRAM Total:					240.00
Fund: 307 - C & D FORFEITED DEPOSITS					
02/10/2022	ECONOMICS, INC.	2017-2018.55	Professional Services, Recycling Program, Jan '22	307-355-700000	14,523.34
Fund 307 - C & D FORFEITED DEPOSITS Total:					14,523.34
Fund: 600 - CAPITAL IMPROVEMENT PROJECT					
02/10/2022	HATTOX DESIGN GROUP, LLC	2201103	Civic Center Improvements, CIP #505	600-000-490100	(3,720.00)
02/10/2022	HATTOX DESIGN GROUP, LLC	2201103	Civic Center Improvements, CIP #505	600-255-950505	3,720.00
02/10/2022	RICHARD FISHER ASSOCIATES	4462	Professional Services, CIP #519, Jan	600-000-490100	(6,941.25)
02/10/2022	RICHARD FISHER ASSOCIATES	4462	Professional Services, CIP #519, Jan	600-255-950519	6,941.25
Fund 600 - CAPITAL IMPROVEMENT PROJECT Total:					-
Grand Total:					995,216.64

Attachment: Payables Detail Report - February 22, 2022 (2754 : Warrant Register, February 22, 2022)

Report Summary

Fund Summary

Fund	Expense Amount	Payment Amount
100 - GENERAL FUND	928,080.30	928,080.30
101 - MGP DEVELOPMENT APPLICATION - VALH PROJEC	1,280.00	1,280.00
212 - MEASURE M	51,093.00	51,093.00
221 - SENIOR MOBILITY PROGRAM	240.00	240.00
307 - C & D FORFEITED DEPOSITS	14,523.34	14,523.34
600 - CAPITAL IMPROVEMENT PROJECT	-	-
Grand Total:	995,216.64	995,216.64

Account Summary

Account Number	Account Name	Expense Amount	Payment Amount
100-000-222000	Refundable Deposits	1,000.00	1,000.00
100-000-223000	Plan Application Deposit	720.00	720.00
100-000-227001	SecurityDeposit-WasteRecycling	720.00	720.00
100-000-452000	Plan Check Fee - Fee Base	(720.00)	(720.00)
100-155-612000	Travel, Conferences & Meetings	1,903.71	1,903.71
100-155-620000	Office Supplies	145.46	145.46
100-155-622000	Operating Supplies	125.36	125.36
100-155-623000	Printing	532.10	532.10
100-155-625000	Postage & Delivery	355.16	355.16
100-155-626000	Subscriptions & Books	279.94	279.94
100-155-700011	Legal Services-Litigation	174.00	174.00
100-155-700030	Professional Svcs- City Clerk	130.50	130.50
100-155-700050	Professional Services- Financial	500.00	500.00
100-155-700055	Professional Services -	2,828.28	2,828.28
100-195-617000	Recruitment	18.87	18.87
100-195-620000	Office Supplies	106.98	106.98
100-195-621000	Computer Supplies	964.24	964.24
100-195-622000	Operating Supplies	145.17	145.17
100-195-623000	Printing	295.34	295.34
100-195-630000	Telephone & Communication	1,115.14	1,115.14
100-195-641000	Rent/Lease - Equipment	530.22	530.22
100-195-641200	Rent/Lease - Copier	35.71	35.71
100-195-720050	Contract Serv-Software Support	2,451.60	2,451.60
100-225-700201	Plan Application	720.00	720.00
100-225-720512	Contract Staffing Services	10,800.00	10,800.00
100-310-620500	Office Supplies - Comm Ctr	827.05	827.05
100-310-622005	Operating Supplies Comm Ctr	185.82	185.82
100-310-641000	Rent/Lease - Equipment	526.48	526.48
100-310-695507	Marathon 5k	10,000.00	10,000.00
100-310-721500	Contract Services-Program Svce	3,003.00	3,003.00
100-355-631000	Utilities - Electric	17.62	17.62
100-355-635000	Utilities - Water	203.60	203.60
100-355-720500	Graffiti Removal	16,876.00	16,876.00
100-355-720701	Parks Contract Repair	2,220.00	2,220.00
100-355-720702	Tree Maintenance	10,122.00	10,122.00
100-356-631400	MOE Electricity-Streetlights &	11,862.61	11,862.61
100-356-700255	MOE Improvement Inspection	16,656.50	16,656.50
100-356-720420	MOE Traffic Signal Maintenance	4,244.70	4,244.70
100-420-720401	Animal Care & Shelter Services	59,220.02	59,220.02
100-420-720800	General Law Enforcement	748,752.27	748,752.27
100-420-720822	Crossing Guard Services	6,823.60	6,823.60
100-600-790600	Transfers Out - Capital Imprv	10,661.25	10,661.25
101-000-223000	Plan Application Deposit	1,280.00	1,280.00
101-000-450000	Planning Fees	(1,280.00)	(1,280.00)
101-225-700000	Consultant Services	1,280.00	1,280.00
212-355-720400	Street Maintenance	34,354.57	34,354.57
212-355-720410	Street Sweeping	16,738.43	16,738.43

Attachment: Payables Detail Report - February 22, 2022 (2754 : Warrant Register, February 22, 2022)

Payables Detail Report

Payment Dates: 01/28/2022 - 02/10/2022

Account Summary

Account Number	Account Name	Expense Amount	Payment Amount
221-310-720000	Contract Services	240.00	240.00
307-355-700000	Professional Services	14,523.34	14,523.34
600-000-490100	Transfer In- General Fund	(10,661.25)	(10,661.25)
600-255-950505	CIP-Civic Center Improvements	3,720.00	3,720.00
600-255-950519	Holiday Pavilion Landscape	6,941.25	6,941.25
Grand Total:		995,216.64	995,216.64

Project Account Summary

Project Account Key	Expense Amount	Payment Amount
None	995,216.64	995,216.64
Grand Total:	995,216.64	995,216.64

Attachment: Payables Detail Report - February 22, 2022 (2754 : Warrant Register, February 22, 2022)



City of Laguna Hills

City Council/Planning Agency

Staff Report

DATE: February 22, 2022

TO: Mayor and Council Members

FROM: Janice Reyes
Finance Director

ISSUE: Second Quarter Financial & Treasurer's Report for Fiscal Year 2021-2022

RECOMMENDATION: That the City Council receive and file the Second Quarter Financial and Treasurer's Report for Fiscal Year 2021-2022.

SUMMARY:

Attached to this report is the City of Laguna Hills Quarterly Financial Report for the Second Quarter of Fiscal Year 2021-2022. The information presented in the Quarterly Financial Report provides the City Council, management, and the public with the results of the City's financial operations for the 2021-2022 Fiscal Year through December 31, 2021, on a modified accrual basis for all governmental funds.

Fund Balances of governmental funds are reported separately within classifications based on a hierarchy of constraints placed on the use of those resources. Fund balances are considered "restricted" if there are externally imposed restrictions on its usage. Those that are constrained to a specific purpose determined by formal action (resolution) by City Council are considered "committed", for which the City has none. "Assigned" fund balances are constrained by the City's intent to used for specific purposes, e.g. reserves as established in the City's Financial Policy No. 105. Lastly, the residual fund balance remaining is considered "unassigned". Pursuant to Policy No. 105, the City shall strive to achieve and maintain a minimum "unrestricted" fund balance of 35% and a minimum "unassigned" fund balance of 25%. A detailed schedule of total fund balance for all governmental funds at the onset of the current fiscal year, as of June 30, 2021, is as follows.

Second Quarter Financial & Treasurer's Report FY 2021-2022

February 22, 2022

Page 2

Fund Balance, as of June 30, 2021	\$ 14,530,352	<i>Ratio</i>
<i>Less the following fund balances:</i>		
Reservation for Debt Service	(1,810,912)	
Non-major Governmental Funds	(3,892,860)	
Unrestricted General Fund Balance (>35%)	\$ 8,826,580	<i>40%</i>
<i>Less Assigned:</i>		
Total Capital Replacement Funds	(710,659)	
Insurance Reserve Funds	(200,000)	
Unassigned Fund Balance (>25%)	\$ 7,915,921	<i>36%</i>

There are no material deviations or significant variances to report at the end of the second quarter. Fiscal year-to-date activity for the first six months of the fiscal year resulted in a net decrease of \$136,727 in the City's total governmental fund balance from \$14,530,352, as of June 30, 2021, to \$14,393,623, as of December 31, 2021.

The Quarterly Financial Report contains a condensed Treasurer's Investment Report as of December 31, 2021, on Page 6. The City's total portfolio of \$15,125,741 at the end of the second quarter for all fund types is invested in authorized securities. The City's investment policy approved by City Council Resolution is the prevailing guideline in managing investments.

ATTACHMENTS:

- Quarter End Financial & Treasurer's Report, 2nd Quarter FY 2021-2022



CITY OF LAGUNA HILLS

Quarterly Financial Report

Second Quarter, Fiscal Year 2021/2022

The following unaudited financial information summarizes the City's overall financial activity for the current fiscal year through December 31, 2021. Financial analysis for this report is provided for the General Fund, Capital Improvement Program, Debt Service, and other City governmental funds, and is intended to provide the City Council and the public with a summary overview of the City's general fiscal condition through December 31, 2021.

A Summary of Funding Sources and Uses for the six months ended December 31, 2021, is presented in the table below.

Summary of Funding Sources & Uses For the Three Months Ended December 31, 2021

	YTD Actual (million)	Budget (million)	YTD % of Budget
<i>Funding Sources</i>	\$ 13.1	\$ 29.1	45%
<i>Funding Uses</i>	13.2	28.4	46%
<i>Net Change</i>	(\$0.1)	\$0.7	

The Comparative Statement of Operations for Governmental Funds, on page 3, shows the detail of the year-to-date actual financial activity in relation to the Amended Budget. Year-to-date financial activity for all governmental funds through December 31, 2021, reports expenditures exceeding revenues by \$136,727, with the City receiving roughly \$13.1 million in total funding sources and incurring roughly \$13.2 million in total funding uses.

The financial activity is reported using modified-accrual basis of accounting. Revenues are recognized when they become measurable and available as net current assets. Available means that the amounts were collected during the reporting period or soon enough thereafter to be available to finance the expenditures accrued for the reporting period. Generally, the City uses an availability period of 60 days. Expenditures are recognized in the period in which the liability is incurred and expected to be paid with expendable available financial resources.

Interpreting the information presented herein requires consideration of the cash flow fluctuations of revenues and expenditures during the fiscal year. With one quarter of the fiscal year complete, total funding sources for all governmental funds was 45% of budget and funding uses was at 46% of budget. There are a number of revenue and expenditures items that would show significant deviation if a straight-line comparison was applied. In a straight-line approach, one would expect line items to approximate 50% of budget by the end of the quarter. However, the timing of many revenue and expenditure transactions do not occur at uniform times or at equal intervals over the course of the fiscal year. Hence, although the second quarter represents 50% of the fiscal year, not all line items will be at 50% of the budget.

There are no significant material variances from the fiscal year 2021/22 Budget to report at this time. However, given the dynamic conditions of the current pandemic and its impact on the national, as well as local economy, Staff will continue to closely monitor its effects on the financial activity of the City in the proceeding quarters of the fiscal year 2021/22, most notably in potential shortfalls in sales tax revenue and transient occupancy tax revenues.

Funding Sources

The City's total funding sources comprise of general fund revenues, special fund revenues, and other financing sources. At the end of the second quarter, total funding sources were approximately \$13 million, or 45% of budget.

GENERAL FUND REVENUES

General Fund Revenues are utilized primarily to finance the City's general governmental activities. At quarter end, general fund revenues totaled roughly \$8 million or 36% of budget. Receipts of Property Tax came in at \$4,579,674, or 38% of budget. Intergovernmental Revenues, which includes sales tax revenue, were \$2,137,124, or 36%, of budget. The recording of these revenue sources comply with GASB 33 which addresses the timing of recognition of non-exchange transactions, e.g. taxes and fines. Revenues from non-exchange transactions, such as property and sales tax, received in the first two months of this fiscal year were accrued in the prior fiscal year. Franchise Tax from utility companies and Transient Occupancy Tax came in at \$555,710 or 28% of budget. These receipts lag at least a quarter and no accrual was made at quarter end. Revenues from Licenses & Permits, \$414,177, and Charges for Services, \$314,417, are dependent upon development activities and came in at 41% and 29% of budget, respectively. Fines and Forfeitures, which includes parking and vehicle fines, ended the quarter at 43% of budget, at \$76,061.

SPECIAL REVENUES AND GRANTS

Many of the Special Revenue funding sources are tied in with the City's Capital Improvement Plan. The receipts of funding sources for certain capital projects typically lag behind the spending on the projects, as the claims are applied for during construction or after project-completion. At the end of the second quarter, special revenues receipts totaled \$4,954,899 or 73% of budget, which is predominantly from the receipt of the first tranche of \$3,732,689 in ARPA funds.

OTHER FUNDING SOURCES

The City reported interest income of \$13,410, or 13% of budget, for the first six months of the fiscal year.

Funding Uses

The City's total funding uses consist of the City's Operating Expenditures, outlay for Capital Improvement projects, debt charges and expenditures for grant related programs. At the end of the second quarter, total funding uses were approximately \$13.2 million, which was 46% of budget.

OPERATING EXPENDITURES

At the end of the second quarter, operating expenditures totaled roughly \$10.5 million, which represents 47% of the total operating budget. While total operating expenditures came in below 50% of budget, the spending level for Non-Departmental came in much higher, at 82% of its budget, due to annual insurance premiums paid in full at the onset of the fiscal year, as well as annual IT related maintenance contracts.

CAPITAL IMPROVEMENT PLAN (CIP)

The purpose of the Capital Improvement Plan is to systematically plan, schedule, and finance capital projects as approved and prioritized by the City Council. CIP expenditures totaled \$2,331,137, or 58% of budget, at the end of the second quarter.

The following table lists the YTD expenditures for capital projects by type as of December 31, 2021.

Capital Improvement Program	
For the 6 Months Ended, December 31, 2021	
Streets, Signals & Lighting	\$ 2,003,515
Flood Control & Water Quality	131,087
Parks	24,120
Public Facilities	172,415
Total	\$ 2,331,137

OTHER FUNDING USES

As of the end of the second quarter, payments for debt service totaled \$63,941. Additionally, \$1,504 was spent on the senior mobility program, primarily funded by OCTA M2 SMP funds; \$207,584 in processing the VALH development project; and \$67,335 of forfeited C&D deposits was spent toward the City's recycling program.

CITY OF LAGUNA HILLS
COMPARATIVE STATEMENT OF OPERATION - GOVERNMENTAL FUNDS
FOR THE 6 MONTHS ENDED, DECEMBER 31, 2021

	FY 2021/22			FY 2020/21		
	Y-T-D ACTUAL	AMENDED BUDGET	YTD % of BUDGET	Y-T-D ACTUAL	AMENDED BUDGET	YTD % of BUDGET
FUNDING SOURCES						
General Fund Revenues						
Property Tax	\$ 4,579,674	\$ 12,042,115	38%	\$ 4,421,450	\$ 11,704,415	38%
Intergovernmental Revenues	2,137,124	5,903,782	36%	1,820,425	6,050,338	30%
Franchise & Transient Occupancy Tax	555,710	2,006,325	28%	494,879	2,658,735	19%
Licenses and Permits	414,177	1,018,500	41%	481,339	1,031,000	47%
Charges for Current Services	314,417	1,091,015	29%	691,146	1,621,225	43%
Fines & Forfeitures	76,061	175,000	43%	60,800	190,000	32%
Total General Fund Revenues	8,077,162	22,236,737	36%	7,970,040	23,255,713	34%
Special Revenue Funds						
Gas Tax - HUTA	312,478	766,768	41%	320,644	700,000	46%
Gas Tax -SB1 RMRA	212,297	605,278	35%	195,339	550,000	36%
Measure M2 Fair Share	243,986	576,042	42%	212,349	628,798	34%
Measure M2 - Competitive	-	200,000	0%	-	-	-
AB 2766 Fund	10,210	40,000	26%	10,529	40,000	26%
Proposition 68	-	200,000	0%	-	200,000	0%
MGP Development-VALH Project	244,022	-	-	-	1,125,000	0%
ARPA	3,732,689	3,732,689	100%	-	-	-
CASp	1,040	5,000	21%	-	5,000	0%
CARES Act	-	-	-	681,260	692,650	98%
Beverage Recycling Fund	-	-	-	-	8,500	0%
CR&R Recycling Fees	2,000	110,000	2%	2,000	2,000	100%
C&D Forfeited Deposits	60,361	100,000	60%	45,906	35,000	131%
Senior Mobility Program	15,798	38,970	41%	13,587	38,091	36%
Grants and Contributions	3,100	305,000	1%	-	-	-
Law Enforcement Grants	116,918	150,000	78%	113,861	140,000	81%
Total Special Revenue Funding	4,954,899	6,829,747	73%	1,595,475	4,165,039	38%
Other Funding Sources						
Interest Income	13,410	100,000	13%	31,819	161,486	20%
TOTAL FUNDING SOURCES	\$ 13,045,472	\$ 29,166,484	45%	\$ 9,597,334	\$ 27,582,238	35%
FUNDING USES						
Operating Expenditures						
General Government	\$ 977,119	2,715,288	36%	\$ 1,081,579	\$ 2,721,473	40%
Non-Departmental	1,300,774	1,592,750	82%	1,036,648	1,262,036	82%
Community Development	476,760	1,523,692	31%	828,266	1,639,977	51%
Public Services	2,207,984	4,786,716	46%	1,938,473	4,792,514	40%
Community Services	847,258	2,037,088	42%	569,902	2,212,855	26%
Public Safety	4,691,868	9,470,414	50%	4,296,858	8,910,462	48%
Total Operating Expenditures	10,501,763	22,125,948	47%	9,751,727	21,539,317	45%
Capital Improvement Program	2,331,137	4,040,000	58%	598,760	1,047,500	57%
Other Funding Uses						
Debt Charges	63,941	1,799,921	4%	103,441	1,788,921	6%
Use of Reserves	-	50,000	0%	1,216	50,000	2%
Special Revenue Fund Expenditures	-	-	-	-	-	-
AB2766	-	50,000	0%	-	35,000	0%
CASp	-	5,000	0%	-	5,000	0%
MGP Development -VALH Project	207,584	-	-	-	1,125,000	0%
CARES Act	-	-	-	377,339	539,664	70%
Senior Mobility Program	1,504	54,230	3%	1,240	64,904	2%
Beverage Recyling	8,935	19,900	45%	-	8,500	0%
CR&R Recycling Fund	-	117,000	0%	-	2,879	0%
Forfeited C&D Deposits	67,335	130,000	52%	42,568	68,000	63%
Total Other Funding Uses	349,299	2,226,051	16%	536,553	3,687,868	15%
TOTAL FUNDING USES	\$ 13,182,199	\$ 28,391,999	46%	\$ 10,887,041	\$ 26,274,685	41%
NET CHANGE IN FUND BALANCE	\$ (136,727)	\$ 774,485		\$ (1,289,707)	\$ 1,307,553	

CITY OF LAGUNA HILLS
ABRIDGED BALANCE SHEET - GOVERNMENTAL FUNDS (UNAUDITED)
DECEMBER 31, 2021

Assets

Cash and investments	\$ 14,938,708
Receivables:	
Accounts	92,422
Interest	7,038
Prepaid items	39,485
Total assets	\$ 15,077,654

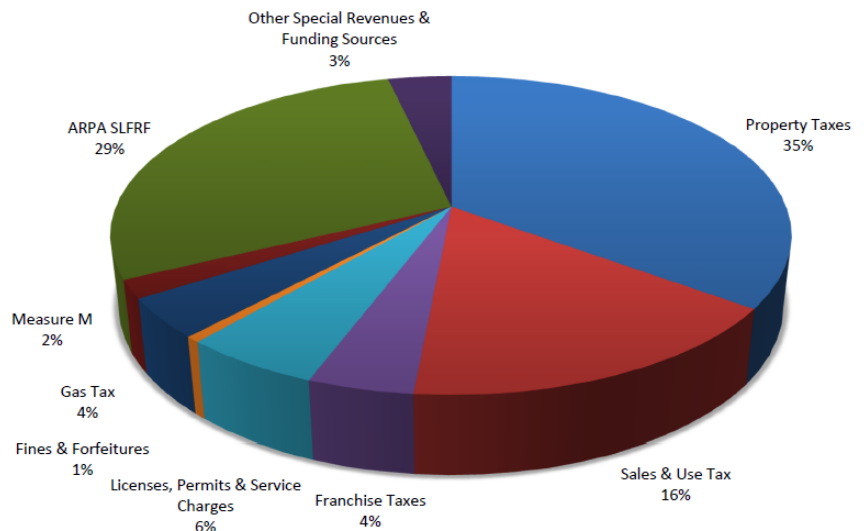
LIABILITIES AND FUND BALANCES**Liabilities:**

Accounts payable	\$ 161,578
Refundable deposits	449,928
Deferred revenue	68,747
Trust accounts	3,778
Total liabilities	684,030
Fund balances:	14,393,623

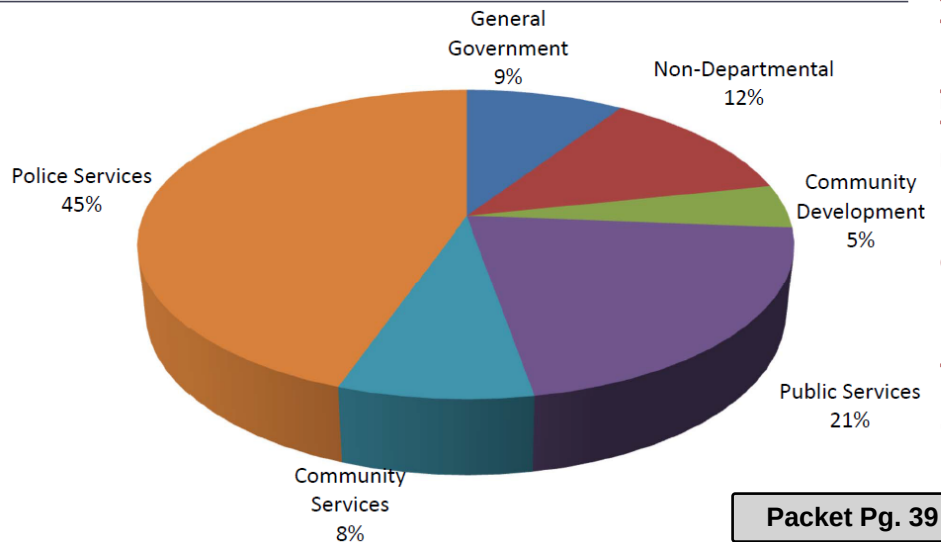
Total liabilities and fund balances **\$ 15,077,654**

REVENUES

**General Fund &
Special Revenue Funds
Fiscal Year 2021/22,
As of 12/31/2021**



**OPERATING
EXPENDITURES
Fiscal Year 2020/21
As of 12/31/21**



Below is a snapshot of the City's fund balance as of December 31, 2021. At the end of the second quarter of the current fiscal year, the City's total fund balance for its governmental funds stood at \$13,848,921. Additionally, an abridged balance sheet, which summarizes the City's assets and liabilities, is included on page 4 and reconciles the fund balance at quarter end. City-managed short-term idle funds, as well as debt service funds, are invested in approved securities.

CITY OF LAGUNA HILLS

GOVERNMENTAL FUNDS

STATEMENT OF WORKING FUNDS (UNAUDITED) AS OF DECEMBER 31, 2021

Fund Balance

General Fund	\$ 8,826,578
Gas Tax	981,404
AB 2766 Fund	304,848
CARITS	1,272,825
Water Conservation	342,555
Senior Mobility Program	128,302
CASp	21,023
Beverage Recycling	19,430
CR&R Recycling	7,043
C&D Forfeited Deposits	71,151
Public Art Fund	71,973
Grants & Contributions	88,185
Debt Service	1,810,912
Total Beginning Fund Balance, as of July 1, 2021	14,530,350
Net Change in Fund Balance, as of December 31, 2021	(136,727)
Total Fund Balance, as of December 31, 2021	\$ 14,393,623

Disposition of Working Funds

Total Cash and Demand Deposits	\$ 1,479,423
Total Investments	13,459,285
Total Cash and Investments	14,938,708
Receivables Net of Liabilities	(545,085)
Total Fund Balance, as of December 31, 2021	\$ 14,393,623

The Quarter End Financial Management Report for the Second Quarter of Fiscal Year 2021-22 is hereby submitted. The accounts of the City are organized on the basis of funds, each of which is considered a separate accounting entity. To the best of our knowledge and belief, the above information is reported in a manner that presents fairly the financial position and results of operation of the Governmental Funds of the City of Laguna Hills as of December 31, 2021.

TREASURER'S INVESTMENT REPORT - ALL FUNDS (CONDENSED)
FOR THE FIRST QUARTER ENDED DECEMBER 30, 2021

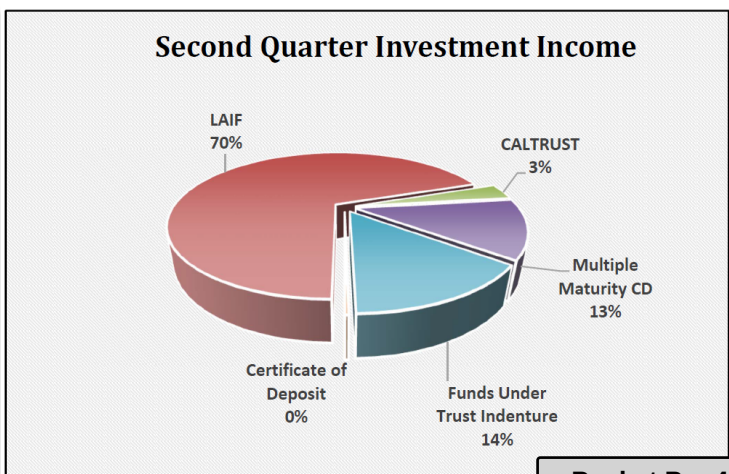
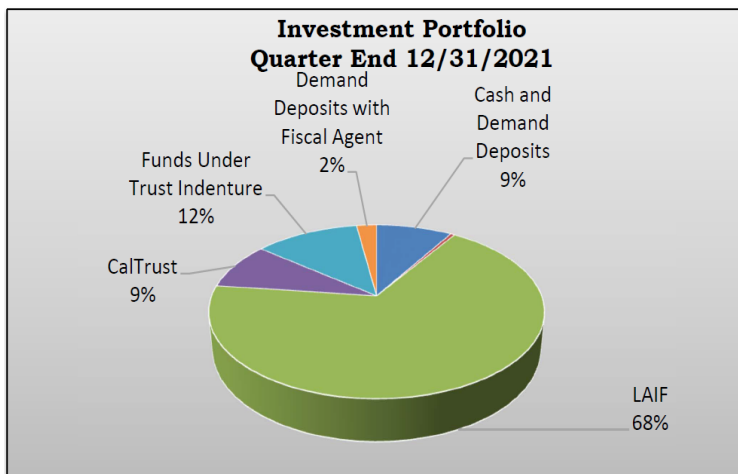
Cash and Investments by Type	Beginning Book Value	Deposits	Withdrawals	Ending Book Value	2nd Quarter Interest Income
Cash on Hand	\$ 2,000	\$ -	\$ -	\$ 2,000	\$ -
Demand Deposits	2,255,880	8,950,655	9,891,365	1,315,151	-
Multiple Maturity Certificates of Deposits	70,502	-	-	70,502	924
State Treasurer's Investment Fund (LAIF)	9,248,182	1,003,824	-	10,252,006	5,126
Investment Trust of CA (CalTRUST)	1,325,683	251	1,071	1,324,862	251
Debt Service Funds Under Trust Indenture	1,810,811	1,103	-	1,811,914	1,043
Demand Deposits with Custodial Agent	530,444	330,422	511,561	349,305	19
TOTAL	\$ 15,243,483	\$ 10,286,255	\$ 10,403,996	\$ 15,125,741	\$ 7,363

The City's investment policy approved by Council resolution is the prevailing guideline in managing investments. Short-term excess cash is currently invested primarily in the State Treasurer's Local Agency Investment Fund (LAIF) and the Investment Trust of California (CalTRUST), a Public Joint Powers Authority (JPA). Restricted investments held under trust indenture by The Bank of New York Mellon Trust Company, N.A, is a Reserve Fund, deposited with LAIF, established to secure the timely payment of principal and interest represented by the 2010 Refinancing Project bond issues.

The following is the summary of the cash and investments as of December 30, 2021, compared with the same period of the previous fiscal year:

	December 31, 2021	December 31, 2020
Cash on hand	\$ 2,000	\$ 2,000
Pooled Deposits:		
Demand Deposits	1,664,456	1,252,636
Certificates of Deposits	70,502	70,502
Total Pooled Deposits	1,734,959	1,323,138
Pooled Investments:		
Local Agency Investment Fund	10,252,006	7,729,381
Investment Trust of California	1,324,862	1,325,061
Restricted Cash and Investments:		
Local Agency Investment Fund	1,811,914	1,804,492
Demand Deposits		10,588
Total Cash and Investments	\$ 15,125,741	\$ 12,194,660

We believe the City's portfolio provides sufficient cash flow liquidity to meet the next six months of the City's projected operating expenditures.





City of Laguna Hills

City Council/Planning Agency

Staff Report

DATE: February 22, 2022

TO: Mayor and Council Members

FROM: Melissa Au-Yeung
Deputy City Manager

ISSUE: Amendment to Fiscal Year 2021-2022 Operating Budget for 30TH Anniversary Activities

RECOMMENDATION: That the City Council adopt a Resolution entitled: "A Resolution of the City Council of the City of Laguna Hills, California, amending the Fiscal Year 2021-2022 Budget by increasing the General Government Department Operating Budget for 30th Anniversary activities."

BACKGROUND:

The City of Laguna Hills celebrated its 30th Anniversary on December 20, 2021. As a milestone anniversary, this anniversary has provided the City with an opportunity to engage and educate residents about the City's rich history all while allowing residents to celebrate their hometown. Consequently, at the August 24, 2021, City Council meeting, the City Council discussed various possible recommendations and, ultimately, established an ad-hoc committee comprised of Council Members Heft and Pezold for the purpose of recognizing, planning and celebrating the City's Thirtieth Anniversary.

The ad-hoc committee held its first meeting on September 15, 2021, and has since met on a biweekly basis to discuss a number of approaches to the anniversary celebration, including augmenting existing community events and activities to incorporate the 30th Anniversary.

Council Members Heft and Pezold provided a status update on the activities of the 30th Anniversary Ad Hoc Committee at the December 14, 2021, City Council meeting, at which time the City Council voted to increase the budget for 30th Anniversary activities

2021-2022 Budget Amendment for 30TH Anniversary Activities

February 22, 2022

Page 2

by \$20,000, from \$40,000 to \$60,000. As such, it is necessary for the City Council to adopt the attached Resolution amending the Fiscal Year 2021-2022 adopted Budget in the amount of \$20,000.

FISCAL IMPACT:

Celebration of the City's 30th Anniversary was included as a Major Plan in the current Fiscal Year 2021-2023 Biennial Budget. A total of \$40,000 is budgeted for the occasion, as well as an additional \$5,000 in the 4th of July event budget to increase the duration of the fireworks show, to celebrate the milestone anniversary. The attached Resolution would amend the Fiscal Year 2021-2022 budget in the amount of \$20,000.

ATTACHMENTS:

- Proposed Resolution

RESOLUTION NO. 2022-02-22-X

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LAGUNA HILLS, CALIFORNIA, AMENDING THE FISCAL YEAR 2021-2022 BUDGET BY INCREASING THE GENERAL GOVERNMENT DEPARTMENT OPERATING BUDGET FOR 30TH ANNIVERSARY ACTIVITIES

WHEREAS, the City Council of the City of Laguna Hills approved Resolution No. 2021-06-22-5 on June 22, 2021, adopting the Operating Budget, Capital Improvement Program, and Other Appropriations for the City of Laguna for the Fiscal Years 2021-2022 to 2022-2023 Biennial Budget; and

WHEREAS, the adopted Fiscal Years 2021-2022 to 2022-2023 Biennial Budget included an appropriation for celebrating the City's 30th Anniversary as a Major Plan work effort; and

WHEREAS, the City Council voted at the December 14, 2021, City Council meeting to increase the existing appropriation for 30th Anniversary activities from \$40,000 to \$60,000.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF LAGUNA HILLS, CALIFORNIA, DOES RESOLVE, DECLARE, DETERMINE, AND ORDER AS FOLLOWS:

SECTION 1. Adoption of Recitals. The foregoing recitals set forth above are true and correct and are incorporated by reference herein.

SECTION 2. Approval of Budget Amendments. The City Council hereby approves and adopts the proposed amendment to the Fiscal Year 2021-2022 Operating Budget for 30TH Anniversary activities, as set forth in the attached Exhibit "A".

PASSED, APPROVED, AND ADOPTED this 22nd day of February 2022.

DAVE WHEELER, MAYOR

ATTEST:

MELISSA AU-YEUNG, CITY CLERK

STATE OF CALIFORNIA)
COUNTY OF ORANGE) ss
CITY OF LAGUNA HILLS)

I, Melissa Au-Yeung, City Clerk of the City of Laguna Hills, California, DO
HEREBY CERTIFY that the foregoing is a true and correct copy of Resolution
No. 2022-02-22-X adopted by the City Council of the City of Laguna Hills, California, at a
Regular Meeting thereof held on the 22nd day of February 2022, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

(SEAL)

MELISSA AU-YEUNG, CITY CLERK

EXHIBIT A

Proposed Amendments
to the
Fiscal Year 2021-2022 Operating Budget
for
30TH Anniversary Activities

**CITY OF LAGUNA HILLS
PROPOSED BUDGET AMENDMENT
For Fiscal Year 2021-2022**

<u>FUND</u>	<u>DEPARTMENT</u>	<u>Current Budget</u>	<u>Proposed Amendment</u>	<u>Amended Budget</u>
	<u>Description</u>			
GENERAL FUND	GENERAL GOVERNMENT DEPARTMENT			
	Community Events/Public Relations – 30 th Anniversary Activities	40,000	20,000	60,000
	Total	<u>40,000</u>	<u>20,000</u>	<u>60,000</u>



City of Laguna Hills

City Council/Planning Agency

Staff Report

DATE: February 22, 2022
TO: Mayor and Council Members
FROM: Melissa Au-Yeung
Deputy City Manager
ISSUE: Support for the Brand-Huang-Mendoza Tripartisan Land Use Initiative

RECOMMENDATION: That the City Council adopt a Resolution entitled: “A Resolution of the City Council of the City of Laguna Hills, California, Supporting the Brand-Huang-Mendoza Tripartisan Land Use Initiative to Amend Article XI of the Constitution of the State of California to make Zoning and Land Use Community Affairs, and Not of State Interest.”

SUMMARY:

In recent years, the California State Legislature has introduced and passed a number of bills preempting local land use, zoning, and housing regulations in an effort to create standardized laws that disregard the unique characteristics of neighborhoods and communities throughout the state. For example, recently adopted legislation, such as Senate Bill 9 and Senate Bill 10, supersede local control and eliminate the opportunity for local governments to implement effective policies to create affordable housing and fair housing practices.

The proposed Brand-Huang-Mendoza Tripartisan Land Use Initiative would allow each city, not the State, to evaluate and determine for itself how to address local land use patterns, design standards (e.g. setbacks, size, height, etc.), parking demand and need, access to transit, and impacts on infrastructure including roadway capacity, water, sewer, energy, and emergency access.

Staff is recommending that the City Council approve a Resolution in support of the proposed Brand-Huang-Mendoza Tripartisan Land Use Initiative to express its

Support for the Brand-Huang-Mendoza Tripartisan Land Use Initiative

February 22, 2022

Page 2

opposition to actions of the California State Legislature to override local zoning and land use authority.

BACKGROUND:

Over the past few years, the California State Legislature has proposed and adopted numerous statewide laws that supersede local land use and zoning regulations. Generally, these laws preempt the City's land use policies and practices, effectively creating homogenous land use and housing regulations for all cities and communities in California. For instance, during the 2020 legislative session, Senate Bill 50, introduced by Senator Weiner, would have allowed developers of certain types of housing projects to override locally adopted height limitations, housing densities, parking requirements, and design review standards. Subsequent to the failure of Senate Bill 50, the California State Legislature passed Senate Bill 9 (Atkins) and Senate Bill 10 (Weiner) in 2021, proposing by-right ministerial approval of housing developments of two units, subdivision of parcels, and provisions allowing density increases within the single-family residential zone.

Despite growing opposition to such laws by local governments, including by the Laguna Hills City Council, the California State Legislature has made consistent effort over the past few years to introduce and adopt bills that preempt local control of local land use and housing regulations. In the current legislative session, to date, the California State Legislature has introduced 559 bills related to housing and 143 bills related to zoning. In the previous legislative session, 735 housing bills and 182 zoning bills were introduced by the Legislature.

The proposed Brand-Huang-Mendoza Tripartisan Land Use Initiative states that local land use and community development will not be controlled by State planners but by local governments and local initiatives approved by voters, except for regulations in the following categories:

1. The California Coastal Act of 1976;
2. Siting of power generating facility as determined by the California Public Utilities Commission; or
3. An ordinance or regulation addressing the development of water, communication, or transportation infrastructure projects of statewide concern.

Support for the Brand-Huang-Mendoza Tripartisan Land Use Initiative

February 22, 2022

Page 3

The Initiative would allow each city to evaluate and determine for itself how to address local land use patterns, design standards (e.g. setbacks, lot coverage, building height, etc.), parking demand and need, access to transit, and impacts on infrastructure, including roadway capacity, water, sewer, energy, and emergency access. This is a proposed initiative with a circulation deadline of May 2022 for placement on the November 8, 2022, General Election ballot.

Staff is recommending that the City Council approve the Resolution in support of the Brand-Huang-Mendoza Tripartisan Land Use Initiative to ensure that zoning and land use authority rests with the local government entities that represent the communities in which the residents reside and to allow local government to effectively address the unique needs and conditions of each local community.

ATTACHMENTS:

- Proposed Resolution
- Exhibit A

RESOLUTION NO. 2022-02-22-X

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LAGUNA HILLS, CALIFORNIA, SUPPORTING THE BRAND-HUANG-MENDOZA TRIPARTISAN LAND USE INITIATIVE TO AMEND ARTICLE XI OF THE CONSTITUTION OF THE STATE OF CALIFORNIA TO MAKE ZONING AND LAND USE COMMUNITY AFFAIRS, AND NOT OF STATE INTEREST

The City Council of the City of Laguna hills, California, hereby finds, determines, declares, and resolves as follows:

WHEREAS, the California State Legislature in recent years has proposed, passed, and signed into law a number of bills pertaining to land use, planning, and housing issues; and

WHEREAS, the majority of these bills usurp the authority of local jurisdictions to determine for themselves the land use policies and practices that best suit each city and its residents and instead impose mandates that do not take into consideration the unique needs and differences of local jurisdictions throughout the State of California; and

WHEREAS, the ability of local jurisdictions to determine for themselves which projects require review beyond ministerial approval; what parking requirements are appropriate for various neighborhoods; what housing plans and programs are suitable and practical for each community; and what zoning should be allowed for residential properties, rather than having these decisions imposed upon cities without regard for the unique circumstances and needs of each individual community, is a matter of critical importance to the City of Laguna Hills and cities focused on local zoning and housing issues; and

WHEREAS, the City Council of the City of Laguna Hills hereby determines that local governments are best able to assess and respond to the unique needs of their respective communities and hereby objects to the proliferation of State legislation that would deprive us of that ability.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF LAGUNA HILLS, CALIFORNIA, DOES RESOLVE, DECLARE, DETERMINE, AND ORDER AS FOLLOWS:

SECTION 1. The foregoing recitals are true and correct and are incorporated herein by reference.

SECTION 2. The City Council of the City of Laguna Hills is opposed to the legislature of the State of California continually proposing and adopting legislation that overrides the zoning and land use authority of local government and inhibits the ability of local government to effectively plan for and implement policies to stimulate the efficient production of affordable housing in the City of Laguna Hills.

SECTION 3. The City Council of the City of Laguna Hills supports the Brand-Huang-Mendoza Tripartisan Land Use Initiative, attached hereto as Exhibit A, to ensure that zoning and land use authority rests with the local government entities that represent the communities in which the residents reside and to allow local government to participate in solving the affordable housing crisis through solutions that effectively address the unique needs and conditions of each local community.

PASSED, APPROVED AND ADOPTED this 22nd day of February 2022.

DAVE WHEELER, MAYOR

ATTEST:

MELISSA AU-YEUNG, CITY CLERK

STATE OF CALIFORNIA)
COUNTY OF ORANGE) ss
CITY OF LAGUNA HILLS)

I, Melissa Au-Yeung, City Clerk of the City of Laguna Hills, California, DO HEREBY CERTIFY that the foregoing is a true and correct copy of Resolution No. 2020-02-22-X adopted by the City Council of the City of Laguna Hills, California, at a Regular Meeting thereof held on the 22nd day of February 2022, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

(SEAL)

MELISSA AU-YEUNG, CITY CLERK

21-0016

Amdt. # 1

To: The Office of the Attorney General
ATTN: Initiative Coordinator
1300 I Street, 17th Floor
Sacramento, CA 95814
(916) 445-4752 | www.oag.ca.gov

RECEIVED

OCT 1 2021

Re: Initiative 21-0016 (Local Land Use) - Amendment

INITIATIVE COORDINATOR
ATTORNEY GENERAL'S OFFICE

Dear Initiative Coordinator:

Pursuant to subdivision (b) of Section 9002 of the Elections Code, enclosed please find amendments to Initiative No. 21-0016. The amendments are reasonably germane to the theme, purpose or subject of the initiative measure as originally proposed. I am a proponent of the measure and request that the Attorney General prepare a circulating title and summary of the measure as provided by law, using the amended language. Thank you for your time and attention processing my request.

Please direct all inquiries and correspondence regarding this proposed initiative to:

John Heath
(323) 248-1699
jheath@uhawhvp.org



Bill Brand

Date: 7-28-21

Attachment: Exhibit A (2756 : Support for the Brand-Huang-Mendoza Tripartisan Land Use Initiative)

To: The Office of the Attorney General
ATTN: Initiative Coordinator
1300 I Street, 17th Floor
Sacramento, CA 95814
(916) 445-4752 | www.oag.ca.gov

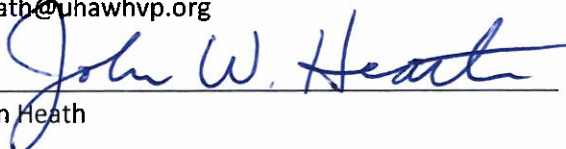
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Please direct all inquiries and correspondence regarding this proposed initiative to:

John Heath
(323) 248-1699
jheath@uhawhvp.org



John Heath

Date: *Sept. 28, 2021*

Attachment: Exhibit A (2756 : Support for the Brand-Huang-Mendoza Tripartisan Land Use Initiative)

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ATTN: Initiative Coordinator
1300 I Street, 17th Floor
Sacramento, CA 95814
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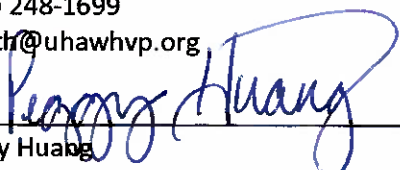
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Please direct all inquiries and correspondence regarding this proposed initiative to:

John Heath
(323) 248-1699
jheath@uhawhvp.org


Peggy Huang

Date:

Sept. 28, 2021

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To: The Office of the Attorney General
ATTN: Initiative Coordinator
1300 I Street, 17th Floor
Sacramento, CA 95814
(916) 445-4752 | www.oag.ca.gov

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Please direct all inquiries and correspondence regarding this proposed initiative to:

John Heath
(323) 248-1699
JHeath@uhawhvp.org


Jovita Mendoza

Date: 9/29/21

Attachment: Exhibit A (2756 : Support for the Brand-Huang-Mendoza Tripartisan Land Use Initiative)

To: The Office of the Attorney General
ATTN: Initiative Coordinator
1300 I Street, 17th Floor
Sacramento, CA 95814
(916) 445-4752 | www.oag.ca.gov

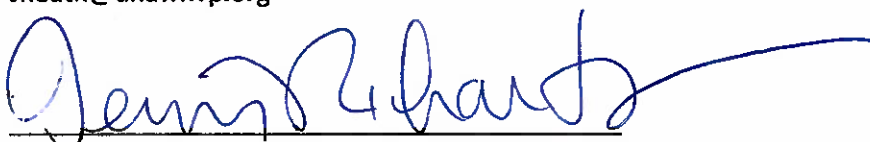
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Please direct all inquiries and correspondence regarding this proposed initiative to:

John Heath
(323) 248-1699
jheath@uhawhvp.org



Dennis Richards

Date: SEPTEMBER 29, 2021

Attachment: Exhibit A (2756 : Support for the Brand-Huang-Mendoza Tripartisan Land Use Initiative)

21 - 0016 Amdt. # 1

SECTION 1. The people of the State of California find and declare all of the following:

- (a) The circumstances and environmental impacts of local land use decisions vary greatly across the state from locality to locality.
- (b) The infrastructure required to maintain appropriate levels of public services, including police and fire services, parklands and public open spaces, transportation, water supply, schools, and sewers varies greatly across the state from locality to locality.
- (c) Land use decisions made by local officials must balance development with public facilities and services while addressing the economic, environmental, and social needs of the particular communities served by those local officials.
- (d) Thus, it is in the best interests of the state and local communities for these complex decisions to be made at the local level to ensure that the specific, unique characteristics, constraints, and needs of those communities are properly analyzed and addressed.
- (e) Gentrification of housing adjacent to public transportation will reduce or eliminate the availability of low or very low income housing near public transit, resulting in the loss of access by low or very low income persons to public transit, declines in public transit ridership, and increases in vehicle miles travelled.
- (f) The State Legislature cannot properly assess the impacts upon each community of sweeping centralized and rigid state land use rules and zoning regulations that apply across the state without regard to community impacts and, as a result, statewide land use and zoning will do great harm to local communities with differing circumstances and concerns.
- (g) Community development should not be controlled by state planners, but by local governments that know and can address the needs of, and the impacts upon, local communities. Local initiatives approved by voters pertaining to land use and zoning restrictions should not be nullified or superseded by the actions of any local or state legislative body.
- (h) Numerous state laws that target communities for elimination of zoning standards have been enacted, and continue to be proposed, that eliminate or erode local control over local development and circumvent the California Environmental Quality Act ("CEQA"), creating the potential for harmful environmental impacts to occur.
- (i) The purpose of this measure is to ensure that all decisions regarding local land use controls, including zoning law and regulations, are made by the affected communities in accordance with applicable law, including but not limited to CEQA (Public Resources Code § 21000 et seq.), the California Fair Employment and Housing Act (Government Code §§ 12900 – 12996), prohibitions against discrimination (Government Code § 65008), and affirmatively furthering fair housing (Government Code § 8899.50). This constitutional amendment would continue to provide for state control in the coastal zone, the siting of a power plant that can generate more than 50 megawatts of electricity, or the development or construction of water, communication or transportation infrastructure projects which the Legislature declares are matters of statewide concern and are in the best interests of the state. For purposes of this measure, it is the intent that a transportation infrastructure project shall not include a transit-oriented development project that is residential, commercial, or mixed-use.

SECTION 2. Section 4.5 is added to Article XI of the California Constitution, to read:

SEC. 4.5. (a) Except as provided in subdivision (b), in the event of a conflict with a state statute, a county charter provision, general plan, specific plan, ordinance or a regulation adopted pursuant to a county charter, that regulates the zoning, development or use of land within the boundaries of an unincorporated area of the county shall be deemed a county affair within the meaning of Section 4 and shall prevail over a conflicting state statute. No voter approved local initiative that regulates the zoning, development or use of land within the boundaries of any county shall be overturned or otherwise nullified by any legislative body.

(b) A county charter provision, general plan, specific plan, ordinance or a regulation adopted and applicable to an unincorporated area within a county, may be determined only by a court of competent jurisdiction, in accordance with Section 4, to address either a matter of statewide concern or a county affair if that provision, ordinance, or regulation conflicts with a state statute with regard to only the following:

(1) The California Coastal Act of 1976 (Division 20 (commencing with Section 30000) of the Public Resources Code), or a successor statute.

(2) The siting of a power generating facility capable of generating more than 50 megawatts of electricity and the California Public Utilities Commission has determined that a need exists at that location that is a matter of statewide concern.

(3) The development or construction of a water, communication or transportation infrastructure project for which the Legislature has declared in statute the reasons why the project addresses a matter of statewide concern and is in the best interests of the state. For purposes of this paragraph, a transportation infrastructure project does not include a transit-oriented development project, whether residential, commercial, or mixed-use.

(c) No modification to appropriations for state funded programs shall occur, and no state grant applications or funding shall be denied as a result of the application of this section. No benefit or preference in state appropriations or grants shall be given to an entity that opts not to utilize the provisions of this section.

(d) The provisions of this section are severable. If any provision of this section or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

SECTION 3. Section 5.5 is added to Article XI of the California Constitution, to read:

SEC. 5.5. (a) Except as provided in subdivision (b), in the event of a conflict with a state statute, a city charter provision, general plan, specific plan, ordinance or a regulation adopted pursuant to a city charter, that establishes land use policies or regulates zoning or development standards within the boundaries of the city shall be deemed a municipal affair within the meaning of Section 5 and shall prevail over a conflicting state statute. No voter approved local initiative that regulates the zoning, development or use of land within the boundaries of any city shall be overturned or otherwise nullified by any legislative body.

(b) A city charter provision, general plan, specific plan, ordinance or a regulation adopted pursuant to a city charter, may be determined only by a court of competent jurisdiction, in accordance with Section 5, to address either a matter of statewide concern or a municipal affair

if that provision, ordinance, or regulation conflicts with a state statute with regard to only the following:

- (1) The California Coastal Act of 1976 (Division 20 (commencing with Section 30000) of the Public Resources Code), or a successor statute.
 - (2) The siting of a power generating facility capable of generating more than 50 megawatts of electricity and the California Public Utilities Commission has determined that a need exists at that location that is a matter of statewide concern.
 - (3) The development or construction of a water, communication or transportation infrastructure project for which the Legislature has declared in statute the reasons why the project addresses a matter of statewide concern and is in the best interests of the state. For purposes of this paragraph, a transportation infrastructure project does not include a transit-oriented development project, whether residential, commercial, or mixed-use.
- (c) No modification to appropriations for state funded programs shall occur, and no state grant applications or funding shall be denied as a result of the application of this section. No benefit or preference in state appropriations or grants shall be given to an entity that opts not to utilize the provisions of this section.
- (d) The provisions of this section are severable. If any provision of this section or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

SECTION 4. Section 7 of Article XI of the California Constitution is amended to read:

SEC. 7. (a) A county or city may make and enforce within its limits all local, police, sanitary, and other ordinances and regulations ~~not that are not, except as provided in subdivision (b),~~ in conflict with general laws. A county or city may not supersede or otherwise interfere with any voter approved local initiative pertaining to land use or zoning restrictions.

(b) A county or city general plan, specific plan, ordinance or regulation that regulates the zoning, development or use of land within the boundaries of the county or city shall prevail over conflicting general laws, except for only the following:

- (A) A coastal land use plan, ordinance or regulation that conflicts with the California Coastal Act of 1976 (Division 20 (commencing with Section 30000) of the Public Resources Code), or a successor statute.
- (B) An ordinance or regulation that addresses the siting of a power generating facility capable of generating more than 50 megawatts of electricity and the California Public Utilities Commission has determined that a need exists at that location that is a matter of statewide concern.
- (C) An ordinance or regulation that addresses the development or construction of a water, communication or transportation infrastructure project for which the Legislature has declared in statute the reasons why the project addresses a matter of statewide concern and is in the best interests of the state. For purposes of this subparagraph, a transportation infrastructure project does not include a transit-oriented development project, whether residential, commercial, or mixed-use.

(c) No modification to appropriations for state funded programs shall occur, and no state grant applications or funding shall be denied as a result of the application of this section. No benefit or preference in state appropriations or grants shall be given to an entity that opts not to utilize the provisions of this section.

(d) The provisions of this subdivision are severable. If any provision of this subdivision or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.



City of Laguna Hills

City Council/Planning Agency

Staff Report

DATE: February 22, 2022

TO: Mayor and Council Members

FROM: Melissa Au-Yeung
Deputy City Manager

ISSUE: 30TH Anniversary Ad Hoc Committee Update on Banners

RECOMMENDATION: That the City Council review and approve the installation of 30th Anniversary banners, including a limited number of Moulton Museum banners.

BACKGROUND:

At its August 24, 2021, City Council meeting, the City Council established an ad-hoc committee comprised of Mayor Pro Tempore Heft and Council Member Pezold for the purpose of planning and celebrating the City's 30th Anniversary. Since its establishment, the ad-hoc committee has discussed a number of ways to celebrate and promote the City's 30th Anniversary including proclamations recognizing the City's anniversary, development of banners highlighting the 30th Anniversary, expanding the City's existing premier events such as the Memorial Day race and 4th of July celebration, holding additional 30th Anniversary branded events, and utilizing social media to shine light on the City's history.

The year-long celebration includes the development and installation of banners highlighting the City's anniversary along several of the City's arterial roadways. Currently, there are a total of 67 banners slated for installation at a per banner cost is \$563, of which \$150 is for the printing cost and \$413 represents a one-time hardware and installation cost.

The 30th Anniversary represents an opportunity to celebrate the City's rich history and, as such, the ad-hoc committee has actively sought to incorporate different components of the City's history in its activities and events. The opening of the Moulton Museum

30TH Anniversary Ad Hoc Committee Update on Banners

February 22, 2022

Page 2

later this year offers a notable opportunity to celebrate the City's history, particularly during the year-long celebration of one of the City's milestone anniversaries.

The Moulton Museum has expressed interest in working with the City to provide a limited number of banners to be installed coincident with the 30th Anniversary celebration banners. The full cost for the printing of their banners, and the necessary hardware, will be paid exclusively by the Moulton Museum. It is anticipated these banners will be installed at the same time as the City's banners, thereby not incurring additional installation costs.

Staff recommends the City Council review and approve the installation of banners celebrating the City's 30th Anniversary, including a limited number of banners as provided by the Moulton Museum.

FISCAL IMPACT:

The cost for the development and installation of the banners highlighting the City's 30th Anniversary was included in the current 2021-2023 Biennial Budget. The full cost for the printing of additional banners, as requested by the Moulton Museum, including the necessary hardware, will be paid exclusively by the Moulton Museum.



City of Laguna Hills

City Council/Planning Agency

Staff Report

DATE: February 22, 2022

TO: Mayor and Council Members

FROM: Kenneth H. Rosenfield P.E.
Interim City Manager/Director of Public Services

ISSUE: Housing Element Update Workshop Date Options

RECOMMENDATION: That the City Council select one or more dates and times for the Housing Element Update Workshop and schedule a Special Meeting of the City Council for that purpose.

SUMMARY:

The City is actively engaged in the preparation of the 6th cycle of the Housing Element Update. The City Council requested a workshop to facilitate an understanding of process, procedures and policies involved in meeting all State law and policy requirements for the Housing Element Update. The first date scheduled for this workshop was unable to be held. New dates and times are offered herein for the City Council to select. An early selection of the Workshop date and time will provide the interested public with the timeliest notice of the Workshop.

BACKGROUND:

Every city's Housing Element is required by the State to be updated every eight years. The City is currently engaged in the preparation of the 6th cycle of the Housing Element Update. The planning consulting firm Placeworks has been retained to prepare the City's Housing Element Update. Upon the review of the second draft Housing Element Update by the City Council on January 11, 2022, the City Council requested a workshop be held to facilitate an understanding of process, procedures and policies involved in meeting all State law and policy requirements for the Housing Element Update. The first date scheduled for this workshop, set for mid-February, was unable to be held. Staff

Housing Element Update Workshop Dates
February 22, 2022
Page 2

subsequently requested from Placeworks their available dates for the rescheduling of the Workshop.

Placeworks provided the following dates and times they are available over the next few weeks for the Workshop. Staff has annotated the reasons whether or not these dates are an option for City Council to hold the Workshop.

Dates and Times for Workshop

Meeting date availability

Thursday, March 3 – Evening	Staff not available
Friday, March 4 – Evening	Staff not available
Monday, March 7 – Evening	A City Council member not available
Tuesday, March 8 – Evening	City Council Regular Meeting
Wednesday, March 9 - Evening	<u>Date Available</u> but not desired due to a likely late City Council meeting on March 8
Monday, March 14 afternoon (not evening)	Day time weekday meeting not desired by community and Staff not available
Wednesday, March 16 – evening	<u>Date Available</u>
Thursday, March 17 – evening	<u>Date Available</u>
Saturday, March 19 – daytime	Staff not available
Saturday, March 26 – daytime	<u>Date Available</u>

After considering the opportunities and constraints for the dates and times available for the Housing Element Update Workshop, the best dates available are March 16, 17, or 26, 2022. If these dates are not suitable to City Council availability, dates and times in April can be requested.



City of Laguna Hills

City Council/Planning Agency

Staff Report

DATE: February 22, 2022

TO: Mayor and Council Members

FROM: Kenneth H. Rosenfield P.E.
Interim City Manager/Director of Public Services

ISSUE: Nellie Gail Road Equestrian Crossing Update of Improvements and Consideration of a Raised Intersection

RECOMMENDATION: That the City Council authorize Staff to survey Nellie Gail Ranch area residents to determine if there is support for constructing a Split Raised Intersection at the Nellie Gail Road Equestrian Crossing at the Nellie Gail Ranch Owners Association Equestrian Center Driveway.

SUMMARY:

The equestrian crossing located on Nellie Gail Road at the Nellie Gail Ranch Owners Association (NGROA) equestrian facility rear driveway, southerly of Oso Parkway, has been reviewed on several occasions by the Traffic Commission, most recently on January 19, 2022, and has been the subject of a variety of signage improvements, rectangular rapid flashing beacons (RRFB) installations (including two additional RRFBs installed in the median island in early August 2021 to supplement the existing two RRFBs in the parkways), and traffic enforcement. In response to requests from area residents for more improvements, the Traffic Commission, at the January 19, 2022, meeting, reviewed two conceptual designs for adding a raised intersection at this location, and recommended Staff bring design concept #2, split raised intersection, to the City Council for consideration. Based upon the City's Residential Streets Traffic Management Policy to obtain the support of at least 67% of the affected residents of the street including adjacent area streets to implement a physical device such as the split raised intersection, and in consideration of the funding for the project that would need to be allocated if approved, Staff requests City Council authorization to proceed

with the resident area vote.

BACKGROUND:

In 2012, the City Council approved the establishment of a staff directed Committee to review equestrian trail crossing markings and signage in and around the Nellie Gail Ranch community. Since the formation of the Committee, enhancements were made to numerous equestrian crossings. This effort included substantial improvements to the at-grade crossing at the Nellie Gail Equestrian Center driveway/equestrian crossing on Nellie Gail Road, southerly of Oso Parkway. During the past year Staff has worked with the Committee on their request for a new evaluation of the driveway/equestrian crossing at the Nellie Gail Equestrian Center due to recent safety concerns.

The equestrian crossing located on Nellie Gail Road at the Nellie Gail Ranch Owners Association (NGROA) equestrian facility rear driveway has been reviewed on several occasions by the City's consulting Traffic Engineers and the Traffic Commission. The most recent review by the Traffic Commission was on January 19, 2022. To date, this equestrian crossing has been the subject of a variety of signage improvements, rectangular rapid flashing beacons (RRFB) installations (including two additional RRFBs installed in the median island in early August 2021 to supplement the existing two RRFBs in the parkways), and traffic enforcement. Staff also conducted research and developed preliminary design concepts and feasibility studies for a speed table installation at the Equestrian Center, including an alternative to the equestrian crossing.

The attached design concept #1, raised intersection and design concept #2, split raised intersection preliminary design concepts as prepared by Hartzog and Crabill, Inc., would raise the intersection by a total of three inches as a traffic calming roadway feature, seeking to bring driver's attention to the equestrian crossing while moderating vehicle speeds at the crossing. The design concepts are in accordance with traffic calming criteria as published by the Federal Highway Administration (FHWA). The raised intersection is equivalent to an elongated speed hump.

The following Staff review comments of the new split raised intersection concept are provided for consideration.

- 1) The split raised intersection will not significantly change the motorists view of the equestrian crossing or change the equestrians view of traffic.
- 2) Eighty-fifth percentile vehicle speeds are expected to be reduced a minimum of

four miles per hour at the raised intersection as reported by FHWA.

- 3) To maintain gutter drainage at this location, the split raised intersection speed tables will span from gutter to gutter in advance of the equestrian crossing in both directions thereby avoiding the differential in grade at the equestrian crossing.
- 4) Additional vehicle noise should be expected in the area of the split raised intersection. This noise would be attributed to vehicle braking on approach and vehicle acceleration upon leaving the raised intersection. Commercial vehicles, as well, with loose or unsecured loads, would be expected to cause noise as the load rises and falls over the raised intersection. There is limited published literature on the actual noise change expected at these devices. In a 1995 publication entitled, "Traffic Calming: vehicle noise emissions alongside speed control cushions and road humps", the Transport Research Laboratory (United Kingdom) reported "...the flat-top hump causing an increase of about 6 dB(A)..." A six-decibel noise change is definitely discernable by the average person and could be disturbing to sensitive receptors.
- 5) The Orange County Sheriff's Department (OCSD) and the Orange County Fire Authority (OCFA) have approved, in concept, the proposed designs, but OCFA did note there will be minor emergency vehicle delays to the area.
- 6) The construction of the split raised intersection is not included in the current fiscal year budget and has an estimated cost of \$40,000 to include design, construction and inspection (please see Fiscal Impact).

It is the conclusion of Hartzog and Crabill, Inc., that the construction of the roadway feature of a split raised intersection at the subject location is feasible. Based upon Staff's review of the two design concepts and taking into consideration the concerns expressed by the public at meetings of the Traffic Commission, Staff recommends proceeding with concept #2, the split raised intersection, subject to City Council approval of same. At the January 19, 2022, meeting, the Traffic Commission recommended Staff bring design concept #2, split raised intersection, to the City Council for consideration.

In consideration of the recommendation to move forward with the split raised intersection, the below excerpt from the City's Residential Streets Management Policy No. 350 for physical roadway devices (including related improvements) is provided for information including Staff annotations as to the status of the "minimum criteria" relative to the split raised intersection concept. Staff has deemed the raised intersection

as a physical device that must meet the criteria below.

Page 7 of Policy No. 350

“IV. PHYSICAL DEVICES

Physical devices will only be considered as a last use effort to resolve an identified traffic safety issue that has been documented as not being resolved by other means described in this Policy. *[emphasis added] Physical devices are roadway features and may include barricades, chokers, cul-de-sacs, medians, one-way streets, semi-diverters, speed humps and related improvements.*

One of the physical devices most often requested for speed or volume control is a speed hump. Speed humps have been documented in certain but not all cases, to reduce the prevailing speed of traffic depending upon their spacing and frequency of use. While not specifically designed as a traffic volume control device, speed humps can cause some reduction in traffic volumes as motorists seek other routes due to the inconvenience factor caused by speed humps.

A speed hump, in contrast to a speed bump, is an elongated, gentle roadway feature typically 12 feet across with a height of approximately 3 inches, which gives the traversing vehicle a gentle rise and fall as a reminder that the 25-mph speed for the street should be followed. A speed bump, typically two feet across with a height of approximately 4 inches, can jolt vehicles and their passenger, motorcycles, and bicycles, is to be avoided.

... Physical devices, including speed humps, will only be considered for use where other appropriate traffic controls have failed to address the documented traffic safety issue, where an environmental assessment has been considered and where the following minimum criteria are met.

a. At least 67% of the affected residents of the street and adjacent area streets support the implementation of the physical device. The streets to be used to evaluate the support for the physical device will be those that reasonably can be inferred to draw traffic to the street of concern. [Note – this criterion for the Nellie Gail Road equestrian crossing is pending]

b. The prevailing speed of traffic has been documented to be greater than 34 mph for at least two radar speed surveys taken 90 days apart as part of the follow-up

evaluation of all other traffic controls used to address the issue. [This criterion has been met for Nellie Gail Road]

c. At least 1,500 vehicles traverse the street in a 24-hour period. [This criterion has been met for Nellie Gail Road]

d. The location meets the approval of the Police and Fire Department related to adequate response time of safety vehicles. [This criterion has been met for the Nellie Gail Road raised intersection concept]

e. The grade of the street shall not exceed 6%. [This criterion has been met for Nellie Gail Road based upon the City's policy as the street grade is 7.03%. However, upon further research it was determined that the Institute for Transportation Engineers (ITE) Guidelines for the Design and Application of Speed Humps currently recommends consideration only on a street with a grade of 8 percent or less]

f. The street must have a length of at least 1,300 feet and be able to accommodate a minimum of three speed humps unless otherwise directed by the City Council. [This criterion has been met for Nellie Gail Road]

g. Other issues related to traffic engineering will be considered as deemed appropriate by the City Traffic Engineer." [No further issues known at this time]

Based upon the City's Policy to obtain the support of at least 67% of the affected residents of the street including adjacent area streets to implement a physical device such as the split raised intersection, and in consideration of the funding for the project that would need to be allocated if approved, Staff requests City Council authorization to proceed with the resident area vote.

Alternative to the Raised Intersection

Staff has also consistently advised the Equestrian Committee and the Traffic Commission that an alternative to the raised intersection exists. There is a fully functional equestrian tunnel under Nellie Gail Road northerly of the existing at grade crossing which is an alternative route to connecting existing trails. The tunnel avoids all traffic conflicts and any concerns regarding traffic safety. The tunnel is known to be less convenient for the equestrians to use and some equestrians have noted general concerns about using a tunnel. Staff has developed an alternate trail connection to the tunnel that has been shown to be feasible. The cost of this trail connection has not been

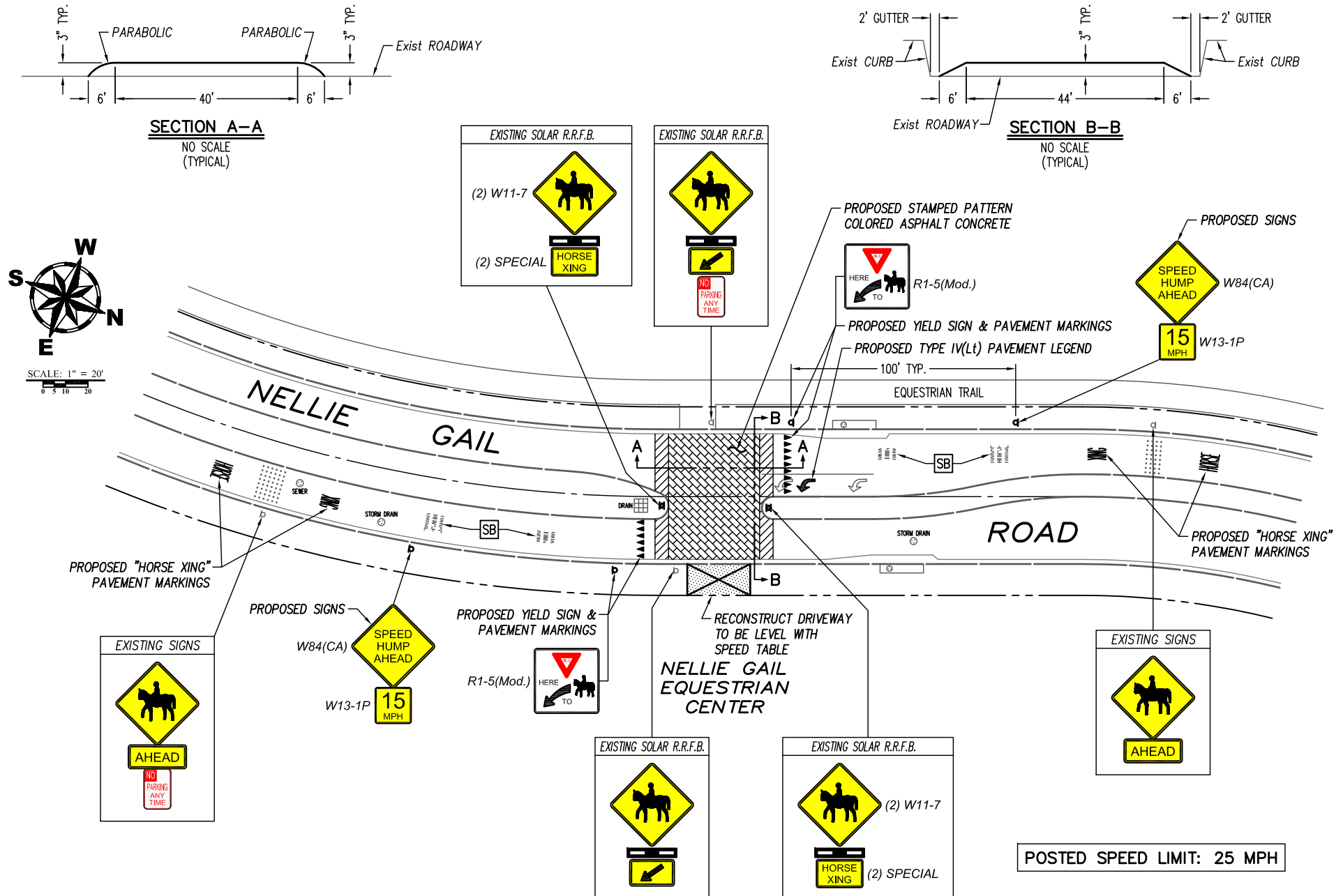
established but is reasonably known to be less costly than the raised intersection.

FISCAL IMPACT:

The proposed Split Raised Intersection Speed Table Improvement and/or Trail Improvement is not included within the current fiscal year Capital Improvement Budget. The Speed Table has an estimated construction cost of \$30,000 and a budget figure of \$40,000 would be recommended to cover design and inspection of the work. The Trail extension work cost estimate is not as yet available.

ATTACHMENTS:

- Design Concept #1 - Raised Intersection
- Design Concept #2 - Split Raised Intersection
- Vicinity Map



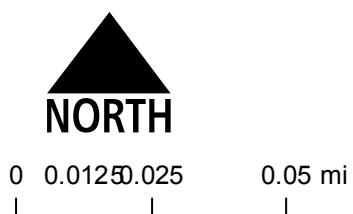
Attachment: Design Concept #1 - Raised Intersection (2758 : Nellie Gail Road Speed Table)

CONCEPT #1 - PROPOSED RAISED CROSSING **Nellie Gail Road at Equestrian Center Driveway** **CITY OF LAGUNA HILLS**





Attachment: Vicinity Map (2758 : Nellie Gail Road Speed Table)



NELLIE GAIL ROAD EQUESTRIAN CROSSING VICINITY MAP





City of Laguna Hills

City Council/Planning Agency

Staff Report

DATE: February 22, 2022

TO: Mayor and Council Members

FROM: David Reynolds
Deputy City Manager/Community Services Director

ISSUE: Updated Community Center and Sports Complex Security Camera and Lighting Plan

RECOMMENDATION: That the City Council review the Updated Community Center and Sports Complex Security Camera and Lighting Plan and direct Staff to prepare a Budget Amendment to increase camera installations and lighting improvements at the Community Center and Sports Complex as described in the report.

SUMMARY:

The City Council was presented with Staff's Community Center and Sports Complex Security Camera and Lighting Plan on October 12, 2021. The plan presented to the City Council at the October 12, 2021, meeting, is attached to this report as Attachment 2 (Original Plan). Comments were made by City Council members on what should be the appropriate style of lighting at the Community Center and Sports Complex and further clarification on the prioritization of the plan's coverage zones was requested. Staff informed the City Council that the plan would be brought back to the City Council to address these comments. The Parks and Recreation Commission was presented with the Community Center and Sports Complex Security Camera and Lighting Plan on December 1, 2021. The Commission supported the plan. Staff has updated the plan based on further evaluation of the coverage area zones with the goal of reducing the overall cost of the project while still providing adequate security coverage in each zone of the plan. Staff's updated plan is attached to this report as Attachment 1 (Updated Plan). Additionally, images of existing equipment at the Community Center and Sports Complex and proposed equipment as part of the plan are attached to the report for the

City Council's reference as Attachment 3.

BACKGROUND:

On July 13, 2021, the City Council received a Public Safety Update report which presented a list of improvements and public safety actions planned to be undertaken at the Community Center and Sports Complex. Another Public Safety Update report was presented to the City Council on October 12, 2021, that provided follow-up on specific actions and a presentation of Staff's proposed Community Center and Sports Complex Security Camera and Lighting Plan (Original Plan). The Original Plan is attached to this report as Attachment 2. At the October 12, 2021, meeting, the City Council directed Staff to prepare a budget amendment to increase security camera installations and lighting improvements at the Community Center and Sports Complex and return to the City Council with both a review of the style of lighting and the prioritization of zones for the installation of security equipment.

Upon further evaluation of the Original Plan, Staff revised the plan to remove certain security lighting and camera equipment from the plan. The reason for these revisions is to reduce the overall cost of the project by eliminating potential overlap of security coverage in particular zones of the plan. The revised Community Center and Sports Complex Security Camera and Lighting Plan (Updated Plan) is attached to this report as Attachment 1. The revisions between the Original Plan and the Updated Plan are noted below in the "Summary of Updated Plan" section of this Staff report.

Lighting Styles

Images of existing lighting equipment, and security cameras, at the Community Center and Sports Complex are included in this report as Attachment 3. Also, examples of proposed lighting equipment and security cameras used for project cost estimation are included in Attachment 3. These may be helpful for City Council in directing Staff on the style of lighting, if needed, that should be included in the bid specifications when the security lighting project goes out to bid.

Staff also recommends that LED motion sensor lights be installed on the athletic field light poles. An image of the type of LED light equipment recommended by Staff is shown in Attachment 3, B, and would be installed on athletic field light poles in a similar fashion to existing security lighting that should be upgraded and replaced (see Attachment 3, A). It is recommended that the newly installed security lighting, especially in the Revised Plan's Zones 1 through 4, are set to motion sensors and are on the higher end of the Correlated Color Temperature (CCT) chart to provide for more visible after-

hours security enforcement. The LED security lighting proposed in the Original Plan and Updated Plan are rated at 5,000K CCT.

In the blind spots around the Community Center building (see Zone 5 in Attachment 1), the fixed LED lighting exhibited in Attachment 3, E, can be used to illuminate the areas marked on the plan. It is also recommended that the afterhours lighting in these areas be set to motion sensors.

Prioritization

Staff and OC Sheriff's Department personnel have assessed the outdoor areas of the Community Center and Sports Complex to identify blind spot areas for the placement of additional security cameras. For the purposes of planning and budgeting for the installation of new cameras, Staff divided the Community Center and Sports Complex into five zones of exterior areas and one zone of interior area (see Attachment 1 and Attachment 2). These zones could be used to prioritize the purchase and installation of new cameras as separate or combined installation project(s).

From the Community Services Department's perspective, the coverage zones of the plan have been prioritized with number 1 being the highest priority (see Table 1 below). With that said, Staff's recommendation is to move forward with the entire lighting and camera security plan identified in the Updated Plan.

Table 1. Community Service Department Zone Priority

Priority	
1	Zone 4 – Hockey Rink and Skatepark
2	Zone 5 – Community Center (Exterior)
3	Zone 1 – Soccer Fields 1 & 2 and walkway in-between Softball field and Soccer Fields
4	Zone 2 – Softball Field, Playground, and Picnic Shelter
5	Zone 3 – Little League Field and Town Green
6	Zone 6 –Community Center (Interior)

The Parks and Recreation Commission was presented with Staff's Original Plan at its December 1, 2021, meeting. Specifically, Staff requested the Commission's input on zone priorities and its opinion on the need for certain cameras and lighting in each zone of the Original Plan. The Commission was in favor of Staff's security plan and expressed that the picnic shelter area and Zone 4, which contains the hockey rink and skatepark, should be the higher priority zones. Staff reminded the Commission that high definition security cameras are currently installed at the Community Center and Sports Complex

restroom and snack bar facility that provides camera coverage of the picnic shelter area.

Summary of Updated Plan

Table 2 below compares the Original Plan and Updated Plan in terms of equipment changes and overall estimated costs per zone, and is followed by a summary description of each zone. The plan's coverage zones are as follows:

- Zone 1 – Soccer Fields 1 & 2 and walkway in-between Softball field and Soccer Fields
- Zone 2 – Softball Field, Playground, and Picnic Shelter
- Zone 3 – Little League Field and Town Green
- Zone 4 – Hockey Rink and Skatepark
- Zone 5 – Community Center (Exterior)
- Zone 6 –Community Center (Interior)

Images of where Staff recommends the installation of the camera and lighting equipment is provided in the Updated Plan (see Attachment 1).

Table 2. Original Plan and Updated Plan Comparison

Original Plan presented to City Council (10/21/21)						Updated Plan				
Zone	Cameras		Lights		Total Cost \$	Cameras		Lights		Total Cost \$
	A	B	C	D		F	G	H	I	
	Count	Cost \$	Count	Cost \$		Count	Cost \$	Count	Cost \$	
1	4	20,000	4	13,000	33,000	2	10,000	2	6,500	16,500
2	3	18,000	8	23,000	41,000	2	12,000	5	14,500	26,500
3	1	6,000	4	13,000	19,000	1	6,000	4	13,000	19,000
4	2	11,000	4	13,000	24,000	2	11,000	4	13,000	24,000
5	7	23,000	7	30,000	53,000	4	13,500	7	30,000	43,500
6	28	35,000	0	0	35,000	28	35,000	0	0	35,000
Totals		113,000		92,000	205,000		87,500		77,000	164,500

Zone 1: Soccer fields and walkway in-between to softball field and soccer fields

Cameras: Install two (2) cameras with 360-degree coverage on the existing athletic field light poles to provide security coverage of soccer fields, the walkway in-between the softball field and soccer fields, the softball field, the Town Green

walkway entrance, the intersection of Community Center Drive and entrance to Community Center Sports Complex parking lots and the soccer field parking lot.

Lighting: Install two (2) motion sensor lights with photo-cell and motion sensor equipment on one athletic field light pole to illuminate the walkway in-between the soccer fields and the softball field and a portion of walkway area in-between the playground and the softball field.

Revisions from Original Plan: Removal of two (2) cameras from (2) two athletic field light poles and two (2) motion sensor lights with photo-cell and motion sensor equipment installed on one (1) athletic field light pole.

Zone 2: Softball Field, Playground, and Picnic Shelter

Cameras: Install one (1) camera with 360-degree coverage on an existing softball field light pole, and one (1) camera with 360-degree coverage on the Town Green Gazebo. These cameras would provide security coverage of the softball field, the walkway area and City storage area located in-between the softball field and playground, portions of the west end of the playground, southern portion of the playground, the walkway in-between the playground and the Town Green Gazebo, and the upper Town Green grass area.

A total of five (5) cameras are currently installed and would remain in place at the snack bar and restroom facility that provides security coverage of the surrounding area including coverage of the picnic shelter area.

Lighting: Install two (2) motion sensor lights with photo-cell and motion sensor equipment on a softball field light pole, and install three (3) motion sensor lights with photo-cell and motion sensor equipment on the Town Green Gazebo to provide additional lighting to the walkway area and City storage area located in-between the softball field and the playground, and provide lighting around the southern portion of the playground, and the walkway area and the Town Green Gazebo area.

Revisions from Original Plan: Removal of one (1) camera and three (3) motion sensor lights with photo-cell and motion sensor equipment from walkway light pole in the northern end of playground. This walkway light pole would require additional power to be installed to power both the camera and lighting equipment.

Zone 3: Little League Field and Town Green

Cameras: Install one (1) camera with 360-degree coverage on the little league field scoreboard. This camera would provide security coverage of the little league field and dugouts, a portion of the Town Green and the Town Green walkway.

Lighting: Install a) two (2) motion sensor lights with photo-cell and motion sensor equipment on one little league field light pole to illuminate the little league field walkways and dugout entrances and b) install two (2) motion sensor lights with photo-cell and motion sensor equipment on another little league field light pole to illuminate the little league field walkways and dugout entrances.

Revisions from Original Plan: No revisions.

Zone 4: Hockey Rink and Skatepark

Cameras: Install one (1) camera with 360-degree coverage on a hockey rink light pole. This camera would provide security coverage of the entire hockey rink, the grass area behind and on the north end of the hockey rink, and the seating area adjacent to the hockey rink. Replace one of the existing Skateboard Park cameras with one (1) new camera equipped with pan/tilt/zoom capabilities to provide real-time surveillance and investigation assistance. The replaced security camera could be moved to another location. A total of three (3) existing cameras are installed on a light pole at the Skateboard Park that provide coverage of the Skatepark, a portion of the upper parking lot, the walkway leading to the hockey rink, and the southern portion of the hockey rink.

Lighting: Install a) two (2) motion sensor light with photo-cell and motion sensor equipment on one hockey rink light pole to illuminate the hockey rink walkway and stadium seating area and b) install two (2) motion sensor lights, photo-cell and motion sensor equipment on another hockey rink light pole to illuminate the hockey rink walkway and stadium seating area.

Revisions from Original Plan: No revisions.

Zone 5: Community Center Building (Exterior)

Cameras: The Community Center Building is currently equipped with seven (7) external cameras; however, there still exists some blind spots in the perimeter of the building and it is recommended to install an additional four (4) cameras. This will provide enhanced coverage to all perimeter areas of the building. Additional security camera coverage areas include the Heritage Room patio area, the walkway and gymnasium entrances on the easterly side of the gymnasium adjacent to

Paseo de Valencia, and the back entrance into the building storage area located on the west side of the building adjacent to Community Center Drive.

Lighting: Install a) two (2) motion sensor lights and two (2) photo-cell and motion sensor sets of equipment on the building to illuminate the walk way and gymnasium entrances on the easterly side of the gymnasium adjacent to Paseo de Valencia; b) install two (2) motion sensor lights and two (2) photo-cell and motion sensor sets of equipment on the building to illuminate the Heritage Room patio area; c) install two (2) motion sensor lights with photo-cell and motion sensor equipment on the building to illuminate the back entrance into the building storage area and trash enclosure area located on the westerly side of the building adjacent to Community Center Drive; and d) install one (1) motion sensor light with photo-cell and motion sensor equipment on the building to illuminate stairway back exit to the gymnasium located on the north side of the building.

Revisions from Original Plan: Remove two (2) cameras from the entrances on the easterly side of the gymnasium adjacent to Paseo de Valencia. Remove one (1) camera from the Heritage Room outdoor patio area.

Zone 6: Community Center Building (Interior)

Cameras: This project would entail upgrading and replacing the existing interior twenty-eight (28) analog cameras to digital cameras to improve camera resolution quality.

Lighting: no lighting recommended.

Revisions from Original Plan: No revisions.

Sports Field Lights

In addition, it is recommended that the existing sports field lighting of the Soccer Fields and Baseball Field be upgraded to higher illumination and power conserving LED lighting. The Softball Field lighting was previously upgraded. Estimated Cost: \$200,000.

FISCAL IMPACT:

The estimated total cost of safety improvements to the Community Center and Sports Complex under the Updated Plan is \$170,000 (Rounded up from \$164,500). This estimate is based upon an allocation of \$87,500 for additional blind spot security cameras and \$77,000 for dark area additional lighting. Millennium Alarm Systems, the

City's current security camera vendor, provided the original estimated costs for the camera and lighting equipment.

It is also recommended to allocate \$200,000 for sports field lighting enhancements.

No funds are currently included in the Capital Improvement Project Budget for these expenditures and the addition of these improvements will require a Budget Amendment. Staff recommends the establish of an overall budget of \$170,000 to fund the security lighting and cameras in Staff's Updated Plan.

ATTACHMENTS:

- Attachment 1 - Updated Plan
- Attachment 2 - Original Plan
- Attachment 3 - Images of Lighting and Cameras

Attachment 1

UPDATED PLAN

Community Center and Sports Complex Security Cameras and Lighting Plan

Legend

 New Camera

 Existing Camera

 General Camera Coverage Direction

 New 360° Camera

 New Security Lights

 Security Light General Coverage

Attachment: Attachment 1 - Updated Plan (2752 : Updated Security Plan)

Community Center and Sports Complex Security Zones Overlay



Community Center and Sports Complex camera and lighting security zones. Zone 6 includes all interior Community Center building cameras and is not noted on the above diagram.

ZONE 1 (Revisions to Original Plan)
Soccer Fields 1 & 2 and walkway in-between Softball
Field and Soccer Fields



Light Pole Installation

1 Lighting **1** Camera



Light Pole Installation

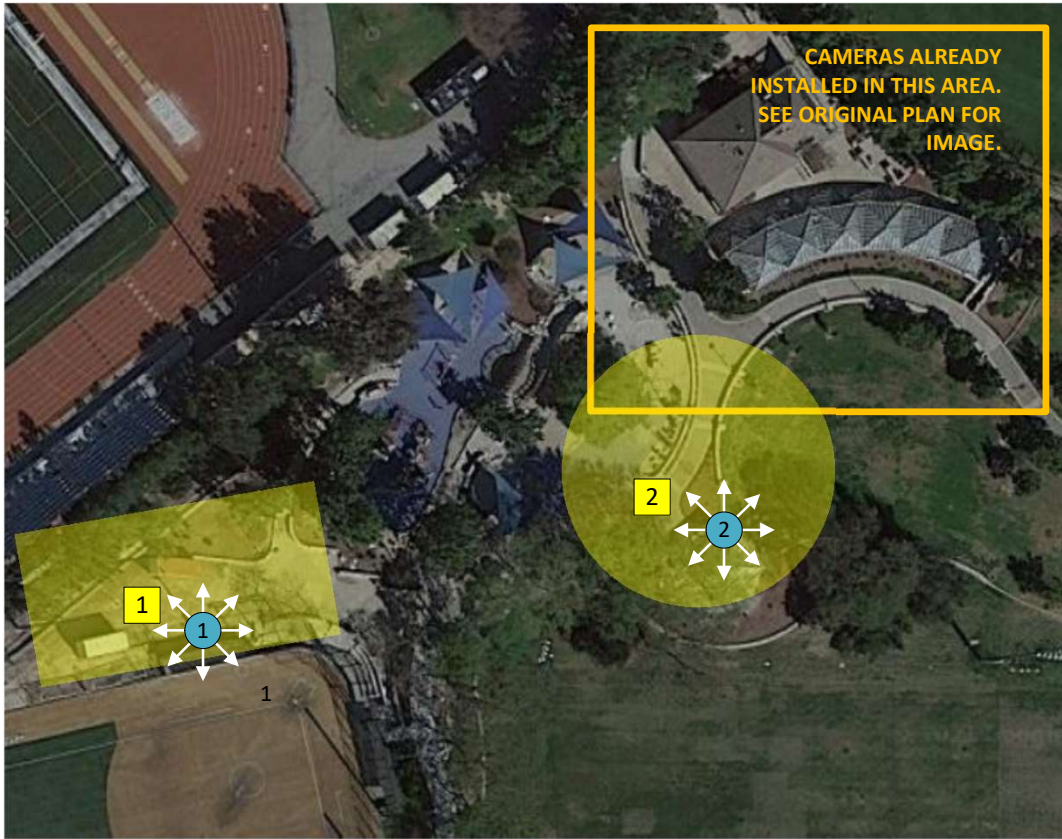
2 Camera



Attachment: Attachment 1 - Updated Plan (2752 : Updated Security Plan)

ZONE 2 (Revisions to Original Plan)

Softball Field, Playground, and Picnic Shelter



Light Pole Installation

1 Lighting **1** Camera



Gazebo Installation

2 Lighting **2** Camera



ZONE 3 (No Revision from Original Plan) Little League Field and Town Green



Scoreboard Installation

- 1 Camera



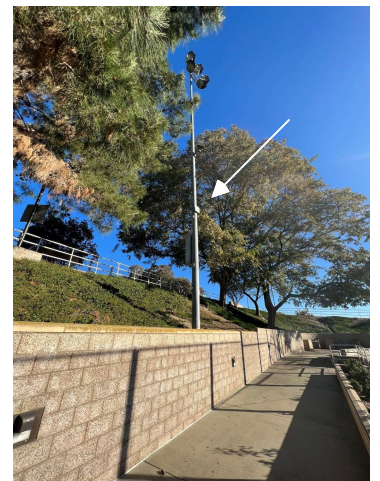
Light Pole Installation

- 1 Lighting



Light Pole Installation

- 2 Lighting



Attachment: Attachment 1 - Updated Plan (2752 : Updated Security Plan)

ZONE 4 (No Revisions from Original Plan)
Hockey Rink and Skate park



Light Pole Installation

1 Lighting **1** Camera



Light Pole Installation

2 Lighting



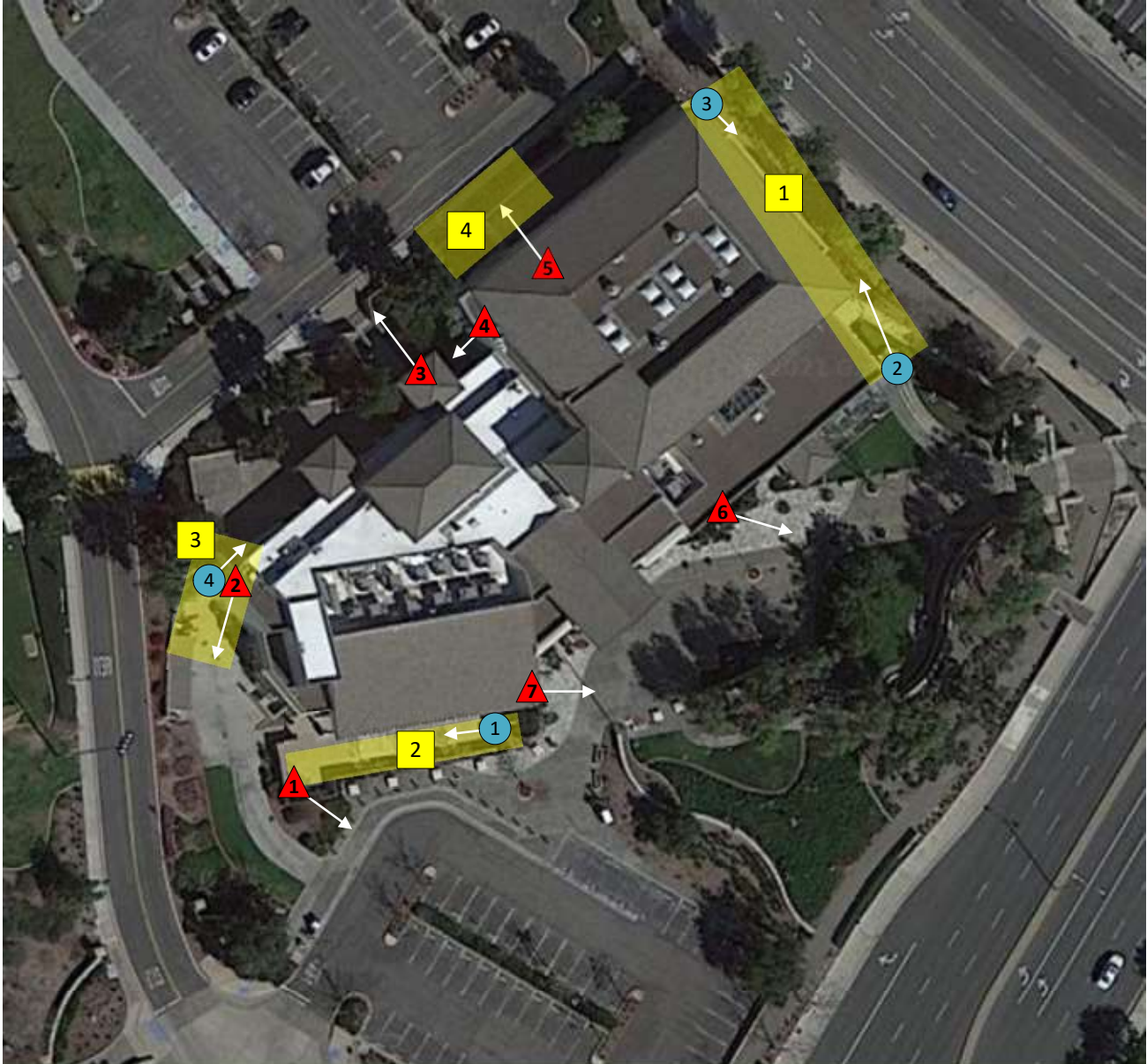
Skate Park Light Pole Installation

2 Camera **1** **2** **3** Existing Cameras



Attachment: Attachment 1 - Updated Plan (2752 : Updated Security Plan)

ZONE 5 (Revisions to Original Plan) Community Center Building (Exterior)



PDV Side of Gym Installation

1 Lighting **2** Camera



PDV Side of Gym Installation

1 Lighting **3** Camera



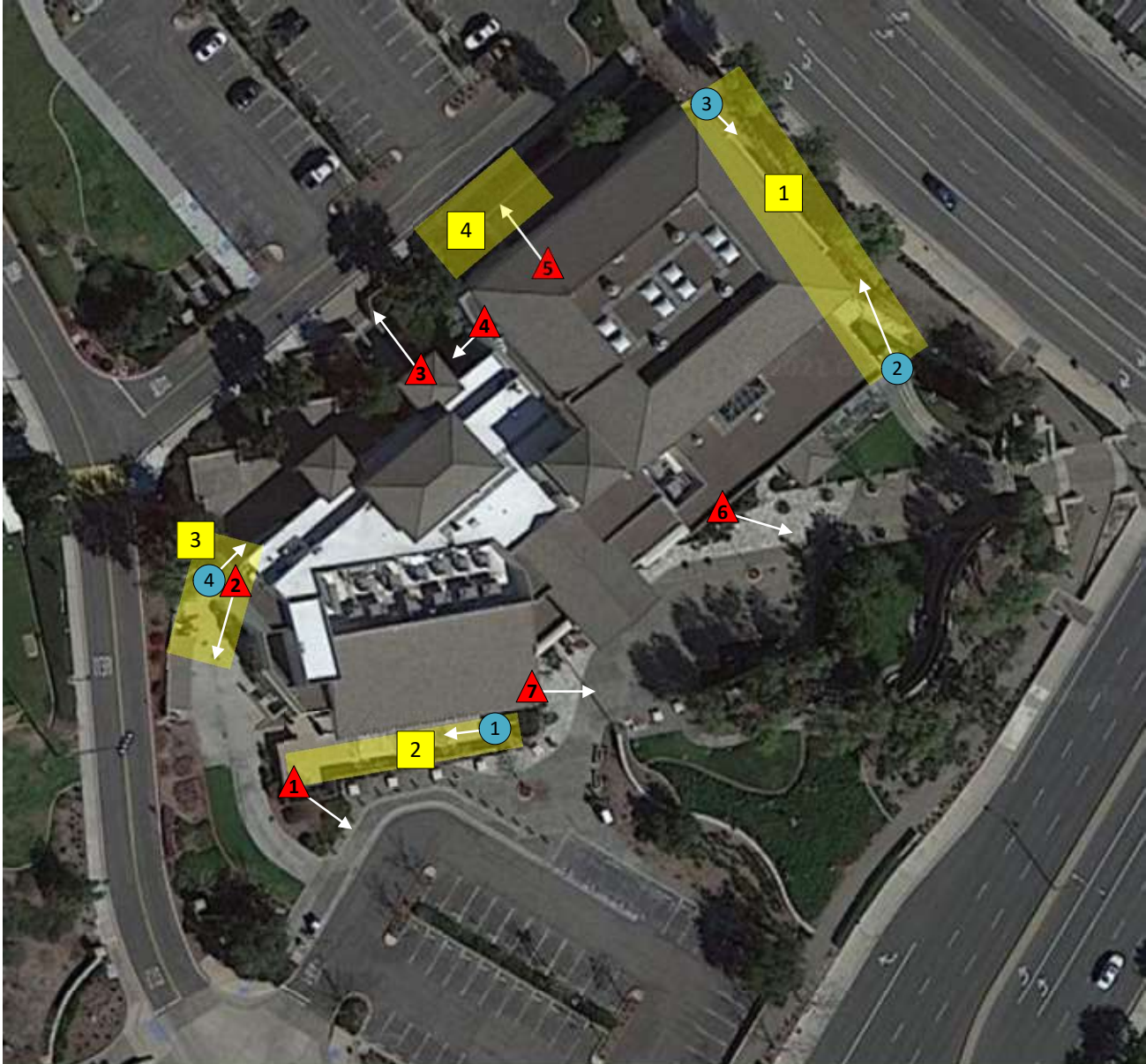
Gym Back Exit Installation

4 Lighting



Attachment: Attachment 1 - Updated Plan (2752 : Updated Security Plan)

ZONE 5 *cont.* (Revisions to Original Plan)
Community Center Building (Exterior)



Community Center Side-back Entrance Installation

3 Lighting **4** Camera



Heritage Room Patio Installation

2 Lighting **1** Camera



Attachment: Attachment 1 - Updated Plan (2752 : Updated Security Plan)

Attachment 2

ORIGINAL PLAN

Community Center and Sports Complex Security Cameras and Lighting Plan

Attachment: Attachment 2 - Original Plan (2752 : Updated Security Plan)

Community Center and Sports Complex Security Zones Overlay

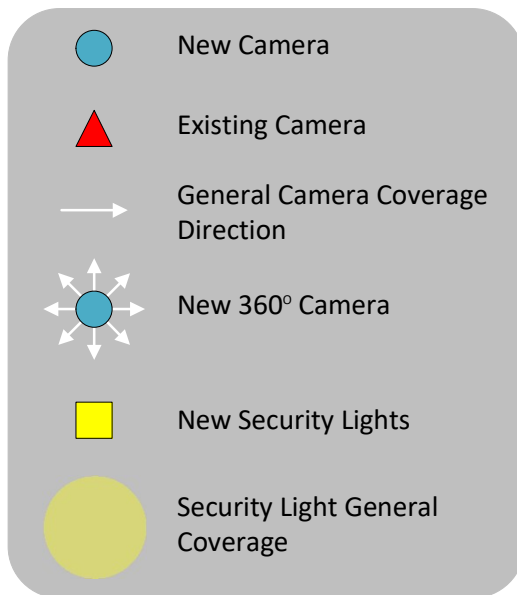
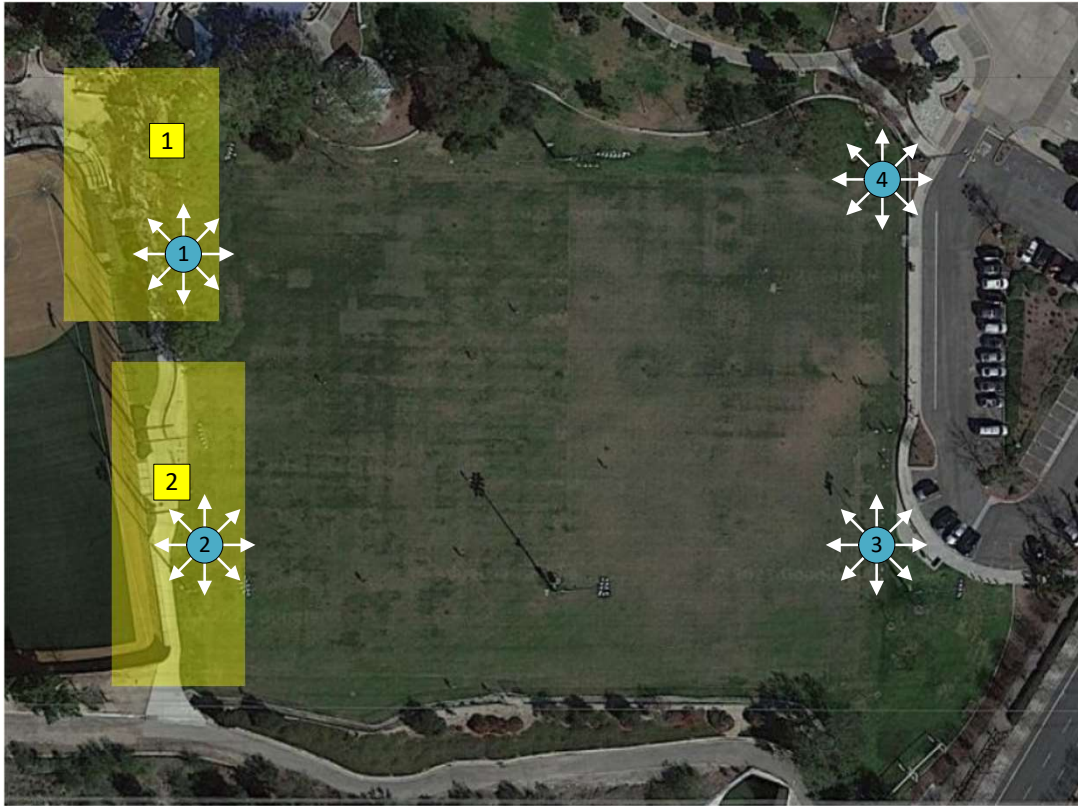


Community Center and Sports Complex camera and lighting security zones. Zone 6 includes all interior Community Center building cameras and is not noted on the above diagram.

Attachment: Attachment 2 - Original Plan (2752 : Updated Security Plan)

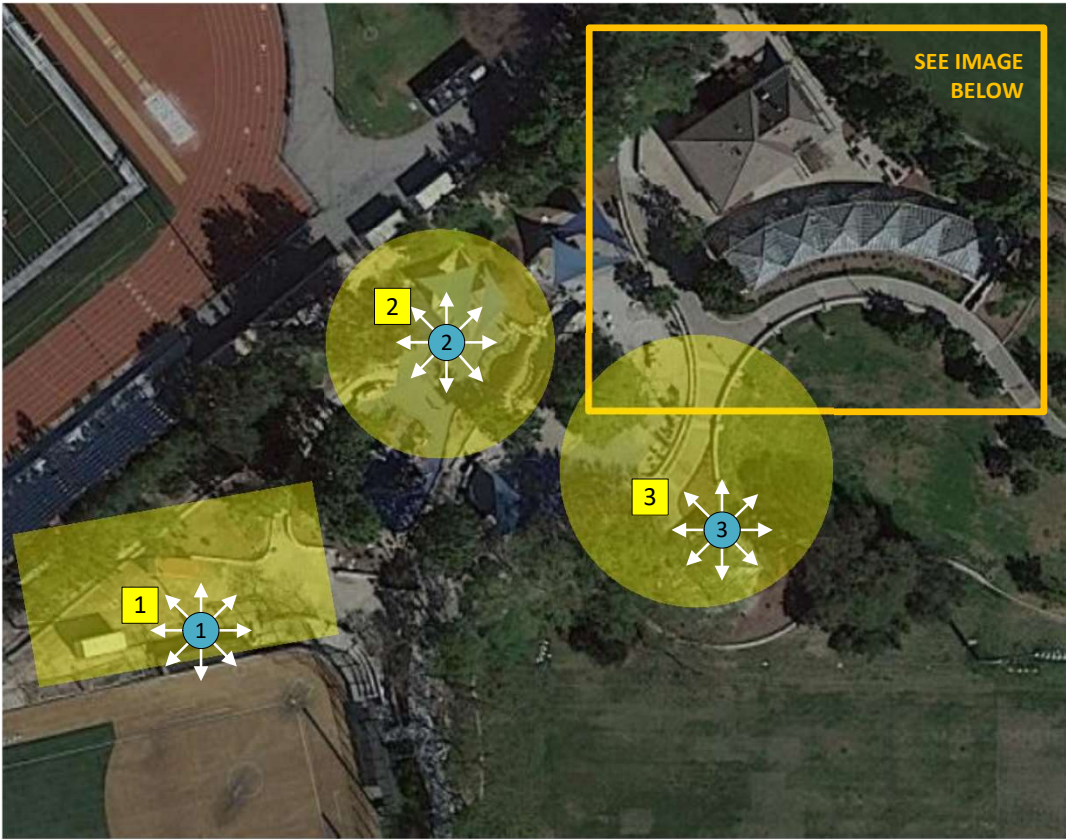
ZONE 1

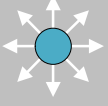
Soccer Fields 1 & 2 and walkway in-between Softball Field and Soccer Fields

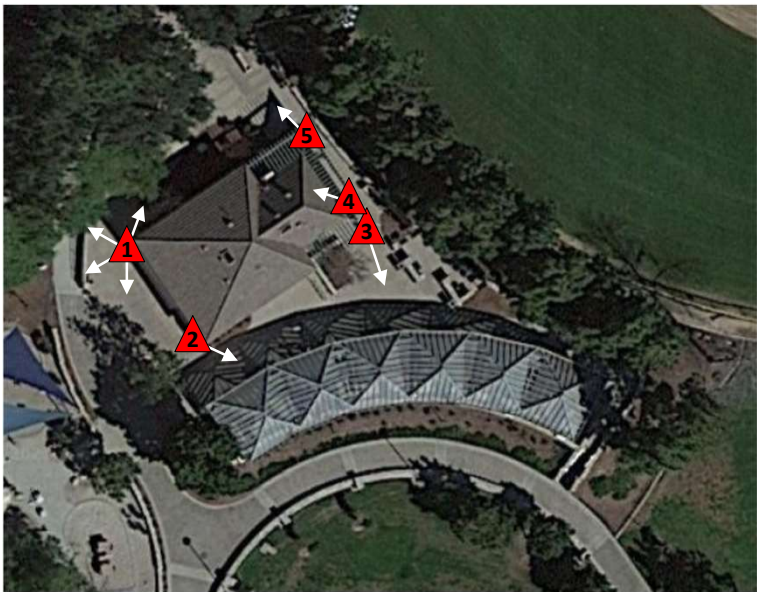


ZONE 2

Softball Field, Playground, and Picnic Shelter

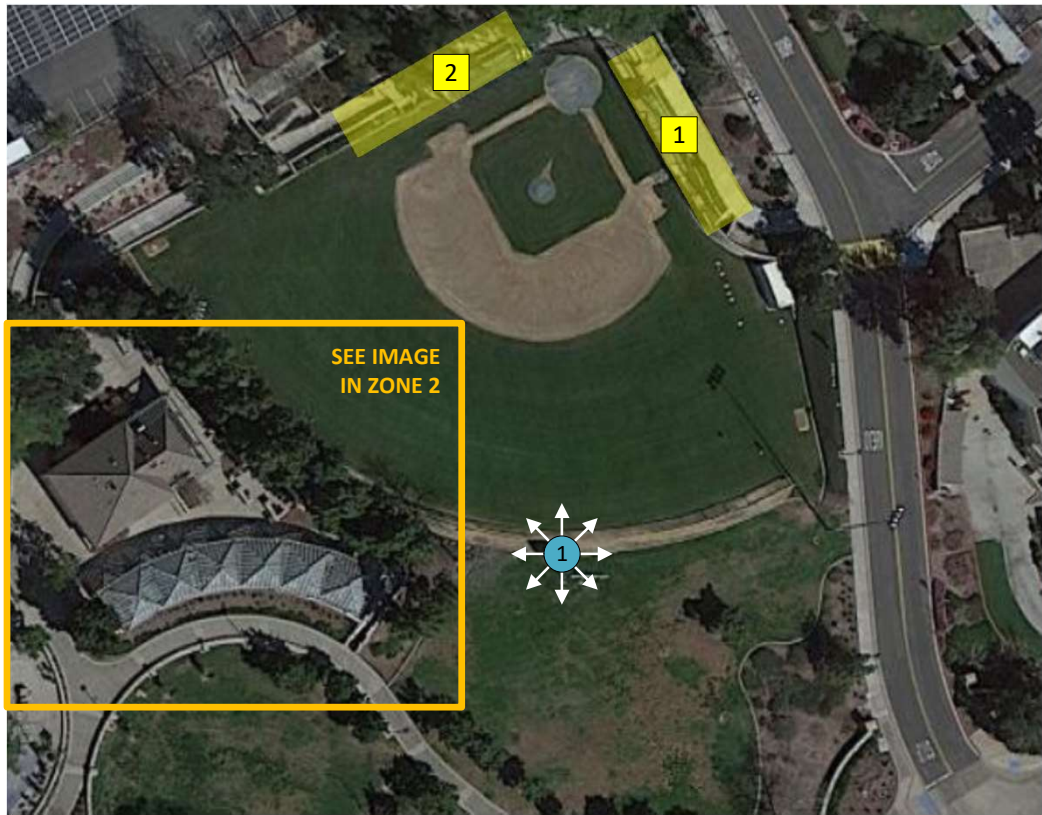


-  New Camera
-  Existing Camera
-  General Camera Coverage Direction
-  New 360° Camera
-  New Security Lights
-  Security Light General Coverage



Attachment: Attachment 2 - Original Plan (2752 : Updated Security Plan)

ZONE 3
Little League Field and Town Green



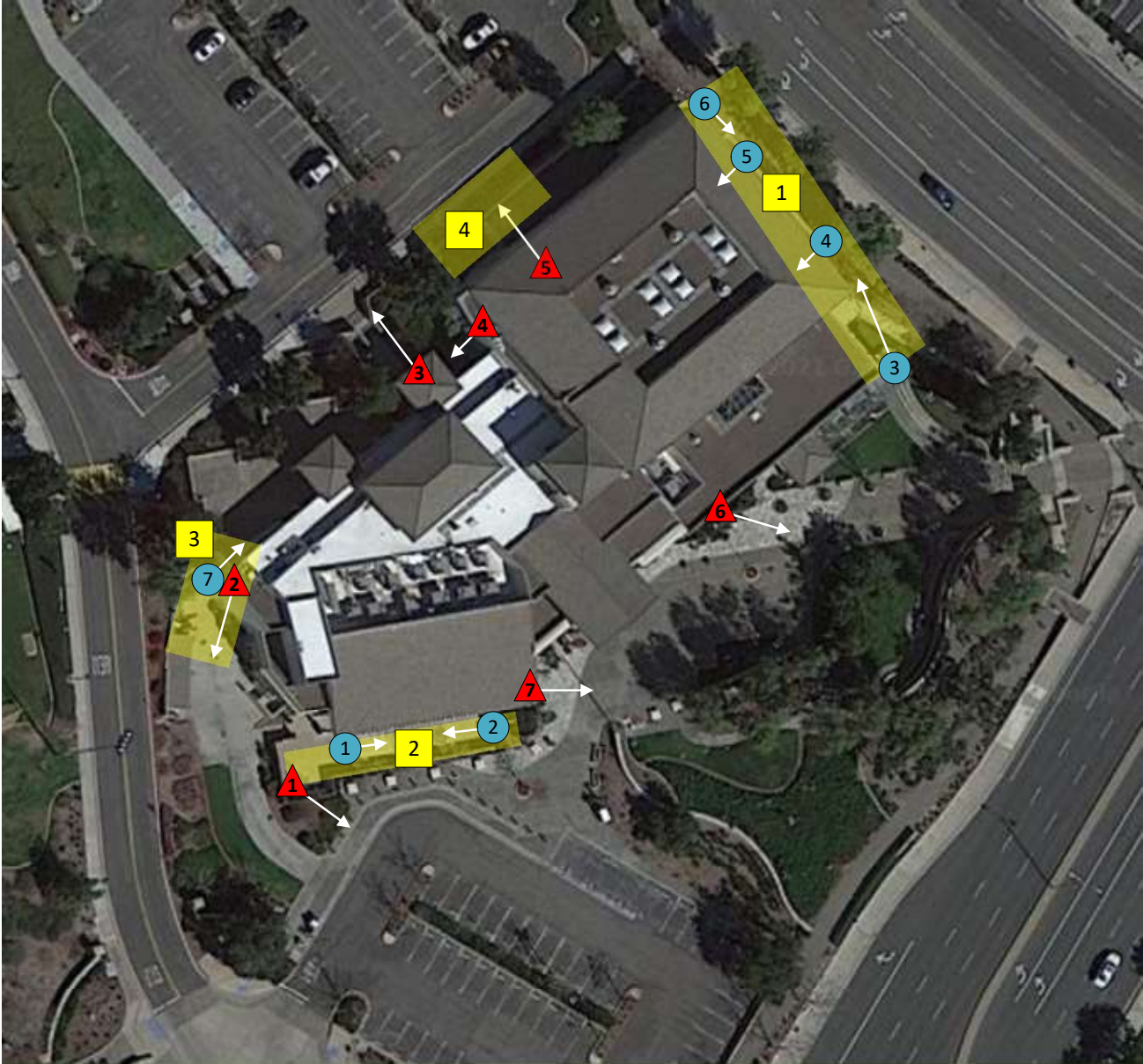
-  New Camera
-  Existing Camera
-  General Camera Coverage Direction
-  New 360° Camera
-  New Security Lights
-  Security Light General Coverage

ZONE 4
Hockey Rink and Skate Park



Attachment: Attachment 2 - Original Plan (2752 : Updated Security Plan)

ZONE 5
Community Center Building (Exterior)





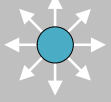
New Camera



Existing Camera



General Camera Coverage Direction



New 360° Camera



New Security Lights



Security Light General Coverage

Attachment: Attachment 2 - Original Plan (2752 : Updated Security Plan)

Attachment 3

Images of Lighting and Cameras

A. Existing athletic field light pole and existing after-hours light equipment



B. Security lighting used for cost estimates and proposed to be installed on athletic field light poles

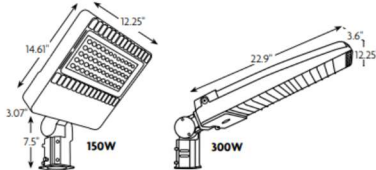


F-ARL/150W/50K/SF

F-ARL/300W/50K/SF

GENERAL SPECIFICATIONS

Voltage: 120-277V (300W also available in 480V)
Average Rated Life: 50,000 (L70)
CRI: >70
CCT: 5000K
IES Distribution: Type 3
Lumens Per Watt (LPW): 130 (300W), 133 (150W)
Ambient temp: -40°F to 113°F



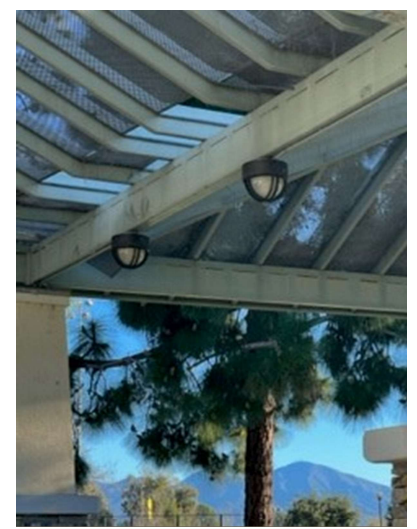
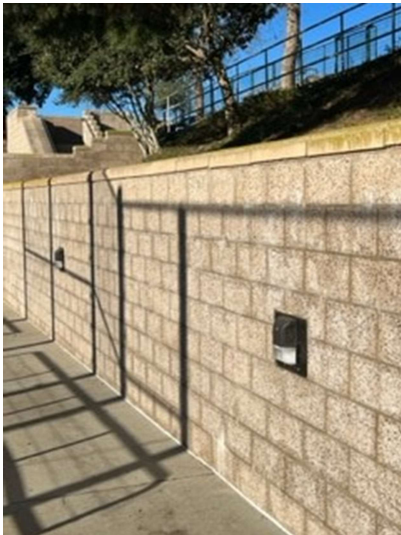
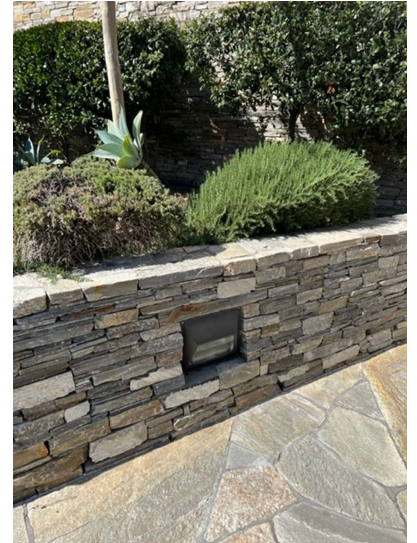
150W

300W

EPA OF AREA LIGHT

Item							
	1	2 @90°	2 @120°	2 @180°	3 @90°	3 @120°	4 @90°
150W	0.667	0.742	1.162	1.165	1.167	1.163	1.167
300W	0.847	0.996	1.629	1.634	1.636	1.632	1.636

C. Existing walkway and structure lighting



D. Parking lot and bollard lighting



E. LED fixed lighting at Community Center (Outside Physical Activity Room) & recessed outdoor lighting



F. Proposed security camera equipment used in cost estimates



G. Existing security cameras



City of Laguna Hills

City Council/Planning Agency

Staff Report

DATE: February 22, 2022

TO: Mayor and Council Members

FROM: Janice Reyes
Finance Director

ISSUE: Review of American Rescue Plan Act and Proposed Projects List

RECOMMENDATION: That the City Council appropriate the City's entire allocation of Coronavirus-related State and Local Fiscal Recovery Funds (SLFRF), as authorized under the American Rescue Plan Act (ARPA), for the provision of government services for projects as defined herein to the full extent of the "standard allowance", through the period of performance, and direct Staff to provide Budget Amendments as necessary to implement said projects.

SUMMARY:

The Coronavirus-related State Local Fiscal Recovery Funds (SLFRF) program established under the American Rescue Plan Act (ARPA) is intended to provide fiscal support to State, local, and Tribal governments in responding to the impact of COVID-19 and their efforts to contain COVID-19 for their communities, residents, and businesses. Per the population formula, the total of SLFRF to be issued to the City of Laguna Hills is \$7,465,377. The City's first 50% allocation, or \$3,732,688, was received in mid-July 2021. Accordingly, the City's second and final 50% allocation is expected to be received in July 2022. The SLFRF program provides substantial flexibility for each jurisdiction to meet local needs within **four separate eligible use categories**. At the Special Meeting of the City Council on September 28, 2021, in seeking City Council direction on the targeted use of ARPA funds, Staff presented an overview of the eligible uses of SLFRF funds. Staff also recommended that City Council appropriate the City's full award, as authorized under the IFR, for 1) the provision of government services to the full extent of the reduction in revenue due to the COVID-19 public health emergency and 2) to respond to

the public health emergency caused by COVID-19 or its negative economic impacts. City Council authorized Staff's recommendation for 1) the recovery of loss revenue but deferred a decision on specific funding priorities and 2) response to public health emergency, to be reviewed at a future meeting. On January 6, 2022, the Treasury released its Final Rule for SLFRF, which provides added clarity and increased flexibility to pursue a wider range of uses, as well as greater simplicity. Under the Final Rule, there are now two options for how to determine the amount of loss revenue that may be used to pay for government services. Recipients must choose one of these two options and may not switch between these approaches after an election. Given the greatly simplified new option to elect a standard allowance for revenue loss (rather than calculating through a complex formula) and its broad latitude to use for general government services, allocating the City's entire SLFRF allocation, \$7,465,377, to government services throughout the period of performance provides the broadest opportunity in the use of these funds. Further, Staff has developed a list of recommended government expenditures for which to apply the SLFRF loss revenue recovery funding. Extensive consideration has been given to meeting important community needs. Nevertheless, as ARPA funding is one-time funding, for use in limited duration, proposed expenditures that would establish new, on-going programs and necessitate continued support by the General Fund are not being proposed.

Staff recommends the City Council appropriate the City's entire allocation of Coronavirus-related State and Local Fiscal Recovery Funds (SLFRF), as authorized under the American Rescue Plan Act (ARPA), for the provision of government services for projects as defined herein to the full extent of the "standard allowance", through the period of performance, and direct Staff to provide Budget Amendments as necessary to implement said projects.

BACKGROUND:

The American Rescue Plan Act (ARPA), which was signed into law by President Biden on March 11, 2021, is a nearly \$1.9 trillion coronavirus relief bill. ARPA established the Coronavirus State Fiscal Recovery Fund and Coronavirus Local Fiscal Recovery Fund, which together make up the Coronavirus-related State Local Fiscal Recovery Funds (SLFRF) program (or "Fiscal Recovery Fund"). The Fiscal Recovery Fund is intended to provide fiscal support to State, local, and Tribal governments in responding to the impact of COVID-19 and their efforts to contain COVID-19 for their communities, residents, and businesses.

Allocation and Distribution

ARPA provided for the Treasury to make payments to the states to allocate and make funding available to smaller units of general local governments known as Non-entitlement Units (NEUs). NEUs, defined in section 603(g)(5) of the Social Security Act, are local governments serving populations of less than 50,000. As a smaller city, Laguna Hills receives its SLFRF allocation via the State of California Department of Finance.

Per the population formula, the total of SLFRF to be issued to the City of Laguna Hills is \$7,465,377. All SLFRF recipients will receive funds in two equal tranches, approximately twelve months apart. The City's first 50% allocation, or \$3,732,688, was received in mid-July 2021. Accordingly, the City's second and final 50% allocation is expected to be received in July 2022.

Overview of the Program

The SLFRF program provides substantial flexibility for each jurisdiction to meet local needs within **four separate eligible use categories**, as summarized below.

- To replace lost public sector revenue, using this funding to provide government services up to the amount of revenue loss due to the pandemic. Recipients may use up to the amount of revenue loss for government services; generally, services traditionally provided by the recipient governments meet the definition of "government services", unless the Treasury has stated otherwise.
- To support the COVID-19 public health and economic response, by addressing COVID-19 and its impact on public health, as well as addressing economic harms to households, small business, non-profits, impacted industries, and the public sector.
- To provide premium pay for eligible workers performing essential work, offering additional support to those who have and will bear the greatest health risk because of their service in critical sectors. Eligible workers are generally those working in-person in key economic sectors, who are below a wage threshold or non-exempt from the Fair Labor Standards Act overtime provisions, or if the recipient submits justification that the premium pay is responsive to workers performing essential work.

- To invest in water, sewer, and broadband infrastructure, making necessary investments to improve access to clean drinking water, to support vital wastewater and stormwater infrastructure, and to expand affordable access to broadband internet.

While there is considerable flexibility to use funds to address the diverse needs of different communities, some restrictions on use apply across all the eligible categories listed above. The **prohibited uses** are clearly outlined in Treasury Department Guidance and include the following:

- Replenishments of Reserves or Rainy-Day Funds;
- Debt Services Payments;
- Satisfaction of settlements and judgements;
- Extraordinary contributions to a pension fund for purposes of reducing an accrued, unfunded liability;
- Offset to tax cuts caused by a change in local law; and
- Uses that contravene or violate ARPA, Uniform Guidance conflicts of interest requirements, and other federal, state, and local laws and regulations.

Program Implementation

Funds must be used for costs incurred on or after March 3, 2021. Further, funds must be obligated by December 31, 2024, and expended by December 31, 2026. This time period, during which recipients can expend SLFRF funds, is considered the “period of performance”.

All jurisdictions are responsible for adhering to the Treasury Department’s requirements for expending and reporting on their use of funds. Initially, the U.S. Department of the Treasury (Treasury) issued the Interim Final Rules (IFR), which was posted on the Federal Register on May 16, 2021, and was effective May 17, 2021. The IFR facilitated the swift implementation of funds by establishing a framework for determining types of programs and services that are eligible under the ARPA along with examples of uses.

At the Special Meeting of the City Council on September 28, 2021, in seeking City Council direction on the targeted use of ARPA funds, Staff presented an overview of the

eligible uses of SLFRF funds as outlined under the IFR. Staff also recommended that City Council appropriate the City's full award, as authorized under the IFR, for 1) the provision of government services to the full extent of the reduction in revenue due to the COVID-19 public health emergency and 2) to respond to the public health emergency caused by COVID-19 or its negative economic impacts. In developing these recommendations, in particular for the first tranche appropriation, Staff's focus is on what would off-set COVID-19 related revenue losses and/or free-up limited resources to support previously adopted budget priorities, projects and deferred maintenance.

Given that at the time of the Sept. 28, 2021, Special Meeting a definitive amount of loss revenue could not be computed, and in anticipation of the final Treasury guidelines, Council authorized Staff's recommendation for 1) the recovery of loss revenue, but deferred a decision on specific funding priorities and 2) response to public health emergency, to be reviewed at a future meeting.

Treasury Final Rule

On January 6, 2022, the Treasury released its Final Rule for SLFRF, which responds to comments received on the IFR through its public comment process and other forums. The Final Rule, attached to this report as *Attachment A – SLFRF Final Rule*, will be effective April 1, 2022. Until that time, the IFR remains in effect, allowing recipients to obligate and expend funds consistent with the IFR. Additionally, prior to April 1, 2022, recipients may also act and use funds in a manner consistent with the Final Rule, and the Treasury will not act to enforce the IFR if a use of funds is consistent with the terms of the Final Rule, regardless of when the SLFRF funds were used.

The Final Rule provides added clarity and increased flexibility to pursue a wider range of uses, as well as greater simplicity. A comprehensive overview of the Final Rule is attached as *Attachment B – Coronavirus State & Local Fiscal Recovery Funds: Overview of the Final Rule*. A complete list of the key changes in the Final Rule can be found on pages 4 and 5 of *Attachment B*.

Replacing Public Sector Revenue Loss

As listed previously under the four categories of allowable uses, SLFRF Funding may be used to pay for "government services" in an amount equal to the revenue loss experienced by the recipient due to the COVID-19 public health emergency. Funds spent under government services are subject to streamlined reporting and compliance requirements. In order to use funds under government services, recipients should first

determine revenue loss. After which, they may spend up to that amount on general government services.

Determining Revenue Loss

Among other clarifications and changes, the Final Rule added a “standard allowance” for revenue loss, as well as an added option of determining loss by fiscal year (rather than by calendar year under the IFR).

Under the Final Rule, there are now two options for how to determine the amount of loss revenue that may be used to pay for government services. Recipients must choose one of these two options (detailed below) and may not switch between these approaches after an election.

1. Standard Allowance

Under this option, recipients may elect a “**standard allowance**” of **\$10 million** to spend on government services through the period of performance. Under this option, the presumption is that up to \$10 million in revenue loss has been lost due to the public health emergency and recipients are permitted to use that amount (not to exceed the recipient’s total SLFRF allocation, or \$7,465,377 in the City’s circumstance) to fund “government services”. The standard allowance is based on extensive analysis of the average revenue loss across states and localities, and offers a simple, convenient way to determine revenue loss, particularly for NEU’s like the City of Laguna Hills.

All recipients may elect to use the standard allowance instead of calculating lost revenue using the formula (discussed below), regardless of the total award amount. Thus, the City should elect the standard allowance. It is noted that electing the standard allowance does not increase or decrease a recipient’s total SLFRF allocation.

2. Calculation formula

Recipients may calculate their actual revenue loss according to the formula articulated in the Final Rule. Under this option, recipients calculate revenue loss at four distinct points in time, either at the end of a calendar year (e.g., December 31 for years 2020, 2021, 2022, and 2023) or at the end of each recipient’s fiscal year (e.g., July 1 for years 2020, 2021, 2022, and 2023).

Recipients can choose whether to use calendar or fiscal year dates but must be consistent throughout the period of performance.

To calculate revenue loss at each of these dates, recipients must follow a four-step process:

- a) Calculate revenues collected in the most recent full fiscal year prior to the public health emergency (i.e., last full fiscal year before January 27, 2020), called the *base year revenue*.
- b) Estimate *counterfactual revenue*, which is equal to the following formula, where n is the number of months elapsed since the end of the base year to the calculation date:

$$\text{base year revenue} \times (1 + \text{growth adjustment})^{n/12}$$

The *growth rate* is the greater of either a standard growth rate, 5.2%, or the recipient's average annual revenue growth in the last full three fiscal years prior to the COVID-19 public health emergency.

- c) Identify *actual revenue*, which equals revenues collected over the twelve months immediately preceding the calculation date.
- d) Revenue loss for the calculation date is equal to the counterfactual revenue minus actual revenue for the twelve-month period. If actual revenue exceeds counterfactual revenue, the loss is set to zero for that twelve-month period. Revenue loss for the period of performance is the sum of the revenue loss for each calculation date.

Spending on Government Services

Government services is the most flexible eligible use category under the SLFRF program. Recipients can use up to the total amount of revenue loss, determined by either of the two options listed above, on government services. **Government services generally include any service traditionally provided by a government**, unless otherwise stated by the Treasury, including construction of roads and other infrastructure, provision of public safety and other services, and health and educational services. Below is a list of common examples provided by the Treasury:

- Construction of schools and hospitals

-
- Road building and maintenance, and other infrastructure
 - Health services
 - General government administration, staff, and administrative facilities
 - Environmental remediation
 - Provision of police, fire, and other public safety services (including purchase of fire trucks and police vehicles)

Prohibited uses of SLFRF, as discussed previously in this report, apply to government services as well.

Compliance and Reporting

Each recipient, including each NEU, is required to meet compliance and reporting responsibilities, as defined in the Final Rule and further described in the attached *Attachment C - Compliance and Reporting Guidance and Attachment D – NEU and Non-UGLG Distribution Templates User Guide*. Each NEU must submit a Project and Expenditure Report by April 30, 2022 and then annually thereafter.

Proposed Use

As previously stated, given the greatly simplified new option to elect a standard allowance for revenue loss (rather than calculating through a complex formula) and its broad latitude to use for general government services, Staff recommends allocating the City's entire SLFRF allocation, \$7,465,377, to government services throughout the period of performance.

Further, Staff has developed a list of recommended government expenditures, which is provided as *Attachment E – Recommended Projects/Studies for ARPA Funding*. Extensive consideration has been given to meeting important community needs. Nevertheless, as ARPA funding is one-time funding, for use in limited duration, proposed expenditures that would establish new, on-going programs and necessitate continued support by the General Fund are not being proposed.

Attachment E – Recommended Projects/Studies for ARPA Funding contains two sets of projects/studies. The cost of the first 14 of 15 projects/studies total \$7,845,000, which exceeds the total ARPA funds available. However, as these costs are estimates; there

may be sufficient funds to fully implement the first 14 projects/studies listed. The second set of projects, numbered 16 through 22, are also viewed as priorities; however, all of these projects are eligible for Quimby Act funding, if such funding becomes available.

Financial Policy Considerations

For the purposes of providing the City Council context when deliberating on how to best prioritize the use of the City's SLFRF allocation, Staff has prepared an analysis of the City's 8-Year Plan and target ratios.

FY 2021/2022 Operating Ratio Analysis

It is the City's policy to fund current year operating expenditures with current year operating revenues. Additionally, the City Financial Policy recommends maintaining the ratio of "operating revenues to operating expenditure" at 1.1 to 1, or greater. No one-time, non-recurring revenues or Gas Tax (HUTA and RMRA) revenues may be used in determining the ratio unless the City Council authorizes the use of reserves and/or non-recurring revenues to balance the budget. The COVID-19 pandemic resulted in a significant reduction in annual City revenues, causing an operating budget imbalance, identifying potential deficit spending in the 2021/2022 Fiscal Year Budget. As a result, it was the Interim City Manager's recommendation to apply a one-time use of non-recurring revenues to balance the Budget and this was approved by the City Council.

The following Table A provides a review of the FY 2021/2022 operating budget scenarios, with Scenario 1, 2, and 3 being discussed during the aforementioned Sept. 28, 2021, Special Meeting, as noted below:

- Scenario 1 is the projected deficit spending without the use of non-recurring revenues;
- Scenario 2 is the use of \$863,090 in non-recurring revenues to achieve a 1.0 operating ratio (as has been approved by the City Council in the current Budget), and;
- Scenario 3 is the allocation of \$3,168,181 in revenue loss recovery from the first tranche of SLFRF to achieve the 1.1 policy target ratio.

Table A

FY 2021/22	ADOPTED BUDGET		
	SCENARIO 1	SCENARIO 2	SCENARIO 3
General Fund Revenues	22,236,737	22,236,737	22,236,737
Other Operating Revenues	826,042	826,042	826,042
<i>Use of Non-recurring Revenues</i>	-	863,090	3,168,181
Total Revenues	23,062,779	23,925,869	26,230,960
Personnel	5,148,039	5,148,039	5,148,039
Maintenance & Operations	2,679,878	2,679,878	2,679,878
Contracts & Professional Services	14,194,331	14,194,331	14,194,331
Capital Outlay	103,700	103,700	103,700
Total Operating Expenditures	22,125,948	22,125,948	22,125,948
Debt Service	1,799,921	1,799,921	1,799,921
Total Expenditures	23,925,869	23,925,869	23,925,869
Operating Surplus/(Deficit)	(863,090)	-	2,305,091
<i>Operating Ratio</i>	<i>0.96</i>	<i>1.00</i>	<i>1.10</i>

The following Table B provides an updated estimate of FY 2021/2022 with current preliminary projections, with Scenario 4, 5, and 6 as noted below:

- Scenario 4 is the preliminary year-end estimate for FY 2021/2022 without the use of non-recurring revenues.
- Scenario 5 is the use of \$299,830 for “government services” from SLFRF funds to achieve a 1.0 operating ratio, and;
- Scenario 6 is the preliminary year-end estimate for FY 2021/2022 with the allocation of \$2,622,859 for “government services” from SLFRF funds to achieve the 1.1 policy target ratio.

Table B

FY 2021/22	YEAR-END ESTIMATE		
	SCENARIO 4	SCENARIO 5	SCENARIO 6
General Fund Revenues	22,718,305	22,718,305	22,718,305
Other Operating Revenues	826,042	826,042	826,042
<i>Use of Non-recurring Revenues</i>	-	299,830	2,622,859
Total Revenues	23,544,347	23,844,177	26,167,206
Personnel	5,148,039	5,148,039	5,148,039
Maintenance & Operations	2,615,686	2,615,686	2,615,686
Contracts & Professional Services	14,176,831	14,176,831	14,176,831
Capital Outlay	103,700	103,700	103,700
Total Operating Expenditures	22,044,256	22,044,256	22,044,256
Debt Service	1,799,921	1,799,921	1,799,921
Total Expenditures	23,844,177	23,844,177	23,844,177
Operating Surplus/(Deficit)	(299,830)	-	2,323,029
<i>Operating Ratio</i>	<i>0.99</i>	<i>1.00</i>	<i>1.10</i>

The broad latitude provided from eligible ARPA revenue loss funding for the provision of “government services” allows the City Council to obligate the use of SLFRF funds for recovery of revenue loss to support “government services” currently budgeted, essentially funding the current budget, addressing deferred maintenance and reversing previous service reductions.

Updated 8-Year Plan

An updated 8-Year Plan has been included in *Attachment F – Eight-Year Plan Update*. This modified version takes into account the following:

- Actual FY 2021/2022 Beginning Fund Balance (to reflect the prior FY 2020/2021 Fund Balance at the close of the fiscal year);
- The preliminary Year-End Estimates for FY 2021/2022;

- Assumes the entire ARPA first \$3.7 million tranche is applied to government services in Year 1 and the entire ARPA second \$3.7 million tranche is applied to government services in Year 2.
- Excludes the three \$1.0 million yearly installments to pay down the City's pension Unfunded Actuarial Liability (UAL) in Years 6, 7 and 8;
- Excludes pending development projects, i.e., VALH, Starbucks, Plant Power, Taco Bell, etc.;
- And, reflects the decrease in debt services payments in Years 2 and 3, along with the final payoff in Year 4.

Additionally, *Attachment G – 2021/2023 Biennial Budget 8-Year Plan* includes the original 8-Year Plan as presented in the 2021/2023 Biennial Budget, along with a modified version that excludes ARPA funding and development at VALH.

FISCAL IMPACT:

The \$7,465,377 in SLFRF funding the City will receive will cover eligible expenditures that are fully obligated by December 31, 2024, and expended by December 31, 2026. The first half funding payment of \$3,732,688 was received in July 2021 and the second half funding payment is expected in July 2022.

ATTACHMENTS:

- Attachment A - SLFRF Final Rule
- Attachment B - Overview of SLFRF Final Rule
- Attachment C - Compliance and Reporting Guidance
- Attachment D - Recipient-Reporting-User-Guide-NEU_Non-UGLG
- Attachment E - Proposed Projects for ARPA Funding
- Attachment F - Eight-Year Plan Update
- Attachment G - 2021-2023 Biennial Budget 8-Year Plan

DEPARTMENT OF THE TREASURY

31 CFR Part 35

RIN 1505-AC77

Coronavirus State and Local Fiscal Recovery Funds

AGENCY: Department of the Treasury.

ACTION: Final rule.

SUMMARY: The Secretary of the Treasury (Treasury) is adopting as final the interim final rule published on May 17, 2021, with amendments. This rule implements the Coronavirus State Fiscal Recovery Fund and the Coronavirus Local Fiscal Recovery Fund established under the American Rescue Plan Act.

DATES: The provisions in this final rule are effective April 1, 2022.

FOR FURTHER INFORMATION CONTACT: Katharine Richards, Director, Coronavirus State and Local Fiscal Recovery Funds, Office of Recovery Programs, Department of the Treasury, (844) 529-9527.

SUPPLEMENTARY INFORMATION:

I. Introduction

Overview

Since the first case of coronavirus disease 2019 (COVID-19) was discovered in the United States in January 2020, the pandemic has caused severe, intertwined public health and economic crises. In March 2021, as these crises continued, the American Rescue Plan Act of 2021 (ARPA)¹ established the Coronavirus State and Local Fiscal Recovery Funds (SLFRF) to provide state, local, and Tribal governments² with the resources needed to respond to the pandemic and its economic effects and to build a stronger, more equitable economy during the recovery. The U.S. Department of the Treasury (Treasury) issued an interim final rule implementing the SLFRF program on May 10, 2021³ and has since disbursed over \$240 billion to state, local, and Tribal governments and received over 1,500 public comments on the interim final rule. Treasury is now issuing this final rule which responds to public comments, implements the ARPA statutory provisions on eligible and ineligible uses of SLFRF funds, and

makes several changes to the provisions of the interim final rule, summarized below in the section Executive Summary of Major Changes.

Since Treasury issued the interim final rule in May 2021, both the public health and economic situations facing the country have evolved. On the public health front, the United States has made tremendous progress in the fight against COVID-19, including a historic vaccination campaign that has reached over 80 percent of adults with at least one dose and is reaching millions of children as well.⁴ However, the disease continues to present an imminent threat to public health, especially among unvaccinated individuals. As the Delta variant spread across the country this summer and fall, the United States faced another severe wave of cases, deaths, and strain on the healthcare system, with the risk of hospitalization and mortality exponentially greater to unvaccinated Americans. COVID-19 has now infected over 50 million and killed over 800,000 Americans since January 2020; tens of thousands of Americans continue to be infected each day.⁵ Even as the nation recovers, new and emerging COVID-19 variants may continue to pose threats to both public health and the economy. Moving forward, state, local, and Tribal governments will continue to play a major role in responding through vaccination campaigns, testing, and other services.

The economic recovery similarly has made tremendous progress but faces continued risks from the disease and the disruptions it has caused. In the early months of the pandemic, the United States experienced the sharpest economic downturn on record, with unemployment spiking to 14.8 percent in April 2020.⁶ The economy has gradually added back jobs, with growth accelerating in the first half of 2021.⁷ However, as the Delta variant spread, the intensified health risks and renewed disruptions slowed growth, demonstrating the continued risks from the virus. By fall 2021, the economy had

exceeded its pre-pandemic size⁸ and unemployment had fallen below 5 percent,⁹ but despite this progress, too many Americans remain unemployed, out of the labor force, or unable to pay their bills, with this pain particularly acute among lower-income Americans and communities of color. Again, moving forward, state, local, and Tribal governments will remain on the frontlines of the economic response and rebuilding a stronger economy in the aftermath of the pandemic.

However, as state, local, and Tribal governments continue to face substantial needs to respond to public health and economic conditions, they have also experienced severe impacts from the pandemic and resulting recession. State, local, and Tribal governments cut over 1.5 million jobs in the early months of the pandemic amid sharp declines in revenue and remain over 950,000 jobs below their pre-pandemic levels.¹⁰ As the Great Recession demonstrated, austerity among state, local, and Tribal governments can hamper overall economic growth and severely curtail the ability of governments to serve their constituents.

Recognizing these imperatives, the SLFRF program provides vital resources for state, local, and Tribal governments to respond to the pandemic and its economic effects and to replace revenue lost due to the public health emergency, preventing cuts to government services. Specifically, the ARPA provides that SLFRF funds¹¹ may be used:

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

(b) To respond to workers performing essential work during the COVID-19

⁸ U.S. Bureau of Economic Analysis, Real Gross Domestic Product [GDPC1], retrieved from FRED, Federal Reserve Bank of St. Louis, <https://fred.stlouisfed.org/series/GDPC1> (last visited December 7, 2021).

⁹ U.S. Bureau of Labor Statistics, *supra* note 6.

¹⁰ U.S. Bureau of Labor Statistics, All Employees, State Government [CES9092000001] and All Employees, Local Government [CES9093000001], retrieved from FRED, Federal Reserve Bank of St. Louis, <https://fred.stlouisfed.org/series/CES9092000001> and <https://fred.stlouisfed.org/series/CES9093000001> (last visited December 7, 2021).

¹¹ The ARPA adds section 602 of the Social Security Act, which creates the State Fiscal Recovery Fund, and section 603 of the Social Security Act, which creates the Local Fiscal Recovery Fund (together, SLFRF). Sections 602 and 603 contain substantially similar eligible uses; the primary difference between the two sections is that section 602 establishes a fund for states, territories, and Tribal governments and section 603 establishes a fund for metropolitan cities, nonentitlement units of local government, and counties.

¹ Public Law 117-2. <https://www.congress.gov/117/plaws/publ2/PLAW-117-publ2.pdf>.

² Throughout this Supplementary Information, Treasury uses “state, local, and Tribal governments” or “recipients” to refer generally to governments receiving SLFRF funds; this includes states, territories, Tribal governments, counties, metropolitan cities, and nonentitlement units of local government.

³ 86 FR 26786 (May 17, 2021).

⁴ Centers for Disease Control and Prevention, COVID Data Tracker: COVID-19 Vaccinations in the United States, <https://covid.cdc.gov/covid-data-tracker/#vaccinations> (last visited December 31, 2021).

⁵ Centers for Disease Control and Prevention, COVID Data Tracker, <http://www.covid.cdc.gov/covid-data-tracker/#data-tracker-home> (last visited December 7, 2021).

⁶ U.S. Bureau of Labor Statistics, Unemployment Rate [UNRATE], retrieved from FRED, Federal Reserve Bank of St. Louis; <https://fred.stlouisfed.org/series/UNRATE> (last visited December 7, 2021).

⁷ *Id.*

public health emergency by providing premium pay to eligible workers;

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

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

In addition, Congress specified two types of ineligible uses of funds: funds may not be used for deposit into any pension fund or, for states and territories only, to directly or indirectly offset a reduction in net tax revenue resulting from a change in law, regulation, or administrative interpretation.

Issued May 10, 2021, Treasury's interim final rule provided further detail on eligible uses of funds within the four statutory categories, ineligible uses of funds, and administration of the program. The interim final rule provided state, local, and Tribal governments substantial flexibility to determine how best to use payments from the SLFRF program to meet the needs of their communities. The interim final rule aimed to facilitate swift and effective implementation by establishing a framework for determining the types of programs and services that are eligible under the ARPA along with examples of eligible uses of funds that state, local, and Tribal governments may consider.

State, local, and Tribal governments are already deploying SLFRF funds to make an impact in their communities. The SLFRF program ensures that state, local, and Tribal governments have the resources needed to fight the pandemic, sustain and strengthen the economic recovery, maintain vital public services, and make investments that support long-term growth, opportunity, and equity. Treasury looks forward to supporting and engaging with state, local, and Tribal governments as they use these funds to make transformative investments in their communities. Finally, with so many pressing and effective ways to use SLFRF funds, there is no excuse for waste, fraud, or abuse of these funds.

Treasury received over 1,500 comments spanning nearly all aspects of the interim final rule. The final rule considers and responds to comments, provides clarification to many aspects of the interim final rule, and makes several changes to eligible uses under the program, summarized immediately below.

Executive Summary of Major Changes and Clarifications

The final rule provides broader flexibility and greater simplicity in the program, in response to public comments. Among other clarifications and changes, the final rule provides for the following:

- **Public Health and Negative Economic Impacts:** In addition to programs and services, the final rule clarifies that recipients may use funds for capital expenditures that support an eligible COVID-19 public health or economic response. For example, recipients may build certain affordable housing, childcare facilities, schools, hospitals, and other projects consistent with the requirements in this final rule and the Supplementary Information.

In addition, the final rule presumes that an expanded set of households and communities are "impacted" or "disproportionately impacted" by the pandemic, thereby allowing recipients to provide responses to a broad set of households and entities without requiring additional analysis. Further, the final rule provides a broader set of enumerated eligible uses available for these communities as part of COVID-19 public health and economic response, including making affordable housing, childcare, and early learning services eligible in all impacted communities and making certain community development and neighborhood revitalization activities eligible for disproportionately impacted communities.

Further, the final rule allows for a broader set of uses to restore and support government employment, including hiring above a recipient's pre-pandemic baseline, providing funds to employees that experienced pay cuts or furloughs, avoiding layoffs, and providing retention incentives.

- **Premium Pay:** The final rule offers more streamlined options to provide premium pay, by broadening the share of essential workers who can receive premium pay without a written justification while maintaining a focus on lower-income and frontline essential workers.

- **Revenue Loss:** The final rule offers a standard allowance for revenue loss of up to \$10 million, not to exceed a recipient's SLFRF award amount, allowing recipients to select between a standard amount of revenue loss or complete a full revenue loss calculation. Recipients that select the standard allowance may use that amount for government services.

- **Water, Sewer, and Broadband Infrastructure:** The final rule

significantly broadens eligible broadband infrastructure investments to address challenges with broadband access, affordability, and reliability, and adds additional eligible water and sewer infrastructure investments, including a broad range of lead remediation and stormwater management projects.

Structure of the Supplementary Information

In addition to this Introduction, this Supplementary Information is organized into four sections: (1) Eligible Uses, (2) Restrictions on Use, (3) Program Administration Provisions, and (4) Regulatory Analyses.

The Eligible Uses section describes the standards to determine eligible uses of funds in each of the four eligible use categories:

(1) Responding to the public health and negative economic impacts of the pandemic (which includes several sub-categories)

(2) Providing premium pay to essential workers

(3) Providing government services to the extent of revenue loss due to the pandemic, and

(4) Making necessary investments in water, sewer, and broadband infrastructure.

Each eligible use category has separate and distinct standards for assessing whether a use of funds is eligible. Standards, restrictions, or other provisions in one eligible use category do not apply to the others. Therefore, 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. In the case of uses to respond to the public health and negative economic impacts of the pandemic, recipients should also determine which sub-category the eligible use fits within (*i.e.*, public health, assistance to households, assistance to small businesses, assistance to nonprofits, aid to impacted industries, or public sector capacity and workforce), then assess whether the potential use of funds meets the eligibility standard for that sub-category. Treasury does not pre-approve uses of funds; recipients are advised to review the final rule and may pursue eligible projects under it.

In some sections of the rule, Treasury identifies specific uses of funds that are eligible, called "enumerated eligible uses"; for example, Treasury provides many enumerated eligible uses of funds to respond to the public health and negative economic impacts of the pandemic. Uses of funds that are not specifically named as eligible in this

final rule may still be eligible in two ways. First, under the revenue loss eligible use category, recipients have broad latitude to use funds for government services up to their amount of revenue loss due to the pandemic. A potential use of funds that does not fit within the other three eligible use categories may be permissible as a government service, which recipients can fund up to their amount of revenue loss. For example, transportation infrastructure projects are generally ineligible as a response to the public health and negative economic impacts of the pandemic; however, a recipient could fund these projects as a government service up to its amount of revenue loss, provided that other restrictions on use do not apply. See sections Revenue Loss and Restrictions on Use for further information. Second, the eligible use category for responding to the public health and negative economic impacts of the pandemic provides a non-exhaustive list of enumerated eligible uses, which means that the listed eligible uses include some, but not all, of the uses of funds that could be eligible. The Eligible Uses section provides a standard for determining if other uses of funds, beyond those specifically enumerated, are eligible. If a recipient would like to pursue a use of funds that is not specifically enumerated, the recipient should use the standard and other guidance provided in the section Public Health and Negative Economic Impacts to assess whether the use of funds is eligible.

Next, the Restrictions on Use section describes limitations on how funds may be used. Treasury has divided the Restriction on Use section into (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 nonentitlement 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. 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. 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. 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 on the basis of 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 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 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 advised to also consult Treasury's Reporting and Compliance Guidance for additional information on program administration processes and requirements, including applicability of the Uniform Guidance.

Finally, the section Regulatory Analyses provides Treasury's analysis of the impacts of this rulemaking, as required by several laws, regulations, and Executive Orders.

Throughout this Supplementary Information, statements using the terms "should" or "must" refer to requirements, except when used in

summarizing opinions expressed in public comments. Statements using the term "encourage" refer to recommendations, not requirements.

II. Eligible Uses

A. Public Health and Negative Economic Impacts

Background

Since the first case of COVID-19 was discovered in the United States in January 2020, the disease has infected over 50 million and killed over 800,000 Americans.¹² The disease—and necessary measures to respond—have had an immense public health and economic impact on millions of Americans across many areas of life, as detailed below in the respective sections on Public Health and Negative Economic Impacts. Since the release of the interim final rule in May 2021, the country has made major progress in fighting the disease and rebuilding the economy but faces continued risks, as illustrated by the spread of the Delta variant and the resulting slowdown in the economic recovery. The SLFRF program, and Treasury's interim final rule, provide substantial flexibility to recipients to respond to pandemic impacts in their local community; this flexibility is designed to help state, local, and Tribal governments adapt to the evolving public health emergency and tailor their response as needs evolve and to the particular local needs of their communities.

Indeed, state, local, and Tribal governments face continued needs to respond at scale to the public health emergency. This includes continued public health efforts to slow the spread of the disease, to increase vaccination rates and provide vaccinations to new populations as they become eligible, to protect individuals living in congregate facilities, and to address the broader impacts of the pandemic on public health. Similarly, while a strong economic recovery is underway, the economy remains 3.9 million jobs below its pre-pandemic level, pointing to the continued need for response efforts, with low-income workers and communities of color facing elevated rates of unemployment and economic hardship.¹³ Long-standing disparities in health and economic outcomes in

¹² Centers for Disease Control and Prevention, COVID Data Tracker, <http://www.covid.cdc.gov/covid-data-tracker/#data-tracker-home> (last visited December 31, 2021).

¹³ U.S. Bureau of Labor Statistics, All Employees, Total Nonfarm [PAYEMS] <https://fred.stlouisfed.org/series/PAYEMS> (last visited December 7, 2021).

underserved¹⁴ communities, that amplified and exacerbated the impacts of the pandemic, also present continued barriers to full and equitable recovery.

As state, local, and Tribal governments work to meet the public health and economic needs of their communities, these governments are also confronting the need to rebuild their own capacity. Facing severe budget challenges during the pandemic, many state, local, and Tribal governments have been forced to make cuts to services or their workforces, including cutting over 1.5 million jobs from February to May 2020, or delay critical investments. As of fall 2021, state, local, and Tribal government employment remained over 950,000 jobs below pre-pandemic levels.¹⁵ In the recovery from the Great Recession, cuts to state, local, and Tribal governments became a meaningful drag on economic growth for several years, and the SLFRF program provides the resources needed to re-invest in vital public services and workers to avoid this outcome.¹⁶

1. General Provisions: Structure and Standards

Background: Sections 602(c)(1)(A) and 603(c)(1)(A) of the Social Security Act establish that recipients may use funds “to respond to the public health emergency with respect to COVID–19 or its negative economic impacts, including assistance to households, small businesses, and nonprofits, or aid to impacted industries such as tourism, travel, and hospitality.” The interim final rule established three categories within this eligible use: (1) Public health responses for those impacted by the pandemic, including the general public; (2) responses to the negative economic impacts that were experienced by those impacted as a result of the pandemic; and (3) additional services, either as a public health response or a response to the negative economic impacts of the

pandemic, for disproportionately impacted communities.

The interim final rule established the method to determine which specific programs or services may be eligible to respond to the public health emergency or to respond to the negative economic impacts of the public health emergency within this framework. The interim final rule included multiple enumerated uses that are eligible within each of these categories when provided to eligible populations, including populations that the interim final rule presumed to have been *impacted* (in the case of public health responses and responses to negative economic impacts) or *disproportionately impacted* (in the case of disproportionately impacted communities). Finally, the interim final rule also allowed recipients to designate additional individuals or classes as impacted or disproportionately impacted. The standards for each of these criteria under the interim final rule are discussed below.

To assess whether a program or service would be eligible to respond to the public health emergency or its negative economic impacts, the interim final rule stated that, “the recipient [is required] to, first, identify a need or negative impact of the COVID–19 public health emergency and, second, identify how the program, service, or other intervention addresses the identified need or impact [. . .] [E]ligible uses under this category must be in response to the disease itself or the harmful consequences of the economic disruptions resulting from or exacerbated by the COVID–19 public health emergency.” The enumerated eligible uses were presumed to meet this criterion.

With respect to uses not specifically enumerated in the interim final rule as eligible public health responses, the interim final rule stated that, “[t]o 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.”

With respect to uses not specifically enumerated in the interim final rule as eligible responses to a negative economic impact of the public health emergency, the interim final rule stated that “[e]ligible uses that respond to the negative economic impacts of the public health emergency must be designed to address an economic harm resulting from or exacerbated by the public health emergency. In considering whether a program or service would be eligible

under this category, the recipient should assess whether, and the extent to which, there has been an economic harm, such as loss of earnings or revenue, that resulted from the COVID–19 public health emergency and whether, and the extent to which, the use would respond to or address this harm.¹⁷ A recipient should first consider whether an economic harm exists and whether this harm was caused or made worse by the COVID–19 public health emergency.” The interim final rule went on to say that: “In addition, the eligible use must ‘respond to’ the identified negative economic impact. Responses must be related and reasonably proportional to the extent and type of harm experienced; uses that bear no relation or are grossly disproportionate to the type or extent of harm experienced would not be eligible uses.”

Throughout this final rule, Treasury refers to households, communities, small businesses, nonprofits, and industries that experienced public health or negative economic impacts of the pandemic as “impacted.” The first section in the interim final rule under this eligible use category included public health responses for these impacted classes. The second category in the interim final rule under this eligible use category included responses to the negative economic impacts that were experienced by these impacted classes as a result of the pandemic.

The interim final rule further recognized that certain populations have experienced disproportionate health or negative economic impacts during the pandemic, as pre-existing disparities in these communities amplified the impacts of the pandemic. For example, the interim final rule recognized that the negative economic effects of the pandemic were particularly pronounced among lower-income families, who were more likely to experience income loss and more likely to have a job that required in-person work. The interim final rule recognized the role of pre-existing social vulnerabilities and disparities in driving the disparate health and economic outcomes and presumed that programs designed to address these health or economic disparities are responsive to the public health or negative economic impacts of the COVID–19 public health emergency, when provided in disproportionately impacted communities. In addition to identifying certain populations and communities

¹⁴ Treasury uses “underserved” to refer to populations sharing a particular characteristic, as well as geographic communities, that have been systematically denied a full opportunity to participate in aspects of economic, social, and civic life. In the interim final rule, Treasury generally used the term “disadvantaged” to refer to these same populations and communities.

¹⁵ U.S. Bureau of Labor Statistics, All Employees, State Government [CES9092000001] and All Employees, Local Government [CES9093000001], retrieved from FRED, Federal Reserve Bank of St. Louis, <https://fred.stlouisfed.org/series/CES9092000001> and <https://fred.stlouisfed.org/series/CES9093000001> (last visited December 7, 2021).

¹⁶ Tracy Gordon, State and Local Budgets and the Great Recession, Brookings Institution (Dec. 31, 2012), <http://www.brookings.edu/articles/state-and-local-budgets-and-the-great-recession>.

¹⁷ In some cases, a use may be permissible under another eligible use category even if it falls outside the scope of section (c)(1)(A) of section 602 and 603 of the Social Security Act.

presumed to be disproportionately impacted, it also empowered recipients to identify other disproportionately impacted households, populations, communities, or small businesses. The interim final rule provided that, in identifying these disproportionately impacted communities, recipients should be able to support their determination that the pandemic resulted in disproportionate public health or economic outcomes to the specific populations, households, or geographic areas to be served.

Throughout this final rule, Treasury refers to those households, communities, small businesses, and nonprofits that experienced disproportionate public health or negative economic impacts of the pandemic as “disproportionately impacted.” The third category in the interim final rule under this eligible use included public health responses and responses to the negative economic impacts for these disproportionately impacted classes.

The interim final rule provided significant flexibility for recipients to determine which households, populations, communities, or small businesses have been impacted and/or disproportionately impacted by the pandemic and to identify appropriate responses. The interim final rule included several provisions to provide simple methods for recipients to identify impacts and design programs to address those impacts. First, the interim final rule allowed recipients to demonstrate a negative economic impact on a population or class and provide assistance to households or small businesses that fall within that population or class. In such cases, the recipient need only demonstrate that an individual household or business is within the class that experienced a negative economic impact, rather than requiring a recipient to demonstrate that each individual household or small business experienced a negative economic impact, because the impact was already identified for the class.

Second, in the interim final rule, Treasury presumed that certain populations have been impacted or disproportionately impacted and are thus eligible for services that respond to these impacts or disproportionate impacts. Specifically, the interim final rule permitted recipients to presume that households that experienced unemployment, increased food or housing insecurity, or are low- or moderate-income experienced a negative economic impact from the pandemic. The interim final rule also permitted recipients to presume that

certain services provided in Qualified Census Tracts (QCTs), to individuals living in QCTs, or by Tribal governments are responsive to disproportionate impacts of the pandemic. In addition to the populations presumed to be impacted or disproportionately impacted, under the interim final rule, recipients could identify other impacted households or classes, as described above, as well as other populations, households, or geographic areas that are disproportionately impacted by the pandemic.

Third, as mentioned previously, the interim final rule included a non-exhaustive list of uses of funds that Treasury identified as responsive to the impacts or disproportionate impacts of the pandemic. Treasury refers to these as “enumerated eligible uses.”

To summarize, the interim final rule identified certain populations that are presumed to be *impacted* by the pandemic (and specific enumerated uses of funds that are responsive to that impact) and populations that are presumed to be *disproportionately impacted* by the pandemic (and specific enumerated uses of funds that are responsive to those disproportionate impacts). In addition, the interim final rule provided standards for recipients to assess whether additional uses of funds, beyond the enumerated eligible uses, are eligible for impacted and disproportionately impacted populations and permitted recipients to identify other households or classes that experienced impacts of the pandemic or disproportionate impacts of the pandemic.

Rule Structure

Public Comment: Many commenters expressed concern regarding the structure of the eligible uses, indicating they found the structure of the public health and negative economic impacts section of the interim final rule to be confusing or difficult to navigate. Other commenters indicated that they understood the enumerated uses to be the only eligible uses and/or the presumed eligible populations to be the only eligible populations. Several commenters expressed frustration about the number of eligible uses specifically enumerated in the interim final rule, which they considered too few, and commenters proposed a wide range of additional enumerated eligible uses (for further discussion, see the section Public Health and section Negative Economic Impacts). Commenters expressed concern with pursuing uses of funds not explicitly enumerated in the eligible use section or uncertainty

regarding the broad flexibility provided under the interim final rule to pursue additional programs that respond to the public health or negative economic impacts of the pandemic or the process for doing so.

Treasury Response: Treasury recognizes that many commenters felt the structure of the interim final rule could be clarified. These comments are consistent with many of the questions that Treasury has received from recipients, which requested clarification regarding the category their desired response fits into. Treasury observes that these comments and questions generally fall into four categories: (1) How to identify the correct public health or negative economic impact category for a particular response, (2) how to identify whether a particular use is eligible, (3) how to identify an impacted or disproportionately impacted class, and (4) whether an enumerated use can be provided to a class other than those presumed impacted or disproportionately impacted. In response to comments, Treasury is adjusting the structure of the public health and negative economic impacts eligible use section of the final rule to improve clarity and make it easier for recipients to interpret and apply the final rule.

Specifically, Treasury is restructuring the rule 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 a use of funds is eligible based on its responsiveness to a public health or negative economic impact experienced by individuals, households, small businesses, nonprofits, or impacted industries (together “beneficiaries”).¹⁸ This restructuring is intended to make the rule easier to navigate and to implement, including any criteria or conditions on particular uses of funds.

The reorganization of the public health and negative economic impacts section of the final rule is also intended to clarify the enumerated eligible uses described in the interim final rule. The reorganization itself is not intended to change the scope of the enumerated uses that were included in the interim final rule or that were allowable under the interim final rule. In some cases, specific enumerated uses are being altered, and those changes are discussed

¹⁸ Note that small businesses, nonprofits, and industries may also function as subrecipients. For additional information on these distinctions see section Distinguishing Subrecipients versus Beneficiaries.

as changes within the section on that enumerated use.

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. Under this approach, 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 nonprofits, alongside a fourth standalone eligibility category for aid to travel, tourism, hospitality, and other impacted industries. The first three categories, assistance to households, small businesses, and nonprofits, include enumerated eligible uses for impacted and disproportionately impacted beneficiaries. This change in structure is intended to provide a framework that clearly identifies the intended beneficiaries of uses of funds and provides clarity about what types of assistance are “responsive to the pandemic or its negative economic impacts” for these beneficiaries.

a. Standards for Identifying a Public Health or Negative Economic Impact

Standards: Designating a Public Health Impact

Public Comment: Many commenters expressed uncertainty about how to determine whether a use of funds, beyond those specifically enumerated as eligible, might be an eligible public health response. For example, many commenters submitted questions asking whether specific uses of funds would be eligible. Others described what they considered to be impacts of the pandemic and argued that uses of funds to respond to these issues should be eligible. Some commenters requested that Treasury provide additional detail to guide their assessments of eligible uses of funds. For example, a commenter requested more clarification around exactly what and whose medical expenses can be covered. These comments ranged in their specificity and covered the full range of the enumerated eligible uses.

Treasury Response: 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 the two eligibility requirements discussed below. These standards apply to all proposed public health uses.

First, there must be a negative public health impact or harm experienced by an individual or a class. For ease of administration, the interim final rule allowed, and the final rule maintains the ability for, recipients to identify a public health impact on a population or group of individuals, referred to as a “class,” and to provide assistance to that class. In determining whether an individual is eligible for a program designed to address a harm experienced by a class, the recipient need only document that the individual is within the class that experienced a public health impact, see section Standards: Designating Other Impacted Classes. In the case of some impacts, for example impacts of COVID-19 itself that are addressed by providing prevention and mitigation services, such a class could reasonably include the general public.

Second, the program, service, or other intervention must address or respond to the identified impact or harm. The final rule maintains the interim final rule requirement that eligible uses under this category must be in response to the disease itself or other public health harms that it caused.¹⁹

Responses must be reasonably designed to benefit the individual or class that experienced the public health impact or harm. Uses of funds should be assessed based on their responsiveness to their intended beneficiaries and the ability of the response to address the impact or harm experienced by those beneficiaries.

Responses must also be related and reasonably proportional to the extent and type of public health impact or harm experienced. Uses that bear no relation or are grossly disproportionate to the type or extent of harm experienced would not be eligible uses. Reasonably proportional refers to the scale of the response compared to the scale of the harm. It also refers to the targeting of the response to beneficiaries compared to the amount of harm they experienced. In evaluating whether a

¹⁹ In designing an intervention to mitigate COVID-19, the recipient should consider guidance from public health authorities, particularly the Centers for Disease Control and Prevention (CDC), in assessing appropriate COVID-19 mitigation and prevention strategies (see Centers for Disease Control and Prevention, COVID-19, <https://www.cdc.gov/coronavirus/2019-ncov/index.html>). A program or service that imposes conditions on participation in or acceptance of the service that would undermine efforts to stop the spread of COVID-19 or discourage compliance with practices in line with CDC guidance for stopping the spread of COVID-19 is not a permissible use of funds.

use is reasonably proportional, recipients should consider relevant factors about the harm identified and the response. For example, recipients may consider the size of the population impacted and the severity, type, and duration of the impact. Recipients may also consider the efficacy, cost, cost-effectiveness, and time to delivery of the response.

If a recipient intends to fund capital expenditures in response to the public health impacts of the pandemic, recipients should refer to the section Capital Expenditures for details about the eligibility of capital expenditures.

Standards: Designating a Negative Economic Impact

Public Comment: Many commenters expressed uncertainty about how to determine whether uses of funds, beyond those specifically enumerated as eligible, might be eligible responses to negative economic impacts. For example, many commenters submitted questions asking whether specific uses of funds would be eligible. Others described what they considered to be impacts of the pandemic and argued that uses of funds to respond to these issues should be eligible. Some commenters requested that Treasury provide additional detail to guide their assessments of eligible uses of funds. These comments ranged in their specificity and covered the full range of eligible uses to respond to negative economic impacts. Several commenters asked for clarification about what types of food assistance would be considered eligible. Another commenter requested that the establishment of outdoor dining be eligible. Many commenters inquired about homeless shelters as an eligible use of SLFRF funds.

Commenters also expressed uncertainty about the ability to establish classes, including geographic areas, that experienced a negative economic impact or disagreed with the requirement that an individual entity be impacted by the pandemic in order to receive assistance. For example, a commenter argued that interventions should not be limited to individuals or businesses that experienced an economic impact and should instead be used broadly to support economic growth. These commenters argued that an expenditure that supports a more robust economy may help combat the pandemic’s negative economic impacts, and it can do so even if funding is provided to individuals or entities that did not themselves experience a negative economic impact during the pandemic.

Treasury Response: The final rule maintains the standard articulated in

the interim final rule. For clarity, the final rule re-articulates that when assessing whether a program or service is an eligible use to respond to the negative economic impacts of the COVID-19 public health emergency, Treasury will consider the two eligibility requirements discussed below.

First, there must be a negative economic impact, or an economic harm, experienced by an individual or a class. The recipient should assess whether, and the extent to which, there has been an economic harm, such as loss of earnings or revenue, that resulted from the COVID-19 public health emergency. A recipient should first consider whether an economic harm exists and then whether this harm was caused or made worse by the COVID-19 public health emergency. This approach is consistent with the text of the statute, which provides that funds in this category must be used to “respond to the public health emergency with respect to . . . its negative economic impacts.”

While economic impacts may either be immediate or delayed, individuals or classes that did not experience a negative economic impact from the public health emergency would not be eligible beneficiaries under this category. As noted above, the interim final rule permitted recipients to presume that households that experienced unemployment, increased food or housing insecurity, or are low- or moderate-income experienced a negative economic impact from the pandemic. For discussion of the final rule’s approach to this presumption, see section Populations Presumed Eligible.

The final rule also maintains several provisions included in the interim final rule and subsequent guidance that are intended to ease administration of identifying that the beneficiary experienced a negative economic impact or harm. For example, the interim final rule allowed, and the final rule maintains the ability for, recipients to demonstrate a negative economic impact on a population or group, referred to as a “class,” and to provide assistance to households, small businesses, or nonprofits that fall within that class. In such cases, the recipient need only demonstrate that the household, small business, or nonprofit is within the class that experienced a negative economic impact, see section Standards: Designating Other Impacted Classes. This would allow, for example, an internet access assistance program for all households with children to support those households’ ability to participate in healthcare, work, and

educational activities like extending learning opportunities, among other critical activities. In that case, the recipient would only need to identify a negative economic impact to the class of “households with children” and would not need to document or otherwise demonstrate that each individual household served experienced a negative economic impact.

Second, the response must be designed to address the identified economic harm or impact resulting from or exacerbated by the public health emergency. In selecting responses, the recipient must assess whether, and the extent to which, the use would respond to or address this harm or impact. This approach is consistent with the text of the statute, which provides that funds may be used to “respond to” the “negative economic impacts” of the public health emergency “including assistance to households, small businesses, and nonprofits, or aid to impacted industries such as tourism, travel, and hospitality.” The list of potential responses (“assistance” or “aid”) suggests that responses should address the “negative economic impacts” of particular types of beneficiaries (e.g., households or small businesses).

Responses must be reasonably designed to benefit the individual or class that experienced the negative economic impact or harm. Uses of funds should be assessed based on their responsiveness to their intended beneficiary and the ability of the response to address the impact or harm experienced by that beneficiary.²⁰

Responses must also be related and reasonably proportional to the extent and type of harm experienced; uses that bear no relation or are grossly disproportionate to the type or extent of harm experienced would not be eligible uses.²¹ Reasonably proportional refers to the scale of the response compared to the scale of the harm. It also refers to the targeting of the response to beneficiaries compared to the amount of harm they experienced; for example, it may not be reasonably proportional for a cash assistance program to provide assistance in a very small amount to a group that

²⁰ For example, expenses such as excessive compensation to employees or expenses which have already been reimbursed through another federal program, are not reasonably designed to address a negative economic impact to a beneficiary.

²¹ For example, a program or service that imposes conditions on participation in or acceptance of the service that would undermine efforts to stop the spread of COVID-19 or discourage compliance with practices in line with CDC guidance for stopping the spread of COVID-19 is not a permissible use of funds.

experienced severe harm and in a much larger amount to a group that experienced relatively little harm. In evaluating whether a use is reasonably proportional, recipients should consider relevant factors about the harm identified and the response. For example, recipients may consider the size of the population impacted and the severity, type, and duration of the impact. Recipients may also consider the efficacy, cost, cost-effectiveness, and time to delivery of the response.

Finally, recipients should be aware of the distinction between beneficiaries of funds and subrecipients; a recipient may provide services to beneficiaries through subrecipients that did not experience a negative economic impact, see section Distinguishing Subrecipients versus Beneficiaries. That is, a recipient may award SLFRF funds to an entity that did not experience a negative economic impact in order to implement a program or provide a service to beneficiaries on its behalf. Such transfers, when implementing a public health or negative economic impact response, should be responsive to and designed to benefit individuals, households, small businesses, nonprofits, or impacted industries that did experience a public health or negative economic impact.

Determining the Appropriate Eligible Use Category

Public Comment: Some commenters expressed uncertainty about how to analyze negative economic impacts to different entities (e.g., households, small businesses, nonprofits). For example, commenters asked whether a nonprofit, which did not experience a negative economic impact itself, could be granted funds to provide services to individuals experiencing homelessness, who did experience negative economic impacts. Other commenters proposed providing assistance to support the expansion of small businesses, under the theory that this would create more job opportunities for unemployed workers who experienced negative economic impacts.

Treasury Response: In the final rule, 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, nonprofits, or impacted industries that experienced the negative economic impact.

Treasury notes that recipients may award SLFRF funds to many different types of organizations to carry out eligible uses of funds and serve beneficiaries on behalf of a recipient.

When a recipient provides funds to another entity to carry out eligible uses of funds and serve beneficiaries the entity becomes a subrecipient (see section Distinguishing a Subrecipient versus a Beneficiary). For example, a recipient may grant funds to a nonprofit organization to provide food assistance (an eligible use) to low-income households (the beneficiaries). Recipients only need to assess whether the beneficiaries experienced a negative economic impact and whether the eligible use responds to that impact, consistent with the two-part framework described above; the organization carrying out the eligible use does not need to have experienced a negative economic impact if it is serving as the vehicle for reaching the beneficiaries. When making determinations about how to implement a program, recipients should consider whether that method of program implementation is an effective and efficient method to implement the program and do so in accordance with the Uniform Guidance provisions that govern procurements and sub-granting of federal funds, as applicable.

As noted above, recipients should analyze eligible uses based on the beneficiary of the assistance or the entity that experienced a negative economic impact. Assistance to a small business or to an impacted industry must respond to a negative economic impact experienced by that small business or industry. Recipients may not provide assistance to small businesses or impacted industries that did not experience a negative economic impact, although recipients can identify negative economic impacts for classes, rather than individual businesses, and may also presume that small businesses in certain areas experienced impacts; see section General Provisions: Structure and Standards and section Assistance to Small Businesses for details.

Several examples illustrate the application of these concepts. For example, a recipient could provide assistance to households via a contract with a business to create subsidized jobs for the long-term unemployed; in this case the business is a subrecipient and need not have experienced a negative economic impact, but the recipient would need to identify a specific connection between the assistance provided and addressing the negative economic impact experienced by the unemployed households. The recipient could, for instance, document the subsidized jobs created under the contract and their reservation for long-term unemployed individuals. Similarly, a recipient might provide

assistance to a small business that experienced a pandemic-related loss of revenue. This small business is a beneficiary and may use those funds in many ways, potentially including hiring or retaining staff. However, general assistance to a business that did not experience a negative economic impact under the theory that this assistance generally grows the economy and therefore enhances opportunities for unemployed workers would not be an eligible use, because such assistance is not reasonably designed to impact the individuals or classes that experienced a negative economic impact. In other words, there is not a reasonable connection between the assistance provided and an impact on the beneficiaries. Such an activity would be attenuated from and thus not reasonably designed to benefit the households that experienced the negative economic impact.

b. Populations Presumed Eligible

Presumed Eligibility: Impacted and Disproportionately Impacted Households and Communities

Background: As noted above, the interim final rule allowed recipients to presume that certain households were impacted or disproportionately impacted by the pandemic and thus eligible for responsive programs or services. Specifically, under the interim final rule, recipients could presume that a household or population that experienced unemployment, experienced increased food or housing insecurity, or is low- or moderate-income experienced negative economic impacts resulting from the pandemic, and recipients may provide services that respond to these impacts.

The interim final rule also recognized that pre-existing health, economic, and social disparities contributed to disproportionate pandemic impacts in certain communities and allowed for a broader list of enumerated eligible uses to respond to the pandemic in disproportionately impacted communities. Under the interim final rule, recipients were allowed to presume that families residing in QCTs or receiving services provided by Tribal governments were disproportionately impacted by the pandemic.

Definition of Low- and Moderate-Income

Public Comment: As noted earlier, many commenters sought a definition for “low- and moderate-income” to provide recipients greater clarity on which specific households could be

presumed to be impacted by the pandemic.

Treasury Response: 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.

Definitions. The final rule defines a household as *low income* if it has (i) income 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 (ii) income 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).²²

The final rule defines a household as *moderate income* if it has (i) income 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) income at or below 65 percent of the AMI for its county and size of household based on the most recently published data by HUD.²³

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. For example, recipients developing a program that serves specific households (e.g., a subsidy for internet access, a childcare program) may measure income at the household level. Recipients providing a service that reaches a general geographic area (e.g., a park) may measure median income of that area.

Further, recipients should generally use the income threshold for the size of the household to be served (e.g., when providing childcare to a household of five, recipients should reference the income threshold for a household of five); however, recipients may use the income threshold for a default household size of three if providing

²² AMI is also often referred to as median family income for the area. Since AMI is synonymous with this term and used more generally, the final rule refers to AMI.

²³ For the six New England states of Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont, HUD provides AMI for towns rather than counties. Recipients in these states should use the AMI corresponding to their town when determining thresholds for both low and moderate income.

services that reach a general geographic area or if doing so would simplify administration of the program to be provided (e.g., when developing a park, recipients should use the income threshold for a household size of three and compare it to median income of the geographic area to be served).

Note that recipients can also identify and serve other classes of households that experienced negative economic impacts or disproportionate impacts from the pandemic; recipients can identify these classes based on their income levels, including above the levels defined as low- and moderate-income in the final rule. For example, a recipient may identify that households in their community with incomes above the final rule threshold for low-income

nevertheless experienced disproportionate impacts from the pandemic and provide responsive services. See section General Provisions: Standards for Identifying Other Eligible Populations for details on applicable standards.

Applicable levels. For reference, the FPG is commonly referred to as the federal poverty level (FPL) and is related to—although distinct from—the U.S. Census Bureau's poverty threshold. The final rule uses the FPG when referring specifically to the HHS guidelines, as these are the quantitative metrics used for determining low- and moderate-income households.

The FPG by household size for 2021 is included in the table below. Recipients should refer to HHS Poverty

Guidelines for this information, which is updated annually and available on the HHS website.²⁴ For calculating the thresholds of 40 percent and 65 percent of AMI, recipients should refer to the annual HUD Section 8 50 percent income limits by county and household size published by HUD and available on the HUD website; in particular, recipients should calculate the 40 percent threshold as 0.8 times the 50 percent income limit, and recipients should calculate the 65 percent threshold as 1.3 times the 50 percent income limit.²⁵ Finally, for median income of Census Tracts and other geographic areas, recipients should refer to the most recent American Community Survey 5-year estimates available through the Census website.²⁶

2021 FEDERAL POVERTY GUIDELINES

Household size	48 contiguous states and the District of Columbia	Alaska	Hawaii
1	\$12,880	\$16,090	\$14,820
2	17,420	21,770	20,040
3	21,960	27,450	25,260
4	26,500	33,130	30,480
5	31,040	38,810	35,700
6	35,580	44,490	40,920
7	40,120	50,170	46,140
8	44,660	55,850	51,360

For families/households with more than 8 persons, add the following amounts for each additional person:

48 Contiguous States and the District of Columbia: \$4,540.

Alaska: \$5,680.

Hawaii: \$5,220.

Source: "HHS Poverty Guidelines for 2021," available at <https://aspe.hhs.gov/topics/poverty-economic-mobility/poverty-guidelines>.

Rationale. In defining low income, the final rule uses both the FPG and AMI to account for national trends and regional differences. The metric of 185 percent of FPG aligns with some other programs; for instance, under the National School Lunch Program, students with household incomes under 185 percent of FPG qualify for free or reduced-price lunch, and schools often use eligibility for free or reduced-price lunch as an indicator of low-income status under Title 1–A of the Elementary and Secondary Education Act. Eligibility for other programs, such as the Federal Communications Commission's e-Rate

program and the Special Supplemental Nutrition Program for Women, Infants and Children employ this metric as well. In addition, 185 percent of the FPG for a family of four is \$49,025, which is approximately the wage earnings for a two-earner household in which both earners receive the median wage in occupations, such as waiters and waitresses and hotel clerks, that were heavily impacted by COVID–19.²⁷ This measure is targeted toward those at the bottom of the income distribution and thus helps to promote use of SLFRF funds towards populations with the greatest needs. At the same time, with

approximately one-quarter of Americans below 185 percent of the poverty threshold, this approach is broad enough to facilitate use of SLFRF funds across many jurisdictions.²⁸ Because regions have different cost and income levels, this definition also allows for upward adjustment based on AMI for those regions where 40 percent of AMI exceeds 185 percent of FPG. The metric of 40 percent of AMI is based on the midpoint of values often used to designate certain categories of low-income households; specifically, it is the midpoint of the 30 percent income limit and the 50 percent income limit

²⁴ U.S. Department of Health and Human Service, HHS Poverty Guidelines for 2021, available at <https://aspe.hhs.gov/topics/poverty-economic-mobility/poverty-guidelines>.

²⁵ U.S. Department of Housing and Urban Development, FY 2021 Section 8 Income Limits, available at <https://www.huduser.gov/portal/datasets/il/il21/Section8-FY21.xlsx>. Recipients may refer to the list of counties (and New England towns) identified by state and metropolitan area for identifying the appropriate area. U.S. Department of Housing and Urban Development, FY 2021 List of Counties (and New England Towns) Identified by

State and Metropolitan Area, available at <https://www.huduser.gov/portal/datasets/il/il21/area-definitions-FY21.pdf>.

²⁶ The U.S. Census Bureau provides an interactive map: U.S. Census Bureau, Median Household Income State Selection Map, available at https://data.census.gov/cedsci/map?q=Median%20Household%20Income&g=0100000US%2404000%24001&tid=ACST5Y2019.S1901&cid=S1901_C01_012E&vintage=2019. The U.S. Census Bureau also provides an interactive table: U.S. Census Bureau, Median Household Income In The Past 12 Months (In 2019 Inflation-Adjusted Dollars),

available at <https://data.census.gov/cedsci/table?q=b19013&tid=ACSDT5Y2019.B19013&hidePreview=true>.

²⁷ See U.S. Bureau of Labor Statistics, Occupational Employment and Wage Estimates, https://www.bls.gov/oes/current/oes_nat.htm (last visited December 7, 2021).

²⁸ U.S. Census Bureau, Poverty Status by State, <https://www.census.gov/data/tables/time-series/demo/income-poverty/cps-pov/pov-46.html> (last visited December 7, 2021).

used in programs such as the Community Development Block Grant (CDBG) Program.

In defining moderate income, the final rule uses both the FPG and AMI to account for national trends and regional differences. While there are different definitions of moderate income, 300 percent of FPG falls within the range commonly used by researchers.²⁹ Analysis of median wages among a sample of occupations likely impacted by the pandemic also suggests that an income cutoff of 300 percent of FPG would include many households with workers in such occupations.³⁰ Moreover, the metric of 300 percent of FPG covers households that, while above the poverty line, often lack economic security.³¹ Treasury determined the AMI threshold for moderate income by maintaining the same ratio of FPG multiplier to AMI multiplier as in the definition of low income. This anchors the threshold to the existing definitions of moderate income from the literature while taking into account geographical variation in income and expenses in the same manner as the definition of low income.

Eligibility Presumptions

Public Comment: Many commenters believed that a broader range of groups should be considered presumptively impacted and disproportionately impacted, arguing that many households had been affected by the pandemic and that broader presumed eligibility would help recipients provide assistance quickly and effectively.

Treasury also received many comments on the presumption that

families living in QCTs or receiving services from Tribal governments were disproportionately impacted by the pandemic. While many commenters supported the interim final rule's recognition of disproportionate impacts of the pandemic on low-income communities, many commenters disagreed with treating QCTs as the only presumed eligible group of disproportionately impacted households, apart from households served by Tribal governments. While acknowledging a potential increase in administrative burden, commenters recommended that Treasury presume other households or geographic areas, in addition to QCTs, were disproportionately impacted; suggestions included all low- and moderate-income households, geographic areas designated as Opportunity Zones, Difficult Development Areas (DDAs), areas with a certain amount of Real Estate Advantage Program (REAP) recipients, or use of eligibility criteria from the Community Reinvestment Act. One commenter generally recommended that a clearer definition of "disproportionately impacted" should be provided and that any definition should include communities of color and people of limited means. Another recommended specific eligibility for people that had recently interacted with the criminal justice system. Many commenters representing Tribal governments and groups recommended a presumption of eligibility for all Tribal uses of funds, clarification that off reservation members remained eligible, and broad flexibility on use of funds.

Additionally, commenters noted that some areas are technically eligible to be QCTs but fall short because of the aggregate population of eligible tracts. One commenter noted that these areas should be considered the same as QCTs for the purpose of SLFRF funds. Some commenters argued that rural counties typically have few QCTs despite high levels of poverty and disruption caused by the COVID-19 pandemic. Other rural commenters recommended that the designation be by county rather than at a more granular level, arguing that the QCT designation is biased towards urban areas and understates the harm done to rural America. Many commenters representing Tribal governments supported the presumption that services provided by Tribal governments respond to disproportionate impacts.

Treasury Response

Summary: While households residing in QCTs or served by Tribal

governments were presumed to be disproportionately impacted, Treasury emphasizes that under the interim final rule recipients could also identify other households, populations, or geographic areas that were disproportionately impacted by the pandemic and provide services to respond.

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. The final rule also allows recipients to presume that low-income households were disproportionately impacted, and as discussed above, defines low- and moderate-income. Finally, 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.

Households presumed to be impacted: Impacted households are those that experienced a public health or negative economic impact from the pandemic.

With regard to public health impacts, recipients may presume that the general public experienced public health impacts from the pandemic for the purposes of providing services for COVID-19 mitigation and behavioral health. In other words, recipients may provide a wide range of enumerated eligible uses in these categories to the general public without further analysis. As discussed in the introduction, COVID-19 as a disease has directly affected the health of tens of millions of Americans, and efforts to prevent and mitigate the spread of the disease are needed and in use across the country. Further, the stress of the pandemic and resulting recession have affected nearly all Americans. Accordingly, the final rule presumes that the general public are impacted by and eligible for services to respond to COVID-19 mitigation and prevention needs, as well as behavioral health needs.

With regard to negative economic impacts, as with the interim final rule, under the final rule recipients may presume that a household or population that experienced unemployment, experienced increased food or housing insecurity, or is low- or moderate-income experienced negative economic impacts resulting from the pandemic. The final rule's definition of low- and moderate-income, by providing standard metrics based on widely available data, is intended to simplify administration for recipients.

Households presumed to be disproportionately impacted: Disproportionately impacted households are those that experienced a

²⁹ For instance, Melissa Kearney et al. (2013) cap the "struggling lower middle-income class" at 250 percent of the federal poverty level, while Isabel Sawhill and Edward Rodrigue (2015) define the "middle class" as those with incomes of at least 300 percent of the poverty line. Melissa Kearney et al., "A Dozen Facts about America's Struggling Lower-Middle Class," The Hamilton Project (December 2013), https://www.hamiltonproject.org/assets/legacy/files/downloads_and_links/THP_12LowIncomeFacts_Final.pdf; Isabel Sawhill and Edward Rodrigue, "An Agenda for Reducing Poverty and Improving Opportunity," Brookings Institution, https://www.brookings.edu/wp-content/uploads/2016/07/Sawhill_FINAL.pdf.

³⁰ Data on median annual wages from: U.S. Bureau of Labor and Statistics, Occupational Employment and Wage Statistics, available at https://www.bls.gov/oes/current/oes_nat.htm (last visited December 7, 2021).

³¹ For instance, households earning between 200 and 300 percent of the FPG have significantly higher rates of food and housing insecurity than those earning above 300 percent of the FPG. Table 1, Kyle J. Caswell and Stephen Zuckerman, Food Insecurity, Housing Hardship, and Medical Care Utilization, Urban Institute (June 2018), https://www.urban.org/sites/default/files/publication/98701/2001896_foodinsecurity_housinghardship_medicalcareutilization_finalized.pdf.

disproportionate, or meaningfully more severe, impact from the pandemic. As discussed in the interim final rule, pre-existing disparities in health and economic outcomes magnified the impact of the COVID-19 public health emergency on certain households and communities. As with the interim final rule, under the final rule recipients may presume that households residing in QCTs or receiving services provided by Tribal governments were disproportionately impacted by the pandemic. In addition, under the final rule recipients may presume that low-income households were disproportionately impacted by the pandemic. Finally, 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.

Treasury notes that households presumed to be disproportionately impacted would also be presumptively impacted, as these households have not only experienced pandemic impacts but have experienced disproportionate pandemic impacts; as a result, these households are presumptively eligible for responsive services for both impacted and disproportionately impacted households.

Many different geographic, income-based, or poverty-based presumptions could be used to designate disproportionately impacted populations. The combination of permitting recipients to use QCTs, low-income households, and services provided by Tribal or territorial governments as presumptions balances these varying methods. Specifically, QCTs are a commonly used designation of geographic areas based on low incomes or high poverty rates of households in the community; for recipients providing geographically targeted services, QCTs may provide a simple metric with readily available maps for use. However, Treasury recognizes that QCTs do not capture all underserved populations, including for reasons noted by commenters. 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. Data on household incomes is also readily available at varying levels of geographic granularity (e.g., Census Tracts, counties), again permitting flexibility to adapt to local circumstances and needs. Finally, Treasury notes that, as discussed further below, recipients may also identify other households, populations, and

communities disproportionately impacted by the pandemic, in addition to those presumed to be disproportionately impacted.

Additionally, 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. Given a lack of regularly published data on household incomes in most territories,³² as well as a lack of poverty guidelines developed for these jurisdictions,³³ it may be highly challenging to assess disproportionate impact in these communities according to an income- or poverty-based standard. Similarly, data on incomes in Tribal communities are not readily available.³⁴ Finally, as described in the sections on Public Health and Negative Economic Impacts, Tribal communities have faced particularly severe health and economic impacts of the pandemic. Similarly, available research suggests that preexisting health and economic disparities in the territories amplified the impact of the pandemic on these communities.³⁵

Categorical Eligibility

Public Comment: Several commenters suggested that the final rule permit recipients to rely on a beneficiary's eligibility for other federal benefits programs as an easily administrable proxy for identifying a group or population that experienced a negative economic impact as a result of the COVID-19 public health emergency (i.e., categorical eligibility). In other words, a recipient would determine that individuals or households are eligible for an SLFRF-funded program based on the individual or household's eligibility in another program, typically another federal benefit program. Commenters noted that categorical eligibility is a common policy in program

administration that can significantly ease administrative burden on both program administrators and beneficiaries.

Treasury Response: 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. To the extent that the other program's eligibility criteria align with a population or class that experienced a negative economic impact of the pandemic, this approach is also consistent with the process allowed under the final rule for recipients to determine that a class has experienced a negative economic impact, and then document that an individual receiving services is a member of the class. For these reasons, the final rule recognizes categorical eligibility for the following programs and populations:

- **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
- **Disproportionately impacted households.** 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)
 - 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

³² For instance, the American Community Survey does not include all territories. U.S. Census Bureau, Areas Published, <https://www.census.gov/programs-surveys/acs/geography-acs/areas-published.html> (last visited November 9, 2021).

³³ U.S. Department of Health and Human Services, *supra* note 24.

³⁴ For instance, data from the American Community Survey is based on geographical location rather than Tribal membership. U.S. Census Bureau, My Tribal Area, https://www.census.gov/Tribal/Tribal_glossary.php.

³⁵ Lina Stoylar et. al., Challenges in the U.S. Territories: COVID-19 and the Medicaid Financing Cliff, Kaiser Family Foundation (May 18, 2021), <https://www.kff.org/coronavirus-covid-19/issue-brief/challenges-in-the-u-s-territories-covid-19-and-the-medicaid-financing-cliff/>.

I eligible schools³⁶ as disproportionately impacted and responsive services that support the school generally or support the whole school as eligible

c. Standards for Identifying Other Eligible Populations

Standards: Designating Other Impacted Classes

Public Comment: Treasury received multiple comments requesting additional clarification about how classes of impacted individuals may be designated, as well as questions asking whether recipients must demonstrate a specific public health or negative economic impact to each entity served (e.g., each household receiving assistance under a program). There were several comments requesting that specific geographic designations, like a county or Impact Zone, be eligible to use as a determining boundary.

Treasury Response: The interim final rule allowed, and the final rule maintains, the ability for recipients to demonstrate a public health or negative economic impact on a class and to provide assistance to beneficiaries that fall within that class. 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 nonprofits. In such cases, the recipient need only demonstrate that the household, small business, or nonprofit is within the relevant class. For example, a recipient could determine that restaurants in the downtown area had generally experienced a negative economic impact and provide assistance to those small businesses to respond. When providing this assistance, the recipient would only need to demonstrate that the small businesses receiving assistance were restaurants in the downtown area. The recipient would not need to demonstrate that each restaurant served experienced its own negative economic impact.

In identifying an impacted class and responsive program, service, or capital expenditure, recipients should consider the relationship between the definition of the class and proposed response. Larger and less-specific classes are less likely to have experienced similar harms and thus the responses are less

likely to be responsive to the harms identified. That is, as the group of entities being served by a program has a wider set of fact patterns, or the type of entities, their circumstances, or their pandemic experiences differ more substantially, it may be more difficult to determine that the class has actually experienced the same or similar negative economic impact and that the response is appropriately tailored to address that impact.

Standard: Designating Other Disproportionately Impacted Classes

Summary of Interim Final Rule: As noted above, the interim final rule provided a broad set of enumerated eligible uses of funds in disproportionately impacted communities, including to address pre-existing disparities that contributed to more severe pandemic impacts in these communities. The interim final rule presumed that these services are eligible uses when provided in a QCT, to families and individuals living in QCTs, or when these services are provided by Tribal governments. Recipients may also provide these services to “other populations, households, or geographic areas disproportionately impacted by the pandemic” and, in identifying these disproportionately impacted communities, should be able to support their determination that the pandemic resulted in disproportionate public health or economic outcomes to the group identified.

Public Comment: A significant number of commenters expressed uncertainty regarding the process for determining eligibility for disproportionately impacted communities beyond QCTs. A commenter noted that a clearer definition of “disproportionately impacted” should be delineated and that any definition should include communities of color and people of limited means. Some commenters suggested a template or checklist to see if an area meets the standard for disproportionately impacted communities outside of QCTs. Some commenters stated that QCT and non-QCT beneficiaries should be treated the same.

Treasury Response: Under the interim final rule, presuming eligibility for services in QCTs, for populations living in QCTs, and for Tribal governments was intended to ease administrative burden, providing a simple path for recipients to offer services in underserved communities, and is not an exhaustive list of disproportionately impacted communities. To further clarify, the final rule codifies the

interpretive framework discussed above, including presumptions of groups disproportionately impacted, as well as the ability to identify other disproportionately impacted populations, households, or geographies (referred to here as disproportionately impacted classes).

As discussed in the interim final rule, in identifying other disproportionately impacted classes, recipients should be able to support their determination that the pandemic resulted in disproportionate public health or economic outcomes to the specific populations, households, or geographic areas to be served. For example, the interim final rule considered data regarding the rate of COVID-19 infections and deaths in low-income and socially vulnerable communities, noting that these communities have experienced the most severe health impacts, compared to national averages. Similarly, the interim final rule considered the high concentration of low-income workers performing essential work, the reduced ability to socially distance, and other pre-existing public health challenges, all of which correlate with more severe COVID-19 outcomes. The interim final rule also considered the disproportionate economic impacts of the pandemic, citing, for example, the rate of job losses among low-income persons as compared to the general population. The interim final rule then identified QCTs, a common, readily accessible, and geographically granular method of identifying communities with a large proportion of low-income residents, as presumed to be disproportionately impacted by the pandemic.

In other words, the interim final rule identified disproportionately impacted populations by assessing the impacts of the pandemic and finding that some populations experienced meaningfully more severe impacts than the general public. Similarly, to identify disproportionately impacted classes, recipients should compare the impacts experienced by that class to the typical or average impacts of the pandemic in their local area, state, or nationally.

Recipients may identify classes of households, communities, small businesses, nonprofits, or populations that have experienced a disproportionate impact based on academic research or government research publications, through analysis of their own data, or through analysis of other existing data sources. To augment their analysis, or when quantitative data is not readily available, recipients may also consider qualitative research and sources like resident interviews or

³⁶ Title I eligible schools means 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.

feedback from relevant state and local agencies, such as public health departments or social services departments. In both cases, recipients should consider the quality of the research, data, and applicability of analysis to their determination.

In designing a program or service that responds to a disproportionately impacted class, a recipient must first identify the impact and then identify an appropriate response. To assess disproportionate impact, recipients should rely on data or research that measures the public health or negative economic impact. An assessment of the effects of a response (e.g., survey data on levels of resident support for various potential responses) is not a substitute for an assessment of the impact experienced by a particular class. Data about the appropriateness or desirability of a response may be used to assess the reasonableness of a response, once an impact or disproportionate impact has been identified but should not be the basis for assessing impact.

2. Public Health Background

On January 21, 2020, the Centers for Disease Control and Prevention (CDC) identified the first case of novel coronavirus in the United States.³⁷ Since that time, and through present day, the United States has faced numerous waves of the virus that have brought acute strain on health care and public health systems. At various points in the pandemic, hospitals and emergency medical services have seen significant influxes of patients; response personnel have faced shortages of personal protective equipment; testing for the virus has been scarce; and congregate living facilities like nursing homes have seen rapid spread.

Since the initial wave of the COVID-19 pandemic, the United States has faced several additional major waves that continued to impact communities and stretch public health services. The summer 2020 wave impacted communities in the south and southwest. As the weather turned colder and people spent more time indoors, a wave throughout fall and winter 2020 impacted communities in almost every region of the country as the virus reached a point of uncontrolled spread and over 3,000 people died per day due to COVID-19.³⁸

³⁷ Press Release, Centers for Disease Control and Prevention, First Travel-related Case of 2019 Novel Coronavirus Detected in United States (Jan. 21, 2020), <https://www.cdc.gov/media/releases/2020/p0121-novel-coronavirus-travel-case.html>.

³⁸ Centers for Disease Control and Prevention, COVID Data Tracker: Trends in Number of COVID-

In December 2020, the Food and Drug Administration (FDA) authorized COVID-19 vaccines for emergency use, and soon thereafter, mass vaccination in the United States began. At the time of the interim final rule publication in May 2021, the number of daily new infections was steeply declining as rapid vaccination campaigns progressed across the country. By summer 2021, COVID-19 cases had fallen to their lowest level since early months of the pandemic, when testing was scarce. However, throughout late summer and early fall, the Delta variant, a more infectious and transmissible variant of the SARS-CoV-2 virus, sparked yet another surge. From June to early September, the seven-day moving average of reported cases rose from 12,000 to 165,000.³⁹

As of December 2021, COVID-19 in total has infected over 50 million and killed over 800,000 Americans.⁴⁰ Preventing and mitigating the spread of COVID-19 continues to require a major public health response from federal, state, local, and Tribal governments.

First, state, local, and Tribal governments across the country have mobilized to support the national vaccination campaign. As of December 2021, more than 80 percent of adults have received at least one dose, with more than 470 million total doses administered.⁴¹ Additionally, more than 15 million children over the age of 12 have received at least one dose of the vaccine and over 47 million people have received a booster dose.⁴² Vaccines for younger children, ages 5 through 11, have been approved and are reaching communities and families across the country. As new variants continue to emerge globally, the national effort to administer vaccinations and other COVID-19 mitigation strategies will be a critical component of the public health response.

In early reporting on uses of SLFRF funds, recipients have indicated that they plan to put funds to immediate use to support continued vaccination campaigns. For example, one recipient has indicated that it plans to use SLFRF

19 Cases and Deaths in the US Reported to CDC, by State/Territory, https://covid.cdc.gov/covid-data-tracker/#trends_dailytrendscases (last visited December 7, 2021).

³⁹ *Id.*

⁴⁰ Centers for Disease Control and Prevention, COVID Data Tracker, <http://www.covid.cdc.gov/covid-data-tracker/#data-tracker-home> (last visited December 31, 2021).

⁴¹ Centers for Disease Control and Prevention, COVID Data Tracker: COVID-19 Vaccinations in the United States, <https://covid.cdc.gov/covid-data-tracker/#vaccinations> (last visited December 7, 2021).

⁴² *Id.*

funds to support a vaccine incentive program, providing \$100 gift cards to residents at community vaccination clinics. The program aimed to target communities with high public health needs.⁴³ Another recipient reported that it is partnering with multiple agencies, organizations, and providers to distribute COVID-19 vaccinations to homebound residents in assisted living facilities.⁴⁴

State, local, and Tribal governments have also continued to execute other aspects of a wide-ranging public health response, including increasing access to COVID-19 testing and rapid at-home tests, contact tracing, support for individuals in isolation or quarantine, enforcement of public health orders, new public communication efforts, public health surveillance (e.g., monitoring case trends and genomic sequencing for variants), enhancement to health care capacity through alternative care facilities, and enhancement of public health data systems to meet new demands or scaling needs.

State, local, and Tribal governments have also supported major efforts to prevent COVID-19 spread through safety measures at key settings like nursing homes, schools, congregate living settings, dense worksites, incarceration settings, and in other public facilities. This has included, for example, implementing infection prevention measures or making ventilation improvements.

In particular, state, local, and Tribal governments have mounted significant efforts to safely reopen schools. A key factor in school reopening is the ability to implement COVID-19 mitigation strategies such as providing masks and other hygiene resources, improving air-quality and ventilation, increasing outdoor learning and eating spaces, testing and contact tracing protocols, and a number of other measures.⁴⁵ For example, one recipient described plans to use SLFRF funds to further invest in school health resources that were critical components of school reopening and reducing the spread of COVID-19 in schools. Those investments include the increasing school nurses and social

⁴³ Columbus, Ohio Recovery Plan, <https://www.columbus.gov/recovery/>.

⁴⁴ Luzerne County, Pennsylvania Recovery Plan, <https://www.luzernecounty.org/DocumentCenter/View/26304/Final-Interim-Recovery-Plan-Performance-Report-83121>.

⁴⁵ This includes implementing mitigation strategies consistent with the Centers for Disease Control and Prevention's (CDC) Guidance for COVID-19 Prevention in K-12 Schools (November 5, 2021), available at <https://www.cdc.gov/coronavirus/2019-ncov/community/schools-childcare/k-12-guidance.html>.

workers, improved ventilation systems, and other health and safety measures.

The need for public health measures to respond to COVID-19 will continue moving forward. This includes the continuation of vaccination campaigns for the general public, booster doses, and children. This also includes monitoring the spread of COVID-19 variants, understanding the impact of these variants, developing approaches to respond, and monitoring global COVID-19 trends. Finally, the long-term health impacts of COVID-19 will continue to require a public health response, including medical services for individuals with “long COVID,” and research to understand how COVID-19 impacts future health needs and raises risks for the tens of millions of Americans who have been infected.

The COVID-19 pandemic also negatively impacted other areas of public health, particularly mental health and substance use. In January 2021, over 40 percent of American adults reported symptoms of depression or anxiety, up from 11 percent in the first half of 2019.⁴⁶ The mental health impacts of the pandemic have been particularly acute for adults ages 18 to 24, racial and ethnic minorities, caregivers for adults, and essential workers, with all reporting significantly higher rates of considering suicide.⁴⁷ The proportion of children’s emergency department visits related to mental health has also risen noticeably.⁴⁸ Similarly, rates of substance use and overdose deaths have spiked: Preliminary data from the CDC show a nearly 30 percent increase in drug overdose mortality from April 2020 to April 2021, bringing the estimated overdose death toll for a 12-month period over 100,000 for the first time ever.⁴⁹ The CDC also found that 13 percent of adults started or increased

substance use to cope with stress related to COVID-19 and 26 percent reported having symptoms of trauma- and stressor-related disorder (TRSD) related to the pandemic.⁵⁰

Another public health challenge exacerbated by the pandemic was violent crime and gun violence, which increased during the pandemic and has disproportionately impacted low-income communities.⁵¹ According to the Federal Bureau of Investigation (FBI), although the property crime rate fell 8 percent in 2020, the violent crime rate increased 6 percent in 2020 compared to 2019 data.⁵² In particular, the estimated number of aggravated assault offenses rose 12 percent, while murder and manslaughter increased 30 percent from 2019 to 2020.⁵³ The proportion of homicides committed with firearms rose from 73 percent in 2019 to 76 percent in 2020.⁵⁴ Exposure to violence can create serious short-term and long-term harmful effects to health and development, and repeated exposure to violence may be connected to negative health outcomes.⁵⁵ Addressing community violence as a public health issue may help prevent and even reduce additional harm to individuals, households, and communities.⁵⁶

Many communities are using SLFRF funds to invest in holistic approaches in violence prevention that are rooted in targeted outreach and addressing root causes. For example, the City of St. Louis is planning to invest in expanding a “community responder” model designed to provide clinical help and to divert non-violent calls away from the police department. Additionally, the city will expand access to mental health services, allowing residents to seek support at city recreation centers,

libraries, and other public spaces.⁵⁷ Similarly, Los Angeles County will further invest in its “Care First, Jails Last” program which seeks to replace “arrest and incarceration” responses with health interventions.⁵⁸

While the pandemic affected communities across the country, it disproportionately impacted some demographic groups and exacerbated health inequities along racial, ethnic, and socioeconomic lines.⁵⁹ The CDC has found that racial and ethnic minorities are at increased risk for infection, hospitalization, and death from COVID-19, with Hispanic or Latino and Native American or Alaska Native patients at highest risk.⁶⁰

Similarly, low-income and socially vulnerable communities have seen the most severe health impacts. For example, counties with high poverty rates also have the highest rates of infections and deaths, with 308 deaths per 100,000 compared to the U.S. average of 238 deaths per 100,000, as of December 2021.⁶¹ Counties with high social vulnerability, as measured by factors such as poverty and educational attainment, have also fared more poorly than the national average, with 325 deaths per 100,000 as of December 2021.⁶² Over the course of the

⁵⁷ St. Louis, MO Recovery Plan, <https://www.stlouis-mo.gov/government/recovery/covid-19/arpa/plan/>.

⁵⁸ Los Angeles County, CA Recovery Plan, <http://file.lacounty.gov/SDSInter/bos/supdocs/160391.pdf>.

⁵⁹ Office of the White House, National Strategy for the COVID-19 Response and Pandemic Preparedness (Jan. 21, 2021), <https://www.whitehouse.gov/wp-content/uploads/2021/01/National-Strategy-for-the-COVID-19-Response-and-Pandemic-Preparedness.pdf>.

⁶⁰ In a study of 13 states from October to December 2020, the CDC found that Hispanic or Latino and Native American or Alaska Native individuals were 1.7 times more likely to visit an emergency room for COVID-19 than White individuals, and Black individuals were 1.4 times more likely to do so than White individuals. See Sebastian D. Romano et al., Trends in Racial and Ethnic Disparities in COVID-19 Hospitalizations, by Region—United States, March–December 2020, *MMWR Morb Mortal Wkly Rep* 2021, 70:560–565 (Apr. 16, 2021), https://www.cdc.gov/mmwr/volumes/70/wr/mm7015e2.htm?s_cid=mm7015e2_w.

⁶¹ Centers for Disease Control and Prevention, COVID Data Tracker: Trends in COVID-19 Cases and Deaths in the United States, by County-level Population Factors, https://covid.cdc.gov/covid-data-tracker/#pop-factors_totaldeaths (last visited December 7, 2021).

⁶² The CDC’s Social Vulnerability Index includes fifteen variables measuring social vulnerability, including unemployment, poverty, education levels, single-parent households, disability status, non-English speaking households, crowded housing, and transportation access.

Centers for Disease Control and Prevention, COVID Data Tracker: Trends in COVID-19 Cases and Deaths in the United States, by Social

⁴⁶ Nirmita Panchal et al., The Implications of COVID-19 for Mental Health and Substance Abuse (Feb. 10, 2021), [https://www.kff.org/coronavirus/covid-19/issue-brief/the-implications-of-covid-19-for-mental-health-and-substance-use/#:~:text=Older%20adults%20are%20also%20more,prior%20to%20the%20current%20crisis](https://www.kff.org/coronavirus/covid-19/issue-brief/the-implications-of-covid-19-for-mental-health-and-substance-use/#:~:text=Older%20adults%20are%20also%20more,prior%20to%20the%20current%20crisis;); Mark É. Czeisler et al., Mental Health, Substance Abuse, and Suicidal Ideation During COVID-19 Pandemic—United States, June 24–30 2020, *Morb. Mortal. Wkly. Rep.* 69(32):1049–57 (Aug. 14, 2020), <https://www.cdc.gov/mmwr/volumes/69/wr/mm6932a1.htm>.

⁴⁷ *Id.*

⁴⁸ Rebecca T. Leeb et al., Mental Health-Related Emergency Department Visits Among Children Aged <18 Years During the COVID Pandemic—United States, January 1–October 17, 2020, *Morb. Mortal. Wkly. Rep.* 69(45):1675–80 (Nov. 13, 2020), <https://www.cdc.gov/mmwr/volumes/69/wr/mm6945a3.htm>.

⁴⁹ Centers for Disease Prevention and Control, National Center for Health Statistics, Provisional Drug Overdose Death Counts, <https://www.cdc.gov/nchs/nvss/vsrr/drug-overdose-data.htm> (last visited May 8 December 6, 2021).

⁵⁰ Panchal, *supra* note 46; Mark É. Czeisler et al., *supra* note 46.

⁵¹ The White House, FACT SHEET: More Details on the Biden-Harris Administration’s Investments in Community Violence Interventions (April 7, 2021), <https://www.whitehouse.gov/briefing-room/statements-releases/2021/04/07/fact-sheet-more-details-on-the-biden-harris-administrations-investments-in-community-violence-interventions/>.

⁵² Federal Bureau of Investigation, FBI Releases 2020 Crime Statistics (September 27, 2021) <https://www.fbi.gov/news/pressrel/press-releases/fbi-releases-2020-crime-statistics>.

⁵³ *Id.*

⁵⁴ *Id.*

⁵⁵ The Educational Fund to Stop Gun Violence, Community Gun Violence, <https://efsgv.org/learn/type-of-gun-violence/community-gun-violence/> (last visited November 9, 2021).

⁵⁶ Giffords Law Center, Healing Communities in Crisis: Lifesaving Solutions to the Urban Gun Violence Epidemic (March 2016), <https://giffords.org/wp-content/uploads/2019/01/Healing-Communities-in-Crisis.pdf>.

pandemic, Native Americans have experienced more than one and a half times the rate of COVID–19 infections, more than triple the rate of hospitalizations, and more than double the death rate compared to White Americans.⁶³ Low-income and minority communities also exhibit higher rates of pre-existing conditions that may contribute to an increased risk of COVID–19 mortality.⁶⁴ In addition, individuals living in low-income communities may have had more limited ability to socially distance or to self-isolate when ill, resulting in faster spread of the virus, and were over-represented among essential workers, who face greater risk of exposure.⁶⁵

Social distancing measures in response to the pandemic may have also exacerbated pre-existing public health challenges. For example, for children living in homes with lead paint, spending substantially more time at home raises the risk of developing elevated blood lead levels, while screenings for elevated blood lead levels declined during the pandemic.⁶⁶ The combination of these underlying social and health vulnerabilities may have contributed to more severe public health outcomes of the pandemic within these communities, resulting in an exacerbation of pre-existing disparities in health outcomes.⁶⁷

Vulnerability Index, https://covid.cdc.gov/covid-data-tracker/#pop-factors_totaldeaths (last visited December 7, 2021).

⁶³ Centers for Disease Control and Prevention, Risk for COVID–19 Infection, Hospitalization, and Death By Race/Ethnicity, <https://www.cdc.gov/coronavirus/2019-ncov/covid-data/investigations-discovery/hospitalization-death-by-race-ethnicity.html> (last visited December 7, 2021).

⁶⁴ See, e.g., Centers for Disease Control and Prevention, Risk of Severe Illness or Death from COVID–19 (Dec. 10, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/community/health-equity/racial-ethnic-disparities/disparities-illness.html> (last visited December 7, 2021).

⁶⁵ Milena Almagro et al., Racial Disparities in Frontline Workers and Housing Crowding During COVID–19: Evidence from Geolocation Data (Sept. 22, 2020), NYU Stern School of Business (forthcoming), available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3695249; Grace McCormack et al., Economic Vulnerability of Households with Essential Workers, *JAMA* 324(4):388–90 (2020), available at <https://jamanetwork.com/journals/jama/fullarticle/2767630>.

⁶⁶ See, e.g., Joseph G. Courtney et al., Decreases in Young Children Who Received Blood Lead Level Testing During COVID–19—34 Jurisdictions, January–May 2020, *Morb. Mort. Wkly. Rep.* 70(5):155–61 (Feb. 5, 2021), <https://www.cdc.gov/mmwr/volumes/70/wr/mm7005a2.htm>; Emily A. Benfer & Lindsay F. Wiley, Health Justice Strategies to Combat COVID–19: Protecting Vulnerable Communities During a Pandemic, *Health Affairs Blog* (Mar. 19, 2020), <https://www.healthaffairs.org/doi/10.1377/hblog20200319.757883/full>.

⁶⁷ See, e.g., Centers for Disease Control and Prevention, *supra* note 62; Benfer & Wiley, *supra* note 66; Nathaniel M. Lewis et al., Disparities in COVID–19 Incidence, Hospitalizations, and Testing,

Summary of the Interim Final Rule Approach to Public Health

Summary: As discussed above, the interim final rule provided flexibility for recipients to pursue a wide range of eligible uses to “respond to” the COVID–19 public health emergency. Uses of funds to “respond to” the public health emergency address the SARS-CoV–2 virus itself, support efforts to prevent or decrease spread of the virus, and address other impacts of the pandemic on public health. The interim final rule implemented these provisions by identifying a non-exhaustive list of programs or services that may be funded as responding to COVID–19 (“enumerated eligible uses”), along with considerations for evaluating other potential uses of funds not explicitly listed. Enumerated eligible uses are discussed below. For guidance on how to determine whether a particular use is allowable, beyond those enumerated, see section Standards: Identifying a Public Health Impact.

Enumerated eligible uses under this section built and expanded upon permissible expenditures under the Coronavirus Relief Fund; for clarity, the interim final rule expressly listed as eligible uses the uses permissible under the Coronavirus Relief Fund, with minor exceptions.⁶⁸ The interim final rule also recognized that the nature of the COVID–19 public health emergency, and responsive policy measures, programs, and services, had changed over time and is expected to continue evolving.

The interim final rule categorized enumerated eligible uses to respond to the public health emergency into several categories: (1) COVID–19 mitigation and prevention, (2) medical expenses, (3) behavioral health care, (4) public health and safety staff, (5) expenses to improve the design and execution of health and public health programs, and (6) eligible uses to address disparities in public health outcomes. For each category in turn, this section describes public comments received and Treasury’s responses, as well as comments received

by Area-Level Deprivation—Utah, March 3–July 9, 2020, *Morb. Mort. Wkly. Rep.* 69(38):1369–73 (Sept. 25, 2020), <https://www.cdc.gov/mmwr/volumes/69/wr/mm6938a4.htm>.

⁶⁸ Generally, funding uses eligible under CRF as a response to the direct public health impacts of COVID–19 will continue to be eligible under the ARPA, including those not explicitly listed in the final rule, with the following two exceptions: (1) The standard for eligibility of public health and safety payrolls has been updated (see section Public Sector Capacity and Workforce in General Provisions: Other) and (2) expenses related to the issuance of tax-anticipation notes are no longer an eligible funding use (see section Restrictions on Use: Debt Service).

proposing additional enumerated eligible uses.

Reorganizations and Cross-References: In some cases, enumerated eligible uses included in the interim final rule under responding to the public health emergency have been re-categorized in the organization of the final rule to enhance clarity. For discussion of eligible uses for public health and safety staff and to improve the design and execution of public health programs, please see section Public Sector Capacity and Workforce in General Provisions: Other. For discussion of eligible uses to address disparities in public health outcomes, please see section Assistance to Households in Negative Economic Impacts.

Conversely, discussion of eligible assistance to small businesses and nonprofits to respond to public health impacts has been moved from Assistance to Small Businesses and Assistance to Nonprofits in Negative Economic Impacts to this section. This change is consistent with the interim final rule, which provides that appropriate responses to address the public health impacts of COVID–19 may be provided to any type of entity.

a. COVID–19 Mitigation and Prevention

COVID–19 public health response and mitigation tactics. Recognizing the broad range of services and programming needed to contain COVID–19, the interim final rule provided an extensive list of enumerated eligible uses to prevent and mitigate COVID–19 and made clear that the public health response to the virus is expected to continue to evolve over time, necessitating different uses of funds.

Enumerated eligible uses of funds in this category included: Vaccination programs; medical care; testing; contact tracing; support for isolation or quarantine; supports for vulnerable populations to access medical or public health services; public health surveillance (e.g., monitoring case trends, genomic sequencing for variants); enforcement of public health orders; public communication efforts; enhancement to health care capacity, including through alternative care facilities; purchases of personal protective equipment; support for prevention, mitigation, or other services in congregate living facilities (e.g., nursing homes, incarceration settings, homeless shelters, group living facilities) and other key settings like schools; ventilation improvements in congregate settings, health care settings, or other key locations; enhancement of

public health data systems; other public health responses; and capital investments in public facilities to meet pandemic operational needs, such as physical plant improvements to public hospitals and health clinics or adaptations to public buildings to implement COVID-19 mitigation tactics. These enumerated uses are consistent with guidance from public health authorities, including the CDC.

Public Comment: Many commenters were supportive of expansive enumerated eligible uses for mitigating and preventing COVID-19, noting the wide range of activities that governments may undertake and the continued changing landscape of pandemic response. Some commenters requested that Treasury engage in ongoing consideration of and consultation on evolving public health needs and resulting eligible expenses. Some commenters noted that their jurisdiction does not have an official public health program, for example smaller jurisdictions or those that do not have a health department, and requested clarification on whether their public health expenses would still be eligible in compliance with program rules.

Treasury Response: 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.” Note that the final rule discusses several of these enumerated uses in more detail below.

Treasury is further clarifying that when providing COVID-19 prevention and mitigation services, recipients can identify the impacted population as the general public. Treasury presumes that all enumerated eligible uses for programs and services, including COVID-19 mitigation and prevention programs and services, are reasonably proportional responses to the harm identified unless a response is grossly disproportionate to the type or extent of harm experienced. 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. In other words, 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.

This approach gives recipient governments an extensive set of eligible

uses that can adapt to local needs, as well as evolving response needs and developments in understanding of transmission of COVID-19. Treasury emphasizes how the enumerated eligible uses can adapt to changing circumstances. For example, when the interim final rule was released, national daily COVID-19 cases were at relatively low levels and declining;⁶⁹ as the Delta variant spread and cases peaked in many areas of the country, particularly those with low vaccination rates, government response needs and tactics evolved, and the SLFRF funds provided the ability to quickly and nimbly adapt to new public health needs. Treasury also notes that funds may be used to support compliance with and implementation of COVID-19 safety requirements, including vaccination requirements, testing programs, or other required practices.

Recipient governments do not need to have an official health or public health program in order to utilize these eligible uses; any recipient can pursue these eligible uses, though Treasury recommends consulting with health and public health professionals to support effective implementation.

The CDC has provided recommendations and guidelines to help mitigate and prevent COVID-19. The interim final rule and final rule help support recipients in stopping the spread of COVID-19 through these recommendations and guidelines.⁷⁰ The final rule reflects changing circumstances of COVID-19 and provides a broad range of permissible uses for mitigating and preventing the spread of the disease, in a manner consistent with CDC guidelines and recommendations.

The purpose of the SLFRF funds is to mitigate the fiscal effects stemming from the COVID-19 public health emergency, including by supporting efforts to stop the spread of the virus. The interim final rule and final rule implement this objective by, in part, providing that recipients may use SLFRF funds for COVID-19 mitigation and prevention.⁷¹ A program or service that imposes conditions on participation in or acceptance of the service that would undermine efforts to stop the spread of COVID-19 or discourage compliance with recommendations and guidelines

⁶⁹ See Centers for Disease Control and Prevention, COVID Data Tracker, https://covid.cdc.gov/covid-data-tracker/#trends_dailycases (last visited December 7, 2021).

⁷⁰ See Centers for Disease Control and Prevention, COVID-19, <https://www.cdc.gov/coronavirus/2019-ncov/index.html> (last visited November 8, 2021).

⁷¹ See § 35.6(b); Coronavirus State and Local Fiscal Recovery Funds, 86 FR at 26786.

in CDC guidance for stopping the spread of COVID-19 is not a permissible use of funds. In other words, recipients may not use funds for a program that undermines practices included in the CDC’s guidelines and recommendations for stopping the spread of COVID-19. This includes programs that impose a condition to discourage compliance with practices in line with CDC guidance (e.g., paying off fines to businesses incurred for violation of COVID-19 vaccination or safety requirements), as well as programs that require households, businesses, nonprofits, or other entities not to use practices in line with CDC guidance as a condition of receiving funds (e.g., requiring that businesses abstain from requiring mask use or employee vaccination as a condition of receiving SLFRF funds).

Vaccination programs and vaccine incentives. At the time of the interim final rule release, many vaccination programs were using mass vaccination tactics to rapidly reach Americans en masse for first vaccine doses.⁷² Since that time, the FDA has authorized booster vaccine doses for certain groups and certain vaccines and has also authorized vaccines for youths.^{73 74} The inclusion of “vaccination programs” as an eligible use allows for adaptation as the needs of programs change or new groups become eligible for different types of vaccinations.

Public Comment: Since the release of the interim final rule, many recipient governments have also requested clarification on whether vaccine incentives are a permissible use of funds.

Treasury Response: 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

⁷² Centers for Disease Control and Prevention, COVID Data Tracker: COVID-19 Vaccinations in the United States, <https://covid.cdc.gov/covid-data-tracker/#vaccinations> (last visited October 18, 2021).

⁷³ U.S. Food and Drug Administration, Coronavirus (COVID-19) Update: FDA Takes Additional Actions on the Use of a Booster Dose for COVID-19 Vaccines, <https://www.fda.gov/news-events/press-announcements/fda-authorizes-pfizer-biontech-covid-19-vaccine-emergency-use-children-5-through-11-years-age> (last visited November 8, 2021).

⁷⁴ U.S. Food and Drug Administration, FDA Authorizes Pfizer-BioNTech COVID-19 Vaccine for Emergency Use in Children 5 through 11 Years of Age, <https://www.fda.gov/news-events/press-announcements/fda-authorizes-pfizer-biontech-covid-19-vaccine-emergency-use-children-5-through-11-years-age> (last visited November 8, 2021).

use of funds so long as such costs are reasonably proportional to the expected public health benefit.”⁷⁵ This use of funds remains permissible under the final rule.

Capital Expenditures

Public Comment: Many commenters requested clarification around the types and scope of permissible capital investments in public facilities to meet pandemic operational needs; ventilation improvements in congregate settings, health care settings, or other key locations; and whether support for prevention and mitigation in congregate facilities could include facilities renovations, improvements, or construction of new facilities, or if the facilities must solely be used for COVID-19 response.

Treasury Response: For clarity, Treasury has addressed the eligibility standard for capital expenditures, or investments in property, facilities, or equipment, in one section of this Supplementary Information; see section Capital Expenditures in General Provisions: Other. In recognition of the importance of capital expenditures in the COVID-19 public health response, Treasury enumerates that the following projects are examples of eligible capital expenditures, as long as they meet the standards for capital expenditures in section Capital Expenditures in General Provisions: Other:

- Improvements or construction of COVID-19 testing sites and laboratories, and acquisition of related equipment;
- Improvements or construction of COVID-19 vaccination sites;
- Improvements or construction of medical facilities generally dedicated to COVID-19 treatment and mitigation (e.g., emergency rooms, intensive care units, telemedicine capabilities for COVID-19 related treatment);
- Expenses of establishing temporary medical facilities and other measures to increase COVID-19 treatment capacity, including related construction costs;
- Acquisition of equipment for COVID-19 prevention and treatment, including ventilators, ambulances, and other medical or emergency services equipment;
- Improvements to or construction of emergency operations centers and acquisition of emergency response

equipment (e.g., emergency response radio systems);

- Installation and improvements of ventilation systems;
- Costs of establishing public health data systems, including technology infrastructure;
- 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 for the purpose of mitigating spread of COVID-19 in the facility); and
- Mitigation measures in small businesses, nonprofits, and impacted industries (e.g., developing outdoor spaces).

Other clarifications on COVID-19 mitigation: *Medical care, supports for vulnerable populations, data systems, carceral settings.* Based on public comments and questions received from recipients following the interim final rule, Treasury is making several further clarifications on enumerated eligible uses in this category.

Public Comment: Several commenters requested clarification on eligible uses of funds for medical care; Treasury addresses those comments in the section Medical Expenses below.

Public Comment: Recipients posed questions on the type and scope of activities eligible as “supports for vulnerable populations to access medical or public health services.”

Treasury Response: Enumerated eligible uses should be considered in the context of the eligible use category or section where they appear; in this case, “supports for vulnerable populations to access medical or public health services” appears in the section COVID-19 Mitigation and Prevention. As such, these eligible uses should help vulnerable or high-risk populations access services that mitigate COVID-19, for example, transportation assistance to reach vaccination sites, mobile vaccination or testing programs, or on-site vaccination or testing services for homebound individuals, those in group homes, or similar settings.

Public Comment: Some commenters asked whether “enhancement of public health data systems” could include investments in software, databases, and other information technology resources that support responses to the COVID-19 public health emergency but also provide benefits for other use cases and long-term capacity of public health departments and systems.

Treasury Response: These are permissible uses of funds under the interim final rule and remain eligible under the final rule.

Assistance to Businesses and Nonprofits To Implement COVID-19 Mitigation Strategies

Background: As detailed above, Treasury received many public comments describing uncertainty about which eligible use category should be used to assess different potential uses of funds. As a result, Treasury has re-categorized some uses of funds in the final rule to provide greater clarity, consistent with the principle that uses of funds should be assessed based on their intended beneficiary. For example, COVID-19 mitigation and prevention serves the general public or specific populations within the public. However, in the interim final rule, assistance to small businesses, nonprofits, and impacted industries to implement COVID-19 mitigation and prevention strategies was categorized in the respective sections within Negative Economic Impacts. The final rule consolidates all COVID-19 mitigation and prevention within Public Health.

Public Comment: Treasury has received multiple comments and questions about which eligible use permits the recipient to provide assistance to businesses and nonprofits to address the public health impacts of COVID-19.

Treasury Response: In the final rule, these services have been re-categorized under COVID-19 mitigation and prevention to reflect the fact that this assistance responds to public health impacts of the pandemic rather than the negative economic impacts to a small business, nonprofit, or impacted industry. When providing COVID-19 mitigation and prevention services, recipients can identify the impacted entity as small businesses, nonprofits, or businesses in impacted industries in general. As with all enumerated eligible uses, recipients may presume that all COVID-19 mitigation and prevention programs and services are reasonably proportional responses to the harm identified unless a response is grossly disproportionate to the type or extent of harm experienced. 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. In other words, recipients can provide any COVID-19 prevention or mitigation service to small businesses, nonprofits, and businesses in impacted

⁷⁵ Coronavirus State and Local Fiscal Recovery Funds, Frequently Asked Questions, as of July 19, 2021; <https://home.treasury.gov/system/files/136/SLFRFAQ.pdf>. Note that programs may provide incentives to individuals who have already received a vaccination if the incentive is reasonably expected to increase the number of people who choose to get vaccinated or motivate people to get vaccinated sooner and the costs are reasonably proportional to the expected public health benefit.

industries without any further analysis of impacts of the pandemic on those entities and whether the service is responsive.

In some cases, this means that an entity not otherwise eligible to receive assistance to respond to negative economic impacts of the pandemic, for example an entity that did not experience a negative economic impact, may still be eligible to receive assistance under this category for COVID-19 mitigation and prevention services.

Uses of funds can include loans, grants, or in-kind assistance to small businesses, nonprofits, or other entities to implement COVID-19 prevention or mitigation tactics, such as vaccination; testing; contact tracing programs; physical plant changes to enable greater use of outdoor spaces or ventilation improvements; enhanced cleaning efforts; and barriers or partitions. For example, this would include assistance to a restaurant to establish an outdoor patio, given evidence showing much lower risk of COVID-19 transmission outdoors.⁷⁶ Uses of funds can also include aid to travel, tourism, hospitality, and other impacted industries to implement COVID-19 mitigation and prevention measures to enable safe reopening, for example, vaccination or testing programs, improvements to ventilation, physical barriers or partitions, signage to facilitate social distancing, provision of masks or personal protective equipment, or consultation with infection prevention professionals to develop safe reopening plans.

Recipients providing assistance to small businesses, nonprofits, or impacted industries that includes capital expenditures (*i.e.*, expenditures on property, facilities, or equipment) should also review the section Capital Expenditures in General Provisions: Other, which describes eligibility standards for these expenditures. Recipients providing assistances in the form of loans should review the section Treatment of Loans Made with SLFRF Funds in General Provisions: Other.

Recipients should also be aware of the difference between beneficiaries of assistance and subrecipients when working with small businesses, nonprofits, or impacted industries. As noted above, Treasury presumes that the general public, as well as small businesses, nonprofits, and impacted industries in general, has been impacted by the COVID-19 disease itself and is

eligible for services that mitigate or prevent COVID-19 spread. As such, a small business, nonprofit, or impacted industry receiving assistance to implement COVID-19 mitigation measures is a beneficiary of assistance (*e.g.*, granting funds to a small business to develop an outdoor patio to reduce transmission). In contrast, if a recipient contracts with, or grants funds to, a small business, nonprofit, or impacted industry to carry out an eligible use for COVID-19 mitigation on behalf of the recipient, the entity is a subrecipient (*e.g.*, contracting with a small business to operate COVID-19 vaccination sites). For further information on distinguishing between beneficiaries and subrecipients, as well as the impacts of the distinction on reporting and other requirements, see section Distinguishing Subrecipients versus Beneficiaries.

b. Medical Expenses

Background: The interim final rule also included as an enumerated eligible use medical expenses, including medical care and services to address the near-term and potential longer-term impacts of the disease on individuals infected.

Public Comment: Some commenters sought clarification on the types of medical expenses eligible and for whom, including whether funds could be used under this category for expanding health insurance coverage (*e.g.*, subsidies for premiums, expanding a group health plan), improvements to healthcare facilities or establishment of new medical facilities, direct costs of medical services, and costs to a self-funded health insurance plan (*e.g.*, a county government health plan) for COVID-19 medical care.

Treasury Response: In the final rule, Treasury is maintaining this enumerated eligible use category and clarifying 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). This can include medical costs to uninsured individuals; deductibles, co-pays, or other costs not covered by insurance; costs for uncompensated care at a health provider; emergency medical response costs; and, for recipients with a self-funded health insurance plan, excess health insurance costs due to COVID-19 medical care. These are medical expenses due to COVID-19 and distinguish this category of eligible uses from other related eligible uses, like COVID-19 mitigation and prevention and health insurance expenses to households, to provide greater clarity for recipients in determining which

category of eligible uses they should review to assess a potential use of funds. For discussion of eligibility for programs to expand health insurance coverage, see section Assistance to Households.

c. Behavioral Health Care

Background: Recognizing that the public health emergency, necessary mitigation measures like social distancing, and the economic downturn have exacerbated mental health and substance use challenges for many Americans, the interim final rule included an enumerated eligible use for mental health treatment, substance use treatment, and other behavioral health services, including a non-exhaustive list of specific services that would be eligible under this category.

Public Comment: Many commenters expressed support for the interim final rule's recognition of behavioral health impacts of the pandemic and eligible uses under this category. Several commenters requested clarification on the types of eligible services under this category, specifically whether both acute and chronic care are included as well as services that often do not directly accept insurance payments, like peer support groups. Some commenters highlighted the importance of cultural competence in providing effective behavioral health services. Some commenters suggested that funding should be available broadly and quickly for this purpose, recommending that funding available for behavioral health not be tied to the amount of revenue loss experienced by the recipient.

Treasury Response: In the final rule, Treasury is maintaining this enumerated eligible use category and clarifying that it 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. The specific services listed in the interim final rule also remain eligible.⁷⁷

Treasury is further clarifying that when providing behavioral health services, recipients can identify the impacted population as the general public and, as with all enumerated eligible uses, presume that all programs and services are reasonably proportional responses to the harm identified unless a response is grossly disproportionate to the type or extent of harm experienced. In contrast, capital expenditures are not

⁷⁶ See Centers for Disease Control and Prevention, Participate in Outdoor and Indoor Activities, <https://www.cdc.gov/coronavirus/2019-ncov/daily-life-coping/outdoor-activities.html> (last visited November 8, 2021).

⁷⁷ Hotlines or warmlines, crisis intervention, overdose prevention, infectious disease prevention, and services or outreach to promote access to physical or behavioral health primary care and preventative medicine.

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.

In other words, recipients can provide behavioral health services to members of the general public without any further analysis of impacts of the pandemic on those individuals and whether the service is responsive. Recipients may also use this eligible use category to respond to increased rates of behavioral health challenges at a population level or, at an individual level, new behavioral health challenges or exacerbation of pre-existing challenges, including new barriers to accessing treatment.

Services that respond to these impacts of the public health emergency may include services across the continuum of care, including both acute and chronic care, such as prevention, outpatient treatment, inpatient treatment, crisis care, diversion programs (e.g., from emergency departments or criminal justice system involvement), outreach to individuals not yet engaged in treatment, harm reduction, and supports for long-term recovery (e.g., peer support or recovery coaching, housing, transportation, employment services).

Recipients may also provide services for special populations, for example, enhanced services in schools to address increased rates of behavioral health challenges for youths, mental health first responder or law enforcement-mental health co-responder programs to divert individuals experiencing mental illness from the criminal justice system, or services for pregnant women with substance use disorders or infants born with neonatal abstinence syndrome. Finally, recipients may use funds for programs or services to support equitable access to services and reduce racial, ethnic, or socioeconomic disparities in access to high-quality treatment.

Eligible uses of funds may include services typically billable to insurance⁷⁸ or services not typically billable to insurance, such as peer support groups, costs for residence in supportive housing or recovery housing, and the 988 National Suicide Prevention Lifeline or other hotline services. Recipients may also use funds in conjunction with other federal grants or programs (see section Program Administration Provisions), though

eligible services under SLFRF are not limited to those eligible under existing federal programs.

Given the public health emergency’s exacerbation of the ongoing opioid and overdose crisis, Treasury highlights several ways that funds may be used to respond to opioid use disorder and prevent overdose mortality.⁷⁹ Specifically, eligible uses of funds include programs to expand access to evidence-based treatment like medications to treat opioid use disorder (e.g., direct costs or incentives for emergency departments, prisons, jails, and outpatient providers to offer medications and low-barrier treatment), naloxone distribution, syringe service programs, outreach to individuals in active use, post-overdose follow up programs, programs for diversion from the criminal justice system, and contingency management interventions.

Finally, for clarity, Treasury has addressed the eligibility standard for capital expenditures, or investments in property, facilities, or equipment, in one section of this Supplementary Information; see section Capital Expenditures in General Provisions: Other. Examples of capital expenditures related to behavioral health that Treasury recognizes as eligible include behavioral health facilities and equipment (e.g., inpatient or outpatient mental health or substance use treatment facilities, crisis centers, diversion centers), as long as they adhere to the standards detailed in the Capital Expenditures section.

d. Preventing and Responding to Violence

Background: The interim final rule highlighted that some types of violence had increased during the pandemic and that the ability of victims to access services had decreased, noting as an example the challenges that individuals affected by domestic violence face in accessing services. Accordingly, the interim final rule enumerated as an eligible use, in disproportionately impacted communities, evidence-based community violence intervention programs. Following the release of the interim final rule, Treasury received several recipient questions regarding whether and how funds may be used to respond to an increase in crime,

violence, or gun violence in some communities during the pandemic. Treasury released further guidance identifying how enumerated eligible uses and eligible use categories under the interim final rule could support violence reduction efforts, including rehiring public sector staff, behavioral health services, and services to address negative economic impacts of the pandemic that may aid victims of crime. The guidance also identified an expanded set of enumerated eligible uses to address increased gun violence.

Public Comment: Several commenters expressed support for this use of funds.

Treasury Response: In the final rule, Treasury is maintaining enumerated eligible uses in this area and clarifying how to apply eligibility standards. Throughout the final rule, enumerated eligible uses should respond to an identified impact of the COVID-19 public health emergency in a reasonably proportional manner to the extent and type of harm experienced. Many of the enumerated eligible uses—like behavioral health services, services to improve employment opportunities, and services to address educational disparities in disproportionately impacted communities—that respond to the public health and negative economic impacts of the pandemic may also have benefits for reducing crime or aiding victims of crime. For example, the pandemic exacerbated the impact of domestic violence, sexual assault, and human trafficking; enumerated eligible uses like emergency housing assistance, cash assistance, or assistance with food, childcare, and other needs could be used to support survivors of domestic violence, sexual assault, or human trafficking who experienced public health or economic impacts due to the pandemic.

Public Comment: Several commenters expressed support for community violence intervention programs or argued that traditional public safety approaches had negatively impacted the social determinants of health in their communities. Several commenters recommended inclusion of approaches like mental health or substance use diversion programs.

Treasury Response: Treasury recognizes the importance of comprehensive approaches to challenges like violence. The final rule includes an enumerated eligible use for community violence intervention programs in all communities, not just the disproportionately impacted communities eligible under the interim final rule. Given the increased rate of violence during the pandemic, Treasury has determined that this enumerated

⁷⁸ However, SLFRF funds may not be used to reimburse a service that was also billed to insurance.

⁷⁹ In line with the Department of Health and Human Services, Overdose Prevention Strategy, <https://www.hhs.gov/overdose-prevention/>, and the Office of National Drug Control Policy, Administration’s Statement on Drug Policy Priorities for Year One (April 1, 2021), <https://www.whitehouse.gov/wp-content/uploads/2021/03/BidenHarris-Statement-of-Drug-Policy-Priorities-April-1.pdf>.

eligible use is responsive to the impacts of the pandemic in all communities. The final rule incorporates guidance issued after the interim final rule on specifically types of services eligible, including:

- Evidence-based practices like focused deterrence, street outreach, violence interrupters, and hospital-based violence intervention models, complete with wraparound services such as behavioral therapy, trauma recovery, job training, education, housing and relocation services, and financial assistance; and
- Capacity-building efforts at community violence intervention programs like funding more intervention workers, increasing their pay, providing training and professional development for intervention workers, and hiring and training workers to administer the programs.

Public Comment: Some commenters sought further clarification on whether some of the enumerated eligible uses are considered responsive to all crime, violent crime, or gun violence.

Treasury Response: Enumerated eligible uses that respond to an increase in gun violence may be pursued in communities experiencing an increase in gun violence associated with the pandemic, specifically: (1) Hiring law enforcement officials—even above pre-pandemic levels—or paying overtime where the funds are directly focused on advancing community policing strategies for gun violence, (2) additional enforcement efforts to reduce gun violence exacerbated by the pandemic, including prosecuting gun traffickers, dealers, and other parties contributing to the supply of crime guns, as well as collaborative federal, state, and local efforts to identify and address gun trafficking channels, and (3) investing in technology and equipment to allow law enforcement to more efficiently and effectively respond to the rise in gun violence resulting from the pandemic, for example technology to assist in the identification of guns whose serial numbers have been damaged.

3. Negative Economic Impacts

a. Assistance to Households Background

While the U.S. economy is now on the path to a strong recovery, the public health emergency, including the necessary measures taken to protect public health, resulted in significant economic and financial hardship for many Americans. As businesses closed, consumers stayed home, schools shifted to remote education, and travel declined

precipitously, over 22 million jobs were lost in March and April 2020.⁸⁰ One year later, in April 2021, the economy still remained over 8 million jobs below its pre-pandemic peak,⁸¹ and the unemployment rate hovered around 6 percent.⁸²

In the months since Treasury issued the interim final rule in May 2021, the economy has made large strides in its recovery. The economy gained over 4 million jobs in the seven months from May to November 2021;⁸³ the unemployment rate fell more than 1.5 percentage points to 4.2 percent, which is the lowest rate since February 2020;⁸⁴ and the size of the nation's economy surpassed the pre-pandemic peak in the second quarter of 2021.⁸⁵

While the economy has made immense progress in its recovery since May 2021, the economy has also faced setbacks that illustrate the continued risks to the recovery. As the Delta variant spread across the country this summer and fall, the United States faced another severe wave of cases, deaths, and strain on the healthcare system, which contributed to a slowdown in the pace of recovery in the third quarter.⁸⁶ Supply chain disruptions have also demonstrated the difficulties of restarting a global economy.⁸⁷ Moreover, although many Americans have returned to work as of November 2021, the economy remains 3.9 million jobs below its pre-pandemic peak,⁸⁸ and 2.4 million workers have dropped out of the labor market altogether relative to February 2020.⁸⁹ Thus, despite much

progress, there is a continued need to respond to the pandemic's economic effects to ensure a full, broad-based, and equitable recovery.

Indeed, the pandemic's economic impacts continue to affect some demographic groups more than others. Rates of unemployment remain particularly severe among workers of color and workers with lower levels of educational attainment; for example, the overall unemployment rate in the United States was 4.2 percent in November 2021, but certain groups saw much higher rates: 6.7 percent for Black workers, 5.2 percent for Hispanic or Latino workers, and 5.7 percent for workers without a high school diploma.⁹⁰ Job losses have also been particularly steep among low-wage workers, with these workers remaining furthest from recovery as of the end of 2020.⁹¹ A severe recession, and its concentrated impact among low-income workers, has amplified food and housing insecurity, with an estimated nearly 20 million adults living in households where there is sometimes or often not enough food to eat and an estimated 12 million adults living in households that were not current on rent.⁹²

While economic effects have been seen across many communities, there are additional disparities by race and income. For example, approximately

Federal Reserve Bank of St. Louis, <https://fred.stlouisfed.org/series/CLF16OV> (last visited December 7, 2021).

⁸⁰ U.S. Bureau of Labor Statistics, Labor Force Statistics from the Current Population Survey: Employment status of the civilian population by sex and age (December 6, 2021), <https://www.bls.gov/news.release/empsit.101.htm> (last visited December 7, 2021); U.S. Bureau of Labor Statistics, Labor Force Statistics from the Current Population Survey: Employment status of the civilian noninstitutional population by race, Hispanic or Latino ethnicity, sex, and age (December 6, 2021), <https://www.bls.gov/web/empsit/cpseea04.htm> (last visited December 7, 2021); U.S. Bureau of Labor Statistics, Labor Force Statistics from the Current Population Survey: Employment status of the civilian noninstitutional population 25 years and over by educational attainment (December 6, 2021), <https://www.bls.gov/web/empsit/cpseea05.htm> (last visited December 7, 2021).

⁹¹ Elise Gould & Jori Kandra, Wages grew in 2020 because the bottom fell out of the low-wage labor market, Economic Policy Institute (Feb. 24, 2021), <https://files.epi.org/pdf/219418.pdf>. See also, Michael Dalton et al., The K-Shaped Recovery: Examining the Diverging Fortunes of Workers in the Recovery from the COVID-19 Pandemic using Business and Household Survey Microdata, U.S. Bureau of Labor Statistics Working Paper Series (July 2021), <https://www.bls.gov/osmr/research-papers/2021/pdf/ec210020.pdf>.

⁹² Center on Budget and Policy Priorities, Tracking the COVID-19 Recession's Effects on Food, Housing, and Employment Hardships, <https://www.cbpp.org/research/poverty-and-inequality/tracking-the-covid-19-economys-effects-on-food-housing-and> (last visited December 17, 2021).

⁸⁰ U.S. Bureau of Labor Statistics, All Employees, Total Nonfarm [PAYEMS], retrieved from FRED, Federal Reserve Bank of St. Louis; <https://fred.stlouisfed.org/series/PAYEMS> (last visited December 7, 2021).

⁸¹ *Id.*

⁸² U.S. Bureau of Labor Statistics, Unemployment Rate [UNRATE], retrieved from FRED, Federal Reserve Bank of St. Louis; <https://fred.stlouisfed.org/series/UNRATE> (last visited December 7, 2021).

⁸³ U.S. Bureau of Labor Statistics, *supra* note 80.

⁸⁴ U.S. Bureau of Labor Statistics, *supra* note 82.

⁸⁵ U.S. Bureau of Economic Analysis, Real Gross Domestic Product [GDPC1], retrieved from FRED, Federal Reserve Bank of St. Louis; <https://fred.stlouisfed.org/series/GDPC1> (last visited December 7, 2021).

⁸⁶ U.S. Department of the Treasury, Economy Statement by Catherine Wolfram, Acting Assistant Secretary for Economy Policy, for the Treasury Borrowing Advisory Committee (November 1, 2021), available at <https://home.treasury.gov/news/press-releases/jy0453>.

⁸⁷ Yuka Hayashi, IMF Cuts Global Growth Forecast Amid Supply-Chain Disruptions, Pandemic Pressures, Wall Street Journal (October 12, 2021), available at <https://www.wsj.com/articles/imf-cuts-global-growth-forecast-amid-supply-chain-disruptions-warns-of-inflation-risks-11634043601>.

⁸⁸ U.S. Bureau of Labor Statistics, *supra* note 80.

⁸⁹ U.S. Bureau of Labor Statistics, Civilian Labor Force Level [CLF16OV], retrieved from FRED,

half of low-income, Black, and Hispanic parents reported difficulty covering costs related to food, housing, utility, or medical care.⁹³ Over the course of the pandemic, inequities also manifested along gender lines, as schools closed to in-person activities, leaving many working families without childcare during the day.⁹⁴ Women of color have been hit especially hard: The labor force participation rate for Black women has fallen by 3.6 percentage points⁹⁵ during the pandemic as compared to 1.3 percentage points for Black men⁹⁶ and 1.7 percentage points for White women.⁹⁷

As the economy recovers, the effects of the pandemic-related recession may continue to impact households, including a risk of longer-term effects on earnings and economic potential. For example, unemployed workers, especially those who have experienced longer periods of unemployment, earn lower wages over the long term once rehired.⁹⁸ In addition to the labor market consequences for unemployed workers, recessions can also cause longer-term economic challenges

through, among other factors, damaged consumer credit scores⁹⁹ and reduced familial and childhood wellbeing.¹⁰⁰ These potential long-term economic consequences underscore the continued need for robust policy support.

Low- and moderate-income households, those with income levels at or below 300 percent of the federal poverty level (FPL), face particular hardships and challenges. These households report much higher rates of food insecurity and housing hardships than households with higher incomes. For example, households with incomes at or below 300 percent FPL are several times more likely to have reported struggling with food insecurity compared to households with income above 300 percent FPL.¹⁰¹ Similarly, low- and moderate-income households reported being housing insecure¹⁰² at rates more than twice as high as higher-income households, and low- and moderate-income households reported housing quality hardship¹⁰³ at rates statistically significantly greater than the rate for higher-income households.¹⁰⁴ The economic crisis caused by the pandemic worsened economic outcomes for workers in many low- and moderate-income households. Industries that employed low-wage workers experienced a disproportionate level of job loss. For example, from February 2020 to February 2021, the hospitality and leisure industry lost nearly 3.5 million jobs.¹⁰⁵ While the

entire industry was impacted, 72 percent of the job losses occurred in the lowest wage service occupations compared to only a 6 percent rate of job loss in the highest wage management and finance jobs.¹⁰⁶ Similar trends exist in other heavily impacted industries. In public education, the lowest wage occupations, service and transportation jobs, saw a job loss rate of 20 and 26 percent, respectively.¹⁰⁷ During that same time period, the highest wage occupations in public education, management, actually saw jobs increase by 7 percent.¹⁰⁸

While many households suffered negative economic outcomes as a result of the COVID-19 pandemic and economic recession, households with low incomes were impacted in disproportionate and exceptional ways. From January 2020 to March 2021, low-wage workers experienced job loss at a rate five times higher than middle-wage workers, and high-wage workers actually experienced an increase in job opportunities.¹⁰⁹ Because workers in low-income households were more likely to lose their job or experience reductions in pay, those same households were also more likely to experience economic hardships like trouble paying utility bills, affording rent or mortgage payments, purchasing food, and paying for medical expenses.¹¹⁰ The disproportionate negative impacts the pandemic has had on low-income families extend beyond financial insecurity. For example, low-income families have reported higher levels of social isolation, stress, and other negative mental health outcomes during the pandemic. While over half of all U.S. adults report that their mental health was negatively affected by the pandemic, adults with low incomes reported major negative mental health impacts at a rate nearly twice that of adults with high incomes.¹¹¹

2021), available at <https://www.epi.org/publication/swa-2020-employment-report/>.

¹⁰⁶ *Id.*

¹⁰⁷ *Id.*

¹⁰⁸ *Id.*

¹⁰⁹ R. Chetty, J. Friedman, N. Hendren, M. Stepner, & Team, T. O. I., The Economic Impacts of COVID-19: Evidence from a New Public Database Built Using Private Sector Data (No. w27431; p. w27431) (2020), National Bureau of Economic Research, <https://doi.org/10.3386/w27431>.

¹¹⁰ M. Despard, Michal Grinstein-Weiss, Yung Chun, and Stephen Roll, COVID-19 job and income loss leading to more hunger and financial hardship, Brookings Institute (July 13, 2020), <https://www.brookings.edu/blog/upfront/2020/07/13/covid-19-job-and-income-loss-leading-to-more-hunger-and-financial-hardship/>.

¹¹¹ N. Panchal, R. Kamal, C. Muñana, & P. Chidambaram, The Implications of COVID-19 for Mental Health and Substance Use, Kaiser Family Foundation (February 10, 2021), <https://www.kff.org/covid-19/issue-brief/the-implications-of-covid-19-for-mental-health-and-substance-use/>.

⁹³ Michael Karpman, Dulce Gonzalez, Genevieve M. Kenney, Parents Are Struggling to Provide for Their Families during the Pandemic, Urban Institute (May 2020), https://www.urban.org/research/publication/parents-are-struggling-provide-their-families-during-pandemic?utm_source=urban_researcher&utm_medium=email&utm_campaign=covid_parents&utm_term=lp.

⁹⁴ Women have carried a larger share of childcare responsibilities than men during the COVID-19 crisis. See, e.g., Gema Zamarró & María J. Prados, Gender differences in couples' division of childcare, work and mental health during COVID-19, *Rev. Econ. Household* 19:11-40 (2021), available at <https://link.springer.com/article/10.1007/s11150-020-09534-7>; Titan Alon et al., The Impact of COVID-19 on Gender Equality, National Bureau of Economic Research Working Paper 26947 (April 2020), available at <https://www.nber.org/papers/w26947>.

⁹⁵ U.S. Bureau of Labor Statistics, Labor Force Participation Rate—20 Yrs. & Over, Black or African American Women [LNS11300032], retrieved from FRED, Federal Reserve Bank of St. Louis; <https://fred.stlouisfed.org/series/LNS11300032> (last visited December 7, 2021).

⁹⁶ U.S. Bureau of Labor Statistics, Labor Force Participation Rate—20 Yrs. & Over, Black or African American Men [LNS11300031], retrieved from FRED, Federal Reserve Bank of St. Louis; <https://fred.stlouisfed.org/series/LNS11300031> (last visited December 7, 2021).

⁹⁷ U.S. Bureau of Labor Statistics, Labor Force Participation Rate—20 Yrs. & Over, White Women [LNS11300029], retrieved from FRED, Federal Reserve Bank of St. Louis; <https://fred.stlouisfed.org/series/LNS11300029> (last visited December 7, 2021).

⁹⁸ See, e.g., Michael Greenstone & Adam Looney, Unemployment and Earnings Losses: A Look at Long-Term Impacts of the Great Recession on American Workers, Brookings Institution (Nov. 4, 2011), <https://www.brookings.edu/blog/jobs/2011/11/04/unemployment-and-earnings-losses-a-look-at-long-term-impacts-of-the-great-recession-on-american-workers/>.

⁹⁹ Chi Chi Wu, Solving the Credit Conundrum: Helping Consumers' Credit Records Impaired by the Foreclosure Crisis and Great Recession, National Consumer Law Center (Dec. 2013), https://www.nclc.org/images/pdf/credit_reports/report-credit-conundrum-2013.pdf.

¹⁰⁰ Irwin Garfinkel, Sara McLanahan, Christopher Wimer, eds., *Children of the Great Recession*, Russell Sage Foundation (Aug. 2016), available at <https://www.russellsage.org/publications/children-great-recession>.

¹⁰¹ Kyle J. Casewell and Stephen Zuckerman, Food Insecurity, Housing Hardship, and Medical Care Utilization, Urban Institute (June 2018), available at https://www.urban.org/sites/default/files/publication/98701/2001896_foodinsecurity_housinghardship_medicalcareutilization_finalized.pdf.

¹⁰² Housing insecurity is defined as not paying the full amount of rent or mortgage and/or utility bills (gas, oil, or electricity) sometime in the previous 12 months.

¹⁰³ Housing quality hardship is defined as an affirmative response to one or more questions related to problems with a respondent's physical dwelling: Pests and/or insects; leaking roof or ceiling; windows that are broken or cannot shut; exposed electrical wires; broken plumbing (toilet, hot water, other); holes in walls, ceiling, or floor; no appliances (refrigerator or stove); and no phone (of any kind).

¹⁰⁴ *Id.*

¹⁰⁵ Elise Gould and Melat Kassa, Low-wage, low-hours workers were hit hardest in the COVID-19 recession: The State of Working America 2020 employment report, Economic Policy Institute (May

Summary of Interim Final Rule and Final Rule Structure

Summary: The interim final rule provided a non-exhaustive list of enumerated eligible uses to respond to the negative economic impacts of the pandemic through assistance to households, as well as a standard for assessing whether uses of funds beyond those enumerated are eligible.

The interim final rule described enumerated eligible uses for assistance to households in several categories: (1) Assistance to unemployed workers, (2) state Unemployment Insurance Trust Funds, (3) assistance to households, and (4) expenses to improve the efficacy of economic relief. Note that the interim final rule posed several questions to the public on enumerated eligible uses for assistance to households; comments on these questions are addressed in the relevant subject matter section below.

In addition, in recognition that pre-existing health, economic, and social disparities contributed to disproportionate pandemic impacts in certain communities, the interim final rule also provided a broader list of enumerated eligible uses to respond to the pandemic in disproportionately impacted communities, specifically: (1) Building stronger communities through investments in housing and neighborhoods, (2) addressing educational disparities, and (3) promoting healthy childhood environments. In the interim final rule, under the Public Health section, recipients could also provide services to address health disparities and increase access to health and social services; these eligible uses have been re-organized into the Assistance to Households section to consolidate responses in disproportionately impacted communities and enhance clarity.

This section addresses enumerated eligible uses in the final rule to respond to negative economic impacts to households. As a reminder, recipients may presume that a household or population that experienced unemployment, experienced increased food or housing insecurity, or is low or moderate income experienced negative economic impacts resulting from the pandemic, and recipients may provide services to them that respond to these impacts, including these enumerated eligible uses.

For guidance on how to determine whether a particular use, beyond those enumerated, is eligible; further detail on

which households and communities are presumed eligible for services; and how to identify eligible households and communities beyond those presumed eligible, see section General Provisions: Structure and Standards.

Reorganizations and Cross-

References: The final rule reorganizes all enumerated eligible uses for impacted and disproportionately impacted households into the section Assistance to Households, with the exception that expenses to improve the efficacy of economic relief has been re-categorized into a different section of the final rule for increased clarity; for discussion of that use category, see section General Provisions: Other.

Note that in conducting this reorganization, and based on further analysis and in response to comments, 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 disproportionately impacted and impacted households. These uses include assistance applying for public benefits or services; programs or services that address or mitigate the impacts of the COVID-19 public health emergency on childhood health or welfare, including childcare, early learning services, programs to provide home visits, and services for families involved in the child welfare system and foster youth; programs to address the impacts of lost instructional time for students;¹¹² and programs or services that address housing insecurity, lack of affordable housing, or homelessness.

The following activities remain enumerated eligible uses for disproportionately impacted households: Remediation of lead paint or other lead hazards; housing vouchers and assistance relocating to neighborhoods with higher levels of economic opportunity; and programs or services that address educational disparities, including assistance to high-poverty school districts to advance equitable funding across districts and geographies and evidence-based services to address the academic, social, emotional, and mental health needs of students.

¹¹² For which recipients may presume that any student who did not have access to in-person instruction for a significant period of time was impacted by the pandemic.

Enumerated Eligible Uses for Impacted Households

The interim final rule included several enumerated eligible uses to provide assistance to households or populations facing negative economic impacts due to COVID-19. Enumerated eligible uses included: Food assistance; rent, mortgage, or utility assistance; counseling and legal aid to prevent eviction or homelessness; emergency assistance for burials, home repairs, weatherization, or other needs; internet access or digital literacy assistance; cash assistance; or job training to address negative economic or public health impacts experienced due to a worker's occupation or level of training. It also posed a question as to what other types of services or costs Treasury should consider as eligible uses to respond to the negative economic impacts of COVID-19.

This section addresses each of these enumerated eligible uses in turn, with the exception of job training, which has been re-categorized for increased clarity to the eligible use for “assistance to unemployed and underemployed workers.” In general, commenters supported inclusion of these enumerated eligible uses to address key economic needs among households due to the pandemic, and Treasury is maintaining these eligible uses in the final rule, in line with commenters' recommendations.

1. Food assistance. The interim final rule included an enumerated eligible use for food assistance. Some commenters expressed support for this eligible use and emphasized the importance of aid to address food insecurity. Some commenters raised questions as to whether food assistance funds could be used to augment services provided through organizations like food banks, churches, and other food delivery services, or generally be sub-awarded to these organizations.

Treasury Response: Treasury is maintaining this enumerated eligible use without change. Recipients may, as was the case under the interim final rule, administer programs through a wide range of entities, including nonprofit and for-profit entities, to carry out eligible uses on behalf of the recipient government (see section Distinguishing Subrecipients versus Beneficiaries). Further, Treasury is clarifying that capital expenditures related to food banks and other facilities primarily dedicated to addressing food insecurity are eligible; recipients seeking to use funds for capital expenditures should refer to the section Capital Expenditures in General

www.kff.org/coronavirus-covid-19/issue-brief/the-implications-of-covid-19-for-mental-health-and-substance-use/.

Provisions: Other for additional eligibility standards that apply to uses of funds for capital expenditures.

2. *Emergency housing assistance.* The interim final rule included an enumerated eligible use for rent, mortgage, or utility assistance and counseling and legal aid to prevent eviction or homelessness.

Public Comment: Several commenters supported the inclusion of eviction prevention activities as an eligible use given the high number of households behind on rent and potentially at risk of eviction. Following release of the interim final rule, Treasury had also received requests for elaboration on the types of eligible services in this category. Some commenters also recommended including assistance to households for delinquent property taxes, for example to prevent tax foreclosures on homes, as an enumerated eligible use.

Treasury Response: In response to requests for elaboration on the types of eligible services for eviction prevention, Treasury has provided further guidance that these services include “housing stability services that enable eligible households to maintain or obtain housing, such as housing counseling, fair housing counseling, case management related to housing stability, outreach to households at risk of eviction or promotion of housing support programs, housing related services for survivors of domestic abuse or human trafficking, and specialized services for individuals with disabilities or seniors that support their ability to access or maintain housing,” as well as “legal aid such as legal services or attorney’s fees related to eviction proceedings and maintaining housing stability, court-based eviction prevention or eviction diversion programs, and other legal services that help households maintain or obtain housing.”¹¹³ Treasury also emphasized that recipients may work with court systems, nonprofits, and a wide range of other organizations to implement strategies to support housing stability and prevent evictions.

In the final rule, Treasury is maintaining these enumerated eligible uses, including those described in the interim final rule and later guidance, in line with commenters’ recommendations. To enhance clarity, Treasury is also elaborating on some types of services included under this eligible use category; this remains a

non-exhaustive list of eligible services. For example, eligible services under this use category include: Rent, rental arrears, utility costs or arrears (e.g., electricity, gas, water and sewer, trash removal, and energy costs, such as fuel oil), reasonable accrued late fees (if not included in rental or utility arrears), mortgage payment assistance, financial assistance to allow a homeowner to reinstate a mortgage or to pay other housing-related costs related to a period of forbearance, delinquency, or default, mortgage principal reduction, facilitating mortgage interest rate reductions, counseling to prevent foreclosure or displacement, relocation expenses following eviction or foreclosure (e.g., rental security deposits, application or screening fees). Treasury is clarifying that assistance to households for delinquent property taxes, for example to prevent tax foreclosures on homes, was permissible under the interim final rule and continues to be so under the final rule. In addition, Treasury is also clarifying that recipients may administer utility assistance or address arrears on behalf of households through direct or bulk payments to utility providers to facilitate utility assistance to multiple consumers at once, so long as the payments offset customer balances and therefore provide assistance to households.

This eligible use category also includes 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).

Further, Treasury is clarifying that transitional shelters (e.g., temporary residences for people experiencing homelessness) are eligible capital expenditures. Recipients seeking to use funds for capital expenditures should refer to the section Capital Expenditures in General Provisions: Other for additional eligibility standards that apply to uses of funds for capital expenditures.

Note that this enumerated eligible use describes “emergency housing assistance,” or assistance for responses to the immediate or near-term negative economic impacts of the pandemic. The final rule also clarifies and expands the ability of recipients to use SLFRF funds to address the general lack of affordable housing and housing challenges underscored by the pandemic. For discussion of affordable housing eligible uses, including services that primarily increase access to affordable, high-quality housing and support stable

housing and homeownership over the long term, see the eligible use for “promoting long-term housing security: Affordable housing and homelessness.”

3. *Emergency assistance for pressing needs: Burials, home repairs, weatherization, or other needs.* The interim final rule included an enumerated eligible use for emergency assistance for burials, home repairs, weatherization, and other needs; these types of programs may provide emergency assistance for pressing and unavoidable household needs. Treasury did not receive comments on this eligible use and is maintaining it in the final rule.

Background on Home Repairs and Weatherization: The economic downturn has meant fewer households had the resources needed to make necessary home repairs and improvements. In May 2021, 28 percent of landlords reported deferring maintenance and 27 percent of tenants reported maintenance requests going unanswered.¹¹⁴ While small and cosmetic repairs can often wait, deferring major repairs, such as plumbing needs, can result in unsafe and unhealthy living environments and, eventually, the need for more expensive repairs and fixes.

In addition to repairs, many homes are in need of weatherization. Weatherization assistance helps low- and moderate-income Americans save energy, reduce their utility bills, and keeps them and their homes safe. One in three households is energy insecure,¹¹⁵ meaning they do not have the ability to meet their energy needs.¹¹⁶ Weatherization efforts are particularly important for low- and moderate-income households. Households of color, renters, and households with low or moderate incomes are all more likely to report energy insecurity.¹¹⁷ These

¹¹⁴ Jung Hyun Choi, Laurie Goodman, and Daniel Pang, *The Pandemic Is Making It Difficult for Mom-and-Pop Landlords to Maintain Their Properties*, Urban Institute (July 23, 2021), <https://www.urban.org/urban-wire/pandemic-making-it-difficult-mom-and-pop-landlords-maintain-their-properties>.

¹¹⁵ U.S. Energy Information Administration, *Residential Energy Consumption Survey (2017)*, Retrieved from <https://www.eia.gov/consumption/residential/data/2015/hc/php/hc11.1.php>.

D. Hernández, *Understanding ‘energy insecurity’ and why it matters to health*, *Social Science & Medicine*, 167, 1–10 (2016), <https://doi.org/10.1016/j.socscimed.2016.08.029>.

¹¹⁶ Hernández, D. (2016). *Understanding ‘energy insecurity’ and why it matters to health*. *Social Science & Medicine*, 167, 1–10. <https://doi.org/10.1016/j.socscimed.2016.08.029>.

¹¹⁷ U.S. Energy Information Administration, *Residential Energy Consumption Survey (RECS)* <https://www.eia.gov/consumption/residential/data/2015/hc/php/hc11.1.php>. (last visited November 9, 2021)

¹¹³ See FAQ 2.21. Coronavirus State and Local Fiscal Recovery Funds, Frequently Asked Questions, as of July 19, 2021; <https://home.treasury.gov/system/files/136/SLFRPFAQ.pdf>.

disparities are partially a result of economic hardship but are also caused by inequitable access to housing with proper insulation, up to date heating, cooling, and ventilation systems, and functioning and up to date lighting and appliances.¹¹⁸ While programs that address the effects of energy hardships, like the Low-Income Home Energy Assistance Program (LIHEAP), are critical, weatherization attempts to address root causes by addressing issues that lead to energy insecurities.

4. *Internet access or digital literacy assistance.* The interim final rule included an enumerated eligible use for assistance to households for internet access or digital literacy assistance. This enumerated eligible use, which responds to the negative economic impacts of the pandemic on a household by providing assistance that helps them secure internet access or increase their ability to use computers and the internet, is separate from the eligible use category for investments in broadband infrastructure, under Sections 602(c)(1)(D) and 603(c)(1)(D), which is used to build new broadband networks through infrastructure construction or modernization. For discussion of broadband infrastructure investment in the final rule, see section Broadband Infrastructure in Infrastructure.

Background: 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 other critical activities, school, healthcare, and work. Recognizing the need for such connectivity, SLFRF funds can be used to make necessary investments in broadband infrastructure that increase access over the long term, as well as the necessary supports to purchase internet access or gain digital literacy skills needed to complete activities of daily living during the pandemic.

The National Telecommunications and Information Administration (NTIA) highlighted the growing necessity of broadband in daily lives through its analysis of NTIA internet Use Survey data, noting that Americans turn to broadband internet service for every facet of daily life including work, study, and healthcare.¹¹⁹ With increased use of

technology for daily activities and the movement by many businesses and schools to operating remotely during the pandemic, broadband has become even more critical for people across the country to carry out their daily lives.

However, even in areas where broadband infrastructure exists, broadband access may be out of reach for millions of Americans because it is unaffordable, as the United States has some of the highest broadband prices in the Organisation for Economic Co-operation and Development (OECD).¹²⁰ According to a 2021 Pew Research Center study, 20 percent of non-broadband users say that the monthly cost of home broadband is the primary reason they do not have broadband at home, and 40 percent say that cost is one reason for their lack of home broadband.¹²¹ Further, according to another survey, 22 percent of parents with homebound schoolchildren during the COVID-19 pandemic say that it is very or somewhat likely that their children will have to rely on public wi-fi to finish their schoolwork because there is no reliable internet connection at home; this percentage nearly doubles for lower-income parents, 40 percent of whom noted that their children will have to rely on public wi-fi.¹²² The same survey showed that 36 percent of lower-income parents with homebound children say their child will not be able to complete their schoolwork because they do not have access to a computer at home.¹²³

Public Comment: Many commenters highlighted the importance of broadband access during the pandemic, including for remote work and

education, and argued that affordability presents a major barrier to broadband adoption by households; in other words, many households live in areas that have broadband infrastructure and service available but are unable to purchase service for their household due to the high cost. These commenters argued that broadband must be affordable to be accessible.

Commenters proposed several potential responses to affordability concerns. Some commenters recommended that building “gap networks,” or broadband networks built at low cost to provide affordable service in areas where it is lacking, be eligible as assistance to households to respond to the negative economic impacts of the pandemic, even if they do not meet the technical standards for eligibility under the eligible use category of broadband infrastructure investment, especially the required speed standards for new service. These commenters argued that the networks have shown promise as a timely means to expand access to affordable broadband internet during the pandemic, even if they may not provide service speeds needed for more intensive internet uses. Another commenter requested eligible uses include funding cellular towers to decrease costs. One commenter recommended that affordability should be addressed through other programs but not SLFRF given that affordability and availability may require nuanced solutions that would be complex to combine.

Treasury Response: The interpretive framework and enumerated eligible uses allow recipients flexibility to address identified pandemic impacts, including through solutions that take into account the particularized issues in their community. Given extensive commenter feedback on the importance of affordability to achieving broadband access, and the centrality of broadband to participating in work, education, healthcare, and other activities during the pandemic, affordability programs are an appropriate eligible use to respond to the negative economic impacts of the pandemic and Treasury is maintaining the enumerated eligible use for assistance to households for internet access and digital literacy programs in the final rule.

Building or constructing new broadband networks is an infrastructure investment and is governed by a separate clause in the statute. Treasury has addressed comments on “gap networks” that require infrastructure build-out in the section Broadband Infrastructure in Infrastructure.

American Households Used the Internet for Health-Related Activities in 2019, NTIA Data Show (December 7, 2020), <https://www.ntia.gov/blog/2020/more-half-american-households-used-internet-health-related-activities-2019-ntia-data-show>; Nation Telecommunications and Information Administration, Nearly a Third of American Employees Worked Remotely in 2019, NTIA Data Show (September 3, 2020) <https://www.ntia.gov/blog/2020/nearly-third-american-employees-worked-remotely-2019-ntia-data-show>; and generally, Nation Telecommunications and Information Administration, Digital Nation Data Explorer (June 10, 2020), <https://www.ntia.gov/data/digital-nation-data-explorer>.

¹²⁰ BroadbandSearch Blog Post, How Do U.S. Internet Costs Compare To The Rest Of The World?, available at <https://www.broadbandsearch.net/blog/internet-costs-compared-worldwide>.

¹²¹ Pew Research Center, Mobile Technology and Home Broadband 2021 (June 3, 2021), <https://www.pewresearch.org/internet/2021/06/03/mobile-technology-and-home-broadband-2021/>.

¹²² Pew Research Center, 53% of Americans Say the Internet Has Been Essential During the COVID-19 Outbreak (April 30, 2020), <https://www.pewresearch.org/internet/2020/04/30/53-of-americans-say-the-internet-has-been-essential-during-the-covid-19-outbreak/>.

¹²³ *Id.*

¹¹⁸ A. Dreihobl, & L. Ross, Lifting the high energy burden in America's largest cities: How energy efficiency can improve low income and underserved communities, American Council for an Energy Efficient Economy (2016), <https://www.aceee.org/sites/default/files/publications/researchreports/u1602.pdf>.

¹¹⁹ See, e.g., Nation Telecommunications and Information Administration, More than Half of

Public Comment: Some commenters also use the term “gap networks” to refer to equipment installed as part of wi-fi systems, such as routers, repeaters, and access points; this equipment provides consumer access to an existing broadband network and does not require new network build-out or construction. These commenters recommended that Treasury permit, as assistance to households for internet access, investments in public wi-fi networks, free wi-fi in public housing communities, and other equipment that offers internet access to end users by utilizing existing broadband networks.

Other commenters recommended that eligible uses in this category include providing devices and equipment necessary to access the internet, like computers and routers, directly to low-income households.

Treasury Response: 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. Treasury is clarifying that eligible uses under this category can also include a wide range of programs and services to expand internet access and digital literacy, such as subsidies for the cost of internet service, other programs that support adoption of internet service where available, digital literacy programs, or programs that provide devices and equipment to access the internet (e.g., programs that provide equipment like tablets, computers, or routers) to households. Recipients seeking to use funds for equipment should refer to the section Capital Expenditures in General Provisions: Other for additional eligibility standards that apply to uses of funds for capital expenditures (e.g., equipment, property, and facilities).

5. Cash assistance. The interim final rule included as an enumerated eligible use cash assistance and provided that cash transfers must be “reasonably proportional” to the negative economic impact they address and may not be “grossly in excess of the amount needed to address” the impact. In assessing whether a transfer is reasonably proportional, recipients may “consider and take guidance from the per person amounts previously provided by the Federal Government in response to the COVID-19 crisis,” and transfers “grossly in excess of such amounts” are not eligible.

Public Comment: Several commenters expressed support for this eligible use, noting that this is a common policy tool

for some governments to support the well-being of households and individuals in their communities. Some commenters requested that Treasury set a specific dollar amount for permissible cash transfers, and Treasury has also received recipient questions on whether specific types of transfers, such as those to a substantial share of the population in the jurisdiction, would be a permissible use of funds.

Treasury Response: Treasury is maintaining this enumerated eligible use in the final rule, in line with commenters’ recommendations. Because the final rule is intended to provide flexibility to recipients to respond to the particularized pandemic impacts in their communities, which may vary in type and intensity, setting a specific dollar threshold for eligible cash transfers would fail to recognize the particularized needs of communities and limit recipients’ flexibility to tailor their response to those needs.

To provide greater clarity, Treasury is elaborating on the analysis that recipients may undertake to assess the eligibility of specific cash assistance programs or transfers. 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. For the reasons discussed above, recipients may presume that low- and moderate-income households (as defined in the final rule), as well as households that experienced unemployment, food insecurity, or housing insecurity, experienced a negative economic impact due to the pandemic.

Recipients may also identify other households or classes of households that experienced a negative economic impact of the pandemic and provide cash assistance that is reasonably proportional to, and not grossly in excess of, the amount needed to address the negative economic impact. For example, in the ARPA, Congress authorized Economic Impact Payments to households at certain income levels, identifying and responding to a negative economic impact of the pandemic on these households.

Finally, Treasury has reiterated in the final rule that responses to negative economic impacts should be reasonably proportional to the impact that they are intended to address. Uses that bear no relation or are grossly disproportionate to the type or extent of harm experienced would not be eligible uses. Reasonably proportional refers to the scale of the response compared to the scale of the harm. It also refers to the targeting of the response to beneficiaries compared to the amount of harm they

experienced; for example, it may not be reasonably proportional for a cash assistance program to provide assistance in a very small amount to a group that experienced severe harm and in a much larger amount to a group that experienced relatively little harm.

6. Survivor’s benefits. The interim final rule included an enumerated eligible use for survivor’s benefits to surviving family members of individuals who have died from COVID-19, including cash assistance to widows, widowers, or dependents.

Public Comment: Treasury did not receive any comments on the inclusion of survivor’s benefits as an enumerated use for impacted households in the interim final rule.

Treasury Response: This use of funds remains eligible under the final rule. Consistent with the general reorganization noted above, the final rule organizes survivor’s benefits under assistance to households to clarify that households are the intended beneficiaries of survivor’s benefits.

7. Assistance accessing or applying for public benefits or services. Recognizing that eligible households often face barriers to accessing public benefits or services that improve health and economic outcomes, the interim final rule included as an enumerated eligible use in disproportionately impacted communities, public benefits navigators to assist community members with navigating and applying for available federal, state, and local public benefits or services. Treasury also clarified in subsequent guidance after the interim final rule that this eligible use category would include outreach efforts to increase uptake of the Child Tax Credit.

Background: The under-enrollment of eligible households in social assistance programs is a well-recognized and persistent challenge. There are many reasons why a household may not be receiving a particular benefit even though they are eligible. For many federal programs, enrollment processes vary from state-to-state. Sometimes, households are simply unaware that they are eligible for a particular benefit.¹²⁴ For example, despite having one of the highest rates of participation of any benefits program, nearly 20 percent of eligible individuals do not participate in the Supplementary Nutritional Assistance Program

¹²⁴ Amy Finkelstein & Matthew J Notowidigdo, Take-Up and Targeting: Experimental Evidence from SNAP, *The Quarterly Journal of Economics*, vol. 134(3), pages 1505–1556 (2019), <https://www.nber.org/papers/w24652>.

(SNAP).¹²⁵ In other cases, policies like public charge and asset testing can discourage otherwise eligible households.¹²⁶ While the gap between households that need assistance and the number of households participating in public benefit programs has always existed, narrowing that gap and ensuring households receive the support they need is critical in mitigating the negative economic impacts of the pandemic.

Public Comment: Treasury has also received feedback from recipients and stakeholders noting the need to increase awareness and uptake of assistance programs, including gaps that remain in enrollment of eligible households in programs to address the negative economic impacts of the pandemic.¹²⁷

Treasury Response: Treasury has determined that this impact of the pandemic is widely experienced across many jurisdictions and programs or services to increase awareness and uptake of assistance programs would respond to the pandemic's negative economic impact in all communities. As such, in the final rule, this use is eligible for any impacted household or class of households, not only in disproportionately impacted communities.

8. Promoting healthy childhood environments. The interim final rule included programs and services that promote healthy childhood environments as an enumerated eligible use for disproportionately impacted households. The interim final rule listed three programs or services included under this use: Childcare; programs to provide home visits by health professionals, parent educators, and social service professionals to individuals with young children to provide education and assistance for economic support, health needs, or child development; and services for child welfare-involved families and foster youth to provide support and

education on child development, positive parenting, coping skills, or recovery for mental health and substance use. The interim final rule also included an enumerated eligible use for early learning services in disproportionately impacted communities, to address disparities in education.

Public Comment: Childcare and Early Learning: Treasury received multiple comments that were supportive of the provision of childcare. Treasury has also received multiple comments and questions indicating that recipients have identified a need for childcare for a broader range of households and communities, for example those that may need childcare in order to return to work, in addition to households and communities disproportionately impacted by the pandemic. Several commenters expressed uncertainty about how childcare facilities should interact with the boundaries of a QCT. Finally, one commenter recommended that pre-K or early learning services encompass care for infants and toddlers, arguing that these types of care are often more expensive or challenging to access for families.

Background: Childcare and Early Learning: As daycares and schools closed in-person activities during the pandemic, many working families were left without childcare during the day.¹²⁸ Although daycare centers and schools have since reopened in many communities, there remains a persistent childcare shortage as childcare employment levels have not fully rebounded since the sharp decline in childcare employment at the beginning of the pandemic.¹²⁹ As a result, working parents in communities across the country, and more specifically women, may face challenges entering or reentering the labor force.¹³⁰

¹²⁸ Women have carried a larger share of childcare responsibilities than men during the COVID-19 crisis. See, e.g., Gema Zamarró & Mari'a J. Prados, Gender differences in couples' division of childcare, work and mental health during COVID-19, *Rev. Econ. Household* 19:11–40 (2021), available at <https://link.springer.com/article/10.1007/s11150-020-09534-7>; Titan Alon et al., The Impact of COVID-19 on Gender Equality, National Bureau of Economic Research Working Paper 26947 (April 2020), available at <https://www.nber.org/papers/w26947>.

¹²⁹ See, e.g., Center For The Study Of Child Care Employment (CSCCE), Child Care Sector Jobs: BLS Analysis (November 8, 2021), <https://csce.berkeley.edu/child-care-sector-jobs-bls-analysis/>; Emma K. Lee, and Zachary Parolin, The Care Burden during COVID-19: A National Database of Child Care Closures in the United States, *Socius* (January 2021), doi:10.1177/23780231211032028.

¹³⁰ Jason Furman, Melissa Schettini Kearney, and Wilson Powell, The Role of Childcare Challenges in the US Jobs Market Recovery During the COVID-19 Pandemic, NBER Working Paper No. 28934 (June 2021), <https://www.nber.org/papers/w28934>.

Low-income households are also more likely to lose access to quality childcare.¹³¹ The widespread closure of childcare centers combined with a lack of access to paid family leave means parents in low-income households are more likely to experience a reduction of income or leave their jobs due to a lack of childcare options.¹³²

Additionally, childcare providers serving primarily low-income families were less likely to remain open during the pandemic because of tighter profit margins and general community financial insecurity, compared to childcare providers serving primarily high-income families.^{133 134}

In addition to disruptions to childcare, early learning services were also significantly impacted by the pandemic, and the disruption of these services had widespread ramifications for learning loss, parental support, and equity. Early learning centers have seen declined enrollment across the board, though there was a larger dip in enrollment for low-income households.¹³⁵ This lower enrollment coincides with a diminishing workforce, as similarly to childcare, early childhood educators have been leaving the profession due to long hours, low pay,¹³⁶ and health and safety concerns.¹³⁷ As a result, children's school readiness has suffered, leading to potential long-term impacts on life outcomes.¹³⁸ The impact also extended

¹³¹ U.S. Census Bureau, Phase 3.2 Household Pulse Survey: Table 2. Childcare Arrangements in the Last 4 Weeks for Children Under 5 Years Old, by Selected Characteristics, (Washington: 2021), available at <https://www.census.gov/programs-surveys/household-pulse-survey/data.html>.

¹³² *Id.*

¹³³ N. Kalluri, C. Kelly, & A. Garg, Child Care During the COVID-19 Pandemic: A Bad Situation Made Worse, *Pediatrics* (2021), <https://doi.org/10.1542/peds.2020-041525>.

¹³⁴ National Association for the Education of Young Children, Am I Next? Sacrificing to Stay Open, Child Care Providers Face a Bleak Future Without Relief (December 2020), <https://www.naeyc.org/sites/default/files/globally-shared/downloads/PDF>.

¹³⁵ G. G. Weisenfeld, Impacts of Covid-19 on Preschool Enrollment and Spending, New Brunswick, NJ: National Institute for Early Education Research (2021), https://nieer.org/wp-content/uploads/2021/03/NIEER_Policy_Brief_Impacts-of-Covid-19on_Preschool_Enrollment_and_Spending_3_16_21.pdf.

¹³⁶ Heather Long, 'The pay is absolute crap': Child-care workers are quitting rapidly, a red flag for the economy, *Washington Post* (September 19, 2021), <https://www.washingtonpost.com/business/2021/09/19/childcare-workers-quit/>.

¹³⁷ Monash University, The emotional toll of COVID-19 among early childhood educators (August 5, 2020) <https://lens.monash.edu/@education/2020/08/05/1381001/the-emotional-toll-of-covid-19-among-early-childhood-educators>.

¹³⁸ Daphna Bassok and Anna Shapiro, Understanding COVID-19-era enrollment drops

Continued

to parents. Parents, especially mothers, may face challenges reentering or remaining in the workforce if early learning services are unavailable.

Treasury Response: Childcare and Early Learning Services: Treasury agrees with commenters' analysis that challenges accessing or affording childcare have been widespread during the pandemic, affecting many jurisdictions and populations across the country. Disruptions to early care and learning services similarly have had broad impact and likely result in negative impacts for young children and their parents. As such, these enumerated eligible uses are generally responsive to the negative economic impacts of the pandemic in all communities, not just in disproportionately impacted communities. Under the final rule, childcare and early learning services are available to impacted households or classes of households, not just those disproportionately impacted. These eligible uses can include new or expanded services, increasing access to services, efforts to bolster, support, or preserve existing providers and services, and similar activities.

Further, Treasury is clarifying that improvements to or new construction of childcare, daycare, and early learning facilities are eligible capital expenditures. Recipients seeking to use funds for capital expenditures should refer to the section Capital Expenditures in General Provisions: Other for additional eligibility standards that apply to uses of funds for capital expenditures.

Public Comment: Home Visiting: Treasury has also received questions about whether the provision of home visiting services would be responsive to the health and mental health needs of impacted new mothers, citing the positive mental health impacts shown on the mother as well as improved outcomes for children.

Background: Home Visiting: Pregnant and recently pregnant individuals are at an increased risk for serious illness from COVID-19.¹³⁹ Furthermore, pregnant individuals with COVID-19 are more likely to experience preterm birth (delivering the baby earlier than 37

weeks).¹⁴⁰ In addition to heightened health risks from COVID-19, pregnant individuals may have experienced significant changes to their prenatal care during the pandemic¹⁴¹ or may also have experienced increased mental health challenges, including high levels of depression, anxiety, loneliness, and post-traumatic stress during the pandemic.¹⁴²

Home visiting services provided to families, particularly new mothers and newborns, feature regular home visits from trained nurses, social workers, and/or counselors who provide health care, mental health resources, positive parenting support, support in making personal health decisions, and awareness of other potentially helpful services. These functions have become even more essential at mitigating negative factors associated with the pandemic. Home visits give professionals a chance to flag potential domestic violence, which has risen worldwide over the course of the pandemic.¹⁴³ Racial health disparities can also be driven down by home visits. For example, Black women are more likely to avoid hospitals during the pandemic, and home visitors can help either assuage concerns around hospitals or give effective advice for alternative methods of childbirth.¹⁴⁴ Given the disproportionate effect of the pandemic on people of color, home visits are an essential equity tool that tackle major negative effects of the pandemic. These are just a few selections from the evidence that suggests many home visiting models can have a positive effect on maternal physical and mental health.¹⁴⁵

Treasury Response: Home Visiting: Given the widespread impact of

¹⁴⁰ *Id.*

¹⁴¹ Sarah Javaid, Sarah Barringer, Sarah D Compton, Elizabeth Kaselitz, Maria Muzik, Cheryl A. Moyer, The impact of COVID-19 on prenatal care in the United States: Qualitative analysis from a survey of 2519 pregnant women, *Midwifery*, Volume 98, 2021, 102991, ISSN 0266-6138, <https://doi.org/10.1016/j.midw.2021.102991>.

¹⁴² A Basu, HH Kim, R Basaldua, KW Choi, L Charron, et al., A cross-national study of factors associated with women's perinatal mental health and wellbeing during the COVID-19 pandemic, *PLOS ONE* 16(4): e0249780, (2021), <https://doi.org/10.1371/journal.pone.0249780>.

¹⁴³ Amanda Taub, A New Covid-19 Crisis: Domestic Abuse Rises Worldwide, *New York Times* (April 6, 2020), <https://www.nytimes.com/2020/04/06/world/coronavirus-domestic-violence.html>.

¹⁴⁴ Xenia Shih Bion, Efforts to Reduce Black Maternal Mortality Complicated by COVID-19, *California Health Care Foundation* (April 20, 2020), <https://www.chcf.org/blog/efforts-reduce-black-maternal-mortality-complicated-covid-19/>.

¹⁴⁵ U.S. Department of Health and Human Services, Home Visiting Evidence of Effectiveness, <https://homvee.acf.hhs.gov/outcomes/maternal%20health/In%20Brief>.

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.

Public Comment: Child Welfare: While the interim final rule noted that certain types of assistance, particularly around child development and parenting, were eligible for child welfare-involved families, Treasury has received some recipient questions asking whether financial, educational, housing, or other supports and services are eligible uses for foster youth, including those aging out of the system, and child welfare-involved families. Other commenters asked about whether funding for kinship care would be eligible.

Background: Child Welfare: The COVID-19 pandemic placed meaningful strain on the child welfare and foster care system. Court hearings were delayed,¹⁴⁶ essential mental health care was shifted to a virtual environment, and attendance and performance in school among foster children dropped sharply.¹⁴⁷ Additionally, there was a nationwide rise of new children entering the foster care system and many states placed temporary moratoria on children aging out of the foster care system.¹⁴⁸ As these temporary moratoria expire, additional support will be needed to assist children exiting the system.

Additionally, financial and material hardship are causal factors in the increase of new children entering the foster care system, whether through loss of a caregiver, domestic violence,¹⁴⁹ or other associated costs of the pandemic. Therefore, support to decrease these hardships will support families and increase positive outcomes for youth

¹⁴⁶ National Conference of State Legislatures, Criminal Justice System Responses to COVID-19 (November 16, 2020), <https://www.ncsl.org/research/civil-and-criminal-justice/criminal-justice-and-covid-19.aspx>.

¹⁴⁷ John Burton Advocates for Youth, The Cumulative Impact of the Pandemic on Youth Who Have Been in Foster Care or Homeless (May 2020) <https://jbay.org/wp-content/uploads/2021/04/JBAY-COVID-19-Impact.pdf>.

¹⁴⁸ John Kelly, Next Week, Thousands of Foster Youth Will Age Out on the Same Day (September 21, 2021), <https://imprintnews.org/subscriber-content/thousands-of-foster-youth-will-age-out-on-the-same-day/59006>.

¹⁴⁹ Conrad-Hiebner, Aislinn, and Elizabeth Byram, The Temporal Impact of Economic Insecurity on Child Maltreatment: A Systematic Review. Trauma, Violence, & Abuse, vol. 21, no. 1, Jan. 2020, pp. 157-178, doi:10.1177/1524838018756122.

among early-grade public school students, Brookings Institution (February 22, 2021), <https://www.brookings.edu/blog/brown-center-chalkboard/2021/02/22/understanding-covid-19-era-enrollment-drops-among-early-grade-public-school-students/>.

¹³⁹ Centers for Disease Control and Prevention, Pregnant and Recently Pregnant People, <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/pregnant-people.html> (last visited November 9, 2021).

and families that may otherwise become involved in the child welfare system.

Treasury Response: 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.

9. Addressing the impacts of lost instructional time.

Public Comment: The interim final rule included an enumerated eligible use to address educational disparities in disproportionately impacted communities, recognizing that underserved students have been more severely impacted by the pandemic and including responsive services for early learning, enhance funding to high-poverty districts, and providing evidence-based services to address the academic, social, emotional, and mental health needs of students. Some commenters expressed concerns that learning loss or the negative impacts of lost instructional time due to school closures or remote education during the pandemic had affected a significant share of students in grades kindergarten through twelve (K–12), including students who may not fall within a disproportionally impacted group.

Background: The COVID–19 pandemic resulted in the widespread closure of schools across the nation. While many schools and districts reopened to in-person instruction or implemented remote learning, the shift was not immediate or without consequence. Children who received virtual only or combined remote and in-person instruction were more likely to report experiencing negative mental- and physical health outcomes than children who received in-person instruction.¹⁵⁰

Treasury Response: Under the final rule, addressing the impact of lost instructional time and/or learning loss is an enumerated eligible use for impacted households. 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.

Interventions or services that address the impact of lost instructional time may include offering high-quality tutoring and other extended learning opportunities, providing differentiated instruction, implementing activities to meet the comprehensive needs of students, expanding and improving language access for parents and families, providing information and assistance to parents and families on how they can effectively support students, including in a distance learning environment, improving student engagement in distance education, and administering and using high-quality assessments to assess students' academic progress, among others. In designing services under this eligible use, recipients may wish to reference guidance from the Department of Education on strategies for addressing lost instructional time.¹⁵¹

The final rule also maintains a separate enumerated eligible use for addressing educational disparities in disproportionately impacted communities. This eligible use includes services to address disparities in educational outcomes that predate the pandemic and amplified its impact on underserved students; these include, for example, enhanced funding to high-poverty districts and providing evidence-based services to address the academic, social, emotional, and mental health needs of students.

Finally, as described in the section Public Health, recipients can provide a broad range of behavioral health services, including services for children and youth in schools, to respond to the impacts of the pandemic on mental health and other behavioral health issues. When providing behavioral health services, recipients may presume that the general public was impacted by the pandemic and provide behavioral health services to members of the general public, including children and youth in schools, without any further analysis of impacts of the pandemic on those individuals and whether the service is responsive.

10. Promoting long-term housing security: affordable housing and homelessness. Under the interim final rule, recipients may use SLFRF funds to provide a set of housing services to communities that have been disproportionately impacted by the pandemic. Specifically, the interim final rule provided that programs or services that address housing insecurity, lack of affordable housing, or homelessness,

were responsive to the negative economic impacts of the pandemic when provided to disproportionately impacted households and communities. The enumerated uses included supportive housing or other programs or services to improve access to stable, affordable housing among individuals who are homeless and development of affordable housing to increase supply of affordable and high-quality living units. Many recipients have already announced plans to use SLFRF funds for affordable housing interventions in all of these categories. Treasury received many comments asking for additional clarity or flexibility in these uses.

As detailed below, based on multiple public comments and questions and Treasury's subsequent analysis, Treasury has determined that supportive housing or other programs or services to improve access to stable, affordable housing among individuals who are homeless, and the development of affordable and high-quality living units are responsive to the needs of impacted populations, not only disproportionately impacted populations. This final rule reflects this clarification and builds on the objectives stated in the interim final rule to improve access to stable, affordable housing, including through interventions that increase the supply of affordable and high-quality living units, improve housing security, and support durable and sustainable homeownership.

Finally, note that "emergency housing assistance," or assistance for responses to the immediate negative economic impacts of the pandemic through services like financial assistance for rental arrears or mortgage payments, is also an eligible use category for assistance to households under the final rule; see the eligible use for "emergency housing assistance" above. The provision of housing vouchers and assistance relocating to neighborhoods with higher levels of economic opportunity remains an eligible use under assistance to disproportionately impacted households; for discussion, see the eligible use for "housing vouchers and assistance relocating" below.

Background: Affordable Housing: It is clear that the ongoing pandemic and resulting economic crisis are having a profound, long-term negative effect on the pre-existing affordable housing crisis facing low-income households.¹⁵²

¹⁵⁰ Verlenden JV, Pampati S, Rasberry CN, et al. Association of Children's Mode of School Instruction with Child and Parent Experiences and Well-Being During the COVID–19 Pandemic—COVID Experiences Survey, United States, October 8–November 13, 2020. *MMWR Morb Mortal Wkly Rep* 2021;70:369–376. DOI: <http://dx.doi.org/10.15585/mmwr.mm7011a1external> icon.

¹⁵¹ U.S. Department of Education, Strategies for Using American Rescue Plan Funding to Address the Impact of Lost Instructional Time, August 2021. Retrieved from <https://www2.ed.gov/documents/coronavirus/lost-instructional-time.pdf>.

¹⁵² Consumer Financial Protection Bureau, Housing insecurity and the COVID–19 pandemic
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The combination of a large number of higher-income households who have weathered the pandemic without significant income losses, low interest rates, and housing supply constraints exacerbated by the pandemic, have driven a sharp increase in the sale price of homes.¹⁵³ Meanwhile, many low-income renters and homeowners are struggling with lost employment and income and are behind on their housing payments.¹⁵⁴

Public Comment: Affordable Housing Outside of Low-Income Geographies: A major theme in comments was that affordable housing interventions, especially development of affordable housing, should be allowed outside of QCTs, as concentrating the supply of affordable housing in low-income geographies can have the effect of increasing both concentrated poverty and racial and economic segregation, while locking lower-income households in need of housing support out of high-opportunity neighborhoods with access to employment and amenities.

Treasury Response: Affordable Housing Outside Low-Income Geographies: As previously stated, affordable housing is not confined to low-income geographies under the interim final rule. As discussed elsewhere, the interim final rule presumed that QCTs, as well as communities served by Tribal governments, were disproportionately impacted for administrative convenience, but recipients may identify other populations, households, or geographic areas with disparate impacts of COVID-19 and provide affordable housing services to them. For example, under the interim final rule, a city could determine that its low-income residents faced disproportionate impacts of COVID-19 and develop affordable housing targeted to these households. Such a scenario could include, for example, affordable projects

in higher-income neighborhoods that would allow residents to live closer to jobs and well-resourced schools.

Additionally, as noted above, Treasury is finalizing the rule with some changes to the treatment of affordable housing development designed to clarify that permanent supportive housing or other programs or services to improve access to stable, affordable housing among individuals who are homeless, and the development of affordable housing to increase supply of affordable and high-quality living units, are responsive to individuals and households that were impacted by the pandemic in addition to those that were disproportionately impacted. This shift is in line with commenters' recommendations and consistent with the facts described above, which demonstrate that lack of supply of affordable housing units contributed to the pandemic's impact on housing insecurity and unsustainable housing cost burdens and that these impacts were experienced broadly across the country.

Public Comment: Eligible Activities: Many commenters asked for clarity on what types of activities (e.g., land acquisition, construction, pre-construction costs, operating costs, etc.) are eligible uses of SLFRF, and what affordability criteria must be applied to affordable housing development. Commenters encouraged Treasury to allow the full array of affordable housing activities, including particular requests for broad flexibility for Tribal communities, and to specify that "development" should include construction, preservation, rehabilitation, and operation. Other commenters requested clarification about permissible program administration approaches for affordable housing, such as contracting methods and distribution of funds.

Some commenters asked that Treasury require SLFRF funds to be focused on the lowest-income households, who suffer the most severe rent burdens and risks of housing instability, and whose housing situation has left them particularly vulnerable to COVID-19. For example, one commenter argued that SLFRF funds should only be used to support affordable housing for households making 50 percent of AMI or less and that recipients should be required to set aside significant portions of any developments for renters making 30 percent of AMI or less and persons with physical and sensory disabilities. Other commenters requested a more flexible approach to affordable housing definitions.

Treasury Response: Eligible Activities: The final rule clarifies eligibility of affordable housing development for recipients; these uses were eligible under the interim final rule, but Treasury is providing further guidance to enhance clarity and respond to recipient and commenter questions.

As with all interventions to address the negative economic impacts of the pandemic, affordable housing projects must be responsive and proportional to the harm identified. This test may be met by affordable housing development projects—which may involve large expenditures and capital investments—if the developments increase the supply of long-term affordable housing for low-income households. While there may be less costly (or non-capital) alternatives to affordable housing development, a comprehensive response to the widespread housing challenges underscored by the pandemic will require the production of additional affordable homes, and targeted affordable housing development is a cost-effective and proportional response to this need.

For purposes of this test, 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. Note that these programs use different income limits than the definition of low- and moderate-income adopted by Treasury. Given the severity of the affordable housing shortage, and the ways in which the pandemic has exacerbated the need for affordable, high-quality dwelling units, Treasury has determined that the households served by these federal housing programs have been impacted by the pandemic and its negative economic impacts and that development of affordable housing consistent with these programs is a related and reasonably proportional response to those impacts. 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. Alignment with these programs, which define "affordable housing" in a manner consistent with a proportionate response to the affordable housing challenges faced by low- and moderate-income households as a result of the negative economic impacts of the pandemic, is intended to give recipients comfort and clarity as they design a

(March 2020), https://files.consumerfinance.gov/f/documents/cfpb_Housing_insecurity_and_the_COVID-19_pandemic.pdf.

¹⁵³ Joint Center For Housing Studies Of Harvard University, The State of the Nation's Housing (June 2021), https://www.jchs.harvard.edu/sites/default/files/reports/files/Harvard_JCHS_State_Nations_Housing_2021.pdf.

¹⁵⁴ Davin Reed and Eileen Divringi, Household Rental Debt During COVID-19: Update for 2021, Federal Reserve Bank of Philadelphia (2020), available at: <https://www.philadelphiafed.org/community-development/housing-and-neighborhoods/household-rental-debt-during-covid-19-update-for-2021>. Further, some research suggests that liquidity may be a more important predictor of default than other factors, including income or equity. See Trading Equity for Liquidity (June 2019), available at <https://www.jpmmorganchase.com/content/dam/jpmc/jpmorgan-chase-and-co/institute/pdf/institute-trading-equity-for-liquidity.pdf>.

wide variety of affordable housing interventions, including production, rehabilitation, and preservation of affordable rental housing and, in some cases, affordable homeownership units. These programs allow the financing of a wide range of affordable housing activities and set clear eligibility criteria that many recipients are already familiar with.

Finally, to further support sustainable and durable homeownership, 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.

Public Comment: Permanent Supportive Housing: Treasury has received comments encouraging the use of SLFRF funds for permanent supportive housing. This is an eligible use under the interim final rule: Both the development of affordable housing (including operating subsidies) and wraparound services such as behavioral health services, employment services, and other supportive services, are eligible responses to the public health crisis or its negative economic impacts.

Treasury Response: The final rule maintains the eligibility of permanent supportive housing as an enumerated use. Treasury is also clarifying that other affordable housing developments targeted to specialized populations are also eligible, for example recovery housing for individuals in recovery from substance use.

Public Comment: Operating Expenses: Commenters specifically asked that Treasury allow the use of SLFRF funds for operating expenses of affordable housing units, as operating subsidies are typically required to reach extremely low-income households, whose affordable rents may be lower than the ongoing cost of operating their unit.

Treasury Response: Operating expenses for eligible affordable housing were an eligible use of funds under the interim final rule and the final rule maintains this treatment. This may include capitalized operating reserves.

Rehabilitation and repair of public housing will also be considered an eligible use of SLFRF funds.

Public Comment: Affordable Housing Loans and Revolving Loan Funds: Some commenters requested that loans with

maturities beyond the period of performance or revolving loan funds that revolve beyond the period of performance be eligible uses of SLFRF funds if used for affordable housing. Some commenters pointed out that for-profit developers of low-income housing through the Low-Income Housing Tax Credit (LIHTC) may be deterred from accepting grants to bridge funding gaps in current LIHTC deals by the treatment of grants to for-profit entities in the calculation of eligible basis for the LIHTC.

Treasury Response: The final rule does not change the treatment of loans from the interim final rule. For more details see section Treatment of Loans in Program Administration Provisions. Similarly, the final rule does not change the treatment of grants to support affordable housing development, including developments supported by the LIHTC: such grants are an eligible use of funds.

Additional enumerated eligible uses for assistance to impacted households. As noted above, the interim final rule posed a question on what other types of services or costs Treasury should consider as eligible uses to respond to the negative economic impacts of COVID-19. In response, commenters proposed a wide variety of additional recommended enumerated eligible uses to assist households, ranging from general categories of services (e.g., legal and social services) to services that respond to needs widely experienced across the country (e.g., access to and affordability of health insurance) to services that are most applicable to the particularized needs of certain populations or geographic areas of the United States (e.g., senior citizens, SNAP recipients, immigrants, formerly-incarcerated individuals, responding to environmental issues in certain geographic regions). Other commenters generally requested a high degree of flexibility to respond to the particular needs of their communities.

Treasury Response: Given the large number and diversity of SLFRF recipients, Treasury's approach to assistance to households in the final rule aims to clarify additional enumerated eligible uses that respond to negative economic impacts of the pandemic experienced widely in many jurisdictions across the country, making it clear and simple for recipients to pursue these enumerated eligible uses under the final rule. In the final rule, Treasury is clarifying several additional uses, which generally respond to pandemic impacts experienced broadly across jurisdictions and populations, are eligible under the interim final rule as

assistance to households and continue to be so under the final rule, as outlined below.

11. Paid sick, medical, or family leave.

Public Comment: Some commenters argued that the pandemic increased the need for paid sick or medical leave, as staying home when ill is recommended by the CDC to prevent spread of the virus but lack of access to paid sick leave often prevents workers from staying home. Other commenters recommended paid family leave as an eligible use, arguing that shortages in access to childcare or home health assistance, as well as school closures, may increase the need for family members to serve as caretakers.

Background: The COVID-19 pandemic highlighted the importance of paid leave as well as the number of workers who do not have access to paid sick and/or family leave. When workers have access to paid leave, they are less likely to report to work sick, and therefore less likely to spread illnesses in the workplace: One study demonstrates that the emergency sick leave provision of the Families First Coronavirus Response Act (FFCRA) reduced the spread of COVID-19.¹⁵⁵

The lack of paid leave exacerbates financial hardships experienced as a result of the public health emergency. A 2018 survey by the Department of Labor found that two-thirds of employees that took unpaid or partial-paid leave experienced financial hardship.¹⁵⁶ Furthermore, because the Family and Medical Leave Act (FMLA) excludes small employers, part-time workers, and workers who have been with their employer for less than a year, 44 percent of workers do not have access to even unpaid leave.¹⁵⁷ Workers of color and workers with lower incomes are less likely to have access to paid leave.^{158 159}

¹⁵⁵ Stefan Pichler, Katherine Wen, and Nicolas R. Ziebarth, COVID-19 Emergency Sick Leave Has Helped Flatten The Curve In The United States: Study examines the impact of emergency sick leave on the spread of COVID-19, Health Affairs 39, no. 12 (2020): 2197–2204, <https://www.healthaffairs.org/doi/10.1377/hlthaff.2020.00863>.

¹⁵⁶ Scott Brown et al., Employee and Worksites Perspectives of the Family and Medical Leave Act: Results from the 2018 Surveys, Abt Associates (July 2020), https://www.dol.gov/sites/dolgov/files/OASP/evaluation/pdf/WHDFMLA2018SurveyResults_FinalReport_Aug2020.pdf.

¹⁵⁷ Id.

¹⁵⁸ Ann P. Bartel et al., Racial and ethnic disparities in access to and use of paid family and medical leave: evidence from four nationally representative datasets, U.S. Bureau of Labor Statistics (BLS) (January 2019), <https://www.bls.gov/opub/mlr/2019/article/racial-and-ethnic-disparities-in-access-to-and-use-of-paid-family-and-medical-leave.htm>.

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For workers that are also caregivers for children, seniors, or other family members, there may be a similar need for—and benefits of—paid family leave. For example, some workers may have struggled during the pandemic to balance caring for children, as schools and daycares closed, and working. For new parents, paid parental leave results in fewer infant hospitalizations, lowering parental stress, increasing parental involvement, and improving the overall health of parent and child.¹⁵⁹ COVID-19 has also increased the levels of “caregiving intensity”¹⁶¹ and “caregiving burden”¹⁶² for those providing care to seniors or older family members.¹⁶³ ¹⁶⁴ When surveyed, more than half of caregivers reported that COVID-19 increased both the amount of caregiving responsibilities they had as well as the negative physical and mental impacts their caregiving responsibilities had on themselves.¹⁶⁵

Treasury Response: Treasury agrees that these constitute impacts of the pandemic, and accordingly, 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.

12. Health insurance.

Public Comment: Several commenters recommended that uses of funds to expand access to health insurance be enumerated eligible uses; commenters believed that the heightened risk of

illness or hospitalization due to COVID-19 had increased the negative economic impacts of lacking health insurance.

Background: In 2019, prior to the pandemic, it was estimated that 11 percent of nonelderly adults lacked health insurance.¹⁶⁶ By mid-2020, job loss had resulted in an estimated 3.3 million people losing their employer sponsored insurance, resulting in an additional 2 million uninsured adults.¹⁶⁷ Participation in Medicaid, the Children’s Health Insurance Program (CHIP), and the Affordable Care Act (ACA) marketplace played an important role in minimizing the number of people who completely lost health insurance during the early phases of the pandemic; Medicaid and CHIP enrollment increased by 9 percent from February to September 2020¹⁶⁸ and 8.3 million people enrolled in insurance through the ACA marketplace.¹⁶⁹

Although the ACA, CHIP, and Medicaid have significantly reduced the number of uninsured Americans through the pandemic and the economic downturn, adequate coverage and affordability still remains an issue for many. In 2020, 21 percent of working-age adults were inadequately insured, meaning even if they had insurance, they incurred a significant amount of out-of-pocket costs.¹⁷⁰ Additionally, 37 percent of adults reported struggling with medical bills or medical debt and 71 percent of adults who did not purchase insurance cited affordability as the main factor.¹⁷¹

Treasury Response: Treasury agrees that loss of health insurance, increased financial risk from lacking health insurance, or excessive out-of-pocket healthcare costs constitute negative economic impacts of the pandemic. Under the final rule, programs or services to expand access to health insurance coverage are an enumerated eligible use as assistance to households, for example, subsidies for health insurance premiums or expansion of a recipient’s health insurance plan to cover additional employees who currently lack coverage.

13. Services for the unbanked and underbanked.

Public Comment: One commenter expressed support for the inclusion of services to increase banking access as an allowable expense under SLFRF. The commenter recommended that states be encouraged to offer opportunities for consumers to open safe and affordable accounts capable of receiving direct payments. The commenter emphasized that allowing unbanked and underbanked households to receive funds securely through no-fee, direct deposit will help connect or reconnect consumers to the mainstream financial system.

Background: Banking inequities can make it difficult for unbanked or underbanked households to access housing, jobs, and other important economic opportunities. Being unbanked or underbanked can also make it challenging for households to apply for and receive financial assistance, including services like pandemic emergency housing assistance.

Safe, affordable, and accessible financial services play a critical role in assisting households in the United States in managing income volatility and cash flow shortages.¹⁷² Currently, over 5 percent of families, or 7 million households are “unbanked,” meaning they do not have a bank account.¹⁷³ Low-income households, non-white households, and households with individuals with disabilities were even more likely to be unbanked. In 2019, 16 percent of Native American households, 14 percent of Black households, and 12 percent of Hispanic households were unbanked, compared to 2.5 percent of white households. Additionally,

¹⁵⁹ U.S. Bureau of Labor Statistics, Employee Benefits in the United States (March 2019), <https://www.bls.gov/ncs/ebs/benefits/2019/ownership/civilian/table31a.pdf>.

¹⁶⁰ Maya Rossin-Slater et al., Local exposure to school shootings and youth antidepressant use, *Proceedings of the National Academy of Sciences*, vol 117(38), pages 23484–23489 (2020), <https://www.pnas.org/content/117/38/23484>; Ariel Marek Pihl and Gaetano Basso, Did California Paid Family Leave Impact Infant Health?, *Journal of Policy Analysis and Management*, <https://onlinelibrary.wiley.com/doi/abs/10.1002/pam.2210>.

¹⁶¹ J.C. Jacobs, A. Laporte, C.H. Van Houtven, P.C. Coyte, Caregiving intensity and retirement status in Canada. *Social Science & Medicine*, 102, 74–82 (2014), <https://www.sciencedirect.com/science/article/abs/pii/S0277953613006631>.

¹⁶² E. Lightfoot, R.P. Moone, Caregiving in times of uncertainty: Helping adult children of aging parents find support during the COVID-19 outbreak, *Journal of Gerontological Social Work*, 63(6–7), 542–552 (2020), <https://www.tandfonline.com/doi/abs/10.1080/01634372.2020.1769793>.

¹⁶³ Note: “Caregiving intensity” is defined as the amount and type of care provided by informal caregivers; “Caregiving burden” is defined as the impacts on physical and mental health, and health-related quality of life of informal caregivers.

¹⁶⁴ SA Cohen, ZJ Kunicki, MM Drohan, ML Greaney, Exploring Changes in Caregiver Burden and Caregiving Intensity due to COVID-19, *Gerontology and Geriatric Medicine* (January 2021), doi:10.1177/2333721421999279.

¹⁶⁵ *Id.*

¹⁶⁶ Jennifer Tolbert et al., Key Facts about the Uninsured Population, Kaiser Family Foundation (November 6, 2020), <https://www.kff.org/uninsured/issue-brief/key-facts-about-the-uninsured-population/>.

¹⁶⁷ Joshua Aarons et al., As the COVID-19 Recession Extended into the Summer of 2020, More Than 3 Million Adults Lost Employer-Sponsored Health Insurance Coverage and 2 Million Became Uninsured, Urban Institute (September 18, 2020), <https://www.urban.org/research/publication/covid-19-recession-extended-summer-2020-more-3-million-adults-lost-employer-sponsored-health-insurance-coverage-and-2-million-became-uninsured>.

¹⁶⁸ Centers for Medicare and Medicaid Services, Medicaid and CHIP Enrollment Trends Snapshot through September 2020 (Washington: 2021), available at <https://www.medicare.gov/sites/default/files/2021-01/september-medicare-chip-enrollment-trend-snapshot.pdf>.

¹⁶⁹ Centers for Medicare and Medicaid Services, 2021 Federal Health Insurance Exchange Weekly Enrollment Snapshot: Final Snapshot (January 12, 2021) available at <https://www.cms.gov/newsroom/fact-sheets/2021-federal-health-insurance-exchange-weekly-enrollment-snapshot-final-snapshot>.

¹⁷⁰ Sara R. Collins, Munira Z. Gunja, and Gabriella N. Aboulafia, U.S. Health Insurance Coverage in 2020: A Looming Crisis in Affordability (New York: Commonwealth Fund, 2020), available at <https://www.commonwealthfund.org/publications/issue-briefs/2020/aug/looming-crisis-health-coverage-2020-biennial>.

¹⁷¹ *Id.*

¹⁷² Federal Deposit Insurance Corporation, FDIC National Survey of Unbanked and Underbanked Households (2015), <https://www.fdic.gov/householdsurvey/2015/2015execsumm.pdf>.

¹⁷³ Federal Deposit Insurance Corporation, How America Banks: Household Use of Banking and Financial Services 2019 FDIC Survey, <https://www.fdic.gov/analysis/household-survey/2019report.pdf>.

underbanked households—those that have a bank account but rely on alternative financial services, such as money orders, payday loans, and check cashing services—account for 16 percent of all households in the United States.¹⁷⁴ As a result of the COVID-19 pandemic, new social distancing protocols have, in some instances, made it more difficult to perform financial transactions with paper instruments, like banknotes, coinage, paper checks, or money orders. Households constrained to these payment methods may face challenges receiving government assistance. Additionally, businesses have transitioned to cashless payments systems to promote contactless payments.¹⁷⁵ As a result, unbanked individuals may face additional challenges conducting financial transactions.

Treasury Response: Recognizing these challenges, Treasury is clarifying that recipients may use SLFRF funds to provide financial services that facilitate the delivery of federal, state, or local benefits (e.g., Child Tax Credit, Earned Income Tax Credit, tax refunds, or emergency housing or food assistance funds). The following includes a non-exhaustive list of uses to provide financial services to unbanked and underbanked households:

- Provide low or no cost financial services, including in conjunction with administration of benefits, such as pre-paid debit cards, e.g., via Economic Impact Payment or General Purpose Reloadable pre-paid cards or for the development of public banking infrastructure that can support benefit delivery.
- Provide transitional services to facilitate long-term access to banking and financial services.
- Provide financial literacy programs and conduct community outreach and deploy engagement resources to increase awareness about low-cost, no-overdraft fee accounts, pilot new strategies and approaches that help overcome barriers to banking access and support the gathering and sharing of information in ways that improve equity, such as community meetings, partnerships with community-based organizations, online surveys, focus groups, human-centered design

¹⁷⁴ Board of the Governors of the Federal Reserve System, Report on the Economic Well-Being of U.S. Households in 2018–May 2019, <https://www.federalreserve.gov/publications/2019-economic-well-being-of-us-households-in-2018-banking-and-credit.htm>.

¹⁷⁵ Zaheer Allam, The Forceful Reevaluation of Cash-Based Transactions by COVID-19 and Its Opportunities to Transition to Cashless Systems in Digital Urban Networks. Surveying the Covid-19 Pandemic and its Implications (2020): 107–117. doi:10.1016/B978-0-12-824313-8.00008-5.

activities, and other community engagement activities.

Assistance to Unemployed and Underemployed Workers

The interim final rule included assistance to unemployed workers as an enumerated eligible use, including “services like job training to accelerate rehiring of unemployed workers.” Treasury provided further guidance, based on recipient questions after the interim final rule, that eligible uses under this section also include “other efforts to accelerate rehiring and thus reduce unemployment, such as childcare assistance, assistance with transportation to and from a jobsite or interview, and incentives for newly employed workers[.]” as well as assistance to unemployed workers seeking to start small businesses. Finally, further guidance also provided that “public jobs programs, subsidized employment, combined education and on-the-job training programs, or job training to accelerate rehiring or address negative economic or public health impacts experienced due to a worker’s occupation or level of training” are all enumerated eligible uses as assistance to unemployed or underemployed workers.

The interim final rule defined eligible beneficiaries of assistance as “individuals who want and are available for work, including those who have looked for work sometime in the past 12 months or who are employed part time but who want and are available for full-time work.” This definition is based on definitions used by the Bureau of Labor Statistics to define individuals currently unemployed, as well as persons marginally attached to the labor force and working part-time for economic reasons.¹⁷⁶ The latter two classifications are types of labor underutilization, or “underemployed” workers.¹⁷⁷ Finally, the interim final rule specified that assistance to unemployed workers included both workers who lost their job during the pandemic and resulting recession and workers unemployed when the pandemic began who saw further deterioration of their economic prospects due to the pandemic.

Public Comment: Commenters generally supported the inclusion of this enumerated eligible use. One commenter recommended including assistance for underemployed workers who took jobs due to the pandemic that

did not fully utilize their skillset or did not provide the hours, wages, or job quality desired. Treasury has also received recipient questions on whether job fairs or grants to businesses to hire underserved workers are eligible uses under this category. Another commenter recommended flexibility in eligible workforce development programs, arguing that rural areas may face particular challenges.

Treasury Response: Treasury is maintaining this eligible use in the final rule, including the enumerated eligible services in the interim final rule and subsequent guidance. Treasury is also confirming that job fairs or grants to businesses to hire underserved workers are eligible uses under this section.

Treasury is also enumerating that job and workforce training centers are eligible capital expenditures, so long as they adhere to the standards and presumptions detailed in the section Capital Expenditures in General Provisions: Other.

The final rule maintains the definition of eligible beneficiaries, which is aligned with the Bureau of Labor Statistics’ definitions of unemployed workers and other labor underutilization, using a common, widely known definition that incorporates a broad group of individuals both unemployed or whose skills are otherwise underutilized in the labor market.

In addition, recognizing that the pandemic has generated broad workforce disruption, in the final rule, Treasury is making clear that recipients may provide job training or other enumerated types of assistance to individuals that are currently employed but are seeking to move to a job that provides better opportunities for economic advancement, such as higher wages or more opportunities for career advancement.

Recipient Unemployment Insurance Trust Funds and Related Expenses

Under the interim final rule, a recipient may use funds to make deposits into its account of the Unemployment Trust Fund established under section 904 of the Social Security Act (42 U.S.C. 1104) up to the level needed to restore the pre-pandemic balance of such account as of January 27, 2020 or to pay back advances received under Title XII of the Social Security Act (42 U.S.C. 1321) for the payment of benefits between January 27, 2020 and May 17, 2021. These costs support the solvency of the unemployment insurance system and, ultimately, unemployment insurance benefits provided to unemployed

¹⁷⁶ Bureau of Labor Statistics, Labor Force Statistics from the Current Population Survey: Concepts and Definitions, <https://www.bls.gov/cps/definitions.htm> (last visited November 9, 2021).

¹⁷⁷ *Id.*

workers during the pandemic.¹⁷⁸ The interim final rule also posed the question of what, if any, conditions should be considered to ensure that funds used under this eligible use category repair economic impacts of the pandemic and strengthen unemployment insurance systems.

Public Comment: Inclusion as an Eligible Use and Conditions: Commenters expressed mixed perspectives on this eligible use category. Some commenters supported its inclusion, arguing that unemployment insurance systems have faced significant costs to support unemployed workers during the pandemic and that this constitutes a negative economic impact that SLFRF funds should be able to address. Other commenters opposed this eligible use category, arguing that funds used under this category may not ultimately support unemployed workers. Some commenters noted that unemployment insurance taxes on businesses automatically increase when trust fund balances are low and suggested that permitting the deposit of funds into unemployment insurance trust funds prevents a tax increase on businesses, some of which may not have faced negative economic impacts from the pandemic, rather than providing assistance to unemployed workers. Other comments suggested that deposits are better thought of as savings for future needs than assistance to unemployed workers in the near term.

Responding to the interim final rule's question, several commenters suggested that, if Treasury maintains this eligible use, the final rule should require detailed reporting on funds used under this category or place conditions on this category to increase the likelihood that funds ultimately support unemployed workers. For example, some commenters suggested that recipients that deposit SLFRF funds into their trust fund should be barred from cutting unemployment insurance benefits for workers during the period of performance or from erecting new barriers to accessing benefits (e.g., through the application process and ongoing requirements to receive benefits). One commenter, noting that unemployment insurance benefits often provide low rates of wage replacement and do not cover some types of unemployed workers, argued that recipients should not be permitted to deposit funds into the trust fund unless

the recipient concurrently expands benefits. Finally, one commenter suggested a cap on the amount of funds that can be used for this purpose.

Treasury Response: Inclusion as an Eligible Use and Conditions: In the final rule, Treasury is maintaining the inclusion of this eligible use category. Because unemployment insurance trust funds directly fund benefits to unemployed workers, maintaining the solvency of the trust fund is critical to the continued provision of assistance to unemployed workers. Further, funds deposited into the trust fund must be used as assistance to unemployed workers, an eligible use of SLFRF funds. Finally, while, in the absence of the SLFRF, trust fund deposits would likely be funded through increases on employer payroll taxes, the eligibility of uses of SLFRF funds does not depend on how obligations would otherwise be satisfied if the SLFRF were not available for this use.

While deposits to unemployment insurance trust funds generally serve as assistance to unemployed workers, recipients that make deposits but also cut unemployment insurance benefits to workers substantially decrease the likelihood that the deposited funds will assist unemployed workers. In other words, SLFRF funds deposited into an unemployment insurance trust fund generally serve as assistance to unemployed workers, unless recipients take policy actions that substantially decrease the extent to which SLFRF funds would flow to unemployed workers. As such, through December 31, 2024, recipients that deposit SLFRF funds into an unemployment insurance trust fund or use SLFRF funds to repay principal on Title XII advances, may not take action to reduce benefits available to unemployed workers by changing the computation method governing regular unemployment compensation in a way that results in a reduction of average weekly benefit amounts or the number of weeks of benefits payable (i.e., the maximum benefit entitlement).

Finally, until the final rule becomes effective on April 1, 2022, the interim final rule remains binding and effective.¹⁷⁹ These requirements were not in effect under the interim final rule and do not apply to funds used (i.e., obligated or expended) under the interim final rule while it is in effect. In addition, recognizing that some recipients have taken significant steps

toward making a trust fund deposit or repaying principal on Title XII advances under the interim final rule, such as the legislative appropriation of funds for this purpose, even if a formal obligation has not occurred, Treasury will exercise enforcement discretion to not pursue violations of this final rule provision (i.e., the requirement not to reduce benefits) for recipients that have appropriated funds for this purpose prior to the date of adoption of the final rule consistent with the laws and procedures in their jurisdiction. Recipients should refer to Treasury's Statement Regarding Compliance with the Coronavirus State and Local Fiscal Recovery Funds Interim Final Rule and Final Rule, which provides additional detail on these issues.

Public Comment and Treasury Response: Technical Corrections and Amendments: Following the interim final rule, Treasury received recipient questions on whether paying interest on advances received under Title XII of the Social Security Act (42 U.S.C. 1321) is an eligible use of SLFRF funds; Treasury is clarifying that such use is permissible, consistent with Treasury's treatment of the eligibility of interest on Title XII advances under the Coronavirus Relief Fund.

Treasury is further clarifying that recipients may only use SLFRF funds for contributions to unemployment insurance trust funds and repayment of the principal amount due on advances received under Title XII of the Social Security Act up to an amount equal to (i) the difference between the balance in the recipient's unemployment insurance trust fund as of January 27, 2020 and the balance of such account as of May 17, 2021, plus (ii) the principal amount outstanding as of May 17, 2021 on any advances received under Title XII of the Social Security Act between January 27, 2020 and May 17, 2021. Further, recipients may use SLFRF funds for the payment of any interest due on such Title XII advances. In other words, excluding interest due on Title XII advances, the magnitude of the decrease of the balance in the unemployment insurance trust fund plus the principal outstanding on any Title XII borrowings made from the beginning of the public health emergency to the date of publication of the SLFRF interim final rule sets a cap on the amount of SLFRF funds a recipient may use for trust fund contributions and repayment of principal on Title XII advances. Further, a recipient that deposits SLFRF funds into its unemployment insurance trust fund to fully restore the pre-pandemic balance may not draw down that

¹⁷⁸ Note that, while the economic harm being addressed accrued before March 3, 2021, the cost incurred to address the harm occurs after March 3, 2021 and provides assistance to unemployed workers, an eligible use of SLFRF funds.

¹⁷⁹ See, e.g., U.S. Department of the Treasury, More Information on the Conclusion of the Public Comment Period and the Interim Final Rule on the Coronavirus State and Local Fiscal Recovery Funds, <https://home.treasury.gov/system/files/136/IFR-Explainer.pdf>.

balance and deposit more SLFRF funds, back up to the pre-pandemic balance.

Enumerated Eligible Uses for Disproportionately Impacted Households

Background

The COVID-19 pandemic has had disproportionately negative impacts on many households and communities that were already experiencing inequality related to race, gender, age, or income before the pandemic. People of color, low-income workers, and women disproportionately lost their jobs during the COVID-19 pandemic and experienced disproportionate rates of negative health outcomes.^{180 181}

These disproportionate negative impacts experienced by systemically underserved communities are not novel to the COVID-19 pandemic and the economic downturn. Research shows that historically underserved communities that are experiencing economic and social disparities typically experience disproportionate impacts of economic downturns and natural disasters.¹⁸² This pattern held true for the effects of COVID-19 and the economic downturn: Historically undeserved groups experienced amplified negative impacts, further widening inequality.¹⁸³

Many communities facing systemic barriers had not yet recovered from the impact of the Great Recession before experiencing the impacts of COVID-19 and the economic downturn. For example, in 2009, at the end of the Great Recession, households without a high school diploma had an average annual income of \$32,300 (measured in 2018 dollars). By 2018, nine years into the economic recovery, those same households saw their average income increase by \$600. During that same time period, households with a bachelor's degree saw an increase in their average

household income of \$6,100 (measured in 2018 dollars).¹⁸⁴

The impact pre-existing inequalities have on a household or community's ability to recover is intersectional. Research shows that pre-existing racial and gender disparities exacerbated the disproportionate economic and health impact COVID-19 and the economic downturn had on workers of color, and specifically, women of color.¹⁸⁵ Another study found that during the first six months of the pandemic counties that were both high-poverty and majority non-white experienced COVID-19 infection rates eight times higher than high-poverty, majority white counties.¹⁸⁶ Many residents in these communities are still coping with the negative health and economic impacts.

Summary of the Interim Final Rule and Final Rule Structure

As described previously, the interim final rule provided a broader list of enumerated eligible uses to respond to the pandemic in disproportionately impacted communities, in recognition that pre-existing health, economic, and social disparities contributed to disproportionate pandemic impacts in certain communities and that addressing the root causes of those disparities constitutes responding to the public health and negative economic impacts of the pandemic. The interim final rule described eligible uses in disproportionately impacted communities in four categories, spread across public health and negative economic impacts: (1) Addressing disparities in public health outcomes, (2) building stronger communities through investments in housing and neighborhoods, (3) addressing educational disparities, and (4) promoting healthy childhood environments. As described above, Treasury has moved eligible uses related to community violence intervention, assistance accessing or applying to public benefits and services, affordable housing development, healthy childhood environments, and addressing lost instructional time in K–

12 schools into the category “assistance to impacted households,” recognizing that these pandemic impacts were widely shared across the country.

This section discusses enumerated eligible uses to address health disparities, to build stronger communities through investments in neighborhoods, to address educational disparities, to provide rental assistance vouchers or assistance relocating to areas of greater economic opportunity, and additional eligible uses to respond to negative economic impacts in disproportionately impacted communities. While many of these services impact both health and economic outcomes, Treasury has consolidated them into a single section for simplicity and clarity and to reflect the intertwined nature of these issues.

As a reminder, recipients can presume these uses are eligible when provided in a QCT, to families and individuals living in QCTs, by Tribal or territorial governments, or to low-income households or communities. As provided in section Standards: Designating Other Disproportionately Impacted Classes, recipients can also provide these services to other populations, households, or geographic areas disproportionately impacted by the pandemic. Recipients may also identify additional disproportionate impacts of the pandemic and design an appropriate response to address that harm. For details on eligibility standards and presumed eligible populations, see section General Provisions: Structure and Standards.

Enumerated Eligible Uses for Disproportionately Impacted Households

1. Addressing health disparities.

Public Comment: General: In general, commenters supported eligible uses to address health disparities and support health equity; several commenters highlighted the disparities faced by communities of color and low-income populations, as well as the importance of community engagement in developing effective programs to serve disproportionately impacted communities. Many commenters recommended additional enumerated eligible uses to address health disparities; these are discussed further below in this section.

Treasury Response: In line with commenters' recommendations, the final rule maintains several enumerated eligible uses to address health disparities, specifically:

a. Community health workers.

Treasury received few comments on community health workers, though one

¹⁸⁰ U.S. Department of Health and Human Services, COVID-19 and Economic Opportunity: Inequities in the Employment Crisis, April 2021. Retrieved from https://aspe.hhs.gov/sites/default/files/migrated_legacy_files/199901/covid-economic-equity-brief.pdf.

¹⁸¹ Adelle Simmons et al., Health disparities by race and ethnicity during the COVID-19 pandemic: Current evidence and policy approaches. U.S. Department of Health and Human Services https://aspe.hhs.gov/sites/default/files/migrated_legacy_files/199516/covid-equity-issue-brief.pdf.

¹⁸² Perry, Brea L., Brian Aronson, and Bernice A. Pescosolido, Pandemic precarity: COVID-19 is exposing and exacerbating inequalities in the American heartland, National Academy of Sciences (February 2021), <https://www.pnas.org/content/118/8/e2020685118>.

¹⁸³ *Id.*

¹⁸⁴ Jesse Bennet & Rakesh Kochhar, Two Recessions, Two Recoveries, Pew Research Center (December 13, 2019), <https://www.pewresearch.org/social-trends/2019/12/13/two-recessions-two-recoveries-2/>.

¹⁸⁵ Darrick Hamilton et al., Building an Equitable Recovery: The role of Race, Labor Markets, and Education, The New School's Institute on Race and Political Economy (February 2021).

¹⁸⁶ Adhikari S, Pantaleo NP, Feldman JM, Ogedegbe O, Thorpe L, Troxel AB. Assessment of Community-Level Disparities in Coronavirus Disease 2019 (COVID-19) Infections and Deaths in Large US Metropolitan Areas. JAMA Netw Open. 2020;3(7):e2016938. doi:10.1001/jamanetworkopen.2020.16938.

requested further clarification on their role.¹⁸⁷ Treasury is maintaining this eligible use in the final rule.

b. Remediation of lead paint or other lead hazards. The interim final rule included remediation of lead paint or other lead hazards as an enumerated eligible use to address health disparities.

Public Comment: Treasury received several comments asking for clarification on the eligibility of a particular use that would indirectly address lead pollution. For example, a commenter requested the ability to fund remedial actions, such as filtration and plumbing procedures to help address lead pollution. One commenter requested that private wells be eligible for funding to address contamination with substances such as lead. Other commenters requested that Treasury allow replacement of lead pipes as an eligible use of funds.

Treasury Response: Recipients may make a broad range of water infrastructure investments under section 602(c)(1)(d) and 603(c)(1)(d), which can include lead service line replacement and other activities to identify and remediate lead in water. These uses are discussed in greater detail in section Water and Sewer Infrastructure of this Supplemental Information.

Treasury has further determined that several of the services identified by commenters are appropriate responses to address health disparities in disproportionately impacted households. These services were eligible under the interim final rule and continue to be so under the final rule. These services include remediation to address lead-based public health risk factors, outside of lead in water, including evaluation and remediation of lead paint, dust, or soil hazards; testing for blood lead levels; public outreach and education; and emergency protection measures, like bottled water and water filters, in areas with an action level exceedance for lead in water in accordance with the Environmental Protection Agency's Lead and Copper Rule.¹⁸⁸

Further, Treasury had determined that certain capital expenditures, including improvements to existing facilities to remediate lead contaminants (e.g., removal of lead paint), are eligible responses, although this does not

include construction of new facilities for the purpose of lead remediation. Recipients should make sure that all capital expenditures adhere to the standards and presumptions detailed in section Capital Expenditures in General Provisions: Other.

c. Medical facilities. Treasury received a few comments from recipients seeking to use SLFRF funds to build new medical facilities, such as hospitals or public health clinics, to serve disproportionately impacted communities. Given the central role of access to high-quality medical care in reducing health disparities and addressing the root causes that led to disproportionate impact COVID-19 health impacts in certain communities, the final rule recognizes that medical equipment and facilities designed to address disparities in public health outcomes are eligible capital expenditures. This includes primary care clinics, hospitals, or integrations of health services into other settings. Recipients should make sure that all capital expenditures adhere to the standards and presumptions detailed in section Capital Expenditures in General Provisions: Other.

2. Housing vouchers and assistance relocating. In addition to other housing services, the interim final rule permitted a variety of rental assistance approaches to support low-income households in securing stable, long-term housing, including housing vouchers, residential counseling, or housing navigation assistance to facilitate household moves to neighborhoods with high levels of economic opportunity and mobility for low-income residents. Examples could include SLFRF-funded analogues to Section 8 Housing Choice vouchers; other kinds of rent subsidies, including shallow subsidies; and programs to help residents move to areas with higher levels of economic mobility.¹⁸⁹ Treasury did not receive public comments on these enumerated eligible uses.

Treasury Response: Treasury maintains the eligibility of vouchers and relocation assistance in the final rule.

3. Building strong, healthy communities through investments in neighborhoods. While the interim final rule included a category of enumerated eligible uses for “building stronger communities through investments in housing and neighborhoods,” the examples of services provided generally focused on housing uses. In response to questions following release of the interim final rule, Treasury issued

further guidance clarifying that “investments in parks, public plazas, and other public outdoor recreation spaces may be responsive to the needs of disproportionately impacted communities by promoting healthier living environments.”

Public Comment: General: A significant theme across many public comments was the importance of neighborhood environment to health and economic outcomes and the potential connections between residence in an underserved neighborhood and disproportionate impacts from the pandemic. Many commenters highlighted the connection between neighborhoods and health outcomes, including citing public health research linking neighborhood traits to health outcomes. For example, the CDC states that “neighborhoods people live in have a major impact on their health and well-being.”¹⁹⁰ As such, CDC identifies “neighborhoods and built environment” as one of five key social determinants of health¹⁹¹ and includes “creat[ing] neighborhoods and environments that promote health and safety” as one of the agency’s goals for social determinants of health outcomes.

a. Neighborhood features that promote improved health and safety outcomes.

Public Comment: Commenters argued that neighborhoods impact physical health outcomes in several ways. First, some commenters reasoned that the physical environment and amenities in a community¹⁹² influence a person’s level of physical activity, with features like parks, recreation facilities, and safe sidewalks promoting increased physical activity that improves health outcomes. Conversely, commenters argued that a lack of these features in a neighborhood could dampen physical activity and contribute to health conditions like obesity that are risk factors for more severe COVID-19 health outcomes.

Second, some commenters also suggested that access to healthy food in a neighborhood impacts health outcomes. These commenters reasoned

¹⁹⁰ U.S. Department of Health and Human Services, Neighborhood and Built Environment, <https://health.gov/healthypeople/objectives-and-data/browse-objectives/neighborhood-and-built-environment#cit1> (last visited November 9, 2021).

¹⁹¹ Social determinants of health are “the conditions in the places where people live, learn, work, and play that affect a wide range of health risks and outcomes.” Centers for Disease Control and Prevention, About Social Determinants of Health (SDOH), <https://www.cdc.gov/social-determinants/about.html> (last visited November 9, 2021).

¹⁹² In public health, this is referred to as “built environment,” or the man-made physical aspects of a community (e.g., homes, buildings, streets, open spaces, and infrastructure).

¹⁸⁷ See, e.g., Centers for Disease Control and Prevention, Community Health Worker (CHW) Toolkit, <https://www.cdc.gov/dhbsp/pubs/toolkits/chw-toolkit.htm> (last visited November 9, 2021).

¹⁸⁸ Environmental Protection Agency, 40 CFR 141.80(c)(1), <https://www.ecfr.gov/current/title-40/chapter-I/subchapter-D/part-141/subpart-I/section-141.80>.

¹⁸⁹ See, e.g., Opportunity Insights, Creating Moves To Opportunity (August 2019), <https://opportunityinsights.org/policy/cmto/>.

that lacking adequate access to affordable, healthy food or living in a “food desert” may contribute to disparities in diet that influence health outcomes, including contributing to pre-existing conditions that increased risk for severe COVID-19 outcomes. These commenters cited public health research finding “clear evidence for disparities in food access in the United States by income and race.”¹⁹³

Some commenters also suggested that neighborhood environment is connected to other public health outcomes, like mental health and public safety. For example, some research suggests that living in neighborhoods with green space and tree cover correlates with improved mental health outcomes.¹⁹⁴ Finally, some commenters argued that activities like installing streetlights, greening or cleanup of public spaces or land, and other efforts to revitalize public spaces would support improved public safety.^{195 196}

These commenters recommended that Treasury include as an enumerated eligible use in disproportionately impacted communities projects to develop neighborhood features that promote improved health and safety outcomes, such as parks, green spaces, recreational facilities, sidewalks, pedestrian safety features like crosswalks, projects that increase access to healthy foods, streetlights, neighborhood cleanup, and other projects to revitalize public spaces.

Background: Investments in neighborhood features, including parks, recreation facilities, sidewalks, and healthy food access, can work to improve physical and mental health outcomes. Allowing people access to nature, including parks, has been connected to decreased levels of

mortality and illness and increased well-being.¹⁹⁷ Urban park use during the COVID-19 pandemic may have declined among lower-income individuals.¹⁹⁸ Encouraging physical activity can also play a role in health outcomes, as a sedentary lifestyle is a risk factor for chronic diseases and more severe COVID-19 outcomes.¹⁹⁹ Parks, recreation facilities, and sidewalks can promote healthier living environments by allowing for safe and socially distanced recreation during the COVID-19 pandemic.

Additionally, food insecurity rates, which are higher among lower-income households and households of color, doubled among all households and tripled among households with children during the onset of COVID-19 from February 2020 to May 2020.²⁰⁰ Improving healthy food access supports public health, particularly among lower-income households and households of color that face disproportionate outcomes.

Treasury Response: Treasury recognizes the connection between neighborhood built environment and physical health outcomes as discussed in the research and analysis provided by commenters, including risk factors that may have contributed to disproportionate COVID-19 health impacts in low-income communities. The final rule also recognizes that the public health impacts of the pandemic are broader than just the COVID-19 disease itself and include substantial impacts on mental health and public safety challenges like rates of violent crime, which are correlated with a neighborhood’s built environment and features. As such, neighborhood features that promote improved health and safety outcomes respond to the pre-existing disparities that contributed to COVID-19’s disproportionate impacts on low-income communities.

The final rule includes enumerated eligible uses in disproportionately impacted communities for developing neighborhood features that promote improved health and safety outcomes, such as parks, green spaces, recreational facilities, sidewalks, pedestrian safety features like crosswalks,²⁰¹ projects that increase access to healthy foods, streetlights, neighborhood cleanup, and other projects to revitalize public spaces. Recipients seeking to use funds for capital expenditures should refer to the section Capital Expenditures in General Provisions: Other, which describes additional eligibility standards that apply to uses of funds for capital expenditures.

b. Vacant or abandoned properties. As discussed above, the interim final rule included enumerated eligible uses for building stronger communities through investments in housing and neighborhoods in disproportionately impacted communities. The interim final rule also posed a question of whether other potential uses in this category, specifically “rehabilitation of blighted properties or demolition of abandoned or vacant properties,” address the public health or economic impacts of the pandemic.

Public Comment: Several commenters argued that programs or services to address vacant or abandoned property would respond to the public health and negative economic impacts of the pandemic in disproportionately impacted communities. Some commenters cited research suggesting that living near such property is correlated with worse physical health and mental health outcomes, noted that such properties pose an environmental hazard, or argued that such properties present a barrier to economic recovery. These commenters suggested that renovation or demolition of vacant or abandoned property could benefit community health and raise property values. Other commenters recommended that Treasury include an enumerated eligible use for the operation of land banks that redevelop or renew vacant properties and land.

Treasury Response: As noted throughout the final rule, the pandemic underscored the importance of safe, affordable housing and healthy

¹⁹³ J Beaulac, E Kristjansson, S Cummins, A systematic review of food deserts, 1966–2007, *Prev Chronic Dis* 2009;6(3):A105, http://www.cdc.gov/pccd/issues/2009/jul/08_0163.htm.

¹⁹⁴ See, e.g., Yijun Zhang et al. The Association between Green Space and Adolescents’ Mental Well-Being: A Systematic Review. *International journal of environmental research and public health* vol. 17, 18 6640 (Sep. 11 2020), doi:10.3390/ijerph17186640; EC South, BC Hohl, MC Kondo, JM MacDonald, CC Branas, Effect of Greening Vacant Land on Mental Health of Community-Dwelling Adults: A Cluster Randomized Trial, *JAMA Netw Open*. 2018;1(3):e180298 (2018), available at: doi:10.1001/jamanetworkopen.2018.0298.

¹⁹⁵ See, e.g., Yanqing Xu, Cong Fu, Eugene Kennedy, Shanhe Jiang, Samuel Owusu-Agyemang, The impact of street lights on spatial-temporal patterns of crime in Detroit, Michigan, *Cities*, Volume 79, Pages 45–52, ISSN 0264–2751 (2018), <https://doi.org/10.1016/j.cities.2018.02.021>.

¹⁹⁶ A. Chalfin, B. Hansen, J. Lerner et al., Reducing Crime Through Environmental Design: Evidence from a Randomized Experiment of Street Lighting in New York City, *Journal of Quantitative Criminology* (2021), <https://doi.org/10.1007/s10940-020-09490-6>.

¹⁹⁷ See, e.g., American Public Health Association, Improving Health and Wellness through Access to Nature (November 5, 2013), <https://www.apha.org/policies-and-advocacy/public-health-policy-statements/policy-database/2014/07/08/09/18/improving-health-and-wellness-through-access-to-nature>.

¹⁹⁸ LR Larson et al., Urban Park Use During the COVID-19 Pandemic: Are Socially Vulnerable Communities Disproportionately Impacted?, *Front. Sustain. Cities* 3:710243 (2021), <https://doi.org/10.3389/frsc.2021.710243>.

¹⁹⁹ JP Després, Severe COVID-19 outcomes—the role of physical activity. *Nat Rev Endocrinol* 17, 451–452 (2021). <https://doi.org/10.1038/s41574-021-00521-1>.

²⁰⁰ Caroline George and Adie Tomer, Beyond ‘food deserts’: America needs a new approach to mapping food, *Brookings Institution* (August 17, 2021), <https://www.brookings.edu/research/beyond-food-deserts-america-needs-a-new-approach-to-mapping-food-insecurity/>.

²⁰¹ However, Treasury cautions recipients that general infrastructure development, including street or road construction, remains a generally ineligible use of funds under the final rule. Sidewalks and pedestrian safety should be the predominant component of uses of funds in this category. While projects may include ancillary construction needed to execute the predominant component, a project that predominantly involves street construction or repair to benefit vehicular traffic would be ineligible.

neighborhood environments to public health and economic outcomes. Treasury agrees with commenters that high rates of vacant or abandoned properties in a neighborhood may exacerbate public health disparities, for example through environmental contaminants that contribute to poor health outcomes or by contributing to higher rates of crime. As such, certain services for vacant or abandoned properties are eligible to address the public health and negative economic impacts of the pandemic on disproportionately impacted households or communities. Eligible activities include:

- Rehabilitation, renovation, maintenance, or costs to secure vacant or abandoned properties to reduce their negative impact
- Costs associated with acquiring and securing legal title of vacant or abandoned properties and other costs to position the property for current or future productive use
- Removal and remediation of environmental contaminants or hazards from vacant or abandoned properties, when conducted in compliance with applicable environmental laws or regulations
- Demolition or deconstruction of vacant or abandoned buildings (including residential, commercial, or industrial buildings) paired with greening or other lot improvement as part of a strategy for neighborhood revitalization
- Greening or cleanup of vacant lots, as well as other efforts to make vacant lots safer for the surrounding community
- Conversion of vacant or abandoned properties to affordable housing
- Inspection fees and other administrative costs incurred to ensure compliance with applicable environmental laws and regulations for demolition, greening, or other remediation activities

Vacant or abandoned properties are generally those that have been unoccupied for an extended period of time or have no active owner.²⁰² Such

²⁰² A state or locality may use its existing classifications of what is considered vacant or abandoned property under state law and local ordinances, as well as any corresponding processes for demolition, for these eligible uses. A recipient without a definition of vacant or abandoned property may refer to definitions used in the Department of Housing and Urban Development's Neighborhood Stabilization Program (available at the citations below); however, recipients should be aware that other federal, state, or local requirements may apply such as compliance with the Uniform Relocation Act (see U.S. Department of Housing and Urban Development, Real Estate Acquisition and Relocation Overview in HUD Programs, <https://www.hudexchange.info/programs/relocation/>

properties may be in significant disrepair (e.g., major structural defects; lack of weather tight conditions; or lack of useable plumbing, kitchen facilities, electricity, or heating infrastructure (not to include utilities currently out of service or disconnected but able to be reconnected and used)), or may be declared unfit for inhabitants by a government authority.

As noted above, demolition and greening (or other structure or lot remediation) of vacant or abandoned properties, including residential, commercial, or industrial buildings, is an eligible use of funds. Treasury encourages recipients to undertake these activities as part of a strategy for neighborhood revitalization and to consider how the cleared property will be used to benefit the disproportionately impacted community. Activities under this eligible use should benefit current residents and businesses, who experienced the pandemic's impact on the community.

Treasury encourages recipients to be aware of potential impacts of demolition of vacant or abandoned residential properties. Demolition activities that exacerbate the pandemic's impact on housing insecurity or lack of affordable housing are not eligible uses of funds. This risk is generally more acute in jurisdictions with low or reasonable vacancy rates and less acute in jurisdictions with high or hyper-vacancy.²⁰³

overview/#overview-of-the-ura (last visited November 9, 2021) and other state and local requirements like condemnation and code enforcement. U.S. Department of Housing and Urban Development, What is the definition of vacant properties as referenced in NSP Eligible Use E—Redevelop Demolished or Vacant Properties? (October 2012), <https://www.hudexchange.info/faqs/programs/neighborhood-stabilization-program-nsp/redevelopment/what-is-the-definition-of-vacant-properties-as-referenced-in-nsp-eligible/>. U.S. Department of Housing and Urban Development, What are the definitions of abandoned and foreclosed? (October 2012), <https://www.hudexchange.info/faqs/programs/neighborhood-stabilization-program-nsp/program-requirements/eligible-activities/uses/what-are-the-definitions-of-abandoned-and-foreclosed/>.

²⁰³ For analysis of vacancy rates considered low or high, see, e.g., page 12 of Alan Mallach, The Empty House Next Door, Lincoln Institute (May 2018), <https://www.lincolninstitute.edu/publications/policy-focus-reports/empty-house-next-door#:~:text=%E2%80%9C9CAlan%20Mallach%20is%20the%20usage,through%20data%20and%20model%20practices>. Recipients may determine the appropriate geographic unit for which to analyze vacancy rates (e.g., county, census tract) based on their circumstances. As needed, recipients may refer to the Current Population Survey/Housing Vacancy Survey data series on Housing Vacancies and Homeownership as one data source to assess vacancy rates. See <https://www.census.gov/housing/hvs/index.html>. Other data sources include the American Community Survey five-year estimates, for smaller geographic areas, or tabulations by the Department of Housing and Urban Development

Treasury presumes that demolition of vacant or abandoned residential properties that results in a net reduction in occupiable housing units for low- and moderate-income individuals in an area where the availability of such housing is lower than the need for such housing would exacerbate the impacts of the pandemic on disproportionately impacted communities and that use of SLFRF funds for such activities would therefore be ineligible. This includes activities that convert occupiable housing units for low- and moderate-income individuals into housing units unaffordable to current residents in the community. Recipients may assess whether units are “occupiable” and what the housing need is for a given area taking into account vacancy rates (as described above), local housing market conditions (including conditions for different types of housing like multi-family or single-family), and applicable law and housing codes as to what units are occupiable. Recipients should also take all reasonable steps to minimize the displacement of persons due to activities under this eligible use category, especially the displacement of low-income households or longtime residents.

Recipients engaging in these activities and other construction activities with SLFRF funds should be mindful of the provisions of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, 42 U.S.C. 4601, and the Department of Transportation's implementing regulations, 49 CFR part 24, that apply to projects funded with federal financial assistance, such as SLFRF funds. Recipients should also be aware of federal, state, and local laws and regulations, outside of SLFRF program requirements, that apply to this activity. Recipients must comply with the applicable requirements of the Uniform Guidance regarding procurement, contracting, and conflicts of interest and must follow the applicable laws and regulations in their jurisdictions. Recipients must also comply with all federal, state, and local public health and environmental laws or regulations that apply to activities under this eligible use category,²⁰⁴ for example, requirements around the

based on United States Postal Service Vacancy Data. See, respectively, <https://data.census.gov/cedsci/table?q=DP04&tid=ACSDP5Y2019.DP04&hidePreview=true> or <https://www.huduser.gov/portal/datasets/usps.html>.

²⁰⁴ See U.S. Environmental Protection Agency, Large-Scale Residential Demolition, <https://www.epa.gov/large-scale-residential-demolition> (last visited November 9, 2021) for a primer on requirements that may apply.

handling and disposal of asbestos-containing materials, lead paint, and other harmful materials may apply, as well as environmental standards for any backfill materials used at demolition sites. Treasury encourages recipients to consult and apply best practices from the Environmental Protection Agency as well.

Recipients must evaluate each subrecipient's risk of noncompliance with federal statutes, regulations, and the terms and conditions of the subaward related to safely and properly conducting activities under this eligible use. This may include checking for any past violations recorded by state or local environmental, workplace safety, licensing, and procurement agencies, as well as regular reviews for suspensions, debarments, or stop work orders. Recipients must establish rigorous oversight and internal controls processes to monitor compliance with any applicable requirements, including compliance by subrecipients.

4. Addressing educational disparities. The interim final rule included an enumerated eligible use for addressing educational disparities in disproportionately impacted communities and outlined some enumerated eligible services under this use. These enumerated uses included early learning services, assistance to high-poverty school districts to advance equitable funding across districts and geographies, and educational and evidence-based services to address the academic, social, emotional, and mental health needs of students. Addressing the many dimensions of resource equity—including equitable and adequate school funding; access to a well-rounded education; well-prepared, effective, and diverse educators and staff; and integrated support services—can also begin to mitigate the impact of COVID-19 on schools and students and can close long-standing gaps in educational opportunity. As discussed above, in the final rule, early learning services and addressing the impacts of lost instructional time for K-12 students are enumerated eligible uses for impacted communities, not just disproportionately impacted communities.

Public Comment: Treasury received some comments in this category. Generally, commenters expressed agreement with the elements of the interim final rule regarding use of funds for addressing educational disparities. Some commenters had questions about whether a few specific uses of funds qualified under this category. For example, commenters inquired about whether the funds could be used for

behavioral health in a school setting or cultural language classes.

Treasury Response: Treasury is maintaining these enumerated eligible uses in the final rule, which are now organized under the heading of “services to address educational disparities.” Treasury reiterates that these uses include addressing educational disparities exacerbated by COVID-19, including but not limited to: increasing resources for high-poverty school districts, educational services like tutoring or afterschool programs, summer education and enrichment programs, and supports for students’ social, emotional, and mental health needs. This also includes responses aimed at addressing the many dimensions of resource equity—including equitable and adequate school funding; access to a well-rounded education; well-prepared, effective, and diverse educators and staff; and integrated support services—in order to close long-standing gaps in educational opportunity.

Further, Treasury is clarifying that improvements or new construction of schools and other educational facilities or equipment are eligible capital expenditures for disproportionately impacted communities. Recipients seeking to use funds for capital expenditures should refer to the section Capital Expenditures in General Provisions: Other for additional eligibility standards that apply to uses of funds for capital expenditures.

Treasury notes that services to promote healthy childhood environments, including childcare, early learning services, and home visiting programs that serve infants and toddlers, is a separate category of enumerated eligible uses for households impacted by the pandemic (see eligible uses for “promoting healthy childhood environments”). Similarly, education services to address the impact of lost instructional time during the pandemic are a separate eligible use category for households impacted by the pandemic; when providing these services, 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 eligible uses for “addressing the impact of lost instructional time”).

Proposed Additional Enumerated Eligible Uses Not Incorporated

The interim final rule posed a question on what other types of services or costs Treasury should consider as eligible uses to respond to the

disproportionate public health or negative economic impacts of COVID-19 on low-income populations and communities.

In response, commenters proposed a wide variety of additional recommended enumerated eligible uses to assist disproportionately impacted households, ranging from general categories of services (e.g., long-term investments to remediate long-term disparities) to highly specific examples of services (e.g., a specific type of healthcare equipment). As discussed above, Treasury is including several additional categories of enumerated eligible uses in the final rule in response to public comments.

Given the large number and diversity of SLFRF recipients, Treasury’s approach to assistance to households in disproportionately impacted communities in the final rule aims to provide enumerated eligible uses that respond to disproportionate impacts of the pandemic experienced widely in many jurisdictions across the country and are intended to simplify and clarify these enumerated eligible uses. At the same time, Treasury recognizes that the impacts of the pandemic vary over time, by jurisdiction, and by population; as such, the final rule provides flexibility for recipients to identify additional disproportionate impacts to additional households or classes of households and pursue programs and services that respond to those disproportionate impacts.

In the final rule, Treasury has not chosen to include as enumerated uses all uses proposed by commenters; given the significant range, and in some cases highly specific nature, of the proposed uses Treasury was not able to assess that the proposed uses would respond to disproportionate impacts experienced in many jurisdictions across the country, supporting an enumerated eligible use available to all recipients presumptively. However, the final rule continues to provide a framework to allow recipients to identify and respond to additional disproportionate impacts (for details, see section General Provisions: Structure and Standards). Some types of proposed additional enumerated eligible uses for assistance to households in disproportionately impacted communities were recommended by several commenters:

- **Capital expenditures.** Many commenters recommended that capital expenditures on many different types of public and private facilities be enumerated eligible uses. For clarity, Treasury has addressed all comments on the eligibility of capital expenditures on property, facilities, or equipment in one

section (see section Capital Expenditures in General Provisions: Other).

- Equity funds. Several commenters recommended that Treasury permit SLFRF funds to be deposited into an equity fund to support long-term racial and economic equity investments. The eligibility of such use would depend on the specific structure and uses of funds. Under the statute, SLFRF funds can only support costs incurred until December 31, 2024; see section Timeline for Use of SLFRF Funds in Program Administration Provisions. Further, recipients may calculate the cost incurred with respect to investments in revolving loan funds based on the methodology described in section Treatment of Loans in Program Administration Provisions. Projects funded by a revolving loan fund using SLFRF funds would also need to be eligible uses of SLFRF funds.

- Environmental quality and climate resilience. Several commenters recommended eligible uses to enhance environmental quality, remediate pollution, promote recycling or composting, or increase energy efficiency or electrical grid resilience. Whether these projects respond to the disproportionate impacts of the pandemic on certain communities would depend on the specific issue they address and its nexus to the public health and economic impacts of the pandemic.

b. Assistance to Small Businesses Background

The pandemic has severely impacted many businesses, with small businesses hit especially hard. Small businesses make up nearly half of U.S. private-sector employment²⁰⁵ and play a key role in supporting the overall economic recovery as they are responsible for two-thirds of net new jobs.²⁰⁶ Since the beginning of the pandemic, however, 400,000 small businesses have closed, with many more at risk.²⁰⁷ Sectors with a large share of small business employment have been among those with the most drastic drops in

employment.²⁰⁸ The negative outlook for small businesses has continued: As of November 2021, approximately 66 percent of small businesses reported that the pandemic has had a moderate or large negative effect on their business, and over a third expect that it will take over 6 months for their business to return to their normal level of operations.²⁰⁹

This negative outlook is likely the result of many small businesses having faced periods of closure and having seen declining revenues as customers stayed home.²¹⁰ In general, small businesses can face greater hurdles in accessing credit,²¹¹ and many small businesses were already financially fragile at the outset of the pandemic.²¹²

While businesses everywhere faced significant challenges during the pandemic, minority-owned and very small businesses have faced additional obstacles. Between February and April 2020, the number of actively self-employed Black business owners decreased by 41 percent.²¹³ During that same time period, Asian and Latino business owners decreased by 26 and 32 percent, respectively, compared to a 17 percent decrease in white business owners.²¹⁴ Female business owners also saw significant impacts, with businesses owned by women falling by 25 percent.²¹⁵

Many of the disparities in how minority business owners experienced

the pandemic are rooted in systemic issues present even before the pandemic. For example, before the economic downturn, only 12 percent of Black-owned businesses and 19 percent of Hispanic-owned businesses had annual earnings of over \$1 million compared to 31 percent of white-owned businesses.²¹⁶ Minority-owned businesses were also overrepresented in industries hit hardest by the economic downturn (e.g., services, transportation and warehousing, healthcare and social assistance, administrative and support and waste management, and accommodation and food services).²¹⁷ Approximately 22 percent of all minority-owned business fell into the hardest hit industries compared to 13 percent of nonminority-owned businesses.²¹⁸

Although disparities in annual revenue are not a direct indication of a business's ability to weather an economic downturn, they do highlight other disparities that make it more challenging for these businesses to survive the effects of the pandemic. Black-owned startups, for example, face larger challenges in raising capital, including securing business loans.²¹⁹

Summary of the Interim Final Rule and Final Rule Structure

Summary of Interim Final Rule: As discussed above, small businesses faced significant challenges in covering payroll, mortgages or rent, and other operating costs as a result of the public health emergency and measures taken to contain the spread of the virus. Under Sections 602(c)(1)(A) and 603(c)(1)(A), recipients may “respond to the public health emergency or its negative economic impacts,” by, among other things, providing “assistance to . . . small businesses.” Accordingly, the interim final rule allowed recipients to provide assistance to small businesses to address the negative economic impacts faced by those businesses. A

²⁰⁵ Board of Governors of the Federal Reserve System, Monetary Policy Report (June 12, 2020), <https://www.federalreserve.gov/monetarypolicy/2020-06-mp-r-summary.htm>.

²⁰⁶ U.S. Small Business Administration, Office of Advocacy, Small Businesses Generate 44 Percent of U.S. Economic Activity (Jan. 30, 2019), <https://advocacy.sba.gov/2019/01/30/small-businesses-generate-44-percent-of-u-s-economic-activity/>.

²⁰⁷ Joseph R. Biden, Remarks by President Biden on Helping Small Businesses (Feb. 22, 2021), <https://www.whitehouse.gov/briefing-room/speeches-remarks/2021/02/22/remarks-by-president-biden-on-helping-small-businesses/>.

²⁰⁸ Daniel Wilmoth, U.S. Small Business Administration Office of Advocacy, The Effects of the COVID-19 Pandemic on Small Businesses, Issue Brief No. 16 (Mar. 2021), available at <https://cdn.advocacy.sba.gov/wp-content/uploads/2021/03/02112318/COVID-19-Impact-On-Small-Business.pdf>.

²⁰⁹ U.S. Census Bureau, Small Business Pulse Survey, <https://portal.census.gov/pulse/data/> (last visited December 7, 2021).

²¹⁰ Olivia S. Kim et al., Revenue Collapses and the Consumption of Small Business Owners in the Early Stages of the COVID-19 Pandemic (Nov. 2020), <https://www.nber.org/papers/w28151>.

²¹¹ See, e.g., Board of Governors of the Federal Reserve System, Report to Congress on the Availability of Credit to Small Businesses (Sept. 2017), available at <https://www.federalreserve.gov/publications/2017-september-availability-of-credit-to-small-businesses.htm>.

²¹² Alexander W. Bartik et al., The Impact of COVID-19 on small business outcomes and expectations, PNAS 117(30): 17656–66 (July 28, 2020), available at <https://www.pnas.org/content/117/30/17656>.

²¹³ Robert Fairlie, The impact of COVID-19 on small business owners: Evidence from the first 3 months after widespread social-distancing restrictions, Journal of economics & management strategy (August 27, 2020), <https://doi.org/10.1111/jems.12400>.

²¹⁴ U.S. Small Business Administration, The Effects of the COVID-19 Pandemic on Small Businesses (March 2021), <https://cdn.advocacy.sba.gov/wp-content/uploads/2021/03/02112318/COVID-19-Impact-On-Small-Business.pdf>.

²¹⁵ Robert Fairlie, *supra* note 213.

²¹⁶ Federal Reserve Bank of Atlanta. 2019. Small Business Credit Survey 2019 Report on Minority-Owned Firms. December. [fedsmallbusiness.org/survey/2019/report-on-minority-owned-firms](https://smallbusiness.org/survey/2019/report-on-minority-owned-firms).

²¹⁷ Ding, Lei, and Alvaro Sanchez. 2020. What Small Businesses Will Be Impacted by COVID-19? Federal Reserve Bank of Philadelphia. philadelphiafed.org/covid-19/covid-19-equity-in-recovery/what-small-businesses-will-be-impacted.

²¹⁸ Lucas Misera, An Uphill Battle: COVID-19's Outsized Toll on Minority-Owned Firms, Federal Reserve Bank of Cleveland (October 8, 2020), <https://www.clevelandfed.org/newsroom-and-events/publications/community-development-briefs/db-20201008-misera-report.aspx>.

²¹⁹ Robert Fairlie, A. Robb, D. Robinson, Black and White: Access to Capital among Minority-Owned Startups, NBER Working Paper 28154 (November 2020), <https://www.nber.org/papers/w28154>.

“small business” is defined as a business concern or other organization that:

(1) Has no more than 500 employees or, if applicable, the size standard in number of employees established by the Administrator of the Small Business Administration for the industry in which the business concern or organization operates; and

(2) Is a small business concern as defined in section 3 of the Small Business Act (15 U.S.C. 632).

Specifically, the interim final rule provided that recipients may provide assistance to small businesses to adopt safer operating procedures, weather periods of closure, or mitigate financial hardship resulting from the COVID-19 public health emergency, including:

- Loans or grants to mitigate financial hardship such as declines in revenues or impacts of periods of business closure;
- Loans, grants, or in-kind assistance to implement COVID-19 prevention or mitigation tactics; and
- Technical assistance, counseling, or other services to assist with business planning needs.

The interim final rule further provided that recipients may consider additional criteria to target assistance to businesses in need, including small businesses. Such criteria may include businesses facing financial insecurity, substantial declines in gross receipts (e.g., comparable to measures used to assess eligibility for the Paycheck Protection Program), or other economic harm due to the pandemic, as well as businesses with less capacity to weather financial hardship, such as the smallest businesses, those with less access to credit, or those serving underserved communities. The interim final rule also indicated that recipients should consider local economic conditions and business data when establishing such criteria. Finally, the interim final rule posed a question on whether there are other services or costs that Treasury should consider as eligible uses to respond to the disproportionate impacts of COVID-19 on low-income populations and communities.

Final Rule Structure: Consistent with the interim final rule approach, the final rule provides a non-exhaustive list of enumerated eligible uses for assistance to small businesses that are impacted or disproportionately impacted by the pandemic. Further, within Assistance to Small Business, a recipient may also identify a negative economic impact experienced by small businesses and design and implement a response to that negative economic impact, beyond the uses specifically enumerated in the final

rule, according to the standard described in the section Standards: Identifying a Negative Economic Impact. A recipient may also identify small businesses that have been disproportionately impacted by the public health emergency and design and implement a program that responds to the source of that disproportionate impact.

Consistent with other eligible use categories to respond to the public health and economic impacts of the pandemic, recipients may identify and serve small businesses that experienced a negative economic impact or disproportionate impact due to the pandemic, as described in the section Standards for Identifying Other Eligible Populations. For example, to identify impacted small businesses, a recipient may consider whether the small businesses faced challenges in covering payroll, mortgage or rent, or other operating costs as a result of the public health emergency and measures taken to contain the spread of the virus. In order to ease administrative burden, the final rule presumes that small businesses operating in QCTs, small businesses operated by Tribal governments or on Tribal Lands, and small businesses operating in the U.S. territories were disproportionately impacted by the pandemic.

Reorganizations and Cross-References: As detailed above, Treasury has re-categorized some uses of funds in the final rule to provide greater clarity. For discussion of assistance to small businesses and impacted industries to implement COVID-19 mitigation and prevention strategies, see section COVID-19 Mitigation and Prevention in Public Health.

Small Businesses Eligible for Assistance

Public Comment: Treasury received many comments about the general benefits or drawbacks of use of SLFRF funds to provide assistance to small businesses. Some commenters suggested that SLFRF funds should be available to assist all small businesses, rather than only businesses that experienced direct negative economic impacts due to the public health emergency. Other commenters argued that aid to small businesses should be narrowed in the final rule, asserting that SLFRF funds should instead focus on assistance to households or building public sector capacity.

Treasury also received comments requesting clarification of the types of small businesses eligible for assistance. For example, some commenters requested clarification about whether microbusinesses were included in the

definition of small business. Comments also suggested that self-employed individuals and Tribal enterprises be classified as small businesses, respectively. Commenters argued that these types of small businesses are more common among low-income and minority businessowners and serve as important institutions in underserved communities.

Finally, some commenters suggested that Treasury permit broader enumerated eligible uses to assist small businesses in disproportionately impacted communities and generally strengthen economic growth in these communities. These commenters recommended that Treasury presume small businesses operating in QCTs are disproportionately impacted and eligible for broader enumerated uses.

Treasury Response: As discussed in the section Designating a Negative Economic Impact, in the final rule, recipients must identify an economic harm caused or exacerbated by the pandemic on a small business or class of small businesses to provide services that respond.

As discussed above, programs or services in this category must respond to a harm experienced by a small business or class of small businesses as a result of the public health emergency. To identify impacted small businesses and necessary response measures, recipients may consider impacts such as lost revenue or increased costs, challenges covering payroll, rent or mortgage, or other operating costs, the capacity of a small business to weather financial hardships, and general financial insecurity resulting from the public health emergency.

Recognizing the difficulties faced by small businesses in certain communities, the final rule presumes that small businesses operating in QCTs, small businesses operated by Tribal governments or on Tribal Lands, and small businesses operating in the U.S. territories were disproportionately impacted by the pandemic. This presumption parallels the final rule's approach to assistance to households, reflecting the more severe pandemic impacts in underserved communities and creating a parallel structure across different categories of eligible uses to make the structure simpler for recipients to understand and navigate.

Treasury notes that recipients may also designate a class of small businesses that experienced a negative economic impact or disproportionate negative economic impact (e.g., microbusinesses, small businesses in certain economic sectors), design an intervention to fit the impact, and

document that the individual entity is a member of the class. Additional information about this framework is included in the section General Provisions: Structure and Standards.

Further, Treasury is maintaining the interim final rule definition of “small business,” which used the Small Business Administration’s (SBA) definition of fewer than 500 employees, or per the standard for that industry, as defined by SBA. This definition includes businesses with very few employees, self-employed individuals, and Tribally owned businesses.²²⁰ Finally, Treasury notes that recipients may award SLFRF funds to many different types of organizations, including small businesses, to function as a subrecipient in carrying out eligible uses of funds on behalf of a recipient government. In this case, a small business need not have experienced a negative economic impact in order to serve as a subrecipient. See section Distinguishing Subrecipients versus Beneficiaries for more detailed discussion of interactions with subrecipients, in contrast to beneficiaries of assistance.

Enumerated Eligible Uses for Assistance to Small Businesses

Public Comment: Treasury received comments requesting clarification of the types of assistance available to small businesses. For example, one commenter suggested that outdoor dining be an eligible use for SLFRF funds as assistance to small businesses. Other commenters asked for clarification about how SLFRF funds could be used to support new businesses and start-ups.

Several commenters requested clarification of whether and how recipients may provide services to business districts or downtown areas, particularly those that exist in whole or in part within a QCT, and requested reduced documentation of the specific negative economic impact for the businesses operating within those areas. These commenters argued in favor of allowing redevelopment or other support, including capital investments, in business districts that were

negatively impacted by COVID-19. Several commenters also argued that funds should be available to support and grow microbusinesses, or businesses with five or fewer employees, which are more likely to be owned by women and people of color.

Treasury Response: In the final rule, Treasury is maintaining and clarifying the enumerated eligible uses of funds for assistance to small businesses that are impacted or disproportionately impacted by the pandemic.

Impacted small businesses.

Specifically, Treasury is maintaining enumerated eligible uses from the interim final rule for assistance to impacted small businesses. These include but are not limited to:

- Loans or grants to mitigate financial hardship such as declines in revenues or impacts of periods of business closure, for example by supporting payroll and benefits costs, costs to retain employees, mortgage, rent, or utilities costs, and other operating costs;
- Loans, grants, or in-kind assistance to implement COVID-19 prevention or mitigation tactics (see section Public Health for details on these eligible uses); and
- Technical assistance, counseling, or other services to assist with business planning needs.

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

- As noted above, a recipient could assist small business startups or microbusinesses with additional costs associated with COVID-19 mitigation tactics; see section Public Health for details on these eligible uses.
- A recipient could identify and respond to a negative economic impact of COVID-19 on new small business startups or microbusinesses; for example, if small business startups or microbusinesses in a locality faced greater difficulty accessing credit than prior to the pandemic or faced increased costs to starting the business due to the pandemic or if particular small businesses or microbusinesses had lost expected startup capital due to the pandemic.
- The interim final rule also discussed, and the final rule maintains, eligible uses that provide support for individuals who have experienced a negative economic impact from the COVID-19 public health emergency, including uses that provide job training

for unemployed individuals. These initiatives also may support small business start-ups, microbusinesses, and individuals seeking to start small or microbusinesses.

Disproportionately impacted small businesses. Additionally, Treasury agrees with commenters that disproportionately impacted small businesses may benefit from additional assistance to address the sources of that disparate impact.

As such, the final rule provides a broader set of enumerated eligible uses for disproportionately impacted small businesses and/or small businesses in disproportionately impacted business districts. Recipients may use SLFRF funds to assist these businesses with certain capital investments, such as rehabilitation of commercial properties, storefront improvements, and façade improvements. Recipients may also provide disproportionately impacted microbusinesses additional support to operate the business, including financial, childcare, and transportation supports.

Recipients could also provide technical assistance, business incubators, and grants for start-ups or expansion costs for disproportionately impacted small businesses. Note that some of these types of assistance are similar to those eligible to respond to small businesses that experienced a negative economic impact (“impacted” small businesses). However, because the final rule presumes that some small businesses were disproportionately impacted, these enumerated eligible uses can be provided to those businesses without any specific assessment of whether they individually experienced negative economic impacts or disproportionate impacts due to the pandemic.

Cross-References: Recipients providing assistance to small businesses for capital expenditures (*i.e.*, expenditures on property, facilities, or equipment) should also review the section Capital Expenditures in General Provisions: Other, which describes eligibility standards that apply to capital expenditures. Recipients should also note that services to address vacant or abandoned commercial or industrial properties are addressed in section Vacant or Abandoned Properties in Assistance to Households.

Loans to Small Businesses

Public Comment: Treasury received many comments requesting clarification on using SLFRF funds to establish funds that provide loans to small businesses. For example, commenters sought clarification of how eligible use

²²⁰ In regard to counting employees, businesses owned and controlled by a Tribal government are not considered affiliates of the Tribal government and are not considered affiliates of other businesses owned by the Tribal government because of their common ownership by the Tribal government or common management, as described in 13 CFR 121.103(b)(2). This definition is consistent with the Small Business Administration (SBA) HUBZone definition of a “small business concern” relating to Tribal governments as well as how Tribal enterprises are defined for the State Small Business Credit Initiative (SSBCI).

requirements and applicable dates for SLFRF funds would apply to third party organizations (like economic development organizations) who receive SLFRF funds in order to establish a loan fund. In addition, commenters requested clarification on what requirements apply to loan programs with available funds remaining after December 31, 2024.

Treasury Response: SLFRF funds may be used to make loans, including to small businesses, provided that the loan is an eligible use, and the cost of the loan is tracked and reported in accordance with Treasury's Compliance and Reporting Guidance. Funds that are unobligated after December 31, 2024 must be returned to Treasury. See section Treatment of Loans for more information about using SLFRF funds for loan programs.

c. Assistance to Nonprofits

Background: Nonprofits have faced significant challenges because of the pandemic, including increased demand for services and changing operational needs.²²¹ Prior to the pandemic, the median U.S. nonprofit reported that it had six months of cash on hand.²²² This varied by sector, however, with some sectors like disaster relief organizations reporting a median of 17 months cash on hand, and others, like mental health and crisis intervention organizations reporting only three months.²²³ Evidence suggests that the pandemic has damaged the financial health of nonprofits, with small nonprofits, which tend to rely more heavily on donations than large nonprofits, reporting relatively larger declines in donations — 42 percent versus 29 percent, respectively.²²⁴ Among nonprofits that collect fees for services, the median revenue amount collected from such fees fell by 30 percent from 2019 to 2020, with arts organization experiencing a 50 percent decline.²²⁵ Nonprofits also experienced significant job losses. While employment in the nonprofit sector has recovered from its low point in 2020, as of November 2021,

the sector remained 485,000 jobs below its pre-pandemic level.²²⁶ In addition, some nonprofits may have experienced declines in volunteer staffing during the pandemic.²²⁷

At the same time, nonprofits provide a host of services for their communities, including helping Americans weather the multitude of challenges presented by the pandemic. The ARPA and the interim final rule recognized this dichotomy—nonprofits as entities that have themselves been negatively impacted by the pandemic and as entities that provide services that respond to the public health and negative economic impacts of the pandemic on households and others—by creating two roles for nonprofits.

First, under Sections 602(c)(1)(A) and 603(c)(1)(A), recipients may “respond to the public health emergency or its negative economic impacts,” by, among other activities, providing “assistance to . . . nonprofits.” The interim final rule defined assistance to nonprofits to include “loans, grants, in-kind assistance, technical assistance or other services, that responds to the negative economic impacts of the COVID-19 public health emergency,” and “nonprofit” to mean a tax-exempt organization under Section 501(c)(3) of the U.S. Internal Revenue Code.²²⁸

Second, as discussed above, ARPA and the interim final rule provided that nonprofit organizations may also receive funds as subrecipients of a recipient government (i.e., a government that received SLFRF funds); subrecipients carry out an eligible use of SLFRF funds on behalf of a recipient government (e.g., a recipient government that would like to provide food assistance to impacted households may grant funds to a nonprofit organization to carry out that eligible use). Recipients generally have wide latitude to award funds to many types of organizations, including nonprofit or for-profit organizations, as subrecipients to carry out eligible uses of funds on their behalf. For further information on distinguishing between beneficiaries and subrecipients, as well as the impacts of the distinction on reporting and other requirements, see section Transfers of Funds and section Distinguishing Subrecipients versus Beneficiaries under the Public Health

and Negative Economic Impacts eligible use category.²²⁹

Reorganization and Cross-References: Under the interim final rule, assistance to disproportionately impacted communities was a separate, stand-alone category. The final rule reorganizes the disproportionate impact analysis within the sections Assistance to Households, Assistance to Small Business, and Assistance to Nonprofits to better articulate how recipients can serve disproportionately impacted beneficiaries in each of those categories.

As detailed above in the Public Health subsection, in response to public comments describing uncertainty on which eligible use category should be used to assess different potential uses of funds, Treasury has re-categorized some uses of funds in the final rule to provide greater clarity. For discussion of assistance to nonprofits to implement COVID-19 mitigation and prevention strategies, see section COVID-19 Mitigation and Prevention in Public Health.

Recipients providing assistance via nonprofits involving capital expenditures (i.e., expenditures on property, facilities, or equipment) should also review the section Capital Expenditures in General Provisions: Other, which describes eligibility standards for these expenditures. Recipients providing assistances in the form of loans should review the section Treatment of Loans.

Public Comment: Eligible Assistance to Impacted and Disproportionately Impacted Nonprofits: A few commenters asked Treasury to be more explicit in the final rule that recipients may use funds to provide relief directly to nonprofit organizations and to explain how nonprofits might qualify themselves for assistance and what expenses SLFRF funds may be used to cover.²³⁰ Commenters requested that Treasury note that the pandemic is

²²¹ See, e.g., Federal Reserve Bank of San Francisco, Impacts of COVID-19 on Nonprofits in the Western United States (May 2020), <https://www.frbsf.org/community-development/files/impact-of-covid>.

²²² Philanthropy and COVID-19: Measuring one year of giving, Candid and the Center for Disaster Philanthropy. (2021), <https://www.issuelab.org/resources/38039/38039.pdf>.

²²³ *Id.*

²²⁴ Elizabeth T. Boris et al., Nonprofit Trends and Impacts 2021, Urban Institute (October 7, 2021), https://www.urban.org/research/publication/nonprofit-trends-and-impacts-2021/view/full_report.

²²⁵ *Id.*

²²⁶ Chelsea Newhouse, COVID-19 JOBS UPDATE, NOVEMBER 2021: Nonprofits add just 5,000 jobs in November, Center for Civil Society Studies at Johns Hopkins University (December 10, 2021), <http://ccss.jhu.edu/november-2021-jobs/>.

²²⁷ Elizabeth T. Boris et al. *supra* note 224 at p. 38.

²²⁸ § 35.3 Definitions.

²²⁹ The ARPA also states under “Transfer Authority” that a Recipient may transfer funds to a private nonprofit organization such as those defined in paragraph (17) of section 401 of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11360(17)). See 602 & 603(c)(3) of the Social Security Act. See section Transfers of Funds for additional information on other types of entities, including other forms of nonprofits, that may receive transfers.

²³⁰ While not stated specifically in the interim final rule, the Department does not require or have a preference as to the payment structure for recipients that transfer funds to subrecipients (e.g., advance payments, reimbursement basis, etc.). Ultimately, recipients must comply with the eligible use requirements and any other applicable laws or requirements and are responsible for the actions of their subrecipients or beneficiaries.

leading to a changing financial landscape for nonprofits.

Treasury Response: Eligible Assistance to Impacted and Disproportionately Impacted Nonprofits: The interim final rule provided for, and the final rule maintains, the ability for recipients to provide direct assistance to nonprofits that experienced public health or negative economic impacts of the pandemic. Specifically, recipients may provide direct assistance to nonprofits if the nonprofit has experienced a public health or negative economic impact as a result of the pandemic. For example, if a nonprofit organization experienced impacts like decreased revenues or increased costs (e.g., through reduced contributions or uncompensated increases in service need), and a recipient provides funds to address that impact, then it is providing direct assistance to the nonprofit as a beneficiary under Subsection (c)(1) of Sections 602 and 603. Direct assistance may take the form of loans, grants, in-kind assistance, technical assistance, or other services that respond to the negative economic impacts of the COVID-19 public health emergency.

A recipient may identify a negative economic impact experienced by a nonprofit, or class of nonprofits, and design and implement a response to that negative economic impact, see section Standards: Designating a Negative Economic Impact. The final rule provides a non-exhaustive list of enumerated eligible uses for assistance to nonprofits that are impacted or disproportionately impacted by the pandemic.

A recipient may also identify a class of nonprofits that have been disproportionately impacted by the public health emergency and design and implement a program that responds to the source of that disproportionate impact. For example, a recipient may determine that nonprofits offering after-school programs within its jurisdiction were disproportionately impacted by the pandemic due to the previous in-person, indoors nature of the work and the nonprofits' reliance on fees received for services (e.g., attendance fees). The recipient might then design an intervention to assist those nonprofits in adapting their programming (e.g., to outdoor or online venues), their revenue structure (e.g., adapting the fee for service structure or developing expertise in digital donation campaigns), or both. Additional information about this framework is included in General Provisions: Structure and Standards. In order to ease administrative burden, the final rule presumes that nonprofits

operating in QCTs, operated by Tribal governments or on Tribal Lands, or operating in the U.S. territories were disproportionately impacted by the pandemic.

To summarize, a recipient may determine that certain nonprofits were impacted by the pandemic or were disproportionately impacted by the pandemic and provide responsive services.

Public Comment: Beneficiaries and Subrecipients: As noted elsewhere in this final rule, Treasury received multiple comments expressing uncertainty on how to categorize a particular activity in the eligible use categories. For instance, some commenters requested that recipients be able to use SLFRF funds for certain expenses incurred by nonprofits (e.g., unemployment charges) as a response to a public health or negative economic impact to that nonprofit; others asked if nonprofits providing certain services (e.g., social services) made them eligible for direct assistance. Commenters also requested that Treasury acknowledge that engagement directly with nonprofit organizations in low-income communities and communities of color may allow the recipient to better assess economic harms in these areas.

Treasury Response: Beneficiaries and Subrecipients: Treasury recognizes that many nonprofits play important roles in their communities, and some may have experienced public health or negative economic impacts during the pandemic. As such, under the interim final rule and the final rule, nonprofits may be impacted by the pandemic and receive assistance as a beneficiary, as described above, and/or be a subrecipient providing services on behalf of a recipient.²³¹

Specifically, the interim final rule also allowed for, and the final rule maintains, the ability for the recipient to transfer, e.g., via grant or contract, funds to nonprofit entities to carry out an eligible use on behalf of the recipient. Treasury notes that recipients may award SLFRF funds to many different types of organizations to carry out eligible uses of funds and serve beneficiaries on behalf of a recipient government (e.g., assisting in a vaccination campaign, operating a job training program, developing affordable housing). When a recipient provides funds to an organization to carry out eligible uses of funds and serve

beneficiaries, the organization becomes a subrecipient. In this case, a nonprofit need not have experienced a negative economic impact in order to serve as a subrecipient.

In the context of SLFRF, nonprofits of all types may be subrecipients. Treasury is not restricting the types of nonprofits that can operate as subrecipients, rather allowing recipients to decide what form best meets the needs of their community. Therefore, a "nonprofit" that is acting as subrecipient could include, but is not limited to, a nonprofit as that term is defined in paragraph (17) of section 401 of the McKinney-Vento Homeless Assistance.²³² See section Distinguishing Subrecipients versus Beneficiaries for further information. Additional guidance on determining subrecipient status may be found in the Uniform Guidance.²³³

Recipients may transfer funds to subrecipients in several ways, including advance payments and on a reimbursement basis. Ultimately, recipients must comply with the eligible use requirements and any other applicable laws or requirements and are responsible for the actions of their subrecipients or beneficiaries.

As part of accepting the Award Terms and Conditions for SLFRF, each recipient agreed to maintain a conflict-of-interest policy consistent with 2 CFR 200.318(c) that is applicable to all activities funded with the SLFRF award. Pursuant to this requirement, decisions concerning SLFRF funds must be free of undisclosed personal or organizational conflicts of interest, both in fact and in appearance. Recipients may avoid conflicts of interest in providing assistance to nonprofits or making subrecipient awards by, *inter alia*, making aid available to nonprofits on generally applicable terms or utilizing a competitive grant process, respectively. A recipient may not use control over SLFRF funds for their own private gain. Furthermore, no employee, officer, or agent may participate in the selection, award, or administration of a contract supported by a federal award if he or she has a real or apparent conflict of interest.

Public Comment: Definition of Nonprofit: Treasury also received several requests to expand the definition of nonprofits so that other tax-exempt entities (e.g., 501(c)(7)s, 501(c)(9)s, 501(c)(19)s, nonprofits with "historical

²³¹ Note, this response is meant to clarify the difference between nonprofits as beneficiaries and nonprofits as subrecipients. It is not meant to limit the types of relationships that a recipient may enter into with a nonprofit as permitted under the Uniform Guidance.

²³² See sections 602(c)(3) and 603(c)(3) of the Social Security Act. See also Section 401 of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11360(17)), which defines a "private nonprofit organization."

significance”) could be eligible for direct assistance as beneficiaries.

Treasury Response: Definition of Nonprofit: The final rule expands the definition of nonprofits to mean 501(c)(3) organizations and 501(c)(19) organizations.²³⁴ The 501(c)(3) classification includes a wide range of organizations with varying charitable or public service-oriented goals (e.g., housing, food assistance, job training). As discussed above, these nonprofit organizations often experienced hardship due to increased needs for services combined with decreased donations and other sources of funding. In response to comments, Treasury has expanded the definition of nonprofit to include 501(c)(19) organizations, which includes veterans’ organizations, to provide recipients more flexibility and in alignment with the definition of nonprofit adopted by the CARES Act, wherein 501(c)(3)s and 501(c)(19)s were eligible for assistance.²³⁵

Public Comment: Reporting Requirements: One commenter asked Treasury to clarify if nonprofits that receive direct assistance as beneficiaries are required to comply with guidelines and reporting requirements.

Treasury Response: Reporting Requirements: Nonprofits that receive direct assistance as beneficiaries are not subrecipients under SLFRF and are therefore not required to comply with SLFRF reporting requirements. However, the recipient must comply with SLFRF reporting requirements, which would require reporting obligations and expenditures for assistance to nonprofits. The recipient may also choose to establish other forms of reporting or accountability as a part of the recipient’s direct assistance program.

A nonprofit entity that receives a transfer from a recipient is a subrecipient. Per the Uniform Guidance, subrecipients must adhere to the same requirements as recipients. Therefore, a nonprofit subrecipient may only receive funds to carry out an eligible use of SLFRF funds and must comply with any reporting and compliance requirements. Note that recipients are ultimately responsible for reporting information to Treasury and must collect any necessary

information from their subrecipients to complete required reporting.

d. Aid to Impacted Industries

The interim final rule allowed for “aid to tourism, travel, and hospitality, and other impacted industries” that responds to the negative economic impacts of the COVID–19 public health emergency. In designating other impacted industries, Treasury specified that recipients should consider the “extent of the economic impact as compared to tourism, travel, and hospitality” and “whether impacts were due to the COVID–19 pandemic, as opposed to longer-term economic or industrial trends unrelated to the pandemic.”²³⁶ Treasury identified declines in employment and revenue as possible metrics to compare the economic impact on a particular industry relative to the tourism, travel, and hospitality industries.

Treasury further provided that aid should be limited to businesses, attractions, business districts, and Tribal development districts²³⁷ that were operating prior to the pandemic and affected by required closures and other efforts to contain the pandemic. Examples of eligible aid include assistance to implement COVID–19 mitigation and infection prevention measures, aid to support safe reopening of businesses in these industries, as well as aid for a planned expansion or upgrade of tourism, travel, and hospitality facilities delayed due to the pandemic. The interim final rule and Treasury’s subsequent Compliance and Reporting Guidance also required governments to publicly report assistance provided to private-sector businesses under this eligible use and maintain records of their assessments to facilitate transparency and accountability.

Reorganization and Cross-References: As detailed above, Treasury has re-categorized some uses of funds in the final rule to provide greater clarity. In the interim final rule, aid to impacted industries to implement COVID–19 mitigation and prevention strategies was categorized under Aid to Impacted Industries; the final rule addresses these items under the section COVID–19 Mitigation and Prevention in Public Health. Recipients should also be aware of the difference between beneficiaries

of assistance and subrecipients when working with impacted industries; for further information, see section Distinguishing Subrecipients versus Beneficiaries.

Designating an Impacted Industry

Public Comment: Many commenters requested greater clarity on how to designate “other impacted industries” within their jurisdiction. Commenters requested greater specificity as to the metrics used to measure impact, with some suggesting metrics such as the change in the size of an industry’s workforce due to the pandemic, as well as consideration of whether and why employees are choosing to return to work at slower rates in certain industries. One commenter asked if this meant nearly every industry was “disproportionately impacted.” Some commenters encouraged Treasury to focus on industries most negatively impacted by the pandemic, including disallowing across-the-board business subsidies to businesses that were not negatively impacted by the pandemic and saw revenue or profit growth. Other commenters asked for flexibility for recipients to determine impacted industries based on their local knowledge of the economic landscape.

Treasury Response: The final rule maintains the interim final rule’s approach of allowing recipients to designate impacted industries outside the travel, tourism, and hospitality industries, and, in response to comments, provides greater clarity as to how recipients may designate such impacted industries.

Sections 602(c)(1)(A) and 603(c)(1)(A) recognize that the tourism, travel, and hospitality industries are severely negatively impacted by the pandemic. Under the final rule, recipients may provide eligible aid (described in further detail herein) to the tourism, travel, and hospitality industries. Treasury considers Tribal development districts, which are commercial centers for Tribal hospitality, gaming, tourism, and entertainment and can include Tribal enterprises, as part of the tourism, travel, and hospitality industries that have been severely hit by the pandemic. Therefore, Treasury reaffirms that Tribal development districts are considered impacted industries and recipients may provide eligible aid to them.

To identify other industries comparably impacted to the tourism, travel, and hospitality industries, recipients should undertake a two-step process: Identifying an industry and determining whether that industry is comparably impacted.

²³⁴ § 35.3 Definitions.

²³⁵ Treasury considered expanding the definition of nonprofit to include 501(c)(6) organizations, as Congress later did in the Coronavirus Response and Consolidated Appropriations Act of 2021, but ultimately decided to retain the original CARES Act definition. To the extent impacted by the pandemic, 501(c)(6) organizations may be eligible to receive funds to support eligible uses that align with their overall purpose (e.g., tourism promotion in aid of an impacted industry).

²³⁶ Coronavirus State and Local Fiscal Recovery Funds, 86 FR at 26795.

²³⁷ For a definition of “Tribal development districts,” please see FAQ 2.9 at the following: Coronavirus State and Local Fiscal Recovery Funds, Frequently Asked Questions, as of July 19, 2021; <https://home.treasury.gov/system/files/136/SLFRPFAQ.pdf>.

First, recipients should identify an industry to be assessed. In identifying this industry, the final rule provides recipients the flexibility to define its substantive or geographic scope.²³⁸ Recipients may identify a broad sector that encompasses a number of sub-industries, or they may identify a specific sub-industry to be assessed. For example, a recipient may identify “personal care services” as an industry, or they may identify a more specific category within the “personal care services” industry (e.g., barber shops) as an industry. In defining the industry, Treasury encourages recipients to define narrow and discrete industries eligible for aid. Recipients are not required to follow, but may consider following, industry classifications under the North American Industry Classification System (NAICS). Treasury notes that the larger and more diverse the sector, the more difficult it may be to demonstrate that the larger and less specific sector is negatively impacted in the same way given the scale and diversity of businesses within it.

State or territory recipients may also define a constituent industry with greater geographic precision than state or territory-wide. For example, a state may identify a particular industry in a certain region of the state that was negatively impacted by the pandemic, even if the same industry in the rest of the state did not see a meaningful negative economic impact from the pandemic. State recipients oversee large and diverse industries, sometimes with differences in economic activity between geographic regions. Allowing greater geographic precision allows recipients to target aid to those that need it most, ensuring that state averages do not conceal hard-hit areas in their state.

Second, to determine whether the industry is “impacted,” recipients should compare the negative economic impacts of the public health emergency on the identified industry to the impacts observed on the travel, tourism, and hospitality industries.

1. *Simplified test.* An industry is presumed to be impacted if the industry experienced employment loss of at least 8 percent.

Specifically, a recipient should compare the percent change in the

number of employees of the recipient’s identified industry and the national Leisure & Hospitality sector in the three months before the pandemic’s most severe impacts began (a straight three-month average of seasonally-adjusted employment data from December 2019, January 2020, and February 2020) with the latest data as of the final rule release (a straight three-month average of seasonally-adjusted employment data from September 2021, October 2021, and November 2021).²³⁹ The national Leisure & Hospitality sector largely represents the national travel, tourism, and hospitality industries enumerated in the statute. According to the Bureau of Labor Statistics, employment has fallen by approximately 8 percent for the national Leisure & Hospitality sector when comparing the most recent three-month period available as of the date of adoption of the final rule to the three-month period immediately before the public health emergency. Therefore, if the identified industry has suffered an employment loss of at least 8 percent, the final rule presumes the industry to be an “impacted industry.”

For parity and simplicity, smaller recipients without employment data that measure industries in their specific jurisdiction may use data available for a broader unit of government for this calculation (e.g., a county may use data from the state in which it is located; a city may use data for the county, if available, or state in which it is located) solely for purposes of determining whether a particular industry is an impacted industry.

2. *If simplified test is not met.* If an industry does not satisfy the test above or data are unavailable, the recipient may still designate the industry as impacted by demonstrating the following:

a. The recipient can show that the totality of relevant major economic indicators demonstrate that the industry is experiencing comparable or worse economic impacts as the national tourism, travel, and hospitality industries at the time of the publication of the final rule, and that the impacts were generally due to the COVID-19 public health emergency. Example economic indicators include gross output, GDP, net profits, employment levels, and projected time to restore employment back to pre-pandemic levels. Recipients may rely on available economic data, government research

publications, research from academic sources, and other quantitative sources for this determination.

If quantitative data is unavailable, the recipient can rely on qualitative data to show that the industry is experiencing comparable or worse economic impacts as the national tourism, travel, and hospitality industries, and the impacts were generally due to the COVID-19 public health emergency. Recipients may rely on sources like community interviews, surveys, and research from relevant state and local government agencies.

As the public health emergency and economic recovery evolves, recipients should assess how industry impacts shift over time. Impacted industries may recover in a short period of time and no longer face a negative economic impact; in those circumstances, the recipient should ensure that the extent and length of aid is reasonably proportional to the negative economic impact that is experienced, as detailed further below and in section General Provisions: Structure and Standards. Recipients may add to their list of impacted industries by showing that the negative economic impacts to the industry at the time of the designation are comparable to the negative economic impacts to the national tourism, travel, and hospitality sectors as of the date of the final rule adoption, as detailed herein.

Eligible Aid

Public Comment: Commenters asked for further clarification as to the definition of eligible aid to an impacted industry, with many requesting that a broad range of aid be eligible. Examples of aid that recipients asked to be considered eligible include aid to businesses to cover COVID-19 mitigation costs and planned renovations or improvements to tourism, travel, and hospitality facilities, as well as marketing and in-kind incentives to attract visitors. Commenters also asked about the eligibility of aid to broadly cover losses incurred by facilities such as convention centers and hotels due to the pandemic’s economic impact. Commenters also asked for further clarification about the requirements related to private-sector reporting. Further, some commenters asked for clarification about eligible aid to impacted industries owned and operated by Tribal governments, including for Tribal construction projects that have been delayed due to the pandemic’s economic impacts, and for deference to Tribal determinations of negative economic impacts.

²³⁸ Once an industry is designated as impacted, aid should be generally broadly available to businesses in the industry that qualify. Recipients should document how they defined the scope of their industry and how they determined that the industry was impacted. For states and territories, this includes documenting their justification for defining a constituent industry with greater geographic precision than state or territory-wide.

²³⁹ National Leisure & Hospitality supersector employment data can be found on the U.S. Bureau of Labor Statistics website: U.S. Bureau of Labor Statistics, Leisure and Hospitality, <https://www.bls.gov/iag/tgs/iag70.htm> (last visited December 7, 2021).

Treasury Response: In response to commenters' requests for clarification on eligible aid, 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.

First, recipients should identify a negative economic impact, *i.e.*, an economic harm, that is experienced by businesses in the impacted industry. Second, recipients should select a response that is designed to address the identified economic harm resulting from or exacerbated by the public health emergency. Responses must also be related and reasonably proportional to the extent and type of harm experienced; uses that bear no relation or are grossly disproportionate to the type or extent of harm experienced would not be eligible uses. Recipients should consider the further discussion of this standard provided in the sections Standards: Designating a Public Health Impact and Standards: Designating a Negative Economic Impact.

These responses may take the form of direct spending by recipients to promote an industry or support for businesses within an "impacted" industry that experienced a negative economic impact (*e.g.*, through a grant program). Examples of eligible responses include:

- Aid to mitigate financial hardship due to declines in revenue or profits by supporting payroll costs and compensation of returning employees for lost pay and benefits during the COVID-19 pandemic, as well as support of operations and maintenance of existing equipment and facilities, such as rent, leases, and utilities;

- Aid for technical assistance, counseling, and other services to assist with business planning needs; and

- Aid to implement COVID-19 mitigation and infection prevention measures, such as vaccination or testing programs, is broadly eligible for many types of entities, including travel, tourism, hospitality, and other impacted industries. Recipients providing aid to impacted industries for COVID-19 public health measures should review the section Assistance to Businesses to Implement COVID-19 Strategies in Public Health, which describes types of eligible uses of funds in this category.

To address the identified harms, responses (*e.g.*, aid through a grant program) should be generally broadly available to all businesses within the impacted industry to avoid the risk of self-dealing, preferential treatment, and

conflicts of interest.²⁴⁰ Treasury encourages recipients to design aid programs such that funds are first used for operational expenses that are generally recognized as ordinary and necessary for the recipient's operation, such as payroll, before being used on other types of costs. As noted in the section General Standards: Structure and Standards, uses of funds that do not respond to the negative economic impacts of the pandemic, such as excessive compensation to employees, is ineligible.

The final rule maintains the interim final rule's requirement that aid may only be considered responsive to the negative economic impacts of the pandemic if it supports businesses, attractions, and Tribal development districts operating prior to the pandemic and affected by required closures and other efforts to contain the pandemic. Further, to facilitate transparency and accountability, the final rule maintains the interim final rule's requirement that recipients publicly report assistance provided to private-sector businesses under this eligible use, including tourism, travel, hospitality, and other impacted industries, and its connection to negative economic impacts of the public health emergency. Recipients also should maintain records to support their assessment of how businesses receiving assistance were affected by the negative economic impacts of the public health emergency and how the aid provided responds to these impacts.

Recipients providing aid to impacted industries for capital expenditures (*i.e.*, expenditures on property, facilities, or equipment), including Tribal governments providing aid to Tribal development districts, should also review the section Capital Expenditures in General Provisions: Other, which describes eligibility standards that are applicable to these expenditures, depending on the type of aid. Recipients providing assistance in the form of loans should review the section Treatment of

²⁴⁰ As part of accepting the Award Terms and Conditions for SLFRF, each recipient agreed to maintain a conflict-of-interest policy consistent with 2 CFR 200.318(c) that is applicable to all activities funded with the SLFRF award. Pursuant to this policy, decisions concerning SLFRF must be free of undisclosed personal or organizational conflicts of interest, both in fact and in appearance. Recipients may avoid conflicts of interest in awarding aid to impacted industries by, *inter alia*, making aid available to businesses in the industry on generally applicable terms or utilizing a competitive grant process. A recipient may not use control over SLFRF for their own private gain. Furthermore, no employee, officer, or agent may participate in the selection, award, or administration of a contract supported by a federal award if he or she has a real or apparent conflict of interest.

Loans in Program Administration Provisions.

4. General Provisions: Other

As noted above, the final rule consolidates into a General Provisions section several types of uses of funds; in the interim final rule, the eligibility of these uses of funds was discussed within specific categories of eligible uses for public health and negative economic impacts. Treasury anticipates that this re-organization will enhance recipient clarity in assessing eligible uses of funds. These General Provisions apply across all uses of funds under public health and negative economic impacts.

Specifically, this section considers eligible uses for:

- *Public Sector Capacity and Workforce*, which includes several separate and non-mutually exclusive categories articulated in the interim final rule: public health and safety staff; rehiring state, local, and Tribal government staff; expenses for administering COVID-19 response programs; expenses to improve the efficacy of public health or economic relief programs; and administrative expenses caused or exacerbated by the pandemic. Treasury recognizes that these are closely related and frequently overlapping categories. The final rule treats them as a single purpose, supporting public sector capacity, and provides coordinated guidance on the standards and presumptions that apply to them.

- *Capital Expenditures*, which was addressed only under Public Health in the interim final rule. The final rule moves this expense to General Provisions and provides more clarity on the eligibility of capital expenditures across all aspects of the public health and negative economic impacts eligible use category.

- *Distinguishing Subrecipients versus Beneficiaries*, which describes the differences between these two categories. Recipient governments responding to the public health and negative economic impacts of the pandemic may provide assistance to beneficiaries or execute an eligible use of funds through a subrecipient; some types of entities (*e.g.*, nonprofits) could fit into either category depending on the specific purpose of the use of funds.

- *Uses Outside the Scope of this Category*, which addresses uses of funds that are ineligible or generally ineligible under this eligible use category in the interim final rule. These uses of funds remain ineligible under the final rule, but Treasury has re-categorized where they are addressed, as described below.

This section also addresses enumerated eligible uses proposed by commenters that Treasury has not incorporated into the final rule.

Recipients should also note that the Office of Management and Budget's (OMB) *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards* (commonly called the "Uniform Guidance") generally applies to SLFRF.

a. Public Sector Capacity and Workforce
Public Safety, Public Health, and Human Services Staff

Summary of Interim Final Rule: Under the interim final rule, funds may be used for payroll and covered benefits²⁴¹ for *public safety, public health, health care, human services, and similar employees*²⁴² of a recipient government, for the portion of the employee's time that is spent responding to COVID-19. For administrative convenience, the recipient may consider *public health and safety* employees to be entirely devoted to responding to COVID-19, and therefore their full payroll and covered benefits eligible to be covered, if the employee, or his or her operating unit or division, is "primarily dedicated" to responding to COVID-19, meaning that more than half of the employee, unit, or division's time is dedicated to responding to COVID-19. Recipients may consider other presumptions for assessing the extent to which an employee, division, or operating unit is responding to COVID-19. Recipients must periodically reassess their determination and maintain records to support their assessment, such as payroll records, attestations from supervisors or staff, or regular work product or

correspondence; recipients need not track staff hours. The interim final rule also posed a question on how long recipients should be able to use funds for staff responding to COVID-19 and what other measures or presumptions might Treasury consider to assess the extent to which public sector staff are engaged in COVID-19 response in an easily administrable manner.

Treasury also provided further guidance on the types of employees covered by this category of eligible use, specifically: "Public safety employees would include police officers (including state police officers), sheriffs and deputy sheriffs, firefighters, emergency medical responders, correctional and detention officers, and those who directly support such employees such as dispatchers and supervisory personnel. Public health employees²⁴³ would include employees involved in providing medical and other health services to patients and supervisory personnel, including medical staff assigned to schools, prisons, and other such institutions, and other support services essential for patient care (e.g., laboratory technicians, medical examiner, or morgue staff) as well as employees of public health departments directly engaged in matters related to public health and related supervisory personnel. Human services staff include employees providing or administering social services; public benefits; child welfare services; and child, elder, or family care, as well as others."

Public Comment: Measuring Time Spent on COVID-19 Response: Treasury received public comments on several components of this eligible use category. Many commenters argued that it poses an administrative burden to identify the extent to which staff are responding to COVID-19 and to maintain records to support that assessment. Largely citing administrative burden in assessing eligibility, several commenters recommended revisions to the administrative convenience that the full payroll and covered benefits for public health and safety staff "primarily dedicated" to responding to COVID-19 may be paid with SLFRF funds. Some commenters recommended presuming that all public health and safety staff are primarily dedicated to COVID-19 response, while others proposed that public health and safety workers who primarily serve QCTs or low- and moderate-income areas be presumed to be primarily dedicated to COVID-19

response, given the disproportionate impacts of the pandemic in those communities. Similarly, Tribal communities recommended that their public health staff be presumed eligible due to the disproportionate impact of the pandemic on their communities. Some commenters proposed that they be able to use the administrative convenience for staff outside of public health and safety that are responding to COVID-19 (i.e., to be able to pay the full payroll and covered benefits for any staff "primarily dedicated" to COVID-19 response).

Treasury Response: In the final rule, Treasury is maintaining the approach in the interim final rule, including elaborations issued in further guidance, but providing additional clarification on its application, including methods to apply the approach to minimize administrative burden. Treasury notes that recipients may assess the extent to which staff are dedicated to responding to COVID-19 through a variety of means, including establishing presumptions or assessing public health and safety staff at the division or operating unit level. For example, a recipient could consider the amount of time spent by employees in its public health department's epidemiology division in responding to COVID-19 and, if a majority of its employees are dedicated to responding to COVID-19, determine that the entire division is primarily dedicated to responding to COVID-19. Treasury also clarifies that recipients may use reasonable estimates to establish administrable presumptions; for example, a recipient could estimate, based on discussions with staff, the general share of time that employees in a specific role or type of position spend on COVID-19 related tasks and apply that share of time to all employees in that position.

Recipients are generally required to be able to support uses of SLFRF funds as eligible, including, in this instance, maintenance of records to support an assessment that public health and safety staff are primarily dedicated to responding to COVID-19. As noted above, recipients may use reasonable estimates to implement this provision. Recipients should maintain records on how they developed these estimates and need not track staff hours. Treasury notes that records retained can include payroll records (e.g., the number and type of staff in various positions), attestations from supervisors or staff (e.g., self-attestation of share of time spent on COVID-19), or regular work product or correspondence (e.g., calendars, email correspondence, documents, and other electronic

²⁴¹ In general, if an employee's wages and salaries are an eligible use of SLFRF funds, recipients may treat the employee's covered benefits as an eligible use of SLFRF funds. For purposes of SLFRF funds, covered benefits include costs of all types of leave (vacation, family-related, sick, military, bereavement, sabbatical, jury duty), employee insurance (health, life, dental, vision), retirement (pensions, 401(k)), unemployment benefit plans (federal and state), workers compensation insurance, and Federal Insurance Contributions Act (FICA) taxes (which includes Social Security and Medicare taxes). As described further in the section Deposits into Pension Funds in Restrictions on Use, that limitation on use does not apply to pension contributions that are part of regular payroll contributions for employees whose wages and salaries are an eligible use of SLFRF funds.

²⁴² Note that the interim final rule adapted prior guidance issued for CRF that described these four categories of employees; however, when listing the specific occupations or types of employees in each of these categories, the guidance collapses health care and public health into one category titled "public health." Therefore, the presumption described around public health employees also covers health care employees.

²⁴³ Note that this category encompasses both public health and health care employees; both are treated as public health employees for the purposes of this eligible use category.

records). Treasury anticipates that these types of records are generally retained in many government settings; recipients should also consult the Award Terms and Conditions for SLFRF funds for requirements on length of record retention. For example, a recipient could establish a reasonable presumption about the share of time that an employee, division, or operating unit is responding to COVID-19 and simply retain those employees' electronic records as a record to support their assessment.

Public Comment: Public Health and Safety Staff Primarily Dedicated to COVID-19 Response: Some commenters recommended expanding the administrative convenience for public health and safety staff primarily dedicated to COVID-19 response to further types of staff, to all public health and safety staff, or to public health and safety staff serving underserved areas.

Treasury Response: The interim final rule recognized that COVID-19 response continues to require substantial staff resources and provides an administrative convenience to make it relatively simpler to identify the eligibility of the types of workers—public health and safety workers—generally most involved in COVID-19 response. At the same time, many public health and safety workers perform roles unrelated to COVID-19; coverage of all roles would be overbroad compared to the workers responding to COVID-19 in actuality. For this reason, the final rule maintains the interim final rule's approach to permitting SLFRF funds to be used for public health and safety staff primarily dedicated to responding to COVID-19. Finally, to the extent that a greater proportion of public health and safety staff time is needed to respond to COVID-19 in disproportionately impacted communities, the "primarily dedicated" approach recognizes this increased need.

Public Comment: Eligible Types of COVID-19 Response: Some public commenters also sought further clarification on how to identify eligible types of "COVID-19 response." For example, commenters requested clarification on delineating COVID-19 response from general public health response and defining COVID-19 response for public safety employees.

Treasury Response: Treasury is clarifying that "responding to" COVID-19 entails work needed to respond to the public health or negative economic impacts of the pandemic, apart from the typical pre-pandemic job duties or workload of an employee in a comparable role, if one existed. For

example, responding to COVID-19 for a public safety worker may entail working in an emergency operations center to coordinate pandemic-related supply distribution, responding to an increased volume of 911 calls, or implementing COVID-19 prevention and mitigation protocols in a carceral setting.

Public Comment: Eligible Employees: Some commenters requested clarification on the types of eligible employees or expansion of eligible employees to include additional types of staff, including in behavioral health; administrative, management, or financial management positions; social services; morgue staff; and nonprofit staff supporting projects to undertake eligible uses of funds under SLFRF.

Treasury Response: Treasury provided further guidance on eligible types of employees following the interim final rule, which expressly included social services and morgue staff, and incorporates that guidance into the final rule. In addition, Treasury is clarifying that public health "employees involved in providing medical and other health services to patients and supervisory personnel" includes behavioral health services as well as physical health services.

Treasury also is clarifying that this provision only addresses employees of the recipient government responding to COVID-19. For discussion of eligible expenses to administer SLFRF, including eligible costs for subrecipients performing eligible activities on behalf of a recipient government, see section Administrative Expenses in Program Administration Provisions.

Finally, Treasury is clarifying that indirect costs for administrative, management, and financial management personnel to support public health and safety staff responding to COVID-19 are not permissible under this provision, given the relatively greater challenge of differentiating the marginal increase in staff time and workload due to pandemic response for indirect versus direct costs.

Public Comment: Time Period: Finally, some commenters made recommendations on the time period during which this eligible use should be available. Some commenters recommended eligibility begin before March 3, 2021, the period when Treasury's interim final rule permitted recipients to begin to incur costs using SLFRF funds; for discussion of this topic, see section Timeline for Use of SLFRF Funds in Program Administration Provisions. As noted above, Treasury also posed a question in the interim final rule asking for how long Treasury should maintain the

administrative convenience that SLFRF funds may be used for the full payroll and covered benefits of public health and safety staff primarily dedicated to COVID-19 response. Several commenters recommended that Treasury maintain this approach throughout the program or through December 31, 2024. Other commenters requested clarification on whether eligibility for this use of funds was tied to the length of the state of emergency or whether a jurisdiction has an active state of emergency.

Treasury Response: In the final rule, Treasury is clarifying that recipients will be permitted to fund the full payroll and covered benefits of public health and safety staff primarily dedicated to COVID-19 response throughout the period of performance for the SLFRF program, though recipients should periodically reassess their determination of primarily dedicated staff, including as the public health emergency and response evolves.

Government Employment and Rehiring Public Sector Staff

The interim final rule permitted use of funds for costs associated with rehiring state, local, and Tribal government staff in order to bolster the government's ability to effectively administer services. Specifically, recipients may pay for payroll, covered benefits, and other costs associated with the recipient increasing the number of its employees up to the pre-pandemic baseline, or the number of employees that the recipient government employed on January 27, 2020.

Public Comment: Many commenters requested greater flexibility and additional clarification on the provision's requirements, including the pre-pandemic baseline and re-hiring process. Some commenters requested that the final rule allow for hiring above the pre-pandemic baseline given historic underinvestment in the public sector workforce. Commenters suggested a number of adjustments to the pre-pandemic baseline, including adjusting based on population or revenue growth, while some recommended allowing recipients to set their own hiring levels. Others requested clarification on the definition of the baseline and the re-hiring process, including whether the pre-pandemic baseline referred to budgeted or filled positions and whether new hires had to fill the same roles as the previous hires. Commenters also asked whether recipients need to show if the reduction in number of employees was due to the pandemic in order to qualify for funding and requested that workers dedicated to

COVID-19 response be exempted from the calculation of number of employees.

Many commenters also requested an expanded set of eligible uses beyond restoring their workforce up to the pre-pandemic baseline. Commenters requested that funding be able to be used to avoid layoffs, provide back pay, retain employees through pay increases and other retention programs, or reimburse salaries and benefits already paid. Some commenters also requested clarification as to whether recipients can fund re-hired positions through the period of performance and on the definition of payroll and benefits. Other commenters requested preferential hiring for workers laid off, a strong commitment to equity, and a requirement that funds would not be used to pay for contract or temporary replacement workers during a labor dispute.

Treasury Response: The final rule allows for an expanded set of eligible uses to restore and support public sector employment. Eligible uses include hiring up to a pre-pandemic baseline that is adjusted for historic underinvestment in the public sector, providing additional funds for employees who experienced pay cuts or were furloughed, avoiding layoffs, providing worker retention incentives, and paying for ancillary administrative costs related to hiring.

Restoring pre-pandemic employment. In response to comments and recognizing underinvestment in public sector employment, the final rule expands the ability to use SLFRF funds to restore pre-pandemic employment. Treasury is also clarifying how, and the extent to which, recipients may use SLFRF funds to rehire public employees.

The final rule provides two options to restore pre-pandemic employment, depending on recipient's needs. 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 to 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.

To pursue the first option, recipients may use SLFRF funds to hire employees for the same positions that existed on January 27, 2020 but that were unfilled or eliminated as of March 3, 2021, without undergoing further analysis. For

these employees, recipients may use SLFRF funds for payroll and covered benefit costs that are obligated by December 31, 2024 and expended by December 31, 2026, consistent with the Uniform Guidance's Cost Principles at 2 CFR part 200 Subpart E. This option provides administrative simplicity for recipients that would simply like to restore pre-pandemic positions and would not like to hire above the pre-pandemic baseline.

To pursue the second option, recipients should undergo the analysis provided below. In short, this option allows recipients to pay for payroll and covered benefits associated with the recipient increasing its number of budgeted full-time equivalent employees (FTEs) up to 7.5 percent above its pre-pandemic employment baseline, which adjusts for the continued underinvestment in state and local governments since the Great Recession. State and local government employment as a share of population in 2019 remained considerably below its share prior to the Great Recession in 2007, which presented major risks to recipients mounting a response to the COVID-19 public health emergency. The *adjustment factor* of 7.5 percent results from estimating how much larger 2019 state and local government employment would have needed to be for the share of state and local government employment to population in 2019 to have been back at its 2007 level and is intended to correct for this gap.

Recipients should complete the steps described below. Recipients may choose whether to conduct this analysis on a government-wide basis or for an individual department, agency, or authority.

- **Step One:** Identify the recipient's budgeted FTE level on January 27, 2020. This includes all budgeted positions, filled and unfilled. This is called the *pre-pandemic baseline*.

- **Step Two:** Multiply the *pre-pandemic baseline* by 1.075 (that is, 1 + *adjustment factor*). This is called the *adjusted pre-pandemic baseline*.

- **Step Three:** Identify the recipient's budgeted FTE level on March 3, 2021, which is the beginning of the period of performance for SLFRF funds. Recipients may, but are not required to, exclude FTEs dedicated to responding to the COVID-19 public health emergency.²⁴⁴ This is called the *actual number of FTEs*.

²⁴⁴ Recipients may determine that a portion of an FTE's time is dedicated to responding to the COVID-19 public health emergency. Further, for administrative convenience, the recipient may

- **Step Four:** Subtract the *actual number of FTEs* from the *adjusted pre-pandemic baseline* to calculate the number of FTEs that can be hired and covered by SLFRF funds.

Recipients may use SLFRF funds to cover payroll and covered benefit costs obligated by December 31, 2024, and expended by December 31, 2026, up to the number of FTEs calculated in Step Four, consistent with the Uniform Guidance's Cost Principles at 2 CFR part 200 Subpart E. Recipients may only use SLFRF funds for additional FTEs hired over the March 3, 2021 level of budgeted FTEs (*i.e.*, the *actual number of FTEs*); note again that recipients may choose whether to conduct the analysis of FTEs that can be covered by SLFRF funds on a government-wide basis or for an individual department, agency, or authority.

These FTEs must have begun their employment on or after March 3, 2021, which is the beginning of the period of performance. For administrative convenience, recipients do not need to demonstrate that the reduction in number of FTEs was due to the COVID-19 pandemic, as Treasury assumes the vast majority of employment reductions during this time were due to pandemic fiscal pressures on state and local budgets. Recipients do not need to hire for the same roles that existed pre-pandemic.

For illustration, consider a hypothetical recipient with 1,000 budgeted FTEs on January 27, 2020 (950 filled FTE positions and 50 unfilled FTE positions). The recipient's *pre-pandemic baseline* is 1000 FTEs; its *adjusted pre-pandemic baseline* is $1,000 * 1.075 = 1075$ FTEs. Now, assume that on March 3, 2021, the recipient had 800 budgeted FTEs in total (795 filled FTE positions and 5 unfilled FTE positions), with 50 FTEs primarily dedicated to responding to the COVID-19 public health emergency. The recipient would have the option of using either 800 FTEs or 750 FTEs as its *actual number of FTEs* for the calculation; assuming it chooses the lower number, it would be able to fund up to 325 FTEs with SLFRF funds (that is, $1,075 - 750 = 325$ FTEs).

consider public health and safety FTEs to be entirely devoted to mitigating or responding to the COVID-19 public health emergency if the FTE, or his or her operating unit of division, is primarily dedicated to responding to the COVID-19 public health emergency. Recipients may also consider other presumptions for assessing the extent to which an FTE, 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.

Specifically, the recipient would be able to use SLFRF to fund payroll and covered benefits for up to 325 FTEs that begin their employment on or after March 3, 2021, for costs obligated by December 31, 2024, and expended by December 31, 2026, consistent with the Uniform Guidance's Cost Principles, as long as SLFRF funds are used for additional FTEs hired over the recipient's 750 FTE level (which is its March 3, 2021 budgeted FTE level).

In hiring new employees, the final rule encourages recipients to ensure a diverse workforce. The final rule also prohibits recipients from using funds to temporarily fill positions during a labor dispute, as this would not constitute responding to the public health or negative economic impacts of the pandemic. Further, recipients must ensure that its hiring practices do not violate conflict-of-interest policies.²⁴⁵ Total compensation for a hired employee that is substantially in excess of typical compensation for employees of their experience and tenure within the recipient's government, without a corresponding business case, may indicate a potential conflict-of-interest in fact or appearance.

Providing additional funding for employees who experienced pay cuts and furloughs. In recognition of the economic hardship caused by pay cuts and furloughs, additional funds may be provided to employees who experienced pay cuts or were furloughed since the onset of the pandemic on January 27, 2020. Recipients must be able to substantiate that the pay cut or furlough was substantially due to the public health emergency or its negative economic impacts (e.g., fiscal pressures on state and local budgets) and should document their assessment. As a reminder, this additional funding must be reasonably proportional to the negative economic impact of the pay cut or furlough on the employee, which would include taking into account unemployment insurance (UI) benefits that a furloughed employee may have received during the furloughed period. Treasury presumes that additional funds beyond the difference in pay had the

employee not received a pay cut or been furloughed would not be reasonably proportional.

Recipients may also provide premium pay to certain employees, as detailed further in section Premium Pay.

Avoiding layoffs. Funds may be used to maintain current compensation levels, with adjustments for inflation, in order to prevent layoffs that would otherwise be necessary. Recipients must be able to substantiate that layoffs were likely in the absence of SLFRF funds and would be substantially due to the public health emergency or its negative economic impacts (e.g., fiscal pressures on state and local budgets) and should document their assessment.

Retaining workers. Funds may be used to provide worker retention incentives, which are designed to persuade employees to remain with the employer as compared to other employment options. Recipients must be able to substantiate that the employees were likely to leave employment in the absence of the retention incentive and should document their assessment. For example, a recipient may determine that a retention bonus is necessary based on the presence of an alternative employment offer for an employee.

All worker retention incentives must be narrowly tailored to need and should not exceed incentives traditionally offered by the recipient or compensation that alternative employers may offer to compete for the employees. Further, because retention incentives are intended to provide additional incentive to remain with the employer, they must be entirely additive to an employee's regular rate of wages and other remuneration and may not be used to reduce or substitute for an employee's normal earnings. Treasury will presume that retention incentives that are less than 25 percent of the rate of base pay for an individual employee or 10 percent for a group or category of employees are reasonably proportional to the need to retain employees, as long as the other requirements are met.

Ancillary administrative costs. Funds may be used to pay for ancillary administrative costs associated with administering SLFRF-funded hiring and retention programs detailed above, including costs to publish job postings, review applications, and onboard and train new hires. For additional information on administrative expenses, see section Administrative Expenses in Program Administration Provisions.

Effective Service Delivery: Administrative Expenses

The interim final rule provided that funds could be used for: "Expenses to improve efficacy of public health or economic relief programs: Administrative costs associated with the recipient's COVID-19 public health emergency assistance programs, including services responding to the COVID-19 public health emergency or its negative economic impacts, that are not federally funded." In the final rule, Treasury is clarifying that there are several categories of eligible administrative expenses.

First, recipients may use funds for administrative costs to improve the efficacy of public health or economic relief programs through tools like program evaluation, data analysis, and targeted consumer outreach (see section Effective Service Delivery: Program Evaluation, Data, and Outreach).

Second, recipients may use funds for administrative costs associated with programs to respond to the public health emergency and its negative economic impacts, including programs that are not funded by SLFRF or not federally funded. In other words, Treasury recognizes that responding to the public health and economic impacts of the pandemic requires many programs and activities, some of which are not funded by SLFRF. Executing these programs effectively is a component of responding to the public health and negative economic impacts of the pandemic.

Finally, recipients may use funds for direct and indirect administrative costs for administering the SLFRF program and projects funded by the SLFRF program. See section Administrative Expenses in Program Administration Provisions for details on this eligible use category.

Effective Service Delivery: Program Evaluation, Data, and Outreach

The Supplementary Information of the interim final rule provided that state, local and Tribal governments may use SLFRF funds to improve the design and execution of programs responding to the COVID-19 pandemic and to improve the efficacy of programs addressing negative economic impacts. The interim final rule included high-level guidance about how SLFRF funds could be used in this eligible use category, including the use of targeted consumer outreach, improvements to data or technology infrastructure, impact evaluations, and data analysis.

Since the publication of the interim final rule, Treasury has also released

²⁴⁵ As part of accepting the Award Terms and Conditions for SLFRF, each recipient agreed to maintain a conflict-of-interest policy consistent with 2 CFR 200.318(c)112 that is applicable to all activities funded with the SLFRF award. Pursuant to this policy, decisions concerning SLFRF must be free of undisclosed personal or organizational conflicts of interest, both in fact and in appearance. A recipient may not use control over SLFRF for their own private gain. Furthermore, no employee, officer, or agent may participate in the selection, award, or administration of a contract supported by a federal award if he or she has a real or apparent conflict of interest.

supplementary information on data analysis, evidence building, and program evaluation in the Compliance and Reporting Guidance.

Public Comment: Treasury received positive comments about the opportunity to invest in data and technology upgrades with SLFRF funds. For example, one commenter noted that investing in technology for better connectivity, coupled with software and hardware upgrades, will allow the workforce to be more productive. Treasury also received comments seeking clarification on using funds for investments in data and technology, including whether upgrading government websites to improve community outreach and investing in technologies that support social distancing were eligible uses.

Treasury Response: Governments with high capacity to use data and evidence to administer programs are more likely to be responsive to the needs of their community, more transparent about their community impact, and more resilient to emergencies such as the pandemic and its economic impacts.²⁴⁶ Treasury recognizes that collecting high-quality data and developing community-driven, evidence-based programs requires resources to hire and build the capacity of staff, adopt new processes and systems, and use new technology and tools in order to effectively develop, execute, and evaluate programs. As such, Treasury is clarifying that recipients may use SLFRF funds toward the following non-exhaustive list of uses to address the data, evidence, and program administration needs of recipients. Additional information may be provided in the Compliance and Reporting Guidance.

- **Program evaluation and evidence resources** to support building and using evidence to improve outcomes, including development of Learning Agendas²⁴⁷ to support strategic evidence building, selection of evidence-based interventions, and program evaluations including impact evaluations (randomized control trials

and quasi-experimental designs) as well as rapid-cycle evaluations, process or implementation evaluations, outcome evaluations, and cost-benefit analyses. Recipients are encouraged to undertake rigorous program evaluations when practicable, assess the impact of their programs by beneficiary demographics (including race, ethnicity, gender, income, and other relevant factors), and engage with community stakeholders (including intended beneficiaries) when developing Learning Agendas and designing evaluations to ensure that programmatic, cultural, linguistic, and historical nuances are accurately and respectfully addressed.

Recipients are also encouraged to use relevant evidence Clearinghouses,²⁴⁸ among other sources, to assess the level of evidence for their interventions and identify evidence-based models that could be applied in their jurisdiction (meaning models with strong or moderate evidence; see Compliance and Reporting Guidance for details on these terms).

- **Data analysis resources** to gather, assess, and use data for effective policy-making and real-time tracking of program performance to support effective implementation of SLFRF-funded programs and programs that respond to the public health emergency and its negative economic impacts, or which households, small businesses, or impacted industries are accessing during the pandemic that are funded by other sources. These resources include but are not limited to data gathering, data cleaning, data analysis, data infrastructure, data management, data sharing, data transparency, performance management, outcomes-based budgeting, outcomes-based procurement, and other data needs. Treasury encourages the disaggregation of data to identify disparate program impacts and the use of cross-jurisdictional data sharing to better measure and implement government programs.

²⁴⁶ Evidence Clearinghouses are databases of research in particular program areas. Frequently these Clearinghouses identify evidence-based programs, the strength of the evidence for those programs, and provide contextual or supporting information in easy to understand formats. Many federal departments have developed rigorous and helpful Clearinghouses that cover a wide range of uses enumerated in this final rule as well as other programs that may be responsive to public health or negative economic impacts of the pandemic. For more information on Clearinghouses, please see the Compliance and Reporting Guidance: U.S. Department of the Treasury, Recipient Compliance and Reporting Responsibilities, as of November 5, 2021; <https://home.treasury.gov/policy-issues/coronavirus/assistance-for-state-local-and-tribal-governments/state-and-local-fiscal-recovery-funds/recipient-compliance-and-reporting-responsibilities>.

- **Technology infrastructure resources** to improve access to and the user-experience of government information technology systems, including upgrades to hardware and software as well as improvements to public-facing websites or to data management systems, to increase public access and improve public delivery of government programs and services (including in the judicial, legislative, or executive branches).

- **Community outreach and engagement resources** to support the gathering and sharing of information in ways that improve equity and effective implementation of SLFRF-funded programs and programs that respond to the public health emergency and its negative economic impacts, or which households, small businesses, or impacted industries are accessing during the pandemic that are funded by other sources. These methods include but are not limited to community meetings, online surveys, focus groups, human-centered design activities, behavioral science techniques, and other community engagement tools.

- **Capacity building resources** to support using data and evidence in designing, executing, and evaluating programs, including hiring public sector staff, contractors, academics, consultants, and others with expertise in evaluation, data, technology, and community engagement as well as technical assistance support for public sector staff, staff of subrecipients, and community partners to support effective implementation of SLFRF-funded programs and programs that respond to the public health emergency and its negative economic impacts, or which households, small businesses, or impacted industries are accessing during the pandemic that are funded by other sources.

Administrative Needs Caused or Exacerbated by the Pandemic

As described in guidance and the interim final rule, SLFRF funds may be used to address administrative needs of recipient governments that were caused or exacerbated by the pandemic. Guidance following the interim final rule included several examples of this, for example, uses of funds to address backlogs resulting from pandemic-related shutdowns (e.g., backlogs in court systems).²⁴⁹ This also includes

²⁴⁹ See FAQ 2.19, Coronavirus State and Local Fiscal Recovery Funds, Frequently Asked Questions, as of July 19, 2021; <https://home.treasury.gov/system/files/136/SLFRPFAQ.pdf>. In the case of courts specifically, this includes “implementing COVID-19 safety measures to facilitate court operations, hiring additional court staff or attorneys to increase speed of case

²⁴⁶ Results for America, Invest in What Works State Standard of Excellence (August 2020), https://2020state.results4america.org/2020_State-Standard-of-Excellence.pdf.

²⁴⁷ Learning Agendas are systematic plans to identify, prioritize, answer important questions about programs and policies using analytic techniques that are appropriate to the type of question asked. For more information on learning agendas, please see OMB Memorandum M-19-23, available at: <https://www.whitehouse.gov/wp-content/uploads/2019/07/M-19-23.pdf> and OMB Memorandum M-21-27, available at: <https://www.whitehouse.gov/wp-content/uploads/2021/06/M-21-27.pdf>.

using funds for increased repair or maintenance needs to respond to significantly greater use of public facilities during the pandemic (e.g., increased use of parks resulting in damage or increased need for maintenance). Some commenters expressed support for the ability to use funds for these purposes. Treasury is maintaining these enumerated eligible uses in the final rule and clarifying that capital expenditures such as technology infrastructure to adapt government operations to the pandemic (e.g., video-conferencing software, improvements to case management systems or data sharing resources), reduce government backlogs, or meet increased maintenance needs are eligible.

b. Capital Expenditures

The interim final rule expressly permitted use of funds for a limited number of capital expenditures that mostly pertained to COVID-19 prevention and mitigation. These included capital investments in public facilities to meet pandemic operational needs, such as physical plant improvements to public hospitals and health clinics; adaptations to public buildings to implement COVID-19 mitigation tactics; ventilation improvements in congregate settings, health care settings, or other key locations; assistance to small businesses and nonprofits and aid to impacted industries to implement COVID-19 prevention or mitigation tactics, such as physical plant changes to enable social distancing. For disproportionately impacted populations and communities, the interim final rule also expressly permitted development of affordable housing to increase the supply of affordable and high-quality living units.

Public Comment: Many commenters supported the interim final rule's allowance of capital expenditures in facilities to meet pandemic operational needs but requested that the final rule explicitly allow for a broader range of capital expenditures. Commenters expressed an interest in investing in equipment, real property, and facilities that they argued will yield lasting benefits beyond the SLFRF period of performance. Some commenters stated that the approach in the interim final rule limited the vast majority of capital expenditures to governments that experienced revenue loss under Sections 602(c)(1)(C) and 603(c)(1)(C) and that this approach may prevent some governments from fully meeting the needs of their residents. A few

commenters argued that Treasury should limit use of funds on capital expenditures not related to addressing a direct pandemic harm, such as general economic development or workforce development, and some expressed support for generally limiting capital expenditures to those that address the needs of low-income communities and communities of color.

Many commenters requested that capital expenditures related to direct COVID-19 public health response be included as enumerated eligible uses. The requested types of expenditures include improvements and construction of hospitals and health clinics (including behavioral health clinics), as well as other health-related infrastructure improvements, such as improvements to medical equipment or public health information technology. These commenters stated that investments in health and public health systems are vital to ensuring critical infrastructure necessary to respond to continued impacts of COVID-19 or to address disparities in health, due to lack of access to health care, that contributed to disproportionate impacts of COVID-19 on some communities. Further, some commenters requested that construction or improvements of emergency management and public safety facilities be deemed eligible, citing that some of these sites serve as remote vaccination sites or are otherwise crucial to the pandemic public health response.

Commenters also requested use of funds for capital expenditures that support community needs apart from health care, such as new construction or improvements to schools, affordable housing (beyond presumed disproportionately impacted communities), childcare facilities, and community centers; some suggested that all types of projects permissible under the Community Development Block Grant Program should be eligible both for policy and administrability reasons. Further, some commenters also asked for clarification as to whether parks and recreational facilities are eligible if built in certain disproportionately impacted areas, as well as public transportation infrastructure.

Finally, some commenters also requested use of funds for capital expenditures in government administration buildings, such as public courthouses, as well as technology infrastructure that would allow for remote delivery of public benefits. Others also asked about whether funds could be used to renovate vacant business district buildings or commercial spaces to spur economic recovery.

Treasury Response: Capital expenditures, in certain cases, can be appropriate responses to the public health and economic impacts of the pandemic, in addition to programs and services. Like other eligible uses of SLFRF funds in this category, capital expenditures should be a related and reasonably proportional response to a public health or negative economic impact of the pandemic. The final rule clarifies and expands how SLFRF funds may be used for certain capital expenditures, including criteria and documentation requirements specified in this section, as applicable.

Treasury provides presumptions and guidelines for capital expenditures that are enumerated earlier in sections Public Health, Negative Economic Impacts, and General Provisions: Other under the Public Health and Negative Economic Impact eligible use category ("enumerated projects"), along with capital expenditures beyond those enumerated by Treasury. In addition to satisfying the two-part framework in Standards: Designating a Public Health Impact and Standards: Designating a Negative Economic Impact for identifying and designing a response to a pandemic harm, Treasury will require projects with total expected capital expenditure costs of \$1 million or greater to undergo additional analysis to justify their capital expenditure. Increased reporting requirements will be required for projects that are larger in size, as well as projects that are not enumerated as eligible by Treasury, with certain exceptions for Tribal governments discussed below. Smaller projects with total expected capital expenditures below \$1 million will not be required to undergo additional analysis to justify their capital expenditure, as such projects will be presumed to be reasonably proportional, provided that they are responding to a harm caused or exacerbated by the public health emergency. These standards and documentation requirements are designed to minimize administrative burden while also ensuring that projects are reasonably proportional and supporting Treasury's risk-based approach to overall program management and monitoring.

This section provides (1) an overview of general standards governing capital expenditures; (2) presumptions on capital expenditures, which help guide recipients in determining whether the expenditure meets the standards and the associated documentation requirements; and (3) additional standards and requirements that may apply.

resolution, and other expenses to expedite case resolution are eligible uses."

Overview of General Standards

In considering whether a capital expenditure would be eligible under the public health and negative economic impacts eligible use category, recipients must satisfy the requirements for all uses under the public health and negative economic impacts eligible use category, including identifying an impact or harm and designing a response that addresses or responds to the identified impact or harm. Responses must be reasonably designed to benefit the individual or class that experienced the impact or harm and must be related and reasonably proportional to the extent and type of impact or harm. Recipients should consult further details on this standard provided in the sections Standards: Designating a Public Health Impact and Standards: Designating a Negative Economic Impact under General Provisions: Structure and Standards.

In addition to the framework described above, for projects with total expected capital expenditures of \$1 million or greater, recipients must complete and meet the substantive requirements of a Written Justification for their capital expenditure, except for Tribal governments as discussed below. This Written Justification helps clarify the application of this interpretive framework to capital expenditures, while recognizing that the needs of communities differ. In particular, this justification reflects the fact that the time required for a large construction project may make capital expenditures less responsive to pandemic-related needs relative to other types of responses. In addition, as discussed in section Timeline for Use of SLFRF Funds of this Supplemental Information, SLFRF funds must be obligated by December 31, 2024 and expended by December 31, 2026. Capital expenditures may involve long lead-times, and the Written Justification may support recipients in analyzing proposed capital expenditures to confirm that they conform to the obligation and expenditure timing requirements. Further, such large projects may be less likely to be reasonably proportional to the harm identified. For example, construction of a new, larger public facility for the purpose of increasing the ability to socially distance generally would not be considered a reasonably proportional response compared to other less time- and resource-intensive options that may be available and would be equally or more effective. Other solutions, such as improvements in ventilation, could be made more quickly and are typically

more cost effective than construction of a new, larger facility. The needs of communities differ, and recipients are responsible for identifying uses of SLFRF funds that best respond to these needs. The Written Justification recognizes this while also establishing consistent documentation and reporting to support monitoring and compliance with the ARPA and final rule. Finally, the Written Justification also reflects the fact that infrastructure projects are generally not within scope of this eligible use category. See section Uses Outside the Scope of this Category in General Provisions: Other.

As noted above, Tribal governments are not required to complete the Written Justification for projects with total capital expenditures of \$1 million or greater. Tribal governments generally have limited administrative capacity due to their small size and corresponding limited ability to supplement staffing for short-term programs. In addition, Tribal governments are already subject to unique considerations that require additional administrative processes and administrative burden for Tribal government decision making, including capital expenditures. Tribal governments generally are subject to a jurisdictionally complex sets of rules and regulations in the case of improvements to land for which the title is held in trust by the United States for a Tribe (Tribal Trust Lands).²⁵⁰ This includes the requirement in certain circumstances to seek the input or approval of one or more federal agencies such as the Department of the Interior, which holds fee title of Tribal Trust Lands.

As a result of their limited administrative capacity and unique and complex rules and regulations applicable to Tribal governments operating on Tribal Trust Lands, Tribal governments would experience significant and redundant administrative burden by also being required to complete a Written Justification for applicable capital expenditures. While Tribal governments are not required to complete the Written Justification for applicable capital expenditures, the associated substantive requirements continue to apply, including the requirement that a capital expenditure must be reasonably designed to benefit the individual or class that experienced the identified impact or harm and must be related and reasonably proportional to the extent and type of impact or harm. Note that, as a general matter, Treasury may also

request further information on SLFRF expenditures and projects, including capital expenditures, as part of the regular SLFRF reporting and compliance process, including to assess their eligibility under the final rule.

The Written Justification should (1) describe the harm or need to be addressed; (2) explain why a capital expenditure is appropriate to address the harm or need; and (3) compare the proposed capital expenditure against alternative capital expenditures that could be made. The information required for the Written Justification reflects the framework applicable to all uses under the public health and negative economic impacts eligible use category, providing justification for the reasonable design, relatedness, and reasonable proportionality of the capital expenditure in response to the harm or impact identified.

1. *Description of harm or need to be addressed:* Recipients should provide a description of the specific harm or need to be addressed, and why the harm was exacerbated or caused by the public health emergency. When appropriate, recipients may provide quantitative information on the extent and type of the harm, such as the number of individuals or entities affected.

2. *Explanation of why a capital expenditure is appropriate:* Recipients should provide an independent assessment demonstrating why a capital expenditure is appropriate to address the specified harm or need. This should include an explanation of why existing capital equipment, property, or facilities would be inadequate to addressing the harm or need and why policy changes or additional funding to pertinent programs or services would be insufficient without the corresponding capital expenditures. Recipients are not required to demonstrate that the harm or need would be irremediable but for the additional capital expenditure; rather, they may show that other interventions would be inefficient, costly, or otherwise not reasonably designed to remedy the harm without additional capital expenditure.

3. *Comparison of the proposed capital expenditure against alternative capital expenditures:* Recipients should provide an objective comparison of the proposed capital expenditure against at least two alternative capital expenditures and demonstrate why their proposed capital expenditure is superior to alternative capital expenditures that could be made. Specifically, recipients should assess the proposed capital expenditure against at least two alternative types or sizes of capital expenditures that are potentially effective and reasonably

²⁵⁰ See 25 U.S.C. 5108.

feasible. Where relevant, recipients should compare the proposal against the alternative of improving existing capital assets already owned or leasing other capital assets. Recipients should use quantitative data when available, although they are encouraged to supplement with qualitative information and narrative description. Recipients that complete analyses with minimal or no quantitative data should provide an explanation for doing so.

In determining whether their proposed capital expenditure is superior to alternative capital expenditures, recipients should consider the following factors against each selected alternative.

a. *A comparison of the effectiveness of the capital expenditures in addressing the harm identified.* Recipients should generally consider the effectiveness of the capital expenditures in addressing the harm over the useful life of the capital asset and may consider metrics such as the number of impacted or disproportionately impacted individuals or entities served, when such individuals or entities are estimated to be served, the relative time horizons of the project, and consideration of any uncertainties or risks involved with the capital expenditure.

b. *A comparison of the expected total cost of the capital expenditures.* Recipients should consider the expected total cost of the capital expenditure required to construct, purchase, install, or improve the capital assets intended to address the public health or negative economic impact of the public health emergency. Recipients should include pre-development costs in their calculation and may choose to include information on ongoing operational costs, although this information is not required.

Recipients should balance the effectiveness and costs of the proposed capital expenditure against alternatives and demonstrate that their proposed capital expenditure is superior. Further, recipients should choose the most cost-effective option unless it substantively reduces the effectiveness of the capital investment in addressing the harm identified.

As an example, a recipient considering building a new diagnostic testing laboratory to enhance COVID-19 testing capacity may consider whether existing laboratories sufficiently meet demand for COVID-19 testing, considering the demand for test results (along with their turnaround time) as well as the impact of current testing

availability on the spread of COVID-19. Recipients may also consider other public health impacts of the level of diagnostic testing capacity, for example if insufficient capacity has decreased testing for other health conditions. The recipient may consider alternatives such as expanding existing laboratories or building a laboratory of a different size. In comparing the effectiveness of the capital expenditures, examples of factors that the recipient may consider include when the facilities will become operational and for how long; the daily throughput of COVID-19 tests; and the effect on minimizing delays in test results on the populations that such tests will serve. In comparing costs, the recipient may compare the total expected cost of the new laboratory (including costs of acquisition of real property, construction of the laboratory, and purchase of any necessary equipment needed to operationalize the lab), against the expected costs of expanding existing laboratories (whether by replacing current equipment with higher throughput devices or physically expanding space to accommodate additional capacity) or building a new laboratory of a different size, including by leasing property. As a reminder, recipients should only consider alternatives that are potentially effective and reasonably feasible.

Because, in all cases, uses of SLFRF funds to respond to public health and negative economic impacts of the pandemic must be related and reasonably proportional to a harm caused or exacerbated by the pandemic, some capital expenditures may not be eligible. For example, constructing a new correctional facility would generally not be a proportional response to an increase in the rate of certain crimes or overall crime as most correctional facilities have historically accommodated fluctuations in occupancy.²⁵¹ In addition, construction of new congregate facilities, which would generally be expected to involve expenditures greater than \$1 million, would generally not be a proportional response to mitigate or prevent COVID-19, because such construction is generally expected to be more costly than alternative approaches or capital expenditures that may be equally or more effective in decreasing spread of

the disease.²⁵² These alternatives include personal protective equipment, ventilation improvements, utilizing excess capacity in other facilities or wings, or temporary facility capacity expansions.

Large capital expenditures intended for general economic development or to aid the travel, tourism, and hospitality industries—such as convention centers and stadiums—are, on balance, generally not reasonably proportional to addressing the negative economic impacts of the pandemic, as the efficacy of a large capital expenditure intended for general economic development in remedying pandemic harms may be very limited compared to its cost.²⁵³

Presumptions on Capital Expenditures

For administrative convenience, the final rule provides presumptions on whether a Written Justification is required—and required to be submitted to Treasury through reporting—based on the type and size of the capital expenditure, as detailed in the table below.

As discussed above, Tribal governments are not required to complete the Written Justification for applicable capital expenditures, but the associated substantive requirements continue to apply, including the requirement that a capital expenditure must be reasonably designed to benefit the individual or class that experienced the identified impact or harm and must be related and reasonably proportional to the extent and type of impact or harm.

²⁵² For instance, the CDC has published detailed recommendations for nursing homes, long-term care facilities, and correctional and detention facilities, on infection prevention and control. Many of these recommendations are relatively low cost, such as proper use of PPE. In addition, increasing vaccination rates among nursing home staff is among the most important ways to decrease the spread of the disease. Centers for Disease Control and Prevention, Interim Infection Prevention and Control Recommendations to Prevent SARS-CoV-2 Spread in Nursing Homes (September 10, 2021), https://www.cdc.gov/coronavirus/2019-ncov/hcp/long-term-care.html#anchor_1631030153017.

²⁵³ For instance, researchers have found no consistent positive relationship between building sports facilities and local economic development. As Siegfried and Zimbalist (2000, 103) write in a review of the literature, “independent work on the economic impact of stadiums and arenas has uniformly found that there is no statistically significant positive correlation between sports facility construction and economic development.” John Siegfried and Andrew Zimbalist, *The Economics of Sports Facilities and Their Communities*, *Journal of Economic Perspectives* 14, no. 3 (Summer 2000): 95–114, <https://www.aeaweb.org/articles?id=10.1257/jep.14.3.95>.

²⁵¹ See, e.g., “Economic Perspectives on Incarceration and the Criminal Justice System,” Council of Economic Advisers (April 2016), pg. 36–43.

If a project has total expected capital expenditures of	and the use is enumerated by Treasury as eligible, then ²⁵⁴	and the use is beyond those enumerated by Treasury as eligible, then ²⁵⁵
Less than \$1 million	No Written Justification required	No Written Justification required.
Greater than or equal to \$1 million, but less than \$10 million.	Written Justification required but recipients are not required to submit as part of regular reporting to Treasury.	Written Justification required and recipients must submit as part of regular reporting to Treasury.
\$10 million or more	Written Justification required and recipients must submit as part of regular reporting to Treasury.	

In selecting these thresholds, Treasury recognized that capital expenditures vary widely in size and therefore would benefit from tiered treatment to implement eligibility standards while minimizing administrative burden, especially for smaller projects. For example, Treasury selected \$1 million as a threshold for whether a recipient needs to complete a Written Justification as well as a threshold under which capital expenditures would be presumed reasonably proportional. Treasury estimates that \$1 million would encapsulate the costs of a significant portion of equipment or small renovations. These types of smaller projects are often a necessary and reasonably proportional part of a response to the public health emergency; therefore, the \$1 million threshold provides a simplified pathway to complete smaller projects more likely to meet the eligibility standard. At the same time, Treasury selected \$10 million as the threshold for more intensive reporting requirements, estimating that projects larger than \$10 million would likely constitute significant improvements or construction of mid- or large-sized facilities. As discussed above, given their scale and longer time to completion, these types of larger

²⁵⁴ Whether or not a Written Justification is required, recipients should still determine that the response is related and reasonably proportional to the public health emergency and its negative economic impacts. Treasury recognizes that enumerated eligible uses are “related” to the public health emergency and its negative economic impacts and presumed to be reasonably proportional, except recipients pursuing projects with expected total capital expenditures equal to or greater than \$1 million should still independently determine that the expenditures are a reasonably proportional response. Enumerated projects with total expected capital expenditures under \$1 million receive a safe harbor and deemed to meet the related and reasonably proportional standard.

²⁵⁵ Whether or not a Written Justification is required, recipients should still determine that the response is related and reasonably proportional to the public health emergency and its negative economic impacts. Treasury presumes that projects with total expected capital expenditures under \$1 million are reasonably proportional in size to responding to the public health emergency and its negative economic impacts; however, recipients should determine that the response otherwise meets the requirements of the standard, including that the response is related to the public health emergency and its negative economic impacts.

projects may be less likely to be reasonably proportional responses. The \$10 million threshold also generally aligns with thresholds in other parts of the SLFRF program, such as for enhanced reporting on labor practices.

Expenditures from closely related activities directed toward a common purpose are considered part of the scope of one project. These expenditures can include capital expenditures, as well as expenditures on related programs, services, or other interventions. A project includes expenditures that are interdependent (e.g., acquisition of land, construction of the school on the land, and purchase of school equipment), or are of the same or similar type and would be utilized for a common purpose (e.g., acquisition of a fleet of ambulances that would be used for COVID-19 emergency response). Recipients must not segment a larger project into smaller projects in order to evade review. A recipient undertaking a set of identical or similar projects (e.g., development of a number of new affordable housing complexes across the recipient jurisdiction) may complete one Written Justification comprehensively addressing the entire set of projects.

Projects Enumerated as Eligible by Treasury

Under the public health and negative economic impacts eligible use category, the final rule provides a non-exclusive list of eligible uses of funding for projects that respond to the public health emergency or its negative economic impacts. Treasury has determined that these enumerated projects are related to the public health emergency and its negative economic impacts; however, recipients (other than Tribal governments) undertaking these projects with total expected capital expenditures of \$1 million or greater must still complete and meet the substantive requirements of a Written Justification as part of their demonstration that the project is a related and reasonably proportional response to the harm identified.

• *Projects with total expected capital expenditures of under \$1 million:* Treasury provides a safe harbor for

projects with total expected capital expenditures of less than \$1 million and will not require recipients to complete, submit, or meet the substantive requirements of a Written Justification for the capital expenditure. In essence, recipients may pursue an enumerated project with total expected capital expenditures of under \$1 million without having to undergo additional assessments to meet SLFRF requirements.

• *Projects with total expected capital expenditures of at least \$1 million but under \$10 million:* Recipients should complete a Written Justification for the capital expenditure and make an independent assessment of whether their proposed capital expenditure meets the substantive requirements of the Written Justification. Recipients will not be required to submit the Written Justification as part of regular reporting to Treasury but should keep documentation for their records.

• *Projects with total expected capital expenditures of at least \$10 million:* Similar to the above, recipients should complete a Written Justification of the capital expenditure and make an independent assessment of whether their proposed capital expenditure meets the substantive requirements of the Written Justification. Further, recipients will be asked to submit the Written Justification as part of regular reporting to Treasury. Similar to other parts of the SLFRF program, such as on reporting on labor practices, Treasury recognizes that projects with expected total capital expenditures of at least \$10 million may be less likely to meet eligibility requirements and therefore requires recipients to provide an enhanced level of information to Treasury.

Projects Beyond Those Enumerated as Eligible by Treasury

As with all uses, recipients that undertake capital expenditures beyond those enumerated as eligible by Treasury must meet the two-part framework under Standards: Designating a Public Health Impact and Standards: Designating a Negative Economic Impact under General Provisions: Structure and Standards,

including the requirement that responses are related and reasonably proportional to the harm or impact identified. As part of that assessment, these recipients may also be asked to complete a Written Justification. Recipients (other than Tribal governments) are subject to the following presumptions for the Written Justification of the capital expenditure, based on the total expected capital expenditures of the project:

- *Projects with total expected capital expenditures of under \$1 million:*

Treasury provides a safe harbor for unenumerated projects with total expected capital expenditures of under \$1 million and will not require recipients to complete, submit, or meet the substantive requirements of a Written Justification of the capital expenditure. Recipients should still make a determination as to whether the capital expenditure is part of a response that is related and reasonably proportional to the public health emergency or its negative economic impacts.

- *Projects with total expected capital expenditures of \$1 million or over:*

Recipients should complete a Written Justification of the capital expenditure and make an independent assessment that their proposed capital expenditure meets the substantive requirements of the Written Justification. Further, recipients will be asked to submit the Written Justification as part of regular reporting to Treasury.

Treasury employs a risk-based approach to overall program management and monitoring, which may result in heightened scrutiny on larger projects. Accordingly, recipients pursuing projects with larger capital expenditures should complete more detailed analyses for their Written Justification, commensurate with the scale of the project.

Additional Provisions, Standards, and Definitions

Strong Labor Standards in Construction

Treasury encourages recipients to carry out projects in ways that produce high-quality work, avert disruptive and costly delays, and promote efficiency. Treasury encourages recipients to use strong labor standards, including project labor agreements (PLAs) and community benefits agreements that offer wages at or above the prevailing rate and include local hire provisions. Treasury also recommends that recipients prioritize in their procurement decisions employers who can demonstrate that their workforce meets high safety and training standards

(e.g., professional certification, licensure, and/or robust in-house training), that hire local workers and/or workers from historically underserved communities, and who directly employ their workforce or have policies and practices in place to ensure contractors and subcontractors meet high labor standards. Treasury further encourages recipients to prioritize employers (including contractors and subcontractors) without recent violations of federal and state labor and employment laws.

Treasury believes that such practices will promote effective and efficient delivery of high-quality projects and support the economic recovery through strong employment opportunities for workers. Such practices will reduce likelihood of potential project challenges like work stoppages or safety accidents, while ensuring a reliable supply of skilled labor and minimizing disruptions, such as those associated with labor disputes or workplace injuries. That will, in turn, promote on-time and on-budget delivery.

Furthermore, among other requirements contained in 2 CFR 200, Appendix II, all contracts made by a recipient or subrecipient in excess of \$100,000 with respect to a capital expenditure that involve employment of mechanics or laborers must include a provision for compliance with certain provisions of the Contract Work Hours and Safety Standards Act, 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR part 5).

Treasury will seek information from recipients on their workforce plans and practices related to capital expenditures undertaken under the public health and negative economic impacts eligible use category with SLFRF funds. This reporting will support transparency and competition by enhancing available information on the services being provided.

Environmental, Uniform Guidance, and Other Generally Applicable Requirements

Treasury cautions that, as is the case with all projects using SLFRF funds, all projects must comply with applicable federal, state, and local law. In the case of capital expenditures in particular, this includes environmental and permitting laws and regulations. Likewise, as with all capital expenditure projects using the SLFRF funds, projects must be completed in a manner that is technically sound, meaning that it must meet design and construction methods and use materials that are approved, codified, recognized, fall under standard

or acceptable levels of practice, or otherwise are determined to be generally acceptable by the design and construction industry.

Further, as with all other uses of funds under the SLFRF program, the Uniform Guidance at 2 CFR part 200 applies to capital expenditures unless stated otherwise. Importantly, this includes 2 CFR part 200 Subpart D on post-federal award requirements, including property standards pertaining to insurance coverage, real property, and equipment; procurement standards; sub-recipient monitoring and management; and record retention and access.

Definitions

Treasury adopts several definitions from the Uniform Guidance at 2 CFR 200.1 under this section, including for capital expenditures, capital assets, equipment, and supplies.

Per the Uniform Guidance, the term “capital expenditures” means “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.” The term “capital assets” means “tangible or intangible assets used in operations having a useful life of more than one year which are capitalized in accordance with [Generally Accepted Accounting Principles].”

Capital assets include lands, facilities, equipment, and intellectual property. Equipment means “tangible personal property (including information technology systems) having a useful life of more than one year and a per-unit acquisition cost which equals or exceeds the lesser of the capitalization level established by the non-Federal entity for financial statement purposes, or \$5,000.” Supplies, which means all tangible personal property other than those included as “equipment,” are not considered capital expenditures.

Recipients may also use SLFRF funds for pre-project development costs that are tied to or reasonably expected to lead to an eligible capital expenditure. For example, pre-project costs associated with planning and engineering for an eligible project are considered an eligible use of funds.

c. Distinguishing Subrecipients Versus Beneficiaries

Under the interim final rule, state, local, and Tribal governments that receive a federal award directly from a federal awarding agency, such as Treasury, are designated as “recipients,”

and state, local, and Tribal governments are authorized to transfer funds to other entities, including private entities like nonprofits. The interim final rule stated that, “[a] transferee receiving a transfer from a recipient under sections 602(c)(3) and 603(c)(3) will be a subrecipient. Subrecipients are entities that receive a subaward from a recipient to carry out a program or project on behalf of the recipient with the recipient’s Federal award funding.”

For funds transferred to a subrecipient, the interim final rule noted that “[r]ecipients continue to be responsible for monitoring and overseeing the subrecipient’s use of SLFRF funds and other activities related to the award to ensure that the subrecipient complies with the statutory and regulatory requirements and the terms and conditions of the award. Recipients also remain responsible for reporting to Treasury on their subrecipients’ use of payments from the SLFRF funds for the duration of the award.”

Public Comment: Treasury received many comments requesting clarification about which entities qualify as subrecipients and are, in turn, subject to subrecipient monitoring and reporting requirements. For example, commenters sought clarification about whether a nonprofit that received a grant to provide services under a program to carry out an enumerated eligible use would qualify as a subrecipient and be subject to subrecipient monitoring and reporting requirements. Similarly, commenters also wondered if a nonprofit that received a grant in recognition of experiencing a negative economic impact of the public health emergency would also be a subrecipient and subject to subrecipient reporting requirements.

Treasury Response: Treasury is clarifying the distinction between a subrecipient and beneficiary in the final rule. The Uniform Guidance definitions for subaward and subrecipient inform Treasury’s distinction between subrecipients and beneficiaries.

First, per 2 CFR 200.1 of Uniform Guidance “[s]ubaward means an award provided by a pass-through entity²⁵⁶ to a subrecipient for the subrecipient to carry out part of a Federal award received by the pass-through entity. It does not include payments to a contractor or payments to an individual that is a beneficiary of a Federal program. A subaward may be provided through any form of legal agreement,

including an agreement that the pass-through entity considers a contract.”

Further, 2 CFR 200.1 of the Uniform Guidance defines a subrecipient, in that “[s]ubrecipient means an entity, usually but not limited to non-Federal entities, that receives a subaward from a pass-through entity to carry out part of a Federal award; but does not include an individual that is a beneficiary of such award. A subrecipient may also be a recipient of other Federal awards directly from a Federal awarding agency.” Treasury is aligning the definition of subrecipient in the final rule with the definition of subrecipient in the Uniform Guidance.

Treasury is maintaining the monitoring and subrecipient reporting requirements outlined in the final rule. Per 2 CFR 200.101 (b)(2) of the Uniform Guidance, the terms and conditions of federal awards flow down to subawards to subrecipients. Therefore, non-federal entities, as defined in the Uniform Guidance, must comply with the applicable requirements in the Uniform Guidance regardless of whether the non-federal entity is a recipient or subrecipient of a federal award. This includes requirements such as the treatment of eligible uses of funds, procurement, and reporting requirements.

The Uniform Guidance definitions for both subaward and subrecipient specify that payments to individuals or entities that are direct beneficiaries of a federal award are not considered subrecipients. The final rule adopts this definition of a beneficiary and outlines that households, communities, small businesses, nonprofits, and impacted industries are all potential beneficiaries of projects carried out with SLFRF funds. Beneficiaries are not subject to the requirements placed on subrecipients in the Uniform Guidance, including audit pursuant to the Single Audit Act and 2 CFR part 200, subpart F or subrecipient reporting requirements.

The distinction between a subrecipient and a beneficiary, therefore, is contingent upon the rationale for why a recipient is providing funds to the individual or entity. If the recipient is providing funds to the individual or entity for the purpose of carrying out a SLFRF program or project on behalf of the recipient, the individual or entity is acting as a subrecipient. Acting as a subrecipient, the individual or entity is subject to subrecipient monitoring and reporting requirements. Conversely, if the recipient is providing funds to the individual or entity for the purpose of directly benefitting the individual or

entity as a result of experiencing a public health impact or negative economic impact of the pandemic, the individual or entity is acting as a beneficiary. Acting as a beneficiary, the individual or entity is not subject to subrecipient monitoring and reporting requirements.

d. Uses Outside the Scope of This Category

Summary of the Interim Final Rule and Final Rule Structure

In the interim final rule, Treasury noted that certain uses of funds are not permissible under the eligible use category of responding to the public health and negative economic impacts of the pandemic. In the final rule, these uses remain impermissible, but Treasury has re-categorized where they are addressed to increase clarity.

Specifically, the interim final rule provided that the following uses of funds are not eligible under this eligible use category: Contributions to rainy day funds, financial reserves, or similar funds; payment of interest or principal on outstanding debt instruments; fees or issuance costs associated with the issuance of new debt; and satisfaction of any obligation arising under or pursuant to a settlement agreement, judgment, consent decree, or judicially confirmed debt restructuring plan in a judicial, administrative, or regulatory proceeding, except to the extent the judgment or settlement requires the provision of services that would respond to the COVID-19 public health emergency. These uses of funds remain ineligible under the final rule; Treasury has re-categorized these issues to the section Restrictions on Use, which describes restrictions that apply to all eligible use categories, to clarify that these uses are not eligible under any eligible use category of SLFRF. Treasury responds to public comments on this issue in the section Restrictions on Use.

As noted above, the interim final rule also posed several questions on what other types of services or costs Treasury should consider as eligible uses to respond to the public health and negative economic impacts of COVID-19, including in disproportionately impacted communities. In this section, Treasury addresses proposed uses of funds suggested by commenters that Treasury has not included as enumerated eligible uses of funds in this eligible use category.

General Eligible Uses

Public Comment: Commenters proposed a wide variety of additional recommended enumerated eligible uses

²⁵⁶ In this context, a pass-through entity means a recipient of SLFRF funds.

in all sections of the public health and negative economic impacts eligible use category, including in impacted and disproportionately impacted communities. The proposed additional uses included general categories of services (e.g., legal and social services, long-term investments to remediate long-term disparities, response to natural disasters). Other suggested uses of funds respond to needs widely experienced across the country (e.g., access to and affordability of health insurance). Finally, other suggested uses of funds were highly specific (e.g., healthcare equipment for a specific health condition, fire hydrants, weather alert systems) or most applicable to the particularized needs to certain populations or geographic areas of the United States (e.g., senior citizens, immigrants, formerly incarcerated individuals, responding to environmental issues in certain geographic regions). Other commenters generally requested a high degree of flexibility to respond to the particular needs of their communities.

Treasury Response: Given the large number and diversity of SLFRF recipients, Treasury has aimed to include as enumerated eligible uses programs, services, and capital expenditures that respond to public health and negative economic impacts of the pandemic experienced widely in many jurisdictions across the country, making it clear and simple for recipients to pursue these enumerated eligible uses under the final rule. This provides enumerated eligible uses that many recipients may want to pursue, while including uses that are responsive to the pandemic's impacts across the diverse range of SLFRF recipients. In the final rule, Treasury has clarified several additional uses that generally respond to pandemic impacts experienced broadly across jurisdictions and populations.

Treasury has not chosen to include as enumerated uses all uses proposed by commenters; given the significant range, and in some cases highly specific nature, of the proposed uses Treasury was not able to assess that the proposed uses would respond to negative economic impacts experienced generally across the country, supporting an enumerated eligible use available to all recipients presumptively.

However, Treasury emphasizes that the enumerated eligible uses are non-exhaustive and that other uses, beyond those enumerated, are eligible. Treasury recognizes that the impacts of the pandemic vary over time, by jurisdiction, and by population; as such, the final rule provides flexibility for

recipients to identify other public health or negative economic impacts to additional households, small businesses, or nonprofits, including classes of these entities, and pursue programs and services that respond to those impacts. Treasury also notes that some populations are presumed to be impacted or disproportionately impacted by the pandemic, and thus eligible for responsive services; these presumed eligible populations may encompass many individuals in the specific populations for whom commenters recommended services. For details on these issues, see section General Provisions: Structure and Standards.

Infrastructure, Community Development, and General Economic Development

Some potential additions to enumerated eligible uses were also recommended by several commenters each but are not included as enumerated eligible uses in the final rule.

Public Comment: Infrastructure: In the interim final rule, Treasury noted that a “general infrastructure project, for example, typically would not be included [in this eligible use category] unless the project responded to a specific pandemic public health need.”

Numerous commenters requested that Treasury permit investments in infrastructure as a response to the public health and negative economic impacts of the pandemic. While these comments most commonly recommended that constructing and maintaining roads and surface transportation infrastructure be eligible, the proposed uses for infrastructure ranged widely and included parking lots, bridges, traffic management infrastructure, solid waste disposal facilities, and utility infrastructure (outside of water, sewer, and broadband).

Many commenters argued that infrastructure development and maintenance is a pressing need in their communities and that their communities had less need for water, sewer, and broadband infrastructure or other eligible uses to respond to the public health and negative economic impacts of the pandemic. Other commenters argued that these uses would stimulate the economy, attract businesses, or allow for tourist movement; these commenters argued that, by generally supporting a stronger economy or facilitating conditions that are more conducive to business activity and tourism, these uses respond to the negative economic impacts of the pandemic.

Treasury Response: In the final rule, Treasury is maintaining the approach under the interim final rule that general infrastructure projects, including roads, streets, and surface transportation infrastructure, would generally not be eligible, unless the project responded to a specific pandemic public health need or a specific negative economic impact.

The ARPA expressly includes infrastructure if it is “necessary” and in water, sewer, or broadband, suggesting that the statute contemplates only those types of infrastructure. Further, responding to the public health and negative economic impacts of the pandemic requires identifying whether, and the extent to which, there has been a harm that resulted from the COVID-19 public health emergency and whether, and the extent to which, the use would respond or address this harm. Uses of funds intended to generally grow the economy and therefore enhance opportunities for workers and businesses would not be an eligible use, because such assistance is not reasonably designed to impact individuals or classes that have been identified as having experienced a negative economic impact. In other words, there is not a reasonable connection between the assistance provided and an impact on the beneficiaries. Such an activity would be attenuated from and thus not reasonably designed to benefit the households that experienced the negative economic impact.

Note, however, that Treasury has clarified that capital expenditures that are related and reasonably proportional to responding to the public health and economic impacts of the pandemic are eligible uses of funds, in addition to programs and services; for details on eligibility criteria for capital expenditures, see section Capital Expenditures in General Provisions: Other.

Public Comment: Community Development Block Grant: Several commenters recommended that Treasury enumerate as eligible uses those eligible under the Department of Housing and Urban Development's Community Development Block Grant (CDBG) or the Housing and Community Development Act of 1974, which established the CDBG program. Commenters requested that these uses be eligible either to respond to the negative economic impacts of the pandemic, or in the alternate the disproportionate negative economic impacts of the pandemic in certain communities. Under the CDBG program, recipient governments may undertake a wide range of community and economic

development services and projects. Commenters reasoned that many state and local governments are familiar with this program, and that aligning to its eligible uses may help recipients easily understand and pursue eligible projects. Commenters also noted that Treasury had chosen to align with existing federal programs in other eligible use categories, namely water infrastructure, in the interim final rule.

Treasury Response: In the final rule, Treasury is not including all categories of projects permissible under CDBG as enumerated eligible uses to respond to the public health and negative economic impacts of the pandemic. Because CDBG permits such a broad range of activities, including services to individual households, communities, small businesses, general economic development activities, and capital expenditures, Treasury determined that it was more appropriate to assess the underlying types of projects eligible within CDBG and whether each type of project responds to the negative economic impacts of the pandemic. In other words, Treasury considered whether various types of community and economic development projects respond to the impacts of the pandemic in different communities and circumstances. In the final rule, Treasury addresses the eligibility of these various types of projects in each relevant eligible use category within public health and negative economic impacts under SLFRF, including assistance for impacted households, disproportionately impacted households, disproportionately impacted small businesses, and capital expenditures.

Public Comment: General Economic Development: Treasury provided guidance following the interim final rule that general economic development or workforce development would generally not be eligible as it does not respond to a negative economic impact of the COVID-19 public health emergency.

Some commenters recommended that Treasury expand enumerated eligible uses to include general economic development activities, beyond those that respond to negative economic impacts of the pandemic, such as creating an economic development strategy for the jurisdiction's overall economic growth, creating a general workforce development strategy, or providing funds to businesses that did not experience negative economic impacts to carry out economic development activities or to incentivize the addition or retention of jobs. Commenters supportive of assistance to

businesses for general economic development activities argued that subsidies to businesses increase job growth and that, in some cases, assistance to companies that excelled during the public health emergency would help create more job opportunities for workers or expand the jurisdiction's tax base and produce funds to support government services. In contrast, other commenters argued that academic research consistently finds that economic development subsidies have a negligible, or even negative, economic effect, citing research findings to this effect.²⁵⁷

Treasury Response: In the final rule, Treasury maintains the interim final rule's approach that general economic development or workforce development, meaning activities that do not respond to negative economic impacts of the pandemic and rather seek to more generally enhance the jurisdiction's business climate, would generally not be eligible under this eligible use category. As noted above, to identify an eligible use of funds under this category, a recipient must identify a beneficiary or class of beneficiaries that experienced a harm or impact due to the pandemic, and eligible uses of funds must be

²⁵⁷ See, e.g., Matthew D. Mitchell et al., *The Economics of a Targeted Economic Development Subsidy* (Arlington, VA: Mercatus Center at George Mason University, 2019), 5, available at <https://www.mercatus.org/publications/government-spending/economics-targeted-economic-development-subsidy>; Timothy J. Bartik, *Who Benefits from Economic Development Incentives? How Incentive Effects on Local Incomes and the Income Distribution Vary with Different Assumptions about Incentive Policy and the Local Economy* (Upjohn Institute Technical Report No. 13-034, W.E. Upjohn Institute for Employment Research, March 1, 2018), available at https://research.upjohn.org/up_technicalreports/34/; Cailin Slattery and Owen Zidar, *Evaluating State and Local Business Tax Incentives*, *Journal of Economic Perspectives* 34, no. 2 (2020): 90-118, available at <https://www.aeaweb.org/articles?id=10.1257/jep.34.2.90>; Kenneth Thomas, *The State of State and Local Subsidies to Business* (Mercatus Policy Brief, Mercatus Center at George Mason University, Arlington, VA, October 2019), available at https://www.mercatus.org/system/files/thomas_-_policy_brief_-_the_state_of_state_and_local_subsidies_to_business_-_v1.pdf; Dennis Coates, *Growth Effects of Sports Franchises, Stadiums, and Arenas: 15 Years Later* (Mercatus Working Paper, Mercatus Center at George Mason University, Arlington, VA, September 2015), available at <https://www.mercatus.org/system/files/Coates-Sports-Franchises.pdf>; Dennis Coates and Brad R. Humphreys, *Do Economists Reach a Conclusion on Subsidies for Sports Franchises, Stadiums, and Mega-Events?*, *Econ Journal Watch* 5, no. 3 (2008): 294-315, available at <https://econjwatch.org/articles/do-economists-reach-a-conclusion-on-subsidies-for-sports-franchises-stadiums-and-mega-events>; Matthew D. Mitchell, Daniel Sutter, and Scott Eastman, *The Political Economy of Targeted Economic Development Incentives*, *Review of Regional Studies* 48, no. 1 (2018): 1-9, available at <https://www.mercatus.org/publications/corporate-welfare/political-economy-targeted-economic-development-incentives>.

reasonably designed to respond to the harm, benefit the beneficiaries that experienced it, and be related and reasonably proportional to that harm or impact.

As noted above, recipients should analyze eligible uses based on the beneficiary of the assistance, and recipients may not provide assistance to small businesses or impacted industries that did not experience a negative economic impact. Provision of assistance to a business that did not experience a negative economic impact, under the theory that such assistance would generally grow the economy and therefore enhance opportunities for workers, would not be an eligible use, because such assistance is not reasonably designed to impact individuals or classes that have been identified as having experienced a negative economic impact. In other words, there is not a reasonable connection between the assistance provided and an impact on the beneficiaries. Such an activity would be attenuated from and thus not reasonably designed to benefit the households that experienced the negative economic impact. Research cited by some commenters finding that business subsidies have limited or negative economic impact also suggests that such a response may not be reasonably designed to benefit households and other entities impacted by the pandemic. Similarly, planning activities for an economic development or workforce strategy regarding general future economic growth do not provide a program, service, or capital expenditure that responds to negative economic impacts of the pandemic.

However, Treasury notes that the final rule includes as enumerated eligible uses many types of assistance that respond to negative economic impacts of the pandemic and may produce economic development benefits. For example, see sections Assistance to Unemployed Workers, Assistance to Small Businesses, and Capital Expenditures.

B. Premium Pay

Background and Summary of the Interim Final Rule

Sections 602(c)(1)(B) and 603(c)(1)(B) of the Social Security Act, as added by the ARPA, provide that SLFRF funds may be used "to respond to workers performing essential work during the COVID-19 public health emergency by providing premium pay to eligible workers of the . . . government that are performing such essential work, or by providing grants to eligible employers

that have eligible workers who perform essential work.”

Premium pay is designed to compensate workers that, by virtue of their employment, were forced to take on additional burdens and make great personal sacrifices as a result of the COVID-19 pandemic. Premium pay can be thought of as hazard pay by another name.²⁵⁸

During the public health emergency, employers’ policies on COVID-19-related premium pay or hazard pay have varied widely, with many essential workers not yet compensated for the heightened risks they have faced and continue to face.²⁵⁹ Many of these workers earn lower wages on average and live in socioeconomically underserved communities as compared to the general population.²⁶⁰ A recent study found that 25 percent of essential workers were estimated to have low household income, with 13 percent in high-risk households.²⁶¹ The low pay of many essential workers makes them less able to cope with the financial consequences of the pandemic or their work-related health risks. As Americans return to work and governments relax certain rules, essential workers will continue to bear the brunt of the risk of maintaining the ongoing operation of vital facilities and services. The added health risk to essential workers is one prominent way in which the pandemic has amplified pre-existing socioeconomic inequities. Premium pay is designed to address the disparity between the critical services provided by and the risks taken by essential workers and the relatively low compensation they tend to receive.

The interim final rule established a three-part framework for recipients seeking to use SLFRF funds for premium pay. First, to receive premium pay one must be an eligible worker. Second, an eligible worker must also perform essential work. Finally, premium pay must respond to workers performing essential work during the COVID-19 public health emergency. Most of the comments received by Treasury pertaining to premium pay related to these three requirements. Comments also addressed the definition of premium pay generally and posed

questions regarding premium pay program structuring. This section responds to the comments by addressing the three requirements in turn, then the overall definition of premium pay and, finally, program structure.

Eligible Workers

The ARPA defines “eligible workers” as “those workers needed to maintain continuity of operations of essential critical infrastructure sectors and additional sectors as each . . . [government] may designate as critical to protect the health and wellbeing of [its] residents.” The interim final rule supplemented this definition by identifying a list of “essential critical infrastructure sectors” whose workers are eligible workers, based on the list of sectors in the HEROES Act, a bill introduced in the House of Representatives in 2020 that would have provided premium pay to essential workers.²⁶² In addition to the critical infrastructure sectors defined in the interim final rule, the chief executive (or equivalent) of a recipient government may designate additional non-public²⁶³ sectors as critical so long as doing so is necessary to protecting the health and wellbeing of the residents of such jurisdiction.

Public Comment: Treasury received multiple comments on the definition of “eligible worker” included in the interim final rule. Many commenters agreed with the definition of eligible worker adopted by Treasury. Other commenters sought clarification about or changes to the definition of eligible worker, including the definition of eligible sectors, the inclusion of government workers in the definition of eligible workers, and the process for designating additional non-public sectors as eligible.

Some commenters asked Treasury to change how it identifies eligible sectors, including suggestions to add to or subtract from the list of eligible sectors. For example, some commenters asked Treasury to consider using Bureau of Labor Statistics (BLS)-Standard Occupational Classifications to identify specific sectors or occupations, in contrast to the approach taken in the interim final rule, which included a mixture of economic sectors, industries, and occupations. Many commenters asked Treasury to explicitly clarify that a particular industry or occupation is covered by the definition of “essential critical infrastructure sector.” Some of

these commenters represented public employees, e.g., employees of facilities and public works; public utilities; courthouse employees; police, fire, and emergency medical services; and waste and wastewater services. Others were a mixture of public and private sector employees, e.g., coroners and medical examiners; transportation infrastructure (specifically electric vehicle infrastructure and supply equipment); electric utilities, natural gas, and steam supply; and grocery employees. Other commenters requested that Treasury prohibit certain occupations currently included in the eligible workers definition (e.g., police and corrections officers) from receiving premium pay for performance of regular duties.

Commenters also asked Treasury to clarify which government workers are included in the definition of eligible workers. The interim final rule included as an essential critical infrastructure sector, “any work performed by an employee of a State, local, or Tribal government.” Some commenters requested that Treasury adopt a definition of eligible worker that includes all employees of the recipient government; however, all public employees of state, local, and Tribal governments are already included in the interim final rule definition of “eligible worker.” Commenters asked whether this includes governments that did not receive SLFRF funds (i.e., “non recipient governments”). Many commenters from Tribal governments requested that the definition of eligible worker, which includes “any work performed by an employee of a . . . Tribal government,” also include an employee of a “Tribal enterprise” to remove uncertainty regarding which employees are included.

Finally, commenters made suggestions for the process by which the chief executive (or equivalent) of a recipient government may designate additional non-public sectors as critical. Commenters asked that Treasury adopt a requirement that Treasury must approve or deny any additional non-public sector identified by the chief executive of a recipient government prior to implementation of the recipient’s program.

Some commenters asked Treasury to clarify whether their chief executive (or equivalent) could designate particular, and in some cases *all*, employees of the recipient government as eligible for premium pay.

Treasury Response: In the final rule, Treasury will preserve the definition of “eligible worker” as it was defined in the interim final rule with minor modifications to clarify that all public

²⁵⁸ See U.S. Department of Labor, *Hazard Pay*, <https://www.dol.gov/general/topic/wages/hazardpay> (last visited October 18, 2021).

²⁵⁹ Economic Policy Institute, Only 30% of those working outside their home are receiving hazard pay (June 16, 2020), <https://www.epi.org/press/only-30-of-those-working-outside-their-home-are-receiving-hazard-pay-black-and-hispanic-workers-are-most-concerned-about-bringing-the-coronavirus-home/>.

²⁶⁰ McCormack, *supra* note 65.

²⁶¹ *Id.*

²⁶² See H.R. 6800, 116th Cong. (2020).

²⁶³ Note that the sectors defined in the interim final rule already include all state, local, and Tribal government employees.

employees of recipient governments are already included in the interim final rule definition of “eligible worker.” A more specific eligibility system (e.g., linking eligibility to specific occupational or industry codes) would have provided more certainty but would have been much more rigid. In contrast, the current definition is flexible enough to give recipients the ability to tailor their premium pay programs to meet their needs while ensuring that programs focus on sectors where workers were forced to shoulder substantial risk as a result of the COVID-19 pandemic. Furthermore, the critical infrastructure sectors defined in the interim final rule already include many of the occupations that commenters requested be added. For example, Treasury received many comments from public workers asking to be included in the definition of “eligible worker” even though these workers already fall within the scope of “any work performed by an employee of a State, local, or Tribal government.” Treasury has clarified in the final rule that the chief executive’s discretion to designate additional sectors as critical relates only to “non-public” sectors, since all public employees of recipient governments are already included in the definition of “eligible worker.” While all such public employees are “eligible workers” and the chief executive (or equivalent) of a recipient government may designate additional non-public sectors as critical, in order to receive premium pay, these workers must still meet the other premium pay requirements (e.g., performing essential work).

Treasury recognizes that the list of “essential critical infrastructure sectors” includes both occupations and sectors. Recipients, if uncertain which occupations are included in a critical infrastructure sector, may consult government occupational classifications if helpful but are not required to do so.²⁶⁴ Furthermore, a recipient government does not need to submit to Treasury for approval its designation of a sector as essential critical infrastructure; rather, Treasury will defer to the reasonable interpretation of the recipient government and the discretion of the recipient’s chief executive in making such designations. If a recipient is unsure if a non-public sector is covered by the definition in the

final rule,²⁶⁵ the chief executive (or equivalent) of a recipient government may also identify the non-public sector as critical so long as the chief executive deems the non-public sector necessary to protecting the health and wellbeing of residents. Treasury has, where possible, clarified the definition of “essential critical infrastructure sectors.” For instance, Treasury has clarified in the final rule that work performed by an employee of a Tribal government includes an employee of a Tribal enterprise and discussed in this Supplementary Information how a recipient may qualify other non-public sectors as essential critical infrastructure.

Essential Work

The interim final rule defined “essential work” as work that (1) is not performed while teleworking from a residence and (2) involves either (i) regular, in-person interactions with patients, the public, or coworkers of the individual that is performing the work or (ii) regular physical handling of items that were handled by, or are to be handled by, patients, the public, or coworkers of the individual that is performing the work. Treasury adopted this definition of essential work to ensure that premium pay is targeted to workers that faced or face heightened risks due to the character of their work during a pandemic.

Public Comment: Some commenters found the definition unclear and asked Treasury to clarify what constitutes “essential work.” Others disagreed with the essential work test altogether, arguing that it forces recipients to distinguish between essential and non-essential employees, which may be difficult to do. Accordingly, these commenters asked Treasury to allow recipients to determine which workers qualify as essential. Treasury also received several requests that specific occupations be explicitly deemed essential, including all public employees, veterinarians, election administrators, detention staff and sheriff’s deputies, and employees of utilities, such as electric power, natural gas, steam supply, water supply, and sewage removal.

Several commenters requested that Treasury not distinguish between remote and in-person work or amend the standard so that employees providing essential services would still be eligible even if they worked remotely. Finally, a few commenters requested clarification as to the

definition of “regular” in-person interactions and whether Treasury could clarify which job functions merit more (or less) premium pay.

Treasury Response: Treasury is maintaining the definition of “essential work” in the final rule without modification. The test adopted in the interim final rule was designed to compensate workers facing disproportionate risk due to the pandemic. COVID-19 is transmitted through person-to-person interactions, and therefore, workers with regular in-person interactions are the primary group facing increased health risks. Although COVID-19 is not transmitted primarily by people handling items, such work may present increased risk in certain cases, and the final rule maintains the interim final rule’s inclusion of such work in order to give recipient governments the flexibility to include workers performing such work as they determine appropriate. Changing the test as some commenters suggested, e.g., by eliminating the in-person work requirement or allowing recipients to designate which employees are essential, even if not working in person, would no longer focus the program on workers taking on additional health risks and instead allow premium pay to be awarded to individuals who experienced relatively little risk of exposure to COVID-19. To maintain flexibility, Treasury is not defining the term “regular” with regard to in-person interactions, allowing recipients to develop programs based on the specific workforce to be served and local circumstances. Generally speaking, however, recipients are encouraged to consider an eligible worker’s risk of exposure in designing premium pay programs.

Respond To

As required by the ARPA, the interim final rule required that premium pay programs “respond to” eligible workers performing essential work during the COVID-19 public health emergency. Premium pay responds to eligible workers performing essential work if it prioritizes low- and moderate-income persons, given the significant share of essential workers that are low- and moderate-income and may be least able to bear added costs associated with illness. The level of the award limit—up to \$13 per hour not to exceed \$25,000 in aggregate—in the ARPA supports this reasoning.

Accordingly, the interim final rule required written justification for how premium pay to certain higher-income workers responds to eligible workers performing essential work: If a recipient

²⁶⁴ See, e.g., sources such as Bureau of Labor Statistics, Occupational Outlook Handbook, which provide information on which professions or occupations are typically included in interpretations of a sector, <https://www.bls.gov/ooh/>.

²⁶⁵ Public sector workers are “eligible workers” under the interim final rule and final rule.

(or grantee) uses SLFRF funds to provide premium pay to an employee and the pay or grant would increase a worker's total pay above 150 percent of their residing state or county's average annual wage for all occupations, as defined by the BLS Occupational Employment and Wage Statistics, whichever is higher, on an annual basis, then the recipient must provide, whether for themselves or on behalf of a grantee, written justification to Treasury detailing how the award responds to eligible workers performing essential work.

Public Comment: Treasury received numerous comments on the wage threshold and the written justification requirement. Several commenters supported the threshold as a way to encourage recipients to target premium pay to lower-income, eligible workers. Some commenters even asked Treasury to make the wage threshold a firm restriction, above which an eligible worker could not receive premium pay. Others agreed with the threshold but also requested flexibility to use existing worker classifications as an administratively simple way to identify workers for whom premium pay would be responsive. For instance, a few commenters asked Treasury to allow recipients or grantees to presume that premium pay “responds to” eligible workers performing essential work when it is provided to employees who are not exempt from the Fair Labor Standards Act (FLSA) overtime provisions—a test that employers are routinely required to apply.²⁶⁶

In contrast, several commenters disagreed with the threshold and the requirement for written justification. A few commenters thought the threshold was too low to capture employees in certain critical infrastructure sectors (e.g., public safety, waste collection) and that it did not sufficiently account for the variance in economic need across different geographic areas and family structures. Some smaller communities argued that the threshold was difficult to calculate and apply.

Other commenters proposed revisions for how the threshold is calculated. For instance, a few commenters asked Treasury to consider using alternative earnings measures such as median income. Similarly, another commenter asked Treasury to consider the incomes of workers with different levels of seniority in developing any income

thresholds for permitting or reporting on premium pay.

Finally, there was also some uncertainty as to the threshold and the requirement for written justification. Some commenters interpreted the threshold as a hard cap on who was eligible for premium pay, which is not the case. Relatedly, some commenters also requested further guidance on what recipients should include in the written justification submitted to the Secretary.

Treasury Response: The final rule makes some modifications to the determination of when premium pay “responds to” eligible workers performing essential work during the public health emergency. Under the interim final rule, premium pay was responsive if either the workers’ pay was below a wage threshold or, if the pay was above a wage threshold, the recipient submitted written justification to Treasury explaining how the premium pay was responsive. The final rule retains these two means of establishing premium pay in response to workers performing essential work and adds an additional means of demonstrating that premium pay is responsive. Under the final rule, a recipient may also show that premium pay is responsive by demonstrating that the eligible worker receiving premium pay is not exempt from the FLSA overtime provisions.²⁶⁷ This change will expand the number of workers eligible to receive premium pay²⁶⁸ and does not require recipients to provide written justification to Treasury regarding the workers who are not exempt from the FLSA overtime provisions, making the program easier to administer for recipients. Incorporating this change further simplifies application of the

final rule for recipients because Treasury understands that most employers, public and private, are familiar with and are routinely required to apply the FLSA.

With this addition, the final rule provides that premium pay is responsive to eligible workers performing essential work during the public health emergency if each eligible worker who receives premium pay falls into one of three categories: (1) The worker’s pay is below the wage threshold, (2) the worker is not exempt from the FLSA overtime provisions, or (3) the recipient has submitted a written justification to Treasury.

The final rule makes it clear that written justification to Treasury is not necessary with respect to eligible workers whose pay is less than the wage threshold. Nor is written justification necessary with respect to eligible workers who are not exempt from the FLSA overtime provisions. The written justification is only necessary if the worker’s pay (with or without the premium) exceeds the threshold, and the worker is exempt from the FLSA overtime provisions. The final rule also clarifies that a worker’s pay exceeds the threshold if either the premium pay increases the worker’s total pay above the wage threshold or the worker’s total pay was already above the threshold, before receiving premium pay.

Treasury has also updated the final rule to clarify that written justification means a brief, written narrative justification of how the premium pay or grant is responsive to workers performing essential work during the public health emergency. This could include a description of the essential workers’ duties, health or financial risks faced due to COVID-19, and why the recipient determined that the premium pay was responsive despite the workers’ higher income.

Recipients should refer to SLFRF program reporting guidance, user guides, and other documentation for further guidance on the form and content of the written justification. Treasury anticipates that recipients will easily be able to satisfy the justification requirement for front-line workers, like nurses and hospital staff.

Definition of Premium Pay

The statute defines premium pay as “an amount of up to \$13 per hour . . . , in addition to wages or remuneration the eligible worker otherwise receives, for all work performed by the eligible worker during the COVID-19 public health emergency. Such amount may not exceed \$25,000 with respect to any single eligible worker.” The interim

²⁶⁷ Department of Labor, Overtime Pay, <https://www.dol.gov/agencies/whd/overtime>; see also 29 U.S.C. 207.

²⁶⁸ Among workers that report working overtime, roughly 41–44 percent of workers earn above \$50,000 per year, which is slightly less than the national average annual wage for all employees according to the Bureau of Labor Statistics’ Occupational Employment and Wage Statistics, available at <https://www.bls.gov/oes/>. See also U.S. Census Bureau, Basic Monthly CPS, January 2019 through December 2019, available at <https://www.census.gov/data/datasets/time-series/demo/cps/cps-basic.html>. Notes: Annual earnings reflect weekly wages multiplied by 52. Usual weekly earnings are computed by BLS to include earnings from work such as tips, overtime, regular wages, etc., but not non-labor sources of income such as government transfers and capital gains. Pre-overtime earnings are computed by taking the difference of usual weekly earnings and earnings from overtime last week and multiplying by 52. Note, some sources multiply weekly earnings by 50 instead of 52 to account for unpaid time off and holidays, so these figures may be slightly larger than those reported elsewhere. Either assumption may overestimate earnings if workers do not work year-round.

²⁶⁶ See generally 29 U.S.C. 207(a); U.S. Department of Labor, Overtime Pay Requirements of the FLSA (Fact Sheet No. 23), <https://www.dol.gov/agencies/whd/fact-sheets/23-flsa-overtime-pay>.

final rule incorporated this definition and emphasized that premium pay should be in addition to compensation typically received.

Public Comment: Several submitted comments related to the definition of “premium pay.” Several commenters asked Treasury to clarify certain aspects of the interim final rule and statutory definition of premium pay. For instance, a few commenters asked whether the \$25,000 limit applies to the annual amount of premium pay received or the aggregate amount of premium pay received over the period of performance. A few commenters requested flexibility as to how premium pay may be awarded, including flexibility to make monthly or quarterly payments or lump sum payments. Finally, commenters requested additional clarification as to how premium pay should be calculated. For instance, a commenter asked how to calculate the amount of and account for overtime pay and other incentive pay.²⁶⁹

Treasury Response: Treasury has clarified some of these issues in the final rule. For example, Treasury has clarified in the final rule that the \$25,000 per employee limit is for the entire period of performance, not an annual cap. Further, recipients have discretion with respect to the way in which premium pay is awarded to eligible workers (e.g., monthly, quarterly, lump sum), provided that the total premium pay awarded to any eligible worker does not exceed \$13 per hour or \$25,000 over the period of performance. Finally, a recipient may award premium pay to an eligible worker in addition to the overtime pay already earned by the eligible worker but in no instance may the portion of the compensation funded with SLFRF funds exceed \$13 per hour, even if strict time-and-a-half calculation requires more.²⁷⁰ To the extent that an employer is required under the FLSA to make payments to an eligible worker in excess of \$13 per hour or \$25,000 in the aggregate over the period of performance, the employer must use a source of funding other than the SLFRF funds to satisfy those obligations.

Program Structure

Public Comment: Several commenters also requested elaboration on eligible

types of employees and permissible structures for awarding premium pay. A few commenters asked if premium pay could be awarded to volunteers or those in irregular and non-hourly or salaried employment positions. Similarly, various commenters asked if part-time workers were eligible for premium pay.

Some commenters asked Treasury to provide more detail on when premium pay may be paid retroactively or if a government could reimburse its general fund for hazard pay already paid before the start of the period of performance.

Treasury Response: Treasury has also made clear in the final rule that a recipient may award premium pay to non-hourly or salaried workers as well as part-time workers. Premium pay may not, however, be awarded to volunteers. If a recipient is interested in compensating volunteers with SLFRF funds, then it must do so consistent with the requirements set forth in other eligible use categories; for example, see section Public Sector Capacity and Workforce in Public Health and Negative Economic Impacts.

Under the final rule, recipients may award premium pay retroactively; however, SLFRF funds may not be used to reimburse a recipient or eligible employer grantee for premium pay or hazard pay already received by the employee. To make retroactive premium payments funded with SLFRF funds, a recipient or eligible employer grantee must make a new cash outlay for the premium payments and the payments must be in addition to any wages or remuneration the eligible worker already received, subject to the other requirements and limitations set forth in the ARPA and this final rule.

Finally, as part of accepting the Award Terms and Conditions for SLFRF, each recipient agreed to maintain a conflict-of-interest policy consistent with 2 CFR 200.318(c) that is applicable to all activities funded with the SLFRF award. This award term requires recipients and subrecipients to report to Treasury or the pass-through agency, as appropriate, any potential conflict of interest related to the award funds per 2 CFR 200.112. Pursuant to this policy, decisions concerning SLFRF funds must be free of undisclosed personal or organizational conflicts of interest, both in fact and in appearance. Consistent with this policy, elected officials are prohibited from using their official position and control over SLFRF funds for their own private gain. This policy also prohibits, among other things, elected officials from steering funds to projects in which they have a financial interest or using funds to pay themselves premium pay.

C. Revenue Loss

Background

Sections 602(c)(1)(C) and 603(c)(1)(C) of the Social Security Act provide that SLFRF funds may be used “for the provision of government services to the extent of the reduction in revenue of such . . . government due to the COVID-19 public health emergency relative to revenues collected in the most recent full fiscal year of the . . . government prior to the emergency.” This provision allows recipients experiencing budget shortfalls to use payments from the SLFRF funds to avoid cuts to government services and, thus, enables state, local, and Tribal governments to continue to provide valuable services and ensures that fiscal austerity measures do not hamper the broader economic recovery.

State and local government budgets experienced stress in fiscal year 2020 as delayed tax filings and pandemic-related business closures caused revenues to decline sharply.²⁷¹ Twenty-two state governments took actions to close budget gaps in fiscal year 2020²⁷² and nearly 80 percent of cities reported being less able to meet the fiscal needs of their communities relative to fiscal year 2019.²⁷³ Surveys of Tribal governments and Tribal enterprises conducted in 2020 found majorities of respondents reporting substantial cost increases and revenue decreases, with Tribal governments reporting reductions in health care, housing, social services, and economic development activities as a result of reduced revenues.²⁷⁴

The economic recovery, aided by the broad distribution of COVID-19 vaccines and the deployment of federal stimulus, has led to a strong rebound in total state and local government revenue and is contributing to a brighter fiscal

²⁷¹ In the second quarter of 2020, quarterly state and local tax revenues as reported by the U.S. Census Bureau fell 19 percent compared to the second quarter of 2019; U.S. Census Bureau, Quarterly Summary of State and Local Tax Revenue, <https://www.census.gov/programs-surveys/qtax.html>.

²⁷² National Association of State Budget Officers, Fiscal Survey of the States (Fall 2020), available at https://higherlogicdownload.s3.amazonaws.com/NASBO/9d2d2db1-c943-4f1b-b750-0fca152d64c2/UploadedImages/Fiscal%20Survey/NASBO_Fall_2020_Fiscal_Survey_of_States_S.pdf.

²⁷³ National League of Cities, City Fiscal Conditions (2020), available at https://www.nlc.org/wp-content/uploads/2020/08/City_Fiscal_Conditions_2020_FINAL.pdf.

²⁷⁴ Surveys conducted by the Center for Indian Country Development at the Federal Reserve Bank of Minneapolis in March, April, and September 2020. Elijah Moreno & Heather Sobrepena, Tribal entities remain resilient as COVID-19 batters their finances, Federal Reserve Bank of Minneapolis (Nov. 10, 2020), <https://www.minneapolisfed.org/article/2020/tribal-entities-remain-resilient-as-covid-19-batters-their-finances>.

²⁶⁹ See 29 U.S.C. 207(a) (“[A]t a rate not less than one and one-half times the regular rate at which he is employed.”).

²⁷⁰ All recipients are required to comply with otherwise applicable laws, including any wage and hour requirements in the Fair Labor Standards Act. See generally, Department of Labor, *Wages and the Fair Labor Standards Act*, <https://www.dol.gov/agencies/whd/flsa>.

outlook for most jurisdictions as compared to the earlier months of the public health emergency. For the fiscal year ending June 30, 2021, total state and local government tax revenues increased 21 percent relative to the same period in 2020, reflecting the combined impact of the modified tax filing deadline in 2020 and an improving economy.²⁷⁵ However, despite a stable budget situation overall, many governments face uncertainty as the COVID-19 pandemic continues to impact commuting patterns, hospitality and tourism, and other drivers of jurisdictions' economies. Thirty-five percent of cities still report being less able to meet financial needs than in fiscal year 2020,²⁷⁶ and over half of surveyed Tribal governments and Tribal enterprises reported losing at least 40 percent of their revenue since the start of the pandemic.²⁷⁷ Budget challenges persist as governments work to mitigate and contain COVID-19 and help citizens weather the economic downturn.

State, local, and Tribal government budgets affect the broader economic recovery. During the period following the 2007–2009 recession, state and local government budget pressures led to fiscal austerity that was a significant drag on the overall economic recovery.²⁷⁸ Inflation-adjusted state and local government revenue did not return to the previous peak until 2013,²⁷⁹ while employment in the sector returned to the previous peak in August 2019, nearly a decade later.²⁸⁰ Just months after recouping losses from the previous downturn, the COVID-19

pandemic caused state and local government employment to contract again, but this time more sharply: By May 2020, state and local government payrolls fell 7.7 percent compared to February 2020. Despite improvement, non-federal public sector job growth continues to lag behind the rest of the U.S. labor market recovery.²⁸¹

Summary of Interim Final Rule

As stated above, the Social Security Act provides that SLFRF funds may be used “for the provision of government services to the extent of the reduction in revenue of such . . . government due to the COVID-19 public health emergency relative to revenues collected in the most recent full fiscal year of the . . . government prior to the emergency.” The interim final rule provided a formula for calculating revenue loss through a four-step process:

- *Step 1:* Identify revenues collected in the most recent full fiscal year prior to the public health emergency (*i.e.*, last full fiscal year before January 27, 2020), called the *base year revenue*.
- *Step 2:* Estimate *counterfactual revenue*, which is the amount of revenue the recipient would have expected in the absence of the downturn caused by the pandemic. The counterfactual revenue is equal to *base year revenue* * [(1 + *growth adjustment*) $\wedge$ (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 the average annual growth rate across all State and Local Government “General Revenue from Own Sources” in the most recent three years prior to the

emergency, 5.2 percent, or the recipient's average annual revenue growth in the three full fiscal years prior to the COVID-19 public health emergency.²⁸² This approach to the growth rate provides recipients with the option to use a standardized growth adjustment when calculating the counterfactual revenue trend and thus minimizes administrative burden, while not disadvantaging recipients with revenue growth that exceeded the national average prior to the COVID-19 public health emergency by permitting these recipients to use their own revenue growth rate over the preceding three years.

- *Step 3:* Identify *actual revenue*,²⁸³ which equals revenues collected over the twelve months immediately preceding the calculation date.

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

For illustration, consider a hypothetical recipient with *base year revenue* equal to 100 (Step 1) that ends on June 30, 2019. In Step 2, the hypothetical recipient finds that the average annual growth across all state and local government “General Revenue from Own Sources” in the most recent three years of available data, 5.2 percent, is greater than the recipient's average annual revenue growth in the three full fiscal years prior to the public health emergency. In this illustration, *n* (months elapsed) and *counterfactual revenue* would be equal to:

As of:	12/31/2020	12/31/2021	12/31/2022	12/31/2023
<i>n</i> (months elapsed)	18	30	42	54
<i>Counterfactual revenue:</i>	107.9	113.5	119.4	125.6

²⁷⁵ Analysis of Quarterly Summary of State and Local Tax Revenue, U.S. Census Bureau, *supra* note 271.

²⁷⁶ National League of Cities, City Fiscal Conditions (2021), available at <https://www.nlc.org/wp-content/uploads/2021/10/2021-City-Fiscal-Conditions-Report-2021.pdf>.

²⁷⁷ Center for Indian Country Development and Federal Reserve Bank of Minneapolis, One Year Into COVID-19, Pandemic's Negative Effects Persist in Indian Country (May 2021), available at <https://www.minneapolisfed.org/article/2021/one-year-into-covid-19-pandemics-negative-effects-persist-in-indian-country>.

²⁷⁸ See, e.g., Nora Fitzpatrick et al., Fiscal Drag from the State and Local Sector?, Liberty Street Economics Blog, Federal Reserve Bank of New York (June 27, 2012), [https://libertystreeteconomics.newyorkfed.org/2012/06/fiscal-drag-from-the-state-](https://libertystreeteconomics.newyorkfed.org/2012/06/fiscal-drag-from-the-state-and-local-sector.html)

[and-local-sector.html](https://libertystreeteconomics.newyorkfed.org/2012/06/fiscal-drag-from-the-state-and-local-sector.html); Jiri Jonas, Great Recession and Fiscal Squeeze at U.S. Subnational Government Level, IMF Working Paper 12/184, (July 2012), available at <https://www.imf.org/external/pubs/ft/wp/2012/wp12184.pdf>; Gordon, *supra* note 16.

²⁷⁹ State and local government general revenue from own sources, adjusted for inflation using the Bureau of Economic Analysis' implicit price deflator for GDP. U.S. Census Bureau, Annual Survey of State Government Finances and U.S. Bureau of Economic Analysis, National Income and Product Accounts, <https://www.census.gov/programs-surveys/gov-finances.html>.

²⁸⁰ U.S. Bureau of Labor Statistics, All Employees, State Government [CES9092000001] and All Employees, Local Government [CES9093000001], retrieved from FRED, Federal Reserve Bank of St. Louis, <https://fred.stlouisfed.org/series/CES9092000001> and <https://fred.stlouisfed.org/series/CES9093000001>.

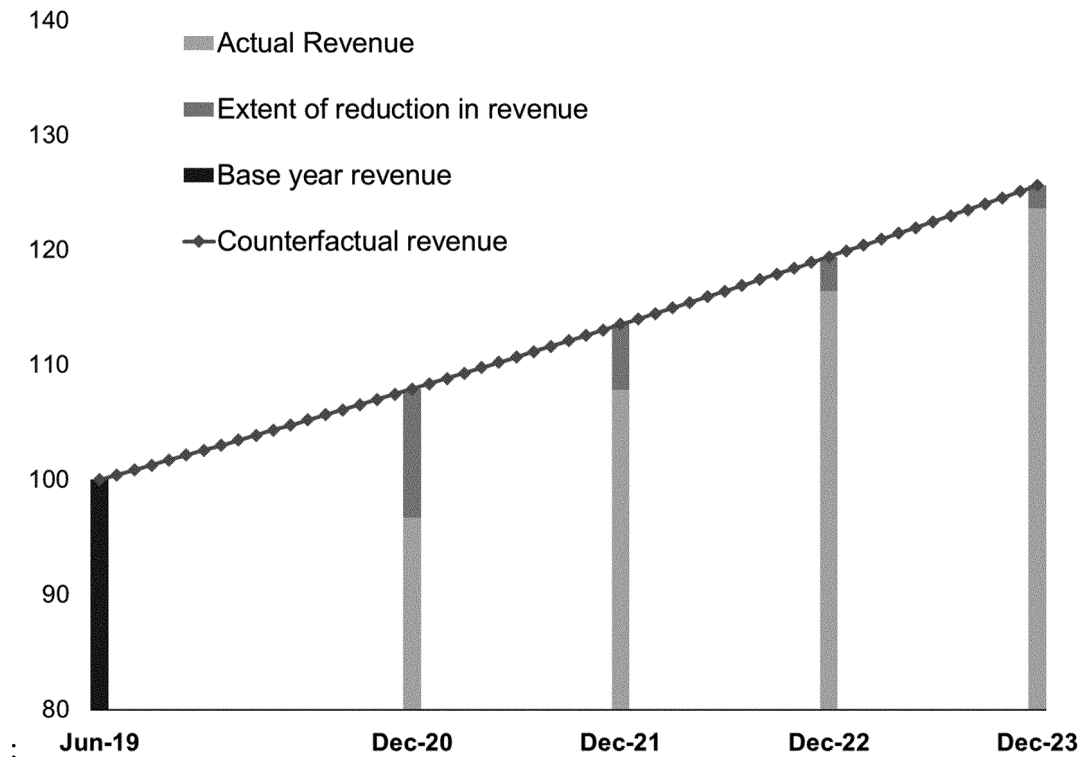
²⁸¹ Pew Research, State and Local Government Job Growth Lags as Economy Recovers (September 2021), available at <https://www.pewtrusts.org/en/research-and-analysis/articles/2021/09/14/state-and-local-government-job-growth-lags-as-economy-recovers>.

²⁸² At the time the interim final rule was published, the average annual growth across all state and local government “General Revenue from Own Sources” in the most recent three years of available data (2015–2018) was 4.1%, which was presented as one option for the growth adjustment. Since the interim final rule was published, 2019 data has been made available, which increases this rate to 5.2%. The final rule updates the percentage to 5.2%, as shown in Step 2.

²⁸³ As explained below, in the final rule, recipients must adjust actual revenue amounts based on certain tax policy changes.

The figure below illustrates the reduction in revenue for the

hypothetical recipient calculated in accordance with the methodology.



Finally, as explained in greater detail below, the clear meaning of the statutory phrase “due to the COVID-19 public health emergency” is that it is referring to revenue reductions caused by the public health emergency. As such, it does not include revenue reduced for reasons other than the public health emergency. Treasury in the interim final rule presumed that any reduction in revenue relative to the counterfactual estimate would be considered revenue lost due to the pandemic and thereby relieved recipients of the administrative burden of determining the extent to which reduction in revenue was due to the public health emergency. The calculation methodology in the interim final rule implicitly assumed that recipients did not suffer a loss in revenue due to the public health emergency if they did not experience a reduction in aggregate revenue compared to the counterfactual estimate. The interim final rule invited comments on whether Treasury should revise its presumption to “take into account other factors, including actions taken by the recipient as well as the expiration of the COVID-19 public health emergency, in determining whether to presume that revenue losses

are ‘due to’ the COVID-19 public health emergency.”

Treasury received a substantial number of comments on the revenue loss provisions set forth in the interim final rule. These comments largely pertained to the following topics: The overall methodology for calculating revenue loss; the definition of “revenue”; whether revenue should be aggregated or calculated on some alternative basis (*e.g.*, source-by-source or fund-by-fund); the appropriate calculation dates (*i.e.*, fiscal year or calendar year); the presumption that all revenue loss is due to the pandemic; the base year; and the definition of “government services.”

Overall Methodology for Calculating Revenue Loss

As noted above, the interim final rule provided a formula for recipients to calculate revenue loss by comparing actual revenues received during a given time-period with a counterfactual amount of revenue based on revenues in the base year and an adjustment for expected growth in revenue each year.

Public Comment: Treasury received many public comments on the overall methodology for calculating revenue loss. Some recipients, including smaller governments, have expressed concern regarding the burden associated with

the calculation of revenue loss, particularly the burden involved in calculating the amount of general revenue, given that the definition of general revenue in the interim final rule does not always align with the definition of revenue already calculated by recipients for other purposes, and requested clarifications regarding a number of components, including the definition of revenue. Commenters also asked for clarification on the relationship between revenue loss calculations across different calculation dates. Other commenters argued that the revenue loss formula does not precisely capture the nuances of local revenues or their particular situation. For example, some commenters stated that requiring that revenues be aggregated fails to capture decreases in revenue sources that cannot easily be made up for with other revenue sources.

Treasury Response: In the final rule, Treasury is largely maintaining the revenue loss formula as set forth in the interim final rule. To address comments that the formula for calculating revenue loss was difficult to apply, Treasury is including an option for recipients to use a standard allowance for revenue loss. 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 up to \$10 million total for the entire period of performance not to exceed the recipient’s SLFRF award amount. Although Treasury anticipates that this standard allowance will be most helpful to smaller local governments and Tribal governments, any recipient can use this standard allowance instead of calculating revenue loss pursuant to the formula above, so long as recipients employ a consistent methodology across the period of performance (*i.e.*, choose either the standard allowance or the regular formula). Treasury intends to amend its reporting forms to provide a mechanism for recipients to make a one-time, irrevocable election to utilize either the revenue loss formula or the standard allowance.

The \$10 million level is based on average revenue loss across state and local governments, taking into consideration potential variation in revenue types and losses and continued uncertainty faced by many recipients regarding revenue shortfalls. To calculate this estimate, Treasury applied a variation of the final rule’s revenue loss calculation on available aggregate state and local government tax revenue data as reported by the Census Bureau for the first calculation date of December 31, 2020. This estimate accounts for expected variation across recipient experiences and reflects the fact that the final rule revenue loss calculation provides recipients several options for specific aspects (*e.g.*, calendar year or fiscal year basis; use of average state and local revenue growth rate or specific local rate). Treasury compared actual calendar year 2020 tax revenues, in aggregate for all state and local governments, to several counterfactual trends that vary based on the end date of the fiscal base year.²⁸⁴ Treasury also assessed counterfactual trends using different revenue growth rates (*e.g.*, the three-year average growth rates of total state and local government general revenue for both fiscal years ending in 2016–2018 and fiscal years ending in 2017–2019; the three-year average growth rates of total state and local government tax revenues for fiscal years ending in 2017–2019; and the one-year growth rate for total state and local government tax revenue in the last full fiscal year before the public health emergency). To account for the fact that the initial estimate, based on tax

revenue, only includes a subset of recipient aggregate general revenue, Treasury applied a scaling factor to recognize that tax revenues generally make up just over half of general revenue collected by state and local governments (*i.e.*, Treasury scaled up its estimate based on tax revenue to produce an estimate for total general revenue).²⁸⁵ The resulting calculation was then extrapolated over the four-year period of performance and divided by a population of interest to arrive at an average loss estimate.

As noted above, Treasury estimated a range of scenarios to account for different values of the variables that would impact average losses. For example, the end date of the fiscal base year and growth rate of counterfactual revenue impact the overall estimate of revenue loss. In addition, this estimate takes into consideration the limitations in the available data. The governments covered by the Census Bureau’s survey do not entirely align with SLFRF recipients. The Census Bureau’s figures are based on 50 state governments, all local government property tax collectors and local government non-property tax imposers, representing at a minimum the more than 38,000 “General Purpose Governments” defined by Census. However, there are only roughly 32,000 recipients of SLFRF funds. Thus, Treasury considered the difference between the number and type of entities in the Census Bureau data and the SLFRF recipients.

Based on this methodology, Treasury estimates that average revenue loss (determined by comparing the counterfactual revenue to actual revenue) may range from \$0 to \$11.7 million per recipient over the period of performance.²⁸⁶ Treasury settled on a point estimate toward the upper end of the range of potential averages, in part, to account for significant variation in the experiences of recipient governments: Some recipients likely experienced losses at the upper end of this range of potential averages. A point estimate toward the upper end of the range errs toward ensuring more recipients’ experiences are covered and increases the utility of the standard allowance for SLFRF recipients. Specifically, the program includes a very large number of recipients with relatively smaller awards; these recipients have tended to describe having greater difficulty completing the

regular revenue loss calculation. Thus, selecting a point estimate toward the higher end of the expected range not only increases the likelihood that the standard allowance will reflect the experience of a larger number of SLFRF recipients but is more responsive to the comments of those with smaller awards. In addition, using a point estimate toward the upper end of the range accounts for the difficulty and uncertainty in predicting revenue losses years into the future, throughout the period of performance.²⁸⁷

Finally, Treasury selected a single allowance level, as opposed to varying levels, to further the goals of simplicity, flexibility, and administrability. Furthermore, data limitations make it difficult to distinguish between types of local governments.²⁸⁸

General Revenue

The interim final rule adopted a definition of “general revenue” based largely on the components reported under “General Revenue from Own Sources” in the Census Bureau’s Annual Survey of State and Local Government Finances. Under the interim final rule, general revenue included revenue collected by a recipient and generated from its underlying economy, and it would capture a range of different types of tax revenues, as well as other types of revenue that are available to support government services.²⁸⁹ Specifically, revenue under the interim final rule included money that is received from tax revenue, current charges, and miscellaneous general revenues and excluded refunds and other correcting transactions, proceeds from issuance of debt or the sale of investments, agency or private trust transactions, revenue from utilities, social insurance trust revenues, and intergovernmental

²⁸⁷ See, *e.g.*, Government Accountability Office, State and Local Governments: Fiscal Conditions During the COVID–19 Pandemic in Selected States (July 2021) (noting that “[s]tate and local government revenues partly depend on the overall economy, and actions to stem the spread of the virus drastically reduced economic activity.”); Board of Governors of the Federal Reserve System, Monetary Policy Report (July 9, 2021) (noting that the pandemic “pushed down state and local government tax collections” and that while some of the drag is “abating” state and local “government payrolls . . . have only edged up from their lows at the onset of the pandemic”).

²⁸⁸ Local government tax revenue data in the Census Bureau’s Quarterly Summary of State and Local Tax Revenue, *supra* note 271, is provided on an aggregated basis.

²⁸⁹ The Department also released guidance clarifying how a recipient may determine whether a particular entity is “part of the recipient’s government.” See *FAQ 3.14. Coronavirus State and Local Fiscal Recovery Funds, Frequently Asked Questions*, as of July 19, 2021; <https://home.treasury.gov/system/files/136/SLFRPFAQ.pdf>.

²⁸⁴ Because the Census Bureau’s state and local government tax revenue data is reported on a quarterly frequency, fiscal base year end dates of March 31, June 30, September 30, and December 31 were used in this assessment.

²⁸⁵ Annual Survey of State and Local Government Finances (2019).

²⁸⁶ This is the range of averages that Treasury calculated by varying the aforementioned assumptions.

transfers from the federal government, including transfers made pursuant to section 9901 of the ARPA.²⁹⁰ In the case of Tribal governments, it also included revenue from Tribal business enterprises.

Public Comment: Many commenters asked Treasury to include certain items in the definition of “general revenue.” For instance, several commenters that operate their own utilities asked that revenue from utilities be included, arguing that declines in utility revenue directly affect contributions to their general funds. Many of these commenters noted that moratoriums on utility shutoffs and a decline in collections have resulted in significant budgetary pressures.

Some commenters also asked for the exclusion of certain intergovernmental transfers in the definition of general revenue, including transfers of shared revenue from the state.²⁹¹ Other commenters asked for the inclusion of certain transfers from the federal government, including fees paid for services and grants that are, in effect, paid for the provision of services.

Treasury also received multiple requests to include revenue from Tribal enterprises in the definition of “general revenue” and that “Tribal enterprise” be defined broadly. Others asked for the ability to choose whether to include revenue from Tribal enterprises.

Finally, some commenters requested that the definition of general revenue exclude certain sources of revenue, such as revenue sources that do not support a general fund (*i.e.*, revenue sources that are restricted in use). Commenters also asked that general revenue exclude revenue from special assessments, settlements that make the recipient

whole for past expenditures, and one-time revenues such as revenue from the sale of property.

Treasury Response: In the final rule, Treasury has maintained the definition of “general revenue” from the interim final rule with two exceptions.

Treasury has adjusted the definition to allow recipients that operate utilities that are part of their own government to choose whether to include revenue from these utilities in their revenue loss calculation. This change responds to comments from recipients indicating that revenue from utilities is used to fund other government services and that utility revenues have declined on aggregate.²⁹² This approach is consistent with other eligible uses, which recognize decreased ability of many households to make utility payments; see section Assistance to Households, which identifies utility assistance as an enumerated eligible use of funds, including through direct or bulk payments to utilities for consumer assistance. Furthermore, for utilities or other entities (*e.g.*, certain service districts) that are not part of the recipient government, a transfer from the utility to the recipient constitutes an intergovernmental transfer and therefore is included in the definition of “general revenue.”²⁹³

Treasury has also added liquor store revenue to the definition of general revenue. The Supplemental Information to the interim final rule stated that the definition of tax revenue would include liquor store revenue, but the text of the rule did not include it. Accordingly, in the final rule, Treasury is clarifying that revenue includes liquor store revenue. However, Treasury believes revenue from government-owned liquor stores is better classified as general revenue than it is as tax revenue, so the final rule includes it as part of general revenue.

In response to requests that the definition of general revenue exclude revenue from special assessments, settlements that make the recipient whole for past expenditures, and one-time revenues such as revenue from the sale of property, Treasury is maintaining its position in the final rule that such revenue is included in general revenue. While such revenues may be less predictable than other sources of

revenue (*e.g.*, property taxes), these are not uncommon sources of revenue for recipients, and their inclusion provides a more complete view of the financial health of a recipient government and is consistent with the Census Bureau methodology. Treasury is also maintaining the exclusion of all payments from the federal government (including payments for services) from general revenue in order to avoid substantial dilution of the definition of revenue, particularly in light of extraordinary fiscal support provided during the pandemic. Treasury is maintaining the inclusion of intergovernmental transfers other than from the federal government for the reasons provided in the Supplemental Information to the interim final rule; to do otherwise would be to significantly distort the revenue calculations for local governments that regularly receive revenue sharing payments, for example, from their state governments. Treasury is also maintaining the approach that “general revenue” includes revenue from Tribal enterprises. This approach recognizes that these enterprises often form the revenue base for Tribal governments’ budgets.

To ease the burden on recipients and account for anomalous variations in revenue, as mentioned above, Treasury has incorporated a “standard allowance” option into the final rule. A recipient may choose to use the standard allowance, which under the final rule is set at up to \$10 million, not to exceed the recipient’s SLFRF award amount, as an alternative to calculating revenue loss according to the formula described above. This addition will promote administrative efficiency and simplify the revenue loss calculation for the vast majority of 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.

Aggregate Revenue Loss Calculation

Under the interim final rule, revenue loss was calculated based on aggregate revenues and therefore loss in one type of revenue could be offset by gains in another. The amount of SLFRF funds available to provide government services was based on overall net revenue loss. In the Supplementary Information to the interim final rule, Treasury asked commenters to discuss the advantages and disadvantages of, and any potential concerns with, this approach, including circumstances in which it could be necessary or

²⁹⁰ The interim final rule stated that “general revenue” and “tax revenue” excludes refunds and other correcting transactions. Instead of “excluding” refunds and other correcting transactions, the Census Bureau methodology upon which those definitions are based provides that general revenue and tax revenue are determined “net of” refunds and other correcting transactions. The use of “excluding” in the interim final rule is substantively the same as the Census Bureau methodology. However, to be consistent with the terminology used by the Census Bureau, the final rule uses “net of” instead of “excluding.” Current charges are defined as “charges imposed for providing current services or for the sale of products in connection with general government activities.” It includes revenues such as public education institution, public hospital, and toll revenues. Miscellaneous general revenue comprises of all other general revenue of governments from their own sources (*i.e.*, other than utility and insurance trust revenue), including rents, royalties, lottery proceeds, and fines.

²⁹¹ The interim final rule excluded governmental transfers from the Federal Government, but it did not exclude intergovernmental transfers from other governmental units for purposes of the revenue loss provisions.

²⁹² U.S. Energy Information Administration, Annual Electric Utility Data (October 2021), available at https://www.eia.gov/electricity/sales_revenue_price/.

²⁹³ FAQ 3.14 provides further guidance on how to determine what entities constitute a government for purposes of calculating revenue loss. See Coronavirus State and Local Fiscal Recovery Funds, Frequently Asked Questions, as of July 19, 2021; <https://home.treasury.gov/system/files/136/SLFRPFAQ.pdf>.

appropriate to calculate the reduction in revenue by source.

Public Comment: Treasury received many comments stating that revenue loss should be calculated on a source-by-source basis. Some commenters argued that a source-by-source approach would be administratively simpler. Other commenters argued that calculating revenue loss source-by-source would better reflect the impact of the COVID-19 pandemic on their ability to fund government services because revenue gains in one source cannot always be used to make up for losses in another. For similar reasons, other commenters asked that revenue loss be calculated on a fund basis.

Treasury Response: Treasury considered alternative methods (e.g., source-by-source, fund-by-fund) but ultimately determined to maintain the calculation of revenue loss in the aggregate. The pandemic has had different effects on recipients (and their revenues), and Treasury recognized that one particular type of revenue or one particular source may have experienced a greater amount of loss for some recipients. However, the statute refers only to “the reduction in revenue of such State, local government, or Tribal government.” The statute is thus clear that Treasury is to refer to the aggregate revenue reduction of the recipient due to the public health emergency. Further, this provision is designed to address declines in the recipients’ overall ability to pay for governmental services, and calculating revenue loss on an aggregate basis provides a more accurate representation of the effect of the pandemic on overall revenues and the fiscal health of the recipient. In many circumstances, recipient governments have flexibility to use revenues from an array of sources and offset declines in some sources with gains in others. While the details and configuration of this flexibility vary widely across recipient governments, calculating revenue loss on a source-by-source or fund-by-fund basis would not capture how recipient governments balance their budgets in the regular course of business. Accordingly, the final rule maintains the requirement that revenue loss is to be calculated on an aggregate basis.

Calculation Dates

Public Comment: Under the interim final rule, recipients calculate revenue loss as of the end of the calendar year. Treasury received many comments requesting that recipients be permitted to calculate revenue loss as of the end of their fiscal year. Commenters argued that doing so would be simpler and less

burdensome on recipients and that financial data as of the end of the fiscal year is audited and therefore more reliable. Commenters also argued that recipients’ fiscal years are structured around the timing of major revenue sources, and that the Census Bureau uses fiscal years in its Annual Survey.

Treasury also received comments about the use of multiple calculation dates. Several Tribal governments stated that they would not see ongoing revenue losses due to the COVID-19 public health emergency and asked to be able to determine revenue loss as of the first calculation date. Several commenters asked whether revenue loss is determined independently for each year, so that a gain in one year does not offset a loss in another, or whether revenue loss is cumulative from the beginning of the pandemic.

Treasury Response: In the final rule, Treasury has made adjustments to give recipients more flexibility with respect to calculation dates and to clarify certain elements. Specifically, the final rule provides recipients the option to choose whether to calculate revenue loss on a fiscal year or calendar year basis, though they must choose a consistent basis for loss calculations throughout the period of performance. Treasury has also clarified in the final rule that revenue loss is calculated separately for each year such that the calculation of revenue lost in one year does not affect the calculation of revenue lost in prior or future years.

Presumption That Revenue Loss Is Due to the Pandemic

As stated above, sections 602(c)(1)(C) and 603(c)(1)(C) of the Social Security Act provide that SLFRF funds may be used “for the provision of government services to the extent of the reduction in revenue of such . . . government due to the COVID-19 public health emergency relative to revenues collected in the most recent full fiscal year of the . . . government prior to the emergency.” As discussed in the interim final rule, although revenue may decline for reasons unrelated to COVID-19, in order to minimize the administrative burden on recipients in calculating revenue loss and take into consideration the devastating effects of the COVID-19 public health emergency, any reduction in revenue relative to the counterfactual estimate was presumed in the interim final rule to be considered revenue lost due to the pandemic.

Treasury stated in the Supplementary Information to the interim final rule that it was considering when, if ever, during the period of performance it would be appropriate to reevaluate the

presumption that all losses are attributable to the public health emergency. Treasury also sought comment on whether to take into account other factors, including actions taken by the recipient as well as the expiration of the COVID-19 public health emergency, in determining whether to presume that revenue losses are “due to” the COVID-19 public health emergency.

Public Comment: Treasury received many comments in support of the presumption, as well as some opposed. Some commenters argued that the presumption eases the administrative burden on recipients because, without it, it would be difficult to identify which losses are attributable to the COVID-19 public health emergency. Many commenters also argued that Treasury should maintain the presumption because recipients are likely to experience losses due to the public health emergency even after the end of the public health emergency. Treasury also received comments asking that it adjust any revenue loss calculation to account for tax changes enacted by the recipient. In particular, some commenters noted that 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.

Treasury Response: In the final rule, Treasury has maintained the presumption that a reduction in a recipient’s revenue is due to the public health emergency with certain adjustments to respond to comments and to better account for revenue loss “due to the COVID-19 public health emergency.” The final rule makes adjustments to the presumption to take into account certain government actions to change tax policy. In particular, Treasury is adjusting the presumption to account for changes to tax policy by providing that changes in revenue that are caused by tax increases or decreases adopted after the issuance of the final rule will not be treated as due to the public health emergency.

Presumption of Revenue Loss “Due To” the Pandemic

In enacting sections 602(c)(1)(C) and 603(c)(1)(C) of the Social Security Act, Congress provided that a state, local government, or Tribal government could use funds to “cover costs . . . for the provision of government services,” but only “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.” In doing so, Congress recognized that the pandemic was causing significant disruption to economic activity and sought to minimize the impact of associated revenue losses on the ability of the recipient to provide government services when such services were needed most.²⁹⁴ The text of the statute itself reinforces this important context: The law specifically limits funds to cover revenue losses that both are “due to the COVID–19 public health emergency” and could impact “the provision of government services.”

Courts have recognized that the phrase “due to” can refer to various causal standards.²⁹⁵ Here, in the context of Congress’s addressing economic disruptions caused by the COVID–19 pandemic that could impact both revenues and government services, the key consideration is whether a revenue loss experienced by the recipient resulted from the exogenous impacts of the public health emergency (and were thus “due to” the pandemic) or instead from the recipient’s own discretionary actions (and, in this context, were not “due to” the pandemic). Reductions in revenue due to the public health emergency does not cover revenue reductions that resulted from a recipient’s own discretionary actions.

In the interim final rule, Treasury included a presumption that all revenue loss is due to the pandemic in order to minimize the administrative burden on recipients discussed above and take into consideration the devastating effects of the COVID–19 public health emergency. Based on comments, Treasury believes that the reasons for the presumption continue to be valid and has determined to maintain the presumption in the final rule with certain modifications. In

particular, at this point in the course of the pandemic, with the fiscal pressure on state and local governments having been significantly reduced, it is appropriate for Treasury to reassess aspects of this presumption. As discussed below, the final rule requires recipients to exclude the value of tax policy changes adopted after January 6, 2022.

Recipients of the SLFRF range from states to the smallest local governments. At the time that the interim final rule was adopted, it was important for recipients to be able to calculate with ease and certainty their amount of revenue loss so that they could begin deploying these funds to continue to maintain essential government services. To this end, the presumption in the interim final rule provided a relatively simple formula for all recipients to use, but the exigent need for recipients to immediately deploy funds for the provision of government services has decreased and the benefit of the presumption in reducing administrative burden is less relevant for those governments that are not likely to avail themselves of the standard allowance described above.

Consistent with these considerations, the final rule requires recipients to exclude revenue loss due to tax changes adopted after January 6, 2022. Eliminating revenue loss due to tax changes from the presumption is appropriate given the significance of tax revenue as a portion of all revenue for state and local governments, the direct impact of tax policy decisions on revenue collected, and the relative ease with which recipients can isolate the estimated effect of a tax change on revenue.²⁹⁶ Most state budgeting processes require a “budget score,” often developed through a consensus process with executive and legislative branch experts,²⁹⁷ and Treasury expects that larger localities, those most likely to utilize the revenue loss formula rather than the standard allowance, also regularly use revenue or budget estimates when considering changes to tax policies. As such, in many cases,

recipients already prepare estimates of the impact of tax changes on revenue, and as discussed below, Treasury will generally permit recipients to rely on such estimates in adjusting their revenue loss calculations.

Reductions in revenue that are not attributable to tax changes would continue to be subject to the presumption. A requirement that recipients evaluate the revenue effect of changes in discretionary policy actions other than tax changes would be more difficult for recipients than evaluating the changes attributable to tax changes given that state and local governments do not generally prepare estimates of the revenue effects of other actions. Finally, as noted above, taxes are the single largest source of revenue for state and local government recipients in the aggregate.

Revisions to Presumption To Address Tax Reductions

For these reasons, Treasury is providing in the final rule that changes in general revenue that are caused by tax cuts adopted after the date of adoption of the final rule (January 6, 2022) will not be treated as due to the public health emergency, and the estimated fiscal impact of such tax cuts must be added to the calculation of “actual revenue” for purposes of calculation dates that occur on or after April 1, 2022. Tax cuts include final legislative or regulatory action or a new or changed administrative interpretation 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 and that the recipient assesses has had the effect of reducing tax revenue relative to current law. This includes the phase-in or taking effect of any statute or rule if the phase-in or taking effect was not prescribed prior to the issuance of the final rule.

In assessing whether a tax change has had the effect of reducing tax revenue, recipients may either calculate the actual effect on revenue or rely on estimates prepared at the time the tax change was adopted. More specifically, recipients may rely on information typically prepared in the course of developing the budget (e.g., expected revenues) and/or considering tax changes (e.g., budget scores, revenue notes) to determine the amount of revenue that would have been collected in the absence of the tax cut, as long as those estimates are based on reasonable assumptions and do not use dynamic methodologies that incorporate the projected effects of macroeconomic growth, given that macroeconomic

²⁹⁴ See also sections 602(a)(1) and 603(a) of the Social Security Act (appropriating the funds for payment to recipients in order to “mitigate the fiscal effects stemming from the public health emergency”).

²⁹⁵ *U.S. Postal Service v. Postal Regulatory Comm’n*, 640 F.3d 1263 (D.C. Cir. 2011); see *Kimber v. Thiokol Corp.*, 196 F.3d 1092, 1100 (10th Cir. 1999); *Adams v. Director, OWCP*, 886 F.2d 818, 821 (6th Cir. 1989).

²⁹⁶ Treasury considered whether to also eliminate the presumption with respect to losses resulting from other changes in policy, such as decreases in user fees or fines. However, the effects of these changes are more minor overall and would be more challenging to accurately identify and quantify, so the administrability benefit of the presumption for recipients outweighs whatever distortion there might be as a result of not reflecting such changes.

²⁹⁷ See generally, National Association of State Budget Officers, *Budget Processes in the States*, (2021), available at https://higherlogicdownload.s3.amazonaws.com/NASBO/9d2d2db1-c943-4f1b-b750-0fca152d64c2/UploadedImages/Budget%20Processes/NASBO_2021_Budget_Processes_in_the_States_S.pdf.

growth is accounted for in the counterfactual growth assumptions. Recipients that choose to calculate the actual effect of a tax change on revenue must similarly base their calculations on reasonable estimates that do not use dynamic methodologies. Recipients should apply this adjustment in determining their actual revenue totals at Step 3 in the revenue loss calculation described above.

Revisions to Presumption To Address Tax Increases

As noted above, the calculation methodology in the interim final rule implicitly assumed that recipients did not experience a reduction in revenue due to the public health emergency if they did not experience a reduction in aggregate revenue relative to the counterfactual estimate. Treasury recognizes that some recipients may have experienced a reduction in revenue due to the public health emergency that was offset by other revenue, particularly in the case of increases to tax revenue resulting from a tax increase. The final rule requires recipients that increased taxes to deduct the amount of increases to revenue attributable to such tax increase. This change is also consistent with the incorporation in the interim final rule and final rule of a counterfactual growth rate, which effectively permits recipients to count revenue losses due to the public health emergency that are offset by increased tax revenue resulting from organic growth.

For these reasons, Treasury is providing in the final rule that recipients must subtract from their calculation of actual revenue the effect of tax increases adopted after the date of adoption of this final rule (January 6, 2022) for purposes of calculation dates that occur on or after April 1, 2022. This change and the change to the final rule described above treat tax changes in a consistent manner: In the case of reduction in revenue resulting from a tax cut, a recipient must add the amount of that reduction to its calculation of actual revenue, and in the case of an increase in revenue resulting from a tax increase, a recipient must subtract the amount of additional revenue collected as a result of the tax increase from its calculation of actual revenue.²⁹⁸

²⁹⁸ The final rule does not permit recipients to reflect the effects of other changes in policy, such as increases in fees adopted after adoption of the final rule. Treasury understands that the main beneficiaries of such a change would be those recipients that will benefit from the standard allowance provided for in the final rule and that for other recipients the administrative burden on recipients needed to calculate these adjustments

As is the case with tax cuts, discussed above, tax increases that must be reflected in the calculation of revenue include final legislative or regulatory action or a new or changed administrative interpretation that increases any tax and that the recipient assesses has had the effect of increasing tax revenue relative to current law. In assessing whether a tax change has had the effect of increasing tax revenue, recipients may either calculate the actual effect on revenue or rely on estimates prepared at the time the tax change was adopted. Recipients may rely on information typically prepared in the course of developing the budget (e.g., expected revenues) and/or considering tax changes (e.g., budget scores, revenue notes) to determine the amount of revenue that was collected as a result of the tax increase as long as those estimates are based on reasonable assumptions and do not use dynamic methodologies that incorporate the projected effects of macroeconomic growth, given that macroeconomic growth is accounted for in the counterfactual growth assumptions. Recipients that choose to calculate the actual effect of a tax change on revenue must similarly base their calculations on reasonable estimates that do not use dynamic methodologies. Recipients should apply this adjustment in determining their actual revenue totals at Step 3 in the revenue loss calculation described above.

Previously Adopted Tax Changes

As discussed above, 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. Recipients that adopted a tax change in a previous period will not be required to recalculate the amount of revenue loss as of prior calculation dates or to reflect the fiscal impacts of such tax changes in calculation dates after the effective date of the final rule. However, the final rule will permit recipients to elect to reflect the revenue effects of their tax changes adopted between the beginning of the public health emergency and the adoption of the final rule.²⁹⁹ If a recipient elects to do so, it must do so with respect to all of its tax changes

would outweigh the benefit of having a somewhat larger amount of funds available for government services.

²⁹⁹ The final rule also addresses the possibility that some recipients may have fiscal years ending during the period between January 6, 2022 and April 1, 2022; such recipients' election to reflect tax changes from prior periods would also apply to changes during this period with respect to the calculation date in this period.

adopted between the beginning of the public health emergency and the adoption of the final rule. Treasury intends to revise its reporting requirements to permit recipients to amend their previously reported calculation periods to reflect such changes.

Determination of the Base Year

Under the ARPA and interim final rule, SLFRF funds may be used "for the provision of government services to the extent of the reduction in revenue . . . relative to revenues collected in the most recent full fiscal year" of the recipient. Therefore, the base year for the revenue loss calculation is the most recent full fiscal year prior to the COVID-19 public health emergency.

Public Comment: Treasury received multiple comments asking for flexibility in determining base year revenues. For instance, some commenters asked to use a different base year than the "most recent full fiscal year" prior to the pandemic for calculating revenue loss; others asked to be able to average prior years. Commenters stated that, for various reasons, revenue was artificially low in the last full fiscal year prior to the public health emergency, and, therefore, using revenue in that year as the base year did not accurately reflect expected revenue in a normal year. For example, several Tribes stated that unforeseeable weather events resulted in forced closure of casinos which, in turn, artificially deflated revenues in the base year. Other commenters indicated that one-time anomalies in the timing of tax collection in that year artificially pushed revenue into the following fiscal year. Similarly, a few commenters noted that tax changes that took effect in the middle of the base year may artificially skew the size of the revenue loss experienced by the recipient government.

Treasury Response: Treasury understands that recipients may have experienced events in the base year that led to lower or higher revenues than what they otherwise would have collected. The ARPA provides that revenue loss is to be determined with respect to revenue in the most recent full fiscal year prior to the pandemic, and therefore the final rule maintains its incorporation of the statutory definition.

In calculating revenue loss, recipients may use data on a cash, accrual, or modified accrual basis, provided that recipients are consistent in their choice of methodology throughout the covered period, which might help recipients adjust to certain delays in revenue receipt. Both the standard allowance and elements of the formula (e.g.,

counterfactual growth rate) incorporate generous assumptions to give recipients flexibility and to account for variation among recipients' experiences during the pandemic.

Government Services

The **SUPPLEMENTAL INFORMATION** to the interim final rule provided a non-exhaustive list of examples of services that are government services. The interim final rule also discussed why neither payment of debt service nor replenishing financial reserves constitutes government services, as these expenditures do not provide services but relate to the financing of such services. Similarly, government services under the interim final rule did not include satisfaction of any obligation arising under or pursuant to a settlement agreement, judgment, consent decree, or judicially confirmed debt restructuring in a judicial, administrative, or regulatory proceeding, unless the judgment or settlement required the provision of government services.

Public Comment: Treasury received several comments requesting further clarification regarding the scope of government services, including asking for either a specific definition of government services or that a specific use be expressly deemed to be a government service. Some commenters disagreed with the exclusions from government services in the interim final rule. For instance, many of the comments Treasury received suggested that replenishing reserve funds and at least certain types of debt service should be treated as providing governmental services. Some commenters also suggested that a recipient should be able to use funds for costs incurred before March 3, 2021. Other commenters asked Treasury to maintain the prohibition on using the funds to pay debt service.

Treasury Response: Treasury continues to believe that the lists of activities that either are or are not providing government services are accurate but is clarifying here that, generally speaking, services provided by the recipient governments are "government services" under the interim final rule and final rule, unless Treasury has stated otherwise. Government services include, but are not limited to, maintenance or pay-go funded building³⁰⁰ of infrastructure, including roads; modernization of cybersecurity, including hardware,

software, and protection of critical infrastructure; health services; environmental remediation; school or educational services; and the provision of police, fire, and other public safety services.

The aforementioned list of government services is not exclusive. However, recipients should be mindful that other restrictions may apply, including those articulated in the section Restrictions on Use. In the final rule, Treasury is maintaining the limitations on government services included in the interim final rule and has addressed and responded to public commenters on these issues in the section Restrictions on Use.

D. Investments in Water, Sewer, and Broadband Infrastructure

Summary of Interim Final Rule

Under the ARPA, recipients may use funds to make necessary investments in water, sewer, and broadband infrastructure. The interim final rule provided recipients with the ability to use funds for a broad array of uses within these categories.

The interim final rule discussed two general provisions that apply across all water, sewer, and broadband infrastructure investments. First, the interim final rule addressed the meaning of "necessary" investments as meaning those designed to provide an adequate minimum level of service and unlikely to be made using private sources of funds. Second, the interim final rule encouraged recipients to use strong labor standards in water, sewer, and broadband projects, as discussed below.

Necessary Investments

The statute limits investments to those that are necessary. As discussed in more detail below, Treasury determined that the types of water and sewer projects that were authorized under the interim final rule by reference to existing Environmental Protection Agency (EPA) programs would in all cases be necessary investments given the conditions applicable to such EPA programs. Similarly, the interim final rule's definition of eligible broadband projects as those designed to provide a certain standard of service to those households and businesses with limited existing service was based on the statutory requirement that investments in water, sewer, and broadband must be "necessary."

As discussed further below, Treasury has expanded the scope of what is an eligible water and sewer infrastructure project to include additional uses. In

particular, the final rule permits use of SLFRF funds for certain dam and reservoir restoration projects and certain drinking water projects to support population growth. The nature of these additional uses is such that additional factors must be considered in determining whether one of these additional uses is a necessary project. In addition, Treasury recognizes that there may be a need for improvements to broadband beyond those households and businesses with limited existing service as defined in the interim final rule. Treasury has replaced this specific requirement based on an understanding that broadband investments may be necessary for a broader set of reasons.

Given this expansion of what is considered in scope as a water, sewer, or broadband infrastructure project, the final rule provides a further elaboration of Treasury's understanding of the conditions under which an infrastructure project will be considered to be a necessary investment. Treasury considers a necessary investment in infrastructure to be one that is (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 and (2) a cost-effective means for meeting that need, taking into account available alternatives. In addition, given that drinking water is a resource that is subject to depletion, in the case of investments in infrastructure that supply drinking water in order to meet projected population growth, the project must be projected to be sustainable over its estimated useful life.

Not included in the list of criteria above is the requirement in the interim final rule that the project be unlikely to be made using private sources of funds. Given that it may be difficult to assess in a particular case what the probability of private investment in a project would be, Treasury has eliminated this standard from the meaning of necessary but still encourages recipients to prioritize projects that would provide the greatest public benefit in their respective jurisdictions.

Strong Labor Standards in Water, Sewer, and Broadband Construction

As stated in the Supplementary Information to the interim final rule, Treasury encourages recipients to carry out investments in water, sewer, or broadband infrastructure in ways that produce high-quality infrastructure, avert disruptive and costly delays, and

³⁰⁰ Pay-go infrastructure funding refers to the practice of funding capital projects with cash-on-hand from taxes, fees, grants, and other sources, rather than with borrowed sums.

promote efficiency.³⁰¹ Treasury encourages recipients to use strong labor standards, including project labor agreements (PLAs) and community benefits agreements that offer wages at or above the prevailing rate and include local hire provisions. Treasury also recommends that recipients prioritize in their procurement decisions employers who can demonstrate that their workforce meets high safety and training standards (e.g., professional certification, licensure, and/or robust in-house training), that hire local workers and/or workers from historically underserved communities, and who directly employ their workforce or have policies and practices in place to ensure contractors and subcontractors meet high labor standards. Treasury further encourages recipients to prioritize employers (including contractors and subcontractors) without recent violations of federal and state labor and employment laws.

Treasury believes that such practices will promote effective and efficient delivery of high-quality infrastructure projects and support the economic recovery through strong employment opportunities for workers. Such practices will also reduce the likelihood of potential project challenges like work stoppages or safety accidents, while ensuring a reliable supply of skilled labor and minimizing disruptions, such as those associated with labor disputes or workplace injuries. That will, in turn, promote on-time and on-budget delivery.

Furthermore, among other requirements contained in 2 CFR 200, Appendix II, all contracts made by a recipient or subrecipient in excess of \$100,000 with respect to water, sewer, or broadband infrastructure project that involve employment of mechanics or laborers must include a provision for compliance with certain provisions of the Contract Work Hours and Safety Standards Act, 40 U.S.C. 3702 and 3704,

³⁰¹ Treasury received several comments related to its encouragement of certain wage and labor standards in the Supplementary Information to the interim final rule. Some commenters opposed this encouragement, arguing that even encouragement and reference to PLAs and prevailing wage laws could lead to confusion or make it more likely that recipients would apply labor standards in ways that would discourage competition and raise project costs. Conversely, some commenters supported the encouragement of the use of certain standards, including giving preference to employers that meet certain employment standards (e.g., those that maintain high safety and training standards) because it would support the goal of completing water, sewer, and broadband projects efficiently and safely. As in the interim final rule, this encouragement does not impose a legally binding restriction on recipients.

as supplemented by Department of Labor regulations (29 CFR part 5).

Treasury will continue to seek information from recipients on their workforce plans and water, sewer, and broadband projects undertaken with SLFRF funds. This reporting will support transparency and competition by enhancing available information on the services being provided. Since publication of the interim final rule, Treasury has provided recipients with additional guidance and instructions on the reporting requirements.³⁰²

Environmental and Other Generally Applicable Requirements

Treasury cautions that, as is the case with all projects engaged in using the SLFRF funds, all projects must comply with applicable federal, state, and local law. In the case of infrastructure projects in particular, this includes environmental and permitting laws and regulations. Likewise, as with all capital expenditure projects using SLFRF funds, projects must be undertaken and completed in a manner that is technically sound, meaning that they must meet design and construction methods and use materials that are approved, codified, recognized, fall under standard or acceptable levels of practice, or otherwise are determined to be generally acceptable by the design and construction industry.

1. Water and Sewer Infrastructure

Sections 602(c)(1)(D) and Section 603(c)(1)(D) of the Social Security Act provide that recipients may use the SLFRF funds “to make necessary investments in water [and] sewer . . . infrastructure.” The interim final rule permitted a broad range of necessary investments in projects that improve access to clean drinking water and improve wastewater and stormwater infrastructure systems. As discussed below, after review of comments received on the interim final rule, Treasury has made changes in the final rule to expand the scope of eligible water and sewer projects.

Summary of Interim Final Rule and Final Rule Structure

Background: In the interim final rule, Treasury aligned eligible uses of the SLFRF with the wide range of types or categories of projects that would be eligible to receive financial assistance through the Clean Water State Revolving Fund (CWSRF) or Drinking Water State Revolving Fund (DWSRF) administered

³⁰² See U.S. Department of the Treasury, *Compliance and Reporting Guidance*, 21 (June 24, 2021), <https://home.treasury.gov/system/files/136/SLFRF-Compliance-and-Reporting-Guidance.pdf>.

by the Environmental Protection Agency (EPA). By referring to these existing programs, with which many recipients are already familiar, Treasury intended to provide flexibility to recipients to respond to the needs of their communities while facilitating recipients’ identification of eligible projects. Furthermore, by aligning SLFRF eligible uses with these existing programs, Treasury could ensure that projects using the SLFRF are limited to “necessary investments.”

Public Comment: Treasury received many comments responding to the water and sewer infrastructure provisions of the interim final rule from state, local, and Tribal governments, industry trade associations, public interest groups, private individuals, and other interested parties. Commenters requested that Treasury provide a wider set of eligible uses for water and sewer infrastructure beyond those uses articulated by the DWSRF and CWSRF, suggesting that Treasury expand the definition of necessary water and sewer infrastructure.

Treasury Response: In response to commenters, Treasury is expanding the eligible use categories for water and sewer infrastructure, discussed in further detail below. Because the interim final rule aligned the definition of necessary water and sewer infrastructure with the eligible uses included in the DWSRF and CWSRF, Treasury is reflecting in the final rule a revised standard for determining a necessary water and sewer infrastructure investment for eligible water and sewer uses beyond those uses that are eligible under the DWSRF and CWSRF.

Interpretation of Necessary Investments and Water and Sewer Infrastructure

Necessary Investments: As discussed above, Treasury considers an investment in infrastructure to be necessary if it is (1) responsive to an identified need to achieve or maintain an adequate minimum level of service, which for some eligible project categories may include a reasonable projection of increased need, whether due to population growth or otherwise and (2) a cost-effective means for meeting that need, taking into account available alternatives. In addition, in the case of investments in drinking water service infrastructure to supply drinking water to satisfy a projected increase in population, the project must also be projected to be sustainable over its estimated useful life. As detailed further below, DWSRF and CWSRF eligible projects continue to be presumed to be necessary investments under the final

rule, with the exception of projects for the rehabilitation of dams and reservoirs, which the EPA has permitted in certain circumstances under the DWSRF and, as discussed below, are addressed separately in the final rule.

In evaluating whether a project would respond to a need to achieve or maintain an adequate minimum level of service, a recipient should consider whether it would meet the needs of the population to be served and would satisfy applicable standards. For example, a drinking water project must be sized such that it provides an adequate volume of water to households and other customers and must meet applicable standards for drinking water quality under the Safe Drinking Water Act (SDWA). Similarly, a centralized wastewater treatment project should be designed to manage updated estimated flow rates and comply with Clean Water Act requirements. These requirements are already reflected in the eligibility criteria of the DWSRF and CWSRF, respectively.

In evaluating whether a project is a cost-effective means of providing the water or sewer service, the recipient should consider the need for the project, the costs and benefits of the project compared to alternatives, and the effectiveness of the project in meeting the identified need. Recipients are not required to conduct a full cost-benefit analysis; however, they should consider and analyze relevant factors. For example, a recipient may not use funds to pursue a costly dam rehabilitation to provide drinking water to a community if it could provide the same service with a significantly smaller investment by drawing water from another available reservoir, assuming that doing so would meet the other requirements of the final rule. As detailed further below, recipients are only required to assess cost-effectiveness of projects for the creation of new drinking water systems, dam and reservoir rehabilitation projects, or projects for the extension of drinking water service to meet population growth needs.

Certain DWSRF eligibilities are already subject to a cost-effectiveness test. Specifically, projects that create new drinking water systems must be a cost-effective solution to addressing the identified problem.³⁰³ The EPA also imposes a cost-effectiveness condition on dam and reservoir rehabilitation projects undertaken pursuant to its class deviation from the DWSRF rule. These projects are particularly expensive and, unlike in the case of other types of eligible projects, there are often

available alternatives to conducting these projects. Projects for the extension of drinking water service to meet population growth needs are also often particularly expensive, and there are often different ways to meet the needs of expanding populations. Treasury will accordingly require that recipients engage in a cost-effectiveness analysis when engaging in projects for the creation of new drinking water systems, dam and reservoir rehabilitation projects, or projects for the extension of drinking water service to meet population growth needs. Other types of eligible water or sewer projects will not be subject to this cost-effectiveness test, including lead line replacement and lead remediation.³⁰⁴

In the case of projects that expand drinking water service infrastructure to satisfy a projected increase in population, the project must also be sustainable, meaning that the project can continue providing the adequate minimum level of service for its estimated useful life, taking into account projected impacts of changes to the climate and other expected demands on the source of water. For example, a reservoir rehabilitation project may not be pursued if the reservoir will no longer be able to provide an adequate source of drinking water before the end of the estimated useful life of the improvements to the reservoir. In areas currently impacted by drought or where drought conditions are expected to be more frequent or more severe in the future, sources of drinking water may be diminished more quickly than in prior periods. In considering how much of a source of water will be available in the future for the drinking water project, a recipient must consider that a source of water may be drawn upon or otherwise used for other current and expected uses, including use by fish and other wildlife.

The final rule applies this sustainability condition to projects that expand drinking water service infrastructure to satisfy a projected increase in population but not to other drinking water projects. When a new source of water is required to remedy an existing threat to public health, as in the case of source projects eligible under the DWSRF, sustainability should be a consideration, but in some cases, the need to replace a contaminated source may mean that a less sustainable choice

may be made. When faced with such an issue, such as in the case of a contaminated well system, a project to replace the contaminated source can be said to be “necessary” even if the replaced source is not sustainable over the long term. Expediency may dictate that a shorter-term solution is pursued if it is cost-effective and will prevent health issues while a longer-term solution can be found. In contrast, an expansion to accommodate population growth cannot be said to be necessary if it is not sustainable over its estimated useful life.

Not included in the list of criteria above is the requirement in the interim final rule that the project be unlikely to be made using private sources of funds. Given that it may be difficult to assess in a particular case what the probability of private investment in a project would be, Treasury has eliminated this standard from the meaning of necessary but nevertheless encourages recipients to apply funds to projects that would provide the greatest public benefit.

Water and Sewer Infrastructure: As stated above, Congress provided that SLFRF funds are available for “necessary water, sewer, and broadband infrastructure.” Treasury interprets the reference to water and sewer uses consistent with the inclusion of broadband uses. Water, sewer, and broadband infrastructure all involve the provision of essential services to residents, businesses, and other consumers. As the pandemic has made clear, access to broadband has itself become essential for individuals and businesses to participate in education, commerce, work, and civic matters and to receive health care and social services.

Water and sewer services provided broadly to the public as essential services include the provision of drinking water and the removal, management, and treatment of wastewater and stormwater.³⁰⁵ Although governments are engaged in other infrastructure related to water, including irrigation projects, transportation projects, and recreation projects, such projects go beyond the scope of what is provided to all residents as an essential service. Provision of drinking water and removal, management, and treatment of

³⁰⁵ In many jurisdictions, stormwater flows into the sewer system rather than into a separate stormwater system. The separate inclusion of “water” and “sewer” infrastructure also makes clear that “water” in this context cannot refer to all uses relevant to water. Given that sewer systems carry wastewater (and often stormwater), if water infrastructure were to refer to all water-related infrastructure in this context, it would make the inclusion of sewer infrastructure redundant.

³⁰⁴ In such cases, either the projects are presumptively cost-effective (e.g., lead projects would always be considered cost-effective given the costs imposed by lead poisoning) or a cost-effectiveness test is less relevant given the lack of available alternatives or the relatively low cost of the project.

³⁰³ See 40 CFR 35.3520(b)(2)(vi).

wastewater and stormwater are the typical responsibilities of “water and sewer” authorities throughout the country, and there is a tremendous need for improvements to the ability of state, local, and Tribal governments to provide such services, including to address the consequences of deferred maintenance and additional resiliency needed to adapt to changes to the climate.³⁰⁶

Although the meaning of water and sewer infrastructure for purposes of sections 602(c)(1)(D) and 603(c)(1)(D) of the Social Security Act does not include all water-related uses, Treasury has made clear in this final rule that investments to infrastructure include a wide variety of projects. Treasury interprets the word “infrastructure” in this context broadly to mean the underlying framework or system for achieving the given public purpose, whether it be provision of drinking water or management of wastewater or stormwater.³⁰⁷ As discussed below, this can include not just storm drains and culverts for the management of stormwater, for example, but also bioretention basins and rain barrels implemented across a watershed, including on both public and private property, that together reduce the amount of runoff that needs to be managed by traditional infrastructure.

Further, Treasury understands that investments in infrastructure include

improvements that increase the capacity of existing infrastructure and extend the useful life of existing infrastructure. Accordingly, water and sewer infrastructure investment projects include those that conserve water, thereby reducing pressure on infrastructure for the provision of drinking water, and that recycle wastewater and stormwater, thereby reducing pressure on the infrastructure for treating and managing wastewater and stormwater.

As with other infrastructure projects and capital expenditure projects that are permitted as responses to the public health emergency and its negative economic impacts, costs for planning and design and associated pre-project costs are eligible uses of SLFRF funds. Costs for the acquisition of land are also eligible, but only if needed for the purposes of locating eligible project components. Recipients should ensure that they have the technical, financial, and managerial capability to ensure compliance with the requirements of the SDWA, or that the assistance will ensure compliance and the owners or operators of the systems will undertake feasible and appropriate changes in operations to ensure compliance over the long-term.

Drinking Water State Revolving Fund and Clean Water State Revolving Fund

Background: As stated above, in the interim final rule, Treasury included eligible uses of the DWSRF and the CWSRF as eligible uses of the SLFRF in the water and sewer infrastructure category. By providing that projects eligible under the DWSRF and the CWSRF are also eligible uses of SLFRF funds, the interim final rule permitted a broad range of projects that improve drinking water infrastructure, such as building or upgrading facilities and transmission, distribution, and storage systems, including replacement of lead service lines. With respect to clean water and wastewater infrastructure, the interim final rule provided that recipients may use SLFRF funds to construct publicly owned treatment infrastructure, manage and treat stormwater or subsurface drainage water, and facilitate water reuse, among other uses. Consistent with the DWSRF and the CWSRF, the interim final rule provided that SLFRF funds may be used for cybersecurity needs to protect water or sewer infrastructure, such as developing effective cybersecurity practices and measures at drinking water systems and publicly owned treatment works.

Use of DWSRF and CWSRF to Support Climate Change Adaptations. Many of

the types of projects eligible under either the DWSRF or CWSRF also support efforts to address climate change. For example, by taking steps to manage potential sources of pollution and preventing these sources from reaching sources of drinking water, projects eligible under the DWSRF and CWSRF may reduce energy required to treat drinking water. Similarly, projects eligible under the DWSRF and CWSRF include measures to conserve and reuse water, for example through projects to reuse or recycle wastewater, stormwater, or subsurface drainage water. Treasury encourages recipients to consider green infrastructure investments and projects to improve resilience to the effects of climate change. For example, more frequent and extreme precipitation events combined with construction and development trends have led to increased instances of stormwater runoff, water pollution, and flooding. Green infrastructure projects that support stormwater system resiliency could include bioretention basins that provide water storage and filtration benefits, and green streets, where vegetation, soil, and engineered systems are combined to direct and filter rainwater from impervious surfaces. In cases of a natural disaster, recipients may also use SLFRF funds for water infrastructure to provide relief, such as interconnecting water systems or rehabilitating existing wells during an extended drought.

Public Comment: Many commenters expressed support for the interim final rule's alignment of the use of funds for water and sewer infrastructure under the SLFRF with the project categories provided through the EPA's DWSRF and CWSRF programs.

Many commenters also provided recommendations about the specific types of water infrastructure projects that should be eligible under the final rule. In many of these cases, commenters recommended that Treasury include project types that are already eligible under the DWSRF and CWSRF and thus eligible under the interim final rule and final rule. For example, several commenters requested that aquifer recharge projects, or other groundwater protection and restoration projects, be included as eligible uses of SLFRF when certain aquifer recharge projects that (1) implement a nonpoint source pollution management program³⁰⁸ or (2) constitute reuse of

³⁰⁸ Specifically, this would include desalination projects that decrease the burden on aquifers where there is causal relationship between aquifer withdrawals and saltwater intrusion if the projects implement a nonpoint source pollution

Continued

³⁰⁶ In addition, Treasury interprets the eligible uses of SLFRF funds against the background of the Coronavirus Relief Fund (CRF), for which the SLFRF funds are, in part, a successor. CRF recipients expressed great interest in using the CRF to pursue water infrastructure projects, including provision of drinking water and internal plumbing on Tribal lands and in Alaskan villages, and broadband projects throughout the country; Treasury permitted these projects given the connection to the public health emergency (see Coronavirus Relief Fund for States, Tribal Governments, and Certain Eligible Local Governments, 86 FR 4182, 4190, 4192 (Jan. 15, 2021)), but the short deadline for use of funds made it difficult to use CRF funds in this way. Congress' inclusion of the water, sewer, and broadband clause in the ARPA, along with the SLFRF funds' longer eligible use date, is responsive to this unmet need. As discussed below, Congress in the Infrastructure Investment and Jobs Act amended sections 602(c) and 603(c) of the Social Security Act to add a new paragraph as sections 602(c)(4) and 603(c)(5), respectively, providing that SLFRF funds may be used to meet non-federal matching requirements of any authorized Bureau of Reclamation project. This authority was added as a separately enumerated eligible use regardless of whether the underlying project would be an eligible use of SLFRF funds under the water and sewer infrastructure eligible use category.

³⁰⁷ See, e.g., section 502 of the Federal Water Pollution Control Act (33 U.S.C. 1362), defining “green infrastructure” as “the range of measures that use plant or soil systems, permeable pavement or other permeable surfaces or substrates, stormwater harvest and reuse, or landscaping to store, infiltrate, or evapotranspire stormwater and reduce flows to sewer systems or to surface waters.”

wastewater, stormwater, or subsurface drainage water are in fact eligible uses under the CWSRF. Furthermore, under the DWSRF, eligible projects include certain aquifer storage and recovery systems for water storage.

Treasury Response: Eligible projects articulated in the DWSRF and CWSRF continue to be eligible uses of SLFRF funds under the final rule. Recognizing that recipients have faced challenges interpreting eligible use categories under the interim final rule or cross-referencing EPA program materials to interpret eligible project types, Treasury is including in this Supplementary Information additional information on the types of projects eligible under the DWSRF and CWSRF. Treasury emphasizes that this further clarification does not represent a change in eligibility. Treasury encourages recipients to reference EPA handbooks for the DWSRF and CWSRF, which provide further information and detail about the types of projects eligible under those programs and thus under the final rule.

Eligible projects under the DWSRF. Eligibilities under the DWSRF, the interim final rule, and the final rule include projects that address present or prevent future violations of health-based drinking water standards. These include projects needed to maintain compliance with existing national primary drinking water regulations for contaminants with acute and chronic health effects. Projects to replace aging infrastructure are also eligible uses if they are needed to maintain compliance or further the public health protection objectives of section 1452 of the SDWA.³⁰⁹ The following project categories are eligible under the DWSRF, were eligible under the interim final rule, and continue to be eligible under the final rule:

(i) *Treatment projects*, including installation or upgrade of facilities to

management program under section 319 of the Clean Water Act. This could include projects in which desalinated seawater is injected into the aquifer to mitigate or prevent salt water intrusion, as well as projects in which brackish water is removed from an aquifer, desalinated, and returned to the aquifer.

³⁰⁹ See 42 U.S.C. 300j-12(a)(2)(B) (limiting financial assistance used by a public water system to expenditures (including expenditures for planning, design, siting, and associated preconstruction activities, or for replacing or rehabilitating aging treatment, storage, or distribution facilities of public water systems, but not including monitoring, operation, and maintenance expenditures of a type or category which the Administrator of the EPA has determined, through guidance, will facilitate compliance with national primary drinking water regulations applicable to the system under 42 U.S.C. 300g-1 or otherwise significantly further the health protection objectives of the SDWA); See also 40 CFR 35.3520(b).

improve the quality of drinking water to comply with primary or secondary standards and point of entry or central treatment under section 1401(4)(B)(i)(III) of the SDWA.

(ii) *Transmission and distribution projects*, including installation or replacement of transmission and distribution pipes to improve water pressure to safe levels or to prevent contamination caused by leaks or breaks in the pipes.

(iii) *Source projects*, including rehabilitation of wells or development of eligible sources to replace contaminated sources.

(iv) *Storage projects*, including installation or upgrade of eligible storage facilities, including finished water reservoirs, to prevent microbiological contaminants from entering a public water system.

(v) *Consolidation projects*, including projects needed to consolidate water supplies where, for example, a supply has become contaminated or a system is unable to maintain compliance for technical, financial, or managerial reasons.

(vi) *Creation of new systems*, including those that, upon completion, will create a community water system to address existing public health problems with serious risks caused by unsafe drinking water provided by individual wells or surface water sources. Eligible projects are also those that create a new regional community water system by consolidating existing systems that have technical, financial, or managerial difficulties. Projects to address existing public health problems associated with individual wells or surface water sources must be limited in scope to the specific geographic area affected by contamination. Projects that create new regional community water systems by consolidating existing systems must be limited in scope to the service area of the systems being consolidated.

Ineligible projects under the DWSRF. Federally-owned public water systems and for-profit noncommunity water systems are not eligible to receive DWSRF funds and therefore SLFRF funds.³¹⁰ The acquisition of water rights, laboratory fees for routine compliance monitoring, and operation and maintenance expenses are not costs associated with investments in infrastructure and thus would not be eligible under the final rule.³¹¹ Projects needed primarily to serve future population growth are also ineligible under the DWSRF; the treatment of such projects under the final rule is discussed

³¹⁰ See 40 CFR 35.3520(d)(1).

³¹¹ See *id.* at § 35.3520(e)(2)-(4).

separately below under “Expansion of Drinking Water Service.” Projects eligible under the DWSRF must be sized only to accommodate a reasonable amount of population growth expected to occur over the useful life of the project.

Eligible projects under the CWSRF. The final rule continues to allow the use of SLFRF funds for projects eligible under the CWSRF, consistent with the interim final rule. Under the CWSRF, a project must meet the criteria of one of the following CWSRF eligibilities to be eligible for assistance. Section 603(c) of the Clean Water Act (CWA)³¹² provides that the CWSRF can provide assistance:

(i) to any municipality, intermunicipal, interstate, or state agency for construction of publicly owned treatment works (as defined in section 212 of the CWA);³¹³

(ii) for the implementation of a management program established under section 319 of the CWA;³¹⁴

(iii) for the development and implementation of a conservation and management plan under section 320 of the CWA;³¹⁵

(iv) for the construction, repair, or replacement of decentralized wastewater treatment systems that treat municipal wastewater or domestic sewage. Eligible projects include, but are not limited to, the construction of new decentralized systems (e.g., individual onsite systems and cluster systems), as well as the upgrade, repair, or replacement of existing systems.

(v) for measures to manage, reduce, treat, or recapture stormwater or subsurface drainage water. Publicly and privately owned, permitted and unpermitted projects that manage, reduce, treat, or recapture stormwater or subsurface drainage water are eligible. For example, projects that are specifically required by a Municipal Separate Storm Sewer System (MS4) permit are eligible, regardless of ownership. Projects may include, but are not limited to green roofs, bioretention basins, roadside plantings, porous pavement, and rainwater harvesting.

(vi) to any municipality, intermunicipal, interstate, or state agency for measures to reduce the demand for publicly owned treatment works capacity through water conservation, efficiency, or reuse. Eligible projects include, but are not limited to, the installation, replacement, or upgrade of water meters; plumbing fixture retrofits or replacement; and gray water recycling. Water audits and water conservation plans are also eligible.

³¹² 33 U.S.C. 1383(c).

³¹³ 33 U.S.C. 1292.

³¹⁴ 33 U.S.C. 1329.

³¹⁵ 33 U.S.C. 1330.

Equipment to reuse effluent (e.g., gray water, condensate, and wastewater effluent reuse systems) is eligible.

(vii) for the development and implementation of watershed projects meeting the criteria set forth in section 122 of the CWA.³¹⁶ Projects that develop or implement a watershed pilot project related to at least one of the six areas identified in section 122 of the CWA are eligible: Watershed management of wet weather discharges, stormwater best management practices, watershed partnerships, integrated water resource planning, municipality-wide stormwater management planning, or increased resilience of treatment works.

(viii) to any municipality, intermunicipal, interstate, or state agency for measures to reduce the energy consumption needs for publicly owned treatment works. Projects may include, but are not limited to, the installation of energy efficient lighting, HVAC, process equipment, and electronic equipment and systems at publicly owned treatment works. Planning activities, such as energy audits and optimization studies are also eligible.

(ix) for reusing or recycling wastewater, stormwater, or subsurface drainage water. Projects involving the reuse or recycling of wastewater, stormwater, or subsurface drainage water are eligible. This includes, as part of a reuse project, the purchase and installation of treatment equipment sufficient to meet reuse standards. Other eligible projects include, but are not limited to, distribution systems to support effluent reuse, including piping the effluent on the property of a private consumer, recharge transmission lines, injection wells, and equipment to reuse effluent (e.g., gray water, condensate, and wastewater effluent reuse systems).

(x) for measures to increase the security of publicly owned treatment works. Security measures for publicly owned treatment works might include, but are not limited to, vulnerability assessments, contingency/emergency response plans, fencing, security cameras/lighting, motion detectors, redundancy (systems and power), secure chemical and fuel storage, laboratory equipment, securing large sanitary sewers, and tamper-proof manholes. The CWSRF cannot fund operations and maintenance activities. Therefore, maintaining a human presence (i.e., security guards) and monitoring activities are not eligible.

Other Clarifications of DSWRF and CWSRF Eligible Project Categories

Public Comment: Several commenters requested that Treasury provide clarification of the requirements associated with use of SLFRF funds for necessary investments in water and sewer infrastructure.

Treasury Response: After release of the interim final rule, Treasury clarified in further guidance that, while recipients must ensure that water and sewer infrastructure projects pursued are eligible under the final rule, recipients are not required to obtain project pre-approval from Treasury or any other federal agency when using SLFRF funds for necessary water and sewer infrastructure projects unless otherwise required by federal law. For projects that are being pursued under the eligibility categories provided through the DWSRF or CWSRF programs, project eligibilities are based on federal project categories and definitions for the programs and not on each state's eligibility or definitions. While reference in the final rule to the DWSRF, CWSRF, or other federal water programs is provided to assist recipients in understanding the types of water and sewer infrastructure projects eligible to be funded with SLFRF, recipients do not need to apply for funding from the applicable state programs or through any federal water program. Similarly, besides eligible project categories, the final rule does not incorporate other program requirements or guidance that attach to the DWSRF, CWSRF, or other federal water programs. However, as noted above, recipients should be aware of other federal or state laws or regulations that may apply to construction projects or water and sewer projects, independent of SLFRF funding conditions, and that may require pre-approval from another federal or state agency.

Expanded Eligible Uses for Water and Sewer Infrastructure Summary

Public Comment: Many commenters requested broader flexibility in the use of SLFRF funds for water and sewer infrastructure projects that are not eligible under the DWSRF and CWSRF. These commenters argued that localities are best situated to identify the highest-need water and sewer projects in their communities. Several Tribal government commenters noted that Tribes have different water and sewer infrastructure needs than states and localities and that additional flexibility in the use of funds would lift current

barriers to improving infrastructure on Tribal lands.

To achieve additional flexibility, commenters suggested a range of options for broadening the eligible use of SLFRF funds for necessary water and sewer infrastructure. For example, several commenters suggested Treasury broaden the eligibilities provided under the interim final rule to include project types eligible under other federal water and sewer programs.

Treasury Response: Treasury agrees that additional flexibility for use of SLFRF funds is warranted and is providing expanded eligibilities as described below, several of which address specific areas of need outlined by Tribal and rural communities.

As discussed below, Treasury has incorporated into the final rule projects that are eligible under certain programs established by the EPA under the Water Infrastructure Improvements for the Nation Act (WIIN Act). Other water-related grant programs cited by commenters include projects that are otherwise already covered by the final rule, for example because they are covered as eligible under the DWSRF or the CWSRF, or projects that are ineligible under the final rule because they are beyond the scope of the meaning of water and sewer projects for purposes of ARPA. To minimize the need for recipients of SLFRF funds to cross reference eligibilities across multiple federal programs, which may exacerbate current challenges to understanding eligibility under SLFRF, Treasury is providing detailed information related to expanded eligibilities within the text of this **SUPPLEMENTARY INFORMATION** for the final rule.

Stormwater Infrastructure

Public Comment: Several commenters requested that additional stormwater infrastructure projects be included as eligible uses of SLFRF funds under the final rule. Commenters suggested that culvert repair and resizing and replacement of storm sewers is necessary to address increased rainfall brought about by a changing climate. Other commenters noted that rural communities that do not manage their own sewer systems may rely on this type of water infrastructure.

Treasury Response: The CWSRF includes a broad range of stormwater infrastructure projects, and as such these projects were eligible under the interim final rule and continue to be eligible under the final rule. These projects include gray infrastructure projects, such as traditional pipe, storage, and treatment systems. Projects

³¹⁶ 33 U.S.C. 1274.

that manage, reduce, treat, or recapture stormwater or subsurface drainage water are also eligible, including real-time control systems for combined sewer overflow management, and sediment control. Culvert infrastructure projects are eligible under the CWSRF if they (1) implement a nonpoint source management plan, (2) implement National Estuary Program Comprehensive Conservation and Management Plan, or (3) implement a stormwater management plan with the goal of providing a water quality benefit. Stormwater projects under the CWSRF also encompass a number of eligible green infrastructure categories, such as green roofs, green streets, and green walls, rainwater harvesting collection, storage, management, and distribution systems, real-time control systems for harvested rainwater, infiltration basins, constructed wetlands, including surface flow and subsurface flow (e.g., gravel) wetlands, bioretention/bioswales (e.g., bioretention basins, tree boxes), permeable pavement, wetland, riparian, or shoreline creation, protection, and restoration, establishment or restoration of urban tree canopy, and replacement of gray infrastructure with green infrastructure including purchase and demolition costs.

In addition to the eligible uses under the CWSRF, Treasury is expanding the eligible uses under the final rule to include stormwater system infrastructure projects regardless of whether there is an expected water quality benefit from the project. Treasury anticipates that this eligible use will allow recipients to manage increased volumes of stormwater as a result of changes to the climate. For example, the final rule now permits the use of SLFRF funds for the repair, replacement, or removal of culverts or other road-stream crossing infrastructure to the extent the purpose of the project is to manage stormwater. In addition, Treasury understands that the repair, replacement, or removal of culverts may necessitate the repair or upgrade of roads. As noted in guidance issued after the interim final rule, recipients may use SLFRF funds for road repairs and upgrades that interact directly with an eligible stormwater infrastructure project. All stormwater infrastructure projects undertaken should incorporate updated design features and current best practices.

Private Wells and Septic Systems

Public Comment: Several commenters requested that the scope of eligible projects be expanded to allow for the expenditure of SLFRF funds on private wells or septic systems. Commenters

noted that wells may be contaminated with dangerous substances, including arsenic, lead, radon, and PFAS (per- and polyfluoroalkyl). Commenters also suggested that, because rural and underserved communities are often reliant on these infrastructure types for their drinking water or wastewater needs, lack of appropriate funding to maintain these systems could present health and safety issues that disproportionately affect certain communities.

Treasury Response: Consistent with the CWSRF, the installation, repair, or replacement of private septic units continues to be an eligible use of SLFRF funds under the final rule. For example, eligible projects include those that address groundwater contamination resulting from faulty septic units and those that would connect failing septic systems to centralized wastewater treatment. Consistent with the DWSRF, connecting homes served by a private well to a public water system is an eligible use of SLFRF funds.

In addition, Treasury has provided in the final rule that recipients may use SLFRF funds for an expanded set of infrastructure projects that improve access to and provision of safe drinking water for individuals served by residential wells. Eligible projects under this category include rehabilitation of private wells, testing initiatives to identify contaminants in wells, and treatment activities and remediation strategies that address contamination.

Remediating Lead in Water

Public Comment: Several commenters emphasized the need to fully remediate lead contamination, especially in structures that serve the public or populations like children that are particularly vulnerable to the effects of lead exposure, such as schools and daycares. Many American households and an estimated 400,000 schools and childcare centers currently lack safe drinking water.³¹⁷

Treasury Response: The replacement of lead service lines, up to premise plumbing, is an eligible use under the DWSRF and continues to be an eligible use of SLFRF funds. Such projects are eligible regardless of the pipe material of the replacement lines and ownership of the property on which the service line is located. Lead service line replacement projects can serve households, schools, or any other

entities. Given the lifelong impacts of lead exposure for children and the widespread prevalence of lead service lines, Treasury encourages recipients to consider projects to replace lead service lines.

In addition, Treasury is providing in the final rule that for lead service line replacement projects, recipients must replace the full length of the service line, and not just a partial portion of the service line. Some water utilities, when replacing service lines, will only replace the “public portion” of the service line and physically slice through the lead service line at the public/private line. This action can result in elevated drinking water lead levels for some period of time after replacement, suggesting the potential for harm, rather than benefit during that time period.³¹⁸ Requiring replacement of the full length of the service line is also consistent with the requirements of the EPA’s Lead and Copper Rule Revisions for water systems that have an action level exceedance for lead³¹⁹ and certain other water systems.³²⁰

Treasury is expanding eligible uses of SLFRF funds to include infrastructure projects eligible under EPA grant programs authorized by the WIIN Act.³²¹ Eligible projects under these programs include the installation or re-optimization of corrosion control treatment, replacing lead service lines, replacing galvanized pipes downstream of a lead service line (other than lead pipes within a home as discussed below), and maintaining an inventory of the drinking water system’s service lines. Water quality testing, compliance monitoring, and remediation activities in schools and other childcare facilities, as well as activities necessary to respond to a contaminant, are eligible uses of SLFRF funds.³²² Remediation

³¹⁸ See EPA Science Advisory Board, Evaluation of the Effectiveness of Partial Lead Service Line Replacements, (September 2011), <https://www.epa.gov/sdwa/science-advisory-board-evaluation-effectiveness-partial-lead-service-line-replacements> (advising against partial lead service line replacement).

³¹⁹ Environmental Protection Agency, *supra* note 188.

³²⁰ Environmental Protection Agency, National Primary Drinking Water Regulations: Lead and Copper Rule Revisions, 86 FR 4198, 40 CFR 141.84, and preamble at 4215, January 15, 2021, <https://www.federalregister.gov/d/2020-28691>; scheduled to become effective December 16, 2021, Environmental Protection Agency, 86 FR 31939, <https://www.federalregister.gov/d/2021-12600>.

³²¹ Eligible uses of funds include those eligible under the Small, Underserved, and Disadvantaged Communities Grant (Section 2104), Reduction in Lead Exposure via Drinking Water Grant Program (Section 2105) and Lead Testing in School and Child Care Program Drinking Water Grant Program (Section 2107).

³²² Such testing and remediation programs would be an eligible use of SLFRF funds given that they

activities such as replacement of faucets, internal plumbing, and fixtures in schools and childcare facilities are also an eligible use of SLFRF funds.

Consistent with the EPA programs, replacement of lead pipes within a home is not eligible under the final rule because the vast majority of lead contamination cases can be solved by replacing lead service lines (including on public and private property) and faucets and fixtures themselves. As such, replacement of lead pipes within a home would not be considered a cost-effective means for achieving the desired level of service and thus would not be a “necessary” investment. The provision of bottled water is also not an eligible use of SLFRF funds under this eligible use category, as it is not an investment in infrastructure. However, bottled water in areas with an action level exceedance for lead in water may be an eligible use of SLFRF funds under a separate eligible use category for “remediation of lead paint and other lead hazards;” see Assistance to Households in Public Health and Negative Economic Impacts.

Water filtration systems are eligible under the EPA grant programs and the final rule as long as they are installed as a permanent part of a facility’s system and not intended for temporary use. Conducting remediation, follow-up monitoring, and conducting public education and outreach about the availability of infrastructure programs, such as water testing and fixture replacement programs funded with SLFRF funds or otherwise, are also eligible projects. Finally, recipients should note that “remediation of lead paint and other lead hazards” is a separate eligible use category and a broader range of programs and services may be eligible under that section, including investments that are not infrastructure; see the eligible use for “remediation of lead paint and other lead hazards” in section Assistance to Households in Public Health and Negative Economic Impacts.

Dams and Reservoirs

Public Comment: Many commenters requested that Treasury broaden eligibilities to include dams and reservoirs, infrastructure that commenters noted may in its current state be unsafe and could put surrounding communities at risk. Some

commenters argued that dams and reservoirs play an important role in providing municipal water supply and water to irrigate farmland, including in areas impacted by recent droughts. Other commenters noted that a large number of dams are currently classified as high-hazard structures, the failure of which would have severe consequences for public safety and the local environment. With respect to reservoirs, commenters articulated that changing climate conditions have necessitated upgrades to reservoir infrastructure to ensure existing facilities can meet the local water needs of a community. Commenters noted that communities facing drought may also need to adjust or enhance reservoirs to maintain adequate water supply.

In contrast, several commenters suggested that infrastructure projects related to dams and reservoirs should not be considered eligible uses of SLFRF funds. These commenters noted that alternate sources of funding exist for dam and reservoir projects and that dams and reservoir infrastructure could result in negative impacts to Tribal communities and negative environmental impacts, including harm to wildlife habitats.

Treasury Response: Treasury understands that many dams and reservoirs in need of rehabilitation are dams and reservoirs whose primary purpose is to provide drinking water. As discussed above, SLFRF funds are available for projects related to the provision of drinking water. Moreover, since issuance of the interim final rule, the EPA has adopted a class deviation from the DWSRF regulations that permits such dam and reservoir rehabilitation projects in certain circumstances.³²³ In approving this class deviation, the EPA recognized that many dams used for drinking water are aging and deteriorating and pose a public health risk to communities; that current dam conditions do not meet state safety standards; and that reservoir capacity has diminished and requires dredging to meet drinking water needs of the existing population.

Treasury’s final rule provides that funds may be used for rehabilitation of dams and reservoirs if the primary purpose of the dam or reservoir is for drinking water supply and the rehabilitation project is necessary for continued provision of drinking water

supply. In considering whether a dam or reservoir project is necessary for the provision of drinking water supply, a recipient may take into consideration future population growth in certain circumstances, as discussed under “Expansion of Drinking Water Service Infrastructure” below, but the project must in any case be designed to support no more than a reasonable level of projected increased need. The recipient must also determine that the project is cost-effective, *i.e.*, that there are not significantly superior alternatives that are available, taking into consideration the relative costs and benefits of the project as compared to those alternatives.

This change to the final rule would permit a wide variety of projects.³²⁴ The limitation in the final rule to rehabilitation of existing dams and reservoirs reflects the scope of the EPA class deviation referenced above and Treasury’s understanding of the significant need for investments in rehabilitation to address deterioration of dams and the diminished capacity of reservoirs. Further, Treasury expects that in many cases it would be considerably more difficult to demonstrate that construction of a new dam or reservoir would be necessary for the purpose of the provision of drinking water than is the case for rehabilitation of dams and reservoirs already serving that purpose for a particular population, particularly given opportunities to meet drinking water needs through water reuse and conservation efforts. For these reasons, and given that the relatively short period of availability of the funds makes new dam and reservoir construction with these funds less likely, Treasury has limited the scope of the final rule to dam and reservoir rehabilitation projects.

As discussed above, Treasury has determined that ARPA does not authorize the use of SLFRF funds for uses other than the provision of drinking water and the management of wastewater and storm water. As such, the final rule does not include infrastructure projects related to dams and reservoirs as eligible uses of SLFRF funds unless they meet the conditions discussed above.

³²⁴ As noted in the EPA’s class deviation, examples of dam rehabilitation projects include spillway reconstruction or repair; dam resurfacing, patching, or other structural repairs, including minimal height increases if needed to maintain the structural integrity of the dam; grouting for seepage control or liquefaction remediation (e.g., epoxy resin, asphalt, or rock); repair or replacement of drainage systems; and seismic stability efforts (e.g., anchors). Examples of reservoir rehabilitation projects include sedimentation dredging and reservoir lining.

would help a recipient determine whether an infrastructure project, such as a lead line replacement, is necessary. In contrast, as mentioned above, the costs of continual testing that is part of a drinking water or wastewater facilities’ operating costs would not be considered part of an infrastructure project.

³²³ See EPA, Approval of Class Exception from the Regulatory Prohibitions on the Use of Drinking Water State Revolving Fund for Rehabilitation of Dams and Reservoirs (July 14, 2021), available at <https://www.epa.gov/system/files/documents/2021-07/dwsrf-class-deviation-dam-reservoir-rehab-2021-0.pdf>.

Public Comment: Several commenters requested that the removal of dams and associated habitat restoration should be eligible uses of SLFRF funds, noting that in some cases, dam removal will improve water quality while removing long-term operational expenses for the recipient.

Treasury Response: Dam removal projects and associated stream and habitat restoration projects are eligible uses of the CWSRF and continue to be eligible under the final rule when the removal implements either a nonpoint source management program plan or a National Estuary Program Comprehensive Conservation and Management Plan or when the removal will provide a water quality benefit. Habitat restoration projects more generally may also be eligible under the CWSRF and the final rule if they constitute a form of stormwater infrastructure.

Expansion of Drinking Water Service Infrastructure

Public Comment: Commenters asked for the ability to use funds for drinking water projects for the purpose of meeting needs arising from future growth, which, given the restrictions applicable to the DWSRF, was not permitted under the interim final rule.

Treasury Response: As provided for in the SDWA, the DWSRF is meant to serve the public health needs of the existing population. The EPA regulation implementing the DWSRF program provides that projects needed primarily to serve future population growth are not eligible uses of the DWSRF. A project that is intended primarily to address public health or regulatory compliance issues for the existing service population may be sized for a “reasonable” amount of population growth over the useful life of the project.³²⁵

ARPA does not include the same limitation as the SDWA. Accordingly, the final rule provides that recipients may use SLFRF funds for projects that are needed to support increased population in certain cases. ARPA limits projects to those investments that are “necessary.” As discussed above, Treasury interprets this to mean that the investments must be (1) responsive to an identified need to achieve or maintain an adequate minimum level of service, which for some eligible project categories may include a reasonable projection of increased need, whether due to population growth or otherwise and (2) a cost-effective means for meeting that need, taking into account

available alternatives. For this eligible use category, expansion of drinking water service infrastructure, the project must also be projected to be sustainable over its estimated useful life.

Investments must be determined to be necessary when they are initiated. Accordingly, Treasury is clarifying in the final rule that the need identified for a water or sewer project may include a need arising from reasonable expectations of future population growth, provided that it is necessary at the time the investment is initiated for the recipient to make the investment to meet this growth. For example, a recipient expecting increased population during the period of performance may install a drinking water treatment plant to meet that growth. In addition, a recipient expecting increased population growth outside the period of performance may install the treatment plant if the planning and construction timeline for the project would require work to begin during the performance period in order to meet the expected population growth. A recipient may install transmission lines as part of the development of new housing occurring during the period of performance. In this case, the housing development must be in progress; a recipient may not use the SLFRF funds to install a water main, for example, to an undeveloped tract in the expectation that in the future that tract will be developed with housing, because there would be no need for that investment to be made at the time it is initiated.

For the reasons discussed above, if a project is undertaken to address expected growth in population, the project must also be sustainable, meaning that the project can continue providing the adequate minimum level of service for its estimated useful life, taking into account projected impacts of changes to the climate and other expected demands on the source of water. In considering how much of a source of water will be available in the future for the drinking water project, a recipient must consider that a source of water may be drawn upon or otherwise used for other current and expected uses, including use by fish and other wildlife. A drinking water project that is designed to address a growing population cannot be considered a necessary investment if the source of drinking water will cease to be available to meet the population’s needs before the end of the estimated useful life of the project. In such a case, a recipient should consider alternative sources for drinking water. See “Interpretation of Necessary Investments and Water and

Sewer Infrastructure” above for more information.

Non-Federal Matching Requirements for Authorized Bureau of Reclamation Projects

The Infrastructure Investment and Jobs Act amends sections 602(c) and 603(c) of the Social Security Act to add an additional eligible use of SLFRF funds, providing that SLFRF funds “may be used for purposes of satisfying any non-Federal matching requirement required for [an authorized Bureau of Reclamation project].”³²⁶

This amendment permits 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. These amendments are effective as of March 11, 2021, as if included in the ARPA at the time of its enactment.³²⁷ Treasury will provide further guidance to recipients on the scope of Bureau of Reclamation water projects and expenses covered by this provision.

Floodplain Management and Flood Mitigation Projects

Public Comment: Several commenters requested that projects to address floodwater, including floodplain management and flood mitigation projects, be included as an eligible use of SLFRF funds. Within this category of floodplain management and flood mitigation infrastructure, several commenters requested that the installation of levees, flood walls, sea walls, elevation projects, dredging, or nature-based flood mitigation projects be included as eligible projects.

Treasury Response: Treasury notes that some floodplain management and flood mitigation infrastructure projects, including green infrastructure designed to protect treatment works from flood waters and flood impact are currently eligible under the CWSRF and therefore continue to be eligible under the final rule.

Treasury has not included floodplain management and flood mitigation projects more generally as eligible under the final rule. Although floodplain management and flood mitigation are functions of many state and local governments, they are not the sort of generally-provided essential services included within the meaning of water

³²⁶ See Public Law 117–58, 40909(a)–(b) (Nov. 15, 2021).

³²⁷ See Public Law 117–58 § 40909(c).

³²⁵ See 40 CFR 35.3520(e)(5).

and sewer projects under the ARPA, as discussed above.

Irrigation

Public Comment: Some commenters requested that irrigation projects be an eligible use because they consider such projects to be critical infrastructure. Several commenters supported this request by noting that irrigation systems may be used to replenish aquifers and recharge wells, in addition to delivering water for irrigation. One commenter also noted that the national irrigation system is antiquated and in need of repair.

Treasury Response: Some irrigation projects were eligible under the interim final rule and continue to be eligible under the final rule as a result of their inclusion as eligible projects under the CWSRF. For example, water efficient irrigation equipment that reduces the runoff of nutrients and implements a management program established under section 319 of the CWA and/or a conservation and management plan under section 320 of the CWA are eligible uses under the CWSRF and therefore continue to be an eligible use of SLFRF funds under the final rule. Likewise, projects to receive and distribute reclaimed water for irrigation systems or other agricultural use are eligible under the CWSRF and therefore continue to be an eligible use under the final rule. Unlike projects for the improvement of irrigation systems generally, these reclaimed water projects are related to wastewater treatment and stormwater management, which are within the scope of the meaning of water and sewer infrastructure for purposes of ARPA.

Treasury considered commenter requests for inclusion of additional irrigation infrastructure and determined that irrigation projects more generally are not permitted under the final rule. Although these types of projects may be water-related infrastructure, they are not the sort of generally-provided essential services included within the meaning of water and sewer projects under ARPA, as discussed above.

Consumer Incentive Programs

Public Comment: One commenter requested that consumer incentive programs in the areas of water use efficiency, conservation, green infrastructure, reuse, and other distributed solutions be an allowable use of SLFRF.

Treasury Response: The DWSRF and CWSRF eligibilities include the development and implementation of incentive and educational programs that address and promote water conservation, source water protection,

and efficiency related to infrastructure improvements, e.g., incentives such as rebates to install green infrastructure such as rain barrels or promote other water conservation activities. Treasury clarifies that such project types were eligible under the interim final rule and continue to be eligible under the final rule.

2. Broadband Infrastructure

Under the ARPA, recipient governments may use SLFRF funds to make “necessary investments in . . . broadband infrastructure.” In the Supplementary Information to the interim final rule, Treasury interpreted necessary investments in infrastructure as investments “designed to provide an adequate minimum level of service and [that] are unlikely to be made using private sources of funds.” Treasury explained that, with respect to broadband specifically, such necessary investments include projects that “establish [] or improve [] broadband service to underserved populations to reach an adequate level to permit a household to work or attend school, and that are unlikely to be met with private sources of funds.”

Summary of Interim Final Rule, Public Comments, and Treasury Response

Summary of Interim Final Rule: In implementing the ARPA, the interim final rule provided that eligible broadband infrastructure investments are limited to those that are designed to provide service to unserved or underserved households or businesses, defined as those that lack access to a wireline connection capable of reliably delivering at least minimum speeds of 25 Mbps download and 3 Mbps upload. The interim final rule also provided that eligible projects under the SLFRF are limited to those that are designed to deliver, upon project completion, service that reliably meets or exceeds symmetrical upload and download speeds of 100 Mbps. In instances where it would not be practicable for a project to deliver such service speeds because of the geography, topography, or excessive costs associated with such a project, the interim final rule provided that the project would be required to be designed to deliver, upon project completion, service that reliably meets or exceeds 100 Mbps download speed and between at least 20 Mbps and 100 Mbps upload speeds and be scalable to a minimum of 100 Mbps symmetrical for download and upload speeds.

In addition, Treasury, in the Supplementary Information to the interim final rule, encouraged recipients to pursue a number of other objectives.

First, Treasury encouraged recipients to prioritize investments in fiber-optic infrastructure wherever feasible and focus on projects that deliver a physical broadband connection by prioritizing projects that achieve last-mile connections. Second, Treasury encouraged recipients to integrate affordability options into their program design. Third, Treasury encouraged recipients to prioritize support for local networks owned, operated, or affiliated with local governments, nonprofits, and cooperatives. Fourth, Treasury encouraged recipients to avoid investing in locations with existing agreements to build reliable wireline service with minimum speeds of 100 Mbps download and 20 Mbps upload by December 31, 2024, in order to avoid duplication of efforts and resources. Finally, following release of the interim final rule, Treasury provided further guidance clarifying some aspects of broadband infrastructure eligibility, specifically on flexibility for recipients to determine eligible areas to be served,³²⁸ middle-mile projects,³²⁹ pre-project development costs,³³⁰ broadband connections to schools or libraries,³³¹ and the applicability of the National Environmental Policy Act (NEPA) and the Davis-Bacon Act.³³²

Summary of Public Comments: Treasury received several comments on the interim final rule’s requirements regarding eligible areas for investment and build-to speed standards, as well as Treasury’s encouragements in the Supplementary Information of the interim final rule. Many commenters found the interim final rule’s requirement to limit projects to those designed to provide service to unserved or underserved households or businesses to be appropriately focused on hard-to-reach areas. In contrast, other commenters argued that this requirement was too restrictive and that it would limit the ability for some recipients, particularly local governments, to invest in broadband infrastructure.

Separately, some commenters supported the interim final rule’s requirement that eligible projects be built to reliable speeds of 100 Mbps symmetrical, with an exception for areas where it was impracticable, and encouragement that projects be built with fiber-optic infrastructure, while a

³²⁸ See FAQ 6.8, 6.9, 6.11. Coronavirus State and Local Fiscal Recovery Funds, Frequently Asked Questions, as of July 19, 2021; <https://home.treasury.gov/system/files/136/SLFRFPFAQ.pdf>.

³²⁹ See FAQ 6.10. *Id.*

³³⁰ See FAQ 6.12. *Id.*

³³¹ See FAQ 6.16. *Id.*

³³² See FAQ 6.4, 6.17. *Id.*

few others argued that the interim final rule should remain technology-neutral and that lower speed standards would be more appropriate for today's usage needs.

Summary of Treasury Response: In response to the comments, 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. In addition, as discussed further below, the final rule further supports the expansion of affordable access to broadband service for households by requiring that recipients use a provider that participates in a qualifying affordability plan. Treasury encourages recipients 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.

The final rule maintains the interim final rule's requirement that eligible projects be designed to, upon completion, reliably meet or exceed symmetrical 100 Mbps download and upload speeds. As was the case under the interim final rule, in cases where it is not practicable, because of the excessive cost of the project or geography or topography of the area to be served by the project, eligible projects may be designed to reliably meet or exceed 100 Mbps download speed and between at least 20 Mbps and 100 Mbps upload speed and be scalable to a minimum of 100 Mbps download speed and 100 Mbps upload speed. Treasury continues to encourage recipients to prioritize investments in fiber-optic infrastructure wherever feasible and to focus on projects that will achieve last-mile connections, whether by focusing directly on funding last-mile projects or by ensuring that funded middle-mile projects have commitments in place to support new and/or improved last-mile service.

The final rule requires recipients to address the affordability needs of low-income consumers in accessing broadband networks funded by SLFRF, given that such a project cannot be considered a necessary investment in broadband infrastructure if it is not affordable to the population the project would serve. Recipients must require the service provider for a completed broadband infrastructure investment project that provides service to households to either participate in the

Federal Communications Commission's (FCC) Affordable Connectivity Program (ACP), or otherwise provide access to a broad-based affordability program to low-income consumers in the proposed service area of the broadband infrastructure that provides benefits to households commensurate with those provided under the ACP.

Treasury also recognizes the importance of affordable broadband access for all consumers beyond those that are low-income. As part of their project selection process, recipients are encouraged to consult with the community on the general affordability needs of the target markets in the proposed service area. Additionally, 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 users to simultaneously telework and engage in remote learning. Recipients will be required to report speed, pricing, and any data allowance information as part of mandatory reporting to Treasury.

The final rule also clarifies that subsidies to households and communities impacted by the pandemic to access the internet, broadband adoption programs, digital literacy programs, and device programs are eligible programs to respond to the public health and negative economic impacts of the pandemic under sections 602(c)(1)(A) and 603(c)(1)(A). See section Assistance to Households in Negative Economic Impacts.

Treasury continues to encourage recipients to prioritize support for broadband networks owned, operated by, or affiliated with local governments, nonprofits, and cooperatives. In addition, to the extent recipients are considering deploying broadband to locations where there are existing enforceable federal or state funding commitments for reliable service at speeds of at least 100 Mbps download speed and 20 Mbps upload speed, recipients must ensure that SLFRF funds are designed to address an identified need for additional broadband investment that is not met by existing federal or state funding commitments. Recipients must also ensure that SLFRF funds will not be used for costs that will be reimbursed by the other federal or state funding streams. Further, Treasury highlights that recipients are subject to the prohibition on use of grant funds to procure or obtain certain telecommunications and video surveillance services or equipment as outlined in 2 CFR 200.216 and 2 CFR

200.471 and clarifies that modernization of cybersecurity for existing and new broadband networks are eligible uses of funds under sections 602(c)(1)(D) and 603(c)(1)(D).

Finally, this Supplementary Information to the final rule incorporates and confirms guidance issued by Treasury following the interim final rule regarding middle-mile projects,³³³ pre-project development costs,³³⁴ broadband connections to schools or libraries,³³⁵ and applicability of the National Environmental Policy Act (NEPA) and Davis-Bacon Act.³³⁶

The remainder of this section provides additional details on the final rule. Specifically, these sections address: (1) Eligible areas for investment; (2) build-to speed standards; (3) affordability; (4) public networks; (5) duplication of efforts and resources; (6) cybersecurity; and (7) use of funds to meet non-federal match under the Infrastructure Investment and Jobs Act.

Eligible Areas for Investment

The interim final rule limited eligible broadband investments to projects focused on delivering service to unserved or underserved locations, defined as households or businesses that lack access to a wireline connection capable of reliably delivering at least minimum speeds of 25 Mbps download and 3 Mbps upload. This targeted approach was generally consistent with certain speed thresholds used in other federal programs to identify eligible areas for federal investment in broadband infrastructure, such as the FCC's Rural Digital Opportunity Fund (RDOF) program and the National Telecommunication and Information Administration's (NTIA's) Broadband Infrastructure Program, and generally aligns with the FCC's benchmark for an "advanced telecommunications capability" for wireline broadband services.

Public Comment: Many commenters discussed the disadvantages of such an approach. Some commenters, including several local government recipients, argued that limiting investments to locations without access to reliable wireline 25/3 Mbps³³⁷ was too

³³³ See FAQ 6.10. Coronavirus State and Local Fiscal Recovery Funds, Frequently Asked Questions, as of July 19, 2021; <https://home.treasury.gov/system/files/136/SLFRFPFAQ.pdf>.

³³⁴ See FAQ 6.12. *Id.*

³³⁵ See FAQ 6.16. *Id.*

³³⁶ See FAQ 6.4, 6.17. *Id.*

³³⁷ In the remainder of this Supplementary Information, "25/3 Mbps" refers to broadband infrastructure that is designed to reliably meet or exceed at least 25 Mbps download speeds and 3

restrictive because some urban jurisdictions are already mostly or entirely covered by a network with at least 25/3 Mbps speeds yet lack widespread broadband adoption for various reasons. Commenters suggested that recipients would benefit from greater flexibility to provide necessary investments in broadband access in areas that are nominally covered by speeds of at least 25/3 Mbps, such as to provide affordable broadband access in low-income areas or to address service quality and reliability issues. Further, commenters argued that Treasury's requirement that new projects meet minimum reliable speeds of 100 Mbps symmetrical was inconsistent with the requirement that broadband infrastructure projects focus on those with access to significantly lower speeds, and further noted that several states have already expanded the focus of their broadband programs beyond those without reliable access to speeds of 25/3 Mbps. Commenters argued that if the limitation to unserved and underserved households and businesses were maintained, the definition of unserved and underserved households and businesses should be revised to include households and businesses currently served by higher standards. Commenters proposed a number of alternative cutoff speeds, including 25/25 Mbps, 50/10 Mbps, and 100 Mbps symmetrical. Others expressed support for providing flexibility for recipients to make their own determination on eligible areas for investment. These commenters referenced studies indicating that 25/3 Mbps is inadequate for today's modern household or business needs.

Some commenters advocated for unserved and underserved areas to be prioritized while providing flexibility for recipients to serve areas beyond those designated as unserved or underserved. Reflecting the perceived restrictiveness of the interim final rule approach, some commenters asked for assurance that projects conducted under other categories of SLFRF eligible uses, specifically to respond to the public health and negative economic impacts of the pandemic under sections 602(c)(1)(A)–(C) and 603(c)(1)(A)–(C), were not barred by the presence of 25/3 Mbps service, including “gap networks,” which are networks designed to offer low-cost or no-cost internet access for lower-income

households with low broadband adoption rates.

Commenters suggested additional factors to be incorporated in the consideration of locations that are eligible to be served. Many commenters suggested that affordability should be considered a key factor when determining whether a community has access to broadband, as the presence of 25/3 Mbps service does not necessarily mean the service is financially accessible to the area's residents. Commenters noted that surveys indicate that affordability, not lack of coverage, is the most significant barrier for most Americans who do not have robust broadband service in their households. Some advocated that the final rule allow for investments in areas with existing reliable wireline access at or above 25/3 Mbps as long as existing broadband service has been unaffordable for a certain segment of the population; others advocated that Treasury presume eligibility when investments are made in certain areas, such as Qualified Census Tracts or neighborhoods with persistent poverty, or are made by Tribal governments. Separately, some commenters noted that Treasury should provide more clarification on what constitutes a “reliabl[e]” connection, including providing details as to latency, jitter, and other technical specifications that would meet that standard, and what it means for certain technologies, such as copper and other outdated technologies, to be deemed presumptively unreliable.

Other commenters supported the interim final rule's approach on eligible areas for investment or suggested tightening eligibility even further. They argued that higher speed thresholds beyond 25/3 Mbps would likely lead to investments in or building of new broadband infrastructure in areas already served by broadband at speeds these commenters considered sufficient; these areas, commenters suggested, are less in need of federal assistance and permitting investments here could divert funding away from rural areas to more densely populated areas.

Treasury Response: 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. Recipients have flexibility to identify a need for additional broadband infrastructure investment: Examples of need include lack of access to a connection that reliably meets or exceeds symmetrical 100 Mbps download and upload speeds, lack of

affordable access to broadband service, or lack of reliable broadband service. Recipients are encouraged 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, as many commenters indicated that those without such service constitute hard-to-reach areas in need of subsidized broadband deployment.

Households and businesses with an identified need for additional broadband infrastructure investment do not have to be the only ones in the service area served by an eligible broadband infrastructure project. Indeed, serving these households and businesses may require a holistic approach that provides service to a wider area, for example, in order to make ongoing service of certain households or businesses within the service area economical.

Consistent with further guidance issued by Treasury,³³⁸ in determining areas for investment, recipients may choose to consider any available data, including but not limited to documentation of existing broadband internet service performance, federal and/or state collected broadband data, user speed test results, interviews with community members and business owners, reports from community organizations, and any other information they deem relevant.

In evaluating such data, recipients may take into account a variety of factors, including whether users actually receive internet service at or above the speed thresholds at all hours of the day, whether factors other than speed such as latency, jitter, or deterioration of the existing connections make their user experience unreliable, and whether the existing service is being delivered by legacy technologies, such as copper telephone lines (typically using Digital Subscriber Line technology) or early versions of cable system technology (DOCSIS 2.0 or earlier),³³⁹ and other factors related to

³³⁸ See FAQ 6.11. Coronavirus State and Local Fiscal Recovery Funds, Frequently Asked Questions, as of July 19, 2021; <https://home.treasury.gov/system/files/136/SLFRPFAQ.pdf>.

³³⁹ Legacy technologies such as copper telephone lines (typically using Digital Subscriber Line technology) and early versions of cable system technology (DOCSIS 2.0 or earlier) typically lag on speeds, latency, and other factors, as compared to more modern technologies like fiber-optic. See, e.g., https://www.fcc.gov/sites/default/files/tech_transitions_network_upgrades_that_may_affect_your_service.pdf (comparing copper to fiber and noting that copper wire networks have “limited speeds,” are “susceptible to signal interference/loss,” and have a “relatively short life”); <https://>

Continued

Mbps upload speeds. “100 Mbps” symmetrical refers to broadband infrastructure that is designed to reliably meet or exceed at least 100 Mbps download speeds and 100 Mbps upload speeds.

the services to be provided by the project. In addition, recipients may consider the actual experience of current broadband customers when making their determinations; whether there is a provider serving the area that advertises or otherwise claims to offer broadband at a given speed is not dispositive.

Build-To Speed Standards

The interim final rule provided that a recipient may use funds to make investments in broadband infrastructure that is designed to, upon completion, reliably meet or exceed symmetrical 100 Mbps download and upload speeds. In cases where it is not practicable, because of the excessive cost of the project or the geography or topography of the area to be served by the project, eligible projects may be designed to reliably meet or exceed 100 Mbps download speed and between at least 20 Mbps and 100 Mbps upload speed, so long as it is scalable to a minimum of 100 Mbps download speed and 100 Mbps upload speed. Relatedly, Treasury in the **SUPPLEMENTARY INFORMATION** to the interim final rule encouraged recipients to prioritize investments in fiber-optic infrastructure wherever feasible and to prioritize projects that achieve last-mile connections.

Public Comment: Many commenters discussed the advantages of setting minimum symmetrical download and upload speeds of reliable 100 Mbps as the speed threshold for new projects. Some commenters indicated support for the interim final rule's standard as it takes into account growing demands on internet use resulting from pandemic broadband usage and suggested that such a standard will help to ensure that networks built with SLFRF funds remain valuable for years to come, even as demands continue to accelerate, particularly on upload speeds. Some also indicated that the interim final rule standard has the effect of prioritizing the use of fiber-optic infrastructure to deliver such speeds, which some noted was a "gold standard" future-proof technology, although some commenters noted that other technologies like fixed wireless have been shown to deliver such speeds in certain circumstances.

Other commenters suggested that 100 Mbps symmetrical speeds were unnecessary given current broadband

usage needs and that such high standards may have the potential to slow down expansion to unserved or underserved rural areas. Some argued that setting this symmetrical threshold may limit the type of technologies that can be used, thereby decreasing competition and limiting flexibility to recipients whose communities might be better served by technologies such as wireless solutions or inexpensive gap networks. Commenters suggested alternate minimum speeds, ranging from 25/3 Mbps (which some argued best balances reaching all communities and maximizing the impact of federal funds) to 100/20 Mbps (which some argued best serves the typical broadband usage patterns of households and businesses, including new pandemic-driven needs). A few commenters suggested a higher minimum speed, such as gigabit speeds, advocating that such speeds were necessary for a network to last at least a decade.

Many commenters supported the interim final rule's lower speed standards for projects where it is impracticable to meet minimum reliable speeds of 100 Mbps symmetrical, as it provides flexibility for recipients to invest in hard-to-reach areas, such as those in mountainous regions. A few commenters indicated that Treasury should more clearly define the characteristics of a location eligible for this exception. Some indicated that the minimum standard for all new projects should be 100 Mbps symmetrical. In contrast, others argued that scalability to 100 Mbps symmetrical should not be a requirement to meet today's demands, particularly in hard-to-reach areas.

Some commenters requested that Treasury clarify eligibility for middle-mile projects as these projects potentially provide connectivity to far-reaching areas, while other commenters suggested that last-mile projects generally require more capital investment and are therefore most in need of government support.

Treasury Response: The final rule maintains the interim final rule's requirement that eligible projects be designed to, upon completion, reliably meet or exceed symmetrical 100 Mbps download and upload speeds, with the interim final rule's exception for projects where it is impracticable to build to such speeds due to excessive cost, geography, or topography of the area to be served by the project. Given the build time associated with broadband infrastructure projects, these standards will enable SLFRF funds to fund lasting infrastructure that will be able to accommodate increased network demand once the network is

complete,³⁴⁰ while providing flexibility for certain locations to meet lower speed standards where 100 Mbps symmetrical speeds are impracticable.

To illustrate the accelerating need for higher upload speeds, by one measure, mean upload speeds as of October 2021 increased to 75.21 Mbps as compared to 62.11 Mbps a year earlier.³⁴¹ Jurisdictions are increasingly responding to the growing demands of their communities for high speeds; for example, Illinois requires 100 Mbps symmetrical service as the construction standard for their state broadband grant programs. The 100 Mbps symmetrical standard accounts for increased pandemic internet usage and provides adequate upload speeds for individuals and businesses to accommodate interactive applications such as virtual learning and videoconferencing, while also helping ensure that funding is responsibly used to provide a true and lasting benefit for years to come. Treasury continues to encourage recipients to prioritize investments in fiber-optic infrastructure wherever feasible, as such advanced technology enables the next generation of application solutions for all communities and is capable of delivering superior, reliable performance and is generally most efficiently scalable to meet future needs.³⁴² In designing these projects, recipients should ensure that the broadband infrastructure provides "reliable" service at required speeds and are not required to rely on providers' advertised speeds in their assessments.

Consistent with further guidance issued by Treasury,³⁴³ while recipients are permitted to make investments in "middle-mile" connections that otherwise satisfy the requirements of the final rule, Treasury continues to encourage recipients to focus on

³⁴⁰ Using the Federal Communications Commission (FCC) Broadband Speed Guide, a household with two telecommuters and two to three remote learners today is estimated to need 100 Mbps download to work simultaneously. See Federal Communications Commission, Broadband Speed Guide, available at <https://www.fcc.gov/consumers/guides/broadband-speed-guide> (last visited October 28, 2021).

³⁴¹ United States' Mobile and Broadband Internet Speeds—Speedtest Global Index, available at <https://www.speedtest.net/global-index/united-states#fixed>.

³⁴² Bennett Cyphers, The Case for Fiber to the Home, Today: Why Fiber is a Superior Medium for 21st Century Broadband, Electronic Frontier Foundation (October 16, 2019), <https://www.eff.org/wp/case-fiber-home-today-why-fiber-superior-medium-21st-century-broadband>.

³⁴³ See FAQ 6.10, Coronavirus State and Local Fiscal Recovery Funds, Frequently Asked Questions, as of July 19, 2021; <https://home.treasury.gov/system/files/136/SLFRFPFAQ.pdf>.

data.fcc.gov/download/measuring-broadband-america/2020/2020-Fixed-Measuring-Broadband-America-Report.pdf (comparing fiber with DSL and cable technologies on a number of dimensions); <https://www.eff.org/wp/case-fiber-home-today-why-fiber-superior-medium-21st-century-broadband> (providing a technical background comparing fiber technology to other legacy technologies).

projects that will achieve last-mile connections—whether by focusing directly on funding last-mile projects or by ensuring that funded middle-mile projects have commitments in place to support new and/or improved last-mile service.

Affordability

The interim final rule encouraged recipients to consider ways to integrate affordability options into their program design but did not require recipients to take particular actions. The interim final rule also provided that assisting households with internet access and digital literacy is an eligible use of SLFRF funds under sections 602(c)(1)(A) and 603(c)(1)(A) to respond to the negative economic impacts of COVID–19.

Public Comment: Many commenters suggested that Treasury provide recipients with a broader set of tools to tackle what the commenters characterized as an affordability crisis in the broadband sector. As noted above, some commenters proposed that Treasury consider affordability when determining whether an area is unserved or underserved by broadband. Some commenters indicated that the final rule should allow for the construction of broadband networks in low-income neighborhoods including low-cost or no-cost gap networks, even in areas with existing service at the speeds required under the interim final rule. Other commenters voiced support for direct subsidies to low-income communities to afford broadband service, which would provide additional incentives for providers to serve these communities.

Treasury Response: In response to many commenters that highlighted the importance of affordability in providing meaningful access to necessary broadband infrastructure, the final rule provides additional requirements to address the affordability needs of low-income consumers in accessing broadband networks funded by SLFRF. Recipients must require the service provider for a completed broadband infrastructure investment project that provides service to households to:

- Participate in the Federal Communications Commission's (FCC) Affordable Connectivity Program (ACP); or
- Otherwise provide access to a broad-based affordability program to low-income consumers in the proposed service area of the broadband infrastructure that provides benefits to households commensurate with those provided under the ACP.

Recipients must require providers to participate in or provide access to these programs through the life of the ACP. This requirement will no longer apply once the SLFRF-funded broadband infrastructure is no longer in use.

Furthermore, Treasury also recognizes the importance of affordable broadband access for all consumers beyond those that are low income. As part of their project selection process, recipients are encouraged to consult with the community on the general affordability needs of the target markets in the proposed service area. Additionally, 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 at speeds that are sufficient for a household with multiple users to simultaneously telework and engage in remote learning. Treasury will require recipients to report speed, pricing, and any data allowance information as part of their mandatory reporting to Treasury.

Further, Treasury is clarifying that, as a response to the public health and negative economic impacts of the pandemic, recipients may provide households and communities impacted by the pandemic with subsidies to help pay for internet service, digital literacy programs, broadband adoption programs, and device programs that provide discounted or no-cost devices for low-income households to access the internet. For further discussion of this eligible use category, see the section internet Assistance in Assistance to Households in Public Health and Negative Economic Impacts.

Public Networks

The interim final rule encouraged recipients to prioritize support for local networks owned, operated, or affiliated with local governments, nonprofits, and cooperatives.

Public Comment: Many commenters voiced their support for Treasury's encouragement that recipients work with governmental or community entities to establish local networks, arguing that they have been shown to effectively provide broadband access to areas that would otherwise be left with unaffordable or insufficient service. These commenters suggested that, since these entities are less driven by financial returns to investment than private providers, in some circumstances they may be able to provide robust service at a lower price as compared to private providers, along with potentially increasing local competition in a service area.

Other commenters argued against Treasury's encouragement, remarking that private businesses have a robust track record of serving hard-to-reach customers. These commenters argued that commercial providers have greater technical and operational expertise in deploying and operating broadband networks and may be able to construct broadband networks with greater efficiency. Additionally, some commenters argued that providing what they considered an unfair competitive advantage for government- or community-owned or operated networks may hurt consumers over time.

Treasury Response: The final rule maintains the interim final rule's encouragement for recipients to prioritize support for broadband networks owned, operated by, or affiliated with local governments, nonprofits, and cooperatives, given that these networks have less pressure to generate profits and a commitment to serve entire communities.³⁴⁴ This encouragement provides flexibility for recipients to select providers that best fit their needs, while noting the critical role that networks owned, operated, or affiliated with local governments and community organizations can play in providing sufficient coverage, affordable access, or increased competition in the broadband sector.

Duplication of Efforts and Resources

Public Comment: Some commenters raised concerns that Treasury's encouragement in the interim final rule that recipients avoid funding projects in locations with an existing agreement to provide service that reliably delivers 100/20 Mbps by December 31, 2024 was too restrictive. Commenters noted that many plans do not always lead to a successful and complete deployment, as issues may arise that prevent such infrastructure from deploying on time or at all, and that several existing federal grants were designed and awarded before the onset of the COVID–19 pandemic and do not meet the critical broadband needs highlighted by the pandemic. Other commenters argued that Treasury's encouragement to avoid duplication of resources should be strengthened, as investing in areas with existing agreements would be an inefficient duplication of efforts.

Treasury Response: Given the final rule's revised requirements on eligible areas for investment, this

³⁴⁴ The Executive Office of the President, Community-Based Broadband Solutions (January 2015), https://obamawhitehouse.archives.gov/sites/default/files/docs/community-based_broadband_report_by_executive_office_of_the_president.pdf.

Supplementary Information to the final rule also modifies the interim final rule's requirements around duplication of resources. Since recipients must ensure that the objective of the broadband projects is to serve locations with an identified need for additional broadband investment, the final rule provides that, to the extent recipients are considering deploying broadband to locations where there are existing enforceable federal or state funding commitments for reliable service at speeds of at least 100 Mbps download speed and 20 Mbps upload speed, recipients must ensure that SLFRF funds are designed to address an identified need for additional broadband investment that is not met by existing federal or state funding commitments. Recipients must also ensure that SLFRF funds will not be used for costs that will be reimbursed by the other federal or state funding streams.

Cybersecurity

Public Comment: Several commenters expressed concern about the cybersecurity of new broadband projects funded with SLFRF funds and urged Treasury to prohibit recipients from utilizing SLFRF funds to procure equipment from certain providers from the People's Republic of China that may pose a national security risk. These commenters pointed out that the 2019 National Defense Authorization Act (NDAA) and the FCC's Universal Service Fund have similar prohibitions. Further, several commenters requested that Treasury explicitly include cybersecurity costs as an eligible use for broadband infrastructure investment given the growing threat of cyber-attacks and cyber-intrusions into the nation's infrastructure.

Treasury Response: Treasury highlights that investments in broadband infrastructure must be carried out in ways that comply with applicable federal laws, including the 2019 NDAA. Among other requirements contained in 2 CFR part 200, 2 CFR 200.216 implements certain provisions of the NDAA and contains prohibitions on the use of federal financial assistance to procure or obtain certain telecommunications and video surveillance services or equipment provided or produced by designated entities, including certain entities owned or controlled by the People's Republic of China. In addition, 2 CFR 200.471 provides that certain telecommunications and video surveillance costs associated with 2 CFR 200.216 are unallowable.

Further, the final rule allows for modernization of cybersecurity for existing and new broadband infrastructure as an eligible use under sections 602(c)(1)(D) and 603(c)(1)(D) as such investments are necessary for the reliability and resiliency of broadband infrastructure.³⁴⁵ Recipients may provide necessary investments in cybersecurity, including modernization of hardware and software, for existing and new broadband infrastructure regardless of their speed delivery standards. The final rule maintains the interim final rule's provision that allows for broader modernization of cybersecurity, including hardware, software, and protection of critical infrastructure as an eligible provision of government services, to the extent of revenue loss due to the pandemic, under sections 602(c)(1)(C) and 603(c)(1)(C).

Use of Funds To Meet Non-Federal Match Under the Infrastructure Investment and Jobs Act

The Infrastructure Investment and Jobs Act specifies that, except as otherwise provided, an entity using funding under section 60102 of the law for broadband deployment "shall provide, or require a subgrantee to provide, a contribution, derived from non-Federal funds (or funds from a Federal regional commission or authority) . . . of not less than 25 percent of project costs."³⁴⁶ It further states that the matching contribution may include funds provided to an eligible entity or subgrantee under the American Rescue Plan Act for the purpose of deployment of broadband service, which includes funds provided under the SLFRF program.

SLFRF and the program established under section 60102 of the Infrastructure Investment and Jobs Act are separate programs with separate requirements. While section 60102 allows states and other eligible entities to use SLFRF funds as the source of matching funds for broadband deployment, the requirements of the SLFRF program still apply. As such, recipients that use SLFRF funds to meet the section 60102 matching requirement will continue to be subject to the requirements of the SLFRF program.

³⁴⁵ For more on the importance of cybersecurity to the reliability and resiliency of broadband networks, see: Federal Communications Commission, <https://docs.fcc.gov/public/attachments/FCC-10-63A1.doc>; Brookings Institute, Protecting the Cybersecurity of America's Networks (February 11, 2021), <https://www.brookings.edu/blog/techtank/2021/02/11/protecting-the-cybersecurity-of-americas-networks/>.

³⁴⁶ See Infrastructure Investment and Jobs Act, Public Law 117–58 (2021).

III. Restrictions on Use

While recipients have considerable flexibility to use funds to address the diverse needs of their communities, some restrictions on use of funds apply. The ARPA includes two statutory provisions that further define the boundaries of the statute's eligible uses. First, section 602(c)(2)(A) of the Social Security Act provides that states and territories may not "use the funds . . . to either directly or indirectly offset a reduction in . . . net tax revenue . . . resulting from a change in law, regulation, or administrative interpretation during the covered period that reduces any tax . . . or delays the imposition of any tax or tax increase." Second, sections 602(c)(2)(B) and 603(c)(2) prohibit all recipients, except Tribal governments, from using funds for deposit into any pension fund. These restrictions support use of funds only for the congressionally permitted purposes described in the Eligible Uses section by providing a backstop against the use of funds for purposes outside of the eligible use categories provided for in the statute.

In addition to the restrictions on use of funds provided for in the ARPA statute, the interim final rule noted that several uses of funds would be ineligible under any eligible use category, including as a response to the public health and negative economic impacts of the pandemic or as a "government service" under the revenue loss eligible use category. Specifically, use of funds for debt service, to replenish financial reserves, or to satisfy an obligation arising from a judicial settlement or judgment were ineligible uses of funds under the eligible use categories for public health and negative economic impacts and revenue loss. These restrictions apply to all recipients.

Recipients should note that restrictions on use of funds for debt service, to replenish financial reserves, or to satisfy an obligation arising from a judicial settlement or judgment apply to all eligible use categories, not just the eligible use categories in which they were discussed in the interim final rule.

Recipients are also subject to other restrictions on use of funds in the ARPA, the Award Terms and Conditions, and other federal laws. As discussed further below, uses of funds may not conflict with the overall statutory purpose of the ARPA to reduce the spread of COVID–19. Per the Award Terms and Conditions, recipients must adopt and abide by policies to prevent conflicts of interest. Finally, recipients are reminded that other federal laws

also apply to uses of funds, including environmental and civil rights laws.

To enhance clarity, this

SUPPLEMENTARY INFORMATION for the final rule consolidates these restrictions on use of funds into one section and makes clear that they apply to all eligible use categories and any use of funds under the program by recipients to whom each specific restriction applies.

This section discusses the aforementioned restrictions, public comments received, and Treasury's response to these comments. For clarity, Treasury has divided the following discussion into (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.

A. Ineligible Uses of Funds Under the ARPA Statute

1. Offset a Reduction in Net Tax Revenue

For states and territories (recipient governments³⁴⁷), section 602(c)(2)(A)—the offset provision—prohibits the use of SLFRF funds to directly or indirectly offset a reduction in net tax revenue resulting from a change in law, regulation, or administrative interpretation³⁴⁸ during the covered period. If a state or territory uses SLFRF funds to offset a reduction in net tax revenue resulting from a change in law, regulation, or interpretation, the ARPA provides that the state or territory must repay to Treasury an amount equal to the lesser of (i) the amount of the applicable reduction attributable to the impermissible offset and (ii) the amount of SLFRF funds received by the state or territory. A state or territory that uses SLFRF funds to offset a reduction in net tax revenue does not forfeit its entire allocation of SLFRF funds (unless it misused the full allocation to offset a reduction in net tax revenue) or any non-SLFRF funding.

The interim final rule implements these conditions by establishing a framework for states and territories to determine the cost of changes in law, regulation, or interpretation that reduce tax revenue and to identify and value

the sources of funds that will offset—*i.e.*, cover the cost of—any reduction in net tax revenue resulting from such changes. The interim final rule recognizes three sources of funds that may offset a reduction in net tax revenue other than SLFRF funds: Organic revenue growth, increases in revenue due to policy changes (*e.g.*, an increase in a tax rate), and certain cuts in spending.

Specifically, the interim final rule establishes a step-by-step process for determining whether, and the extent to which, SLFRF funds have been used to offset a reduction in net tax revenue, based on information reported by the recipient government:

- First, each year, each recipient government will identify and value the changes in law, regulation, or interpretation that would result in a reduction in net tax revenue, as it would in the ordinary course of its budgeting process. The sum of these values in the year for which the government is reporting is the amount it needs to “pay for” with sources other than SLFRF funds (total value of revenue reducing changes).

- Second, the interim final rule recognizes that it may be difficult to predict how a change would affect net tax revenue in future years and, accordingly, provides that if the total value of the changes in the year for which the recipient government is reporting is below a de minimis level, as discussed below, the recipient government need not identify any sources of funding to pay for revenue reducing changes and will not be subject to recoupment.

- Third, a recipient government will consider the amount of actual tax revenue recorded in the year for which it is reporting. If the recipient government's actual tax revenue is greater than the amount of tax revenue received by the recipient for the fiscal year ending 2019, adjusted annually for inflation, the recipient government will not be considered to have violated the offset provision because there will not have been a reduction in net tax revenue.

- Fourth, if the recipient government's actual tax revenue is less than the amount of tax revenue received by the recipient government for the fiscal year ending 2019, adjusted annually for inflation, in the reporting year the recipient government will identify any sources of funds that have been used to permissibly offset the total value of covered tax changes other than SLFRF 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 SLFRF funds.

The recipient government will calculate the value of revenue reduction remaining after applying these sources of offsetting funding to the total value of revenue reducing changes—that is, how much of the tax change has not been paid for. The recipient government will then compare that value to the difference between the baseline and actual tax revenue. A recipient government will not be required to repay to Treasury an amount that is greater than the recipient government's actual tax revenue shortfall relative to the baseline (*i.e.*, fiscal year 2019 tax revenue adjusted for inflation). This “revenue reduction cap,” together with Step 3, ensures that recipient governments can use organic revenue growth to offset the cost of revenue reductions.

- Finally, if there are any amounts that could be subject to recoupment, Treasury will provide notice to the recipient government of such amounts along with an explanation of such amounts. This process is discussed in greater detail in section Remediation and Recoupment of this Supplementary Information.

Together, these steps allow Treasury to identify the amount of reduction in net tax revenue that both is attributable to covered changes and has been directly or indirectly offset with SLFRF funds.

Overview of Comments: Many commenters supported the framework established under the interim final rule. These commenters argued that the offset provision, and the interim final rule's implementation of the offset provision, was essential to ensuring SLFRF funds are used in a manner consistent with the statute's defined eligible uses and, in particular, to support the use of SLFRF funds to build public sector capacity. Several commenters argued that the framework should be made more restrictive; for example, some comments advocated that the offset provision be applied to local governments.

Other commenters argued that the offset provision and the interim final rule's implementation of the offset provision is too restrictive, with some asserting that the offset provision prohibits states from making changes to reduce taxes. Many of these commenters argued that the offset provision presents constitutional concerns. These commenters asserted that the offset provision is ambiguous and the restriction is unrelated to the purpose of the ARPA. These commenters also

³⁴⁷ In this sub-section, “recipient governments” refers only to states and territories. In other sections, “recipient governments” refers more broadly to eligible governments receiving funding from the SLFRF.

³⁴⁸ For brevity, this phrase is referred to as “changes in law, regulation, or interpretation” for the remainder of this **SUPPLEMENTARY INFORMATION**.

argued that the generous amount of SLFRF funds provided to those governments gave recipient governments little choice as to whether to accept the SLFRF funds and, as a result, the offset provision is coercive. In describing these concerns and arguments, several of these commenters referenced litigation regarding the offset provision.³⁴⁹ Many of these commenters also expressed concern regarding the interim final rule's implementation of the offset provision. Some of these commenters argued that Treasury lacked the authority to implement the provision, asserting that the significance of the provision required Congress to make an explicit delegation of rulemaking authority and provide clearer principles by which Treasury should implement the provision. Finally, one commenter argued that the offset provision should only apply if the recipient expressly and intentionally uses SLFRF funds to offset a reduction in revenue, arguing that the term "offset" implies a deliberate use SLFRF funds to "pay for" a tax cut.

As discussed in the interim final rule, the offset provision does not prevent a recipient government from enacting a broad variety of tax changes. Rather, the offset provision prevents a recipient government from using SLFRF funds to offset a revenue reduction resulting from a tax cut. A recipient government would only be considered to have used SLFRF funds to offset a reduction in net tax revenue resulting from changes in law, regulation, or interpretation if, and to the extent that, the recipient government could not identify sufficient funds from sources other than SLFRF funds to offset the reduction in net tax revenue. Only if sufficient funds from other sources cannot be identified to cover the full cost of the reduction in net tax revenue resulting from changes in law, regulation, or interpretation, will the remaining amount not covered by these sources be considered to have been offset by SLFRF funds, in contravention of the offset provision. Consistent with the statutory text, the approach taken in the interim final rule recognizes that, because money is fungible, even if SLFRF funds are not explicitly or directly used to cover the costs of changes that reduce net tax revenue, those funds may be used in a manner inconsistent with the statute by indirectly being used to substitute for the state's or territory's funds that

would otherwise have been needed to cover the costs of the reduction. As discussed below, the scope of changes in law, regulation, or interpretation is further limited to those that the recipient government voluntarily enacted during the covered period.

Congress has the authority under the Spending Clause in Article I, section 8 of the Constitution to specify the permissible and impermissible uses of federal grants. The Supreme Court has repeatedly "upheld Congress's authority to condition the receipt of funds on the States' complying with restrictions on the use of those funds, because that is the means by which Congress ensures that the funds are spent according to its view of the 'general Welfare.'" ³⁵⁰ "The power to keep a watchful eye on expenditures . . . is bound up with congressional authority to spend in the first place." ³⁵¹ Assertions that the amount of SLFRF funds are sufficiently large to be coercive are inconsistent with the Supreme Court's reasoning in *NFIB*, which distinguished between conditions placed on new federal funds and conditions placed on existing federal funds and not based on the size of funds.³⁵² Further, the conditions placed on the use of SLFRF funds under the ARPA—both the eligible uses and additional limitations on deposits into pension funds and the offset provision—were well known to recipient governments prior to recipient governments requesting to receive SLFRF funds. Finally, the ARPA provides Treasury with the express authority "to issue such regulations as may be necessary or appropriate to carry out" section 602, which includes the offset provision.

A number of commenters expressed concern regarding the burden associated with complying with the offset provision and the interim final rule. Similarly, other commenters argued that the framework provided in the interim final rule complicated implementation

³⁵⁰ *National Fed'n of Indep. Bus. v. Sebelius* (*NFIB*), 567 U.S. 519, 580 (2012) (plurality opinion); see, e.g., *South Dakota v. Dole*, 483 U.S. 203, 206–208 (1987); *Gruver v. Louisiana Bd. of Supervisors for Louisiana State Univ. Agric. & Mech. Coll.*, 959 F.3d 178, 183 (5th Cir.), cert. denied, 141 S. Ct. 901 (2020). For additional discussion of these issues, see, e.g., *Brief Reply for Appellants, Ohio v. Yellen*, No. 21–3787 (6th Cir. Oct. 26, 2021).

³⁵¹ *Sabri v. United States*, 541 U.S. 600, 608 (2004).

³⁵² The new federal funds offered by the Affordable Care Act totaled \$100 billion per year. Even the dissenting Justices agreed that "Congress could have made just the new funding provided under the ACA contingent on acceptance of the terms of the Medicaid Expansion," although they disagreed with the majority about whether that funding condition was severable. *NFIB* at 687–688 (joint dissent).

of the offset provision. Treasury took several steps to minimize burden for recipient governments in the interim final rule. For example, the interim final rule incorporates the types of information and modeling already used by states and territories in their own fiscal and budgeting processes. By incorporating existing budgeting processes and capabilities, states and territories will be able to assess and evaluate the relationship of tax and budget decisions to uses of SLFRF funds based on information they likely have or can readily obtain. This approach ensures that recipient governments have the information they need to understand the implications of their decisions regarding the use of SLFRF funds—and, in particular, whether they are using the funds to directly or indirectly offset a reduction in net tax revenue resulting from a change in law, regulation, or interpretation, making the funds potentially subject to recoupment. To further reduce burden, Treasury is considering whether the scope of reporting requirements can be further tailored.

As described in greater detail below, Treasury is finalizing its implementation of the offset provision largely without change. This approach is consistent with the text of the ARPA. The remainder of this section discusses and responds to comments on specific aspects of the framework.

1. Definitions

Covered change. The offset provision is triggered by a reduction in net tax revenue resulting from "a change in law, regulation, or administrative interpretation." Consistent with this language, the interim final rule defines a "covered change" to include 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. Thus, the offset provision applies only to actions for which the change in policy occurs during the covered period; it excludes regulations or other actions that implement a change or law substantively enacted prior to March 3, 2021. For example, covered changes do not include a change in rate that is triggered automatically and based on statutory or regulatory criteria in effect prior to the covered period.³⁵³ Changed

³⁵³ For example, a state law that sets its earned income tax credit (EITC) at a fixed percentage of the federal EITC will see its EITC payments automatically increase—and thus its tax revenue reduced—because of the federal government's expansion of the EITC in the ARPA. See, e.g., Tax

³⁴⁹ See, e.g., *State of West Virginia v. U.S. Department of the Treasury*, No. 7:21-cv-00465–LSC, 2021 WL 2952863 (N.D. Ala. Jul. 14, 2021); *State of Ohio v. Yellen*, No. 1:21-cv-181, 2021 WL 2712220 (S.D. Ohio Jul. 1, 2021).

administrative interpretations would not include corrections to replace prior inaccurate interpretations; such corrections would instead be treated as changes implementing legislation enacted or regulations issued prior to the covered period. The operative change in those circumstances is the underlying legislation or regulation that occurred prior to the covered period. Moreover, only changes within the control of the state or territory are considered covered changes. Finally, covered changes do not include changes that simply conform with recent changes in federal law (including those to conform to recent changes in federal taxation of unemployment insurance benefits and taxation of loan forgiveness under the Paycheck Protection Program).

Scope of Covered Changes

Public Comment: Several commenters argued that the definition of covered change, and thus the limitations of the offset provision, should apply to subsidies for businesses. Similarly, other commenters requested that Treasury clarify that the offset provision applies to tax abatements and reductions in corporate taxes, even if administered by a sub-unit of the recipient government. Citing to empirical research and other evidence, these commenters argued that these types of economic development policies were poorly administered, reduced public sector capacity, and were ineffective at achieving stated objectives of creating jobs, increasing income, and increasing economic growth. On the other hand, some commenters argued that, because subsidies were economically similar to some tax cuts, neither action should be considered a covered change and subject to the offset provision. Finally, other commenters requested that Treasury clarify whether covered changes must be broad-based policies or whether administrative decisions applicable to individuals would be considered covered changes.

Treasury Response: 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.” Accordingly, and consistent with this statutory text, the final rule applies to covered changes that reduce any tax, which can include tax abatements, but does not apply to loans,

grants, or other types of interventions that do not reduce tax revenue.³⁵⁴ In addition, by including changes in regulation or administrative interpretation, in addition to changes in law, within the scope of the offset provision, the ARPA recognizes that a recipient government may make a covered change through its legislature or may delegate the authority to make a covered change including, but not limited to, to a sub-unit of government. Treasury has revised the definition of “covered change” in the final rule using the statutory language above to make clear that the offset provision only applies to such changes in law, regulation, or administrative interpretation. With respect to the question of whether covered changes could include administrative decisions applicable to individuals, as discussed above, a covered change includes a change in law, regulation, or administrative interpretation that reduces any tax. Such changes may apply to one or more individuals or entities, provided that—consistent with the statutory text—they result from a change in law, regulation, or administrative interpretation.

Prior Enactment and Phase-In

Public Comment: A number of commenters expressed concern, or requested clarification, regarding changes that were enacted prior to the covered period but take effect or phase-in during the covered period. Several commenters argued that the definition of covered change should include changes that were made prior to the covered period but that phase-in during the covered period.

Treasury Response: As discussed above, the offset provision is triggered by a reduction in net tax revenue resulting from “a change in law, regulation, or administrative interpretation” made during the covered period. Consistent with the statutory text, “covered change” is defined to include 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.

Conformity

Public Comment: A number of commenters requested clarification on the scope of covered changes. Specifically, several commenters

requested clarification on the scope of changes that would be considered as conforming to recent changes in federal law. These commenters requested that Treasury clarify whether actions to selectively conform with federal law would be considered covered changes and requested clarification regarding the extent to which changes would be considered “recent.” For example, these commenters requested clarification regarding conformance with the Global Intangible Low-Taxed Income provision of the 2017 Tax Cuts and Jobs Act. Some commenters further argued that changes that selectively conform or decouple from the Internal Revenue Code should be included within scope of covered changes and thus subject to the offset provision.

Treasury Response: The final rule maintains the treatment of changes that simply conform with recent changes in federal law, such as those to conform to recent changes in federal taxation of unemployment insurance benefits and taxation of loan forgiveness under the Paycheck Protection Program³⁵⁵ and including other changes over the past several years. Regardless of the particular method of conformity and the effect on net tax revenue, Treasury views such changes as permissible under the offset provision.

Accordingly, and for the reasons discussed above, Treasury is maintaining the definition of covered change without change.

Tax revenue. The interim final rule’s definition of “tax revenue” is based on the Census Bureau’s definition of taxes, used for its Annual Survey of State Government Finances.³⁵⁶ It provides a consistent, well-established definition with which states and territories will be familiar and is consistent with the approach taken in section Revenue Loss of this **SUPPLEMENTARY INFORMATION** describing the implementation of sections 602(c)(1)(C) and 603(c)(1)(C) of the Social Security Act regarding revenue loss. A number of commenters expressed concern and requested clarification regarding the definition of “tax revenue.” These comments and responses are discussed in section Revenue Loss of this Supplemental Information and, for the reasons discussed above, Treasury is finalizing the definition of tax revenue without

³⁵⁵ See Statement on State Fiscal Recovery Funds and Tax Conformity, April 7, 2021, available at <https://home.treasury.gov/news/press-releases/jy0113>.

³⁵⁶ U.S. Census Bureau, Annual Survey of State and Local Government Finances Glossary, <https://www.census.gov/programs-surveys/state/about/glossary.html> (last visited Apr. 30, 2021).

Policy Center, How do state earned income tax credits work?, <https://www.taxpolicycenter.org/briefing-book/how-do-state-earned-income-tax-credits-work/> (last visited May 9, 2021).

³⁵⁴ Assistance must be consistent with eligible uses of SLFRF funds. See section Eligible Uses of this **SUPPLEMENTARY INFORMATION**.

change and maintaining a consistent definition of “tax revenue.”³⁵⁷

Baseline. For purposes of measuring a reduction in net tax revenue, the interim final rule measures actual changes in tax revenue relative to a revenue baseline (baseline). The baseline is calculated as 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.³⁵⁸

Public Comment: Some commenters expressed concern regarding the choice of FY 2019 as the baseline, arguing that the choice lacked justification and would make the offset provision more restrictive as applied to recipient governments that experienced a decline in revenue independent of making any covered changes.

Treasury Response: Measuring a “reduction” in net tax revenue requires identification of a baseline. In other words, a “reduction” can be assessed only by comparing two amounts. The Act defines “covered period” to begin on March 3, 2021, and thus the baseline year must end prior to March 3, 2021. As discussed in the interim final rule, FY 2019 is the last full fiscal year prior to the COVID–19 public health emergency, and thus is consistent with the statutory definition and does not include the extraordinary effects of the pandemic that began in 2020. Further, as discussed above, the interim final rule recognizes three potential ways that a recipient government may offset or “pay for” a reduction in net tax revenue due to a covered change: Increases in taxes, decreases in spending, and organic revenue growth. U.S. gross domestic product rebounded to exceed its pre-pandemic level in 2021,³⁵⁹ suggesting that an FY 2019 pre-

pandemic baseline is a reasonable comparator for future revenue levels and provides recipients with flexibility to identify organic growth as a permissible offset. Finally, this baseline year is consistent with the approach directed by sections 602(c)(1)(C) and 603(c)(1)(C), which identify the “most recent full fiscal year of the [state, territory, or Tribal government] prior to the emergency” as the comparator for measuring revenue loss. For these reasons, Treasury is finalizing the definition of “baseline” without change.

The interim final rule includes several other definitions that are applicable to the implementation of the offset provision, such as the term “reporting year.”³⁶⁰ Commenters did not express concern regarding other definitions in the interim final rule.

2. Framework

The interim final rule provides a step-by-step framework, to be used in each reporting year, to determine whether a state or territory used SLFRF funds to offset a reduction in net tax revenue. Consistent with section 602(c)(2) and the interim final rule, the final rule applies to states and territories:

(1) *Covered changes that reduce tax revenue.* Under the interim final rule, a recipient government identifies and values covered changes that the recipient government predicts will have the effect of reducing tax revenue in a given reporting year, similar to the way it would in the ordinary course of its budgeting process. The interim final rule states that the value of these covered changes may be reported based on estimated values produced by a budget model, incorporating reasonable assumptions, that aligns with the recipient government’s existing approach for measuring the effects of fiscal policies, and that measures these effects relative to a current law baseline. If the recipient would prefer, the covered changes may also be reported based on actual values using a statistical methodology to isolate the change in year-over-year revenue attributable to the covered change(s), relative to the current law baseline prior to the change(s).³⁶¹ Further, estimation approaches may not use dynamic methodologies that incorporate the

projected effects of macroeconomic growth because macroeconomic growth is accounted for separately in the framework.

Estimation

Public Comment: A number of commenters expressed concern that estimating the value of covered changes required a number of assumptions and that the actual effects of covered changes on tax revenue would be difficult to predict. Several commenters expressed support for the interim final rule’s approach to dynamic scoring methodologies, and one commenter argued that the final rule should prohibit the use of prior cash balances in calculations of permissible tax cuts.

Treasury Response: Treasury recognizes that estimating the effects of covered changes requires assumptions and that many other factors influence the amount of tax revenue received. The interim final rule addresses these concerns in several ways. First, in general and where possible, reporting should be produced by the agency of the recipient government responsible for estimating the costs and effects of fiscal policy changes. This approach offers recipient governments the flexibility to determine their reporting methodology based on their existing budget scoring practices and capabilities. In addition, by relying on scoring methodologies that do not incorporate projected effects of macroeconomic growth, the estimation of the value of covered changes relies on fewer assumptions and thus provide greater consistency among states and territories. Finally, as discussed below, the interim final rule includes a de minimis threshold, below which the sum of covered changes will be deemed not to have any revenue-reducing effects.

Timing of the Impact of Covered Changes

Public Comment: Several commenters expressed concern that recipient governments, to evade the offset provision, may backload the costs of certain covered changes outside of the covered period, and advocated that covered changes be instead evaluated as the net present value in the year that the covered change is enacted. These commenters argued that some tax cuts could have effects on tax revenue for many decades or could be structured to take effect after the end of the covered period.

Treasury Response: As discussed in section Timeline for Use of SLFRF Funds, SLFRF funds must be used to cover costs incurred prior to December 31, 2024. Accordingly, SLFRF funds

³⁵⁷ As discussed in section Revenue Loss of this Supplementary Information, for purposes of measuring revenue lost due to the pandemic under sections 602(c)(1)(C) and 603(c)(1)(C), recipients must adjust the amount of revenue lost to reflect changes that resulted from a tax increase or decrease. These adjustments do not apply to or affect the definition of tax revenue.

³⁵⁸ U.S. Department of Commerce, Bureau of Economic Analysis, GDP Price Deflator, <https://www.bea.gov/data/prices-inflation/gdp-price-deflator> (last visited Apr. 30, 2021). The FY 2019 baseline revenue is adjusted annually for inflation to allow for direct comparison of actual tax revenue in each year (reported in nominal terms) to baseline revenue in common units of measurement; without inflation adjustment, each dollar of reported actual tax revenue would be worth less than each dollar of baseline revenue expressed in 2019 terms.

³⁵⁹ Economy Statement by Catherine Wolfram, Acting Assistant Secretary for Economy Policy, for the Treasury Borrowing Advisory Committee November 1, 2021 (Nov. 1, 2021), available at <https://home.treasury.gov/news/press-releases/jy0453>.

³⁶⁰ One commenter requested clarification that references to fiscal year refer to the fiscal year of the recipient. “Reporting year” is defined in the interim final rule and final rule to mean “a single year or partial year within the covered period, aligned to the current fiscal year of the State or Territory during the covered period.”

³⁶¹ By permitting recipient governments to use actual or estimated values, the interim final rule and final rule provide flexibility to recipients and thus minimizes burden.

generally would not be able to offset a reduction in net tax revenue occurring after December 31, 2024.

For these reasons, Treasury is maintaining this element of the interim final rule without change.

(2) *In excess of the de minimis.* Under the framework established in the interim final rule, after establishing that a covered change occurred, the recipient government next calculates the total value of all covered changes in the reporting year resulting in revenue reductions, identified in Step 1. If the total value of the revenue reductions resulting from these changes is below the de minimis level, the recipient government is deemed not to have any revenue-reducing changes for the purpose of determining the recognized net reduction. If the total is above the de minimis level, the recipient government must identify sources of in-year revenue to cover the full costs of changes that reduce tax revenue. Under the interim final rule, the de minimis level is calculated as 1 percent of the reporting year's baseline.

Public Comment: Many commenters supported the inclusion of the de minimis, noting that the de minimis protects recipients from penalty resulting from minor or incidental changes, minimizes administrative burden, and enhances predictability of the application of the offset provision. Some commenters expressed concern that the fixed threshold could result in cliff effects.

Treasury Response: A clear de minimis threshold supports recipient governments' compliance with the offset provision. A de minimis level recognizes the inherent challenges and uncertainties that recipient governments face, and thus allows relatively small reductions in tax revenue without consequence. In other words, states and territories may make many small changes to alter the composition of their tax revenues or implement other policies with marginal effects on tax revenues. They may also make changes based on projected revenue effects that turn out to differ from actual effects, unintentionally resulting in minor revenue changes that are not fairly described as "resulting from" tax law changes. However, a de minimis does not automatically result in consequences under the offset provision, since a recipient government could demonstrate that other, non-SLFRF funds to offset a net reduction in tax revenue. Accordingly, any cliff effects associated with a clear de minimis threshold are mitigated by other aspects of the framework.

Public Comment: Commenters expressed a range of views regarding the amount of the de minimis. Some commenters argued that the de minimis was too generous, noting that the choice of 1 percent could, in some cases, permit reductions in net tax revenue of hundreds of millions of dollars. These commenters advocated that the de minimis be lowered (e.g., to 25 basis points) or be tied to a fixed amount. Other commenters argued that the choice of de minimis was not well supported by the statute, advocated for a larger de minimis and suggested that the amount be tied to the recipient government's total expenditures in the prior fiscal year.

Treasury Response: Treasury adopted a de minimis threshold as an administrative accommodation for the reasons discussed above. As discussed in the interim final rule, Treasury determined that the 1 percent de minimis level reflects the historical reductions in revenue due to minor changes in state fiscal policies and was determined by assessing the historical effects of state-level tax policy changes in state EITCs implemented to effect policy goals other than reducing net tax revenues.³⁶²

For these reasons, Treasury is adopting the 1 percent de minimis without change.

(3) *Safe harbor.* Next, under the interim final rule, if the revenue reduction caused by the covered changes exceeds the 1 percent de minimis threshold, the recipient government compares the reporting year's actual tax revenue to the baseline. If actual tax revenue is greater than the baseline, Treasury will deem the recipient government not to have any recognized net reduction for the reporting year, and therefore to be in a safe harbor and outside the ambit of the offset provision. This approach is consistent with the ARPA, which contemplates recoupment of SLFRF funds only in the event that such funds are used to offset a reduction in net tax revenue. If net tax revenue has not been reduced, the offset provision does not apply. In the event that actual tax revenue is above the baseline, the organic revenue growth that has occurred, plus any other revenue-raising changes, by definition must have been enough to offset the in-year costs of any covered changes. One commenter argued that the offset for organic growth be adjusted to reflect population growth. To minimize administrative burden, and

for the reasons discussed above, Treasury is maintaining the measurement of actual tax revenue without adjustment for population growth.

(4) *Consideration of other sources of funding.* The recipient government will then identify and calculate the total value of changes that could pay for revenue reduction due to covered changes and sum these items. This amount can be used to pay for up to the total value of revenue-reducing changes in the reporting year. These changes consist of two categories:

(a) *Tax and other increases in revenue.* The recipient government must identify and consider covered changes in policy that the recipient government predicts will have the effect of increasing general revenue in a given reporting year. Recipient governments should use the same approach to identify and value covered changes that increase tax revenue as applied to covered changes that reduce tax revenue. For the reasons discussed above, Treasury is adopting these aspects of identifying and valuing covered changes without change.

(b) *Covered spending cuts.* A recipient government also may cut spending in certain areas to pay for covered changes that reduce tax revenue, up to the amount of the recipient government's net reduction in total spending as described below. These changes must be reductions in government outlays in an area where the recipient government has not spent SLFRF funds. To better align with existing reporting and accounting, the interim final rule considers the department, agency, or authority from which spending has been cut and whether the recipient government has spent SLFRF funds on that same department, agency, or authority. If the recipient government has not spent SLFRF funds in a department, agency, or authority, the full amount of the reduction in spending counts as a covered spending cut, up to the recipient government's net reduction in total spending. If they have spent SLFRF funds in such department, agency, or authority, the SLFRF funds generally would be deemed to have replaced the amount of spending cut and only reductions in spending above the amount of SLFRF funds spent on the department, agency, or authority would count. This approach—allowing only spending reductions in areas where the recipient government has not spent SLFRF funds to be used as an offset for a reduction in net tax revenue—aims to prevent recipient governments from using SLFRF funds to supplant state or territory funding in the eligible use

³⁶² Data provided by the Urban-Brookings Tax Policy Center for state-level EITC changes for 2004–2017.

areas, and then using those state or territory funds to offset tax cuts. Such an approach helps ensure that SLFRF funds are not used to “indirectly” offset revenue reductions due to covered changes.

Department, Agency, or Authority

Public Comment: Several commenters supported the interim final rule’s approach to considering spending cuts at the department, agency, or authority level, on the basis that this approach is supported by the statutory language prohibiting SLFRF funds from being used to “directly or indirectly” offset a reduction in net tax revenue. On the other hand, some commenters argued that the methodology for identifying offsetting spending cuts was too restrictive; specifically, that measurement at the agency or department-level may not adequately account for the size and various programs that could occur in one agency or department. One commenter argued that recipient governments should instead be permitted to consider spending cuts on a more granular sub-unit of a department but noted that this additional flexibility would come at the cost of transparency and clarity.

Treasury Comment: Treasury recognizes that some recipients may vary in their budgeting processes, with some budgeting on a department level and others budgeting at more or less granular sub-units of government. Relying on spending at a department, agency, or authority level allows recipient governments to report how SLFRF funds have been spent using reporting units already incorporated into their budgeting process.

Spending Cuts Baseline

Under the interim final rule, to calculate the amount of spending cuts that are available to offset a reduction in tax revenue, the recipient government must first consider whether there has been a reduction in total net spending, excluding SLFRF funds (net reduction in total spending). This approach ensures that reported spending cuts actually create fiscal space, rather than simply offset other spending increases. A net reduction in total spending is measured as the difference between total spending in each reporting year, excluding SLFRF funds spent, relative to total spending for the recipient’s fiscal year ending in 2019, adjusted for inflation. Measuring reductions in spending relative to 2019 reflects the fact that the fiscal space created by a spending cut persists so long as spending remains below its original

level, even if it does not decline further, relative to the same amount of revenue.

Public Comment: Several commenters expressed concern regarding the measurement of spending cuts relative to the recipient’s FY 2019, for example arguing that the choice did not take into account increases in spending in 2020. As one commenter noted, the fiscal year 2020 required extraordinary intervention by recipient governments and the ongoing public health emergency continues to require extraordinary intervention.

Treasury Response: FY 2019 provides a reasonable and relatively generous baseline for considering spending because it is the last full fiscal year prior to the COVID–19 public health emergency and governments’ extraordinary efforts to address the impact of the pandemic. This approach also aligns with the FY 2019 baseline for measuring revenue loss. Measuring spending cuts from year to year would, by contrast, not recognize any available funds to offset revenue reductions unless spending continued to decline, failing to reflect the actual availability of funds created by a persistent change and limiting the discretion of states and territories.

For the reasons discussed above, Treasury is adopting the approach taken in the interim final rule without change.

(5) *Identification of amounts subject to recoupment.* If a recipient government (i) reports covered changes that reduce tax revenue (Step 1); (ii) to a degree greater than the de minimis (Step 2); (iii) has experienced a reduction in net tax revenue (Step 3); and (iv) lacks sufficient revenue from other, permissible sources to pay for the entirety of the reduction (Step 4), then the recipient government will be considered to have used SLFRF funds to offset a reduction in net tax revenue, up to the amount that revenue has actually declined. That is, the maximum value of the reduction revenue due to covered changes that a recipient government must cover is capped at the difference between the baseline and actual tax revenue.³⁶³ In the event that the baseline is above actual tax revenue but the difference between them is less than the sum of revenue reducing changes that are not paid for with other, permissible sources, organic revenue growth has implicitly offset a portion of the reduction. The revenue reduction cap implements this approach for

permitting organic revenue growth to cover the cost of tax cuts.

Finally, a recipient government may request reconsideration of any amounts identified in a notice from Treasury as subject to recoupment under this framework. Comments and responses to the recoupment process are discussed in section Remediation and Recoupment of this Supplemental Information.

3. Reporting

To facilitate the implementation of the framework above, and in addition to reporting required on eligible uses, recipient governments are required to report certain information. The interim final rule indicated that Treasury would provide additional guidance at a later date and that, on an annual basis, it expected each recipient government would be required to provide the following information:

- Actual net tax revenue for the reporting year;
- Each revenue-reducing change made to date during the covered period and the in-year value of each change;
- Each revenue-raising change made to date during the covered period and the in-year value of each change; and
- Each covered spending cut made to date during the covered period, the in-year value of each cut, and documentation demonstrating that each spending cut is covered as prescribed under the interim final rule.

Since the adoption of the interim final rule, Treasury has provided guidance on reporting regarding eligible uses and has required recipient governments to indicate whether they have made covered changes and the value of such changes.³⁶⁴

Reporting Burden

Public Comment: Some commenters argued that the framework for identifying and reporting impermissible offsets was burdensome and that the burdens should be accounted for under Executive Order 13132 (Federalism, August 4, 1999).

Treasury Response: Taking into consideration comments received regarding burden, Treasury is considering a tiered approach to reporting on the offset provision. Specifically, under this approach, a recipient would only be required to report information to the extent needed to determine whether SLFRF funds had been used to offset a reduction in net tax revenue. For example, a recipient government would be required to report

³⁶³ This cap is applied in section 35.8(c) of the final rule, calculating the amount of funds used in violation of the tax offset provision.

³⁶⁴ See Reporting Guidance, Section C.11, available at <https://home.treasury.gov/system/files/136/SLFRF-Compliance-and-Reporting-Guidance.pdf>.

information regarding permissible offsets only if it had also reported covered changes that were in excess of the de minimis and had reported a net reduction in tax revenue. Treasury will provide additional guidance and instructions on the reporting requirements at a later date.

As discussed in section Regulatory Analyses of this Supplemental Information, Treasury maintains that the final rule does not have federalism implications within the meaning of Executive Order 13132 (Federalism, August 4, 1999). In the ARPA, Congress requires states and territories to repay the Secretary for amounts used in violation of the prohibition on using SLFRF funds to offset reductions in net tax revenue, and it authorizes the Secretary to issue regulations to carry out this limitation and other requirements of the statute. Section 6(b) of Executive Order 13132 contemplates that certain regulations will be required by statute, as is the case with the interim final rule and the final rule, in which case section 6(b)(2)(B)'s requirement to include a federalism summary impact statement in the Supplementary Information to the regulation does not apply. Notwithstanding the above, Treasury has engaged in efforts to consult and work cooperatively with affected state, local, and Tribal government officials and associations in the process of developing the interim final rule.

Reporting Transparency

Public Comment: Several commenters argued that information supporting the net tax offset calculation should be publicly available. Some of these commenters requested that reporting be made available in a machine-readable format, and others advocated that recipient governments disclose this information on their local budget agency's website. These commenters argued that making information regarding tax changes publicly available would increase transparency and accountability. Further, several commenters suggested that Treasury provide a mechanism for citizens to register their concerns about particular tax actions.

Treasury Response: As discussed in other sections, reporting requirements promote transparency and accountability for the general public and constituents of recipient governments to understand how state, local, and Tribal governments have used SLFRF funds. Since the publication of the interim final rule, Treasury issued supplementary reporting guidance in the Compliance and Reporting Guidance

and in the User Guide: Treasury's Portal for Recipient Reporting (User Guide), which addresses the particular content and form of required reporting. Treasury will continue to issue updated guidance prior to each reporting period clarifying any modifications to requested report content and will continue to consider how reporting can best support transparency and accountability while minimizing recipient administrative burden. Further, as discussed in the section Remediation and Recoupment, Treasury may address potential violations of this final rule based on both information submitted from recipients, either through quarterly reports or self-reporting, and from other sources of information (e.g., information submitted from the public).

2. Deposit Into Pension Funds

Background: Subsection 602(c)(2)(B) of the Social Security Act provides that "[n]o State or territory may use funds made available under this section for deposit into any pension fund." Similarly, subsection 603(c)(2) of the Social Security Act provides that "[n]o metropolitan city, nonentitlement unit of local government, or county may use funds made available under this section for deposit into any pension fund."

For purposes of this restriction on pension deposits, the interim final rule defined deposit to mean "an extraordinary payment of an accrued, unfunded liability." The interim final rule also specified that a deposit does not include routine contributions made as part of a payroll obligation, such as the normal cost component of a pension contribution or the component that consists of amortization of unfunded liabilities calculated by reference to the employer's payroll costs. The interim final rule applied the restriction on pension deposits to all recipients.

Public Comment: Several commenters observed that the statutory restriction on deposits into pension funds does not apply to Tribal governments.

Treasury Response: In response, Treasury is clarifying in the final rule that the pension restriction does not apply to Tribal governments.

Public Comment: Treasury also received a comment expressing concern that the interim final rule permitted recipients to make a larger than usual pension contribution, so long as the timing of that contribution aligns with the historical timing of contributions.

Treasury Response: The interim final rule prohibited the use of SLFRF funds from the ARPA to make extraordinary payments, and the **SUPPLEMENTARY INFORMATION** to the interim final rule said that a payment would be an

extraordinary payment if it reduces a liability incurred prior to the start of the COVID-19 public health emergency and occurs outside the recipient's regular timing for making the payment. At the same time, however, as suggested by the comment Treasury received, a 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.

Public Comment: Other commenters asked which pension contributions are permitted.

Treasury Response: To be an eligible use of SLFRF funds, a use must (1) be eligible under one of the eligible use categories and (2) not contravene any of the applicable restrictions on uses of funds. Some pension contributions may be eligible because they both fit within an eligible use category and do not contravene the restriction on deposits into pension funds (i.e., they are not an extraordinary payment of an accrued, unfunded liability). For example, payroll and covered benefits for public health and safety staff responding to COVID-19 are an eligible use of funds to respond to the public health and negative economic impacts of the pandemic; routine pension contributions as part of an employee's regular covered benefits are permissible under that eligible use category.

B. Other Restrictions on Use of Funds

1. Debt Service and Replenishing Financial Reserves

The **SUPPLEMENTARY INFORMATION** to the interim final rule provided that debt service is not an eligible use of funds either to respond to the public health emergency or its negative economic impacts or as a provision of government services to the extent of revenue loss.³⁶⁵ The interim final rule also provided that replenishing financial reserves (e.g., rainy day funds) is not an eligible use of funds either to respond to the public health emergency or its negative economic impacts or as a provision of

³⁶⁵ "[G]overnment services would not include interest or principal on any outstanding debt instrument, including, for example, short-term revenue or tax anticipation notes, or fees or issuance costs associated with the issuance of new debt. For the same reasons, government services would not include satisfaction of any obligation arising under or pursuant to a settlement agreement, judgment, consent decree, or judicially confirmed debt restructuring in a judicial, administrative, or regulatory proceeding, except if the judgment or settlement required the provision of government services." 86 FR 26796-97 (May 17, 2021).

government services to the extent of revenue loss.³⁶⁶

As explained in greater detail below, Treasury, in the final rule, has retained these restrictions and is clarifying that these restrictions on the use of SLFRF funds apply to all eligible use categories.

Public Comments

Several commenters suggested that debt service and reserve replenishment should qualify as the provision of a government service and be an eligible use of funds, up to the amount of revenue loss due to the pandemic. Many commenters indicated that they had been forced to borrow money or dip into reserve funds to continue providing government services during the public health emergency and that using SLFRF funds for resulting debt service or reserve replenishment costs should therefore be considered a government service.

Many comments from Tribal governments noted that their governments depend on revenue from Tribal enterprises to pay government debts and provide services. The comments suggest that it should be an eligible use of SLFRF to replace lost revenue from these enterprises that would typically be used to pay debt service costs. Other commenters argued that paying the interest or principal on debt should in some cases be considered provision of government services and an eligible use of funds as such expenditures facilitate the provision of government services.

Some commenters argued that debt costs or reserve drawdowns during the public health emergency constitute a negative economic impact to recipient governments, and thus debt service or reserve replenishment should be an eligible use to respond to that negative economic impact. For example, several commenters suggested that there should be a specific carve-out allowing the use of SLFRF funds for debt service on debt incurred for government services after January 27, 2020, the start of the public health emergency, or short-term debt incurred for this purpose. Others suggested that recipient governments should be able to service debt, up to the amount of debt incurred in direct response to the pandemic. These commenters generally reasoned that the cost of responding to the public health emergency and its negative economic impacts prior to APRA's passage

constitutes a negative economic impact of the pandemic.

Some commenters argued that the specific impacts of the pandemic on the travel, tourism, and hospitality sector had affected their ability to meet debt service costs. For example, some commenters explained that specific tax streams (e.g., hotel room taxes) or revenue sources (e.g., hospitality generally) are tied to specific debt instruments and that these revenue sources had declined during the public health emergency; commenters argued that this constitutes a negative economic impact that SLFRF funds should be permitted to address.

Finally, some commenters questioned why servicing debt incurred after March 3, 2021 for an otherwise eligible project (e.g., a broadband infrastructure project) would not be an eligible use of funds.

On the other hand, many commenters expressed support for the interim final rule's prohibition on use of funds for debt service and reserve replenishment. These commenters largely argued that SLFRF funds should be used to provide current services to communities in response to the public health emergency and that use of funds for debt service or reserve replenishment represented, respectively, payment for past costs or savings for potential future costs. In addition to the prohibition on debt service and reserve replenishment, some commenters suggested that the final rule should also prevent funds from being used for state UI trust fund replenishment or for paying off debt owed through UI trust funds. One commenter argued that Treasury should further restrict recipient governments, for example by preventing recipients from making cuts to an allowable budget item, filling the budget gap with SLFRF funds, and then using the savings from the initial cut for debt service or reserve replenishment.

Treasury Response

The final rule maintains the restriction on the use of funds for debt service or reserve replenishment for the reasons described below and clarifies that this restriction applies to all eligible use categories.

First, debt service and reserve replenishment costs do not constitute the provision of services to constituents. As noted in the interim final rule, financing expenses—such as issuance of debt or payment of debt service—do not provide services or aid to citizens. Similarly, contributions to rainy day funds and similar financial reserves constitute savings for future spending needs. As such, these expenses do not respond to the current and ongoing

public health and negative economic impacts of the pandemic, nor do they provide a government service.

Second, payments from the SLFRF are intended to be used prospectively (see section Timeline for Use of SLFRF Funds). The interim final rule provided that funds may be used for costs incurred beginning on March 3, 2021, which Treasury has maintained in the final rule. Use of funds for debt service on indebtedness issued prior to March 3, 2021 necessarily entails using funds for costs incurred during prior time periods, rather than the present response to the public health emergency and its negative economic impacts or to provide government services.

Third, SLFRF funds provide recipients with substantial latitude to use funds to support the diverse needs in their communities. With SLFRF resources available, recipients have less need to incur debt for otherwise-eligible SLFRF uses.

Finally, given the strong performance of overall revenues and low municipal bond yields, state and local governments generally do not face high levels of fiscal stress. Limits on debt service or replenishment of reserves would not have a substantial impact on recipients' ability to provide services. The ratio of state and local debt-to-GDP, which spiked briefly during the pandemic, has recovered to its pre-pandemic level and remains well below levels seen during the Great Recession.³⁶⁷

2. Settlements and Judgments

The interim final rule also provided that satisfaction of any obligation arising under or pursuant to a settlement agreement, judgment, consent decree, or judicially confirmed debt restructuring in a judicial, administrative, or regulatory proceeding would not be an eligible use of funds to respond to the public health and negative economic impacts of the pandemic or as a government service provided under the revenue loss eligible use category. However, if the judgment or settlement requires the recipient to provide services that are otherwise eligible under an SLFRF eligible use category, specifically if the settlement or judgment requires the recipient to provide services to respond to the COVID-19 public health emergency or its negative economic impacts or to provide government services, then those costs are eligible uses of SLFRF funds.

³⁶⁶ "In addition, replenishing financial reserves (e.g., rainy day or other reserve funds) would not be considered provision of a government service, since such expenses do not directly relate to the provision of government services."

³⁶⁷ Table Z.1 of the Financial Accounts of the United States, Board of Governors of the Federal Reserve System, and Table 1.1.5 of National Income and Product Accounts, Bureau of Economic Analysis.

In other words, satisfaction of a settlement or judgment itself is not itself an eligible use of funds, unless the settlement requires the recipient to provide services or incur other costs that are eligible uses of SLFRF funds.

In the final rule, Treasury is maintaining the interim final rule approach and clarifying that it applies to all eligible use categories and any use of funds under the SLFRF program.

3. General Restrictions

In addition to the above restrictions, there are three general restrictions that apply to SLFRF funds. These restrictions, which reflect existing laws and regulations, the Award Terms and Conditions, and application of the ARPA statute, applied under the interim final rule, and they continue to apply under the final rule.

A primary purpose of the SLFRF in the ARPA is to support efforts to stop the spread of COVID-19.³⁶⁸ As discussed above, recipients of SLFRF funds are required to comply with the Award Terms and Conditions established for the use of such funds. The interim final rule and final rule implement this objective by, in part, providing that recipients may use SLFRF funds for COVID-19 mitigation and prevention.³⁶⁹ See section Public Health in Public Health and Negative Economic Impacts.

The CDC has provided recommendations and guidelines to help mitigate and prevent COVID-19 and has identified vaccines and masks as two of the best tools to prevent the spread of COVID-19. The interim final rule and final rule help support recipients in stopping the spread of COVID-19 through these recommendations and guidelines. Consistent with the purpose of the ARPA and as implemented through the interim final rule and final rule, a recipient may not use SLFRF funds for a program, service, or capital expenditure that includes a term or condition that undermines efforts to stop the spread of COVID-19. A program or service that imposes conditions on participation or acceptance of the service that would undermine efforts to stop the spread of COVID-19 or discourage compliance with recommendations and guidelines in CDC guidance for stopping the spread of COVID-19 is not a permissible use of SLFRF funds.

In other words, recipients may not use funds for a program that undermines

practices included in the CDC's guidelines and recommendations for stopping the spread of COVID-19. This includes programs that impose a condition to discourage compliance with practices in line with CDC guidance (e.g., paying off fines to businesses incurred for violation of COVID-19 vaccination or safety requirements), as well as programs that require households, businesses, nonprofits, or other entities not to use practices in line with CDC guidance as a condition of receiving funds (e.g., requiring that businesses abstain from requiring mask use or employee vaccination as a condition of receiving SLFRF funds).

Second, a recipient may not use SLFRF funds in violation of the conflict of interest requirements contained in the Award Terms and Conditions or the Office of Management and Budget's Uniform Guidance, including any self-dealing or violation of ethics rules. Recipients are required to establish policies and procedures to manage potential conflicts of interest.³⁷⁰ Treasury may provide further guidance on the types of activities or conflicts that the recipient's policies and procedures must cover.

Lastly, recipients should also be cognizant that federal, state, and local laws and regulations, outside of SLFRF program requirements, may apply. Recipients may not use revenue loss funds, for instance, to violate other background laws that limit the scope of activities that may be conducted as "government services," including other state and federal laws. State and local procurement, contracting, and conflicts-of-interest laws and regulations may include applicable requirements, including, for example, required procurement processes for contractor selection or competitive price setting. Furthermore, recipients are also required to comply with other federal, state, and local background laws, including environmental laws³⁷¹ and federal civil rights and nondiscrimination requirements, which include prohibitions on discrimination on the basis of race, color, national origin, sex, (including sexual orientation

and gender identity), religion, disability, or age, or familial status (having children under the age of 18).

IV. Program Administration Provisions

The interim final rule included several sections that described the processes and requirements for administering the program on an ongoing basis, specifically: Distribution of funds, transfer of funds, use of funds for program administration, reporting on the use of funds, and remediation and recoupment of funds used for ineligible purposes.

To enhance clarity, this **SUPPLEMENTARY INFORMATION** for the final rule organizes these issues into one section on Program Administration Provisions. Recipients should also consult Treasury's Compliance and Reporting Guidance for additional information on program administration processes and requirements, including the applicability of the Uniform Guidance.

A. Payments in Tranches to Local Governments and Certain States

Section 602(b)(6)(A)(ii) of the Social Security Act authorizes the Secretary to withhold payment of up to 50 percent of the amount allocated to each state and territory for a period of up to 12 months from the date on which the state or territory provides its statutorily-required certification to the Secretary. The Social Security Act requires any such withholding be based on the unemployment rate in the state or territory as of the date of the certification.

Under the interim final rule, Treasury provided that it would withhold 50 percent of the amount allocated from any state that had an unemployment rate less than two percentage points above its unemployment rate in February 2020 as of the date the state submitted its initial certification for payment of funds pursuant to section 602(d)(1) of the Social Security Act. Based on data available at the time of the issuance of the interim final rule, this threshold was expected to result in a majority of states being paid in two tranches. Treasury did not split the payments of any territories.

Public Comment: One commenter asked Treasury to allow a state to request release of the portion of the state's second tranche payment after the state could demonstrate that it had allocated the entirety of the first tranche, a need to continue ongoing programs, and a desire to avoid borrowing costs. Another commenter asked Treasury to clarify whether states that received half their funding in the

³⁷⁰ Specifically, the Award Terms and Conditions provide that "[r]ecipient understands and agrees it must maintain a conflict of interest policy consistent with 2 CFR 200.318(c), and that such conflict-of-interest policy is applicable to each activity funded under this award. Recipients and subrecipients must disclose in writing to Treasury or the pass-through agency, as appropriate, any potential conflict of interest affecting the awarded funds in accordance with 2 CFR 200.112."

³⁷¹ An exception is statutes that do not apply unless explicitly stated, including, e.g., the National Environmental Policy Act and the Davis-Bacon Act.

³⁶⁸ See Sec. 602(a)(1); 603(a)(1); 602(c)(1); 603(c)(1).

³⁶⁹ See 35.6(b); Coronavirus State and Local Fiscal Recovery Funds, 86 FR at 26786.

first payment would receive their second half payment within 12 months. Similarly, some recipients requested clarification on whether they could obligate second tranche funds before receipt or use second tranche funds for costs incurred prior to receipt.

Treasury Response: The final rule maintains the approach in the interim final rule with two modifications. As described in the interim final rule, splitting payments for most states provides consistency with payments to local governments and encourages states to adapt their use of funds to developments that arise in the course of the economic recovery. Moreover, SLFRF funds may be used for costs incurred during the period of performance. Recipients may use their jurisdiction's budgeting and procurement practices and laws to determine how and when second tranche funds may be obligated.

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. This should increase clarity and consistency on the timing of second tranche payments for both states and Treasury. Second, also 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 on which 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, with no 30 day wait period required.

B. Payments to Nonentitlement Units of Local Government (NEUs) and Units of Local Government (UGLGs) Within Non-UGLG Counties

The interim final rule established requirements related to distributions of SLFRF funds by states and territories to NEUs and UGLGs within non-UGLG counties. Specifically, the interim final rule provided that the total distribution to an NEU cannot exceed 75 percent of the most recent budget for the NEU (the 75 percent budget cap); a requirement set forth in section 603(b)(2)(C)(iii) of the Social Security Act. The interim final rule **SUPPLEMENTARY INFORMATION** defined the NEU's budget for purposes of calculating the 75 percent budget cap as the NEU's "most recent annual total

operating budget, including its general fund and other funds, as of January 27, 2020." The interim final rule further provided that states and territories must permit NEUs without formal budgets as of January 27, 2020 to self-certify their most recent annual expenditures as of January 27, 2020 for the purpose of calculating the 75 percent budget cap. Further, the interim final rule prohibited states and territories from placing additional conditions or requirements on distributions to NEUs beyond those required by the statute, the interim final rule, or Treasury's guidance and from offsetting any debt owed by such NEUs against such distributions.

Commenters predominantly focused on the definition of an NEU's budget for purposes of calculating the 75 percent budget cap, NEU allocations and eligibility, and the prohibition on states and territories imposing additional conditions or requirements in the NEU distribution process.

Definition of NEU Budget

Public Comment: Commenters suggested that Treasury provide greater clarification on the definition of an NEU's "most recent budget" for purposes of the 75 percent budget cap calculation. Treasury provided updated guidance on its interpretation of the 75 percent budget cap on June 30, 2021, and a commenter suggested that Treasury incorporate such updated interpretation into the **SUPPLEMENTARY INFORMATION** of the final rule.

Treasury Response: Consistent with the Update on Interpretation for the 75 Percent Budget Cap Calculation published on June 30, 2021,³⁷² the **SUPPLEMENTARY INFORMATION** of the final rule defines an NEU's budget for purposes of calculating the 75 percent budget cap as its total annual budget, including both operating and capital expenditure budgets, in effect as of January 27, 2020. The guidance also gives states and territories flexibility to provide further guidance to their NEUs to operationalize the 75 percent budget cap. Given the variance in local financial accounting, this updated definition will better facilitate states' and territories' distribution of SLFRF funds to NEUs.

Allocations and Eligibility

Public Comment: Many commenters provided feedback on specific allocation calculations and eligibility of local governments for NEU funding.

³⁷² Treasury's Update on Interpretation for the 75 Percent Budget Cap Calculation can be found at: <https://home.treasury.gov/system/files/136/NEU-Update-75-Percent-Budget-Cap.pdf>.

Commenters addressed how a locality was classified as an NEU or metropolitan city, deviations between Treasury's allocation calculations and earlier estimates from other sources, treatment of unincorporated areas, sources for population data, and Treasury's allocation of NEU funding to states and territories based on the population of a state and territory outside of its metropolitan cities. Two commenters proposed that Treasury provide an appeal process for localities that were not identified on the List of Local Governments used by states and territories as part of the process in which a state or territory determines the eligibility of an NEU in accordance with Treasury guidance, or for Minor Civil Divisions (MCDs) that were denied funding as part of a facts-and-circumstances test undertaken by a weak-MCD state.

Treasury Response: Neither the interim final rule nor the final rule addresses eligibility or allocations issues, and comments on these topics are outside the scope of this rulemaking. These questions are addressed in other Treasury guidance, including the Guidance on Distribution of Funds to Non-entitlement Units of Local Government and Non-entitlement Unit of Local Government Definitional and Data Methodology guidance documents available on Treasury's website.³⁷³ Because Treasury interpreted the definition of an NEU³⁷⁴ in accordance with the statute and established an NEU distribution process in May 2021, the final rule does not incorporate an appeals process regarding the definitions or the facts-and-circumstances test used for eligibility determinations.

Prohibition on Additional Conditions or Requirements in the NEU Distribution Process

Public Comment: One commenter expressed support for Treasury's prohibition on states and territories

³⁷³ The Guidance on Distribution of Funds to Nonentitlement Units of Local Government can be found at this link: https://home.treasury.gov/system/files/136/NEU_Guidance.pdf. The Nonentitlement Unit of Local Government Definitional and Data Methodology can be found at this link: https://home.treasury.gov/system/files/136/NEU_Methodology.pdf.

³⁷⁴ Treasury has interpreted NEU to generally include both incorporated places and MCDs with active functioning governments, subject to the state determining, in the case of weak-MCD States, that a weak MCD has the legal and operational capacity to accept SLFRF funds and provides a broad range of services that would constitute eligible uses under ARPA. More details can be found in the Nonentitlement Unit of Local Government Definitional and Data Methodology, available at https://home.treasury.gov/system/files/136/NEU_Methodology.pdf.

placing additional conditions or requirements on distributions to NEUs. This prohibition restricts states and territories from imposing limitations on NEUs' use of SLFRF funds based on an NEU's proposed spending plan or other policies, offsetting any debt owed by an NEU against the NEU's distribution, or providing funding on a reimbursement model. In particular, the commenter noted that a reimbursement model would lead to inequities in accessing SLFRF funds.

Treasury Response: The final rule maintains and finalizes the prohibition on states and territories placing additional conditions or requirements on distributions to NEUs as well as to any UGLGs within counties that are non-UGLGs. Such conditions or requirements may contravene the statutory requirement that states and territories make distributions based on population and within the statutorily defined timeframe.

Other Provisions

Treasury did not receive substantive comments on the requirement that states and territories permit NEUs without formal budgets as of January 27, 2020 to self-certify their most recent annual expenditures as of January 27, 2020 for the purpose of calculating the 75 percent budget cap, or Treasury's interpretation of the 75 percent budget cap applying only to a consolidated government's NEU allocation under section 603(b)(2) but not to a consolidated government's county allocation under section 603(b)(3). Further, Treasury did not receive substantive comments on the interim final rule's allowance that states and territories be able to use SLFRF funds under section 602(c)(1)(A) to fund expenses related to administering payments to NEUs and units of general local government. As such, the final rule maintains these provisions as written in the interim final rule without modification.

Treasury received some comments that are not addressed because they are beyond the scope of the NEU provision of the interim final rule or not authorized by the statute, including comments related to state accounting practices, re-allocations of NEU allocations that exceed the 75 percent budget cap, and concerns around eligible uses under SLFRF that small local governments may find particularly salient.

C. Timeline for Use of SLFRF Funds

The interim final rule provided that “[a] recipient may only use funds to cover costs incurred during the period

beginning March 3, 2021 and ending December 31, 2024.” The interim final rule also provides that the period of performance will run until December 31, 2026, which will provide recipients an additional two years during which they may expend funds for costs incurred (*i.e.*, obligated).

As explained in more detail below, in the final rule Treasury is maintaining these time periods. Treasury will retain March 3, 2021 as the first date when costs may be incurred, to provide for forward-looking or prospective use of funds and to align with the start date of the “covered period” as such term is used in section 602(c)(2)(A). The deadline for costs to be incurred—which the final rule clarifies means obligated—December 31, 2024, is specified in the ARPA statute, and Treasury will retain December 31, 2026 as the end of the period of performance to provide a reasonable amount of time for recipients to liquidate obligations incurred by the statutory deadline.

Public Comments. Some commenters expressed concerns about costs incurred before March 3, 2021 not being covered and recommended the “start date” be changed to January 2020 to coincide with the declaration of the public health emergency. These commenters argued that recipient governments began incurring costs to respond to COVID-19 and its economic impacts in January 2020 and that prior federal fiscal relief, such as relief provided in the Coronavirus Aid, Relief, and Economic Security Act, did not fully compensate recipient governments for these costs. These commenters recommended that costs incurred before March 3, 2021 that otherwise fit within eligible use categories for SLFRF should be permissible uses of funds.

Some commenters asked Treasury to clarify whether local governments are subject to the same covered period as states and territories beginning March 3, 2021. Commenters noted that section 603(g) of the Social Security Act does not contain the same definition of “covered period” as section 602(g)(1) of the Social Security Act, which references a statutory provision that only applies to states and territories.

Many commenters requested that the deadline for costs to be incurred and the period of performance be extended due to the longer timeline for completing water and sewer projects. One commenter requested that recipients be able to split projects into different phases so that funds could be expended on larger, longer term projects (*e.g.*, by obligating funds on one portion of the project by the statutory deadline). One commenter recommended that the

period of performance be extended for at least two additional years beyond the expenditure deadline set forth in the interim final rule, *i.e.*, until December 31, 2028. One commenter wrote that the final rule should allow for extended projects (*e.g.*, over a time horizon of more than ten years) for recipients working to develop long-term water supplies to prepare for extreme drought.

Treasury Response. In the final rule, Treasury is maintaining March 3, 2021 as the date when recipients may begin to incur costs using SLFRF funds. As described in the interim final rule, use of SLFRF funds is forward looking and the eligible use categories provided by statute are all prospective in nature. While recipients may identify and respond to negative economic impacts that occurred during 2020, the costs incurred to respond to these impacts remain prospective. Further, Treasury considers the beginning of the covered period for purposes of determining compliance with section 602(c)(2)(A) to be a relevant reference point for this purpose that provides some flexibility for recipients that began incurring costs in the anticipation of enactment of the ARPA or in advance of the issuance of the interim final rule and receipt of payment.

Finally, establishing an earlier start date would permit governments to use funds received in 2021 to satisfy obligations incurred in 2020. This use raises a substantial risk of SLFRF funds being used to supplant other recipient funds previously used to pay for such 2020 obligations, freeing funds for recipients to use for any purpose rather than eligible uses of SLFRF funds under the ARPA. Permitting such usage would undermine the provisions setting forth permissible and impermissible uses in the statute. Therefore, a reading of the statute permitting use of funds prior to March 3, 2021 would be inconsistent with the statutory structure.

In the final rule, Treasury is also maintaining the deadlines by which funds must be obligated (*i.e.*, December 31, 2024) and by which such obligations must be liquidated (*i.e.*, December 31, 2026). The December 31, 2024 deadline by which eligible costs must be incurred is established by statute. Treasury is finalizing its interpretation of “incurred” to be equivalent to the definition of “obligation,” based on the definition used for purposes of the Uniform Guidance. Treasury is also maintaining the period of performance, which will run through December 31, 2026, and provides the deadline by which recipients must expend obligated funds. Most recipients received SLFRF funds in the spring and summer of 2021,

meaning that they have over three years to obligate and over five years to expend funds. This provides a sufficient amount of time for recipients to plan and execute projects.

D. Transfers of Funds

Under section 602(c)(3) of the Social Security Act, a state, territory, or Tribal government may transfer SLFRF funds to a “private nonprofit organization . . . a Tribal organization . . . a public benefit corporation involved in the transportation of passengers or cargo, or a special-purpose unit of state or local government.” Similarly, section 603(c)(3) authorizes a local government to transfer SLFRF funds to the same entities (other than Tribal organizations). Separately, section 603(c)(4) authorizes a local government to transfer SLFRF funds to the state in which it is located.

Entities Eligible for a Transfer Under Sections 602(c)(3) and 603(c)(3)

Regarding transfers permitted under sections 602(c)(3) and 603(c)(3) of the Act, the interim final rule Supplementary Information clarified that the lists of transferees in these sections are not exclusive and that state, local, territorial, and Tribal governments may transfer funds to other constituent units of government or private entities beyond those specified in the statute.

Public Comment: Several commenters supported Treasury’s interpretation of eligible transferees in sections 602(c)(3) and 603(c)(3) as nonexclusive. However, many commenters asked for greater clarity as to whether specific entities not listed in Treasury’s examples of eligible subrecipients, such as nonprofits and Tribal governments, were eligible transferees. One commenter also asked whether a recipient may transfer SLFRF funds to a higher level of government, such as a locality to the county in which it is located.

Treasury Response: The final rule clarifies that, in addition to the entities enumerated in sections 602(c)(3) and 603(c)(3), recipients may transfer SLFRF funds to any entity to carry out as a subrecipient an eligible use of funds by the transferor, as long as they comply with the Award Terms and Conditions and other applicable requirements, including the Uniform Guidance at 2 CFR 200.331–200.333. Eligible subrecipients include, but are not limited to, other units of government (including Tribal governments), nonprofits and other civil society organizations, and private entities. Further, the final rule clarifies that transfers may be made to both constituent or non-constituent units of

government. For example, county A may transfer SLFRF funds to county B as long as county B abides by the use restrictions applicable to county A and the transfer would constitute an eligible use of the funds by county A. County A must receive a benefit proportionate to the amount transferred.

As detailed in the interim final rule Supplementary Information, once transfers are received, the transferee must abide by the restrictions on use applicable to the transferor under the ARPA and other applicable law, regulations, and program guidance. Further, the transferor remains responsible for monitoring and overseeing the subrecipient’s use of SLFRF funds and other activities related to the award to ensure that the subrecipient complies with the statutory and regulatory requirements and the Award Terms and Conditions. Recipients also remain responsible for reporting to Treasury on their subrecipients’ use of payments from the SLFRF for the duration of the award.

Pooling Funds

Public Comment: Several commenters asked for clarification about whether they may pool SLFRF funds for a project with other recipients, including when doing so involves a transfer to another entity, such as a regional organization or government that undertakes projects on behalf of a number of local governments. Commenters also asked for clarification on the oversight and reporting obligations that would result from such transfers.

Treasury Response: Consistent with guidance issued following the interim final rule,³⁷⁵ the final rule clarifies that 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. In general, when pooling funds for regional projects, recipients may expend funds directly on the project or transfer funds to another government or other entity that is undertaking the project on behalf of multiple recipients. To the extent recipients undertake regional projects via transfer to another organization or government, recipients would need to comply with the rules on transfers specified in the final rule

SUPPLEMENTARY INFORMATION. A

³⁷⁵ Coronavirus State and Local Fiscal Recovery Funds, Frequently Asked Questions, as of July 19, 2021; <https://home.treasury.gov/system/files/136/SLFRPFAQ.pdf>.

recipient may transfer funds to a government outside its boundaries (e.g., county transfers to a neighboring county), provided that the transferor can document that the transfer constitutes an eligible expense of the transferor government and that its jurisdiction receives a benefit proportionate to the amount transferred.

Blending and Braiding of Funds

Treasury is clarifying in the final rule that, consistent with further guidance issued by Treasury following the interim final rule,³⁷⁶ 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. The recipient must comply with applicable reporting requirements for all sources of funds supporting the SLFRF projects and with any requirements and restrictions on the use of funds from the supplemental funding sources and the SLFRF program. Specifically,

- All funds provided under the SLFRF program must be used for projects, investments, or services that are eligible under the SLFRF program. SLFRF funds may not be used to fund an activity that is not, in its entirety, an eligible use under the SLFRF program. For example:
 - SLFRF funds may be used in conjunction with other sources of funds to make an investment in water infrastructure that is eligible under section 602 or 603 of the Social Security Act and the final rule.
 - SLFRF funds could *not* be used to fund the entirety of a water infrastructure project that was partially, although not entirely, an eligible use under Treasury’s final rule. However, the recipient could use SLFRF funds only for a smaller component project that does constitute an eligible use, while using other funds for the remaining portions of the larger planned water infrastructure project that do not constitute an eligible use. In this case, the “project” for SLFRF purposes under this program would be only the eligible use component of the larger project.
 - In addition, because SLFRF funds must be obligated by December 31, 2024, and recipients must expend all funds under the award no later than December 31, 2026, recipients must be able to, at a minimum, determine and report to Treasury on the amount of SLFRF funds obligated and expended and when such funds were obligated and expended.

³⁷⁶ See FAQ 4.10. *Id.*

Scope of a 603(c)(4) Transfer

Unlike in the case of a transfer under sections 602(c)(3) or 603(c)(3), the interim final rule **SUPPLEMENTARY INFORMATION** specified that transfers from a local government to the state under section 603(c)(4) will result in a cancellation or termination of the award on the part of the transferor local government and a modification of the award to the transferee state.

Public Comment: Two commenters suggested that Treasury expand section 603(c)(4) beyond transfers from localities to the state to include transfers from counties to their constituent local governments, which would incentivize counties to augment funds to address the needs of local governments. These commenters noted that counties are disincentivized to make transfers under section 603(c)(3), as is currently allowed, as such transfers would require that counties provide oversight and monitoring over its subrecipients.

Treasury Response: Section 603(c)(4), by its terms, applies only to transfers from local governments to states. Accordingly, the final rule must maintain the interim final rule's limitation of section 603(c)(4) transfers as applicable only to transfers from local governments to states. Expansions of section 603(c)(4) transfer authority beyond transfers from local governments to states were not explicitly authorized by Congress. As such, transfers under section 603(c)(4) may only be made by local governments to the state in which they are located.

Congress enumerated two separate transfer provisions for local governments—section 603(c)(3) and section 603(c)(4)—that use different language and were intended to operate differently. Section 603(c)(4) contains prefatory language (“Notwithstanding paragraph (1)”—a reference to the eligible SLFRF uses) that section 603(c)(3) does not. In other words, section 603(c)(4) transfers are not required to constitute an eligible use of the funds from the perspective of the transferor local government, but section 603(c)(3) transfers are required to constitute an eligible use. A transfer to accomplish an eligible use fits within the recipient-subrecipient framework.

Further, treating section 603(c)(3) transfers as leading to a cancellation of the award for the transferor local government would result in scenarios that are inconsistent with the statutory language. An award cancellation pursuant to a section 603(c)(3) transfer would result in either (1) non-governmental entities becoming award recipients under the program, which

would contravene the purpose of SLFRF or (2) transfers to governmental and non-governmental entities being treated in a distinct and inconsistent manner. That is, section 603(c)(3) transfers to governmental entities would lead to award cancellation but section 603(c)(3) transfers to non-governmental entities would lead to a recipient-subrecipient relationship. Therefore, in the final rule, Treasury maintains its distinct treatment of a section 603(c)(3) transfer and section 603(c)(4) transfer.

The final rule clarifies that a transfer under section 603(c)(4) will result in a modification, termination, or cancellation of the award on the part of the transferor local government and a modification of the award to the transferee state or territory. As detailed in the **SUPPLEMENTARY INFORMATION** to the interim final rule, the transferor must provide notice of the transfer to Treasury in a format specified by Treasury. Until the local government provides such notice and Treasury provides confirmation of its acceptance of the notice, the local government will remain responsible for ensuring that the SLFRF award is being used in accordance with the Award Terms and Conditions, section 602 or 603 of the Social Security Act, the final rule, and program guidance including reporting on such uses of the award funds to Treasury.

A state that receives a transfer from a local government under section 603(c)(4) will be bound, by statute, by all of the use restrictions set forth in section 602(c) with respect to the use of those SLFRF funds, including the prohibitions on use of such SLFRF funds to offset certain reductions in taxes or to make deposits into pension funds. The state will be responsible as the prime recipient for the use and reporting on any funds transferred under section 603(c)(4) by the local government. Such transferred funds will be subject to the Award Terms and Conditions previously accepted by the state in connection with its SLFRF award.

Subrecipient Transfers

Public Comment: Commenters sought clarification as to how funds may be transferred from a recipient to another entity. For instance, one commenter requested that recipients be able to advance funds to subrecipients as opposed to reimbursing subrecipients for expenses incurred.

Treasury Response: Treasury did not specify in the interim final rule whether recipients may advance funds to subrecipients. This omission was not intended to prevent recipients from

advancing funds to subrecipients, consistent with the various methods permitted under the Uniform Guidance. Given the broad flexibility that recipients have in selecting eligible uses and the broad variety of potential subrecipients, Treasury believes that specifying a single method of advancement or reimbursement would add unnecessary administrative difficulty to program administration. Recipients may determine the optimal payment structure for the transfer of funds (e.g., advance payments, reimbursement basis, etc.) from recipients to subrecipients. Ultimately, recipients must comply with the eligible use requirements and any other applicable laws or requirements and are responsible for the actions of their subrecipients.

E. Administrative Expenses

The interim final rule permitted, under the heading “[e]xpenses to improve efficacy of public health or economic relief programs,” use of funds for “[a]dministrative costs associated with the recipient’s COVID–19 public health emergency assistance programs, including services responding to the COVID–19 public health emergency or its negative economic impacts, that are not federally funded.”

Following release of the interim final rule, Treasury issued Compliance and Reporting Guidance that provided that “recipients may use funds for administering the SLFRF program, including costs of consultants to support effective management and oversight, including consultation for ensuring compliance with legal, regulatory, and other requirements. Further, costs must be reasonable and allocable as outlined in 2 CFR 200.404 and 2 CFR 200.405. Pursuant to the SLFRF Award Terms and Conditions, recipients are permitted to charge both direct and indirect costs to their SLFRF award as administrative costs. Direct costs are those that are identified specifically as costs of implementing the SLFRF program objectives, such as contract support, materials, and supplies for a project. Indirect costs are general overhead costs of an organization where a portion of such costs are [sic] allocable to the SLFRF award such as the cost of facilities or administrative functions like a director’s office.”³⁷⁷ Several commenters

³⁷⁷ U.S. Department of the Treasury, Recipient Compliance and Reporting Responsibilities, as of November 5, 2021; <https://home.treasury.gov/policy-issues/coronavirus/assistance-for-state-local-and-tribal-governments/state-and-local-fiscal>

Continued

requested clarity on which administrative expenses are permissible uses of funds and how recipients should structure administrative costs.

In the final rule, Treasury is clarifying that direct and indirect administrative expenses are permissible uses of SLFRF funds and are a separate eligible use category from “[e]xpenses to improve efficacy of public health or economic relief programs,” which refers to efforts to improve the effectiveness of public health and economic programs through use of data, evidence, and targeted consumer outreach. For details on permissible direct and indirect administrative costs, recipients should refer to Treasury’s Compliance and Reporting Guidance.³⁷⁸ Costs incurred for the same purpose in like circumstances must be treated consistently as either direct or indirect costs.

F. Treatment of Loans

The interim final rule allowed recipients to use SLFRF funds to make loans for uses that are otherwise eligible (for example, for small business assistance). Subsequent guidance clarified how recipients must track and dispose of program income from loans, consistent with the statutory requirements for the timing of SLFRF expenditures.

SLFRF funds must be used to cover “costs incurred” by the recipient between March 3, 2021 and December 31, 2024. The interim final rule provided that SLFRF funds must be obligated by December 31, 2024 and expended by December 31, 2026. In using SLFRF funds to make loans, recipients must be able to determine the amount of funds used to make a loan and must comply with restrictions on the timing of the use of funds and with restrictions in the Uniform Guidance.

When SLFRF funds are used as the principal for loans, there is an expectation that a significant share of the loaned funds will be repaid. Thus, recipients may not simply consider the full amount of loaned funds to be permanently expended and must appropriately account for the return of loaned funds.

For loans that mature or are forgiven on or before December 31, 2026, the recipient must account for the use of funds on a cash flow basis, consistent with Treasury’s guidance regarding loans made by recipients using payments from the Coronavirus Relief

Fund.³⁷⁹ Recipients may use SLFRF funds to fund the principal of the loan and in that case must track repayment of principal and interest (*i.e.*, “program income,” as defined under 2 CFR 200). When the loan is made, recipients must report the principal of the loan as an expense.

Repayment of principal may be re-used only for eligible uses and is subject to restrictions on the timing of the use of funds. Interest payments received prior to the end of the period of performance will be considered an addition to the total award and may be used for any purpose that is an eligible use of funds under the statute and final rule. Recipients are not subject to restrictions under 2 CFR 200.307(e)(1) with respect to such payments.

For loans with maturities longer than December 31, 2026, the recipient must estimate the cost to the recipient of extending the loan over the life of the loan. In other words, at origination, the recipient must measure the projected cost of the loan and may use SLFRF funds for the projected cost of the loan. Recipients have two options for estimating this amount: They may estimate the subsidy cost (*i.e.*, net present value of estimated cash flows) or the discounted cash flow under current expected credit losses (*i.e.*, CECL method). See further guidance issued by Treasury for further explanation.³⁸⁰

Public Comment: Many commenters asked for further clarification on the treatment of loans and the calculation of “costs incurred.” Some commenters requested that grants made for eligible activities prior to December 31, 2024 to a revolving loan fund, an economic development corporation, a land bank, or a similar facility should be considered obligated and expended at the time of the grant. This would allow funds to be expended by the grantee beyond the covered period and for funds returned to the grantee to be re-invested in further uses outside of the covered period.

Treasury Response: The final rule maintains the treatment of loans from the interim final rule and subsequent guidance, as discussed above. This approach is consistent with the statutory requirement that funds be used for costs incurred for eligible purposes by December 31, 2024 and is consistent

with standard accounting practices and the Uniform Guidance.

G. Use of Funds for Match or Cost-Share Requirements

As a general matter and as referenced in the **SUPPLEMENTARY INFORMATION** to the interim final rule, funds provided under one federal program may not be used by a recipient to meet the non-federal match or cost-share requirements of another federal program.

However, Treasury has since determined that, consistent with this general principle and the requirements of the Uniform Guidance at 2 CFR 200.306(b)(5), the funds available under sections 602(c)(1)(C) and 603(c)(1)(C) of the Social Security Act 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. Federal funds that constitute revenue sharing to state and local governments may generally be used to meet non-federal match requirements.³⁸¹ The broad eligible uses of the SLFRF funds available under sections 602(c)(1)(C) and 603(c)(1)(C) of the Social Security Act, combined with the purpose of these provisions (which is to provide general fiscal assistance to governments facing revenue losses due to the public health emergency), demonstrate that these funds are revenue sharing. They thus should generally be permitted to be used to meet the non-federal match and cost-share requirements of other federal programs. As such, the SLFRF 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, may be used to meet the non-federal match requirements of the Drinking Water State Revolving Fund and Clean Water State Revolving Fund programs administered by the EPA, for example.

Pursuant to 2 CFR 200.306(b) of the Uniform Guidance, if funds are legally available to meet the match or cost-share requirements of an agency’s federal program, such awarding agency is required to accept such funds for the purpose of that program’s match or cost-share requirements except in the circumstances enumerated in that section. The Office of Management and Budget has authority under 2 CFR

recovery-funds/recipient-compliance-and-reporting-responsibilities.

³⁷⁸ *Id.*

³⁷⁹ Coronavirus Relief Fund for States, Tribal Governments, and Certain Eligible Local Governments, 86 FR at 4192.

³⁸⁰ See *FAQ 4.11. Coronavirus State and Local Fiscal Recovery Funds*, Frequently Asked Questions, as of July 19, 2021; <https://home.treasury.gov/system/files/136/SLFRPFAQ.pdf>.

³⁸¹ See U.S. Government Accountability Office, *Principles of Federal Appropriations Law, Third Edition, Volume II*, p. 10–99, GAO–06–382SP (February 2006), <https://www.gao.gov/assets/gao-06-382sp.pdf>.

200.102 of the Uniform Guidance to issue waivers of this requirement on request of the relevant awarding agency. Analogous requirements and waiver authorities may be present in other regulations. If a recipient seeks to use SLFRF funds to satisfy match or cost-share requirements for a federal grant program, it should first confirm with the relevant awarding agency that no waiver has been granted for that program, that no other circumstances enumerated under 2 CFR 200.306(b) would limit the use of SLFRF funds to meet the match or cost-share requirement, and that there is no other statutory or regulatory impediment to using the SLFRF funds for the match or cost-share requirement. Note that 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 as requested by the Centers for Medicare & Medicaid Services pursuant to 2 CFR 200.102 of the Uniform Guidance and related regulations.

SLFRF funds beyond those that are available under sections 602(c)(1)(C) or 603(c)(1)(C) of the Social Security Act 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 specifically provided for by statute. For example, as discussed in other sections of this final rule, section 40909 of the Infrastructure Investment and Jobs Act provides that SLFRF funds may be used to meet the non-federal match requirements of any authorized Bureau of Reclamation project, and section 60102 of the Infrastructure Investment and Jobs Act provides that the SLFRF may be used to meet the non-federal match requirements of the broadband infrastructure program authorized under that section (see sections Water and Sewer Infrastructure and Broadband Infrastructure).

H. Reporting

The interim final rule established Treasury's authority to collect information from recipients through requested reports and any additional requests for information. The interim final rule also provided Treasury flexibility to extend or accelerate reporting deadlines and to modify requested content for the Interim Report, Project and Expenditure reports, and Recovery Plan Performance reports.

The **SUPPLEMENTARY INFORMATION** of the interim final rule provided initial guidance on the reporting requirements for the SLFRF funds. States (defined to include the District of Columbia), territories, metropolitan cities, counties,

and Tribal governments were required to submit one interim report and quarterly Project and Expenditure reports thereafter. Non-entitlement units of local government were not required to submit an interim report. States, territories, and metropolitan cities and counties with a population greater than 250,000 residents were also required to submit an annual Recovery Plan Performance report to Treasury. The Supplementary Information of the interim final rule provided guidance on the deadlines and content required for each type of report.

Public Comment: Treasury received many comments on the content and specific data elements required of program reporting. Some commenters expressed enthusiasm for including particular details in reporting to promote transparency. Other commenters requested that Treasury streamline reporting requirements to avoid imposing undue administrative burdens and compliance costs. Many commenters requested further clarification on or amendments to particular elements of reporting content. Some commenters requested that reports and specific reporting elements be public, including a request for a public website with a number of programmatic data metrics about the use of SLFRF funds. Some commenters sought clarification and guidance for using the reporting portal, which allows recipients to upload the required information, or requested user modifications to the portal. Finally, some commenters requested that Treasury provide example materials and reporting metrics to aid recipient understanding.

Treasury Response: Since the publication of the interim final rule, Treasury issued supplementary reporting guidance in the Compliance and Reporting Guidance and in the User Guide: Treasury's Portal for Recipient Reporting (User Guide).³⁸² Treasury has addressed many of these comments in the Compliance and Reporting Guidance and User Guide and will continue to issue updated guidance prior to each reporting period clarifying any modifications to requested report content. Treasury notes that the interim final rule did not address the specific content and data elements required in reporting, the reporting portal or submission process, and the specific

form of reporting (e.g., example templates, machine readability); comments on these topics are outside the scope of the final rule and, as noted, are addressed instead in Compliance and Reporting Guidance.

Reporting Deadlines

Public Comment: Treasury received comments requesting various changes to reporting deadlines to ease compliance burdens. For example, Treasury received several comments requesting that Treasury delay early reporting deadlines for various reasons, including to align with the timeline for issuing a final rule and to allow for more time for recipients to determine SLFRF allocations. Commenters also requested changes to the immediacy of reporting, for example requesting that Treasury allow expenses to be reported with a lag instead of the quarter in which they were accrued or that reports be due 90 days after period close instead of 30 days after the close of a reporting period. Some commenters requested changes to the reporting frequency, for example to report biannually rather than quarterly.

Treasury Response: Treasury has clarified reporting deadlines in the Compliance and Reporting guidance.³⁸³ Treasury is retaining the reporting deadline of 30 days after the close of the reporting period to ensure timely accounting of the use of SLFRF funds; this timeline also aligns with practices in many other federal programs. The final rule maintains Treasury's discretion to extend or delay reporting deadlines.

Administrative Costs for Reporting and Compliance

Public Comment: Many commenters sought clarification about whether various administrative costs related to reporting and compliance were eligible uses of funds and asked for clarification on the limits of such use.

Treasury Response: Treasury notes that administrative costs are generally allowable uses of SLFRF funds, including for reporting. For additional information on administrative expenses, please see section Administrative Expenses under Program Administration Provisions.

Uniform Guidance

Public Comment: The **SUPPLEMENTARY INFORMATION** of the interim final rule clarified that SLFRF funds were generally subject to the provisions of the Uniform Administrative Requirements, Cost Principles, and Audit

³⁸² U.S. Department of the Treasury, Recipient Compliance and Reporting Responsibilities, as of November 5, 2021; <https://home.treasury.gov/policy-issues/coronavirus/assistance-for-state-local-and-tribal-governments/state-and-local-fiscal-recovery-funds/recipient-compliance-and-reporting-responsibilities>.

³⁸³ *Id.*

Requirements for Federal Awards (2 CFR part 200) (the Uniform Guidance), including the cost principles and restrictions on general provisions for selected items of cost. Treasury received many comments requesting clarification about or modifications to the applicability of the Uniform Guidance on various issues.

For example, one commenter requested that Treasury remove requirements that expenditures of funds be made in conformance with the Uniform Guidance, particularly in case of expenditures made during period from March 3, 2021 to the release of the interim final rule, while other comments requested that Treasury raise the single-audit threshold from \$750,000 to \$5 million. Commenters sought clarification on items such as: The applicability of the Uniform Guidance for funds that are used for the provision of government services, the applicability of particular sections of the cost principles provided in subpart E of the Uniform Guidance, the applicability of the procurement provisions of the Uniform Guidance, and requirements for subrecipient reporting.

Treasury Response: 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 in this rule or program-specific guidance. 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. Additional information about the definition of subrecipients is available in the section Distinguishing Subrecipients versus Beneficiaries.

Recipients should refer to the Assistance Listing for details on the specific provisions of the Uniform Guidance that do not apply to this program. The Assistance Listing is available on SAM.gov. Additional changes to compliance and reporting guidelines, including any clarifications on Uniform Guidance requirements, will be addressed in Compliance and Reporting Guidance and the User Guide.³⁸⁴

I. Remediation and Recoupment

Sections 602(e) and 603(e) of the Social Security Act provide the Secretary with the power to recoup “funds used in violation” of the Social Security Act. The interim final rule implemented these provisions by establishing a process for recoupment. Treasury may identify funds used in violation of the Social Security Act based on information submitted by recipients, including as part of reporting requirements, as well as information from other sources.³⁸⁵ If a potential violation is identified, Treasury will provide the recipient an initial written notice of the amount subject to recoupment along with an explanation of such amounts. A recipient then has 60 calendar days following receipt of a recoupment notice to submit a request for reconsideration containing any information it believes supports its use of funds. Within 60 calendar days of receipt of the request for reconsideration, the interim final rule provided that a recipient will receive a final notice of the Secretary’s decision to affirm, withdraw, or modify the recoupment notice. If the recipient did not submit a request for reconsideration, the initial notice of recoupment would be deemed a final notice. A recipient would then be required to repay any amounts subject to recoupment within 120 calendar days of either the initial recoupment notice, if the recipient does not request reconsideration, or the final recoupment notice, if the recipient does request reconsideration.

Public Comments

Treasury received several comments on the process for recoupment. For instance, some commenters, including many Tribal governments, requested additional time to file a request for reconsideration and submit repayment to ensure that small entities have the time necessary to carry out any logistical steps and consult with counsel. Treasury was also asked to align its recoupment process with that of the Office of the Inspector General and other departmental administrative processes to resolve findings, agency decisions, and related timelines. One commenter asked if the 120-calendar-day time limit for repayment was based on the initial notice, rather than a final decision issued by the Secretary. Several commenters expressed concern regarding the recoupment process, arguing that consideration of “all relevant facts and circumstances” provided Treasury with too much

authority and created ambiguity. Other commenters urged Treasury to establish a robust enforcement and compliance program and process and advocated for the creation of a whistleblower mechanism or public complaint process to allow public and private entities to report suspected misuses of funds. Finally, some commenters requested clarification regarding the process after a violation is identified and becomes final. One commenter also asked to allow recipients to amend reports deemed to contain ineligible expenses and inform recipients how the agency intends to resolve instances where a use was later deemed unacceptable. Another commenter asked if recouped funds could be released back to the recipient.

Commenters also expressed concern about Treasury’s authority to recoup funds used in violation of the tax offset provision. Some commenters requested additional clarity around when tax cuts would trigger Treasury’s recoupment authority and the duration of Treasury’s authority to seek recoupment of such funds.

Treasury Response

The final rule largely preserves the process established in the interim final rule but includes several adjustments to clarify certain elements.

Like the interim final rule, the final rule provides that, after an initial determination is made that a recipient has used SLFRF funds in violation of the law, a recipient may submit a request for reconsideration concerning any amounts identified in a notice provided by Treasury. If a recipient chooses to seek reconsideration of the initial notice, the recipient must submit a request for reconsideration as provided under the final rule. If a recipient does not request reconsideration, the initial notice that the recipient received will be deemed the final notice.³⁸⁶ Treasury has clarified that a recipient must invoke and exhaust the procedures available under section 35.10 of the final rule prior to seeking judicial review of a recoupment decision. Consistent with Section 602(b)(6)(A)(ii)(III) of the Social Security Act, 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 amount that the state or territory would be required to repay as recoupment.

In the final rule, Treasury has clarified that, if it identifies a potential

³⁸⁴ *Id.*

³⁸⁵ Treasury will also consider the tax offset provision on an annual basis.

³⁸⁶ Funds subject to recoupment cannot later be returned.

violation,³⁸⁷ it may request additional information from a recipient before initiating the recoupment process and, where necessary, provide written notice to the recipient along with an explanation of such amounts potentially subject to recoupment. Furthermore, Treasury has also made clear that it retains the ability to expedite or extend timelines in any adjudication or pre-adjudication process pursuant to section 35.4(b) of the final rule, although the general timelines set forth in the interim final rule are maintained in the final rule.

This process is intended to provide the recipient with an adequate opportunity to present additional information regarding its uses of funds and provides flexibility for recipients to determine the information relevant to the particular facts and circumstances. It is also flexible enough to align with other adjudication procedures in other ARPA recovery programs administered by the Office of Recovery Programs at Treasury. As discussed above, the initial notice will provide recipients with an explanation of the identified potential violation in order to provide recipients with a meaningful opportunity to respond. Such initial notice will generally include information regarding the specific use of SLFRF funds and the source of such information.³⁸⁸ This process also will allow the Secretary to take into consideration the information provided by recipients, along with other relevant information, to ensure SLFRF funds are used in a manner consistent with the Social Security Act.

Finally, Treasury expects to work with recipients to support the use of SLFRF funds consistent with the law. For example, Treasury may request additional information from a recipient before initiating the recoupment process. In addition, Treasury may pursue other forms of remediation and monitoring in conjunction with, or as an alternative to, recoupment.³⁸⁹ These efforts may include working with recipients to identify and substitute permissible uses of SLFRF funds or amending uses of SLFRF funds to comply with applicable restrictions.

In response to comments regarding the amount of time provided to respond to an initial notice, the final rule clarifies that Treasury retains the ability

to expedite or extend timelines in any adjudication or pre-adjudication process pursuant to section 35.4(b) of the final rule, although the general timelines set forth in the interim final rule are maintained in the final rule.

V. Regulatory Analyses

Executive Orders 12866 and 13563

Regulatory Impact Assessment

This final rule is a “significant regulatory action” under section 3(f) of Executive Order 12866 for the purposes of Executive Orders 12866 and 13563 because it is likely to have an annual effect on the economy of \$100 million or more.

As explained below, this regulation meets a substantial need: ensuring that recipients—states, territories, Tribal governments, and local governments—of SLFRF funds fully understand the requirements and parameters of the program as set forth in the statute and deploy funds in a manner that best reflects Congress’ intent to provide necessary relief to recipient governments adversely impacted by the COVID–19 public health emergency. Furthermore, as required by Executive Orders 12866 and 13563, Treasury has weighed the costs and benefits of this final rule and varying alternatives and has reasonably determined that the benefits of the final rule to recipients and their communities far outweigh any costs.

The rule has been reviewed by the Office of Management and Budget (OMB) in accordance with Executive Order 12866.

Executive Orders 12866 and 13563

Under Executive Order 12866, OMB must determine whether this regulatory action is “significant,” and therefore, subject to the requirements of the Executive Order and subject to review by OMB. Section 3(f) of Executive Order 12866 defines a significant regulatory action as an action likely to result in a rule that may, among other things, have an annual effect on the economy of \$100 million or more. This rule is likely to have an annual effect on the economy of \$100 million or more, and therefore, it is subject to review by OMB under section 3(f) of Executive Order 12866.

Treasury has also reviewed these regulations under Executive Order 13563, which supplements and explicitly reaffirms the principles, structures, and definitions governing regulatory review established in Executive Order 12866. To the extent permitted by law, section 1(b) of Executive Order 13563 requires that an agency: (1) Propose or adopt regulations

only upon a reasoned determination that their benefits justify their costs (recognizing that some benefits and costs are difficult to quantify); (2) tailor its regulations to impose the least burden on society, consistent with obtaining regulatory objectives taking into account, among other things, and to the extent practicable, the costs of cumulative regulations; (3) select, in choosing among alternative regulatory approaches, those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity); (4) to the extent feasible, specify performance objectives, rather than the behavior or manner of compliance a regulated entity must adopt; and (5) identify and assess available alternatives to direct regulation, including providing economic incentives—such as user fees or marketable permits—to encourage the desired behavior, or providing information that enables the public to make choices. Executive Order 13563 also requires an agency “to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible.” OMB’s Office of Information and Regulatory Affairs (OIRA) has emphasized that these techniques may include “identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes.”

Based on the analysis that follows and the reasons stated elsewhere in this document, Treasury believes that this final rule is consistent with the principles set forth in Executive Orders 12866 and 13563. This Regulatory Impact Analysis discusses the need for regulatory action, the potential benefits, and the potential costs. Treasury has assessed the potential costs and benefits, both quantitative and qualitative, of this regulatory action, and is issuing this final rule only on a reasoned determination that the benefits exceed the costs. In choosing among alternative regulatory approaches, Treasury selected those approaches that would maximize net benefits.

Need for Regulatory Action

This final rule implements the \$350 billion SLFRF program of the ARPA, which Congress passed to help states, territories, Tribal governments, and localities respond to the ongoing COVID–19 public health emergency and its economic impacts. As the agency charged with execution of these programs, Treasury has concluded that this final rule is needed to ensure that recipients of SLFRF funds fully

³⁸⁸ Treasury may address potential violations based on information submitted from recipients, either through quarterly reports or self-reported information, and from other sources of information as Treasury deems necessary and appropriate (e.g., press, information submitted from the public).

³⁸⁹ Treasury intends to work with recipients to support the use of SLFRF funds consistent with the law.

understand the requirements and parameters of the program as set forth in the statute and deploy funds in a manner that best reflects Congress' mandate for targeted fiscal relief. This final rule governs the use of \$350 billion in grant funds from the federal government to states, territories, Tribal governments, and localities, generating a significant macroeconomic effect on the U.S. economy. Treasury has sought to implement the program in ways that maximize its potential benefits while minimizing its costs. It has done so by: aiming to target relief in key areas according to the congressional mandate; offering clarity to states, territories, Tribal governments, and localities while maintaining their flexibility to respond to local needs; and limiting administrative burdens.

Analysis of Benefits

Relative to a pre-statutory baseline, the SLFRF funds provide a combined \$350 billion to state, local, and Tribal governments for fiscal relief and support for costs incurred responding to the COVID-19 pandemic. Treasury believes that this transfer will generate substantial additional economic activity, although given the flexibility accorded to recipients in the use of funds, it is not possible to precisely estimate the extent to which this will occur and the timing with which it will occur. Economic research has demonstrated that state fiscal relief is an efficient and effective way to mitigate declines in jobs and output during an economic downturn.³⁹⁰ Absent such fiscal relief, fiscal austerity among state, local, and Tribal governments could exert a prolonged drag on the overall economic recovery, as occurred following the 2007–2009 recession.³⁹¹

This final rule provides benefits across several areas by implementing the four eligible use categories, as defined in statute: strengthening the response to the COVID-19 public health emergency and its negative economic impacts; replacing lost revenue to ease fiscal pressure on state, local, and Tribal governments that might otherwise lead to harmful cutbacks in employment or government services; providing premium pay to essential workers; and making necessary investments in water, sewer, and broadband infrastructure.

These benefits are achieved in the final rule through a broadly flexible

approach that sets clear guidelines on eligible uses of SLFRF funds and provides state, local, and Tribal government officials discretion within those eligible uses to direct SLFRF funds to areas of greatest need within their jurisdiction. While preserving recipients' overall flexibility, the final rule includes several provisions that implement statutory requirements and will help support use of SLFRF funds to achieve the intended benefits. Preserving flexibility for recipients not only serves an important public policy goal by allowing them to meet particularized and diverse needs of their local communities but also enhances the economic benefits of the final rule by allowing recipients to choose eligible uses of funds that provide the highest utility in their jurisdictions.

In implementing the ARPA, Treasury has also prioritized supporting underserved communities that have been disproportionately impacted by the pandemic. The SLFRF program as implemented by the final rule provides even greater flexibility to recipients for uses of funds in underserved communities, recognizing that pre-existing health and economic disparities in these communities amplified the impact of the pandemic there. In general, investments in improving health outcomes and economic opportunities provide high economic returns, so this approach is likely to achieve substantial near-term economic and public health benefits, in addition to the longer-term benefits arising from the allowable investments in water, sewer, and broadband infrastructure.

The remainder of this section clarifies how Treasury's approach to key provisions in the final rule will contribute to greater realization of benefits from the program.

Public Health and Negative Economic Impacts

The eligible use category for responding to the public health and negative economic impacts of the pandemic covers a wide range of eligible uses of funds. Treasury addresses several key uses of funds in this analysis, as well as ways that Treasury has structured this eligible use to minimize recipient administrative burden while also maintaining targeting of the funding to entities that experienced negative impacts from the pandemic.

Government Employment: In order to bolster the government's ability to effectively administer services, the final rule allows for a broader set of eligible uses to restore and support public sector employment relative to the interim final

rule. In particular, eligible uses include hiring up to a pre-pandemic baseline that is adjusted for historic underinvestment in the public sector by allowing funds to be used to pay for payroll and covered benefits associated with the recipient increasing its number of employees up to 7.5 percent above its pre-pandemic baseline. Eligible uses also include providing additional funds for employees who experienced pay cuts or were furloughed, avoiding layoffs, providing worker retention incentives, and paying for ancillary administrative costs related to hiring.

Treasury believes this expanded approach, relative to the interim final rule, provides useful flexibility to recipients, which may increase a state or local government's ability to effectively deliver services to its residents. While the interim final rule already explicitly permitted using funds to restore recipients' workforces up to pre-pandemic levels, the final rule's inclusion of an upward adjustment factor recognizes that, as the population or economy of a jurisdiction grows over time, more workers are generally needed to effectively meet responsibilities. It also provides recipients greater room to employ funds toward building back the public sector workforce after years of chronic underinvestment since the Great Recession. Treasury arrived at the 7.5 percent adjustment factor through an analysis of data from the Bureau of Labor Statistics on state and local government employment and data from the Census Bureau on population to estimate the extent of underinvestment in the public sector since the onset of the Great Recession. While Treasury considered a range of methodologies and point estimates to set the adjustment factor, a 7.5 percent factor errs on the side of recipient flexibility. Treasury believes this adjustment enhances recipients' ability to identify and meet the particularized needs of their communities. Treasury also believes that the additional enumerated eligible uses for supporting the workforce provide recipients several means to help retain current workers, decreasing turnover costs.

Identifying Eligible Populations

Treasury has provided several methods for recipients to identify households, populations, and communities eligible for services that respond to the public health and negative economic impacts of the pandemic. In general, these methods seek to provide recipients options to identify eligible populations with minimal administrative burden, while also maintaining targeting of the funds

³⁹⁰ See, e.g., Gabriel Chodorow-Reich et al., *Does state Fiscal Relief During Recessions Increase Employment? Evidence from the American Recovery and Reinvestment Act*, 4 American Economic Journal 118–145 (2012) <http://dx.doi.org/10.1257/pol.4.3.118>.

³⁹¹ See, e.g., Fitzpatrick, *supra* note 278.

to entities impacted by the pandemic. Recipients also retain flexibility to identify and serve other populations and entities that experienced pandemic impacts, ensuring that recipients can meet the particularized needs of their local communities.

Defining Low and Moderate Income: To streamline the provision of funds relating to negative economic impacts resulting from the pandemic, Treasury has created an eligibility standard making it easier for recipients to provide assistance to low- and moderate-income populations without needing to identify and document a specific negative economic impact. Populations falling under the definition of low income are presumed to have been disproportionately impacted by the pandemic, while those falling under the definition of moderate income are presumed to have been impacted by the pandemic. In addition, the final rule recognizes categorical eligibility for certain enumerated programs and populations if a recipient chooses to implement categorical eligibility when identifying impacted and disproportionately impacted populations. Treasury considered several options for eligibility standards that would reduce administrative burdens for recipients when determining who qualifies as low and moderate income.

One option involved defining a household as low income or moderate income based only on FPG thresholds and could use levels lower than those selected. This option involved setting uniform thresholds throughout the country.

A second option took a broader approach, defining a household as low income if it has (i) income at or below 185 percent of the FPG for the size of its household or (ii) income at or below 40 percent of the AMI for its county and size of household. The option defined a household as moderate income if it has (i) income at or below 300 percent of the FPG for the size of its household or (ii) income at or below 65 percent of the AMI for its county and size of household. The combination of an FPG floor with AMI allows for a regional adjustment in areas with substantially higher costs and incomes. Finally, Treasury also considered a range of FPG and AMI thresholds above and below these levels.

Treasury chose the second option. Treasury believes that the higher FPG floor will ease administrative burdens by making more households presumptively eligible for funds meant to address negative economic impacts in a targeted manner. With respect to the

low-income cutoff, 185 percent of the FPG for a family of four is \$49,025, which is approximately the wage earnings for a two-earner household where both earners receive the median wage in occupations, such as waiters and waitresses and hotel clerks, that were heavily impacted by COVID-19. As such, this cutoff is likely to include more workers in industries heavily impacted by COVID-19, who may be most likely to face disproportionate impacts of the pandemic, than a lower threshold.³⁹² With respect to the moderate-income cutoff, many households with incomes between 200 percent and 300 percent of the FPG struggle with a lack of economic security, suggesting that 300 percent of the FPG was an appropriate cutoff for moderate income.

Treasury also considered relatively higher thresholds for both an FPG and AMI approach; however, increasing income thresholds for presumed eligibility increases the likelihood that higher-income workers, who generally experienced fewer economic impacts from the pandemic, would become presumed eligible for responsive services. Providing services to households that did not experience a negative economic impact, or experienced a relatively minimal impact, would provide much less benefit than serving households that experienced more severe impacts, diluting the benefits of the SLFRF funds.

In all, Treasury anticipates that these selected thresholds, combined with the regional adjustment, will allow resources to be targeted toward individuals and households with the greatest need while also reducing administrative burdens on recipients.

Disproportionately Impacted Populations: In the interim final rule, Treasury enumerated a broader set of eligible uses for disproportionately impacted communities, in recognition of the pre-existing health, economic, and social disparities that contributed to disproportionate pandemic impacts in certain communities and that addressing root causes of those disparities constitutes responding to the public health and negative economic impacts of the pandemic. To identify these communities and reduce administrative burden, Treasury allowed recipients to presume that certain populations—those in QCTs and those being served by Tribal

³⁹² See U.S. Bureau of Labor Statistics, Occupational Employment and Wage Estimates, https://www.bls.gov/oes/current/oes_nat.htm (last visited November 9, 2021).

governments—were disproportionately impacted. In the final rule, to further decrease administrative burden and enhance recipient flexibility, Treasury is allowing recipients to also presume that low-income households were disproportionately impacted. Treasury anticipates that adding low-income households as a presumed eligible population will maintain targeting of funds to populations and communities most likely to have experienced severe pandemic impacts, while providing a more flexible approach for recipients.

Identifying Impacted Classes: In the final rule, Treasury reiterated its stance in the interim final rule allowing recipients to designate a class of households or other entities as impacted or disproportionately impacted and provide responsive services. After designating a class, recipients can serve a household or entity by simply identifying that the household or entity is a member of the class. Relative to restricting services to only presumed eligible populations identified by Treasury, this decision provides vital administrative flexibility for recipients that may identify particular impacted classes in the context of their jurisdiction. Treasury anticipates that SLFRF funds will be targeted to impacted or disproportionately impacted communities, as recipients must demonstrate that the designated class experienced negative economic impacts or meaningfully more severe negative economic impacts. This approach maintains the requirement that entities served have to have experienced a negative economic impact, while simultaneously minimizing any administrative costs associated with meeting this requirement.

Additional Enumerated Uses

The interim final rule enumerated eligible uses of SLFRF funds to serve both impacted and disproportionately impacted communities. For example, enumerated eligible uses to serve impacted communities included food assistance; rent, mortgage, or utility assistance; and counselling and legal aid to prevent eviction or homelessness. Examples of enumerated eligible uses to serve disproportionately impacted communities included remediation of lead paint or other lead hazards and housing vouchers and assistance relocating to neighborhoods with higher levels of economic opportunity. In the final rule, Treasury had the option to retain, expand, or reduce enumerated eligible uses, or shift use eligibility between disproportionately impacted and impacted communities. Many

public comments suggested potential expansions of uses, including shifting enumerated eligible uses for disproportionately impacted communities to serve a broader population of impacted communities. Taking these comments into account, Treasury generally took this approach, in anticipation that the benefits of the program will increase while recipient administrative costs in identifying and justifying non-enumerated uses of funds will decrease.

Specifically, Treasury added enumerated eligible uses for impacted populations including paid sick, medical, or family leave; health insurance subsidies; and services for the unbanked and underbanked, on the basis that impacts of the pandemic that were broadly experienced by many communities would be addressed by these uses. Treasury also shifted some eligible uses, formerly restricted only to disproportionately impacted communities, to impacted communities. These uses included 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. These uses were shifted on the basis that the associated impacts of the pandemic were experienced by a broader population, and responses are, accordingly, eligible to benefit a broader population.

Additionally, the final rule clarified that investments in parks and other public outdoor recreation spaces are enumerated eligible uses for disproportionately impacted communities. In including these uses, Treasury took into account evidence on the social determinants of health, or the ways that social context, like the neighborhood built environment, impacts health outcomes. By taking a more holistic approach to public health, the final rule allows recipients to respond more broadly to factors that contributed to the pandemic's health impacts and more fully mitigate those health impacts.

To balance administrative flexibility with a maintenance of focus on impacts of the pandemic, Treasury considered, but did not include, other proposed enumerated uses that did not respond to the impacts of the pandemic or responded to impacts that were not experienced generally across the country by many jurisdictions and populations. For example, Treasury did not include pollution remediation broadly, a proposed enumerated eligible use for disproportionately impacted

communities, on the basis that associated projects would only respond to disproportionate impacts of the pandemic depending on the specific issue addressed. In sum, Treasury expanded enumerated eligible uses while retaining a focus on broadly experienced impacts of the pandemic. Treasury anticipates that this will give recipients further flexibility to presume eligibility and respond to pandemic impacts without increasing administrative burden.

Capital Expenditures: In the interim final rule, Treasury permitted funds to be used for a limited number of capital expenditures mostly related to the COVID-19 public health response. This decision granted recipients some discretion to use SLFRF funds to address COVID-19 prevention and mitigation through certain investments in equipment, real property, and facilities, which Treasury recognized as critical components of the public health response. In the final rule, Treasury considered maintaining the provisions in the interim final rule or expanding allowable capital expenditures to provide recipients greater flexibility to pursue other capital investments that are responsive to the public health emergency and its negative economic impacts. While expanding allowable capital expenditures may increase the risk that recipients will undertake large expenditures that do not sufficiently address intended harms, or address harms in a less cost-efficient manner than an alternative investment (e.g., a program or service), expanding allowable capital expenditures would likely help fill critical gaps in recipients' response to the pandemic and provide equipment and facilities that generate benefits beyond SLFRF's period of performance. To preserve flexibility while mitigating risks, the final rule allows recipients to undertake an expanded set of capital expenditures while requiring additional written justifications for projects with an expected total cost at or over \$1 million. Treasury believes this approach balances the implementation of appropriate risk-based compliance requirements and the provision of administrative convenience for smaller capital expenditures, while generally allowing recipients the flexibility to undertake a greater variety of responsive capital expenditures.

Revenue Loss

Revenue Loss Formula: In this final rule, Treasury's approach to revenue loss allows recipients to compute the extent of reduction in revenue by comparing actual revenue to a

counterfactual trend representing what could have plausibly been expected to occur in the absence of the pandemic. The counterfactual trend begins with the last full fiscal year prior to the public health emergency (as required by statute) and projects forward with an annualized growth adjustment. Treasury has made several adjustments in the final rule to decrease administrative burden, reducing costs for recipients, while still accurately capturing reductions in revenue due to the pandemic.

Under the interim final rule, Treasury specified that recipients calculate revenue loss on a calendar year basis. In this final rule, Treasury is providing recipients the option to calculate revenue loss on a calendar year or fiscal year basis, which will allow recipients the administrative flexibility to minimize administrative burdens based on the data available to them.

Treasury's decision to incorporate a growth adjustment into the calculation of revenue loss ensures that the formula more fully captures revenue shortfalls relative to recipients' pre-pandemic expectations. Recipients will have the opportunity to calculate revenue loss at several points throughout the program, recognizing that some recipients may experience revenue effects with a lag. This option to re-calculate revenue loss on an ongoing basis is intended to result in more support for recipients to avoid harmful cutbacks in future years. In calculating revenue loss, recipients will look at general revenue in the aggregate, rather than on a source-by-source basis, given that recipients may have experienced offsetting changes in revenues across sources. The final rule also provides for removing the impact of tax increasing or decreasing changes, which affect the amount of revenue collected but are not "due to" the pandemic, from the calculation of revenue loss due to the public health emergency. Both of these components of Treasury's approach provide a more accurate representation of the effect of the pandemic on overall revenues.

Revenue Loss Standard Allowance: In addition to largely preserving the formula to calculate revenue loss from the interim final rule, Treasury also added an alternative "standard allowance" option for the revenue loss calculation to this final rule. Treasury's decision to elect to allow a fixed amount of loss that can be used to fund "government services" allows recipients the flexibility to use minimal administrative capacity on the calculation if desired. The decision also benefits recipients by allowing them to avoid expending administrative

resources to determine how unique variations in revenue interact with the revenue loss formula.

Premium Pay

Per the ARPA statute, recipients have broad latitude to designate critical infrastructure sectors and make grants to third-party employers for the purpose of providing premium pay. While the final rule provides significant flexibility to implement the statutory requirement that premium pay respond to essential workers, it requires recipients give written justification in the case that premium pay would increase a worker's annual pay above a certain threshold or is awarded to an individual whose annual pay is already above that threshold. To set this threshold, Treasury analyzed data from the Bureau of Labor Statistics to determine a level that would not require further justification for premium pay to the vast majority of essential workers, while requiring higher scrutiny for provision of premium pay to higher earners who, even without premium pay, would likely have greater personal financial resources to cope with the effects of the pandemic. Alternatively, a recipient need not submit written justification to Treasury if the worker receiving premium pay is eligible for overtime under the FLSA. Treasury believes this alternative, which is an addition to the final rule, will give recipients more flexibility and will simplify application of the final rule as employers, public and private, are already legally required to determine whether an employee is eligible for overtime pay under the FLSA. Treasury believes the threshold and overtime eligibility provision in the final rule strike the appropriate balance between preserving flexibility and helping encourage use of these resources to help those in greatest need. The final rule also requires that workers eligible for premium pay have regular in-person interactions or regular physical handling of items that were also handled by others. This requirement will help encourage use of financial resources for those who have endured the heightened risk of performing essential work.

Water and Sewer Infrastructure

In the interim final rule, Treasury aligned eligible uses of funds for water and sewer infrastructure to those projects eligible to receive financial assistance through the DWSRF and CWSRF administered by the EPA.

The benefits of this approach included giving recipients an existing list that would provide them clarity as well as flexibility in identifying eligible

projects, particularly given the broad range of projects eligible under the CWSRF and DWSRF. The approach also ensured that projects would conform to vetted project types from a widely used program. Treasury received comments from recipients requesting additional project categories to be considered eligible, indicating a potential cost to maintaining alignment with the CWSRF and DWSRF.

For the final rule, Treasury has expanded eligibility to include several additional project types beyond those covered by the CWSRF and DWSRF.

Treasury believes that expanded eligibility will benefit recipients by allowing them additional flexibility to pursue beneficial projects, including project categories that support the provision of drinking water and the removal, management, and treatment of wastewater and stormwater: Additional stormwater management projects, private well infrastructure, additional projects that address lead in water, and certain dam and reservoir rehabilitation projects undertaken to address the provision of drinking water. A potential cost of this approach is that uses beyond the CWSRF and DWSRF may have less public guidance available to understand project eligibilities. However, Treasury anticipates that this eligibility expansion will provide a net benefit to recipients by allowing them to pursue projects relevant to their goals that were ineligible under the interim final rule.

The expansion to allow private well infrastructure may also affect the distributional impact of SLFRF. Private wells disproportionately serve rural Americans, including low-income households, and expanding eligibility to include this use may allow SLFRF funds to benefit such households. While distributional impacts are uncertain, Treasury believes that the potential for benefits to accrue to rural and low-income households makes it important to clarify that these types of projects are eligible.

Broadband Infrastructure

In the final rule, Treasury expands eligible areas for broadband investment by requiring that recipients invest in projects designed to provide service to households and businesses with an identified need for additional broadband investment, including increasing access to high-speed broadband, increasing the affordability of broadband services, and improving the reliability of broadband service.³⁹³

³⁹³ Further, the final rule encourages, but does not require, that recipients pursue broadband infrastructure projects in locations not currently

Treasury considered multiple alternatives when selecting this standard. The threshold for the interim final rule allowed benefits to accrue in a more targeted manner to the approximately 9 percent of the country with access to speeds under the 25/3 Mbps threshold.³⁹⁴ However, since SLFRF funds are distributed to tens of thousands of governments across the country with a variety of broadband needs, Treasury believes that allowing recipients greater flexibility to determine locations to serve in their jurisdictions—including considering affordability and competition barriers—will lead to greater long-term public benefit. Further, given that many federal broadband grant programs are focused solely on unserved and underserved areas, Treasury believes that the final rule's flexibility enables these funds to fill an important role in the overall federal broadband landscape.

In the final rule, Treasury also requires that broadband projects must meet a standard of reliably delivering at least 100 Mbps download speeds and upload speeds, or in cases where it is not practicable to do so, reliably delivering at least 100 Mbps download speed and between at least 20 Mbps and 100 Mbps upload speed while being scalable to 100 Mbps upload and download speeds. Treasury expects that this threshold will yield long-term benefits and allow networks to meet both pandemic-related and future needs. The Federal Communications Commission (FCC) estimates that currently a household with two to three remote learners using the internet simultaneously needs a connection supporting 100 Mbps download speeds.³⁹⁵ While a lower threshold may have resulted in lower near-term costs to build, it would have potentially constrained future utility from the infrastructure by producing infrastructure that would more quickly—potentially in the near-term—become obsolete and no longer meet household needs, potentially requiring sooner replacement and generally decreasing the return on investment. As

served by a wireline connection that reliably delivers at least 100 Mbps of download speed and 20 Mbps of upload speed.

³⁹⁴ Data from the Federal Communications Commission shows that as of June 2020, 9.07 percent of the U.S. population had no available cable or fiber broadband providers providing greater than 25 Mbps download speeds and 3 Mbps upload speeds. Federal Communications Commission, Fixed Broadband Deployment, <https://broadbandmap.fcc.gov/#/> (last visited May 9, 2021).

³⁹⁵ See Federal Communications Commission, Broadband Speed Guide, available at <https://www.fcc.gov/consumers/guides/broadband-speed-guide> (last visited October 28, 2021).

such, projects meeting a lower threshold could not be considered “necessary” investments in broadband infrastructure, so Treasury has retained the threshold from the interim final rule.

Further, the final rule adds a requirement that recipients address the affordability needs of low-income consumers in accessing broadband networks funded by SLFRF, either by requiring service providers that provide service to households to either participate in the FCC’s Affordable Connectivity Program (ACP), or a broad-based affordability program with commensurate benefits. Treasury believes that this requirement will increase the number of customers that are able to take advantage of broadband infrastructure funded by SLFRF, increasing the effectiveness of funds in connecting households and businesses to high-speed internet that is critical to work, health, and education. There is a potential that this requirement may marginally increase project costs for recipients and providers, but this impact is uncertain, given the varying business models and pricing structures of broadband projects and providers.

Labor Standards

In this Supplementary Information for the final rule, Treasury encourages recipients to ensure that capital expenditures to respond to the public health and negative economic impacts of the pandemic and water, sewer, and broadband projects use strong labor standards, including, for example, project labor agreements and community benefits agreements that offer wages at or above the prevailing rate and include local hire provisions. Treasury believes that its encouragement of labor standards carries benefits because it will ensure that workers have access to strong employment opportunities associated with infrastructure projects, which will in turn aid the economic recovery. Treasury believes that infrastructure projects may also benefit from stronger labor standards due to the potential of these standards to ensure a stronger skilled labor supply and minimize labor disputes and workplace injuries, which can result in costly disruptions to projects. Treasury assesses that these benefits will increase the economy and efficiency of infrastructure projects undertaken through SLFRF and will outweigh the potential for a marginal increase in labor costs.

Splitting Payments to Recipients

Treasury is required by statute to deliver funds to local governments in

two payments separated by at least twelve months, and the interim final rule provided for split payments to a majority of states as well. As discussed above, splitting payments ensures that recipients can adapt spending plans to evolving economic conditions and that at least some of the economic benefits will be realized in 2022 or later. However, consistent with authorities granted to Treasury in the statute, Treasury recognizes that a subset of states with significant remaining elevation in the unemployment rate could face heightened additional near term needs to aid unemployed workers and stimulate the recovery. Therefore, for a subset of state governments, Treasury has provided funds in one payment. Treasury believes that this approach strikes an appropriate balance between the general reasons to provide funds in two payments and the heightened additional near-term needs in specific states. As discussed above, Treasury set a threshold based on historical analysis of unemployment rates in recessions.

Reaching Underserved Communities

Finally, the final rule aims to promote and streamline the provision of assistance to individuals and communities in greatest need, particularly communities that have been historically underserved and have experienced disproportionate impacts of the COVID-19 crisis. Targeting relief is in line with Executive Order 13985, “Advancing Racial Equity and Support for Underserved Communities Through the Federal Government,” which laid out an Administration-wide priority to support “equity for all, including people of color and others who have been historically underserved, marginalized, and adversely affected by persistent poverty and inequality.” To this end, the final rule enumerates a list of services that may be provided using SLFRF funds in disproportionately impacted communities, including low-income areas, to address the more severe impacts of the pandemic in these communities; establishes the characteristics of essential workers eligible for premium pay and encouragement to serve workers based on financial need; provides that recipients may use SLFRF funds to restore state and local workforces, where women and people of color are disproportionately represented; and requires that broadband infrastructure projects participate in programs to support affordability of broadband service. Collectively, these provisions will promote use of resources to facilitate the provision of assistance to

individuals and communities with the greatest need.

Analysis of Costs

This regulatory action will generate administrative costs relative to a pre-statutory baseline. This includes, chiefly, costs required to administer SLFRF funds, oversee subrecipients and beneficiaries, and file periodic reports with Treasury. It also requires states to allocate SLFRF funds to nonentitlement units, which are smaller units of local government that are statutorily required to receive their funds through states. Treasury expects that the administrative burden associated with this program will be moderate for a grant program of its size. Treasury expects that many recipients receive direct or indirect funding from federal government programs and that many have familiarity with how to administer and report on federal funds or grant funding provided by other entities. In particular, states, territories, and large localities will have received funds from the Coronavirus Relief Fund (CRF) and Treasury expects them to rely heavily on established processes developed through that program or other prior grant funding, mitigating burden on these governments. Treasury has enhanced the level of recipient reporting as compared to the CRF, incorporating feedback from the Government Accountability Office and others that additions would improve the oversight of recipients’ use of funds. To balance the oversight benefits with the costs of added reporting burdens, Treasury has incorporated other mechanisms to mitigate burden. For example, Treasury is “tiering” reporting requirements so that recipients that receive relatively lesser amounts of SLFRF funds are required to submit less frequent reports than recipients receiving greater amounts of funds. Treasury is noting administrative costs as a generally allowable use of SLFRF funds, which defrays administrative expenses to recipients that may be needed to comply with reporting requirements. Treasury has also provided options for recipients to use eligibility thresholds they are already familiar with during administration of SLFRF funds, which will enable recipients to avoid the costs of setting up new programs and reporting mechanisms to meet reporting and compliance requirements. For example, Treasury has permitted recipients to use “categorical eligibility” when delivering assistance to particular groups, such as impacted or disproportionately impacted households.

In making implementation choices, Treasury has hosted numerous consultations with a diverse range of direct recipients—states, cities, counties, and Tribal governments—along with various communities across the United States, including those that are underserved. Furthermore, Treasury has made clear in guidance that SLFRF funds may be used to cover certain expenses related to administering programs established using SLFRF funds.³⁹⁶

Executive Order 13132

Executive Order 13132 (entitled Federalism) prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial, direct compliance costs on state, local, and Tribal governments, and is not required by statute, or preempts state law, unless the agency meets the consultation and funding requirements of section 6 of the Executive Order. This final rule does not have federalism implications within the meaning of the Executive Order and does not impose substantial, direct compliance costs on state, local, and Tribal governments or preempt state law within the meaning of the Executive Order. The compliance costs are imposed on state, local, and Tribal governments by sections 602 and 603 of the Social Security Act, as enacted by the ARPA. Notwithstanding the above, Treasury has engaged in efforts to consult and work cooperatively with affected state, local, and Tribal government officials and

associations in the process of developing the interim final rule and this final rule. Pursuant to the requirements set forth in section 8(a) of Executive Order 13132, Treasury certifies that it has complied with the requirements of Executive Order 13132.

Administrative Procedure Act

The Administrative Procedure Act (APA), 5 U.S.C. 551 *et seq.*, generally requires public notice and an opportunity for comment before a rule becomes effective. However, the APA provides that the requirements of 5 U.S.C. 553 do not apply “to the extent that there is involved . . . a matter relating to agency . . . grants.” The APA also provides an exception to ordinary notice-and-comment procedures “when the agency for good cause finds (and incorporates the finding and a brief statement of reasons therefor in the rules issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.” 5 U.S.C. 553(b)(B). The interim final rule was issued without prior notice and comment procedures because it implemented statutory conditions on the eligible uses of SLFRF funds, and addressed the payment of those funds, the reporting on uses of funds, and potential consequences of ineligible uses to help address the economic and public health emergency. 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. In addition, under the exception discussed in that section for matters relating to agency grants, the requirements of 5 U.S.C. 553 also do not apply to this final rule. After careful consideration of the comments received, this final rule adopts the May 17, 2021 interim final rule with the revisions discussed in this **SUPPLEMENTARY INFORMATION**.

Congressional Review Act

The Administrator of OIRA has determined that this is a major rule for purposes of Subtitle E of the Small Business Regulatory Enforcement and Fairness Act of 1996 (also known as the Congressional Review Act or CRA) (5 U.S.C. 804(2) *et seq.*). Under the CRA, a major rule generally may take effect no earlier than 60 days after the rule is published in the **Federal Register**. 5 U.S.C. 801(a)(3).

Paperwork Reduction Act

The information collections associated with the SLFRF program have been reviewed and approved by OMB pursuant to the Paperwork Reduction Act (44 U.S.C. Chapter 35) (PRA) and assigned control number 1505–0271. Under the PRA, an agency may not conduct or sponsor, and a respondent is not required to respond to, an information collection unless it displays a valid OMB control number.

Estimates of hourly burden under this program are set forth in the table below.

Reporting	Number respondents	Number responses per respondent	Total responses	Hours per response	Total burden in hours	Cost to respondents (\$48.80 per hour*)
Recipient Payment Form	5,050	1	5,050	.25 (15 minutes)	1,262.5	\$61,610
Acceptance of Award Terms	5,050	1	5,050	.25 (15 minutes)	1,262.5	61,610
Title VI Assurances	5,050	1	5,050	.50 (30 minutes)	2,525	123,220
Tribal Employment Information Form	584	1	584	.75 (45 minutes)	438	21,374
Request for Extension Form	96	1	96	1	96	4,685
Annual Recovery Plan Performance Report	430	1	430	100	43,000	2,098,400
NEU Distribution Template	55	2	110	10	1,100	53,680
Non-UGLG Distribution Template	55	2	110	5	550	26,840
Transfer Forms	1,500	1	1,500	1	1,500	73,200
Project and Expenditure Report	37,000	1	37,000	5	185,000	9,028,000
Total	54,870		54,980		236,735	11,552,619

* Bureau of Labor Statistics, U.S. Department of Labor, Occupational Outlook Handbook, Accountants and Auditors, on the internet at <https://www.bls.gov/ooh/business-and-financial/accountants-and-auditors.htm> (visited March 28, 2020). Base wage of \$33.89/hour increased by 44 percent to account for fully loaded employer cost of employee compensation (benefits, etc.) for a fully loaded wage rate of \$48.80.

Regulatory Flexibility Analysis

The Regulatory Flexibility Act (RFA) generally requires that when an agency issues a proposed rule, or a final rule pursuant to section 553(b) of the

Administrative Procedure Act or another law, the agency must prepare a regulatory flexibility analysis that meets the requirements of the RFA and

publish such analysis in the **Federal Register**. 5 U.S.C. 603, 604.

Rules that are exempt from notice and comment under the APA or any other law are also exempt from the RFA

³⁹⁶ See Coronavirus State and Local Fiscal Recovery Funds, Frequently Asked Questions, 10.2,

as of July 19, 2021; <https://home.treasury.gov/system/files/136/SLFRPFAQ.pdf>.

requirements, including the requirement to conduct a regulatory flexibility analysis, when among other things the agency for good cause finds that notice and public procedure are impracticable, unnecessary, or contrary to the public interest. Because this rule is exempt from the notice and comment requirements of the APA, Treasury is not required to conduct a regulatory flexibility analysis.

Rule Text

List of Subjects in 31 CFR Part 35

Executive compensation, State and Local Governments, Tribal Governments, Public health emergency.

For the reasons stated in the preamble, the United States Department of the Treasury amends 31 CFR part 35 as follows:

PART 35—PANDEMIC RELIEF PROGRAMS

■ 1. Revise Subpart A to read as follows:

Subpart A—Coronavirus State and Local Fiscal Recovery Funds

- Sec.
- 35.1 Purpose.
 - 35.2 Applicability.
 - 35.3 Definitions.
 - 35.4 Reservation of authority, reporting.
 - 35.5 Use of funds.
 - 35.6 Eligible uses.
 - 35.7 Pensions.
 - 35.8 Tax.
 - 35.9. Compliance with applicable laws.
 - 35.10. Recoupment.
 - 35.11 Payments to States.
 - 35.12. Distributions to nonentitlement units of local government and units of general local government.

Authority: 42 U.S.C. 802(f); 42 U.S.C. 803(f).

§ 35.1 Purpose.

This part implements section 9901 of the American Rescue Plan Act (Subtitle M of Title IX of Pub. L. 117–2), which amends Title VI of the Social Security Act (42 U.S.C. 801 *et seq.*) by adding sections 602 and 603 to establish the Coronavirus State Fiscal Recovery Fund and Coronavirus Local Fiscal Recovery Fund.

§ 35.2 Applicability.

This part applies to states, territories, Tribal governments, metropolitan cities, nonentitlement units of local government, counties, and units of general local government that accept a payment or transfer of funds made under section 602 or 603 of the Social Security Act.

§ 35.3 Definitions.

Baseline means tax revenue of the recipient for its fiscal year ending in 2019, adjusted for inflation in each reporting year using the Bureau of Economic Analysis's Implicit Price Deflator for the gross domestic product of the United States.

Capital expenditures has the same meaning given in 2 CFR 200.1.

County means a county, parish, or other equivalent county division (as defined by the Census Bureau).

Covered benefits include, but are not limited to, the costs of all types of leave (vacation, family-related, sick, military, bereavement, sabbatical, jury duty), employee insurance (health, life, dental, vision), retirement (pensions, 401(k)), unemployment benefit plans (Federal and State), workers' compensation insurance, and Federal Insurance Contributions Act taxes (which includes Social Security and Medicare taxes).

Covered change means a change in law, regulation, or administrative interpretation 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. A change in law includes any final legislative or regulatory action, a new or changed administrative interpretation, and the phase-in or taking effect of any statute or rule if the phase-in or taking effect was not prescribed prior to the start of the covered period.

Covered period means, with respect to a state or territory, the period that:

- (1) Begins on March 3, 2021; and
- (2) Ends on the last day of the fiscal year of such State or territory in which all funds received by the State or territory from a payment made under section 602 or 603 of the Social Security Act have been expended or returned to, or recovered by, the Secretary.

COVID-19 means the Coronavirus Disease 2019.

COVID-19 public health emergency means the period beginning on January 27, 2020 and lasting until the termination of the national emergency concerning the COVID-19 outbreak declared pursuant to the National Emergencies Act (50 U.S.C. 1601 *et seq.*).

Deposit means an extraordinary payment of an accrued, unfunded liability. The term deposit does not refer to routine contributions made by an employer to pension funds as part of the employer's obligations related to payroll, such as either a pension contribution consisting of a normal cost component related to current employees or a component addressing the amortization of unfunded liabilities

calculated by reference to the employer's payroll costs.

Eligible employer means an employer of an eligible worker who performs essential work.

Eligible workers means workers needed to maintain continuity of operations of essential critical infrastructure sectors, including health care; emergency response; sanitation, disinfection, and cleaning work; maintenance work; grocery stores, restaurants, food production, and food delivery; pharmacy; biomedical research; behavioral health work; medical testing and diagnostics; home- and community-based health care or assistance with activities of daily living; family or childcare; 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; and work in critical clinical research, development, and testing necessary for COVID-19 response.

(1) With respect to a recipient that is a metropolitan city, nonentitlement unit of local government, or county, workers in any additional non-public sectors as each chief executive officer of such recipient may designate as critical to protect the health and well-being of the residents of their metropolitan city, nonentitlement unit of local government, or county; or

(2) With respect to a State, territory, or Tribal government, workers in any additional non-public sectors as each Governor of a State or territory, or each Tribal government, may designate as critical to protect the health and well-being of the residents of their State, territory, or Tribal government.

Essential work means work that:

- (1) Is not performed while teleworking from a residence; and
- (2) Involves:

(i) Regular in-person interactions with patients, the public, or coworkers of the individual that is performing the work; or

(ii) Regular physical handling of items that were handled by, or are to be handled by patients, the public, or coworkers of the individual that is performing the work.

Funds means, with respect to a recipient, amounts provided to the recipient pursuant to a payment made under section 602(b) or 603(b) of the Social Security Act or transferred to the recipient pursuant to section 603(c)(4) of the Social Security Act.

General revenue means money that is received from tax revenue, current charges, and miscellaneous general revenue, excluding refunds and other correcting transactions 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 American Rescue Plan Act. 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 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. Revenue from Tribal business enterprises must be included in general revenue.

Intergovernmental transfers means money received from other governments, including grants and shared taxes.

Low-income household means a household with:

(1) Income at or below 185 percent of the Federal Poverty Guidelines for the size of its household based on the poverty guidelines published most recently by the Department of Health and Human Services; or

(2) Income at or below 40 percent of the Area Median Income for its county and size of household based on data published most recently by the Department of Housing and Urban Development.

Micro-business means a small business that has five or fewer employees, one or more of whom owns the small business.

Moderate-income household means a household with:

(1) Income at or below 300 percent of the Federal Poverty Guidelines for the size of its household based on poverty guidelines published most recently by the Department of Health and Human Services; or

(2) Income at or below 65 percent of the Area Median Income for its county and size of household based on data published most recently by the Department of Housing and Urban Development.

Metropolitan city has the meaning given that term in section 102(a)(4) of

the Housing and Community Development Act of 1974 (42 U.S.C. 5302(a)(4)) and includes cities that relinquish or defer their status as a metropolitan city for purposes of receiving allocations under section 106 of such Act (42 U.S.C. 5306) for fiscal year 2021.

Net reduction in total spending is measured as the State or territory's total spending for a given reporting year excluding its spending of funds, subtracted from its total spending for its fiscal year ending in 2019, adjusted for inflation using the Bureau of Economic Analysis's Implicit Price Deflator for the gross domestic product of the United States for that reporting year.

Nonentitlement unit of local government means a "city," as that term is defined in section 102(a)(5) of the Housing and Community Development Act of 1974 (42 U.S.C. 5302(a)(5)), that is not a metropolitan city.

Nonprofit means a nonprofit organization that is exempt from Federal income taxation and that is described in section 501(c)(3) or 501(c)(19) of the Internal Revenue Code.

Obligation means an order placed for property and services and entering into contracts, subawards, and similar transactions that require payment.

Pension fund means a defined benefit plan and does not include a defined contribution plan.

Period of performance means the 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.

Premium pay means an amount of up to \$13 per hour that is paid to an eligible worker, in addition to wages or remuneration the eligible worker otherwise receives, for all work performed by the eligible worker during the COVID-19 public health emergency. Such amount may not exceed \$25,000 in total over the period of performance with respect to any single eligible worker. Premium pay may be awarded to non-hourly and part-time eligible workers performing essential work. Premium pay will be considered to be in addition to wages or remuneration the eligible worker otherwise receives if, as measured on an hourly rate, the premium pay is:

(1) With regard to work that the eligible worker previously performed, pay and remuneration equal to the sum of all wages and remuneration previously received plus up to \$13 per hour with no reduction, substitution, offset, or other diminishment of the eligible worker's previous, current, or prospective wages or remuneration; or

(2) With regard to work that the eligible worker continues to perform, pay of up to \$13 per hour that is in addition to the eligible worker's regular rate of wages or remuneration, with no reduction, substitution, offset, or other diminishment of the worker's current and prospective wages or remuneration.

Qualified census tract has the same meaning given in 26 U.S.C. 42(d)(5)(B)(ii)(I).

Recipient means a State, territory, Tribal government, metropolitan city, nonentitlement unit of local government, county, or unit of general local government that receives a payment made under section 602(b) or 603(b) of the Social Security Act or transfer pursuant to section 603(c)(4) of the Social Security Act.

Reporting year means a single year or partial year within the covered period, aligned to the current fiscal year of the State or territory during the covered period.

Secretary means the Secretary of the Treasury.

State means each of the 50 States and the District of Columbia.

Small business means a business concern or other organization that:

(1) Has no more than 500 employees or, if applicable, the size standard in number of employees established by the Administrator of the Small Business Administration for the industry in which the business concern or organization operates, and

(2) Is a small business concern as defined in section 3 of the Small Business Act (15 U.S.C. 632).

Tax revenue means revenue received from a compulsory contribution that is exacted by a government for public purposes excluding refunds and corrections and, for purposes of § 35.8, intergovernmental transfers. Tax revenue does not include payments for a special privilege granted or service rendered, employee or employer assessments and contributions to finance retirement and social insurance trust systems, or special assessments to pay for capital improvements.

Territory means the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, the Commonwealth of the Northern Mariana Islands, or American Samoa.

Title I eligible schools means 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.

Tribal enterprise means a business concern:

(1) That is wholly owned by one or more Tribal governments, or by a corporation that is wholly owned by one or more Tribal governments; or

(2) That is owned in part by one or more Tribal governments, or by a corporation that is wholly owned by one or more Tribal governments, if all other owners are either United States citizens or small business concerns, as these terms are used and consistent with the definitions in 15 U.S.C. 657a(b)(2)(D).

Tribal government means the recognized governing body of any Indian or Alaska Native Tribe, band, nation, pueblo, village, community, component band, or component reservation, individually identified (including parenthetically) in the list published on January 29, 2021, pursuant to section 104 of the Federally Recognized Indian Tribe List Act of 1994 (25 U.S.C. 5131).

Unemployment rate means the U-3 unemployment rate provided by the Bureau of Labor Statistics as part of the Local Area Unemployment Statistics program, measured as total unemployment as a percentage of the civilian labor force.

Unemployment trust fund means an unemployment trust fund established under section 904 of the Social Security Act (42 U.S.C. 1104).

Unit of general local government has the meaning given to that term in section 102(a)(1) of the Housing and Community Development Act of 1974 (42 U.S.C. 5302(a)(1)).

§ 35.4 Reservation of authority, reporting.

(a) *Reservation of authority.* Nothing in this part shall limit the authority of the Secretary to take action to enforce conditions or violations of law, including actions necessary to prevent evasions of this subpart.

(b) *Extensions or accelerations of timing.* The Secretary may extend or accelerate any deadline or compliance date of this part, including reporting requirements that implement this subpart, if the Secretary determines that such extension or acceleration is appropriate. In determining whether an extension or acceleration is appropriate, the Secretary will consider the period of time that would be extended or accelerated and how the modified timeline would facilitate compliance with this subpart.

(c) *Reporting and requests for other information.* During the period of performance, recipients shall provide to the Secretary periodic reports providing detailed accounting of the uses of funds, modifications to a State or Territory's tax revenue sources, and such other information as the Secretary may

require for the administration of this section. In addition to regular reporting requirements, the Secretary may request other additional information as may be necessary or appropriate, including as may be necessary to prevent evasions of the requirements of this subpart. False statements or claims made to the Secretary may result in criminal, civil, or administrative sanctions, including fines, imprisonment, civil damages and penalties, debarment from participating in Federal awards or contracts, and/or any other remedy available by law.

§ 35.5 Use of funds.

(a) *In general.* A recipient may only use funds to cover costs incurred during the period beginning March 3, 2021, and ending December 31, 2024, for one or more of the purposes enumerated in sections 602(c)(1) and 603(c)(1) of the Social Security Act, as applicable, including those enumerated in § 35.6, subject to the restrictions set forth in sections 602(c)(2) and 603(c)(2) of the Social Security Act, as applicable.

(b) *Costs incurred.* A cost shall be considered to have been incurred for purposes of paragraph (a) of this section if the recipient has incurred an obligation with respect to such cost by December 31, 2024.

(c) *Return of funds.* A recipient must return any funds not obligated by December 31, 2024. A recipient must also return funds obligated by December 31, 2024 but not expended by December 31, 2026.

§ 35.6 Eligible uses.

(a) *In general.* Subject to §§ 35.7 and 35.8, a recipient may use funds for one or more of the purposes described in paragraphs (b) through (f) of this section.

(b) *Responding to the public health emergency or its negative economic impacts.* A recipient may use funds to respond to the public health emergency or its negative economic impacts if the use meets the criteria provided in paragraph (b)(1) of this section or is enumerated in paragraph (b)(3) of this section; provided that, in the case of a use of funds for a capital expenditure under paragraphs (b)(1) or (b)(3) of this section, the use of funds must also meet the criteria provided in paragraph (b)(4) of this section. Treasury may also articulate additional eligible programs, services, or capital expenditures from time to time that satisfy the eligibility criteria of this paragraph (b), which shall be eligible under this paragraph (b).

(1) *Identifying eligible responses to the public health emergency or its negative economic impacts.* (i) A

program, service, or capital expenditure is eligible under this paragraph (b)(1) if a recipient identifies a harm or impact to a beneficiary or class of beneficiaries caused or exacerbated by the public health emergency or its negative economic impacts and the program, service, or capital expenditure responds to such harm.

(ii) A program, service, or capital expenditure responds to a harm or impact experienced by an identified beneficiary or class of beneficiaries if it is reasonably designed to benefit the beneficiary or class of beneficiaries that experienced the harm or impact and is related and reasonably proportional to the extent and type of harm or impact experienced.

(2) *Identified harms: Presumptions of impacted and disproportionately impacted beneficiaries.* A recipient may rely on the following presumptions to identify beneficiaries presumptively impacted or disproportionately impacted by the public health emergency or its negative economic impacts for the purpose of providing a response under paragraph (b)(1) or (b)(3) of this section:

(i) Households or populations that experienced unemployment; experienced increased food or housing insecurity; qualify for the Children's Health Insurance Program (42 U.S.C. 1397aa *et seq.*), Childcare Subsidies through the Child Care and Development Fund Program (42 U.S.C. 9857 *et seq.* and 42 U.S.C. 618), or Medicaid (42 U.S.C. 1396 *et seq.*); if funds are to be used for affordable housing programs, qualify for the National Housing Trust Fund (12 U.S.C. 4568) or the Home Investment Partnerships Program (42 U.S.C. 12721 *et seq.*); if funds are to be used to address impacts of lost instructional time for students in kindergarten through twelfth grade, any student who did not have access to in-person instruction for a significant period of time; and low- and moderate-income households and populations are presumed to be impacted by the public health emergency or its negative economic impacts;

(ii) The general public is presumed to be impacted by the public health emergency for the purposes of providing the uses set forth in subparagraphs (b)(3)(i)(A) and (b)(3)(i)(C); and

(iii) The following households, communities, small businesses, and nonprofit organizations are presumed to be disproportionately impacted by the public health emergency or its negative economic impacts:

(A) Households and populations residing in a qualified census tract;

households and populations receiving services provided by Tribal governments; households and populations residing in the territories; households and populations receiving services provided by territorial governments; low-income households and populations; households that qualify for Temporary Assistance for Needy Families (42 U.S.C. 601 *et seq.*), the Supplemental Nutrition Assistance Program (7 U.S.C. 2011 *et seq.*), Free and Reduced Price School Lunch and/or Breakfast programs (42 U.S.C. 1751 *et seq.* and 42 U.S.C. 1773), Medicare Part D Low-income Subsidies (42 U.S.C. 1395w–114), Supplemental Security Income (42 U.S.C. 1381 *et seq.*), Head Start (42 U.S.C. 9831 *et seq.*), Early Head Start (42 U.S.C. 9831 *et seq.*), the Special Supplemental Nutrition Program for Women, Infants, and Children (42 U.S.C. 1786), Section 8 Vouchers (42 U.S.C. 1437f), the Low-Income Home Energy Assistance Program (42 U.S.C. 8621 *et seq.*), Pell Grants (20 U.S.C. 1070a), and, if SLFRF funds are to be used for services to address educational disparities, Title I eligible schools;

(B) Small businesses operating in a qualified census tract, operated by Tribal governments or on Tribal lands, or operating in the territories; and

(C) Nonprofit organizations operating in a qualified census tract, operated by Tribal governments or on Tribal lands, or operating in the territories.

(3) *Enumerated eligible uses:*
Responses presumed reasonably proportional. A recipient may use funds to respond to the public health emergency or its negative economic impacts on a beneficiary or class of beneficiaries for one or more of the following purposes unless such use is grossly disproportionate to the harm caused or exacerbated by the public health emergency or its negative economic impacts:

(i) Responding to the public health impacts of the public health emergency for purposes including:

(A) COVID–19 mitigation and prevention in a manner that is consistent with recommendations and guidance from the Centers for Disease Control and Prevention, including vaccination programs and incentives; testing programs; contact tracing; isolation and quarantine; mitigation and prevention practices in congregate settings; acquisition and distribution of medical equipment for prevention and treatment of COVID–19, including personal protective equipment; COVID–19 prevention and treatment expenses for public hospitals or health care facilities, including temporary medical

facilities; establishing or enhancing public health data systems; installation and improvement of ventilation systems in congregate settings, health facilities, or other public facilities; and assistance to small businesses, nonprofits, or impacted industries to implement mitigation measures;

(B) Medical expenses related to testing and treating COVID–19 that are provided in a manner consistent with recommendations and guidance from the Centers for Disease Control and Prevention, including emergency medical response expenses, treatment of long-term symptoms or effects of COVID–19, and costs to medical providers or to individuals for testing or treating COVID–19;

(C) Behavioral health care, including prevention, treatment, emergency or first-responder programs, harm reduction, supports for long-term recovery, and behavioral health facilities and equipment; and

(D) Preventing and responding to increased violence resulting from the public health emergency, including community violence intervention programs, or responding to increased gun violence resulting from the public health emergency, including payroll and covered benefits associated with community policing strategies; enforcement efforts to reduce gun violence; and investing in technology and equipment;

(ii) Responding to the negative economic impacts of the public health emergency for purposes including:

(A) Assistance to households and individuals, including:

(1) Assistance for food; emergency housing needs; burials, home repairs, or weatherization; internet access or digital literacy; cash assistance; and assistance accessing public benefits;

(2) Paid sick, medical, or family leave programs, or assistance to expand access to health insurance;

(3) Childcare, early learning services, home visiting, or assistance for child welfare-involved families or foster youth;

(4) Programs to address the impacts of lost instructional time for students in kindergarten through twelfth grade;

(5) Development, repair, and operation of affordable housing and services or programs to increase long-term housing security;

(6) Financial services that facilitate the delivery of Federal, State, or local benefits for unbanked and underbanked individuals;

(7) Benefits for the surviving family members of individuals who have died from COVID–19, including cash assistance to surviving spouses or

dependents of individuals who died of COVID–19;

(8) Assistance for individuals who want and are available for work, including those who are unemployed, have looked for work sometime in the past 12 months, who are employed part time but who want and are available for full-time work, or who are employed but seeking a position with greater opportunities for economic advancement;

(9) Facilities and equipment related to the provision of services to households provided in subparagraphs (b)(3)(ii)(A)(1)–(8);

(10) The following expenses related to Unemployment Trust Funds:

(i) Contributions to a recipient Unemployment Trust Fund and repayment of principal amounts due on advances received under Title XII of the Social Security Act (42 U.S.C. 1321) up to an amount equal to the difference between the balance in the recipient's Unemployment Trust Fund as of January 27, 2020 and the balance of such account as of May 17, 2021 plus the principal amount outstanding as of May 17, 2021 on any advances received under Title XII of the Social Security Act between January 27, 2020 and May 17, 2021; provided that if a recipient repays principal on Title XII advances or makes a contribution to an Unemployment Trust Fund after April 1, 2022, such recipient shall not reduce average weekly benefit amounts or maximum benefit entitlements prior to December 31, 2024; and

(ii) Any interest due on such advances received under Title XII of the Social Security Act (42 U.S.C. 1321); and

(11) A program, service, capital expenditure, or other assistance that is provided to a disproportionately impacted household, population, or community, including:

(i) Services to address health disparities of the disproportionately impacted household, population, or community;

(ii) Housing vouchers and relocation assistance;

(iii) Investments in communities to promote improved health outcomes and public safety such as parks, recreation facilities, and programs that increase access to healthy foods;

(iv) Capital expenditures and other services to address vacant or abandoned properties;

(v) Services to address educational disparities; and

(vi) Facilities and equipment related to the provision of these services to the disproportionately impacted household, population, or community.

(B) Assistance to small businesses, including:

(1) Programs, services, or capital expenditures that respond to the negative economic impacts of the COVID-19 public health emergency, including loans or grants to mitigate financial hardship such as declines in revenues or impacts of periods of business closure, or providing technical assistance; and

(2) A program, service, capital expenditure, or other assistance that responds to disproportionately impacted small businesses, including rehabilitation of commercial properties; storefront and façade improvements; technical assistance, business incubators, and grants for start-ups or expansion costs for small businesses; and programs or services to support micro-businesses;

(C) Assistance to nonprofit organizations including programs, services, or capital expenditures, including loans or grants to mitigate financial hardship such as declines in revenues or increased costs, or technical assistance;

(D) Assistance to tourism, travel, hospitality, and other impacted industries for programs, services, or

capital expenditures, including support for payroll costs and covered benefits for employees, compensating returning employees, support for operations and maintenance of existing equipment and facilities, and technical assistance; and

(E) Expenses to support public sector capacity and workforce, including:

(1) Payroll and covered benefit expenses for public safety, public health, health care, human services, and similar employees to the extent that the employee's time is spent mitigating or responding to the COVID-19 public health emergency;

(2) Payroll, covered benefit, and other costs associated with programs or services to support the public sector workforce and with the recipient:

(i) Hiring or rehiring staff to fill budgeted full-time equivalent positions that existed on January 27, 2020 but that were unfilled or eliminated as of March 3, 2021; or

(ii) Increasing the number of its budgeted full-time equivalent employees by up to the difference between the number of its budgeted full-time equivalent employees on January 27, 2020, multiplied by 1.075, and the number of its budgeted full-time equivalent employees on March 3, 2021,

provided that funds shall only be used for additional budgeted full-time equivalent employees above the recipient's number of budgeted full-time equivalent employees as of March 3, 2021;

(3) Costs to improve the design and execution of programs responding to the COVID-19 pandemic and to administer or improve the efficacy of programs addressing the public health emergency or its negative economic impacts; and

(4) Costs associated with addressing administrative needs of recipient governments that were caused or exacerbated by the pandemic.

(4) *Capital expenditures.* A recipient, other than a Tribal government, must prepare a written justification for certain capital expenditures according to Table 1 to paragraph (b)(4) of this section. Such written justification must include the following elements:

(i) Describe the harm or need to be addressed;

(ii) Explain why a capital expenditure is appropriate; and

(iii) Compare the proposed capital expenditure to at least two alternative capital expenditures and demonstrate why the proposed capital expenditure is superior.

TABLE 1 TO PARAGRAPH (b)(4)

If a project has total expected capital expenditures of	and the use is enumerated in (b)(3), then	and the use is not enumerated in (b)(3), then
Less than \$1 million	No Written Justification required	No Written Justification required.
Greater than or equal to \$1 million, but less than \$10 million.	Written Justification required but recipients are not required to submit as part of regular reporting to Treasury.	Written Justification required and recipients must submit as part of regular reporting to Treasury.
\$10 million or more	Written Justification required and recipients must submit as part of regular reporting to Treasury.	

(c) *Providing premium pay to eligible workers.* A recipient may use funds to provide premium pay to eligible workers of the recipient who perform essential work or to provide grants to eligible employers that have eligible workers who perform essential work, provided that any premium pay or grants provided under this paragraph (c) must respond to eligible workers performing essential work during the COVID-19 public health emergency. A recipient uses premium pay or grants provided under this paragraph (c) to respond to eligible workers performing essential work during the COVID-19 public health emergency if:

(1) The eligible worker's total wages and remuneration, including the premium pay, is less than or equal to 150 percent of the greater of such eligible worker's residing State's or county's average annual wage for all

occupations as defined by the Bureau of Labor Statistics' Occupational Employment and Wage Statistics;

(2) The eligible worker is not exempt from the Fair Labor Standards Act overtime provisions (29 U.S.C. 207); or

(3) The recipient has submitted to the Secretary a written justification that explains how providing premium pay to the eligible worker is responsive to the eligible worker performing essential work during the COVID-19 public health emergency (such as a description of the eligible workers' duties, health, or financial risks faced due to COVID-19, and why the recipient determined that the premium pay was responsive despite the worker's higher income).

(d) *Providing government services.* A recipient may use funds for the provision of government services to the extent of the reduction in the recipient's general revenue due to the public health

emergency, calculated according to this paragraph (d). A recipient must make a one-time election to calculate the amount of the reduction in the recipient's general revenue due to the public health emergency according to either paragraph (d)(1) or (d)(2) of this section:

(1) *Standard allowance.* The reduction in the recipient's general revenue due to the public health emergency over the period of performance will be deemed to be ten million dollars; or

(2) *Formula.* The reduction in the recipient's general revenue due to the public health emergency over the period of performance equals the sum of the reduction in revenue, calculated as of each date identified in paragraph (d)(2)(i) of this section and according to the formula in paragraph (d)(2)(ii) of this section:

(i) A recipient must make a one-time election to calculate the reduction in its general revenue using information as of either:

(A) December 31, 2020, December 31, 2021, December 31, 2022, and December 31, 2023; or

(B) The last day of each of the recipient's fiscal years ending in 2020, 2021, 2022, and 2023.

(ii) A reduction in a recipient's general revenue for each date identified in paragraph (d)(2)(i) of this section equals:

$$\text{Max} \{ [\text{Base Year Revenue} * (1 + \text{Growth Adjustment})^{\wedge} (n/12)] - \text{Actual General Revenue}; 0 \}$$

Where:

(A) Base Year Revenue is the recipient's general revenue for the most recent full fiscal year prior to the COVID-19 public health emergency;

(B) Growth Adjustment is equal to the greater of 5.2 percent (or 0.052) and the recipient's average annual revenue growth over the three full fiscal years prior to the COVID-19 public health emergency;

(C) n equals the number of months elapsed from the end of the base year to the calculation date;

(D) Subscript t denotes the specific calculation date; and

(E) Actual General Revenue is a recipient's actual general revenue collected during the 12-month period ending on each calculation date identified in paragraph (d)(2)(i) of this section, except:

(1) For purposes of all calculation dates on or after April 1, 2022, in the case of any change made after January 6, 2022 to any law, regulation, or administrative interpretation 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 and that the recipient assesses has had the effect of decreasing the amount of tax revenue collected during the 12-month period ending on the calculation date relative to the amount of tax revenue that would have been collected in the absence of such change, the recipient must add to actual general revenue the amount of such decrease in tax revenue;

(2) For purposes of any calculation date on or after April 1, 2022, in the case of any change made after January 6, 2022 to any law, regulation, or administrative interpretation that increases any tax (by providing for an increase in a rate, the reduction of a rebate, a deduction, or a credit, or otherwise) or accelerates the imposition of any tax or tax increase and that the

recipient assesses has had the effect of increasing the amount of tax revenue collected during the 12-month period ending on the calculation date relative to the amount of tax revenue that would have been collected in the absence of such change, the recipient must subtract from actual general revenue the amount of such increase in tax revenue;

(3) If the recipient makes a one-time election to adjust general revenue to reflect tax changes made during the period beginning on January 27, 2020 and ending on January 6, 2022, for purposes of each calculation date identified in paragraph (d)(2)(i) of this section:

(i) In the case of any change made during such prior period to any law, regulation, or administrative interpretation 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 and that the recipient assesses has had the effect of decreasing the amount of tax revenue collected during the 12-month period ending on the calculation date relative to the amount of tax revenue that would have been collected in the absence of such change, the recipient must add to actual general revenue the amount of such decrease in tax revenue; and

(ii) In the case of any change made during such prior period to any law, regulation, or administrative interpretation that increases any tax (by providing for an increase in a rate, the reduction of a rebate, a deduction, or a credit, or otherwise) or accelerates the imposition of any tax or tax increase and that the recipient assesses has had the effect of increasing the amount of tax revenue collected during the 12-month period ending on the calculation date relative to the amount of tax revenue that would have been collected in the absence of such change, the recipient must subtract from actual general revenue the amount of such increase in tax revenue; and

(4) With respect to any calculation date during the period beginning on January 6, 2022 and ending on March 31, 2022, if the recipient makes the election in paragraph (d)(3) of this section, the recipient must also make the adjustments referenced in paragraph (d)(3) of this section with respect to any such changes in law, regulation, or administrative interpretation during the period beginning on January 6, 2022 and ending on such calculation date.

(e) *Making necessary investments in water, sewer, and broadband infrastructure.* A recipient may use funds to make the following

investments in water, sewer, and broadband infrastructure.

(1) *Water and sewer investments—(i) Clean Water State Revolving Fund projects.* Projects or activities of the type that meet the eligibility requirements of section 603(c) of the Federal Water Pollution Control Act (33 U.S.C. 1383(c));

(ii) *Additional stormwater projects.* Projects to manage, reduce, treat, or recapture stormwater or subsurface drainage water regardless of whether such projects would improve water quality if such projects would otherwise meet the eligibility requirements of section 603(c)(5) of the Federal Water Pollution Control Act (33 U.S.C. 1383(c)(5));

(iii) *Drinking Water State Revolving Fund projects.* Projects or activities of the type that meet the eligibility requirements of section 1452 of the Safe Drinking Water Act (42 U.S.C. 300j-12) as implemented by the regulations adopted by the Environmental Protection Agency (EPA) under 40 CFR 35.3520, provided that:

(A) The recipient is not required to comply with the limitation under 40 CFR 35.3520(c)(2) to acquisitions of land from willing sellers or the prohibition under 40 CFR 35.3520(e)(6) on uses of funds for certain Tribal projects; and

(B) In the case of lead service line replacement projects, the recipient must replace the full length of the service line and may not replace only a partial portion of the service line.

(iv) *Additional lead remediation and household water quality testing.* Projects or activities to address lead in drinking water or provide household water quality testing that are within the scope of the programs the EPA is authorized to establish under sections 1459A(b)(2), 1459B(b)(1), 1464(d)(2), and 1465 of the Safe Drinking Water Act (42 U.S.C. 300j-19a(b)(2), 300j-19b(b)(1), 300j-24(d)(2), and 300j-25), provided that:

(A) In the case of lead service line replacement projects, the recipient must replace the full length of the service line and may not replace only a partial portion of the service line; and

(B) In the case of projects within the scope of the program the EPA is authorized to establish under section 1459B(b)(1) of the Safe Drinking Water Act, the recipient may determine the income eligibility of homeowners served by lead service line replacement projects in its discretion.

(v) *Drinking water projects to support increased population.* Projects of the type that meet the eligibility requirements of 40 CFR 35.3520 other than the requirement of subparagraph

(b)(1) of such regulation to address present or prevent future violations of health-based drinking water standards, if the following conditions are met:

(A) The project is needed to support increased population, with need assessed as of the time the project is undertaken;

(B) The project is designed to support no more than a reasonable level of projected increased need, whether due to population growth or otherwise;

(C) The project is a cost-effective means for achieving the desired level of service; and

(D) The project is projected to continue to provide an adequate level of drinking water over its estimated useful life.

(vi) *Dams and reservoirs.*

Rehabilitation of dams and reservoirs if the following conditions are met:

(A) The project meets the requirements of 40 CFR 35.3520 other than the following requirements:

(1) The prohibition on the rehabilitation of dams and reservoirs in 40 CFR 35.3520(e)(1) and (3); and

(2) The requirement in 40 CFR 35.3520(b)(1) that the project is needed to address present or prevent future violations of health-based drinking water standards, provided that if the dam or reservoir project does not meet this requirement, the project must be needed to support increased population, with need assessed as of the time the project is undertaken, and the project must be projected to continue to provide an adequate level of drinking water over its estimated useful life;

(B) The primary purpose of the dam or reservoir is for drinking water supply;

(C) The project is needed for the provision of drinking water supply, with need assessed as of the time the project is initiated;

(D) The project is designed to support no more than a reasonable level of projected increased need, whether due to population growth or otherwise; and

(E) The project is a cost-effective means for achieving the desired level of service.

(vii) *Private wells.* Rehabilitation of private wells, testing initiatives to identify contaminants in private wells, and treatment activities and remediation projects that address contamination in private wells, if the project meets the requirements of 40 CFR 35.3520 other than the limitation to certain eligible systems under 40 CFR 35.3520(a).

(2) *Broadband investments—(i) General.* Broadband infrastructure if the following conditions are met:

(A) The broadband infrastructure is designed to provide service to households and businesses with an

identified need, as determined by the recipient, for such infrastructure;

(B) The broadband infrastructure is designed to, upon completion:

(1) Reliably meet or exceed symmetrical 100 Mbps download speed and upload speeds; or

(2) In cases where it is not practicable, because of the excessive cost of the project or geography or topography of the area to be served by the project, to provide service reliably meeting or exceeding symmetrical 100 Mbps download speed and upload speeds:

(i) Reliably meet or exceed 100 Mbps download speed and between at least 20 Mbps and 100 Mbps upload speed; and

(ii) Be scalable to a minimum of 100 Mbps download speed and 100 Mbps upload speed; and

(C) The service provider for a completed broadband infrastructure investment project that provides service to households is required, for as long as the SLFRF-funded broadband infrastructure is in use, by the recipient to:

(1) Participate in the Federal Communications Commission's Affordable Connectivity Program (ACP) through the lifetime of the ACP; or

(2) Otherwise provide access to a broad-based affordability program to low-income consumers in the proposed service area of the broadband infrastructure that provides benefits to households commensurate with those provided under the ACP through the lifetime of the ACP.

(ii) *Cybersecurity infrastructure investments.* Cybersecurity infrastructure investments that are designed to improve the reliability and resiliency of new and existing broadband infrastructure. Such investments may include the addition or modernization of network security hardware and software tools designed to strengthen cybersecurity for the end-users of these networks.

(f) *Meeting the non-federal matching requirements for Bureau of Reclamation projects.* A recipient may use funds to meet the non-federal matching requirements of any authorized Bureau of Reclamation project.

§ 35.7 Pensions.

A recipient (other than a Tribal government) may not use funds for deposit into any pension fund.

§ 35.8 Tax.

(a) *Restriction.* A State or Territory shall not use funds to either directly or indirectly offset a reduction in the net tax revenue of the State or Territory resulting from a covered change during the covered period.

(b) *Violation.* Treasury will consider a State or Territory to have used funds to offset a reduction in net tax revenue if, during a reporting year:

(1) *Covered change.* The State or Territory has made a covered change that, either based on a reasonable statistical methodology to isolate the impact of the covered change in actual revenue or based on projections that use reasonable assumptions and do not incorporate the effects of macroeconomic growth to reduce or increase the projected impact of the covered change, the State or Territory assesses has had or predicts to have the effect of reducing tax revenue relative to current law;

(2) *Exceeds the de minimis threshold.* The aggregate amount of the measured or predicted reductions in tax revenue caused by covered changes identified under paragraph (b)(1) of this section, in the aggregate, exceeds 1 percent of the State's or Territory's baseline;

(3) *Reduction in net tax revenue.* The State or Territory reports a reduction in net tax revenue, measured as the difference between actual tax revenue and the State's or Territory's baseline, each measured as of the end of the reporting year; and

(4) *Consideration of other changes.* The aggregate amount of measured or predicted reductions in tax revenue caused by covered changes is greater than the sum of the following, in each case, as calculated for the reporting year:

(i) The aggregate amount of the expected increases in tax revenue caused by one or more covered changes that, either based on a reasonable statistical methodology to isolate the impact of the covered change in actual revenue or based on projections that use reasonable assumptions and do not incorporate the effects of macroeconomic growth to reduce or increase the projected impact of the covered change, the State or Territory assesses has had or predicts to have the effect of increasing tax revenue; and

(ii) Reductions in spending, up to the amount of the State's or Territory's net reduction in total spending, that are in:

(A) Departments, agencies, or authorities in which the State or Territory is not using funds; and

(B) Departments, agencies, or authorities in which the State or Territory is using funds, in an amount equal to the value of the spending cuts in those departments, agencies, or authorities, minus funds used.

(c) *Amount and revenue reduction cap.* If a State or Territory is considered to be in violation pursuant to paragraph (b) of this section, the amount used in

violation of paragraph (a) of this section is equal to the lesser of:

(1) The reduction in net tax revenue of the State or Territory for the reporting year, measured as the difference between the State's or Territory's baseline and its actual tax revenue, each measured as of the end of the reporting year; and,

(2) The aggregate amount of the reductions in tax revenues caused by covered changes identified in paragraph (b)(1) of this section, minus the sum of the amounts in identified in paragraphs (b)(4)(i) and (ii) of this section.

§ 35.9 Compliance with applicable laws.

A recipient must comply with all other applicable Federal statutes, regulations, and executive orders, and a recipient shall provide for compliance with the American Rescue Plan Act, this subpart, and any interpretive guidance by other parties in any agreements it enters into with other parties relating to these funds.

§ 35.10 Recoupment.

(a) *Identification of violations*—(1) *In general.* Any amount used in violation of § 35.5, 35.6, or 35.7 may be identified at any time prior to December 31, 2026.

(2) *Annual reporting of amounts of violations.* On an annual basis, a recipient that is a State or territory must calculate and report any amounts used in violation of § 35.8.

(b) *Calculation of amounts subject to recoupment*—(1) *In general.* Except as provided in paragraph (b)(2) of this section, the Secretary will calculate any amounts subject to recoupment resulting from a violation of § 35.5, 35.6 or 35.7 as the amounts used in violation of such restrictions.

(2) *Violations of § 35.8.* The Secretary will calculate any amounts subject to recoupment resulting from a violation of § 35.8, equal to the lesser of:

(i) The amount set forth in § 35.8(c); and,

(ii) The amount of funds received by such recipient.

(c) *Initial notice.* If the Secretary calculates an amount subject to recoupment under paragraph (b) of this section, Treasury will provide the recipient an initial written notice of the amount subject to recoupment along with an explanation of such amounts.

(d) *Request for reconsideration.* Unless the Secretary extends or accelerates the time period, within 60 calendar days of receipt of an initial notice of recoupment provided under paragraph (c) of this section, a recipient may submit a written request to the Secretary requesting reconsideration of any amounts subject to recoupment

under paragraph (b) of this section. To request reconsideration of any amounts subject to recoupment, a recipient must submit to the Secretary a written request that includes:

(1) An explanation of why the recipient believes all or some of the amount should not be subject to recoupment; and

(2) A discussion of supporting reasons, along with any additional information.

(e) *Final amount subject to recoupment.* Unless the Secretary extends or accelerates the time period, within 60 calendar days of receipt of the recipient's request for reconsideration provided pursuant to paragraph (d) of this section or the expiration of the period for requesting reconsideration provided under paragraph (d), the recipient will be notified of the Secretary's decision to affirm, withdraw, or modify the notice of recoupment. Such notification will include an explanation of the decision, including responses to the recipient's supporting reasons and consideration of additional information provided. A recipient must invoke and exhaust the procedures available under this subpart prior to seeking judicial review of a decision under § 35.10.

(f) *Repayment of funds.* Unless the Secretary extends or accelerates the time period, a recipient shall repay to the Secretary any amounts subject to recoupment in accordance with instructions provided by the Secretary:

(1) Within 120 calendar days of receipt of the notice of recoupment provided under paragraph (c) of this section, in the case of a recipient that does not submit a request for reconsideration in accordance with the requirements of paragraph (d) of this section; or

(2) Within 120 calendar days of receipt of the Secretary's decision under paragraph (e) of this section, in the case of a recipient that submits a request for reconsideration in accordance with the requirements of paragraph (d) of this section.

(g) *Other remedial actions.* Prior to seeking recoupment or taking other appropriate action pursuant to paragraph (c), (d), (e), or (f) of this section, the Secretary may notify the recipient of potential violations and provide the recipient an opportunity for informal consultation and remediation.

§ 35.11 Payments to States.

(a) *In general.* With respect to any State or Territory that has an unemployment rate as of the date that it submits an initial certification for payment of funds pursuant to section

602(d)(1) of the Social Security Act that is less than two percentage points above its unemployment rate in February 2020, the Secretary will withhold 50 percent of the amount of funds allocated under section 602(b) of the Social Security Act to such State or territory until at least May 10, 2022 and not more than twelve months from the date such initial certification is provided to the Secretary.

(b) *Payment of withheld amount.* In order to receive the amount withheld under paragraph (a) of this section, the State or Territory must submit to the Secretary the following information:

(1) A certification, in the form provided by the Secretary, that such State or Territory requires the payment to carry out the activities specified in section 602(c) of the Social Security Act and will use the payment in compliance with section 602(c) of the Social Security Act; and

(2) Any reports required to be filed by that date pursuant to this part that have not yet been filed.

§ 35.12 Distributions to nonentitlement units of local government and units of general local government.

(a) *Nonentitlement units of local government.* Each State or Territory that receives a payment from the Secretary pursuant to section 603(b)(2)(B) of the Social Security Act shall distribute the amount of the payment to nonentitlement units of local government in such State or Territory in accordance with the requirements set forth in section 603(b)(2)(C) of the Social Security Act and without offsetting any debt owed by such nonentitlement units of local governments against such payments.

(b) *Budget cap.* A State or Territory may not make a payment to a nonentitlement unit of local government pursuant to section 603(b)(2)(C) of the Social Security Act and paragraph (a) of this section in excess of the amount equal to 75 percent of the most recent budget for the nonentitlement unit of local government as of January 27, 2020. For purposes of this section 35.12, a nonentitlement unit of local government's most recent budget shall mean the nonentitlement unit of local government's total annual budget, including both operating and capital expenditure budgets, in effect as of January 27, 2020. A State or Territory shall permit a nonentitlement unit of local government without a formal budget as of January 27, 2020, to provide a certification from an authorized officer of the nonentitlement unit of local government of its most recent annual expenditures as of

January 27, 2020, and a State or Territory may rely on such certification for purposes of complying with this section 35.12.

(c) *Units of general local government.* Each State or Territory that receives a payment from the Secretary pursuant to section 603(b)(3)(B)(ii) of the Social Security Act, in the case of an amount to be paid to a county that is not a unit of general local government, shall

distribute the amount of the payment to units of general local government within such county in accordance with the requirements set forth in section 603(b)(3)(B)(ii) of the Social Security Act and without offsetting any debt owed by such units of general local government against such payments.

(d) *Additional conditions.* A State or Territory may not place additional conditions or requirements on

distributions to nonentitlement units of local government or units of general local government beyond those required by section 603 of the Social Security Act or this subpart.

Jacob Leibenluft,

Chief Recovery Officer.

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Coronavirus State & Local Fiscal Recovery Funds: Overview of the Final Rule

U.S. DEPARTMENT OF THE TREASURY

January 2022



The Overview of the Final Rule provides a summary of major provisions of the final rule for informational purposes and is intended as a brief, simplified user guide to the final rule provisions.

The descriptions provided in this document summarize key provisions of the final rule but are non-exhaustive, do not describe all terms and conditions associated with the use of SLFRF, and do not describe all requirements that may apply to this funding. Any SLFRF funds received are also subject to the terms and conditions of the agreement entered into by Treasury and the respective jurisdiction, which incorporate the provisions of the final rule and the guidance that implements this program.



Contents

Introduction	4
Overview of the Program	6
Replacing Lost Public Sector Revenue	9
Responding to Public Health and Economic Impacts of COVID-19	12
Responding to the Public Health Emergency	14
Responding to Negative Economic Impacts	16
Assistance to Households	17
Assistance to Small Businesses	21
Assistance to Nonprofits	23
Aid to Impacted Industries	24
Public Sector Capacity	26
Public Safety, Public Health, and Human Services Staff	26
Government Employment and Rehiring Public Sector Staff	27
Effective Service Delivery	28
Capital Expenditures	30
Framework for Eligible Uses Beyond those Enumerated	32
Premium Pay	35
Water & Sewer Infrastructure	37
Broadband Infrastructure	39
Restrictions on Use	41
Program Administration	43



Introduction

The Coronavirus State and Local Fiscal Recovery Funds (SLFRF), a part of the American Rescue Plan, delivers \$350 billion to state, local, and Tribal governments across the country to support their response to and recovery from the COVID-19 public health emergency. The program ensures that governments have the resources needed to:

- Fight the pandemic and support families and businesses struggling with its public health and economic impacts,
- Maintain vital public services, even amid declines in revenue, and
- Build a strong, resilient, and equitable recovery by making investments that support long-term growth and opportunity.

EARLY PROGRAM IMPLEMENTATION

In May 2021, Treasury published the Interim final rule (IFR) describing eligible and ineligible uses of funds (as well as other program provisions), sought feedback from the public on these program rules, and began to distribute funds. The IFR went immediately into effect in May, and since then, governments have used SLFRF funds to meet their immediate pandemic response needs and begin building a strong and equitable recovery, such as through providing vaccine incentives, development of affordable housing, and construction of infrastructure to deliver safe and reliable water.

As governments began to deploy this funding in their communities, Treasury carefully considered the feedback provided through its public comment process and other forums. Treasury received over 1,500 comments, participated in hundreds of meetings, and received correspondence from a wide range of governments and other stakeholders.

KEY CHANGES AND CLARIFICATIONS IN THE FINAL RULE

The final rule delivers broader flexibility and greater simplicity in the program, responsive to feedback in the comment process. Among other clarifications and changes, the final rule provides the features below.

Replacing Lost Public Sector Revenue

The final rule offers a standard allowance for revenue loss of up to \$10 million, allowing recipients to select between a standard amount of revenue loss or complete a full revenue loss calculation. Recipients that select the standard allowance may use that amount – in many cases their full award – for government services, with streamlined reporting requirements.

Public Health and Economic Impacts

In addition to programs and services, the final rule clarifies that recipients can use funds for capital expenditures that support an eligible COVID-19 public health or economic response. For example, recipients may build certain affordable housing, childcare facilities, schools, hospitals, and other projects consistent with final rule requirements.



In addition, the final rule provides an expanded set of households and communities that are presumed to be “impacted” and “disproportionately impacted” by the pandemic, thereby allowing recipients to provide responses to a broad set of households and entities without requiring additional analysis. Further, the final rule provides a broader set of uses available for these communities as part of COVID-19 public health and economic response, including making affordable housing, childcare, early learning, and services to address learning loss during the pandemic eligible in all impacted communities and making certain community development and neighborhood revitalization activities eligible for disproportionately impacted communities.

Further, the final rule allows for a broader set of uses to restore and support government employment, including hiring above a recipient’s pre-pandemic baseline, providing funds to employees that experienced pay cuts or furloughs, avoiding layoffs, and providing retention incentives.

Premium Pay

The final rule delivers more streamlined options to provide premium pay, by broadening the share of eligible workers who can receive premium pay without a written justification while maintaining a focus on lower-income and frontline workers performing essential work.

Water, Sewer & Broadband Infrastructure

The final rule significantly broadens eligible broadband infrastructure investments to address challenges with broadband access, affordability, and reliability, and adds additional eligible water and sewer infrastructure investments, including a broader range of lead remediation and stormwater management projects.

FINAL RULE EFFECTIVE DATE

The final rule takes effect on April 1, 2022. Until that time, the interim final rule remains in effect; funds used consistently with the IFR while it is in effect are in compliance with the SLFRF program.

However, recipients can choose to take advantage of the final rule’s flexibilities and simplifications now, even ahead of the effective date. Treasury will not take action to enforce the interim final rule to the extent that a use of funds is consistent with the terms of the final rule, regardless of when the SLFRF funds were used. Recipients may consult the *Statement Regarding Compliance with the Coronavirus State and Local Fiscal Recovery Funds Interim Final Rule and Final Rule*, which can be found on Treasury’s website, for more information on compliance with the interim final rule and the final rule.



Overview of the Program

The Coronavirus State and Local Fiscal Recovery Funds (SLFRF) program provides substantial flexibility for each jurisdiction to meet local needs within the four separate eligible use categories. This Overview of the Final Rule addresses the four eligible use categories ordered from the broadest and most flexible to the most specific.

Recipients may use SLFRF funds to:

- **Replace lost public sector revenue**, using this funding to provide government services up to the amount of revenue loss due to the pandemic.
 - Recipients may determine their revenue loss by choosing between two options:
 - A standard allowance of up to \$10 million in aggregate, not to exceed their award amount, during the program;
 - Calculating their jurisdiction's specific revenue loss each year using Treasury's formula, which compares actual revenue to a counterfactual trend.
 - Recipients may use funds up to the amount of revenue loss for government services; generally, services traditionally provided by recipient governments are government services, unless Treasury has stated otherwise.
- **Support the COVID-19 public health and economic response** by addressing COVID-19 and its impact on public health as well as addressing economic harms to households, small businesses, nonprofits, impacted industries, and the public sector.
 - Recipients can use funds for programs, services, or capital expenditures that respond to the public health and negative economic impacts of the pandemic.
 - To provide simple and clear eligible uses of funds, Treasury provides a list of enumerated uses that recipients can provide to households, populations, or classes (i.e., groups) that experienced pandemic impacts.
 - Public health eligible uses include COVID-19 mitigation and prevention, medical expenses, behavioral healthcare, and preventing and responding to violence.
 - Eligible uses to respond to negative economic impacts are organized by the type of beneficiary: assistance to households, small businesses, and nonprofits.
 - Each category includes assistance for "impacted" and "disproportionately impacted" classes: impacted classes experienced the general, broad-based impacts of the pandemic, while disproportionately impacted classes faced meaningfully more severe impacts, often due to preexisting disparities.
 - To simplify administration, the final rule presumes that some populations and groups were impacted or disproportionately impacted and are eligible for responsive services.

Coronavirus State & Local Fiscal Recovery Funds: Overview of the Final Rule



- Eligible uses for assistance to impacted households include aid for re-employment, job training, food, rent, mortgages, utilities, affordable housing development, childcare, early education, addressing learning loss, and many more uses.
- Eligible uses for assistance to impacted small businesses or nonprofits include loans or grants to mitigate financial hardship, technical assistance for small businesses, and many more uses.
- Recipients can also provide assistance to impacted industries like travel, tourism, and hospitality that faced substantial pandemic impacts, or address impacts to the public sector, for example by re-hiring public sector workers cut during the crisis.
- Recipients providing funds for enumerated uses to populations and groups that Treasury has presumed eligible are clearly operating consistently with the final rule. Recipients can also identify (1) other populations or groups, beyond those presumed eligible, that experienced pandemic impacts or disproportionate impacts and (2) other programs, services, or capital expenditures, beyond those enumerated, to respond to those impacts.
- **Provide premium pay for eligible workers performing essential work**, offering additional support to those who have and will bear the greatest health risks because of their service in critical sectors.
 - Recipients may provide premium pay to eligible workers – generally those working in-person in key economic sectors – who are below a wage threshold or non-exempt from the Fair Labor Standards Act overtime provisions, or if the recipient submits justification that the premium pay is responsive to workers performing essential work.
- **Invest in water, sewer, and broadband infrastructure**, making necessary investments to improve access to clean drinking water, to support vital wastewater and stormwater infrastructure, and to expand affordable access to broadband internet.
 - Recipients may fund a broad range of water and sewer projects, including those eligible under the EPA’s Clean Water State Revolving Fund, EPA’s Drinking Water State Revolving Fund, and certain additional projects, including a wide set of lead remediation, stormwater infrastructure, and aid for private wells and septic units.
 - Recipients may fund high-speed broadband infrastructure in areas of need that the recipient identifies, such as areas without access to adequate speeds, affordable options, or where connections are inconsistent or unreliable; completed projects must participate in a low-income subsidy program.

While recipients have considerable flexibility to use funds to address the diverse needs of their communities, some restrictions on use apply across all eligible use categories. These include:

- **For states and territories:** No offsets of a reduction in net tax revenue resulting from a change in state or territory law.

Coronavirus State & Local Fiscal Recovery Funds: Overview of the Final Rule



- **For all recipients except for Tribal governments:** No extraordinary contributions to a pension fund for the purpose of reducing an accrued, unfunded liability.
- **For all recipients:** No payments for debt service and replenishments of rainy day funds; no satisfaction of settlements and judgments; no uses that contravene or violate the American Rescue Plan Act, Uniform Guidance conflicts of interest requirements, and other federal, state, and local laws and regulations.

Under the SLFRF program, funds must be used for costs incurred on or after March 3, 2021. Further, funds must be obligated by December 31, 2024, and expended by December 31, 2026. This time period, during which recipients can expend SLFRF funds, is the “period of performance.”

In addition to SLFRF, the American Rescue Plan includes other sources of funding for state and local governments, including the [Coronavirus Capital Projects Fund](#) to fund critical capital investments including broadband infrastructure; the [Homeowner Assistance Fund](#) to provide relief for our country’s most vulnerable homeowners; the [Emergency Rental Assistance Program](#) to assist households that are unable to pay rent or utilities; and the [State Small Business Credit Initiative](#) to fund small business credit expansion initiatives. Eligible recipients are encouraged to visit the Treasury website for more information.



Replacing Lost Public Sector Revenue

The Coronavirus State and Local Fiscal Recovery Funds provide needed fiscal relief for recipients that have experienced revenue loss due to the onset of the COVID-19 public health emergency. Specifically, SLFRF funding may be used to pay for “government services” in an amount equal to the revenue loss experienced by the recipient due to the COVID-19 public health emergency.

Government services generally include any service traditionally provided by a government, including construction of roads and other infrastructure, provision of public safety and other services, and health and educational services. Funds spent under government services are subject to streamlined reporting and compliance requirements.

In order to use funds under government services, recipients should first determine revenue loss. They may, then, spend up to that amount on general government services.

DETERMINING REVENUE LOSS

Recipients have two options for how to determine their amount of revenue loss. Recipients must choose one of the two options and cannot switch between these approaches after an election is made.

1. Recipients may elect a “standard allowance” of \$10 million to spend on government services through the period of performance.

Under this option, which is newly offered in the final rule Treasury presumes that up to \$10 million in revenue has been lost due to the public health emergency and recipients are permitted to use that amount (not to exceed the award amount) to fund “government services.” The standard allowance provides an estimate of revenue loss that is based on an extensive analysis of average revenue loss across states and localities, and offers a simple, convenient way to determine revenue loss, particularly for SLFRF’s smallest recipients.

All recipients may elect to use this standard allowance instead of calculating lost revenue using the formula below, including those with total allocations of \$10 million or less. Electing the standard allowance does not increase or decrease a recipient’s total allocation.

2. Recipients may calculate their actual revenue loss according to the formula articulated in the final rule.

Under this option, recipients calculate revenue loss at four distinct points in time, either at the end of each calendar year (e.g., December 31 for years 2020, 2021, 2022, and 2023) or the end of each fiscal year of the recipient. Under the flexibility provided in the final rule, recipients can choose whether to use calendar or fiscal year dates but must be consistent throughout the period of performance. Treasury has also provided several adjustments to the definition of general revenue in the final rule.

To calculate revenue loss at each of these dates, recipients must follow a four-step process:



- a. Calculate revenues collected in the most recent full fiscal year prior to the public health emergency (i.e., last full fiscal year before January 27, 2020), called the *base year revenue*.
- b. Estimate *counterfactual revenue*, which is equal to the following formula, where n is the number of months elapsed since the end of the base year to the calculation date:

$$\text{base year revenue} \times (1 + \text{growth adjustment})^{\frac{n}{12}}$$

The *growth adjustment* is the greater of either a standard growth rate—5.2 percent—or the recipient’s average annual revenue growth in the last full three fiscal years prior to the COVID-19 public health emergency.

- c. Identify *actual revenue*, which equals revenues collected over the twelve months immediately preceding the calculation date.

Under the final rule, recipients must adjust actual revenue totals for the effect of tax cuts and tax increases that are adopted after the date of adoption of the final rule (January 6, 2022). Specifically, the estimated fiscal impact of tax cuts and tax increases adopted after January 6, 2022, must be added or subtracted to the calculation of actual revenue for purposes of calculation dates that occur on or after April 1, 2022.

Recipients may subtract from their calculation of actual revenue the effect of tax increases enacted prior to the adoption of the final rule. Note that recipients that elect to remove the effect of tax increases enacted before the adoption of the final rule must also remove the effect of tax decreases enacted before the adoption of the final rule, such that they are accurately removing the effect of tax policy changes on revenue.

- d. Revenue loss for the calculation date is equal to *counterfactual revenue* minus *actual revenue* (adjusted for tax changes) for the twelve-month period. If actual revenue exceeds counterfactual revenue, the loss is set to zero for that twelve-month period. Revenue loss for the period of performance is the sum of the revenue loss on for each calculation date.

The supplementary information in the final rule provides an example of this calculation, which recipients may find helpful, in the Revenue Loss section.



SPENDING ON GOVERNMENT SERVICES

Recipients can use SLFRF funds on government services up to the revenue loss amount, whether that be the standard allowance amount or the amount calculated using the above approach. **Government services generally include *any service traditionally provided by a government***, unless Treasury has stated otherwise. Here are some common examples, although this list is not exhaustive:

- ✓ Construction of schools and hospitals
- ✓ Road building and maintenance, and other infrastructure
- ✓ Health services
- ✓ General government administration, staff, and administrative facilities
- ✓ Environmental remediation
- ✓ Provision of police, fire, and other public safety services (including purchase of fire trucks and police vehicles)

Government services is the most flexible eligible use category under the SLFRF program, and funds are subject to streamlined reporting and compliance requirements. Recipients should be mindful that certain restrictions, which are detailed further in the Restrictions on Use section and apply to all uses of funds, apply to government services as well.



Responding to Public Health and Economic Impacts of COVID-19

The Coronavirus State and Local Fiscal Recovery Funds provide resources for governments to meet the public health and economic needs of those impacted by the pandemic in their communities, as well as address longstanding health and economic disparities, which amplified the impact of the pandemic in disproportionately impacted communities, resulting in more severe pandemic impacts.

The eligible use category to respond to public health and negative economic impacts is organized around the types of assistance a recipient may provide and includes several sub-categories:

- public health,
- assistance to households,
- assistance to small businesses,
- assistance to nonprofits,
- aid to impacted industries, and
- public sector capacity.

In general, to identify eligible uses of funds in this category, recipients should (1) identify a COVID-19 public health or economic impact on an individual or class (i.e., a group) and (2) design a program that responds to that impact. Responses should be related and reasonably proportional to the harm identified and reasonably designed to benefit those impacted.

To provide simple, clear eligible uses of funds that meet this standard, Treasury provides a non-exhaustive list of enumerated uses that respond to pandemic impacts. Treasury also presumes that some populations experienced pandemic impacts and are eligible for responsive services. In other words, recipients providing enumerated uses of funds to populations presumed eligible are clearly operating consistently with the final rule.¹

Recipients also have broad flexibility to (1) identify and respond to other pandemic impacts and (2) serve other populations that experienced pandemic impacts, beyond the enumerated uses and presumed eligible populations. Recipients can also identify groups or “classes” of beneficiaries that experienced pandemic impacts and provide services to those classes.

¹ However, please note that use of funds for enumerated uses may not be grossly disproportionate to the harm. Further, recipients should consult the Capital Expenditures section for more information about pursuing a capital expenditure; please note that enumerated capital expenditures are not presumed to be reasonably proportional responses to an identified harm except as provided in the Capital Expenditures section.



Step	1. Identify COVID-19 public health or economic impact	2. Design a response that addresses or responds to the impact
Analysis	- Can identify impact to a specific household, business or nonprofit or to a class of households, businesses, or nonprofits (i.e., group) - Can also identify disproportionate impacts, or more severe impacts, to a specific beneficiary or to a class	- Types of responses can include a program, service, or capital expenditure - Response should be related and reasonably proportional to the harm - Response should also be reasonably designed to benefit impacted individual or class
Simplifying Presumptions	Final Rule presumes certain populations and classes are impacted and disproportionately impacted	Final Rule provides non-exhaustive list of enumerated eligible uses that respond to pandemic impacts and disproportionate impacts

To assess eligibility of uses of funds, recipients should first determine the sub-category where their use of funds may fit (e.g., public health, assistance to households, assistance to small businesses), based on the entity that experienced the health or economic impact.² Then, recipients should refer to the relevant section for more details on each sub-category.

While the same overall eligibility standard applies to all uses of funds to respond to the public health and negative economic impacts of the pandemic, each sub-category has specific nuances on its application. In addition:

- Recipients interested in using funds for capital expenditures (i.e., investments in property, facilities, or equipment) should review the Capital Expenditures section in addition to the eligible use sub-category.
- Recipients interested in other uses of funds, beyond the enumerated uses, should refer to the section on “Framework for Eligible Uses Beyond Those Enumerated.”

² For example, a recipient interested in providing aid to unemployed individuals is addressing a negative economic impact experienced by a household and should refer to the section on assistance to households. Recipients should also be aware of the difference between “beneficiaries” and “sub-recipients.” Beneficiaries are households, small businesses, or nonprofits that can receive assistance based on impacts of the pandemic that they experienced. On the other hand, sub-recipients are organizations that carry out eligible uses on behalf of a government, often through grants or contracts. Sub-recipients do not need to have experienced a negative economic impact of the pandemic; rather, they are providing services to beneficiaries that experienced an impact.



RESPONDING TO THE PUBLIC HEALTH EMERGENCY

While the country has made tremendous progress in the fight against COVID-19, including a historic vaccination campaign, the disease still poses a grave threat to Americans' health and the economy. Providing state, local, and Tribal governments the resources needed to fight the COVID-19 pandemic is a core goal of the Coronavirus State and Local Fiscal Recovery Funds, as well as addressing the other ways that the pandemic has impacted public health. Treasury has identified several public health impacts of the pandemic and enumerated uses of funds to respond to impacted populations.

- **COVID-19 mitigation and prevention.** The pandemic has broadly impacted Americans and recipients can provide services to prevent and mitigate COVID-19 to the general public or to small businesses, nonprofits, and impacted industries in general. Enumerated eligible uses include:
 - ✓ Vaccination programs, including vaccine incentives and vaccine sites
 - ✓ Testing programs, equipment and sites
 - ✓ Monitoring, contact tracing & public health surveillance (e.g., monitoring for variants)
 - ✓ Public communication efforts
 - ✓ Public health data systems
 - ✓ COVID-19 prevention and treatment equipment, such as ventilators and ambulances
 - ✓ Medical and PPE/protective supplies
 - ✓ Support for isolation or quarantine
 - ✓ Ventilation system installation and improvement
 - ✓ Technical assistance on mitigation of COVID-19 threats to public health and safety
 - ✓ Transportation to reach vaccination or testing sites, or other prevention and mitigation services for vulnerable populations
 - ✓ Support for prevention, mitigation, or other services in congregate living facilities, public facilities, and schools
 - ✓ Support for prevention and mitigation strategies in small businesses, nonprofits, and impacted industries
 - ✓ Medical facilities generally dedicated to COVID-19 treatment and mitigation (e.g., ICUs, emergency rooms)
 - ✓ Temporary medical facilities and other measures to increase COVID-19 treatment capacity
 - ✓ Emergency operations centers & emergency response equipment (e.g., emergency response radio systems)
 - ✓ Public telemedicine capabilities for COVID-19 related treatment



- **Medical expenses.** Funds may be used for expenses to households, medical providers, or others that incurred medical costs due to the pandemic, including:
 - ✓ Unreimbursed expenses for medical care for COVID-19 testing or treatment, such as uncompensated care costs for medical providers or out-of-pocket costs for individuals
 - ✓ Paid family and medical leave for public employees to enable compliance with COVID-19 public health precautions
 - ✓ Emergency medical response expenses
 - ✓ Treatment of long-term symptoms or effects of COVID-19

- **Behavioral health care, such as mental health treatment, substance use treatment, and other behavioral health services.** Treasury recognizes that the pandemic has broadly impacted Americans' behavioral health and recipients can provide these services to the general public to respond. Enumerated eligible uses include:
 - ✓ Prevention, outpatient treatment, inpatient treatment, crisis care, diversion programs, outreach to individuals not yet engaged in treatment, harm reduction & long-term recovery support
 - ✓ Enhanced behavioral health services in schools
 - ✓ Services for pregnant women or infants born with neonatal abstinence syndrome
 - ✓ Support for equitable access to reduce disparities in access to high-quality treatment
 - ✓ Peer support groups, costs for residence in supportive housing or recovery housing, and the 988 National Suicide Prevention Lifeline or other hotline services
 - ✓ Expansion of access to evidence-based services for opioid use disorder prevention, treatment, harm reduction, and recovery
 - ✓ Behavioral health facilities & equipment

- **Preventing and responding to violence.** Recognizing that violence – and especially gun violence – has increased in some communities due to the pandemic, recipients may use funds to respond in these communities through:
 - ✓ Referrals to trauma recovery services for victims of crime
 - ✓ 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
 - ✓ In communities experiencing increased gun violence due to the pandemic:
 - Law enforcement officers focused on advancing community policing
 - Enforcement efforts to reduce gun violence, including prosecution
 - Technology & equipment to support law enforcement response

Coronavirus State & Local Fiscal Recovery Funds: Overview of the Final Rule



RESPONDING TO NEGATIVE ECONOMIC IMPACTS

The pandemic caused severe economic damage and, while the economy is on track to a strong recovery, much work remains to continue building a robust, resilient, and equitable economy in the wake of the crisis and to ensure that the benefits of this recovery reach all Americans. While the pandemic impacted millions of American households and businesses, some of its most severe impacts fell on low-income and underserved communities, where pre-existing disparities amplified the impact of the pandemic and where the most work remains to reach a full recovery.

The final rule recognizes that the pandemic caused broad-based impacts that affected many communities, households, and small businesses across the country; for example, many workers faced unemployment and many small businesses saw declines in revenue. The final rule describes these as “impacted” households, communities, small businesses, and nonprofits.

At the same time, the pandemic caused disproportionate impacts, or more severe impacts, in certain communities. For example, low-income and underserved communities have faced more severe health and economic outcomes like higher rates of COVID-19 mortality and unemployment, often because pre-existing disparities exacerbated the impact of the pandemic. The final rule describes these as “disproportionately impacted” households, communities, small businesses, and nonprofits.

To simplify administration of the program, the final rule presumes that certain populations were “impacted” and “disproportionately impacted” by the pandemic; these populations are presumed to be eligible for services that respond to the impact they experienced. The final rule also enumerates a non-exhaustive list of eligible uses that are recognized as responsive to the impacts or disproportionate impacts of COVID-19. Recipients providing enumerated uses to populations presumed eligible are clearly operating consistently with the final rule.

As discussed further in the section Framework for Eligible Uses Beyond Those Enumerated, recipients can also identify other pandemic impacts, impacted or disproportionately impacted populations or classes, and responses.

However, note that the final rule maintains that general infrastructure projects, including roads, streets, and surface transportation infrastructure, would generally not be eligible under this eligible use category, unless the project responded to a specific pandemic public health need or a specific negative economic impact. Similarly, general economic development or workforce development – activities that do not respond to negative economic impacts of the pandemic but rather seek to more generally enhance the jurisdiction’s business climate – would generally not be eligible under this eligible use category.



Assistance to Households

Impacted Households and Communities

Treasury presumes the following households and communities are impacted by the pandemic:

- ✓ Low- or-moderate income households or communities
- ✓ Households that experienced unemployment
- ✓ Households that experienced increased food or housing insecurity
- ✓ Households that qualify for the Children's Health Insurance Program, Childcare Subsidies through the Child Care Development Fund (CCDF) Program, or Medicaid
- ✓ *When providing affordable housing programs:* households that qualify for the National Housing Trust Fund and Home Investment Partnerships Program
- ✓ *When providing services to address lost instructional time in K-12 schools:* any student that lost access to in-person instruction for a significant period of time

Low- or moderate-income households and communities are those with (i) income at or below 300 percent of the Federal Poverty Guidelines for the size of the household based on the most recently published poverty guidelines or (ii) income at or below 65 percent of the area median income for the county and size of household based on the most recently published data. For the vast majority of communities, the Federal Poverty Guidelines are higher than the area's median income and using the Federal Poverty Guidelines would result in more households and communities being presumed eligible. Treasury has provided an easy-to-use spreadsheet with Federal Poverty Guidelines and area median income levels on its website.

Recipients can measure income for a specific household or the median income for the community, depending on whether the response they plan to provide serves specific households or the general community. The income thresholds vary by household size; recipients should generally use income thresholds for the appropriate household size but can use a default household size of three when easier for administration or when measuring income for a general community.

The income limit for 300 percent of the Federal Poverty Guidelines for a household of three is \$65,880 per year.³ In other words, recipients can always presume that a household earning below this level, or a community with median income below this level, is impacted by the pandemic and eligible for services to respond. Additionally, by following the steps detailed in the section Framework for Eligible Uses Beyond Those Enumerated, recipients may designate additional households as impacted or disproportionately impacted beyond these presumptions, and may also pursue projects not listed below in response to these impacts consistent with Treasury's standards.

³ For recipients in Alaska, the income limit for 300 percent of the Federal Poverty Guidelines for a household of three is \$82,350 per year. For recipients in Hawaii, the income limit for 300 percent of the Federal Poverty Guidelines for a household of three is \$75,780 per year.



Treasury recognizes the enumerated projects below, which have been expanded under the final rule, as eligible to respond to impacts of the pandemic on households and communities:

- ✓ Food assistance & food banks
- ✓ Emergency housing assistance: rental assistance, mortgage assistance, utility assistance, assistance paying delinquent property taxes, counseling and legal aid to prevent eviction and homelessness & emergency programs or services for homeless individuals, including temporary residences for people experiencing homelessness
- ✓ Health insurance coverage expansion
- ✓ Benefits for surviving family members of individuals who have died from COVID-19
- ✓ Assistance to individuals who want and are available for work, including job training, public jobs programs and fairs, support for childcare and transportation to and from a jobsite or interview, incentives for newly-employed workers, subsidized employment, grants to hire underserved workers, assistance to unemployed individuals to start small businesses & development of job and workforce training centers
- ✓ Financial services for the unbanked and underbanked
- ✓ Burials, home repair & home weatherization
- ✓ Programs, devices & equipment for internet access and digital literacy, including subsidies for costs of access
- ✓ Cash assistance
- ✓ Paid sick, medical, and family leave programs
- ✓ Assistance in accessing and applying for public benefits or services
- ✓ Childcare and early learning services, home visiting programs, services for child welfare-involved families and foster youth & childcare facilities
- ✓ Assistance to address the impact of learning loss for K-12 students (e.g., high-quality tutoring, differentiated instruction)
- ✓ Programs or services to support long-term housing security: including development of affordable housing and permanent supportive housing
- ✓ Certain contributions to an Unemployment Insurance Trust Fund⁴

⁴ Recipients may only use SLFRF funds for contributions to unemployment insurance trust funds and repayment of the principal amount due on advances received under Title XII of the Social Security Act up to an amount equal to (i) the difference between the balance in the recipient's unemployment insurance trust fund as of January 27, 2020 and the balance of such account as of May 17, 2021, plus (ii) the principal amount outstanding as of May 17, 2021 on any advances received under Title XII of the Social Security Act between January 27, 2020 and May 17, 2021. Further, recipients may use SLFRF funds for the payment of any interest due on such Title XII advances. Additionally, a recipient that deposits SLFRF funds into its unemployment insurance trust fund to fully restore the pre-pandemic balance may not draw down that balance and deposit more SLFRF funds, back up to the pre-pandemic balance. Recipients that deposit SLFRF funds into an unemployment insurance trust fund, or use SLFRF funds to repay principal on Title XII advances, may not take action to reduce benefits available to unemployed workers by changing the computation method governing regular unemployment compensation in a way that results in a reduction of average weekly benefit amounts or the number of weeks of benefits payable (i.e., maximum benefit entitlement).



Disproportionately Impacted Households and Communities

Treasury presumes the following households and communities are disproportionately impacted by the pandemic:

- ✓ Low -income households and communities
- ✓ Households residing in Qualified Census Tracts
- ✓ Households that qualify for certain federal benefits⁵
- ✓ Households receiving services provided by Tribal governments
- ✓ Households residing in the U.S. territories or receiving services from these governments

Low-income households and communities are those with (i) income at or below 185 percent of the Federal Poverty Guidelines for the size of its household based on the most recently published poverty guidelines or (ii) income at or below 40 percent of area median income for its county and size of household based on the most recently published data. For the vast majority of communities, the Federal Poverty Guidelines level is higher than the area median income level and using this level would result in more households and communities being presumed eligible. Treasury has provided an easy-to-use spreadsheet with Federal Poverty Guidelines and area median income levels on its website.

Recipients can measure income for a specific household or the median income for the community, depending on whether the service they plan to provide serves specific households or the general community. The income thresholds vary by household size; recipients should generally use income thresholds for the appropriate household size but can use a default household size of three when easier for administration or when measuring income for a general community.

The income limit for 185 percent of the Federal Poverty Guidelines for a household of three is \$40,626 per year.⁶ In other words, recipients can always presume that a household earning below this level, or a community with median income below this level, is disproportionately impacted by the pandemic and eligible for services to respond.

⁵ These programs are Temporary Assistance for Needy Families (TANF), Supplemental Nutrition Assistance Program (SNAP), 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), and 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.

⁶ For recipients in Alaska, the income limit for 185 percent of the Federal Poverty Guidelines for a household of three is \$50,783 per year. For recipients in Hawaii, the income limit for 185 percent of the Federal Poverty Guidelines for a household of three is \$46,731 per year



U.S. DEPARTMENT OF THE TREASURY

Treasury recognizes the enumerated projects below, which have been expanded under the final rule, as eligible to respond to disproportionate impacts of the pandemic on households and communities:

- ✓ Pay for community health workers to help households access health & social services
- ✓ Remediation of lead paint or other lead hazards
- ✓ Primary care clinics, hospitals, integration of health services into other settings, and other investments in medical equipment & facilities designed to address health disparities
- ✓ Housing vouchers & assistance relocating to neighborhoods with higher economic opportunity
- ✓ Investments in neighborhoods to promote improved health outcomes
- ✓ Improvements to vacant and abandoned properties, including rehabilitation or maintenance, renovation, removal and remediation of environmental contaminants, demolition or deconstruction, greening/vacant lot cleanup & conversion to affordable housing⁷
- ✓ Services to address educational disparities, including assistance to high-poverty school districts & educational and evidence-based services to address student academic, social, emotional, and mental health needs
- ✓ Schools and other educational equipment & facilities

⁷ Please see the final rule for further details and conditions applicable to this eligible use. This includes Treasury's presumption that demolition of vacant or abandoned residential properties that results in a net reduction in occupiable housing units for low- and moderate-income individuals in an area where the availability of such housing is lower than the need for such housing is ineligible for support with SLFRF funds.

Coronavirus State & Local Fiscal Recovery Funds: Overview of the Final Rule



Assistance to Small Businesses

Small businesses have faced widespread challenges due to the pandemic, including periods of shutdown, declines in revenue, or increased costs. The final rule provides many tools for recipients to respond to the impacts of the pandemic on small businesses, or disproportionate impacts on businesses where pre-existing disparities like lack of access to capital compounded the pandemic's effects.

Small businesses eligible for assistance are those that experienced negative economic impacts or disproportionate impacts of the pandemic and meet the definition of "small business," specifically:

1. Have no more than 500 employees, or if applicable, the size standard in number of employees [established](#) by the Administrator of the Small Business Administration for the industry in which the business concern or organization operates, and
2. Are a small business concern as defined in section 3 of the Small Business Act⁸ (which includes, among other requirements, that the business is independently owned and operated and is not dominant in its field of operation).

Impacted Small Businesses

Recipients can identify small businesses impacted by the pandemic, and measures to respond, in many ways; for example, recipients could consider:

- | | |
|---------------------------------------|--|
| ✓ Decreased revenue or gross receipts | ✓ Capacity to weather financial hardship |
| ✓ Financial insecurity | ✓ Challenges covering payroll, rent or mortgage, and other operating costs |
| ✓ Increased costs | |

Assistance to small businesses that experienced negative economic impacts includes the following enumerated uses:

- | | |
|---|--|
| ✓ Loans or grants to mitigate financial hardship, such as by supporting payroll and benefits, costs to retain employees, and mortgage, rent, utility, and other operating costs | ✓ Technical assistance, counseling, or other services to support business planning |
|---|--|

Disproportionately Impacted Small Businesses

Treasury presumes that the following small businesses are disproportionately impacted by the pandemic:

⁸ 15 U.S.C. 632.



U.S. DEPARTMENT OF THE TREASURY

- ✓ Small businesses operating in Qualified Census Tracts
- ✓ Small businesses operated by Tribal governments or on Tribal lands
- ✓ Small businesses operating in the U.S. territories

Assistance to disproportionately impacted small businesses includes the following enumerated uses, which have been expanded under the final rule:

- ✓ Rehabilitation of commercial properties, storefront improvements & façade improvements
- ✓ Technical assistance, business incubators & grants for start-up or expansion costs for small businesses
- ✓ Support for microbusinesses, including financial, childcare, and transportation costs



Assistance to Nonprofits

Nonprofits have faced significant challenges due to the pandemic's increased demand for services and changing operational needs, as well as declines in revenue sources such as donations and fees.

Nonprofits eligible for assistance are those that experienced negative economic impacts or disproportionate impacts of the pandemic and meet the definition of "nonprofit"—specifically those that are 501(c)(3) or 501(c)(19) tax-exempt organizations.

Impacted Nonprofits

Recipients can identify nonprofits impacted by the pandemic, and measures to respond, in many ways; for example, recipients could consider:

- ✓ Decreased revenue (e.g., from donations and fees)
- ✓ Financial insecurity
- ✓ Increased costs (e.g., uncompensated increases in service need)
- ✓ Capacity to weather financial hardship
- ✓ Challenges covering payroll, rent or mortgage, and other operating costs

Assistance to nonprofits that experienced negative economic impacts includes the following enumerated uses:

- ✓ Loans or grants to mitigate financial hardship
- ✓ Technical or in-kind assistance or other services that mitigate negative economic impacts of the pandemic

Disproportionately Impacted Nonprofits

Treasury presumes that the following nonprofits are disproportionately impacted by the pandemic:

- ✓ Nonprofits operating in Qualified Census Tracts
- ✓ Nonprofits operated by Tribal governments or on Tribal lands
- ✓ Nonprofits operating in the U.S. territories

Recipients may identify appropriate responses that are related and reasonably proportional to addressing these disproportionate impacts.



Aid to Impacted Industries

Recipients may use SLFRF funding to provide aid to industries impacted by the COVID-19 pandemic. Recipients should first designate an impacted industry and then provide aid to address the impacted industry's negative economic impact.

This sub-category of eligible uses does not separately identify disproportionate impacts and corresponding responsive services.

1. Designating an impacted industry. There are two main ways an industry can be designated as "impacted."

1. If the industry is in the travel, tourism, or hospitality sectors (including Tribal development districts), the industry is impacted.
2. If the industry is outside the travel, tourism, or hospitality sectors, the industry is impacted if:
 - a. The industry experienced at least 8 percent employment loss from pre-pandemic levels,⁹ or
 - b. The industry is experiencing comparable or worse economic impacts as the national tourism, travel, and hospitality industries as of the date of the final rule, based on the totality of economic indicators or qualitative data (if quantitative data is unavailable), and if the impacts were generally due to the COVID-19 public health emergency.

Recipients have flexibility to define industries broadly or narrowly, but Treasury encourages recipients to define narrow and discrete industries eligible for aid. State and territory recipients also have flexibility to define the industries with greater geographic precision; for example, a state may identify a particular industry in a certain region of a state as impacted.

2. Providing eligible aid to the impacted industry. Aid may only be provided to support businesses, attractions, and Tribal development districts operating prior to the pandemic and affected by required closures and other efforts to contain the pandemic. Further, aid should be generally broadly available to all businesses within the impacted industry to avoid potential conflicts of interest, and Treasury encourages aid to be first used for operational expenses, such as payroll, before being used on other types of costs.

⁹ Specifically, a recipient should compare the percent change in the number of employees of the recipient's identified industry and the national Leisure & Hospitality sector in the three months before the pandemic's most severe impacts began (a straight three-month average of seasonally-adjusted employment data from December 2019, January 2020, and February 2020) with the latest data as of the final rule (a straight three-month average of seasonally-adjusted employment data from September 2021, October 2021, and November 2021). For parity and simplicity, smaller recipients without employment data that measure industries in their specific jurisdiction may use data available for a broader unit of government for this calculation (e.g., a county may use data from the state in which it is located; a city may use data for the county, if available, or state in which it is located) solely for purposes of determining whether a particular industry is an impacted industry.

Coronavirus State & Local Fiscal Recovery Funds: Overview of the Final Rule



U.S. DEPARTMENT OF THE TREASURY

Treasury recognizes the enumerated projects below as eligible responses to impacted industries.

- ✓ Aid to mitigate financial hardship, such as supporting payroll costs, lost pay and benefits for returning employees, support of operations and maintenance of existing equipment and facilities
- ✓ Technical assistance, counseling, or other services to support business planning
- ✓ COVID-19 mitigation and infection prevention measures (see section Public Health)

As with all eligible uses, recipients may pursue a project not listed above by undergoing the steps outlined in the section Framework for Eligible Uses Beyond Those Enumerated.



PUBLIC SECTOR CAPACITY

Recipients may use SLFRF funding to restore and bolster public sector capacity, which supports government's ability to deliver critical COVID-19 services. There are three main categories of eligible uses to bolster public sector capacity and workforce: Public Safety, Public Health, and Human Services Staff; Government Employment and Rehiring Public Sector Staff; and Effective Service Delivery.

Public Safety, Public Health, and Human Services Staff

SLFRF funding may be used for payroll and covered benefits for public safety, public health, health care, human services and similar employees of a recipient government, for the portion of the employee's time spent responding to COVID-19. Recipients should follow the steps below.

1. **Identify eligible public safety, public health, and human services staff.** Public safety staff include:

- ✓ Police officers (including state police officers)
- ✓ Sheriffs and deputy sheriffs
- ✓ Firefighters
- ✓ Emergency medical responders
- ✓ Correctional and detention officers
- ✓ Dispatchers and supervisor personnel that directly support public safety staff

Public health staff include:

- ✓ Employees involved in providing medical and other physical or mental health services to patients and supervisory personnel, including medical staff assigned to schools, prisons, and other such institutions
- ✓ Laboratory technicians, medical examiners, morgue staff, and other support services essential for patient care
- ✓ Employees of public health departments directly engaged in public health matters and related supervisory personnel

Human services staff include:

- ✓ Employees providing or administering social services and public benefits
- ✓ Child welfare services employees
- ✓ Child, elder, or family care employees

2. **Assess portion of time spent on COVID-19 response for eligible staff.**

Recipients can use a variety of methods to assess the share of an employees' time spent responding to COVID-19, including using reasonable estimates—such as estimating the share of time based on discussions with staff and applying that share to all employees in that position.

For administrative convenience, recipients can consider public health and safety employees entirely devoted to responding to COVID-19 (and their payroll and benefits fully covered by SLFRF) if the



employee, or his or her operating unit or division, is “primarily dedicated” to responding to COVID-19. Primarily dedicated means that more than half of the employee, unit, or division’s time is dedicated to responding to COVID-19.

Recipients must periodically reassess their determination and maintain records to support their assessment, although recipients do not need to track staff hours.

3. **Use SLFRF funding for payroll and covered benefits for the portion of eligible staff time spent on COVID-19 response.** SLFRF funding may be used for payroll and covered benefits for the portion of the employees’ time spent on COVID-19 response, as calculated above, through the period of performance.

Government Employment and Rehiring Public Sector Staff

Under the increased flexibility of the final rule, SLFRF funding may be used to support a broader set of uses to restore and support public sector employment. Eligible uses include hiring up to a pre-pandemic baseline that is adjusted for historic underinvestment in the public sector, providing additional funds for employees who experienced pay cuts or were furloughed, avoiding layoffs, providing worker retention incentives, and paying for ancillary administrative costs related to hiring, support, and retention.

- **Restoring pre-pandemic employment.** Recipients have two options to restore pre-pandemic employment, depending on the recipient’s needs.
 - *If the recipient simply wants to hire back employees for pre-pandemic positions:* Recipients may use SLFRF funds to hire employees for the same positions that existed on January 27, 2020 but that were unfilled or eliminated as of March 3, 2021. Recipients may use SLFRF funds to cover payroll and covered benefits for such positions through the period of performance.
 - *If the recipient wants to hire above the pre-pandemic baseline and/or would like to have flexibility in positions:* Recipients may use SLFRF funds to pay for payroll and covered benefits associated with the recipient increasing its number of budgeted FTEs up to 7.5 percent above its pre-pandemic baseline. Specifically, recipients should undergo the following steps:
 - a. Identify the recipient’s budgeted FTE level on January 27, 2020. This includes all budgeted positions, filled and unfilled. This is called the *pre-pandemic baseline*.
 - b. Multiply the pre-pandemic baseline by 1.075. This is called the *adjusted pre-pandemic baseline*.
 - c. Identify the recipient’s budgeted FTE level on March 3, 2021, which is the beginning of the period of performance for SLFRF funds. Recipients may, but are not required to, exclude the number of FTEs dedicated to responding to the COVID-19 public health emergency. This is called the *actual number of FTEs*.
 - d. Subtract the *actual number of FTEs* from the *adjusted pre-pandemic baseline* to calculate the number of FTEs that can be covered by SLFRF funds. Recipients do not have to hire for the same roles that existed pre-pandemic.

Coronavirus State & Local Fiscal Recovery Funds: Overview of the Final Rule



Recipients may use SLFRF funds to cover payroll and covered benefits through the period of performance; these employees must have begun their employment on or after March 3, 2021. Recipients may only use SLFRF funds for additional FTEs hired over the March 3, 2021 level (i.e., the *actual number of FTEs*).

- **Supporting and retaining public sector workers.** Recipients can also use funds in other ways that support the public sector workforce.¹⁰ These include:
 - **Providing additional funding for employees who experienced pay reductions or were furloughed** since the onset of the pandemic, up to the difference in the employee's pay, taking into account unemployment benefits received.
 - **Maintaining current compensation levels to prevent layoffs.** SLFRF funds may be used to maintain current compensation levels, with adjustments for inflation, in order to prevent layoffs that would otherwise be necessary.
 - **Providing worker retention incentives, including reasonable increases in compensation** to persuade employees to remain with the employer as compared to other employment options. Retention incentives must be entirely additive to an employee's regular compensation, narrowly tailored to need, and should not exceed incentives traditionally offered by the recipient or compensation that alternative employers may offer to compete for the employees. Treasury presumes that retention incentives that are less than 25 percent of the rate of base pay for an individual employee or 10 percent for a group or category of employees are reasonably proportional to the need to retain employees, as long as other requirements are met.
- **Covering administrative costs associated with administering the hiring, support, and retention programs above.**

Effective Service Delivery

SLFRF funding may be used to improve the efficacy of public health and economic programs through tools like program evaluation, data, and outreach, as well as to address administrative needs caused or exacerbated by the pandemic. Eligible uses include:

- **Supporting program evaluation, data, and outreach through:**

¹⁰ Recipients should be able to substantiate that these uses of funds are substantially due to the public health emergency or its negative economic impacts (e.g., fiscal pressures on state and local budgets) and respond to its impacts. See the final rule for details on these uses.



U.S. DEPARTMENT OF THE TREASURY

- ✓ Program evaluation and evidence resources
- ✓ Data analysis resources to gather, assess, share, and use data
- ✓ Technology infrastructure to improve access to and the user experience of government IT systems, as well as technology improvements to increase public access and delivery of government programs and services
- ✓ Community outreach and engagement activities
- ✓ Capacity building resources to support using data and evidence, including hiring staff, consultants, or technical assistance support
- **Addressing administrative needs, including:**
 - ✓ Administrative costs for programs responding to the public health emergency and its economic impacts, including non-SLFRF and non-federally funded programs
 - ✓ Address administrative needs caused or exacerbated by the pandemic, including addressing 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)



CAPITAL EXPENDITURES

As described above, the final rule clarifies that recipients may use funds for programs, services, and capital expenditures that respond to the public health and negative economic impacts of the pandemic. Any use of funds in this category for a capital expenditure must comply with the capital expenditure requirements, in addition to other standards for uses of funds.

Capital expenditures are subject to the same eligibility standard as other eligible uses to respond to the pandemic's public health and economic impacts; specifically, they must be related and reasonably proportional to the pandemic impact identified and reasonably designed to benefit the impacted population or class.

For ease of administration, the final rule identifies enumerated types of capital expenditures that Treasury has identified as responding to the pandemic's impacts; these are listed in the applicable sub-category of eligible uses (e.g., public health, assistance to households, etc.). Recipients may also identify other responsive capital expenditures. Similar to other eligible uses in the SLFRF program, no pre-approval is required for capital expenditures.

To guide recipients' analysis of whether a capital expenditure meets the eligibility standard, recipients (with the exception of Tribal governments) must complete and meet the requirements of a written justification for capital expenditures equal to or greater than \$1 million. For large-scale capital expenditures, which have high costs and may require an extended length of time to complete, as well as most capital expenditures for non-enumerated uses of funds, Treasury requires recipients to submit their written justification as part of regular reporting. Specifically:

If a project has total capital expenditures of	and the use is enumerated by Treasury as eligible, then	and the use is beyond those enumerated by Treasury as eligible, then
Less than \$1 million	No Written Justification required	No Written Justification required
Greater than or equal to \$1 million, but less than \$10 million	Written Justification required but recipients are not required to submit as part of regular reporting to Treasury	Written Justification required and recipients must submit as part of regular reporting to Treasury
\$10 million or more	Written Justification required and recipients must submit as part of regular reporting to Treasury	

A Written Justification includes:

- *Description of the harm or need to be addressed.* Recipients should provide a description of the specific harm or need to be addressed and why the harm was exacerbated or caused by the public health emergency. Recipients may provide quantitative information on the extent and the type of harm, such as the number of individuals or entities affected.

Coronavirus State & Local Fiscal Recovery Funds: Overview of the Final Rule

U.S. Department of the Treasury

30



U.S. DEPARTMENT OF THE TREASURY

- *Explanation of why a capital expenditure is appropriate.* For example, recipients should include an explanation of why existing equipment and facilities, or policy changes or additional funding to pertinent programs or services, would be inadequate.
- *Comparison of proposed capital project against at least two alternative capital expenditures and demonstration of why the proposed capital expenditure is superior.* Recipients should consider the effectiveness of the capital expenditure in addressing the harm identified and the expected total cost (including pre-development costs) against at least two alternative capital expenditures.

Where relevant, recipients should consider the alternatives of improving existing capital assets already owned or leasing other capital assets.

Treasury presumes that the following capital projects are generally ineligible:

- | | |
|---|---|
| <ul style="list-style-type: none"> ✖ Construction of new correctional facilities as a response to an increase in rate of crime ✖ Construction of new congregate facilities to decrease spread of COVID-19 in the facility | <ul style="list-style-type: none"> ✖ Construction of convention centers, stadiums, or other large capital projects intended for general economic development or to aid impacted industries |
|---|---|

In undertaking capital expenditures, Treasury encourages recipients to adhere to strong labor standards, including project labor agreements and community benefits agreements that offer wages at or above the prevailing rate and include local hire provisions. Treasury also encourages recipients to prioritize in their procurements employers with high labor standards and to prioritize employers without recent violations of federal and state labor and employment laws.



FRAMEWORK FOR ELIGIBLE USES BEYOND THOSE ENUMERATED

As described above, recipients have broad flexibility to identify and respond to other pandemic impacts and serve other populations that experienced pandemic impacts, beyond the enumerated uses and presumed eligible populations. Recipients should undergo the following steps to decide whether their project is eligible:

Step	1. Identify COVID-19 public health or economic impact	2. Design a response that addresses or responds to the impact
Analysis	- Can identify impact to a specific household, business or nonprofit or to a class of households, businesses or nonprofits (i.e., group) - Can also identify disproportionate impacts, or more severe impacts, to a specific beneficiary or to a class	- Types of responses can include a program, service, or capital expenditure - Response should be related and reasonably proportional to the harm - Response should also be reasonably designed to benefit impacted individual or class

1. Identify a COVID-19 public health or negative economic impact on an individual or a class.

Recipients should identify an individual or class that is “impacted” or “disproportionately impacted” by the COVID-19 public health emergency or its negative economic impacts as well as the specific impact itself.

- “Impacted” entities are those impacted by the disease itself or the harmful consequences of the economic disruptions resulting from or exacerbated by the COVID-19 public health emergency. For example, an individual who lost their job or a small business that saw lower revenue during a period of closure would both have experienced impacts of the pandemic.
- “Disproportionately impacted” entities are those that experienced disproportionate public health or economic outcomes from the pandemic; Treasury recognizes that pre-existing disparities, in many cases, amplified the impacts of the pandemic, causing more severe impacts in underserved communities. For example, a household living in a neighborhood with limited access to medical care and healthy foods may have faced health disparities before the pandemic, like a higher rate of chronic health conditions, that contributed to more severe health outcomes during the COVID-19 pandemic.

The recipient may choose to identify these impacts at either the individual level or at a class level. If the recipient is identifying impacts at the individual level, they should retain documentation supporting the impact the individual experienced (e.g., documentation of lost revenues from a small business). Such documentation can be streamlined in many cases (e.g., self-attestation that a household requires food assistance).

Recipients also have broad flexibility to identify a “class” – or a group of households, small businesses, or nonprofits – that experienced an impact. In these cases, the recipients should

Coronavirus State & Local Fiscal Recovery Funds: Overview of the Final Rule



first identify the class and the impact that it faced. Then, recipients only need to document that the individuals served fall within that class; recipients do not need to document a specific impact to each individual served. For example, a recipient could identify that restaurants in the downtown area faced substantial declines in revenue due to decreased foot traffic from workers; the recipient could develop a program to respond to the impact on that class and only needs to document that the businesses being served are restaurants in the downtown area.

Recipients should keep the following considerations in mind when designating a class:

- **There should be a relationship between the definition of the class and the proposed response.** Larger and less-specific classes are less likely to have experienced similar harms, which may make it more difficult to design a response that appropriately responds to those harms.
- **Classes may be determined on a population basis or on a geographic basis,** and the response should be appropriately matched. For example, a response might be designed to provide childcare to single parents, regardless of which neighborhood they live in, or a response might provide a park to improve the health of a disproportionately impacted neighborhood.
- **Recipients may designate classes that experienced disproportionate impact,** by assessing the impacts of the pandemic and finding that some populations experienced meaningfully more severe impacts than the general public. To determine these disproportionate impacts, recipients:
 - May designate classes based on academic research or government research publications (such as the citations provided in the supplementary information in the final rule), through analysis of their own data, or through analysis of other existing data sources.
 - May also consider qualitative research and sources to augment their analysis, or when quantitative data is not readily available. Such sources might include resident interviews or feedback from relevant state and local agencies, such as public health departments or social services departments.
 - Should consider the quality of the research, data, and applicability of analysis to their determination in all cases.
- **Some of the enumerated uses may also be appropriate responses to the impacts experienced by other classes of beneficiaries.** It is permissible for recipients to provide these services to other classes, so long as the recipient determines that the response is also appropriate for those groups.
- **Recipients may designate a class based on income level, including at levels higher than the final rule definition of "low- and moderate-income."** For example, a recipient may identify that households in their community with incomes above the final rule threshold for low-income nevertheless experienced disproportionate impacts from the pandemic and provide responsive services.

2. **Design a response that addresses or responds to the impact.** Programs, services, and other interventions must be reasonably designed to benefit the individual or class that experienced

Coronavirus State & Local Fiscal Recovery Funds: Overview of the Final Rule



U.S. DEPARTMENT OF THE TREASURY

the impact. They must also be related and reasonably proportional to the extent and type of impact experienced. For example, uses that bear no relation or are grossly disproportionate to the type or extent of the impact would not be eligible.

“Reasonably proportional” refers to the scale of the response compared to the scale of the harm, as well as the targeting of the response to beneficiaries compared to the amount of harm they experienced; for example, it may not be reasonably proportional for a cash assistance program to provide a very small amount of aid to a group that experienced severe harm and a much larger amount to a group that experienced relatively little harm. Recipients should consider relevant factors about the harm identified and the response to evaluate whether the response is reasonably proportional. For example, recipients may consider the size of the population impacted and the severity, type, and duration of the impact. Recipients may also consider the efficacy, cost, cost-effectiveness, and time to delivery of the response.

For disproportionately impacted communities, recipients may design interventions that address broader pre-existing disparities that contributed to more severe health and economic outcomes during the pandemic, such as disproportionate gaps in access to health care or pre-existing disparities in educational outcomes that have been exacerbated by the pandemic.



Premium Pay

The Coronavirus State and Local Fiscal Recovery Funds may be used to provide premium pay to eligible workers performing essential work during the pandemic. Premium pay may be awarded to eligible workers up to \$13 per hour. Premium pay must be in addition to wages or remuneration (i.e., compensation) the eligible worker otherwise receives. Premium pay may not exceed \$25,000 for any single worker during the program.

Recipients should undergo the following steps to provide premium pay to eligible workers.

1. **Identify an “eligible” worker.** Eligible workers include workers “needed to maintain continuity of operations of essential critical infrastructure sectors.” These sectors and occupations are eligible:

- | | |
|--|---|
| ✓ Health care | ✓ State, local, or Tribal government workforce |
| ✓ Emergency response | ✓ Workers providing vital services to Tribes |
| ✓ Sanitation, disinfection & cleaning | ✓ Educational, school nutrition, and other work required to operate a school facility |
| ✓ Maintenance | ✓ Laundry |
| ✓ Grocery stores, restaurants, food production, and food delivery | ✓ Elections |
| ✓ Pharmacy | ✓ Solid waste or hazardous materials management, response, and cleanup |
| ✓ Biomedical research | ✓ Work requiring physical interaction with patients |
| ✓ Behavioral health | ✓ Dental care |
| ✓ Medical testing and diagnostics | ✓ Transportation and warehousing |
| ✓ Home and community-based health care or assistance with activities of daily living | ✓ Hotel and commercial lodging facilities that are used for COVID-19 mitigation and containment |
| ✓ Family or child care | |
| ✓ Social services | |
| ✓ Public health | |
| ✓ Mortuary | |
| ✓ Critical clinical research, development, and testing necessary for COVID-19 response | |

Beyond this list, 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.

2. **Verify that the eligible worker performs “essential work,”** meaning work that:

- Is not performed while teleworking from a residence; and
- Involves either:
 - a. regular, in-person interactions with patients, the public, or coworkers of the individual that is performing the work; or
 - b. regular physical handling of items that were handled by, or are to be handled by, patients, the public, or coworkers of the individual that is performing the work.



3. Confirm that the premium pay “responds to” workers performing essential work during the COVID-19 public health emergency. Under the final rule, which broadened the share of eligible workers who can receive premium pay without a written justification, recipients may meet this requirement in one of three ways:

- Eligible worker receiving premium pay is earning (with the premium included) at or below 150 percent of their residing state or county’s average annual wage for all occupations, as defined by the Bureau of Labor Statistics’ [Occupational Employment and Wage Statistics](#), whichever is higher, on an annual basis; or
- Eligible worker receiving premium pay is not exempt from the Fair Labor Standards Act overtime provisions; or
- If a worker does not meet either of the above requirements, the recipient must submit written justification to Treasury detailing how the premium pay is otherwise responsive to workers performing essential work during the public health emergency. This may include a description of the essential worker’s duties, health, or financial risks faced due to COVID-19, and why the recipient determined that the premium pay was responsive. Treasury anticipates that recipients will easily be able to satisfy the justification requirement for front-line workers, like nurses and hospital staff.

Premium pay may be awarded in installments or lump sums (e.g., monthly, quarterly, etc.) and may be awarded to hourly, part-time, or salaried or non-hourly workers. Premium pay must be paid in addition to wages already received and may be paid retrospectively. A recipient may not use SLFRF to merely reimburse itself for premium pay or hazard pay already received by the worker, and premium pay may not be paid to volunteers.



Water & Sewer Infrastructure

The Coronavirus State and Local Fiscal Recovery Funds may be used to make necessary investments in water and sewer infrastructure. State, local, and Tribal governments have a tremendous need to address the consequences of deferred maintenance in drinking water systems and removal, management, and treatment of sewage and stormwater, along with additional resiliency measures needed to adapt to climate change.

Recipients may undertake the eligible projects below:

PROJECTS ELIGIBLE UNDER EPA'S CLEAN WATER STATE REVOLVING FUND (CWSRF)

Eligible projects under the CWSRF, and the final rule, include:

- ✓ Construction of publicly owned treatment works
- ✓ Projects pursuant to implementation of a nonpoint source pollution management program established under the Clean Water Act (CWA)
- ✓ Decentralized wastewater treatment systems that treat municipal wastewater or domestic sewage
- ✓ Management and treatment of stormwater or subsurface drainage water
- ✓ Water conservation, efficiency, or reuse measures
- ✓ Development and implementation of a conservation and management plan under the CWA
- ✓ Watershed projects meeting the criteria set forth in the CWA
- ✓ Energy consumption reduction for publicly owned treatment works
- ✓ Reuse or recycling of wastewater, stormwater, or subsurface drainage water
- ✓ Security of publicly owned treatment works

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

PROJECTS ELIGIBLE UNDER EPA'S DRINKING WATER STATE REVOLVING FUND (DWSRF)

Eligible drinking water projects under the DWSRF, and the final rule, include:

- ✓ Facilities to improve drinking water quality
- ✓ Transmission and distribution, including improvements of water pressure or prevention of contamination in infrastructure and lead service line replacements
- ✓ New sources to replace contaminated drinking water or increase drought resilience, including aquifer storage and recovery system for water storage
- ✓ Green infrastructure, including green roofs, rainwater harvesting collection, permeable pavement
- ✓ Storage of drinking water, such as to prevent contaminants or equalize water demands
- ✓ Purchase of water systems and interconnection of systems
- ✓ New community water systems

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

Coronavirus State & Local Fiscal Recovery Funds: Overview of the Final Rule



ADDITIONAL ELIGIBLE PROJECTS

With broadened eligibility under the final rule, SLFRF funds may be used to fund additional types of projects— such as additional stormwater infrastructure, residential wells, lead remediation, and certain rehabilitations of dams and reservoirs — beyond the CWSRF and DWSRF, if they are found to be “necessary” according to the definition provided in the final rule and outlined below.

- ✓ Culvert repair, resizing, and removal, replacement of storm sewers, and additional types of stormwater infrastructure
- ✓ Infrastructure to improve access to safe drinking water for individual served by residential wells, including testing initiatives, and treatment/remediation strategies that address contamination
- ✓ Dam and reservoir rehabilitation if primary purpose of dam or reservoir is for drinking water supply and project is necessary for provision of drinking water
- ✓ Broad set of 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, as well as water quality testing, compliance monitoring, and remediation activities, including replacement of internal plumbing and faucets and fixtures in schools and childcare facilities

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, taking into account available alternatives, and
- (3) for investments in infrastructure that supply drinking water in order to meet projected population growth, projected to be sustainable over its estimated useful life.

Please note that DWSRF and CWSRF-eligible projects are generally presumed to be necessary investments. Additional eligible projects generally must be responsive to an identified need to achieve or maintain an adequate minimum level of service. Recipients are only required to assess cost-effectiveness of projects for the creation of new drinking water systems, dam and reservoir rehabilitation projects, or projects for the extension of drinking water service to meet population growth needs. Recipients should review the supplementary information to the final rule for more details on requirements applicable to each type of investment.

APPLICABLE STANDARDS & REQUIREMENTS

Treasury encourages recipients to adhere to strong labor standards, including project labor agreements and community benefits agreements that offer wages at or above the prevailing rate and include local hire provisions. Treasury also encourages recipients to prioritize in their procurements employers with high labor standards and to prioritize employers without recent violations of federal and state labor and employment laws.

Coronavirus State & Local Fiscal Recovery Funds: Overview of the Final Rule



Broadband Infrastructure

The Coronavirus State and Local Fiscal Recovery Funds may be used to make necessary investments in broadband infrastructure, which has been shown to be critical for work, education, healthcare, and civic participation during the public health emergency. The final rule broadens the set of eligible broadband infrastructure investments that recipients may undertake.

Recipients may pursue investments in broadband infrastructure meeting technical standards detailed below, as well as an expanded set of cybersecurity investments.

BROADBAND INFRASTRUCTURE INVESTMENTS

Recipients should adhere to the following requirements when designing a broadband infrastructure project:

1. **Identify an eligible area for investment.** Recipients are encouraged to prioritize projects that are designed to serve locations without access to reliable wireline 100/20 Mbps broadband service (meaning service that reliably provides 100 Mbps download speed and 20 Mbps upload speed through a wireline connection), but are broadly able to invest in projects designed to provide service to locations with an identified need for additional broadband investment. Recipients have broad flexibility to define need in their community. Examples of need could include:

- ✓ Lack of access to a reliable high-speed broadband connection
- ✓ Lack of affordable broadband
- ✓ Lack of reliable service

If recipients are considering deploying broadband to locations where there are existing and enforceable federal or state funding commitments for reliable service of at least 100/20 Mbps, recipients must ensure that SLFRF funds are designed to address an identified need for additional broadband investment that is not met by existing federal or state funding commitments. Recipients must also ensure that SLFRF funds will not be used for costs that will be reimbursed by the other federal or state funding streams.

2. **Design project to meet high-speed technical standards.** Recipients are required to design projects to, upon completion, reliably meet or exceed symmetrical 100 Mbps download and upload speeds. In cases where it is not practicable, because of the excessive cost of the project or geography or topography of the area to be served by the project, 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.

Treasury encourages recipients to prioritize investments in fiber-optic infrastructure wherever feasible and to 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, nonprofits, and co-operatives.



3. **Require enrollment in a low-income subsidy program.** Recipients must require the service provider for a broadband project that provides service to households to either:

- ✓ Participate in the FCC's Affordable Connectivity Program (ACP)
- ✓ Provide access to a broad-based affordability program to low-income consumers that provides benefits commensurate to ACP

Treasury encourages broadband services to also include at least one low-cost option offered without data usage caps at speeds sufficient for a household with multiple users to simultaneously telework and engage in remote learning. Recipients are also encouraged to consult with the community on affordability needs.

CYBERSECURITY INVESTMENTS

SLFRF may be used for modernization of cybersecurity for existing and new broadband infrastructure, regardless of their speed delivery standards. This includes modernization of hardware and software.

APPLICABLE STANDARDS & REQUIREMENTS

Treasury encourages recipients to adhere to strong labor standards, including project labor agreements and community benefits agreements that offer wages at or above the prevailing rate and include local hire provisions. Treasury also encourages recipients to prioritize in their procurements employers with high labor standards and to prioritize employers without recent violations of federal and state labor and employment laws.



Restrictions on Use

While recipients have considerable flexibility to use Coronavirus State and Local Fiscal Recovery Funds to address the diverse needs of their communities, some restrictions on use of funds apply.

OFFSET A REDUCTION IN NET TAX REVENUE

- **States and territories may not use this funding to directly or indirectly offset a reduction in net tax revenue resulting from a change in law, regulation, or administrative interpretation beginning on March 3, 2021, through the last day of the fiscal year in which the funds provided have been spent.** If a state or territory cuts taxes during this period, it must demonstrate how it paid for the tax cuts from sources other than SLFRF, such as by enacting policies to raise other sources of revenue, by cutting spending, or through higher revenue due to economic growth. If the funds provided have been used to offset tax cuts, the amount used for this purpose must be repaid to the Treasury.

DEPOSITS INTO PENSION FUNDS

- **No recipients except Tribal governments may use this funding to make a deposit to a pension fund.** Treasury defines a “deposit” as an extraordinary contribution to a pension fund for the purpose of reducing an accrued, unfunded liability. While pension deposits are prohibited, recipients may use funds for routine payroll contributions connected to an eligible use of funds (e.g., for public health and safety staff). Examples of extraordinary payments include ones that:

✗ Reduce a liability incurred prior to the start of the COVID-19 public health emergency and occur outside the recipient's regular timing for making the payment	✗ Occur at the regular time for pension contributions but is larger than a regular payment would have been
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ADDITIONAL RESTRICTIONS AND REQUIREMENTS

Additional restrictions and requirements that apply across all eligible use categories include:

- **No debt service or replenishing financial reserves.** Since SLFRF funds are intended to be used prospectively, recipients may not use SLFRF funds for debt service or replenishing financial reserves (e.g., rainy day funds).
- **No satisfaction of settlements and judgments.** Satisfaction of any obligation arising under or pursuant to a settlement agreement, judgment, consent decree, or judicially confirmed debt restructuring in a judicial, administrative, or regulatory proceeding is itself not an eligible use. However, if a settlement requires the recipient to provide services or incur other costs that are an eligible use of SLFRF funds, SLFRF may be used for those costs.
- **Additional general restrictions.** SLFRF funds may not be used for a project that conflicts with or contravenes the purpose of the American Rescue Plan Act statute (e.g., uses of funds that

Coronavirus State & Local Fiscal Recovery Funds: Overview of the Final Rule



U.S. DEPARTMENT OF THE TREASURY

undermine COVID-19 mitigation practices in line with CDC guidance and recommendations) and may not be used in violation of the Award Terms and Conditions or conflict of interest requirements under the Uniform Guidance. Other applicable laws and regulations, outside of SLFRF program requirements, may also apply (e.g., laws around procurement, contracting, conflicts-of-interest, environmental standards, or civil rights).



Program Administration

The Coronavirus State and Local Fiscal Recovery Funds final rule details a number of administrative processes and requirements, including on distribution of funds, timeline for use of funds, transfer of funds, treatment of loans, use of funds to meet non-federal match or cost-share requirements, administrative expenses, reporting on use of funds, and remediation and recoupment of funds used for ineligible purposes. This section provides a summary for the most frequently asked questions.

TIMELINE FOR USE OF FUNDS

Under the SLFRF, funds must be used for costs incurred on or after March 3, 2021. Further, costs must be obligated by December 31, 2024, and expended by December 31, 2026.

TRANSFERS

Recipients may undertake projects on their own or through subrecipients, which carry out eligible uses on behalf of a recipient, including pooling funds with other recipients or blending and braiding SLFRF funds with other sources of funds. Localities may also transfer their funds to the state through section 603(c)(4), which will decrease the locality's award and increase the state award amounts.

LOANS

Recipients may generally use SLFRF funds to provide loans for uses that are otherwise eligible, although there are special rules about how recipients should track program income depending on the length of the loan. Recipients should consult the final rule if they seek to utilize these provisions.

NON-FEDERAL MATCH OR COST-SHARE REQUIREMENTS

Funds available under the "revenue loss" eligible use category (sections 602(c)(1)(C) and 603(c)(1)(C) of the Social Security Act) generally may be used to meet the non-federal cost-share or matching requirements of other federal programs. However, note that 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 as requested by the Centers for Medicare & Medicaid Services pursuant to 2 CFR 200.102 of the Uniform Guidance and related regulations.

SLFRF funds beyond those that are available under the revenue loss eligible use category may not be used to meet the non-federal match or cost-share requirements of other federal programs, other than as specifically provided for by statute. As an example, the Infrastructure Investment and Jobs Act provides that SLFRF funds may be used to meet the non-federal match requirements of authorized Bureau of Reclamation projects and certain broadband deployment projects. Recipients should consult the final rule for further details if they seek to utilize SLFRF funds as a match for these projects.

ADMINISTRATIVE EXPENSES

SLFRF funds may be used for direct and indirect administrative expenses involved in administering the program. For details on permissible direct and indirect administrative costs, recipients should refer to Treasury's [Compliance and Reporting Guidance](#). Costs incurred for the same purpose in like circumstances must be treated consistently as either direct or indirect costs.

Coronavirus State & Local Fiscal Recovery Funds: Overview of the Final Rule



REPORTING, COMPLIANCE & RECOUPMENT

Recipients are required to comply with Treasury's [Compliance and Reporting Guidance](#), which includes submitting mandatory periodic reports to Treasury.

Funds used in violation of the final rule are subject to remediation and recoupment. As outlined in the final rule, Treasury may identify funds used in violation through reporting or other sources. Recipients will be provided with an initial written notice of recoupment with an opportunity to submit a request for reconsideration before Treasury provides a final notice of recoupment. If the recipient receives an initial notice of recoupment and does not submit a request for reconsideration, the initial notice will be deemed the final notice. Treasury may pursue other forms of remediation and monitoring in conjunction with, or as an alternative to, recoupment.

REVISIONS TO THE OVERVIEW OF THE FINAL RULE:

- January 18, 2022 (p. 4, p. 16): Clarification that the revenue loss standard allowance is “up to” \$10 million under the Replacing Lost Public Sector Revenue eligible use category; addition of further information on the eligibility of general infrastructure, general economic development, and worker development projects under the Public Health and Negative Economic Impacts eligible use category.

Coronavirus State & Local Fiscal Recovery Funds: Overview of the Final Rule

U.S. Department of the Treasury

Compliance and Reporting Guidance

State and Local Fiscal Recovery Funds

Attachment: Attachment C - Compliance and Reporting Guidance (2746 : American Rescue Plan Act)



November 15, 2021



Coronavirus State and Local Fiscal Recovery Funds Guidance on Recipient Compliance and Reporting Responsibilities

On March 11, 2021, the American Rescue Plan Act was signed into law, and established the Coronavirus State Fiscal Recovery Fund and Coronavirus Local Fiscal Recovery Fund, which together make up the Coronavirus State and Local Fiscal Recovery Funds (“SLFRF”) program. This program is intended to provide support to State, territorial, local, and Tribal governments in responding to the economic and public health impacts of COVID-19 and in their efforts to contain impacts on their communities, residents, and businesses.

This guidance provides additional detail and clarification for each recipient’s compliance and reporting responsibilities under the SLFRF program, and should be read in concert with the Award Terms and Conditions, the authorizing statute, the [SLFRF implementing regulation](#), and other regulatory and statutory requirements, including regulatory requirements under [the Uniform Guidance \(2 CFR Part 200\)](#). Please see the [Assistance Listing](#) in SAM.gov under assistance listing number (formerly known as CFDA number), 21.027 for more information.

Please Note: This guidance document applies to the SLFRF program only and does not change nor impact reporting and compliance requirements for the Coronavirus Relief Fund (“CRF”) established by the CARES Act.

This guidance includes two parts:

Part 1: General Guidance

This section provides an orientation to recipients’ compliance responsibilities and the U.S. Department of the Treasury’s (“Treasury”) expectations, and recommends best practices where appropriate under the SLFRF Program.

A. Key Principles.....	P. 3
B. Statutory Eligible Uses.....	P. 3
C. Treasury’s Rulemaking.....	P. 4
D. Uniform Guidance (2 CFR Part 200).....	P. 6
E. Award Terms and Conditions.....	P. 10

Part 2: Reporting Requirements

This section provides information on the reporting requirements for the SLFRF program.

A. Interim Report.....	P. 14
B. Project and Expenditure Report.....	P. 15
C. Recovery Plan Performance Report.....	P. 22
Appendix 1: Expenditure Categories.....	P. 30
Appendix 2: Evidenced-Based Intervention Additional Information.....	P. 32



Part 1: General Guidance

This section provides an orientation on recipients' compliance responsibilities and Treasury's expectations and recommended best practices where appropriate under the SLFRF program.

Recipients under the SLFRF program are the eligible entities identified in sections 602 and 603 of the Social Security Act as added by section 9901 of the American Rescue Plan Act of 2021 (the "SLFRF statute") that receive a SLFRF award. Subrecipients under the SLFRF program are entities that receive a subaward from a recipient to carry out the purposes (program or project) of the SLFRF award on behalf of the recipient.

Recipients are accountable to Treasury for oversight of their subrecipients, including ensuring their subrecipients comply with the SLFRF statute, SLFRF Award Terms and Conditions, Treasury's Interim Final Rule, and reporting requirements, as applicable.

A. Key Principles

There are several guiding principles for developing your own effective compliance regimes:

- Recipients and subrecipients are the first line of defense, and responsible for ensuring the SLFRF award funds are not used for ineligible purposes, and there is no fraud, waste, or abuse associated with their SLFRF award;
- Many SLFRF-funded projects respond to the COVID-19 public health emergency and meet urgent community needs. Swift and effective implementation is vital, and recipients must balance facilitating simple and rapid program access widely across the community and maintaining a robust documentation and compliance regime;
- Treasury encourages recipients to use SLFRF-funded projects to advance shared interests and promote equitable delivery of government benefits and opportunities to underserved communities, as outlined in [Executive Order 13985, On Advancing Racial Equity and Support for Underserved Communities Through the Federal Government](#); and
- Transparency and public accountability for SLFRF award funds and use of such funds are critical to upholding program integrity and trust in all levels of government, and SLFRF award funds should be managed consistent with Administration guidance per [Memorandum M-21-20](#) and [Memorandum M-20-21](#).

B. Statutory Eligible Uses

As a recipient of an SLFRF award, your organization has substantial discretion to use the award funds in the ways that best suit the needs of your constituents – as long as such use fits into one of the following four statutory categories:

1. To respond to the COVID-19 public health emergency or its negative economic impacts;
2. To respond to workers performing essential work during the COVID-19 public health emergency by providing premium pay to such eligible workers of the recipient, or by providing grants to eligible employers that have eligible workers who performed essential work;
3. For the provision of government services, to the extent of the reduction in revenue of such recipient due to the COVID-19 public health emergency, relative to revenues collected in the most recent full fiscal year of the recipient prior to the emergency; and
4. To make necessary investments in water, sewer, or broadband infrastructure.



Treasury adopted an [Interim Final Rule](#) to implement these eligible use categories and other restrictions on the use of funds under the SLFRF program.¹ It is the recipient's responsibility to ensure all SLFRF award funds are used in compliance with these requirements. In addition, recipients should be mindful of any additional compliance obligations that may apply – for example, additional restrictions imposed upon other sources of funds used in conjunction with SLFRF award funds, or statutes and regulations that may independently apply to water, broadband, and sewer infrastructure projects. Recipients should ensure they maintain proper documentation supporting determinations of costs and applicable compliance requirements, and how they have been satisfied as part of their award management, internal controls, and subrecipient oversight and management.

C. Treasury's Rule

Treasury's [Interim Final Rule](#) details recipients' compliance responsibilities and provides additional information on eligible and restricted uses of SLFRF award funds and reporting requirements. Your organization should review and comply with the information contained in Treasury's Interim Final Rule, and any subsequent final rule when building appropriate controls for SLFRF award funds.

- 1. Eligible and Restricted Uses of SLFRF Funds.** As described in the SLFRF statute and summarized above, there are four enumerated eligible uses of SLFRF award funds. As a recipient of an award under the SLFRF program, your organization is responsible for complying with requirements for the use of funds. In addition to determining a given project's eligibility, recipients are also responsible for determining subrecipient's or beneficiaries' eligibility and must monitor use of SLFRF award funds.

To help recipients build a greater understanding of eligible uses, Treasury's Interim Final Rule establishes a framework for determining whether a specific project would be eligible under the SLFRF program, including some helpful definitions. For example, Treasury's Interim Final Rule establishes:

- A framework for determining whether a project "responds to" a "negative economic impact" caused by the COVID-19 public health emergency;
- Definitions of "eligible employers", "essential work," "eligible workers", and "premium pay" for cases where premium pay is an eligible use;
- A definition of "general revenue" and a formula for calculating revenue lost due to the COVID-19 public health emergency;
- A framework for eligible water and sewer infrastructure projects that aligns eligible uses with projects that are eligible under the Environmental Protection Agency's Drinking Water and Clean Water State Revolving Funds; and
- A framework for eligible broadband projects designed to provide service to unserved or underserved households, or businesses at speeds sufficient to enable users to generally meet household needs, including the ability to support the simultaneous use of work, education, and health applications, and also sufficiently robust to meet increasing household demands for bandwidth.

Treasury's Interim Final Rule also provides more information on four important restrictions on use of SLFRF award funds: recipients may not deposit SLFRF funds into a pension fund; recipients that are States or territories may not use SLFRF funds to offset a reduction in net tax revenue caused by the recipient's change in law, regulation, or administrative interpretation; and recipients may not use SLFRF funds as non-Federal match where

¹ Treasury's Interim Final Rule is effective as of May 17, 2021, and public comments are due July 16, 2021. This guidance may be clarified consistent with the final rule.
<https://www.govinfo.gov/content/pkg/FR-2021-05-17/pdf/2021-10283.pdf>



prohibited. In addition, the Interim Final Rule clarifies certain uses of SLFRF funds outside the scope of eligible uses, including that recipients generally may not use SLFRF funds directly to service debt, satisfy a judgment or settlement, or contribute to a “rainy day” fund. Recipients should refer to Treasury’s Interim Final Rule for more information on these restrictions.

2. **Eligible Costs Timeframe.** Your organization, as a recipient of an SLFRF award, may use SLFRF funds to cover eligible costs that your organization incurred during the period that begins on March 3, 2021 and ends on December 31, 2024, as long as the award funds for the obligations incurred by December 31, 2024 are expended by December 31, 2026. Costs for projects incurred by the recipient State, territorial, local, or Tribal government prior to March 3, 2021 are not eligible, as provided for in Treasury’s Interim Final Rule.

Recipients may use SLFRF award funds to provide assistance to households, businesses, nonprofits, and individuals within the eligible use categories described in Treasury’s Interim Final Rule for costs that those households, businesses, nonprofits, and individuals incurred prior to March 3, 2021. For example,

- a. Public Health/Negative Economic Impacts: Recipients may use SLFRF award funds to provide assistance to households, small businesses, and nonprofits – such as rent, mortgage, or utility assistance – for costs incurred by the household prior to March 3, 2021, provided that the recipient state, territorial, local or Tribal government did not incur the cost of providing such assistance prior to March 3, 2021.
- b. Premium Pay: Recipients may provide premium pay retrospectively for work performed at any time since the start of the COVID-19 public health emergency. Such premium pay must be “in addition to” wages and remuneration already received and the obligation to provide such premium pay must not have been incurred by the recipient prior to March 3, 2021.
- c. Revenue Loss: Treasury’s Interim Final Rule gives recipients broad discretion to use funds for the provision of government services to the extent of reduction in revenue. While calculation of lost revenue begins with the recipient’s revenue in the last full fiscal year prior to the COVID-19 public health emergency and includes the 12-month period ending December 31, 2020, use of funds for government services must be forward looking for costs incurred by the recipient after March 3, 2021.
- d. Investments in Water, Sewer, and Broadband: Recipients may use SLFRF award funds to make necessary investments in water, sewer, and broadband. Recipients may use SLFRF award funds to cover costs incurred for eligible projects planned or started prior to March 3, 2021, provided that the project costs covered by the SLFRF award funds were incurred by the recipient after March 3, 2021.

Any funds not obligated or expended for eligible uses by the timelines above must be returned to Treasury, including any unobligated or unexpended funds that have been provided to subrecipients and contractors as part of the award closeout process pursuant to 2 C.F.R. 200.344(d). For the purposes of determining expenditure eligibility, Treasury’s Interim Final Rule provides that “incurred” has the same meaning given to “financial obligation” in 2 CFR 200.1.

3. **Reporting.** Generally, recipients must submit one initial interim report, quarterly or annual Project and Expenditure reports which include subaward reporting, and in some cases annual Recovery Plan reports. Treasury’s Interim Final Rule and Part 2 of this guidance provide more detail around SLFRF reporting requirements.



Assistance Listing

The [Assistance Listing](#) for the Coronavirus State and Local Fiscal Recovery Funds (SLFRF) was published May 28, 2021 on SAM.gov under Assistance Listing Number (“ALN”), formerly known as CFDA Number, **21.027**.

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

To expedite payments and meet statutory timelines Treasury issued initial payments under an existing ALN, 21.019, assigned to the CRF. If you have already received funds or captured the initial number in your records, please update your systems and reporting to reflect the new ALN 21.027 for the SLFRF program. **Recipients must use ALN 21.027 for all financial accounting, subawards, and associated program reporting requirements for the SLFRF awards.**

D. Uniform Administrative Requirements

The SLFRF awards are generally subject to the requirements set forth in the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, [2 CFR Part 200](#) (the “Uniform Guidance”). In all instances, your organization should review the Uniform Guidance requirements applicable to your organization’s use of SLFRF funds, and SLFRF-funded projects. Recipients should consider how and whether certain aspects of the Uniform Guidance apply.

The following sections provide a general summary of your organization’s compliance responsibilities under applicable statutes and regulations, including the Uniform Guidance, as described in the [2020 OMB Compliance Supplement Part 3. Compliance Requirements \(issued August 18, 2020\)](#). Note that the descriptions below are only general summaries and all recipients and subrecipients are advised to carefully review the Uniform Guidance requirements and any additional regulatory and statutory requirements applicable to the program.

- 1. Allowable Activities.** Each recipient should review program requirements, including Treasury’s Interim Final Rule and the recipient’s Award Terms and Conditions, to determine and record eligible uses of SLFRF funds. Per 2 CFR Part 200.303, your organization must develop and implement effective internal controls to ensure that funding decisions under the SLFRF award constitute eligible uses of funds, and document determinations.
- 2. Allowable Costs/Cost Principles.** As outlined in the Uniform Guidance at 2 CFR Part 200, Subpart E regarding Cost Principles, allowable costs are based on the premise that a recipient is responsible for the effective administration of Federal awards, application of sound management practices, and administration of Federal funds in a manner consistent with the program objectives and terms and conditions of the award. Recipients must implement robust internal controls and effective monitoring to ensure compliance with the Cost Principles, which are important for building trust and accountability.



SLFRF Funds may be, but are not required to be, used along with other funding sources for a given project. Note that SLFRF Funds may not be used for a non-Federal cost share or match where prohibited by other Federal programs, e.g., funds may not be used for the State share for Medicaid.²

Treasury's Interim Final Rule and guidance and the Uniform Guidance outline the types of costs that are allowable, including certain audit costs. For example, per 2 CFR 200.425, a reasonably proportionate share of the costs of audits required by the Single Audit Act Amendments of 1996 are allowable; however, costs for audits that were not performed in accordance with 2 CFR Part 200, Subpart F are not allowable. Please see 2 CFR Part 200, Subpart E regarding the Cost Principles for more information.

- a. **Administrative costs:** Recipients may use funds for administering the SLFRF program, including costs of consultants to support effective management and oversight, including consultation for ensuring compliance with legal, regulatory, and other requirements.³ Further, costs must be reasonable and allocable as outlined in 2 CFR 200.404 and 2 CFR 200.405. Pursuant to the SLFRF Award Terms and Conditions, recipients are permitted to charge both direct and indirect costs to their SLFRF award as administrative costs. Direct costs are those that are identified specifically as costs of implementing the SLFRF program objectives, such as contract support, materials, and supplies for a project. Indirect costs are general overhead costs of an organization where a portion of such costs are allocable to the SLFRF award such as the cost of facilities or administrative functions like a director's office.⁴⁵ Each category of cost should be treated consistently in like circumstances as direct or indirect, and recipients may not charge the same administrative costs to both direct and indirect cost categories, or to other programs. If a recipient has a current Negotiated Indirect Costs Rate Agreement (NICRA) established with a Federal cognizant agency responsible for reviewing, negotiating, and approving cost allocation plans or indirect cost proposals, then the recipient may use its current NICRA. Alternatively, if the recipient does not have a NICRA, the recipient may elect to use the de minimis rate of 10 percent of the modified total direct costs pursuant to 2 CFR 200.414(f).
 - b. **Salaries and Expenses:** In general, certain employees' wages, salaries, and covered benefits are an eligible use of SLFRF award funds. Please see Treasury's Interim Final Rule for details.
- 3. Cash Management.** SLFRF payments made to recipients are not subject to the requirements of the Cash Management Improvement Act and Treasury's implementing regulations at 31 CFR part 205 or 2 CFR 200.305(b)(8)-(9).
- As such, recipients can place funds in interest-bearing accounts, do not need to remit interest to Treasury, and are not limited to using that interest for eligible uses under the SLFRF award.
- 4. Eligibility.** Under this program, recipients are responsible for ensuring funds are used for eligible purposes. Generally, recipients must develop and implement policies and

² See 42 CFR 433.51 and 45 CFR 75.306.

³ Recipients also may use SLFRF funds directly for administrative costs to improve efficacy of programs that respond to the COVID-19 public health emergency. 31 CFR 35.6(b)(10).

⁴ 2 CFR 200.413 Direct Costs.

⁵ 2 CFR 200.414 Indirect Costs.



procedures, and record retention, to determine and monitor implementation of criteria for determining the eligibility of beneficiaries and/or subrecipients. Your organization, and if applicable, the subrecipient(s) administering a program on behalf of your organization, will need to maintain procedures for obtaining information evidencing a given beneficiary, subrecipient, or contractor's eligibility including a valid SAM.gov registration. Implementing risk-based due diligence for eligibility determinations is a best practice to augment your organization's existing controls.

5. **Equipment and Real Property Management.** Any purchase of equipment or real property with SLFRF funds must be consistent with the Uniform Guidance at 2 CFR Part 200, Subpart D. Equipment and real property acquired under this program must be used for the originally authorized purpose. Consistent with 2 CFR 200.311 and 2 CFR 200.313, any equipment or real property acquired using SLFRF funds shall vest in the non-Federal entity. Any acquisition and maintenance of equipment or real property must also be in compliance with relevant laws and regulations.
6. **Matching, Level of Effort, Earmarking.** There are no matching, level of effort, or earmarking compliance responsibilities associated with the SLFRF award. See Section C.1 (Eligible and Restricted Uses of SLFRF Funds) for a discussion of restrictions on use of SLFRF funds. SLFRF funds may only be used for non-Federal match in other programs where costs are eligible under both SLFRF and the other program and use of such funds is not prohibited by the other program.
7. **Period of Performance.** Your organization should also develop and implement internal controls related to activities occurring outside the period of performance. For example, each recipient should articulate each project's policy on allowability of costs incurred prior to award or start of the period of performance. All funds remain subject to statutory requirements that they must be used for costs incurred by the recipient during the period that begins on March 3, 2021, and ends on December 31, 2024, and that award funds for the financial obligations incurred by December 31, 2024 must be expended by December 31, 2026. Any funds not used must be returned to Treasury as part of the award closeout process pursuant to 2 C.F.R. 200.344(d).
8. **Procurement, Suspension & Debarment.** Recipients are responsible for ensuring that any procurement using SLFRF funds, or payments under procurement contracts using such funds are consistent with the procurement standards set forth in the Uniform Guidance at 2 CFR 200.317 through 2 CFR 200.327, as applicable. The Uniform Guidance establishes in 2 CFR 200.319 that all procurement transactions for property or services must be conducted in a manner providing full and open competition, consistent with standards outlined in 2 CFR 200.320, which allows for non-competitive procurements only in circumstances where at least one of the conditions below is true: the item is below the micro-purchase threshold; the item is only available from a single source; the public exigency or emergency will not permit a delay from publicizing a competitive solicitation; or after solicitation of a number of sources, competition is determined inadequate.⁶ Recipients must have and use documented procurement procedures that are consistent with the standards outlined in 2 CFR 200.317 through 2 CFR 200.320. The Uniform Guidance requires an infrastructure for competitive bidding and contractor oversight, including maintaining written standards of conduct and prohibitions on dealing with suspended or debarred parties. Your organization must ensure adherence to all applicable local, State, and federal procurement laws and regulations.
9. **Program Income.** Generally, program income includes, but is not limited to, income from fees for services performed, the use or rental of real or personal property acquired under

⁶ 2 CFR 200.320(c)(1)-(3) and (5)



Federal awards and principal and interest on loans made with Federal award funds. Program income does not include interest earned on advances of Federal funds, rebates, credits, discounts, or interest on rebates, credits, or discounts. Recipients of SLFRF funds should calculate, document, and record the organization's program income. Additional controls that your organization should implement include written policies that explicitly identify appropriate allocation methods, accounting standards and principles, compliance monitoring checks for program income calculations, and records.

The Uniform Guidance outlines the requirements that pertain to program income at 2 CFR 200.307. Treasury intends to provide additional guidance regarding program income and the application of 2 CFR 200.307(e)(1), including with respect to lending programs.

- 10. Reporting.** All recipients of federal funds must complete financial, performance, and compliance reporting as required and outlined in Part 2 of this guidance. Expenditures may be reported on a cash or accrual basis, as long as the methodology is disclosed and consistently applied. Reporting must be consistent with the definition of expenditures pursuant to 2 CFR 200.1. Your organization should appropriately maintain accounting records for compiling and reporting accurate, compliant financial data, in accordance with appropriate accounting standards and principles.

In addition, where appropriate, your organization needs to establish controls to ensure completion and timely submission of all mandatory performance and/or compliance reporting. See Part 2 of this guidance for a full overview of recipient reporting responsibilities.

- 11. Subrecipient Monitoring.** SLFRF recipients that are pass-through entities as described under 2 CFR 200.1 are required to manage and monitor their subrecipients to ensure compliance with requirements of the SLFRF award pursuant to 2 CFR 200.332 regarding requirements for pass-through entities.

First, your organization must clearly identify to the subrecipient: (1) that the award is a subaward of SLFRF funds; (2) any and all compliance requirements for use of SLFRF funds; and (3) any and all reporting requirements for expenditures of SLFRF funds.

Next, your organization will need to evaluate each subrecipient's risk of noncompliance based on a set of common factors. These risk assessments may include factors such as prior experience in managing Federal funds, previous audits, personnel, and policies or procedures for award execution and oversight. Ongoing monitoring of any given subrecipient should reflect its assessed risk and include monitoring, identification of deficiencies, and follow-up to ensure appropriate remediation.

Accordingly, your organization should develop written policies and procedures for subrecipient monitoring and risk assessment and maintain records of all award agreements identifying or otherwise documenting subrecipients' compliance obligations.

Recipients should note that non-entitlement units of local government (NEUs) are not subrecipients under the SLFRF program. They are SLFRF recipients that will report directly to Treasury.

Recipients should also note that subrecipients do not include individuals and organizations that received SLFRF funds as end users to respond to the negative economic impacts of COVID-19 on these organizations. Such individuals and organizations are beneficiaries and not subject to audit pursuant to the Single Audit Act and 2 C.F.R. Part 200, Subpart F.



Separately or in addition, many recipients may choose to provide a subaward (e.g., via contract or grant) to other entities to provide services to other end—users. For example, a recipient may provide a grant to a nonprofit to provide homeless services to individuals experiencing homelessness. In this case, the subaward to a nonprofit is based on the services that the Recipient intends to provide, assistance to households experiencing homelessness, and the nonprofit is serving as the subrecipient, providing services on behalf of the recipient. Subrecipients are subject to audit pursuant to the Single Audit Act and 2 CFR part 200, subpart F regarding audit requirements.

- 12. Special Tests and Provisions.** Treasury has received comments on the Interim Final Rule and will adopt a final rule after responding to these comments. In addition, Treasury may add clarifications to the Final Rule and other subregulatory guidance as well as frequently asked questions.

Across each of the compliance requirements above, Treasury described some best practices for development of internal controls. The table below provides a brief description and example of each best practice.

Table 1: Internal controls best practices

Best Practice	Description	Example
Written policies and procedures	Formal documentation of recipient policies and procedures	Documented procedure for determining worker eligibility for premium pay
Written standards of conduct	Formal statement of mission, values, principles, and professional standards	Documented code of conduct / ethics for subcontractors
Risk-based due diligence	Pre-payment validations conducted according to an assessed level of risk	Enhanced eligibility review of subrecipient with imperfect performance history
Risk-based compliance monitoring	Ongoing validations conducted according to an assessed level of risk	Higher degree of monitoring for projects that have a higher risk of fraud, given program characteristics
Record maintenance and retention	Creation and storage of financial and non-financial records.	Storage of all subrecipient payment information.

E. Award Terms and Conditions

The Award Terms and Conditions of the SLFRF financial assistance agreement sets forth the compliance obligations for recipients pursuant to the SLFRF statute, the Uniform Guidance, and Treasury's Interim Final Rule. Recipients should ensure they remain in compliance with all Award Terms and Conditions. These obligations include the following items in addition to those described above:

- 1. SAM.gov Requirements.** All eligible recipients are also required to have an active registration with the System for Award Management (SAM) (<https://www.sam.gov>). To ensure timely receipt of funding, Treasury has stated that Non-entitlement Units of Government (NEUs) who have not previously registered with SAM.gov may do so after receipt of the award, but before the submission of mandatory reporting.⁷
- 2. Recordkeeping Requirements.** Generally, your organization must maintain records and financial documents for five years after all funds have been expended or returned to Treasury, as outlined in paragraph 4.c. of the Award Terms and Conditions. Treasury may

⁷ See flexibility provided in https://www.whitehouse.gov/wp-content/uploads/2021/03/M_21_20.pdf.



request transfer of records of long-term value at the end of such period. Wherever practicable, such records should be collected, transmitted, and stored in open and machine-readable formats.

Your organization must agree to provide or make available such records to Treasury upon request, and to the Government Accountability Office (“GAO”), Treasury’s Office of Inspector General (“OIG”), and their authorized representative in order to conduct audits or other investigations.

3. **Single Audit Requirements.** Recipients and subrecipients that expend more than \$750,000 in Federal awards during their fiscal year will be subject to an audit under the Single Audit Act and its implementing regulation at 2 CFR Part 200, Subpart F regarding audit requirements.⁸ Recipients and subrecipients may also refer to the [Office of Management and Budget \(OMB\) Compliance Supplements for audits of federal funds and related guidance](#) and the [Federal Audit Clearinghouse](#) to see examples and single audit submissions.
4. **Civil Rights Compliance.** Recipients of Federal financial assistance from the Treasury are required to meet legal requirements relating to nondiscrimination and nondiscriminatory use of Federal funds. Those requirements include ensuring that entities receiving Federal financial assistance from the Treasury do not deny benefits or services, or otherwise discriminate on the basis of race, color, national origin (including limited English proficiency), disability, age, or sex (including sexual orientation and gender identity), in accordance with the following authorities: Title VI of the Civil Rights Act of 1964 (Title VI) Public Law 88-352, 42 U.S.C. 2000d-1 et seq., and the Department’s implementing regulations, 31 CFR part 22; Section 504 of the Rehabilitation Act of 1973 (Section 504), Public Law 93-112, as amended by Public Law 93-516, 29 U.S.C. 794; Title IX of the Education Amendments of 1972 (Title IX), 20 U.S.C. 1681 et seq., and the Department’s implementing regulations, 31 CFR part 28; Age Discrimination Act of 1975, Public Law 94-135, 42 U.S.C. 6101 et seq., and the Department implementing regulations at 31 CFR part 23.

In order to carry out its enforcement responsibilities under Title VI of the Civil Rights Act, Treasury will collect and review information from non-Tribal recipients to ascertain their compliance with the applicable requirements before and after providing financial assistance. Treasury’s implementing regulations, 31 CFR part 22, and the Department of Justice (DOJ) regulations, [Coordination of Non-discrimination in Federally Assisted Programs, 28 CFR part 42](#), provide for the collection of data and information from recipients (see 28 CFR 42.406). Treasury may request that recipients submit data for post-award compliance reviews, including information such as a narrative describing their Title VI compliance status. This collection does not apply to Tribal Governments.

⁸ For-profit entities that receive SLFRF subawards are not subject to Single Audit requirements. However, they are subject to other audits as deemed necessary by authorized governmental entities, including Treasury, the GAO, and Treasury’s OIG.



Part 2: Reporting Guidance

There are three types of reporting requirements for the SLFRF program.

- **Interim Report:** Provide initial overview of status and uses of funding. This is a one-time report. [See Section A, page 14.](#)
- **Project and Expenditure Report:** Report on projects funded, expenditures, and contracts and subawards over \$50,000, and other information. [See Section B, page 15.](#)
- **Recovery Plan Performance Report:** The Recovery Plan Performance Report (the “Recovery Plan”) will provide information on the projects that large recipients are undertaking with program funding and how they plan to ensure program outcomes are achieved in an effective, efficient, and equitable manner. It will include key performance indicators identified by the recipient and some mandatory indicators identified by Treasury. The Recovery Plan will be posted on the website of the recipient as well as provided to Treasury. [See Section C, page 22.](#)

The reporting threshold is based on the total award amount allocated by Treasury under the SLFRF program, not the funds received by the recipient as of the time of reporting.

States and territories are also required to submit information on their distributions to NEUs. Please refer to Section D for additional details.

**Table 2: Reporting requirements by recipient type**

Tier	Recipient	Interim Report	Project and Expenditure Report	Recovery Plan Performance Report
1	States, U.S. territories, metropolitan cities and counties with a population that exceeds 250,000 residents	By August 31, 2021 or 60 days after receiving funding if funding was received by October 15, with expenditures by category	By January 31, 2022, and then 30 days after the end of each quarter thereafter ⁹	By August 31, 2021 or 60 days after receiving funding, and annually thereafter by July 31 ¹⁰
2	Metropolitan cities and counties with a population below 250,000 residents which received more than \$10 million in SLFRF funding		By April 30, 2022, and then annually thereafter ¹¹	Not required
3	Tribal Governments which received more than \$30 million in SLFRF funding			
4	Tribal Governments which received less than \$30 million in SLFRF funding			
5	Metropolitan cities and counties with a population below 250,000 residents which received less than \$10 million in SLFRF funding			
6	NEUs	Not required		

Note: Based on the period of performance, reports will be collected through April 30, 2027. See the specific due dates listed in Sections B and C.

The remainder of this document describes these reporting requirements. User guides describing how and where to submit required reports will be posted at www.treasury.gov/SLFRPReporting and updated on a regular basis.

⁹ Interim Final Rule Page 111

¹⁰ Interim Final Rule page 112

¹¹ Interim Final Rule Page 111



Comparison to reporting for the CRF

This guidance does not change the reporting or compliance requirements pertaining to the CRF. Reporting and compliance requirements for the SLFRF are separate from CRF reporting requirements. Changes from CRF to SLFRF include:

- **Project, Expenditure, and Subaward Reporting:** The SLFRF reporting requirements leverage the existing reporting regime used for CRF to foster continuity and provide many recipients with a familiar reporting mechanism. The data elements for the Project and Expenditure Report will largely mirror those used for CRF, with some minor exceptions noted in this guidance. The users' guide will describe how reporting for CRF funds will relate to reporting for the SLFRF.
- **Timing of Reports:** CRF reports were due within 10 days of each calendar quarter end. For quarterly reporters, SLFRF reporting will be due 30 days from quarter end. For annual reporters, SLFRF reporting will be due on an annual schedule (see table below).
- **Program and Performance Reporting:** The CRF reporting did not include any program or performance reporting. To build public awareness and accountability and allow Treasury to monitor compliance with eligible uses, some program and performance reporting is required for SLFRF.

A. Interim Report

States, U.S. territories, metropolitan cities, counties, and Tribal governments are required to submit a one-time interim report with expenditures¹² by Expenditure Category covering the period from March 3rd to July 31, 2021, by August 31, 2021 or sixty (60) days after first receiving funding if the recipient's date of award is between July 15, 2021 and October 15, 2021. The recipient will be required to enter obligations¹³ and expenditures and, for each, select the specific expenditure category from the available options. See Appendix 1 for Expenditure Categories (EC).

1. Required Programmatic Data

Recipients will also be required to provide the following information if they have or plan to have expenditures in the following Expenditure Categories.

- Revenue replacement (EC 6.1¹⁴):** Key inputs into the revenue replacement formula in the Interim Final Rule and estimated revenue loss due to the Covid-19 public health emergency calculated using the formula in the Interim Final Rule as of December 31, 2020.
 - Base year general revenue (e.g., revenue in the last full fiscal year prior to the public health emergency)
 - Fiscal year end date
 - Growth adjustment used (either 4.1 percent or average annual general revenue growth over 3 years prior to pandemic)
 - Actual general revenue as of the twelve months ended December 31, 2020

¹² For purposes of reporting in the SLFRF portal, an expenditure is the amount that has been incurred as a liability of the entity (the service has been rendered or the good has been delivered to the entity).

¹³ For purposes of reporting in the SLFRF portal, an obligation is an order placed for property and services, contracts and subawards made, and similar transactions that require payment.

¹⁴ See Appendix 1 for the full Expenditure Category (EC) list. References to Expenditure Categories are identified by "EC" followed by numbers from the table in Appendix 1.



- Estimated revenue loss due to the Covid-19 public health emergency as of December 31, 2020
- An explanation of how revenue replacement funds were allocated to government services (Note: additional instructions and/or template to be provided in users' guide)

In calculating general revenue and the other items discussed above, recipients should use audited data if it is available. When audited data is not available, recipients are not required to obtain audited data if substantially accurate figures can be produced on an unaudited basis. Recipients should use their own data sources to calculate general revenue, and do not need to rely on revenue data published by the Census Bureau. Treasury acknowledges that due to differences in timing, data sources, and definitions, recipients' self-reported general revenue figures may differ from those published by the Census Bureau. Recipients may provide data on a cash, accrual, or modified accrual basis, provided that recipients are consistent in their choice of methodology throughout the covered period and until reporting is no longer required. Recipients' reporting should align with their own financial reporting.

In calculating general revenue, recipients should exclude all intergovernmental transfers from the federal government. This includes, but is not limited to, federal transfers made via a State to a locality pursuant to the CRF or SLFRF. To the extent federal funds are passed through States or other entities or intermingled with other funds, recipients should attempt to identify and exclude the federal portion of those funds from the calculation of general revenue on a best-efforts basis.

Consistent with the broad latitude provided to recipients to use funds for government services to the extent of reduction in revenue, recipients will be required to submit a description of services provided. This description may be in narrative or in another form, and recipients are encouraged to report based on their existing budget processes and to minimize administrative burden. For example, a recipient with \$100 in revenue replacement funds available could indicate that \$50 were used for law enforcement operating expenses and \$50 were used for pay-go building of sidewalk infrastructure. As discussed in the Interim Final Rule, these services can include a broad range of services but may not be used directly for pension deposits or debt service.

Reporting requirements will not require tracking the indirect effects of Fiscal Recovery Funds, apart from the restrictions on use of Fiscal Recovery Funds to offset a reduction in net tax revenue. In addition, recipients must indicate that Fiscal Recovery Funds were not used to make a deposit in a pension fund.

B. Project and Expenditure Report

All recipients are required to submit Project and Expenditure Reports.

1. Quarterly Reporting

The following recipients are required to submit quarterly Project and Expenditure Reports:

- States and U.S. territories
- Tribal governments that received more than \$30 million in SLFRF funding
- Metropolitan cities and counties with a population that exceeds 250,000 residents
- Metropolitan cities and counties with a population below 250,000 residents that are allocated more than \$10 million in SLFRF funding



For these recipients, the initial quarterly Project and Expenditure Report will cover three calendar quarters from March 3, 2021 to December 31, 2021 and must be submitted to Treasury by January 31, 2022. The subsequent quarterly reports will cover one calendar quarter and must be submitted to Treasury within 30 calendar days after the end of each calendar quarter. Quarterly reports are not due concurrently with applicable annual reports. The table below summarizes the quarterly report timelines:

Report	Year	Quarter	Period Covered	Due Date
1	2021	2 - 4	March 3 – December 31	January 31, 2022
2	2022	1	January 1 – March 31	April 30, 2022
3	2022	2	April 1 – June 30	July 31, 2022
4	2022	3	July 1 – September 30	October 31, 2022
5	2022	4	October 1 – December 31	January 31, 2023
6	2023	1	January 1 – March 31	April 30, 2023
7	2023	2	April 1 – June 30	July 31, 2023
8	2023	3	July 1 – September 30	October 31, 2023
9	2023	4	October 1 – December 31	January 31, 2024
10	2024	1	January 1 – March 31	April 30, 2024
11	2024	2	April 1 – June 30	July 31, 2024
12	2024	3	July 1 – September 30	October 31, 2024
13	2024	4	October 1 – December 31	January 31, 2025
14	2025	1	January 1 – March 31	April 30, 2025
15	2025	2	April 1 – June 30	July 31, 2025
16	2025	3	July 1 – September 30	October 31, 2025
17	2025	4	October 1 – December 31	January 31, 2026
18	2026	1	January 1 – March 31	April 30, 2026
19	2026	2	April 1 – June 30	July 31, 2026
20	2026	3	July 1 – September 30	October 31, 2026
21	2026	4	October 1 – December 31	March 31, 2027

2. Annual Reporting

The following recipients are required to submit annual Project and Expenditure Reports:

- Tribal governments that received less than \$30 million in SLFRF funding
- Metropolitan cities and counties with a population below 250,000 residents that are allocated less than \$10 million in SLFRF funding
- NEUs. To facilitate reporting, each NEU will need a NEU Recipient Number. This is a unique identification code for each NEU assigned by the State or territory to the NEU as part of its request for funding.

For these recipients, the initial Project and Expenditure Report will cover from March 3, 2021 to March 31, 2022 and must be submitted to Treasury by April 30, 2022. The subsequent annual reports will cover one calendar year and must be submitted to Treasury by April 30. The table below summarizes the report timelines:

Report	Period Covered	Due Date
1	March 3, 2021 – March 31, 2022	April 30, 2022
2	April 1, 2022 – March 31, 2023	April 30, 2023
3	April 1, 2023 – March 31, 2024	April 30, 2024
4	April 1, 2024 – March 31, 2025	April 30, 2025
5	April 1, 2025 – March 31, 2026	April 30, 2026
6	April 1, 2026 – December 31, 2026	April 30, 2027



3. Required Information

The following information will be required in Project and Expenditure Reports for both quarterly and annual reporting:

- a. Projects: Provide information on all SLFRF funded projects. Projects are new or existing eligible government services or investments funded in whole or in part by SLFRF funding. For each project, the recipient will be required to enter the project name, identification number (created by the recipient), project expenditure category (see Appendix 1), description, and status of completion. Project descriptions must describe the project in sufficient detail to provide understanding of the major activities that will occur, and will be required to be between 50 and 250 words. Projects should be defined to include only closely related activities directed toward a common purpose. Recipients should review the Required Programmatic Data described in 3.g. below and define their projects at a sufficient level of granularity.

Note: For each project, the recipient will be asked to select the appropriate Expenditure Category based on the scope of the project (see Appendix 1). Projects should be scoped to align to a single Expenditure Category. For select Expenditure Categories, the recipient will also be asked to provide additional programmatic data (described further below).

- b. Expenditures: Once a project is entered the recipient will be able to report on the project's obligations and expenditures. Recipients will be asked to report:
- Current period obligation
 - Cumulative obligation
 - Current period expenditure
 - Cumulative expenditure
- c. Project Status: Once a project is entered the recipient will be asked to report on project status each reporting period, in four categories:
- Not Started
 - Completed less than 50 percent
 - Completed 50 percent or more
 - Completed
- d. Adopted Budget (States, U.S. territories, metropolitan cities and counties with a population that exceeds 250,000 residents only): Each state, territory and metropolitan city and county with a population that exceeds 250,000 residents will provide the budget adopted for each project by its jurisdiction associated with SLFRF funds. Treasury will use this information to better understand the intended impact, identify opportunities for technical assistance, and understand the recipient's progress in program implementation. Treasury is not approving or pre-approving projects or budgets.
- Recipients will enter the Adopted Budget based on information that exists currently in the recipient's financial systems and the recipient's established budget process. Treasury understands that recipients may use different budget processes. For example, a recipient may consider a project budgeted once a legislature has appropriated funds; whereas another recipient may consider a project budgeted at the moment when the funds have been obligated.
 - Additional information will be provided on the differences between Adopted Budget, Obligations, and Expenditures as part of the forthcoming User Guide.
- e. Project Demographic Distribution – Collection of this data will be phased in; no data will be collected in this area before April 2022: Recognizing the disproportionate impact of the pandemic-related recession on low-income and economically disadvantaged communities,



the Interim Final Rule encourages recipients to direct Fiscal Recovery Funds toward disproportionately impacted communities. Recipients are encouraged to design projects that prioritize economic and racial equity and promote equitable outcomes. Treasury is committed to supporting recipients in executing and reporting on projects that promote equity. In a subsequent version of the Reporting Guidance and User Guide, which will be released after the issuance of the Fiscal Recovery Fund Final Rule, Treasury will issue detailed requirements for reporting the project demographic distribution of Fiscal Recovery Fund projects.

- f. Subawards: Each recipient shall also provide detailed obligation and expenditure information for any contracts and grants awarded, loans issued, transfers made to other government entities, and direct payments made by the recipient that are greater than \$50,000.

Recipients do not also need to submit separate monthly subaward reports to FSRS.gov as required pursuant to the 2 CFR Part 170, Appendix A award term regarding reporting subaward and executive compensation, which is included in the SLFRF Award Terms and Conditions. Treasury will submit this reporting on behalf of recipients using the \$50,000 reporting threshold, timing, and data elements discussed in this guidance. If recipients choose to continue reporting to FSRS.gov in addition to reporting directly to Treasury on these funds, they may do so and will be asked to notify Treasury as part of their quarterly submission.

In general, recipients will be asked to provide the following information for each Contract, Grant, Loan, Transfer, or Direct Payment greater than \$50,000:

- Subrecipient identifying and demographic information (e.g., DUNS number and location)
- Award number (e.g., Award number, Contract number, Loan number)
- Award date, type, amount, and description
- Award payment method (reimbursable or lump sum payment(s))
- For loans, expiration date (date when loan expected to be paid in full)
- Primary place of performance
- Related project name(s)
- Related project identification number(s) (created by the recipient)
- Period of performance start date
- Period of performance end date
- Quarterly obligation amount
- Quarterly expenditure amount
- Project(s)
- Additional programmatic performance indicators for select Expenditure Categories (see below)

Aggregate reporting is required for contracts, grants, transfers made to other government entities, loans, direct payments, and payments to individuals that are below \$50,000. This information will be accounted for by expenditure category at the project level.

As required by the 2 CFR Part 170, Appendix A award term regarding reporting subaward and executive compensation, recipients must also report the names and total compensation of their five most highly compensated executives and their subrecipients' executives for the preceding completed fiscal year if (1) the recipient received 80 percent or more of its annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as provided by 2 CFR 170.320 (and subawards), and received \$25,000,000 or more in annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the



Transparency Act (and subawards), and (2) if the information is not otherwise public. In general, most SLFRF Recipients are governmental entities with executive salaries that are already disclosed, so no additional information must be reported. The recipient is responsible for the subrecipients' compliance with registering and maintaining an updated profile on SAM.gov.

- g. Civil Rights Compliance: Treasury will request information on recipients' compliance with Title VI of the Civil Rights Act of 1964, as applicable, on an annual basis. This information may include a narrative describing the recipient's compliance with Title VI, along with other questions and assurances. This collection does not apply to Tribal Governments.
- h. Ineligible Activities: Tax Offset Provision (States and territories only): Treasury may collect additional information related to the Tax Offset Provision as described in section 602(c)(2) of the Social Security Act and implemented under 31 CFR 35.8 as part of the Project and Expenditure Report, such as but not limited to revenue reducing covered changes. Please see Section C.11 (Recovery Plan, Ineligible Activities: Tax Offset Provision) for more information.
- i. Required Programmatic Data (other than infrastructure projects): For all projects listed under the following Expenditure Categories (see Appendix 1), the information listed must be provided in each report.
 1. Payroll for Public Health and Safety Employees (EC 1.9) – *Collection to begin in January 2022*:
 - Number of government FTEs responding to COVID-19 supported under this authority
 2. Household Assistance (EC 2.1-2.5) – *Collection to begin January 2022*:
 - Brief description of structure and objectives of assistance program(s) (e.g., nutrition assistance for low-income households)
 - Number of households served (by program if recipient establishes multiple separate household assistance programs)
 - Brief description of recipient's approach to ensuring that aid to households responds to a negative economic impact of Covid-19, as described in the Interim Final Rule
 3. Small Business Economic Assistance (EC 2.9) – *Collection of this data will be phased in; no data will be collected in this area before April 2022*:
 - Brief description of the structure and objectives of assistance program(s) (e.g., grants for additional costs related to Covid-19 mitigation)
 - Number of small businesses served (by program if recipient establishes multiple separate small businesses assistance programs)
 - Brief description of recipient's approach to ensuring that aid to small businesses responds to a negative economic impact of COVID-19, as described in the Interim Final Rule
 4. Aid to Travel, Tourism, and Hospitality or Other Impacted Industries (EC 2.11-2.12) – *Collection of this data will be phased in; no data will be collected in this area before April 2022*:
 - If aid is provided to industries other than travel, tourism, and hospitality (EC 2.12), a description of pandemic impact on the industry and rationale for providing aid to the industry
 - Brief narrative description of how the assistance provided responds to negative economic impacts of the COVID-19 pandemic



- For each subaward:
 - Sector of employer (Note: additional detail, including list of sectors to be provided in a users' guide)
 - Purpose of funds (e.g., payroll support, safety measure implementation)
5. Rehiring Public Sector Staff (EC 2.14) – *Collection to begin in January 2022:*
- Number of FTEs rehired by governments under this authority
6. Education Assistance (EC 3.1-3.5) – *Collection to begin in January 2022:*
- The National Center for Education Statistics (“NCES”) School ID or NCES District ID. List the School District if all schools within the school district received some funds. If not all schools within the school district received funds, list the School ID of the schools that received funds. These can allow evaluators to link data from the NCES to look at school-level demographics and, eventually, student performance.¹⁵
7. Premium Pay (both Public Sector EC 4.1 and Private Sector EC 4.2) – *Collection to begin in January 2022:*
- List of sectors designated as critical to the health and well-being of residents by the chief executive of the jurisdiction, if beyond those included in the Interim Final Rule (Note: a list of sectors will be provided in the forthcoming users' guide).
 - Number of workers to be served
 - Employer sector for all subawards to third-party employers (i.e., employers other than the State, local, or Tribal government) (Note: a list of sectors will be provided in the forthcoming users' guide).
 - For groups of workers (e.g., an operating unit, a classification of worker, etc.) or, to the extent applicable, individual workers, for whom premium pay would increase total pay above 150 percent of their residing State's average annual wage, or their residing county's¹⁶ average annual wage, whichever is higher, on an annual basis:
 - A brief written narrative justification of how the premium pay or grant is responsive to workers performing essential work during the public health emergency. This could include a description of the essential workers' duties, health or financial risks faced due to COVID-19, and why the recipient government determined that the premium pay was responsive to workers performing essential work during the pandemic. This description should not include personally identifiable information; when addressing individual workers, recipients should be careful not to include this information. Recipients may consider describing the workers' occupations and duties in a general manner as necessary to protect privacy.
8. Revenue replacement (EC 6.1) – *Collection began in August 2021:*
- Under the Interim Final Rule, recipients calculate revenue loss using data as of four discrete points during the program: December 31, 2020, December 31, 2021, December 31, 2022, and December 31, 2023. Revenue loss calculated as of December 31, 2020 will be reported in the Interim Report, as described above. For future calculation dates, revenue loss will be reported only in the Quarter 4 reports

¹⁵ For more information on NCES identification numbers see <https://nces.ed.gov/ccd/districtsearch/> (districts) and <https://nces.ed.gov/ccd/schoolsearch/> (schools).

¹⁶ *County* means a county, parish, or other equivalent county division (as defined by the Census Bureau). See 31 CFR 35.3.



due January 31, 2022, January 31, 2023, and January 31, 2024. Reporting on revenue loss should include:

- General revenue collected over the past 12 months as of the most recent calculation date, as outlined in the Interim Final Rule (for example, for the January 31, 2022 report, recipients should provide 12 month general revenue as of December 31, 2021).
- Calculated revenue loss due to the Covid-19 public health emergency; and
- An explanation of how the revenue replacement funds were allocated to government services (note: additional instructions and/or template to be provided in user guide).

In calculating general revenue and the revenue loss due to the COVID-19 public health emergency, recipients should follow the same guidance as described above for the Interim Report.

- j. Required Programmatic Data for Infrastructure Projects (EC 5): For all projects listed under the Water, Sewer, and Broadband Expenditure Categories (see Appendix 1), more detailed project-level information is required. Each project will be required to report expenditure data as described above, but will also report the following information:

1. All infrastructure projects (EC 5) – Collection to begin in January 2022:

- Projected/actual construction start date (month/year)
- Projected/actual initiation of operations date (month/year)
- Location (for broadband, geospatial location data)
- For projects over \$10 million (based on expected total cost):
 - a. A recipient may provide a certification that, for the relevant project, all laborers and mechanics employed by contractors and subcontractors in the performance of such project are paid wages at rates not less than those prevailing, as determined by the U.S. Secretary of Labor in accordance with subchapter IV of chapter 31 of title 40, United States Code (commonly known as the “Davis-Bacon Act”), for the corresponding classes of laborers and mechanics employed on projects of a character similar to the contract work in the civil subdivision of the State (or the District of Columbia) in which the work is to be performed, or by the appropriate State entity pursuant to a corollary State prevailing-wage-in-construction law (commonly known as “baby Davis-Bacon Acts”). If such certification is not provided, a recipient must provide a project employment and local impact report detailing:
 - The number of employees of contractors and sub-contractors working on the project;
 - The number of employees on the project hired directly and hired through a third party;
 - The wages and benefits of workers on the project by classification; and
 - Whether those wages are at rates less than those prevailing.¹⁷
 Recipients must maintain sufficient records to substantiate this information upon request.
 - b. A recipient may provide a certification that a project includes a project labor agreement, meaning a pre-hire collective bargaining agreement consistent with section 8(f) of the National Labor Relations Act (29 U.S.C. 158(f)). If the recipient does not provide such certification, the recipient must provide a project workforce continuity plan, detailing:

¹⁷ As determined by the U.S. Secretary of Labor in accordance with subchapter IV of chapter 31 of title 40, United States Code (commonly known as the “Davis-Bacon Act”), for the corresponding classes of laborers and mechanics employed on projects of a character similar to the contract work in the civil subdivision of the State (or the District of Columbia) in which the work is to be performed.



- How the recipient will ensure the project has ready access to a sufficient supply of appropriately skilled and unskilled labor to ensure high-quality construction throughout the life of the project;
 - How the recipient will minimize risks of labor disputes and disruptions that would jeopardize timeliness and cost-effectiveness of the project;
 - How the recipient will provide a safe and healthy workplace that avoids delays and costs associated with workplace illnesses, injuries, and fatalities;
 - Whether workers on the project will receive wages and benefits that will secure an appropriately skilled workforce in the context of the local or regional labor market; and
 - Whether the project has completed a project labor agreement.
- c. Whether the project prioritizes local hires.
- d. Whether the project has a Community Benefit Agreement, with a description of any such agreement.
2. Water and sewer projects (EC 5.1-5.15) *Collection to begin in January 2022 and required once the project starts:*
- National Pollutant Discharge Elimination System (NPDES) Permit Number (if applicable; for projects aligned with the Clean Water State Revolving Fund)
 - Public Water System (PWS) ID number (if applicable; for projects aligned with the Drinking Water State Revolving Fund)
3. Broadband projects (EC 5.16-5.17) *Collection to begin in January 2022:*
- Confirm that the project is designed to, upon completion, reliably meet or exceed symmetrical 100 Mbps download and upload speeds.
 - If the project is not designed to reliably meet or exceed symmetrical 100 Mbps download and upload speeds, explain why not, and
 - Confirm that the project is designed to, upon completion, meet or exceed symmetrical 100 Mbps download speed and between at least 20 Mbps and 100 Mbps upload speed, and be scalable to a minimum of 100 Mbps download speed and 100 Mbps upload speed.
 - Please note: additional programmatic data will be required for broadband projects beginning in July 2022 and will be defined in a subsequent version of the Reporting Guidance.
- k. NEU Documentation (NEUs only): Each NEU will also be asked to provide the following information once their accounts are established in Treasury's Reporting Portal and prior to the due date for their first annual Project and Expenditure Report (due April 30, 2022):
- Copy of the signed award terms and conditions agreement (which was signed and submitted to the State as part of the request for funding)
 - Copy of the signed assurances of compliance with Title VI of the Civil Rights Act of 1964 (which was signed and submitted to the State as part of the request for funding)
 - Copy of actual budget documents validating the top-line budget total provided to the State as part of the request for funding

NEU accounts will be established in Treasury's Portal based on information provided by the States or territories, as further described in Section Part 2 D below.

C. Recovery Plan Performance Report

States, territories, metropolitan cities, and counties with a population that exceeds 250,000 residents will also be required to publish and submit to Treasury a Recovery Plan performance report ("Recovery Plan"). Each Recovery Plan must be posted on the public-facing website of



the recipient by the same date the recipient submits the report to Treasury. This reporting requirement includes uploading a link to the publicly available document report along with providing data in the Treasury reporting portal.

The Recovery Plan will provide the public and Treasury information on the projects recipients are undertaking with program funding and how they are planning to ensure program outcomes are achieved in an effective, efficient, and equitable manner. While this guidance outlines some minimum requirements for the Recovery Plan, each recipient is encouraged to add information to the plan they feel is appropriate to provide information to their constituents on efforts they are taking to respond to the pandemic and promote economic recovery. Each jurisdiction may determine the general form and content of the Recovery Plan, as long as it includes the minimum information determined by Treasury. Treasury will provide a recommended template but recipients may modify this template as appropriate for their jurisdiction. The Recovery Plan will include key performance indicators identified by the recipient and some mandatory indicators identified by Treasury.

The initial Recovery Plan will cover the period from the date of award to July 31, 2021 and must be submitted to Treasury by August 31, 2021, or 60 days after receiving funding. Thereafter, the Recovery Plan will cover a 12-month period and recipients will be required to submit the report to Treasury within 30 days after the end of the 12-month period (by July 31). The table below summarizes the report timelines:

Annual Report	Period Covered	Due Date
1	Award Date – July 31, 2021	August 31, 2021
2	July 1, 2021 – June 30, 2022	July 31, 2022
3	July 1, 2022 – June 30, 2023	July 31, 2023
4	July 1, 2023 – June 30, 2024	July 31, 2024
5	July 1, 2024 – June 30, 2025	July 31, 2025
6	July 1, 2025 – June 30, 2026	July 31, 2026
7	July 1, 2026 – December 31, 2026	March 31, 2027

The Recovery Plan will include, at a minimum, the following information:

1. Executive Summary

Provide a high-level overview of the jurisdiction's intended and actual uses of funding including, but not limited to: the jurisdiction's plan for use of funds to promote a response to the pandemic and economic recovery, key outcome goals, progress to date on those outcomes, and any noteworthy challenges or opportunities identified during the reporting period.

2. Uses of Funds

Describe in further detail your jurisdiction's intended and actual uses of the funds, such as how your jurisdiction's approach would help support a strong and equitable recovery from the COVID-19 pandemic and economic downturn. Describe any strategies employed to maximize programmatic impact and effective, efficient, and equitable outcomes. Given the broad eligible uses of funds and the specific needs of the jurisdiction, please also explain how the funds would support the communities, populations, or individuals in your jurisdiction. Your description should address how you are promoting each of the following, to the extent they apply:

- Public Health (EC 1):** As relevant, describe how funds are being used to respond to COVID-19 and the broader health impacts of COVID-19 and the COVID-19 public health emergency.



- b. Negative Economic Impacts (EC 2): As relevant, describe how funds are being used to respond to negative economic impacts of the COVID-19 public health emergency, including to households and small businesses.
- c. Services to Disproportionately Impacted Communities (EC 3): As relevant, describe how funds are being used to provide services to communities disproportionately impacted by the COVID-19 public health emergency.
- d. Premium Pay (EC 4): As relevant, describe the approach, goals, and sectors or occupations served in any premium pay program. Describe how your approach prioritizes low-income workers.
- e. Water, sewer, and broadband infrastructure (EC 5): Describe the approach, goals, and types of projects being pursued, if pursuing.
- f. Revenue Replacement (EC 6): Describe the loss in revenue due to the COVID-19 public health emergency and how funds have been used to provide government services.

Where appropriate, recipients should also include information on your jurisdiction's use (or planned use) of other federal recovery funds including other programs under the American Rescue Plan such as Emergency Rental Assistance, Housing Assistance, and so forth, to provide broader context on the overall approach for pandemic recovery.

3. Promoting equitable outcomes

Describe efforts to promote equitable outcomes, including how programs were designed with equity in mind. Please include in your description how your jurisdiction will consider and measure equity at the various stages of the program, including:

- a. Goals: Are there particular historically underserved, marginalized, or adversely affected groups that you intend to serve within your jurisdiction?
- b. Awareness: How equal and practical is the ability for residents or businesses to become aware of the services funded by the SLFRF?
- c. Access and Distribution: Are there differences in levels of access to benefits and services across groups? Are there administrative requirements that result in disparities in ability to complete applications or meet eligibility criteria?
- d. Outcomes: Are intended outcomes focused on closing gaps, reaching universal levels of service, or disaggregating progress by race, ethnicity, and other equity dimensions where relevant for the policy objective?

Treasury encourages uses of funds that promote strong, equitable growth, including racial equity. Please describe how your jurisdiction's planned or current use of funds prioritizes economic and racial equity as a goal, names specific targets intended to produce meaningful equity results at scale, and articulates the strategies to achieve those targets. In addition, please explain how your jurisdiction's overall equity strategy translates into the specific services or programs offered by your jurisdiction in the following Expenditure Categories:

- a. Negative Economic Impacts (EC 2): assistance to households, small businesses, and non-profits to address impacts of the pandemic, which have been most severe among low-income populations. This includes assistance with food, housing, and other needs; employment programs for people with barriers to employment who faced negative economic impacts from the pandemic (such as residents of low-income neighborhoods, minorities, disconnected youth, the unemployed, formerly incarcerated people, veterans, and people with disabilities); and other strategies that provide disadvantaged groups with access to education, jobs, and opportunity.
- b. Services to Disproportionately Impacted Communities (EC 3): services to address health disparities and the social determinants of health, build stronger neighborhoods and communities (e.g., affordable housing), address educational disparities (e.g., evidence-based tutoring, community schools, and academic, social-emotional, and mental health



supports for high poverty schools), and promote healthy childhood environments (e.g., home visiting, child care).

The initial report must describe efforts to date and intended outcomes to promote equity. Each annual report thereafter must provide an update, using qualitative and quantitative data, on how the recipients' approach achieved or promoted equitable outcomes or progressed against equity goals during the performance period. Please also describe any constraints or challenges that impacted project success in terms of increasing equity. In particular, this section must describe the geographic and demographic distribution of funding, including whether it is targeted toward traditionally marginalized communities.

For the purposes of the SLFRF, equity is described in the [Executive Order 13985 On Advancing Racial Equity and Support for Underserved Communities Through the Federal Government](#), as issued on January 20, 2021.

4. Community Engagement

Please describe how your jurisdiction's planned or current use of funds incorporates written, oral, and other forms of input that capture diverse feedback from constituents, community-based organizations, and the communities themselves. Where relevant, this description must include how funds will build the capacity of community organizations to serve people with significant barriers to services, including people of color, people with low incomes, limited English proficient populations, and other traditionally underserved groups.

5. Labor Practices

Describe workforce practices on any infrastructure projects being pursued (EC 5). How are projects using strong labor standards to promote effective and efficient delivery of high-quality infrastructure projects while also supporting the economic recovery through strong employment opportunities for workers? For example, report whether any of the following practices are being utilized: project labor agreements, community benefits agreements, prevailing wage requirements, and local hiring.

6. Use of Evidence

The Recovery Plan should identify whether SLFRF funds are being used for evidence-based interventions¹⁸ and/or if projects are being evaluated through rigorous program evaluations that are designed to build evidence. Recipients must briefly describe the goals of the project, and the evidence base for the interventions funded by the project. Recipients must specifically identify the dollar amount of the total project spending that is allocated towards evidence-based interventions for each project in the Public Health (EC 1), Negative Economic Impacts (EC 2), and Services to Disproportionately Impacted Communities (EC 3) Expenditure Categories.¹⁹

Recipients are exempt from reporting on evidence-based interventions in cases where a program evaluation is being conducted. Recipients are encouraged to use relevant evidence Clearinghouses, among other sources, to assess the level of evidence for their interventions and identify evidence-based models that could be applied in their jurisdiction; such evidence clearinghouses include the U.S. Department of Education's [What Works Clearinghouse](#), the U.S. Department of Labor's [CLEAR](#), and the [Childcare & Early Education Research Connections and the Home Visiting Evidence of Effectiveness](#) clearinghouses from

¹⁸As noted in Appendix 2, evidence-based refers to interventions with strong or moderate levels of evidence.

¹⁹ Of note, recipients are only required to report the amount of the total funds that are allocated to evidence-based interventions in the areas of Public Health, Negative Economic Impacts, and Services to Disproportionately Impacted Communities that are marked by an asterisk in Appendix 1: Expenditure Categories.



Administration for Children and Families, as well as other clearinghouses relevant to particular projects conducted by the recipient. In such cases where a recipient is conducting a program evaluation in lieu of reporting the amount of spending on evidence-based interventions, they must describe the evaluation design including whether it is a randomized or quasi-experimental design; the key research questions being evaluated; whether the study has sufficient statistical power to disaggregate outcomes by demographics; and the timeframe for the completion of the evaluation (including a link to completed evaluation if relevant).²⁰ Once the evaluation has been completed, recipients must post the evaluation publicly and link to the completed evaluation in the Recovery Plan. Once an evaluation has been completed (or has sufficient interim findings to determine the efficacy of the intervention), recipients should determine whether the spending for the evaluated interventions should be counted towards the dollar amount categorized as evidence-based for the relevant project.

For all projects, recipients may be selected to participate in a national evaluation, which would study their project along with similar projects in other jurisdictions that are focused on the same set of outcomes. In such cases, recipients may be asked to share information and data that is needed for the national evaluation.

Recipients are encouraged to consider how a Learning Agenda, either narrowly focused on SLFRF or broadly focused on the recipient's broader policy agenda, could support their overarching evaluation efforts in order to create an evidence-building strategy for their jurisdiction.²¹

Appendix 2 contains additional information on evidence-based interventions for the purposes of the Recovery Plan.

7. Table of Expenses by Expenditure Category

Please include a table listing the amount of funds used in each Expenditure Category (See Appendix 1). The table should include cumulative expenses to date within each category, and the additional amount spent within each category since the last annual Recovery Plan.

8. Project Inventory

List the name and provide a brief description of all SLFRF funded projects. Projects are new or existing eligible government services or investments funded in whole or in part by SLFRF funding. For each project, include the project name, funding amount, identification number (created by the recipient and used thereafter in the quarterly Program and Expenditure Report), project Expenditure Category (see Appendix 1), and a description of the project which includes an overview of the main activities of the project, the approximate timeline, primary delivery mechanisms and partners, if applicable, and intended outcomes. Include a link to the website of the project if available. This information will provide context and additional detail for the information reported quarterly in the Project and Expenditure Report.

For infrastructure investment projects (EC 5), project-level reporting will be more detailed, as described for the Project and Expenditure Report above. Projects in this area may be grouped by Expenditure Category if needed, with further detail (such as the specific project name and identification number) provided in the Project and Expenditure Report. For infrastructure projects, descriptions should note how the project contributes to addressing climate change.

9. Performance Report

The Recovery Plan must include key performance indicators for the major SLFRF funded projects undertaken by the recipient. The recipient has flexibility in terms of how this information is presented in the Recovery Plan, and may report key performance indicators for

²⁰ For more information on the required standards for program evaluation, see [OMB M-20-12](#).

²¹ For more information on learning agendas, please see [OMB M-19-23](#)



each project, or may group projects with substantially similar goals and the same outcome measures. In some cases, the recipient may choose to include some indicators for each individual project as well as crosscutting indicators.

Performance indicators should include both output and outcome measures. Output measures, such as number of students enrolled in an early learning program, provide valuable information about the early implementation stages of a project. Outcome measures, such as the percent of students reading on grade level, provide information about whether a project is achieving its overall goals. Recipients are encouraged to use logic models²² to identify their output and outcome measures. While the initial report will focus heavily on early output goals, recipients must include the related outcome goal for each project and provide updated information on achieving these outcome goals in annual reports. In cases where recipients are conducting a program evaluation for a project (as described above), the outcome measures in the performance report should be aligned with those being evaluated in the program. To support their performance measurement and program improvement efforts, recipients are permitted to use funds to make improvements to data or technology infrastructure and data analytics, as well as program evaluations.

10. Required Performance Indicators and Programmatic Data

While recipients have discretion on the full suite of performance indicators to include, a number of mandatory performance indicators and programmatic data must be included. These are necessary to allow Treasury to conduct oversight as well as understand and aggregate program outcomes across recipients. This section provides an overview of the mandatory performance indicators and programmatic data. This information may be included in each recipient's Recovery Plan as they determine most appropriate, including combining with the section above, but this data will also need to be entered directly into the Treasury reporting portal. Below is a list of required data for each Expenditure Category:

- a. Household Assistance (EC 2.2 & 2.5) and Housing Support (EC 3.10-3.12):
 - Number of people or households receiving eviction prevention services (including legal representation)
 - Number of affordable housing units preserved or developed
- b. Negative Economic Impacts (EC 2):
 - Number of workers enrolled in sectoral job training programs
 - Number of workers completing sectoral job training programs
 - Number of people participating in summer youth employment programs
- c. Education Assistance (EC 3.1-3.5):
 - Number of students participating in evidence-based tutoring programs²³
- d. Healthy Childhood Environments (EC 3.6-3.9):
 - Number of children served by childcare and early learning (pre-school/pre-K/ages 3-5)
 - Number of families served by home visiting

The initial report should include the key indicators above. Each annual report thereafter should include updated data for the performance period as well as prior period data, and a brief

²² A logic model is a tool that depicts the intended links between program investments and outcomes, specifically the relationships among the resources, activities, outputs, outcomes, and impact of a program.

²³ For more information on evidence-based tutoring programs, refer to the U.S. Department of Education's [2021 ED COVID-19 Handbook \(Volume 2\)](#), which summarizes research on evidence-based tutoring programs (see the bottom of page 20).



narrative adding any additional context to help the reader interpret the results and understand the any changes in performance indicators over time. To the extent possible, Treasury also encourages recipients to provide data disaggregated by race, ethnicity, gender, income, and other relevant factors.

11. Ineligible Activities: Tax Offset Provision (States and territories only)

The following information is required for Treasury to ensure SLFRF funding is not used for ineligible activities.

In each reporting year, States and territories will report certain items related to the Tax Offset Provision as described in section 602(c)(2) of the Social Security Act and implemented by 31 CFR 35.8. Additional guidance will be forthcoming for reporting requirements regarding the tax offset provision and additional information that Recipients will report once the Final Rule goes into effect.

a. Revenue-reducing Covered Changes: Collection began August 2021:

For each reporting year, a recipient must report the value of covered changes that the recipient predicts will have the effect of reducing tax revenue in a given reporting year (revenue-reducing covered changes), similar to the way it would in the ordinary course of its budgeting process. The value of these covered changes may be reported based on estimated values produced by a budget model, incorporating reasonable assumptions, that aligns with the recipient government's existing approach for measuring the effects of fiscal policies, and that measures relative to a current law baseline. The covered changes may also be reported based on actual values using a statistical methodology to isolate the change in year-over-year revenue attributable to the covered change(s), relative to the current law baseline prior to the change(s). Estimation approaches should not use dynamic methodologies that incorporate the projected effects of the policies on macroeconomic growth. In general, and where possible, reported values should be produced by the agency of the recipient government responsible for estimating the costs and effects of fiscal policy changes. Recipients must maintain records regarding the identification and predicted effects of revenue-reducing covered changes. The term "covered change," and "tax revenue" are described in the Interim Final Rule, 31 CFR 35.3. For additional information, see 602(c)(2) of the Social Security Act, the Interim Final Rule, and 31 CFR 35.8.

D. Distributions to NEUs

Each State and territory is asked to provide regular updates on their NEU distribution as well as their distributions to units of general local government within counties that are not units of general local government (Non-UGLG). The distribution template generally requests information on whether the local government has (1) received funding; (2) declined funding and requested a transfer to the State under Section 603(c)(4) of the Act; or (3) not taken action on its funding or declined funding.

For NEUs, states and territories should be prepared to report on their information, including the following:

- NEU name
- NEU DUNS number
- NEU Taxpayer Identification Number (TIN)
- NEU Recipient Number (a unique identification code for each NEU assigned by the State or territory to the NEU as part of the request for funding)
- NEU contact information (e.g., address, point of contact name, point of contact email address, and point of contact phone number)
- NEU authorized representative name and email address



- Initial allocation and, if applicable, subsequent allocation to the NEU (before application of the 75 percent cap)
- Total NEU reference budget (as submitted by the NEU to the State or territory as part of the request for funding)
- Amount of the initial and, if applicable, subsequent allocation above 75 percent of the NEU's reference budget which will be returned to Treasury
- Payment amount(s)
- Payment date(s)

States with “weak” minor civil divisions (i.e., Illinois, Indiana, Kansas, Missouri, Nebraska, North Dakota, Ohio, and South Dakota) should also list any minor civil divisions that the State deemed ineligible.

For each eligible NEU that declined funding and requested a transfer to the State under Section 603(c)(4), the State or territory must also attach a form signed by the NEU, as detailed in the [Guidance on Distributions of Funds to Non-Entitlement Units of Local Government](#).



Appendix 1: Expenditure Categories

The Expenditure Categories (EC) listed below must be used to categorize each project as noted in Part 2 above. The term “Expenditure Category” refers to the detailed level (e.g., 1.1 COVID-10 Vaccination). When referred to as a category (e.g., EC 1) it includes all Expenditure Categories within that level.

1: Public Health	
1.1	COVID-19 Vaccination ^
1.2	COVID-19 Testing ^
1.3	COVID-19 Contact Tracing
1.4	Prevention in Congregate Settings (Nursing Homes, Prisons/Jails, Dense Work Sites, Schools, etc.)*
1.5	Personal Protective Equipment
1.6	Medical Expenses (including Alternative Care Facilities)
1.7	Capital Investments or Physical Plant Changes to Public Facilities that respond to the COVID-19 public health emergency
1.8	Other COVID-19 Public Health Expenses (including Communications, Enforcement, Isolation/Quarantine)
1.9	Payroll Costs for Public Health, Safety, and Other Public Sector Staff Responding to COVID-19
1.10	Mental Health Services*
1.11	Substance Use Services*
1.12	Other Public Health Services
2: Negative Economic Impacts	
2.1	Household Assistance: Food Programs* ^
2.2	Household Assistance: Rent, Mortgage, and Utility Aid* ^
2.3	Household Assistance: Cash Transfers* ^
2.4	Household Assistance: Internet Access Programs* ^
2.5	Household Assistance: Eviction Prevention* ^
2.6	Unemployment Benefits or Cash Assistance to Unemployed Workers*
2.7	Job Training Assistance (e.g., Sectoral job-training, Subsidized Employment, Employment Supports or Incentives)* ^
2.8	Contributions to UI Trust Funds
2.9	Small Business Economic Assistance (General)* ^
2.10	Aid to Nonprofit Organizations*
2.11	Aid to Tourism, Travel, or Hospitality
2.12	Aid to Other Impacted Industries
2.13	Other Economic Support* ^
2.14	Rehiring Public Sector Staff
3: Services to Disproportionately Impacted Communities	
3.1	Education Assistance: Early Learning* ^
3.2	Education Assistance: Aid to High-Poverty Districts ^
3.3	Education Assistance: Academic Services* ^
3.4	Education Assistance: Social, Emotional, and Mental Health Services* ^
3.5	Education Assistance: Other* ^
3.6	Healthy Childhood Environments: Child Care* ^
3.7	Healthy Childhood Environments: Home Visiting* ^
3.8	Healthy Childhood Environments: Services to Foster Youth or Families Involved in Child Welfare System* ^



3.9	Healthy Childhood Environments: Other* ^
3.10	Housing Support: Affordable Housing* ^
3.11	Housing Support: Services for Unhoused Persons* ^
3.12	Housing Support: Other Housing Assistance* ^
3.13	Social Determinants of Health: Other* ^
3.14	Social Determinants of Health: Community Health Workers or Benefits Navigators* ^
3.15	Social Determinants of Health: Lead Remediation ^
3.16	Social Determinants of Health: Community Violence Interventions* ^
4: Premium Pay	
4.1	Public Sector Employees
4.2	Private Sector: Grants to Other Employers
5: Infrastructure²⁴	
5.1	Clean Water: Centralized Wastewater Treatment
5.2	Clean Water: Centralized Wastewater Collection and Conveyance
5.3	Clean Water: Decentralized Wastewater
5.4	Clean Water: Combined Sewer Overflows
5.5	Clean Water: Other Sewer Infrastructure
5.6	Clean Water: Stormwater
5.7	Clean Water: Energy Conservation
5.8	Clean Water: Water Conservation
5.9	Clean Water: Nonpoint Source
5.10	Drinking water: Treatment
5.11	Drinking water: Transmission & Distribution
5.12	Drinking water: Transmission & Distribution: Lead Remediation
5.13	Drinking water: Source
5.14	Drinking water: Storage
5.15	Drinking water: Other water infrastructure
5.16	Broadband: “Last Mile” projects
5.17	Broadband: Other projects
6: Revenue Replacement	
6.1	Provision of Government Services
7: Administrative	
7.1	Administrative Expenses
7.2	Evaluation and Data Analysis
7.3	Transfers to Other Units of Government
7.4	Transfers to Non-entitlement Units (States and territories only)

*Denotes areas where recipients must identify the amount of the total funds that are allocated to evidence-based interventions (see Use of Evidence section above for details)

^Denotes areas where recipients must report on whether projects are primarily serving disadvantaged communities (see Project Demographic Distribution section above for details)

²⁴ Definitions for water and sewer Expenditure Categories can be found in the EPA’s handbooks. For “clean water” expenditure category definitions, please see: <https://www.epa.gov/sites/production/files/2018-03/documents/cwdefinitions.pdf>. For “drinking water” expenditure category definitions, please see: <https://www.epa.gov/dwsrf/drinking-water-state-revolving-fund-national-information-management-system-reports>.



Appendix 2: Evidenced-Based Intervention Additional Information

What is evidence-based?

For the purposes of the SLFRF, evidence-based refers to interventions with strong or moderate evidence as defined below:

Strong evidence means that the evidence base can support causal conclusions for the specific program proposed by the applicant with the highest level of confidence. This consists of one or more well-designed and well-implemented experimental studies conducted on the proposed program with positive findings on one or more intended outcomes.

Moderate evidence means that there is a reasonably developed evidence base that can support causal conclusions. The evidence base consists of one or more quasi-experimental studies with positive findings on one or more intended outcomes OR two or more non-experimental studies with positive findings on one or more intended outcomes. Examples of research that meet the standards include: well-designed and well-implemented quasi-experimental studies that compare outcomes between the group receiving the intervention and a matched comparison group (i.e., a similar population that does not receive the intervention).

Preliminary evidence means that the evidence base can support conclusions about the program's contribution to observed outcomes. The evidence base consists of at least one non-experimental study. A study that demonstrates improvement in program beneficiaries over time on one or more intended outcomes OR an implementation (process evaluation) study used to learn and improve program operations would constitute preliminary evidence. Examples of research that meet the standards include: (1) outcome studies that track program beneficiaries through a service pipeline and measure beneficiaries' responses at the end of the program; and (2) pre- and post-test research that determines whether beneficiaries have improved on an intended outcome.

**Revision Log**

Version	Date Published	Summary of changes
1.0	June 17, 2021	Initial publication
1.1	June 24, 2021	- Pg. 12, removed references to “summary” level with respect to reporting by Expenditure Categories in the Interim Report to avoid confusion. - Pg. 13, revised the coverage period end date for the Interim Report from June 30, 2021 to July 31, 2021 to align with the IFR. - Pg. 13, removed references to “summary” level with respect to reporting by Expenditure Categories in the Interim Report to avoid confusion. - Pg. 31, removed references to “summary level” with respect to Expenditure Categories in Appendix 1 to avoid confusion.
1.1	September 30, 2021	Announced the extension in the Project and Expenditure Report submission date, originally due on October 31, 2021.
2.0	November 5, 2021	- Updated Subrecipient Monitoring section to clarify beneficiaries and recipients. - Updated references to Interim Final Rule comment period as comment period is closed. - Updated reporting tiers, thresholds and timelines in Part 2 Table 2, Reporting Requirements by recipient type, as well as Part 2 A and Part 2 B. - Updated reporting periods for Interim Report and Project and Expenditure reports. - Added concept of Adopted Budget to Project and Expenditure Report data fields. - Noted phase in of Required Programmatic Data in the Project and Expenditure Report. - Removed certain data fields from the Ineligible Activities: Tax Offset Provision under the Recovery Plan. - Separated reporting of NEU Distributions (for States and territories) from the Interim Report and Project and Expenditure Reports as information will be provided on an ongoing basis.
2.1	November 15, 2021	Updated pages 9 and 11 to note that civil rights certification is not applicable to Tribal Governments.

NEU and Non-UGLG Distribution Templates User Guide

State and Local Fiscal Recovery Funds



October 7, 2021



Table of Contents

Section I.	Reporting Basics	1
Section II.	Navigation and Logistics	3
Section III.	Recipient Information.....	8
Section IV.	Reporting Requirements- Non-Entitlement Units of Local Government.....	9
Section V.	Reporting Requirements- Units of General Local Government within Counties that are Not Units of General Local Government	17
Section VI.	Official Certification	22
Appendix A – Bulk File Upload Overview		24
Appendix B – Designating SLFRF Points of Contact by SLFRF Account Administrators		34

List of Figures

Figure 1 – Landing Page.....	3
Figure 2 – Navigation Bar	3
Figure 3 – Sample Bulk Upload Icon with Template Download Link	4
Figure 4 – Successful Bulk Upload Example	4
Figure 5 – Unsuccessful Bulk Upload	5
Figure 6- Invalid Bulk Upload Error	6
Figure 7 Duplicative Value Upload Error.....	6
Figure 8 – Manual Entry Text Box	7
Figure 9 – Recipient Information	8
Figure 10 – Recipient Profile Discrepancies Entry.....	8
Figure 11 – NEU Monthly Updates	10
Figure 12 – Screen for Eligible NEUs	11
Figure 13 – NEU Distribution Process Written Summary.....	14
Figure 14 – Screen for Ineligible NEUs.....	14
Figure 15 – Screen for NEU Transactions	15
Figure 16 – Non-UGLG Monthly Updates.....	18
Figure 17 – Non-UGLG Distribution Screen	18
Figure 18 – Non-UGLG Distribution Process Written Summary	20
Figure 19 – Non-UGLG Transaction Screen.....	21
Figure 20 Official Certification	22
Figure 21 – Summary of Reported Information.....	23



Section I. Reporting Basics

a) Overview

This document provides information on using Treasury's Portal to submit required Coronavirus State and Local Fiscal Recovery Fund (SLFRF) reports. It is a supplement to the Compliance and Reporting Guidance ([Reporting Guidance](#)), which contains relevant information and guidance on reporting requirements.

Additionally, you should visit the Treasury's [SLFRF home page](#) for the latest guidance and updates on programmatic and reporting topics, as well as information on Treasury's [Interim Final Rule](#) (IFR).

Each SLFRF recipient is required to submit periodic reports with current performance and financial information including background information about the SLFRF projects that are the subjects of the reports; and financial information with details about obligations, expenditures, direct payments, and subawards.

b) What is Covered in this User Guide?

This User Guide provides detailed instructions to help States and U.S. Territories to gather and complete the following templates:

- Non-Entitlement Units of Local Government (NEU) Distribution Templates
- Units of general local government within counties that are not units of general local government (Non-UGLG) Distribution Templates

c) Designated Staff for Key Roles in Managing SLFRF Reports User Designations

SLFRF recipient organizations are required to designate staff or officials for the following three roles in managing reports for their SLFRF award. Recipients must make the required designations prior to accessing Treasury's Portal. The required roles are as follows:

- **Account Administrator** for the SLFRF award has the administrative role of maintaining the names and contact information of the designated individuals for SLFRF reporting. The Account Administrator is also responsible for working within your organization to determine its designees for the roles of Point of Contact for Reporting and Authorized Representative for Reporting and providing their names and contact information via Treasury's Portal. Finally, the Account Administrator is responsible for making any changes or updates to the user roles as needed over the award period. We recommend that the Account Administrator identify an individual to serve in his/her place in the event of staff changes.
- **Point of Contact for Reporting** is the primary contact for receiving official Treasury notifications about reporting on the SLFRF award, including alerts about upcoming reporting, requirements, and deadlines. The Point of Contact for Reporting is responsible for completing the SLFRF reports.
- **Authorized Representative for Reporting** is responsible for certifying and submitting official reports on behalf of the SLFRF award recipient. Treasury will accept reports or other official communications only when submitted by the Authorized Representative for Reporting. The Authorized Representative for Reporting is also responsible for



communications with Treasury on such matters as extension requests and amendments of previously submitted reports. The official reports may include special reports, quarterly reports, interim reports, and final reports.

An individual may be designated for multiple roles. For example, the individual designated as the Point of Contact for Reporting may also be designated as the Authorized Representative for Reporting. In addition, the recipient may designate one individual for all three roles. Multiple individuals can be designated for each role.

The guidance on the process for designating individuals for the three roles was provided via email to SLFRF recipients and is also posted in [Treasury's site](#).

The designated individuals' names and contact information will be pre-populated in the "Recipient Profile" portion of the recipient's SLFRF reports, and recipients will be able to update the information, if necessary.

Each designated individual must register with ID.me to gain access to Treasury's portal. Please contact SLFRP@treasury.gov for additional information on procedures for registering with ID.me.

d) Questions?

If you have any questions about the SLFRF program's reporting requirements, please contact us by email via SLFRP@treasury.gov.



Section II. Navigation and Logistics

a) Login to Landing Page and Portal Navigation

After logging into Treasury's Portal, the landing page (see Figure 1) will appear listing the Office of Recovery Programs (ORP)-administered program for which your organization may be eligible for.

Figure 1 – Landing Page

From the landing page, select *Go to Your Reports* on the left side panel to be taken to a list of options for the programs you have access to under the Report Selection section.

Each listed report constitutes a link to that specific report's online forms. Selecting a report from the landing page will open the first in a series of screens.

To begin completing a specific report, click on *Provide Information* for the given report. Refer to the [Reporting Guidance](#) for details about each type of required report for submittal.

The Navigation Bar (see Figure 2) on the top of Treasury's Portal will allow you to freely move between screens.

Figure 2 – Navigation Bar

b) Helpful Tips/Shortcuts for Submitting Data to Treasury's Portal

Treasury's Portal leads you through a series of online forms that, when completed, will fulfill your reporting obligations. While navigating through Treasury's Portal and submitting required information, users will have the option of manually entering data directly into the portal or providing information via a bulk upload file that includes all relevant information in a Treasury approved process and format.



1. Bulk File Upload File

Recipients can use the bulk upload function for providing required information for the five modules listed here:

- NEU Distribution- Eligible NEUs
- NEU Distribution- Ineligible (for listing ineligible Local Governments)
- NEU Distribution- Transactions
- Non-UGLG- Distribution
- Non-UGLG- Transactions

When using the bulk upload, recipients must provide the required information in specified formats and use the Treasury approved templates for each respective bulk upload. Recipients must download each of the templates separately from within the relevant Treasury Portal module.

Please see Appendix A – Bulk File Upload Overview for complete guidance on using this important function.

Modules accepting bulk upload files are clearly marked in Treasury’s Portal and identified in later sections of this User Guide. The template for each upload file is available in the relevant module for download (see Figure 3).

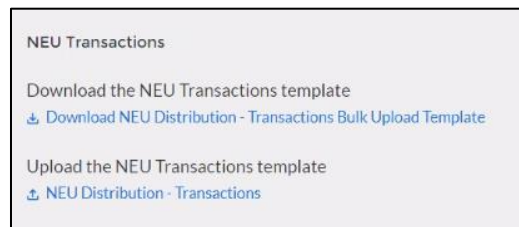


Figure 3 – Sample Bulk Upload Icon with Template Download Link

When you click the upload button you will be directed to an upload screen (see Figure 4). You can either choose to add files or drag and drop files to initiate the bulk upload.

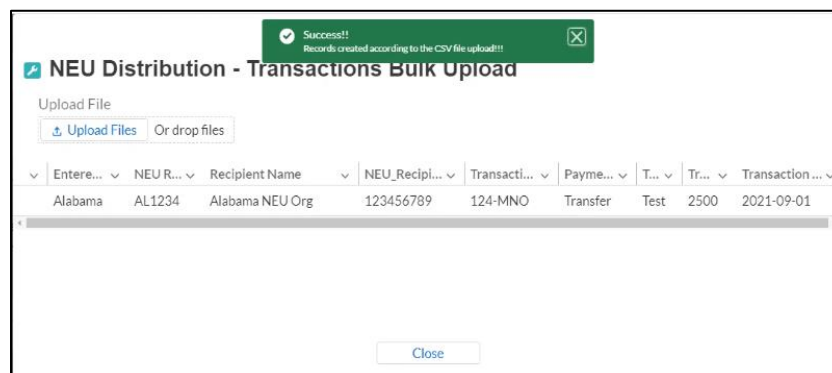


Figure 4 – Successful Bulk Upload Example

Treasury’s Portal will reject the file if an incorrect template, data format, or file format other than .csv is used for upload (see Figure 5). Treasury’s Portal will display an error message on screen (see Figure 5) if the bulk data upload file contains errors. If you receive an error



message, you will need to correct the errors in the bulk upload file and re-submit the corrected version. Recipients should review the upload file carefully, as current system functionality will only show the first error found in a bulk file. Multiple field errors will necessitate multiple fix and upload attempts.

When a bulk upload error occurs, the system stops scanning the file and immediately reports the first error found in the document. Once you correct the error, you should ensure you have not made the same error in each consecutive row below where the first error was identified prior to re-submitting the corrected bulk upload file.

There are three common Bulk File Upload errors as described below:

- **Blank Data (see Figure 5):** When a required field is left blank within your Bulk Upload File, the specific bulk upload file row and cell number will be provided on the screen. In the example below, the user made an error pertaining to the “Recipient Number” and the error is located in Column C, Row 11.

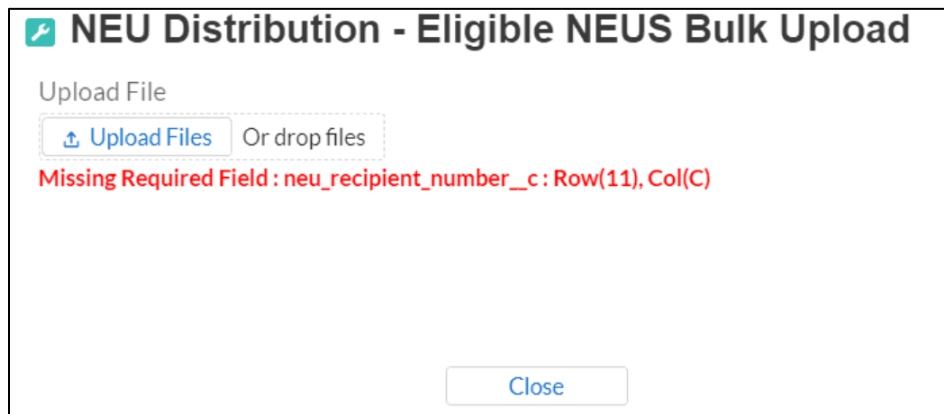


Figure 5 – Unsuccessful Bulk Upload

- **Invalid Data (see Figure 6):** Invalid data includes any type of data (numeric or text) that does not meet the requirements set forth in the Help Text within each Bulk Upload Template. When invalid data is found in a cell, the error message uses Row Zero logic. When the system scans for and finds invalid data, the error message treats the first row containing your entered data (typically Row 8) as Row “0.”
 - For example, if your Bulk Upload file contains an error in Row 10, and the first line of your data entry is in Row 8, then the error message will report the mistake in Row 2 (10 minus the starting point of 8) as shown in the image below.
 - The error message will also show the required field that was incorrect, such as “Status” shown below.

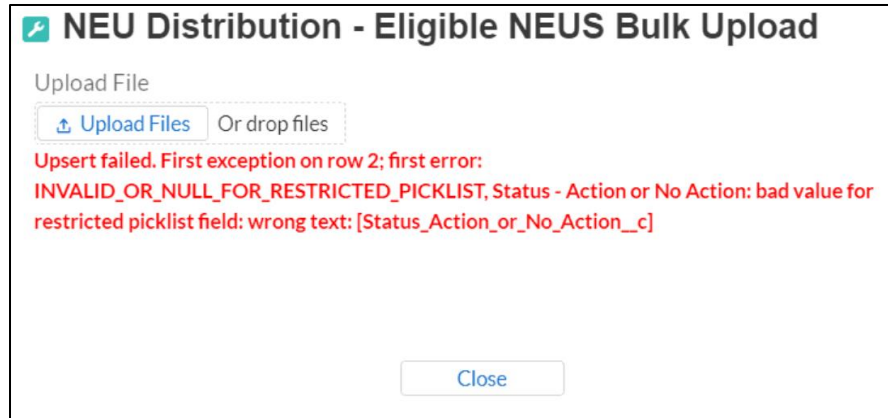


Figure 6- Invalid Bulk Upload Error

- **Duplicate Data (see Figure 7):** Duplicate data includes any type of data (numeric or text) that is repeated in the same column when the Help Text within a Bulk Upload Template requires a unique entry. When duplicate data is found in a cell, the error message uses Row Zero logic. When the system scans for and finds invalid data, the error message treats the first row containing your entered data (typically Row 8) as Row “0.”
 - For example, if your Bulk Upload file contains an error in Row 9, and the first line of your data entry is in Row 8, then the error message will report the mistake in Row 1 (9 minus the starting point of 8) as shown in the image below.
 - The error message will also show the required field that was incorrect, such as “Unique Identifier” shown below.

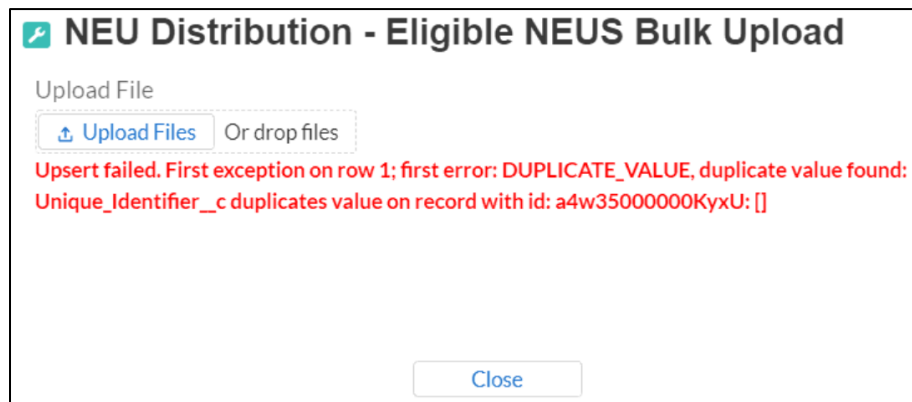


Figure 7 Duplicative Value Upload Error

2. Manual Data Entry

Manual data entry requires you to provide inputs as instructed on the screen. Manual inputs are described in detail below for each section of this user guide.



Note: An asterisk (*) indicates a required field. Entry into the field is required before you can save or proceed to the next screen.

Your inputs will be subject to validation by Treasury's Portal to ensure that the data provided is consistent with expected format or description (e.g., entering "one hundred" instead of 100). If a given data entry fails a validation rule, Treasury's Portal will display an error for you to address.

You will not be able to submit manually entered data that does not satisfy the data validation rules.

3. Narrative Boxes

When filling out detailed narratives, you are encouraged to type out responses in a word processing application (such as Microsoft Word) to minimize grammatical errors, track word count, and concisely answer all required narrative details. You can then copy and paste the final written narratives directly into the text boxes.

The text boxes (see Figure 8) can be expanded by clicking and dragging the icon in the bottom-right corner.

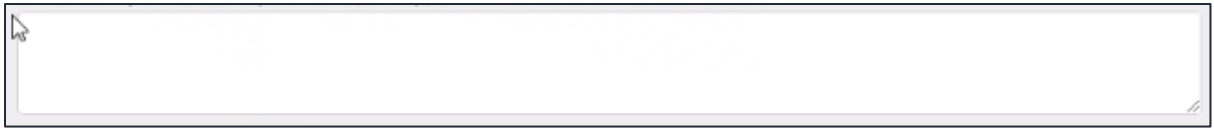


Figure 8 – Manual Entry Text Box



Section III. Recipient Information

Upon login, you will be directed to the recipient information page, which is intended to verify relevant information in the Treasury system.

1. Review and confirm your Recipient Profile pre-populated from your SLFRF Application file (see Figure 9). If you have previously entered a DUNS (+4) number, it will appear here.
2. If you have a Recipient DUNS (+4) number and the field is not populated, update as necessary.

Recipient Information	
Recipient DUNS	153485658
Recipient DUNS (+4)	1234
Recipient TIN	153485659
Recipient Legal Entity Name	NEU User Guide
Recipient Type	State or Territory
FAIN	2346
CFDA No./Assistance Listing	4543
Recipient Address	123 Test Lane
Recipient Address 2	
Recipient Address 3	
Recipient City	Fairfax
Recipient State/Territory	VA
Recipient Zip5	32523
Recipient Zip+4	1211
Recipient Reporting Tier	Cities/Counties with Population under 250,000 and Total Allocation of at least \$5M

Figure 9 – Recipient Information

3. Verify the information displayed, as well as names and contact information for individuals the recipient has designated for key roles for the SLFRF program. If changes are needed to the information displayed on the screen, use textbox (see figure 9), refer to the instructions included in Appendix B to update the applicable roles, or contact SLFRP@treasury.gov.
4. Use the textbox (see Figure 10) to flag errors, notifying Treasury if any information is incorrect.

Please report discrepancies (if any) on the above information

☐ Show Point of Contact List

Figure 10 – Recipient Profile Discrepancies Entry



5. Once all fields have been reviewed and verified, click the *Next* button to proceed to the following screen. Information will save automatically.

Section IV. Reporting Requirements- Non-Entitlement Units of Local Government

This section is only applicable for States and U.S. Territories.

Non-entitlement Units of Local Government (NEUs), defined in section 603(g)(5) of the Social Security Act, as added by section 9901 of the American Rescue Plan Act of 2021, are local governments typically serving populations of less than 50,000. NEUs include cities, villages, towns, townships, or other types of local governments.

NEUs receive SLFRF payments through their State and U.S. territory governments. State and U.S. territory governments receive a specific allocation of these funds from Treasury for this purpose and are responsible for distributing these funds to the NEUs within their State or U.S. Territory. Award amounts are based on population.

Additional information on distributions to NEUs can be found [here](#).

States and U.S. Territories are required to provide an update on distributions to eligible NEUs as part of the Interim Report, covering NEU distributions from the date of award to July 31, 2021.

Recipients are asked to provide updates on distributions to individual NEUs to Treasury every month thereafter until all distributions have been made. States and U.S. Territories should, unless otherwise instructed by Treasury, provide updates to Treasury where information or status has changed. Each report should cover all changes since the prior month's report (e.g., submission by September 30, 2021, for the period covering August 1-31, 2021).

Templates will be available for download from Treasury's Portal. Each NEU template will need to be completed separately to allow for the proper uploading of information into Treasury's Portal.

For any NEUs that requested a transfer to the State or U.S. Territory under Section 603(c)(4), the State or U.S. Territory must complete, sign, and attach the Treasury form.

Note: Guidance related to the upload of the PDF Treasury form for NEUs requesting transfer to the State or U.S. Territory under Section 603(c)(4) will be provided separately.

Specific step-by-step instructions for filling out the NEU templates are noted below. Appendix A includes an overview of the bulk file upload process and the information associated with formats and content to include in the bulk upload files.

The following NEU Distribution templates are included in this section:

- NEU Distribution- Eligible NEUs
- NEU Distribution- Ineligible (for listing ineligible Local Governments)
- NEU Distribution- Transactions



In addition, a written narrative of the recipient's NEU distribution process is also required, including any instructions or guidelines that were given to the NEUs. For NEU specific guidance, visit [Treasury's SLFRF website for NEUs](#).

a. Monthly NEU Updates

Each month States and U.S. territories will be asked to report if they have any NEU transactions or updates to report for the previous month (see Figure 11).

- If "No" is selected, States and U.S. territories will be taken to the Non-UGLG information entry.
- If "Yes" is selected, States and U.S. territories will continue entering NEU information for the reporting month. Go to [IV.b.](#) below.

*Are there any updates to the NEU information for the current monthly reporting cycle?

Yes

Figure 11 – NEU Monthly Updates

Note: - The State or U.S. Territory should ascertain that all NEUs identified by Treasury for such State or U.S. Territory are included in the reporting, as part of the Eligible NEUs template (see IV.b.) or the Ineligible template (see IV.c.). The list of NEUs can be found [here](#) in the **List of Local Governments** excel. As such, if a State or U.S. Territory has 300 potential eligible NEUs on the list, the information reported to Treasury's Portal should reflect all 300 NEUs broken out (as applicable) between the Eligible NEU or Ineligible Local Governments templates and status of action. Refer to example below.

State XX- Total Local Governments (per list)- 300

Eligible NEUs- 250 (report as part of Eligible NEUs. Refer to IV.b.)

Action Taken (NEU requested funding or declined

funding and requested transfer to State) 150

Action Not Taken (NEU is nonresponsive or

declined funding but has not requested transfer) 100

Ineligible Local Governments- 50 (report as part Ineligible template. Refer to IV.c.)

In accordance with Treasury's [guidance](#) on distributions to NEUs, please note that only "weak minor civil divisions (MCD)" governments (Illinois, Indiana, Kansas, Missouri, Nebraska, North Dakota, Ohio, and South Dakota) should have deem any local governments on Treasury's List of Local Governments as ineligible, barring exceptional circumstances.



b. NEU Distribution: Eligible NEUs

In this section, the State or U.S. Territory will populate the table for all eligible NEUs within the State and U.S. Territory's jurisdiction, including all eligible NEUs that are unresponsive or declined funding (see Figure 12). The "Status" column will enable the recipient to indicate whether the NEU has acted on their funding.

In the event the State or U.S. Territory needs to update information (including changing the "Status" from Action Not Taken to Action Taken), the State or U.S. Territory should submit updates to the previously submitted data. If dollar amounts previously reported need to be updated, the State or U.S. Territory should submit the change to the previously reported balances. For example, if the Total NEU Budget Reference submitted by the NEU as part of its request for funding or Sec. 603 (c)(4) transfer to the State was originally reported at \$2 million but needs to be adjusted to \$1.5 million, the State and U.S. Territory will submit an update of negative \$500,000 in a follow-on submission.

Figure 12 – Screen for Eligible NEUs

For NEUs that are unresponsive, States or U.S. Territories do not have to provide information for all fields; however, a valid DUNS number is always required for uploading Eligible NEUs that have requested funding from the State or U.S. territory. The table below notes the fields that are required if 1) NEU has taken action (e.g., requested funding or declined funding and requested a transfer to the State or U.S. territory) or 2) NEU has not taken action (e.g., is unresponsive or declined funding).

1. Provide answer to the question, do you have any distributions or updates to distributions to eligible NEUs to report?
2. If the answer is "No", proceed to NEU Distribution-Ineligible Local Governments in IV.c.
3. If the answer is "Yes", download the NEU Distribution- Eligible NEUs template from the Treasury's Portal screen. See Figure 12.
4. Fill the downloaded template with information specific to the distributions to NEUs, as follows. Refer to Appendix A for additional information related to the bulk file upload process. Optional fields are denoted by (*). "Column" below refers to the applicable area in the bulk upload file.



Template Column	Action	Required for NEU that Has Taken Action (e.g., Requested Funding)	Required for NEU that Has Taken Action (declined funding <u>and</u> requested transfer)	Required for NEU that Has Not Taken Action (e.g., Unresponsive or Declined Funding)
B	Provide the name of the State or U.S. Territory in which the NEU resides	Yes	Yes	Yes
C	Include the NEU's unique recipient identification number assigned by the State or U.S. Territory to the NEU (e.g., AZ0013)	Yes	Yes	Yes
D	Include the legal name of the NEU	Yes	Yes	Yes
E	Include the NEU's DUNS number*	Yes	Yes	No
F	Include the NEU's Taxpayer Identification Number (TIN)*	Yes	Yes	No
G-M	Include the NEU's address (including city, State, zip code, and zip+4)	Yes	Yes	No
N	Include the NEU's primary email address. If there is no NEU primary email address, provide the point of contact's email address*	Yes	Yes	No
O	Include the NEU's primary point of contact's full name (first then last)*	Yes	No	No
P	Include the NEU's primary point of contact's phone number (###-###-####)*	Yes	No	No
Q	Include the NEU's primary point of contact's email address*	Yes	No	No
R	Include the NEU's authorized representative name. If the primary point of contact is also the authorized representative, provide the name again*	Yes	Yes	No
S	Include the NEU's authorized representative email address. If the primary point of contact is also the authorized representative, provide the email again*	Yes	Yes	No
T	Indicate the NEU's eligibility status: Action Taken (i.e., the NEU requested funding) or declined funding <u>and</u> requested Sec. 603 (c)(4) transfer to the State)	Yes	Yes	Yes



Template Column	Action	Required for NEU that Has Taken Action (e.g., Requested Funding)	Required for NEU that Has Taken Action (declined funding and requested transfer)	Required for NEU that Has Not Taken Action (e.g., Unresponsive or Declined Funding)
	Action Not Taken (i.e., the NEU is nonresponsive or declined funding)			
U	Provide the Total NEU Budget Reference submitted by the NEU as part of its request for funding or Sec. 603 (c)(4) transfer to the State*	Yes	Yes	No
V	Provide the revised Total NEU Budget Reference (e.g., if revisions were made based on updated Treasury guidance on the NEU's interpretation of the 75 percent budget cap issued on June 30, 2021)*	Yes- if applicable	No	No
W	Provide the Total Allocation Across 1 st and 2 nd Tranches before application of the 75 percent budget cap	Yes	Yes	Yes
X	Provide the Total Allocation Across 1 st and 2 nd Tranches (before application of 75 percent budget cap) (first revision, if applicable)*	Yes- if applicable	No	No
Y	Provide the Total Allocation Across 1 st and 2 nd Tranches (before application of 75 percent cap) (second revision, if applicable)*	Yes- if applicable	No	No
Z	Provide the Final Allocation Across 1 st and 2 nd Tranches after application of the 75 percent budget cap *	Yes	Yes	No
AA	Provide the Final Allocation Across 1 st and 2 nd Tranches after application of the 75 percent budget cap (first revision, if applicable)*	Yes- if applicable	No	No
AB	Provide the Final Allocation Across 1 st and 2 nd Tranches after application of the 75 percent budget cap (second revision, if applicable)*	Yes- if applicable	No	No
AC	Include any additional notes required to explain the NEU distribution summary line items, as applicable*	No	No	No



5. Upload the NEU Distribution- Eligible NEUs template separately as a .csv file by using the respective *Upload* button on the screen or dropping the files in this view.
 - Reminder- in the event a file is uploaded, the information will be accepted by Treasury's Portal as a record. Changes to information that has been bulk uploaded are not permitted. If you need to correct information submitted, contact SLFRP@treasury.gov.
6. After uploading or dropping the applicable template and documentation, provide a written summary of the State or U.S. Territory's NEU distribution process, including any substantive instructions or guidance provided to the NEUs (see Figure 13).

Figure 13 – NEU Distribution Process Written Summary

7. Once all of the above information is entered, click Save. Click the *Next* button to proceed to the following screen.

c. NEU Distribution: Ineligible Local Governments

In this section, the State or U.S. Territory will populate the local governments that were deemed ineligible to receive a NEU distribution (see Figure 14). Optional fields are denoted by (*). "Column" below refers to the applicable area in the bulk upload file.

Figure 14 – Screen for Ineligible NEUs

As with the NEU Eligible NEUs template, States or U.S. Territories are asked to provide updates to Treasury every month after the initial submission. For these updates, States or U.S. Territories should only provide entries where information has changed.

1. Provide answer to the question, do you have any local government(s) that were deemed ineligible to receive a NEU distribution to report?
2. If the answer is "No", proceed to NEU Distribution- Transactions.



3. If the answer is “Yes”, download the NEU Distribution- Ineligible Local Governments template (for listing ineligible Local Governments).
4. Fill the downloaded template with information specific to Ineligible Local Governments, as follows. Refer to Appendix A for additional information related to the bulk file upload process. Optional fields are denoted by (*). “Column” below refers to the applicable area in the bulk upload file.
 - Column B: Provide the name of the State or U.S. Territory in which the local government resides
 - Column C: Include the legal name of the Local Government
 - Column D: Include the Local Government’s DUNS number, if known or available*
 - Column E: Select the rationale for ineligibility:
 - Ineligible MCD (i.e., any Minor Civil Divisions in a “weak-MCD” State that did not meet the facts-and-circumstances test as outlined in Treasury’s guidance)
 - Other. If other, provide additional explanation in Column E
 - Column F: Provide an explanation for “Other” ineligibility rationale*
5. Upload the NEU Distribution- Ineligible Local Governments template separately as a .csv file by using the respective *Upload* button on the screen or dropping the files in this view.
 - Reminder- in the event a file is uploaded, the information will be accepted by Treasury’s Portal as a record. Changes to information that has been bulk uploaded are not permitted. If you need to correct information submitted, contact SLFRP@treasury.gov.
6. Refer to steps [IV.b.6](#) and [IV.b.7](#) above.

d. NEU Distribution: Transactions

In this section, the State or U.S. Territory will populate the table for all NEU transactions (see Figure 15).

NEU Transactions

*Do you have any NEU transactions to report?
Yes

Download the NEU Transactions template
[Download NEU Distribution - Transactions Bulk Upload Template](#)

Upload the NEU Transactions template
[NEU Distribution - Transactions](#)

Total NEU Transactions Uploaded: 0

Recipient Name	NEU Recipient Nu...	Entered State or T...	Recipient DUNS	Transaction Id as ...	Payment or Transfer	Transaction Descri...	Transaction Amount
----------------	---------------------	-----------------------	----------------	-----------------------	---------------------	-----------------------	--------------------

Figure 15 – Screen for NEU Transactions



As with the Eligible NEUs and Ineligible Local Governments information, States or U.S. Territories are asked to provide updates to Treasury every month after the submission of the Interim Report. For these updates, States or U.S. Territories should only provide entries where information has changed.

1. Provide answer to the question, do you have any NEU transactions to report?
2. If the answer is “No”, proceed to Non-UGLG section.
3. If the answer is “Yes”, download the NEU Distribution- Transactions.
4. Fill the downloaded templates with information specific to the transactions to NEUs, as follows. Refer to Appendix A for additional information related to the bulk file upload process. “Column” below refers to the applicable area in the bulk upload file.
 - Column B: Provide the name of the State or Territory in which the NEU resides
 - Column C: Provide the NEU Recipient Number assigned by the State or Territory to the NEU
 - NEU Recipient Number should match the number provided as part of the Eligible NEU template
 - Column D: Provide the NEU Name
 - NEU Name should match the NEU name provided as part of the Eligible NEU template
 - Column E: Provide the NEU’s DUNS number
 - DUNS number should match the DUNS number provided as part of the Eligible NEU template
 - Column F: Provide the transaction ID, assigned by the State or Territory
 - Column G: Indicate whether the transaction was a Payment or Transfer to State under Section 603(c)(4)
 - Column H: Provide a description of the transaction (e.g., initial payment under First Tranche, subsequent distribution under First Tranche)
 - Column I: Provide the transaction amount. Use negative numbers for downward revisions. For transfers to the State under Section 603 (c)(4), include the amount intended for transfer to the State
 - Column J: Provide the date of the transaction. For transfers to the State or U.S. Territory under Section 603(c)(4), provide the date that Treasury’s transfer form agreement was signed by both parties, not the expected date of Treasury’s approval



5. Upload the NEU Distribution- Transactions template separately as a .csv file by using the respective *Upload* button on the screen or dropping the files in this view.
 - Reminder- in the event a file is uploaded, the information will be accepted by Treasury's Portal as a record. Changes to information that has been bulk uploaded are not permitted. If you need to correct information submitted, contact SLFRP@treasury.gov.
6. Refer to step [IV.b.6](#) and [IV.b.7](#) above.

Section V. Reporting Requirements- Units of General Local Government within Counties that are Not Units of General Local Government

Note: This section is applicable only to Alaska, Connecticut, Massachusetts, Rhode Island, Vermont, U.S. Virgin Islands, and American Samoa.

Section 603(b)(3)(B)(ii) of the Social Security Act (the Act), as amended by the American Rescue Plan Act of 2021, provides that in the case of an amount to be paid to a county that is not a unit of general local government (Non-UGLG), the amount shall instead be paid to the State or U.S. Territory in which such county is located, and such State or U.S. Territory shall distribute such amount to each unit of general local government within such county based on population.

Units of general local government within Non-UGLG counties can include non-entitlement units of local government (NEUs) and metropolitan cities. As noted in the [Guidance on Counties that are Not Units of General Local Government](#), NEUs and metropolitan cities located in Non-UGLG counties that receive funds under Section 603(b)(3)(B)(ii) of the Act must have already accepted the award terms for payments made under Section 603(b)(2) (for NEUs) or section 603(b)(1) (for metropolitan cities).

State and U.S. territory governments will receive a specific allocation of these funds from Treasury and are responsible for calculating the allocations and distributing funds to units of general local government within Non-UGLG counties in the State or U.S. territory.

States and U.S. Territories are required to provide updates on distributions as part of the Interim Report., covering distributions from the date of award, to the extent such distributions have been made prior to that date.

Recipients are asked to provide updates on distributions to units of general local government within Non-UGLG counties to Treasury every month thereafter until all distributions have been made. States and U.S. Territories should, unless otherwise instructed by Treasury, provide updates to Treasury where information or status has changed. Each report should cover all changes since the prior month's report (e.g., submission by September 30, 2021, for the period covering August 1-31, 2021).

Templates will be available for download from Treasury's Portal. Each Non-UGLG template will need to be completed separately to allow for the proper uploading of information into Treasury's portal.

The Non-UGLG Distribution templates cover two areas:



- Non-UGLG Distribution
- Non-UGLG Transactions

On this screen, State and U.S. Territory recipients will provide information pertaining to distributions made to Non-UGLGs.

Specific step-by-step instructions for filling out the Non-UGLG templates are noted below. Appendix A includes an overview of the bulk file upload process and the information associated with formats and content to include in the bulk upload files

Users will also be asked to provide a summary of the state's Non-UGLG distribution process to date, to include substantive instructions or guidance that the state issued (e.g., key deadlines, guidance, etc.).

a. Monthly Non-UGLG Updates

Each month States and U.S. territories will be asked to report if they have had transactions for the current month (see Figure 16).

- If "No" is selected, States and U.S. territories may proceed to the certification page.
- If "Yes" is selected, States and U.S. territories will continue entering Non-UGLG information for the month. See [V.b.](#) below.

*Are there any updates to the Non-UGLG information for the current monthly reporting cycle?

Yes

Figure 16 – Non-UGLG Monthly Updates

b. Non-UGLG Distribution

In this template, the State or U.S. Territory will populate the spreadsheet for units of general local government (UGLG) within Non-UGLG counties that are eligible to receive a disbursement under Section 603(b)(3)(B)(ii) of the Social Security Act, as added by the American Rescue Plan Act of 2021 (see Figure 17).

Non-UGLG Summary

*Do you have any distributions to eligible Non-UGLGs to report?

Yes

Download the Non-UGLG Summary template

Download non-UGLG Distribution Template - Summary

Upload the Non-UGLG Distribution template

Non-UGLG Distribution

Total Non-UGLG Recipients Uploaded: 0

Recipient Name	Jurisdiction Number	Non-UGLG County Name	Population of Jurisdiction	Funds Received
----------------	---------------------	----------------------	----------------------------	----------------

Figure 17 – Non-UGLG Distribution Screen

States and U.S. Territories are asked to provide updates to Treasury every month after submitting the Interim Report. For these updates, States and U.S. Territories should only



provide entries where information or status has changed. Each report should cover any changes since the prior month's report. Optional fields denoted by (*). A valid DUNS number is always required for units of general local government within the non-UGLG that request payment from the State or U.S. territory. The table below notes the fields that are required if 1) units of local governments within the Non-UGLG that requested funding or 2) units of government within a Non-UGLG that declined funding or are unresponsive

1. Provide answer to the question, do you have any distributions to eligible units of general local government to report?
2. If the answer is "No", proceed to Non-UGLG Transactions.
3. If the answer is "Yes", download the Non-UGLG: Distribution from Treasury's Portal screen (see Figure 15).
4. Fill the downloaded template with information specific to distributions to Non-UGLGs, as follows. Refer to Appendix A for additional information related to the bulk file upload process. "Column" below refers to the applicable area in the bulk upload file.

Template Column	Action	Required for Units of Local Government within the Non-UGLG that Requested Funding	Required for Units of Local Government within the Non-UGLG that declined funding <u>and</u> requested a transfer	Required for Units of Local Government within the Non-UGLG that Declined Funding or Non-responsive
B	Provide the name of the Non-UGLG County	Y	Y	Y
C	Provide the name of the UGLG Jurisdiction within the Non-UGLG county	Y	Y	Y
D	Provide the population of the Jurisdiction	Y	Y	Y
E	Provide the amount of funds allocated to the Jurisdiction	Y	Y	Y
F	Include the Jurisdiction Number assigned by the State to the Jurisdiction (e.g., AZ0013)	Y	Y	Y
G	Include the Jurisdiction DUNS number*	Y	Y	N
H	Include the Jurisdiction Taxpayer Identification Number (TIN)*	Y	Y	N
I-O	Include the Jurisdiction address (including city, State and zip code)	Y	Y	N
P	Include the Jurisdiction primary email address. If there is no primary email address, provide the point of contact's email address*	Y	Y	N
Q	Include the Jurisdiction primary point of contact's full name (first then last)*	Y	N	N



Template Column	Action	Required for Units of Local Government within the Non-UGLG that Requested Funding	Required for Units of Local Government within the Non-UGLG that declined funding <u>and</u> requested a transfer	Required for Units of Local Government within the Non-UGLG that Declined Funding or Non-responsive
R	Include the Jurisdiction primary point of contact's phone number (###-###-####)*	Y	N	N
S	Include the Jurisdiction primary point of contact's email address*	Y	N	N
T	Include the Jurisdiction authorized representative name. If the primary point of contact is also the authorized representative, provide the name again*	Y	Y	N
U	Include the Jurisdiction authorized representative email address. If the primary point of contact is also the authorized representative, provide the email again*	Y	Y	N
V	Did the Jurisdiction decline <u>and</u> transfer funding to the State? Indicate Y or N	Y	Y	Y
W	Include any additional notes required to explain the Jurisdiction distribution summary line items, as applicable*	Y, if applicable	Y, If applicable	Y, if applicable

- Upload the Non-UGLG Distribution template separately as a .csv file by using the respective *Upload* button on the screen or dropping the files in this view.
- After uploading the applicable template and documentation, provide a written summary of the State or U.S. Territory's Non-UGLG distribution process to date. Include any substantive instructions or guidance provided to the Non-UGLG (e.g., key deadlines, guidance) (see Figure 18).

Non-UGLG Distribution Process

* Please provide a summary of the state's Non-UGLG distribution process to date. Include substantive instructions or guidance that the state issued to units of general local government within non-UGLG counties (e.g., key deadlines, guidance, etc).

ok

Figure 18 – Non-UGLG Distribution Process Written Summary

- Once all of the above information is entered, click Save. Click the *Next* button to proceed to the following screen.



c. Non-UGLG Transactions

In this template, the State or U.S. Territory will populate the spreadsheet for transactions to units of general local government within Non-UGLG counties (see Figure 19).

Figure 19 – Non-UGLG Transaction Screen

States and U.S. Territory are asked to provide updates to Treasury every month after submitting the Interim Report. For these updates, States or U.S. Territory should only provide entries where information has changed. Each report should cover any changes since the prior month's report.

1. Provide answer to the question, do you have any Non-UGLG transactions to report?
2. If the answer is “No”, proceed to certification page.
3. If the answer is “Yes”, download the Non-UGLG Transactions template from Treasury’s Portal screen (see Figure 17).
 - Column B: Provide the name of the Non-UGLG County
 - Non-UGLG name should match the Non-UGLG name provided as part of the Non-UGLG Distribution template
 - Column C: Provide the name of the UGLG Jurisdiction within the Non-UGLG county
 - Non-UGLG jurisdiction name should match the Non-UGLG jurisdiction name provided as part of the Non-UGLG Distribution template
 - Column D: Provide the Jurisdiction Number assigned by the State
 - Jurisdiction name should match the jurisdiction name provided as part of the Non-UGLG Distribution template
 - Column E: Include the Jurisdiction DUNS number
 - Jurisdiction DUNS should match the jurisdiction DUNS provided as part of the Non-UGLG Distribution template
 - Column F: Provide the transaction ID, assigned by the State
 - Column G: Indicate whether the transaction was a Payment or Transfer to State under Section 603(c)(4)



- Column H: Provide a description of the transaction (Enter “First Tranche” or “Second Tranche”)
 - Column I: Provide the transaction amount. Use negative numbers for downward revisions. For transfers to the State under Section 603(c)(4), include the amount intended for transfer to the State.
 - Column J: Provide the date of the transaction. For transfers to the State under Section 603(c)(4), provide the date that Treasury’s transfer form agreement was signed by both parties (not the expected date on which Treasury would grant the transfer).
4. Upload the Non-UGLG Transaction template separately as a .csv file by using the respective Upload button on the screen or dropping the files in this view.
 5. Refer to [V.b.6](#) and [V.b.7](#) for next steps.

Section VI. Official Certification

On this screen, the Authorized Representative for Reporting (ARR) will be asked to certify information pertaining to the NEU and Non-UGLG information. By certifying this submission, the ARR is confirming that all reported information is accurate and approved for submission (see Figures 20 and 21).

Users who are not designated as an ARR will not be presented with the screen.

1. The ARR’s Name, Title, Telephone Number, and E-Mail Address will be presented on screen for review.
2. Allow the Certifying Official to review all prior screens and entries to verify accuracy of the inputted record.

I certify that the information provided is accurate and complete after reasonable inquiry of people, systems, and other information available to the SLFRF recipient. The undersigned acknowledges that any materially false, fictitious, fraudulent statement, or representation (or concealment or omission of a material fact) in this submission may be the subject of criminal prosecution under the False Statements Accountability Act of 1996, as amended, 18 USC 1001, and also may subject me and the SLFRF Recipient to civil penalties, damages, and administrative remedies for false claims or otherwise (including under 31 USC 3729 et seq.) The undersigned is an authorized representative of the SLFRF Recipient with authority to make the above certifications and representations on behalf of the SLFRF Recipient.

By signing this report, the Authorized Representative for Reporting acknowledges in accordance with 31 CFR 35.4(c) that recipients shall provide to the Secretary periodic reports providing detailed accounting of the uses of funds, as applicable, all modifications to a State’s or Territory’s tax revenue sources, and such other information as the Secretary may require for the administration of this program. In addition to regular reporting requirements, the Secretary may request other additional information as may be necessary or appropriate, including as may be necessary to prevent evasions of the requirements of this program. False statements or claims made to the Secretary may result in criminal, civil, or administrative sanctions, including fines, imprisonment, civil damages and penalties, debarment from participating in Federal awards or contracts, and/or any other remedy available by law.

Name of Current Login User

The information for the currently signed in user will populate as the Authorizer of this submittal. Only those in Role of Authorized Representative for Reporting or Authorized Representative on the Submission record will have access to Certify and Submit.

Name:

Telephone:

Title:

Email:

Figure 20 Official Certification



Are you sure you want to submit?

Total Amount of NEU Distributions (Bulk Upload)

Total NEU Eligible Recipients to Date:	Total NEU Ineligible Recipients to Date:
0	0
Total NEU Transactions to Date:	
0	

Total Amount of Non-UGLG Distributions (Bulk Upload)

Total Non-UGLG Recipients to Date:	Total Non-UGLG Transactions to Date:
0	0

Total Amount of NEU/Non-UGLG Distributions (Bulk Upload):

0

Cancel Submit

Figure 21 – Summary of Reported Information

3. Verify information included in Figure 21 and confirm that the values presented are as expected based on the information included or uploaded in previous screens.
4. Once all of the information is validated, click the *Submit* button to complete the entry.



Appendix A – Bulk File Upload Overview

a) Purpose

The following segment provides overview on the bulk file upload process. There are five (5) unique bulk file upload templates as outlined below:

1. NEU Distribution – Eligible NEUs
2. NEU Distribution – Ineligible
3. NEU Distribution – Transactions
4. Non-UGLG Distribution
5. Non-UGLG Transactions

b) Template Description

Each of the five bulk file upload templates contain instructions on how to populate the respective fields within each file. When adding content to each template, please follow the “Help” text, which will provide what is and isn’t permitted for each cell. Each Module in the web application provides a link to download the template. All templates have the same structure as described below:

Row 1: Template Version

Row 2: Template Name

Row 3: Instructions: Brief description of the template constraints.

Row 4: Field IDs: Column identifiers

Row 5: Field Label: Brief description of each Field or Column

Row 6: Required or Optional: This field specifies if the field is optional or required. When the column is required, and a recipient does not provide the required data, the system will not accept any record or allow the file to be uploaded.

Row 7: Field Help Text: Provides a description of the column. There are 2 types of fields, 1). an open value either text or numbers and 2). A predefined list of pick list values:

- Open Value: Any text or number. Text for NEU State name or a Number that represents amounts. Most text types are free formats, the only expectation is for Dates, each column that represents a date describes the accepted format. For any number field, it is not required to add “,” to represent thousands or it is not required to add “\$” to represent currency. Only add decimal “.” when needed.
- Pick List: A Predefine list of values that is accepted by the system. When the column is a pick list, row 7 provides the list of options that the system accepts. End users should “copy and paste” the valid value for each record. If the respondent provides a value that is not in the predefined pick list, the system will not accept the file. Responses should not contain double quotes

Row 8: Data that Recipient submits. Row 8 is where recipients insert specific data to submit. The system accepts 1 or many rows.



The following is special guidance for each row or set of rows:

1. Do not change the content of rows 1 to 7.
2. Rows 4 to 7 provide metadata of each data element or column of the information that respondents will provide.
3. Add your data in row 8 column B.

c) Bulk Upload Process

The upload process includes the following steps:

1. Download the template from the link provided in the web application section of the module.
2. Open the template in Microsoft Excel.
3. Save the template as a .CSV file and change the name of the file as needed.
4. Add your data starting with row 8th of the applicable template.
5. When you finish adding your data repeat step 4.
6. Upload the new file to the portal. The system will provide a message if the upload was successful or unsuccessful.
7. Reuse the same file if the upload process fails. Reconcile the issues that the system indicated and repeat step 7 until all issues are corrected.

d) Bulk Upload Creation Steps

The collective bulk file upload process is contingent upon end-users following the below steps to ensure successful submission:

1. Load the NEU Distribution – Eligible NEUs
2. Load the NEU Distribution – Ineligible
3. Load the NEU Distribution – Transactions
4. Non-UGLG Distribution
5. Non-UGLG Transactions

Note: All data submitted via the bulk upload functionality must be submitted as a .CSV file.

e) CSV Guidance

Refer to the following link for descriptions of the CSV format.

https://en.wikipedia.org/wiki/Comma-separated_values

f) Specific CSV characteristics



- The date format is: MM/DD/YYYY. Example:
 - a. 06/22/2021
- All currency values are numeric. It is not required to add “,” for thousand or millions.
- All currency values should not contain a “\$” sign. The file will be rejected if a “\$” is included in the data entry.

g) Upload Template Description

Each data element and/or column in the CSV files is described below:

- Index No: Reference number for the data element. For internal use only.
- Defined term: Column Short description.
- Definition: Column long description or definition.
- CSV Column Name: The column header name that must be used in the CSV file.
- Required: Indicates if the column is required or not required.
- List Value: The content of the column is from a list of predefined values. This is valid for some of the columns. The list is provided for all cases. Most of the cases is N/A which means that the type is either String or Numeric.
- Data type: Specify the data type of the column. The options are: Numeric, Text, Date and Pick List.
- Max Length: Indicates the maximum length in characters that is allowed for each column.

h) NEU Distribution – Eligible NEUs

The downloadable template contains all information required to create the upload files to include required/optional fields, help text, and permissible data types. The following table highlights the data elements required for the NEU Distribution – Eligible NEUs.

Defined Term	Definition	Required	List Values	Data Type	Max Length
State or Territory	Name of the state or territory performing the transfer to the NEU (e.g. California, Maine, Maryland)	Required	n/a	String	20
NEU Recipient Number	A unique identification code for each NEU assigned by the State to the NEU as part of the request for funding (e.g., AZ1003)	Required	n/a	Number	10
NEU/Local Government Name	Legal name of the NEU organization/local government.	Required	n/a	String	120
NEU/Local Government DUNS Number	NEU/local government DUNS Number	Optional	n/a	Number	9
NEU Taxpayer Identification Number (TIN)	NEU Taxpayer Identification Number (TIN)	Optional	n/a	Number	9
NEU Address 1	First line of the NEU organization's address.	Optional	n/a	String	120



Defined Term	Definition	Required	List Values	Data Type	Max Length
NEU Address 2	Second line of the NEU organization's address.	Optional	n/a	String	120
NEU Address 3	Third line of the NEU organization's address.	Optional	n/a	String	120
NEU City	Name of city in which the NEU organization is located.	Optional	n/a	String	120
NEU State	United States Postal Service (USPS) two-letter abbreviation for the state or territory in which the NEU organization is located.	Optional	n/a	String	2
NEU Zip Code	United States ZIP code (five digits)	Optional	n/a	Number	5
NEU Zip +4	United States ZIP code (five digits) concatenated with the additional +4 digits associated with the NEU organization's address.	Optional	n/a	Number	4
NEU Email Address	Email address of the NEU organization.	Optional	n/a	String	120
NEU Point of Contact (POC) Name	Name of a Point of Contact at the NEU.	Optional	n/a	String	120
NEU POC Phone Number	Phone number of the primary Point of Contact for the NEU organization.	Optional	n/a	String	10
NEU POC Email	Email address of the primary Point of Contact for the NEU organization.	Optional	n/a	String	120
Authorized Representative Name	Name of an Authorized Representative of the NEU. If the primary point of contact is also the authorized representative, please provide the name again.	Optional	n/a	String	120
Authorized Representative Email	Email of an Authorized Representative of the NEU. If the primary point of contact is also the authorized representative, please provide the email again.	Optional	n/a	String	120
Status	Eligibility status of a given NEU. Indicate the NEU's status: 1) Action Taken (i.e., the NEU requested funding or declined funding & requested Sec. 603(c)(4) transfer to the state); or 2) Action Not Taken (i.e., the NEU is nonresponsive / declined funding)	Required	1) Action Taken (i.e., the NEU requested funding or declined funding & requested Sec. 603(c)(4) transfer to the state); 2) Action Not Taken (i.e., the NEU is nonresponsive / declined funding)	Pick List	n/a



Defined Term	Definition	Required	List Values	Data Type	Max Length
Total NEU Budget Reference (original)	Provide the Total NEU Budget Reference submitted by the NEU as part of its request for funding or Sec. 603(c)(4) transfer to the state	Optional	n/a	Dollar Numeric	12, 2
Total NEU Budget Reference (revised, if applicable)	Provide the revised Total NEU Budget Reference, if revisions were made based on updated NEU Guidance (i.e., updated Treasury guidance on interpretation of the 75 percent budget cap issued on June 30, 2021)	Optional	n/a	Dollar Numeric	12, 2
Total Allocation Across 1st and 2nd Tranches (before application of 75 percent cap)	Provide the Total Allocation Across 1st and 2nd Tranches before application of the 75 percent budget cap	Required	n/a	Dollar Numeric	12, 2
Total Allocation Across 1st and 2nd Tranches (before application of 75 percent cap) (first revision, if applicable)	Provide the Total Allocation Across 1st and 2nd Tranches (before application of 75 percent budget cap) (first revision, if applicable)	Optional	n/a	Dollar Numeric	12, 2
Total Allocation Across 1st and 2nd Tranches (before application of 75 percent cap) (second revision, if applicable)	Provide the Total Allocation Across 1st and 2nd Tranches (before application of 75 percent budget cap) (first revision, if applicable)	Optional	n/a	Dollar Numeric	12, 2
Final Allocation Across 1st and 2nd Tranches after application of the 75 percent budget cap	Final Allocation Across 1st and 2nd Tranches after application of the 75 percent budget cap	Optional	n/a	Dollar Numeric	12, 2
Final Allocation Across 1st and 2nd Tranches after application of the 75 percent budget cap (first revision, if applicable)	Final Allocation Across 1st and 2nd Tranches after application of the 75 percent budget cap (first revision, if applicable)	Optional	n/a	Dollar Numeric	12, 2
Final Allocation Across 1st and 2nd Tranches after application of the 75 percent budget cap (second revision, if applicable)	Final Allocation Across 1st and 2nd Tranches after application of the 75 percent budget cap (second revision, if applicable)	Optional	n/a	Dollar Numeric	12, 2
Additional Notes	Include any additional notes required to explain the NEU distribution summary line items, as applicable	Optional	n/a	String	400



i) NEU Distribution - Ineligible

The downloadable template contains all information required to create the upload files to include required/optional fields, help text, and permissible data types. The templates provide all information required to create the upload files. The following table highlights the data elements required for the NEW Distribution - Ineligible.

Defined Term	Definition	Required	List Values	Data Type	Max Length
State or Territory	Name of the state or territory performing the transfer to the NEU (e.g. California, Maine, Maryland)	Required	n/a	String	20
NEU/Local Government Name	Legal name of the NEU organization/local government.	Required	n/a	String	120
NEU/Local Government DUNS Number	NEU/local government DUNS Number	Optional	n/a	Number	9
Reason for Ineligibility	Select the rationale for ineligibility: 1) Ineligible MCD (i.e., any Minor Civil Divisions in a "weak-MCD" State that did not meet the facts-and-circumstances test as outlined in Treasury's guidance); or 2) Other. If other, please provide additional explanation in Column E	Required	1) Ineligible MCD (i.e., any Minor Civil Divisions in a "weak-MCD" State that did not meet the facts-and-circumstances test as outlined in Treasury's guidance); 2) Other. If other, please provide additional explanation in Column E	Pick List	n/a
Notes	Provide an explanation for "Other" ineligibility rationale	Optional	n/a	String	400

j) NEU Distribution - Transactions

The downloadable template contains all information required to create the upload files to include required/optional fields, help text, and permissible data types. The following table highlights the data elements required for NEU Distribution - Transactions.



Defined Term	Definition	Required	List Values	Data Type	Max Length
State or Territory	Name of the state or territory performing the transfer to the NEU (e.g., California, Maine, Maryland)	Required	n/a	String	20
NEU Recipient Number	A unique identification code for each NEU assigned by the State to the NEU as part of the request for funding (e.g., AZ1003)	Required	n/a	Number	10
NEU/Local Government Name	Legal name of the NEU organization/local government.	Required	n/a	String	120
NEU/Local Government DUNS Number	NEU/local government DUNS Number	Required	n/a	Number	9
Transaction ID (assigned by State or Territory)	Provide the transaction ID, assigned by the State or Territory	Required	n/a	String	25
Transaction Type	Transaction type (payment or Transfer to State under Section 603(c)(4))	Required	- Payment; - Transfer to State under Section 603(c)(4)	Pick List	n/a
Transaction Description	Transaction description of the transaction (e.g., initial payment under First Tranche, subsequent distribution under First Tranche)	Required	n/a	String	25
Transaction Amount	Transaction amount. Use negative numbers for downward revisions. For transfers to the state under Section 603(c)(4), include the amount of the intended transfer.	Required	n/a	Dollar Numeric	12,2
Date	Provide the date of the transaction. For transfers to the state under Section 603(c)(4), provide the date that Treasury's transfer form agreement was signed by both parties, not the expected date of Treasury approval.	Required	n/a	Date Numeric (MM/DD/YYYY)	10



k) Non-UGLG Distribution

The downloadable template contains all information required to create the upload files to include required/optional fields, help text, and permissible data types. The following table highlights the data elements required for Non-UGLG Distribution.

Defined Term	Definition	Required	List Values	Data Type	Max Length
Non-UGLG County Name	Non-UGLG County Name	Required	n/a	String	150
Jurisdiction Name	Jurisdiction Recipient Name	Required	n/a	String	150
Population of Jurisdiction	Population of Jurisdiction	Required	n/a	Number	12
Allocation amount	Provide the amount of funds allocated to the jurisdiction	Required	n/a	Number	12
Jurisdiction Number	Include the Jurisdiction Recipient Number assigned by the State to the Jurisdiction (e.g., AZ0013)	Required	n/a	String	50
Jurisdiction DUNS number	Include the Jurisdiction unique 9 digit DUNS number	Optional	n/a	String	9
Taxpayer Identification Number (TIN)	Taxpayer Identification Number (TIN)	Optional	n/a	text	82
Jurisdiction Address 1	Jurisdiction Address 1	Required	n/a	String	150
Jurisdiction Address 2	Jurisdiction Address 2	Optional	n/a	String	150
Jurisdiction Address 3	Jurisdiction Address 3	Optional	n/a	String	150
Jurisdiction City	Jurisdiction City	Required	n/a	String	150
Jurisdiction State	United States Postal Service (USPS) two-letter abbreviation for the state or territory in which the NEU organization is located.	Required	n/a	State Code	2
Jurisdiction Zip Code	United States ZIP code (five digits)	Required	n/a	Number	5
Jurisdiction Zip +4	United States ZIP code (five digits) concatenated with the additional +4 digits associated with the NEU organization's address.	Optional	n/a	Number	5+4
Jurisdiction Email Address	Include the Jurisdiction primary email address. If there is no primary email address, please provide the point of contact's email address.	Optional	n/a	String	150



Defined Term	Definition	Required	List Values	Data Type	Max Length
Jurisdiction Point of Contact Name	Jurisdiction Point of Contact Name	Optional	n/a	String	150
Jurisdiction Point of Contact Phone Number	Jurisdiction Point of Contact Phone Number	Optional	n/a	Number	10
Jurisdiction Point of Contact Email	Jurisdiction Point of Contact Email	Optional	n/a	String	150
Authorized Representative Name	Include the Jurisdiction authorized representative name. If the primary point of contact is also the authorized representative, please provide the name again.	Optional	n/a	String	150
Authorized Representative Email	Include the Jurisdiction authorized representative email address. If the primary point of contact is also the authorized representative, please provide the email again.	Optional	n/a	String	150
Question: Did the jurisdiction decline and transfer funding to the state?	Response to Question: Did the jurisdiction decline and transfer funding to the state?	Required	n/a	Yes or No	3
Notes	Include any additional notes required to explain the Jurisdiction distribution summary line items, as applicable	Optional	n/a	text	500

I) Non-UGLG Transactions

The downloadable template contains all information required to create the upload files to include required/optional fields, help text, and permissible data types. The following table highlights the data elements required for Non-UGLG Transactions.

Defined Term	Definition	Required	List Values	Data Type	Max Length
Non-UGLG County Name	Non-UGLG County Name	Required	n/a	String	150
Jurisdiction Name	Jurisdiction Recipient Name	Required	n/a	String	150
Jurisdiction Recipient Number	Include the Jurisdiction Recipient Number assigned by the State to the Jurisdiction (e.g., AZ0013)	Required	n/a	String	50



Defined Term	Definition	Required	List Values	Data Type	Max Length
Jurisdiction DUNS number	Include the Jurisdiction unique 9 digit DUNS number	Required	n/a	String	9
Transaction ID (assigned by Non-UGLG)	Provide the transaction ID, assigned by the State	Required	n/a	String	50
Transaction Type	Indicate whether the transaction was a Payment or Transfer to State under Section 603(c)(4)	Required	- Payment; - Transfer to State under Section 603(c)(4)	Pick List	n/a
Transaction Description	Provide a description of the transaction (Enter "First Tranche" or "Second Tranche")	Required	"First Tranche" or "Second Tranche"	Pick List	n/a
Transaction Amount	Provide the transaction amount. Use negative numbers for downward revisions. For transfers to the state under Section 603(c)(4), include the amount intended for transfer to the state.	Required	n/a	Number	12,2
Transaction Date	Provide the date of the transaction. For transfers to the state under Section 603(c)(4), provide the date that Treasury's transfer form agreement was signed by both parties (not the expected date that Treasury grants the transfer).	Required	n/a	date	10



Appendix B – Designating SLFRF Points of Contact by SLFRF Account Administrators

This section provides a brief instruction for SLFRF Account Administrators on accessing Treasury's Portal to provide the names and contact information of officials to be designated as your organization's points of contact for the SLFRF award(s). The following pages provide step-by-step guidance. See Section II for commonly asked questions/answers on this topic.

Note- the screens noted below may be subject to change.

Section I: Instructions

Step 1

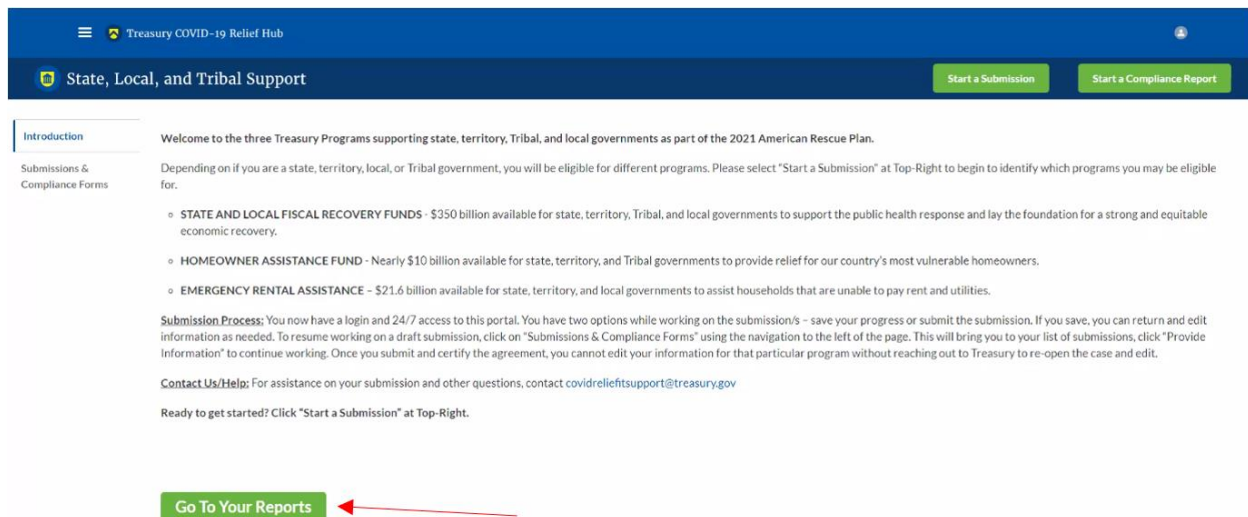
You must be registered in the ID.me system to access Treasury's Portal. You can refer additional guidance on registering in the ID.me system. If you have questions about registering in ID.me, please email SLFRP@treasury.gov.

Step 2

Once you are registered in ID.me, click on the link in the email you received requesting the POC designations. If you do not have the email link, please email us via SLFRP@Treasury.gov and we will provide the link.

Step 3

The link will take you to the Treasury Portal "State, Local, and Tribal Support" landing page as shown below. Once on that page, click on the *Go to Your Report* button at the bottom left of the screen, as indicated in by the red arrow below.



Step 4

The green *Go to Your Report* button will take you to the Submissions and Compliance page as shown below. Once on that page, click on the three-line navigation icon at the top left of the screen. The red arrow below is pointing to the icon.



Treasury COVID-19 Relief Hub

State, Local, and Tribal Support

Start a Submission Start a Compliance Report

Introduction

Submissions & Compliance Forms

Submissions

No current submissions.

Compliance

Application ID	Application Type	Status		
ERA Compliance-78106	ERA	Submitted	View Information	Download PDF

Step 5

After clicking on the three-line navigation icon, a drop-down menu will appear on the top left of the screen as shown below. Please click on “Account” from the drop-down menu, as shown by the red arrow below.

Treasury COVID-19 Relief Hub

State, Local, and Tribal Support

Start a Submission Start a Compliance Report

Submissions

No current submissions.

Compliance

Application ID	Application Type	Status		
ERA Compliance-78106	ERA	Submitted	View Information	Download PDF
ERA Compliance-781018	ERA	Draft	Provide Information	

Step 6

Next you will see the screen below. Under the “Account Name” heading, click on the name of your organization (as shown by the red arrow).

Treasury COVID-19 Relief Hub

Accounts

All Accounts

1 item • Sorted by Account Name • Filtered by All accounts - Account Record Type • Updated a few seconds ago

	Account Name	Account Record Type	Created Date
1	Test Account	CARES	5/20/2021 10:30 AM

Step 7

By clicking the name of your organization, Treasury’s portal will open to allow you to provide names and contact information on your organization’s designees for the SLFRF reports, as shown below. The landing page provides basic information about the designations. Please see section B for more details about the roles and responsibilities for each or the three roles.



Treasury COVID-19 Relief Hub

Introduction

Certification

Designation Form

ERA Award Account Administrator, Point of Contact for Reporting, and Authorized Representative for Reporting

Each Emergency Rental Assistance (ERA) award recipient must designate up to three individuals to serve as Treasury's lead contacts for reporting for each ERA1 and ERA2 award.

There are three distinct roles for each ERA1 and ERA2 awards, as follows:

Account Administrator - Individual authorized to maintain your organization's list of designated individuals for the ERA1 or ERA2 award reporting in the Treasury Portal.

Point of Contact for Reporting - Individual responsible for receiving official Treasury notifications about reporting on the ERA1 or ERA2 award including alerts about upcoming reporting, requirements, and deadlines. The Point of Contact for Reporting will also be responsible for completing the reports on the ERA1 or ERA2 award.

Authorized Representative for Reporting - Individual responsible for certifying and submitting official reports on behalf of the ERA1 or ERA2 award recipient. The Authorized Representative will also be responsible for communications with Treasury on such matters as extension requests and amendments of previously submitted reports. The official reports may include special reports, monthly reports, quarterly reports, interim reports and final reports.

The Point of Contact for Reporting may be the same individual identified as the Authorized Representative for Reporting. The Account Administrator may be designated for these roles as well.

User Instructions

- 1) Please go to the "Certification" tab and complete the official certification that you are authorized by the recipient/grantee to submit names of individuals, who are authorized to act on behalf of the recipient in the roles identified above for purposes of reporting on its award under the program.
- 2) Go to the "Designation Form" tab and complete the brief form providing the names and contact information for your organization's designees for the ERA1 or ERA2 award.

Step 8

When you are ready to key in the names of the designated individuals, click on the "Certification" button on the left navigation bar, as noted in the red arrow as shown below.

Treasury COVID-19 Relief Hub

Introduction

Certification

Designation Form

ERA Award Account Administrator, Point of Contact for Reporting, and Authorized Representative for Reporting

Each Emergency Rental Assistance (ERA) award recipient must designate up to three individuals to serve as Treasury's lead contacts for reporting for each ERA1 and ERA2 award.

There are three distinct roles for each ERA1 and ERA2 awards, as follows:

Account Administrator - Individual authorized to maintain your organization's list of designated individuals for the ERA1 or ERA2 award reporting in the Treasury Portal.

Point of Contact for Reporting - Individual responsible for receiving official Treasury notifications about reporting on the ERA1 or ERA2 award including alerts about upcoming reporting, requirements, and deadlines. The Point of Contact for Reporting will also be responsible for completing the reports on the ERA1 or ERA2 award.

Authorized Representative for Reporting - Individual responsible for certifying and submitting official reports on behalf of the ERA1 or ERA2 award recipient. The Authorized Representative will also be responsible for communications with Treasury on such matters as extension requests and amendments of previously submitted reports. The official reports may include special reports, monthly reports, quarterly reports, interim reports and final reports.

The Point of Contact for Reporting may be the same individual identified as the Authorized Representative for Reporting. The Account Administrator may be designated for these roles as well.

User Instructions

- 1) Please go to the "Certification" tab and complete the official certification that you are authorized by the recipient/grantee to submit names of individuals, who are authorized to act on behalf of the recipient in the roles identified above for purposes of reporting on its award under the program.
- 2) Go to the "Designation Form" tab and complete the brief form providing the names and contact information for your organization's designees for the ERA1 or ERA2 award.

Step 9

On the "Official Certification of Authorization" screen, you should type in your name to indicate you are authorized to submit the names of the designated individuals. Once you enter your name, click on the *Submit* button.

Treasury COVID-19 Relief Hub

Introduction

Certification

Designation Form

Official Certification of Authorization

I certify that I am authorized by the recipient/grantee to submit the above names of individuals, who are authorized to act on behalf of the recipient in the roles identified above for purposes of reporting on its award under the program. I acknowledge that any materially false, fictitious, fraudulent statement, or representation (or concealment or omission of a material fact) may be punishable by fine or imprisonment or both under the False Statements Accountability Act of 1996, as amended 18 U.S.C. § 1001, and also may subject me to civil penalties and administrative remedies for false claims or otherwise (including under to 31 U.S.C. §§ 3729 and 3730).

Signature of Account Administrator [Type name/signature equivalent]:

type your name here

Submit



Step 10

Next, click on the “Designation Form” button on the left navigation bar, as noted by the red arrow shown below.

The screenshot shows the Treasury COVID-19 Relief Hub interface. On the left navigation bar, the 'Designation Form' button is highlighted with a red arrow. The main content area displays the 'Official Certification of Authorization' form, which includes a signature line for the Account Administrator and a 'Submit' button.

Step 11

Clicking on the “Designation Form” button will open the “Designation of Account Administrator, Point of Contact for Reporting, and Authorized Representative for Reporting” screen shown below.

The screenshot shows the 'Designation Form' screen. It includes a left navigation bar with 'Introduction', 'Certification', and 'Designation Form' (selected). The main content area is titled 'Program Name: Emergency Rental Assistance' and 'Designation of Account Administrator, Point of Contact for Reporting, and Authorized Representative for Reporting'. It provides instructions for entering contact information for up to three individuals. The form includes fields for Salutation, First Name, Middle Name, Last Name, Suffix, Title, Phone, Email, and Name of Entity/Organization. There are also 'Complete' and 'Edit my current roles' buttons at the bottom.

You can use the Designation Form to enter the names and contact information for each of the three designations for each of your SLFRF allocations.

The roles for the SLFRF allocations are displayed as follows:

- SLFRF – Account Administrator
- SLFRF – Point of Contact for Reporting
- SLFRF – Authorized Representative for Reporting

The Designation Form screen shows nine data fields for entering key information about the individual being designated. These include:



- Salutation (optional)
- First Name
- Middle Name (optional)
- Last Name
- Suffix (optional)
- Title
- Phone
- Email
- Name of Entity/Organization (Recipient entity)

Note: The screen will display a list at the bottom of the screen with the names and contact information of individuals (if any) who have previously been designated for any of the three roles. This list will be important in maintaining and updating your organization's designees in the future.

a. Designation of the Account Administrator

Remember, we have temporarily authorized you as the SLFRF – Account Administrator. There is no need to re-enter your name and contact information if you plan to continue in that role. If you need to designate someone else as the SLFRF Account Administrator,

- Find your name at the bottom of the screen.
- Hit the blue *Edit* button located to right of your name.
- Enter the name and contact information of the new SLFRF Account Administrator.
- Hit the blue *Complete* button.

b. Designation of Point of Contact for Reporting and Authorized Representative for Reporting

- Enter the next designee's name and contact information.
- After entering their name and required contact information, select the Program Role(s) for which he/she is being designated.
- Once the role is selected, click on the small arrow to the right of the role, which will move the role to the box on the right.
- Click on the *Complete* button at the bottom of the screen.
- Follow the same process for each of the remaining designees.
- When you have entered all three designations, please press the *Complete* button.
- As a final step, go to the icon on the upper right of the screen as shown below to exit the system.



Section II: Questions and Answers

Who is authorized to designate the Account Administrator, the Point of Contact for Reporting, and the Authorized Representative for Reporting for my organization's SLFRF's award?

Treasury requests that each SLFRF should follow its own decision-making procedures in making the three designations for each award.

What is the deadline for making the designation?

Treasury requests that use Treasury's portal to make the three designations as soon as possible to enable your organization to submit its Interim Report and Recovery Plan Performance Report (if applicable).

What are the responsibilities for each of the three designated roles?

The required roles are as follows:

- Account Administrator** for the SLFRF award has the administrative role of maintaining the names and contact information of the designated individuals for SLFRF reporting. The Account Administrator is also responsible for working within your organization to determine its designees for the roles of Point of Contact for Reporting and Authorized Representative for Reporting and providing their names and contact information via Treasury's Portal. The Account Administrator can also view and submit reports. Finally, the Account Administrator is responsible for making any changes or updates as needed over the award period. We recommend that the Account Administrator identify an individual to serve in his/her place in the event of staff changes.



- **Point of Contact for Reporting** is the primary contact for receiving official Treasury notifications about reporting on the SLFRF award, including alerts about upcoming reporting, requirements, and deadlines. The Point of Contact for Reporting is responsible for completing the SLFRF reports, but cannot certify and submit these reports.
- **Authorized Representative for Reporting** is responsible for certifying and submitting official reports on behalf of the SLFRF award recipient. Treasury will accept reports or other official communications only when submitted by the Authorized Representative for Reporting. The Authorized Representative for Reporting is also responsible for communications with Treasury on such matters as extension requests and amendments of previously submitted reports. The official reports may include special reports, monthly reports, quarterly reports, interim reports, and final reports.

May my organization designate one individual for multiple roles?

Yes, an individual may be designated for multiple roles. For example, the individual designated as the Account Administrator can also be designated as the Authorized Representative for Reporting or Point of Contact for Reporting. It is also acceptable for an organization to designate one individual for all three roles however it should also adhere to any applicable rules on personnel checks and balances.

May my organization designate more than one individual per role?

Yes, you may designate more than one person per each role but are encouraged to limit the number of users assigned to each role.

May my organization change the designations from time to time?

Yes, an organization may make changes and updates to the list of designation individuals whenever needed.

Must each of the designated individuals register for using Treasury's Portal?

Yes, everyone designated for any of the roles must register with ID.me before they will be given access to Treasury's portal. Please contact us at the email address below for more information and guidance on registering with ID.me.

Additional Questions or Additional Assistance?

If you have additional questions about accessing or using Treasury's portal to provide the designees' names and contact information, please send us an email via SLFRP@treasury.gov.



RECOMMENDED PROJECTS/STUDIES FOR ARPA FUNDING

The expenditure of American Rescue Plan Act funds should only be assigned to one time uses as this is not a repeating source of funds. To this end, Staff has prepared a priority list of projects and studies for City Council Consideration. The costs of the first 14 of 15 projects/studies listed below totals \$7,845,000, which exceeds the total ARPA funds available. However, as these costs are estimates, there may be sufficient funds to fully implement the first 14 projects/studies as listed. The second set of projects listed below, numbered 16 through 22, are also viewed as priorities, however, all of these projects are eligible for Quimby Act funding, if such funding becomes available.

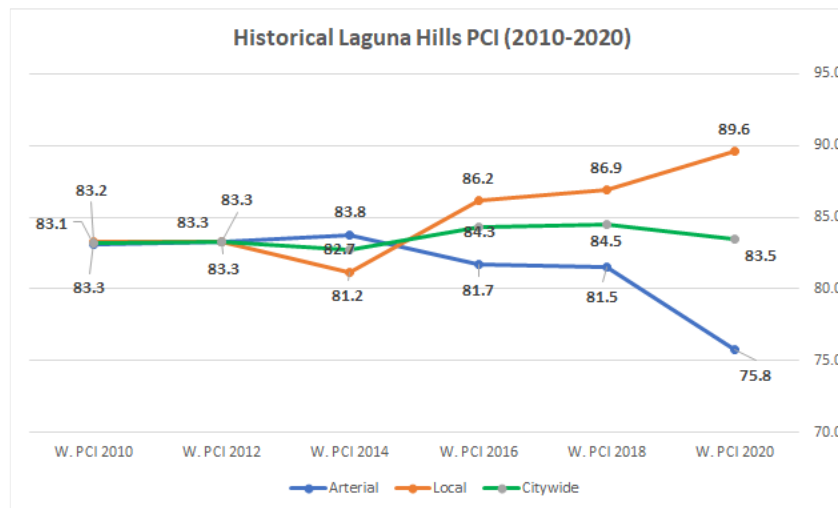
A summary explanation of each of the first 14 projects is provided below the table.

1	Americans with Disability Act (ADA) Transition Plan	\$ 100,000.00
2	Update the Laguna Hills Municipal Code	\$ 200,000.00
3	OCSO Body Worn Cameras and In Car Video	\$ 275,000.00
4	Traffic Signal Video Detection Camera replacements	\$ 600,000.00
5	Traffic Signal Reflective Backplates	\$ 300,000.00
6	Arterial Highway Pavement Rehabilitation	\$ 3,000,000.00
7	Traffic Signal Observation Camera replacements	\$ 70,000.00
8	Upgrade Audio-Visual - Council Chamber & Community Ctr	\$ 250,000.00
9	Housing Element Rezoning and Environmental Document	\$ 300,000.00
10	La Paz Sidewalk Widening at Valencia Elementary School	\$ 1,500,000.00
11	Civic Center Facility Condition Assessment update	\$ 25,000.00
12	Community Center Facility Condition Assessment Update	\$ 25,000.00
13	Traffic Signal Illuminated Street Name Sign replacements	\$ 450,000.00
14	Laguna Hills Drive Median Island Landscaping	\$ 750,000.00
	SUBTOTAL 1 = \$7,845,000.00 [Exceeds ARPA]	
15	Storm Drain from Civic Center to Aliso Creek	\$ 900,000.00
	SUBTOTAL 2 = \$8,745,000.00	
	The following projects are "Quimby eligible"	
16	Replace all Parks rubberized playground surfacing	\$ 1,250,000.00
17	Air Conditioning for the Community Center Gymnasium	\$ 700,000.00
18	Electronic Bulletin Board at the Community Center	\$ 100,000.00
19	Additional Security Cameras at Community Center	\$ 90,000.00
20	Additional Lighting at Community Center	\$ 80,000.00
21	Convert Community Center Sports Field Lighting to LED	\$ 200,000.00
22	Holiday Pavilion Development at the Community Center	\$ 400,000.00
	TOTAL	\$ 11,565,000.00

1. Americans with Disability Act (ADA) Transition Plan – This study is necessary for the City to remain eligible to receive Federal Funding, particularly funding related to transportation (roads) purposes. The City’s current Transition Plan is out of date. It is noted that both the Civic Center and Community Center have ADA compliance plans that have been fully implemented. However, a Transition Plan additionally includes the public street system, parks and other public facilities to make sure plans are in place for future actions needed to meet the requirements of the Americans with Disability Act.
2. Update the Laguna Hills Municipal Code – The LHMC is in needed of a full update as many sections of the Code are out of date with current laws or court established precedents. While the City’s work remains in compliance with the current laws and established precedents, the Code, originally established in 1991, needs to be updated to be fully functional.
3. OCSD Body Worn Cameras and In Car Video – Several years ago, the Orange County Sheriffs Department made the determination they would work towards the deployment of Body Worn Cameras along with in-car cameras to provide the public with transparency in police enforcement. In the upcoming contract with the OCSD, all contract cities will be required to contribute to the one-time rollout costs for the Body Worn Cameras and the upgrade to the in-car camera systems.
4. Traffic Signal Video Detection Camera replacements – Traffic signals operate most efficiently when the computer operating the traffic signal has awareness of the vehicle and pedestrian demands on all approaches to the intersection. Over ten years ago, through a variety of traffic signal improvement projects, video detection cameras have been deployed for this purpose. These cameras are becoming antiquated and no longer supported by the vendor. Accordingly, it is time to replace existing cameras with current models to maintain and improve their effectiveness at all of the City’s traffic signal locations with vintage cameras.
5. Traffic Signal Reflective Backplates – The Federal Highway Administration has issued a report that identified at least a 15% reduction in signalized intersection crashes when yellow reflective stripes are added to traffic signal backplates. FHWA states, “this treatment is recognized as a human factors enhancement of traffic signal visibility, conspicuity, and orientation for both older and color vision deficient drivers. This countermeasure is also advantageous during periods of power outages when the signals would otherwise be dark, providing a visible cue for motorists to stop at the intersection ahead.” Given the age of most of our traffic signal equipment, the full backplate, and in some instances the signal head, would need to be replaced for all heads at all traffic signal locations. This safety improvement is recommended. The FHWA report can be found here: [Intersection Proven Safety Countermeasure: Technical Summary: Backplates with](#)

Retroreflective Borders, Published Date : 2015-01-01, Report Number : FHWA-SA-15-007, URL : <https://rosap.nhtl.bts.gov/view/dot/42807>

6. Arterial Highway Pavement Rehabilitation - The City's Pavement Management System rates the condition of the City's arterial highways on an every two-year basis on a 100-point Pavement Condition Index (PCI) scale. A rating of 86 or better is a pavement in very good condition and a rating of 59 or less is a pavement in poor to very poor condition. While the City spends approximately \$2.5million every two years for pavement rehabilitation, the repairs and restoration of the arterial roadways is falling behind the need. As shown in the graph below, the arterial highway pavement condition is falling:



Under current spending plans, the PCI for arterial highways is projected to be 63 by Fiscal Year 2026-2027, just above the poor condition. An additional expenditure of \$3,000,000 will maintain the arterial highways at a projected PCI of 75, the good range.

7. Traffic Signal Observation Camera replacements – The City maintains 10 traffic observation cameras at selected signalized intersection to provide a technology advantage for the limited staff availability. These observation cameras allow Staff to remotely observe traffic flow and conditions and adjust traffic signal timing. The existing cameras are over ten years old, are analog based, and are no longer a technology that is supported. Several cameras are no longer functional.
8. Upgrade Audio-Visual at Council Chamber and Community Center – The audio-visual equipment in both the City Council Chambers and in the Community Center Heritage Room are antiquated, being over 10 years old. Broadcast and media technology have greatly improved and these systems need to be upgraded in order to meet current and future needs.
9. Housing Element Rezoning and Environmental Document – The Housing Element Update is near to concluding the phase 1 effort. Subsequent to this effort,

expected in the next fiscal year is the phase 2 effort to rezone specifically identified properties to allow residential zoning along with the requisite environmental document. There may some grant funds available for this effort but this will not be known until the first phase effort is complete.

10. La Paz Sidewalk Widening at Valencia Elementary School – The La Paz Sidewalk Widening along the frontage of Valencia Elementary School has been an unfulfilled Capital Improvement due to lack of funding. The existing heavily used sidewalk is only four feet wide and needs to meet arterial highway standards. A wider sidewalk will aid access to the school and to the OCTA bus stop. In order to construct the sidewalk, the City will need to acquire right of way from the Saddleback Valley Unified School District, build a substantial retaining wall and then the sidewalk. This project has been the subject of previous grant applications that have not reached a high enough score, relative to other projects around the State, to be funded.
11. Civic Center Facility Condition Assessment update – The existing Civic Center Facility Condition Assessment is over ten years old and needs an update to allow the City to properly budget for future maintenance and capital improvement funding needs of this City asset.
12. Community Center Facility Condition Assessment Update - The existing Community Center Facility Condition Assessment is over ten years old and needs an update to allow the City to properly budget for future maintenance and capital improvement funding needs of this City asset.
13. Traffic Signal Illuminated Street Name Sign replacements – The City’s 49 traffic signals include illuminated street name signs to provide guidance to motorists. The street name signs at 47 of the traffic signals are an antiquated design based upon fluorescent lighting and many of the sign panels are deteriorated to a state of poor condition. New technology illuminated street name signs are available in an LED based format. Complete replacement of these signs would improve the readability of the street names and, as the same time, allow the City to brand our location by adding “CITY OF LAGUNA HILLS” below each street name on these signs.
14. Laguna Hills Drive Median Island Landscaping – This median island curbing was constructed about ten years ago as a part of the pavement rehabilitation of this street with the then federal funding provided for one-time projects. Funding has not yet been available to landscape this island to the City’s standards.

CITY OF LAGUNA HILLS
8-YEAR PLAN
FINANCIAL POLICY RATIOS & RESERVES

UPDATED

	Forecast YEAR 1 FY 2021/22	Forecast YEAR 2 FY 2022/23	Forecast YEAR 3 FY 2023/24	Forecast YEAR 4 FY 2024/25	Forecast YEAR 5 FY 2025/26	Forecast YEAR 6 FY 2026/27	Forecast YEAR 7 FY 2027/28	Forecast YEAR 8 FY 2028/29
1 BEGINNING TOTAL FUND BALANCE	\$14,530,351	\$12,135,408	\$12,956,905	\$11,025,415	\$11,824,067	\$10,521,604	\$12,044,760	\$10,876,987
2 General Fund Revenues	22,718,305	23,498,992	24,106,618	24,790,782	25,499,289	26,191,353	26,902,705	27,633,887
3 Special Revenues	6,103,705	5,440,232	2,071,713	1,906,737	1,798,579	2,048,412	1,880,577	1,713,529
4 Other Funding Sources	826,042	843,590	862,689	878,826	901,968	921,527	941,673	962,423
5 TOTAL REVENUES	\$29,648,052	\$29,782,814	\$27,041,020	\$27,576,345	\$28,199,836	\$29,161,293	\$29,724,955	\$30,309,839
6 Operating Expenditures	22,044,256	23,404,916	23,991,798	24,641,622	25,309,208	25,995,046	26,699,637	27,423,500
7 Capital Expenditures	7,772,689	4,757,689	4,500,000	1,650,000	4,100,000	1,550,000	4,100,000	1,600,000
8 Other Funding Uses	376,130	357,291	43,091	43,091	43,091	43,091	43,091	43,091
9 CalPERS UAL Paydown/Section 115 Trust	0	0	0	0	0	0	0	0
10 Use of Insurance Reserve Funds	50,000	50,000	50,000	50,000	50,000	50,000	50,000	50,000
11 Debt Service	1,799,921	391,421	387,621	392,979	0	0	0	0
12 TOTAL EXPENDITURES	\$32,042,996	\$28,961,317	\$28,972,510	\$26,777,692	\$29,502,299	\$27,638,137	\$30,892,728	\$29,116,591
13 Change in Total Fund Balance	(2,394,944)	821,497	(1,931,490)	798,653	(1,302,464)	1,523,156	(1,167,773)	1,193,248
14 Ending Total Fund Balance	\$12,135,408	\$12,956,905	\$11,025,415	\$11,824,067	\$10,521,604	\$12,044,760	\$10,876,987	\$12,070,235
15 Less the Following Fund Balances:								
16 Restricted for Debt Service	(391,421)	(387,621)	(392,979)	-	-	-	-	-
17 Restricted Special Revenue Funds	(2,143,954)	(3,505,052)	(2,308,674)	(3,822,320)	(2,402,808)	(4,008,129)	(2,670,615)	(4,341,053)
18 Unrestricted General Fund Balance	\$9,600,033	\$9,064,232	\$8,323,762	\$8,001,748	\$8,118,796	\$8,036,631	\$8,206,372	\$7,729,182
Less the Following Assigned Fund Balances:								
19 Capital Maintenance Reserve Funds	(655,659)	(850,659)	(775,659)	(1,050,659)	(980,299)	(1,255,299)	(856,587)	(852,500)
20 Insurance Reserve Funds	(200,000)	(200,000)	(200,000)	(200,000)	(200,000)	(200,000)	(200,000)	(200,000)
21 Unassigned General Fund Balance	8,744,374	8,013,573	7,348,103	6,751,089	6,938,497	6,581,332	7,149,785	6,676,682
Ratio Analysis								
22 Operating Ratio (>1.1) (before debt service)	1.07	1.04	1.04	1.04	1.04	1.04	1.04	1.04
23 Operating Surplus before Debt Service	1,500,091	937,666	977,509	1,027,986	1,092,048	1,117,835	1,144,741	1,172,810
24 Operating Ratio (>1.1) (after debt service)	0.99	1.02	1.02	1.03	1.04	1.04	1.04	1.04
25 Operating Surplus after Debt Service	(299,830)	546,245	589,888	635,007	1,092,048	1,117,835	1,144,741	1,172,810
26 Debt Service Ratio (<12%)	8%	2%	2%	2%	0%	0%	0%	0%
27 Total Fund Balance Ratio	55%	55%	46%	48%	42%	46%	41%	44%
28 Unrestricted General Fund Balance Ratio (>35%)	44%	39%	35%	32%	32%	31%	31%	28%
29 Unassigned General Fund Balance Ratio (>25%)	40%	34%	31%	27%	27%	25%	27%	24%

Attachment: Attachment F - Eight-Year Plan Update (2746 : American Rescue Plan Act)

CITY OF LAGUNA HILLS
8-YEAR PLAN
FINANCIAL POLICY RATIOS & RESERVES

ADOPTED 2021-2023 BIENNIAL BUDGET (with ARPA & without VALH)

	Forecast YEAR 1 FY 2021/22	Forecast YEAR 2 FY 2022/23	Forecast YEAR 3 FY 2023/24	Forecast YEAR 4 FY 2024/25	Forecast YEAR 5 FY 2025/26	Forecast YEAR 6 FY 2026/27	Forecast YEAR 7 FY 2027/28	Forecast YEAR 8 FY 2028/29
1 BEGINNING TOTAL FUND BALANCE	\$13,118,078	\$13,892,564	\$17,953,143	\$15,515,705	\$15,795,762	\$13,961,737	\$13,940,043	\$11,213,799
2 General Fund Revenues	22,236,737	23,005,385	23,600,671	24,272,186	24,967,728	25,646,503	26,344,234	27,061,454
3 Special Revenues	5,240,615	5,440,232	2,071,713	1,906,737	1,798,579	2,048,412	1,880,577	1,713,529
4 Other Funding Sources	1,689,132	843,590	862,689	878,826	901,968	921,527	941,673	962,423
5 TOTAL REVENUES	\$29,166,484	\$29,289,207	\$26,535,072	\$27,057,749	\$27,668,275	\$28,616,443	\$29,166,484	\$29,737,406
6 Operating Expenditures	22,125,948	23,404,916	23,991,798	24,641,622	25,309,208	25,995,046	26,699,637	27,423,500
7 Capital Expenditures	4,040,000	1,025,000	4,500,000	1,650,000	4,100,000	1,550,000	4,100,000	1,600,000
8 Other Funding Uses	376,130	357,291	43,091	43,091	43,091	43,091	43,091	43,091
9 CalPERS UAL Paydown/Section 115 Trust	0	0	0	0	0	1,000,000	1,000,000	1,000,000
10 Use of Insurance Reserve Funds	50,000	50,000	50,000	50,000	50,000	50,000	50,000	50,000
11 Debt Service	1,799,921	391,421	387,621	392,979	0	0	0	0
12 TOTAL EXPENDITURES	\$28,391,999	\$25,228,628	\$28,972,510	\$26,777,692	\$29,502,299	\$28,638,137	\$31,892,728	\$30,116,591
13 Change in Total Fund Balance	774,485	4,060,579	(2,437,437)	280,057	(1,834,025)	(21,694)	(2,726,244)	(379,185)
14 Ending Total Fund Balance	\$13,892,564	\$17,953,143	\$15,515,705	\$15,795,762	\$13,961,737	\$13,940,043	\$11,213,799	\$10,834,614
15 Less the Following Fund Balances:								
16 Restricted for Debt Service	(391,421)	(387,621)	(392,979)	-	-	-	-	-
17 Restricted Special Revenue Funds	(3,015,318)	(7,269,934)	(5,603,895)	(6,851,091)	(5,431,579)	(7,036,901)	(5,699,387)	(7,369,824)
18 Unrestricted General Fund Balance	\$10,485,825	\$10,295,588	\$9,518,831	\$8,944,671	\$8,530,158	\$6,903,143	\$5,514,413	\$3,464,790
Less the Following Assigned Fund Balances:								
19 Capital Maintenance Reserve Funds	(655,659)	(850,659)	(775,659)	(1,050,659)	(980,299)	(1,255,299)	(856,587)	(852,500)
20 Insurance Reserve Funds	(200,000)	(200,000)	(200,000)	(200,000)	(200,000)	(200,000)	(200,000)	(200,000)
21 Unassigned General Fund Balance	9,630,166	9,244,929	8,543,172	7,694,011	7,349,859	5,447,843	4,457,825	2,412,290
Ratio Analysis								
22 Operating Ratio (>1.1) (before debt service)	1.08	1.02	1.02	1.02	1.02	1.02	1.02	1.02
23 Operating Surplus before Debt Service	1,799,921	444,059	471,562	509,390	560,487	572,985	586,270	600,377
24 Operating Ratio (>1.1) (after debt service)	1.00	1.00	1.00	1.00	1.02	1.02	1.02	1.02
25 Operating Surplus after Debt Service	0	52,638	83,941	116,411	560,487	572,985	586,270	600,377
26 Debt Service Ratio (<12%)	8%	2%	2%	2%	0%	0%	0%	0%
27 Total Fund Balance Ratio	63%	77%	65%	64%	55%	54%	42%	40%
28 Unrestricted General Fund Balance Ratio (>35%)	47%	44%	40%	36%	34%	27%	21%	13%
29 Unassigned General Fund Balance Ratio (>25%)	44%	39%	36%	31%	29%	21%	17%	9%

CITY OF LAGUNA HILLS
8-YEAR PLAN
FINANCIAL POLICY RATIOS & RESERVES

Adopted 2021-2023 Biennial Budget (without ARPA & without VALH)

	Forecast YEAR 1 FY 2021/22	Forecast YEAR 2 FY 2022/23	Forecast YEAR 3 FY 2023/24	Forecast YEAR 4 FY 2024/25	Forecast YEAR 5 FY 2025/26	Forecast YEAR 6 FY 2026/27	Forecast YEAR 7 FY 2027/28	Forecast YEAR 8 FY 2028/29
1 BEGINNING TOTAL FUND BALANCE	\$13,118,078	\$10,159,875	\$10,487,765	\$8,050,327	\$8,330,384	\$6,496,359	\$6,474,665	\$3,748,421
2 General Fund Revenues	22,236,737	23,005,385	23,600,671	24,272,186	24,967,728	25,646,503	26,344,234	27,061,454
3 Special Revenues	2,371,016	1,707,543	2,071,713	1,906,737	1,798,579	2,048,412	1,880,577	1,713,529
4 Other Funding Sources	826,042	843,590	862,689	878,826	901,968	921,527	941,673	962,423
5 TOTAL REVENUES	\$25,433,795	\$25,556,518	\$26,535,072	\$27,057,749	\$27,668,275	\$28,616,443	\$29,166,484	\$29,737,406
6 Operating Expenditures	22,125,948	23,404,916	23,991,798	24,641,622	25,309,208	25,995,046	26,699,637	27,423,500
7 Capital Expenditures	4,040,000	1,025,000	4,500,000	1,650,000	4,100,000	1,550,000	4,100,000	1,600,000
8 Other Funding Uses	376,130	357,291	43,091	43,091	43,091	43,091	43,091	43,091
9 CalPERS UAL Paydown/Section 115 Trust	0	0	0	0	0	1,000,000	1,000,000	1,000,000
10 Use of Insurance Reserve Funds	50,000	50,000	50,000	50,000	50,000	50,000	50,000	50,000
11 Debt Service	1,799,921	391,421	387,621	392,979	0	0	0	0
12 TOTAL EXPENDITURES	\$28,391,999	\$25,228,628	\$28,972,510	\$26,777,692	\$29,502,299	\$28,638,137	\$31,892,728	\$30,116,591
13 Change in Total Fund Balance	(2,958,204)	327,890	(2,437,437)	280,057	(1,834,025)	(21,694)	(2,726,244)	(379,185)
14 Ending Total Fund Balance	\$10,159,875	\$10,487,765	\$8,050,327	\$8,330,384	\$6,496,359	\$6,474,665	\$3,748,421	\$3,369,236
15 Less the Following Fund Balances:								
16 Restricted for Debt Service	(391,421)	(387,621)	(392,979)	-	-	-	-	-
17 Restricted Special Revenue Funds	(2,041,803)	(3,402,901)	(2,206,523)	(3,720,169)	(2,300,657)	(3,905,978)	(2,568,464)	(4,238,902)
18 Unrestricted General Fund Balance	\$7,726,651	\$6,697,242	\$5,450,825	\$4,610,215	\$4,195,702	\$2,568,687	\$1,179,957	(\$869,666)
Less the Following Assigned Fund Balances:								
19 Capital Maintenance Reserve Funds	(655,659)	(850,659)	(775,659)	(1,050,659)	(980,299)	(1,255,299)	(856,587)	(852,500)
20 Insurance Reserve Funds	(200,000)	(200,000)	(200,000)	(200,000)	(200,000)	(200,000)	(200,000)	(200,000)
21 Unassigned General Fund Balance	6,870,992	5,646,583	4,475,166	3,359,556	3,015,403	1,113,388	123,370	(1,922,166)
Ratio Analysis								
22 Operating Ratio (>1.1) (before debt service)	1.04	1.02	1.02	1.02	1.02	1.02	1.02	1.02
23 Operating Surplus before Debt Service	936,831	444,059	471,562	509,390	560,487	572,985	586,270	600,377
24 Operating Ratio (>1.1) (after debt service)	0.96	1.00	1.00	1.00	1.02	1.02	1.02	1.02
25 Operating Surplus after Debt Service	(863,090)	52,638	83,941	116,411	560,487	572,985	586,270	600,377
26 Debt Service Ratio (<12%)	8%	2%	2%	2%	0%	0%	0%	0%
27 Total Fund Balance Ratio	46%	45%	34%	34%	26%	25%	14%	12%
28 Unrestricted General Fund Balance Ratio (>35%)	35%	29%	23%	19%	17%	10%	4%	-3%
29 Unassigned General Fund Balance Ratio (>25%)	31%	24%	19%	14%	12%	4%	0%	-7%