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Public Sector Capacity

Final Rule “Policy Language”

[Final Rule Pg. 4450](#)

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 fulltime 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.
- (5) 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.

[Treasury SLFRF Policy Clarification Resource: Summary of Interim Final Rule Public Comments and Treasury’s response.](#)

[Final Rule Pg. 4383](#)

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.

Final Rule Pg. 4384

Public Sector Capacity and Workforce

Public Safety, Public Health, and Human Services Staff

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 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 rehiring 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 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 prepandemic 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 prepandemic 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.
- Step Four: Subtract the actual number of FTEs from the adjusted prepandemic 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 prepandemic.

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 prepandemic 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).

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 highlevel 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 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 policymaking 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 crossjurisdictional data sharing to better measure and implement government programs.
- Technology infrastructure resources to improve access to and the userexperience 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 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., videoconferencing software, improvements to case management systems or data sharing resources), reduce government backlogs, or meet increased maintenance needs are eligible.

Overview of Final Rule

[Overview of Final Rule Pg. 26](#)

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 prepandemic 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.

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. These include:
 - o **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.
 - o **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.

o **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:**

- ✓ 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)