

# Final Rule: Coronavirus State and Local Fiscal Recovery Funds

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January 20, 2022



# Agenda

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The Purpose of the State and Local Fiscal Recovery Funds (SLFRF)

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When does the Final Rule go into Effect?

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Highlighted Changes in the Final Rule

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Final Rule Eligible Uses

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# The Purpose of the State and Local Fiscal Recovery Funds (SLFRF)

## ARPA provides that SLFRF funds may be used:

- ✓ **To respond to the public health emergency or its negative economic impacts**, including assistance to households, small businesses, and nonprofits, or aid to impacted industries such as tourism, travel, and hospitality;
- ✓ **To respond to workers performing essential work** during the COVID-19 public health emergency by providing premium pay to eligible workers;
- ✓ **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
- ✓ **To make necessary investments in water, sewer, or broadband infrastructure.**

## Congress specified ineligible uses of funds:

- X Funds may not be used for deposit into any pension fund; or
- X For states and territories only, to directly or indirectly offset a reduction in net tax revenue resulting from a change in law, regulation; or
- X Other ineligible uses as identified by the administration.



# When does the Final Rule go into Effect?

- The final rule takes effect on **April 1, 2022**
- **If a use of funds complies with the final rule, Treasury will not take action to enforce the interim final rule**, regardless of when the funds were used (e.g., if the IFR would not permit that use of funds); recipients can take advantage of the expanded flexibilities in the final rule now
- **Until April 1, 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



# Highlighted Changes in the Final Rule

## Public Sector Revenues

- Major simplification through the **\$10 million revenue loss standard allowance for provision of government services**

## Public Health & Economic Response

- Providing a **broader set of eligible uses** for impacted and disproportionately impacted populations
- Clarifying that reasonably proportional **capital expenditures** may be allowable (e.g., affordable housing, hospitals)

## Premium Pay for Essential Workers

- **Streamlining options to provide premium pay** by broadening the share of essential workers who can receive premium pay without a written justification

## Water, Sewer, & Broadband Infrastructure

- **Expanding water and sewer projects** that are eligible
- **Broadening eligible broadband investments** to allow recipients to address access, affordability, and reliability challenges

# Final Rule Eligible Uses

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# Replace Public Sector Revenue Loss

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To determine revenue loss, recipients can choose one of two available options:

a) **Elect “standard allowance” of up to \$10 million to spend on government services** through the life of the program.

**OR**

b) **Calculate actual revenue loss** according to Treasury formula.

- Calculate revenue loss either on a calendar or fiscal year basis to more accurately reflect revenue loss due to the pandemic.
- Revenue loss growth rate changed from 4.1% to 5.2%
- Must adjust actual revenue totals for the effect of tax cuts/increases adopted after January 6, 2022

**Funds can be spent on government services up to the revenue loss/allowance amount. Funds are on the same obligation (by end of 2024) and expenditure (by end of 2026) timeline.**

Government services generally include **any service traditionally provided by a government** unless Treasury has stated otherwise, such as:

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

# Restrictions on Use of Revenue Replacement Funds

Recipients may use “lost revenue” for general government services up to the revenue loss amount, whether that be the standard allowance amount (\$10 million or the amount calculated using Treasury’s formula:

HOWEVER, the following activities are NOT an eligible use of a recipients’ “revenue loss” allowance:

- X Extraordinary contribution to a pension fund
- X Debt service payment, including Tax Anticipation Notes (TANs)
- X Rainy day or reserve account
- X Settlement agreement, judgment, consent decree or judicially confirmed debt with limited exceptions)
- X Activity that conflicts with the purpose of the American Rescue Plan Act statute e.g. uses of funds that conflict with COVID 19 mitigation practices in line with CDC guidance and recommendations)
- X Violations of Award Terms and Conditions or conflict of interest requirements under the Uniform Guidance





# Non-Federal Match and Cost-Share Requirements

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- **Funds available under the “revenue loss” eligible use category generally may be used to meet the non-federal cost-share or matching requirements of other federal programs**
  - However, **SLFRF funds may not be used as the non-federal share for purposes of a state’s Medicaid and CHIP programs, even under the “revenue loss” category**
- **SLFRF funds beyond those that are available under the “revenue loss” eligible use category above may not be used to meet the non-federal match or cost-share requirements of other federal programs**
  - other than as specifically provided by statute (e.g., the Infrastructure Investment and Jobs Act for Bureau of Reclamation and certain broadband deployment projects)



# Respond to COVID-19's Public Health and Economic Impacts

## Eligible Use Categories

- Public health impacts
- Negative economic impacts, including assistance to:
  - ✓ Households
  - ✓ Small businesses
  - ✓ Non-profits
  - ✓ Impacted industries
  - ✓ Public sector capacity and workforce

# Public Health Response Eligible Uses

## COVID-19 Mitigation & Containment

- A very broad range of services and programming that are needed to contain COVID-19, including vaccination and testing programs and other COVID mitigation tactics
- May include certain capital expenditures, such as medical facilities generally dedicated to COVID-19 treatment & mitigation

## Medical Expenses

- Expenses to households, medical providers, or others that incurred medical costs due to the pandemic
- Includes unreimbursed expenses for COVID-19 testing or treatment & emergency medical response expenses

## Behavioral Healthcare

- A broad range of prevention, treatment, harm reduction, and recovery services that may be needed to meet mental health, substance use, and other behavioral health needs
- May include certain capital expenditures, such as behavioral health facilities & equipment

## Preventing & Responding to Violence

- Responses to communities that experienced an increase in violence, particularly gun violence
- Includes community violence intervention programs & enforcement efforts to reduce gun violence



# Assistance to Impacted Households

## Assisting Impacted Households

- ✓ Food assistance
- ✓ Re-employment and job training
- ✓ Rent, mortgage, or utility assistance & Internet subsidies
- ✓ Cash assistance
- ✓ Health insurance coverage expansion and paid sick & family leave NEW
- ✓ Financial services for unbanked and underbanked NEW
- ✓ Affordable housing development and permanent supportive housing NEW
- ✓ Childcare, early learning, and addressing learning loss for K-12 students NEW

## Identifying Impacted Households

- Low and moderate income (LMI) households, defined as those at or below 300% of FPG or 65% of AMI
- Households experiencing unemployment or food or housing insecurity
- Households that qualify for certain federal programs NEW

Recipients can identify other impacted or disproportionately impacted households, beyond those presumed eligible.



# Assistance to Disproportionately Impacted Households

## Assisting Disproportionately Impacted Households

- ✓ Addressing health disparities: e.g., community health workers, lead remediation, health facilities
- ✓ Investments in neighborhoods to promote health outcomes
- ✓ Addressing educational disparities: e.g., enhanced funding to high-poverty schools & educational facilities
- ✓ Improvements to vacant and abandoned property

## Disproportionately Impacted Households

Treasury presumes that the following households are disproportionately impacted:

- Low income (LI) households, defined as those at or below 185% of FPG or 40% of AMI NEW
- Households located in QCTs
- Households receiving services from Tribal governments
- Households residing in the U.S. territories or receiving services from territorial governments NEW
- Households that qualify for certain fed programs NEW



# Provide Assistance to Small Businesses

## Impacted Small Businesses

To assess which small businesses were impacted, recipients may consider:

- Decreased revenue or gross receipts
- Financial insecurity
- Increased costs
- And more

### Eligible uses include:

- ✓ Loans or grants to mitigate financial hardship, such as by supporting payroll and benefits
- ✓ Technical assistance, counseling or other services to support business planning

## Disproportionately Impacted Small Businesses

Small businesses are presumed to be disproportionately impacted if the small business is:

- Operating in QCTs
- Operated by Tribal governments or on Tribal lands
- Operating in the U.S. territories

### Eligible uses include:

- ✓ Rehabilitation of commercial properties, storefront & façade improvements
- ✓ Technical assistance, business incubators & grants for start-up or expansions
- ✓ Support for microbusinesses (e.g., childcare, transportation)



# Assistance to Non-Profits

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**Treasury defines a nonprofit as 501(c)(3) and 501(c)(19) tax exempt organizations.**

**To assess which nonprofits were impacted, recipients may consider:**

- Decreased revenue (e.g., lower donations or 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

**Eligible uses include:**

- ✓ Loans or grants to mitigate financial hardship
- ✓ Technical or in-kind assistance or other services to mitigate negative economic impact

# Assistance to Disproportionately Impacted Non-Profits

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## **Non-profits presumed disproportionately impacted include:**

- Operating in QCTs
- Operated by Tribal governments or on Tribal lands
- Operating in the U.S. territories

## **Eligible uses include:**

- ✓ Loans or grants to mitigate financial hardship
- ✓ Technical or in kind assistance or other services that mitigate negative economic impacts of the pandemic
- ✓ Other responses that are related and reasonably proportional to addressing disparities that led to disproportionate impacts





# Provide Aid to Impacted Industries

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## Designating an impacted industry

- If industry is in the **travel, tourism, or hospitality sectors** (including Tribal development districts), the industry is impacted.
- If industry is **outside the sectors above**, the industry is impacted if either:
  - Experienced **at least 8 percent employment loss** from pre-pandemic levels, or NEW
  - Is experiencing **comparable or worse economic impacts** as the national travel, tourism, and hospitality sectors as of the date of the Final Rule and the impacts resulted from the COVID-19 public health emergency

## Provide eligible aid to the impacted industry

- ✓ Aid to mitigate financial hardship, such as supporting payroll costs
- ✓ COVID-19 mitigation and infection prevention measures
- ✓ Technical assistance, counseling or other services to support business planning

**Aid limited to entities operating prior to the pandemic and affected by required closures and other efforts to contain the pandemic**

# Determining eligible use when not specified in the Final Rule

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Recipients may identify additional eligible uses beyond those enumerated by Treasury based on the standards provided in the rule

To identify eligible uses of funds, recipients should generally:

- a) Identify a public health or economic impact
- b) Design a related and reasonably proportional response (e.g., a program, service, or capital expenditure)



# Identify a public health or economic impact to an individual or a class

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- A program, service, or capital expenditure is eligible if:
  - A recipient **identifies a harm or impact caused or exacerbated by the public health emergency or its negative economic impacts and the program, service, or capital expenditure responds to such harm.**
- **The 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.



# Restore and Bolster Public Sector Capacity

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## Public safety, public health, and human services staff

- ✓ Payroll and covered benefits for public safety, public health, health care, human services and similar employees of a recipient government through the period of performance
- ✓ Limited to the portion of the employee's time spent responding to COVID-19, though public health and safety staff primarily dedicated to COVID-19 response may be fully covered; recipients can use reasonable estimates to determine share of employee time

## Government employment & rehiring public sector staff

- ✓ Restoring employment by hiring up to 7.5% above pre-pandemic baseline
- ✓ Funding for employees who experienced pay reductions or were furloughed NEW
- ✓ Maintaining current compensation levels to prevent layoffs NEW
- ✓ Worker retention incentives, including reasonable increases in compensation NEW

## Effective service delivery

- ✓ Supporting use of evidence, program evaluation, data, and outreach
- ✓ Providing administrative expenses for administration of programs that respond to COVID-19
- ✓ Address administrative needs caused or exacerbated by the pandemic (e.g., backlogs from pandemic shutdowns, adapting government operations to the pandemic)



# Invest in Capital Expenditures

## Overall eligibility requirements

- Capital expenditures subject to same “**related and reasonably proportional**” standard as other uses
- **No pre-approval** is required for capital expenditures
- Recipients other than Tribal governments must **complete Written Justification (WJ)** NEW **capital expenditures at or over \$1 million**
  - WJ requires recipients to explain why a capital expenditure is appropriate and why the proposed capital expenditure is superior to alternatives
  - Depending on project size, recipients may be required to submit WJ with reporting; no pre-approval

# Capital Expenditures Reporting Table

<b>If a project has total expected capital expenditures of</b>	<b>and the use is enumerated in (b)(3), then</b>	<b>and the use is not enumerated in (b)(3), then</b>
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	



# Specified Capital Expenditures Uses

## **Projects presumed eligible, provided the above requirements are met:**

- ✓ Testing labs and equipment
- ✓ Emergency operations center & equipment
- ✓ Affordable housing
- ✓ Childcare facilities
- ✓ Schools (for Disproportionately impacted communities)
- ✓ Primary care health clinics and hospitals (for Disproportionately impacted communities)

## **Projects generally presumed to be ineligible:**

- × 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 facility
- × Construction of convention centers, stadiums or other general economic development or aid to impacted industries



# Provide Premium Pay for Essential Employees

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- Eligible workers are those in critical infrastructure sectors
- Premium pay may be awarded to non-hourly and part-time eligible workers performing essential work.
- Essential work involves regular in-person interactions or physical handling of items handled by others **(Is not performed while teleworking from a residence)**
- X Cannot be provided to Elected Officials per Treasury's policy on conflict of interest NEW
- X Volunteers cannot receive premium pay NEW
- Pay must respond to worker needs:
  - Serves workers who:
    - Earn at or below 150% of their state or county's average annual wage, or
    - Are not exempt from Fair Labor Standards Act overtime rules NEW
  - **Or** recipient provides written justification explaining how providing premium pay to the eligible worker is responsive to the worker performing essential work during COVID-19





# Professions and Sectors Eligible for Premium Pay



- Staff at nursing homes, hospitals, and home-care settings
- Public health, safety, and emergency response
- State, local, and Tribal government workforce
- Workers at food production facilities, grocery stores, restaurants, and food delivery services
- Janitors and sanitation workers
- Truck drivers, transit staff, and warehouse workers
- Public health and safety staff
- Childcare workers, educators, and school staff
- Social service and human services staff
- Additional sectors designated by recipients

# Build Water and Sewer Infrastructure

Projects eligible under the EPA's State Revolving Funds including:

Examples of  
Clean Water  
State  
Revolving  
Fund Projects

- ✓ Construction of publicly owned treatment works
- ✓ Decentralized wastewater treatment systems construction, upgrades & repair
- ✓ Water conservation, efficiency, or reuse measures
- ✓ Management & treatment of stormwater or subsurface drainage water
- ✓ Reuse or recycling of wastewater, stormwater, or subsurface drainage water

Examples of  
Drinking Water  
State  
Revolving  
Fund Projects

- ✓ New facilities to improve drinking water quality
- ✓ New sources to replace contaminated drinking water or increase drought resilience
- ✓ Green infrastructure
- ✓ Storage of drinking water
- ✓ New community water systems
- ✓ Lead service line replacement

Additional projects eligible under Final Rule include:

- ✓ Additional lead remediation activities, including: NEW
  - lead testing and lead service line replacement (including replacement of faucets, fixtures; and
  - internal plumbing in schools and childcare facilities).
- ✓ Additional stormwater infrastructure, including culvert repair, resizing and removal, and replacement of storm sewers NEW
  - Projects to manage, reduce, treat, or recapture stormwater or subsurface drainage water are eligible regardless of whether such projects would improve water quality if such projects would otherwise meet the eligibility requirements.
- ✓ Residential wells NEW
- ✓ Certain dam and reservoir rehabilitation NEW



# Criteria to Invest in Broadband Infrastructure

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## Identify an eligible area for investment

- Recipients are encouraged to invest in locations without reliable wireline service of at least 100/20 Mbps speed, but are broadly able to invest in locations where recipient has identified need for additional investment NEW
- Such need can include lack of access to high speeds, affordability & reliability

## Design project to meet high-speed technical standards

- Deliver reliable high-speed service of minimum 100 Mbps symmetrical speeds unless impracticable

## Require enrollment in a low-income subsidy program NEW

- Recipients must require service providers for a broadband project that provides service to households to either:
  - Participate in the FCC's Affordable Connectivity Program
  - Provide access to a broad-based, low-income affordability program commensurate to the Affordable Connectivity Program

Flexibility in eligible areas for investment complements IJA broadband funding; recipients are also able to invest in cybersecurity for broadband infrastructure regardless of service delivery standards

# Key Considerations for Compliance

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# Restrictions on Use

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## Net Reduction in Tax Revenue

### **For states and territories:**

- X SLFRF may not be used to directly or indirectly offset a reduction in net tax revenue resulting from a change in state or territory law, as required by the American Rescue Plan Act.

## Deposits into Pension Funds

### **For all recipients except for Tribal governments:**

- X SLFRF may not be used for deposits into pension funds, as required by the American Rescue Plan
- X A “deposit” is defined as an extraordinary contribution to a pension fund for the purpose of reducing an accrued, unfunded liability
- X Recipients may use funds for routine payroll contributions to pensions of employees whose wages and salaries are an eligible use

## Other Restrictions on Use

### **For all recipients:**

- X Funds may not be used for debt service, replenishing rainy day funds/financial reserves, or satisfaction of a settlement or judgement
- X Uses of funds may not undermine COVID-19 mitigation practices in line with CDC guidance and recommendations
- X Uses of funds may not violate Uniform Guidance conflict-of-interest requirements or other applicable laws



# Defining Conflicts of Interest

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As part of accepting the Award Terms and Conditions for SLFRF, each recipient agreed to maintain a conflict-of-interest policy consistent with 2 C.F.R. § 200.318(c) and 2 C.F.R. § 200.112 that is applicable to all activities funded with the SLFRF award.

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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.

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Recipients may avoid conflicts of interest in providing assistance to nonprofits or making subrecipient awards by making aid available to nonprofits on generally applicable terms or utilizing a competitive grant process, respectively.

Decisions concerning SLFRF funds must be free of undisclosed personal or organizational conflicts of interest, both in fact and in appearance.

Recipients and subrecipients are required to establish policies and procedures to manage potential conflicts of interest and are required to report to Treasury any potential conflict of interest related to procurement and awarding of contracts per 2 C.F.R. § 200.318(c)

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.**

# Reporting

	Recipients	Requirements
Quarterly Reports Due January 31	<b>Recipients required to submit quarterly reports:</b> <ul style="list-style-type: none"><li>• States and territories</li><li>• Metropolitan cities and counties with population over 250,000</li><li>• Metropolitan cities and counties with population less than 250,000 that received an award of more than \$10 million</li><li>• Tribal governments that received an award of more than \$30 million</li></ul>	<ul style="list-style-type: none"><li>• Recipients should rely on reporting guidance and user guide issued by Treasury</li><li>• Portal will reflect certain final rule changes, including information on capital expenditures as part of public health and economic response, fiscal year revenue loss calculation, standard allowance election, &amp; expanded flexibility in premium pay</li></ul>
Quarterly and Annual Reports Due April 30	<b>All recipients above, who are required to submit quarterly reports, as well as recipients required to submit annually, which include:</b> <ul style="list-style-type: none"><li>• Metropolitan cities and counties with population less than 250,000 that received an award less than \$10 million,</li><li>• Tribal governments that received an award less than \$30 million</li><li>• Nonentitlement units of government</li></ul>	<ul style="list-style-type: none"><li>• Treasury will issue additional reporting guidance ahead of reports due April 30</li></ul>



# Recoupment

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Any amount used in violation of use of funds, eligible uses, or deposits into pensions policies, may be identified at any time prior to December 31, 2026.

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On an annual basis, a recipient that is a State or territory must calculate and report any amounts used in violation of the tax policy section.





# Keys to Compliance

- Refer to Final Rule to ensure eligible use
- Review and Understand [SLFRF Assistance Listing via Sam.gov](#)
- Ensure compliance with [2 CFR Part 200](#), Treasury requires compliance with the following provisions:
  - Subpart B, General provisions
  - Subpart C, Pre-Federal Award Requirements and Contents of Federal Awards
  - **Subpart D, Post Federal; Award Requirements**
  - **Subpart E, Cost Principles**
  - **Subpart F, Audit Requirements**
- Review and comply with reporting requirements

The following 2 CFR Policy requirements also apply to this assistance listing:

- 2 C.F.R. Part 25, Universal Identifier and System for Award Management;
- 2 C.F.R. Part 170, Reporting Subaward and Executive Compensation Information; and
- 2 C.F.R. Part 180, OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Non-procurement).

**Document, Document, Document...and then Document some more!**



# Next Steps

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- Upcoming Treasury Reporting Webinar – Yet to be announced
- Continue technical assistance
  - Preparation for January 31<sup>st</sup> Project and Expenditure Report due date, only for recipients with over \$10 million allocation and/or more than 250,000 population.
  - Supporting recipients with analysis of final rule and assessment of projects to ensure compliance.
- Monitoring for updates from Treasury
  - New FAQs
  - Treasury OIG Reporting and Compliance Guidance and/or Webinar



Questions and Answers