

# Final Rule: Coronavirus State and Local Fiscal Recovery Funds

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January 13, 2022



# Agenda

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

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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 county’s “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)

# 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

# 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 to counties
  - Preparation for January 31<sup>st</sup> Project and Expenditure Report due date, only for counties with over \$10 million allocation and/or more than 250,000 population.
  - Supporting counties 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