



Special Report

# Eligible Uses of Coronavirus State and Local Fiscal Recovery Funds

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January 18, 2022)

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# Introduction

On March 11, 2021, President Joe Biden signed into law the \$1.9 trillion **American Rescue Plan Act of 2021 (ARPA)** ([P.L. 117-2](#)). [Section 9901](#) of ARPA established the \$350 billion **Coronavirus State and Local Fiscal Recovery Funds (Fiscal Recovery Funds)**, providing federal payments to all state, local, tribal, and territorial governments in the United States. The law provides a total of **\$195.3 billion** to the 50 states and the District of Columbia; **\$65.1 billion** to county governments; **\$45.57 billion** to “metropolitan cities” (with populations generally above 50,000); **\$19.53 billion** to “non-entitlement communities” (with populations generally less than 50,000); **\$20 billion** to tribal governments; and **\$4.5 billion** to the five U.S. territories.

In general, ARPA provides four eligible uses of Fiscal Recovery Funds. They are:

- Respond to the COVID-19 public health emergency and its negative economic impacts
- Provide premium pay to essential workers or grants to employers with essential workers
- Replace lost, delayed, or decreased revenue
- Make necessary investments in water, sewer, or broadband infrastructure

On May 10, 2021, the U.S. Department of the Treasury [released](#) a 151-page [Interim Final Rule](#) providing guidance on the eligible uses of the Fiscal Recovery Funds. All payments are to remain available until **December 31, 2024**, with funded projects completed no later than **December 31, 2026**. Amounts not spent or used for ineligible purposes will be repaid to Treasury.

Upon publication of the Interim Final Rule in the Federal Register (which is likely to occur during the week of May 17, 2021), Treasury encourages stakeholders to submit public comments on the Interim Final Rule at [regulations.gov](#). The public comment period will be open for 60 days after publication in the Federal Register (i.e., until July 16, 2021). TFG will provide additional information regarding commenting on the Interim Final Rule.

On May 10, 2021, the Treasury Department also released additional Fiscal Recovery Funds-related documents, including:

- [Fact Sheet](#)
- [Frequently Asked Questions document](#) (Treasury will be updating this document periodically in response to questions received from stakeholders)
- [Quick Reference Guide](#)
- [Allocations for Counties](#)
- [Allocation Methodology for Counties](#)
- [Allocations for Metropolitan Cities](#)
- [Allocation Methodology for Metropolitan Cities](#)
- [Allocations for Non-entitlement Communities \(aggregate state totals\)](#)
- [Allocation Methodology for Non-entitlement Communities \(aggregate state totals\)](#)
- [Allocations for States](#)
- [Allocation Methodology for States](#)
- [Allocation Methodology for Tribal Governments](#)

**Update (January 18, 2022):**

On January 6, 2022, the Treasury Department [released](#) its [Final Rule](#) for the Fiscal Recovery Funds, which will become **effective beginning April 1, 2022**. Treasury received more than 1,500 public comments between May 17 and July 16, 2021, and utilized that formal feedback when developing the Final Rule. The Final Rule delivers broader flexibility and greater simplicity for the Fiscal Recovery Fund program, including:

- Broader set of uses that are available to respond to the pandemic's public health and economic impacts on households, small businesses, and others, including capital expenditures.
- Major simplification for thousands of recipients through the \$10 million revenue loss standard allowance.
- Greater flexibility in eligible broadband investments to address challenges with access, affordability, and reliability, as well as the addition of numerous eligible water and sewer infrastructure investments.
- More streamlined options to provide premium pay through broadening the share of eligible workers who can receive premium pay without additional justification.

Until April 1, 2022, the Interim Final Rule remains in effect; funds used consistently with the Interim Final Rule while it is in effect are in compliance with the Fiscal Recovery Funds program. However, recipients can choose to take advantage of the Final Rule's flexibilities and simplifications between January 6 and April 1, 2022.

Treasury will not take action to enforce the Interim Final Rule to the extent that the use of funds is consistent with the terms of the Final Rule, regardless of when the Fiscal Recovery Funds were used.

Treasury has also released additional Fiscal Recovery Funds-related documents for the Final Rule, including:

- An [overview of the Final Rule](#), which provides a summary of major rule provisions for informational purposes and is intended as a brief, simplified user guide for recipients and stakeholders.
- The [Statement Regarding Compliance with the Coronavirus State and Local Fiscal Recovery Funds Interim Final Rule and Final Rule](#) provides guidance on the transition from compliance with the Interim Final Rule to compliance with the Final Rule.
- A [Tool for Determining Low and Moderate Income \(LMI\) Households](#), which provides a spreadsheet to assist recipients in determining income thresholds for the Final Rule's definition of LMI in their jurisdiction and assist with administering the public health and economic response provisions of the Final Rule.
- Treasury's [Final Rule webinar](#) and [slide presentation](#), which provide an introduction and summary of the Final Rule.

This updated TFG Special Report includes the provisions of the Interim Final Rule that are retained in the Final Rule, in addition to highlighting new changes and additions made by the Final Rule.

## How much money will I receive?

The Treasury Department released funding allocations for state, territorial, metropolitan city, county, and Tribal governments on May 10, 2021. The following links will take you directly to specific allocation tables and methodology explanatory material.

- [Allocations for Counties](#)

- [Allocation Methodology for Counties](#)
- [Allocations for Metropolitan Cities](#)
- [Allocation Methodology for Metropolitan Cities](#)
- [Allocations for States](#)
- [Allocation Methodology for States](#)
- [Allocation Methodology for Tribal Governments](#)

At this time, funding amounts for non-entitlement units of local government (NEUs) are available only [in aggregate](#) at the state level. Treasury expects to provide further guidance on distributions to NEUs in the coming days. Additional information for NEUs can be found [here](#).

The Interim Rule also allows Fiscal Recovery Funds recipients to transfer funds to private nonprofit groups, special purpose units of state or local governments (or special districts), or public benefit corporations involved in the transportation of passengers or cargo. Recipients are also authorized to transfer Fiscal Recovery Funds to other constituent units of government (e.g., a county can transfer Fiscal Recovery Funds to a city, town, or school district within it) or to private entities. ARPA also provides for transfers by a local government to its State or territory.

#### Changes Made by the Final Rule:

- The Final Rule does not address eligibility or allocation concerns. Treasury addresses these concerns in other guidance documents, including funding for non-entitlement units of local government:
  - NEUs include cities, villages, towns, townships, or other types of local government.
  - NEUs will receive payments through their state governments. State governments will receive a specific allocation from Treasury and are responsible for distributing funds to NEUs within their state. Award amounts are based on the population of the NEU.
  - Aggregate allocations to states for distribution to NEUs may be found [here](#). The status of payments to states for distribution to NEUs may be found [here](#).
  - [Treasury guidance on NEUs](#) provides further information on eligibility and a step-by-step guide for states to allocate and distribute funds to their NEUs. States should follow the guidance and calculate allocations based on the [list of local governments and their respective populations](#).

## How do I access the funding?

### Metropolitan cities, counties, and Tribal governments

As of May 10, metropolitan cities, counties, and Tribal governments may request their allocation of Coronavirus State and Local Fiscal Recovery Funds through the [Treasury Submission Portal](#).

To complete a submission on behalf of your jurisdiction, you will be asked to provide the following information:

- Jurisdiction name and address, taxpayer ID number, DUNS Number, and SAM.gov account (Note: non-entitlement units of local government are not required to have a SAM.gov account.)
- Authorized representative name, title, and email
- Contact person name, title, phone, and email

- Fund transfer information, including recipient's financial institution, address, phone, routing number, and account number
- Completed certification document (to be signed by the authorized representative)

Jurisdictions must submit a request to receive funding even if they have previously applied for other programs through the Treasury Submission Portal. Eligible jurisdictions will receive further communication regarding the status of their submission via the email address provided in the Treasury Submission Portal.

## Non-entitlement units of government

NEUs (generally local governments with populations of less than 50,000) do not request their allocation through the Treasury Submission Portal. Instead, NEUs will receive their allocations through their state governments. State governments will be responsible for disbursing these funds to NEUs within their states, without additional restrictions or conditions applied by the states.

NEUs will be required to provide the following to their states for disbursement:

- DUNS number
- Authorized representative name, title, and email
- Fund transfer information, including recipient's financial institution, address, phone, routing number, and account number

Treasury will disburse NEUs' allocations to states following the release of further guidance. States are required to distribute funds to NEUs within 30 days unless granted an extension by Treasury. States are required to ensure that the allocation to a NEU does not exceed 75% of the NEU's most recent annual budget (defined as the most recent annual total operating budget, including general fund and other funds, as of January 27, 2020).

NEUs with further questions should contact their state government once Treasury has issued further guidance on distributions.

## DUNS and SAM

All recipients must obtain a DUNS number. An entity that does not have a valid DUNS number should visit <https://fedgov.dnb.com/webform/> or call 1-866-705-5711 to begin the registration process.

Next, all recipients, except NEUs, must have an active registration with the System for Award Management (SAM) database at [SAM.gov](https://sam.gov). SAM is the official government-wide database with which to register in order to do business with the federal government. All federal financial assistance recipients must register on SAM.gov and renew their SAM registration annually to maintain an active status to be eligible to receive federal financial assistance. There is no charge to register or maintain an entity's SAM registration. An entity that does not have an active SAM registration should visit SAM.gov to begin the entity registration or renewal process. Please note that completing a new SAM.gov registration can take up to three weeks.

### Changes Made by the Final Rule:

- The Final Rule made no additional adjustments to this information.



## How can I spend the funding?

Within the categories of eligible uses, recipients have broad flexibility to decide how best to use this funding to meet the needs of their communities. Recipients may use Fiscal Recovery Funds to:

- **Support public health expenditures** by funding COVID-19 mitigation efforts, medical expenses, behavioral healthcare, and certain public health and safety staff; or **address negative economic impacts caused by the public health emergency**, including economic harm to workers, households, small businesses, impacted industries, and the public sector.
- **Replace lost public sector revenue**, using recovery funds to provide government services to the extent of the reduction in revenue experienced due to the pandemic.
- **Provide premium pay for essential workers**, offering additional support to those who have borne and will bear the greatest health risks because of their service in critical sectors.
- **Invest in water, sewer, and broadband infrastructure**, making necessary investments to improve access to clean drinking water, support vital wastewater and stormwater infrastructure, and to expand access to broadband internet.

The Interim Final Rule clearly states that certain uses that may not be within the scope of one of the categories listed above may be eligible under another eligible use categories.

## Respond to the public health emergency or its negative economic impacts

### Support public health expenditures

Recipients may utilize Fiscal Recovery Funds to meet and address emergent public health needs, including undertaking measures to counter the spread of COVID-19, through the provision of care for those impacted by the virus, and through programs or services that address disparities in public health that have been exacerbated by the pandemic. The Interim Final Rule identifies a non-exclusive list of eligible uses of funding to respond to the public health emergency. Eligible uses build and expand upon permissible expenditures under the Coronavirus Relief Fund (CRF). If not on the list, the guidance recommends recipients assess whether additional uses would be eligible under this category by (1) identifying 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 (2) assess how the use would respond to or address the identified need. The non-exclusive list of uses includes:

- **COVID-19 Mitigation and Prevention:** Mitigation and prevention efforts for COVID-19 including vaccination programs; medical care; testing; contact tracing; support for isolation or quarantine; support for vulnerable populations to access medical or public health services; public health orders enforcement; public communication efforts; and purchase of personal protective equipment. Also included are 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.
- **Medical Expenses:** Funds may be used to continue to provide care and services to address near- and long-term needs resulting from the COVID-19 public health emergency. This includes actions to better

understand the potentially serious and long-term effects of the virus, including symptoms like shortness of breath, multi-organ impacts, or for post-intensive care syndrome.

- **Behavioral Health Care:** These services include mental health treatment, substance misuse treatment, other behavioral health services – including access to services for victims of domestic violence, hotlines or warmlines, crisis intervention, overdose intervention, infectious disease prevention, and services or outreach to promote access to physical or behavioral health primary care and preventative medicine.
- **Public Health and Safety Staff:** Funds may be used for payroll and covered benefits expenses for public safety, public health, health care, human services, and similar employees, to the extent that their services are devoted to mitigating or responding to the COVID-19 public health emergency. For administrative convenience, the guidance allows recipients to consider public health and safety employees to be entirely devoted to mitigating or responding to the COVID-19 public health emergency, and therefore fully covered.
- **Expenses to Improve the Design and Execution of Health and Public Health Programs:** Funds may be used to engage in planning and analysis to improve programs addressing the COVID-19 pandemic, including using targeted consumer outreach, improvements to data or technology infrastructure, impact evaluations, and data analysis.

#### Changes Made by the Final Rule:

- In the Final Rule, Treasury broadens and simplifies the determination of “impacted” or “disproportionally impacted” households and communities, and clarifies that prevention and mitigation services, among others, can simply identify the impacted population as the general public.
- The Final Rule specifically clarifies that vaccine programs, including those that provide incentives, are an eligible use of funds.
- The Final Rule provides the following list of examples of capital expenditures eligible for funding, in addition to others that meet the standards for capital expenditures:
  - Improvements to or construction of COVID-19 testing sites and laboratories, and acquisition of related equipment.
  - Improvements to or construction of COVID-19 vaccination sites.
  - Improvements to 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 of and improvements to 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).
- Mitigation measures in small businesses, nonprofits, and impacted industries (e.g., developing outdoor spaces).
- The Final Rule enumerates that community violence intervention programs in all communities are eligible, not just programs in the disproportionately impacted communities under the Interim Final Rule. Specifically, eligible services include:
  - 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.
  - 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.
- The Final Rule enumerates eligible uses that respond to an increase in gun violence in communities experiencing an increase in gun violence associated with the pandemic, including:
  - 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.
  - 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.
  - 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, such as technology to assist in the identification of guns whose serial numbers have been damaged.

## Address negative economic impacts caused by the public health emergency

Fiscal Recovery Funds enable governments to provide a wide range of assistance to individuals and households, small businesses, and impacted industries, in addition to enabling governments to rehire public sector staff and rebuild capacity.

Where there has been a negative economic impact resulting from the public health emergency, governments have broad latitude to choose whether and how to use the Fiscal Recovery Funds to respond to and address the negative economic impact. If not specifically listed below, the guidance informs recipients to (1) assess

whether, and the extent to which, there has been economic harm (like loss of earnings or revenue) resulting from the pandemic; and (2) whether the use would respond to or address the harm. Responses must be related and reasonably proportional to the extent and type of harm experience. The guidance cautions that uses that bear no relation or are grossly disproportionate to the type or extent of harm experienced would not be eligible.

## Households and Individuals

Fiscal Recovery Funds can be used to deliver assistance to workers and families, including:

- Assistance to unemployed workers, including services like job training. These services may extend to workers unemployed due to the pandemic or the resulting recession, or who were already unemployed when the pandemic began and remain so due to the negative economic impacts of the pandemic.
- Assistance to households, including:
  - Food assistance
  - Rent, mortgage, or utility assistance
  - Counseling and legal aid to prevent eviction or homelessness
  - Cash assistance
  - Emergency assistance for burials, home repairs, weatherization, or other needs
  - Internet access or digital literacy assistance
  - Job training to address negative economic or public health impacts experienced due to a worker's occupation or level of training
  - Providing survivor's benefits to surviving family members of COVID-19 victims, or cash assistance to widows, widowers, and dependents of eligible COVID-19 victims

## Changes Made by the Final Rule:

- The Final Rule establishes that impacted households are eligible for several new funding uses, including:
  - Health insurance coverage expansion and paid sick and family leave.
  - Financial services for the unbanked and underbanked.
  - Affordable housing development and permanent supportive housing.
  - Childcare, early learning, and addressing learning loss for K-12 students.
- The Final Rule establishes that disproportionately impacted households are also eligible for a new use of the funds: improvements to vacant and abandoned property under specific conditions. Small Businesses and Non-Profits

Fiscal Recovery Funds can be used to support small businesses and non-profits, including:

- 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, such as physical plant changes to enable social distancing, enhanced cleaning efforts, barriers or partitions, or COVID-19 vaccination, testing, or contact tracing programs.
- Technical assistance, counseling, or other services to assist with business planning needs.

- Loan, grant, in-kind assistance, and counseling programs to enable small businesses to rebound from the downturn.

#### Changes Made by the Final Rule:

- The Final Rule establishes that recipients may now consider “increased costs” as one of the factors when considering granting funds to impacted small businesses. This is in addition to decreased revenue or gross receipts; financial insecurity; and more.
- The Final Rule establishes that small businesses operating in the U.S. territories should now be considered a “disproportionately impacted small business” (in addition to small businesses operating within Qualified Census Tracts and those operated by Tribal governments or on Tribal lands).
- The Final Rule establishes that new eligible uses of the funds for “disproportionately impacted small businesses” now include:
  - Rehabilitation of commercial properties, storefront, and façade improvements.
  - Technical assistance, business incubators, and grants for start-up expansions.
  - Support for microbusinesses (e.g., childcare, transportation).
- The Final Rule establishes that recipients may now consider “increased costs” (e.g., uncompensated increases in service need) when assessing which non-profits were impacted by the pandemic.
- The Final Rule establishes that “disproportionately impacted non-profits” also include those operating in the U.S. territories.

#### Impacted Industries

Fiscal Recovery Funds can be used to support the recovery of the tourism, travel, and hospitality sectors, including:

- Assistance to implement COVID-19 mitigation and infection prevention measures to enable safe resumption of tourism, travel, and hospitality services.
- 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.
- Aid to support safe reopening of businesses in the tourism, travel, and hospitality industries and to business districts that were closed during the COVID-19 public health emergency, as well as aid for a planned expansion or upgrade of tourism, travel, and hospitality facilities delayed due to the pandemic.

#### Changes Made by the Final Rule:

- The Final Rule establishes that recipients may designate “impacted industries” as those outside of the travel, tourism, or hospitality sectors if the industry experienced at least eight percent employment loss from pre-pandemic levels or is experiencing comparable or worse economic impacts as the national travel, tourism, and hospitality sectors, as of January 6, 2022, and the impacts resulted from the COVID-19 public health emergency.

#### Rebuilding Public Sector Capacity

Fiscal Recovery Funds can be used to rebuild public sector capacity, including:

- Payroll, covered benefits, and other costs associated with rehiring public sector staff, up to the pre-pandemic staffing level of the government.
- Replenishing Unemployment Insurance (UI) trust funds up to pre-pandemic levels.
- Improving the efficacy of programs addressing negative economic impacts, including through use of data analysis, targeted consumer outreach, improvements to data or technology infrastructure, and impact evaluations.

#### Changes Made by the Final Rule:

- The Final Rule establishes that recipients may use their funds for government employment and rehiring of public sector staff, including specifically: funding for employees who experienced pay reductions or were furloughed; maintaining current compensation levels to prevent layoffs; and worker retention incentives, including reasonable increases in compensation.

#### Hardest Hit Communities

In addition to the uses of funding described above, recipients may utilize Fiscal Recovery Funds to address the disproportionate public health and economic impacts of the crisis on the hardest-hit communities, populations, and households. Governments may use Fiscal Recovery Funds to support the additional services described below if they are provided:

- Within a [Qualified Census Tract](#)<sup>1</sup>
- By a Tribal government; or,
- To other populations, households, or geographic areas disproportionately impacted by the pandemic. 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.

Eligible services available to the hardest hit communities include:

- **Addressing health disparities and the social determinants of health**, such as:
  - Funding community health workers to help community members access health services and services to address the social determinants of health.
  - Funding public benefits navigators to assist community members with navigating and applying for available Federal, State, and local public benefits or services.
  - Housing services to support healthy living environments and neighborhoods conducive to mental and physical wellness.
  - Remediation of lead paint or other lead hazards to reduce risk of elevated blood lead levels among children.
  - Evidence-based community violence intervention programs to prevent violence and mitigate the increase in violence during the pandemic.
- **Investments in housing and neighborhoods**, including:

<sup>1</sup> The definition of a Qualified Census Tract is contained within 26 U.S.C. 42(d)(5)(B)(ii)(I): *The term “qualified census tract” means any census tract which is designated by the Secretary of Housing and Urban Development and, for the most recent year for which census data are available on household income in such tract, either in which 50 percent or more of the households have an income which is less than 60 percent of the area median gross income for such year or which has a poverty rate of at least 25 percent. If the Secretary of Housing and Urban Development determines that sufficient data for any period are not available to apply this clause on the basis of census tracts, such Secretary shall apply this clause for such period on the basis of enumeration districts.*

- Services to address homelessness such as supportive housing, and to improve access to stable, affordable housing among unhoused individuals.
- Affordable housing development to increase supply of affordable and high-quality living units.
- 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, to help residents increase their economic opportunity and reduce concentrated areas of low economic opportunity.
- **Addressing educational disparities**, including:
  - New, expanded, or enhanced early learning services, including pre-kindergarten, Head Start, or partnerships between pre-kindergarten programs and local education authorities, or administration of those services.
  - Providing assistance to high-poverty school districts to advance equitable funding across districts and geographies.
  - Evidence-based educational services and practices to address the academic needs of students, including tutoring, summer, afterschool, and other extended learning and enrichment programs.
  - Evidence-based practices to address the social, emotional, and mental health needs of students.
- **Promoting healthy childhood environments**, including:
  - New or expanded high-quality childcare to provide safe and supportive care for children.
  - Home visiting programs to provide structured visits from healthcare, parent educators, and social service professionals to pregnant women or families with young children to offer education and assistance navigating resources for economic support, health needs, or child development.
  - Enhanced services for child welfare-involved families and foster youth to provide support and training on child development, positive parenting, coping skills, or recovery for mental health and substance use challenges.

### Changes Made by the Final Rule:

- The Final Rule establishes that households that qualify for certain federal programs are also among “impacted households” that have experienced an impact from the COVID-19 pandemic (in addition to low- and- moderate income [LMI] households [defined as those at or below 300% of the Federal Poverty Guidelines [FPG] or 65% of the Area Median Income [AMI] and households experiencing unemployment or food or housing insecurity). These federal programs include federal unemployment programs, the Children’s Health Insurance Program, childcare subsidies through the Child Care Development Fund (CCDF) Program, Medicaid, the National Housing Trust Fund programs, the Home Investment Partnerships Program, and services to address lost instructional time in K-12.
- The Final Rule establishes that “disproportionately impacted households” that have experienced a disproportionate impact from the COVID-19 pandemic also include: low-income households (defined as those at or below 185% of the FPG or 40% of the AMI); households residing in the U.S. territories or receiving services from territorial governments; and households that qualify for certain federal programs, including: 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. This is in addition to households located in Qualified Census Tracts and households receiving services from Tribal governments.

## Replace lost public sector revenue

Public sector “general revenue” may be replaced with Fiscal Recovery Funds to provide government services. This amount is limited to the amount of revenue lost as a result of the pandemic. There is a formula outlined below that must be utilized to determine the amount of lost general revenue.

### General Revenue Defined

In the Interim Rule, “General revenue” is defined broadly, allowing recipients to calculate revenue by summing across many revenue streams. General revenues also include intergovernmental transfers between State and local governments; this provision recognizes the importance of State transfers for local government revenue. Excluded revenue includes proceeds from the issuance of debt or the sale of investments, and revenue generated by utilities. Intergovernmental transfers from the federal government are also excluded.

In line with the broad definition of “general revenue,” sources such as outside concessions that contract with the recipient may be covered. For example, revenues from swimming pools, recreational marinas, golf courses, museums, and zoos are likely covered by the definition, as are auxiliary facilities in public recreation areas, such as refreshment stands and gift shops. Also, leases or use fees from stadiums, auditoriums, and community and convention centers are also likely covered under the definition. In addition to Fiscal Recovery Funds, the federal government also has a grant program specifically aimed at closed venue relief; please contact us if you have questions regarding this grant program.

#### Changes Made by the Final Rule:

- In the Final Rule, Treasury maintains the definition of “general revenue” from the Interim Final Rule with two exceptions:
  - Treasury 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.
  - Treasury also added liquor store revenue to the definition of general revenue.
- In the Final Rule, Treasury maintains 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 (i.e., after January 6, 2022) will not be treated as due to the public health emergency.
- In the Final Rule, Treasury 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.

## Loss Calculation

Revenue loss is determined by comparing (a) actual pandemic-era revenue, to (b) an estimate of revenue if the pandemic had not occurred.

To determine estimated revenue, recipients may use either a formula based upon their average annual revenue growth OR 4.1%, whichever is higher. ARPA recipients may *presume* that any loss using this formula is due to the COVID-19 public health emergency; in other words, recipients need not demonstrate that reduction in revenue is due to the public health emergency.

Some ARPA recipients have or will experience revenue losses later than others, and ARPA allows recipients to re-calculate revenue loss at several points through the program to account for variations in the timing of economic impact. Importantly, once a shortfall in revenue is identified, recipients will have broad latitude to use this funding to support government services, up to the amount of lost revenue.

Recipients should calculate the extent of the reduction in revenue as of four points in time: December 31, 2020; December 31, 2021; December 31, 2022; and December 31, 2023.

There is the four-step process ARPA recipients will use to determine the amount of revenue loss:

**Step 1:** Identify revenues collected in the most recent full fiscal year prior to January 27, 2020, called the base year revenue.

**Step 2:** Estimate “counterfactual revenue” (i.e., revenue reasonably expected to have been realized absent the pandemic). Counterfactual revenue is equal to base year revenue. Base year revenue is  $[(1 + \text{growth adjustment})^{(n/12)}]$ , where “n” is the number of months elapsed since the end of the base year to the calculation date, and growth adjustment is the greater of 4.1 percent and the recipient’s average annual revenue growth in the three full fiscal years prior to the COVID-19 public health emergency.

**Step 3:** Identify actual revenue, which equals revenues collected over the past twelve months as of the calculation date.

**Step 4:** Subtract the actual revenue from the counterfactual revenue to determine the extent of the reduction in revenue. If actual revenue exceeds counterfactual revenue, the extent of the reduction in revenue is set to zero for that calculation date.

### Changes Made by the Final Rule:

- In a key change from the Interim Final Rule, the Final Rule **offers a standard allowance for revenue loss of \$10 million (for the entire period of performance, i.e., through 2026), allowing recipients to select between a standard amount of revenue loss or complete a full revenue loss calculation each year using Treasury’s formula** (which compares actual revenue to a counterfactual trend). Recipients that select the standard allowance may use that amount for “general government services,” with streamlined reporting requirements.



- “Government services” is defined broadly and these funds can be used to SUPPLANT a recipient’s budget. This provision allows maintenance or pay-go capital projects that benefit citizens. Treasury provides a non-exclusive list of general government services examples,” 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.”

## Eligible Uses

Generally, recipients have broad latitude to use funds for the provision of government services. Eligible uses include, for example, maintenance of infrastructure or pay-go spending<sup>2</sup> for building new infrastructure, including roads, modernization of cybersecurity, health services, environmental remediation, school or educational services, and the provision of public safety services (e.g., police and fire).

However, there are some restrictions on uses. For instance, paying interest on principal on outstanding debt, replenishing rainy day funds, or paying settlements or judgments are not eligible. A general infrastructure project typically would *not* be considered a response to the COVID emergency *unless* the project responds to a specific pandemic-related public health need (e.g., investments in facilities for the delivery of vaccines) or a specific negative economic impact of the pandemic (e.g., affordable housing). ARPA funds may not be used as a non-federal match for other federal programs if the program bars the use of federal funds to meet matching requirements.

## Provide premium pay for essential workers

Fiscal Recovery Fund payments may be used by recipients to provide premium pay to eligible workers performing essential work during the COVID-19 public health emergency or to provide grants to third-party employers with eligible workers performing essential work. These are workers who have been and continue to be relied on to maintain continuity of operations of essential critical infrastructure sectors, including those who are critical to protecting the health and wellbeing of their communities. Such workers include:

- Staff at nursing homes, hospitals, and home care settings
- Workers at farms, food production facilities, grocery stores, and restaurants
- Janitors and sanitation workers
- Truck drivers, transit staff, and warehouse workers
- Public health and safety staff
- Childcare workers, educators, and other school staff
- Social service and human services staff

To ensure that premium pay is targeted to workers that faced or face heightened risks due to the character of their work, the Rule defines essential work as work involving regular in-person interactions or regular physical handling of items that were also handled by others. A worker would not be engaged in essential work, and accordingly may not receive premium pay, for telework performed from a residence.

ARPA defines premium pay to mean an amount of **up to \$13 per hour** in addition to wages or remuneration the worker otherwise receives in an aggregate amount not to exceed \$25,000 per eligible worker. Any

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<sup>2</sup> Pay-go infrastructure funding is funding capital projects with cash-on-hand and not borrowed funds.

premium pay or grants provided using Fiscal Recovery Funds should prioritize compensation of those lower income eligible workers that perform essential work.

If premium pay would increase a worker's total pay above **150 percent** of their residing state's average annual wage for all occupations or their residing county's average annual wage, whichever is higher, on an annual basis, the local government must provide Treasury a written justification of how the premium pay or grant is responsive to workers performing essential work during the public health emergency.

Premium pay may also be provided **retrospectively** for work performed at any time since the start of the COVID-19 public health emergency, where those workers have yet to be compensated adequately for work previously performed. Treasury encourages recipients to prioritize providing retrospective premium pay where possible. Essential workers who have already earned premium pay for essential work performed during the public health emergency remain eligible for additional payments, and an essential worker may receive both retrospective premium pay for prior work as well as prospective premium pay for current or ongoing work.

#### Changes Made by the Final Rule:

- 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.
- The following changes were made to the Premium Pay subsections:
  - Eligible Workers: Treasury's Final Rule makes a minor modification to clarify that all public employees are already included in the original definition of "eligible worker." In the Final Rule, the chief executive's (or equivalent) discretion only applies to non-public sectors when designating additional critical workers. Regarding the definition of "essential critical infrastructure sectors," Treasury clarified that an employee of a Tribal enterprise is included as work performed by an employee of a Tribal government.
  - Premium Pay Responds To Workers Providing Essential Work During the COVID-19 Public Health Emergency: Recipients must meet one of three ways to meet this requirement: 1- 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; 2- Eligible worker receiving premium pay is not exempt from the Fair Labor Standards Act overtime provisions (new in the Final Rule); and 3- written justification is only necessary if the worker's pay exceeds the threshold, and the worker is exempt from the FLSA overtime provisions.
  - Definition of Premium Pay: The Final Rule provides that the limit to premium pay is \$25,000 per employee for the entire period of performance, not an annual cap. The recipient may also choose how to award premium pay to the eligible worker (via monthly, quarterly, lump sum) given the payment falls within the original ARPA-defined thresholds. Lastly, premium pay may be awarded to eligible workers in addition to overtime pay earned.
  - Program Structure: The Final Rule maintains that non-hourly, salaried, and part-time workers may receive premium pay, but volunteers may not receive premium pay. Treasury's Final Rule allows for retroactive premium pay, given the recipient or eligible employer grantee makes a "new cash outlay for the premium payments" and is not used for hazard pay already received.

## Invest in water, sewer, and broadband infrastructure

### Water and Sewer

Recipients may use the Fiscal Recovery Funds to make necessary investments in water and sewer infrastructure. The Interim Final Rule explains that “[b]y permitting funds to be used for water and sewer infrastructure needs, Congress recognized the critical role that clean drinking water and services for the collection and treatment of wastewater and stormwater play in protecting public health.”

The Interim Final Rule provides important details on how the funds should be used for water and sewer projects:

- In the rule, Treasury aimed to give governments “wide latitude to identify investments in water and sewer infrastructure that are of the highest priority for their own communities.” The rule does this by aligning eligible uses of the Fiscal Recovery Funds with the wide range of project types that would be eligible to receive assistance through the EPA’s Clean Water State Revolving Fund (CWSRF) or Drinking Water State Revolving Fund (DWSRF).
- As a reminder, the types of projects eligible for assistance under the CWSRF include projects to construct, improve, and repair wastewater treatment plants, control non-point sources of pollution, improve resilience of infrastructure to severe weather events, create green infrastructure, and protect waterbodies from pollution. A full list of eligible CWSRF project categories can be found [here](#).
- For the DWSRF, a wide range of water infrastructure capital improvements are eligible, including the installation and replacement of treatment and distribution systems, storage, replacement of lead service lines, development of new water sources, wells, aquifer storage and recovery, and consolidation projects, among others. A full list of eligible DWSRF project categories can be found [here](#).
- 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.
- Treasury encourages investment in several types of projects, including the replacement of lead service lines and projects that address climate change. Climate change-related projects are those that that reduce the energy required to treat water by managing potential sources of pollution and projects that conserve or reuse water are eligible. In addition, Treasury encourages recipients to consider green infrastructure investments and projects to improve resilience. Green infrastructure projects that support stormwater system resiliency could include rain gardens 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 Fiscal Recovery Funds to provide relief, such as interconnecting water systems or rehabilitating existing wells during an extended drought.
- Projects on privately-owned infrastructure are eligible.
- Treasury encourages recipients to ensure that water and sewer projects use 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, “not only to promote effective and efficient

- delivery of high-quality infrastructure projects but also to support the economic recovery through strong employment opportunities for workers.”
- Regarding reporting, the rule states, “[t]o provide public transparency on whether projects are using practices that promote on-time and on-budget delivery, Treasury will seek information from recipients on their workforce plans and practices related to water [and] sewer...projects undertaken with Fiscal Recovery Funds. Treasury will provide additional guidance and instructions on the reporting requirements at a later date.”

### Changes Made by the Final Rule:

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. After its review of comments on the Interim Final Rule, Treasury expands the scope of eligible water and sewer projects in the Final Rule.

- 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. 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 (see below for more information on dams and reservoirs). And, 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.
- 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, considering 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.
- Treasury will 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.
- Treasury makes clear in the Final Rule that investments in 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. 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.

- There was a requirement in the Interim Final Rule that said a project should be unlikely to be advanced 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, in its Final Rule, Treasury eliminated this standard but nevertheless encourages recipients to apply funds to projects that would provide the greatest public benefit.
- In the Final Rule, Treasury recognizes that some recipients have had difficulty interpreting eligible use categories under the Interim Final Rule or cross-referencing EPA program materials to interpret eligible project types consistent with the DWSRF and CWSRF programs. Accordingly, Treasury provides additional information on the types of projects that are eligible under the DWSRF and CWSRF programs. Please see [pages 274-279](#) of the Final Rule for this supplemental information.
- To minimize the need for recipients of SLFRF funds to cross reference eligibilities across multiple federal programs, Treasury is also providing detailed information related to expanded eligibilities within the text of the Final Rule. Note that these eligibilities are generally beyond the scope of the DWSRF and CWSRF but are eligible if they are found to be “necessary,” according to the aforementioned definition. Please refer to [pages 281-293](#) of the Final Rule for more information. In summary:
  - Stormwater. Treasury expands 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. 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 Fiscal Recovery Funds for road repairs and upgrades that interact directly with an eligible stormwater infrastructure project.
  - Private wells and septic systems. Treasury provides in the Final Rule that recipients may use Fiscal Recovery 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.
  - Lead in water. Treasury provides 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. 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 lead and certain other water systems. Treasury is expanding eligible uses of Fiscal Recovery Funds to include infrastructure projects eligible under EPA grant programs authorized by the WIIN Act. 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. Consistent with the EPA programs, replacement of lead pipes within a home is not eligible under the Final Rule.

- Regarding dams and reservoirs, 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. New dam and reservoir projects are not eligible. 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 under certain conditions. Habitat restoration projects more generally may also be eligible under the CWSRF and the Final Rule if they constitute a form of stormwater infrastructure.
- Regarding the expansion of drinking water service infrastructure, the Final Rule provides that recipients may use Fiscal Recovery Funds for projects that are needed to support increased population, in certain cases.
- Regarding authorized Bureau of Reclamation projects, the IIJA permits the use Fiscal Recovery 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 Fiscal Recovery Funds under the water and sewer infrastructure eligible use category. Treasury will provide further guidance to recipients on the scope of Bureau of Reclamation water projects and expenses covered by this provision.
- Regarding floodplain management and flood mitigation, 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 and sewer projects under the ARPA.
- Regarding irrigation, 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. No additional flexibilities are provided for irrigation in the Final Rule.
- Regarding consumer incentive programs, Treasury clarifies that such project types were eligible under the Interim Final Rule and continue to be eligible under the Final Rule.

## Broadband

Recognizing the acute need in certain communities, Treasury's Interim Final Rule provides that investments in broadband be made in areas that are currently unserved or underserved—in other words, lacking a wireline connection that reliably delivers minimum speeds of 25 Mbps download and 3 Mbps upload. The Interim Final Rule provides award recipients with flexibility to identify the specific locations within their communities to be served and to otherwise design the project. Treasury recognized that different communities and their residents may have a broad range of internet needs and that those needs may change over time. Additionally, Treasury is encouraging recipients to prioritize support for broadband networks owned, operated by, or affiliated with local governments, non-profits, and co-operatives—providers with less pressure to turn profits and with a commitment to serving entire communities.

The Interim Final Rule provides important details on how the funds should be used for broadband projects:

- Using these funds, recipients are encouraged to prioritize projects that achieve last-mile connections to households and businesses.
- Recipients generally should build broadband infrastructure with modern technologies in mind and are encouraged to prioritize fiber optic investments.
- Projects should deliver services offering reliable 100 Mbps download and 100 Mbps upload speeds, unless impracticable due to topography, geography, or financial cost.
- In those instances when not practicable, the affected project would be expected to be designed to deliver, upon project completion, service that reliably meets or exceeds 100 Mbps download 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 selecting an area to be served by a project, recipients are encouraged to avoid investing in locations that have existing agreements to build reliable wireline service with minimum speeds of 100 Mbps download and 20 Mbps upload by December 31, 2024, to avoid duplication of efforts and resources.
- Treasury encourages recipients to ensure that broadband projects use 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 recommended the speed thresholds to ensure that broadband infrastructure is sufficient to enable users to generally meet household needs, including the ability to support the simultaneous use of work, education, and health applications, and sufficiently robust to meet increasing household demands for bandwidth.

In view of the wide disparities in broadband access, assistance to households to support internet access or digital literacy is an eligible use to respond to the public health and negative economic impacts of the pandemic, as detailed above.

#### **Changes Made by the Final Rule:**

The Final Rule expands the areas eligible for broadband investments, which was limited under the Interim Final Rule to areas lacking access to connections reliably delivering transmission speeds of at least 25 Mbps downstream and 3 Mbps upstream. 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.

- Examples of need include lack of access to a connection that reliably meets or exceeds 100 Mbps down and upload speeds, lack of affordable access to broadband service, or lack of reliable broadband service.
- 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), and other factors related to 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.

The Interim Final Rule encouraged recipients to consider ways to integrate affordability options into their program design but did not require recipients to take specified actions. The Interim Final Rule also provided that assisting households with internet access and digital literacy is an eligible use of Fiscal Recovery Funds.

The Final Rule provides additional requirements to address the affordability needs of low-income consumers in accessing broadband networks funded by Fiscal Recovery Funds. 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.

Treasury also recognized the importance of affordable broadband access for all consumers beyond those that are low income.

- As part of the 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.

The Final Rule also modifies the Interim Final Rule's requirements around duplication of resources. 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 Fiscal Recovery 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 Fiscal Recovery Funds will not be used for costs that will be reimbursed by the other federal or state funding streams.

## Environmental Review for Infrastructure Projects

It is important to note the National Environmental Policy Act (NEPA) does not apply to Treasury's administration of funds for infrastructure projects under ARPA. However, if those projects are also funded by other federal programs, a NEPA review will still apply.

### Changes Made by the Final Rule:

- No changes were made to this provision.

## Is there anything I can't spend the funding on?

To ensure that resources provided by the Fiscal Recovery Fund are being used for their intended purpose, the American Rescue Plan also identified ineligible uses of funds.

Treasury has primarily highlighted that states and **territories may not use funds to directly or indirectly offset a reduction in net tax revenue** due to a change in law from March 3, 2021, through the last day of the fiscal year in which the funds provided have been spent. ARPA ensures that funds needed to provide vital services and support public employees, small businesses, and families struggling to make it through the pandemic are not used to fund a reduction in net tax revenue.

If a state or territory cuts taxes, they **must demonstrate how they paid for the tax cuts** from sources other than Local Recovery Funds – by enacting policies to raise other sources of revenue by cutting spending or through higher revenue due to economic growth. If funds provided have been used to offset tax cuts, the amount used for this purpose must be paid back to Treasury.

Additionally, **no recipient may use Fiscal Recovery Funds to make deposits to a pension fund**. The Interim Final Rule defines a "deposit" as an extraordinary contribution to a pension fund to reduce an accrued, unfunded liability. While pension deposits are prohibited, recipients may use funds for routine payroll contributions for employees whose wages and salaries are an eligible use of funds.

Other ineligible uses include **funding debt services, legal settlements or judgments, and deposits to rainy day funds or financial reserves**. General infrastructure spending is not covered as an eligible use outside of waters, sewer, and broadband investments or above the amount allocated under the revenue loss provision. While the program offers broad flexibility to recipients to address local conditions, these restrictions will help ensure that funds are used to augment activities and address pressing needs.

### Changes Made by the Final Rule:

- Treasury's Final Rule provides **examples of ineligible expenses**, such as **transportation projects** which are generally ineligible as a response to public health and negative economic impacts of the pandemic; however, a recipient could fund transportation projects as a "general government service" up to its amount of revenue loss, provided that other restrictions on use do not apply (see pages 14-15 of this Report). Treasury also 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 use 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. 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 house is lower than need for such housing would exacerbate the impacts of the pandemic on disproportionately impacted communities that use of Fiscal Recovery Funds for such activities would therefore be ineligible. Use of funds that do not

respond to the negative impacts of the pandemic, such as **excessive compensation to employees**, is ineligible.

## What are the reporting requirements?

Treasury's Interim Rule also established required reporting mechanisms for the use of funding administered from the ARPA. These requirements include:

- Direct recipients must submit one Interim Report and thereafter quarterly Project and Expenditure reports through December 31, 2026 (the end of the award period).
- Direct recipients with a population more than 250,000 will also be required to submit an annual Recovery Performance Plan to Treasury.
- NEUs are not required to submit an Interim Report or Recovery Performance Report. However, NEUs will be required to submit annual Project and Expenditure reports through December 31, 2026.
- Financial records and supporting documents must be kept for five years after all funds are expended.

### Changes Made by the Final Rule:

- The Final Rule clarifies that **nonprofits** that receive direct assistance as beneficiaries are not subrecipients and are therefore not required to comply with Treasury's reporting requirements. However, the recipient must comply with reporting requirements, which would require reporting obligations and expenditures for assistance to nonprofits.
- **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. **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, if they are responding to a harm caused or exacerbated by the public health emergency. Treasury also 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.
- In the Final Rule, Treasury also states that the department will **provide additional guidance and instructions on the reporting requirements** for reporting impermissible offsets. The Final Rule also states that Treasury may address potential violations of the Final Rule based on both information submitted from recipients, either through quarterly reports or self-reporting, and from other sources of information.
- For **blending and braiding of funds**, where Fiscal Recovery Funds are combined with other sources of funding, Treasury clarified that recipients must comply with applicable reporting requirements for all sources of funds supporting the projects and with any requirements and restrictions on the use of funds from the supplemental funding sources and the Fiscal Recovery Fund program.
- Treasury is also retaining the **reporting deadline of 30 days after the close of the reporting period** to ensure timely accounting of the use of Fiscal Recovery Funds.

## When will we receive our funds?

Treasury's Submission Portal is now open for direct recipients. Once a recipient's representative provides the required information, Treasury will take approximately four business days to verify. After verification is complete, the recipient's point of contact will receive an email that their submission has been verified and payments will generally be scheduled for the next business day.

NEUs must wait for further guidance from Treasury. However, once allocations and guidance are released, states will have 30 days to release payments to NEUs unless an extension is granted by the Secretary of Treasury.

Finally, unless a State has elevated unemployment, allocations will be made in two tranches. The first half of a recipient's allocation will be available upon certification and the second half will be released twelve months thereafter (i.e., approximately May 2022). The reasoning is to encourage recipients to adapt to new developments that may arise over the next year as the recovery evolves. If economic recovery is faster than expected, a recipient may want to dedicate funds to long-term investments. If economic recovery is slower than expected, then a recipient may choose to use additional funds for near-term stimulus.

### Changes Made by the Final Rule:

- In the Final Rule, Treasury makes two modifications to the payment in tranches to local governments and certain states:
  - Second tranche payments are to be available to all states regardless of when the state submitted its initial certification "beginning 12 months from the date that funding was first made available."
  - To limit "administrative burden" a requirement for states to certify for their second payment and file all necessary reports at least 30 days prior to the release of the funds was simplified to require all reports with no set wait period.
- The Final Rule identifies changes to payments to NEUs and Units of Local Government (UGLGs) within Non-UGLG Counties:
  - Treasury defines total annual budget of an NEU as the 75 percent budget cap, including both operating and capital expenditures.
  - The Final Rule also allows flexibility for states and territories to share further guidance to NEUs to operationalize the 75 percent budget cap allowing for better facilitation of the distribution of Fiscal Recovery Funds.

## What's Next?

Treasury hosted three webinars immediately after the Final Rule's release (recording link on page 3 of this Report). The department will host additional webinars in February to address additional frequently asked questions, and to assist recipients with reporting requirements. Please let us know of any questions you have, and we will relay those questions to Treasury.