

After much uncertainty regarding appropriate uses of Coronavirus State and Local Fiscal Recovery Funds (SLFRF), authorized under the American Rescue Plan Act of 2021 (ARP), the US Treasury’s recently published final rule broadens, streamlines and simplifies the program. The final rule provisions are effective starting April 1, 2022; in the meantime, no action will be taken to enforce the interim final rule if use of funds complies with the terms of the final rule.

In response to the unprecedented economic effects of the COVID-19 pandemic, Congress enacted the SLFRF program to help state, local and Tribal governments support struggling individuals, families and businesses and maintain essential public services. To allow SLFRF recipients to use funding for a wide range of projects and programs, Congress included a non-exhaustive list of eligible uses of funds. The Treasury Department, in connection with its administration of the SLFRF program, provided guidance by issuing an interim final rule on how the program would be administered, including guidance on use of SLFRF moneys. After a public comment period, on January 6, 2022, the Treasury issued a final rule that provides final guidance on the use of SLFRF moneys.

Still substantially similar to the interim final rule, the final rule continues to ensure the flexibility of the uses of SLFRF moneys while providing more explicit guidance on eligible projects.

Relevant areas of expanded eligible uses of SLFRF moneys include:

(1) Public health and economic impacts – restructures and provides a non-exhaustive list for recipients to determine the eligibility of a particular use. This list includes affordable housing development and public benefits, such as food and housing assistance, re-hiring public sector workers who were let go during the crisis and addressing the public health emergency through mitigation and prevention activities.

Eligible uses are organized by type of beneficiary such as households, small businesses, impacted industries, nonprofits and the public sector. Within each beneficiary category is a designation for “impacted classes” (i.e., those that experience the general, broad-based impacts of the pandemic) and “disproportionately impacted classes” (i.e., those facing more severe impacts of the pandemic, likely due to preexisting societal inequities).

Due to these preexisting disparities, the final rule presumes that some communities are impacted or disproportionately impacted – such as lower-income areas – and, therefore, eligible for targeted programming without requiring further analysis.

(2) Replacing lost public sector revenue – adds an additional method to determine if a government service is eligible for SLFRF moneys based upon the Treasury’s presumption of lost revenue. To help stabilize local economies, SLFRF moneys may be used to provide government services to cover revenue lost due to the pandemic. Under the final rule, a recipient may either (i) calculate actual revenue loss following [the Treasury’s formula in the final rule](#) or (ii) elect a “standard allowance” of up to \$10 million to spend on the government service, but such standard allowance may not exceed the recipient’s award amount if such award amount is lower.

Government services are those traditionally provided by a government (e.g., construction of schools and hospitals; road building and maintenance; other infrastructure costs; health services; general government administration, staff and facilities; environmental remediation; provision of police, fire and other public safety services including the purchase of fire trucks and police vehicles; and cyber security modernization) subject to a [few exceptions](#).

(3) Water, Sewer and Broadband Infrastructure – improves access to clean drinking water, bolsters wastewater and storm water infrastructure and increases affordable access to broadband internet. Water and sewer projects eligible under the EPA’s Clean Water State Revolving Fund or Drinking Water State Revolving Fund, as well as lead remediation efforts, storm water improvement plans on both private and public lands, and storm and sanitary sewer separation projects, are now all considered eligible expenses; potential uses include, but are not limited to, storm and sanitary sewer separation projects, storm water projects to mitigate run-off from agricultural lands to lakes that result in algal blooms, and addressing private wells and septic unit issues. The final rule encourages the development of high-speed broadband in areas of need as measured by existing access to adequate broadband speed, affordable options, and consistency of connection. Broadband projects must participate in a low-income subsidy program.

(4) Premium Pay for Eligible Workers – allows [SLFRF moneys](#) to be used to provide premium pay (up to \$13 per hour in addition to wages or standard compensation the worker otherwise receives) to eligible workers performing essential work during the pandemic, but such premium pay cannot exceed \$25,000 for any single worker during the program.

(5) Payments to Non-Entitlement Units (NEUs) – Clarifies the definition of “most recent budget” for local governments serving populations of less than 50,000 (labeled NEUs) and prohibits states from imposing additional conditions or requirements for distribution of funds to NEUs. Instead of receiving SLFRF moneys directly from the Treasury, NEUs receive payments from their state government and total distribution to an NEU cannot exceed 75% of its [most recent budget](#). As the final rule explains, an NEU’s total annual budget includes both operating and capital expenditure budgets in effect as of January 27, 2020. For NEUs without formal budgets as of January 27, 2020, the NEU may self-certify its most recent annual expenditures as of that date. Additionally, in an attempt to prevent states and territories from placing conditions or requirements on distributing SLFRF moneys to NEUs that might be at odds with ARP, the Treasury bans the imposition of limitations not already set forth in the statute.

The greatest strength of the final rule, though, still lies in its flexible nature. Uses that are not explicitly enumerated in the final rule may still be eligible through the following ways:

- **Revenue loss eligibility.** Government services can fund up to their amount of revenue loss following the methods discussed in (2) above.
- **Identify eligible uses by analyzing an economic harm exacerbated by the COVID-19 public health crisis and designing a program to address that harm.** Recipients should identify a COVID-19 related public health or economic impact on an individual or group, and then design a program that responds to that identified impact. This response must be (i) reasonably proportional to the extent and type of harm, and (ii) reasonably designed to benefit the harmed individuals or class. As discussed in (1) above, the final rule presumes some communities are impacted and disproportionately impacted to lessen the administrative burden.

Certain restrictions are also in place regarding use of funds:

- For states and territories, no offsets of a reduction in net tax revenue resulting from a change in state or territory law are permitted.
- Except for Tribal governments, no extraordinary contributions to a pension fund with the purpose of reducing an accrued, unfunded liability are permitted.
- For all recipients, no payments of debt service or replenishment of rainy day funds are permitted.

SLFRF funds must be used for costs incurred on or after March 3, 2021, obligated for a particular project or program by December 31, 2024, and expended by December 31, 2026. While more than \$245 billion has been appropriated thus far, an additional \$105 billion is still expected to be delivered. For more information on project eligibility, applying for SLFRF moneys or compliance guidelines, please refer to the US Treasury’s website ([Treasury rule overview](#) and [final rule](#)) or seek legal counsel.

Stay Tuned

Squire Public Finance will make available any helpful information as soon as we receive it. In the meantime, please feel free to reach out to your Squire Public Finance contact or any contacts listed.

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