



AGENDA
BOARD OF CLALLAM COUNTY COMMISSIONERS
223 East 4th Street Room 160
Port Angeles, Washington
Tuesday, March 22, 2022 – 9:00 a.m.

Board of Clallam County Commissioner meetings will also be available virtually at:

If you would like to participate in the meeting via Zoom audio only, call 253-215-8782 and use meeting ID: 875 561 7844 and passcode: 12345

If you would like to participate in the meeting via Zoom video conference, visit <https://zoom.us/j/8755617844> and use meeting ID: 875 561 7844 and passcode: 12345

This meeting can be viewed on a live stream at this link: <http://www.clallam.net/features/meetings.html>

Public comment and questions can be directed to the Clerk of the Board at 360-417-2256 or agores@co.clallam.wa.us.

CALL TO ORDER, PLEDGE OF ALLEGIANCE, ROLL CALL

REQUEST FOR MODIFICATIONS/APPROVAL OF AGENDA

PUBLIC COMMENT – Please limit comments to three minutes (10 minutes total)

CONSENT AGENDA – Any Commissioner may remove items for discussion

- 1a. Approval of vouchers for the week of March 14

Approval of vouchers 

- 1b. Approval of minutes for the week of March 14

Approval of minutes 

REPORTS AND PRESENTATIONS

CONTRACTS AND AGREEMENTS

- 2a. Agreement with Olympic Peninsula Community Clinic to expand the Clallam County Jail's medication assistance treatment program

Agreement 

- 2b. Agreement amendment 11 with Correctional Healthcare Companies, LLC for Inmate Health Care Services

Agreement 

- 2c. Agreement with Sequim Food Bank for American Rescue Plan Act (ARPA) direct grant assistance

Agreement 

- 2d. Memorandum of Understanding between Washington Municipalities regarding opioid litigation

Memorandum of Understanding 

- 2e. Agreement amendment 2 Clallam County Economic Development Council for American Rescue Plan Act funds

Agreement 

ADMINISTRATION

- 3a. Notice of hearing to be held Tuesday, April 5, 2022 at 10:30 a.m. for an Ordinance adding a Chapter to Clallam County Code Titled Additional Sales and Use Tax – Housing and Related Services

Notice of hearing 

- 3b. Resolution appointing David Hanna and correcting the position for Christy Cox on the Solid Waste Advisory Committee

Resolution 

- 3c. Resolution appointing Christine Dunn to the Homelessness Task Force

Resolution 

- 3d. Review the Scheme of Arrangement in the matter of the Mallinckrodt Public Limited Company.

Review 

PUBLIC COMMENT – Please limit comments to three minutes

EXECUTIVE SESSION

The Board may recess into Executive Session to consider employment or dismissal of personnel, to review the performance of a public employee, to consult with legal counsel, to consider the position to be taken in collective bargaining, to consider acquisition or sale of real estate, or other matters per RCW 42.30.110

The following meetings are scheduled for the Board of Commissioners March 21 - 25:

Monday, March 21:

9:00 a.m. Work Session

12:00 p.m. WSAC Virtual Update

1:00 p.m. Department of Natural Resources meeting

Tuesday, March 22:

10:00 a.m. Board Meeting

3:00 p.m. William Shore Memorial Pool District meeting

Thursday, March 24:

1:00 p.m. Timber Counties Caucus meeting

INSTRUCTIONS FOR SPEAKING AT A COMMISSIONERS' MEETING:

- Members of the public wishing to address the Board on general items may do so during the designated times on the agenda.
- Members of the public wishing to comment at the public hearing are asked to sign in on the sheet provided giving their name and address.
- The Chair may limit the comment period to 3 minutes for each speaker subject to Board concurrence.
- Speakers, generally, will be heard in the order they signed up. All comments must be made from the speaker's rostrum and any individual making comments shall first state their name and address for the official record.
- General comments, applause, booing from members of the audience are inappropriate and may result in removal.

These guidelines are intended to promote an orderly system for conducting a public hearing so that each person has an opportunity to be heard and to ensure that exercising their right of free speech embarrasses no one.

Note: Written testimony presented by members of the public during the Board meeting is considered a public document and must be submitted to the Clerk of the Board. Copies of public documents from Board meetings are available by contacting the Public Records Department.



1a
3/22/22

Date of report: March 16, 2022

General	\$70,431.66
Other	\$1,384,108.36
Total	\$1,454,540.02

STATE OF WASHINGTON)

County of Clallam)

This is to certify that the foregoing Final Check Lists a.k.a., Register of Warrants for the period herein indicated, is a full, true, and correct representation of the corresponding payments for services rendered to and supplies and equipment received by all Clallam County government operations as recorded in the books or original entry maintained by this office.

WITNESS MY HAND AND OFFICIAL SEAL THIS _____ DAY OF _____ 2022.

SHOONA RIGGS COUNTY AUDITOR

CLALLAM COUNTY BOARD OF COMMISSIONERS does hereby certify that the services and merchandise herein specified have been received and that the claims listed and numbered above are hereby approved for payment:

BOARD OF COMMISSIONERS
CLALLAM COUNTY, WASHINGTON

MARK OZIAS, Chair

BILL PEACH

RANDY JOHNSON

RICH SILL (County Administrator)

Weekly Expenditures

March 14 - 18, 2022

Fund #	Department	Expenditures		Use Tax	
		General Fund	Other	General Fund	Other
00100.211	Assessor	1,344.89			
00100.221	Auditor	350.99			
12401.221	Auditor - Document Preservation		36.81		
	Commissioners (BOCC)				
19914.291	BOCC - Veterans Relief		1,786.52		
19961.291	BOCC - American Rescue Plan Act		14,259.74		
00100.331-334	Dept. of Community Develop't (DCD)	3,172.62			
30301.331	DCD - Lower Dungeness Floodplain		581,556.45		
00100.871	District Court I	1,749.62			
00100.881	District Court II	249.45			
11301.511	Health & Human Services (HHS)		6,214.10		178.27
00100.511	HHS - Environmental Health	3,672.43		10.41	
00100.513	HHS - Admin	86.83			
11331.511	HHS - Developmental Disabilities		5,608.00		
00100.851	Juvenile Services	9,232.88		19.01	
13001/13051	Noxious Weed/LMD #2 (Lake Mgmt. Dist.)		1,123.74		
00100.911/912	Parks Fair Facilities (PFF)	23,581.14			
30101.911	PFF - REET 1 (Real Estate Excise Tax)		34,228.48		
30201.911	PFF - REET 2 (Real Estate Excise Tax)		1,457.82		
30501.911	PFF - Capital Projects		4,807.50		
	Public Works (PW)				
10101.611	PW - Roads		24,791.56		
30401.331	PW - Dungeness Reservoir		665,184.05		
41401.611	PW - Clallam/Seki Sewer		6,356.47		
42401.611	PW - Carlsborg Sewer		13,182.85		
43401.611	PW - Bullman Beach Water System		292.92		
50301.611	PW - ER&R (Equip't Rental & Revolving)		19,533.02		
00100.811-815,817	Sheriff	15,164.90			
00100.816	Sheriff - Jail Medical	7,216.63			
11003.811	Sheriff - Boating Safety		525.00		
11008.811	Sheriff - OPNET Drug		1,096.71		
11065.811	Sheriff - OPSCAN Operations		460.33		
11080.811	Sheriff - Inmate Commissary		799.88		14.64
00100.861	Superior Court	400.60		27.28	
00100.231	Treasurer	440.43			
12201.231	Treasurer - O&M (Operation & Maintenance)		613.50		
00100.931	WSU Extension	3,711.55			
Total		70,374.96	1,383,915.45	56.70	192.91

Report Reconciliation		Totals			
Total	1,454,290.41	General Fund	70,431.66		
Final Check Lists	1,454,290.41	Other	1,384,108.36		
Difference	-	Total	1,454,540.02	Use Tax	249.61

COPY

Prepared by:

Sara DeBiddle, Clallam County Auditor's Office

Invoice History Use Tax Report
CLALLAM COUNTY

Tran Date	Vendor Name	Invoice / Credit Memo No.	Doc Group	Taxable Amount	Tax Amount	Invoice Total
3/8/2022	U S BANK	3363	dputnam3	156.00	13.73	156.00
3/8/2022	U S BANK	609ACCE2-0001	dputnam3	59.99	5.28	59.99
3/9/2022	U S BANK	437450	lfors	310.00	27.28	310.00
3/10/2022	SWANSONS SERVICES CORP.	1557835	jkoon	45.63	4.02	45.63
3/10/2022	SWANSONS SERVICES CORP.	1563096	jkoon	77.21	6.80	77.21
3/10/2022	SWANSONS SERVICES CORP.	1560339	jkoon	43.42	3.82	43.42
3/22/2022	U S BANK	7298-030722	cthompso	118.24	10.41	118.24
3/22/2022	U S BANK	4318 3-7-22	jdansere	2,025.83	178.27	2,068.22
Totals:				2,836.32	249.61	2,878.71

Bank : apbank U S BANK

Check #	Date	Vendor	Invoice	Inv Date	Description	Amount Paid	Check Total
3/22/2022	0001641	VERIZON WIRELESS	990265112	3/8/2022	DATA FOR MOBILE APPRAISA	240.06	240.06
3/22/2022	0020849	U S BANK	USB 3-8-22	3/8/2022	SUBSCRIPTION FOR COMME	911.10	911.10
3/22/2022	0021386	STAPLES ADVANTAGE	8065394380	3/8/2022	BUSINESS ENVLEOPES WITH	178.08	178.08
3/22/2022	0033199	LEMAY MOBILE SHREDDING	4737510S185	3/8/2022	DOCUMENT DESTRUCTION	15.65	15.65
Sub total for U S BANK:							1,344.89

0.*

1,344.89+

387.80+

14,259.74+

584,729.07+

1,749.62+

249.45+

15,581.36+

6,668.20+

9,232.88+

1,123.74+

62,878.94+

19,533.02+

19,319.36+

685,016.29+

18,046.82+

7,216.63+

400.60+

1,053.93+

1,786.52+

3,711.55+

1,454,290.41*+

0.*

Bank : apbank U S BANK

Check #	Date	Vendor	Invoice	Inv Date	Description	Amount Paid	Check Total	
	3/22/2022	0001179	PACIFIC OFFICE EQUIPMENT	1097238	2/28/2022	CONTRACT COPIER 10785-10	128.19	
				1097240	2/28/2022	CONTRACT COPIER 11455-03	31.92	
				1097239	2/28/2022	CONTRACT COPIER 10931-09	21.87	181.98
	3/22/2022	0001641	VERIZON WIRELESS	9900349237	2/24/2022	MIFI FOR KIOSKS	40.01	40.01
	3/22/2022	0003410	LEMAY MOBILE SHREDDING	4737112S185	3/1/2022	DOCUMENT SHREDDING	36.81	36.81
	3/22/2022	0020849	U S BANK	5976806	2/9/2022	MICROSOFT EXCEL CLASS	129.00	129.00
Sub total for U S BANK:							387.80	

apChkLst
03/15/2022 12:53:49PM

Final Check List
CLALLAM COUNTY

BOCC

Page: 1

Bank : apbank U S BANK

Check #	Date	Vendor	Invoice	Inv Date	Description	Amount Paid	Check Total
	3/22/2022	0046411	WEST OLYMPIC PENINSULA, WOPBA 0322	3/10/2022	COVID-19 EXPENSE REIMBUI	14,259.74	14,259.74
Sub total for U S BANK:							14,259.74

Final Check List
CLALLAM COUNTY

DCD

Bank : apbank U S BANK

Check #	Date	Vendor	Invoice	Inv Date	Description	Amount Paid	Check Total
3/22/2022	0000196	BILLS PLUMBING & SANIKAN	IS36489110	3/28/2022	G145 TASK 2 3/28-4/28/22	155.00	155.00
3/22/2022	0000360	CLALLAM COUNTY ER&R	2022.038E	3/2/2022	FEB 2022 DUNG RES \$30.00/C	73.00	73.00
3/22/2022	0000370	CLALLAM TITLE CO	140490	3/3/2022	G85 HENDREN 2002 1085191	425.00	425.00
3/22/2022	0001179	PACIFIC OFFICE EQUIPMENT	1097247	2/28/2022	#8631 FEBRUARY 2022	276.30	
			1097250	2/28/2022	#10293 FEBRUARY 2022	227.99	
			1097249	2/28/2022	#10336 FEBRUARY 2022	179.87	
			1097248	2/28/2022	#10051 FEBRUARY 2022	19.03	703.19
3/22/2022	0001540	SWAIN'S GENERAL STORE IN	295862	2/7/2022	SK OPERATING SUPPLY	52.09	52.09
3/22/2022	0001641	VERIZON WIRELESS	9900349235	2/24/2022	G146 TASK 1 \$105.96 FEB 202	158.21	
			9900170000	2/22/2022	INSPECTOR FEBRUARY 2022	26.23	
			9900169999	2/22/2022	INSPECTOR FEB 2022	23.86	
			9900170001	2/22/2022	LRP FEBRUARY 2022	21.85	230.15
3/22/2022	0004428	LEAR, CATHY	LEAR 1/28-3/3/2	3/7/2022	G146 TASK 2 MILEAGE 1/28/2	168.48	168.48
3/22/2022	0020849	U S BANK	WABO 2-7-22	2/7/2022	WABO TRAINING	1,375.00	
			AMZN 2-9-22	2/9/2022	CE OPERATING SUPPLY	44.13	
			AMZN 2-27-22	2/27/2022	CE OPERATING SUPPLY	23.92	1,443.05
3/22/2022	0021923	FIRST RACE CAR WASH	FEBRUARY 202	2/28/2022	DCD FEB 2022	46.00	46.00
3/22/2022	0026563	MAHAN, REBECCA	PARADIS 1/1-3/	3/7/2022	G145 TASKS 1, 2, 3, G146 TAS	176.79	176.79
3/22/2022	0031887	SCARSELLA BROS INC	PAY APP 4	3/10/2022	G146 TASK 2 PRO SVC 1/8-3/	282,249.54	282,249.54
3/22/2022	0036994	SHANNON & WILSON INC	126726	12/16/2021	G146 TASK 2 AMEND 10: 10/1	110,190.69	
			128208	3/8/2022	G146 TASK 2 AMEND 9: 1/16-2	97,552.32	
			128260	3/7/2022	G146 TASK 2 AMEND 10: 1/16	71,217.05	
			126783	12/22/2021	G146 TASK 2 WSDOT NON C	15,706.66	
			127468	12/22/2021	G146 TASK 2 WSDOT NON C	4,197.50	298,864.22
3/22/2022	0045812	GREEN, JOEL	GREEN 1/25-2/2	3/7/2022	G146 TASK 2 MILEAGE	84.24	
			GREEN JAN FE	3/7/2022	G146 TASK 2 WSDOT NON C	42.12	
			GREEN 1-15-22	3/7/2022	STREAMKEEPERS JAN-FEB 2	16.20	142.56
Sub total for U S BANK:							584,729.07

Bank : apbank U S BANK

Check #	Date	Vendor	Invoice	Inv Date	Description	Amount Paid	Check Total
3/22/2022	0001140	OLYMPIC PRINTERS INC	29671	3/2/2022	OLYMPIC PRINTERS - B. TALM	103.36	103.36
3/22/2022	0001179	PACIFIC OFFICE EQUIPMENT	1097233	2/28/2022	POE - CANON/IMAGERUNNER	79.14	
			1097231	2/28/2022	POE - CANON/IRA615IFZ, BLA	65.35	
			1097230	2/28/2022	POE - CANON/IR1435, BLACK	37.83	
			1097232	2/28/2022	POE - CANON/IR1435, BLACK	0.02	182.34
3/22/2022	0001509	CORDANT HEALTH SOLUTIONS	TC-1631002282	2/28/2022	CORDANT - RANDOM UAS	1,364.56	1,364.56
3/22/2022	0021386	STAPLES ADVANTAGE	3501216764	2/26/2022	STAPLES - HP 19A IMAGING I	87.44	99.36
			3501216766	2/26/2022	STAPLES - INDEX BTM TAB E	11.92	
Sub total for U S BANK:							1,749.62

Bank : apbank U S BANK

Check #	Date	Vendor	Invoice	Inv Date	Description	Amount Paid	Check Total	
	3/22/2022	0000296	CENTURYLINK	CentLinkMar22	3/9/2022	TELEPHONE SERVICES MAR	107.16	107.16
	3/22/2022	0001179	PACIFIC OFFICE EQUIPMENT	1097235	3/9/2022	CANON IRA400 MAINTENANC	60.74	
				1097234	3/9/2022	CANON IR1025 MAINTENANC	27.13	87.87
	3/22/2022	0001641	VERIZON WIRELESS	9900349236	3/9/2022	PROBATION OFFICER CELL	54.42	54.42
Sub total for U S BANK:							249.45	

Bank : apbank U S BANK

Check #	Date	Vendor	Invoice	Inv Date	Description	Amount Paid	Check Total
3/22/2022	0000336	CLALLAM CONSERVATION DIS	EPA22-PIC2	2/11/2022	WQ-PIC JANUARY 2022	480.86	480.86
3/22/2022	0000360	CLALLAM COUNTY ER&R	2022.029E	2/24/2022	OSS-VEHICLE RENT	1,368.00	1,368.00
3/22/2022	0001716	DEPT OF ENTERPRISE SVCS	731112399	2/14/2022	FOOD-INSPECTION REPORT	301.93	301.93
3/22/2022	0000870	KONP RADIO 1450	12519-1	3/3/2022	OSS-FEBRUARY RADIO ADS	425.00	425.00
3/22/2022	0001179	PACIFIC OFFICE EQUIPMENT	1097287	2/28/2022	EHADMIN-COPIER 10272	91.91	
			1097288	2/28/2022	OSS-COPIER 10297	28.51	120.42
3/22/2022	0001602	SPECTRA LABORATORIES, KI	22-00629	2/10/2022	WLAB-WATER TESTING SER	173.00	
			22-01200	2/28/2022	WLAB-WATER TESTING SER	40.00	213.00
3/22/2022	0020849	U S BANK	4878-030722	3/7/2022	WQ-SWAINS-MISCELLANEOL	249.29	
			7298-030722	3/7/2022	WLAB- NCL LABS-LAB SUPPL	118.24	367.53
3/22/2022	0001617	UNIVERSITY OF WASHINGTO	OTS2587	2/28/2022	WQ-WATER TESTING	395.69	395.69
3/22/2022	0001179	PACIFIC OFFICE EQUIPMENT	1097293	2/28/2022	HADM - 3RD ST 2ND FLOOR	82.31	
			1097292	2/28/2022	HADM - HHS DIRECTOR	4.52	86.83
3/22/2022	0000037	AIRPORT ROAD STORAGE	APS 3-3-22	3/3/2022	HOPS - STORAGE FOR CARE	966.60	966.60
3/22/2022	0022148	CENTURYLINK BUSINESS SE	281523226	2/24/2022	HOPS- FORKS OFFICE 1-800	7.68	7.68
3/22/2022	0000360	CLALLAM COUNTY ER&R	2022-037E	3/2/2022	HOPS - PH VEHICLE RENTAL	102.24	102.24
3/22/2022	0000546	EXPRESS SERVICES, INC	26834442	3/2/2022	HOPS - EXTRA HELP EMPLO	2,046.72	2,046.72
3/22/2022	0000593	FORKS, CITY OF	CF 3-1-22	3/1/2022	HOPS - FORKS OFFICE UTILI	67.98	67.98
3/22/2022	0001179	PACIFIC OFFICE EQUIPMENT	1097294	2/28/2022	HOPS - PH COLOR COPIER	84.49	
			1097291	2/28/2022	HOPS - FORKS OFFICE	30.56	
			1097252	2/28/2022	HOPS - PH COPIER	25.13	140.18
3/22/2022	0001300	PUBLIC UTILITY DISTRICT	20704 1-25-22	1/25/2022	HOPS - FORKS OFFICE UTILI	191.71	191.71
3/22/2022	0001339	REAVES PAINTING & CARPET	RPCC 2-19-22	2/19/2022	HOPS - FORKS OFFICE CARP	155.00	155.00
3/22/2022	0028699	SOUND PUBLISHING INC	PDN949383	2/27/2022	HOPS - BOARD OF HEALTH P	83.95	83.95
3/22/2022	0001499	TAYLOR COMMUNICATIONS	1150089558	3/2/2022	HOPS - BIRTH CERTIFICATE	175.95	175.95
3/22/2022	0020849	U S BANK	4318 3-7-22	3/7/2022	HOPS - AMAZON - 3 RED FIR	2,068.22	2,068.22
3/22/2022	0001641	VERIZON WIRELESS	9900204106	2/23/2022	HOPS - WIC PROGRAM CELL	169.78	169.78
3/22/2022	0001767	WEST WASTE & RECYCLING	0000241231	2/28/2022	HOPS - GARBAGE COLLECTI	38.09	38.09
3/22/2022	0000396	CONCERNED CITIZENS	SSD-02/22	3/2/2022	DDD-SSD FEBRUARY 2022	570.00	570.00
3/22/2022	0000577	FIRST STEP FAMILY SUPPOR	11331-22-FFSSF	3/8/2022	DDD- SUPPORTED PARENTIN	2,233.00	2,233.00
3/22/2022	0017530	PIERCE JONES & ASSOCIATE	SSD-JANUARY	3/8/2022	DDD-SSD JANUARY 2022	1,605.00	
			PASD-01/22	2/28/2022	DDD-JANUARY 2022 PASD	1,200.00	2,805.00

Sub total for U S BANK: 15,581.36

apChkLst
03/15/2022 4:21:25PM

Final Check List
CLALLAM COUNTY

HR Payroll

Page: 1

Bank : apbank U S BANK

Check #	Date	Vendor	Invoice	Inv Date	Description	Amount Paid	Check Total
	3/22/2022	0016373	WESTERN CONFERENCE OF,PENFEB22	3/8/2022	TEAMSTERS PENSION TRUS	6,668.20	6,668.20
					Sub total for U S BANK:		6,668.20

Final Check List
CLALLAM COUNTY

Juv Svcs

Bank : apbank U S BANK

Check #	Date	Vendor	Invoice	Inv Date	Description	Amount Paid	Check Total
3/22/2022	0000360	CLALLAM COUNTY ER&R	2022.035E	2/24/2022	VEHICLE RENTAL/LEASE	1,500.00	1,500.00
3/22/2022	0001179	PACIFIC OFFICE EQUIPMENT	1097486	2/28/2022	EQUIP-REPAIR/MAINT	211.95	
			1097487	2/28/2022	EQUIP-REPAIR/MAINT	185.54	
			1097490	2/28/2022	EQUIP-REPAIR/MAINT	25.76	
			1097489	2/28/2022	EQUIP-REPAIR/MAINT	7.80	
			1097488	2/28/2022	EQUIP-REPAIR/MAINT	0.61	431.66
3/22/2022	0001211	PENINSULA DAILY NEWS	MAR2022DET	2/24/2022	SUBSCRIPTION	176.80	
			MAR2022ADMIN	2/24/2022	SUBSCRIPTION	176.80	353.60
3/22/2022	0001252	PORT ANGELES, CITY OF	228222PA	2/26/2022	UTILITIES-CITY OF PA	4,615.41	4,615.41
3/22/2022	0001723	WSDOT/WA ST FERRIES	*RK386218	2/4/2022	TRAVEL/BUSINESS	50.00	50.00
3/22/2022	0001734	WA ST PATROL	I22004832	3/3/2022	PRO SVCS-FINGERPRINTS	66.00	66.00
3/22/2022	0017787	DAIRY FRESH FARMS INC	8182206110	3/2/2022	DET FOOD	92.53	
			8182204714	2/16/2022	DET FOOD	26.78	119.31
3/22/2022	0020849	U S BANK	092682	2/22/2022	DET FOOD & SUPPLIES-COS	211.89	
			29200	2/9/2022	DET SUPPLIES-ALCOPRO	166.03	
			023793A	2/7/2022	DET FOOD & SUPPLIES-COS	162.30	
			3363	3/1/2022	SOFTWARE LICENSE-CASA M	156.00	
			609ACCE2-0001	3/1/2022	SUBSCRIPTION-XMIND LTD.	59.99	
			013482	2/7/2022	DET FOOD & SUPPLIES-WALI	37.80	
			112-5088753-971	2/9/2022	DET SUPPLIES-AMAZON	28.02	
			4737116S185	3/1/2022	PRO SVCS-LEMAY MOBILE SI	20.45	
			018090	2/22/2022	DET FOOD-FRANZ	18.17	
			028541	2/22/2022	DET FOOD-WALMART	6.74	867.39
3/22/2022	0022041	THOMAS SHERRY, M.S.	4500	2/28/2022	PRO SVCS-SSODA	350.00	
			4502	2/28/2022	PRO SVCS-SSODA	200.00	
			4503	2/28/2022	PRO SVCS-SSODA	200.00	
			4501	2/28/2022	PRO SVCS-SSODA	200.00	950.00
3/22/2022	0028699	SOUND PUBLISHING INC	PDN948620	2/16/2022	ADVERTISING-LEGAL NOTICI	184.86	184.86
3/22/2022	0041605	HOME DEPOT PRO	670590538	2/23/2022	DET SUPPLIES	94.65	94.65
Sub total for U S BANK:							9,232.88

apChkLst
03/16/2022 8:09:51AM

Final Check List
CLALLAM COUNTY

Noy Weeds

Page: 1

Bank : apbank U S BANK

Check #	Date	Vendor	Invoice	Inv Date	Description	Amount Paid	Check Total
3/22/2022	0001641	VERIZON WIRELESS	9900349239	3/8/2022	GEN=47.99 RD=47.99	95.98	
			9899603726	3/8/2022	GEN=1.38 FS=1.38	2.76	98.74
3/22/2022	0020849	U S BANK	169534621	3/8/2022	HERBICIDE-RDS	1,025.00	1,025.00
Sub total for U S BANK:							1,123.74

Bank : apbank U S BANK

Check #	Date	Vendor	Invoice	Inv Date	Description	Amount Paid	Check Total
3/22/2022	0000087	ANGELES ELECTRIC INC	18339	3/10/2022	CH REPAIR LIGHT IN CLOCK	514.08	
			18289	3/10/2022	2203FAC CH HVAC REBUILD/I	421.06	
			18340	3/10/2022	2203FAC TROUBLESHOOT PE	367.20	1,302.34
3/22/2022	0000090	ANGELES MACHINE WORKS	175535	3/10/2022	JAIL CUT PLATE MFG TAB AN	145.25	145.25
3/22/2022	0000091	ANGELES MILLWORKS & LUM	305213	3/10/2022	SC MASKING TAPE, PAINT BF	11.21	11.21
3/22/2022	0000196	BILLS PLUMBING & SANIKAN	s3649305	3/10/2022	FWB SANIKAN	100.00	
			s3649527	3/10/2022	DRA SANIKAN	95.00	
			s36489106	3/10/2022	RDG SANIKAN	95.00	
			s36489071	3/10/2022	RH SANIKAN	95.00	385.00
3/22/2022	0000366	CLALLAM COUNTY TREASUR	209-18287	3/10/2022	PFF 2022 PROP TAXES PID 3	25.39	
			209-18289	3/10/2022	PFF 2022 PROP TAXES PID 7	17.98	43.37
3/22/2022	0000546	EXPRESS SERVICES, INC	26834436	3/10/2022	CH COVID WEEK END 2/27/22	2,668.86	2,668.86
3/22/2022	0000677	GRAINGER INC	9225212704	3/10/2022	CH BREAKER BAR BARRICA	374.89	
			9225212696	3/10/2022	CH SAFETY CLASSES GLOVE	343.24	
			9225639385	3/10/2022	CH PLSTC SHEET OPAQUE	166.40	
			9225536805	3/10/2022	CH FLEX COUPLING	104.06	988.59
3/22/2022	0000725	HEARTLINE, THE	a18263	3/10/2022	2009PT DRA 3 YD ROCK	110.98	110.98
3/22/2022	0001036	MURREYS OLYMPIC DISPOS	7024146s112	3/10/2022	SC FEB GARBAGE	1,029.58	
			7024920s112	3/10/2022	CH FEB RECYCLE	416.53	
			7025493s112	3/10/2022	SC FEB RECYCLE	305.69	
			7025009s112	3/10/2022	CH FEB RECYCLE	87.34	
			7024973s112	3/10/2022	VET FEB RECYCLE	33.03	1,872.17
3/22/2022	0001074	NEW PIG CORP	23582565-00	3/10/2022	1710CH FRAMELESS STORM	1,457.82	1,457.82
3/22/2022	0001156	OLYPEN INC	220310-0013	3/10/2022	DRA DSL INTERNET	18.00	18.00
3/22/2022	0001179	PACIFIC OFFICE EQUIPMENT	1097251	3/10/2022	FG COPIER SERV	22.59	22.59
3/22/2022	0001187	PAPE MACHINERY INC	13232391	3/10/2022	CH HANDLE	37.17	37.17

Bank : apbank U S BANK

(Continued)

Check #	Date	Vendor	Invoice	Inv Date	Description	Amount Paid	Check Total
3/22/2022	0001300	PUBLIC UTILITY DISTRICT	22216 2/22	3/10/2022	CDJ FEB ELECT	367.42	
			25837 2/22	3/10/2022	DRA FEB ELECT	295.02	
			22650 2/22	3/10/2022	CB FEB WATER & ELECT	230.55	
			25840 2/22	3/10/2022	DRA FEB ELECT	150.11	
			57419 2/22	3/10/2022	DL FEB ELECT	135.34	
			25839 2/22	3/10/2022	DRA FEB ELECT	123.78	
			25838 2/22	3/10/2022	DRA FEB ELECT	48.45	
			54219 2/22	3/10/2022	LKPLSNT UNMETERED LIGH	13.78	
			126922 2/22	3/10/2022	LK PLSNT UNMETERED LIGH	13.78	1,378.23
3/22/2022	0001472	SOLMAR WATER SYSTEM, IN	RH 1-2/22	3/10/2022	RH JAN FEB WATER	36.00	36.00
3/22/2022	0001540	SWAIN'S GENERAL STORE IN	296924	3/10/2022	CH MARINE SEALANT ACETC	57.60	
			296869	3/10/2022	CH BIT DRIL HARDWARE SHC	44.50	
			296666	3/10/2022	DRA ROAP POLY TARP	43.42	
			296759	3/10/2022	CH HARDWARE EQUIPMENT	33.51	
			296765	3/10/2022	SMPK HOSE REPAIR PARTS	31.86	210.89
3/22/2022	0001576	THURMAN SUPPLY	790751	3/10/2022	SC PLUMBING SUPPLIES	163.97	163.97
3/22/2022	0001577	TK ELEVATOR	6000561124	3/10/2022	JAIL ELEVATOR SERVICE	3,258.65	3,258.65
3/22/2022	0001588	TRANE US, INC	312416430	3/10/2022	JUV REPAIR SERVICES	3,329.28	3,329.28
3/22/2022	0001641	VERIZON WIRELESS	9900265109	3/10/2022	CH ADM JUV FG SMARTPHOI	301.80	301.80
3/22/2022	0001686	WA RECREATION & PARK ASS	7129	3/10/2022	ADM 2022 MEMBERSHIP	875.00	875.00
3/22/2022	0002241	KNIGHT FIRE PROTECTION, I	173376	3/10/2022	SC ANNUAL TEST BACKFLOV	233.06	233.06
3/22/2022	0002458	EVERGREEN RURAL WATER	45572	3/10/2022	SMPK CONFINED SPACE EN1	330.00	330.00
3/22/2022	0025256	FIRE CHIEF EQUIPMENT CO.,	0906511	3/10/2022	CH DATA ELECTRICAL ROOM	1,980.70	1,980.70
3/22/2022	0035842	CLALLAM CO PARKS CREDIT	Feb 2022	3/10/2022	DRA SC FEB 2022 ONLINE CC	2,428.47	2,428.47
3/22/2022	0036786	BUILDING CONTROL SYSTEM	12452	3/10/2022	2011FAC JAIL CONTROL BOA	5,962.78	5,962.78
3/22/2022	0037225	JACKSON, DALE	817-21-02 2/22	3/10/2022	2006FAC EOC RELOCATE PR	4,807.50	4,807.50
3/22/2022	0041605	HOME DEPOT PRO	666701180	3/10/2022	JUV MERV FILTERS	843.98	
			670922921	3/10/2022	DRA WHT BEMIS EL. O/SEAT	56.22	
			670604171	3/10/2022	SC DISH LIQUID	39.94	940.14
3/22/2022	0041765	CALL LUKE LLC	6001022	3/10/2022	3RD ST OUTSIDE PERIMETER	108.50	
			7003022	3/10/2022	SC RODENT BAIT BLOCKS B/	104.16	212.66
3/22/2022	0044755	HERMANSON COMPANY LLP	50309	3/10/2022	2203FAC CH HVAC REBUILD I	27,366.46	27,366.46
Sub total for U S BANK:							62,878.94

Bank : apbank U S BANK

Check #	Date	Vendor	Invoice	Inv Date	Description	Amount Paid	Check Total
3/22/2022	0000099	A-1 AUTO PARTS	1368497	3/2/2022	W. six cavi, poly, LED, Optronics	138.46	
			1367765	2/25/2022	Breakaway, rigid poly, batteries	134.74	
			1368419	3/1/2022	Hose clamp, fuel hose - SQ 243	34.99	
			1368643	3/3/2022	Wire - SQ 243	21.54	
			136835	3/1/2022	Hose clamps - SQ 243	17.97	
			1367447	2/23/2022	1/2" dr. 13/16 and 15/16 - SQ 1	17.02	364.72
3/22/2022	0000172	BAXTER A/P OFFICE	15663-16322	2/24/2022	ALK-200, lacq. thinner, catalyst	202.34	
			15663-17198	3/9/2022	Alk catalyst, mix cups - PA 451	28.82	
			15663-17153	3/8/2022	Acryl enam-SB yellow - PZ 451	8.87	240.03
3/22/2022	0000329	CO-OP FARM AND GARDEN, T	63365	3/3/2022	Propane - SQ 839	45.88	45.88
3/22/2022	0000709	HARBOR SAW & SUPPLY	689052	1/20/2022	Spring, governor - PA	3.92	3.92
3/22/2022	0000848	PAPE KENWORTH NORTHWE	11105555	2/25/2022	Compressor-freo - PA 253	538.56	
			11105657	2/25/2022	EC50 pls; Clamps-exh - PA 206	24.35	562.91
3/22/2022	0001036	MURREYS OLYMPIC DISPOS	7024157S112	3/1/2022	Garbage service - SQ	192.08	192.08
3/22/2022	0001187	PAPE MACHINERY INC	13081453	2/26/2022	Fuel pump - PA SC201	86.89	
			13364791	3/3/2022	Nozzle, housing, bolts, isolators-F	55.78	142.67
3/22/2022	0001255	PRICE FORD LINCOLN MERC	5042354	3/2/2022	Panel asy, door - PA S328	571.59	
			5042258	2/24/2022	Armrest asy - PA 181	221.71	
			5042409	3/7/2022	Indicator asy, oil filter, seal -PA	70.24	
			5042446	3/9/2022	Screen asy, gasket - PA 130	58.56	922.10
3/22/2022	0001300	PUBLIC UTILITY DISTRICT	22716/03032022	3/3/2022	Elect. utility chg, 384 Frontier-C	162.84	162.84
3/22/2022	0001385	SAFETY-KLEEN CORP	88338424	3/8/2022	MDL solvent recovery fee - SQ	246.63	246.63
3/22/2022	0001405	LES SCHWAB TIRE CENTERS	38000707833	2/10/2022	385/65-22.5 AM15+ tires - PA 2	1,645.58	
			38000712988	3/9/2022	Retreads, casings, v.stems - PA	1,410.74	
			38100468161 #2	1/6/2022	11R-22.5/14 traction tires - PA 2	973.24	
			38100469092 #2	1/13/2022	11R-22.5/14 RR150 highway tire	908.26	
			38000709158	2/17/2022	Store credit for removed casing	-700.00	
			38000709163	2/17/2022	Store credit for removed casing	-800.00	3,437.82
3/22/2022	0001540	SWAIN'S GENERAL STORE IN	296384	2/22/2022	Vlvball FP 300IPS 1/4"LF - PA 2	42.33	42.33

Bank : apbank U S BANK

-(Continued)

Check #	Date	Vendor	Invoice	Inv Date	Description	Amount Paid	Check Total
3/22/2022	0001551	TACOMA SCREW PRODUCTS	140036832-00	3/8/2022	Recycled rags - PA	620.16	
			140036224-00	3/3/2022	Shop towels, Penetrating oil - P.	393.86	
			140036418-00	3/8/2022	Recycled rags - PA	310.09	
			140032712-00	2/1/2022	Links,A.br fittings,d.bits-PA Stor	134.73	
			140035882-00	3/3/2022	Storage bins - PA	115.44	
			140030344-00	1/13/2022	Grabber hand warmers - SQ	34.76	
			140031518-00	1/12/2022	Returns: Zinc washers - PA	-19.24	1,589.80
3/22/2022	0001586	TRAFFIC SAFETY SUPPLY CO	INV046409	2/16/2022	48X48 aluminum blanks -PS Si	505.27	
			INV046570	2/22/2022	School speed limits signs -PS S	108.70	613.97
3/22/2022	0017663	ARAMARK UNIFORM SVCS IN	512000266605	3/8/2022	Laundry services - PA	35.62	
			512000263503	3/3/2022	Laundry services - SQ	16.32	
			512000263470	3/3/2022	Laundry services - WE	16.28	68.22
3/22/2022	0020849	U S BANK	1968-74378832	2/18/2022	Digi-Key: Sensors inclinometer 2	443.13	
			0328-072397	2/15/2022	H.Depot: bar clamps, face clam	323.95	
			0328-4413022	2/7/2022	Amzn: Bolewin: Filter elements	251.16	
			1968-9420221	2/11/2022	Amzn: Pendelton: Marking pain	243.96	
			6048-8055426	3/3/2022	Amzn: Emerg. light Exit signs -	126.42	
			6048-5825849	3/3/2022	-7,ATI,Amzn: Ear pl, cleaner - P	67.41	
			0328-6520897	3/2/2022	Plasti dip, crimper - SQ 243	46.15	
			7330-4628215 E	2/23/2022	Wall calendars - PA 20-B201	45.66	
			0328-5524465	2/11/2022	HI-E instant st. elec; Conduit - S	44.88	
			0328-4036252	3/7/2022	Online Best: H.Duty casters - S	37.96	
			0328-6524412	2/10/2022	Conduits - SQ 748	22.99	
			0328-8016083	2/28/2022	Flat self-drillings screws - SQ 7	20.67	1,674.34
3/22/2022	0022435	RACE STREET AUTO PARTS	574690	2/22/2022	Degreaser, hose ends - PA 401	126.88	
			575158	2/25/2022	Capsules, air filter, oil filter-PA M	72.05	
			573668	2/15/2022	Air, fuel, oil, & hyd. filters - PA F	64.17	
			575609	3/1/2022	Hose ends - PA 243	61.92	
			575871	3/3/2022	Fuel cap & tether - PA MP203	37.19	
			572906	2/9/2022	Blister pack capsules - PA 401	36.97	
			576432	3/7/2022	Air, fuel, and oil filters - PA SC2	23.36	
			576626	3/9/2022	Washer pump - PA 240	18.83	
			574723	2/22/2022	Battery switch knob - PA 56	8.06	
			576702	3/9/2022	Washer pump - PA 240	-18.83	430.60
3/22/2022	0030295	WESTERN PETERBILT INC	025P123967	2/24/2022	Pump w/grommet-washer bot -	97.19	97.19

Bank : apbank U S BANK

(Continued)

Check #	Date	Vendor	Invoice	Inv Date	Description	Amount Paid	Check Total	
	3/22/2022	0040272	MATT'S TOOLS USA LLC	123681	2/8/2022	Slide hammer puller, coupers-P	538.44	538.44
	3/22/2022	0043469	PETROCARD	439954-IN	3/1/2022	Unleaded fuel purchase - CH	8,096.02	8,096.02
	3/22/2022	0044305	HARBOR FREIGHT TOOLS	329298	3/9/2022	HLVP gravity gun - PA 451	41.32	41.32
	3/22/2022	0045842	CINTAS CORPORATION #2	5092767105	1/25/2022	First Aid supplies - LC	19.19	19.19
Sub total for U S BANK:							19,533.02	

Bank : apbank U S BANK

Check #	Date	Vendor	Invoice	Inv Date	Description	Amount Paid	Check Total
3/22/2022	0000172	BAXTER A/P OFFICE	15663-17156	3/8/2022	MAINTENANCE SUPPLIES - P	8.17	8.17
3/22/2022	0000196	BILLS PLUMBING & SANIKAN	S36489041	3/1/2022	03/22~04/22 ODT SANIKANS	295.00	
			S3649017	3/1/2022	03/22~04/22 ELWHA KIOSK S/	255.00	
			S3649354	3/19/2022	03/22~04/15 SQ SHOP SANIK/	95.00	645.00
3/22/2022	0000332	CLALLAM CO AUDITORS TAX	02/22SUT-10101	2/28/2022	02/22 SALES AND USE TAX	296.07	296.07
3/22/2022	0000352	CLALLAM COUNTY DEPT OF, 621		3/7/2022	ACROBAT FOR JESSE GOOD	181.66	181.66
3/22/2022	0000546	EXPRESS SERVICES, INC	26834434-10101	3/2/2022	02/21/22~02/27/22 ROADS	2,083.37	2,083.37
3/22/2022	0000709	HARBOR SAW & SUPPLY	690691	2/3/2022	MAINTENANCE SUPPLIES - P	73.43	
			694342	3/3/2022	MAINTENANCE SUPPLIES - P	34.18	107.61
3/22/2022	0000917	LINCOLN INDUSTRIAL CORP	I0160551	2/18/2022	MAINTENANCE SUPPLIES - P	5,661.10	5,661.10
3/22/2022	0000918	LINCOLN STREET STATION	200691	3/9/2022	SHIPPING - SURVEY TO VEC	71.89	71.89
3/22/2022	0001036	MURREYS OLYMPIC DISPOS	A7026677S112	3/1/2022	02.22 ELWHA KIOSK GARBAG	313.94	313.94
3/22/2022	0001156	OLYPEN INC	220311-0014	3/11/2022	03/22~04/22 MLS, OLS	40.50	40.50
3/22/2022	0001253	PORT ANGELES SOLID WAST	1014112 SQ	2/17/2022	WASTE TRANSFER - SQ	46.12	
			1016322 SQ	2/28/2022	WASTE TRANSFER - SQ	42.68	
			1010829 SQ	2/2/2022	WASTE TRANSFER - SQ	31.36	120.16
3/22/2022	0001586	TRAFFIC SAFETY SUPPLY CO	INV046597	2/22/2022	MAINTENANCE SUPPLIES - P	904.33	904.33
3/22/2022	0001635	UTILITIES UNDERGROUND	LC2020247	2/28/2022	02/22 EXCAVATION NOTIFICA	239.94	239.94
3/22/2022	0001740	WSU EXTENSION OF CLALLA	222 030922	3/9/2022	02/22 ROADSIDE WEED MAN,	6,827.35	6,827.35
3/22/2022	0017663	ARAMARK UNIFORM SVCS IN	512000266607	3/8/2022	LAUNDRY SERVICE - PA	16.32	
			512000268628	3/10/2022	LAUNDRY SERVICE - LC	16.28	
			512000268708	3/10/2022	LAUNDRY SERVICE - SQ	16.27	48.87

Bank : apbank U S BANK

(Continued)

Check #	Date	Vendor	Invoice	Inv Date	Description	Amount Paid	Check Total
	3/22/2022	0020849 U S BANK	3953-0791-03/22	2/6/2022	CENTURYLINK - 300510791	338.94	
			3953-033358	3/8/2022	WCI*MURRAYS - DPRA GARB	260.04	
			0328-7230648	2/14/2022	AMAZON - SQ MAINT SUPPLI	216.99	
			0328-053516	2/24/2022	WALMART - SQ SHOP SUPPL	134.51	
			3953-1356-03/22	2/6/2022	CENTURYLINK - 300561356	126.75	
			7330-4628215 R	2/24/2022	AMAZON - PA MAINT SUPPLIE	114.03	
			3953-1022522	2/25/2022	RLI INSURANCE - MP NOTAR	90.58	
			1968-4845000	2/16/2022	AMAZON - SQ MAINT SUPPLI	84.65	
			6048-042767	2/28/2022	HARBOR FREIGHT - UT SUPP	65.27	
			1968-9137859	3/4/2022	AMAZON - PA MAINT SUPPLIE	60.48	
			0328-079729	2/16/2022	WALMART - SQ SHOP SUPPL	33.63	
			0328-8798642	2/14/2022	AMAZON - SQ MAINT SUPPLI	32.54	
			1968-6797850	3/5/2022	AMAZON - PA MAINT SUPPLIE	24.94	
			1968-1748252	2/26/2022	AMAZON - PA MAINT SUPPLIE	16.73	
			3953-03/22-PRIM	3/5/2022	AMAZON PRIME - MONTHLY S	14.13	1,614.21
	3/22/2022	0037242 HORN, DUSTIN	HORN 031922	3/9/2022	CDL LICENSE REIMBURSEME	136.00	136.00
	3/22/2022	0045842 CINTAS CORPORATION #2	5092767105-101	1/25/2022	MAINTENANCE SUPPLIES - P	19.19	19.19
Sub total for U S BANK:							19,319.36

apCkHist
03/16/2022 9:21AM

Check History Listing
CLALLAM COUNTY

Public Works

Page: 1

Bank code: apbank

Check #	Date	Vendor	Status	Clear/Void Date	Invoice	Inv. Date	Amount Paid	Check Total
	03/22/2022	0000332 CLALLAM CO AUDITORS			02/22SUT-41401	02/28/2022	399.97	399.97
	03/22/2022	0046122 COLE DUSTIN			847571	08/17/2021	25.00	25.00
	03/22/2022	0000633 GARYS PAY & SAVE AUT			2301 030322 105	03/03/2022	27.13	27.13
	03/22/2022	0000677 GRAINGER INC			9223764078	02/23/2022	324.49	324.49
	03/22/2022	0001058 NCL OF WISCONSIN INC			467068	02/24/2022	4,087.48	4,087.48
	03/22/2022	0001300 PUBLIC UTILITY DISTRIC			22718-030322	03/03/2022	923.27	
					22602-030322	03/03/2022	245.34	1,168.61
	03/22/2022	0020849 U S BANK			3953-1116-03/22	03/06/2022	242.76	
					3953-0414611	02/07/2022	81.03	323.79
	03/22/2022	0036990 ANCHOR QEA LLC			07103	12/31/2021	344,790.60	
					05897	11/24/2021	320,347.53	665,138.13
	03/22/2022	0000546 EXPRESS SERVICES, IN			26805598	02/23/2022	45.92	45.92
	03/22/2022	0000332 CLALLAM CO AUDITORS			02/22SUT-42401	02/28/2022	155.80	155.80
	03/22/2022	0001426 SEQUIM, CITY OF			4405.0.0228 US	02/28/2022	6,634.11	
					C22-02	02/28/2022	3,585.84	
					4405.0.022822	02/28/2022	2,045.00	12,264.95
	03/22/2022	0020849 U S BANK			00028628	02/15/2022	662.00	662.00
	03/22/2022	0001641 VERIZON WIRELESS			9900290683	02/23/2022	100.10	100.10
	03/22/2022	0000546 EXPRESS SERVICES, IN			26834434-43401	03/02/2022	292.92	292.92

apbank Total: 685,016.29

14 checks in this report

Total Checks: 685,016.29

Page: 1

Bank : apbank U S BANK

Check #	Date	Vendor	Invoice	Inv Date	Description	Amount Paid	Check Total
3/22/2022	0000179	BEERS, RICHARD B	Apr 2022	3/10/2022	RENTAL AGREEMENT	525.00	525.00
3/22/2022	0000268	WAVE BUSINESS	1032293-02-Mar	3/2/2022	CABLE TV - INMATES 3/01/2	333.62	
			1032290-02-Mar	3/2/2022	CABLE TV - ADMIN & JAIL 3/	286.32	
			1240306-01-Mar	3/2/2022	INTERNET - SAR & OPSCAN	129.27	749.21
3/22/2022	0000546	EXPRESS SERVICES, INC	26834440	3/2/2022	CALL CENTER REPRESENTA	1,650.63	1,650.63
3/22/2022	0000593	FORKS, CITY OF	2214	3/2/2022	PRISONER BOARD BILL	2,310.00	2,310.00
3/22/2022	0000628	GALLS LLC	OR20214564	2/23/2022	UNIFORM - BIKE PATROL	375.35	
			20513488	2/23/2022	UNIFORM & DUTY GEAR - MC	266.29	
			020523680	2/24/2022	UNIFORM - MORGAN,J	124.56	
			020501337	2/21/2022	UNIFORM - MONTEZ	16.27	782.47
3/22/2022	0000918	LINCOLN STREET STATION	Account1-Mar22	3/4/2022	SHIPPING CHARGES	242.28	242.28
3/22/2022	0001148	OLYMPIC SPRINGS INC	346208	2/17/2022	WATER	181.64	
			345854	2/3/2022	WATER	155.70	
			346523	2/28/2022	WATER COOLER RENTAL	43.30	380.64
3/22/2022	0001229	PETERSON FRUIT CO. INC.	424914	2/15/2022	FOOD	388.25	388.25
3/22/2022	0001300	PUBLIC UTILITY DISTRICT	22794-Mar22	3/3/2022	UTILITIES - FRONTIER #1 1/	184.92	
			96237-Mar22	3/3/2022	UTILITIES - FRONTIER #2 1/	49.17	
			65837-Mar22	3/2/2022	HOOKUP AT MORSE CRK 1/	47.25	281.34
3/22/2022	0001426	SEQUIM, CITY OF	Apr2022	3/10/2022	LEASE AGREEMENT	1,100.00	1,100.00
3/22/2022	0001543	SWANSONS SERVICES CORP	1563096	2/24/2022	INDIGENT PACKS	77.21	
			1557835	2/10/2022	INDIGENT PACKS	45.63	
			1560339	2/17/2022	INDIGENT PACKS	43.42	166.26
3/22/2022	0001547	SYSCO FOOD SERVICES OF	455077360	2/2/2022	FOOD	1,075.03	
			455100604	2/16/2022	FOOD & KITCHEN SUPPLIES	895.57	
			455112394	2/23/2022	FOOD	882.73	
			455089245	2/9/2022	FOOD	362.25	
			455121281	2/28/2022	FOOD	127.00	
			455098156	2/14/2022	FOOD	56.20	
			455082443	2/5/2022	KITCHEN TOOLS	45.32	
			455115859	2/25/2022	CREDIT MEMO FROM 455112	-54.64	3,389.46
3/22/2022	0001641	VERIZON WIRELESS	9900265108	2/23/2022	CELL PHONE SERVICE	684.69	684.69
3/22/2022	0001723	WSDOT/WA ST FERRIES	RK387761	2/28/2022	FERRY RECEIPTS	30.00	30.00
3/22/2022	0003410	LEMAY MOBILE SHREDDING	4737115S185	3/1/2022	SHREDDING	13.65	13.65
3/22/2022	0003461	BENEDICT, WILLIAM	031022	3/3/2022	TRAVEL - ELLENSBURG	262.67	262.67

Bank : apbank U S BANK

(Continued)

Check #	Date	Vendor	Invoice	Inv Date	Description	Amount Paid	Check Total
3/22/2022	0004211	CENTURYLINK	206-T30-9144-M	2/23/2022	DATA CONNECTION 2/23/22	340.52	
			360-417-5383-M	3/2/2022	INTERNET CONNECTION 3/2/22	65.00	
3/22/2022	0004361	USA TODAY	206-T31-9138-M	2/23/2022	DATA CONNECTION 2/23/22	55.17	460.69
3/22/2022	0017787	DAIRY FRESH FARMS INC	0015910325	2/27/2022	INMATE NEWSPAPERS	75.00	75.00
			8182205411	2/23/2022	FOOD	320.80	
			8182204015	2/9/2022	FOOD	214.37	
			8182203315	2/2/2022	FOOD	204.79	
			8182204718	2/16/2022	FOOD	198.81	938.77
3/22/2022	0020862	GERMAN, NANCY	Apr2022	3/10/2022	LEASE AGREEMENT	2,166.12	2,166.12
3/22/2022	0024819	QUILEUTE TRIBE	Apr2022	3/10/2022	LEASE AGREEMENT	1,200.00	1,200.00
3/22/2022	0037042	OFFICE DEPOT	218855138001	1/8/2022	OFFICE SUPPLIES	24.69	24.69
3/22/2022	0037247	HAIR BY NICOLE	030822	3/8/2022	INMATE HAIRCUTS	225.00	225.00
Sub total for U S BANK:							18,046.82

Bank : apbank U S BANK

Check #	Date	Vendor	Invoice	Inv Date	Description	Amount Paid	Check Total
	3/22/2022	0001136	OLYMPIC MEDICAL CENTER OMC 3.10.22	3/10/2022	INMATE MEDICAL	2,841.14	2,841.14
	3/22/2022	0001209	PENINSULA BEHAVIORAL HEALTH 2021-Q4 2022-01	3/10/2022	MENTAL HEALTH SUBSTITUT	3,150.00	
				3/10/2022	MENTAL HEALTH SUBSTITUT	1,050.00	4,200.00
	3/22/2022	0004826	OLYMPIC MEDICAL PHYSICIAN 71228855290 71228553071	3/10/2022	INMATE MEDICAL	47.15	
				3/10/2022	INMATE MEDICAL	27.84	74.99
	3/22/2022	0041537	MCKESSON MEDICAL-SURGICAL 19115132 19109306	2/28/2022	CLINIC SUPPLIES	53.82	
				2/25/2022	CLINIC SUPPLIES	46.68	100.50
Sub total for U S BANK:							7,216.63

Bank : apbank U S BANK

Check #	Date	Vendor	Invoice	Inv Date	Description	Amount Paid	Check Total
	3/22/2022	0020849	U S BANK				
			437450	3/9/2022	2/16/22-BADGE & WALLET, (4	310.00	
			9900265114CF	3/9/2022	FEBRUARY 2022 - VERIZON C	50.30	
			9900265114P4P	3/9/2022	FEBRUARY 2022 - VERIZON C	40.30	400.60
Sub total for U S BANK:							400.60

Bank : apbank U S BANK

Check #	Date	Vendor	Invoice	Inv Date	Description	Amount Paid	Check Total
3/22/2022	0000008	LEXIS NEXIS RISK MGMT INC	1382924-202202	3/8/2022	MONTHLY SUBSCRIPTION FE	115.43	115.43
3/22/2022	0000331	CLALLAM COUNTY AUDITOR	22-141176	3/8/2022	CURRENT USE REMOVAL RE	204.50	
			22-141233	3/8/2022	CURRENT USE REMOVAL RE	204.50	
			22-141177	3/8/2022	CURRENT USE REMOVAL RE	204.50	613.50
3/22/2022	0020849	U S BANK	ZRNDD6BZWV4	3/8/2022	WPTA 2022 CONFERENCE	325.00	325.00
Sub total for U S BANK:							1,053.93

Bank : apbank U S BANK

Check #	Date	Vendor	Invoice	Inv Date	Description	Amount Paid	Check Total	
	3/9/2022	0000360	CLALLAM COUNTY ER&R	ER&R 3/9/22	3/9/2022	VEHICLE RENTAL	57.00	57.00
	3/9/2022	0001179	PACIFIC OFFICE EQUIPMENT	POE 3/9/22	3/9/2022	VET CENTER PRINTER	141.09	141.09
	3/9/2022	0001300	PUBLIC UTILITY DISTRICT	TB7322 3/9/22	3/9/2022	UTILITIES	294.50	
				DW7488 3/9/22	3/9/2022	UTILITIES	259.71	
				LR0480 3/9/22	3/9/2022	UTILITIES	134.22	688.43
3/9/2022	0020849	U S BANK	JJ2522 3/9/22 S	3/9/2022	FOOD	150.00		
			MC2576 3/9/22 S	3/9/2022	FUEL	150.00		
			MR0685 3/9/22 S	3/9/2022	FOOD	150.00		
			SR6054 3/9/22 V	3/9/2022	FOOD	150.00		
			TM2565 3/9/22 S	3/9/2022	FOOD	150.00		
			WS7621 3/9/22 \	3/9/2022	FOOD	150.00		900.00
Sub total for U S BANK:								1,786.52

Bank : apbank U S BANK

Check #	Date	Vendor	Invoice	Inv Date	Description	Amount Paid	Check Total
3/22/2022	0000546	EXPRESS SERVICES, INC	26866532	3/9/2022	EXPRESS SERVICES	507.60	507.60
3/22/2022	0001179	PACIFIC OFFICE EQUIPMENT	1097301	3/9/2022	PACIFIC OFFICE EQUIPMENT	88.05	88.05
3/22/2022	0001641	VERIZON WIRELESS	9900265113	3/9/2022	VERIZON	251.50	251.50
3/22/2022	0020849	U S BANK	visa us bank 2/2	3/9/2022	US BANK FEB 2022	1,026.90	1,026.90
3/22/2022	0046410	WIZBANG RESEARCH LLC	141	3/9/2022	WIZBANG RESEARCH LLC	1,837.50	1,837.50
Sub total for U S BANK:							3,711.55



BOARD of CLALLAM COUNTY COMMISSIONERS MINUTES for the week of March 14 – 18, 2022

1b
3/22/22

WORK SESSION – 9 a.m.

The work session convened at 9 a.m., Monday, March 14, 2022. Present were Commissioners Ozias, Johnson and Administrator Sill. Commissioner Peach appeared by video.

Items of discussion per the agenda published March 10 were:

- Calendar/Correspondence
- Briefing and notice of hearing to be held Tuesday, April 5, 2022 at 10:30 a.m. for an Ordinance adding a Chapter to Clallam County Code Titled Additional Sales and Use Tax – Housing and Related Services
- Pre-application questionnaire with the Washington Department of Agriculture for security lighting and power improvements to the fairgrounds
- Agreement with Olympic Peninsula Community Clinic to expand the Clallam County Jail's medication assistance treatment program
- Agreement amendment 11 with Correctional Healthcare Companies, LLC for Inmate Health Care Services
- Discussion regarding proposed Health and Human Services positions to be funded by the Foundational Public Health Services grant
- Resolution appointing David Hanna and correcting the position for Christy Cox on the Solid Waste Advisory Committee
- Resolution appointing Christine Dunn to the Homelessness Task Force
- Discussion on proposed budget revisions to be considered on March 29 (4a)*
- Discussion of proposed supplemental appropriations to be considered on March 29 (4b)*
- Discussion of proposed budget emergencies to be considered on March 29 (4c)*
- Discussion and next steps regarding provision of American Rescue Plan Act (ARPA) funds to be used in support of Black Diamond Water District Waterline Relocation Project
- Agreement with Sequim Food Bank for American Rescue Plan Act (ARPA) direct grant assistance
- Review the "How Did We Do" reports comparing each month's actual performance against the 2022 Annual Budget

Meeting adjourned at 11:01 a.m.

REGULAR MEETING OF THE BOARD OF CLALLAM COUNTY COMMISSIONERS

Chair Ozias called the meeting to order at 10 a.m., Tuesday, March 15, 2022. Also present were Commissioner Peach and Administrator Sill. Commissioner Johnson was excused.

REQUEST FOR MODIFICATIONS/APPROVAL OF AGENDA

ACTION TAKEN: CBPm to adopt the agenda as presented, CMOs, mc

PUBLIC COMMENT

- Ed Bowen, Clallam Bay, commented on Housing Solutions Committee, item 4c

CONSENT AGENDA

- 1a Approval of vouchers for the week of March 7
- 1b Approval of payroll for the week of February 28
- 1c Approval of minutes for the week of March 7

ACTION TAKEN: CBPm to adopt the consent agenda, CMOs, mc

REPORTS AND PRESENTATIONS

- CBP commented on service for Huey Simmons, Washington Environmental Council, Beaver Sawmill opening
- CMO commented on Washington State Association of Counties work group, hybrid meetings, EDC Annual Gala

BOARD of CLALLAM COUNTY COMMISSIONERS
MINUTES for the week of March 14 – 18, 2022
Page 2

CONTRACTS AND AGREEMENTS

2a Contract with Wave Business Solutions, LLC to improve bandwidth and reduce monthly costs
ACTION TAKEN: CBPm to approve, CMOs, mc

2b Quote from NWN Carousel to upgrade county Avaya phone system
ACTION TAKEN: CBPm to approve, CMOs, mc

2c Agreement with Washington State Department of Commerce for Hotel Leasing and Rapid Re-Housing
ACTION TAKEN: CBPm to approve, CMOs, mc

ADMINISTRATION

3a Notice of hearing to be held Tuesday, March 29, 2022 at 10:30 a.m. for an Ordinance amending Clallam County Code, Chapter 5.100 Consolidated Fee Schedule – Fairgrounds Fee Schedule 215-A
ACTION TAKEN: CBPm to issue notice, CMOs, mc

3b Resolution appointing Cynthia L. Ross to the North Olympic Library System Board of Trustees
ACTION TAKEN: CBPm to adopt, CMOs, mc

3c Resolution appointing Wendy Clark-Getzin and Lorrie Mittmann to the Trails Advisory Committee
ACTION TAKEN: CBPm to adopt, CMOs, mc

3d Resolution appointing Dr. William R. Kintner to the Lake Sutherland Steering Committee
ACTION TAKEN: CBPm to adopt, CMOs, mc

3e Resolution reappointing Norma Turner to the Peninsula Housing Authority Board of Commissioners
ACTION TAKEN: CBPm to adopt, CMOs, mc

3f Resolution reappointing Trol Gale to the Clallam Bay/Seki Community Action Team
ACTION TAKEN: CBPm to adopt, CMOs, mc

3g Resolution for establishing the Housing Solutions Committee
ACTION TAKEN: CBPm to adopt, CMOs, mc

BUDGET

4a Notice that the following budget revisions will be adopted by Resolution on March 29:
Prosecuting Attorney – Operations – Reallocation of funding for extra help to be used for Personnel Services/\$30,000

ACTION TAKEN: CBPm to issue notice, CMOs, mc

4b Notice that the following supplemental appropriations will be adopted by Resolution on March 29:
Sheriff – Emergency Services – Receipt and expenditure of Washington State Military Department FY2021/\$41,792
Sheriff – Operations – Receipt and expenditure of Washington Traffic Safety Commission grant FY2022/\$21,520

ACTION TAKEN: CBPm to issue notice, CMOs, mc

BOARD of CLALLAM COUNTY COMMISSIONERS
MINUTES for the week of March 14 – 18, 2022
Page 3

- 4c Resolution calling for a hearing to be held March 29 at 10:30 a.m. for the following debatable emergencies:

NonDepartmental

- Additional funding for Cascadia Consulting Group, Inc./\$55,000
- Additional funding for North Olympic Development Council to facilitate the Broadband Expansion Project coordination/\$14,400

Prosecuting Attorney – Operations – Additional funding to cover expenditures related to prosecuting State v. Bauer/\$12,673

Parks & Facilities – Additional funding for expenses related to COVID-19 for goods and services expenditures incurred in January and February, 2022 expected to be reimbursed through FEMA/\$14,380

Sheriff – Emergency Services – To fund the part-time, fully-benefited, Emergency Management Assistant position/\$36,963

Sheriff – Jail – Additional funding for increased costs of 5 budgeted replacement ballistic vests and 5 additional vests for new hire Corrections Deputies in FY2022/\$7,800

Sheriff – Operations – Additional funding for increased costs of 7 budgeted replacement ballistic vests and 5 additional vests for new hire Patrol Deputies in FY2022/\$8,100

ACTION TAKEN: CBPm to issue notice, CMOs, mc

PUBLIC COMMENT

- Ed Bowen, Clallam Bay, commented on Affordable Housing Tax, Black Diamond Water District

Meeting concluded at 10:31 a.m. and continued to 9 a.m., Monday, March 21, 2022.

There are no Zoom chat logs for the week of March 14.

The Board of Commissioners attended a WSAC Virtual update, Board of Health meeting, Clallam Transit meeting and EDC Annual Gala during the week of March 14.

PASSED AND ADOPTED this 22 day of March 2022.

BOARD OF CLALLAM COUNTY COMMISSIONERS

Mark Ozias, Chair

ATTEST:

Randy Johnson

Loni Gores, CMC, Clerk of the Board

Bill Peach

KEY TO ABBREVIATIONS:

ARS Administrator Rich Sill

CMO Commissioner Mark Ozias

CRJ Commissioner Randy Johnson

CBP Commissioner Bill Peach

m	moved
mc	motion carried
s	seconded



AGENDA ITEM SUMMARY

(Must be submitted NLT 3PM Wednesday for next week agenda)

2a
3/22/22

Department: Sheriff

WORK SESSION ☒ Meeting Date: 03/14/22

REGULAR AGENDA ☒ Meeting Date: 03/22/22

Required originals approved and attached? ☒
Will be provided on:

Item summary:

- | | |
|---|---|
| ☐ Call for Hearing | ☒ Contract/Agreement/MOU - Contract # 816-22-01 |
| ☐ Resolution | ☐ Proclamation ☒ Budget Item |
| ☐ Draft Ordinance | ☐ Final Ordinance ☐ Other |

Documents exempt from public disclosure attached: ☐

Executive summary:

Personal Services Agreement with Olympic Peninsula Community Clinic (OPCC) to facilitate the expansion of the Clallam County Jail's medication assistance treatment program to offer medications for opioid use disorder and to coordinate continuing treatment services upon inmate release. This agreement with OPCC establishes the roles of the County and OPCC for the success of the program. The program expansion expenses are funded via a contract between OPCC and Washington State Health Care Authority (HCA). The County's agreement with OPCC covers the reimbursement from OPCC to the County for the 14 hours per week additional Jail Medical nursing services, 4 hours per week additional Jail Medical doctor services, and County administrative services associated with this program.

Budgetary impact: (If a budget action is required, has it been submitted and a copy attached?) ☒

A supplemental request form is submitted to increase the 00100.816 Jail Medical budget to cover the additional costs for the Jail medication assistance treatment program expansions and the reimbursement from OPCC.

Recommended action:

The Sheriff's Office recommends approval by the Board and signature by the Chair.

County Official signature & print name: W.L. Benedict W.L. Benedict, Sheriff

Name of Employee/Stakeholder attending meeting: Don Wenzl, Chief Corrections Deputy

Relevant Departments: Sheriff's Office

Date submitted: 03/09/22

* Work Session Meeting - Submit 1 single sided/not stapled copy
** Regular Meeting - Submit 1 single sided/not stapled copy and originals (1 or 3 copies)



PERSONAL SERVICES AGREEMENT

COPY

THIS AGREEMENT is entered into between CLALLAM COUNTY, a political subdivision of the State of Washington, (hereinafter called "County" or "Clallam County") and

Name: Olympic Peninsula Community Clinic

Address: 819 Georgiana Street
Port Angeles, WA 98362

Phone N^o: 360-457-4431

(hereinafter called "Contractor").

This Agreement is comprised of:

- ☒ Attachment A - Scope of Work
- ☒ Attachment B – Compensation
- ☒ Attachment C - General Conditions
- ☒ Attachment D - Special Terms and Conditions
- ☒ Attachment E - HCA Contract Number K5887 with OPCC

copies of which are attached hereto and incorporated herein by this reference as if fully set forth.

The term of this Agreement shall commence on the _____ day of _____ 2022 and shall, unless terminated as provided elsewhere in the Agreement, terminate on the 31st day of July 2023.

IN WITNESS WHEREOF, the parties have executed this Agreement on this _____ day of _____ 2022.

CONTRACTOR

CLALLAM COUNTY

Scott Brandon

Mark Ozias

Title: Executive Director

Title: Chair of the Board of Commissioners

Date: _____, 2022

Date: _____, 2022

Originals: BOCC
Vendor
Initiating Department
Copies: 1 with Contract Summary

THIS CONTRACT HAS BEEN APPROVED AS TO
FORM BY THE CLALLAM COUNTY PROSECUTING
ATTORNEY

SCOPE OF WORK

Olympic Peninsula Community Clinic (OPCC) has been awarded a Medications for Opioid Use Disorder (MOUD) Professional Services Contract from Washington State Health Care Authority (HCA) for the performance period of 03/01/22 – 07/31/23. The purpose of this contract is to provide medication for opioid use disorder to inmates in the Clallam County Jail who present with an opioid use disorder (OUD) and supporting a full MOUD program in the Jail. The Clallam County Sheriff's Office is working with OPCC to expand the Clallam County Jail's medication assistance treatment program to begin offering all three types of FDA approved medications for Opioid Use Disorder, as well as coordinate continuing treatment services upon inmate release. These additional medication options and curated release plans will hopefully increase treatment program success rates, and reduce recidivism. With the use of the HCA contracted funding, OPCC will reimburse the County for County's costs associated with the expansion of this program. OPCC itself is funded by this HCA contract to provide the required case management services as part of the Jail's program.

The purpose of this contract is to establish the processes and services provided by each entity to meet the requirements outlined in the HCA Contract Number K5887 Statement of Work, and to the success of the treatment program expansion.

CONTRACTOR:

Olympic Peninsula Community Clinic (OPCC) agrees to:

- Hire or reassign a Substance Use Disorder Professional (SUDP) and case manager on staff with OPCC that will be designated to provide services to Clallam County Jail inmates.
- Provide timely, in-person Substance Use Disorder (SUD) assessments to Clallam County Jail inmates presenting with Opioid Use Disorder (OUD) during jail intake and willing to participate in a treatment program.
- Purchase medications and necessary medical tests including CBC, CMA, drug screen, fentanyl screen and pregnancy tests for inmates participating in the program.
- Ensure bridge medication is available at inmate release and prescription can be easily refilled.
- Contract with an Opioid Treatment Provider (OTP) for provision of methadone to inmates.
- Meet inmates at their release from jail and provide needed transportation to MOUD appointments, OPCC for further services, and/or inpatient treatment.
- Provide follow-up care coordinated by the SUDP and OPCC case manager for the following services: arranging inpatient/outpatient treatment, making follow-up MOUD appointments on or before release, restarting Medicaid insurance, making referrals with warm hand off, and providing intensive case management wrap around services.
- Compile data useful for evaluating the success of the program and share it with the State and County.
- File all required reports and reimbursement requests to the HCA, including information and invoices provided by County.

- Relay to County all necessary information, including schedule of meetings or trainings, required data collection parameters, and budget updates.
- Obtain prior written approval from HCA to enter into this Agreement with the County as per Section 4.36 Subcontracting outlined in the HCA Contract Number K5887.

COUNTY:

Clallam County agrees to:

- Offer SUD program participation to eligible Clallam County Jail inmates. Eligibility will be determined via screening questions during booking.
- Contact OPCC's Substance Use Disorder Professional (SUDP) to schedule assessments.
- Provide a suitable space for the OPCC SUDP to meet with inmates for the SUD assessments.
- Provide up to 4 additional hours per week doctor staff time, in excess of regular duties, to prescribe medications.
- Provide 14 hours per week nursing staff time, in excess of regular duties, to administer and monitor medications and fulfill required administrative duties.
- Accommodate ongoing contact between OPCC SUDP and OPCC case manager with inmates and with the County Jail case manager in order to coordinate medication, treatment, and release planning.
- Collect relevant data on program participation to report monthly to OPCC in conjunction with an invoice of monthly costs.
- Provide up to 2 hours per month administrative services associated with invoicing, coordinating, or reporting.
- Waive General Condition #21 – Ownership of Items Produced outlined in Attachment C of this Agreement.

COMPENSATION

1. ☐ a. FIXED FEE FOR SERVICE:

☐ b. HOURLY RATES:

☒ c. **Other (specify):** OPCC will reimburse County for the County's actual costs associated with the MOUD in Jails Program, as outlined within this Agreement.

The Sheriff's Office will invoice OPCC on a monthly basis for the actual costs County expends for this grant funded MOUD program, including: Nursing services contract (CHC) cost for additional 14 hours per week, cost of additional doctor hours, and cost of County administrative services.

OPCC will pay these invoices within 60 days unless notified by HCA of a funding delay, which will be promptly communicated to the County.

Budgeted projections of County costs to fulfill the grant program during the period of performance are as follows:

Period of Performance: March 1, 2022 – June 30, 2022

14 hours per week additional nursing services:	\$16,200
4 hours per week additional doctor services:	\$10,400
Contract administrative services:	\$ 280
Total	\$26,880

Additional budget for the Period of Performance 7/1/22-7/31/23 will be granted via HCA Contract Number K5887 amendment between HCA and OPCC in June, 2022.

Budgeted projections of County costs to fulfill the grant program during the period of performance are as follows:

Period of Performance: July 1, 2022 – July 31, 2023

14 hours per week additional nursing services:	\$48,600
4 hours per week additional doctor services:	\$31,200
Contract administrative services:	\$ 840
Total	\$80,640

Failure of HCA and OPCC to amend HCA Contract Number K5887 will result in cessation of program funds and therefore activities on June 30, 2022.

GENERAL CONDITIONS

1. Scope of Contractor's Services. The Contractor agrees to provide to the County services and any materials set forth in the project narrative identified as Attachment A during the agreement period. No material, labor, or facilities will be furnished by the County, unless otherwise provided for in the Agreement.
2. Accounting and Payment for Services. Payment to the County for services rendered under this Agreement shall be as set forth in Attachment B. Changes to the budgets or covered costs will be agreed upon in writing by both parties, and as allowed by the Grantor.
3. Delegation and Subcontracting. Contractor's services are deemed personal and no portion of this contract may be delegated or subcontracted to any other individual, firm or entity without the express and prior written approval of the County Project Manager.
4. Independent Contractor. The Contractor's services shall be furnished by the Contractor as an independent contractor and nothing herein contained shall be construed to create a relationship of employer/employee or master/servant.

The Contractor acknowledges that the entire compensation for this Agreement is specified in Attachment B and the Contractor is not entitled to any county benefits including, but not limited to: vacation pay, holiday pay, sick leave pay, medical, dental or other insurance benefits, or any other rights or privileges afforded to Clallam County employees. The Contractor represents that it maintains a separate place of business, serves clients other than the County, will report all income and expense accrued under this contract with the Internal Revenue Service on a business tax schedule, and has a tax account with the State of Washington Department of Revenue for payment of all sales and use and Business and Occupation taxes collected by the State of Washington.

In the event that either the state or federal government determines that an employer/employee or master/servant relationship exists rather than an independent contractor relationship such that Clallam County is deemed responsible for federal withholding, social security contributions, workers compensation and the like, the Contractor agrees to reimburse Clallam County for any payments made or required to be made by Clallam County. Should any payments be due to the Contractor pursuant to this Agreement, the Contractor agrees that reimbursement may be made by deducting from such future payments a pro rata share of the amount to be reimbursed.

Notwithstanding any determination by the state or federal government that an employer/employee or master/servant relationship exists, the Contractor, its officers, employees and agents, shall not be entitled to any benefits that Clallam County provides to its employees.

5. No Guarantee of Employment. The performance of all or part of this contract by the Contractor shall not operate to vest any employment rights whatsoever and shall not be deemed to guarantee any employment of the Contractor or any employee of the Contractor or any subcontractor or any employee of any subcontractor by the County at the present time or in the future.
6. Regulations and Requirements. This Agreement shall be subject to all federal, state, and local laws, rules, and regulations.
7. Right to Review. This contract is subject to review by any federal or state auditor. The County shall have the right to review and monitor the financial and service components of this program by whatever means are deemed expedient by the County Project Manager. Such review may occur with or without notice, and may include, but is not limited to, on-site inspection by County agents or employees, inspection of all records or other materials that the County deems pertinent to the Agreement and its performance, and any and all communications with or evaluations by service recipients under this Agreement. The Contractor shall preserve and maintain all financial records and records relating to the performance of work under this Agreement for three (3) years after

contract termination, and shall make them available for such review, within Clallam County, State of Washington, upon request, during reasonable business hours.

8. **Modifications.** Either party may request changes in the Agreement. Any and all agreed modifications shall be in writing, signed by each of the parties.
9. **Termination for Default.** If the Contractor defaults by failing to perform any of the obligations of the contract or becomes insolvent or is declared bankrupt or makes an assignment for the benefit of creditors, the County may, by depositing written notice to the Contractor in the U.S. Mail, postage prepaid, terminate the contract, and at the County's option, obtain performance of the work elsewhere. If the contract is terminated for default, the Contractor shall not be entitled to receive any further payments under the contract. Any extra cost or damage to the County resulting from such default(s) shall be deducted from any money due or coming due to the Contractor. The Contractor agrees to bear any extra expenses incurred by the County in completing the work, including all increased costs for completing the work, and all damage sustained, or which may be sustained by the County by reason of such default.

If a notice of termination for default has been issued and it is later determined for any reason that the Contractor was not in default, the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to the Termination for Public Convenience paragraph hereof.

10. **Termination for Public Convenience.** The County may terminate the contract in whole or in part whenever the County determines, in its sole discretion that such termination is in the interests of the County. Whenever the contract is terminated in accordance with this paragraph, the Contractor shall be entitled to payment for actual work performed for completed items of work. An equitable adjustment in the contract price for partially completed items of work will be made, but such adjustment shall not include provision for loss of anticipated profit on deleted or uncompleted work. Termination of this contract by the County at any time during the term, whether for default or convenience, shall not constitute a breach of contract by the County.
11. **Termination Due to Insufficient Funds.** If sufficient funds for payment under this contract are not appropriated or allocated or are withdrawn, reduced, or otherwise limited, the County may terminate this contract upon five (5) days written notice to the Contractor. No penalty or expense shall accrue to the County in the event this provision applies.
12. **Termination Procedure.** The following provisions apply in the event that this Agreement is terminated:
 - (a) The Contractor shall cease to perform any services required hereunder as of the effective date of termination and shall comply with all reasonable instructions contained in the notice of termination, if any.
 - (b) The Contractor shall provide the County with an accounting of authorized services provided through the effective date of termination.
 - (c) If the Agreement has been terminated for default, the County may withhold a sum from the final payment to the Contractor that the County determines necessary to protect itself against loss or liability.
13. **Defense and Indemnity Agreement.**
 - (a) The Contractor agrees to hold harmless, indemnify and defend the County, its officers, officials, employees and agents, from and against any and all claims, actions, suits, liability, loss, expenses, damages and judgments of any nature whatsoever, including reasonable costs and attorneys' fees in defense thereof, for injury, sickness, disability or death to persons or damage to property (including loss of use thereof) or business (including economic loss),

caused by or arising out of the Contractor's acts, errors or omissions in the performance of the Contract. Provided, however, that the Contractor's obligation under this provision will not extend to injury, sickness, disability, death or damage caused by or arising out of the sole negligence of the County, its officers, officials, employees or agents.

(b) With regard to any claim against the County, its officers, officials, employees and agents by any employee of the Contractor, subcontractor, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable, the indemnification obligation under this Section will not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the Contractor or subcontractor under workers' compensation acts, disability benefit acts or other employee benefit acts. It is clearly agreed and understood by the parties to the Contract that the Contractor expressly waives any immunity the Contractor might have had under such laws. By executing the Contract, the Contractor acknowledges that the foregoing waiver has been mutually negotiated by the parties as is required by RCW 4.24.115, and that the provisions of this Section will be incorporated, as relevant, into any contract the Contractor makes with any subcontractor or agent performing work under the Contract.

(c) The Contractor's obligations under these provisions include, but are not limited to, investigating, adjusting and defending all claims alleging loss from action, error or omission, or breach of any common law, statutory or other delegated duty by the Contractor, the Contractor's employees, agents or subcontractors.

14. Industrial Insurance Waiver. With respect to the performance of this Agreement and as to claims against the County, its appointed and elected officers, agents and employees, the Contractor expressly waives its immunity under Title 51 of the Revised Code of Washington, the Industrial Insurance Act, as now or hereafter amended, for injuries to its employees and agrees that the obligations to indemnify, defend and hold harmless provided in this Agreement extend to any claim brought by or on behalf of any employee of the Contractor. Along with the other provisions of this Agreement, this waiver is mutually negotiated by the parties to this Agreement.
15. Venue and Choice of Law. In the event that any litigation should arise concerning the construction or interpretation of any of the terms of this Agreement, the venue of such action shall be in the courts of the State of Washington in and for the County of Clallam. This Agreement shall be governed by the law of the State of Washington.
16. Withholding Payment. In the event the County Project Manager determines that the Contractor has failed to perform any obligation under this Agreement within the times set forth in this Agreement, then the County may withhold from amounts otherwise due and payable to Contractor the amount determined by the County as necessary to cure the default, until the County Project Manager determines that such failure to perform has been cured. Withholding under this clause shall not be deemed a breach entitling Contractor to termination or damages, provided that the County promptly gives notice in writing to the Contractor of the nature of the default or failure to perform, and in no case more than ten (10) days after it determines to withhold amounts otherwise due. A determination of the County Project Manager set forth in a notice to the Contractor of the action required and/or the amount required to cure any alleged failure to perform shall be deemed conclusive, except to the extent that the Contractor acts within the times and in strict accord with the provision of the Disputes clause of this Agreement. The County may act in accordance with any determination of the County Project Manager which has become conclusive under this clause, without prejudice to any other remedy under the Agreement, to take all or any of the following actions: (1) cure any failure or default, (2) to pay any amount so required to be paid and to charge the same to the account of the Contractor, (3) to set off any amount paid or incurred from amounts due or to become due the Contractor. In the event the Contractor obtains relief upon a claim under the Disputes clause, no penalty or damages shall accrue to the Contractor by reason of good faith withholding by the County under this clause.

17. Rights and Remedies. The duties and obligations imposed by this Agreement and the rights and remedies available hereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law.
18. Contractor Commitments, Warranties and Representations. Any written commitment received from the Contractor concerning this Agreement shall be binding upon the Contractor, unless otherwise specifically provided herein with reference to this paragraph. Failure of the Contractor to fulfill such a commitment shall render the Contractor liable for damages to the County. A commitment includes, but is not limited to any representation made prior to execution of this Agreement, whether or not incorporated elsewhere herein by reference, as to performance of services or equipment, prices or options for future acquisition to remain in effect for a fixed period, or warranties.
19. Patent/Copyright Infringement. Contractor will defend, indemnify and save harmless County, its appointed and elected officers, agents and employees from and against all loss or expense, including but not limited to claims, demands, actions, judgments, settlements, attorneys' fees and costs by reason of any and all claims and demands upon the County, its elected or appointed officials or employees for damages because of the Contractor's alleged infringement on any patent or copyright. The Contractor will pay those costs and damages attributable to any such claims that are finally awarded against the County, its appointed and elected officers, agents and employees in any action. Such defense and payments are conditioned upon the following:
- (a) That Contractor shall be notified promptly in writing by County of any notice of such claim.
 - (b) Contractor shall have the right, hereunder, at its option and expense, to obtain for the County the right to continue using the information, in the event such claim of infringement, is made, provided no reduction in performance or loss results to the County.
20. Disputes:
- (a) General. Differences between the Contractor and the County, arising under and by virtue of the contract documents shall be brought to the attention of the County at the earliest possible time in order that such matters may be settled or other appropriate action promptly taken. The records, orders, rulings, instructions, and decision of the County Project Manager shall be final and conclusive 30 days from the date of mailing unless the Contractor mails or otherwise furnishes to the County Administrator a written notice of appeal. The notice of appeal shall include facts, law, and argument as to why the conclusions of the County Project Manager are in error.

In connection with any appeal under this clause, the Contractor and County shall have the opportunity to submit written materials and argument and to offer documentary evidence in support of the appeal. Oral argument and live testimony will not be permitted. The decision of the County Administrator for the determination of such appeals shall be final and conclusive. Reviews of the appellate determination shall be brought in the Superior Court of Clallam County within 15 days of mailing of the written appellate determination. Pending final decision of the dispute, the Contractor shall proceed diligently with the performance of this Agreement and in accordance with the decision rendered.
 - (b) Notice of Potential Claims. The Contractor shall not be entitled to additional compensation or to extension of time for (1) any act or failure to act by the County Project Manager or the County, or (2) the happening of any event or occurrence, unless the Contractor has given the County a written Notice of Potential Claim within 10 days of the commencement of the act, failure, or event giving rise to the claim, and before final payment by the County. The written Notice of Potential Claim shall set forth the reasons for which the Contractor believes additional compensation or extension of time is due, the nature of the cost involved, and insofar as possible, the amount of the potential claim. Contractor shall keep full and complete daily records of the work performed, labor and material used, and all costs and additional time claimed to be additional.

(c) Detailed Claim. The Contractor shall not be entitled to claim any such additional compensation, or extension of time, unless within 30 days of the accomplishment of the portion of the work from which the claim arose, and before final payment by the County, the Contractor has given the County a detailed written statement of each element of cost or other compensation requested and of all elements of additional time required, and copies of any supporting documents evidencing the amount or the extension of time claimed to be due.

21. Ownership of Items Produced. All writings, programs, data, art work, music, maps, charts, tables, illustrations, records or other written, graphic, analog or digital materials prepared by the Contractor and/or its consultants or subcontractors, in connection with the performance of this Agreement shall be the sole and absolute property of the County and constitute "work made for hire" as that phrase is used in federal and/or state intellectual property laws and Contractor and/or its agents shall have no ownership or use rights in the work.
22. Recovery of Payments to Contractor. The right of the Contractor to retain monies paid to it is contingent upon satisfactory performance of this Agreement, including the satisfactory completion of the project described in the Scope of Work (Attachment A). In the event that the Contractor fails, for any reason, to perform obligations required of it by this Agreement, the Contractor may, at the County Project Manager's sole discretion, be required to repay to the County all monies disbursed to the Contractor for those parts of the project that are rendered worthless in the opinion of the County Project Manager by such failure to perform.

Interest shall accrue at the rate of 12 percent (12%) per annum from the time the County Project Manager demands repayment of funds.

23. Project Approval. The extent and character of all work and services to be performed under this Agreement by the Contractor shall be subject to the review and approval of the County Project Manager. For purposes of this Agreement, the County Project Manager is:

Name: Don Wenzl
Title: Chief Corrections Deputy
Address: 223 E. 4th St, Suite 12, Port Angeles, WA 98362
Telephone: 360-417-2356
E-mail: dwenzl@co.clallam.wa.us
Fax: 360-417-2498

In the event there is a dispute with regard to the extent and character of the work to be done, the determination of the County Project Manager as to the extent and character of the work to be done shall govern subject to the Contractor's right to appeal that decision as provided herein.

24. Non-Discrimination. The Contractor shall not discriminate against any person on the basis of race, creed, political ideology, color, national origin, sex, marital status, sexual orientation, age, or the presence of any sensory, mental or physical handicap.
25. Subcontractors. In the event that the Contractor employs the use of any subcontractors, the contract between the Contractor and the subcontractor shall provide that the subcontractor is bound by the terms of this Agreement between the County and the Contractor. The Contractor shall insure that in all subcontracts entered into, Clallam County is named as an express third-party beneficiary of such contracts with full rights as such.
26. No Third Party Beneficiaries. This agreement is intended for the benefit of only the County and Contractor. This agreement does not confer any benefits, rights, or privileges upon any third party.

27. Standard of Care. The Contractor shall perform its duties hereunder in a manner consistent with that degree of care and skill ordinarily exercised by members of the same profession as the Contractor currently practicing under similar circumstances. The Contractor shall, without additional compensation, correct those services not meeting such a standard.
28. Time is of the Essence. Time is of the essence in the performance of this contract unless a more specific time period is set forth in either the Special Terms and Conditions or Scope of Work.
29. Notice. Except as set forth elsewhere in the Agreement, for all purposes under this Agreement, except service of process, any notices shall be given by the Contractor to the County Project Manager. Notice to the Contractor for all purposes under this Agreement shall be given to the person executing the Agreement on behalf of the Contractor at the address identified on the signature page.
30. Severability. If any term or condition of this contract or the application thereof to any person(s) or circumstances is held invalid, such invalidity shall not affect other terms, conditions, or applications which can be given effect without the invalid term, condition or application. To this end, the terms and conditions of this contract are declared severable.
31. Precedence. In the event of inconsistency in this Agreement, unless otherwise provided herein, the inconsistency shall be resolved by giving precedence in the following order:
 - (a) Applicable federal, state, and local statutes, ordinances, and regulations;
 - (b) Scope of Work (Attachment A) and Compensation (Attachment B);
 - (c) Special Terms and Conditions (Attachment D); and
 - (d) General Conditions (Attachment C).
32. Waiver. Waiver of any breach or condition of this contract shall not be deemed a waiver of any prior or subsequent breach. No term or condition of this contract shall be held to be waived, modified, or deleted except by an instrument, in writing, signed by the parties hereto.
33. Attorney Fees. In the event that litigation must be brought to enforce the terms of this agreement, the prevailing party shall be entitled to be paid reasonable attorney fees.
34. Construction. This agreement has been mutually reviewed and negotiated by the parties and should be given a fair and reasonable interpretation and should not be construed less favorably against either party.
35. Survival. Without being exclusive, Paragraphs 4, 7, 13-19, 21-22 and 31-35 of these General Conditions shall survive any termination, expiration, or determination of invalidity of this Agreement in whole or in part. Any other Paragraphs of this Agreement which, by their sense and context, are intended to survive shall also survive.
36. Entire Agreement. This written contract represents the entire Agreement between the parties and supersedes any prior statements, discussions or understandings between the parties except as provided herein.

SPECIAL TERMS AND CONDITIONS

- ☒ 1. Reporting. The County shall submit written progress reports to the Contractor as set forth below:

- ☒ With each request for payment.
- ☒ Monthly.
- ☐ Quarterly.
- ☐ Semi-annually.
- ☐ Annually.
- ☐ Project completion.
- ☐ Other (specify): Not applicable

Progress reports shall include, at a minimum, the following:

- total # of bookings in the jail
- # of individuals booked who were assessed for OUD (including those at risk and not at risk for acute withdrawal from opioids)
- # of the individuals above who were started on MOUD immediately
- # of the individuals above who were started on MOUD prior to release, but not immediately upon booking
- # of individuals booked who reported being currently on MOUD in the community
- # of the individuals above for whom MOUD was continued without interruption
- # of individuals with OUD who were provided naloxone and naloxone training prior to release
- and additional information required after evaluation of the program

Reports shall also include any problems, delays or adverse conditions which will materially affect the Contractor's ability to meet project objectives or time schedules together with a statement of action taken or proposed to resolve the situation. Reports shall also include recommendations for changes to the Scope of Work, if any.

- ☒ 2. Insurance. The Contractor shall maintain in full force and effect during the term of this Agreement, and until final acceptance of the work, public liability and property damage insurance with companies or through sources approved by the state insurance commissioner pursuant to RCW Title 48, as now or hereafter amended. The County, its appointed and elected officials, agents and employees, shall be specifically named as additional insureds in a policy with the same company which insures the Contractor or by endorsement to an existing policy or with a separate carrier approved pursuant to RCW Title 48, as now or hereafter amended, and the following coverages shall be provided:

☒ **COMMERCIAL GENERAL LIABILITY:**

Bodily injury, including death	\$1,000,000 per occurrence
	\$2,000,000 aggregate

Property damage	\$1,000,000 per occurrence
	\$2,000,000 aggregate
☒ ERRORS AND OMISSIONS or PROFESSIONAL LIABILITY with an Extended Reporting Period Endorsement (two year tail)	\$2,000,000 per occurrence
☒ WORKERS COMPENSATION:	Statutory amount

- ☐ AUTOMOBILE: coverage on owned, non-owned, rented and hired vehicles
- | | | |
|---|----|----------------|
| Bodily injury, liability, including death | \$ | per occurrence |
| | \$ | aggregate |
| Property damage liability | \$ | per occurrence |
| | \$ | aggregate |
- ☐ BUSINESS AUTOMOBILE LIABILITY: \$ per occurrence

If the Errors and Omissions or Professional Liability insurance obtained is an occurrence policy as opposed to a claims-made policy, the Extended Reporting Period Endorsement is not required.

Any such policy of insurance the Contractor is required to obtain and maintain pursuant to this Agreement shall be primary over any third party liability coverage provided to Clallam County by and through its membership in the Washington Counties Risk Pool or WCRP. The third party liability coverage provided by the WCRP to Clallam County shall be non-contributory with respect to any policy of insurance the Contractor is required to obtain and maintain pursuant to this Agreement. The County shall have no obligation to report occurrences unless a claim or lawsuit is filed with it and the County has no obligation to pay any insurance premiums.

Evidence of primary insurance coverage shall be submitted to the County Project Manager within 20 days of the execution of the Agreement. The Agreement shall be void ab initio if the proof of coverage is not timely supplied.

If the proof of insurance or certificate of coverage indicating the County is an "additional insured" to a policy obtained by the Consultant in order to comply with this agreement refers to an endorsement (by number, abbreviation or name) but does not provide the full text of that endorsement, then it shall be the obligation of the Consultant to obtain the full text of that endorsement and forward that full text to the County within 30 days of the execution of this Agreement.

The coverage limits identified herein shall not limit the potential liability of the Contractor and the Contractor's duty to defend, indemnify, and hold harmless shall apply to any liability beyond the scope of insurance coverage.

- ☐ 3. Liquidated Damages. For delays in timely completion of the work to be done or missed milestones of the work in progress, the Contractor shall be assessed _____ Dollars (\$ _____) per day as liquidated damages and not as a penalty because the County finds it impractical to calculate the actual cost of delays. Liquidated damages will not be assessed for any days for which an extension of time has been granted. No deduction or payment of liquidated damages will, in any degree, release the Contractor from further obligations and liabilities to complete the entire project.

- ☐ 4. Other (specify):.

	PROFESSIONAL SERVICES CONTRACT for MOUD in Jails	HCA Contract Number: K5887 Resulting from Solicitation Number (If applicable: 2021HCA42 Contractor/Vendor Contract Number:
---	---	--

THIS CONTRACT is made by and between Washington State Health Care Authority, (HCA) and Olympic Peninsula Community Clinic, (Contractor).

CONTRACTOR NAME Olympic Peninsula Community Clinic		CONTRACTOR DOING BUSINESS AS (DBA)		
CONTRACTOR ADDRESS Street 819 Georgiana St	City Port Angeles	State WA	Zip Code 98362	
CONTRACTOR CONTACT T. Scott Brandon	CONTRACTOR TELEPHONE 360-457-4431	CONTRACTOR E-MAIL ADDRESS t_scott_brandon@msn.com		
Is Contractor a Subrecipient under this Contract? ☐ YES ☒ NO	CFDA NUMBER(S): N/A	FFATA Form Required ☐ YES ☒ NO		

HCA PROGRAM MOUD in Jails Program	HCA DIVISION/SECTION DBHR
HCA CONTACT NAME AND TITLE Rachel Meade, MOUD in Jails Program Administrator	HCA CONTACT ADDRESS Health Care Authority 626 8th Avenue SE PO Box 45330 Olympia, WA 98504-5330
HCA CONTACT TELEPHONE (360) 725-2009	HCA CONTACT E-MAIL ADDRESS rachel.meade@hca.wa.gov

CONTRACT START DATE March 1, 2022	CONTRACT END DATE July 31, 2023	TOTAL MAXIMUM CONTRACT AMOUNT \$156,820.00
PURPOSE OF CONTRACT: To develop and implement or continue to expand MOUD in jails program.		

The parties signing below warrant that they have read and understand this Contract and have authority to execute this Contract. This Contract will be binding on HCA only upon signature by both parties.

CONTRACTOR SIGNATURE 	PRINTED NAME AND TITLE T. Scott Brandon Executive Director	DATE SIGNED 2/28/2022
HCA SIGNATURE 	PRINTED NAME AND TITLE Rachelle Amerine Contracts Administrator	DATE SIGNED 2/26/2022

TABLE OF CONTENTS

Recitals	4
1. Statement of Work (SOW).....	4
2. Definitions	4
3. Special Terms and Conditions	7
3.1 PERFORMANCE EXPECTATIONS	7
3.2 Term.....	7
3.3 Compensation	7
3.4 Invoice and Payment	8
3.5 Contractor and HCA Contract Managers	9
3.6 Legal Notices.....	9
3.7 Incorporation of Documents and Order of Precedence	10
3.8 Insurance.....	10
4. General Terms and Conditions	12
4.1 Access to Data	12
4.2 Advance Payment Prohibited.....	12
4.3 Amendments	12
4.4 Assignment.....	12
4.5 Attorneys' Fees.....	12
4.6 Change in Status	13
4.7 Confidential Information Protection	13
4.8 Confidential Information Security	13
4.9 Confidential Information Breach – Required Notification	14
4.10 Contractor's Proprietary Information	14
4.11 Covenant Against Contingent Fees	15
4.12 Debarment.....	15
4.13 Disputes	15
4.14 Entire Agreement.....	16
4.15 Force Majeure	16
4.16 Funding withdrawn, Reduced, or Limited	16
4.17 Governing Law	17
4.18 HCA Network Security	17
4.19 Indemnification	17
4.20 Independent Capacity of the Contractor	18
4.21 Industrial Insurance Coverage	18

4.22 Legal and Regulatory Compliance	18
4.23 Limitation of Authority	19
4.24 No THIRD-PARTY Beneficiaries.....	19
4.25 Nondiscrimination	19
4.26 Overpayments to the Contractor	19
4.27 Pay Equity	19
4.28 Publicity	20
4.29 Records and Document Review	20
4.30 Remedies Non-Exclusive.....	21
4.31 Right of Inspection.....	21
4.32 Rights in Data/Ownership	21
4.33 Rights of State and Federal Governments	22
4.34 Severability	22
4.35 Site Security	23
4.36 Subcontracting	23
4.37 Survival	23
4.38 Taxes	24
4.39 Termination	24
4.40 Termination Procedures	25
4.41 Treatment of Assets	26
4.42 Waiver	27
4.43 Warranties	27

Attachments

Attachment 1: Confidential Information Security Requirements

Schedules

Schedule A: Statement of Work (SOW) Medication for Opioid Use Disorder (MOUD) in Jails Program

Exhibits

Exhibit A: HCA RFA 2021HCA42 for Medication for Opioid Use Disorder (MOUD) in Jails Program

Exhibit B: Olympic Peninsula Community Clinic Response to HCA RFP 2021HCA42

Note: Exhibits A and B are not attached but are available upon request from the HCA Contracts Administrator.

Contract #K5887 for Medication for Opioid Use Disorder (MOUD) in Jails Program

RECITALS

The state of Washington, acting by and through the Health Care Authority (HCA), issued a Request for Application (RFA) dated December 29, 2021, (Exhibit A) for the purpose of developing or implementing or continuing to expand Medication for Opioid Use Disorder (MOUD) in Jails Program in accordance with its authority under chapters 39.26 and 41.05 RCW.

Olympic Peninsula Community Clinic submitted a timely Response to HCA's RFA #2021HCA42 (Exhibit B).

HCA evaluated all properly submitted Responses to the above-referenced RFA and has identified Olympic Peninsula Community Clinic as the Apparent Successful Bidder.

HCA has determined that entering into a Contract with Olympic Peninsula Community Clinic will meet HCA's needs and will be in the State's best interest.

NOW THEREFORE, HCA awards to Olympic Peninsula Community Clinic this Contract, the terms and conditions of which will govern Contractor's providing to HCA the MOUD in Jails Program.

IN CONSIDERATION of the mutual promises as set forth in this Contract, the parties agree as follows:

1. STATEMENT OF WORK (SOW)

The Contractor will provide the services and staff as described in Schedule A: *Statement of Work*.

2. DEFINITIONS

"Authorized Representative" means a person to whom signature authority has been delegated in writing acting within the limits of his/her authority.

"Breach" means the unauthorized acquisition, access, use, or disclosure of Confidential Information that compromises the security, confidentiality, or integrity of the Confidential Information.

"Business Associate" means a Business Associate as defined in 45 CFR 160.103, who performs or assists in the performance of an activity for or on behalf of HCA, a Covered Entity, that involves the use or disclosure of protected health information (PHI). Any reference to Business Associate in this DSA includes Business Associate's employees, agents, officers, Subcontractors, third party contractors, volunteers, or directors.

“Business Days and Hours” means Monday through Friday, 8:00 a.m. to 5:00 p.m., Pacific Time, except for holidays observed by the state of Washington.

“Centers for Medicare and Medicaid Services” or **“CMS”** means the federal office under the Secretary of the United States Department of Health and Human Services, responsible for the Medicare and Medicaid programs.

“CFR” means the Code of Federal Regulations. All references in this Contract to CFR chapters or sections include any successor, amended, or replacement regulation. The CFR may be accessed at <http://www.ecfr.gov/cgi-bin/ECFR?page=browse>.

“Confidential Information” means information that may be exempt from disclosure to the public or other unauthorized persons under chapter 42.56 RCW or chapter 70.02 RCW or other state or federal statutes or regulations. Confidential Information includes, but is not limited to, any information identifiable to an individual that relates to a natural person’s health, (see also Protected Health Information); finances, education, business, use or receipt of governmental services, names, addresses, telephone numbers, social security numbers, driver license numbers, financial profiles, credit card numbers, financial identifiers and any other identifying numbers, law enforcement records, HCA source code or object code, or HCA or State security information.

“Contract” means this Contract document and all schedules, exhibits, attachments, incorporated documents and amendments.

“Contractor” means Olympic Peninsula Community Clinic, its employees and agents. Contractor includes any firm, provider, organization, individual or other entity performing services under this Contract. It also includes any Subcontractor retained by Contractor as permitted under the terms of this Contract.

“Covered entity” means a health plan, a health care clearinghouse or a health care provider who transmits any health information in electronic form to carry out financial or administrative activities related to health care, as defined in 45 CFR 160.103.

“Data” means information produced, furnished, acquired, or used by Contractor in meeting requirements under this Contract.

“Effective Date” means the first date this Contract is in full force and effect. It may be a specific date agreed to by the parties; or, if not so specified, the date of the last signature of a party to this Contract.

“HCA Contract Manager” means the individual identified on the cover page of this Contract who will provide oversight of the Contractor’s activities conducted under this Contract.

“Health Care Authority” or **“HCA”** means the Washington State Health Care Authority, any division, section, office, unit or other entity of HCA, or any of the officers or other officials lawfully representing HCA.

"Overpayment" means any payment or benefit to the Contractor in excess of that to which the Contractor is entitled by law, rule, or this Contract, including amounts in dispute.

"Proprietary Information" means information owned by Contractor to which Contractor claims a protectable interest under law. Proprietary Information includes, but is not limited to, information protected by copyright, patent, trademark, or trade secret laws.

"Protected Health Information" or "PHI" means individually identifiable information that relates to the provision of health care to an individual; the past, present, or future physical or mental health or condition of an individual; or past, present, or future payment for provision of health care to an individual, as defined in 45 CFR 160.103. Individually identifiable information is information that identifies the individual or about which there is a reasonable basis to believe it can be used to identify the individual, and includes demographic information. PHI is information transmitted, maintained, or stored in any form or medium. 45 CFR 164.501. PHI does not include education records covered by the Family Educational Rights and Privacy Act, as amended, 20 USC 1232g(a)(4)(b)(iv).

"Response" means Contractor's Response to HCA's RFA #2021HCA42 for Medication for Opioid Use Disorder (MOUD) in Jails Program and is Exhibit B hereto.

"RCW" means the Revised Code of Washington. All references in this Contract to RCW chapters or sections include any successor, amended, or replacement statute. Pertinent RCW chapters can be accessed at: <http://apps.leg.wa.gov/rcw/>.

"RFA" means the Request for Application used as the solicitation document to establish this Contract, including all its amendments and modifications and is Exhibit A hereto.

"Statement of Work" or "SOW" means a detailed description of the work activities the Contractor is required to perform under the terms and conditions of this Contract, including the deliverables and timeline, and is Schedule A hereto.

"Subcontractor" means a person or entity that is not in the employment of the Contractor, who is performing all or part of the business activities under this Contract under a separate contract with Contractor. The term "Subcontractor" means subcontractor(s) of any tier.

"USC" means the United States Code. All references in this Contract to USC chapters or sections will include any successor, amended, or replacement statute. The USC may be accessed at <http://uscode.house.gov/>

"WAC" means the Washington Administrative Code. All references to WAC chapters or sections will include any successor, amended, or replacement regulation. Pertinent WACs may be accessed at: <http://app.leg.wa.gov/wac/>.

3. SPECIAL TERMS AND CONDITIONS

3.1 PERFORMANCE EXPECTATIONS

Expected performance under this Contract includes, but is not limited to, the following:

- 3.1.1 Knowledge of applicable state and federal laws and regulations pertaining to subject of contract;
- 3.1.2 Use of professional judgment;
- 3.1.3 Collaboration with HCA staff in Contractor's conduct of the services;
- 3.1.4 Conformance with HCA directions regarding the delivery of the services;
- 3.1.5 Timely, accurate and informed communications;
- 3.1.6 Regular completion and updating of project plans, reports, documentation and communications;
- 3.1.7 Regular, punctual attendance at all meetings; and
- 3.1.8 Provision of high-quality services.

Prior to payment of invoices, HCA will review and evaluate the performance of Contractor in accordance with Contract and these performance expectations and may withhold payment if expectations are not met or Contractor's performance is unsatisfactory.

3.2 TERM

- 3.2.1 The initial term of the Contract will commence on March 1, 2022, and continue through July 31, 2023, unless terminated sooner as provided herein.
- 3.2.2 This Contract may be extended through July 31, 2028, by mutually agreed amendment in whatever time increments HCA deems appropriate. No change in terms and conditions will be permitted during these extensions unless specifically agreed to in writing.
- 3.2.3 Work performed without a contract or amendment signed by the authorized representatives of both parties will be at the sole risk of the Contractor. HCA will not pay any costs incurred before a contract or any subsequent amendment(s) is fully executed.

3.3 COMPENSATION

- 3.3.1 The parties have determined the cost of accomplishing the work herein will not exceed **\$156,820.00**, inclusive of all fees, taxes, and expenses. Compensation for

satisfactory performance of the work will not exceed this amount unless the parties agree to a higher amount through an amendment.

- 3.3.2 Contractor's compensation for services rendered will be based on the deliverables table in Schedule A, Statement of Work.

3.4 INVOICE AND PAYMENT

- 3.4.1 In order to receive payment for services or products provided to a state agency, Contractor must register with the Statewide Payee Desk at <https://ofm.wa.gov/it-systems/statewide-vendorpayee-services/receiving-payment-state>.
- 3.4.2 Invoices must describe and document to the HCA Contract Manager's satisfaction a description of the work performed, the progress of the project, and fees. All invoices and deliverables will be approved by the HCA Contract Manager prior to payment. Approval will not be unreasonably withheld or delayed.
- 3.4.3 If expenses are invoiced, invoices must provide a detailed breakdown of each type. Expenses of \$50 or more must be accompanied by a receipt.
- 3.4.4 A-19 invoices must be submitted to Rachel.meade@hca.wa.gov with the HCA Contract number in the subject line of the email. Invoices must include the following information, as applicable:
- a. The HCA Contract number;
 - b. Contractor name, address, phone number;
 - c. Description of services;
 - d. Date(s) of delivery;
 - e. Net invoice price for each item;
 - f. Applicable taxes;
-
- g. Total invoice price; and
 - h. Any available prompt payment discount.

HCA will return incorrect or incomplete invoices for correction and reissue.

- 3.4.5 Upon expiration of the Contract, any claims for payment for costs due and payable under this Contract that are incurred prior to the expiration date must be submitted by the Contractor to HCA within sixty (60) calendar days after the Contract expiration date. HCA is under no obligation to pay any claims that are submitted sixty-one (61) or more calendar days after the Contract expiration date ("Belated

Claims"). HCA will pay Belated Claims at its sole discretion, and any such potential payment is contingent upon the availability of funds.

3.5 CONTRACTOR AND HCA CONTRACT MANAGERS

- 3.5.1 Contractor's Contract Manager will have prime responsibility and final authority for the services provided under this Contract and be the principal point of contact for the HCA Contract Manager for all business matters, performance matters, and administrative activities.
- 3.5.2 HCA's Contract Manager is responsible for monitoring the Contractor's performance and will be the contact person for all communications regarding contract performance and deliverables. The HCA Contract Manager has the authority to accept or reject the services provided and must approve Contractor's invoices prior to payment.
- 3.5.3 The contact information provided below may be changed by written notice of the change (email acceptable) to the other party.

CONTRACTOR Contract Manager Information		Health Care Authority Contract Manager Information	
Name:	T. Scott Brandon	Name:	Rachel Meade
Title:	Executive Director	Title:	MOUD in Jails Program Administrator
Address:	819 Georgiana St Port Angeles, WA 98362	Address:	626 8 th Ave SE, PO Box 45330 Olympia, WA 98504-5330
Phone:	(360) 457-4431	Phone:	(360) 725-2009
Email:	t_scott_brandon@msn.com	Email:	Rachel.meade@hca.wa.gov

3.6 LEGAL NOTICES

Any notice or demand or other communication required or permitted to be given under this Contract or applicable law is effective only if it is in writing and signed by the applicable party, properly addressed, and delivered in person, via email, or by a recognized courier service, or deposited with the United States Postal Service as first-class mail, postage prepaid certified mail, return receipt requested, to the parties at the addresses provided in this section.

- 3.6.1 In the case of notice to the Contractor:

T. Scott Brandon, Executive Director
Olympic Peninsula Community Clinic
819 Georgiana St
Port Angeles, WA 98362

3.6.2 In the case of notice to HCA:

Attention: Contracts Administrator
Health Care Authority
Division of Legal Services
Post Office Box 42702
Olympia, WA 98504-2702
contracts@hca.wa.gov

3.6.3 Notices are effective upon receipt or four (4) Business Days after mailing, whichever is earlier.

3.6.4 The notice address and information provided above may be changed by written notice of the change given as provided above.

3.7 INCORPORATION OF DOCUMENTS AND ORDER OF PRECEDENCE

Each of the documents listed below is by this reference incorporated into this Contract. In the event of an inconsistency, the inconsistency will be resolved in the following order of precedence:

- 3.7.1 Applicable Federal and State of Washington statutes and regulations;
- 3.7.2 Recitals
- 3.7.3 Special Terms and Conditions;
- 3.7.4 General Terms and Conditions;
- 3.7.5 Attachment 1: Confidential Information Security Requirements;
- 3.7.6 Schedule A: Statement of Work;
- 3.7.7 Exhibit A: HCA RFA #2021HCA42 for Medication for Opioid Use Disorder (MOUD) in Jails Program, dated December 29, 2021;
- 3.7.8 Exhibit B: *Contractor's Response* dated January 20, 2022; and
- 3.7.9 Any other provision, term or material incorporated herein by reference or otherwise incorporated.

3.8 INSURANCE

Contractor must provide insurance coverage as set out in this section. The intent of the required insurance is to protect the State should there be any claims, suits, actions, costs, damages or expenses arising from any negligent or intentional act or omission of Contractor or Subcontractor, or agents of either, while performing under the terms of this

Contract. Contractor must provide insurance coverage that is maintained in full force and effect during the term of this Contract, as follows:

- 3.8.1 Commercial General Liability Insurance Policy - Provide a Commercial General Liability Insurance Policy, including contractual liability, in adequate quantity to protect against legal liability arising out of contract activity but no less than \$1 million per occurrence/\$2 million general aggregate. Additionally, Contractor is responsible for ensuring that any Subcontractors provide adequate insurance coverage for the activities arising out of subcontracts.
 - 3.8.2 Business Automobile Liability. In the event that services delivered pursuant to this Contract involve the use of vehicles, either owned, hired, or non-owned by the Contractor, automobile liability insurance is required covering the risks of bodily injury (including death) and property damage, including coverage for contractual liability. The minimum limit for automobile liability is \$1,000,000 per occurrence, using a Combined Single Limit for bodily injury and property damage.
 - 3.8.3 Professional Liability Errors and Omissions – Provide a policy with coverage of not less than \$1 million per claim/\$2 million general aggregate.
 - 3.8.4 The insurance required must be issued by an insurance company/ies authorized to do business within the state of Washington, and must name HCA and the state of Washington, its agents and employees as additional insureds under any Commercial General and/or Business Automobile Liability policy/ies. All policies must be primary to any other valid and collectable insurance. In the event of cancellation, non-renewal, revocation or other termination of any insurance coverage required by this Contract, Contractor must provide written notice of such to HCA within one (1) Business Day of Contractor's receipt of such notice. Failure to buy and maintain the required insurance may, at HCA's sole option, result in this Contract's termination.
-

Upon request, Contractor must submit to HCA a certificate of insurance that outlines the coverage and limits defined in the Insurance section. If a certificate of insurance is requested, Contractor must submit renewal certificates as appropriate during the term of the contract.

- 3.8.5 The Receiving Party certifies that it is self-insured, is a member of a risk pool, or maintains the types and amounts of insurance identified above and will provide certificates of insurance to that effect to HCA upon request.

Upon request, Contractor must submit to HCA a certificate of insurance that outlines the coverage and limits defined in the Insurance section. If a certificate of insurance is requested, Contractor must submit renewal certificates as appropriate during the term of the contract.

The policy must be maintained for the term of this Agreement and three (3) years following its termination.

4. GENERAL TERMS AND CONDITIONS

4.1 ACCESS TO DATA

In compliance with RCW 39.26.180 (2) and federal rules, the Contractor must provide access to any data generated under this Contract to HCA, the Joint Legislative Audit and Review Committee, the State Auditor, and any other state or federal officials so authorized by law, rule, regulation, or agreement at no additional cost. This includes access to all information that supports the findings, conclusions, and recommendations of the Contractor's reports, including computer models and methodology for those models.

4.2 ADVANCE PAYMENT PROHIBITED

No advance payment will be made for services furnished by the Contractor pursuant to this Contract.

4.3 AMENDMENTS

This Contract may be amended by mutual agreement of the parties. Such amendments will not be binding unless they are in writing and signed by personnel authorized to bind each of the parties.

4.4 ASSIGNMENT

4.4.1 Contractor may not assign or transfer all or any portion of this Contract or any of its rights hereunder, or delegate any of its duties hereunder, except delegations as set forth in Section 4.36, *Subcontracting*, without the prior written consent of HCA. Any permitted assignment will not operate to relieve Contractor of any of its duties and obligations hereunder, nor will such assignment affect any remedies available to HCA that may arise from any breach of the provisions of this Contract or warranties made herein, including but not limited to, rights of setoff. Any attempted assignment, transfer or delegation in contravention of this Subsection 4.4.1 of the Contract will be null and void.

4.4.2 ~~HCA may assign this Contract to any public agency, commission, board, or the like,~~ within the political boundaries of the State of Washington, with written notice of thirty (30) calendar days to Contractor.

4.4.3 This Contract will inure to the benefit of and be binding on the parties hereto and their permitted successors and assigns.

4.5 ATTORNEYS' FEES

In the event of litigation or other action brought to enforce the terms of this Contract, each party agrees to bear its own attorneys' fees and costs.

4.6 CHANGE IN STATUS

In the event of any substantive change in its legal status, organizational structure, or fiscal reporting responsibility, Contractor will notify HCA of the change. Contractor must provide notice as soon as practicable, but no later than thirty (30) calendar days after such a change takes effect.

4.7 CONFIDENTIAL INFORMATION PROTECTION

- 4.7.1 Contractor acknowledges that some of the material and information that may come into its possession or knowledge in connection with this Contract or its performance may consist of Confidential Information. Contractor agrees to hold Confidential Information in strictest confidence and not to make use of Confidential Information for any purpose other than the performance of this Contract, to release it only to authorized employees or Subcontractors requiring such information for the purposes of carrying out this Contract, and not to release, divulge, publish, transfer, sell, disclose, or otherwise make the information known to any other party without HCA's express written consent or as provided by law. Contractor agrees to implement physical, electronic, and managerial safeguards to prevent unauthorized access to Confidential Information (See Attachment 1: *Confidential Information Security Requirements*).
- 4.7.2 Contractors that come into contact with Protected Health Information may be required to enter into a Business Associate Agreement with HCA in compliance with the requirements of the Health Insurance Portability and Accountability Act of 1996, Pub. L. 104-191, as modified by the American Recovery and Reinvestment Act of 2009 ("ARRA"), Sec. 13400 – 13424, H.R. 1 (2009) (HITECH Act) (HIPAA).
- 4.7.3 HCA reserves the right to monitor, audit, or investigate the use of Confidential Information collected, used, or acquired by Contractor through this Contract. Violation of this section by Contractor or its Subcontractors may result in termination of this Contract and demand for return of all Confidential Information, monetary damages, or penalties.
-
- 4.7.4 The obligations set forth in this Section will survive completion, cancellation, expiration, or termination of this Contract.

4.8 CONFIDENTIAL INFORMATION SECURITY

The federal government, including the Centers for Medicare and Medicaid Services (CMS), and the State of Washington all maintain security requirements regarding privacy, data access, and other areas. Contractor is required to comply with the Confidential Information Security Requirements set out in Attachment 1 to this Contract and appropriate portions of the Washington OCIO Security Standard, 141.10 (<https://ocio.wa.gov/policies/141-securing-information-technology-assets/14110-securing-information-technology-assets>).

4.9 CONFIDENTIAL INFORMATION BREACH – REQUIRED NOTIFICATION

- 4.9.1 Contractor must notify the HCA Privacy Officer (PrivacyOfficer@hca.wa.gov) within five Business Days of discovery of any Breach or suspected Breach of Confidential Information.
- 4.9.2 Contractor will take steps necessary to mitigate any known harmful effects of such unauthorized access including, but not limited to, sanctioning employees and taking steps necessary to stop further unauthorized access. Contractor agrees to indemnify and hold HCA harmless for any damages related to unauthorized use or disclosure of Confidential Information by Contractor, its officers, directors, employees, Subcontractors or agents.
- 4.9.3 If notification of the Breach or possible Breach must (in the judgment of HCA) be made under the HIPAA Breach Notification Rule, or RCW 42.56.590 or RCW 19.255.010, or other law or rule, then:
 - 4.9.3.1 HCA may choose to make any required notifications to the individuals, to the U.S. Department of Health and Human Services Secretary (DHHS) Secretary, and to the media, or direct Contractor to make them or any of them.
 - 4.9.3.2 In any case, Contractor will pay the reasonable costs of notification to individuals, media, and governmental agencies and of other actions HCA reasonably considers appropriate to protect HCA clients (such as paying for regular credit watches in some cases).
 - 4.9.3.3 Contractor will compensate HCA clients for harms caused to them by any Breach or possible Breach.
- 4.9.4 Any breach of this clause may result in termination of the Contract and the demand for return or disposition (Attachment 1, Section 6) of all Confidential Information.
- 4.9.5 Contractor's obligations regarding Breach notification survive the termination of this Contract and continue for as long as Contractor maintains the Confidential Information and for any breach or possible breach at any time.

4.10 CONTRACTOR'S PROPRIETARY INFORMATION

Contractor acknowledges that HCA is subject to chapter 42.56 RCW, the Public Records Act, and that this Contract will be a public record as defined in chapter 42.56 RCW. Any specific information that is claimed by Contractor to be Proprietary Information must be clearly identified as such by Contractor. To the extent consistent with chapter 42.56 RCW, HCA will maintain the confidentiality of Contractor's information in its possession that is marked Proprietary. If a public disclosure request is made to view Contractor's Proprietary Information, HCA will notify Contractor of the request and of the date that such records will be released to the requester unless Contractor obtains a court order from a court of

competent jurisdiction enjoining that disclosure. If Contractor fails to obtain the court order enjoining disclosure, HCA will release the requested information on the date specified.

4.11 COVENANT AGAINST CONTINGENT FEES

Contractor warrants that no person or selling agent has been employed or retained to solicit or secure this Contract upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, excepting bona fide employees or bona fide established agents maintained by the Contractor for the purpose of securing business. HCA will have the right, in the event of breach of this clause by the Contractor, to annul this Contract without liability or, in its discretion, to deduct from the contract price or consideration or recover by other means the full amount of such commission, percentage, brokerage or contingent fee.

4.12 DEBARMENT

By signing this Contract, Contractor certifies that it is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded in any Washington State or Federal department or agency from participating in transactions (debarred). Contractor agrees to include the above requirement in any and all subcontracts into which it enters, and also agrees that it will not employ debarred individuals. Contractor must immediately notify HCA if, during the term of this Contract, Contractor becomes debarred. HCA may immediately terminate this Contract by providing Contractor written notice, if Contractor becomes debarred during the term hereof.

4.13 DISPUTES

The parties will use their best, good faith efforts to cooperatively resolve disputes and problems that arise in connection with this Contract. Both parties will continue without delay to carry out their respective responsibilities under this Contract while attempting to resolve any dispute. When a genuine dispute arises between HCA and the Contractor regarding the terms of this Contract or the responsibilities imposed herein and it cannot be resolved between the parties' Contract Managers, either party may initiate the following dispute resolution process.

- 4.13.1 The initiating party will reduce its description of the dispute to writing and deliver it to the responding party (email acceptable). The responding party will respond in writing within five (5) Business Days (email acceptable). If the initiating party is not satisfied with the response of the responding party, then the initiating party may request that the HCA Director review the dispute. Any such request from the initiating party must be submitted in writing to the HCA Director within five (5) Business Days after receiving the response of the responding party. The HCA Director will have sole discretion in determining the procedural manner in which he or she will review the dispute. The HCA Director will inform the parties in writing within five (5) Business Days of the procedural manner in which he or she will

review the dispute, including a timeframe in which he or she will issue a written decision.

4.13.2 A party's request for a dispute resolution must:

4.13.2.1 Be in writing;

4.13.2.2 Include a written description of the dispute;

4.13.2.3 State the relative positions of the parties and the remedy sought;

4.13.2.4 State the Contract Number and the names and contact information for the parties;

4.13.3 This dispute resolution process constitutes the sole administrative remedy available under this Contract. The parties agree that this resolution process will precede any action in a judicial or quasi-judicial tribunal.

4.14 ENTIRE AGREEMENT

HCA and Contractor agree that the Contract is the complete and exclusive statement of the agreement between the parties relating to the subject matter of the Contract and supersedes all letters of intent or prior contracts, oral or written, between the parties relating to the subject matter of the Contract, except as provided in Section 4.43, *Warranties*.

4.15 FORCE MAJEURE

A party will not be liable for any failure of or delay in the performance of this Contract for the period that such failure or delay is due to causes beyond its reasonable control, including but not limited to acts of God, war, strikes or labor disputes, embargoes, government orders or any other force majeure event.

4.16 FUNDING WITHDRAWN, REDUCED, OR LIMITED

If HCA determines in its sole discretion that the funds it relied upon to establish this Contract have been withdrawn, reduced or limited, or if additional or modified conditions are placed on such funding after the effective date of this contract but prior to the normal completion of this Contract, then HCA, at its sole discretion, may:

4.16.1 Terminate this Contract pursuant to Section 4.39.3, *Termination for Non-Allocation of Funds*;

4.16.2 Renegotiate the Contract under the revised funding conditions; or

4.16.3 Suspend Contractor's performance under the Contract upon five (5) Business Days' advance written notice to Contractor. HCA will use this option only when HCA determines that there is reasonable likelihood that the funding insufficiency may be

resolved in a timeframe that would allow Contractor's performance to be resumed prior to the normal completion date of this Contract.

- 4.16.3.1 During the period of suspension of performance, each party will inform the other of any conditions that may reasonably affect the potential for resumption of performance.
- 4.16.3.2 When HCA determines in its sole discretion that the funding insufficiency is resolved, it will give Contractor written notice to resume performance. Upon the receipt of this notice, Contractor will provide written notice to HCA informing HCA whether it can resume performance and, if so, the date of resumption. For purposes of this subsection, "written notice" may include email.
- 4.16.3.3 If the Contractor's proposed resumption date is not acceptable to HCA and an acceptable date cannot be negotiated, HCA may terminate the contract by giving written notice to Contractor. The parties agree that the Contract will be terminated retroactive to the date of the notice of suspension. HCA will be liable only for payment in accordance with the terms of this Contract for services rendered prior to the retroactive date of termination.

4.17 GOVERNING LAW

This Contract is governed in all respects by the laws of the state of Washington, without reference to conflict of law principles. The jurisdiction for any action hereunder is exclusively in the Superior Court for the state of Washington, and the venue of any action hereunder is in the Superior Court for Thurston County, Washington. Nothing in this Contract will be construed as a waiver by HCA of the State's immunity under the 11th Amendment to the United States Constitution.

4.18 HCA NETWORK SECURITY

Contractor agrees not to attach any Contractor-supplied computers, peripherals or software to the HCA Network without prior written authorization from HCA's Chief Information Officer. Unauthorized access to HCA networks and systems is a violation of HCA Policy and constitutes computer trespass in the first degree pursuant to RCW 9A.52.110. Violation of any of these laws or policies could result in termination of the contract and other penalties.

Contractor will have access to the HCA visitor Wi-Fi Internet connection while on site.

4.19 INDEMNIFICATION

Contractor must defend, indemnify, and save HCA harmless from and against all claims, including reasonable attorneys' fees resulting from such claims, for any or all injuries to persons or damage to property, or Breach of its confidentiality and notification obligations

under Section 4.7, *Confidential Information Protection* and Section 4.8 *Confidentiality Breach-Required Notification*, arising from intentional or negligent acts or omissions of Contractor, its officers, employees, or agents, or Subcontractors, their officers, employees, or agents, in the performance of this Contract.

4.20 INDEPENDENT CAPACITY OF THE CONTRACTOR

The parties intend that an independent contractor relationship will be created by this Contract. Contractor and its employees or agents performing under this Contract are not employees or agents of HCA. Contractor will not hold itself out as or claim to be an officer or employee of HCA or of the State of Washington by reason hereof, nor will Contractor make any claim of right, privilege or benefit that would accrue to such employee under law. Conduct and control of the work will be solely with Contractor.

4.21 INDUSTRIAL INSURANCE COVERAGE

Prior to performing work under this Contract, Contractor must provide or purchase industrial insurance coverage for the Contractor's employees, as may be required of an "employer" as defined in Title 51 RCW, and must maintain full compliance with Title 51 RCW during the course of this Contract.

4.22 LEGAL AND REGULATORY COMPLIANCE

4.22.1 During the term of this Contract, Contractor must comply with all local, state, and federal licensing, accreditation and registration requirements/standards, necessary for the performance of this Contract and all other applicable federal, state and local laws, rules, and regulations.

4.22.2 While on the HCA premises, Contractor must comply with HCA operations and process standards and policies (e.g., ethics, Internet / email usage, data, network and building security, harassment, as applicable). HCA will make an electronic copy of all such policies available to Contractor.

4.22.3 Pursuant to Proclamation 21-14 – COVID-19 Vaccination Requirement (dated August 9, 2021) as amended by Proclamation 21-14.1 – COVID-19 Vaccination Requirement (dated August 20, 2021) ("Proclamation") all contractors and any of their employees and/or subcontractors who provide contracted services on-site at HCA facilities must certify that they are fully vaccinated against the COVID-19 virus, unless properly excepted or exempted for disability or sincerely held religious beliefs as set forth in the Proclamation. Contractors who cannot so certify are prohibited from contracting with the state.

4.22.4 Contractor represents and warrants that should their responsibilities to the HCA involve on-site services as of October 18, 2021, Contractor's personnel (including subcontractors) providing such services will be fully vaccinated against the COVID-19 virus unless properly excepted or exempted for disability or sincerely held

religious beliefs as set forth in the Proclamation. Contractor further understands that, upon request, Contractor personnel must provide to HCA proof of vaccination, in a manner established by the HCA. Failure to meet these requirements may result in the immediate termination of this Contract.

4.22.5 Failure to comply with any provisions of this section may result in Contract termination.

4.23 LIMITATION OF AUTHORITY

Only the HCA Authorized Representative has the express, implied, or apparent authority to alter, amend, modify, or waive any clause or condition of this Contract. Furthermore, any alteration, amendment, modification, or waiver of any clause or condition of this Contract is not effective or binding unless made in writing and signed by the HCA Authorized Representative.

4.24 NO THIRD-PARTY BENEFICIARIES

HCA and Contractor are the only parties to this contract. Nothing in this Contract gives or is intended to give any benefit of this Contract to any third parties.

4.25 NONDISCRIMINATION

During the performance of this Contract, the Contractor must comply with all federal and state nondiscrimination laws, regulations and policies, including but not limited to: Title VII of the Civil Rights Act, 42 U.S.C. §12101 et seq.; the Americans with Disabilities Act of 1990 (ADA), 42 U.S.C. §12101 et seq., 28 CFR Part 35; and Title 49.60 RCW, Washington Law Against Discrimination. In the event of Contractor's noncompliance or refusal to comply with any nondiscrimination law, regulation or policy, this Contract may be rescinded, canceled, or terminated in whole or in part under the Termination for Default sections, and Contractor may be declared ineligible for further contracts with HCA.

4.26 OVERPAYMENTS TO THE CONTRACTOR

In the event that overpayments or erroneous payments have been made to the Contractor under this Contract, HCA will provide written notice to Contractor and Contractor will refund the full amount to HCA within thirty (30) calendar days of the notice. If Contractor fails to make timely refund, HCA may charge Contractor one percent (1%) per month on the amount due, until paid in full. If the Contractor disagrees with HCA's actions under this section, then it may invoke the dispute resolution provisions of Section 4.13, *Disputes*.

4.27 PAY EQUITY

4.27.1 Contractor represents and warrants that, as required by Washington state law (Engrossed House Bill 1109, Sec. 211), during the term of this Contract, it agrees to equality among its workers by ensuring similarly employed individuals are

compensated as equals. For purposes of this provision, employees are similarly employed if (i) the individuals work for Contractor, (ii) the performance of the job requires comparable skill, effort, and responsibility, and (iii) the jobs are performed under similar working conditions. Job titles alone are not determinative of whether employees are similarly employed.

4.27.2 Contractor may allow differentials in compensation for its workers based in good faith on any of the following: (i) a seniority system; (ii) a merit system; (iii) a system that measures earnings by quantity or quality of production; (iv) bona fide job-related factor(s); or (v) a bona fide regional difference in compensation levels.

4.27.3 Bona fide job-related factor(s)" may include, but not be limited to, education, training, or experience, that is: (i) consistent with business necessity; (ii) not based on or derived from a gender-based differential; and (iii) accounts for the entire differential.

4.27.4 A "bona fide regional difference in compensation level" must be (i) consistent with business necessity; (ii) not based on or derived from a gender-based differential; and (iii) account for the entire differential.

4.27.5 Notwithstanding any provision to the contrary, upon breach of warranty and Contractor's failure to provide satisfactory evidence of compliance within thirty (30) Days of HCA's request for such evidence, HCA may suspend or terminate this Contract.

4.28 PUBLICITY

4.28.1 The award of this Contract to Contractor is not in any way an endorsement of Contractor or Contractor's Services by HCA and must not be so construed by Contractor in any advertising or other publicity materials.

4.28.2 Contractor agrees to submit to HCA, all advertising, sales promotion, and other publicity materials relating to this Contract or any Service furnished by Contractor in which HCA's name is mentioned, language is used, or Internet links are provided from which the connection of HCA's name with Contractor's Services may, in HCA's judgment, be inferred or implied. Contractor further agrees not to publish or use such advertising, marketing, sales promotion materials, publicity or the like through print, voice, the Web, and other communication media in existence or hereinafter developed without the express written consent of HCA prior to such use.

4.29 RECORDS AND DOCUMENT REVIEW

4.29.1 The Contractor must maintain books, records, documents, magnetic media, receipts, invoices or other evidence relating to this Contract and the performance of the services rendered, along with accounting procedures and practices, all of which sufficiently and properly reflect all direct and indirect costs of any nature expended

in the performance of this Contract. At no additional cost, these records, including materials generated under this Contract, are subject at all reasonable times to inspection, review, or audit by HCA, the Office of the State Auditor, and state and federal officials so authorized by law, rule, regulation, or agreement [See 42 USC 1396a(a)(27)(B); 42 USC 1396a(a)(37)(B); 42 USC 1396a(a)(42)(A); 42 CFR 431, Subpart Q; and 42 CFR 447.202].

4.29.2 The Contractor must retain such records for a period of six (6) years after the date of final payment under this Contract.

4.29.3 If any litigation, claim or audit is started before the expiration of the six (6) year period, the records must be retained until all litigation, claims, or audit findings involving the records have been resolved.

4.30 REMEDIES NON-EXCLUSIVE

The remedies provided in this Contract are not exclusive but are in addition to all other remedies available under law.

4.31 RIGHT OF INSPECTION

The Contractor must provide right of access to its facilities to HCA, or any of its officers, or to any other authorized agent or official of the state of Washington or the federal government, at all reasonable times, in order to monitor and evaluate performance, compliance, and/or quality assurance under this Contract.

4.32 RIGHTS IN DATA/OWNERSHIP

4.32.1 HCA and Contractor agree that all data and work products (collectively "Work Product") produced pursuant to this Contract will be considered a *work for hire* under the U.S. Copyright Act, 17 U.S.C. §101 *et seq*, and will be owned by HCA. Contractor is hereby commissioned to create the Work Product. Work Product includes, but is not limited to, discoveries, formulae, ideas, improvements, inventions, methods, models, processes, techniques, findings, conclusions, recommendations, reports, designs, plans, diagrams, drawings, Software, databases, documents, pamphlets, advertisements, books, magazines, surveys, studies, computer programs, films, tapes, and/or sound reproductions, to the extent provided by law. Ownership includes the right to copyright, patent, register and the ability to transfer these rights and all information used to formulate such Work Product.

4.32.2 If for any reason the Work Product would not be considered a *work for hire* under applicable law, Contractor assigns and transfers to HCA, the entire right, title and interest in and to all rights in the Work Product and any registrations and copyright applications relating thereto and any renewals and extensions thereof.

- 4.32.3 Contractor will execute all documents and perform such other proper acts as HCA may deem necessary to secure for HCA the rights pursuant to this section.
- 4.32.4 Contractor will not use or in any manner disseminate any Work Product to any third party, or represent in any way Contractor ownership of any Work Product, without the prior written permission of HCA. Contractor will take all reasonable steps necessary to ensure that its agents, employees, or Subcontractors will not copy or disclose, transmit or perform any Work Product or any portion thereof, in any form, to any third party.
- 4.32.5 Material that is delivered under this Contract, but that does not originate therefrom ("Preexisting Material"), must be transferred to HCA with a nonexclusive, royalty-free, irrevocable license to publish, translate, reproduce, deliver, perform, display, and dispose of such Preexisting Material, and to authorize others to do so. Contractor agrees to obtain, at its own expense, express written consent of the copyright holder for the inclusion of Preexisting Material. HCA will have the right to modify or remove any restrictive markings placed upon the Preexisting Material by Contractor.
- 4.32.6 Contractor must identify all Preexisting Material when it is delivered under this Contract and must advise HCA of any and all known or potential infringements of publicity, privacy or of intellectual property affecting any Preexisting Material at the time of delivery of such Preexisting Material. Contractor must provide HCA with prompt written notice of each notice or claim of copyright infringement or infringement of other intellectual property right worldwide received by Contractor with respect to any Preexisting Material delivered under this Contract.

4.33 RIGHTS OF STATE AND FEDERAL GOVERNMENTS

In accordance with 45 C.F.R. 95.617, all appropriate state and federal agencies, including but not limited to the Centers for Medicare and Medicaid Services (CMS), will have a royalty-free, nonexclusive, and irrevocable license to reproduce, publish, translate, or otherwise use, and to authorize others to use for Federal Government purposes: (i) software, modifications, and documentation designed, developed or installed with Federal Financial Participation (FFP) under 45 CFR Part 95, subpart F; (ii) the Custom Software and modifications of the Custom Software, and associated Documentation designed, developed, or installed with FFP under this Contract; (iii) the copyright in any work developed under this Contract; and (iv) any rights of copyright to which Contractor purchases ownership under this Contract.

4.34 SEVERABILITY

If any provision of this Contract or the application thereof to any person(s) or circumstances is held invalid, such invalidity will not affect the other provisions or

applications of this Contract that can be given effect without the invalid provision, and to this end the provisions or application of this Contract are declared severable.

4.35 SITE SECURITY

While on HCA premises, Contractor, its agents, employees, or Subcontractors must conform in all respects with physical, fire or other security policies or regulations. Failure to comply with these regulations may be grounds for revoking or suspending security access to these facilities. HCA reserves the right and authority to immediately revoke security access to Contractor staff for any real or threatened breach of this provision. Upon reassignment or termination of any Contractor staff, Contractor agrees to promptly notify HCA.

4.36 SUBCONTRACTING

4.36.1 Neither Contractor, nor any Subcontractors, may enter into subcontracts for any of the work contemplated under this Contract without prior written approval of HCA. HCA has sole discretion to determine whether or not to approve any such subcontract. In no event will the existence of the subcontract operate to release or reduce the liability of Contractor to HCA for any breach in the performance of Contractor's duties.

4.36.2 Contractor is responsible for ensuring that all terms, conditions, assurances and certifications set forth in this Contract are included in any subcontracts.

4.36.3 If at any time during the progress of the work HCA determines in its sole judgment that any Subcontractor is incompetent or undesirable, HCA will notify Contractor, and Contractor must take immediate steps to terminate the Subcontractor's involvement in the work.

4.36.4 The rejection or approval by the HCA of any Subcontractor or the termination of a Subcontractor will not relieve Contractor of any of its responsibilities under the Contract, nor be the basis for additional charges to HCA.

4.36.5 ~~HCA has no contractual obligations to any Subcontractor or vendor under contract~~ to the Contractor. Contractor is fully responsible for all contractual obligations, financial or otherwise, to its Subcontractors.

4.37 SURVIVAL

The terms and conditions contained in this Contract that, by their sense and context, are intended to survive the completion, cancellation, termination, or expiration of the Contract will survive. In addition, the terms of the sections titled *Confidential Information Protection, Confidential Information Breach – Required Notification, Contractor's Proprietary Information, Disputes, Overpayments to Contractor, Publicity, Records and Documents Review, Rights in Data/Ownership, and Rights of State and Federal Governments* will

survive the termination of this Contract. The right of HCA to recover any overpayments will also survive the termination of this Contract.

4.38 TAXES

HCA will pay sales or use taxes, if any, imposed on the services acquired hereunder. Contractor must pay all other taxes including, but not limited to, Washington Business and Occupation Tax, other taxes based on Contractor's income or gross receipts, or personal property taxes levied or assessed on Contractor's personal property. HCA, as an agency of Washington State government, is exempt from property tax.

Contractor must complete registration with the Washington State Department of Revenue and be responsible for payment of all taxes due on payments made under this Contract.

4.39 TERMINATION

4.39.1 Termination for Default

In the event HCA determines that Contractor has failed to comply with the terms and conditions of this Contract, HCA has the right to suspend or terminate this Contract. HCA will notify Contractor in writing of the need to take corrective action. If corrective action is not taken within five (5) Business Days, or other time period agreed to in writing by both parties, the Contract may be terminated. HCA reserves the right to suspend all or part of the Contract, withhold further payments, or prohibit Contractor from incurring additional obligations of funds during investigation of the alleged compliance breach and pending corrective action by Contractor or a decision by HCA to terminate the Contract.

In the event of termination for default, Contractor will be liable for damages as authorized by law including, but not limited to, any cost difference between the original Contract and the replacement or cover Contract and all administrative costs directly related to the replacement Contract, e.g., cost of the competitive bidding, mailing, advertising, and staff time.

If it is determined that Contractor: (i) was not in default, or (ii) its failure to perform was outside of its control, fault or negligence, the termination will be deemed a "Termination for Convenience."

4.39.2 Termination for Convenience

When, at HCA's sole discretion, it is in the best interest of the State, HCA may terminate this Contract in whole or in part by providing ten (10) calendar days' written notice. If this Contract is so terminated, HCA will be liable only for payment in accordance with the terms of this Contract for services rendered prior to the effective date of termination. No penalty will accrue to HCA in the event the termination option in this section is exercised.

4.39.3 Termination for Nonallocation of Funds

If funds are not allocated to continue this Contract in any future period, HCA may immediately terminate this Contract by providing written notice to the Contractor. The termination will be effective on the date specified in the termination notice. HCA will be liable only for payment in accordance with the terms of this Contract for services rendered prior to the effective date of termination. HCA agrees to notify Contractor of such nonallocation at the earliest possible time. No penalty will accrue to HCA in the event the termination option in this section is exercised.

4.39.4 Termination for Withdrawal of Authority

In the event that the authority of HCA to perform any of its duties is withdrawn, reduced, or limited in any way after the commencement of this Contract and prior to normal completion, HCA may immediately terminate this Contract by providing written notice to the Contractor. The termination will be effective on the date specified in the termination notice. HCA will be liable only for payment in accordance with the terms of this Contract for services rendered prior to the effective date of termination. HCA agrees to notify Contractor of such withdrawal of authority at the earliest possible time. No penalty will accrue to HCA in the event the termination option in this section is exercised.

4.39.5 Termination for Conflict of Interest

HCA may terminate this Contract by written notice to the Contractor if HCA determines, after due notice and examination, that there is a violation of the Ethics in Public Service Act, Chapter 42.52 RCW, or any other laws regarding ethics in public acquisitions and procurement and performance of contracts. In the event this Contract is so terminated, HCA will be entitled to pursue the same remedies against the Contractor as it could pursue in the event Contractor breaches the contract.

4.40 TERMINATION PROCEDURES

4.40.1 Upon termination of this Contract, HCA, in addition to any other rights provided in this Contract, may require Contractor to deliver to HCA any property specifically produced or acquired for the performance of such part of this Contract as has been terminated.

4.40.2 HCA will pay Contractor the agreed-upon price, if separately stated, for completed work and services accepted by HCA and the amount agreed upon by the Contractor and HCA for (i) completed work and services for which no separate price is stated; (ii) partially completed work and services; (iii) other property or services that are accepted by HCA; and (iv) the protection and preservation of property, unless the termination is for default, in which case HCA will determine the extent of the liability. Failure to agree with such determination will be a dispute within the meaning of Section 4.13, *Disputes*. HCA may withhold from any amounts due the Contractor

such sum as HCA determines to be necessary to protect HCA against potential loss or liability.

4.40.3 After receipt of notice of termination, and except as otherwise directed by HCA, Contractor must:

- 4.40.3.1 Stop work under the Contract on the date of, and to the extent specified in, the notice;
- 4.40.3.2 Place no further orders or subcontracts for materials, services, or facilities except as may be necessary for completion of such portion of the work under the Contract that is not terminated;
- 4.40.3.3 Assign to HCA, in the manner, at the times, and to the extent directed by HCA, all the rights, title, and interest of the Contractor under the orders and subcontracts so terminated; in which case HCA has the right, at its discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts;
- 4.40.3.4 Settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, with the approval or ratification of HCA to the extent HCA may require, which approval or ratification will be final for all the purposes of this clause;
- 4.40.3.5 Transfer title to and deliver as directed by HCA any property required to be furnished to HCA;
- 4.40.3.6 Complete performance of any part of the work that was not terminated by HCA; and
- 4.40.3.7 Take such action as may be necessary, or as HCA may direct, for the protection and preservation of the records related to this Contract that are in the possession of the Contractor and in which HCA has or may acquire an interest.

4.41 TREATMENT OF ASSETS

4.41.1 Ownership

HCA shall retain title to all property furnished by HCA to Contractor under this contract. Title to all property furnished by the Contractor, for the cost of which the Contractor is entitled to reimbursement as a direct item of cost under this contract, excluding intellectual property provided by the Contractor, shall pass to and vest in HCA upon delivery of such property by the Contractor. Title to other property, the cost of which is reimbursable to the Contractor under this Contract, shall pass to and vest in HCA upon (i) issuance for use of such property in the performance of this Contract, (ii) commencement of use of such property in the performance of this Contract, or (iii) reimbursement of the cost thereof by HCA, in whole or in part, whichever occurs first.

4.41.2 Use of Property

Any property furnished to Contractor shall, unless otherwise provided herein, or approved in writing by the HCA Contract Manager, be used only for the performance of and subject to the terms of this Contract. Contractor's use of the equipment shall be subject to HCA's security, administrative and other requirements.

4.41.3 Damage to Property

Contractor shall continuously protect and be responsible for any loss, destruction, or damage to property which results from or is caused by Contractor's acts or omissions. Contractor shall be liable to HCA for costs of repair or replacement for property or equipment that has been lost, destroyed or damaged by Contractor or Contractor's employees, agents or subcontractors. Cost of replacement shall be the current market value of the property and equipment on the date of the loss as determined by HCA.

4.41.4 Notice of Damage

Upon the loss of, destruction of, or damage to any of the property, Contractor shall notify the HCA Contract Manager thereof within one (1) Business Day and shall take all reasonable steps to protect that property from further damage.

4.41.5 Surrender of Property

Contractor will ensure that the property will be returned to HCA in like condition to that in which it was furnished to Contractor, reasonable wear and tear excepted. Contractor shall surrender to HCA all property upon the earlier of expiration or termination of this Contract.

4.42 WAIVER

Waiver of any breach of any term or condition of this Contract will not be deemed a waiver of any prior or subsequent breach or default. No term or condition of this Contract will be held to be waived, modified, or deleted except by a written instrument signed by the parties. Only the HCA Authorized Representative has the authority to waive any term or condition of this Contract on behalf of HCA.

4.43 WARRANTIES

4.43.1 Contractor represents and warrants that it will perform all services pursuant to this Contract in a professional manner and with high quality and will immediately re-perform any services that are not in compliance with this representation and warranty at no cost to HCA.

- 4.43.2 Contractor represents and warrants that it will comply with all applicable local, State, and federal licensing, accreditation and registration requirements and standards necessary in the performance of the Services.
- 4.43.3 EXECUTIVE ORDER 18-03 – WORKERS’ RIGHTS (MANDATORY INDIVIDUAL ARBITRATION). Contractor represents and warrants, as previously certified in Contractor’s bid submission, that Contractor does NOT require its employees, as a condition of employment, to sign or agree to mandatory individual arbitration clauses or class or collective action waivers. Contractor further represents and warrants that, during the term of this Contract, Contractor shall not, as a condition of employment, require its employees to sign or agree to mandatory individual arbitration clauses or class or collective action waivers.
- 4.43.4 Any written commitment by Contractor within the scope of this Contract will be binding upon Contractor. Failure of Contractor to fulfill such a commitment may constitute breach and will render Contractor liable for damages under the terms of this Contract. For purposes of this section, a commitment by Contractor includes: (i) Prices, discounts, and options committed to remain in force over a specified period of time; and (ii) any warranty or representation made by Contractor to HCA or contained in any Contractor publications, or descriptions of services in written or other communication medium, used to influence HCA to enter into this Contract.

Attachment 1

Confidential Information Security Requirements

1. DEFINITIONS

In addition to the definitions set out in Section 2 of this Contract K5887 for Medication for Opioid Use Disorder (MOUD) in Jails Program, the definitions below apply to this Attachment.

- a. "Hardened Password" means a string of characters containing at least three of the following character classes: upper case letters; lower case letters; numerals; and special characters, such as an asterisk, ampersand or exclamation point.
 - i. Passwords for external authentication must be a minimum of 10 characters long.
 - ii. Passwords for internal authentication must be a minimum of 8 characters long.
 - iii. Passwords used for system service or service accounts must be a minimum of 20 characters long.
- b. "Portable/Removable Media" means any Data storage device that can be detached or removed from a computer and transported, including but not limited to: optical media (e.g., CDs, DVDs); USB drives; or flash media (e.g., CompactFlash, SD, MMC).
- c. "Portable/Removable Devices" means any small computing device that can be transported, including but not limited to: handhelds/PDAs/Smartphones; Ultramobile PC's, flash memory devices (e.g., USB flash drives, personal media players); and laptops/notebook/tablet computers. If used to store Confidential Information, devices should be Federal Information Processing Standards (FIPS) Level 2 compliant.
- d. "Secured Area" means an area to which only Authorized Users have access. Secured Areas may include buildings, rooms, or locked storage containers (such as a filing cabinet) within a room, as long as access to the Confidential Information is not available to unauthorized personnel.
- e. "Transmitting" means the transferring of data electronically, such as via email, SFTP, webservices, AWS Snowball, etc.
- f. "Trusted System(s)" means the following methods of physical delivery: (1) hand-delivery by a person authorized to have access to the Confidential Information with written acknowledgement of receipt; (2) United States Postal Service ("USPS") first class mail, or USPS delivery services that include Tracking, such as Certified Mail, Express Mail or Registered Mail; (3) commercial delivery services (e.g. FedEx, UPS, DHL) which offer tracking and receipt confirmation; and (4) the Washington State Campus mail system. For electronic transmission, the Washington State Governmental Network (SGN) is a Trusted System for communications within that Network.

- g. "Unique User ID" means a string of characters that identifies a specific user and which, in conjunction with a password, passphrase, or other mechanism, authenticates a user to an information system.

2. CONFIDENTIAL INFORMATION TRANSMITTING

- a. When transmitting HCA's Confidential Information electronically, including via email, the Data must be encrypted using NIST 800-series approved algorithms (<http://csrc.nist.gov/publications/PubsSPs.html>). This includes transmission over the public internet.
- b. When transmitting HCA's Confidential Information via paper documents, the Receiving Party must use a Trusted System.

3. PROTECTION OF CONFIDENTIAL INFORMATION

The Contractor agrees to store Confidential Information as described:

a. Data at Rest:

- i. Data will be encrypted with NIST 800-series approved algorithms. Encryption keys will be stored and protected independently of the data. Access to the Data will be restricted to Authorized Users through the use of access control lists, a Unique User ID, and a Hardened Password, or other authentication mechanisms which provide equal or greater security, such as biometrics or smart cards. Systems which contain or provide access to Confidential Information must be located in an area that is accessible only to authorized personnel, with access controlled through use of a key, card key, combination lock, or comparable mechanism.

ii. Data stored on Portable/Removable Media or Devices:

- Confidential Information provided by HCA on Removable Media will be encrypted with NIST 800-series approved algorithms. Encryption keys will be stored and protected independently of the Data.
- HCA's data must not be stored by the Receiving Party on Portable Devices or Media unless specifically authorized within the Data Share Agreement. If so authorized, the Receiving Party must protect the Data by:
 1. Encrypting with NIST 800-series approved algorithms. Encryption keys will be stored and protected independently of the data;
 2. Control access to the devices with a Unique User ID and Hardened Password or stronger authentication method such as a physical token or biometrics;
 3. Keeping devices in locked storage when not in use;
 4. Using check-in/check-out procedures when devices are shared;

5. Maintain an inventory of devices; and
 6. Ensure that when being transported outside of a Secured Area, all devices with Data are under the physical control of an Authorized User.
- b. Paper documents. Any paper records containing Confidential Information must be protected by storing the records in a Secured Area that is accessible only to authorized personnel. When not in use, such records must be stored in a locked container, such as a file cabinet, locking drawer, or safe, to which only authorized persons have access.

4. CONFIDENTIAL INFORMATION SEGREGATION

HCA Confidential Information received under this Contract must be segregated or otherwise distinguishable from non-HCA data. This is to ensure that when no longer needed by the Contractor, all HCA Confidential Information can be identified for return or destruction. It also aids in determining whether HCA Confidential Information has or may have been compromised in the event of a security Breach.

- a. The HCA Confidential Information must be kept in one of the following ways:
 - i. on media (e.g., hard disk, optical disc, tape, etc.) which will contain only HCA Data; or
 - ii. in a logical container on electronic media, such as a partition or folder dedicated to HCA's Data; or
 - iii. in a database that will contain only HCA Data; or
 - iv. within a database and will be distinguishable from non-HCA Data by the value of a specific field or fields within database records; or
 - v. when stored as physical paper documents, physically segregated from non-HCA Data in a drawer, folder, or other container.
- b. When it is not feasible or practical to segregate HCA Confidential Information from non-HCA data, then both the HCA Confidential Information and the non-HCA data with which it is commingled must be protected as described in this Attachment.

5. CONFIDENTIAL INFORMATION SHARED WITH SUBCONTRACTORS

If HCA Confidential Information provided under this Contract is to be shared with a Subcontractor, the contract with the Subcontractor must include all of the Confidential Information Security Requirements.

6. CONFIDENTIAL INFORMATION DISPOSITION

When the Confidential Information is no longer needed, except as noted below, the Confidential Information must be returned to HCA or destroyed. Media are to be destroyed using a method documented within NIST 800-88 (<http://csrc.nist.gov/publications/PubsSPs.html>).

- a. For HCA's Confidential Information stored on network disks, deleting unneeded Confidential Information is sufficient as long as the disks remain in a Secured Area and otherwise meet the requirements listed in Section 3, above. Destruction of the Confidential Information as outlined in this section of this Attachment may be deferred until the disks are retired, replaced, or otherwise taken out of the Secured Area.

Schedule A

Statement of Work

1. Purpose.

To provide medication for opioid use disorder (MOUD) in jails to incarcerated individuals who present with an opioid use disorder (OUD). To support a full MOUD program which includes the following: an OUD assessment, discussion of MOUD options between the incarcerated individual and provider, initiation prior to the onset of withdrawal or continuation of MOUD, release and reentry planning to include connection with continued treatment, same day release appointment when possible or MOUD to bridge patient until next appointment and naloxone upon release. Reentry planning may also include assisting the incarcerated individual with sign-up of Medicaid, reestablishing Medicaid and connection with the Managed Care Organizations (MCOs).

Health Equity - This project also intends to address inequities in OUD treatment and recovery services by providing medically necessary treatment for opioid use disorder to incarcerated individuals. MOUD in jails programs should understand cultural barriers and provide culturally appropriate services and recognize the need for inclusion of people with lived experiences in the development of the MOUD in jails programs. Additionally, this project intends to identify stigma and educate staff to ensure ongoing collaboration and openness to change.

2. Performance Work Statement.

The Contractor shall ensure funds are responsibly used towards the MOUD program in the jail/jails and provide the core components or a progressive plan to achieve the core components which include:

- a. FDA approved medication for opioid use disorder (MOUD) must be available and offered to all incarcerated individuals who present with OUD at intake. Individuals with OUD may decline MOUD at any time, but ongoing discussions on MOUD may be offered.
- b. Methadone, buprenorphine, naltrexone should all be offered unless: (a) an opioid treatment program (OTP) is not within reasonable driving distance from the jail, in which case the jail is not required to offer methadone as an option; or (b) there is no available buprenorphine provider in the community to which the patient will likely release, in which case the jail is not required to offer buprenorphine as an option. Naltrexone may be provided in oral formulation while the patient is incarcerated, but injectable long-acting naltrexone must be offered as an option prior to release.
- c. MOUD must be continued for those who are already taking MOUD upon entering the facility. MOUD is continued using the same medication, at the same dose unless ordered otherwise by the prescriber based on clinical need (documented in the patient's medical record) with the exception of injectable long-acting naltrexone which may be converted to an equivalent oral dose until just prior to release and the injectable form is restarted. Methadone may be transitioned to buprenorphine if the jail is not a licensed opioid treatment program (OTP) and the nearest OTP is not within reasonable driving distance from the jail. The presence of other illicit or controlled substances should not result in discontinuation of MOUD (consistent with the [2020 ASAM National Practice Guideline for the Treatment of Opioid Use Disorder](#)).

- d. Assessing for risk of acute withdrawal must be done upon intake. Assessing for opioid use disorder (OUD) absent a risk of acute withdrawal must also be done, but it may be done after intake, as long as the delay does not impair the ability to begin treatment prior to release. The incarcerated individual must be educated on treatment choices and the process for continuation of access to MOUD, during incarceration, and upon release. (See resources for validated tool suggestions.)
- e. Individuals entering the facility who are physically dependent on opioids, must be offered MOUD treatment; withdrawal (including withdrawal using buprenorphine or methadone) is not acceptable unless the patient provides an informed refusal of treatment or the patient elects MOUD treatment with naltrexone, in which case withdrawal is clinically required. Use of other medications (clonidine, anti-emetics, anti-diarrheals, analgesics) may be used as adjuncts or may be used in place of opioid agonist or partial agonist if the individual so chooses, but they may not be the only withdrawal treatment available.
- f. Methadone and buprenorphine must be administered daily or more frequently. Alternate-day ("Balloon") dosing of buprenorphine may be used in rare cases based on a clinical need, the decision for which is arrived at jointly between the healthcare provider and patient and is well-documented in the patient's medical record.
- g. Release planning and reentry coordination completed as soon as possible to ensure an effective plan is in place prior to release or in the event of an unexpected release of an incarcerated individual who needs continued treatment and services.
- h. Provide at least 2 doses of naloxone and naloxone administration training to all incarcerated individuals with OUD upon release.
- i. Schedule the first community appointment with a treatment facility.
- j. Provide – in hand upon release and at no cost to the individual – sufficient doses of MOUD to bridge patient until scheduled MOUD follow-up appointment at community treatment facility (does not apply to patients treated with injectable MOUD).
 - i. Individuals who are at risk of being released directly from court are informed, prior to going to court, that they may request to be transported back to the jail by staff to receive these medications prior to going home.
 - ii. In situations where an appointment cannot be made, e.g., after-hours bail-out, resident is given enough medication to last until the next available appointment at the community treatment facility. If that date is unknown, the individual is given a minimum of a 7-day supply.
 - iii. In situations where medications cannot be provided upon release, e.g., unscheduled release at a time when medical staff are not present in the jail, the individual is informed that he/she may either return to the jail in the morning to receive bridge medications or, if no medical staff are present the following day, will have a prescription for the same bridging medication called to a local pharmacy, at no cost to the individual.
- k. Ensure policies and procedures are in place to mitigate medication diversion.

3. Scope of Work Activities.

- a. Olympic Peninsula will achieve the core components of the MOUD program at the Clallam County Jail through the following activities:

- i. Purchase of MOUD, specifically buprenorphine, methadone, naltrexone, supplies and transportation costs. Purchasing and storage of all MOUD must follow the laws and rules pertaining to locked storage of controlled substances and any pharmacy or prescription laws that pertain.
- ii. Outreach/Substance Use Disorder Professional (1.0 FTE): the SUDP will offer all incarcerated individuals an in-jail OUD assessment, an OUD assessment will be completed for those that elect to participate. SUDP will provide assistance to the incarcerated individual in locating an appropriate placement for MOUD program upon release, assist in program evaluation and data collection, and assist the case manager with completing release plans for incarcerated individuals.
- iii. Intensive Case Manager (1.0 FTE): Assist individuals recently released from jail with following their release plans, making follow up appointments with MOUD providers and other goals identified in release plan, arrange for transportation or transporting released individuals to aftercare appointments and inpatient treatment as needed with follow-up.
- iv. Affordable Care Act (ACA) Navigator (0.05 FTE): 2 hours per week to assist uninsured incarcerated individuals to sign up for Medicaid and to assist recently released individuals to be reinstated. Work towards collaboration with the managed care organizations (MCOs) and services they may be able to provide.
- v. Jail Nursing Staff: estimating 14 additional nursing staff hours per week to administer medications and observe incarcerated individuals after dosing.
- vi. Physician (Prescriber): is necessary to meet with incarcerated individuals to start MOUD program and write prescriptions.
- vii. Work collaboratively with the University of Washington Addictions, Drug and Alcohol Institute (ADAI) technical assistance staff to identify training needs and participate in peer-to-peer and educational learning opportunities.

4. Data Collection.

- a. Participation requires performance monitoring activities, including requiring timely and accurate data reporting to the Health Care Authority, Division of Behavioral Health and Recovery (HCA DBHR). Further evaluation, including on- and off-site data collection may be conducted by HCA DBHR or a third-party.
- b. In FY2022 the contractor will submit a monthly report, template provided by HCA DBHR, by the 10th day of the month with the following information for the previous month:
 - i. -total # of bookings in the jail
 - ii. -# of individuals booked who were assessed for OUD (including those at risk and not at risk for acute withdrawal from opioids)
 - iii. -# of the individuals above who were started on MOUD immediately
 - iv. -# of the individuals above who were started on MOUD prior to release, but not immediately upon booking
 - v. -# of individuals booked who reported being currently on MOUD in the community
 - vi. -# of the individuals above for whom MOUD was continued without interruption

- vii. -# of individuals with OUD who were provided naloxone and naloxone training prior to release
- c. In FY2023 an evaluation of the program will require more data to be collected in order to establish the effectiveness of the program, highlight successes, and emphasize barriers and gaps so that program improvements can be made. This section will be amended for FY2023.

5. Contract Management/Accounting.

- a. Submit invoices for payment, ensure specific tools, such as job descriptions, policies and procedures, and statements of work, are developed, and staff are adequately trained on these tools, to ensure consistent and appropriate practice.
- b. Attend monthly meetings with HCA DBHR program administrator to discuss project contract requirements, compliance, problem-solving and attend trainings. Attend additional meetings as required or deemed necessary by the HCA DBHR program administrator.
- c. Contractor will cooperate with periodic site visits by the HCA DBHR program administrator or designee and make all relevant records and personnel available.
- d. Submit a Monthly Report as detailed in the Deliverables Table with the invoice to the HCA DBHR program administrator, including, but not limited to the number of individuals inducted and successfully transferred to local MOUD treatment, barriers and successes, technical assistance needs, staff changes, trainings and additional information as needed.

FY2022 Contract Deliverables Table			
Activity	Deliverable	Due Date	Payment
Submit monthly progress reports with A-19 invoice	Report must include: report described in Section 4b above, status of hiring staff, status of MOUD purchases and other supplies requested in the budget, core components (Section 2)	Monthly: Reports due on the 10 th of every month beginning with April 10, 2022.	Cost reimbursement of monthly incurred expenses. A-19 should be submitted monthly with the monthly report as deliverable. Total payment for March 1, 2022 – June 30, 2022 shall not exceed \$156,820
	being met or progress towards meeting the core components, barriers and successes, technical assistance and training participation, staff changes and additional information as needed.		

6. Billing and Payment.

- a. This contract total is for \$156,820 and is for services rendered between March 1, 2022 and June 30, 2022.
- b. Invoice System. The Contractor shall submit invoices using State Form A-19 Invoice Voucher, or such other form as designated by HCA. Consideration for services rendered shall be payable upon receipt of properly completed invoices which shall be submitted to the program administrator, Rachel Meade, Rachel.meade@hca.wa.gov, by the Contractor monthly. The invoices shall describe and document to HCA's satisfaction a description of the work performed, activities accomplished, the progress of the project, and fees. Payments shall be in accordance with delivery and approval of deliverables as outlined in the Deliverables Table.
- c. Payment. Payment shall be considered timely if made by HCA within thirty (30) days after receipt and acceptance by HCA of the properly completed invoices. Payment shall be sent to the address designated by the Contractor on page one (1) of this Contract. HCA may, at its sole discretion, withhold payment claimed by the Contractor for services rendered if Contractor fails to satisfactorily comply with any term or condition of this Contract.
- d. Claims for payment submitted by the Contractor to HCA for amounts due and payable under this agreement that were incurred prior to the expiration date shall be paid by HCA if received by HCA within 90 days after the expiration date.
- e. HCA shall not reimburse the Contractor for any fees and expenses which exceed the maximum consideration of this contract.



AGENDA ITEM SUMMARY

(Must be submitted NLT 3PM Wednesday for next week agenda)

26
3/22/22

Department: Sheriff

WORK SESSION ☒ **Meeting Date:** 03/14/22

REGULAR AGENDA ☒ **Meeting Date:** 03/22/22

Required originals approved and attached? ☒
Will be provided on:

Item summary:

- | | |
|---|---|
| ☐ Call for Hearing | ☒ Contract/Agreement/MOU - Contract # 816-14-01 Amendment #11 |
| ☐ Resolution | ☐ Proclamation ☒ Budget Item |
| ☐ Draft Ordinance | ☐ Final Ordinance ☐ Other |

Documents exempt from public disclosure attached: ☐

Executive summary:

Amendment #11 to the Correctional HealthCare Companies Inmate Healthcare Services contract for the performance period of 01/01/22 through 12/31/22. This Amendment adjusts the annual COLA amount for FY22, adds 14 hours per week additional Jail Medical nursing services to handle the enhancement of the Jail's medication assistance treatment program as per contract with Olympic Peninsula Community Clinic (OPCC), which will be reimbursed via that contract, and this Amendment adds 8 hours per week additional Jail Medical nursing services requested by the Sheriff's Office. The 8 hours per week additional hours are necessary to provide time for the RN performing administrative duties to handle program management needs.

There are no changes to the standard Terms and Conditions.

Budgetary impact: (If a budget action is required, has it been submitted and a copy attached?) ☒

Two budget change forms are submitted to cover the increases to this amended contract. A debatable emergency request is to increase the 00100.816 Jail Medical budget to cover the FY22 COLA adjustment and the additional 8 hours per week for Jail Medical nursing duties. A supplemental request is to increase the 00100.816 budget to cover the additional 14 hours per week for Jail medication assistance treatment program nursing services and the reimbursement from OPCC.

Recommended action:

The Sheriff's Office recommends approval by the Board and signature by the Chair.

County Official signature & print name: W.L. Benedict W.L. Benedict, Sheriff

Name of Employee/Stakeholder attending meeting: Don Wenzl, Chief Corrections Deputy

Relevant Departments: Sheriff's Office

Date submitted: 03/09/22

* Work Session Meeting - Submit 1 single sided/not stapled copy
** Regular Meeting - Submit 1 single sided/not stapled copy and originals (1 or 3 copies)

COPY

**ELEVENTH AMENDMENT TO THE AGREEMENT FOR INMATE HEALTH CARE
SERVICES AT CLALLAM COUNTY, WASHINGTON
(Effective January 1, 2022)**

This Eleventh Amendment, effective January 1, 2022 (this "Amendment"), to the Agreement for Inmate Health Care Services dated April 1, 2014, as amended (the "Agreement") is by and between Correctional Healthcare Companies, LLC ("CHC") and Clallam County, Washington ("County").

WHEREAS, the Agreement is set to expire on December 31, 2021 and the Parties wish to renew the Agreement for one additional year; and

WHEREAS, the Parties agree to increase compensation in accordance with an agreed upon percentage based on applicable Price Index figures; and

WHEREAS, the Parties have determined that it is necessary and in the best interest of Covered Persons to add 0.55 FTEs of Registered Nursing to the Agreement; and

WHEREAS, in accordance with Section 11.15, the Parties desire to amend the Agreement to memorialize such changes.

NOW, THEREFORE, in consideration of the mutual covenants herein contained and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. **RECITALS.** The Parties hereto incorporate the foregoing recitals as a material portion of this Amendment.
2. **AMENDMENT TO SECTION 8.0 OF THE AGREEMENT.** The Agreement shall be amended by deleting Section 8.0 in its entirety and inserting the following language in lieu thereof:

8.0 ANNUAL AMOUNT/MONTHLY PAYMENTS. The base annual amount to be paid by the County to CHC under this Agreement is \$403,270.88 for a period of 12 months, payable in equal monthly installments. The monthly installment in January and February shall equal \$28,722.04, pro-rated for any partial months and subject to any reconciliations as set forth below. Each monthly installment thereafter, beginning March 1, 2022, shall equal \$34,582.68, pro-rated for any partial months and subject to any reconciliations as set forth below. Each monthly installment is to be paid to CHC on or before the first day of the month of service.
3. **AMENDMENT TO EXHIBIT A OF AGREEMENT.** The Parties agree that the Staffing Matrix attached hereto as Exhibit A shall replace the previous Staffing Matrix attached to the Agreement as Exhibit A, effective March 1, 2022.
4. **SEVERABILITY.** If any terms or provisions of this Amendment or the application thereof to any person or circumstance shall to any extent be invalid or unenforceable, the remainder of this Amendment or the application of such term or provision to person or circumstances other than those as to which it is held invalid or unenforceable shall not be

affected thereby and each term and provision of this Amendment shall be valid and enforceable to the fullest extent permitted by law.

5. **DEFINITIONS.** Capitalized terms used but not defined herein shall have the meaning ascribed to them under the Agreement.
6. **REMAINING PROVISIONS.** The remaining provisions of the Agreement not amended by this Amendment shall remain in full force and effect.

IN WITNESS WHEREOF, the Parties have caused this Amendment to be executed in their names or their official acts by their respective representatives, each of whom is duly authorized to execute the same.

AGREED TO AND ACCEPTED AS STATED ABOVE:

**COUNTY OF CLALLAM,
WASHINGTON**

**CORRECTIONAL HEALTHCARE
COMPANIES, LLC**

By: _____

Name: Mark Ozias

Title: Chair of the Board

DocuSigned by:
Justin Searle
3F7F2B2BE96B489...

Name: Justin Searle

Title: President, Local Government West Division

By: _____

Name: William Benedict

Title: Sheriff

Approved as to form only:

By: N/A

Name: _____

Title: _____

Exhibit A

Clallam County, WA									
Title	Mon	Tue	Wed	Thu	Fri	Sat	Sun	Hrs/WK	FTE
Days									
Health Service Administrator (RN)	10	10	10	10				40	1
Registered Nurse (RN)	8				12	12	12	44	1.1
TOTAL HOURS/FTE-Day								84	2.1
Evening									
Registered Nurse (RN)	8	10	10	10				38	0.95
TOTAL HOURS/FTE-Evening		10						38	0.95
TOTAL								84	2.1

Correctional Healthcare Companies, LLC

A Wellpath Company

February 22, 2022

Don Wenzl
Clallam County Sheriff's Office
223 East 4th Street, Suite 12
Port Angeles, WA 98362

COPY

RE: Continued Inmate Health Services 2022

Dear Chief Wenzl,

As the proud provider of medical care services for Clallam County, Correctional Healthcare Companies, LLC (CHC) is excited to renew our commitment to provide quality healthcare in the upcoming year.

Following recent conversations, we have prepared a price proposal to add 14 hours of Registered Nursing hours for the Substance Use Disorder (SUD) project. In addition to these added hours, we request to add an additional 8 hours per week of Registered nurse for a total of 22 hours per week. These added hours will allow the Health Service Administrator (HSA) to focus on her administrative duties.

Position	FTE Change	Hours	Monthly	Annual
Registered Nurse	0.2	8	\$2,116.54	\$25,398.48
Registered Nurse (SUD)	0.35	14	\$3,744.10	\$44,929.20
Total	0.55	22	\$5,860.64	\$70,327.68

Staffing and Cost Overview

The following staffing matrix illustrates the newly proposed staffing.

Clallam County, WA									
Title	Mon	Tue	Wed	Thu	Fri	Sat	Sun	Hrs/WK	FTE
Days									
Health Service Administrator (RN)	10	10	10	10				40	1
Registered Nurse (RN)	8				12	12	12	44	1.1
TOTAL HOURS/FTE-Day								84	2.1
Evening									
Registered Nurse (RN)	8	10	10	10				38	0.95
TOTAL HOURS/FTE-Evening								38	0.95
TOTAL								84	2.1

Correctional Healthcare Companies, LLC

A Wellpath Company

Effective January 1, 2022 through February 28, 2022 the monthly billing is \$28,722.04. Beginning March 1, 2022 the compensation will increase to \$34,582.68 monthly, resulting a total base compensation amount of 403,270.88 annually for the contract term beginning January 1, 2022 and ending December 31, 2022.

	Monthly	Annually
Base Compensation	\$28,722.04	\$344,664.48
Staffing Increase*	\$5,860.64	\$70,327.68
Total Compensation	\$34,582.68	\$403,270.88

* Effective date March 1, 2022, Annual amount calculated by 10 months

If the County accepts this proposal, please return a signed copy of the enclosed Eleventh Amendment, to Stephanie Vardell, Sr. Retention Specialist, at sdvardell@wellpath.us.

We thank you for your consideration and this opportunity and look forward to discussing the information presented above. Should you have any questions, please do not hesitate to contact Chris Lamb, Regional Director of Operations, at 720-219-2902.

Warm regards,



Damon Kinton

Regional Vice President

Cc: Chris Lamb, Regional Director of Operations
Adolfo Cisnero, MPH, CCHP, Senior Director of Contract Retention

Correctional Healthcare Companies, LLC

A Wellpath Company

The undersigned is authorized by Clallam County to accept the enclosed terms

Authorized Clallam County Representative

Date Signed

Print Name

Title

PLEASE NOTE: Final delivery of the contract amendment will be via email. If hard copies with original signatures are required, please indicate the number of copies needed: ____

CLALLAM COUNTY BUDGET CHANGE FORM

COPY



Date Submitted: 03/09/2022

Budget Hearing/Meeting Date: 04/26/2022

- ☐ **Supplemental Appropriation** – increased expenditures due to unanticipated federal, state, or local funds
☒ **Debatable Emergency** – public emergency other than a non-debatable emergency which could not reasonably have been foreseen at the time of making the budget, requiring the expenditure of money not provided for in the budget.
☐ **Non-debatable Emergency** – for the relief of a stricken community requiring immediate address; to meet mandatory expenditures required by law
☐ **Budget Revision** – transfers or revisions within departments
☐ **Reduction of Budget** – a reduction in revenues and/or expenditures

Budget Number xxxxx.xxx	00100.816	Budget Name	Sheriff - Jail Medical
-------------------------	-----------	-------------	------------------------

REVENUE/SOURCE

BUDGET NUMBER xxxxx-xxx	DEPT NAME	BARS NUMBER xxxxx.xx.xxxx	ACCOUNT DESCRIPTION	AMOUNT
00100.293	General Fund Reserves	50800.00.0000	Ending fund Balance	\$ 25,399
Total				\$ 25,399

EXPENDITURES

BUDGET NUMBER xxxxx-xxx	DEPT NAME	BARS NUMBER xxxxx.xx.xxxx	ACCOUNT DESCRIPTION	AMOUNT
00100.816	Sheriff - Jail Medical	52360.41.0020	Professional Services	\$ 25,399
Total				\$ 25,399

Revenue/Source and Expenditure totals must agree.

REASON FOR BUDGET ACTION:

To cover increased costs for FY2022 COLA adjustment and an additional 8 hours per week of Jail nursing services as per Amendment #11 to the Correctional Healthcare Services Agreement for Inmate Health Care Services.

County Official Approval: WJ Benedict
 (Obtain Budget Office Approval Prior to Submission to Clerk of the Board)

CLALLAM COUNTY BUDGET CHANGE FORM

COPY



Date Submitted: 03/09/2022

Budget Hearing/Meeting Date: 04/26/2022

- ☒ **Supplemental Appropriation** – increased expenditures due to unanticipated federal, state, or local funds
- ☐ **Debatable Emergency** – public emergency other than a non-debatable emergency which could not reasonably have been foreseen at the time of making the budget, requiring the expenditure of money not provided for in the budget.
- ☐ **Non-debatable Emergency** – for the relief of a stricken community requiring immediate address; to meet mandatory expenditures required by law
- ☐ **Budget Revision** – transfers or revisions within departments
- ☐ **Budget Reduction** – a reduction in revenues and/or expenditures

Budget Number xxxxx.xxx.	00100.816	Budget Name	Sheriff – Jail Medical
--------------------------	-----------	-------------	------------------------

REVENUE/SOURCE

BUDGET NUMBER	DEPT NAME	BARS NUMBER	ACCOUNT DESCRIPTION	AMOUNT
00100.816	Sheriff – Jail Medical	34230.00.0090	Medical Reimbursement	71,630
				71,630

EXPENDITURES

BUDGET NUMBER	DEPT NAME	BARS NUMBER	ACCOUNT DESCRIPTION	AMOUNT
00100.816	Sheriff – Jail Medical	52360.10.0010	Regular Time	24,000
		52360.10.0600	Extra Help	700
		52360.20.0020	Benefits	2,000
		52360.41.0020	Professional Services	44,930
				71,630

Revenue/Source and Expenditure totals must agree.

REASON FOR BUDGET ACTION:

To fund 14 hours per week additional Jail medical nursing services provided by Correctional HealthCare contract, 4 hours per week for County Jail medical doctor services and Sheriff's Office administrative staff hours associated with the expansion of the Jail's medication assistance treatment program. Additional costs will be reimbursed via contract with Olympic Peninsula Community Clinic (OPCC) using funding from Washington State Health Care Authority (HCA).

County Official Approval: _____

A handwritten signature in cursive script, appearing to read "W. Benedict".

(Obtain Budget Office Approval Prior to Submission to Clerk of the Board)



AGENDA ITEM SUMMARY

(Must be submitted NLT 3PM Wednesday for next week agenda)

2C
3/22/22

Department: Finance

WORK SESSION ☒ **Meeting Date: March 14, 2022**

REGULAR AGENDA ☒ **Meeting Date: March 22, 2022**

Required originals approved and attached? ☒
Will be provided on:

Item summary:

- | | | |
|---|--|--------------------------------------|
| ☐ Call for Hearing | ☒ Contract/Agreement/MOU - Contract # 19961.21.006 | |
| ☐ Resolution | ☐ Proclamation | ☐ Budget Item |
| ☐ Draft Ordinance | ☐ Final Ordinance | ☐ Other |

Documents exempt from public disclosure attached: ☐

ARPA DIRECT GRANT ASSISTANCE AGREEMENT BETWEEN CLALLAM COUNTY AND SEQUIM FOOD BANK

GRANT FUNDING BACKGROUND

In May 2021, the County was awarded \$15,020,640 of federal stimulus funding from the Coronavirus State Fiscal Recovery Fund and the Coronavirus Local Fiscal Recovery Funds ("ARPA Funds") under Section 603(b) of the Social Security Act, as amended by Section 9901 of the American Rescue Plan Act ("ARPA Act"). The County received the first half of these funds on May 28, 2021, with the 2nd half of these funds to be disbursed to the County by the US Treasury one year thereafter.

As outlined in the AARPA Interim Final Rule and FAQ guidance provided by the U.S. Treasury, ARPA Funds can be utilized in support of the following purposes:

- (1) To respond to the COVID-19 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;
- (2) To respond to workers performing essential work during the COVID-19 public health emergency by providing premium pay to eligible workers;
- (3) 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;
- (4) To make necessary investments in water, sewer, or broadband infrastructure; and

* Work Session Meeting - Submit 1 single sided/not stapled copy ARPA Clallam Direct Grant Assistance Agreement--Sequim Food Bank
03-22-22

** Regular Meeting - Submit 1 single sided/not stapled copy and originals (1 or 3 copies)

Revised: 3-04-2019

Questions? Call Loni Gores, Clerk of the Board, ext 2256

(5) To address the disparate impact of COVID-19 on certain populations and geographics, additional eligible services may include:

- a. Addressing health disparities and the social determinants of health, including community health workers, public benefits navigators, remediation of lead paint or other lead hazards, and community violence intervention programs;
- b. Building stronger neighborhoods and communities, including supportive housing and other services for individuals experiencing housing or food insecurity, development of affordable housing, and housing vouchers and assistance relocating to neighborhoods with higher levels of economic opportunity;
- c. Addressing educational disparities exacerbated by COVID-19, including: early learning services, increasing resources for high-poverty school districts, educational services like tutoring or afterschool programs, and supports for students' social, emotional, and mental health needs; and
- d. Promoting healthy childhood environments, including: child care, home visiting programs for families with young children, and enhanced services for child welfare-involved families and foster youth

During the July 6, 2021 Continued Work Session with BOCC, the BOCC identified eight priority areas that they indicated support for allocating ARPA Funds to, including:

- Local Small Business and Non Profit Economic Assistance;
- Assistance to Businesses and Non Profits that provide Child Care Services;
- Mental/Behavioral Health;
- Food Security Support to Local Food Banks;
- Affordable Housing/Homelessness Support;
- Residential and Commercial Utility Relief;
- Local Water Systems Infrastructure; and
- Broadband

Based on discussions held during this Work Session in which food security support requests from various food bank entities including Port Angeles Food Bank, Sequim Food Bank, Forks Community Food Bank, and New Hope Food Bank of Clallam Bay were discussed, the BOCC approved the initial granting of \$700,000 of ARPA-funded directed toward supporting food banks in Clallam County. In a follow up work session, this amount funding was increased to \$1,883,950. On November 29, 2021, a BOCC work session discussion was held to revisit ARPA funding support to provide to food banks in the County, where Emily Dexter, Executive Direct of PA Food Bank, reiterated its need for \$1,348,000 ARPA funding to help financially support the needed infrastructure renovations that were underway and nearing completion to its new leased facility and funding to support staff retention efforts.

Below is a recap of the operational impacts incurred by Sequim Food Bank during the COVID-19 pandemic and the resulting needs.

* Work Session Meeting - Submit 1 single sided/not stapled copy ARPA Clallam Direct Grant Assistance Agreement--Sequim Food Bank
03-22-22

** Regular Meeting – Submit 1 single sided/not stapled copy and originals (1 or 3 copies)

Revised: 3-04-2019

SEQUIM FOOD BANK—NOTABLE FACTS AND THE OPERATIONAL IMPACT OF THE COVID-19 PANDEMIC ON THE FOOD BANK'S SERVICES

- Since March 2020 when the COVID-19 emergency began, the number of households seeking food assistance from the Recipient increased significantly, with client visits climbing from 12,000 in 2018/2019 to over 20,000 in 2020 and 14,300 in 2021;
- As a result of the increased demand for food assistance during the COVID-19 emergency, the Recipient has experienced a significant expansion of food aid coming into Clallam County from other food assistance agencies, including NW Harvest, Food Lifeline, and USDA (The Emergency Food Assistance Program) and from local community donations. Food received, sorted, stored and distributed by the Recipient increased from 676,423 meals in 2019, to 1,176,185 meals in 2020 and 764,638 meals in 2021. This increased supply of provided food overwhelmed the storage space of the Recipient's facility;
- Because of public health safety protocols in place during the COVID-19 emergency requiring social distancing combined with the increase of community members experiencing food insecurities, the Recipient added community COVID-19 food distributions at Carrie Blake Community Park from the period of June 2020 to June 2021. The recipient worked closely with the City of Sequim and Fire District 3 to distribute emergency food and supplies to families at the park in Sequim. These community food distribution events were drive-thru only and took place weekly from June 2020 thru September 2020, bi-monthly beginning in October 2020 to March 2021, and then monthly from April 2021 to June 2021. The added drive-thru community distribution at the park was in addition to their normal distribution days at the Food Bank;
- The lack of adequate permanent food storage and the reliance on multiple onsite and offsite dry and cold storage containers created an inefficiency in services, generated food waste and resulted in the Recipient having to turn down food contributions;
- The permanent use of onsite CONEX style storage containers put in place by the Recipient to accommodate the significant increase in food storage demands are not permissible under the city code, however, the City of Sequim granted the Recipient a short-term waiver to allow the use of storage containers. The Recipient is operating within a tight timeline to identify and implement a permissible storage solution and remove the unpermitted onsite containers from the property while preserving the ability to store an adequate supply of food in an efficient and effective manner while continuing to accept donations;
- As a result of this significant increase in food assistance demand being facilitated by the Recipient, the much more labor intensive demands of storing, preparing, and distributing food/emergency supplies, and the need to increase wages and benefits closer to market rate in order to retain its employees given increased work demands, the Recipient's FTE and total payroll costs increased. Staffing increased from one FTE and three part-time positions in 2019 to four FTEs and one part-time employee in 2020. The increased staffing needs has continued into 2021 and 2022;

* Work Session Meeting - Submit 1 single sided/not stapled copy ARPA Clallam Direct Grant Assistance Agreement--Sequim Food Bank
03-22-22

** Regular Meeting – Submit 1 single sided/not stapled copy and originals (1 or 3 copies)

Revised: 3-04-2019

- In order to avoid turning away additional food aid, prevent city code enforcement action being taken and leading to the loss of storage space, in 2021 the Recipient commenced a capital project to expand the existing facility to be more suitable for the Recipient's increased operational needs during the pandemic, including the construction of a new storage facility on a vacant lot adjacent to their current location. The proposed building parcel is located at 154 W. Alder St. and is owned by the Recipient. Once completed, this storage facility will allow the Recipient to have the storage capacity for all food in one location, the capability to support emergency food assistance in the Sequim operational area and continue supporting the community needs during the COVID-19 public health emergency while meeting social distancing and safety requirements for staff and the public;
- As a result of the financial and operational demands placed on the Recipient during the pandemic as outlined above, the Recipient is requesting \$185,950 of ARPA assistance from the County, with \$35,950 to be utilized for incremental personnel and retention costs and \$150,000 to be utilized in support of pre-construction costs of the planned new storage facility.

As outlined below, the County believes the provision of economic support under ARPA to Sequim Food Bank is appropriate and proportional to the need given:

- The substantial increase in food assistance needs in Clallam County during the COVID-19 pandemic;
- the Recipient's critical role in providing food security assistance to impacted, vulnerable residents of the Sequim area within Clallam County;
- the Recipient's need to remain competitive in the job market to retain employees and offer fair wages and benefits;
- the Recipient's need to build a new storage facility to support the dramatic increase in demand and food aid flowing through the Recipient's operations during the COVID-19 public health emergency and transition away from the current multiple offsite and onsite storage facilities causing operational inefficiencies and food to be turned away or wasted and;
- The eventual enforcement of the city code that prohibits the use of permanent storage containers currently located on the Recipient's property.

WRITTEN JUSTIFICATION REQUIREMENT—FOR ALL ARPA CAPITAL EXPENDITURE PROJECTS OF \$1 MILLION OR MORE

As covered in the attached Written Justification which the County is required to prepare for all ARPA-funded capital expenditure projects of \$1 million or greater, the US Treasury requires that the written justification must contain three components:

- A Description of the harm or need to be addressed, including why the harm was exacerbated or caused by the COVID-19 public health emergency;

* Work Session Meeting - Submit 1 single sided/not stapled copy ARPA Clallam Direct Grant Assistance Agreement--Sequim Food Bank
03-22-22

** Regular Meeting – Submit 1 single sided/not stapled copy and originals (1 or 3 copies)

Revised: 3-04-2019

- An Explanation of why a capital expenditure is appropriate, with emphasis placed on why existing equipment and facilities, policy changes or additional funding to programs or services would be inadequate; and
- A Comparison of the proposed capital project against at least two alternative capital expenditures and a demonstration of why the proposed capital expenditure is the superior choice to the other alternatives.

As covered in the Written Justification, we believe the aforementioned impacts of the COVID public health emergency on Sequim Food Bank, the resulting needs created, and the course of action selected by the Recipient based on analysis of the alternatives considered by Sequim Food Bank, all satisfy the criteria required within the County's written justification and support the provision of ARPA funds to be reasonable and appropriate to address these needs.

WHAT THE ARPA FUNDS WILL BE USED FOR

This \$185,950 of ARPA Direct Assistance Grant funding will be provided to Sequim Food Bank on a reimbursement basis and must be utilized by Sequim Food Bank no later than December 31, 2024. All costs to be reimbursed must have been incurred between March 1, 2020 and December 31, 2024 and meet the following eligibility criteria:

(1) Pre-Construction Costs

Funds totaling up to \$150,000 are to be used for pre-construction costs of the new storage facility at 154 W Alder St, the vacant lot adjacent to the current food bank to be incurred from March 1, 2020 thru December 31, 2024.

Pre-construction costs may include:

- Architectural work to design a 3,000 sq. ft. facility to be used for the dry and cold food storage;
- Surveying;
- Contracting; and
- Permitting

(1) Staff Retention Costs

Funds totaling up to \$35,950 may be used to reimburse for the incremental personnel costs incurred by the Recipient from March 1, 2020 thru December 31, 2024 as a result of the substantial increase in food assistance processed by the Recipient and the operational staffing changes made in response to the COVID-19 public health emergency. These costs include regular salaries, wages and benefit costs for staff added during the pandemic.

* Work Session Meeting - Submit 1 single sided/not stapled copy ARPA Clallam Direct Grant Assistance Agreement--Sequim Food Bank 03-22-22

** Regular Meeting – Submit 1 single sided/not stapled copy and originals (1 or 3 copies)

Revised: 3-04-2019

Budgetary impact: (Is there a monetary impact? If so, are funds for this already allocated or is a budget change necessary? If this is a contract and a budget change is necessary, the budget change form must be submitted with the item at work session and for the regular agenda) **If a budget action is required, has it been submitted and a copy attached?** ☐

Approval of this contract will authorize the release of \$185,950 of ARPA funds from the American Rescue Plan Act special revenue fund to Sequim Food Bank on a reimbursement basis for eligible expenses incurred and submitted for reimbursement by Sequim Food Bank.

Recommended action: (Does the Board need to act? If so, what is the department's recommendation?)

We request the Commissioner's approval to proceed in submitting this agreement for approval during the next BOCC meeting scheduled on Tuesday March 22, 2022.

County Official signature & print name: Chelsea Millar Chelsea Millar

Name of Employee/Stakeholder attending meeting: _____ Chelsea Millar _____

Relevant Departments: _____ Finance, BOCC _____

Date submitted:

* Work Session Meeting - Submit 1 single sided/not stapled copy ARPA Clallam Direct Grant Assistance Agreement--Sequim Food Bank
03-22-22

** Regular Meeting – Submit 1 single sided/not stapled copy and originals (1 or 3 copies)

Revised: 3-04-2019



MARK OZIAS, District 1, Chair
RANDY JOHNSON, District 2
BILL PEACH, District 3

Board of Clallam County Commissioners

223 East 4th Street, Suite 4
Port Angeles, WA 98362-3015
360.417.2233 Fax: 360.417.2493
Email: commissioners@co.clallam.wa.us

RICH SILL, County Administrator

March 9, 2022

TO: ARPA Coronavirus State & Local Fiscal Recovery Funds Files of Clallam County

RE: Written Justification for Sequim Food Bank Capital Expenditure ARPA Request of \$150,000 for Pre-Construction costs for its New Storage Facility

BACKGROUND

Pursuant to guidance included in the Final Rule issued on Thursday, January 6, 2022 by the US Department of the Treasury governing the Coronavirus State & Local Fiscal Recovery Funds made available under the American Rescue Plan Act ("ARPA"), the County as a recipient of ARPA funds is required to prepare a written justification for all capital expenditures equal to or greater than \$1 million. Such a capital expenditure justification must contain three components:

- A Description of the harm or need to be addressed, including why the harm was exacerbated or caused by the COVID-19 public health emergency;
- An Explanation of why a capital expenditure is appropriate, with emphasis placed on why existing equipment and facilities, policy changes or additional funding to programs or services would be inadequate; and
- A Comparison of the proposed capital project against at least two alternative capital expenditures and a demonstration of why the proposed capital expenditure is the superior choice to the other alternatives.

As outlined in the ARPA Direct Grant Assistance Agreement between Clallam County and the Sequim Food Bank (the "Recipient"), the Recipient has requested \$185,950 in ARPA Funds, of which \$150,000 will be used to help pay for pre-construction costs on a current vacant lot, 154 W Alder St in Sequim, Washington owned by Sequim Food Bank and adjacent to their existing Food Bank location at 144 W Alder St in Sequim, Washington.

The pre-construction costs on this vacant lot for the proposed new storage facility will include:

- Architectural work to design a 3,000 sq. ft. facility to be used for the dry and cold food storage;
- Surveying;
- Contracting; and
- Permitting

Upon evaluation of the underlying drivers behind this request, review of eligibility guidelines contained within both the US Treasury Interim Final Rule and the Final Rule, and based on the written justification outlined below, the County's staff believes there is sufficient justification for the County to proceed in funding this \$150,000 capital request from the Recipient from the County's ARPA Funds as documented below:

SECTION 1—DESCRIPTION OF THE HARM NEEDING TO BE ADDRESSED BY THIS CAPITAL EXPENDITURE

The Recipient, a Clallam County non-profit organization that operates a food bank serving residents of Sequim and surrounding areas within Clallam County who are experiencing food insecurity during the COVID-19 public health emergency, has witnessed a significant increase in Clallam County households seeking food assistance in its service area during the COVID-19 public health emergency.

Notable impacts of the COVID-19 emergency on the Recipient's food bank services include:

- Since March 2020 when the COVID-19 emergency began, the number of households seeking food assistance from the Recipient increased significantly, with client visits climbing from 12,800 in 2018/2019 to over 22,000 in 2020 and 16,000 in 2021;
- As a result of the increased demand for food assistance during the COVID-19 emergency, the Recipient has experienced a significant expansion of food aid coming into Clallam County from other food assistance agencies, including NW Harvest, Food Lifeline, and USDA (The Emergency Food Assistance Program) and from local community donations. Food received, sorted, stored and distributed by the Recipient increased from 676,423 meals in 2019, to 1,176,185 meals in 2020 and 764,638 meals in 2021, an increase of 58% between 2019 and 2020 and 13% between 2020 and 2021. This increased supply of provided food overwhelmed the storage space of the Recipient's facility;
- Because of public health safety protocols in place during the COVID-19 emergency requiring social distancing combined with the increase of community members experiencing food insecurities, the Recipient added community COVID-19 food distributions at Carrie Blake Community Park from the period of June 2020 to June 2021. The recipient worked closely with the City of Sequim and Fire District 3 to distribute emergency food and supplies to families at the park in Sequim. These community food distribution events were drive-thru only and took place weekly from June 2020 thru September 2020, bi-monthly beginning in October 2020 to March 2021, and then monthly from April 2021 to June 2021. The added drive-thru community distribution at the park was in addition to their normal distribution days at the Food Bank;
- The lack of adequate permanent food storage and the reliance on multiple onsite and offsite dry and cold storage containers created an inefficiency in services, generated food waste and resulted in the Recipient having to turn down food contributions;
- The permanent use of onsite CONEX style storage containers put in place by the Recipient to accommodate the significant increase in food storage demands are not permissible under the city code, however, the City of Sequim granted the Recipient a short-term waiver to allow the use of storage containers. The Recipient is operating within a tight timeline to identify and implement a permissible storage solution and remove the unpermitted onsite containers from the property while preserving the ability to store an adequate supply of food in an efficient and effective manner while continuing to accept donations;

- As a result of this significant increase in food assistance demand being facilitated by the Recipient, the much more labor intensive demands of storing, preparing, and distributing food/emergency supplies, and the need to increase wages and benefits closer to market rate in order to retain its employees given increased work demands, the Recipient's FTE and total payroll costs increased. Staffing increased from one FTE and three part-time positions in 2019 to four FTEs and one part-time employee in 2020. The increased staffing needs has continued into 2021 and 2022;
- In order to avoid turning away additional food aid, prevent city code enforcement action being taken and leading to the loss of storage space, in 2021 the Recipient commenced a capital project to expand the existing facility to be more suitable for the Recipient's increased operational needs during the pandemic, including the construction of a new storage facility on a vacant lot adjacent to their current location. The proposed building parcel is located at 154 W. Alder St. and is owned by the Recipient. Once completed, this storage facility will allow the Recipient to have the storage capacity for all food in one location, the capability to support emergency food assistance in the Sequim operational area and continue supporting the community needs during the COVID-19 public health emergency while meeting social distancing and safety requirements for staff and the public;
- As a result of the financial and operational demands placed on the Recipient during the pandemic as outlined above, the Recipient is requesting \$185,950 of ARPA assistance from the County, with \$35,950 to be utilized for incremental personnel and retention costs and \$150,000 to be utilized in support of pre-construction costs of the planned new storage facility.

SECTION 2—EXPLANATION OF WHY CAPITAL EXPENDITURE IS APPROPRIATE

As discussed in Section 1, the existing facility is not suitable to continue to address the Recipient's immediate needs for significantly more storage space to handle the increase in food aid flowing to the Recipient to support their ongoing needs as a food bank during the COVID-19 pandemic in order to properly and efficiently serve the community. With the increase in food assistance from the community and State Programs, food is occasionally turned away due to a lack of storage space. Their current onsite and offsite storage containers are not permissible structures and have created inefficiencies. As increased demand created by the COVID-19 emergency continues, a larger efficient storage solution is required to support the food assistance needs of the community while eliminating food waste.

To make the current facility more suitable for the Recipient's increased operational needs during the pandemic, the Recipient commenced a capital project for the construction of a new storage facility on the vacant lot adjacent to their current location. Once completed, these renovations will enable the Recipient to have an onsite facility for their dry and cold storage, an in-kind donation receiving area and a sorting and packing area. The Recipient will be able to return to in-person shopping for individuals and families and shutdown the drive-thru model they have adopted for the COVID-19 pandemic due to the former market pace being converted to dry storage and no longer needing to turn away food donations due to lack of space.

SECTION 3—COMPARISON OF PROPOSED CAPITAL PROJECT AGAINST ALTERNATIVES

The Recipient researched and analyzed potential options and concluded that building a new storage facility on the adjacent lot to the existing food bank represents the superior choice to the alternatives considered in order to proportionally address the needs of the Recipient to operate effectively and meet the community food assistance needs during the COVID-19 pandemic.

**"Evaluation of Sequim Food Bank Options – February 2022—Prepared by Andra Smith,
Executive Director, Sequim Food Bank"**

Facility Needs:

1. Centrally located facility within Sequim City limits, adequate parking, on a bus line, and with easy access by vehicles and pedestrians (Exists at current location)
2. Approximately 3,000 sqft storage area to include a combination:
 - Dry and cold storage
 - In-Kind donation receiving area
 - Sorting and packing area
3. Approximately 1,800 sqft 'retail' area for in-person distribution shopping (Exists at current location)
4. Approximately 1,500 sqft administrative and operational offices (Exists at current location)

OPTION 1 – Build 3,000 sqft storage facility at 154 W Alder (lot adjacent to Food Bank)

Sequim Food Bank owns both 144 W. Alder Street (the current location of the food bank) and 154 W. Alder, the adjacent lot. The Food Bank has been located at 144 W. Alder for approximately 30 years. It is an ideal location for the food bank and allows for easy access for its visitors. It is located within the City of Sequim, is one block from the high school, two blocks from the Clallam County Transit Center, and three blocks from the Boys & Girls Club. In addition, it is located within walking distance to the main streets in Sequim, namely Washington Avenue, Sequim Avenue, and 5th Avenue.

Building the proposed steel building for additional storage on the adjacent lot would allow us to continue operations with little or no disruption and it could be easily integrated into the current food bank. The Food Bank owns the property and so would incur not expenses associated with the purchase or lease of another property.

Assuming an average cost per square foot to construct a suitable building to meet the current needs for the facility at an average cost of \$350 per square foot, the estimated cost of building a new facility is as follows:

Pre-Construction- Costs to be funded by ARPA	\$150,000
Construction Cost of Structure (3,000 sqft @ \$350/sq ft)	\$1,050,000
Furniture, fixtures, and equipment	\$200,000
Contingency (15%)	\$187,500

Estimated Cost to Build	\$1,587,500
--------------------------------	--------------------

Estimated Time required to build: 12 months

Constructing a storage facility on 154 W. Alder Street will be the highest utilization of our existing assets. It would add value to the Sequim Food Bank property, will create an efficient workflow, and will be more cost effective for the organization.

OPTION 2 – Purchase Off-Site Storage Facility in Sequim City Limits

At this time, there are no commercial properties available in Sequim that meet the needs and requirements for an additional storage facility. Local realtors have reported that it is unlikely that the food bank would be able to find a property of that type to purchase.

The need for the storage capacity is immediate and it could be years before a property becomes available (if at all).

Locating a storage facility off-site from the existing food bank would require costs of buildout of new facility, purchase of additional cold storage and equipping the storage facility. The food bank would need to duplicate the equipment, staffing and administrative office for warehouse personnel. For example, at the off-site storage facility Sequim Food Bank would need staff who are qualified to operate a forklift and drive a box truck. This staff member would need to be on-site during business hours to accept deliveries, sort and shelve the food. This staff member would also pull necessary food to be transported to the current food bank location for distribution. There will need to be a staff person available to transport food to the food bank in case we run out of food during distribution. In addition, Sequim Food Bank would need administrative support for warehouse staff. Having a second facility would require more staff to cover the additional responsibilities that come with increased off-site capacity. With the additional offices, the food bank would need a minimum of 4,500 sq ft. In addition, we would need to purchase an additional vehicle to shuttle food from the warehouse to the distribution area multiple times a day. The estimated cost of purchasing and renovating an existing off-site building into storage space:

Purchase of Facility (if available)	\$675,000
Buildout to meet needs (estimated) (dock, walk-in refrigerator, walk-in freezer and office)	\$850,000
Furniture, fixtures and Equipment	\$200,000
Purchase of truck and warehouse equipment (forklift, pallet jack, tools, etc.)	\$150,000
Contingency (15%)	\$281,250
Estimated Cost to purchase and equip off-site storage	\$2,156,250

Estimated time for this option: 5 years

*In addition, this option would require us to hire two additional personnel for the second facility adding \$80,000 annually to our budget

Purchasing an off-site property will tie up capital and limit our ability to cost effectively operate the Sequim Food Bank. Sequim Food Bank needs more storage immediately and this option would not satisfy that need.

OPTION 3 – Purchase Property and move the entire Sequim Food Bank operations to a new location in Sequim City Limits

As stated above, there are currently no commercial properties available in Sequim that meet the needs and requirements for the Sequim Food Bank. Local Realtors have reported that it is unlikely that the food bank would even be able to find a property to meet the above requirements to purchase or raw land to build.

The need for the facility is immediate and it could be years before a property becomes available (if at all)

Moving the Sequim Food Bank operations to a new location would have similar expenses as Option 2, only much greater. The Food Bank would need a *minimum* of 6,300 sq ft with the same location requirements - centrally located facility within Sequim City limits, adequate parking, on a bus line, and easy access by vehicle and walking. In addition, the Food Bank would have to sell property it already owns that has enough space to add the proposed 3,000 sq ft storage facility. Option 3's potential costs:

Purchase of Facility (if available)	\$945,000
Buildout to meet needs (estimated)	\$1,260,000
Furniture, fixtures and Equipment (estimated)	\$305,000
Purchase warehouse equipment (forklift, pallet jack, tools, etc.)	\$150,000
Contingency (15%)	\$399,000
Estimated Cost to purchase and equip New Facility	\$3,059,000
Less: Estimated Proceeds from Sale of Existing building and vacant lot	(\$425,000)
Net Estimated Cost to Move Sequim Food Bank to New Location	\$2,634,000

Estimated time for this option: 5+ years

The need for the facility is immediate and it could be years before a property becomes available (if at all)

**COUNTY STAFF COMMENTS/CONCLUSION REGARDING COMPARISON OF
ALTERNATIVES TO OPTION 1:**

Based on evaluation of the options facing the Recipient during the COVID-19 pandemic, we concur with the Recipient's assessment that the most cost effective, practical, and proportionate to the need option for the Recipient to pursue in addressing the overwhelming increase of food assistance flowing to the County to meet food security needs of households experiencing food insecurity during the COVID-19 public health emergency is electing to pursue Option 1— Build 3,000 sqft storage facility at 154 W Alder (the lot adjacent to and owned by the Recipient).

In reviewing **Option 1— Build 3,000 sqft storage facility at 154 W Alder (the lot adjacent to and owned by the Recipient)** we concur that it will provide the Recipient the relief for much needed additional dry and cold food storage capacity to handle the increase of food aid arriving and being donated during the COVID-19 pandemic. By remaining in the existing location, the Sequim Food Bank will continue to accommodate the increased flow of customers utilizing the food bank since the current location is within walking distance of many neighborhoods and main roads, close to schools and on a bus route. This option will also reduce staff and volunteer burnout because adequate storage at the centralized location will eliminate the need to continually go on and offsite to rearrange food being stored in various storage containers or outbuildings on the property. In the new storage facility dry and cold food storage will be centralized in one location, there will be an in-kind donation receiving area and a sorting and packing area. Finally, this option will take less time to complete, will be the least disruptive to the Food Bank, and is the most economical option presented.

Option 2 – Purchase Off-Site Storage Facility in Sequim City Limits was an inferior option given the lack of current storage facilities available on the real estate market located within Sequim city limits and the increased financial burden the food bank would endure due to renovations. The

estimated 5 year timeframe would not immediately solve the current issues they are facing with food supply storage. The Food Bank would likely face higher costs than estimated due to the increasing cost in building materials, supply chain disruptions and the high demand for contractors in the area. This option would also increase staff and volunteer burnout due to numerous trips between both facilities several times a day to shuttle food from the storage facility to the food bank. This option would also require the food bank to hire additional staff creating another financial burden that is not immediately addressing the issue they of food security.

Option 3 - Purchase Property and move the entire Sequim Food Bank operations to a new location in Sequim City Limits was not a feasible option given the extended estimated timeframe and high cost of purchasing a building and renovating it to meet the needs of the food bank. While the real estate market, building materials, and labor are all increasing in cost this option would put the most financial burden on the food bank. Similar to Option 2, the food bank would have additional unnecessary hurdles that would be disruptive to providing needed food assistance, potentially cost significantly more than estimated and prolong the issues they currently face which are; limited storage, onsite and off-site non permissible food storage containers and continual staff burnout from having to constantly move food in and out of different storage containers or in outbuildings on the property. This option would not immediately solve their current issue and the financial repercussions of this option could be damaging to the food bank operations.

ARPA DIRECT GRANT ASSISTANCE AGREEMENT

This ARPA Direct Grant Assistance Agreement ("Agreement") is dated as of the ____ day of _____, 2022, by and between Clallam County, a Washington political subdivision ("County"), and Sequim Food Bank (Federal Tax ID 91-1215709, UBI # 601-799-850), a Washington state non-profit 501(c)(3) organization ("Recipient").

WHEREAS, the U.S. Department of the Treasury ("Treasury") has allocated to the County \$15,020,640 of federal stimulus funding from the Coronavirus State Fiscal Recovery Fund and the Coronavirus Local Fiscal Recovery Funds under CFDA No. 21.027 ("ARPA Funds") under Section 603(b) of the Social Security Act, as amended by Section 9901 of the American Rescue Plan Act ("ARPA Act"), of which \$7,510,320 was outlaid to the County on May 28, 2021 with the remainder of funds of \$7,510,320 to be disbursed by Treasury to the County one year thereafter, for the limited purposes identified in the Interagency Agreement between the Treasury and Clallam County designated under FAIN #SLFRP2169 ("IGA"), identified as Attachment A, the Coronavirus State and Local Fiscal Recovery Funds Interim Final Rule ("Interim Final Rule"), identified as Attachment B, and the Compliance and Reporting Guidance for State and Local Fiscal Recovery Funds ("Compliance & Reporting Guidelines"), identified as Attachment C. Attachments A, B & C are attached hereto and incorporated herein by this reference.

WHEREAS, the ARPA Act authorizes the County to expend ARPA Funds awarded to the County for the following eligible purposes as outlined in the Interim Final Rule as follows:

- (1) To respond to the COVID-19 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;
- (2) To respond to workers performing essential work during the COVID-19 public health emergency by providing premium pay to eligible workers;
- (3) 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
- (4) To make necessary investments in water, sewer, or broadband infrastructure;
- (5) To address the disparate impact of COVID-19 on certain populations and geographics, additional eligible services may include:
 - a. Addressing health disparities and the social determinants of health, including community health workers, public benefits navigators, remediation of lead paint or other lead hazards, and community violence intervention programs;
 - b. Building stronger neighborhoods and communities, including supportive housing and other services for individuals experiencing housing or food insecurity, development of affordable housing, and housing vouchers and assistance relocating to neighborhoods with higher levels of economic opportunity;
 - c. Addressing educational disparities exacerbated by COVID-19, including: early learning services, increasing resources for high-poverty school districts,

educational services like tutoring or afterschool programs, and supports for students' social, emotional, and mental health needs; and

- d. Promoting healthy childhood environments, including: child care, home visiting programs for families with young children, and enhanced services for child welfare-involved families and foster youth. (collectively "Eligible Uses").

Pursuant to the ARPA Act, Eligible Uses under this non-R&D federal program must be obligated no earlier than March 3, 2021 and no later than December 31, 2024, with final disbursement of all funds no later than December 31, 2026.

WHEREAS, the County desires to allocate portions of the ARPA Funds awarded to Clallam County in support of non-profit organizations and other agencies engaged in supporting the food security needs of those low income households, residents residing in Qualified Census Tracts, and other vulnerable populations or geographic areas disproportionately-impacted by the COVID public health emergency in the County who are experiencing food insecurity, which is consistent with Items 1 and 5 (b) of the Eligible Uses of ARPA Funds outlined above.

WHEREAS, the Recipient, a Clallam County non-profit organization that operates a food bank serving residents of Sequim and surrounding areas within Clallam County who are experiencing food insecurity during the COVID-19 public health emergency, has witnessed a significant increase in Clallam County households seeking food assistance in its service area. Notable impacts of the COVID-19 public health emergency on the Recipient's food bank services include:

- Since March 2020 when the COVID-19 emergency began, the number of households seeking food assistance from the Recipient increased significantly, with client visits climbing from 12,800 in 2018/2019 to over 22,000 in 2020 and 16,000 in 2021;
- As a result of the increased demand for food assistance during the COVID-19 emergency, the Recipient has experienced a significant expansion of food aid coming into Clallam County from other food assistance agencies, including NW Harvest, Food Lifeline, and USDA (The Emergency Food Assistance Program) and from local community donations. Food received, sorted, stored and distributed by the Recipient increased from 676,423 meals in 2019, to 1,176,185 meals in 2020 and 764,638 meals in 2021. This increased supply of provided food overwhelmed the storage space of the Recipient's facility;
- Because of public health safety protocols in place during the COVID-19 emergency requiring social distancing combined with the increase of community members experiencing food insecurities, the Recipient added community COVID-19 food distributions at Carrie Blake Community Park from the period of June 2020 to June 2021. The recipient worked closely with the City of Sequim and Fire District 3 to distribute emergency food and supplies to families at the park in Sequim. These community food distribution events were drive-thru only and took place weekly from June 2020 thru September 2020, bi-monthly beginning in October 2020 to March 2021, and then monthly from April 2021 to June 2021. The added drive-thru community distribution at the park was in addition to their normal distribution days at the Food Bank;

- The lack of adequate permanent food storage and the reliance on multiple onsite and offsite dry and cold storage containers created an inefficiency in services, generated food waste and resulted in the Recipient having to turn down food contributions;
- The permanent use of onsite CONEX style storage containers put in place by the Recipient to accommodate the significant increase in food storage demands are not permissible under the city code, however, the City of Sequim granted the Recipient a short-term waiver to allow the use of storage containers. The Recipient is operating within a tight timeline to identify and implement a permissible storage solution and remove the unpermitted onsite containers from the property while preserving the ability to store an adequate supply of food in an efficient and effective manner while continuing to accept donations;
- As a result of this significant increase in food assistance demand being facilitated by the Recipient, the much more labor intensive demands of storing, preparing, and distributing food/emergency supplies, and the need to increase wages and benefits closer to market rate in order to retain its employees given increased work demands, the Recipient's FTE and total payroll costs increased. Staffing increased from one FTE and three part-time positions in 2019 to four FTEs and one part-time employee in 2020. The increased staffing needs has continued into 2021 and 2022;
- In order to avoid turning away additional food aid, prevent city code enforcement action being taken and leading to the loss of storage space, in 2021 the Recipient commenced a capital project to expand the existing facility to be more suitable for the Recipient's increased operational needs during the pandemic, including the construction of a new storage facility on a vacant lot adjacent to their current location. The proposed building parcel is located at 154 W. Alder St. and is owned by the Recipient. Once completed, this storage facility will allow the Recipient to have the storage capacity for all food in one location, the capability to support emergency food assistance in the Sequim operational area and continue supporting the community needs during the COVID-19 public health emergency while meeting social distancing and safety requirements for staff and the public;
- As a result of the financial and operational demands placed on the Recipient during the pandemic as outlined above, the Recipient is requesting \$185,950 of ARPA assistance from the County, with \$35,950 to be utilized for incremental personnel and retention costs and \$150,000 to be utilized in support of pre-construction costs of the planned new storage facility.

WHEREAS, the County believes the provision of economic support to the Recipient is necessary, appropriate and proportional to the need given:

- The substantial increase in food assistance needs in Clallam County during the COVID-19 pandemic;
- the Recipient's critical role in providing food security assistance to impacted, vulnerable residents of the Sequim area within Clallam County;
- the Recipient's need to remain competitive in the job market to retain employees and offer fair wages and benefits;
- the Recipient's need to build a new storage facility to support the dramatic increase in demand and food aid flowing through the Recipient's operations during the COVID-19 public health emergency and transition away from the current multiple offsite and onsite

storage facilities causing operational inefficiencies and food to be turned away or wasted and;

- The eventual enforcement of the city code that prohibits the use of permanent storage containers currently located on the Recipient's property.

Based on the Interim Final Rule, the County believes the provision of economic support to the Recipient represents an eligible use of ARPA Funds as outlined previously.

WHEREAS, the County and Recipient desire to enter into this Agreement so that the County may provide ARPA Funds on a reimbursement basis to the Recipient via a direct economic support grant to provide needed economic support to the Recipient as allowed under the IGA and Interim Final Rule.

NOW, THEREFORE, in consideration of the foregoing recitals which are incorporated herein by reference, and the terms and conditions set forth below, the parties agree as follows:

1. Effective Date and Term. This Agreement shall commence when last executed by all parties and remain in effect until December 31, 2024, unless terminated by the County in writing.
2. ARPA Funds. The County agrees to provide the Recipient a total sum not to exceed \$185,950 on a reimbursement basis for eligible costs incurred during the period of March 1, 2020 through December 31, 2024 based on eligibility criteria outlined in Attachment D.
3. Reimbursement Request Support. To facilitate release of ARPA funding to the Recipient, the Recipient will submit a detailed invoice in a form specified and approved by the County, on or before the 10th day of each month and no more frequently than monthly, detailing the eligible expenses incurred by the Recipient for which Reimbursement is being requested, together with copies of invoices, payroll records, receipts and other supporting documentation for each expense for which reimbursement is requested. Each Reimbursement request submitted by the Recipient will include a signed certification by the Recipient that such expenses represent eligible expenses incurred by the Recipient based on the eligibility criteria outlined in Attachment D and that such expenses have not been nor will be reimbursed under any other government or private entity program. Such schedule may be modified with the prior approval of the County. Failure to provide any of the required documentation may result in termination of the Agreement and in the withholding and/or nonpayment of all remaining funds awarded to the Recipient by the County under the Agreement.
4. Ineligible Uses. Non-allowable uses of ARPA Funds include, without limitation, the following: a) usage of funds to either directly or indirectly offset a reduction in net tax revenue resulting from a change in law, regulation or administrative interpretation during the covered period that reduces any tax or delays the imposition of any tax or tax increase; b) damages covered by insurance; c) usage of funds as a deposit into any pension fund; d) expenses that have been or will be reimbursed under any federal program; e) debt service costs; f) contributions to a "rainy day" fund; and d) legal settlements.

5. Agreed Limitation on Uses. The Recipient agrees that the New Facility shall be used only as a food bank storage facility or for uses directly associated to or connected with a food bank, including but not limited to food storage and food distribution.
6. Non-Discrimination. The Recipient shall provide food security services to clients and shall not, in the operation of its food bank, discriminate against any person on the basis of religion, race, creed, political ideology, color, national origin, sex, marital status, sexual orientation, age, or the presence of any sensory, mental or physical handicap.
7. Return of Grant Funds upon Cessation of Agreed Use. In the event that the above described new storage facility ceases to be used in support of a food bank, the Recipient is unsuccessful in building the new storage facility, or if Recipient later sells the property to another person or entity and does not fully reinvest the proceeds from such sale in acquiring a replacement facility that is operated as a food bank, the Recipient shall return the above described ARPA funds actually received by the Recipient to fund the pre-construction costs of the new storage facility to Clallam County for distribution to other ARPA recipients or return of such monies to the US Treasury.
8. Termination. The County may terminate this Agreement, for convenience or otherwise and for no consideration or damages, upon prior notice to the Recipient.
9. Independent Contractor. Each party under the Agreement shall be for all purposes an Independent Contractor. Nothing contained herein will be deemed to create an association, a partnership, a joint venture, or a relationship of principal and agent, or employer and employee between the parties. The Recipient shall not be, or be deemed to be, or act or purport to act, as an employee, agent, or representative of the County for any purpose.
10. Indemnification. The Recipient agrees to defend, indemnify and hold the County, its officers, officials, employees, agents and volunteers harmless from and against any and all claims, injuries, damages, losses or expenses including without limitation personal injury, bodily injury, sickness, disease, or death, or damage to or destruction of property, which are alleged or proven to be caused in whole or in part by an act or omission of the Recipient, its officers, directors, employees, and/or agents relating to the Recipient's performance or failure to perform under this Agreement. The section shall survive the expiration or termination of this Agreement.
11. Compliance with Laws, Guidelines. The Recipient shall comply with all federal, state, and local laws and all requirements (including debarment and other required certifications and audits) of the IGA, Interim Final Rule, and Compliance & Reporting Guidelines to the extent applicable, when disbursing ARPA Funds to recipients or when seeking Reimbursement from the County.
12. Maintenance and Audit of Records. The Recipient shall maintain records, books, documents, and other materials relevant to its performance under this Agreement. These records shall be subject to inspection, review and audit by the County or its designee, the

Washington State Auditor's Office and as required by the IGA, Interim Final Rule and Compliance & Reporting Guidelines for five (5) years following termination of this Agreement. If it is determined during the course of the audit that the Recipient was reimbursed for unallowable costs under this Agreement, the Recipient agrees to promptly reimburse the County for such payments upon request.

13. Notices. Any notice desired or required to be given hereunder shall be in writing, and shall be deemed received three (3) days after deposit with the U.S. Postal Service, postage fully prepaid, certified mail, return receipt requested, and addressed to the party to which it is intended at its last known address, or to such other person or address as either party shall designate to the other from time to time in writing forwarded in like manner:

Recipient

Sequim Food Bank
Attn: Andra Smith, Executive Director
PO Box 1453
Sequim, WA 98382

Clallam County

Attn: Mark Lane, Chief Financial Officer
223 E 4th St, Suite 4
Port Angeles, WA 98362-3015

14. Improper Influence. Each party warrants that it did not and will not employ, retain, or contract with any person or entity on a contingent compensation basis for the purpose of seeking, obtaining, maintaining, or extending this Agreement. Each party agrees, warrants, and represents that no gratuity whatsoever has been or will be offered or conferred with a view towards obtaining, maintaining, or extending this Agreement.
15. Conflict of Interest. The elected and appointed officials and employees of the parties shall not have any personal interest, direct or indirect, which gives rise to a conflict of interest.
16. Time. Time is of the essence in this Agreement.
17. Survival. The provisions of this Agreement that by their sense and purpose should survive expiration or termination of the Agreement shall so survive. Those provisions include without limitation Agreed Limitations on Uses, Return of Grant Funds upon Cessation of Agreed Use, Indemnification and Maintenance and Audit of Records.
18. Amendment. No amendment or modification to the Agreement will be effective without the prior written consent of the authorized representatives of the parties.
19. Governing Law; Venue. The Agreement will be governed in all respects by the laws of Washington State, both as to interpretation and performance, without regard to conflicts of law or choice of law provisions. Any action arising out of or in connection with the

Agreement may be instituted and maintained only in a court of competent jurisdiction in Clallam County, Washington or as provided by RCW 36.01.050.

17. Non-Waiver. No failure on the part of the County to exercise, and no delay in exercising, any right hereunder shall operate as a waiver thereof; nor shall any single or partial exercise by the County of any right hereunder preclude any other or further exercise thereof or the exercise of any other right. The remedies herein provided are cumulative and not exclusive of any remedy available to the County at law or in equity.
18. Binding Effect. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors.
19. Assignment. The Recipient shall not assign or transfer any of its interests in or obligations under this Agreement without the prior written consent of the County.
20. Entire Agreement. This Agreement constitutes the entire agreement between the County and the Recipient for the use of funds received under this Agreement and it supersedes all prior or contemporaneous communications and proposals, whether electronic, oral, or written between the parties with respect to this Agreement.
21. No Third Party Beneficiaries. Nothing herein shall or be deemed to create or confer any right, action, or benefit in, to, or on the part of any person or entity that is not a party to this Agreement. This provision shall not limit any obligation which either Party has to Treasury in connection with the use of ARPA Funds, including the obligations to provide access to records and cooperate with audits as provided in this Agreement.
22. Severability. In the event that one or more provisions of this Agreement shall be determined to be invalid by any court of competent jurisdiction or agency having jurisdiction thereof, the remainder of the Agreement shall remain in full force and effect and the invalid provisions shall be deemed deleted.
23. Counterparts. This Agreement may be executed in one or more counterparts, any of which shall be deemed an original but all of which together shall constitute one and the same instrument.
24. Authorization. Each party signing below warrants to the other party, that they have the full power and authority to execute this Agreement on behalf of the party for whom they sign.

IN WITNESS WHEREOF, this Agreement is executed and shall become effective as of the last date signed below.

DATED this 8th day of March, 2022.

RECIPIENT

By:



Print Name: Andra Smith

Its: Executive Director

DATED this ____ day of March, 2022.

APPROVED AS TO FORM by DPA Stanley

**BOARD OF COUNTY COMMISSIONERS
CLALLAM COUNTY, WASHINGTON**

MARK OZIAS, Chair

RANDY JOHNSON, Commissioner

BILL PEACH, Commissioner

ATTEST:

L. Gores, Clerk of the Board

ATTACHMENT A

INTERAGENCY AGREEMENT BETWEEN
THE U.S. DEPARTMENT OF TREASURY AND
CLALLAM COUNTY

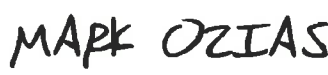
OMB Approved No. 1505-0271
Expiration Date: November 30, 2021

U.S. DEPARTMENT OF THE TREASURY
CORONAVIRUS STATE AND LOCAL FISCAL RECOVERY FUNDS

Recipient name and address: CLALLAM COUNTY 223 EAST FOURTH STREET, SUITE 4 PORT ANGELES, Washington, 98362-3015	DUNS Number: 075739235 Taxpayer Identification Number: 916001298 Assistance Listing Number: 21.019
--	--

Sections 602(b) and 603(b) of the Social Security Act (the Act) as added by section 9901 of the American Rescue Plan Act, Pub. L. No. 117-2 (March 11, 2021) authorize the Department of the Treasury (Treasury) to make payments to certain recipients from the Coronavirus State Fiscal Recovery Fund and the Coronavirus Local Fiscal Recovery Fund.

Recipient hereby agrees, as a condition to receiving such payment from Treasury, to the terms attached hereto.

Recipient: **DocuSigned by:**

9C5FE664B8F24C1...

Authorized Representative: MARK OZIAS

Title: CHAIRMAN, BOARD OF CLALLAM COUNTY COMMISSIONERS

Date signed: 5/19/2021

U.S. Department of the Treasury:

Authorized Representative:

Title:

Date:

PAPERWORK REDUCTION ACT NOTICE

The information collected will be used for the U.S. Government to process requests for support. The estimated burden associated with this collection of information is 15 minutes per response. Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be directed to the Office of Privacy, Transparency and Records, Department of the Treasury, 1500 Pennsylvania Ave., N.W., Washington, D.C. 20220. DO NOT send the form to this address. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by OMB.

U.S. DEPARTMENT OF THE TREASURY
CORONAVIRUS LOCAL FISCAL RECOVERY FUND
AWARD TERMS AND CONDITIONS

1. Use of Funds.
 - a. Recipient understands and agrees that the funds disbursed under this award may only be used in compliance with section 603(c) of the Social Security Act (the Act), Treasury's regulations implementing that section, and guidance issued by Treasury regarding the foregoing.
 - b. Recipient will determine prior to engaging in any project using this assistance that it has the institutional, managerial, and financial capability to ensure proper planning, management, and completion of such project.
2. Period of Performance. The period of performance for this award begins on the date hereof and ends on December 31, 2026. As set forth in Treasury's implementing regulations, Recipient may use award funds to cover eligible costs incurred during the period that begins on March 3, 2021, and ends on December 31, 2024.
3. Reporting. Recipient agrees to comply with any reporting obligations established by Treasury as they relate to this award.
4. Maintenance of and Access to Records
 - a. Recipient shall maintain records and financial documents sufficient to evidence compliance with section 603(c) of the Act, Treasury's regulations implementing that section, and guidance issued by Treasury regarding the foregoing.
 - b. The Treasury Office of Inspector General and the Government Accountability Office, or their authorized representatives, shall have the right of access to records (electronic and otherwise) of Recipient in order to conduct audits or other investigations.
 - c. Records shall be maintained by Recipient for a period of five (5) years after all funds have been expended or returned to Treasury, whichever is later.
5. Pre-award Costs. Pre-award costs, as defined in 2 C.F.R. § 200.458, may not be paid with funding from this award.
6. Administrative Costs. Recipient may use funds provided under this award to cover both direct and indirect costs.
7. Cost Sharing. Cost sharing or matching funds are not required to be provided by Recipient.
8. Conflicts of Interest. Recipient understands and agrees it must maintain a conflict of interest policy consistent with 2 C.F.R. § 200.318(c) and that such conflict of interest policy is applicable to each activity funded under this award. Recipient and subrecipients must disclose in writing to Treasury or the pass-through entity, as appropriate, any potential conflict of interest affecting the awarded funds in accordance with 2 C.F.R. § 200.112.

9. Compliance with Applicable Law and Regulations.

- a. Recipient agrees to comply with the requirements of section 603 of the Act, regulations adopted by Treasury pursuant to section 603(f) of the Act, and guidance issued by Treasury regarding the foregoing. Recipient also agrees to comply with all other applicable federal statutes, regulations, and executive orders, and Recipient shall provide for such compliance by other parties in any agreements it enters into with other parties relating to this award.
- b. Federal regulations applicable to this award include, without limitation, the following:
 - i. Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, 2 C.F.R. Part 200, other than such provisions as Treasury may determine are inapplicable to this Award and subject to such exceptions as may be otherwise provided by Treasury. Subpart F – Audit Requirements of the Uniform Guidance, implementing the Single Audit Act, shall apply to this award.
 - ii. Universal Identifier and System for Award Management (SAM), 2 C.F.R. Part 25, pursuant to which the award term set forth in Appendix A to 2 C.F.R. Part 25 is hereby incorporated by reference.
 - iii. Reporting Subaward and Executive Compensation Information, 2 C.F.R. Part 170, pursuant to which the award term set forth in Appendix A to 2 C.F.R. Part 170 is hereby incorporated by reference.
 - iv. OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement), 2 C.F.R. Part 180, including the requirement to include a term or condition in all lower tier covered transactions (contracts and subcontracts described in 2 C.F.R. Part 180, subpart B) that the award is subject to 2 C.F.R. Part 180 and Treasury's implementing regulation at 31 C.F.R. Part 19.
 - v. Recipient Integrity and Performance Matters, pursuant to which the award term set forth in 2 C.F.R. Part 200, Appendix XII to Part 200 is hereby incorporated by reference.
 - vi. Governmentwide Requirements for Drug-Free Workplace, 31 C.F.R. Part 20.
 - vii. New Restrictions on Lobbying, 31 C.F.R. Part 21.
 - viii. Uniform Relocation Assistance and Real Property Acquisitions Act of 1970 (42 U.S.C. §§ 4601-4655) and implementing regulations.
 - ix. Generally applicable federal environmental laws and regulations.
- c. Statutes and regulations prohibiting discrimination applicable to this award include, without limitation, the following:
 - i. Title VI of the Civil Rights Act of 1964 (42 U.S.C. §§ 2000d et seq.) and Treasury's implementing regulations at 31 C.F.R. Part 22, which prohibit discrimination on the basis of race, color, or national origin under programs or activities receiving federal financial assistance;

- ii. The Fair Housing Act, Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§ 3601 et seq.), which prohibits discrimination in housing on the basis of race, color, religion, national origin, sex, familial status, or disability;
 - iii. Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of disability under any program or activity receiving federal financial assistance;
 - iv. The Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101 et seq.), and Treasury's implementing regulations at 31 C.F.R. Part 23, which prohibit discrimination on the basis of age in programs or activities receiving federal financial assistance; and
 - v. Title II of the Americans with Disabilities Act of 1990, as amended (42 U.S.C. §§ 12101 et seq.), which prohibits discrimination on the basis of disability under programs, activities, and services provided or made available by state and local governments or instrumentalities or agencies thereto.
10. Remedial Actions. In the event of Recipient's noncompliance with section 603 of the Act, other applicable laws, Treasury's implementing regulations, guidance, or any reporting or other program requirements, Treasury may impose additional conditions on the receipt of a subsequent tranche of future award funds, if any, or take other available remedies as set forth in 2 C.F.R. § 200.339. In the case of a violation of section 603(c) of the Act regarding the use of funds, previous payments shall be subject to recoupment as provided in section 603(e) of the Act.
11. Hatch Act. Recipient agrees to comply, as applicable, with requirements of the Hatch Act (5 U.S.C. §§ 1501-1508 and 7324-7328), which limit certain political activities of State or local government employees whose principal employment is in connection with an activity financed in whole or in part by this federal assistance.
12. False Statements. Recipient understands that making false statements or claims in connection with this award is a violation of federal law and may result in criminal, civil, or administrative sanctions, including fines, imprisonment, civil damages and penalties, debarment from participating in federal awards or contracts, and/or any other remedy available by law.
13. Publications. Any publications produced with funds from this award must display the following language: "This project [is being] [was] supported, in whole or in part, by federal award number [enter project FAIN] awarded to [name of Recipient] by the U.S. Department of the Treasury."
14. Debts Owed the Federal Government.
- a. Any funds paid to Recipient (1) in excess of the amount to which Recipient is finally determined to be authorized to retain under the terms of this award; (2) that are determined by the Treasury Office of Inspector General to have been misused; or (3) that are determined by Treasury to be subject to a repayment obligation pursuant to section 603(e) of the Act and have not been repaid by Recipient shall constitute a debt to the federal government.
 - b. Any debts determined to be owed the federal government must be paid promptly by

Recipient. A debt is delinquent if it has not been paid by the date specified in Treasury's initial written demand for payment, unless other satisfactory arrangements have been made or if the Recipient knowingly or improperly retains funds that are a debt as defined in paragraph 14(a). Treasury will take any actions available to it to collect such a debt.

15. Disclaimer.

- a. The United States expressly disclaims any and all responsibility or liability to Recipient or third persons for the actions of Recipient or third persons resulting in death, bodily injury, property damages, or any other losses resulting in any way from the performance of this award or any other losses resulting in any way from the performance of this award or any contract, or subcontract under this award.
- b. The acceptance of this award by Recipient does not in any way establish an agency relationship between the United States and Recipient.

16. Protections for Whistleblowers.

- a. In accordance with 41 U.S.C. § 4712, Recipient may not discharge, demote, or otherwise discriminate against an employee in reprisal for disclosing to any of the list of persons or entities provided below, information that the employee reasonably believes is evidence of gross mismanagement of a federal contract or grant, a gross waste of federal funds, an abuse of authority relating to a federal contract or grant, a substantial and specific danger to public health or safety, or a violation of law, rule, or regulation related to a federal contract (including the competition for or negotiation of a contract) or grant.
- b. The list of persons and entities referenced in the paragraph above includes the following:
 - i. A member of Congress or a representative of a committee of Congress;
 - ii. An Inspector General;
 - iii. The Government Accountability Office;
 - iv. A Treasury employee responsible for contract or grant oversight or management;
 - v. An authorized official of the Department of Justice or other law enforcement agency;
 - vi. A court or grand jury; or
 - vii. A management official or other employee of Recipient, contractor, or subcontractor who has the responsibility to investigate, discover, or address misconduct.
- c. Recipient shall inform its employees in writing of the rights and remedies provided under this section, in the predominant native language of the workforce.

17. Increasing Seat Belt Use in the United States. Pursuant to Executive Order 13043, 62 FR 19217 (Apr. 18, 1997), Recipient should encourage its contractors to adopt and enforce on-the-job seat belt policies and programs for their employees when operating company-owned, rented or personally owned vehicles.

18. Reducing Text Messaging While Driving. Pursuant to Executive Order 13513, 74 FR 51225 (Oct. 6, 2009), Recipient should encourage its employees, subrecipients, and contractors to adopt and enforce policies that ban text messaging while driving, and Recipient should establish workplace safety policies to decrease accidents caused by distracted drivers.

OMB Approved No. 1505-0271

Expiration Date: November 30, 2021

ASSURANCES OF COMPLIANCE WITH CIVIL RIGHTS REQUIREMENTS

ASSURANCES OF COMPLIANCE WITH TITLE VI OF THE CIVIL RIGHTS ACT OF 1964

As a condition of receipt of federal financial assistance from the Department of the Treasury, the recipient named below (hereinafter referred to as the “Recipient”) provides the assurances stated herein. The federal financial assistance may include federal grants, loans and contracts to provide assistance to the Recipient’s beneficiaries, the use or rent of Federal land or property at below market value, Federal training, a loan of Federal personnel, subsidies, and other arrangements with the intention of providing assistance. Federal financial assistance does not encompass contracts of guarantee or insurance, regulated programs, licenses, procurement contracts by the Federal government at market value, or programs that provide direct benefits.

The assurances apply to all federal financial assistance from or funds made available through the Department of the Treasury, including any assistance that the Recipient may request in the future.

The Civil Rights Restoration Act of 1987 provides that the provisions of the assurances apply to all of the operations of the Recipient’s program(s) and activity(ies), so long as any portion of the Recipient’s program(s) or activity(ies) is federally assisted in the manner prescribed above.

1. Recipient ensures its current and future compliance with Title VI of the Civil Rights Act of 1964, as amended, which prohibits exclusion from participation, denial of the benefits of, or subjection to discrimination under programs and activities receiving federal financial assistance, of any person in the United States on the ground of race, color, or national origin (42 U.S.C. § 2000d *et seq.*), as implemented by the Department of the Treasury Title VI regulations at 31 CFR Part 22 and other pertinent executive orders such as Executive Order 13166, directives, circulars, policies, memoranda, and/or guidance documents.
2. Recipient acknowledges that Executive Order 13166, “Improving Access to Services for Persons with Limited English Proficiency,” seeks to improve access to federally assisted programs and activities for individuals who, because of national origin, have Limited English proficiency (LEP). Recipient understands that denying a person access to its programs, services, and activities because of LEP is a form of national origin discrimination prohibited under Title VI of the Civil Rights Act of 1964 and the Department of the Treasury’s implementing regulations. Accordingly, Recipient shall initiate reasonable steps, or comply with the Department of the Treasury’s directives, to ensure that LEP persons have meaningful access to its programs, services, and activities. Recipient understands and agrees that meaningful access may entail providing language assistance services, including oral interpretation and written translation where necessary, to ensure effective communication in the Recipient’s programs, services, and activities.
3. Recipient agrees to consider the need for language services for LEP persons when Recipient develops applicable budgets and conducts programs, services, and activities. As a resource, the Department of the Treasury has published its LEP guidance at 70 FR 6067. For more information on taking reasonable steps to provide meaningful access for LEP persons, please visit <http://www.lep.gov>.

OMB Approved No. 1505-0271

Expiration Date: November 30, 2021

4. Recipient acknowledges and agrees that compliance with the assurances constitutes a condition of continued receipt of federal financial assistance and is binding upon Recipient and Recipient's successors, transferees, and assignees for the period in which such assistance is provided.
5. Recipient acknowledges and agrees that it must require any sub-grantees, contractors, subcontractors, successors, transferees, and assignees to comply with assurances 1-4 above, and agrees to incorporate the following language in every contract or agreement subject to Title VI and its regulations between the Recipient and the Recipient's sub-grantees, contractors, subcontractors, successors, transferees, and assignees:

The sub-grantee, contractor, subcontractor, successor, transferee, and assignee shall comply with Title VI of the Civil Rights Act of 1964, which prohibits recipients of federal financial assistance from excluding from a program or activity, denying benefits of, or otherwise discriminating against a person on the basis of race, color, or national origin (42 U.S.C. § 2000d et seq.), as implemented by the Department of the Treasury's Title VI regulations, 31 CFR Part 22, which are herein incorporated by reference and made a part of this contract (or agreement). Title VI also includes protection to persons with "Limited English Proficiency" in any program or activity receiving federal financial assistance, 42 U.S.C. § 2000d et seq., as implemented by the Department of the Treasury's Title VI regulations, 31 CFR Part 22, and herein incorporated by reference and made a part of this contract or agreement.

6. Recipient understands and agrees that if any real property or structure is provided or improved with the aid of federal financial assistance by the Department of the Treasury, this assurance obligates the Recipient, or in the case of a subsequent transfer, the transferee, for the period during which the real property or structure is used for a purpose for which the federal financial assistance is extended or for another purpose involving the provision of similar services or benefits. If any personal property is provided, this assurance obligates the Recipient for the period during which it retains ownership or possession of the property.
7. Recipient shall cooperate in any enforcement or compliance review activities by the Department of the Treasury of the aforementioned obligations. Enforcement may include investigation, arbitration, mediation, litigation, and monitoring of any settlement agreements that may result from these actions. The Recipient shall comply with information requests, on-site compliance reviews and reporting requirements.
8. Recipient shall maintain a complaint log and inform the Department of the Treasury of any complaints of discrimination on the grounds of race, color, or national origin, and limited English proficiency covered by Title VI of the Civil Rights Act of 1964 and implementing regulations and provide, upon request, a list of all such reviews or proceedings based on the complaint, pending or completed, including outcome. Recipient also must inform the Department of the Treasury if Recipient has received no complaints under Title VI.
9. Recipient must provide documentation of an administrative agency's or court's findings of non-compliance of Title VI and efforts to address the non-compliance, including any voluntary compliance or other

OMB Approved No. 1505-0271

Expiration Date: November 30, 2021

agreements between the Recipient and the administrative agency that made the finding. If the Recipient settles a case or matter alleging such discrimination, the Recipient must provide documentation of the settlement. If Recipient has not been the subject of any court or administrative agency finding of discrimination, please so state.

10. If the Recipient makes sub-awards to other agencies or other entities, the Recipient is responsible for ensuring that sub-recipients also comply with Title VI and other applicable authorities covered in this document State agencies that make sub-awards must have in place standard grant assurances and review procedures to demonstrate that that they are effectively monitoring the civil rights compliance of sub-recipients.

The United States of America has the right to seek judicial enforcement of the terms of this assurances document and nothing in this document alters or limits the federal enforcement measures that the United States may take in order to address violations of this document or applicable federal law.

Under penalty of perjury, the undersigned official(s) certifies that official(s) has read and understood the Recipient's obligations as herein described, that any information submitted in conjunction with this assurances document is accurate and complete, and that the Recipient is in compliance with the aforementioned nondiscrimination requirements.

CLALLAM COUNTY

5/19/2021

Recipient

Date

DocuSigned by:
MARK OZIAS
9C5FE664B8F24C1...

Signature of Authorized Official

PAPERWORK REDUCTION ACT NOTICE

The information collected will be used for the U.S. Government to process requests for support. The estimated burden associated with this collection of information is 30 minutes per response. Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be directed to the Office of Privacy, Transparency and Records, Department of the Treasury, 1500 Pennsylvania Ave., N.W., Washington, D.C. 20220. DO NOT send the form to this address. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by OMB.

ATTACHMENT B

U.S. DEPARTMENT OF TREASURY
CORONAVIRUS STATE AND LOCAL FISCAL RECOVERY FUNDS
INTERIM FINAL RULE
DATED 5-17-2021

DEPARTMENT OF THE TREASURY

31 CFR Part 35

RIN 1505-AC77

Coronavirus State and Local Fiscal Recovery Funds

AGENCY: Department of the Treasury.

ACTION: Interim final rule.

SUMMARY: The Secretary of the Treasury (Treasury) is issuing this interim final rule to implement the Coronavirus State Fiscal Recovery Fund and the Coronavirus Local Fiscal Recovery Fund established under the American Rescue Plan Act.

DATES: *Effective date:* The provisions in this interim final rule are effective May 17, 2021.

Comment date: Comments must be received on or before July 16, 2021. **ADDRESSES:** Please submit comments electronically through the Federal eRulemaking Portal: <http://www.regulations.gov>. Comments can be mailed to the Office of the Undersecretary for Domestic Finance, Department of the Treasury, 1500 Pennsylvania Avenue NW, Washington, DC 20220. Because postal mail may be subject to processing delay, it is recommended that comments be submitted electronically. All comments should be captions with "Coronavirus State and Local Fiscal Recovery Funds Interim Final Rule Comments." Please include your name, organization affiliation, address, email address and telephone number in your comment. Where appropriate, a comment should include a short executive summary.

In general, comments received will be posted on <http://www.regulations.gov> without change, including any business or personal information provided. Comments received, including attachments and other supporting materials, will be part of the public record and subject to public disclosure. Do not enclose any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

FOR FURTHER INFORMATION CONTACT: Katharine Richards, Senior Advisor, Office of Recovery Programs, Department of the Treasury, (844) 529-9527.

SUPPLEMENTARY INFORMATION:

I. Background Information

A. Overview

Since the first case of coronavirus disease 2019 (COVID-19) was discovered in the United States in January 2020, the disease has infected

over 32 million and killed over 575,000 Americans.¹ The disease has impacted every part of life: As social distancing became a necessity, businesses closed, schools transitioned to remote education, travel was sharply reduced, and millions of Americans lost their jobs. In April 2020, the national unemployment rate reached its highest level in over seventy years following the most severe month-over-month decline in employment on record.² As of April 2021, there were still 8.2 million fewer jobs than before the pandemic.³ During this time, a significant share of households have faced food and housing insecurity.⁴ Economic disruptions impaired the flow of credit to households, State and local governments, and businesses of all sizes.⁵ As businesses weathered closures and sharp declines in revenue, many were forced to shut down, especially small businesses.⁶

Amid this once-in-a-century crisis, State, territorial, Tribal, and local governments (State, local, and Tribal governments) have been called on to respond at an immense scale. Governments have faced myriad needs to prevent and address the spread of

COVID-19, including testing, contact tracing, isolation and quarantine, public communications, issuance and enforcement of health orders, expansions to health system capacity like alternative care facilities, and in recent months, a massive nationwide mobilization around vaccinations. Governments also have supported major efforts to prevent COVID-19 spread through safety measures in settings like nursing homes, schools, congregate living settings, dense worksites, incarceration settings, and public facilities. The pandemic's impacts on behavioral health, including the toll of pandemic-related stress, have increased the need for behavioral health resources.

At the same time, State, local and Tribal governments launched major efforts to address the economic impacts of the pandemic. These efforts have been tailored to the needs of their communities and have included expanded assistance to unemployed workers; food assistance; rent, mortgage, and utility support; cash assistance; internet access programs; expanded services to support individuals experiencing homelessness; support for individuals with disabilities and older adults; and assistance to small businesses facing closures or revenue loss or implementing new safety measures.

In responding to the public health emergency and its negative economic impacts, State, local, and Tribal governments have seen substantial increases in costs to provide these services, often amid substantial declines in revenue due to the economic downturn and changing economic patterns during the pandemic.⁷ Facing these budget challenges, many State, local, and Tribal governments have been forced to make cuts to services or their workforces, or delay critical investments. From February to May of 2020, State, local, and Tribal governments reduced their workforces by more than 1.5 million jobs and, in April of 2021, State, local, and Tribal government employment remained nearly 1.3 million jobs below pre-pandemic levels.⁸ These cuts to State, local, and Tribal government workforces

¹ Centers for Disease Control and Prevention, COVID Data Tracker, <http://www.covid.cdc.gov/covid-data-tracker/#data-tracker-home> (last visited May 8, 2021).

² U.S. Bureau of Labor Statistics, Unemployment Rate [UNRATE], retrieved from FRED, Federal Reserve Bank of St. Louis; <https://fred.stlouisfed.org/series/UNRATE>, May 3, 2021. U.S. Bureau of Labor Statistics, Employment Level [LNU02000000], retrieved from FRED, Federal Reserve Bank of St. Louis; <https://fred.stlouisfed.org/series/LNU02000000>, May 3, 2021.

³ U.S. Bureau of Labor Statistics, All Employees, Total Nonfarm [PAYEMS], retrieved from FRED, Federal Reserve Bank of St. Louis; <https://fred.stlouisfed.org/series/PAYEMS>, May 7, 2021.

⁴ Nirmita Panchal et al., The Implications of COVID-19 for Mental Health and Substance Abuse (Feb. 10, 2021), <https://www.kff.org/coronavirus-covid-19/issue-brief/the-implications-of-covid-19-for-mental-health-and-substance-use/#:~:text=Older%20adults%20are%20also%20more,prior%20to%20the%20current%20crisis;U.S.CensusBureau,HouseholdPulseSurvey:MeasuringSocialandEconomicImpactsduringtheCoronavirusPandemic,https://www.census.gov/programs-surveys/household-pulse-survey.html> (last visited Apr. 26, 2021); Rebecca T. Leeb et al., Mental Health-Related Emergency Department Visits Among Children Aged <18 Years During the COVID Pandemic—United States, January 1—October 17, 2020, *Morb. Mortal. Wkly. Rep.* 69(45):1675–80 (Nov. 13, 2020), <https://www.cdc.gov/mmwr/volumes/69/wr/mm6945a3.htm>.

⁵ Board of Governors of the Federal Reserve System, Monetary Policy Report (June 12, 2020), <https://www.federalreserve.gov/monetarypolicy/2020-06-mp-report-summary.htm>.

⁶ Joseph R. Biden, Remarks by President Biden on Helping Small Businesses (Feb. 22, 2021), <https://www.whitehouse.gov/briefing-room/speeches-remarks/2021/02/22/remarks-by-president-biden-on-helping-small-businesses/>.

⁷ Michael Leachman, House Budget Bill Provides Needed Fiscal Aid for States, Localities, Tribal Nations, and Territories (Feb. 10, 2021), <https://www.cbpp.org/research/state-budget-and-tax/house-budget-bill-provides-needed-fiscal-aid-for-states-localities>.

⁸ U.S. Bureau of Labor Statistics, All Employees, State Government [CES9092000001] and All Employees, Local Government [CES9093000001], retrieved from FRED, Federal Reserve Bank of St. Louis, <https://fred.stlouisfed.org/series/CES9092000001> and <https://fred.stlouisfed.org/series/CES9093000001> (last visited May 8, 2021).

come at a time when demand for government services is high, with State, local, and Tribal governments on the frontlines of fighting the pandemic. Furthermore, State, local, and Tribal government austerity measures can hamper overall economic growth, as occurred in the recovery from the Great Recession.⁹

Finally, although the pandemic's impacts have been widespread, both the public health and economic impacts of the pandemic have fallen most severely on communities and populations disadvantaged before it began. Low-income communities, people of color, and Tribal communities have faced higher rates of infection, hospitalization, and death,¹⁰ as well as higher rates of unemployment and lack of basic necessities like food and housing.¹¹ Pre-existing social vulnerabilities magnified the pandemic in these communities, where a reduced ability to work from home and, frequently, denser housing amplified the risk of infection. Higher rates of pre-existing health conditions also may have contributed to more severe COVID-19 health outcomes.¹² Similarly, communities or households facing economic insecurity before the pandemic were less able to weather business closures, job losses, or declines in earnings and were less able to participate in remote work or education due to the inequities in access to reliable and affordable broadband infrastructure.¹³ Finally, though schools in all areas faced challenges, those in high poverty areas had fewer resources to adapt to remote and hybrid learning models.¹⁴ Unfortunately, the pandemic

also has reversed many gains made by communities of color in the prior economic expansion.¹⁵

B. The Statute and Interim Final Rule

On March 11, 2021, the American Rescue Plan Act (ARPA) was signed into law by the President.¹⁶ Section 9901 of ARPA amended Title VI of the Social Security Act¹⁷ (the Act) to add section 602, which establishes the Coronavirus State Fiscal Recovery Fund, and section 603, which establishes the Coronavirus Local Fiscal Recovery Fund (together, the Fiscal Recovery Funds).¹⁸ The Fiscal Recovery Funds are intended to provide support to State, local, and Tribal governments (together, recipients) in responding to the impact of COVID-19 and in their efforts to contain COVID-19 on their communities, residents, and businesses. The Fiscal Recovery Funds build on and expand the support provided to these governments over the last year, including through the Coronavirus Relief Fund (CRF).¹⁹

a lifetime (June 2020), https://webtest.childrensinstitute.net/sites/default/files/documents/COVID-19-and-student-learning-in-the-United-States_FINAL.pdf; Andrew Bacher-Hicks et al., Inequality in Household Adaptation to Schooling Shocks: Covid-Induced Online Engagement in Real Time, *J. of Public Econ.* Vol. 193(C) (July 2020), available at <https://www.nber.org/papers/w27555>.

¹⁵ See, e.g., Tyler Atkinson & Alex Richter, Pandemic Disproportionately Affects Women, Minority Labor Force Participation, <https://www.dallasfed.org/research/economics/2020/1110> (last visited May 9, 2021); Jared Bernstein & Janelle Jones, The Impact of the COVID19 Recession on the Jobs and Incomes of Persons of Color, https://www.cbpp.org/sites/default/files/atoms/files/6-2-20bud_0.pdf (last visited May 9, 2021).

¹⁶ American Rescue Plan Act of 2021 (ARPA), sec. 9901, Public Law 117–2, codified at 42 U.S.C. 802 *et seq.* The term “state” as used in this SUPPLEMENTARY INFORMATION and defined in section 602 of the Act means each of the 50 States and the District of Columbia. The term “territory” as used in this SUPPLEMENTARY INFORMATION and defined in section 602 of the Act means the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, the Commonwealth of Northern Mariana Islands, and American Samoa. Tribal government is defined in the Act and the interim final rule to mean “the recognized governing body of any Indian or Alaska Native tribe, band, nation, pueblo, village, community, component band, or component reservation, individually identified (including parenthetically) in the list published most recently as of the date of enactment of the [American Rescue Plan Act] pursuant to section 104 of the Federally Recognized Indian Tribe List Act of 1994 (25 U.S.C. 5131).” See section 602(g)(7) of the Social Security Act, as added by the American Rescue Plan Act. On January 29, 2021, the Bureau of Indian Affairs published a current list of 574 Tribal entities. See 86 FR 7554, January 29, 2021. The term “local governments” as used in this SUPPLEMENTARY INFORMATION includes metropolitan cities, counties, and nonentitlement units of local government.

¹⁷ 42 U.S.C. 801 *et seq.*

¹⁸ Sections 602, 603 of the Act.

¹⁹ The CRF was established by the section 601 of the Act as added by the Coronavirus Aid, Relief, and Economic Security Act (CARES Act), Public Law 116–136, 134 Stat. 281 (2020).

Through the Fiscal Recovery Funds, Congress provided State, local, and Tribal governments with significant resources to respond to the COVID-19 public health emergency and its economic impacts through four categories of eligible uses. Section 602 and section 603 contain the same eligible uses; the primary difference between the two sections is that section 602 establishes a fund for States, territories, and Tribal governments and section 603 establishes a fund for metropolitan cities, nonentitlement units of local government, and counties. Sections 602(c)(1) and 603(c)(1) provide that funds may be used:

(a) 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;

(b) To respond to workers performing essential work during the COVID-19 public health emergency by providing premium pay to eligible workers;

(c) 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

(d) To make necessary investments in water, sewer, or broadband infrastructure.

In addition, Congress clarified two types of uses which do not fall within these four categories. Sections 602(c)(2)(B) and 603(c)(2) provide that these eligible uses do not include, and thus funds may not be used for, depositing funds into any pension fund. Section 602(c)(2)(A) also provides, for States and territories, that the eligible uses do not include “directly or indirectly offset[ting] a reduction in the net tax revenue of [the] State or territory resulting from a change in law, regulation, or administrative interpretation.”

The ARPA provides a substantial infusion of resources to meet pandemic response needs and rebuild a stronger, more equitable economy as the country recovers. First, payments from the Fiscal Recovery Funds help to ensure that State, local, and Tribal governments have the resources needed to continue to take actions to decrease the spread of COVID-19 and bring the pandemic under control. Payments from the Fiscal Recovery Funds may also be used by recipients to provide support for costs incurred in addressing public health and economic challenges resulting from the pandemic, including resources to offer premium pay to essential workers, in recognition of their sacrifices over the

⁹ Tracy Gordon, State and Local Budgets and the Great Recession, Brookings Institution (Dec. 31, 2012), <http://www.brookings.edu/articles/state-and-local-budgets-and-the-great-recession>.

¹⁰ Sebastian D. Romano et al., Trends in Racial and Ethnic Disparities in COVID-19 Hospitalizations, by Region—United States, March–December 2020, *MMWR Morb Mortal Wkly Rep* 2021, 70:560–565 (Apr. 16, 2021), https://www.cdc.gov/mmwr/volumes/70/wr/mm7015e2.htm?s_cid=mm7015e2_w.

¹¹ Center on Budget and Policy Priorities, Tracking the COVID-19 Recession's Effects on Food, Housing, and Employment Hardships, <https://www.cbpp.org/research/poverty-and-inequality/tracking-the-covid-19-recessions-effects-on-housing-and> (last visited May 4, 2021).

¹² Lisa R. Fortuna et al., Inequity and the Disproportionate Impact of COVID-19 on Communities of Color in the United States: The Need for Trauma-Informed Social Justice Response, *Psychological Trauma* Vol. 12(5):443–45 (2020), available at <https://psycnet.apa.org/fulltext/2020-37320-001.pdf>.

¹³ Emily Vogles et al., 53% of Americans Say the Internet Has Been Essential During the COVID-19 Outbreak (Apr. 30, 2020), <https://www.pewresearch.org/internet/2020/04/30/53-of-americans-say-the-internet-has-been-essential-during-the-covid-19-outbreak/>.

¹⁴ Emma Dorn et al., COVID-19 and student learning in the United States: The hurt could last

last year. Recipients may also use payments from the Fiscal Recovery Funds to replace State, local, and Tribal government revenue lost due to COVID-19, helping to ensure that governments can continue to provide needed services and avoid cuts or layoffs. Finally, these resources lay the foundation for a strong, equitable economic recovery, not only by providing immediate economic stabilization for households and businesses, but also by addressing the systemic public health and economic challenges that may have contributed to more severe impacts of the pandemic among low-income communities and people of color.

Within the eligible use categories outlined in the Fiscal Recovery Funds provisions of ARPA, State, local, and Tribal governments have flexibility to determine how best to use payments from the Fiscal Recovery Funds to meet the needs of their communities and populations. The interim final rule facilitates swift and effective implementation by establishing a framework for determining the types of programs and services that are eligible under the ARPA along with examples of uses that State, local, and Tribal governments may consider. These uses build on eligible expenditures under the CRF, including some expansions in eligible uses to respond to the public health emergency, such as vaccination campaigns. They also reflect changes in the needs of communities, as evidenced by, for example, nationwide data demonstrating disproportionate impacts of the COVID-19 public health emergency on certain populations, geographies, and economic sectors. The interim final rule takes into consideration these disproportionate impacts by recognizing a broad range of eligible uses to help States, local, and Tribal governments support the families, businesses, and communities hardest hit by the COVID-19 public health emergency.

Implementation of the Fiscal Recovery Funds also reflect the importance of public input, transparency, and accountability. Treasury seeks comment on all aspects of the interim final rule and, to better facilitate public comment, has included specific questions throughout this **SUPPLEMENTARY INFORMATION.** Treasury encourages State, local, and Tribal governments in particular to provide feedback and to engage with Treasury regarding issues that may arise regarding all aspects of this interim final rule and Treasury's work in administering the Fiscal Recovery Funds. In addition, the interim final rule establishes certain regular reporting

requirements, including by requiring State, local, and Tribal governments to publish information regarding uses of Fiscal Recovery Funds payments in their local jurisdiction. These reporting requirements reflect the need for transparency and accountability, while recognizing and minimizing the burden, particularly for smaller local governments. Treasury urges State, territorial, Tribal, and local governments to engage their constituents and communities in developing plans to use these payments, given the scale of funding and its potential to catalyze broader economic recovery and rebuilding.

II. Eligible Uses

A. Public Health and Economic Impacts

Sections 602(c)(1)(A) and 603(c)(1)(A) provide significant resources for State, territorial, Tribal governments, and counties, metropolitan cities, and nonentitlement units of local governments (each referred to as a recipient) to meet the wide range of public health and economic impacts of the COVID-19 public health emergency.

These provisions authorize the use of payments from the Fiscal Recovery Funds to respond to the public health emergency with respect to COVID-19 or its negative economic impacts. Section 602 and section 603 also describe several types of uses that would be responsive to the impacts of the COVID-19 public health emergency, including assistance to households, small businesses, and nonprofits and aid to impacted industries, such as tourism, travel, and hospitality.²⁰

Accordingly, to assess whether a program or service is included in this category of eligible uses, a recipient should consider whether and how the use would respond to the COVID-19 public health emergency. Assessing whether a program or service "responds to" the COVID-19 public health emergency requires the recipient to, first, identify a need or negative impact of the COVID-19 public health emergency and, second, identify how the program, service, or other intervention addresses the identified need or impact. While the COVID-19 public health emergency affected many aspects of American life, eligible uses under this category must be in response to the disease itself or the harmful consequences of the economic disruptions resulting from or exacerbated by the COVID-19 public health emergency.

²⁰ Sections 602(c)(1)(A), 603(c)(1)(A) of the Act.

The interim final rule implements these provisions by identifying a non-exclusive list of programs or services that may be funded as responding to COVID-19 or the negative economic impacts of the COVID-19 public health emergency, along with considerations for evaluating other potential uses of the Fiscal Recovery Funds not explicitly listed. The interim final rule also provides flexibility for recipients to use payments from the Fiscal Recovery Funds for programs or services that are not identified on these non-exclusive lists but that fall under the terms of section 602(c)(1)(A) or 603(c)(1)(A) by responding to the COVID-19 public health emergency or its negative economic impacts. As an example, in determining whether a program or service responds to the negative economic impacts of the COVID-19 public health emergency, the interim final rule provides that payments from the Fiscal Recovery Funds should be designed to address an economic harm resulting from or exacerbated by the public health emergency. Recipients should assess the connection between the negative economic harm and the COVID-19 public health emergency, the nature and extent of that harm, and how the use of this funding would address such harm.

As discussed, the pandemic and the necessary actions taken to control the spread had a severe impact on households and small businesses, including in particular low-income workers and communities and people of color. While eligible uses under sections 602(c)(1)(A) and 603(c)(1)(A) provide flexibility to recipients to identify the most pressing local needs, Treasury encourages recipients to provide assistance to those households, businesses, and non-profits in communities most disproportionately impacted by the pandemic.

1. Responding to COVID-19

On January 21, 2020, the Centers for Disease Control and Prevention (CDC) identified the first case of novel coronavirus in the United States.²¹ By late March, the virus had spread to many States and the first wave was growing rapidly, centered in the northeast.²² This wave brought acute

²¹ Press Release, Centers for Disease Control and Prevention, First Travel-related Case of 2019 Novel Coronavirus Detected in United States (Jan. 21, 2020), <https://www.cdc.gov/media/releases/2020/p0121-novel-coronavirus-travel-case.html>.

²² Anne Schuchat et al., Public Health Response to the Initiation and Spread of Pandemic COVID-19 in the United States, February 24–April 21, 2021, *MMWR Morb Mortal Wkly Rep* 2021, 69(18):551–56 (May 8, 2021), <https://www.cdc.gov/mmwr/volumes/69/wr/mm6918e2.htm>.

strain on health care and public health systems: Hospitals and emergency medical services struggled to manage a major influx of patients; response personnel faced shortages of personal protective equipment; testing for the virus was scarce; and congregate living facilities like nursing homes and prisons saw rapid spread. State, local, and Tribal governments mobilized to support the health care system, issue public health orders to mitigate virus spread, and communicate safety measures to the public. The United States has since faced at least two additional COVID-19 waves that brought many similar challenges: The second in the summer, centered in the south and southwest, and a wave throughout the fall and winter, in which the virus reached a point of uncontrolled spread across the country and over 3,000 people died per day.²³ By early May 2021, the United States has experienced over 32 million confirmed COVID-19 cases and over 575,000 deaths.²⁴

Mitigating the impact of COVID-19, including taking actions to control its spread and support hospitals and health care workers caring for the sick, continues to require a major public health response from State, local and Tribal governments. New or heightened public health needs include COVID-19 testing, major expansions in contact tracing, support for individuals in isolation or quarantine, enforcement of public health orders, new public communication efforts, public health surveillance (e.g., monitoring case trends and genomic sequencing for variants), enhancement to health care capacity through alternative care facilities, and enhancement of public health data systems to meet new demands or scaling needs. State, local, and Tribal governments have also supported major efforts to prevent COVID-19 spread through safety measures at key settings like nursing homes, schools, congregate living settings, dense worksites, incarceration settings, and in other public facilities. This has included implementing infection prevention measures or making ventilation improvements in congregate settings, health care settings, or other key locations.

Other response and adaptation costs include 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. In recent months, State, local, and Tribal governments across the country have mobilized to support the national vaccination campaign, resulting in over 250 million doses administered to date.²⁵

The need for public health measures to respond to COVID-19 will continue in the months and potentially years to come. This includes the continuation of the vaccination campaign for the general public and, if vaccinations are approved for children in the future, eventually for youths. This also includes monitoring the spread of COVID-19 variants, understanding the impact of these variants (especially on vaccination efforts), developing approaches to respond to those variants, and monitoring global COVID-19 trends to understand continued risks to the United States. Finally, the long-term health impacts of COVID-19 will continue to require a public health response, including medical services for individuals with “long COVID,” and research to understand how COVID-19 impacts future health needs and raises risks for the millions of Americans who have been infected.

Other areas of public health have also been negatively impacted by the COVID-19 pandemic. For example, in one survey in January 2021, over 40 percent of American adults reported symptoms of depression or anxiety, up from 11 percent in the first half of 2019.²⁶ The proportion of children’s emergency department visits related to mental health has also risen noticeably.²⁷ Similarly, rates of substance misuse and overdose deaths have spiked: Preliminary data from the CDC show a nearly 30 percent increase in drug overdose mortality from September 2019 to September 2020.²⁸ Stay-at-home orders and other pandemic responses may have also reduced the ability of individuals affected by domestic violence to access

services.²⁹ Finally, some preventative public health measures like childhood vaccinations have been deferred and potentially forgone.³⁰

While the pandemic affected communities across the country, it disproportionately impacted some demographic groups and exacerbated health inequities along racial, ethnic, and socioeconomic lines.³¹ The CDC has found that racial and ethnic minorities are at increased risk for infection, hospitalization, and death from COVID-19, with Hispanic or Latino and Native American or Alaska Native patients at highest risk.³²

Similarly, low-income and socially vulnerable communities have seen the most severe health impacts. For example, counties with high poverty rates also have the highest rates of infections and deaths, with 223 deaths per 100,000 compared to the U.S. average of 175 deaths per 100,000, as of May 2021.³³ Counties with high social vulnerability, as measured by factors such as poverty and educational attainment, have also fared more poorly than the national average, with 211 deaths per 100,000 as of May 2021.³⁴

²⁹ Megan L. Evans, et al., A Pandemic within a Pandemic—Intimate Partner Violence during Covid-19, *N. Engl. J. Med.* 383:2302–04 (Dec. 10, 2020), available at <https://www.nejm.org/doi/full/10.1056/NEJMp2024046>.

³⁰ Jeanne M. Santoli et al., Effects of the COVID-19 Pandemic on Routine Pediatric Vaccine Ordering and Administration—United States, *Morb. Mortal. Wkly. Rep.* 69(19):591–93 (May 8, 2020), <https://www.cdc.gov/mmwr/volumes/69/wr/mm6919e2.htm>; Marisa Langdon-Embry et al., Notes from the Field: Rebound in Routine Childhood Vaccine Administration Following Decline During the COVID-19 Pandemic—New York City, March 1–June 27, 2020, *Morb. Mortal. Wkly. Rep.* 69(30):999–1001 (Jul. 31 2020), <https://www.cdc.gov/mmwr/volumes/69/wr/mm6930a3.htm>.

³¹ Office of the White House, National Strategy for the COVID-19 Response and Pandemic Preparedness (Jan. 21, 2021), <https://www.whitehouse.gov/wp-content/uploads/2021/01/National-Strategy-for-the-COVID-19-Response-and-Pandemic-Preparedness.pdf>.

³² In a study of 13 states from October to December 2020, the CDC found that Hispanic or Latino and Native American or Alaska Native individuals were 1.7 times more likely to visit an emergency room for COVID-19 than White individuals, and Black individuals were 1.4 times more likely to do so than White individuals. See Romano, *supra* note 10.

³³ Centers for Disease Control and Prevention, COVID Data Tracker: Trends in COVID-19 Cases and Deaths in the United States, by County-level Population Factors, https://covid.cdc.gov/covid-data-tracker/#pop-factors_totaldeaths (last visited May 8, 2021).

³⁴ The CDC’s Social Vulnerability Index includes fifteen variables measuring social vulnerability, including unemployment, poverty, education levels, single-parent households, disability status, non-English speaking households, crowded housing, and transportation access.

Centers for Disease Control and Prevention, COVID Data Tracker: Trends in COVID-19 Cases

Continued

²³ Centers for Disease Control and Prevention, COVID Data Tracker: Trends in Number of COVID-19 Cases and Deaths in the US Reported to CDC, by State/Territory, https://covid.cdc.gov/covid-data-tracker/#trends_dailytrendscases (last visited May 8, 2021).

²⁴ *Id.*

²⁵ Centers for Disease Control and Prevention, COVID Data Tracker: COVID-19 Vaccinations in the United States, <https://covid.cdc.gov/covid-data-tracker/#vaccinations> (last visited May 8, 2021).

²⁶ Panchal, *supra* note 4; Mark E. Czeisler et al., Mental Health, Substance Abuse, and Suicidal Ideation During COVID-19 Pandemic—United States, June 24–30 2020, *Morb. Mortal. Wkly. Rep.* 69(32):1049–57 (Aug. 14, 2020), <https://www.cdc.gov/mmwr/volumes/69/wr/mm6932a1.htm>.

²⁷ Leeb, *supra* note 4.

²⁸ Centers for Disease Prevention and Control, National Center for Health Statistics, Provisional Drug Overdose Death Counts, <https://www.cdc.gov/nchs/nvss/vsrr/drug-overdose-data.htm> (last visited May 8, 2021).

Over the last year, Native Americans have experienced more than one and a half times the rate of COVID-19 infections, more than triple the rate of hospitalizations, and more than double the death rate compared to White Americans.³⁵ Low-income and minority communities also exhibit higher rates of pre-existing conditions that may contribute to an increased risk of COVID-19 mortality.³⁶

In addition, individuals living in low-income communities may have had more limited ability to socially distance or to self-isolate when ill, resulting in faster spread of the virus, and were over-represented among essential workers, who faced greater risk of exposure.³⁷ Social distancing measures in response to the pandemic may have also exacerbated pre-existing public health challenges. For example, for children living in homes with lead paint, spending substantially more time at home raises the risk of developing elevated blood lead levels, while screenings for elevated blood lead levels declined during the pandemic.³⁸ The combination of these underlying social and health vulnerabilities may have contributed to more severe public health outcomes of the pandemic within these communities, resulting in an exacerbation of pre-existing disparities in health outcomes.³⁹

and Deaths in the United States, by Social Vulnerability Index, https://covid.cdc.gov/covid-data-tracker/#pop-factors_totaldeaths (last visited May 8, 2021).

³⁵ Centers for Disease Control and Prevention, Risk for COVID-19 Infection, Hospitalization, and Death By Race/Ethnicity, <https://www.cdc.gov/coronavirus/2019-ncov/covid-data/investigations-discovery/hospitalization-death-by-race-ethnicity.html> (last visited Apr. 26, 2021).

³⁶ See, e.g., Centers for Disease Control and Prevention, Risk of Severe Illness or Death from COVID-19 (Dec. 10, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/community/health-equity/racial-ethnic-disparities-disparities-illness.html> (last visited Apr. 26, 2021).

³⁷ Milena Almagro et al., Racial Disparities in Frontline Workers and Housing Crowding During COVID-19: Evidence from Geolocation Data (Sept. 22, 2020), NYU Stern School of Business (forthcoming), available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3695249; Grace McCormack et al., Economic Vulnerability of Households with Essential Workers, JAMA 324(4):368–90 (2020), available at <https://jamanetwork.com/journals/jama/fullarticle/2767630>.

³⁸ See, e.g., Joseph G. Courtney et al., Decreases in Young Children Who Received Blood Lead Level Testing During COVID-19—34 Jurisdictions, January–May 2020, *Morb. Mort. Wkly. Rep.* 70(5):155–61 (Feb. 5, 2021), <https://www.cdc.gov/mmwr/volumes/70/wr/mm7005a2.htm>; Emily A. Benfer & Lindsay F. Wiley, Health Justice Strategies to Combat COVID-19: Protecting Vulnerable Communities During a Pandemic, *Health Affairs Blog* (Mar. 19, 2020), <https://www.healthaffairs.org/doi/10.1377/hblog20200319.757883/full/>.

³⁹ See, e.g., Centers for Disease Control and Prevention, *supra* note 34; Benfer & Wiley, *supra*

Eligible Public Health Uses. The Fiscal Recovery Funds provide resources to meet and address these emergent public health needs, including through 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. To facilitate implementation and use of payments from the Fiscal Recovery Funds, the interim final rule identifies a non-exclusive list of eligible uses of funding to respond to the COVID-19 public health emergency. Eligible uses listed under this section build and expand upon permissible expenditures under the CRF, while recognizing the differences between the ARPA and CARES Act, and recognizing that the response to the COVID-19 public health emergency has changed and will continue to change over time. To assess whether additional uses would be eligible under this category, recipients should identify 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 assess how the use would respond to or address the identified need.

The interim final rule identifies a non-exclusive list of uses that address the effects of the COVID-19 public health emergency, including:

- **COVID-19 Mitigation and Prevention.** A broad range of services and programming are needed to contain COVID-19. Mitigation and prevention efforts for COVID-19 include vaccination programs; medical care; testing; contact tracing; support for isolation or quarantine; supports for vulnerable populations to access medical or public health services; public health surveillance (e.g., monitoring case trends, genomic sequencing for variants); enforcement of public health orders; public communication efforts; enhancement to health care capacity, including through alternative care facilities; purchases of personal protective equipment; support for prevention, mitigation, or other services in congregate living facilities (e.g., nursing homes, incarceration settings, homeless shelters, group living facilities) and other key settings like schools;⁴⁰ ventilation improvements in

note 38; Nathaniel M. Lewis et al., Disparities in COVID-19 Incidence, Hospitalizations, and Testing, by Area-Level Deprivation—Utah, March 3–July 9, 2020, *Morb. Mort. Wkly. Rep.* 69(38):1369–73 (Sept. 25, 2020), <https://www.cdc.gov/mmwr/volumes/69/wr/mm6938a4.htm>.

⁴⁰ This includes implementing mitigation strategies consistent with the Centers for Disease Control and Prevention's (CDC) Operational

congregate settings, health care settings, or other key locations; enhancement of public health data systems; and other public health responses.⁴¹ They also include 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. These COVID-19 prevention and mitigation programs and services, among others, were eligible expenditures under the CRF and are eligible uses under this category of eligible uses for the Fiscal Recovery Funds.⁴²

- **Medical Expenses.** The COVID-19 public health emergency continues to have devastating effects on public health; the United States continues to average hundreds of deaths per day and the spread of new COVID-19 variants has raised new risks and genomic surveillance needs.⁴³ Moreover, our understanding of the potentially serious and long-term effects of the virus is growing, including the potential for symptoms like shortness of breath to continue for weeks or months, for multi-organ impacts from COVID-19, or for post-intensive care syndrome.⁴⁴ State and local governments may need to continue to provide care and services to address these near- and longer-term needs.⁴⁵

Strategy for K–12 Schools through Phased Prevention, available at <https://www.cdc.gov/coronavirus/2019-ncov/community/schools-childcare/operation-strategy.html>.

⁴¹ Many of these expenses were also eligible in the CRF. Generally, funding uses eligible under CRF as a response to the direct public health impacts of COVID-19 will continue to be eligible under the ARPA, including those not explicitly listed here (e.g., telemedicine costs, costs to facilitate compliance with public health orders, disinfection of public areas, facilitating distance learning, increased solid waste disposal needs related to PPE, paid sick and paid family and medical leave to public employees to enable compliance with COVID-19 public health precautions), with the following two exceptions: (1) The standard for eligibility of public health and safety payrolls has been updated (see section II.A of this SUPPLEMENTARY INFORMATION) and (2) expenses related to the issuance of tax-anticipation notes are no longer an eligible funding use (see discussion of debt service in section II.B of this SUPPLEMENTARY INFORMATION).

⁴² Coronavirus Relief Fund for States, Tribal Governments, and Certain Eligible Local Governments, 86 FR 4182 (Jan. 15, 2021), available at https://home.treasury.gov/system/files/136/CRF-Guidance-Federal-Register_2021-00827.pdf.

⁴³ Centers for Disease Control and Prevention, *supra* note 24.

⁴⁴ Centers for Disease Control and Prevention, Long-Term Effects (Apr. 8, 2021), <https://www.cdc.gov/coronavirus/2019-ncov/long-term-effects.html> (last visited Apr. 26, 2021).

⁴⁵ Pursuant to 42 CFR 433.51 and 45 CFR 75.306, Fiscal Recovery Funds may not serve as a State or locality's contribution of certain Federal funds.

- *Behavioral Health Care.* In addition, new or enhanced State, local, and Tribal government services may be needed to meet behavioral health needs exacerbated by the pandemic and respond to other public health impacts. These services include mental health treatment, substance misuse treatment, other behavioral health services, hotlines or warmlines, crisis intervention, overdose prevention, 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.*

Treasury recognizes that responding to the public health and negative economic impacts of the pandemic, including administering the services described above, requires a substantial commitment of State, local, and Tribal government human resources. As a result, the Fiscal Recovery 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.⁴⁶ Accordingly, the Fiscal Recovery Funds may be used to support the payroll and covered benefits for the portion of the employee's time that is dedicated to responding to the COVID-19 public health emergency. For administrative convenience, the recipient may 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, if the employee, or his or her operating unit or division, is primarily dedicated to responding to the COVID-19 public health emergency. Recipients may consider other presumptions for assessing the extent to which an employee, division, or operating unit is engaged in activities that respond to the COVID-19 public health emergency, provided that the recipient reassesses periodically and maintains records to support its assessment, such as payroll records, attestations from supervisors or staff, or regular work product or correspondence demonstrating work on

the COVID-19 response. Recipients need not routinely track staff hours.

- *Expenses to Improve the Design and Execution of Health and Public Health Programs.* State, local, and Tribal governments may use payments from the Fiscal Recovery Funds to engage in planning and analysis in order to improve programs addressing the COVID-19 pandemic, including through use of targeted consumer outreach, improvements to data or technology infrastructure, impact evaluations, and data analysis.

Eligible Uses to Address Disparities in Public Health Outcomes. In addition, in recognition of the disproportionate impacts of the COVID-19 pandemic on health outcomes in low-income and Native American communities and the importance of mitigating these effects, the interim final rule identifies a broader range of services and programs that will be presumed to be responding to the public health emergency when provided in these communities. Specifically, Treasury will presume that certain types of services, outlined below, are eligible uses when provided in a Qualified Census Tract (QCT),⁴⁷ to families living in QCTs, or when these services are provided by Tribal governments.⁴⁸ Recipients may also provide these services to other populations, households, or geographic areas that are 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

⁴⁷ Qualified Census Tracts are a common, readily-accessible, and geographically granular method of identifying communities with a large proportion of low-income residents. Using an existing measure may speed implementation and decrease administrative burden, while identifying areas of need at a highly-localized level.

While QCTs are an effective tool generally, many tribal communities have households with a wide range of income levels due in part to non-tribal member, high income residents living in the community. Mixed income communities, with a significant share of tribal members at the lowest levels of income, are often not included as eligible QCTs yet tribal residents are experiencing disproportionate impacts due to the pandemic. Therefore, including all services provided by Tribal governments is a more effective means of ensuring that disproportionately impacted Tribal members can receive services.

⁴⁸ U.S. Department of Housing and Urban Development (HUD), Qualified Census Tracts and Difficult Development Areas, <https://www.huduser.gov/portal/datasets/qct.html> (last visited Apr. 26, 2021); U.S. Department of the Interior, Bureau of Indian Affairs, Indian Lands of Federally Recognized Tribes of the United States (June 2016), <https://www.bia.gov/sites/bia.gov/files/assets/bia/ots/webteam/pdf/idc1-028635.pdf> (last visited Apr. 26, 2021).

specific populations, households, or geographic areas to be served.

Given the exacerbation of health disparities during the pandemic and the role of pre-existing social vulnerabilities in driving these disparate outcomes, services to address health disparities are presumed to be responsive to the public health impacts of the pandemic. Specifically, recipients may use payments from the Fiscal Recovery Funds to facilitate access to resources that improve health outcomes, including services that connect residents with health care resources and public assistance programs and build healthier environments, such as:

- Funding community health workers to help community members access health services and services to address the social determinants of health;⁴⁹
- 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; and
- Evidence-based community violence intervention programs to prevent violence and mitigate the increase in violence during the pandemic.⁵⁰

2. Responding to Negative Economic Impacts

Impacts on Households and Individuals. The public health emergency, including the necessary measures taken to protect public health, resulted in significant economic and financial hardship for many Americans. As businesses closed, consumers stayed home, schools shifted to remote

⁴⁹ The social determinants of health are the social and environmental conditions that affect health outcomes, specifically economic stability, health care access, social context, neighborhoods and built environment, and education access. See, e.g., U.S. Department of Health and Human Services, Office of Disease Prevention and Health Promotion, Healthy People 2030: Social Determinants of Health, <https://health.gov/healthypeople/objectives-and-data/social-determinants-health> (last visited Apr. 26, 2021).

⁵⁰ National Commission on COVID-19 and Criminal Justice, Impact Report: COVID-19 and Crime (Jan. 31, 2021), <https://covid19.counciloncj.org/2021/01/31/impact-report-covid-19-and-crime-3/> (showing a spike in homicide and assaults); Brad Boesrup et al., Alarming Trends in US domestic violence during the COVID-19 pandemic, *Am. J. of Emerg. Med.* 38(12): 2753–55 (Dec. 1, 2020), available at [https://www.ajemjournal.com/article/S0735-6757\(20\)30307-7/fulltext](https://www.ajemjournal.com/article/S0735-6757(20)30307-7/fulltext) (showing a spike in domestic violence).

⁴⁶ In general, if an employee's wages and salaries are an eligible use of Fiscal Recovery Funds, recipients may treat the employee's covered benefits as an eligible use of Fiscal Recovery Funds. For purposes of the Fiscal Recovery Funds, covered benefits include costs of all types of leave (vacation, family-related, sick, military, bereavement, sabbatical, jury duty), employee insurance (health, life, dental, vision), retirement (pensions, 401(k)), unemployment benefit plans (Federal and state), workers compensation insurance, and Federal Insurance Contributions Act (FICA) taxes (which includes Social Security and Medicare taxes).

education, and travel declined precipitously, over 20 million jobs were lost in March and April 2020.⁵¹ Although many have returned to work, as of April 2021, the economy remains 8.2 million jobs below its pre-pandemic peak,⁵² and more than 3 million workers have dropped out of the labor market altogether relative to February 2020.⁵³

Rates of unemployment are particularly severe among workers of color and workers with lower levels of educational attainment; for example, the overall unemployment rate in the United States was 6.1 percent in April 2021, but certain groups saw much higher rates: 9.7 percent for Black workers, 7.9 percent for Hispanic or Latino workers, and 9.3 percent for workers without a high school diploma.⁵⁴ Job losses have also been particularly steep among low wage workers, with these workers remaining furthest from recovery as of the end of 2020.⁵⁵ A severe recession—and its concentrated impact among low-income workers—has amplified food and housing insecurity, with an estimated nearly 17 million adults living in households where there is sometimes or often not enough food to eat and an estimated 10.7 million adults living in households that were not current on rent.⁵⁶ Over the course of the pandemic,

inequities also manifested along gender lines, as schools closed to in-person activities, leaving many working families without child care during the day.⁵⁷ Women of color have been hit especially hard: The labor force participation rate for Black women has fallen by 3.2 percentage points⁵⁸ during the pandemic as compared to 1.0 percentage points for Black men⁵⁹ and 2.0 percentage points for White women.⁶⁰

As the economy recovers, the effects of the pandemic-related recession may continue to impact households, including a risk of longer-term effects on earnings and economic potential. For example, unemployed workers, especially those who have experienced longer periods of unemployment, earn lower wages over the long term once rehired.⁶¹ In addition to the labor market consequences for unemployed workers, recessions can also cause longer-term economic challenges through, among other factors, damaged consumer credit scores⁶² and reduced familial and childhood wellbeing.⁶³

Food, Housing, and Employment Hardships, <https://www.cbpp.org/research/poverty-and-inequality/tracking-the-covid-19-recessions-effects-on-food-housing-and> (last visited May 8, 2021).

⁵¹ Women have carried a larger share of childcare responsibilities than men during the COVID-19 crisis. See, e.g., Gema Zamarró & María J. Prados, Gender differences in couples' division of childcare, work and mental health during COVID-19, *Rev. Econ. Household* 19:11–40 (2021), available at <https://link.springer.com/article/10.1007/s11150-020-09534-7>; Titan Alon et al., The Impact of COVID-19 on Gender Equality, National Bureau of Economic Research Working Paper 26947 (April 2020), available at <https://www.nber.org/papers/w26947>.

⁵² U.S. Bureau of Labor Statistics, Labor Force Participation Rate—20 Yrs. & Over, Black or African American Women [LNS11300032], retrieved from FRED, Federal Reserve Bank of St. Louis; <https://fred.stlouisfed.org/series/LNS11300032> (last visited May 8, 2021).

⁵³ U.S. Bureau of Labor Statistics, Labor Force Participation Rate—20 Yrs. & Over, Black or African American Men [LNS11300031], retrieved from FRED, Federal Reserve Bank of St. Louis; <https://fred.stlouisfed.org/series/LNS11300031> (last visited May 8, 2021).

⁵⁴ U.S. Bureau of Labor Statistics, Labor Force Participation Rate—20 Yrs. & Over, White Women [LNS11300029], retrieved from FRED, Federal Reserve Bank of St. Louis; <https://fred.stlouisfed.org/series/LNS11300029> (last visited May 8, 2021).

⁵⁵ See, e.g., Michael Greenstone & Adam Looney, Unemployment and Earnings Losses: A Look at Long-Term Impacts of the Great Recession on American Workers, *Brookings Institution* (Nov. 4, 2021), <https://www.brookings.edu/blog/jobs/2011/11/04/unemployment-and-earnings-losses-a-look-at-long-term-impacts-of-the-great-recession-on-american-workers/>.

⁵⁶ Chi Chi Wu, Solving the Credit Conundrum: Helping Consumers' Credit Records Impaired by the Foreclosure Crisis and Great Recession (Dec. 2013), https://www.nclc.org/images/pdf/credit_reports/report-credit-conundrum-2013.pdf.

⁵⁷ Irwin Garfinkel, Sara McLanahan, Christopher Wimer, eds., *Children of the Great Recession*,

These potential long-term economic consequences underscore the continued need for robust policy support.

Impacts on Businesses. The pandemic has also severely impacted many businesses, with small businesses hit especially hard. Small businesses make up nearly half of U.S. private-sector employment⁶⁴ and play a key role in supporting the overall economic recovery as they are responsible for two-thirds of net new jobs.⁶⁵ Since the beginning of the pandemic, however, 400,000 small businesses have closed, with many more at risk.⁶⁶ Sectors with a large share of small business employment have been among those with the most drastic drops in employment.⁶⁷ The negative outlook for small businesses has continued: As of April 2021, approximately 70 percent of small businesses reported that the pandemic has had a moderate or large negative effect on their business, and over a third expect that it will take over 6 months for their business to return to their normal level of operations.⁶⁸

This negative outlook is likely the result of many small businesses having faced periods of closure and having seen declining revenues as customers stayed home.⁶⁹ In general, small businesses can face greater hurdles in accessing credit,⁷⁰ and many small businesses were already financially fragile at the outset of the pandemic.⁷¹ Non-profits, which provide vital services to communities, have similarly faced

Russell Sage Foundation (Aug. 2016), available at <https://www.russellsage.org/publications/children-great-recession>.

⁶⁴ Board of Governors of the Federal Reserve System, *supra* note 5.

⁶⁵ U.S. Small Business Administration, Office of Advocacy, Small Businesses Generate 44 Percent of U.S. Economic Activity (Jan. 30, 2019), <https://advocacy.sba.gov/2019/01/30/small-businesses-generate-44-percent-of-u-s-economic-activity/>.

⁶⁶ Biden, *supra* note 6.

⁶⁷ Daniel Wilmoth, U.S. Small Business Administration Office of Advocacy, The Effects of the COVID-19 Pandemic on Small Businesses, Issue Brief No. 16 (Mar. 2021), available at <https://cdn.advocacy.sba.gov/wp-content/uploads/2021/03/02112318/COVID-19-Impact-On-Small-Business.pdf>.

⁶⁸ U.S. Census Bureau, Small Business Pulse Survey, <https://portal.census.gov/pulse/data/> (last visited May 8, 2021).

⁶⁹ Olivia S. Kim et al., Revenue Collapses and the Consumption of Small Business Owners in the Early Stages of the COVID-19 Pandemic (Nov. 2020), <https://www.nber.org/papers/w28151>.

⁷⁰ See e.g., Board of Governors of the Federal Reserve System, Report to Congress on the Availability of Credit to Small Businesses (Sept. 2017), available at <https://www.federalreserve.gov/publications/2017-september-availability-of-credit-to-small-businesses.htm>.

⁷¹ Alexander W. Bartik et al., The Impact of COVID-19 on small business outcomes and expectations, *PNAS* 117(30): 17656–66 (July 28, 2020), available at <https://www.pnas.org/content/117/30/17656>.

⁵¹ U.S. Bureau of Labor Statistics, All Employees, Total Nonfarm (PAYEMS), retrieved from FRED, Federal Reserve Bank of St. Louis; <https://fred.stlouisfed.org/series/PAYEMS> (last visited May 8, 2021).

⁵² *Id.*

⁵³ U.S. Bureau of Labor Statistics, Civilian Labor Force Level [CLF16OV], retrieved from FRED, Federal Reserve Bank of St. Louis; <https://fred.stlouisfed.org/series/CLF16OV> (last visited May 8, 2021).

⁵⁴ U.S. Bureau of Labor Statistics, Labor Force Statistics from the Current Population Survey: Employment status of the civilian population by sex and age (May 8 2021), <https://www.bls.gov/news.release/empstat.t01.htm> (last visited May 8, 2021); U.S. Bureau of Labor Statistics, Labor Force Statistics from the Current Population Survey: Employment status of the civilian noninstitutional population by race, Hispanic or Latino ethnicity, sex, and age (May 8, 2021), <https://www.bls.gov/web/empstat/cpseca04.htm> (last visited May 8, 2021); U.S. Bureau of Labor Statistics, Labor Force Statistics from the Current Population Survey: Employment status of the civilian noninstitutional population 25 years and over by educational attainment (May 8, 2021), <https://www.bls.gov/web/empstat/cpseca05.htm> (last visited May 8, 2021).

⁵⁵ Elise Gould & Jori Kandra, Wages grew in 2020 because the bottom fell out of the low-wage labor market, *Economic Policy Institute* (Feb. 24, 2021), <https://files.epi.org/pdf/219418.pdf>. See also, Michael Dalton et al., The K-Shaped Recovery: Examining the Diverging Fortunes of Workers in the Recovery from the COVID-19 Pandemic using Business and Household Survey Microdata, U.S. Bureau of Labor Statistics Working Paper Series (Feb. 2021), <https://www.bls.gov/osmr/research-papers/2021/pdf/ec210020.pdf>.

⁵⁶ Center on Budget and Policy Priorities, Tracking the COVID-19 Recession's Effects on

economic and financial challenges due to the pandemic.⁷²

Impacts to State, Local, and Tribal Governments. State, local, and Tribal governments have felt substantial fiscal pressures. As noted above, State, local, and Tribal governments have faced significant revenue shortfalls and remain over 1 million jobs below their pre-pandemic staffing levels.⁷³ These reductions in staffing may undermine the ability to deliver services effectively, as well as add to the number of unemployed individuals in their jurisdictions.

Exacerbation of Pre-existing Disparities. The COVID-19 public health emergency may have lasting negative effects on economic outcomes, particularly in exacerbating disparities that existed prior to the pandemic.

The negative economic impacts of the COVID-19 pandemic are particularly pronounced in certain communities and families. Low- and moderate-income jobs make up a substantial portion of both total pandemic job losses,⁷⁴ and jobs that require in-person frontline work, which are exposed to greater risk of contracting COVID-19.⁷⁵ Both factors compound pre-existing vulnerabilities and the likelihood of food, housing, or other financial insecurity in low- and moderate-income families and, given the concentration of low- and moderate-income families within certain communities,⁷⁶ raise a substantial risk that the effects of the COVID-19 public health emergency will be amplified within these communities.

These compounding effect of recessions on concentrated poverty and the long-lasting nature of this effect were observed after the 2007–2009 recession, including a large increase in concentrated poverty with the number of people living in extremely poor

neighborhoods more than doubling by 2010–2014 relative to 2000.⁷⁷ Concentrated poverty has a range of deleterious impacts, including additional burdens on families and reduced economic potential and social cohesion.⁷⁸ Given the disproportionate impact of COVID-19 on low-income households discussed above, there is a risk that the current pandemic-induced recession could further increase concentrated poverty and cause long-term damage to economic prospects in neighborhoods of concentrated poverty.

The negative economic impacts of COVID-19 also include significant impacts to children in disproportionately affected families and include impacts to education, health, and welfare, all of which contribute to long-term economic outcomes.⁷⁹ Many low-income and minority students, who were disproportionately served by remote or hybrid education during the pandemic, lacked the resources to participate fully in remote schooling or live in households without adults available throughout the day to assist with online coursework.⁸⁰ Given these trends, the pandemic may widen educational disparities and worsen outcomes for low-income students,⁸¹ and

effect that would substantially impact their long-term economic outcomes. Increased economic strain or material hardship due to the pandemic could also have a long-term impact on health, educational, and economic outcomes of young children.⁸² Evidence suggests that adverse conditions in early childhood, including exposure to poverty, food insecurity, housing insecurity, or other economic hardships, are particularly impactful.⁸³

The pandemic's disproportionate economic impacts are also seen in Tribal communities across the country—for Tribal governments as well as families and businesses on and off Tribal lands. In the early months of the pandemic, Native American unemployment spiked to 26 percent and, while partially recovered, remains at nearly 11 percent.⁸⁴ Tribal enterprises are a significant source of revenue for Tribal governments to support the provision of government services. These enterprises, notably concentrated in gaming, tourism, and hospitality, frequently closed, significantly reducing both revenues to Tribal governments and employment. As a result, Tribal governments have reduced essential services to their citizens and communities.⁸⁵

Eligible Uses. Sections 602(c)(1)(A) and 603(c)(1)(A) permit use of payments from the Fiscal Recovery Funds to respond to the negative economic impacts of the COVID-19 public health emergency. Eligible uses that respond to the negative economic impacts of the public health emergency must be designed to address an economic harm resulting from or exacerbated by the public health emergency. In considering whether a program or service would be

⁷⁷ Elizabeth Kneebone & Natalie Holmes, U.S. concentrated poverty in the wake of the Great Recession, Brookings Institution (Mar. 31, 2016), <https://www.brookings.edu/research/u-s-concentrated-poverty-in-the-wake-of-the-great-recession/>.

⁷⁸ David Erickson et al., The Enduring Challenge of Concentrated Poverty in America: Case Studies from Communities Across the U.S. (2008), available at https://www.frbsf.org/community-development/files/cp_fullreport.pdf.

⁷⁹ Educational quality, as early as Kindergarten, has a long-term impact on children's public health and economic outcomes. See, e.g., Tyler W. Watts et al., The Chicago School Readiness Project: Examining the long-term impacts of an early childhood intervention, *PLoS ONE* 13(7) (2018), available at <https://journals.plos.org/plosone/article?id=10.1371/journal.pone.0200144>; Opportunity Insights, How Can We Amplify Education as an Engine of Mobility? Using big data to help children get the most from school, <https://opportunityinsights.org/education/> (last visited Apr. 26, 2021); U.S. Department of Health and Human Services (HHS), Office of Disease Prevention and Health Promotion, Early Childhood Development and Education, <https://www.healthypeople.gov/2020/topics-objectives/topic/social-determinants-health/interventions-resources/early-childhood-development-and-education> (last visited Apr. 26, 2021).

⁸⁰ See, e.g., Bacher-Hicks, *supra* note 14.

⁸¹ A Department of Education survey found that, as of February 2021, 42 percent of fourth grade students nationwide were offered only remote education, compared to 48 percent of economically disadvantaged students, 54 percent of Black students and 57 percent of Hispanic students. Large districts often disproportionately serve low-income students. See Institute of Education Sciences, Monthly School Survey Dashboard, <https://ies.ed.gov/schoolsurvey/> (last visited Apr. 26, 2021). In summer 2020, a review found that 74 percent of the largest 100 districts chose remote learning only.

⁷² Federal Reserve Bank of San Francisco, Impacts of COVID-19 on Nonprofits in the Western United States (May 2020), <https://www.frbsf.org/community-development/files/impact-of-covid-nonprofits-serving-western-united-states.pdf>.

⁷³ Bureau of Labor Statistics, *supra* note 8; Elijah Moreno & Heather Sobrepena, Tribal entities remain resilient as COVID-19 batters their finances, Federal Reserve Bank of Minneapolis (Nov. 10, 2021), <https://www.minneapolisfed.org/article/2020/tribal-entities-remain-resilient-as-covid-19-batters-their-finances>.

⁷⁴ Kim Parker et al., Economic Fallout from COVID-19 Continues to Hit Lower-Income Americans the Hardest, Pew Research Center (Sept. 24, 2020), <https://www.pewresearch.org/social-trends/2020/09/24/economic-fallout-from-covid-19-continues-to-hit-lower-income-americans-the-hardest/>; Gould, *supra* note 55.

⁷⁵ See *infra* Section II.B of this Supplementary Information.

⁷⁶ Elizabeth Kneebone, The Changing geography of US poverty, Brookings Institution (Feb. 15, 2017), <https://www.brookings.edu/testimonies/the-changing-geography-of-us-poverty/>.

See Education Week, School Districts' Reopening Plans: A Snapshot (Jul. 15, 2020), <https://www.edweek.org/leadership/school-districts-reopening-plans-a-snapshot/2020/07> (last visited May 4, 2021).

⁸² HHS, *supra* note 79.

⁸³ Hirokazu Yoshikawa, Effects of the Global Coronavirus Disease—2019 Pandemic on Early Childhood Development: Short- and Long-Term Risks and Mitigating Program and Policy Actions, *J. of Pediatrics* Vol. 223:188–93 (Aug. 1, 2020), available at [https://www.jpeds.com/article/S0022-3476\(20\)30606-5/abstract](https://www.jpeds.com/article/S0022-3476(20)30606-5/abstract).

⁸⁴ Based on calculations conducted by the Minneapolis Fed's Center for Indian Country Development using Flood et al. (2020)'s Current Population Survey. Sarah Flood, Miriam King, Renae Rodgers, Steven Ruggles and J. Robert Warren, Integrated Public Use Microdata Series, Current Population Survey: Version 8.0 [dataset], Minneapolis, MN: IPUMS, 2020. <https://doi.org/10.18128/D030.V8.0>; see also Donna Feir & Charles Golding, Native Employment During COVID-19: Hard hit in April but Starting to Rebound? (Aug. 5, 2020), <https://www.minneapolisfed.org/article/2020/native-employment-during-covid-19-hit-hard-in-april-but-starting-to-rebound>.

⁸⁵ Moreno & Sobrepena, *supra* note 73.

eligible under this category, the recipient should assess whether, and the extent to which, there has been an economic harm, such as loss of earnings or revenue, that resulted from the COVID-19 public health emergency and whether, and the extent to which, the use would respond or address this harm.⁶⁶ A recipient should first consider whether an economic harm exists and whether this harm was caused or made worse by the COVID-19 public health emergency. While economic impacts may either be immediate or delayed, assistance or aid to individuals or businesses that did not experience a negative economic impact from the public health emergency would not be an eligible use under this category.

In addition, the eligible use must “respond to” the identified negative economic impact. Responses must be related and reasonably proportional to the extent and type of harm experienced; uses that bear no relation or are grossly disproportionate to the type or extent of harm experienced would not be eligible uses. Where there has been a negative economic impact resulting from the public health emergency, States, local, and Tribal governments have broad latitude to choose whether and how to use the Fiscal Recovery Funds to respond to and address the negative economic impact. Sections 602(c)(1)(A) and 603(c)(1)(A) describe several types of uses that would be eligible under this category, including assistance to households, small businesses, and nonprofits and aid to impacted industries such as tourism, travel, and hospitality.

To facilitate implementation and use of payments from the Fiscal Recovery Funds, the interim final rule identifies a non-exclusive list of eligible uses of funding that respond to the negative economic impacts of the public health emergency. Consistent with the discussion above, the eligible uses listed below would respond directly to the economic or financial harms resulting from and/or exacerbated by the public health emergency.

- *Assistance to Unemployed Workers.* This includes assistance to unemployed workers, including services like job training to accelerate rehiring of unemployed workers; 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.

- *State Unemployment Insurance Trust Funds.* Consistent with the approach taken in the CRF, recipients may make deposits into the state account of the Unemployment Trust Fund established under section 904 of the Social Security Act (42 U.S.C. 1104) up to the level needed to restore the pre-pandemic balances of such account as of January 27, 2020 or to pay back advances received under Title XII of the Social Security Act (42 U.S.C. 1321) for the payment of benefits between January 27, 2020 and May 17, 2021, given the close nexus between Unemployment Trust Fund costs, solvency of Unemployment Trust Fund systems, and pandemic economic impacts. Further, Unemployment Trust Fund deposits can decrease fiscal strain on Unemployment Insurance systems impacted by the pandemic. States facing a sharp increase in Unemployment Insurance claims during the pandemic may have drawn down positive Unemployment Trust Fund balances and, after exhausting the balance, required advances to fund continuing obligations to claimants. Because both of these impacts were driven directly by the need for assistance to unemployed workers during the pandemic, replenishing Unemployment Trust Funds up to the pre-pandemic level responds to the pandemic’s negative economic impacts on unemployed workers.

- *Assistance to Households.*

Assistance to households or populations facing negative economic impacts due to COVID-19 is also an eligible use. This includes: Food assistance; rent, mortgage, or utility assistance; counseling and legal aid to prevent eviction or homelessness; cash assistance (discussed below); emergency assistance for burials, home repairs, weatherization, or other needs; internet access or digital literacy assistance; or job training to address negative economic or public health impacts experienced due to a worker’s occupation or level of training. As discussed above, in considering whether a potential use is eligible under this category, a recipient must consider whether, and the extent to which, the household has experienced a negative economic impact from the pandemic. In assessing whether a household or population experienced economic harm as a result of the pandemic, a recipient may presume that a household or population that experienced unemployment or increased food or housing insecurity or is low- or moderate-income experienced negative

economic impacts resulting from the pandemic. For example, a cash transfer program may focus on unemployed workers or low- and moderate-income families, which have faced disproportionate economic harms due to the pandemic. Cash transfers must be reasonably proportional to the negative economic impact they are intended to address. Cash transfers grossly in excess of the amount needed to address the negative economic impact identified by the recipient would not be considered to be a response to the COVID-19 public health emergency or its negative impacts. In particular, when considering the appropriate size of permissible cash transfers made in response to the COVID-19 public health emergency, State, local and Tribal governments may consider and take guidance from the per person amounts previously provided by the Federal Government in response to the COVID-19 crisis. Cash transfers that are grossly in excess of such amounts would be outside the scope of eligible uses under sections 602(c)(1)(A) and 603(c)(1)(A) and could be subject to recoupment. In addition, a recipient could provide survivor’s benefits to surviving family members of COVID-19 victims, or cash assistance to widows, widowers, and dependents of eligible COVID-19 victims.

- *Expenses to Improve Efficacy of Economic Relief Programs.* State, local, and Tribal governments may use payments from the Fiscal Recovery Funds to improve 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.

- *Small Businesses and Non-profits.*

As discussed above, small businesses and non-profits faced significant challenges in covering payroll, mortgages or rent, and other operating costs as a result of the public health emergency and measures taken to contain the spread of the virus. State, local, and Tribal governments may provide assistance to small businesses to adopt safer operating procedures, weather periods of closure, or mitigate financial hardship resulting from the COVID-19 public health emergency, 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

⁶⁶ In some cases, a use may be permissible under another eligible use category even if it falls outside the scope of section (c)(1)(A) of the Act.

plant changes to enable social distancing, enhanced cleaning efforts, barriers or partitions, or COVID-19 vaccination, testing, or contact tracing programs; and

- Technical assistance, counseling, or other services to assist with business planning needs.

As discussed above, these services should respond to the negative economic impacts of COVID-19. Recipients may consider additional criteria to target assistance to businesses in need, including small businesses. Such criteria may include businesses facing financial insecurity, substantial declines in gross receipts (e.g., comparable to measures used to assess eligibility for the Paycheck Protection Program), or other economic harm due to the pandemic, as well as businesses with less capacity to weather financial hardship, such as the smallest businesses, those with less access to credit, or those serving disadvantaged communities. Recipients should consider local economic conditions and business data when establishing such criteria.⁸⁷

- *Rehiring State, Local, and Tribal Government Staff.* State, local, and Tribal governments continue to see pandemic impacts in overall staffing levels: State, local, and Tribal government employment remains more than 1 million jobs lower in April 2021 than prior to the pandemic.⁸⁸ Employment losses decrease a state or local government's ability to effectively administer services. Thus, the interim final rule includes as an eligible use payroll, covered benefits, and other costs associated with rehiring public sector staff, up to the pre-pandemic staffing level of the government.

- *Aid to Impacted Industries.* Sections 602(c)(1)(A) and 603(c)(1)(A) recognize that certain industries, such as tourism, travel, and hospitality, were disproportionately and negatively impacted by the COVID-19 public health emergency. Aid provided to tourism, travel, and hospitality industries should respond to the negative economic impacts of the

pandemic on those and similarly impacted industries. For example, aid may include assistance to implement COVID-19 mitigation and infection prevention measures to enable safe resumption of tourism, travel, and hospitality services, for example, 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 may be considered responsive to the negative economic impacts of the pandemic if it supports businesses, attractions, business districts, and Tribal development districts operating prior to the pandemic and affected by required closures and other efforts to contain the pandemic. For example, a recipient may provide 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.

When considering providing aid to industries other than tourism, travel, and hospitality, recipients should consider the extent of the economic impact as compared to tourism, travel, and hospitality, the industries enumerated in the statute. For example, on net, the leisure and hospitality industry has experienced an approximately 24 percent decline in revenue and approximately 17 percent decline in employment nationwide due to the COVID-19 public health emergency.⁸⁹ Recipients should also consider whether impacts were due to the COVID-19 pandemic, as opposed to longer-term economic or industrial trends unrelated to the pandemic.

To facilitate transparency and accountability, the interim final rule requires that State, local, and Tribal governments publicly report assistance provided to private-sector businesses under this eligible use, including

tourism, travel, hospitality, and other impacted industries, and its connection to negative economic impacts of the pandemic. Recipients also should maintain records to support their assessment of how businesses or business districts receiving assistance were affected by the negative economic impacts of the pandemic and how the aid provided responds to these impacts.

As discussed above, economic disparities that existed prior to the COVID-19 public health emergency amplified the impact of the pandemic among low-income and minority groups. These families were more likely to face housing, food, and financial insecurity; are over-represented among low-wage workers; and many have seen their livelihoods deteriorate further during the pandemic and economic contraction. In recognition of the disproportionate negative economic impacts on certain communities and populations, the interim final rule identifies services and programs that will be presumed to be responding to the negative economic impacts of the COVID-19 public health emergency when provided in these communities.

Specifically, Treasury will presume that certain types of services, outlined below, are eligible uses when provided in a QCT, to families and individuals living in QCTs, or when these services are provided by Tribal governments.⁹⁰ Recipients may also provide these services 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. The interim final rule identifies a non-exclusive list of uses that address the disproportionate negative economic effects of the COVID-19 public health emergency, including:

- *Building Stronger Communities through Investments in Housing and Neighborhoods.* The economic impacts of COVID-19 have likely been most acute in lower-income neighborhoods, including concentrated areas of high unemployment, limited economic opportunity, and housing insecurity.⁹¹

⁸⁷ See Federal Reserve Bank of Cleveland, An Uphill Battle: COVID-19's Outsized Toll on Minority-Owned Firms (Oct. 8, 2020), <https://www.clevelandfed.org/newsroom-and-events/publications/community-development-briefs/db-20201008-misera-report.aspx> (discussing the impact of COVID-19 on minority owned businesses).

⁸⁸ U.S. Bureau of Labor Statistics, All Employees, State Government [CES9092000001] and All Employees, Local Government [CES9093000001], retrieved from FRED, Federal Reserve Bank of St. Louis, <https://fred.stlouisfed.org/series/CES9092000001> and <https://fred.stlouisfed.org/series/CES9093000001> (last visited May 8, 2021).

⁸⁹ From February 2020 to April 2021, employment in "Leisure and hospitality" has fallen by approximately 17 percent. See U.S. Bureau of Labor Statistics, All Employees, Leisure and Hospitality, retrieved from FRED, Federal Reserve Bank of St. Louis, <https://fred.stlouisfed.org/series/USLAH> (last visited May 8, 2021). From 2019Q4 to 2020Q4, gross output (e.g. revenue) in arts, entertainment, recreation, accommodation, and food services has fallen by approximately 24 percent. See Bureau of Economic Analysis, News Release: Gross Domestic Product (Third Estimate), Corporate Profits, and GDP by Industry, Fourth Quarter and Year 2020 (Mar. 25, 2021), Table 17, https://www.bea.gov/sites/default/files/2021-03/gdp4q20_3rd.pdf.

⁹⁰ HUD, *supra* note 48.

⁹¹ Stuart M. Butler & Jonathan Grabiner, Tackling the legacy of persistent urban inequality and concentrated poverty, Brookings Institution (Nov. 16, 2020), <https://www.brookings.edu/blog/up-front/2020/11/16/tackling-the-legacy-of->

Services in this category alleviate the immediate economic impacts of the COVID-19 pandemic on housing insecurity, while addressing conditions that contributed to poor public health and economic outcomes during the pandemic, namely concentrated areas with limited economic opportunity and inadequate or poor-quality housing.⁹² Eligible services include:

- 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; and

- 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.⁹³

○ *Addressing Educational Disparities.*

As outlined above, school closures and the transition to remote education raised particular challenges for lower-income students, potentially exacerbating educational disparities, while increases in economic hardship among families could have long-lasting impacts on children's educational and economic prospects. Services under this prong would enhance educational supports to help mitigate impacts of the pandemic. Eligible services include:

- 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; and

- Evidence-based practices to address the social, emotional, and mental health needs of students;

- *Promoting Healthy Childhood Environments.* Children's economic and family circumstances have a long-term impact on their future economic outcomes.⁹⁴ Increases in economic hardship, material insecurity, and parental stress and behavioral health challenges all raise the risk of long-term harms to today's children due to the pandemic. Eligible services to address this challenge include:

- New or expanded high-quality childcare to provide safe and supportive care for children;

- Home visiting programs to provide structured visits from health, 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; and

- 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.

State, local, and Tribal governments are encouraged to use payments from the Fiscal Recovery Funds to respond to the direct and immediate needs of the pandemic and its negative economic impacts and, in particular, the needs of households and businesses that were disproportionately and negatively impacted by the public health emergency. As highlighted above, low-income communities and workers and people of color have faced more severe health and economic outcomes during the pandemic, with pre-existing social vulnerabilities like low-wage or insecure employment, concentrated neighborhoods with less economic opportunity, and pre-existing health disparities likely contributing to the magnified impact of the pandemic. The Fiscal Recovery Funds provide resources to not only respond to the immediate harms of the pandemic but also to mitigate its longer-term impact in compounding the systemic public health and economic challenges of disproportionately impacted populations. Treasury encourages recipients to consider funding uses that foster a strong, inclusive, and equitable recovery, especially uses with long-term benefits for health and economic outcomes.

Uses Outside the Scope of this Category. Certain uses would not be within the scope of this eligible use category, although may be eligible under other eligible use categories. A general infrastructure project, for example, typically would not be included unless the project responded to a specific pandemic public health need (e.g., investments in facilities for the delivery of vaccines) or a specific negative economic impact like those described above (e.g., affordable housing in a QCT). The ARPA explicitly includes infrastructure if it is "necessary" and in water, sewer, or broadband. See Section II.D of this **SUPPLEMENTARY INFORMATION**. State, local, and Tribal governments also may use the Fiscal Recovery Funds under sections 602(c)(1)(C) or 603(c)(1)(C) to provide "government services" broadly to the extent of their reduction in revenue. See Section II.C of this **SUPPLEMENTARY INFORMATION**.

This category of eligible uses also would not include contributions to rainy day funds, financial reserves, or similar funds. Resources made available under this eligible use category are intended to help meet pandemic response needs and provide relief for households and businesses facing near- and long-term negative economic impacts. Contributions to rainy day funds and similar financial reserves would not address these needs or respond to the COVID-19 public health emergency but would rather constitute savings for future spending needs. Similarly, this eligible use category would not include payment of interest or principal on outstanding debt instruments, including, for example, short-term revenue or tax anticipation notes, or other debt service costs. As discussed below, payments from the Fiscal Recovery Funds are intended to be used prospectively and the interim final rule precludes use of these funds to cover the costs of debt incurred prior to March 3, 2021. Fees or issuance costs associated with the issuance of new debt would also not be covered using payments from the Fiscal Recovery Funds because such costs would not themselves have been incurred to address the needs of pandemic response or its negative economic impacts. The purpose of the Fiscal Recovery Funds is to provide fiscal relief that will permit State, local, and Tribal governments to continue to respond to the COVID-19 public health emergency.

For the same reasons, this category of eligible uses would not include satisfaction of any obligation arising under or pursuant to a settlement agreement, judgment, consent decree, or judicially confirmed debt restructuring

persistent-urban-inequality-and-concentrated-poverty/.

⁹² U.S. Department of Health and Human Services (HHS), Office of Disease Prevention and Health Promotion, Quality of Housing, <https://www.healthypeople.gov/2020/topics-objectives/topic/social-determinants-health/interventions-resources/quality-of-housing#11> (last visited Apr. 26, 2021).

⁹³ The Opportunity Atlas, <https://www.opportunityatlas.org/> (last visited Apr. 26, 2021); Raj Chetty & Nathaniel Hendren, The Impacts of Neighborhoods on Intergenerational Mobility I: Childhood Exposure Effects, Quarterly J. of Econ. 133(3):1107–162 (2018), available at <https://opportunityinsights.org/paper/neighborhoods/>.

⁹⁴ See *supra* notes 52 and 84.

plan in a judicial, administrative, or regulatory proceeding, except to the extent the judgment or settlement requires the provision of services that would respond to the COVID-19 public health emergency. That is, satisfaction of a settlement or judgment would not itself respond to COVID-19 with respect to the public health emergency or its negative economic impacts, unless the settlement requires the provision of services or aid that did directly respond to these needs, as described above.

In addition, as described in Section V.III of this **SUPPLEMENTARY INFORMATION**, Treasury will establish reporting and record keeping requirements for uses within this category, including enhanced reporting requirements for certain types of uses.

Question 1: Are there other types of services or costs that Treasury should consider as eligible uses to respond to the public health impacts of COVID-19? Describe how these respond to the COVID-19 public health emergency.

Question 2: The interim final rule permits coverage of payroll and benefits costs of public health and safety staff primarily dedicated to COVID-19 response, as well as rehiring of public sector staff up to pre-pandemic levels. For how long should these measures remain in place? What other measures or presumptions might Treasury consider to assess the extent to which public sector staff are engaged in COVID-19 response, and therefore reimbursable, in an easily-administrable manner?

Question 3: The interim final rule permits rehiring of public sector staff up to the government's pre-pandemic staffing level, which is measured based on employment as of January 27, 2020. Does this approach adequately measure the pre-pandemic staffing level in a manner that is both accurate and easily administrable? Why or why not?

Question 4: The interim final rule permits deposits to Unemployment Insurance Trust Funds, or using funds to pay back advances, up to the pre-pandemic balance. What, if any, conditions should be considered to ensure that funds repair economic impacts of the pandemic and strengthen unemployment insurance systems?

Question 5: Are there other types of services or costs that Treasury should consider as eligible uses to respond to the negative economic impacts of COVID-19? Describe how these respond to the COVID-19 public health emergency.

Question 6: What other measures, presumptions, or considerations could be used to assess "impacted industries"

affected by the COVID-19 public health emergency?

Question 7: What are the advantages and disadvantages of using Qualified Census Tracts and services provided by Tribal governments to delineate where a broader range of eligible uses are presumed to be responsive to the public health and economic impacts of COVID-19? What other measures might Treasury consider? Are there other populations or geographic areas that were disproportionately impacted by the pandemic that should be explicitly included?

Question 8: Are there other services or costs that Treasury should consider as eligible uses to respond to the disproportionate impacts of COVID-19 on low-income populations and communities? Describe how these respond to the COVID-19 public health emergency or its negative economic impacts, including its exacerbation of pre-existing challenges in these areas.

Question 9: The interim final rule includes eligible uses to support affordable housing and stronger neighborhoods in disproportionately-impacted communities. Discuss the advantages and disadvantages of explicitly including other uses to support affordable housing and stronger neighborhoods, including rehabilitation of blighted properties or demolition of abandoned or vacant properties. In what ways does, or does not, this potential use address public health or economic impacts of the pandemic? What considerations, if any, could support use of Fiscal Recovery Funds in ways that do not result in resident displacement or loss of affordable housing units?

B. Premium Pay

Fiscal Recovery Funds 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.⁹⁵ 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.

Since the start of the COVID-19 public health emergency in January 2020, essential workers have put their physical wellbeing at risk to meet the daily needs of their communities and to provide care for others. In the course of this work, many essential workers have

contracted or died of COVID-19.⁹⁶ Several examples reflect the severity of the health impacts for essential workers. Meat processing plants became "hotspots" for transmission, with 700 new cases reported at a single plant on a single day in May 2020.⁹⁷ In New York City, 120 employees of the Metropolitan Transit Authority were estimated to have died due to COVID-19 by mid-May 2020, with nearly 4,000 testing positive for the virus.⁹⁸ Furthermore, many essential workers are people of color or low-wage workers.⁹⁹ These workers, in particular, have borne a disproportionate share of the health and economic impacts of the pandemic. 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; and
- Social service and human services staff.

During the public health emergency, employers' policies on COVID-19-related hazard pay have varied widely, with many essential workers not yet compensated for the heightened risks they have faced and continue to face.¹⁰⁰

⁹⁶ See, e.g., Centers for Disease Control and Prevention, COVID Data Tracker: Cases & Death among Healthcare Personnel, <https://covid.cdc.gov/covid-data-tracker/#health-care-personnel> (last visited May 4, 2021); Centers for Disease Control and Prevention, COVID Data Tracker: Confirmed COVID-19 Cases and Deaths among Staff and Rate per 1,000 Resident-Weeks in Nursing Homes, by Week—United States, <https://covid.cdc.gov/covid-data-tracker/#nursing-home-staff> (last visited May 4, 2021).

⁹⁷ See, e.g., The Lancet, The plight of essential workers during the COVID-19 pandemic, Vol. 395, Issue 10237:1587 (May 23, 2020), available at [https://www.thelancet.com/journals/lancet/article/PIIS0140-6736\(20\)29312-0/fulltext](https://www.thelancet.com/journals/lancet/article/PIIS0140-6736(20)29312-0/fulltext).

⁹⁸ *Id.*

⁹⁹ Joanna Gaitens et al., Covid-19 and essential workers: A narrative review of health outcomes and moral injury, *Int'l J. of Env'tl. Research and Pub. Health* 18(4):1446 (Feb. 4, 2021), available at <https://pubmed.ncbi.nlm.nih.gov/33557075/>; Tiana N. Rogers et al., Racial Disparities in COVID-19 Mortality Among Essential Workers in the United States, *World Med. & Health policy* 12(3):311–27 (Aug. 5, 2020), available at <https://onlinelibrary.wiley.com/doi/full/10.1002/wmh3.358> (finding that vulnerability to coronavirus exposure was increased among non-Hispanic blacks, who disproportionately occupied the top nine essential occupations).

¹⁰⁰ Economic Policy Institute, Only 30% of those working outside their home are receiving hazard pay (June 16, 2020), <https://www.epi.org/press/only-30-of-those-working-outside-their-home-are-receiving-hazard-pay-black-and-hispanic-workers-are-most-concerned-about-bringing-the-coronavirus-home/>.

⁹⁵ Sections 602(c)(1)(B), 603(c)(1)(B) of the Act.

Many of these workers earn lower wages on average and live in socioeconomically vulnerable communities as compared to the general population.¹⁰¹ A recent study found that 25 percent of essential workers were estimated to have low household income, with 13 percent in high-risk households.¹⁰² The low pay of many essential workers makes them less able to cope with the financial consequences of the pandemic or their work-related health risks, including working hours lost due to sickness or disruptions to childcare and other daily routines, or the likelihood of COVID-19 spread in their households or communities. Thus, the threats and costs involved with maintaining the ongoing operation of vital facilities and services have been, and continue to be, borne by those that are often the most vulnerable to the pandemic. The added health risk to essential workers is one prominent way in which the pandemic has amplified pre-existing socioeconomic inequities.

The Fiscal Recovery Funds will help respond to the needs of essential workers by allowing recipients to remunerate essential workers for the elevated health risks they have faced and continue to face during the public health emergency. To ensure that premium pay is targeted to workers that faced or face heightened risks due to the character of their work, the interim final 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.

Sections 602(g)(2) and 603(g)(2) define eligible worker to mean “those workers needed to maintain continuity of operations of essential critical infrastructure sectors and additional sectors as each Governor of a State or territory, or each Tribal government, may designate as critical to protect the health and well-being of the residents of their State, territory, or Tribal government.”¹⁰³ The rule incorporates this definition and provides a list of industries recognized as essential critical infrastructure sectors.¹⁰⁴ These sectors include healthcare, public health and safety, childcare, education, sanitation, transportation, and food production and services, among others

as noted above. As provided under sections 602(g)(2) and 603(g)(2), the chief executive of each recipient has discretion to add additional sectors to this list, so long as additional sectors are deemed critical to protect the health and well-being of residents.

In providing premium pay to essential workers or grants to eligible employers, a recipient must consider whether the pay or grant would “respond to” to the worker or workers performing essential work. Premium pay or grants provided under this section respond to workers performing essential work if it addresses the heightened risk to workers who must be physically present at a jobsite and, for many of whom, the costs associated with illness were hardest to bear financially. Many of the workers performing critical essential services are low- or moderate-income workers, such as those described above. The ARPA recognizes this by defining premium pay to mean an amount up to \$13 per hour in addition to wages or remuneration the worker otherwise receives and in an aggregate amount not to exceed \$25,000 per eligible worker. To ensure the provision is implemented in a manner that compensates these workers, the interim final rule provides that any premium pay or grants provided using the Fiscal Recovery Funds should prioritize compensation of those lower income eligible workers that perform essential work.

As such, providing premium pay to eligible workers responds to such workers by helping address the disparity between the critical services and risks taken by essential workers and the relatively low compensation they tend to receive in exchange. If premium pay would increase a worker's total pay above 150 percent of their residing state's average annual wage for all occupations, as defined by the Bureau of Labor Statistics' Occupational Employment and Wage Statistics, or their residing county's average annual wage, as defined by the Bureau of Labor Statistics' Occupational Employment and Wage Statistics, whichever is higher, on an annual basis, the State, local, or Tribal government must provide Treasury and make publicly available, whether for themselves or on behalf of a grantee, a written justification of how the premium pay or grant is responsive to workers performing essential worker during the public health emergency.¹⁰⁵

The threshold of 150 percent for requiring additional written justification is based on an analysis of the distribution of labor income for a sample of 20 occupations that generally correspond to the essential workers as defined in the interim final rule.¹⁰⁶ For these occupations, labor income for the vast majority of workers was under 150 percent of average annual labor income across all occupations. Treasury anticipates that the threshold of 150 percent of the annual average wage will be greater than the annual average wage of the vast majority of eligible workers performing essential work. These enhanced reporting requirements help to ensure grants are directed to essential workers in critical infrastructure sectors and responsive to the impacts of the pandemic observed among essential workers, namely the mis-alignment between health risks and compensation. Enhanced reporting also provides transparency to the public. Finally, using a localized measure reflects differences in wages and cost of living across the country, making this standard administrable and reflective of essential worker incomes across a diverse range of geographic areas.

Furthermore, because premium pay is intended to compensate essential workers for heightened risk due to COVID-19, it must be entirely additive to a worker's regular rate of wages and other remuneration and may not be used to reduce or substitute for a worker's normal earnings. The definition of premium pay also clarifies that premium pay may 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.¹⁰⁷ Treasury encourages recipients to prioritize providing retrospective premium pay where possible, recognizing that many essential workers have not yet received additional compensation for work conducted over the course of many

of Labor Statistics, May 2020 Metropolitan and Nonmetropolitan Area Estimates listed by county or town, https://www.bls.gov/oes/current/county_links.htm (last visited May 1, 2021).

¹⁰⁶ Treasury performed this analysis with data from the U.S. Census Bureau's 2019 Annual Social and Economic Supplement. In determining which occupations to include in this analysis, Treasury excluded management and supervisory positions, as such positions may not necessarily involve regular in-person interactions or physical handling of items to the same extent as non-managerial positions.

¹⁰⁷ However, such compensation must be “in addition to” remuneration or wages already received. That is, employers may not reduce such workers' current pay and use Fiscal Recovery Funds to compensate themselves for premium pay previously provided to the worker.

¹⁰¹ McCormack, *supra* note 37.

¹⁰² *Id.*

¹⁰³ Sections 602(g)(2), 603(g)(2) of the Act.

¹⁰⁴ The list of critical infrastructure sectors provided in the interim final rule is based on the list of essential workers under The Heroes Act, H.R. 6800, 116th Cong. (2020).

¹⁰⁵ County median annual wage is taken to be that of the metropolitan or nonmetropolitan area that includes the county. See U.S. Bureau of Labor Statistics, State Occupational Employment and Wage Estimates, <https://www.bls.gov/oes/current/oesrcst.htm> (last visited May 1, 2021); U.S. Bureau

months. Essential workers who have already earned premium pay for essential work performed during the COVID-19 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.

To ensure any grants respond to the needs of essential workers and are made in a fair and transparent manner, the rule imposes some additional reporting requirements for grants to third-party employers, including the public disclosure of grants provided. *See* Section VIII of this **SUPPLEMENTARY INFORMATION**, discussing reporting requirements. In responding to the needs of essential workers, a grant to an employer may provide premium pay to eligible workers performing essential work, as these terms are defined in the interim final rule and discussed above. A grant provided to an employer may also be for essential work performed by eligible workers pursuant to a contract. For example, if a municipality contracts with a third party to perform sanitation work, the third-party contractor could be eligible to receive a grant to provide premium pay for these eligible workers.

Question 10: Are there additional sectors beyond those listed in the interim final rule that should be considered essential critical infrastructure sectors?

Question 11: What, if any, additional criteria should Treasury consider to ensure that premium pay responds to essential workers?

Question 12: What consideration, if any, should be given to the criteria on salary threshold, including measure and level, for requiring written justification?

C. Revenue Loss

Recipients may use payments from the Fiscal Recovery Funds for the provision of government services to the extent of the reduction in revenue experienced due to the COVID-19 public health emergency.¹⁰⁸ Pursuant to sections 602(c)(1)(C) and 603(c)(1)(C) of the Act, a recipient's reduction in revenue is measured relative to the revenue collected in the most recent full fiscal year prior to the emergency.

Many State, local, and Tribal governments are experiencing significant budget shortfalls, which can have a devastating impact on communities. State government tax revenue from major sources were down 4.3 percent in the six months ended September 2020, relative to the same

period 2019.¹⁰⁹ At the local level, nearly 90 percent of cities have reported being less able to meet the fiscal needs of their communities and, on average, cities expect a double-digit decline in general fund revenues in their fiscal year 2021.¹¹⁰ Similarly, surveys of Tribal governments and Tribal enterprises found majorities of respondents reporting substantial cost increases and revenue decreases, with Tribal governments reporting reductions in healthcare, housing, social services, and economic development activities as a result of reduced revenues.¹¹¹ These budget shortfalls are particularly problematic in the current environment, as State, local, and Tribal governments work to mitigate and contain the COVID-19 pandemic and help citizens weather the economic downturn.

Further, State, local, and Tribal government budgets affect the broader economic recovery. During the period following the 2007–2009 recession, State and local government budget pressures led to fiscal austerity that was a significant drag on the overall economic recovery.¹¹² Inflation-adjusted State and local government revenue did not return to the previous peak until 2013,¹¹³ while State, local, and Tribal government employment did not recover to its prior peak for over a decade, until August 2019—just a few months before the COVID-19 public health emergency began.¹¹⁴

¹⁰⁹ Major sources include personal income tax, corporate income tax, sales tax, and property tax. *See* Lucy Dadayan, States Reported Revenue Growth in July–September Quarter, Reflecting Revenue Shifts from the Prior Quarter, State Tax and Econ. Rev. (Q. 3, 2020), available at https://www.urban.org/sites/default/files/publication/103938/state-tax-and-economic-review-2020-q3_0.pdf.

¹¹⁰ National League of Cities, City Fiscal Conditions (2020), available at https://www.nlc.org/wp-content/uploads/2020/08/City_Fiscal_Conditions_2020_FINAL.pdf.

¹¹¹ Surveys conducted by the Center for Indian Country Development at the Federal Reserve Bank of Minneapolis in March, April, and September 2020. *See* Moreno & Sobrepena, *supra* note 73.

¹¹² *See, e.g.,* Fitzpatrick, Haughwout & Setren, Fiscal Drag from the State and Local Sector?, Liberty Street Economics Blog, Federal Reserve Bank of New York (June 27, 2012), <https://www.libertystreeteconomics.newyorkfed.org/2012/06/fiscal-drag-from-the-state-and-local-sector.html>; Jiri Jonas, Great Recession and Fiscal Squeeze at U.S. Subnational Government Level, IMF Working Paper 12/184, (July 2012), available at <https://www.imf.org/external/pubs/ft/wp/2012/wp12184.pdf>; Gordon, *supra* note 9.

¹¹³ State and local government general revenue from own sources, adjusted for inflation using the GDP price index. U.S. Census Bureau, Annual Survey of State Government Finances and U.S. Bureau of Economic Analysis, National Income and Product Accounts.

¹¹⁴ U.S. Bureau of Labor Statistics, All Employees, State Government [CES9092000001] and All Employees, Local Government [CES9093000001],

Sections 602(c)(1)(C) and 603(c)(1)(C) of the Act allow recipients facing budget shortfalls to use payments from the Fiscal Recovery Funds to avoid cuts to government services and, thus, enable State, local, and Tribal governments to continue to provide valuable services and ensure that fiscal austerity measures do not hamper the broader economic recovery. The interim final rule implements these provisions by establishing a definition of “general revenue” for purposes of calculating a loss in revenue and by providing a methodology for calculating revenue lost due to the COVID-19 public health emergency.

General Revenue. The interim final rule adopts a definition of “general revenue” based largely on the components reported under “General Revenue from Own Sources” in the Census Bureau’s Annual Survey of State and Local Government Finances, and for purposes of this interim final rule, helps to ensure that the components of general revenue would be calculated in a consistent manner.¹¹⁵ By relying on a methodology that is both familiar and comprehensive, this approach minimizes burden to recipients and provides consistency in the measurement of general revenue across a diverse set of recipients.

The interim final rule defines the term “general revenue” to include revenues collected by a recipient and generated from its underlying economy and would capture a range of different types of tax revenues, as well as other types of revenue that are available to support government services.¹¹⁶ In calculating revenue, recipients should sum across all revenue streams covered as general revenue. This approach minimizes the administrative burden for recipients, provides for greater consistency across recipients, and presents a more accurate representation of the overall impact of

retrieved from FRED, Federal Reserve Bank of St. Louis, <https://fred.stlouisfed.org/series/CES9092000001> and <https://fred.stlouisfed.org/series/CES9093000001> (last visited Apr. 27, 2021).

¹¹⁵ U.S. Census Bureau, Annual Survey of State and Local Government Finances, <https://www.census.gov/programs-surveys/gov-finances.html> (last visited Apr. 30, 2021).

¹¹⁶ The interim final rule would define tax revenue in a manner consistent with the Census Bureau’s definition of tax revenue, with certain changes (*i.e.*, inclusion of revenue from liquor stores and certain intergovernmental transfers). Current charges are defined as “charges imposed for providing current services or for the sale of products in connection with general government activities.” It includes revenues such as public education institution, public hospital, and toll revenues. Miscellaneous general revenue comprises of all other general revenue of governments from their own sources (*i.e.*, other than liquor store, utility, and insurance trust revenue), including rents, royalties, lottery proceeds, and fines.

¹⁰⁸ ARPA, *supra* note 16.

the COVID-19 public health emergency on a recipient's revenue, rather than relying on financial reporting prepared by each recipient, which vary in methodology used and which generally aggregates revenue by purpose rather than by source.¹¹⁷

Consistent with the Census Bureau's definition of "general revenue from own sources," the definition of general revenue in the interim final rule would exclude refunds and other correcting transactions, proceeds from issuance of debt or the sale of investments, and agency or private trust transactions. The definition of general revenue also would exclude revenue generated by utilities and insurance trusts. In this way, the definition of general revenue focuses on sources that are generated from economic activity and are available to fund government services, rather than a fund or administrative unit established to account for and control a particular activity.¹¹⁸ For example, public utilities typically require financial support from the State, local, or Tribal government, rather than providing revenue to such government, and any revenue that is generated by public utilities typically is used to support the public utility's continued operation, rather than being used as a source of revenue to support government services generally.

The definition of general revenue would include all revenue from Tribal enterprises, as this revenue is generated from economic activity and is available to fund government services. Tribes are not able to generate revenue through taxes in the same manner as State and local governments and, as a result, Tribal enterprises are critical sources of revenue for Tribal governments that enable Tribal governments to provide a range of services, including elder care, health clinics, wastewater management, and forestry.

Finally, the term "general revenue" includes intergovernmental transfers between State and local governments, but excludes intergovernmental transfers from the Federal Government, including Federal transfers made via a State to a local government pursuant to the CRF or as part of the Fiscal Recovery Funds. States and local governments often share or collect revenue on behalf of one another, which results in

intergovernmental transfers. When attributing revenue to a unit of government, the Census Bureau's methodology considers which unit of government imposes, collects, and retains the revenue and assigns the revenue to the unit of government that meets at least two of those three factors.¹¹⁹ For purposes of measuring loss in general revenue due to the COVID-19 public health emergency and to better allow continued provision of government services, the retention and ability to use the revenue is a more critical factor. Accordingly, and to better measure the funds available for the provision of government services, the definition of general revenue would include intergovernmental transfers from States or local governments other than funds transferred pursuant to ARPA, CRF, or another Federal program. This formulation recognizes the importance of State transfers for local government revenue.¹²⁰

Calculation of Loss. In general, recipients will compute the extent of the reduction in revenue by comparing actual revenue to a counterfactual trend representing what could have been expected to occur in the absence of the pandemic. This approach measures losses in revenue relative to the most recent fiscal year prior to the COVID-19 public health emergency by using the most recent pre-pandemic fiscal year as the starting point for estimates of revenue growth absent the pandemic. In other words, the counterfactual trend starts with the last full fiscal year prior to the COVID-19 public health emergency and then assumes growth at a constant rate in the subsequent years. Because recipients can estimate the revenue shortfall at multiple points in time throughout the covered period as revenue is collected, this approach accounts for variation across recipients in the timing of pandemic impacts.¹²¹ Although revenue may decline for

reasons unrelated to the COVID-19 public health emergency, to minimize the administrative burden on recipients and taking into consideration the devastating effects of the COVID-19 public health emergency, any diminution in actual revenues relative to the counterfactual pre-pandemic trend would be presumed to have been due to the COVID-19 public health emergency.

For purposes of measuring revenue growth in the counterfactual trend, recipients may use a *growth adjustment* of either 4.1 percent per year or the recipient's average annual revenue growth over the three full fiscal years prior to the COVID-19 public health emergency, whichever is higher. The option of 4.1 percent represents the average annual growth across all State and local government "General Revenue from Own Sources" in the most recent three years of available data.¹²² This approach provides recipients with a standardized growth adjustment when calculating the counterfactual revenue trend and thus minimizes administrative burden, while not disadvantaging recipients with revenue growth that exceeded the national average prior to the COVID-19 public health emergency by permitting these recipients to use their own revenue growth rate over the preceding three years.

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. To calculate the extent of the reduction in revenue at each of these dates, recipients should follow a four-step process:

- **Step 1:** Identify revenues collected in the most recent full fiscal year prior to the public health emergency (*i.e.*, last full fiscal year before January 27, 2020), called the *base year revenue*.

- **Step 2:** Estimate *counterfactual revenue*, which is equal to *base year revenue* * $[(1 + \text{growth adjustment})^n]$, 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

¹¹⁹ U.S. Census Bureau, Government Finance and Employment Classification Manual (Dec. 2000), <https://www2.census.gov/govs/class/classfull.pdf>.

¹²⁰ For example, in 2018, state transfers to localities accounted for approximately 27 percent of local revenues. U.S. Census Bureau, Annual Survey of State and Local Government Finances, Table 1 (2018), <https://www.census.gov/data/datasets/2018/econ/local/public-use-datasets.html>.

¹²¹ For example, following the 2007–09 recession, local government property tax collections did not begin to decline until 2011, suggesting that property tax collection declines can lag downturns. See U.S. Bureau of Economic Analysis, Personal current taxes: State and local: Property taxes [S210401A027NBEA], retrieved from Federal Reserve Economic Data, Federal Reserve Bank of St. Louis, <https://fred.stlouisfed.org/graph/?g=r3YI> (last visited Apr. 22, 2021). Estimating the reduction in revenue at points throughout the covered period will allow for this type of lagged effect to be taken into account during the covered period.

¹¹⁷ Fund-oriented reporting, such as what is used under the Governmental Accounting Standards Board (GASB), focuses on the types of uses and activities funded by the revenue, as opposed to the economic activity from which the revenue is sourced. See Governmental Accounting Standards Series, Statement No. 54 of the Governmental Accounting Standards Board: Fund Balance Reporting and Governmental Fund Type Definitions, No. 287–B (Feb. 2009).

¹¹⁸ *Supra* note 116.

¹²² Together with revenue from liquor stores from 2015 to 2018. This estimate does not include any intergovernmental transfers. A recipient using the three-year average to calculate their growth adjustment must be based on the definition of general revenue, including treatment of intergovernmental transfers. 2015–2018 represents the most recent available data. See U.S. Census Bureau, State & Local Government Finance Historical Datasets and Tables (2018), <https://www.census.gov/programs-surveys/gov-finances/data/datasets.html>.

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: The extent of the reduction in revenue is equal to counterfactual*

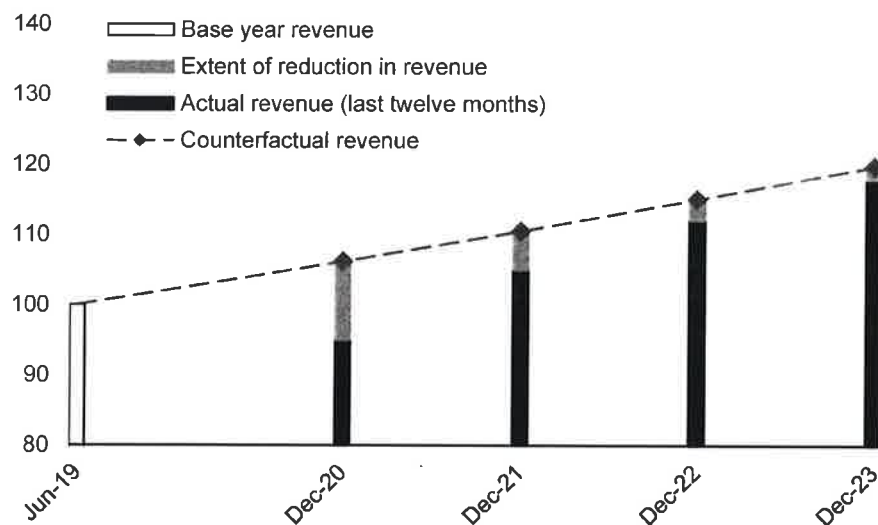
revenue less actual revenue. If actual revenue exceeds counterfactual revenue, the extent of the reduction in revenue is set to zero for that calculation date.

For illustration, consider a hypothetical recipient with *base year revenue* equal to 100. In Step 2, the hypothetical recipient finds that 4.1

percent is greater than the recipient's average annual revenue growth in the three full fiscal years prior to the public health emergency. Furthermore, this recipient's base year ends June 30. In this illustration, *n* (months elapsed) and *counterfactual revenue* would be equal to:

As of:	12/31/2020	12/31/2021	12/31/2022	12/31/2023
<i>n</i> (months elapsed)	18	30	42	54
<i>Counterfactual revenue</i> :	106.2	110.6	115.1	119.8

The overall methodology for calculating the reduction in revenue is illustrated in the figure below:



Upon receiving Fiscal Recovery Fund payments, recipients may immediately calculate revenue loss for the period ending December 31, 2020.

Sections 602(c)(1)(C) and 603(c)(1)(C) of the Act provide recipients with broad latitude to use the Fiscal Recovery Funds for the provision of government services. Government services can include, but are not limited to, maintenance or pay-go funded building¹²³ of infrastructure, 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. However, expenses associated with obligations under instruments evidencing financial indebtedness for

borrowed money would not be considered the provision of government services, as these financing expenses do not directly provide services or aid to citizens. Specifically, government services would not include interest or principal on any outstanding debt instrument, including, for example, short-term revenue or tax anticipation notes, or fees or issuance costs associated with the issuance of new debt. For the same reasons, government services would not include satisfaction of any obligation arising under or pursuant to a settlement agreement, judgment, consent decree, or judicially confirmed debt restructuring in a judicial, administrative, or regulatory proceeding, except if the judgment or settlement required the provision of government services. That is, satisfaction of a settlement or judgment itself is not a government service, unless the settlement required the provision of government services. In addition, replenishing financial reserves (e.g., rainy day or other reserve funds) would

not be considered provision of a government service, since such expenses do not directly relate to the provision of government services.

Question 13: Are there sources of revenue that either should or should not be included in the interim final rule's measure of "general revenue" for recipients? If so, discuss why these sources either should or should not be included.

Question 14: In the interim final rule, recipients are expected to calculate the reduction in revenue on an aggregate basis. Discuss the advantages and disadvantages of, and any potential concerns with, this approach, including circumstances in which it could be necessary or appropriate to calculate the reduction in revenue by source.

Question 15: Treasury is considering whether to take into account other factors, including actions taken by the recipient as well as the expiration of the COVID-19 public health emergency, in determining whether to presume that revenue losses are "due to" the COVID-

¹²³ Pay-go infrastructure funding refers to the practice of funding capital projects with cash-on-hand from taxes, fees, grants, and other sources, rather than with borrowed sums.

19 public health emergency. Discuss the advantages and disadvantages of this presumption, including when, if ever, during the covered period it would be appropriate to reevaluate the presumption that all losses are attributable to the COVID-19 public health emergency.

Question 16: Do recipients anticipate lagged revenue effects of the public health emergency? If so, when would these lagged effects be expected to occur, and what can Treasury to do support these recipients through its implementation of the program?

Question 17: In the interim final rule, paying interest or principal on government debt is not considered provision of a government service. Discuss the advantages and disadvantages of this approach, including circumstances in which paying interest or principal on government debt could be considered provision of a government service.

D. Investments in Infrastructure

To assist in meeting the critical need for investments and improvements to existing infrastructure in water, sewer, and broadband, the Fiscal Recovery Funds provide funds to State, local, and Tribal governments to make necessary investments in these sectors. The interim final rule outlines eligible uses within each category, allowing for a broad range of necessary investments in projects that improve access to clean drinking water, improve wastewater and stormwater infrastructure systems, and provide access to high-quality broadband service. Necessary investments are designed to provide an adequate minimum level of service and are unlikely to be made using private sources of funds. Necessary investments include projects that are required to maintain a level of service that, at least, meets applicable health-based standards, taking into account resilience to climate change, or establishes or improves broadband service to unserved or underserved populations to reach an adequate level to permit a household to work or attend school, and that are unlikely to be met with private sources of funds.¹²⁴

It is important that necessary investments in water, sewer, or broadband infrastructure be carried out in ways that produce high-quality infrastructure, avert disruptive and costly delays, and promote efficiency. Treasury encourages recipients to

ensure that water, sewer, and 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, 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. Using these practices in construction projects may help to ensure a reliable supply of skilled labor that would minimize disruptions, such as those associated with labor disputes or workplace injuries.

To 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, sewer, and broadband projects undertaken with Fiscal Recovery Funds. Treasury will provide additional guidance and instructions on the reporting requirements at a later date.

1. Water and Sewer Infrastructure

The ARPA provides funds to State, local, and Tribal governments to make necessary investments in water and sewer infrastructure.¹²⁵ By 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. Understanding that State, local, and Tribal governments have a broad range of water and sewer infrastructure needs, the interim final rule provides these governments with wide latitude to identify investments in water and sewer infrastructure that are of the highest priority for their own communities, which may include projects on privately-owned infrastructure. The interim final rule does this by aligning eligible uses of the Fiscal Recovery Funds with the wide range of types or categories of projects that would be eligible to receive financial assistance through the Environmental Protection Agency's (EPA) Clean Water State Revolving Fund (CWSRF) or Drinking Water State Revolving Fund (DWSRF).¹²⁶

¹²⁴ Sections 602(c)(1)(D), 603(c)(1)(D) of the Act.

¹²⁶ Environmental Protection Agency, Drinking Water State Revolving fund, <https://www.epa.gov/dwsrf> (last visited Apr. 30, 2021); Environmental Protection Agency, Clean Water State Revolving Fund, <https://www.epa.gov/cwsrf> (last visited Apr. 30, 2021).

Established by the 1987 amendments¹²⁷ to the Clean Water Act (CWA),¹²⁸ the CWSRF provides financial assistance for a wide range of water infrastructure projects to improve water quality and address water pollution in a way that enables each State to address and prioritize the needs of their populations. The types of projects eligible for CWSRF assistance 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.¹²⁹ Each of the 51 State programs established under the CWSRF have the flexibility to direct funding to their particular environmental needs, and each State may also have its own statutes, rules, and regulations that guide project eligibility.¹³⁰

The DWSRF was modeled on the CWSRF and created as part of the 1996 amendments to the Safe Drinking Water Act (SDWA),¹³¹ with the principal objective of helping public water systems obtain financing for improvements necessary to protect public health and comply with drinking water regulations.¹³² Like the CWSRF,

¹²⁷ Water Quality Act of 1987, Public Law 100-4.

¹²⁸ Federal Water Pollution Control Act as amended, codified at 33 U.S.C. 1251 *et seq.*, common name (Clean Water Act). In 2009, the American Recovery and Reinvestment Act created the Green Project Reserve, which increased the focus on green infrastructure, water and energy efficient, and environmentally innovative projects. Public Law 111-5. The CWA was amended by the Water Resources Reform and Development Act of 2014 to further expand the CWSRF's eligibilities. Public Law 113-121. The CWSRF's eligibilities were further expanded in 2018 by the America's Water Infrastructure Act of 2018, Public Law 115-270.

¹²⁹ See Environmental Protection Agency, The Drinking Water State Revolving Funds: Financing America's Drinking Water, EPA-816-R-00-023 (Nov. 2000), <https://nepis.epa.gov/Exe/ZyPDF.cgi/200024WB.PDF?Dockey=200024WB.PDF>; See also Environmental Protection Agency, *Learn About the Clean Water State Revolving Fund*, <https://www.epa.gov/cwsrf/learn-about-clean-water-state-revolving-fund-cwsrf> (last visited Apr. 30, 2021).

¹³⁰ 33 U.S.C. 1383(c). See also Environmental Protection Agency, *Overview of Clean Water State Revolving Fund Eligibilities* (May 2016), https://www.epa.gov/sites/production/files/2016-07/documents/overview_of_cwsrf_eligibilities_may_2016.pdf; Claudia Copeland, *Clean Water Act: A Summary of the Law*, Congressional Research Service (Oct. 18, 2016), <https://fas.org/spp/crs/misc/RL30030.pdf>; Jonathan L. Ramseur, *Wastewater Infrastructure: Overview, Funding, and Legislative Developments*, Congressional Research Service (May 22, 2018), <https://fas.org/spp/crs/misc/R44963.pdf>.

¹³¹ 42 U.S.C. 300j-12.

¹³² Environmental Protection Agency, *Drinking Water State Revolving Fund Eligibility Handbook*, (June 2017), https://www.epa.gov/sites/production/files/2017-06/documents/dwsrf_eligibility_handbook_june_13_2017_updated_508_version.pdf; Environmental Protection Agency, *Drinking Water*

¹²⁴ Treasury notes that using funds to support or oppose collective bargaining would not be included as part of "necessary investments in water, sewer, or broadband infrastructure."

the DWSRF provides States with the flexibility to meet the needs of their populations.¹³³ The primary use of DWSRF funds is to assist communities in making water infrastructure capital improvements, including the installation and replacement of failing treatment and distribution systems.¹³⁴ In administering these programs, States must give priority to projects that ensure compliance with applicable health and environmental safety requirements; address the most serious risks to human health; and assist systems most in need on a per household basis according to State affordability criteria.¹³⁵

By aligning use of Fiscal Recovery Funds with the categories or types of eligible projects under the existing EPA state revolving fund programs, the interim final rule provides recipients with the flexibility to respond to the needs of their communities while ensuring that investments in water and sewer infrastructure made using Fiscal Recovery Funds are necessary. As discussed above, the CWSRF and DWSRF were designed to provide funding for projects that protect public health and safety by ensuring compliance with wastewater and drinking water health standards.¹³⁶ The need to provide funding through the state revolving funds suggests that these projects are less likely to be addressed with private sources of funding; for example, by remediating failing or inadequate infrastructure, much of which is publicly owned, and by addressing non-point sources of pollution. This approach of aligning with the EPA state revolving fund programs also supports expedited project identification and investment so that needed relief for the people and communities most affected by the pandemic can be deployed expeditiously and have a positive impact on their health and wellbeing as soon as possible. Further, the interim final rule is intended to preserve flexibility for award recipients to direct funding to their own particular needs and priorities and would not preclude recipients from applying their own additional project eligibility criteria.

In addition, responding to the immediate needs of the COVID-19 public health emergency may have diverted both personnel and financial resources from other State, local, and Tribal priorities, including projects to ensure compliance with applicable water health and quality standards and provide safe drinking and usable water.¹³⁷ Through sections 602(c)(1)(D) and 603(c)(1)(D), the ARPA provides resources to address these needs. Moreover, using Fiscal Recovery Funds in accordance with the priorities of the CWA and SWDA to “assist systems most in need on a per household basis according to state affordability criteria” would also have the benefit of providing vulnerable populations with safe drinking water that is critical to their health and, thus, their ability to work and learn.¹³⁸

Recipients may use Fiscal Recovery Funds to invest in a broad range of projects that improve drinking water infrastructure, such as building or upgrading facilities and transmission, distribution, and storage systems, including replacement of lead service lines. Given the lifelong impacts of lead exposure for children, and the widespread nature of lead service lines, Treasury encourages recipients to consider projects to replace lead service lines.

Fiscal Recovery Funds may also be used to support the consolidation or establishment of drinking water systems. With respect to wastewater infrastructure, recipients may use Fiscal Recovery Funds to construct publicly owned treatment infrastructure, manage and treat stormwater or subsurface drainage water, facilitate water reuse, and secure publicly owned treatment works, among other uses. Finally, consistent with the CWSRF and DWSRF, Fiscal Recovery 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.

Many of the types of projects eligible under either the CWSRF or DWSRF also

support efforts to address climate change. For example, by taking steps to manage potential sources of pollution and preventing these sources from reaching sources of drinking water, projects eligible under the DWSRF and the ARPA may reduce energy required to treat drinking water. Similarly, projects eligible under the CWSRF include measures to conserve and reuse water or reduce the energy consumption of public water treatment facilities. Treasury encourages recipients to consider green infrastructure investments and projects to improve resilience to the effects of climate change. For example, more frequent and extreme precipitation events combined with construction and development trends have led to increased instances of stormwater runoff, water pollution, and flooding. 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.

Question 18: What are the advantages and disadvantages of aligning eligible uses with the eligible project type requirements of the DWSRF and CWSRF? What other water or sewer project categories, if any, should Treasury consider in addition to DWSRF and CWSRF eligible projects? Should Treasury consider a broader general category of water and sewer projects?

Question 19: What additional water and sewer infrastructure categories, if any, should Treasury consider to address and respond to the needs of unserved, underserved, or rural communities? How do these projects differ from DWSRF and CWSRF eligible projects?

Question 20: What new categories of water and sewer infrastructure, if any, should Treasury consider to support State, local, and Tribal governments in mitigating the negative impacts of climate change? Discuss emerging technologies and processes that support resiliency of water and sewer infrastructure. Discuss any challenges faced by States and local governments when pursuing or implementing climate resilient infrastructure projects.

Question 21: Infrastructure projects related to dams and reservoirs are generally not eligible under the CWSRF and DWSRF categories. Should Treasury consider expanding eligible

Infrastructure Needs Survey and Assessment: Sixth Report to Congress (March 2018), https://www.epa.gov/sites/production/files/2018-10/documents/corrected_sixth_drinking_water_infrastructure_needs_survey_and_assessment.pdf.

¹³³ *Id.*

¹³⁴ *Id.*

¹³⁵ 42 U.S.C. 300j-12(b)(3)(A).

¹³⁶ Environmental Protection Agency, Learn About the Clean Water State Revolving Fund, <https://www.epa.gov/cwsrf/learn-about-clean-water-state-revolving-fund-cwsrf> (last visited Apr. 30, 2021); 42 U.S.C. 300j-12.

¹³⁷ House Committee on the Budget, State and Local Governments are in Dire Need of Federal Relief (Aug. 19, 2020), <https://budget.house.gov/publications/report/state-and-local-governments-are-dire-need-federal-relief/>.

¹³⁸ Environmental Protection Agency, Drinking Water State Revolving Fund (Nov. 2019), https://www.epa.gov/sites/production/files/2019-11/documents/fact_sheet_-_dwsrf_overview_final_0.pdf; Environmental Protection Agency, National Benefits Analysis for Drinking Water Regulations, <https://www.epa.gov/sdwa/national-benefits-analysis-drinking-water-regulations> (last visited Apr. 30, 2020).

infrastructure under the interim final rule to include dam and reservoir projects? Discuss public health, environmental, climate, or equity benefits and costs in expanding the eligibility to include these types of projects.

2. Broadband Infrastructure

The COVID-19 public health emergency has underscored the importance of universally available, high-speed, reliable, and affordable broadband coverage as millions of Americans rely on the internet to participate in, among critical activities, remote school, healthcare, and work. Recognizing the need for such connectivity, the ARPA provides funds to State, territorial, local, and Tribal governments to make necessary investments in broadband infrastructure.

The National Telecommunications and Information Administration (NTIA) highlighted the growing necessity of broadband in daily lives through its analysis of NTIA Internet Use Survey data, noting that Americans turn to broadband internet access service for every facet of daily life including work, study, and healthcare.¹³⁹ With increased use of technology for daily activities and the movement by many businesses and schools to operating remotely during the pandemic, broadband has become even more critical for people across the country to carry out their daily lives.

By at least one measure, however, tens of millions of Americans live in areas where there is no broadband infrastructure that provides download speeds greater than 25 Mbps and upload speeds of 3 Mbps.¹⁴⁰ By contrast, as noted below, many households use upload and download speeds of 100 Mbps to meet their daily needs. Even in areas where broadband infrastructure

exists, broadband access may be out of reach for millions of Americans because it is unaffordable, as the United States has some of the highest broadband prices in the Organisation for Economic Co-operation and Development (OECD).¹⁴¹ There are disparities in availability as well; historically, Americans living in territories and Tribal lands as well as rural areas have disproportionately lacked sufficient broadband infrastructure.¹⁴² Moreover, rapidly growing demand has, and will likely continue to, quickly outpace infrastructure capacity, a phenomenon acknowledged by various states around the country that have set scalability requirements to account for this anticipated growth in demand.¹⁴³

The interim final rule provides that eligible investments in broadband are those that are designed to provide services meeting adequate speeds and are provided to unserved and underserved households and businesses. Understanding that States, territories, localities, and Tribal governments have a wide range of varied broadband infrastructure needs, 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.

Under the interim final rule, eligible projects are expected to be designed to deliver, upon project completion, service that reliably meets or exceeds symmetrical upload and download speeds of 100 Mbps. There may be instances in which it would not be practicable for a project to deliver such service speeds because of the geography, topography, or excessive costs associated with such a project. In these instances, 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.¹⁴⁴ In setting these standards, Treasury identified speeds necessary 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 also sufficiently robust to meet increasing household demands for bandwidth. Treasury also recognizes that different communities and their members may have a broad range of internet needs and that those needs may change over time.

In considering the appropriate speed requirements for eligible projects, Treasury considered estimates of typical households demands during the pandemic. Using the Federal Communication Commission's (FCC) Broadband Speed Guide, for example, a household with two telecommuters and two to three remote learners today are estimated to need 100 Mbps download to work simultaneously.¹⁴⁵ In households with more members, the demands may be greater, and in households with fewer members, the demands may be less.

In considering the appropriate speed requirements for eligible projects, Treasury also considered data usage patterns and how bandwidth needs have changed over time for U.S. households and businesses as people's use of technology in their daily lives has evolved. In the few years preceding the pandemic, market research data showed that average upload speeds in the United States surpassed over 10 Mbps in 2017¹⁴⁶ and continued to increase significantly, with the average upload speed as of November, 2019 increasing to 48.41 Mbps,¹⁴⁷ attributable, in part to a shift to using broadband and the internet by individuals and businesses

¹³⁹ See, e.g., <https://www.ntia.gov/blog/2020/more-half-american-households-used-internet-health-related-activities-2019-ntia-data-show>; <https://www.ntia.gov/blog/2020/nearly-third-american-employees-worked-remotely-2019-ntia-data-show>; and generally, <https://www.ntia.gov/data/digital-nation-data-explorer>.

¹⁴⁰ As an example, data from the Federal Communications Commission shows that as of June 2020, 9.07 percent of the U.S. population had no available cable or fiber broadband providers providing greater than 25 Mbps download speeds and 3 Mbps upload speeds. Availability was significantly less for rural versus urban populations, with 35.57 percent of the rural population lacking such access, compared with 2.57 percent of the urban population. Availability was also significantly less for tribal versus non-tribal populations, with 35.93 percent of the tribal population lacking such access, compared with 8.74 of the non-tribal population. Federal Communications Commission, Fixed Broadband Deployment, <https://broadbandmap.fcc.gov/#/> (last visited May 9, 2021).

¹⁴¹ How Do U.S. Internet Costs Compare To The Rest Of The World?, BroadbandSearch Blog Post, available at <https://www.broadbandsearch.net/blog/internet-costs-compared-worldwide>.

¹⁴² See, e.g., Federal Communications Commission, Fourteenth Broadband Deployment Report, available at <https://docs.fcc.gov/public/attachments/FCC-21-18A1.pdf>.

¹⁴³ See, e.g., Illinois Department of Commerce & Economic Opportunity, Broadband Grants, h (last visited May 9, 2021), <https://www2.illinois.gov/dceo/ConnectIllinois/Pages/BroadbandGrants.aspx>; Kansas Office of Broadband Development, Broadband Acceleration Grant, <https://www.kansascommerce.gov/wp-content/uploads/2020/11/Broadband-Acceleration-Grant.pdf> (last visited May 9, 2021); New York State Association of Counties, Universal Broadband: Deploying High Speed Internet Access in NYS (Jul. 2017), [https://www.nysac.org/files/BroadbandUpdateReport2017\(1\).pdf](https://www.nysac.org/files/BroadbandUpdateReport2017(1).pdf).

¹⁴⁴ This scalability threshold is consistent with scalability requirements used in other jurisdictions. *Id.*

¹⁴⁵ Federal Communications Commission, Broadband Speed Guide, <https://www.fcc.gov/consumers/guides/broadband-speed-guide> (last visited Apr. 30, 2021).

¹⁴⁶ Letter from Lisa R. Youngers, President and CEO of Fiber Broadband Association to FCC, WC Docket No. 19-126 (filed Jan. 3, 2020), including an Appendix with research from RVA LLC, *Data Review Of The Importance of Upload Speeds* (Jan. 2020), and Ookla speed test data, available at <https://ecsapi.fcc.gov/file/101030085118517/FCC%20RDOP%20Jan%203%20Ex%20Parte.pdf>. Additional information on historic growth in data usage is provided in Schools, Health & Libraries Broadband Coalition, *Common Sense Solutions for Closing the Digital Divide*, Apr. 29, 2021.

¹⁴⁷ *Id.* See also United States's Mobile and Broadband internet Speeds—Speedtest Global Index, available at <https://www.speedtest.net/global-index/united-states#fixed>.

to create and share content using video sharing, video conferencing, and other applications.¹⁴⁸

The increasing use of data accelerated markedly during the pandemic as households across the country became increasingly reliant on tools and applications that require greater internet capacity, both to download data but also to upload data. Sending information became as important as receiving it. A video consultation with a healthcare provider or participation by a child in a live classroom with a teacher and fellow students requires video to be sent and received simultaneously.¹⁴⁹ As an example, some video conferencing technology platforms indicate that download and upload speeds should be roughly equal to support two-way, interactive video meetings.¹⁵⁰ For both work and school, client materials or completed school assignments, which may be in the form of PDF files, videos, or graphic files, also need to be shared with others. This is often done by uploading materials to a collaboration site, and the upload speed available to a user can have a significant impact on the time it takes for the content to be shared with others.¹⁵¹ These activities require significant capacity from home internet connections to both download and upload data, especially when there are multiple individuals in one household engaging in these activities simultaneously.

This need for increased broadband capacity during the pandemic was reflected in increased usage patterns seen over the last year. As OpenVault noted in recent advisories, the pandemic significantly increased the amount of data users consume. Among data users observed by OpenVault, per-subscriber average data usage for the fourth quarter of 2020 was 482.6 gigabytes per month, representing a 40 percent increase over the 344 gigabytes consumed in the fourth quarter of 2019 and a 26 percent increase over the third quarter 2020 average of 383.8

gigabytes.¹⁵² OpenVault also noted significant increases in upstream usage among the data users it observed, with upstream data usage growing 63 percent—from 19 gigabytes to 31 gigabytes—between December, 2019 and December, 2020.¹⁵³ According to an OECD Broadband statistic from June 2020, the largest percentage of U.S. broadband subscribers have services providing speeds between 100 Mbps and 1 Gbps.¹⁵⁴

Jurisdictions and Federal programs are increasingly responding to the growing demands of their communities for both heightened download and upload speeds. For example, Illinois now requires 100 Mbps symmetrical service as the construction standard for its state broadband grant programs. This standard is also consistent with speed levels, particularly download speed levels, prioritized by other Federal programs supporting broadband projects. Bids submitted as part of the FCC in its Rural Digital Opportunity Fund (RDOF), established to support the construction of broadband networks in rural communities across the country, are given priority if they offer faster service, with the service offerings of 100 Mbps download and 20 Mbps upload being included in the “above baseline” performance tier set by the FCC.¹⁵⁵ The Broadband Infrastructure Program (BBIP) of the Department of Commerce, which provides Federal funding to deploy broadband

infrastructure to eligible service areas of the country also prioritizes projects designed to provide broadband service with a download speed of not less than 100 Mbps and an upload speed of not less than 20 Mbps.¹⁵⁷

The 100 Mbps upload and download speeds will support the increased and growing needs of households and businesses. Recognizing that, in some instances, 100 Mbps upload speed may be impracticable due to geographical, topographical, or financial constraints, the interim final rule permits upload speeds of between at least 20 Mbps and 100 Mbps in such instances. To provide for investments that will accommodate technologies requiring symmetry in download and upload speeds, as noted above, eligible projects that are not designed to deliver, upon project completion, service that reliably meets or exceeds symmetrical speeds of 100 Mbps because it would be impracticable to do so should be designed so that they can be scalable to such speeds. Recipients are also encouraged to prioritize investments in fiber optic infrastructure where feasible, as such advanced technology enables the next generation of application solutions for all communities.

Under the interim final rule, eligible projects are expected to focus on locations that are unserved or underserved. The interim final rule treats users as being unserved or underserved if they lack access to a wireline connection capable of reliably delivering at least minimum speeds of 25 Mbps download and 3 Mbps upload as households and businesses lacking this level of access are generally not viewed as being able to originate and receive high-quality voice, data, graphics, and video telecommunications. This threshold is consistent with the FCC’s benchmark for an “advanced telecommunications capability.”¹⁵⁸ This threshold is also consistent with thresholds used in other Federal programs to identify eligible areas to be served by programs to improve broadband services. For example, in the FCC’s RDOF program, eligible areas include those without current (or already funded) access to terrestrial broadband service providing 25 Mbps download and 3 Mbps upload speeds.¹⁵⁹ The Department of Commerce’s BBIP also considers households to be “unserved” generally if they lack access to broadband service

¹⁵² OVBI: Covid-19 Drove 15 percent Increase in Broadband Traffic in 2020, OpenVault, Quarterly Advisory, (Feb. 10, 2021), available at <https://openvault.com/ovbi-covid-19-drove-15-increase-in-broadband-traffic-in-2020>; See OpenVault’s data set incorporates information on usage by subscribers across multiple continents, including North America and Europe. Additional data and detail on increases in the amount of data users consume and the broadband speeds they are using is provided in *OpenVault Broadband Insights Report Q4*, Quarterly Advisory (Feb. 10, 2021), available at <https://openvault.com/complimentary-report-4q20/>.

¹⁵³ OVBI Special Report: 202 Upstream Growth Nearly 4X of Pre-Pandemic Years, OpenVault, Quarterly Advisory, (April 1, 2021), available at <https://openvault.com/ovbi-special-report-2020-upstream-growth-rate-nearly-4x-of-pre-pandemic-years/>; Additional data is provided in *OpenVault Broadband Insights Pandemic Impact on Upstream Broadband Usage and Network Capacity*, available at <https://openvault.com/upstream-whitepaper/>.

¹⁵⁴ Organisation for Economic Co-operation and Development, Fixed broadband subscriptions per 100 inhabitants, per speed tiers (June 2020), <https://www.oecd.org/sti/broadband/5.1-FixedBB-SpeedTiers-2020-06.xls> www.oecd.org/sti/broadband/broadband-statistics.

¹⁵⁵ *Rural Digital Opportunity Fund*, Report and Order, 35 FCC Rcd 686, 690, para. 9 (2020), available at <https://www.fcc.gov/document/fcc-launches-20-billion-rural-digital-opportunity-fund-0>.

¹⁵⁶ The BBIP was authorized by the Consolidated Appropriations Act, 2021, Section 905, Public Law 116–260, 134 Stat. 1182 (Dec. 27, 2020).

¹⁵⁷ Section 905(d)(4) of the Consolidated Appropriations Act, 2021.

¹⁵⁸ *Deployment Report*, *supra* note 142.

¹⁵⁹ *Rural Digital Opportunity Fund*, *supra* note 156.

¹⁴⁸ *Id.*

¹⁴⁹ One high definition Zoom meeting or class requires approximately 3.8 Mbps/3.0 Mbps (up/down).

¹⁵⁰ See, e.g., Zoom, System Requirements for Windows, macOS, and Linux, https://support.zoom.us/hc/en-us/articles/201362023-System-requirements-for-Windows-macOS-and-Linux#h_d278c327-e03d-4896-b19a-96a8f3c0c69c (last visited May 8, 2021).

¹⁵¹ By one estimate, to upload a one gigabit video file to YouTube would take 15 minutes at an upload speed of 10 Mbps compared with 1 minute, 30 seconds at an upload speed of 100 Mbps, and 30 seconds at an upload speed of 300 Mbps. *Reviews.org*: What is Symmetrical internet? (March 2020).

with a download speed of not less than 25 Mbps download and 3 Mbps upload, among other conditions. 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, in order to avoid duplication of efforts and resources.

Recipients are also encouraged to consider ways to integrate affordability options into their program design. To meet the immediate needs of unserved and underserved households and businesses, recipients are encouraged to focus on projects that deliver a physical broadband connection by prioritizing projects that achieve last mile-connections. Treasury also encourages 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.

Under sections 602(c)(1)(A) and 603(c)(1)(A), assistance to households facing negative economic impacts due to COVID-19 is also an eligible use, including internet access or digital literacy assistance. As discussed above, in considering whether a potential use is eligible under this category, a recipient must consider whether, and the extent to which, the household has experienced a negative economic impact from the pandemic.

Question 22: What are the advantages and disadvantages of setting minimum symmetrical download and upload speeds of 100 Mbps? What other minimum standards would be appropriate and why?

Question 23: Would setting such a minimum be impractical for particular types of projects? If so, where and on what basis should those projects be identified? How could such a standard be set while also taking into account the practicality of using this standard in particular types of projects? In addition to topography, geography, and financial factors, what other constraints, if any, are relevant to considering whether an investment is impracticable?

Question 24: What are the advantages and disadvantages of setting a minimum level of service at 100 Mbps download and 20 Mbps upload in projects where it is impracticable to set minimum symmetrical download and upload speeds of 100 Mbps? What are the advantages and disadvantages of setting a scalability requirement in these cases? What other minimum standards would be appropriate and why?

Question 25: What are the advantages and disadvantages of focusing these investments on those without access to a wireline connection that reliably delivers 25 Mbps download by 3 Mbps upload? Would another threshold be appropriate and why?

Question 26: What are the advantages and disadvantages of setting any particular threshold for identifying unserved or underserved areas, minimum speed standards or scalability minimum? Are there other standards that should be set (e.g., latency)? If so, why and how? How can such threshold, standards, or minimum be set in a way that balances the public's interest in making sure that reliable broadband services meeting the daily needs of all Americans are available throughout the country with the providing recipients flexibility to meet the varied needs of their communities?

III. Restrictions on Use

As discussed above, recipients have considerable flexibility to use Fiscal Recovery Funds to address the diverse needs of their communities. To ensure that payments from the Fiscal Recovery Funds are used for these congressionally permitted purposes, the ARPA includes two provisions that further define the boundaries of the statute's eligible uses. Section 602(c)(2)(A) of the Act provides that States and territories may not "use the funds . . . to either directly or indirectly offset a reduction in . . . net tax revenue . . . resulting from a change in law, regulation, or administrative interpretation during the covered period that reduces any tax . . . or delays the imposition of any tax or tax increase." In addition, sections 602(c)(2)(B) and 603(c)(2) prohibit any recipient, including cities, nonentitlement units of government, and counties, from using Fiscal Recovery Funds for deposit into any pension fund. These restrictions support the use of funds for the congressionally permitted purposes described in Section II of this Supplementary Information by providing a backstop against the use of funds for purposes outside of the eligible use categories.

These provisions give force to Congress's clear intent that Fiscal Recovery Funds be spent within the four eligible uses identified in the statute—(1) to respond to the public health emergency and its negative economic impacts, (2) to provide premium pay to essential workers, (3) to provide government services to the extent of eligible governments' revenue losses, and (4) to make necessary water, sewer, and broadband infrastructure investments—and not otherwise. These

four eligible uses reflect Congress's judgment that the Fiscal Recovery Funds should be expended in particular ways that support recovery from the COVID-19 public health emergency. The further restrictions reflect Congress's judgment that tax cuts and pension deposits do not fall within these eligible uses. The interim final rule describes how Treasury will identify when such uses have occurred and how it will recoup funds put toward these impermissible uses and, as discussed in Section VIII of this **SUPPLEMENTARY INFORMATION**, establishes a reporting framework for monitoring the use of Fiscal Recovery Funds for eligible uses.

A. Deposit Into Pension Funds

The statute provides that recipients may not use Fiscal Recovery Funds for "deposit into any pension fund." For the reasons discussed below, Treasury interprets "deposit" in this context to refer to an extraordinary payment into a pension fund for the purpose of reducing an accrued, unfunded liability. More specifically, the interim final rule does not permit this assistance to be used to make a payment into a pension fund if both:

1. The payment reduces a liability incurred prior to the start of the COVID-19 public health emergency, and
2. the payment occurs outside the recipient's regular timing for making such payments.

Under this interpretation, a "deposit" is distinct from a "payroll contribution," which occurs when employers make payments into pension funds on regular intervals, with contribution amounts based on a predetermined percentage of employees' wages and salaries.

As discussed above, eligible uses for premium pay and responding to the negative economic impacts of the COVID-19 public health emergency include hiring and compensating public sector employees. Interpreting the scope of "deposit" to exclude contributions that are part of payroll contributions is more consistent with these eligible uses and would reduce administrative burden for recipients. Accordingly, if an employee's wages and salaries are an eligible use of Fiscal Recovery Funds, recipients may treat the employee's covered benefits as an eligible use of Fiscal Recovery Funds. For purposes of the Fiscal Recovery Funds, covered benefits include costs of all types of leave (vacation, family-related, sick, military, bereavement, sabbatical, jury duty), employee insurance (health, life, dental, vision), retirement (pensions, 401(k)), unemployment benefit plans

(Federal and State), workers' compensation insurance, and Federal Insurance Contributions Act taxes (which includes Social Security and Medicare taxes).

Treasury anticipates that this approach to employees' covered benefits will be comprehensive and, for employees whose wage and salary costs are eligible expenses, will allow all covered benefits listed in the previous paragraph to be eligible under the Fiscal Recovery Funds. Treasury expects that this will minimize the administrative burden on recipients by treating all the specified covered benefit types as eligible expenses, for employees whose wage and salary costs are eligible expenses.

Question 27: Beyond a "deposit" and a "payroll contribution," are there other types of payments into a pension fund that Treasury should consider?

B. Offset a Reduction in Net Tax Revenue

For States and territories (recipient governments¹⁶⁰), section 602(c)(2)(A)—the offset provision—prohibits the use of Fiscal Recovery Funds to directly or indirectly offset a reduction in net tax revenue resulting from a change in law, regulation, or administrative interpretation¹⁶¹ during the covered period. If a State or territory uses Fiscal Recovery Funds to offset a reduction in net tax revenue, the ARPA provides that the State or territory must repay to the Treasury an amount equal to the lesser of (i) the amount of the applicable reduction attributable to the impermissible offset and (ii) the amount received by the State or territory under the ARPA. See Section IV of this **SUPPLEMENTARY INFORMATION**. As discussed below Section IV of this **SUPPLEMENTARY INFORMATION**, a State or territory that chooses to use Fiscal Recovery Funds to offset a reduction in net tax revenue does not forfeit its entire allocation of Fiscal Recovery Funds (unless it misused the full allocation to offset a reduction in net tax revenue) or any non-ARPA funding received.

The interim final rule implements these conditions by establishing a framework for States and territories to determine the cost of changes in law, regulation, or interpretation that reduce tax revenue and to identify and value the sources of funds that will offset—

i.e., cover the cost of—any reduction in net tax revenue resulting from such changes. A recipient government would only be considered to have used Fiscal Recovery Funds to offset a reduction in net tax revenue resulting from changes in law, regulation, or interpretation if, and to the extent that, the recipient government could not identify sufficient funds from sources other than the Fiscal Recovery Funds to offset the reduction in net tax revenue. If sufficient funds from other sources cannot be identified to cover the full cost of the reduction in net tax revenue resulting from changes in law, regulation, or interpretation, the remaining amount not covered by these sources will be considered to have been offset by Fiscal Recovery Funds, in contravention of the offset provision.

The interim final rule recognizes three sources of funds that may offset a reduction in net tax revenue other than Fiscal Recovery Funds—organic growth, increases in revenue (*e.g.*, an increase in a tax rate), and certain cuts in spending.

In order to reduce burden, the interim final rule's approach also incorporates the types of information and modeling already used by States and territories in their own fiscal and budgeting processes. By incorporating existing budgeting processes and capabilities, States and territories will be able to assess and evaluate the relationship of tax and budget decisions to uses of the Fiscal Recovery Funds based on information they likely have or can obtain. This approach ensures that recipient governments have the information they need to understand the implications of their decisions regarding the use of the Fiscal Recovery Funds—and, in particular, whether they are using the funds to directly or indirectly offset a reduction in net tax revenue, making them potentially subject to recoupment.

Reporting on both the eligible uses and on a State's or territory's covered tax changes that would reduce tax revenue will enable identification of, and recoupment for, use of Fiscal Recovery Funds to directly offset reductions in tax revenue resulting from tax relief. Moreover, this approach recognizes that, because money is fungible, even if Fiscal Recovery Funds are not explicitly or directly used to cover the costs of changes that reduce net tax revenue, those funds may be used in a manner inconsistent with the statute by indirectly being used to substitute for the State's or territory's funds that would otherwise have been needed to cover the costs of the reduction. By focusing on the cost of changes that reduce net tax revenue—and how a recipient government is

offsetting those reductions in constructing its budget over the covered period—the framework prevents efforts to use Fiscal Recovery Funds to indirectly offset reductions in net tax revenue for which the recipient government has not identified other offsetting sources of funding.

As discussed in greater detail below in this preamble, the framework set forth in the interim final rule establishes a step-by-step process for determining whether, and the extent to which, Fiscal Recovery Funds have been used to offset a reduction in net tax revenue. Based on information reported annually by the recipient government:

- First, each year, each recipient government will identify and value the changes in law, regulation, or interpretation that would result in a reduction in net tax revenue, as it would in the ordinary course of its budgeting process. The sum of these values in the year for which the government is reporting is the amount it needs to "pay for" with sources other than Fiscal Recovery Funds (total value of revenue reducing changes).

- Second, the interim final rule recognizes that it may be difficult to predict how a change would affect net tax revenue in future years and, accordingly, provides that if the total value of the changes in the year for which the recipient government is reporting is below a de minimis level, as discussed below, the recipient government need not identify any sources of funding to pay for revenue reducing changes and will not be subject to recoupment.

- Third, a recipient government will consider the amount of actual tax revenue recorded in the year for which they are reporting. If the recipient government's actual tax revenue is greater than the amount of tax revenue received by the recipient for the fiscal year ending 2019, adjusted annually for inflation, the recipient government will not be considered to have violated the offset provision because there will not have been a reduction in net tax revenue.

- Fourth, if the recipient government's actual tax revenue is less than the amount of tax revenue received by the recipient government for the fiscal year ending 2019, adjusted annually for inflation, in the reporting year the recipient government will identify any sources of funds that have been used to permissibly offset the total value of covered tax changes other than Fiscal Recovery Funds. These are:

- State or territory tax changes that would increase any source of general

¹⁶⁰ In this sub-section, "recipient governments" refers only to States and territories. In other sections, "recipient governments" refers more broadly to eligible governments receiving funding from the Fiscal Recovery Funds.

¹⁶¹ For brevity, referred to as "changes in law, regulation, or interpretation" for the remainder of this preamble.

fund revenue, such as a change that would increase a tax rate; and

- Spending cuts in areas not being replaced by Fiscal Recovery Funds.

The recipient government will calculate the value of revenue reduction remaining after applying these sources of offsetting funding to the total value of revenue reducing changes—that is, how much of the tax change has not been paid for. The recipient government will then compare that value to the difference between the baseline and actual tax revenue. A recipient government will not be required to repay to the Treasury an amount that is greater than the recipient government's actual tax revenue shortfall relative to the baseline (*i.e.*, fiscal year 2019 tax revenue adjusted for inflation). This “revenue reduction cap,” together with Step 3, ensures that recipient governments can use organic revenue growth to offset the cost of revenue reductions.

- Finally, if there are any amounts that could be subject to recoupment, Treasury will provide notice to the recipient government of such amounts. This process is discussed in greater detail in Section IV of this

SUPPLEMENTARY INFORMATION.

Together, these steps allow Treasury to identify the amount of reduction in net tax revenue that both is attributable to covered changes and has been directly or indirectly offset with Fiscal Recovery Funds. This process ensures Fiscal Recovery Funds are used in a manner consistent with the statute's defined eligible uses and the offset provision's limitation on these eligible uses, while avoiding undue interference with State and territory decisions regarding tax and spending policies.

The interim final rule also implements a process for recouping Fiscal Recovery Funds that were used to offset reductions in net tax revenue, including the calculation of any amounts that may be subject to recoupment, a process for a recipient government to respond to a notice of recoupment, and clarification regarding amounts excluded from recoupment. See Section IV of this **SUPPLEMENTARY INFORMATION.**

The interim final rule includes several definitions that are applicable to the implementation of the offset provision.

Covered change. The offset provision is triggered by a reduction in net tax revenue resulting from “a change in law, regulation, or administrative interpretation.” A covered change includes any final legislative or regulatory action, a new or changed administrative interpretation, and the phase-in or taking effect of any statute

or rule where the phase-in or taking effect was not prescribed prior to the start of the covered period. Changed administrative interpretations would not include corrections to replace prior inaccurate interpretations; such corrections would instead be treated as changes implementing legislation enacted or regulations issued prior to the covered period; the operative change in those circumstances is the underlying legislation or regulation that occurred prior to the covered period. Moreover, only the changes within the control of the State or territory are considered covered changes. Covered changes do not include a change in rate that is triggered automatically and based on statutory or regulatory criteria in effect prior to the covered period. For example, a state law that sets its earned income tax credit (EITC) at a fixed percentage of the Federal EITC will see its EITC payments automatically increase—and thus its tax revenue reduced—because of the Federal Government's expansion of the EITC in the ARPA.¹⁶² This would not be considered a covered change. In addition, the offset provision applies only to actions for which the change in policy occurs during the covered period; it excludes regulations or other actions that implement a change or law substantively enacted prior to March 3, 2021. Finally, Treasury has determined and previously announced that income tax changes—even those made during the covered period—that simply conform with recent changes in Federal law (including those to conform to recent changes in Federal taxation of unemployment insurance benefits and taxation of loan forgiveness under the Paycheck Protection Program) are permissible under the offset provision.

Baseline. For purposes of measuring a reduction in net tax revenue, the interim final rule measures actual changes in tax revenue relative to a revenue baseline (baseline). The baseline will be calculated as fiscal year 2019 (FY 2019) tax revenue indexed for inflation in each year of the covered period, with inflation calculated using the Bureau of Economic Analysis's Implicit Price Deflator.¹⁶³

FY 2019 was chosen as the starting year for the baseline because it is the last full fiscal year prior to the COVID-

19 public health emergency.¹⁶⁴ This baseline year is consistent with the approach directed by the ARPA in sections 602(c)(1)(C) and 603(c)(1)(C), which identify the “most recent full fiscal year of the [State, territory, or Tribal government] prior to the emergency” as the comparator for measuring revenue loss. U.S. gross domestic product is projected to rebound to pre-pandemic levels in 2021,¹⁶⁵ suggesting that an FY 2019 pre-pandemic baseline is a reasonable comparator for future revenue levels. The FY 2019 baseline revenue will be adjusted annually for inflation to allow for direct comparison of actual tax revenue in each year (reported in nominal terms) to baseline revenue in common units of measurement; without inflation adjustment, each dollar of reported actual tax revenue would be worth less than each dollar of baseline revenue expressed in 2019 terms.

Reporting year. The interim final rule defines “reporting year” as a single year within the covered period, aligned to the current fiscal year of the recipient government during the covered period, for which a recipient government reports the value of covered changes and any sources of offsetting revenue increases (“in-year” value), regardless of when those changes were enacted. For the fiscal years ending in 2021 or 2025 (partial years), the term “reporting year” refers to the portion of the year falling within the covered period. For example, the reporting year for a fiscal year beginning July 2020 and ending June 2021 would be from March 3, 2021 to July 2021.

Tax revenue. The interim final rule's definition of “tax revenue” is based on the Census Bureau's definition of taxes, used for its Annual Survey of State Government Finances.¹⁶⁶ It provides a consistent, well-established definition with which States and territories will be familiar and is consistent with the approach taken in Section II.C of this **SUPPLEMENTARY INFORMATION** describing the implementation of sections 602(c)(1)(C) and 603(c)(1)(C) of the Act, regarding revenue loss. Consistent with the approach described in Section II.C of this **SUPPLEMENTARY INFORMATION**, tax

¹⁶⁴ Using Fiscal Year 2019 is consistent with section 602 as Congress provided for using that baseline for determining the impact of revenue loss affecting the provision of government services. See section 602(c)(1)(C).

¹⁶⁵ Congressional Budget Office, An Overview of the Economic Outlook: 2021 to 2031 (February 1, 2021), available at <https://www.cbo.gov/publication/56965>.

¹⁶⁶ U.S. Census Bureau, Annual Survey of State and Local Government Finances Glossary, <https://www.census.gov/programs-surveys/state/about/glossary.html> (last visited Apr. 30, 2021).

¹⁶² See, e.g., Tax Policy Center, How do state earned income tax credits work?, <https://www.taxpolicycenter.org/briefing-book/how-do-state-earned-income-tax-credits-work/> (last visited May 9, 2021).

¹⁶³ U.S. Department of Commerce, Bureau of Economic Analysis, GDP Price Deflator, <https://www.bea.gov/data/prices-inflation/gdp-price-deflator> (last visited May 9, 2021).

revenue does not include revenue taxed and collected by a different unit of government (e.g., revenue from taxes levied by a local government and transferred to a recipient government).

Framework. The interim final rule provides a step-by-step framework, to be used in each reporting year, to calculate whether the offset provision applies to a State's or territory's use of Fiscal Recovery Funds:

(1) *Covered changes that reduce tax revenue.* For each reporting year, a recipient government will identify and value covered changes that the recipient government predicts will have the effect of reducing tax revenue in a given reporting year, similar to the way it would in the ordinary course of its budgeting process. The value of these covered changes may be reported based on estimated values produced by a budget model, incorporating reasonable assumptions, that aligns with the recipient government's existing approach for measuring the effects of fiscal policies, and that measures relative to a current law baseline. The covered changes may also be reported based on actual values using a statistical methodology to isolate the change in year-over-year revenue attributable to the covered change(s), relative to the current law baseline prior to the change(s). Further, estimation approaches should not use dynamic methodologies that incorporate the projected effects of macroeconomic growth because macroeconomic growth is accounted for separately in the framework. Relative to these dynamic scoring methodologies, scoring methodologies that do not incorporate projected effects of macroeconomic growth rely on fewer assumptions and thus provide greater consistency among States and territories. Dynamic scoring that incorporates macroeconomic growth may also increase the likelihood of underestimation of the cost of a reduction in tax revenue.

In general and where possible, reporting should be produced by the agency of the recipient government responsible for estimating the costs and effects of fiscal policy changes. This approach offers recipient governments the flexibility to determine their reporting methodology based on their existing budget scoring practices and capabilities. In addition, the approach of using the projected value of changes in law that enact fiscal policies to estimate the net effect of such policies is consistent with the way many States

and territories already consider tax changes.¹⁶⁷

(2) *In excess of the de minimis.* The recipient government will next calculate the total value of all covered changes in the reporting year resulting in revenue reductions, identified in Step 1. If the total value of the revenue reductions resulting from these changes is below the de minimis level, the recipient government will be deemed not to have any revenue-reducing changes for the purpose of determining the recognized net reduction. If the total is above the de minimis level, the recipient government must identify sources of in-year revenue to cover the full costs of changes that reduce tax revenue.

The de minimis level is calculated as 1 percent of the reporting year's baseline. Treasury recognizes that, pursuant to their taxing authority, States and territories may make many small changes to alter the composition of their tax revenues or implement other policies with marginal effects on tax revenues. They may also make changes based on projected revenue effects that turn out to differ from actual effects, unintentionally resulting in minor revenue changes that are not fairly described as "resulting from" tax law changes. The de minimis level recognizes the inherent challenges and uncertainties that recipient governments face, and thus allows relatively small reductions in tax revenue without consequence. Treasury determined the 1 percent level by assessing the historical effects of state-level tax policy changes in state EITCs implemented to effect policy goals other than reducing net tax revenues.¹⁶⁸ The 1 percent de minimis level reflects the historical reductions in revenue due to minor changes in state fiscal policies.

(3) *Safe harbor.* The recipient government will then compare the reporting year's actual tax revenue to the baseline. If actual tax revenue is greater than the baseline, Treasury will deem the recipient government not to have any recognized net reduction for the reporting year, and therefore to be in a safe harbor and outside the ambit of the offset provision. This approach is consistent with the ARPA, which contemplates recoupment of Fiscal Recovery Funds only in the event that

such funds are used to offset a reduction in net tax revenue. If net tax revenue has not been reduced, this provision does not apply. In the event that actual tax revenue is above the baseline, the organic revenue growth that has occurred, plus any other revenue-raising changes, by definition must have been enough to offset the in-year costs of the covered changes.

(4) *Consideration of other sources of funding.* Next, the recipient government will identify and calculate the total value of changes that could pay for revenue reduction due to covered changes and sum these items. This amount can be used to pay for up to the total value of revenue-reducing changes in the reporting year. These changes consist of two categories:

(a) *Tax and other increases in revenue.* The recipient government must identify and consider covered changes in policy that the recipient government predicts will have the effect of increasing general revenue in a given reporting year. As when identifying and valuing covered changes that reduce tax revenue, the value of revenue-raising changes may be reported based on estimated values produced by a budget model, incorporating reasonable assumptions, aligned with the recipient government's existing approach for measuring the effects of fiscal policies, and measured relative to a current law baseline, or based on actual values using a statistical methodology to isolate the change in year-over-year revenue attributable to the covered change(s). Further, and as discussed above, estimation approaches should not use dynamic scoring methodologies that incorporate the effects of macroeconomic growth because growth is accounted for separately under the interim final rule. In general and where possible, reporting should be produced by the agency of the recipient government responsible for estimating the costs and effects of fiscal policy changes. This approach offers recipient governments the flexibility to determine their reporting methodology based on their existing budget scoring practices and capabilities.

(b) *Covered spending cuts.* A recipient government also may cut spending in certain areas to pay for covered changes that reduce tax revenue, up to the amount of the recipient government's net reduction in total spending as described below. These changes must be reductions in government outlays not in an area where the recipient government has spent Fiscal Recovery Funds. To better align with existing reporting and accounting, the interim final rule considers the department, agency, or

¹⁶⁷ See, e.g., Megan Randall & Kim Rueben, Tax Policy Center, Sustainable Budgeting in the States: Evidence on State Budget Institutions and Practices (Nov. 2017), available at https://www.taxpolicycenter.org/sites/default/files/publication/149186/sustainable-budgeting-in-the-states_1.pdf.

¹⁶⁸ Data provided by the Urban-Brookings Tax Policy Center for state-level EITC changes for 2004–2017.

authority from which spending has been cut and whether the recipient government has spent Fiscal Recovery Funds on that same department, agency, or authority. This approach was selected to allow recipient governments to report how Fiscal Recovery Funds have been spent using reporting units already incorporated into their budgeting process. If they have not spent Fiscal Recovery Funds in a department, agency, or authority, the full amount of the reduction in spending counts as a covered spending cut, up to the recipient government's net reduction in total spending. If they have, the Fiscal Recovery Funds generally would be deemed to have replaced the amount of spending cut and only reductions in spending above the amount of Fiscal Recovery Funds spent on the department, agency, or authority would count.

To calculate the amount of spending cuts that are available to offset a reduction in tax revenue, the recipient government must first consider whether there has been a reduction in total net spending, excluding Fiscal Recovery Funds (net reduction in total spending). This approach ensures that reported spending cuts actually create fiscal space, rather than simply offsetting other spending increases. A net reduction in total spending is measured as the difference between total spending in each reporting year, excluding Fiscal Recovery Funds spent, relative to total spending for the recipient's fiscal year ending in 2019, adjusted for inflation. Measuring reductions in spending relative to 2019 reflects the fact that the fiscal space created by a spending cut persists so long as spending remains below its original level, even if it does not decline further, relative to the same amount of revenue. Measuring spending cuts from year to year would, by contrast, not recognize any available funds to offset revenue reductions unless spending continued to decline, failing to reflect the actual availability of funds created by a persistent change and limiting the discretion of States and territories. In general and where possible, reporting should be produced by the agency of the recipient government responsible for estimating the costs and effects of fiscal policy changes. Treasury chose this approach because while many recipient governments may score budget legislation using projections, spending cuts are readily observable using actual values.

This approach—allowing only spending reductions in areas where the recipient government has not spent Fiscal Recovery Funds to be used as an

offset for a reduction in net tax revenue—aims to prevent recipient governments from using Fiscal Recovery Funds to supplant State or territory funding in the eligible use areas, and then use those State or territory funds to offset tax cuts. Such an approach helps ensure that Fiscal Recovery Funds are not used to “indirectly” offset revenue reductions due to covered changes.

In order to help ensure recipient governments use Fiscal Recovery Funds in a manner consistent with the prescribed eligible uses and do not use Fiscal Recovery Funds to indirectly offset a reduction in net tax revenue resulting from a covered change, Treasury will monitor changes in spending throughout the covered period. If, over the course of the covered period, a spending cut is subsequently replaced with Fiscal Recovery Funds and used to indirectly offset a reduction in net tax revenue resulting from a covered change, Treasury may consider such change to be an evasion of the restrictions of the offset provision and seek recoupment of such amounts.

(5) *Identification of amounts subject to recoupment.* If a recipient government (i) reports covered changes that reduce tax revenue (Step 1); (ii) to a degree greater than the de minimis (Step 2); (iii) has experienced a reduction in net tax revenue (Step 3); and (iv) lacks sufficient revenue from other, permissible sources to pay for the entirety of the reduction (Step 4), then the recipient government will be considered to have used Fiscal Recovery Funds to offset a reduction in net tax revenue, up to the amount that revenue has actually declined. That is, the maximum value of reduction in revenue due to covered changes which a recipient government must cover is capped at the difference between the baseline and actual tax revenue.¹⁶⁹ In the event that the baseline is above actual tax revenue and the difference between them is less than the sum of revenue reducing changes that are not paid for with other, permissible sources, organic revenue growth has implicitly offset a portion of the reduction. For example, if a recipient government reduces tax revenue by \$1 billion, makes no other changes, and experiences revenue growth driven by organic economic growth worth \$500 million, it need only pay for the remaining \$500 million with sources other than Fiscal Recovery Funds. The revenue reduction cap implements this

¹⁶⁹ This cap is applied in § 35.8(c) of the interim final rule, calculating the amount of funds used in violation of the tax offset provision.

approach for permitting organic revenue growth to cover the cost of tax cuts.

Finally, as discussed further in Section IV of this **SUPPLEMENTARY INFORMATION**, a recipient government may request reconsideration of any amounts identified as subject to recoupment under this framework. This process ensures that all relevant facts and circumstances, including information regarding planned spending cuts and budgeting assumptions, are considered prior to a determination that an amount must be repaid. Amounts subject to recoupment are calculated on an annual basis; amounts recouped in one year cannot be returned if the State or territory subsequently reports an increase in net tax revenue.

To facilitate the implementation of the framework above, and in addition to reporting required on eligible uses, in each year of the reporting period, each State and territory will report to Treasury the following items:

- Actual net tax revenue for the reporting year;
- Each revenue-reducing change made to date during the covered period and the in-year value of each change;
- Each revenue-raising change made to date during the covered period and the in-year value of each change;
- Each covered spending cut made to date during the covered period, the in-year value of each cut, and documentation demonstrating that each spending cut is covered as prescribed under the interim final rule;

Treasury will provide additional guidance and instructions the reporting requirements at a later date.

Question 28: Does the interim final rule's definition of tax revenue accord with existing State and territorial practice and, if not, are there other definitions or elements Treasury should consider? Discuss why or why not.

Question 29: The interim final rule permits certain spending cuts to cover the costs of reductions in tax revenue, including cuts in a department, agency, or authority in which the recipient government is not using Fiscal Recovery Funds. How should Treasury and recipient governments consider the scope of a department, agency, or authority for the use of funds to ensure spending cuts are not being substituted with Fiscal Recovery Funds while also avoiding an overbroad definition of that captures spending that is, in fact, distinct?

Question 30: Discuss the budget scoring methodologies currently used by States and territories. How should the interim final rule take into consideration differences in approaches? Please discuss the use of

practices including but not limited to macrodynamic scoring, microdynamic scoring, and length of budget windows.

Question 31: *If a recipient government has a balanced budget requirement, how will that requirement impact its use of Fiscal Recovery Funds and ability to implement this framework?*

Question 32: *To implement the framework described above, the interim final rule establishes certain reporting requirements. To what extent do recipient governments already produce this information and on what timeline? Discuss ways that Treasury and recipient governments may better rely on information already produced, while ensuring a consistent application of the framework.*

Question 33: *Discuss States' and territories' ability to produce the figures and numbers required for reporting under the interim final rule. What additional reporting tools, such as a standardized template, would facilitate States' and territories' ability to complete the reporting required under the interim final rule?*

C. Other Restrictions on Use

Payments from the Fiscal Recovery Funds are also subject to pre-existing limitations provided in other Federal statutes and regulations and may not be used as non-Federal match for other Federal programs whose statute or regulations bar the use of Federal funds to meet matching requirements. For example, payments from the Fiscal Recovery Funds may not be used to satisfy the State share of Medicaid.¹⁷⁰

As provided for in the award terms, payments from the Fiscal Recovery Funds as a general matter will be subject to the provisions of the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (2 CFR part 200) (the Uniform Guidance), including the cost principles and restrictions on general provisions for selected items of cost.

D. Timeline for Use of Fiscal Recovery Funds

Section 602(c)(1) and section 603(c)(1) require that payments from the Fiscal Recovery Funds be used only to cover costs incurred by the State, territory, Tribal government, or local government by December 31, 2024. Similarly, the CARES Act provided that payments from the CRF be used to cover costs incurred by December 31, 2021.¹⁷¹ The

definition of "incurred" does not have a clear meaning. With respect to the CARES Act, on the understanding that the CRF was intended to be used to meet relatively short-term needs, Treasury interpreted this requirement to mean that, for a cost to be considered to have been incurred, performance of the service or delivery of the goods acquired must occur by December 31, 2021. In contrast, the ARPA, passed at a different stage of the COVID-19 public health emergency, was intended to provide more general fiscal relief over a broader timeline. In addition, the ARPA expressly permits the use of Fiscal Recovery Funds for improvements to water, sewer, and broadband infrastructure, which entail a longer timeframe. In recognition of this, Treasury is interpreting the requirement in section 602 and section 603 that costs be incurred by December 31, 2024, to require only that recipients have obligated the Fiscal Recovery Funds by such date. The interim final rule adopts a definition of "obligation" that is based on the definition used for purposes of the Uniform Guidance, which will allow for uniform administration of this requirement and is a definition with which most recipients will be familiar.

Payments from the Fiscal Recovery Funds are grants provided to recipients to mitigate the fiscal effects of the COVID-19 public health emergency and to respond to the public health emergency, consistent with the eligible uses enumerated in sections 602(c)(1) and 603(c)(1).¹⁷² As such, these funds are intended to provide economic stimulus in areas still recovering from the economic effects of the pandemic. In implementing and interpreting these provisions, including what it means to "respond to" the COVID-19 public health emergency, Treasury takes into consideration pre-pandemic facts and circumstances (e.g., average revenue growth prior to the pandemic) as well as impact of the pandemic that predate the enactment of the ARPA (e.g., replenishing Unemployment Trust balances drawn during the pandemic). While assessing the effects of the COVID-19 public health emergency necessarily takes into consideration the facts and circumstances that predate the ARPA, use of Fiscal Recovery Funds is forward looking.

As discussed above, recipients are permitted to use payments from the Fiscal Recovery Funds to respond to the public health emergency, to respond to workers performing essential work by providing premium pay or providing

grants to eligible employers, and to make necessary investments in water, sewer, or broadband infrastructure, which all relate to prospective uses. In addition, sections 602(c)(1)(C) and 603(c)(1)(C) permit recipients to use Fiscal Recovery Funds for the provision of government services. This clause provides that the amount of funds that may be used for this purpose is measured by reference to the reduction in revenue due to the public health emergency relative to revenues collected in the most recent full fiscal year, but this reference does not relate to the period during which recipients may use the funds, which instead refers to prospective uses, consistent with the other eligible uses.

Although as discussed above the eligible uses of payments from the Fiscal Recovery Funds are all prospective in nature, Treasury considers the beginning of the covered period for purposes of determining compliance with section 602(c)(2)(A) to be the relevant reference point for this purpose. The interim final rule thus permits funds to be used to cover costs incurred beginning on March 3, 2021. This aligns the period for use of Fiscal Recovery Funds with the period during which these funds may not be used to offset reductions in net tax revenue. Permitting Fiscal Recovery Funds to be used to cover costs incurred beginning on this date will also mean that recipients that began incurring costs in the anticipation of enactment of the ARPA and in advance of the issuance of this rule and receipt of payment from the Fiscal Recovery Funds would be able to cover them using these payments.¹⁷³

As set forth in the award terms, the period of performance will run until December 31, 2026, which will provide recipients a reasonable amount of time to complete projects funded with payments from the Fiscal Recovery Funds.

IV. Recoupment Process

Under the ARPA, failure to comply with the restrictions on use contained in sections 602(c) and 603(c) of the Act may result in recoupment of funds.¹⁷⁴ The interim final rule implements these provisions by establishing a process for recoupment.

Identification and Notice of Violations. Failure to comply with the restrictions on use will be identified based on reporting provided by the

¹⁷⁰ See 42 CFR 433.51 and 45 CFR 75.306.

¹⁷¹ Section 1001 of Division N of the Consolidated Appropriations Act, 2021 amended section 601(d)(3) of the Act by extending the end of the covered period for CRF expenditures from December 30, 2020 to December 31, 2021.

¹⁷² Sections 602(a), 603(a), 602(c)(1) and 603(c)(1) of the Act.

¹⁷³ Given the nature of this program, recipients will not be permitted to use funds to cover pre-award costs, i.e., those incurred prior to March 3, 2021.

¹⁷⁴ Sections 602(e) and 603(e) of the Act.

recipient. As discussed further in Sections III.B and VIII of this **SUPPLEMENTARY INFORMATION**, Treasury will collect information regarding eligible uses on a quarterly basis and on the tax offset provision on an annual basis. Treasury also may consider other information in identifying a violation, such as information provided by members of the public. If Treasury identifies a violation, it will provide written notice to the recipient along with an explanation of such amounts.

Request for Reconsideration. Under the interim final rule, a recipient may submit a request for reconsideration of any amounts identified in the notice provided by Treasury. This reconsideration process provides a recipient the opportunity to submit additional information it believes supports its request in light of the notice of recoupment, including, for example, additional information regarding the recipient's use of Fiscal Recovery Funds or its tax revenues. The process also provides the Secretary with an opportunity to consider all information relevant to whether a violation has occurred, and if so, the appropriate amount for recoupment.

The interim final rule also establishes requirements for the timing of a request for reconsideration. Specifically, if a recipient wishes to request reconsideration of any amounts identified in the notice, the recipient must submit a written request for reconsideration to the Secretary within 60 calendar days of receipt of such notice. The request must include an explanation of why the recipient believes that the finding of a violation or recoupable amount identified in the notice of recoupment should be reconsidered. To facilitate the Secretary's review of a recipient's request for reconsideration, the request should identify all supporting reasons for the request. Within 60 calendar days of receipt of the recipient's request for reconsideration, the recipient will be notified of the Secretary's decision to affirm, withdraw, or modify the notice of recoupment. Such notification will include an explanation of the decision, including responses to the recipient's supporting reasons and consideration of additional information provided.

The process and timeline established by the interim final rule are intended to provide the recipient with an adequate opportunity to fully present any issues or arguments in response to the notice of recoupment.¹⁷⁵ This process will allow the Secretary to respond to the

issues and considerations raised in the request for reconsideration taking into account the information and arguments presented by the recipient along with any other relevant information.

Repayment. Finally, the interim final rule provides that any amounts subject to recoupment must be repaid within 120 calendar days of receipt of any final notice of recoupment or, if the recipient has not requested reconsideration, within 120 calendar days of the initial notice provided by the Secretary.

Question 34: Discuss the timeline for requesting reconsideration under the interim final rule. What, if any, challenges does this timeline present?

V. Payments in Tranches to Local Governments and Certain States

Section 603 of the Act provides that the Secretary will make payments to local governments in two tranches, with the second tranche being paid twelve months after the first payment. In addition, section 602(b)(6)(A)(ii) provides that the Secretary may withhold payment of up to 50 percent of the amount allocated to each State and territory for a period of up to twelve months from the date on which the State or territory provides its certification to the Secretary. Any such withholding for a State or territory is required to be based on the unemployment rate in the State or territory as of the date of the certification.

The Secretary has determined to provide in this interim final rule for withholding of 50 percent of the amount of Fiscal Recovery Funds allocated to all States (and the District of Columbia) other than those with an unemployment rate that is 2.0 percentage points or more above its pre-pandemic (*i.e.*, February 2020) level. The Secretary will refer to the latest available monthly data from the Bureau of Labor Statistics as of the date the certification is provided. Based on data available at the time of public release of this interim final rule, this threshold would result in a majority of States being paid in two tranches.

Splitting payments for the majority of States is consistent with the requirement in section 603 of the Act to make payments from the Coronavirus Local Fiscal Recovery Fund to local governments in two tranches.¹⁷⁶

¹⁷⁶ With respect to Federal financial assistance more generally, States are subject to the requirements of the Cash Management Improvement Act (CMIA), under which Federal funds are drawn upon only on an as needed basis and States are required to remit interest on unused balances to Treasury. Given the statutory requirement for Treasury to make payments to States within a certain period, these requirements

Splitting payments to States into two tranches will help encourage recipients to adapt, as necessary, to new developments that could arise over the coming twelve months, including potential changes to the nature of the public health emergency and its negative economic impacts. While the U.S. economy has been recovering and adding jobs in aggregate, there is still considerable uncertainty in the economic outlook and the interaction between the pandemic and the economy.¹⁷⁷ For these reasons, Treasury believes it will be appropriate for a majority of recipients to adapt their plans as the recovery evolves. For example, a faster-than-expected economic recovery in 2021 could lead a recipient to dedicate more Fiscal Recovery Funds to longer-term investments starting in 2022. In contrast, a slower-than-expected economic recovery in 2021 could lead a recipient to use additional funds for near-term stimulus in 2022.

At the same time, the statute contemplates the possibility that elevated unemployment in certain States could justify a single payment. Elevated unemployment is indicative of a greater need to assist unemployed workers and stimulate a faster economic recovery. For this reason, the interim final rule provides that States and territories with an increase in their unemployment rate over a specified threshold may receive a single payment, with the expectation that a single tranche will better enable these States and territories to take additional immediate action to aid the unemployed and strengthen their economies.

Following the initial pandemic-related spike in unemployment in 2020, States' unemployment rates have been trending back towards pre-pandemic levels. However, some States' labor markets are healing more slowly than others. Moreover, States varied widely in their pre-pandemic levels of unemployment, and some States remain substantially further from their pre-

of the CMIA and Treasury's implementing regulations at 31 CFR part 205 will not apply to payments from the Fiscal Recovery Funds. Providing funding in two tranches to the majority of States reflects, to the maximum extent permitted by section 602 of the Act, the general principles of Federal cash management and stewardship of Federal funding, yet will be much less restrictive than the usual requirements to which States are subject.

¹⁷⁷ The potential course of the virus, and its impact on the economy, has contributed to a heightened degree of uncertainty relative to prior periods. *See, e.g.*, Dave Altig et al., Economic uncertainty before and during the COVID-19 pandemic, *J. of Public Econ.* (Nov. 2020), available at <https://www.sciencedirect.com/science/article/abs/pii/S0047272720301389>.

¹⁷⁵ The interim final rule also provides that Treasury may extend any deadlines.

pandemic starting point. Consequently, Treasury is delineating States with significant remaining elevation in the unemployment rate, based on the net difference to pre-pandemic levels.

Treasury has established that significant remaining elevation in the unemployment rate is a net change in the unemployment rate of 2.0 percentage points or more relative to pre-pandemic levels. In the four previous recessions going back to the early 1980s, the national unemployment rate rose by 3.6, 2.3, 2.0, and 5.0 percentage points, as measured from the start of the recession to the eventual peak during or immediately following the recession.¹⁷⁸ Each of these increases can therefore represent a recession's impact on unemployment. To identify States with significant remaining elevation in unemployment, Treasury took the lowest of these four increases, 2.0 percentage points, to indicate states where, despite improvement in the unemployment rate, current labor market conditions are consistent still with a historical benchmark for a recession.

No U.S. territory will be subject to withholding of its payment from the Fiscal Recovery Funds. For Puerto Rico, the Secretary has determined that the current level of the unemployment rate (8.8 percent, as of March 2021¹⁷⁹) is sufficiently high such that Treasury should not withhold any portion of its payment from the Fiscal Recovery Funds regardless of its change in unemployment rate relative to its pre-pandemic level. For U.S. territories that are not included in the Bureau of Labor Statistics' monthly unemployment rate data, the Secretary will not exercise the authority to withhold amounts from the Fiscal Recovery Funds.

VI. Transfer

The statute authorizes State, territorial, and Tribal governments; counties; metropolitan cities; and nonentitlement units of local government (counties, metropolitan

cities, and nonentitlement units of local government are collectively referred to as "local governments") to transfer amounts paid from the Fiscal Recovery Funds to a number of specified entities. By permitting these transfers, Congress recognized the importance of providing flexibility to governments seeking to achieve the greatest impact with their funds, including by working with other levels or units of government or private entities to assist recipient governments in carrying out their programs. This includes special-purpose districts that perform specific functions in the community, such as fire, water, sewer, or mosquito abatement districts.

Specifically, under section 602(c)(3), a State, territory, or Tribal government may transfer funds to a "private nonprofit organization . . . a Tribal organization . . . a public benefit corporation involved in the transportation of passengers or cargo, or a special-purpose unit of State or local government."¹⁸⁰ Similarly, section 603(c)(3) authorizes a local government to transfer funds to the same entities (other than Tribal organizations).

The interim final rule clarifies that the lists of transferees in sections 602(c)(3) and 603(c)(3) are not exclusive. The interim final rule permits State, territorial, and Tribal governments to transfer Fiscal Recovery Funds to other constituent units of government or private entities beyond those specified in the statute. Similarly, local governments are authorized to transfer Fiscal Recovery Funds to other constituent units of government (e.g., a county is able to transfer Fiscal Recovery Funds to a city, town, or school district within it) or to private entities. This approach is intended to help provide funding to local governments with needs that may exceed the allocation provided under the statutory formula.

State, local, territorial, and Tribal governments that receive a Federal award directly from a Federal awarding agency, such as Treasury, are "recipients." A transferee receiving a transfer from a recipient under sections 602(c)(3) and 603(c)(3) will be a subrecipient. Subrecipients are entities that receive a subaward from a recipient to carry out a program or project on behalf of the recipient with the recipient's Federal award funding. The recipient remains responsible for monitoring and overseeing the subrecipient's use of Fiscal Recovery Funds and other activities related to the award to ensure that the subrecipient complies with the statutory and

regulatory requirements and the terms and conditions of the award. Recipients also remain responsible for reporting to Treasury on their subrecipients' use of payments from the Fiscal Recovery Funds for the duration of the award.

Transfers under sections 602(c)(3) and 603(c)(3) must qualify as an eligible use of Fiscal Recovery Funds by the transferor. Once Fiscal Recovery Funds are received, the transferee must abide by the restrictions on use applicable to the transferor under the ARPA and other applicable law and program guidance. For example, if a county transferred Fiscal Recovery Funds to a town within its borders to respond to the COVID-19 public health emergency, the town would be bound by the eligible use requirements applicable to the county in carrying out the county's goal. This also means that county A may not transfer Fiscal Recovery Funds to county B for use in county B because such a transfer would not, from the perspective of the transferor (county A), be an eligible use in county A.

Section 603(c)(4) separately provides for transfers by a local government to its State or territory. A transfer under section 603(c)(4) will not make the State a subrecipient of the local government, and such Fiscal Recovery Funds may be used by the State for any purpose permitted under section 602(c). A transfer under section 603(c)(4) will result in a cancellation or termination of the award on the part of the transferor local government and a modification of the award to the transferee State or territory. The transferor must provide notice of the transfer to Treasury in a format specified by Treasury. If the local government does not provide such notice, it will remain legally obligated to Treasury under the award and remain responsible for ensuring that the awarded Fiscal Recovery Funds are being used in accordance with the statute and program guidance and for reporting on such uses to Treasury. A State that receives a transfer from a local government under section 603(c)(4) will be bound by all of the use restrictions set forth in section 602(c) with respect to the use of those Fiscal Recovery Funds, including the prohibitions on use of such Fiscal Recovery Funds to offset certain reductions in taxes or to make deposits into pension funds.

Question 35: What are the advantages and disadvantages of treating the list of transferees in sections 602(c)(3) and 603(c)(3) as nonexclusive, allowing States and localities to transfer funds to entities outside of the list?

Question 36: Are there alternative ways of defining "special-purpose unit of State or local government" and

¹⁷⁸ Includes the period during and immediately following recessions, as defined by the National Bureau of Economic Research. National Bureau of Economic Research, *US Business Cycle Expansions and Contractions*, <https://www.nber.org/research/data/us-business-cycle-expansions-and-contractions> (last visited Apr. 27, 2021). Based on data from U.S. Bureau of Labor Statistics, Unemployment Rate [UNRATE], retrieved from FRED, Federal Reserve Bank of St. Louis, <https://fred.stlouisfed.org/series/UNRATE> (last visited Apr. 27, 2021).

¹⁷⁹ U.S. Bureau of Labor Statistics, *Economic News Release—Table 1. Civilian labor force and unemployment by state and selected area, seasonally adjusted*, <https://www.bls.gov/news.release/laus.t01.htm> (last visited Apr. 30, 2021).

¹⁸⁰ Section 602(c)(3) of the Act.

“public benefit corporation” that would better further the aims of the Funds?

VII. Nonentitlement Units of Government

The Fiscal Recovery Funds provides for \$19.53 billion in payments to be made to States and territories which will distribute the funds to nonentitlement units of local government (NEUs); local governments which generally have populations below 50,000. These local governments have not yet received direct fiscal relief from the Federal Government during the COVID–19 public health emergency, making Fiscal Recovery Funds payments an important source of support for their public health and economic responses. Section 603 requires Treasury to allocate and pay Fiscal Recovery Funds to the States and territories and requires the States and territories to distribute Fiscal Recovery Funds to NEUs based on population within 30 days of receipt unless an extension is granted by the Secretary. The interim final rule clarifies certain aspects regarding the distribution of Fiscal Recovery by States and territories to NEUs, as well as requirements around timely payments from the Fiscal Recovery Funds.

The ARPA requires that States and territories allocate funding to NEUs in an amount that bears the same proportion as the population of the NEU bears to the total population of all NEUs in the State or territory, subject to a cap (described below). Because the statute requires States and territories to make distributions based on population, States and territories may not place additional conditions or requirements on distributions to NEUs, beyond those required by the ARPA and Treasury’s implementing regulations and guidance. For example, a State may not impose stricter limitations than permitted by statute or Treasury regulations or guidance on an NEU’s use of Fiscal Recovery Funds based on the NEU’s proposed spending plan or other policies. States and territories are also not permitted to offset any debt owed by the NEU against the NEU’s distribution. Further, States and territories may not provide funding on a reimbursement basis—e.g., requiring NEUs to pay for project costs up front before being reimbursed with Fiscal Recovery Funds payments—because this funding model would not comport with the statutory requirement that States and territories make distributions to NEUs within the statutory timeframe.

Similarly, States and territories distributing Fiscal Recovery Funds payments to NEUs are responsible for

complying with the Fiscal Recovery Funds statutory requirement that distributions to NEUs not exceed 75 percent of the NEU’s most recent budget. The most recent budget is defined as the NEU’s most recent annual total operating budget, including its general fund and other funds, as of January 27, 2020. Amounts in excess of such cap and therefore not distributed to the NEU must be returned to Treasury by the State or territory. States and territories may rely for this determination on a certified top-line budget total from the NEU.

Under the interim final rule, the total allocation and distribution to an NEU, including the sum of both the first and second tranches of funding, cannot exceed the 75 percent cap. States and territories must permit NEUs without formal budgets as of January 27, 2020 to self-certify their most recent annual expenditures as of January 27, 2020 for the purpose of calculating the cap. This approach will provide an administrable means to implement the cap for small local governments that do not adopt a formal budget.

Section 603(b)(3) of the Social Security Act provides for Treasury to make payments to counties but provides that, in the case of an amount to be paid to a county that is not a unit of general local government, the amount shall instead be paid to the State in which such county is located, and such State shall distribute such amount to each unit of general local government within such county in an amount that bears the same proportion to the amount to be paid to such county as the population of such units of general local government bears to the total population of such county. As with NEUs, States may not place additional conditions or requirements on distributions to such units of general local government, beyond those required by the ARPA and Treasury’s implementing regulations and guidance.

In the case of consolidated governments, section 603(b)(4) allows consolidated governments (e.g., a city-county consolidated government) to receive payments under each allocation based on the respective formulas. In the case of a consolidated government, Treasury interprets the budget cap to apply to the consolidated government’s NEU allocation under section 603(b)(2) but not to the consolidated government’s county allocation under section 603(b)(3).

If necessary, States and territories may use the Fiscal Recovery Funds under section 602(c)(1)(A) to fund expenses related to administering payments to NEUs and units of general local

government, as disbursing these funds itself is a response to the public health emergency and its negative economic impacts. If a State or territory requires more time to disburse Fiscal Recovery Funds to NEUs than the allotted 30 days, Treasury will grant extensions of not more than 30 days for States and territories that submit a certification in writing in accordance with section 603(b)(2)(C)(ii)(I). Additional extensions may be granted at the discretion of the Secretary.

Question 37: What are alternative ways for States and territories to enforce the 75 percent cap while reducing the administrative burden on them?

Question 38: What criteria should Treasury consider in assessing requests for extensions for further time to distribute NEU payments?

VIII. Reporting

States (defined to include the District of Columbia), territories, metropolitan cities, counties, and Tribal governments will be required to submit one interim report and thereafter quarterly Project and Expenditure reports through the end of the award period on December 31, 2026. The interim report will include a recipient’s expenditures by category at the summary level from the date of award to July 31, 2021 and, for States and territories, information related to distributions to nonentitlement units. Recipients must submit their interim report to Treasury by August 31, 2021. Nonentitlement units of local government are not required to submit an interim report.

The quarterly Project and Expenditure reports will include financial data, information on contracts and subawards over \$50,000, types of projects funded, and other information regarding a recipient’s utilization of the award funds. The reports will include the same general data (e.g., on obligations, expenditures, contracts, grants, and subawards) as those submitted by recipients of the CRF, with some modifications. Modifications will include updates to the expenditure categories and the addition of data elements related to specific eligible uses, including some of the reporting elements described in sections above. The initial quarterly Project and Expenditure report will cover two calendar quarters from the date of award to September 30, 2021, and must be submitted to Treasury by October 31, 2021. The subsequent quarterly reports will cover one calendar quarter and must be submitted to Treasury within 30 days after the end of each calendar quarter.

Nonentitlement units of local government will be required to submit

annual Project and Expenditure reports until the end of the award period on December 31, 2026. The initial annual Project and Expenditure report for nonentitlement units of local government will cover activity from the date of award to September 30, 2021 and must be submitted to Treasury by October 31, 2021. The subsequent annual reports must be submitted to Treasury by October 31 each year.

States, territories, metropolitan cities, and counties with a population that exceeds 250,000 residents will also be required to submit an annual Recovery Plan Performance report to Treasury. The Recovery Plan Performance report will provide the public and Treasury information on the projects that recipients are undertaking with program funding and how they are planning to ensure project outcomes are achieved in an effective, efficient, and equitable manner. Each jurisdiction will have some flexibility in terms of the form and content of the Recovery Plan Performance report, as long as it includes the minimum information required by Treasury. The Recovery Plan Performance report will include key performance indicators identified by the recipient and some mandatory indicators identified by Treasury, as well as programmatic data in specific eligible use categories and the specific reporting requirements described in the sections above. The initial Recovery Plan Performance report will cover the period from the date of award to July 31, 2021 and must be submitted to Treasury by August 31, 2021. Thereafter, Recovery Plan Performance reports will cover a 12-month period, and recipients will be required to submit the report to Treasury within 30 days after the end of the 12-month period. The second Recovery Plan Performance report will cover the period from July 1, 2021 to June 30, 2022, and must be submitted to Treasury by July 31, 2022. Each annual Recovery Plan Performance report must be posted on the public-facing website of the recipient. Local governments with fewer than 250,000 residents, Tribal governments, and nonentitlement units of local government are not required to develop a Recovery Plan Performance report.

Treasury will provide additional guidance and instructions on the reporting requirements outlined above for the Fiscal Recovery Funds at a later date.

IX. Comments and Effective Date

This interim final rule is being issued without advance notice and public comment to allow for immediate implementation of this program. As

discussed below, the requirements of advance notice and public comment do not apply “to the extent that there is involved . . . a matter relating to agency . . . grants.”¹⁸¹ The interim final rule implements statutory conditions on the eligible uses of the Fiscal Recovery Funds grants, and addresses the payment of those funds, the reporting on uses of funds, and potential consequences of ineligible uses. In addition and as discussed below, the Administrative Procedure Act also provides an exception to ordinary notice-and-comment procedures “when the agency for good cause finds (and incorporates the finding and a brief statement of reasons therefor in the rules issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.”¹⁸² This good cause justification also supports waiver of the 60-day delayed effective date for major rules under the Congressional Review Act at 5 U.S.C. 808(2). Although this interim final rule is effective immediately, comments are solicited from interested members of the public and from recipient governments on all aspects of the interim final rule.

These comments must be submitted on or before July 16, 2021.

X. Regulatory Analyses

Executive Orders 12866 and 13563

This interim final rule is economically significant for the purposes of Executive Orders 12866 and 13563. Treasury, however, is proceeding under the emergency provision at Executive Order 12866 section 6(a)(3)(D) based on the need to act expeditiously to mitigate the current economic conditions arising from the COVID-19 public health emergency. The rule has been reviewed by the Office of Management and Budget (OMB) in accordance with Executive Order 12866. This rule is necessary to implement the ARPA in order to provide economic relief to State, local, and Tribal governments adversely impacted by the COVID-19 public health emergency.

Under Executive Order 12866, OMB must determine whether this regulatory action is “significant” and, therefore, subject to the requirements of the Executive Order and subject to review by OMB. Section 3(f) of Executive Order 12866 defines a significant regulatory

action as an action likely to result in a rule that may:

(1) Have an annual effect on the economy of \$100 million or more, or adversely affect a sector of the economy; productivity; competition; jobs; the environment; public health or safety; or State, local, or Tribal governments or communities in a material way (also referred to as “economically significant” regulations);

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impacts of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President’s priorities, or the principles stated in the Executive order.

This regulatory action is an economically significant regulatory action subject to review by OMB under section 3(f) of Executive Order 12866. Treasury has also reviewed these regulations under Executive Order 13563, which supplements and explicitly reaffirms the principles, structures, and definitions governing regulatory review established in Executive Order 12866. To the extent permitted by law, section 1(b) of Executive Order 13563 requires that an agency:

(1) Propose or adopt regulations only upon a reasoned determination that their benefits justify their costs (recognizing that some benefits and costs are difficult to quantify);

(2) Tailor its regulations to impose the least burden on society, consistent with obtaining regulatory objectives taking into account, among other things, and to the extent practicable, the costs of cumulative regulations;

(3) Select, in choosing among alternative regulatory approaches, those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity);

(4) To the extent feasible, specify performance objectives, rather than the behavior or manner of compliance a regulated entity must adopt; and

(5) Identify and assess available alternatives to direct regulation, including providing economic incentives—such as user fees or marketable permits—to encourage the desired behavior, or providing information that enables the public to make choices.

Executive Order 13563 also requires an agency “to use the best available

¹⁸¹ 5 U.S.C. 553(a)(2).

¹⁸² 5 U.S.C. 553(b)(3)(B); *see also* 5 U.S.C. 553(d)(3) (creating an exception to the requirement of a 30-day delay before the effective date of a rule “for good cause found and published with the rule”).

techniques to quantify anticipated present and future benefits and costs as accurately as possible.” OMB’s Office of Information and Regulatory Affairs (OIRA) has emphasized that these techniques may include “identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes.”

Treasury has assessed the potential costs and benefits, both quantitative and qualitative, of this regulatory action, and is issuing this interim final rule only on a reasoned determination that the benefits exceed the costs. In choosing among alternative regulatory approaches, Treasury selected those approaches that would maximize net benefits. Based on the analysis that follows and the reasons stated elsewhere in this document, Treasury believes that this interim final rule is consistent with the principles set forth in Executive Order 13563.

Treasury also has determined that this regulatory action does not unduly interfere with States, territories, Tribal governments, and localities in the exercise of their governmental functions.

This Regulatory Impact Analysis discusses the need for regulatory action, the potential benefits, and the potential costs.

Need for Regulatory Action. This interim final rule implements the \$350 billion Fiscal Recovery Funds of the ARPA, which Congress passed to help States, territories, Tribal governments, and localities respond to the ongoing COVID-19 public health emergency and its economic impacts. As the agency charged with execution of these programs, Treasury has concluded that this interim final rule is needed to ensure that recipients of Fiscal Recovery Funds fully understand the requirements and parameters of the program as set forth in the statute and deploy funds in a manner that best reflects Congress’ mandate for targeted fiscal relief.

This interim final rule is primarily a transfer rule: It transfers \$350 billion in aid from the Federal Government to states, territories, Tribal governments, and localities, generating a significant macroeconomic effect on the U.S. economy. In making this transfer, Treasury has sought to implement the program in ways that maximize its potential benefits while minimizing its costs. It has done so by aiming to target relief in key areas according to the congressional mandate; offering clarity to States, territories, Tribal governments, and localities while maintaining their flexibility to respond

to local needs; and limiting administrative burdens.

Analysis of Benefits. Relative to a pre-statutory baseline, the Fiscal Recovery Funds provide a combined \$350 billion to State, local, and Tribal governments for fiscal relief and support for costs incurred responding to the COVID-19 pandemic. Treasury believes that this transfer will generate substantial additional economic activity, although given the flexibility accorded to recipients in the use of funds, it is not possible to precisely estimate the extent to which this will occur and the timing with which it will occur. Economic research has demonstrated that state fiscal relief is an efficient and effective way to mitigate declines in jobs and output during an economic downturn.¹⁸³ Absent such fiscal relief, fiscal austerity among State, local, and Tribal governments could exert a prolonged drag on the overall economic recovery, as occurred following the 2007–09 recession.¹⁸⁴

This interim final rule provides benefits across several areas by implementing the four eligible funding uses, as defined in statute: Strengthening the response to the COVID-19 public health emergency and its economic impacts; easing fiscal pressure on State, local, and Tribal governments that might otherwise lead to harmful cutbacks in employment or government services; providing premium pay to essential workers; and making necessary investments in certain types of infrastructure. In implementing the ARPA, Treasury also sought to support disadvantaged communities that have been disproportionately impacted by the pandemic. The Fiscal Recovery Funds as implemented by the interim final rule can be expected to channel resources toward these uses in order to achieve substantial near-term economic and public health benefits, as well as longer-term benefits arising from the allowable investments in water, sewer, and broadband infrastructure and aid to families.

¹⁸³ Gabriel Chodorow-Reich et al., Does State Fiscal Relief during Recessions Increase Employment? Evidence from the American Recovery and Reinvestment Act, *American Econ. J.: Econ. Policy*, 4:3 118–45 (Aug. 2012), available at <https://www.aeaweb.org/articles?id=10.1257/pol.4.3.118>.

¹⁸⁴ See, e.g., Fitzpatrick, Haughwout & Setren, Fiscal Drag from the State and Local Sector?, Liberty Street Economics Blog, Federal Reserve Bank of New York (June 27, 2012), <https://www.libertystreeteconomics.newyorkfed.org/2012/06/fiscal-drag-from-the-state-and-local-sector.html>; Jiri Jonas, Great Recession and Fiscal Squeeze at U.S. Subnational Government Level, IMF Working Paper 12/184, (July 2012), available at <https://www.imf.org/external/pubs/ft/wp/2012/wp12184.pdf>; Gordon, *supra* note 9.

These benefits are achieved in the interim final rule through a broadly flexible approach that sets clear guidelines on eligible uses of Fiscal Recovery Funds and provides State, local, and Tribal government officials discretion within those eligible uses to direct Fiscal Recovery Funds to areas of greatest need within their jurisdiction. While preserving recipients’ overall flexibility, the interim final rule includes several provisions that implement statutory requirements and will help support use of Fiscal Recovery Funds to achieve the intended benefits. The remainder of this section clarifies how Treasury’s approach to key provisions in the interim final rule will contribute to greater realization of benefits from the program.

- **Revenue Loss:** Recipients will compute the extent of reduction in revenue by comparing actual revenue to a counterfactual trend representing what could have plausibly been expected to occur in the absence of the pandemic. The counterfactual trend begins with the last full fiscal year prior to the public health emergency (as required by statute) and projects forward with an annualized growth adjustment. Treasury’s decision to incorporate a growth adjustment into the calculation of revenue loss ensures that the formula more fully captures revenue shortfalls relative to recipients’ pre-pandemic expectations. Moreover, recipients will have the opportunity to re-calculate revenue loss at several points throughout the program, recognizing that some recipients may experience revenue effects with a lag. This option to re-calculate revenue loss on an ongoing basis should result in more support for recipients to avoid harmful cutbacks in future years. In calculating revenue loss, recipients will look at general revenue in the aggregate, rather than on a source-by-source basis. Given that recipients may have experienced offsetting changes in revenues across sources, Treasury’s approach provides a more accurate representation of the effect of the pandemic on overall revenues.

- **Premium Pay:** Per the statute, recipients have broad latitude to designate critical infrastructure sectors and make grants to third-party employers for the purpose of providing premium pay or otherwise respond to essential workers. While the interim final rule generally preserves the flexibility in the statute, it does add a requirement that recipients give written justification in the case that premium pay would increase a worker’s annual pay above a certain threshold. To set this threshold, Treasury analyzed data

from the Bureau of Labor Statistics to determine a level that would not require further justification for premium pay to the vast majority of essential workers, while requiring higher scrutiny for provision of premium pay to higher-earners who, even without premium pay, would likely have greater personal financial resources to cope with the effects of the pandemic. Treasury believes the threshold in the interim final rule strikes the appropriate balance between preserving flexibility and helping encourage use of these resources to help those in greatest need. The interim final rule also requires that eligible workers have regular in-person interactions or regular physical handling of items that were also handled by others. This requirement will also help encourage use of financial resources for those who have endured the heightened risk of performing essential work.

- *Withholding of Payments to Recipients:* Treasury believes that for the vast majority of recipient entities, it will be appropriate to receive funds in two separate payments. As discussed above, withholding of payments ensures that recipients can adapt spending plans to evolving economic conditions and that at least some of the economic benefits will be realized in 2022 or later. However, consistent with authorities granted to Treasury in the statute, Treasury recognizes that a subset of States with significant remaining elevation in the unemployment rate could face heightened additional near-term needs to aid unemployed workers and stimulate the recovery. Therefore, for a subset of State governments, Treasury will not withhold any funds from the first payment. Treasury believes that this approach strikes the appropriate balance between the general reasons to provide funds in two payments and the heightened additional near-term needs in specific States. As discussed above, Treasury set a threshold based on historical analysis of unemployment rates in recessions.

- *Hiring Public Sector Employees:* The interim final rule states explicitly that recipients may use funds to restore their workforces up to pre-pandemic levels. Treasury believes that this statement is beneficial because it eliminates any uncertainty that could cause delays or otherwise negatively impact restoring public sector workforces (which, at time of publication, remain significantly below pre-pandemic levels).

Finally, the interim final rule aims to promote and streamline the provision of assistance to individuals and communities in greatest need,

particularly communities that have been historically disadvantaged and have experienced disproportionate impacts of the COVID-19 crisis. Targeting relief is in line with Executive Order 13985, “Advancing Racial Equity and Support for Underserved Communities Through the Federal Government,” which laid out an Administration-wide priority to support “equity for all, including people of color and others who have been historically underserved, marginalized, and adversely affected by persistent poverty and inequality.”¹⁸⁵ To this end, the interim final rule enumerates a list of services that may be provided using Fiscal Recovery Funds in low-income areas to address the disproportionate impacts of the pandemic in these communities; establishes the characteristics of essential workers eligible for premium pay and encouragement to serve workers based on financial need; provides that recipients may use Fiscal Recovery Funds to restore (to pre-pandemic levels) state and local workforces, where women and people of color are disproportionately represented;¹⁸⁶ and targets investments in broadband infrastructure to unserved and underserved areas. Collectively, these provisions will promote use of resources to facilitate the provision of assistance to individuals and communities with the greatest need.

Analysis of Costs. This regulatory action will generate administrative costs relative to a pre-statutory baseline. This includes, chiefly, costs required to administer Fiscal Recovery Funds, oversee subrecipients and beneficiaries, and file periodic reports with Treasury. It also requires States to allocate Fiscal Recovery Funds to nonentitlement units, which are smaller units of local government that are statutorily required to receive their funds through States.

Treasury expects that the administrative burden associated with this program will be moderate for a grant program of its size. Treasury expects that most recipients receive direct or indirect funding from Federal Government programs and that many

have familiarity with how to administer and report on Federal funds or grant funding provided by other entities. In particular, States, territories, and large localities will have received funds from the CRF and Treasury expects them to rely heavily on established processes developed last year or through prior grant funding, mitigating burden on these governments.

Treasury expects to provide technical assistance to defray the costs of administration of Fiscal Recovery Funds to further mitigate burden. In making implementation choices, Treasury has hosted numerous consultations with a diverse range of direct recipients—States, small cities, counties, and Tribal governments—along with various communities across the United States, including those that are underserved. Treasury lacks data to estimate the precise extent to which this interim final rule generates administrative burden for State, local, and Tribal governments, but seeks comment to better estimate and account for these costs, as well as on ways to lessen administrative burdens.

Executive Order 13132

Executive Order 13132 (entitled Federalism) prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial, direct compliance costs on State, local, and Tribal governments, and is not required by statute, or preempts state law, unless the agency meets the consultation and funding requirements of section 6 of the Executive order. This interim final rule does not have federalism implications within the meaning of the Executive order and does not impose substantial, direct compliance costs on State, local, and Tribal governments or preempt state law within the meaning of the Executive order. The compliance costs are imposed on State, local, and Tribal governments by sections 602 and 603 of the Social Security Act, as enacted by the ARPA. Notwithstanding the above, Treasury has engaged in efforts to consult and work cooperatively with affected State, local, and Tribal government officials and associations in the process of developing the interim final rule. Pursuant to the requirements set forth in section 8(a) of Executive Order 13132, Treasury certifies that it has complied with the requirements of Executive Order 13132.

Administrative Procedure Act

The Administrative Procedure Act (APA), 5 U.S.C. 551 *et seq.*, generally requires public notice and an opportunity for comment before a rule

¹⁸⁵ Executive Order on Advancing Racial Equity and Support for Underserved Communities through the Federal Government (Jan. 20, 2021) (86 FR 7009, January 25, 2021), <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/20/executive-order-advancing-racial-equity-and-support-for-underserved-communities-through-the-federal-government/> (last visited May 9, 2021).

¹⁸⁶ David Cooper, Mary Gable & Algernon Austin, Economic Policy Institute Briefing Paper, The Public-Sector Jobs Crisis: Women and African Americans hit hardest by job losses in state and local governments, <https://www.epi.org/publication/bp339-public-sector-jobs-crisis> (last visited May 9, 2021).

becomes effective. However, the APA provides that the requirements of 5 U.S.C. 553 do not apply “to the extent that there is involved . . . a matter relating to agency . . . grants.” The interim final rule implements statutory conditions on the eligible uses of the Fiscal Recovery Funds grants, and addresses the payment of those funds, the reporting on uses of funds, and potential consequences of ineligible uses. The rule is thus “both clearly and directly related to a federal grant program.” *National Wildlife Federation v. Snow*, 561 F.2d 227, 232 (D.C. Cir. 1976). The rule sets forth the “process necessary to maintain state . . . eligibility for federal funds,” *id.*, as well as the “method[s] by which states can . . . qualify for federal aid,” and other “integral part[s] of the grant program,” *Center for Auto Safety v. Tiemann*, 414 F. Supp. 215, 222 (D.D.C. 1976). As a result, the requirements of 5 U.S.C. 553 do not apply.

The APA also provides an exception to ordinary notice-and-comment procedures “when the agency for good cause finds (and incorporates the finding and a brief statement of reasons therefor in the rules issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.” 5 U.S.C. 553(b)(3)(B); *see also* 5 U.S.C. 553(d)(3) (creating an exception to the requirement of a 30-day delay before the effective date of a rule “for good cause found and published with the rule”). Assuming 5 U.S.C. 553 applied, Treasury would still have good cause under sections 553(b)(3)(B) and 553(d)(3) for not undertaking section 553’s requirements. The ARPA is a law responding to a historic economic and

public health emergency; it is “extraordinary” legislation about which “both Congress and the President articulated a profound sense of ‘urgency.’” *Petry v. Block*, 737 F.2d 1193, 1200 (D.C. Cir. 1984). Indeed, several provisions implemented by this interim final rule (sections 602(c)(1)(A) and 603(c)(1)(A)) explicitly provide funds to “respond to the public health emergency,” and the urgency is further exemplified by Congress’s command (in sections 602(b)(6)(B) and 603(b)(7)(A)) that, “[t]o the extent practicable,” funds must be provided to Tribes and cities “not later than 60 days after the date of enactment.” *See Philadelphia Citizens in Action v. Schweiker*, 669 F.2d 877, 884 (3d Cir. 1982) (finding good cause under circumstances, including statutory time limits, where APA procedures would have been “virtually impossible”). Finally, there is an urgent need for States to undertake the planning necessary for sound fiscal policymaking, which requires an understanding of how funds provided under the ARPA will augment and interact with existing budgetary resources and tax policies. Treasury understands that many states require immediate rules on which they can rely, especially in light of the fact that the ARPA “covered period” began on March 3, 2021. The statutory urgency and practical necessity are good cause to forego the ordinary requirements of notice-and-comment rulemaking.

Congressional Review Act

The Administrator of OIRA has determined that this is a major rule for purposes of Subtitle E of the Small Business Regulatory Enforcement and Fairness Act of 1996 (also known as the

Congressional Review Act or CRA) (5 U.S.C. 804(2) *et seq.*). Under the CRA, a major rule takes effect 60 days after the rule is published in the **Federal Register**. 5 U.S.C. 801(a)(3). Notwithstanding this requirement, the CRA allows agencies to dispense with the requirements of section 801 when the agency for good cause finds that such procedure would be impracticable, unnecessary, or contrary to the public interest and the rule shall take effect at such time as the agency promulgating the rule determines. 5 U.S.C. 808(2). Pursuant to section 808(2), for the reasons discussed above, Treasury for good cause finds that a 60-day delay to provide public notice is impracticable and contrary to the public interest.

Paperwork Reduction Act

The information collections associated with State, territory, local, and Tribal government applications materials necessary to receive Fiscal Recovery Funds (e.g., payment information collection and acceptance of award terms) have been reviewed and approved by OMB pursuant to the Paperwork Reduction Act (44 U.S.C. chapter 35) (PRA) emergency processing procedures and assigned control number 1505–0271. The information collections related to ongoing reporting requirements, as discussed in this interim final rule, will be submitted to OMB for emergency processing in the near future. Under the PRA, an agency may not conduct or sponsor and a respondent is not required to respond to, an information collection unless it displays a valid OMB control number.

Estimates of hourly burden under this program are set forth in the table below. Burden estimates below are preliminary.

Reporting	Number of respondents (estimated)	Number of responses per respondent	Total responses	Hours per response	Total burden in hours	Cost to respondent (\$48.80 per hour *)
Recipient Payment Form	5,050	1	5,050	.25 (15 minutes) ...	1,262.5	\$61,610
Acceptance of Award Terms	5,050	1	5,050	.25 (15 minutes) ...	1,262.5	61,610
Title VI Assurances	5,050	1	5,050	.50 (30 minutes) ...	2,525	123,220
Quarterly Project and Expenditure Report.	5,050	4***	20,200	25	505,000	24,644,000
Annual Project and Expenditure Report from NEUs.	TBD	1 per year	† 20,000–40,000	15	300,000–600,000	14,640,000–29,280,000
Annual Recovery Plan Performance report.	418	1 per year	418	100	41,800	2,039,840
Total	(**)	N/A	55,768–75,768	141	851,850–1,151,850	41,570,280–56,210,280

*Bureau of Labor Statistics, U.S. Department of Labor, Occupational Outlook Handbook, Accountants and Auditors, on the internet at <https://www.bls.gov/ooh/business-and-financial/accountants-and-auditors.htm> (visited March 28, 2020). Base wage of \$33.89/hour increased by 44 percent to account for fully loaded employer cost of employee compensation (benefits, etc.) for a fully loaded wage rate of \$48.80.

**5,050–TBD.

***Per year after first year.

† (Estimate only).

Periodic reporting is required by section 602(c) of Section VI of the Social Security Act and under the interim final rule.

As discussed in Section VIII of this **SUPPLEMENTARY INFORMATION**, recipients of Fiscal Recovery Funds will be required to submit one interim report

and thereafter quarterly Project and Expenditure reports until the end of the award period. Recipients must submit interim reports to Treasury by August

31, 2021. The quarterly Project and Expenditure reports will include financial data, information on contracts and subawards over \$50,000, types of projects funded, and other information regarding a recipient's utilization of the award funds.

Nonentitlement unit recipients will be required to submit annual Project and Expenditure reports until the end of the award period. The initial annual Project and Expenditure report for Nonentitlement unit recipients must be submitted to Treasury by October 31, 2021. The subsequent annual reports must be submitted to Treasury by October 31 each year. States, territories, metropolitan cities, and counties with a population that exceeds 250,000 residents will also be required to submit an annual Recovery Plan Performance report to Treasury. The Recovery Plan Performance report will include descriptions of the projects funded and information on the performance indicators and objectives of the award. Each annual Recovery Plan Performance report must be posted on the public-facing website of the recipient. Treasury will provide additional guidance and instructions on all the reporting requirements outlined above for the Fiscal Recovery Funds program at a later date.

These and related periodic reporting requirements are under consideration and will be submitted to OMB for approval under the PRA emergency provisions in the near future.

Treasury invites comments on all aspects of the reporting and recordkeeping requirements including: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information. Comments should be sent by the comment deadline to the www.regulations.gov docket with a copy to the Office of Information and Regulatory Affairs, U.S. Office of Management and Budget, 725 17th Street NW, Washington, DC 20503; or email to oira_submission@omb.eop.gov.

Regulatory Flexibility Analysis

The Regulatory Flexibility Act (RFA) generally requires that when an agency issues a proposed rule, or a final rule

pursuant to section 553(b) of the Administrative Procedure Act or another law, the agency must prepare a regulatory flexibility analysis that meets the requirements of the RFA and publish such analysis in the **Federal Register**. 5 U.S.C. 603, 604.

Rules that are exempt from notice and comment under the APA are also exempt from the RFA requirements, including the requirement to conduct a regulatory flexibility analysis, when among other things the agency for good cause finds that notice and public procedure are impracticable, unnecessary, or contrary to the public interest. Since this rule is exempt from the notice and comment requirements of the APA, Treasury is not required to conduct a regulatory flexibility analysis.

List of Subjects in 31 CFR Part 35

Executive compensation, Public health emergency, State and local governments, Tribal governments.

For the reasons stated in the preamble, the Department of the Treasury amends 31 CFR part 35 as follows:

PART 35—PANDEMIC RELIEF PROGRAMS

- 1. The authority citation for part 35 is revised to read as follows:

Authority: 42 U.S.C. 802(f); 42 U.S.C. 803(f); 31 U.S.C. 321; Division N, Title V, Subtitle B, Pub. L. 116–260, 134 Stat. 1182; Section 104A, Pub. L. 103–325, 108 Stat. 2160, as amended (12 U.S.C. 4701 *et seq.*); Pub. L. 117–2, 135 Stat. 4 (42 U.S.C. 802 *et seq.*).

- 2. Revise the part heading to read as set forth above.

- 3. Add subpart A to read as follows:

Subpart A—Coronavirus State and Local Fiscal Recovery Funds

Sec.

- 35.1 Purpose.
- 35.2 Applicability.
- 35.3 Definitions.
- 35.4 Reservation of authority, reporting.
- 35.5 Use of funds.
- 35.6 Eligible uses.
- 35.7 Pensions.
- 35.8 Tax.
- 35.9 Compliance with applicable laws.
- 35.10 Recoupment.
- 35.11 Payments to States.
- 35.12 Distributions to nonentitlement units of local government and units of general local government.

§ 35.1 Purpose.

This subpart implements section 9901 of the American Rescue Plan Act (Subtitle M of Title IX of Pub. L. 117–2), which amends Title VI of the Social Security Act (42 U.S.C. 801 *et*

seq.) by adding sections 602 and 603 to establish the Coronavirus State Fiscal Recovery Fund and Coronavirus Local Fiscal Recovery Fund.

§ 35.2 Applicability.

This subpart applies to States, territories, Tribal governments, metropolitan cities, nonentitlement units of local government, counties, and units of general local government that accept a payment or transfer of funds made under section 602 or 603 of the Social Security Act.

§ 35.3 Definitions.

As used in this subpart:

Baseline means tax revenue of the recipient for its fiscal year ending in 2019, adjusted for inflation in each reporting year using the Bureau of Economic Analysis's Implicit Price Deflator for the gross domestic product of the United States.

County means a county, parish, or other equivalent county division (as defined by the Census Bureau).

Covered benefits include, but are not limited to, the costs of all types of leave (vacation, family-related, sick, military, bereavement, sabbatical, jury duty), employee insurance (health, life, dental, vision), retirement (pensions, 401(k)), unemployment benefit plans (Federal and State), workers' compensation insurance, and Federal Insurance Contributions Act taxes (which includes Social Security and Medicare taxes).

Covered change means a change in law, regulation, or administrative interpretation. A change in law includes any final legislative or regulatory action, a new or changed administrative interpretation, and the phase-in or taking effect of any statute or rule if the phase-in or taking effect was not prescribed prior to the start of the covered period.

Covered period means, with respect to a State, Territory, or Tribal government, the period that:

- (1) Begins on March 3, 2021; and
- (2) Ends on the last day of the fiscal year of such State, Territory, or Tribal government in which all funds received by the State, Territory, or Tribal government from a payment made under section 602 or 603 of the Social Security Act have been expended or returned to, or recovered by, the Secretary.

COVID–19 means the Coronavirus Disease 2019.

COVID–19 public health emergency means the period beginning on January 27, 2020 and until the termination of the national emergency concerning the COVID–19 outbreak declared pursuant to the National Emergencies Act (50 U.S.C. 1601 *et seq.*).

Deposit means an extraordinary payment of an accrued, unfunded liability. The term deposit does not refer to routine contributions made by an employer to pension funds as part of the employer's obligations related to payroll, such as either a pension contribution consisting of a normal cost component related to current employees or a component addressing the amortization of unfunded liabilities calculated by reference to the employer's payroll costs.

Eligible employer means an employer of an eligible worker who performs essential work.

Eligible workers means workers needed to maintain continuity of operations of essential critical infrastructure sectors, including health care; emergency response; sanitation, disinfection, and cleaning work; maintenance work; grocery stores, restaurants, food production, and food delivery; pharmacy; biomedical research; behavioral health work; medical testing and diagnostics; home- and community-based health care or assistance with activities of daily living; family or child care; social services work; public health work; vital services to Tribes; any work performed by an employee of a State, local, or Tribal government; educational work, school nutrition work, and other work required to operate a school facility; laundry work; elections work; solid waste or hazardous materials management, response, and cleanup work; work requiring physical interaction with patients; dental care work; transportation and warehousing; work at hotel and commercial lodging facilities that are used for COVID-19 mitigation and containment; work in a mortuary; work in critical clinical research, development, and testing necessary for COVID-19 response.

(1) With respect to a recipient that is a metropolitan city, nonentitlement unit of local government, or county, workers in any additional sectors as each chief executive officer of such recipient may designate as critical to protect the health and well-being of the residents of their metropolitan city, nonentitlement unit of local government, or county; or

(2) With respect to a State, Territory, or Tribal government, workers in any additional sectors as each Governor of a State or Territory, or each Tribal government, may designate as critical to protect the health and well-being of the residents of their State, Territory, or Tribal government.

Essential work means work that:

- (1) Is not performed while teleworking from a residence; and
- (2) Involves:

(i) Regular in-person interactions with patients, the public, or coworkers of the individual that is performing the work; or

(ii) Regular physical handling of items that were handled by, or are to be handled by patients, the public, or coworkers of the individual that is performing the work.

Funds means, with respect to a recipient, amounts provided to the recipient pursuant to a payment made under section 602(b) or 603(b) of the Social Security Act or transferred to the recipient pursuant to section 603(c)(4) of the Social Security Act.

General revenue means money that is received from tax revenue, current charges, and miscellaneous general revenue, excluding refunds and other correcting transactions, proceeds from issuance of debt or the sale of investments, agency or private trust transactions, and intergovernmental transfers from the Federal Government, including transfers made pursuant to section 9901 of the American Rescue Plan Act. General revenue does not include revenues from utilities. Revenue from Tribal business enterprises must be included in general revenue.

Intergovernmental transfers means money received from other governments, including grants and shared taxes.

Metropolitan city has the meaning given that term in section 102(a)(4) of the Housing and Community Development Act of 1974 (42 U.S.C. 5302(a)(4)) and includes cities that relinquish or defer their status as a metropolitan city for purposes of receiving allocations under section 106 of such Act (42 U.S.C. 5306) for fiscal year 2021.

Net reduction in total spending is measured as the State or Territory's total spending for a given reporting year excluding its spending of funds, subtracted from its total spending for its fiscal year ending in 2019, adjusted for inflation using the Bureau of Economic Analysis's Implicit Price Deflator for the gross domestic product of the United States.

Nonentitlement unit of local government means a "city," as that term is defined in section 102(a)(5) of the Housing and Community Development Act of 1974 (42 U.S.C. 5302(a)(5)), that is not a metropolitan city.

Nonprofit means a nonprofit organization that is exempt from Federal income taxation and that is described in section 501(c)(3) of the Internal Revenue Code.

Obligation means an order placed for property and services and entering into

contracts, subawards, and similar transactions that require payment.

Pension fund means a defined benefit plan and does not include a defined contribution plan.

Premium pay means an amount of up to \$13 per hour that is paid to an eligible worker, in addition to wages or remuneration the eligible worker otherwise receives, for all work performed by the eligible worker during the COVID-19 public health emergency. Such amount may not exceed \$25,000 with respect to any single eligible worker. Premium pay will be considered to be in addition to wages or remuneration the eligible worker otherwise receives if, as measured on an hourly rate, the premium pay is:

(1) With regard to work that the eligible worker previously performed, pay and remuneration equal to the sum of all wages and remuneration previously received plus up to \$13 per hour with no reduction, substitution, offset, or other diminishment of the eligible worker's previous, current, or prospective wages or remuneration; or

(2) With regard to work that the eligible worker continues to perform, pay of up to \$13 that is in addition to the eligible worker's regular rate of wages or remuneration, with no reduction, substitution, offset, or other diminishment of the workers' current and prospective wages or remuneration.

Qualified census tract has the same meaning given in 26 U.S.C. 42(d)(5)(B)(ii)(I).

Recipient means a State, Territory, Tribal government, metropolitan city, nonentitlement unit of local government, county, or unit of general local government that receives a payment made under section 602(b) or 603(b) of the Social Security Act or transfer pursuant to section 603(c)(4) of the Social Security Act.

Reporting year means a single year or partial year within the covered period, aligned to the current fiscal year of the State or Territory during the covered period.

Secretary means the Secretary of the Treasury.

State means each of the 50 States and the District of Columbia.

Small business means a business concern or other organization that:

(1) Has no more than 500 employees, or if applicable, the size standard in number of employees established by the Administrator of the Small Business Administration for the industry in which the business concern or organization operates; and

(2) Is a small business concern as defined in section 3 of the Small Business Act (15 U.S.C. 632).

Tax revenue means revenue received from a compulsory contribution that is exacted by a government for public purposes excluding refunds and corrections and, for purposes of § 35.8, intergovernmental transfers. Tax revenue does not include payments for a special privilege granted or service rendered, employee or employer assessments and contributions to finance retirement and social insurance trust systems, or special assessments to pay for capital improvements.

Territory means the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, the Commonwealth of the Northern Mariana Islands, or American Samoa.

Tribal enterprise means a business concern:

(1) That is wholly owned by one or more Tribal governments, or by a corporation that is wholly owned by one or more Tribal governments; or

(2) That is owned in part by one or more Tribal governments, or by a corporation that is wholly owned by one or more Tribal governments, if all other owners are either United States citizens or small business concerns, as these terms are used and consistent with the definitions in 15 U.S.C. 657a(b)(2)(D).

Tribal government means the recognized governing body of any Indian or Alaska Native tribe, band, nation, pueblo, village, community, component band, or component reservation, individually identified (including parenthetically) in the list published by the Bureau of Indian Affairs on January 29, 2021, pursuant to section 104 of the Federally Recognized Indian Tribe List Act of 1994 (25 U.S.C. 5131).

Unemployment rate means the U–3 unemployment rate provided by the Bureau of Labor Statistics as part of the Local Area Unemployment Statistics program, measured as total unemployment as a percentage of the civilian labor force.

Unemployment trust fund means an unemployment trust fund established under section 904 of the Social Security Act (42 U.S.C. 1104).

Unit of general local government has the meaning given to that term in section 102(a)(1) of the Housing and Community Development Act of 1974 (42 U.S.C. 5302(a)(1)).

Unserved and underserved households or businesses means one or more households or businesses that are not currently served by a wireline connection that reliably delivers at least 25 Mbps download speed and 3 Mbps of upload speed.

§ 35.4 Reservation of authority, reporting.

(a) *Reservation of authority.* Nothing in this subpart shall limit the authority of the Secretary to take action to enforce conditions or violations of law, including actions necessary to prevent evasions of this subpart.

(b) *Extensions or accelerations of timing.* The Secretary may extend or accelerate any deadline or compliance date of this subpart, including reporting requirements that implement this subpart, if the Secretary determines that such extension or acceleration is appropriate. In determining whether an extension or acceleration is appropriate, the Secretary will consider the period of time that would be extended or accelerated and how the modified timeline would facilitate compliance with this subpart.

(c) *Reporting and requests for other information.* During the covered period, recipients shall provide to the Secretary periodic reports providing detailed accounting of the uses of funds, all modifications to a State or Territory's tax revenue sources, and such other information as the Secretary may require for the administration of this section. In addition to regular reporting requirements, the Secretary may request other additional information as may be necessary or appropriate, including as may be necessary to prevent evasions of the requirements of this subpart. False statements or claims made to the Secretary may result in criminal, civil, or administrative sanctions, including fines, imprisonment, civil damages and penalties, debarment from participating in Federal awards or contracts, and/or any other remedy available by law.

§ 35.5 Use of funds.

(a) *In general.* A recipient may only use funds to cover costs incurred during the period beginning March 3, 2021, and ending December 31, 2024, for one or more of the purposes enumerated in sections 602(c)(1) and 603(c)(1) of the Social Security Act, as applicable, including those enumerated in section § 35.6, subject to the restrictions set forth in sections 602(c)(2) and 603(c)(2) of the Social Security Act, as applicable.

(b) *Costs incurred.* A cost shall be considered to have been incurred for purposes of paragraph (a) of this section if the recipient has incurred an obligation with respect to such cost by December 31, 2024.

(c) *Return of funds.* A recipient must return any funds not obligated by December 31, 2024, and any funds not expended to cover such obligations by December 31, 2026.

§ 35.6 Eligible uses.

(a) *In general.* Subject to §§ 35.7 and 35.8, a recipient may use funds for one or more of the purposes described in paragraphs (b) through (e) of this section.

(b) *Responding to the public health emergency or its negative economic impacts.* A recipient may use funds to respond to the public health emergency or its negative economic impacts, including for one or more of the following purposes:

(1) *COVID–19 response and prevention.* Expenditures for the mitigation and prevention of COVID–19, including:

(i) Expenses related to COVID–19 vaccination programs and sites, including staffing, acquisition of equipment or supplies, facilities costs, and information technology or other administrative expenses;

(ii) COVID–19-related expenses of public hospitals, clinics, and similar facilities;

(iii) COVID–19 related expenses in **congregate** living facilities, including skilled nursing facilities, long-term care facilities, incarceration settings, homeless shelters, residential foster care facilities, residential behavioral health treatment, and other group living facilities;

(iv) Expenses of establishing temporary public medical facilities and other measures to increase COVID–19 treatment capacity, including related construction costs and other capital investments in public facilities to meet COVID–19-related operational needs;

(v) Expenses of establishing temporary public medical facilities and other measures to increase COVID–19 treatment capacity, including related construction costs and other capital investments in public facilities to meet COVID–19-related operational needs;

(vi) Costs of providing COVID–19 testing and monitoring, contact tracing, and monitoring of case trends and genomic sequencing for variants;

(vii) Emergency medical response expenses, including emergency medical transportation, related to COVID–19;

(viii) Expenses for establishing and operating public telemedicine capabilities for COVID–19-related treatment;

(ix) Expenses for communication related to COVID–19 vaccination programs and communication or enforcement by recipients of public health orders related to COVID–19;

(x) Expenses for acquisition and distribution of medical and protective supplies, including sanitizing products and personal protective equipment;

(xi) Expenses for disinfection of public areas and other facilities in

response to the COVID-19 public health emergency;

(xii) Expenses for technical assistance to local authorities or other entities on mitigation of COVID-19-related threats to public health and safety;

(xiii) Expenses for quarantining or isolation of individuals;

(xiv) Expenses of providing paid sick and paid family and medical leave to public employees to enable compliance with COVID-19 public health precautions;

(xv) Expenses for treatment of the long-term symptoms or effects of COVID-19, including post-intensive care syndrome;

(xvi) Expenses for the improvement of ventilation systems in congregate settings, public health facilities, or other public facilities;

(xvii) Expenses related to establishing or enhancing public health data systems; and

(xviii) Mental health treatment, substance misuse treatment, and other behavioral health services.

(2) *Public health and safety staff.*

Payroll and covered benefit expenses for public safety, public health, health care, human services, and similar employees to the extent that the employee's time is spent mitigating or responding to the COVID-19 public health emergency.

(3) *Hiring State and local government staff.* Payroll, covered benefit, and other costs associated with the recipient increasing the number of its employees up to the number of employees that it employed on January 27, 2020.

(4) *Assistance to unemployed workers.* Assistance, including job training, for individuals who want and are available for work, including those who have looked for work sometime in the past 12 months or who are employed part time but who want and are available for full-time work.

(5) *Contributions to State unemployment insurance trust funds.* Contributions to an unemployment trust fund up to the level required to restore the unemployment trust fund to its balance on January 27, 2020 or to pay back advances received under Title XII of the Social Security Act (42 U.S.C. 1321) for the payment of benefits between January 27, 2020 and May 17, 2021.

(6) *Small businesses.* Assistance to small businesses, including loans, grants, in-kind assistance, technical assistance or other services, that responds to the negative economic impacts of the COVID-19 public health emergency.

(7) *Nonprofits.* Assistance to nonprofit organizations, including loans, grants, in-kind assistance, technical assistance

or other services, that responds to the negative economic impacts of the COVID-19 public health emergency.

(8) *Assistance to households.*

Assistance programs, including cash assistance programs, that respond to the COVID-19 public health emergency.

(9) *Aid to impacted industries.* Aid to tourism, travel, hospitality, and other impacted industries that responds to the negative economic impacts of the COVID-19 public health emergency.

(10) *Expenses to improve efficacy of public health or economic relief programs.* Administrative costs associated with the recipient's COVID-19 public health emergency assistance programs, including services responding to the COVID-19 public health emergency or its negative economic impacts, that are not federally funded.

(11) *Survivor's benefits.* Benefits for the surviving family members of individuals who have died from COVID-19, including cash assistance to widows, widowers, or dependents of individuals who died of COVID-19.

(12) *Disproportionately impacted populations and communities.* A program, service, or other assistance that is provided in a qualified census tract, that is provided to households and populations living in a qualified census tract, that is provided by a Tribal government, or that is provided to other households, businesses, or populations disproportionately impacted by the COVID-19 public health emergency, such as:

(i) Programs or services that facilitate access to health and social services, including:

(A) Assistance accessing or applying for public benefits or services;

(B) Remediation of lead paint or other lead hazards; and

(C) Community violence intervention programs;

(ii) Programs or services that address housing insecurity, lack of affordable housing, or homelessness, including:

(A) Supportive housing or other programs or services to improve access to stable, affordable housing among individuals who are homeless;

(B) Development of affordable housing to increase supply of affordable and high-quality living units; and

(C) Housing vouchers and assistance relocating to neighborhoods with higher levels of economic opportunity and to reduce concentrated areas of low economic opportunity;

(iii) Programs or services that address or mitigate the impacts of the COVID-19 public health emergency on education, including:

(A) New or expanded early learning services;

(B) Assistance to high-poverty school districts to advance equitable funding across districts and geographies; and

(C) Educational and evidence-based services to address the academic, social, emotional, and mental health needs of students; and

(iv) Programs or services that address or mitigate the impacts of the COVID-19 public health emergency on childhood health or welfare, including:

(A) New or expanded childcare;

(B) Programs to provide home visits by health professionals, parent educators, and social service professionals to individuals with young children to provide education and assistance for economic support, health needs, or child development; and

(C) Services for child welfare-involved families and foster youth to provide support and education on child development, positive parenting, coping skills, or recovery for mental health and substance use.

(c) *Providing premium pay to eligible workers.* A recipient may use funds to provide premium pay to eligible workers of the recipient who perform essential work or to provide grants to eligible employers, provided that any premium pay or grants provided under this paragraph (c) must respond to eligible workers performing essential work during the COVID-19 public health emergency. A recipient uses premium pay or grants provided under this paragraph (c) to respond to eligible workers performing essential work during the COVID-19 public health emergency if it prioritizes low- and moderate-income persons. The recipient must provide, whether for themselves or on behalf of a grantee, a written justification to the Secretary of how the premium pay or grant provided under this paragraph (c) responds to eligible workers performing essential work if the premium pay or grant would increase an eligible worker's total wages and remuneration above 150 percent of such eligible worker's residing State's average annual wage for all occupations or their residing county's average annual wage, whichever is higher.

(d) *Providing government services.* For the provision of government services to the extent of a reduction in the recipient's general revenue, calculated according to paragraphs (d)(1) and (2) of this section.

(1) *Frequency.* A recipient must calculate the reduction in its general revenue using information as-of December 31, 2020, December 31, 2021, December 31, 2022, and December 31, 2023 (each, a calculation date) and following each calculation date.

(2) *Calculation.* A reduction in a recipient's general revenue equals:

$$\text{Max} \{ [\text{Base Year Revenue} * (1 + \text{Growth Adjustment})^{\frac{n_t}{12}}] - \text{Actual General Revenue}_t; 0 \}$$

Where:

Base Year Revenue is the recipient's general revenue for the most recent full fiscal year prior to the COVID-19 public health emergency;

Growth Adjustment is equal to the greater of 4.1 percent (or 0.041) and the recipient's average annual revenue growth over the three full fiscal years prior to the COVID-19 public health emergency.

n equals the number of months elapsed from the end of the base year to the calculation date.

Actual General Revenue is a recipient's actual general revenue collected during 12-month period ending on each calculation date;

Subscript *t* denotes the specific calculation date.

(e) *To make necessary investments in infrastructure.* A recipient may use funds to make investments in:

(1) *Clean Water State Revolving Fund and Drinking Water State Revolving Fund investments.* Projects or activities of the type that would be eligible under section 603(c) of the Federal Water Pollution Control Act (33 U.S.C. 1383(c)) or section 1452 of the Safe Drinking Water Act (42 U.S.C. 300j-12); or,

(2) *Broadband.* Broadband infrastructure that is designed to provide service to unserved or underserved households and businesses and that is designed to, upon completion:

(i) Reliably meet or exceed symmetrical 100 Mbps download speed and upload speeds; or

(ii) In cases where it is not practicable, because of the excessive cost of the project or geography or topography of the area to be served by the project, to provide service meeting the standards set forth in paragraph (e)(2)(i) of this section:

(A) Reliably meet or exceed 100 Mbps download speed and between at least 20 Mbps and 100 Mbps upload speed; and

(B) Be scalable to a minimum of 100 Mbps download speed and 100 Mbps upload speed.

§ 35.7 Pensions.

A recipient may not use funds for deposit into any pension fund.

§ 35.8 Tax.

(a) *Restriction.* A State or Territory shall not use funds to either directly or indirectly offset a reduction in the net tax revenue of the State or Territory

resulting from a covered change during the covered period.

(b) *Violation.* Treasury will consider a State or Territory to have used funds to offset a reduction in net tax revenue if, during a reporting year:

(1) *Covered change.* The State or Territory has made a covered change that, either based on a reasonable statistical methodology to isolate the impact of the covered change in actual revenue or based on projections that use reasonable assumptions and do not incorporate the effects of macroeconomic growth to reduce or increase the projected impact of the covered change, the State or Territory assesses has had or predicts to have the effect of reducing tax revenue relative to current law;

(2) *Exceeds the de minimis threshold.* The aggregate amount of the measured or predicted reductions in tax revenue caused by covered changes identified under paragraph (b)(1) of this section, in the aggregate, exceeds 1 percent of the State's or Territory's baseline;

(3) *Reduction in net tax revenue.* The State or Territory reports a reduction in net tax revenue, measured as the difference between actual tax revenue and the State's or Territory's baseline, each measured as of the end of the reporting year; and

(4) *Consideration of other changes.* The aggregate amount of measured or predicted reductions in tax revenue caused by covered changes is greater than the sum of the following, in each case, as calculated for the reporting year:

(i) The aggregate amount of the expected increases in tax revenue caused by one or more covered changes that, either based on a reasonable statistical methodology to isolate the impact of the covered change in actual revenue or based on projections that use reasonable assumptions and do not incorporate the effects of macroeconomic growth to reduce or increase the projected impact of the covered change, the State or Territory assesses has had or predicts to have the effect of increasing tax revenue; and

(ii) Reductions in spending, up to the amount of the State's or Territory's net reduction in total spending, that are in:

(A) Departments, agencies, or authorities in which the State or Territory is not using funds; and

(B) Departments, agencies, or authorities in which the State or Territory is using funds, in an amount equal to the value of the spending cuts in those departments, agencies, or authorities, minus funds used.

(c) *Amount and revenue reduction cap.* If a State or Territory is considered to be in violation pursuant to paragraph (b) of this section, the amount used in violation of paragraph (a) of this section is equal to the lesser of:

(1) The reduction in net tax revenue of the State or Territory for the reporting year, measured as the difference between the State's or Territory's baseline and its actual tax revenue, each measured as of the end of the reporting year; and,

(2) The aggregate amount of the reductions in tax revenues caused by covered changes identified in paragraph (b)(1) of this section, minus the sum of the amounts in identified in paragraphs (b)(4)(i) and (ii).

§ 35.9 Compliance with applicable laws.

A recipient must comply with all other applicable Federal statutes, regulations, and Executive orders, and a recipient shall provide for compliance with the American Rescue Plan Act, this subpart, and any interpretive guidance by other parties in any agreements it enters into with other parties relating to these funds.

§ 35.10 Recoupment.

(a) *Identification of violations—(1) In general.* Any amount used in violation of § 35.5, § 35.6, or § 35.7 may be identified at any time prior to December 31, 2026.

(2) *Annual reporting of amounts of violations.* On an annual basis, a recipient that is a State or Territory must calculate and report any amounts used in violation of § 35.8.

(b) *Calculation of amounts subject to recoupment—(1) In general.* Except as provided in paragraph (b)(2) of this section, Treasury will calculate any amounts subject to recoupment resulting from a violation of § 35.5, § 35.6, or § 35.7 as the amounts used in violation of such restrictions.

(2) *Violations of § 35.8.* Treasury will calculate any amounts subject to recoupment resulting from a violation of § 35.8, equal to the lesser of:

(i) The amount set forth in § 35.8(c); and,

(ii) The amount of funds received by such recipient.

(c) *Notice.* If Treasury calculates an amount subject to recoupment under paragraph (b) of this section, Treasury will provide the recipient a written notice of the amount subject to recoupment along with an explanation of such amounts.

(d) *Request for reconsideration.* Unless Treasury extends the time period, within 60 calendar days of receipt of a notice of recoupment provided under paragraph (c) of this section, a recipient may submit a written request to Treasury requesting reconsideration of any amounts subject to recoupment under paragraph (b) of this section. To request reconsideration of any amounts subject to recoupment, a recipient must submit to Treasury a written request that includes:

(1) An explanation of why the recipient believes all or some of the amount should not be subject to recoupment; and

(2) A discussion of supporting reasons, along with any additional information.

(e) *Final amount subject to recoupment.* Unless Treasury extends the time period, within 60 calendar days of receipt of the recipient's request for reconsideration provided pursuant to paragraph (d) of this section, the recipient will be notified of the Secretary's decision to affirm, withdraw, or modify the notice of recoupment. Such notification will include an explanation of the decision, including responses to the recipient's supporting reasons and consideration of additional information provided.

(f) *Repayment of funds.* Unless Treasury extends the time period, a recipient shall repay to the Secretary any amounts subject to recoupment in accordance with instructions provided by Treasury:

(1) Within 120 calendar days of receipt of the notice of recoupment provided under paragraph (c) of this section, in the case of a recipient that does not submit a request for reconsideration in accordance with the

requirements of paragraph (d) of this section; or

(2) Within 120 calendar days of receipt of the Secretary's decision under paragraph (e) of this section, in the case of a recipient that submits a request for reconsideration in accordance with the requirements of paragraph (d) of this section.

§ 35.11 Payments to States.

(a) *In general.* With respect to any State or Territory that has an unemployment rate as of the date that it submits an initial certification for payment of funds pursuant to section 602(d)(1) of the Social Security Act that is less than two percentage points above its unemployment rate in February 2020, the Secretary will withhold 50 percent of the amount of funds allocated under section 602(b) of the Social Security Act to such State or territory until the date that is twelve months from the date such initial certification is provided to the Secretary.

(b) *Payment of withheld amount.* In order to receive the amount withheld under paragraph (a) of this section, the State or Territory must submit to the Secretary at least 30 days prior to the date referenced in paragraph (a) the following information:

(1) A certification, in the form provided by the Secretary, that such State or Territory requires the payment to carry out the activities specified in section 602(c) of the Social Security Act and will use the payment in compliance with section 602(c) of the Social Security Act; and,

(2) Any reports required to be filed by that date pursuant to this subpart that have not yet been filed.

§ 35.12 Distributions to nonentitlement units of local government and units of general local government.

(a) *Nonentitlement units of local government.* Each State or Territory that receives a payment from Treasury pursuant to section 603(b)(2)(B) of the Social Security Act shall distribute the amount of the payment to nonentitlement units of government in such State or Territory in accordance

with the requirements set forth in section 603(b)(2)(C) of the Social Security Act and without offsetting any debt owed by such nonentitlement units of local governments against such payments.

(b) *Budget cap.* A State or Territory may not make a payment to a nonentitlement unit of local government pursuant to section 603(b)(2)(C) of the Social Security Act and paragraph (a) of this section in excess of the amount equal to 75 percent of the most recent budget for the nonentitlement unit of local government as of January 27, 2020. A State or Territory shall permit a nonentitlement unit of local government without a formal budget as of January 27, 2020, to provide a certification from an authorized officer of the nonentitlement unit of local government of its most recent annual expenditures as of January 27, 2020, and a State or Territory may rely on such certification for purposes of complying with this paragraph (b).

(c) *Units of general local government.* Each State or Territory that receives a payment from Treasury pursuant to section 603(b)(3)(B)(ii) of the Social Security Act, in the case of an amount to be paid to a county that is not a unit of general local government, shall distribute the amount of the payment to units of general local government within such county in accordance with the requirements set forth in section 603(b)(3)(B)(ii) of the Social Security Act and without offsetting any debt owed by such units of general local government against such payments.

(d) *Additional conditions.* A State or Territory may not place additional conditions or requirements on distributions to nonentitlement units of local government or units of general local government beyond those required by section 603 of the Social Security Act or this subpart.

Laurie Schaffer,

Acting General Counsel.

[FR Doc. 2021-10283 Filed 5-13-21; 11:15 am]

BILLING CODE 4810-AK-P

ATTACHMENT C

U.S. DEPARTMENT OF TREASURY
COMPLIANCE AND REPORTING GUIDANCE FOR CORONAVIRUS STATE AND
LOCAL FISCAL RECOVERY FUNDS
DATED 2-28-22

Compliance and Reporting Guidance

State and Local Fiscal Recovery Funds



February 28, 2022

Version: 3.0



Coronavirus State and Local Fiscal Recovery Funds Guidance on Recipient Compliance and Reporting Responsibilities

On March 11, 2021, the American Rescue Plan Act was signed into law, and established the Coronavirus State Fiscal Recovery Fund and Coronavirus Local Fiscal Recovery Fund, which together make up the Coronavirus State and Local Fiscal Recovery Funds ("SLFRF") program. This program is intended to provide support to State, territorial, local, and Tribal governments in responding to the economic and public health impacts of COVID-19 and in their efforts to contain impacts on their communities, residents, and businesses.

In May 2021, Treasury published the interim final rule ("IFR") describing eligible and ineligible uses of SLFRF, as well as other program requirements. The initial versions of this Compliance and Reporting guidance reflected the IFR and its eligible use categories. On January 6, 2022, the U.S. Department of the Treasury ("Treasury") adopted the final rule implementing the SLFRF program. The final rule will be effective on April 1, 2022. Until that time, the IFR remains in effect; funds used consistently with the IFR while it is in effect are in compliance with the SLFRF program. However, recipients can choose to take advantage of the final rule's flexibilities and simplifications now, even ahead of the effective date. Recipients may consult the [Statement Regarding Compliance with the Coronavirus State and Local Fiscal Recovery Funds Interim Final Rule and Final Rule](#) for more information on compliance with the IFR and the final rule.

To support recipients in complying with the final rule, this reporting guidance reflects the final rule and provides additional detail and clarification for each recipient's compliance and reporting responsibilities under the SLFRF program, and should be read in concert with the Award Terms and Conditions, the authorizing statute, the [final rule](#), and other regulatory and statutory requirements, including regulatory requirements under the [Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards \("Uniform Guidance" or 2 CFR Part 200\)](#), and the [Compliance Supplement](#). Please see the [Assistance Listing](#) in SAM.gov under assistance listing number (formerly known as CFDA number), 21.027 for more information.

Please Note: This guidance document applies to the SLFRF program only and does not change nor impact reporting and compliance requirements for the Coronavirus Relief Fund ("CRF") established by the CARES Act.

This guidance includes two parts:

Part 1: General Guidance

This section provides an orientation to recipients' compliance responsibilities and Treasury's expectations and recommends best practices where appropriate under the SLFRF program.

A. Key Principles.....	P. 4
B. Statutory Eligible Uses.....	P. 4
C. Treasury's Final Rule.....	P. 5
D. Uniform Guidance (2 CFR Part 200).....	P. 7
E. Award Terms and Conditions.....	P. 12



Part 2: Reporting Requirements

This section provides information on the reporting requirements for the SLFRF program.

A. Interim Report.....	P. 16
B. Project and Expenditure Report.....	P. 17
C. Recovery Plan Performance Report.....	P. 28
Appendix 1: Expenditure Categories.....	P. 35
Appendix 2: Evidenced-Based Intervention Additional Information.....	P. 40
Appendix 3: Expenditure Categories under the Interim Final Rule.....	P. 41

OMB Control Number: 1505-0271

OMB Expiration Date: 02/28/2022¹

PAPERWORK REDUCTION ACT NOTICE

The information collected will be used for the U.S. Government to process requests for support. The estimated burden for the collections of information included in this guidance is as follows: 30 minutes for Title VI Assurances, 2 hours per response for the Interim Report, 6 hours per response for the Project and Expenditure Report and 100 hours per response for the Recovery Plan Performance Report (if applicable). Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be directed to the Office of Privacy, Transparency and Records, Department of the Treasury, 1500 Pennsylvania Ave., N.W., Washington, D.C. 20220. DO NOT send the form to this address. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by OMB.

¹ Under OMB review to extend the expiration date

Part 1: General Guidance

This section provides an orientation on recipients' compliance responsibilities and Treasury's expectations and recommended best practices where appropriate under the SLFRF program.

Recipients under the SLFRF program are the eligible entities identified in sections 602 and 603 of the Social Security Act as added by section 9901 of the American Rescue Plan Act of 2021 (the "SLFRF statute") that receive a SLFRF award. Subrecipients under the SLFRF program are entities that receive a subaward from a recipient to carry out the purposes (program or project) of the SLFRF award on behalf of the recipient.

Recipients are accountable to Treasury for oversight of their subrecipients in accordance with 2 CFR 200.332, including ensuring their subrecipients comply with the SLFRF statute, SLFRF Award Terms and Conditions, Treasury's interim final rule and final rule, applicable federal statutes, regulations, and reporting requirements.

A. Key Principles

There are several guiding principles for developing your own effective compliance regimes:

- Recipients and subrecipients are the first line of defense and responsible for ensuring the SLFRF award funds are not used for ineligible purposes, and there is no fraud, waste, or abuse associated with their SLFRF award;
- Many SLFRF-funded projects respond to the COVID-19 public health emergency and meet urgent community needs. Swift and effective implementation is vital, and recipients must balance facilitating simple and rapid program access widely across the community and maintaining a robust documentation and compliance regime;
- Treasury encourages recipients to use SLFRF-funded projects to advance shared interests and promote equitable delivery of government benefits and opportunities to underserved communities, as outlined in [Executive Order 13985, On Advancing Racial Equity and Support for Underserved Communities Through the Federal Government](#); and
- Transparency and public accountability for SLFRF award funds and use of such funds are critical to upholding program integrity and trust in all levels of government, and SLFRF award funds should be managed consistent with Administration guidance per [Memorandum M-21-20](#) and [Memorandum M-20-21](#).

B. Statutory Eligible Uses

As a recipient of an SLFRF award, your organization has substantial discretion to use the award funds in the ways that best suit the needs of your constituents – as long as such use fits into one of the following four statutory categories:

1. To respond to the COVID-19 public health emergency or its negative economic impacts;
2. To respond to workers performing essential work during the COVID-19 public health emergency by providing premium pay to eligible workers of the recipient that are performing such essential work, or by providing grants to eligible employers that have eligible workers who perform essential work;
3. For the provision of government services, to the extent of the reduction in revenue of such recipient due to the COVID-19 public health emergency, relative to revenues collected in the most recent full fiscal year of the recipient prior to the emergency; or
4. To make necessary investments in water, sewer, or broadband infrastructure.

Treasury adopted an interim final rule in May 2021 and the [final rule](#) on January 6, 2022, to implement these eligible use categories and other restrictions on the use of funds under the SLFRF



program. The final rule takes effect on April 1, 2022, and the interim final rule remains in effect until that time, although recipients can choose to take advantage of the final rule's flexibilities and simplifications prior to April 1, 2022. Recipients may consult the [Statement Regarding Compliance with the Coronavirus State and Local Fiscal Recovery Funds Interim Final Rule and Final Rule](#) for more information on compliance with the interim final rule and the final rule.

It is the recipient's responsibility to ensure all SLFRF award funds are used in compliance with these requirements. In addition, recipients should be mindful of any additional compliance obligations that may apply – for example, additional restrictions imposed upon other sources of funds used in conjunction with SLFRF award funds, or statutes and regulations that may independently apply to water, broadband, and sewer infrastructure projects. Recipients should ensure they maintain proper documentation supporting determinations of costs and applicable compliance requirements, and how they have been satisfied as part of their award management, internal controls, and subrecipient oversight and management.

C. Treasury's Final Rule

Treasury's [final rule](#) details recipients' compliance responsibilities and provides additional information on eligible and restricted uses of SLFRF award funds and reporting requirements. Your organization should review and comply with the information contained in Treasury's [final rule](#) when building appropriate controls for SLFRF award funds.

- 1. Eligible and Restricted Uses of SLFRF Funds.** As described in the SLFRF statute and summarized above, there are four enumerated eligible uses of SLFRF award funds. As a recipient of an award under the SLFRF program, your organization is responsible for complying with requirements for the use of funds. In addition to determining a given project's eligibility, recipients are also responsible for determining subrecipient's or beneficiaries' eligibility, and must monitor subrecipients' use of SLFRF award funds.

To help recipients build a greater understanding of eligible uses, Treasury's [final rule](#) establishes a framework for determining whether a specific project would be eligible under the SLFRF program, including some helpful definitions. For example, Treasury's [final rule](#) establishes:

- A framework for determining whether a project responds to the COVID-19 public health emergency or its negative economic impacts;
- Definitions of "eligible employers," "essential work," "eligible workers," and "premium pay" for cases where premium pay is an eligible use;
- The option to select between a standard amount of revenue loss or complete a full revenue loss calculation of revenue lost due to the COVID-19 public health emergency;
- A framework for necessary water and sewer infrastructure projects that aligns eligible uses with projects that are eligible under the Environmental Protection Agency's Drinking Water and Clean Water State Revolving Funds along with certain additional projects, including a wider set of lead remediation and stormwater infrastructure projects and aid for residential wells; and
- A framework for necessary broadband projects that allows for projects that are designed to provide service of sufficient speeds to eligible areas, as well as an affordability requirement for providers that provide service to households.

Treasury's [final rule](#) also provides more information on important restrictions on use of SLFRF award funds, including that recipients other than Tribal governments may not deposit SLFRF funds into a pension fund; and recipients that are States or territories may not use SLFRF funds to offset a reduction in net tax revenue resulting from the recipient's change in law, regulation, or administrative interpretation. In addition, recipients may not use SLFRF funds directly to service debt, satisfy a judgment or settlement, or contribute to a "rainy day" fund. Recipients should refer to Treasury's final rule for more information on these restrictions.



Treasury's final rule outlines that funds available under the "revenue loss" eligible use category (sections 602(c)(1)(C) and 603(c)(1)(C) of the Social Security Act) generally may be used to meet the non-federal cost-share or matching requirements of other federal programs. However, the final rule notes that SLFRF funds may not be used as the non-federal share for purposes of a state's Medicaid and CHIP programs because the Office of Management and Budget ("OMB") has approved a waiver as requested by the Centers for Medicare & Medicaid Services pursuant to 2 CFR 200.102 of the Uniform Guidance and related regulations. If a recipient seeks to use SLFRF funds to satisfy match or cost-share requirements for a federal grant program, it should first confirm with the relevant awarding agency that no waiver has been granted for that program, that no other circumstances enumerated under 2 CFR 200.306(b) would limit the use of SLFRF funds to meet the match or cost-share requirement, and that there is no other statutory or regulatory impediment to using the SLFRF funds for the match or cost-share requirement. SLFRF funds beyond those that are available under the revenue loss eligible use category may not be used to meet the non-federal match or cost-share requirements of other federal programs, other than as specifically provided for by statute. For example, the Infrastructure Investment and Jobs Act provides that SLFRF funds may be used to meet the non-federal match requirements of authorized Bureau of Reclamation projects and certain broadband deployment projects.

- 2. Eligible Costs Timeframe.** Your organization, as a recipient of an SLFRF award, may use SLFRF funds to cover eligible costs that your organization incurred during the period that begins on March 3, 2021 and ends on December 31, 2024, as long as the award funds for the obligations incurred by December 31, 2024 are expended by December 31, 2026. Costs for projects incurred by the recipient State, territorial, local, or Tribal government prior to March 3, 2021 are not eligible, as provided for in Treasury's final rule.

Recipients may, in certain circumstances, use SLFRF award funds for the eligible use categories described in Treasury's final rule for costs incurred prior to March 3, 2021. Specifically,

- a. Public Health/Negative Economic Impacts: Recipients may use SLFRF award funds to provide assistance to households, small businesses, and nonprofits to respond to the public health emergency or negative economic impacts of the pandemic – such as rent, mortgage, or utility assistance – for costs incurred by the beneficiary (e.g., a household) prior to March 3, 2021, provided that the recipient State, territorial, local or Tribal government did not incur the cost of providing such assistance prior to March 3, 2021.
- b. Premium Pay: Recipients may provide premium pay retrospectively for work performed at any time since the start of the COVID-19 public health emergency. Such premium pay must be "in addition to" wages and remuneration already received and the obligation to provide such premium pay must not have been incurred by the recipient prior to March 3, 2021.
- c. Revenue Loss: Recipients have broad discretion to use funds for the provision of government services to the extent of reduction in revenue. While calculation of lost revenue is based on the recipient's revenue in the last full fiscal year prior to the COVID-19 public health emergency, use of funds for government services must be forward looking for costs incurred by the recipient after March 3, 2021.
- d. Investments in Water, Sewer, and Broadband: Recipients may use SLFRF award funds to make necessary investments in water, sewer, and broadband infrastructure. Recipients may use SLFRF award funds to cover costs incurred for eligible projects planned or started prior to March 3, 2021, provided that the project costs covered by the SLFRF award funds were incurred by the recipient after March 3, 2021.

Any funds not obligated or expended for eligible uses by the timelines above must be returned to Treasury, including any unobligated or unexpended funds that have been provided to subrecipients and contractors as part of the award closeout process pursuant to 2 C.F.R. 200.344(d). For the purposes of determining expenditure eligibility, Treasury's final rule provides



that “incurred” means the recipient has incurred an obligation, which has the same meaning given to “financial obligation” in 2 CFR 200.1.

3. **Reporting.** Generally, recipients must submit one initial Interim Report, quarterly or annual Project and Expenditure reports which include subaward reporting, and in some cases annual Recovery Plan reports. Treasury’s final rule and Part 2 of this guidance provide more detail around SLFRF reporting requirements.
4. **Expenditure Categories.** Treasury’s final rule provides greater flexibility and simplicity for recipients to fight the pandemic and support families and businesses struggling with its impacts, maintain vital services amid revenue shortfalls, and build a strong, resilient, and equitable recovery. As such, recipients will report on a broader set of eligible uses and associated Expenditure Categories (“EC”), starting with the April 2022 Project and Expenditure Report. Appendix 1 includes the new ECs, as well as a reference to previous ECs used for reporting under the interim final rule.

Assistance Listing

The [Assistance Listing](#) for the Coronavirus State and Local Fiscal Recovery Funds (SLFRF) was published May 28, 2021 on SAM.gov under Assistance Listing Number (“ALN”), formerly known as CFDA Number, **21.027**.

The assistance listing includes helpful information including program purpose, statutory authority, eligibility requirements, and compliance requirements for recipients. The ALN is the unique 5-digit number assigned to identify a federal assistance listing, and can be used to search for federal assistance program information, including funding opportunities, spending on USASpending.gov, or audit results through the Federal Audit Clearinghouse.

To expedite payments and meet statutory timelines Treasury issued initial payments under an existing ALN, 21.019, assigned to the CRF. If you have already received funds or captured the initial number in your records, please update your systems and reporting to reflect the new ALN 21.027 for the SLFRF program. **Recipients must use ALN 21.027 for all financial accounting, subawards, and associated program reporting requirements for the SLFRF awards.**

D. Uniform Administrative Requirements

The SLFRF awards are generally subject to the requirements set forth in the Uniform Guidance. In all instances, your organization should review the Uniform Guidance requirements applicable to your organization’s use of SLFRF funds, and SLFRF-funded projects. Recipients should consider how and whether certain aspects of the Uniform Guidance apply.

The following sections provide a general summary of your organization’s compliance responsibilities under applicable statutes and regulations, including the Uniform Guidance, as described in the most recent compliance supplement issued by OMB. Note that the descriptions below are only general summaries and all recipients and subrecipients are advised to carefully review the Uniform Guidance requirements and any additional regulatory and statutory requirements applicable to the program.

1. **Allowable Activities.** Each recipient should review program requirements, including Treasury’s final rule and the recipient’s Award Terms and Conditions, to determine and record eligible uses of SLFRF funds. Per 2 CFR Part 200.303, your organization must develop and implement effective internal controls to ensure that funding decisions under the SLFRF award constitute eligible uses of funds, and document determinations.



- 2. Allowable Costs/Cost Principles.** As outlined in the Uniform Guidance at 2 CFR Part 200, Subpart E regarding Cost Principles, allowable costs are based on the premise that a recipient is responsible for the effective administration of Federal awards, application of sound management practices, and administration of Federal funds in a manner consistent with the program objectives and terms and conditions of the award. Recipients must implement robust internal controls and effective monitoring to ensure compliance with the Cost Principles, which are important for building trust and accountability.

SLFRF funds may be, but are not required to be, used along with other funding sources for a given project. Recipients should note that SLFRF 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. If a recipient seeks to use SLFRF funds to satisfy match or cost-share requirements for a federal grant program, the recipient should first confirm with the relevant awarding agency that no waiver has been granted for that program, that no other circumstances enumerated under 2 CFR 200.306(b) would limit the use of SLFRF funds to meet the match or cost-share requirement, and that there is no other statutory or regulatory impediment to using the SLFRF funds for the match or cost-share requirement. For instance, recipients should note that SLFRF funds may not be used as the non-federal share for purposes of a state’s Medicaid and CHIP programs because the OMB has approved a waiver from this provision as requested by the Centers for Medicare & Medicaid Services pursuant to 2 CFR 200.102 of the Uniform Guidance and related regulations.

SLFRF funds beyond those that are available under the revenue loss eligible use category may not be used to meet the non-federal match or cost-share requirements of other federal programs, other than as specifically provided for by statute. As an example, the Infrastructure Investment and Jobs Act provides that SLFRF funds may be used to meet the non-federal match requirements of authorized Bureau of Reclamation projects and certain broadband deployment projects. Recipients should consult the final rule for further details if they seek to utilize SLFRF funds as a match for these projects.

Treasury’s final rule, program guidance, and the Uniform Guidance outline the types of costs that are allowable, including certain audit costs. For example, per 2 CFR 200.425, a reasonably proportionate share of the costs of audits required by the Single Audit Act Amendments of 1996 are allowable; however, costs for audits that were not performed in accordance with 2 CFR Part 200, Subpart F and the Compliance Supplement are not allowable. Please see 2 CFR Part 200, Subpart E regarding the Cost Principles for more information.

- a. Administrative costs:** Recipients may use funds for administering the SLFRF program, including costs of consultants to support effective management and oversight, including consultation for ensuring compliance with legal, regulatory, and other requirements.² Further, costs must be reasonable and allocable as outlined in 2 CFR 200.404 and 2 CFR 200.405. Pursuant to the SLFRF Award Terms and Conditions, recipients are permitted to charge both direct and indirect costs to their SLFRF award as administrative costs as long as they are accorded consistent treatment per 2 CFR 200.403. Direct costs are those that are identified specifically as costs of implementing the SLFRF program objectives, such as contract support, materials, and supplies for a project. Indirect costs are general overhead costs of an organization where a portion of such costs are allocable to the SLFRF award such as the cost of facilities or administrative functions like a director’s office.³⁴ Each category of cost should be treated consistently in like circumstances as direct or indirect, and

² Recipients also may use SLFRF funds directly for administrative costs to improve the design and execution of programs responding to the COVID-19 pandemic and to administer or improve the efficacy of programs addressing the public health emergency or its negative economic impacts. 31 CFR 35.6(b)(3)(ii)(E)(3).

³ 2 CFR 200.413 Direct Costs.

⁴ 2 CFR 200.414 Indirect Costs.



recipients may not charge the same administrative costs to both direct and indirect cost categories, or to other programs. If a recipient has a current Negotiated Indirect Costs Rate Agreement ("NICRA") established with a Federal cognizant agency responsible for reviewing, negotiating, and approving cost allocation plans or indirect cost proposals, then the recipient may use its current NICRA. Alternatively, if the recipient does not have a NICRA, the recipient may elect to use the de minimis rate of 10 percent of the modified total direct costs pursuant to 2 CFR 200.414(f).

b. Salaries and Expenses: In general, certain employees' wages, salaries, and covered benefits are an eligible use of SLFRF award funds. Please see Treasury's final rule for details.

- 3. Cash Management.** SLFRF payments made to recipients are not subject to the requirements of the Cash Management Improvement Act and Treasury's implementing regulations at 31 CFR Part 205 or 2 CFR 200.305(b)(8)-(9).

As such, recipients can place funds in interest-bearing accounts, do not need to remit interest to Treasury, and are not limited to using that interest for eligible uses under the SLFRF award.

- 4. Eligibility.** Under this program, recipients are responsible for ensuring funds are used for eligible purposes. Generally, recipients must develop and implement policies and procedures, and retain records, to determine and monitor implementation of criteria for determining the eligibility of beneficiaries and/or subrecipients. Your organization, and if applicable, the subrecipient(s) administering a program on behalf of your organization, will need to maintain procedures for obtaining information evidencing a given beneficiary, subrecipient, or contractor's eligibility, including a valid SAM.gov registration (except with respect to individuals or households for which a SAM.gov registration is not required). Implementing risk-based due diligence for eligibility determinations is a best practice to augment your organization's existing controls.
- 5. Equipment and Real Property Management.** Any purchase of equipment or real property with SLFRF funds must be consistent with the Uniform Guidance at 2 CFR Part 200, Subpart D. Equipment and real property acquired under this program must be used for the originally authorized purpose, unless stated otherwise by Treasury. Consistent with 2 CFR 200.311 and 2 CFR 200.313, any equipment or real property acquired using SLFRF funds shall vest in the non-Federal entity, consistent with any guidance that Treasury may issue. Any acquisition and maintenance of equipment or real property must also be in compliance with relevant laws and regulations.
- 6. Matching, Level of Effort, Earmarking.** There are no matching, level of effort, or earmarking compliance responsibilities associated with the SLFRF award. See Section C.1 (Eligible and Restricted Uses of SLFRF Funds) for a discussion of restrictions on use of SLFRF funds. Please see 2. Allowable Costs/Cost Principles above for information on the use of SLFRF funds for non-Federal match or cost-sharing requirements in other Federal programs.
- 7. Period of Performance.** Your organization should also develop and implement internal controls related to activities occurring outside the period of performance. For example, each recipient should articulate each project's policy on allowability of costs incurred prior to award or start of the period of performance. All funds remain subject to statutory requirements that they must be used for costs incurred by the recipient during the period that begins on March 3, 2021, and ends on December 31, 2024, and that award funds for the financial obligations incurred by December 31, 2024 must be expended by December 31, 2026. Any funds not used must be returned to Treasury as part of the award closeout process pursuant to 2 C.F.R. 200.344(d).
- 8. Procurement, Suspension & Debarment.** Recipients are responsible for ensuring that any procurement using SLFRF funds, or payments under procurement contracts using such funds,



are consistent with the procurement standards set forth in the Uniform Guidance at 2 CFR 200.317 through 2 CFR 200.327, as applicable. The Uniform Guidance establishes in 2 CFR 200.319 that all procurement transactions for property or services must be conducted in a manner providing full and open competition, consistent with standards outlined in 2 CFR 200.320, which allows for non-competitive procurements only in circumstances where at least one of the conditions below is true: the item is below the micro-purchase threshold; the item is only available from a single source; the public exigency or emergency will not permit a delay from publicizing a competitive solicitation; or after solicitation of a number of sources, competition is determined inadequate.⁵ Recipients must have and use documented procurement procedures that are consistent with the standards outlined in 2 CFR 200.317 through 2 CFR 200.320. The Uniform Guidance requires an infrastructure for competitive bidding and contractor oversight, including maintaining written standards of conduct and prohibitions on dealing with suspended or debarred parties. Your organization must ensure adherence to all applicable local, State, and federal procurement laws and regulations.

9. **Program Income.** Generally, program income includes, but is not limited to, income from fees for services performed, the use or rental of real or personal property acquired under Federal awards, and principal and interest on loans made with Federal award funds. Program income does not include interest earned on advances of Federal funds, rebates, credits, discounts, or interest on rebates, credits, or discounts. Recipients of SLFRF funds should calculate, document, and record the organization's program income. Additional controls that your organization should implement include written policies that explicitly identify appropriate allocation methods, accounting standards and principles, compliance monitoring checks for program income calculations, and records.

The Uniform Guidance outlines the requirements that pertain to program income at 2 CFR 200.307. Treasury intends to provide additional guidance regarding program income and the application of 2 CFR 200.307(e)(1).

10. **Reporting.** All recipients of federal funds must complete financial, performance, and compliance reporting as required and outlined in Part 2 of this guidance. Expenditures may be reported on a cash or accrual basis, as long as the methodology is disclosed and consistently applied. Reporting must be consistent with the definition of expenditures pursuant to 2 CFR 200.1. Your organization should appropriately maintain accounting records for compiling and reporting accurate, compliant financial data, in accordance with appropriate accounting standards and principles.

In addition, where appropriate, your organization needs to establish controls to ensure completion and timely submission of all mandatory performance and/or compliance reporting. See Part 2 of this guidance for a full overview of recipient reporting responsibilities.

Consolidated jurisdictions or other types of jurisdictions that received multiple SLFRF allocations (e.g., a county and city with a consolidated government), are only required to file once per reporting period, and such reports will cover the total SLFRF allocations received by the jurisdiction. This includes Non-entitlement units of local government ("NEUs") and/or Units of general local government within counties that are not units of general local government ("Non-UGLGs"). In addition, the total SLFRF allocations across all sources for a given jurisdiction will be used to identify that jurisdiction's Reporting Tier.

11. **Subrecipient Monitoring.** SLFRF recipients that are pass-through entities as described under 2 CFR 200.1 are required to manage and monitor their subrecipients to ensure compliance with requirements of the SLFRF award pursuant to 2 CFR 200.332 regarding requirements for pass-through entities.

⁵ 2 CFR 200.320(c)(1)-(3) and (5). 2 CFR 200.320(c)(4) is excluded from application to the SLFRF program as outlined in the ALN.



First, your organization must clearly identify to the subrecipient: (1) that the award is a subaward of SLFRF funds; (2) any and all compliance requirements for use of SLFRF funds; and (3) any and all reporting requirements for expenditures of SLFRF funds.

Next, your organization will need to evaluate each subrecipient's risk of noncompliance based on a set of common factors. These risk assessments may include factors such as prior experience in managing Federal funds, previous audits, personnel, and policies or procedures for award execution and oversight. Ongoing monitoring of any given subrecipient should reflect its assessed risk and include monitoring, identification of deficiencies, and follow-up to ensure appropriate remediation.

Accordingly, your organization should develop written policies and procedures for subrecipient monitoring and risk assessment and maintain records of all award agreements identifying or otherwise documenting subrecipients' compliance obligations.

Recipients should note that NEUs and Non-UGLGs are not subrecipients under the SLFRF program. They are SLFRF recipients that will report directly to Treasury.

Recipients should also note that subrecipients do not include individuals and organizations that received SLFRF funds as end users. Such individuals and organizations are beneficiaries and not subject to audit pursuant to the Single Audit Act and 2 C.F.R. Part 200, Subpart F.

Many recipients may choose to provide a subaward or contract to other entities to provide services to other end users. For example, a recipient may provide a subaward to a nonprofit to provide homeless services to individuals experiencing homelessness. In this case, the subaward to a nonprofit is based on the services that the recipient intends to provide (assistance to households experiencing homelessness), and the nonprofit is serving as the subrecipient, providing services on behalf of the recipient. Subrecipients are subject to an audit pursuant to the Single Audit Act and 2 CFR part 200, subpart F regarding audit requirements, whereas contractors are not subject to an audit pursuant to the Single Audit Act and 2 CFR part 200, subpart F regarding audit requirements.

12. Special Tests and Provisions. Treasury may issue subregulatory guidance as well as frequently asked questions.

Across each of the compliance requirements above, Treasury has described some best practices for development of internal controls in **Table 1** below, with an example of each best practice.

Table 1: Internal controls best practices

Best Practice	Description	Example
Written policies and procedures	Formal documentation of recipient policies and procedures	Documented procedure for determining worker eligibility for premium pay
Written standards of conduct	Formal statement of mission, values, principles, and professional standards	Documented code of conduct / ethics for subcontractors
Risk-based due diligence	Pre-payment validations conducted according to an assessed level of risk	Enhanced eligibility review of subrecipient with imperfect performance history
Risk-based compliance monitoring	Ongoing validations conducted according to an assessed level of risk	Higher degree of monitoring for projects that have a higher risk of fraud, given program characteristics



Best Practice	Description	Example
Record maintenance and retention	Creation and storage of financial and non-financial records.	Storage of all subrecipient payment information.

E. Award Terms and Conditions

The Award Terms and Conditions of the SLFRF financial assistance agreement sets forth the compliance obligations for recipients pursuant to the SLFRF statute, the Uniform Guidance, Treasury's final rule, and applicable federal laws and regulations. Recipients should ensure they remain in compliance with all Award Terms and Conditions. These obligations include the following items in addition to those described above:

- 1. SAM.gov Requirements.** All eligible recipients are also required to have an active registration with the System for Award Management ("SAM") (<https://www.sam.gov>) pursuant to 2 CFR Part 25. To ensure timely receipt of funding, Treasury has stated that NEUs who have not previously registered with SAM.gov may do so after receipt of the award, but before the submission of mandatory reporting.⁶
- 2. Recordkeeping Requirements.** Generally, your organization must maintain records and financial documents for five years after all funds have been expended or returned to Treasury, as outlined in paragraph 4.c. of the Award Terms and Conditions. Treasury may request transfer of records of long-term value at the end of such period. Wherever practicable, such records should be collected, transmitted, and stored in open and machine-readable formats.

Your organization must agree to provide or make available such records to Treasury upon request, and to the Government Accountability Office ("GAO"), Treasury's Office of Inspector General ("OIG"), and their authorized representative in order to conduct audits or other investigations.
- 3. Single Audit Requirements.** Recipients and subrecipients that expend more than \$750,000 in Federal awards during their fiscal year will be subject to an audit under the Single Audit Act and its implementing regulation at 2 CFR Part 200, Subpart F regarding audit requirements.⁷ Note that the Compliance Supplement provides information on the existing, important compliance requirements that the federal government expects to be considered as a part of such audit. The Compliance Supplement is routinely updated, and is made available in the Federal Register and on OMB's website: <https://www.whitehouse.gov/omb/office-federal-financial-management/>. Recipients and subrecipients should consult the [Federal Audit Clearinghouse](#) to see examples of Single Audit submissions.
- 4. Civil Rights Compliance.** Recipients of Federal financial assistance from the Treasury are required to meet legal requirements relating to nondiscrimination and nondiscriminatory use of Federal funds. Those requirements include ensuring that entities receiving Federal financial assistance from the Treasury do not deny benefits or services, or otherwise discriminate on the basis of race, color, national origin (including limited English proficiency), disability, age, or sex (including sexual orientation and gender identity), in accordance with the following authorities: Title VI of the Civil Rights Act of 1964 (Title VI) Public Law 88-352, 42 U.S.C. 2000d-1 et seq., and the Department's implementing regulations, 31 CFR part 22; Section 504 of the Rehabilitation Act of 1973 (Section 504), Public Law 93-112, as amended by Public Law 93-516, 29 U.S.C. 794; Title IX of the Education Amendments of 1972 (Title IX), 20 U.S.C. 1681 et seq., and the Department's implementing regulations, 31 CFR part 28; Age Discrimination Act of 1975, Public

⁶ See flexibility provided in https://www.whitehouse.gov/wp-content/uploads/2021/03/M_21_20.pdf.

⁷ For-profit entities that receive SLFRF subawards are not subject to Single Audit requirements. However, they are subject to other audits as deemed necessary by authorized governmental entities, including Treasury and Treasury's OIG.



Law 94-135, 42 U.S.C. 6101 et seq., and the Department implementing regulations at 31 CFR part 23.

In order to carry out its enforcement responsibilities under Title VI of the Civil Rights Act, Treasury will collect and review information from non-Tribal recipients to ascertain their compliance with the applicable requirements before and after providing financial assistance. Treasury's implementing regulations, 31 CFR part 22, and the Department of Justice (DOJ) regulations, [Coordination of Non-discrimination in Federally Assisted Programs, 28 CFR part 42](#), provide for the collection of data and information from recipients (see 28 CFR 42.406). Treasury may request that recipients submit data for post-award compliance reviews, including information such as a narrative describing their Title VI compliance status. This collection does not apply to Tribal governments⁸.

⁸ Please note, as explained in Treasury [FAQ 12.1](#), that the award terms and conditions for Treasury's pandemic recovery programs, including the SLFRF, do not impose antidiscrimination requirements on Tribal governments beyond what would otherwise apply under federal law.



Part 2: Reporting Guidance

There are three types of reporting requirements for the SLFRF program. The report requirements are approved and documented under OMB PRA number - OMB # 1505-0271.

- **Interim Report:** Provide initial overview of status and uses of funding. This is a one-time report. **See Section A, page 16.**
- **Project and Expenditure Report:** Report on projects funded, expenditures, and contracts and subawards over \$50,000, and other information. **See Section B, page 17.**
- **Recovery Plan Performance Report:** The Recovery Plan Performance Report (the “Recovery Plan”) will provide information on the projects that large recipients are undertaking with program funding and how they plan to ensure program outcomes are achieved in an effective, efficient, and equitable manner. It will include key performance indicators identified by the recipient and some mandatory indicators identified by Treasury. The Recovery Plan will be posted on the website of the recipient as well as provided to Treasury. **See Section C, page 28.**

The reporting threshold is based on the total award amount allocated by Treasury under the SLFRF program, not the funds received by the recipient as of the time of reporting.

States and territories are also required to submit information on their distributions to NEUs. Please refer to Section D for additional details.

**Table 2: Reporting requirements by recipient type**

Tier	Recipient	Interim Report	Project and Expenditure Report	Recovery Plan Performance Report
1	States, U.S. territories, metropolitan cities and counties with a population that exceeds 250,000 residents	By August 31, 2021 or 60 days after receiving funding if funding was received by October 15, with expenditures by category.	By January 31, 2022, and then 30 days after the end of each quarter thereafter <i>Note: NEUs were not required to submit a Project and Expenditure Report on January 31, 2022. The first reporting date for NEUs will be April 30, 2022.</i>	By August 31, 2021 or 60 days after receiving funding, and annually thereafter by July 31
2	Metropolitan cities and counties with a population below 250,000 residents that are allocated more than \$10 million in SLFRF funding, and NEUs that are allocated more than \$10 million in SLFRF funding.	<i>Note: NEUs were not required to submit an Interim Report</i>	By April 30, 2022, and then annually thereafter	
3	Tribal Governments that are allocated more than \$30 million in SLFRF funding			
4	Tribal Governments that are allocated less than \$30 million in SLFRF funding			
5	Metropolitan cities and counties with a population below 250,000 residents that are allocated less than \$10 million in SLFRF funding, and NEUs that are allocated less than \$10 million in SLFRF funding.			

Note: Based on the period of performance, reports will be collected through April 30, 2027. See the specific due dates listed in Sections B and C.

As mentioned above, the total SLFRF allocations across all sources for a given jurisdiction will be used to identify that jurisdiction's Reporting Tier, beginning in April of 2022. Treasury may reach out to jurisdictions to update Reporting Tiers.

The remainder of this document describes these reporting requirements. User guides describing how and where to submit required reports are posted at www.treasury.gov/SLFRPReporting and updated on a regular basis.



Comparison to reporting for the CRF

This guidance does not change the reporting or compliance requirements pertaining to the CRF. Reporting and compliance requirements for the SLFRF are separate from CRF reporting requirements. Differences between CRF and SLFRF include:

- **Project, Expenditure, and Subaward Reporting:** The SLFRF reporting requirements leverage the existing reporting regime used for CRF to foster continuity and provide many recipients with a familiar reporting mechanism. The data elements for the Project and Expenditure Report will largely mirror those used for CRF, with some minor exceptions noted in this guidance. The users' guide will describe how reporting for CRF funds will relate to reporting for the SLFRF.
- **Timing of Reports:** CRF reports were due within 10 days of each calendar quarter end. For quarterly reporters, SLFRF reporting will be due the last day of the month following the end of the period covered. For annual reporters, SLFRF reporting will be due on an annual schedule (see table in Section B below).
- **Program and Performance Reporting:** The CRF reporting did not include any program or performance reporting. To build public awareness and accountability and allow Treasury to monitor compliance with eligible uses, some program and performance reporting is required for SLFRF.

A. Interim Report

Note: The Interim Reports were submitted under the interim final rule.

States, U.S. territories, metropolitan cities, counties, and Tribal governments were required to submit a one-time interim report with expenditures⁹ by Expenditure Category covering the period from March 3rd to July 31, 2021, by August 31, 2021 or sixty (60) days after first receiving funding if the recipient's date of award was between July 15, 2021 and October 15, 2021. The recipient was required to enter obligations¹⁰ and expenditures and, for each, select the specific expenditure category from the available options. See Appendix 3 for Expenditure Categories applicable for the Interim Report.

1. Required Programmatic Data

Recipients were also required to provide the following information if they had or planned to have expenditures in the following Expenditure Categories.

- a. **Revenue replacement (EC 6.1¹¹):** Key inputs into the revenue replacement formula in the Interim Final Rule and estimated revenue loss due to the Covid-19 public health emergency calculated using the formula in the Interim Final Rule as of December 31, 2020.
 - Base year general revenue (e.g., revenue in the last full fiscal year prior to the public health emergency)
 - Fiscal year end date
 - Growth adjustment used (either 4.1 percent or average annual general revenue growth over 3 years prior to pandemic)
 - Actual general revenue as of the twelve months ended December 31, 2020

⁹ For purposes of reporting in the SLFRF portal, an expenditure is the amount that has been incurred as a liability of the entity (the service has been rendered or the good has been delivered to the entity).

¹⁰ For purposes of reporting in the SLFRF portal, an obligation is an order placed for property and services, contracts and subawards made, and similar transactions that require payment.

¹¹ See Appendix 3 for the full Expenditure Category (EC) list. Please note that Appendix 3 includes the expenditure categories under the interim final rule, applicable to the Interim Report.



- Estimated revenue loss due to the Covid-19 public health emergency as of December 31, 2020
- An explanation of how revenue replacement funds were allocated to government services (Note: additional instructions was provided in the user guide)

In calculating general revenue and the other items discussed above, recipients should have used audited data if it was available. When audited data was not available, recipients were not required to obtain audited data if substantially accurate figures could be produced on an unaudited basis. Recipients should have used their own data sources to calculate general revenue and did not need to rely on revenue data published by the Census Bureau. Treasury acknowledges that due to differences in timing, data sources, and definitions, recipients' self-reported general revenue figures may differ from those published by the Census Bureau. Recipients were permitted to provide data on a cash, accrual, or modified accrual basis, provided that recipients are consistent in their choice of methodology throughout the covered period and until reporting is no longer required. Recipients' reporting should align with their own financial reporting.

In calculating general revenue, recipients should have excluded all intergovernmental transfers from the federal government. This includes, but is not limited to, federal transfers made via a State to a locality pursuant to the CRF or SLFRF. To the extent federal funds are passed through States or other entities or intermingled with other funds, recipients should have attempted to identify and exclude the federal portion of those funds from the calculation of general revenue on a best-efforts basis.

Consistent with the broad latitude provided to recipients to use funds for government services to the extent of reduction in revenue, recipients were required to submit a description of services provided. This description may be in narrative or in another form, and recipients were encouraged to report based on their existing budget processes and to minimize administrative burden. For example, a recipient with \$100 in revenue replacement funds available could indicate that \$50 were used for law enforcement operating expenses and \$50 were used for pay-go building of sidewalk infrastructure. As discussed in the interim final rule, these services can include a broad range of services but may not be used directly for pension deposits or debt service.

Reporting requirements did not require tracking the indirect effects of Fiscal Recovery Funds, apart from the restrictions on use of Fiscal Recovery Funds to offset a reduction in net tax revenue. In addition, recipients were required to indicate that Fiscal Recovery Funds were not used to make a deposit in a pension fund.

B. Project and Expenditure Report

All recipients are required to submit Project and Expenditure Reports.

Note on NEUs: To facilitate reporting, each NEU will need a NEU Recipient Number. This is a unique identification code for each NEU assigned by the State or territory to the NEU as part of its request for funding.

1. Quarterly Reporting

The following recipients are required to submit quarterly Project and Expenditure Reports:

- States and U.S. territories
- Tribal governments that are allocated more than \$30 million in SLFRF funding
- Metropolitan cities and counties with a population that exceeds 250,000 residents



- Metropolitan cities and counties with a population below 250,000 residents that are allocated more than \$10 million in SLFRF funding and NEUs that are allocated more than \$10 million in SLFRF funding.

For these recipients, the initial quarterly Project and Expenditure Report covers three calendar quarters from March 3, 2021 to December 31, 2021 and was required to be submitted to Treasury by January 31, 2022. The subsequent quarterly reports will cover one calendar quarter and must be submitted to Treasury by the last day of the month following the end of the period covered. Quarterly reports are not due concurrently with applicable annual reports. **Table 3** summarizes the quarterly report timelines:

Table 3: Quarterly Project and Expenditure Report Timeline

Report	Year	Quarter	Period Covered	Due Date
1	2021	2 – 4	March 3 – December 31	January 31, 2022
2	2022	1	January 1 – March 31	April 30, 2022
3	2022	2	April 1 – June 30	July 31, 2022
4	2022	3	July 1 – September 30	October 31, 2022
5	2022	4	October 1 – December 31	January 31, 2023
6	2023	1	January 1 – March 31	April 30, 2023
7	2023	2	April 1 – June 30	July 31, 2023
8	2023	3	July 1 – September 30	October 31, 2023
9	2023	4	October 1 – December 31	January 31, 2024
10	2024	1	January 1 – March 31	April 30, 2024
11	2024	2	April 1 – June 30	July 31, 2024
12	2024	3	July 1 – September 30	October 31, 2024
13	2024	4	October 1 – December 31	January 31, 2025
14	2025	1	January 1 – March 31	April 30, 2025
15	2025	2	April 1 – June 30	July 31, 2025
16	2025	3	July 1 – September 30	October 31, 2025
17	2025	4	October 1 – December 31	January 31, 2026
18	2026	1	January 1 – March 31	April 30, 2026
19	2026	2	April 1 – June 30	July 31, 2026
20	2026	3	July 1 – September 30	October 31, 2026
21	2026	4	October 1 – December 31	March 31, 2027

2. Annual Reporting

The following recipients are required to submit annual Project and Expenditure Reports:

- Tribal governments that are allocated less than \$30 million in SLFRF funding
- Metropolitan cities and counties with a population below 250,000 residents that are allocated less than \$10 million in SLFRF funding and NEUs that are allocated less than \$10 million in SLFRF funding.

For these recipients, the initial Project and Expenditure Report will cover from March 3, 2021 to March 31, 2022 and must be submitted to Treasury by April 30, 2022. The subsequent annual reports will cover one calendar year and must be submitted to Treasury by April 30. **Table 4** summarizes the annual report timelines:

**Table 4: Annual Project and Expenditure Report timeline**

Report	Period Covered	Due Date
1	March 3, 2021 – March 31, 2022	April 30, 2022
2	April 1, 2022 – March 31, 2023	April 30, 2023
3	April 1, 2023 – March 31, 2024	April 30, 2024
4	April 1, 2024 – March 31, 2025	April 30, 2025
5	April 1, 2025 – March 31, 2026	April 30, 2026
6	April 1, 2026 – December 31, 2026	April 30, 2027

3. Required Information

The following information will be required in Project and Expenditure Reports for both quarterly and annual reporting:

- a. **Projects:** Provide information on all SLFRF funded projects. Projects are new or existing eligible government services or investments funded in whole or in part by SLFRF funding. For each project, the recipient will be required to enter the project name, identification number (created by the recipient), project expenditure category (see Appendix 1), description, and status of completion. Project descriptions must describe the project in sufficient detail to provide understanding of the major activities that will occur, and will be required to be between 50 and 250 words. Projects should be defined to include only closely related activities directed toward a common purpose. Recipients should review the Required Programmatic Data described in 3.g. below and define their projects at a sufficient level of granularity.

Note: For each project, the recipient will be asked to select the appropriate Expenditure Category based on the scope of the project (see Appendix 1). Projects should be scoped to align to a single Expenditure Category. For select Expenditure Categories, the recipient will also be asked to provide additional programmatic data (described further below).

- b. **Obligations and Expenditures:** Once a project is entered the recipient will be able to report on the project's obligations and expenditures. Recipients will be asked to report:
- Current period obligation
 - Cumulative obligation
 - Current period expenditure
 - Cumulative expenditure
- c. **Project Status:** Once a project is entered the recipient will be asked to report on project status each reporting period, in four categories:
- Not Started
 - Completed less than 50 percent
 - Completed 50 percent or more
 - Completed
- d. **Program Income:** Recipients should report the program income earned and expended to cover eligible project costs, if applicable.
- e. **Adopted Budget (States, U.S. territories, metropolitan cities and counties with a population that exceeds 250,000 residents only):** Each state, territory and metropolitan city and county with a population that exceeds 250,000 residents will provide the budget adopted for each project by its jurisdiction associated with SLFRF funds. Treasury will use this information to better understand the intended impact, identify opportunities for outreach, and understand the recipient's progress in program implementation. Treasury is not approving or pre-approving projects or budgets.
- Recipients will enter the Adopted Budget based on information that exists currently in the recipient's financial systems and the recipient's established budget process. Treasury



understands that recipients may use different budget processes. For example, a recipient may consider a project budgeted once a legislature has appropriated funds; whereas another recipient may consider a project budgeted at the moment when the funds have been obligated.

- Additional information is provided on the differences between Adopted Budget, Obligations, and Expenditures as part of the user guide posted at www.treasury.gov/SLFRPReporting.

f. Project Demographic Distribution (applicable to Public Health and Negative Economic Impact ECs: EC 1.1-2.37)– Collection to begin April 2022

Recognizing the disproportionate public health and negative economic impacts of the pandemic on many households, communities, and other entities, recipients must report whether certain types of projects are targeted to impacted and disproportionately impacted communities. Recipients will be asked to respond to the following:

- What Impacted and/or Disproportionately Impacted population does this project primarily serve? Please select the population primarily served.
- If this project primarily serves more than one Impacted and/or Disproportionately Impacted population, please select up to two additional populations served.

Recipients will select from the following options:

	Impacted	Disproportionately Impacted
Public Health	• General Public	
Assistance to Households	• Low- or-moderate income households or populations¹² • Households that experienced unemployment • Households that experienced increased food or housing insecurity • Households that qualify for certain federal programs¹³ • For services to address lost instructional time in K-12 schools: any students that lost access to in-person instruction for a significant period of time • Other households or populations that experienced a negative	• Low-income households and populations¹⁴ • Households and populations residing in Qualified Census Tracts • Households that qualify for certain federal programs¹⁵ • Households receiving services provided by Tribal governments • Households residing in the U.S. territories or receiving services from these governments

¹² Low or moderate-income households and communities are those with (i) income at or below 300 percent of the Federal Poverty Guidelines for the size of the household based on the most recently published poverty guidelines by the Department of Health and Human Services (HHS) or (ii) income at or below 65 percent of the Area Median Income for the county and size of household based on the most recently published data by the Department of Housing and Urban Development (HUD).

¹³ For Impacted households, these programs are Children's Health Insurance Program ("CHIP"); Childcare Subsidies through the Child Care and Development Fund ("CCDF") Program; Medicaid; National Housing Trust Fund ("HTF"), for affordable housing programs only; Home Investment Partnerships Program ("HOME"), for affordable housing programs only.

¹⁴ Low-income households and communities are those with (i) income at or below 185 percent of the Federal Poverty Guidelines for the size of the household based on the most recently published poverty guidelines by HHS or (ii) income at or below 40 percent of Area Median Income for its county and size of household based on the most recently published data by HUD.

¹⁵ For Disproportionately Impacted households, these programs are 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, Special Supplemental Nutrition Program for Women, Infants, and Children ("WIC"), Section 8 Vouchers, Low-Income Home Energy Assistance Program ("LIHEAP"), and Pell Grants.



	Impacted	Disproportionately Impacted
	economic impact of the pandemic other than those listed above (please specify)	- For services to address educational disparities, Title I eligible schools¹⁶ - Other households or populations that experienced a disproportionate negative economic impact of the pandemic other than those listed above (please specify)
Assistance to Small Businesses	- Small businesses that experienced a negative economic impact of the pandemic - Classes of small businesses designated as negatively economically impacted by the pandemic (please specify)	- Small businesses operating in Qualified Census Tracts - Small businesses operated by Tribal governments or on Tribal lands - Small businesses operating in the U.S. territories - Other small businesses disproportionately impacted by the pandemic (please specify)
Assistance to Non-Profits	- Non-Profits that experienced a negative economic impact of the pandemic (please specify) - Classes of non-profits designated as negatively economically impacted by the pandemic (please specify)	- Non-profits operating in Qualified Census Tracts - Non-profits operated by Tribal governments or on Tribal lands - Non-profits operating in the U.S. territories - Other non-profits disproportionately impacted by the pandemic (please specify)
Aid to Impacted Industries	- Travel, tourism, or hospitality sectors (including Tribal development districts) - Industry outside the travel, tourism, or hospitality sectors that experienced a negative economic impact of the pandemic (please specify)	N/A

- g. Subawards, Contracts, Grants, Loans, Transfers, and Direct Payments: Each recipient shall also provide detailed obligation and expenditure information for any contracts and grants awarded, loans issued, transfers made to other government entities, and direct payments made by the recipient that are greater than \$50,000.

Recipients do not need to submit separate monthly subaward reports to FSRS.gov as required pursuant to the 2 CFR Part 170, Appendix A award term regarding reporting subaward and executive compensation, which is included in the SLFRF Award Terms and Conditions. Treasury will submit this reporting on behalf of recipients using the \$50,000 reporting threshold, timing, and data elements discussed in this guidance. If recipients choose to continue reporting to FSRS.gov in addition to reporting directly to Treasury on these funds, they may do so and will be asked to notify Treasury as part of their quarterly submission.

¹⁶ For educational services and other efforts to address educational disparities, Treasury will recognize Title I eligible schools as disproportionately impacted and responsive services that support the school generally or support the whole school service as eligible. "Title I eligible schools" means schools eligible to receive services under section 1113 of Title I, Part A of the Elementary and Secondary Education Act of 1965, as amended (20 U.S.C. 6313), including schools served under section 1113(b)(1)(C) of that Act.



In general, recipients will be asked to provide the following information for each Contract, Grant, Loan, Transfer, or Direct Payment greater than \$50,000:

- Subrecipient identifying and demographic information (e.g., DUNS/UEI/TIN number and location)
- Award number (e.g., Award number, Contract number, Loan number)
- Award date, type, amount, and description
- Award payment method (reimbursable or lump sum payment(s))
- For loans, expiration date (date when loan expected to be paid in full)
- Primary place of performance
- Related project name(s)
- Related project identification number(s) (created by the recipient)
- Period of performance start date
- Period of performance end date
- Quarterly obligation amount
- Quarterly expenditure amount
- Project(s)
- Additional programmatic performance indicators for select Expenditure Categories (see below)

Aggregate reporting is required for contracts, grants, transfers made to other government entities, loans, direct payments that are below \$50,000. This information will be accounted for by Expenditure Category at the project level. Note that all obligations and expenditures made directly to individuals, regardless of dollar amount, should be included in aggregate reporting.

As required by the 2 CFR Part 170, Appendix A award term regarding reporting subaward and executive compensation, recipients must also report the names and total compensation of their five most highly compensated executives and their subrecipients' executives for the preceding completed fiscal year if (1) the recipient received 80 percent or more of its annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as provided by 2 CFR 170.320 (and subawards), and received \$25,000,000 or more in annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act (and subawards), and (2) if the information is not otherwise public. In general, most SLFRF recipients are governmental entities with executive salaries that are already disclosed, so no additional information would be required to be reported. The recipient is responsible for the subrecipients' compliance with registering and maintaining an updated profile on SAM.gov.

- h. Civil Rights Compliance: Treasury will request information on recipients' compliance with Title VI of the Civil Rights Act of 1964, as applicable, on an annual basis. This information may include a narrative describing the recipient's compliance with Title VI, along with other questions and assurances. This collection does not apply to Tribal governments¹⁷
- i. Ineligible Activities: Tax Offset Provision (States and territories only): Treasury may collect additional information related to the Tax Offset Provision as described in section 602(c)(2) of the Social Security Act and implemented under 31 CFR 35.8 as part of the Project and Expenditure Report, such as but not limited to revenue reducing covered changes. Please see Section C.11 (Recovery Plan, Ineligible Activities: Tax Offset Provision) for more information.

¹⁷ Please note, as explained in Treasury [FAQ 12.1](#), that the award terms and conditions for Treasury's pandemic recovery programs, including the SLFRF, do not impose antidiscrimination requirements on Tribal governments beyond what would otherwise apply under federal law.



- j. Required Programmatic Data (other than infrastructure projects): For all projects listed under the following Expenditure Categories (see Appendix 1), the information listed must be provided in each report.

1. Public Health and Negative Economic Impact (EC 1.1-3.5) - *Collection to begin in April 2022*

- Brief description of structure and objectives of assistance program(s), including public health or negative economic impact experienced
- Brief description of how a recipient's response is related and reasonably and proportional to a public health or negative economic impact of COVID-19.¹⁸

Note: The final rule presumes that all enumerated eligible uses for programs and services, including COVID-19 mitigation and prevention programs and services, are reasonably proportional responses to the harm identified unless a response is grossly disproportionate to the type or extent of harm experienced. Many of the Eligibility Categories encompass multiple specific enumerated eligible uses and may be provided to a variety of populations. For example, EC 2.13 *Healthy Childhood Environments: Services to Foster Youth or Families Involved in Child Welfare System* includes a wide array of financial, educational, child development, or health supports, or other supports necessary, including supports for kinship care and may be provided to foster youth and/or families involved in the child welfare system. Between these two fields above, recipients should provide enough information to identify the type of enumerated eligible use being provided within the EC (e.g., kinship care support services), the public health or economic impact experienced, who the program and/or service is being provided to, and what services are being provided (e.g., respite resources). For enumerated eligible uses, recipients are not required to provide substantive documentation that the response is related and reasonably proportional in the Project and Expenditure Report.

2. Capital Expenditures (EC 1.1-3.5) - *Collection began in January 2022, with additional optional fields to begin in April 2022; optional fields will become required in July 2022*

- Does this project include a capital expenditure? (*Collection began in January 2022*)
- Total expected capital expenditure, including pre-development costs, if applicable (*Collection began in January 2022*)
- Type of capital expenditure, based on the following enumerated uses (This field is *optional in April 2022; required in July 2022*):
 - COVID-19 testing sites and laboratories, and acquisition of related equipment
 - COVID-19 vaccination sites
 - Medical facilities generally dedicated to COVID-19 treatment and mitigation (e.g., emergency rooms, intensive care units, telemedicine capabilities for COVID-19 related treatment)
 - 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
 - Emergency operations centers and acquisition of emergency response equipment (e.g., emergency response radio systems)
 - Installation and improvement of ventilation systems in congregate settings, health facilities, or other public facilities
 - 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

¹⁸ Please note that capital expenditures are not considered "programs and services" and are not presumed to be reasonably proportional responses to an identified harm except as provided in the final rule.



- 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)
 - Behavioral health facilities and equipment (e.g., inpatient or outpatient mental health or substance use treatment facilities, crisis centers, diversion centers)
 - Technology and equipment to allow law enforcement to efficiently and effectively respond to the rise in gun violence resulting from the pandemic
 - Affordable housing, supportive housing, or recovery housing development
 - Food banks and other facilities primarily dedicated to addressing food insecurity
 - Transitional shelters (e.g., temporary residences for people experiencing homelessness)
 - Devices and equipment that assist households in accessing the internet (e.g., tablets, computers, or routers)
 - Childcare, daycare, and early learning facilities
 - Job and workforce training centers
 - Improvements to existing facilities to remediate lead contaminants (e.g., removal of lead paint)
 - Medical equipment and facilities designed to address disparities in public health outcomes (includes primary care clinics, hospitals, or integrations of health services into other settings)
 - Parks, green spaces, recreational facilities, sidewalks, pedestrian safety features like crosswalks, streetlights, neighborhood cleanup, and other projects to revitalize public spaces
 - Rehabilitations, renovation, remediation, cleanup, or conversions of vacant or abandoned properties
 - Schools and other educational facilities or equipment to address educational disparities
 - Technology and tools to effectively develop, execute, and evaluate government programs
 - Technology infrastructure to adapt government operations to the pandemic (e.g., video-conferencing software, improvements to case management systems or data sharing resources), reduce government backlogs, or meet increased maintenance needs
 - Other (please specify)
- For recipients (other than Tribal governments) investing in projects with total expected capital expenditures for an enumerated eligible use of \$10 million or more, as well as projects with total expected capital expenditures for an “other” use of \$1 million or more, please provide a written justification (This field is *optional in April 2022; required in July 2022*)
 - For projects with total expected capital expenditures of over \$10 million, provide labor reporting as outlined for infrastructure projects on pages 26 and 27 (This field is *optional in April 2022; required in July 2022*)
3. Use of Evidence (for relevant ECs noted in Appendix 1)—*Collection to begin April 2022*
- The dollar amount of the total project spending that is allocated towards evidence-based interventions
 - Indicate if a program evaluation of the project is being conducted



4. Household Assistance (EC 2.1-2.8) – *Collection began January 2022:*
 - Number of households served (by program if recipient establishes multiple separate household assistance programs)
5. Small Business Economic Assistance (EC 1.8, 2.29-2.33) – *Collection to begin April 2022*
 - Number of small businesses served (by program if recipient establishes multiple separate small businesses assistance programs)
6. Assistance to Non-Profits (EC 1.9, 2.34)– *Collection to begin April 2022*
 - Number of Non-Profits served (by program if recipient establishes multiple separate non-profit assistance programs)
7. Aid to Travel, Tourism, and Hospitality or Other Impacted Industries (EC 1.10, 2.35-2.36) – *Collection to begin April 2022:*
 - If aid is provided to industries other than travel, tourism, and hospitality (EC 2.36), describe if the industry experienced at least 8 percent employment loss from pre-pandemic levels, or the industry is experiencing comparable or worse economic impacts as the national tourism, travel, and hospitality industries as of the date of the final rule, and rationale for providing aid to the industry
 - For each subaward:
 - Sector of employer (Note: additional detail, including list of sectors, to be provided in the user guide posted to www.treasury.gov/SLFRP)
 - Purpose of funds (e.g., payroll support, safety measure implementation)
8. Education Assistance (EC 2.14, 2.24-2.27) – *Collection began in January 2022:*
 - The National Center for Education Statistics (“NCES”) School ID or NCES District ID. List the School District if all schools within the school district received some funds. If not all schools within the school district received funds, list the School ID of the schools that received funds. These can allow evaluators to link data from the NCES to look at school-level demographics and, eventually, student performance.¹⁹
9. Payroll for Public Health and Safety Employees (EC 3.1) – *Collection began in January 2022:*
 - Number of government FTEs responding to COVID-19 supported under this authority
10. Rehiring Public Sector Staff (EC 3.2) – *Collection began in January 2022:*
 - Number of FTEs rehired by governments under this authority
11. Premium Pay (both Public Sector EC 4.1 and Private Sector EC 4.2) – *Collection began in January 2022; with additional optional field to begin April 2022*
 - List of sectors designated as critical to protecting the health and well-being of residents by the chief executive of the jurisdiction, if beyond those included in the final rule (*Collection began January 2022*)
 - Number of workers to be served (*Collection began January 2022*)
 - Employer sector for all subawards to third-party employers (i.e., employers other than the State, local, or Tribal government) (*Collection began January 2022*)
 - For groups of workers (e.g., an operating unit, a classification of worker, etc.) or, to the extent applicable, individual workers, other than those where the eligible worker receiving premium pay is earning (with the premium pay included) 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

¹⁹ For more information on NCES identification numbers see <https://nces.ed.gov/ccd/districtsearch/> (districts) and <https://nces.ed.gov/ccd/schoolsearch/> (schools).



higher, on an annual basis; OR the eligible worker receiving premium pay is not exempt from the Fair Labor Standards Act overtime provisions:

- A brief written narrative justification of how the premium pay or grant is responsive to workers performing essential work during the public health emergency. This could include a description of the essential workers' duties, health or financial risks faced due to COVID-19, and why the recipient government determined that the premium pay was responsive to workers performing essential work during the pandemic. This description should not include personally identifiable information; when addressing individual workers, recipients should be careful not to include this information. Recipients may consider describing the workers' occupations and duties in a general manner as necessary to protect privacy (*Collection began January 2022*)
- Number of workers to be served with premium pay in K-12 schools (*Collection will begin April 2022*)

12. Revenue replacement (EC 6.1) – *Collection began in August 2021:*

As outlined in the final rule, recipients have the option to make a one-time decision to calculate revenue loss according to the formula outlined in the final rule or elect a "Standard Allowance" of up to \$10 million, not to exceed the award allocation, to spend on government services throughout the period of performance. The option to make this one-time decision will be provided during the April 30, 2022 reporting deadline.

For recipients electing the "Standard Allowance," Treasury will presume that up to \$10 million, not to exceed the award allocation, in revenue has been lost due to the public health emergency and recipients are permitted to use that amount to fund "government services." Please note that electing the standard allowance does not change a recipient's total allocation. Recipients must elect to use this standard allowance instead of calculating lost revenue using the formula.

For recipients calculating revenue loss according to the formula, the final rule permits recipients to choose whether to use calendar or fiscal year calculation dates. Recipients must use the same calculation time frame (calendar or fiscal year) throughout the award period.

Recipients calculating lost revenue using the formula should report the following:

- Choice of fiscal or calendar year revenue loss (choice must remain consistent throughout award period)
- General revenue collected over the past 12 months as of the most recent calculation date, as outlined in the final rule.
- Calculated revenue loss due to the Covid-19 public health emergency; and
- An explanation of how the revenue replacement funds were allocated to government services (note: additional instructions and/or template to be provided in user guide).

For information on treatment of future tax changes, please see the [Statement Regarding Compliance with the Coronavirus State and Local Fiscal Recovery Funds Interim Final Rule and Final Rule](#).

- k. Required Programmatic Data for Infrastructure Projects (EC 5): For all projects listed under the Water, Sewer, and Broadband Expenditure Categories (see Appendix 1), more detailed project-level information is required. Each project will be required to report expenditure data as described above, but will also report the following information:

1. All infrastructure projects (EC 5) – *Collection began in January 2022:*

- Projected/actual construction start date (month/year)



- Projected/actual initiation of operations date (month/year)
- Location (for broadband, geospatial data of locations to be served)
- For projects over \$10 million (based on expected total cost):
 - a. A recipient may provide a certification that, for the relevant project, all laborers and mechanics employed by contractors and subcontractors in the performance of such project are paid wages at rates not less than those prevailing, as determined by the U.S. Secretary of Labor in accordance with subchapter IV of chapter 31 of title 40, United States Code (commonly known as the "Davis-Bacon Act"), for the corresponding classes of laborers and mechanics employed on projects of a character similar to the contract work in the civil subdivision of the State (or the District of Columbia) in which the work is to be performed, or by the appropriate State entity pursuant to a corollary State prevailing-wage-in-construction law (commonly known as "baby Davis-Bacon Acts"). If such certification is not provided, a recipient must provide a project employment and local impact report detailing:
 - The number of employees of contractors and sub-contractors working on the project;
 - The number of employees on the project hired directly and hired through a third party;
 - The wages and benefits of workers on the project by classification; and
 - Whether those wages are at rates less than those prevailing.²⁰
 Recipients must maintain sufficient records to substantiate this information upon request.
 - b. A recipient may provide a certification that a project includes a project labor agreement, meaning a pre-hire collective bargaining agreement consistent with section 8(f) of the National Labor Relations Act (29 U.S.C. 158(f)). If the recipient does not provide such certification, the recipient must provide a project workforce continuity plan, detailing:
 - How the recipient will ensure the project has ready access to a sufficient supply of appropriately skilled and unskilled labor to ensure high-quality construction throughout the life of the project, including a description of any required professional certifications and/or in-house training;
 - How the recipient will minimize risks of labor disputes and disruptions that would jeopardize timeliness and cost-effectiveness of the project;
 - How the recipient will provide a safe and healthy workplace that avoids delays and costs associated with workplace illnesses, injuries, and fatalities, including descriptions of safety training, certification, and/or licensure requirements for all relevant workers (e.g., OSHA 10, OSHA 30);
 - Whether workers on the project will receive wages and benefits that will secure an appropriately skilled workforce in the context of the local or regional labor market; and
 - Whether the project has completed a project labor agreement.
 - c. Whether the project prioritizes local hires.
 - d. Whether the project has a Community Benefit Agreement, with a description of any such agreement.

2. Water and sewer projects (EC 5.1-5.18) *Required once the project starts:*

- National Pollutant Discharge Elimination System (NPDES) Permit Number (if applicable; for projects aligned with the Clean Water State Revolving Fund) (*Collection began in January 2022*)
- Public Water System (PWS) ID number (if applicable; for projects aligned with the Drinking Water State Revolving Fund) (*Collection began January 2022*)

²⁰ As determined by the U.S. Secretary of Labor in accordance with subchapter IV of chapter 31 of title 40, United States Code (commonly known as the "Davis-Bacon Act"), for the corresponding classes of laborers and mechanics employed on projects of a character similar to the contract work in the civil subdivision of the State (or the District of Columbia) in which the work is to be performed.



- Median Household Income of service area (*Collection to begin in April 2022*)
- Lowest Quintile Income of the service area (*Collection to begin in April 2022*)

3. Broadband projects (EC 5.19-5.21) *Collection began in January 2022:*

- Confirm that the project is designed to, upon completion, reliably meet or exceed symmetrical 100 Mbps download and upload speeds.
 - If the project is not designed to reliably meet or exceed symmetrical 100 Mbps download and upload speeds, explain why not, and
 - Confirm that the project is designed to, upon completion, meet or exceed 100 Mbps download speed and between at least 20 Mbps and 100 Mbps upload speed, and be scalable to a minimum of 100 Mbps download speed and 100 Mbps upload speed.
- Please note: additional programmatic data will be required for broadband projects beginning in July 2022 and will be defined in a subsequent version of the Reporting Guidance.

- I. NEU Documentation (NEUs only): Each NEU will also be asked to provide the following information once their accounts are established in Treasury's Reporting Portal and prior to the due date for their first Project and Expenditure Report (due April 30, 2022):
- Copy of the signed award terms and conditions agreement (which was signed and submitted to the State as part of the request for funding)
 - Copy of the signed assurances of compliance with Title VI of the Civil Rights Act of 1964 (which was signed and submitted to the State as part of the request for funding)
 - Copy of actual budget documents validating the top-line budget total provided to the State as part of the request for funding

NEU accounts will be established in Treasury's Portal based on information provided by the States or territories, as further described in Section Part 2 D below.

C. Recovery Plan Performance Report

Note: The guidance included in this section will be updated prior to July 31, 2022 to align with the final rule. The guidance below, including the Expenditure Categories, reflects the interim final rule.

States, territories, metropolitan cities, and counties with a population that exceeds 250,000 residents will also be required to publish and submit to Treasury a Recovery Plan performance report ("Recovery Plan"). Each Recovery Plan must be posted on the public-facing website of the recipient by the same date the recipient submits the report to Treasury. This reporting requirement includes uploading a link to the publicly available document report along with providing data in the Treasury reporting portal.

The Recovery Plan will provide the public and Treasury information on the projects recipients are undertaking with program funding and how they are planning to ensure program outcomes are achieved in an effective, efficient, and equitable manner. While this guidance outlines some minimum requirements for the Recovery Plan, each recipient is encouraged to add information to the plan they feel is appropriate to provide information to their constituents on efforts they are taking to respond to the pandemic and promote economic recovery. Each jurisdiction may determine the general form and content of the Recovery Plan, as long as it includes the minimum information determined by Treasury. Treasury provided a template (located at www.treasury.gov/SLFRP) but recipients may modify this template as appropriate for their jurisdiction. The Recovery Plan will include key performance indicators identified by the recipient and some mandatory indicators identified by Treasury.

The initial Recovery Plan will cover the period from the date of award to July 31, 2021 and must be submitted to Treasury by August 31, 2021, or 60 days after receiving funding. Thereafter, the



Recovery Plan will cover a 12-month period and recipients will be required to submit the report to Treasury within 30 days after the end of the 12-month period (by July 31). **Table 5** summarizes the report timelines:

Table 5 Recovery Plan Timeline

Annual Report	Period Covered	Due Date
1	Award Date – July 31, 2021	August 31, 2021
2	July 1, 2021 – June 30, 2022	July 31, 2022
3	July 1, 2022 – June 30, 2023	July 31, 2023
4	July 1, 2023 – June 30, 2024	July 31, 2024
5	July 1, 2024 – June 30, 2025	July 31, 2025
6	July 1, 2025 – June 30, 2026	July 31, 2026
7	July 1, 2026 – December 31, 2026	March 31, 2027

The Recovery Plan will include, at a minimum, the following information:

1. Executive Summary

Provide a high-level overview of the jurisdiction's intended and actual uses of funding including, but not limited to: the jurisdiction's plan for use of funds to promote a response to the pandemic and economic recovery, key outcome goals, progress to date on those outcomes, and any noteworthy challenges or opportunities identified during the reporting period.

2. Uses of Funds

Describe in further detail your jurisdiction's intended and actual uses of the funds, such as how your jurisdiction's approach would help support a strong and equitable recovery from the COVID-19 pandemic and economic downturn. Describe any strategies employed to maximize programmatic impact and effective, efficient, and equitable outcomes. Given the broad eligible uses of funds and the specific needs of the jurisdiction, please also explain how the funds would support the communities, populations, or individuals in your jurisdiction. Your description should address how you are promoting each of the following, to the extent they apply. Note that these expenditure categories reflect the interim final rule and will be updated prior to July 31, 2022 to align with the final rule.

- a. Public Health (EC 1): As relevant, describe how funds are being used to respond to COVID-19 and the broader health impacts of COVID-19 and the COVID-19 public health emergency.
- b. Negative Economic Impacts (EC 2): As relevant, describe how funds are being used to respond to negative economic impacts of the COVID-19 public health emergency, including to households and small businesses.
- c. Services to Disproportionately Impacted Communities (EC 3): As relevant, describe how funds are being used to provide services to communities disproportionately impacted by the COVID-19 public health emergency.
- d. Premium Pay (EC 4): As relevant, describe the approach, goals, and sectors or occupations served in any premium pay program. Describe how your approach prioritizes low-income workers.
- e. Water, sewer, and broadband infrastructure (EC 5): Describe the approach, goals, and types of projects being pursued, if pursuing.
- f. Revenue Replacement (EC 6): Describe the loss in revenue due to the COVID-19 public health emergency and how funds have been used to provide government services.

Where appropriate, recipients should also include information on your jurisdiction's use (or planned use) of other federal recovery funds including other programs under the American Rescue Plan such as Emergency Rental Assistance, Housing Assistance, and so forth, to provide broader context on the overall approach for pandemic recovery.



3. Promoting equitable outcomes

Describe efforts to promote equitable outcomes, including how programs were designed with equity in mind. Please include in your description how your jurisdiction will consider and measure equity at the various stages of the program, including:

- a. **Goals:** Are there particular historically underserved, marginalized, or adversely affected groups that you intend to serve within your jurisdiction?
- b. **Awareness:** How equal and practical is the ability for residents or businesses to become aware of the services funded by the SLFRF?
- c. **Access and Distribution:** Are there differences in levels of access to benefits and services across groups? Are there administrative requirements that result in disparities in ability to complete applications or meet eligibility criteria?
- d. **Outcomes:** Are intended outcomes focused on closing gaps, reaching universal levels of service, or disaggregating progress by race, ethnicity, and other equity dimensions where relevant for the policy objective?

Treasury encourages uses of funds that promote strong, equitable growth, including racial equity. Please describe how your jurisdiction's planned or current use of funds prioritizes economic and racial equity as a goal, names specific targets intended to produce meaningful equity results at scale, and articulates the strategies to achieve those targets. In addition, please explain how your jurisdiction's overall equity strategy translates into the specific services or programs offered by your jurisdiction in the following Expenditure Categories, as indicated in the interim final rule. Note these expenditure categories will be updated prior to July 31, 2022 to align with the final rule:

- a. **Negative Economic Impacts (EC 2):** assistance to households, small businesses, and non-profits to address impacts of the pandemic, which have been most severe among low-income populations. This includes assistance with food, housing, and other needs; employment programs for people with barriers to employment who faced negative economic impacts from the pandemic (such as residents of low-income neighborhoods, minorities, disconnected youth, the unemployed, formerly incarcerated people, veterans, and people with disabilities); and other strategies that provide disadvantaged groups with access to education, jobs, and opportunity.
- b. **Services to Disproportionately Impacted Communities (EC 3):** services to address health disparities and the social determinants of health, build stronger neighborhoods and communities (e.g., affordable housing), address educational disparities (e.g., evidence-based tutoring, community schools, and academic, social-emotional, and mental health supports for high poverty schools), and promote healthy childhood environments (e.g., home visiting, child care).

The initial report must describe efforts to date and intended outcomes to promote equity. Each annual report thereafter must provide an update, using qualitative and quantitative data, on how the recipients' approach achieved or promoted equitable outcomes or progressed against equity goals during the performance period. Please also describe any constraints or challenges that impacted project success in terms of increasing equity. In particular, this section must describe the geographic and demographic distribution of funding, including whether it is targeted toward traditionally marginalized communities.

For the purposes of the SLFRF, equity is described in the [Executive Order 13985 On Advancing Racial Equity and Support for Underserved Communities Through the Federal Government](#), as issued on January 20, 2021.

4. Community Engagement

Please describe how your jurisdiction's planned or current use of funds incorporates written, oral, and other forms of input that capture diverse feedback from constituents, community-based organizations, and the communities themselves. Where relevant, this description must include how funds will build the capacity of community organizations to serve people with significant barriers to services, including



people of color, people with low incomes, limited English proficient populations, and other traditionally underserved groups.

5. Labor Practices

Describe workforce practices on any infrastructure projects being pursued (EC 5). How are projects using strong labor standards to promote effective and efficient delivery of high-quality infrastructure projects while also supporting the economic recovery through strong employment opportunities for workers? For example, report whether any of the following practices are being utilized: project labor agreements, community benefits agreements, prevailing wage requirements, and local hiring.

6. Use of Evidence

The Recovery Plan should identify whether SLFRF funds are being used for evidence-based interventions²¹ and/or if projects are being evaluated through rigorous program evaluations that are designed to build evidence. Recipients must briefly describe the goals of the project, and the evidence base for the interventions funded by the project. Recipients must specifically identify the dollar amount of the total project spending that is allocated towards evidence-based interventions for each project in the Public Health (EC 1), Negative Economic Impacts (EC 2), and Services to Disproportionately Impacted Communities (EC 3) Expenditure Categories, as identified in the interim final rule and noted in Appendix 3.²² Please note that these expenditure categories reflect the interim final rule and will be updated prior to July 31, 2022 to align with the final rule.

Recipients are exempt from reporting on evidence-based interventions in cases where a program evaluation is being conducted. Recipients are encouraged to use relevant evidence Clearinghouses, among other sources, to assess the level of evidence for their interventions and identify evidence-based models that could be applied in their jurisdiction; such evidence clearinghouses include the U.S. Department of Education's [What Works Clearinghouse](#), the U.S. Department of Labor's [CLEAR](#), and the [Childcare & Early Education Research Connections and the Home Visiting Evidence of Effectiveness](#) clearinghouses from Administration for Children and Families, as well as other clearinghouses relevant to particular projects conducted by the recipient. In such cases where a recipient is conducting a program evaluation in lieu of reporting the amount of spending on evidence-based interventions, they must describe the evaluation design including whether it is a randomized or quasi-experimental design; the key research questions being evaluated; whether the study has sufficient statistical power to disaggregate outcomes by demographics; and the timeframe for the completion of the evaluation (including a link to completed evaluation if relevant).²³ Once the evaluation has been completed, recipients must post the evaluation publicly and link to the completed evaluation in the Recovery Plan. Once an evaluation has been completed (or has sufficient interim findings to determine the efficacy of the intervention), recipients should determine whether the spending for the evaluated interventions should be counted towards the dollar amount categorized as evidence-based for the relevant project.

For all projects, recipients may be selected to participate in a national evaluation, which would study their project along with similar projects in other jurisdictions that are focused on the same set of outcomes. In such cases, recipients may be asked to share information and data that is needed for the national evaluation.

²¹As noted in Appendix 2, evidence-based refers to interventions with strong or moderate levels of evidence.

²² Of note, recipients are only required to report the amount of the total funds that are allocated to evidence-based interventions in the areas of Public Health, Negative Economic Impacts, and Services to Disproportionately Impacted Communities that are marked by an asterisk in Appendix 3: Expenditure Categories. Please note the expenditure categories in Appendix 3 reflect the interim final rule. This Recovery Plan guidance references the expenditure categories aligned with the interim final rule. This guidance will be updated prior to the July 2022 reporting period to reflect the final rule.

²³ For more information on the required standards for program evaluation, see [OMB M-20-12](#).



Recipients are encouraged to consider how a Learning Agenda, either narrowly focused on SLFRF or broadly focused on the recipient's broader policy agenda, could support their overarching evaluation efforts in order to create an evidence-building strategy for their jurisdiction.²⁴

Appendix 2 contains additional information on evidence-based interventions for the purposes of the Recovery Plan.

7. Table of Expenses by Expenditure Category

Please include a table listing the amount of funds used in each Expenditure Category (See Appendix 3). The table should include cumulative expenses to date within each category, and the additional amount spent within each category since the last annual Recovery Plan.

8. Project Inventory

List the name and provide a brief description of all SLFRF funded projects. Projects are new or existing eligible government services or investments funded in whole or in part by SLFRF funding. For each project, include the project name, funding amount, identification number (created by the recipient and used thereafter in the quarterly Program and Expenditure Report), project Expenditure Category (see Appendix 3), and a description of the project which includes an overview of the main activities of the project, the approximate timeline, primary delivery mechanisms and partners, if applicable, and intended outcomes. Include a link to the website of the project if available. This information will provide context and additional detail for the information reported quarterly in the Project and Expenditure Report.

For infrastructure investment projects (EC 5), project-level reporting will be more detailed, as described for the Project and Expenditure Report above. Projects in this area may be grouped by Expenditure Category if needed, with further detail (such as the specific project name and identification number) provided in the Project and Expenditure Report. For infrastructure projects, descriptions should note how the project contributes to addressing climate change.

9. Performance Report

The Recovery Plan must include key performance indicators for the major SLFRF funded projects undertaken by the recipient. The recipient has flexibility in terms of how this information is presented in the Recovery Plan, and may report key performance indicators for each project, or may group projects with substantially similar goals and the same outcome measures. In some cases, the recipient may choose to include some indicators for each individual project as well as crosscutting indicators.

Performance indicators should include both output and outcome measures. Output measures, such as number of students enrolled in an early learning program, provide valuable information about the early implementation stages of a project. Outcome measures, such as the percent of students reading on grade level, provide information about whether a project is achieving its overall goals. Recipients are encouraged to use logic models²⁵ to identify their output and outcome measures. While the initial report will focus heavily on early output goals, recipients must include the related outcome goal for each project and provide updated information on achieving these outcome goals in annual reports. In cases where recipients are conducting a program evaluation for a project (as described above), the outcome measures in the performance report should be aligned with those being evaluated in the program. To support their performance measurement and program improvement efforts, recipients are permitted to use funds to make improvements to data or technology infrastructure and data analytics, as well as program evaluations.

²⁴ For more information on learning agendas, please see [OMB M-19-23](#)

²⁵ A logic model is a tool that depicts the intended links between program investments and outcomes, specifically the relationships among the resources, activities, outputs, outcomes, and impact of a program.

**10. Required Performance Indicators and Programmatic Data**

While recipients have discretion on the full suite of performance indicators to include, a number of mandatory performance indicators and programmatic data must be included. These are necessary to allow Treasury to conduct oversight as well as understand and aggregate program outcomes across recipients. This section provides an overview of the mandatory performance indicators and programmatic data. This information may be included in each recipient's Recovery Plan as they determine most appropriate, including combining with the section above, but this data will also need to be entered directly into the Treasury reporting portal. Below is a list of required data for each Expenditure Category. Note these expenditure categories reflect the interim final rule and will be updated prior to July 31, 2022 to align with the final rule.

- a. Household Assistance (EC 2.2 & 2.5) and Housing Support (EC 3.10-3.12):
 - Number of people or households receiving eviction prevention services (including legal representation)
 - Number of affordable housing units preserved or developed
- b. Negative Economic Impacts (EC 2):
 - Number of workers enrolled in sectoral job training programs
 - Number of workers completing sectoral job training programs
 - Number of people participating in summer youth employment programs
- c. Education Assistance (EC 3.1-3.5):
 - Number of students participating in evidence-based tutoring programs²⁶
- d. Healthy Childhood Environments (EC 3.6-3.9):
 - Number of children served by childcare and early learning (pre-school/pre-K/ages 3-5)
 - Number of families served by home visiting

The initial report should include the key indicators above. Each annual report thereafter should include updated data for the performance period as well as prior period data, and a brief narrative adding any additional context to help the reader interpret the results and understand the any changes in performance indicators over time. To the extent possible, Treasury also encourages recipients to provide data disaggregated by race, ethnicity, gender, income, and other relevant factors.

11. Ineligible Activities: Tax Offset Provision (States and territories only)

The following information is required for Treasury to ensure SLFRF funding is not used for ineligible activities.

In each reporting year, States and territories will report certain items related to the Tax Offset Provision as described in section 602(c)(2) of the Social Security Act and implemented by 31 CFR 35.8. Additional guidance will be forthcoming for reporting requirements regarding the tax offset provision and additional information that Recipients will report once the final rule goes into effect.

- a. Revenue-reducing Covered Changes: Collection began August 2021:
For each reporting year, a recipient must report the value of covered changes that the recipient predicts will have the effect of reducing tax revenue in a given reporting year (revenue-reducing covered changes), similar to the way it would in the ordinary course of its budgeting process. The value of these covered changes may be reported based on estimated values produced by a budget model, incorporating reasonable assumptions, that aligns with the recipient government's

²⁶ For more information on evidence-based tutoring programs, refer to the U.S. Department of Education's [2021 ED COVID-19 Handbook \(Volume 2\)](#), which summarizes research on evidence-based tutoring programs (see the bottom of page 20).



existing approach for measuring the effects of fiscal policies, and that measures relative to a current law baseline. The covered changes may also be reported based on actual values using a statistical methodology to isolate the change in year-over-year revenue attributable to the covered change(s), relative to the current law baseline prior to the change(s). Estimation approaches should not use dynamic methodologies that incorporate the projected effects of the policies on macroeconomic growth. In general, and where possible, reported values should be produced by the agency of the recipient government responsible for estimating the costs and effects of fiscal policy changes. Recipients must maintain records regarding the identification and predicted effects of revenue-reducing covered changes. The term "covered change," and "tax revenue" are described in the interim final rule, 31 CFR 35.3. For additional information, see 602(c)(2) of the Social Security Act, the interim final rule, and 31 CFR 35.8.

D. Distributions to NEUs

Each state and territory is asked to provide regular updates on their NEU distribution as well as their distributions to units of general local government within counties that are not units of general local government (Non-UGLG). The distribution template generally requests information on whether the local government has (1) received funding; (2) declined funding and requested a transfer to the state under Section 603(c)(4) of the Act; or (3) not taken action on its funding or declined funding.

For NEUs, states and territories should be prepared to report on their information, including the following:

- NEU name
- NEU DUNS or UEI number
- NEU Taxpayer Identification Number (TIN)
- NEU Recipient Number (a unique identification code for each NEU assigned by the State or territory to the NEU as part of the request for funding)
- NEU contact information (e.g., address, point of contact name, point of contact email address, and point of contact phone number)
- NEU authorized representative name and email address
- Initial allocation and, if applicable, subsequent allocation to the NEU (before application of the 75 percent cap)
- Total NEU reference budget (as submitted by the NEU to the State or territory as part of the request for funding)
- Amount of the initial and, if applicable, subsequent allocation above 75 percent of the NEU's reference budget which will be returned to Treasury
- Payment amount(s)
- Payment date(s)

States with "weak" minor civil divisions (i.e., Illinois, Indiana, Kansas, Missouri, Nebraska, North Dakota, Ohio, and South Dakota) should also list any minor civil divisions that the state deemed ineligible.

For each eligible NEU that declined funding and requested a transfer to the state under Section 603(c)(4), the state or territory must also attach a form signed by the NEU, as detailed in the [Guidance on Distributions of Funds to Non-Entitlement Units of Local Government](#).



Appendix 1: Expenditure Categories

Treasury's final rule provides greater flexibility and simplicity for recipients to fight the pandemic and support families and businesses struggling with its impacts, maintain vital services amid revenue shortfalls, and build a strong, resilient, and equitable recovery. As such, recipients will report on a broader set of eligible uses and associated Expenditure Categories ("EC"), starting with the April 2022 Project and Expenditure Report. The table below includes the new Expenditure Categories, as well as a reference to previous Expenditure Categories used for reporting under the interim final rule.

The Expenditure Categories (EC) listed below must be used to categorize each project as noted in Part 2 above. The term "Expenditure Category" refers to the detailed level (e.g., 1.1 COVID-19 Vaccination). When referred to as a category (e.g., EC 1) it includes all Expenditure Categories within that level.

*Denotes areas where recipients must identify the amount of the total funds that are allocated to evidence-based interventions (see Use of Evidence section above for details)

^Denotes areas where recipients must report on whether projects are primarily serving disproportionately impacted communities (see Project Demographic Distribution section above for details)

Expenditure Category	EC ²⁷	Previous EC ²⁸
1: Public Health		
COVID-19 Mitigation & Prevention		
COVID-19 Vaccination [^]	1.1	1.1
COVID-19 Testing [^]	1.2	1.2
COVID-19 Contact Tracing [^]	1.3	1.3
Prevention in Congregate Settings (Nursing Homes, Prisons/Jails, Dense Work Sites, Schools, Child care facilities, etc.) ^{*,^}	1.4	1.4
Personal Protective Equipment [^]	1.5	1.5
Medical Expenses (including Alternative Care Facilities) [^]	1.6	1.6
Other COVID-19 Public Health Expenses (including Communications, Enforcement, Isolation/Quarantine) [^]	1.7	1.8
COVID-19 Assistance to Small Businesses [^]	1.8	-
COVID 19 Assistance to Non-Profits [^]	1.9	-
COVID-19 Aid to Impacted Industries [^]	1.10	-
Community Violence Interventions		
Community Violence Interventions ^{*,^}	1.11	3.16
Behavioral Health		
Mental Health Services ^{*,^}	1.12	1.10
Substance Use Services ^{*,^}	1.13	1.11
Other		
Other Public Health Services [^]	1.14	1.12
Capital Investments or Physical Plant Changes to Public Facilities that respond to the COVID-19 public health emergency	-	1.7
2: Negative Economic Impacts		
Assistance to Households		
Household Assistance: Food Programs ^{*,^}	2.1	2.1
Household Assistance: Rent, Mortgage, and Utility Aid ^{*,^}	2.2	2.2
Household Assistance: Cash Transfers ^{*,^}	2.3	2.3

²⁷ Under the final rule to be used starting with April 2022 reports

²⁸ Under the interim final rule to be used in Interim Report and January 2022 Project and Expenditure Report



Expenditure Category	EC ²⁷	Previous EC ²⁸
Household Assistance: Internet Access Programs**^	2.4	2.4
Household Assistance: Paid Sick and Medical Leave^	2.5	-
Household Assistance: Health Insurance**^	2.6	-
Household Assistance: Services for Un/Unbanked**^	2.7	-
Household Assistance: Survivor's Benefits^	2.8	-
Unemployment Benefits or Cash Assistance to Unemployed Workers**^	2.9	2.6
Assistance to Unemployed or Underemployed Workers (e.g. job training, subsidized employment, employment supports or incentives)**^	2.10	2.7
Healthy Childhood Environments: Child Care**^	2.11	3.6
Healthy Childhood Environments: Home Visiting**^	2.12	3.7
Healthy Childhood Environments: Services to Foster Youth or Families Involved in Child Welfare System**^	2.13	3.8
Healthy Childhood Environments: Early Learning**^	2.14	3.1
Long-term Housing Security: Affordable Housing**^	2.15	3.10
Long-term Housing Security: Services for Unhoused Persons**^	2.16	3.11
Housing Support: Housing Vouchers and Relocation Assistance for Disproportionately Impacted Communities**^	2.17	-
Housing Support: Other Housing Assistance**^	2.18	3.12
Social Determinants of Health: Community Health Workers or Benefits Navigators**^	2.19	3.14
Social Determinants of Health: Lead Remediation**^	2.20	3.15
Medical Facilities for Disproportionately Impacted Communities^	2.21	-
Strong Healthy Communities: Neighborhood Features that Promote Health and Safety^	2.22	-
Strong Healthy Communities: Demolition and Rehabilitation of Properties^	2.23	-
Addressing Educational Disparities: Aid to High-Poverty Districts^	2.24	3.2
Addressing Educational Disparities: Academic, Social, and Emotional Services**^	2.25	3.3
Addressing Educational Disparities: Mental Health Services**^	2.26	3.4
Addressing Impacts of Lost Instructional Time^	2.27	-
Contributions to UI Trust Funds^	2.28	2.8
Assistance to Small Businesses		
Loans or Grants to Mitigate Financial Hardship^	2.29	2.9
Technical Assistance, Counseling, or Business Planning**^	2.30	
Rehabilitation of Commercial Properties or Other Improvements^	2.31	-
Business Incubators and Start-Up or Expansion Assistance**^	2.32	
Enhanced Support to Microbusinesses**^	2.33	
Assistance to Non-Profits		
Assistance to Impacted Nonprofit Organizations (Impacted or Disproportionately Impacted)^	2.34	2.10
Aid to Impacted Industries		
Aid to Tourism, Travel, or Hospitality^	2.35	2.11
Aid to Other Impacted Industries^	2.36	2.12
Other		
Economic Impact Assistance: Other**^	2.37	2.13
Household Assistance: Eviction Prevention**^	-	2.5
Education Assistance: Other**^	-	3.5
Healthy Childhood Environments: Other**^	-	3.9
Social Determinants of Health: Other**^	-	3.13



Expenditure Category	EC ²⁷	Previous EC ²⁸
3: Public Health-Negative Economic Impact: Public Sector Capacity		
General Provisions		
Public Sector Workforce: Payroll and Benefits for Public Health, Public Safety, or Human Services Workers	3.1	1.9
Public Sector Workforce: Rehiring Public Sector Staff	3.2	2.14
Public Sector Workforce: Other	3.3	-
Public Sector Capacity: Effective Service Delivery	3.4	7.2
Public Sector Capacity: Administrative Needs	3.5	-
4: Premium Pay		
Public Sector Employees	4.1	4.1
Private Sector: Grants to Other Employers	4.2	4.2
5: Infrastructure		
Water and Sewer		
Clean Water: Centralized Wastewater Treatment	5.1	5.1
Clean Water: Centralized Wastewater Collection and Conveyance	5.2	5.2
Clean Water: Decentralized Wastewater	5.3	5.3
Clean Water: Combined Sewer Overflows	5.4	5.4
Clean Water: Other Sewer Infrastructure	5.5	5.5
Clean Water: Stormwater	5.6	5.6
Clean Water: Energy Conservation	5.7	5.7
Clean Water: Water Conservation	5.8	5.8
Clean Water: Nonpoint Source	5.9	5.9
Drinking water: Treatment	5.10	5.10
Drinking water: Transmission & Distribution	5.11	5.11
Drinking water: Lead Remediation, including in Schools and Daycares	5.12	5.12
Drinking water: Source	5.13	5.13
Drinking water: Storage	5.14	5.14
Drinking water: Other water infrastructure	5.15	5.15
Water and Sewer: Private Wells	5.16	-
Water and Sewer: IIJA Bureau of Reclamation Match	5.17	-
Water and Sewer: Other	5.18	-
Broadband		
Broadband: "Last Mile" projects	5.19	5.16
Broadband: IIJA Match	5.20	-
Broadband: Other projects	5.21	5.17
6: Revenue Replacement		
Provision of Government Services	6.1	6.1
Non-federal Match for Other Federal Programs	6.2	-
7: Administrative		
Administrative Expenses	7.1	7.1
Transfers to Other Units of Government	7.2	7.3
Transfers to Non-entitlement Units (States and territories only)	-	7.4



Treasury has prepared the additional guidance below to support recipients in implementing the new expenditure categories. This table includes only those previous expenditure categories that are changing under the new structure, aligned with the final rule.

January 2022 Expenditure Categories		April 2022 Guidance
1: Public Health		
1.7	Capital Investments or Physical Plant Changes to Public Facilities that respond to the COVID-19 public health emergency	EC removed, capital expenditures can be designated in any relevant PH-NEI EC (e.g., new hospital wing would be tracked under EC 1.4)
1.8	Other COVID-19 Public Health Expenses (including Communications, Enforcement, Isolation/Quarantine)	EC is 1.7
1.9	Payroll Costs for Public Health, Safety, and Other Public Sector Staff Responding to COVID-19	EC is 3.1
1.10	Mental Health Services*	EC is 1.12
1.11	Substance Use Services*	EC is 1.13
1.12	Other Public Health Services	EC is 1.14
2: Negative Economic Impacts		
2.5	Household Assistance: Eviction Prevention	EC is now included as part of 2.2
2.6	Unemployment Benefits or Cash Assistance to Unemployed Workers*	EC is 2.9
2.7	Job Training Assistance (e.g., Sectoral job-training, Subsidized Employment, Employment Supports or Incentives)*^	EC is 2.10
2.8	Contributions to UI Trust Funds	EC is 2.28
2.9	Small Business Economic Assistance (General)*^	If public-health related (e.g., providing rapid tests for small businesses), EC is 1.8; if related to negative economic impact eligible use (e.g., grants, technical assistance, rehabilitation, incubators, or microbusinesses), EC is 2.29-2.33
2.10	Aid to Nonprofit Organizations*	If public-health related (e.g., providing rapid tests for non-profits), EC is 1.9; if related to negative economic impact (e.g., grants to stabilize non-profit budget), EC is 2.34
2.11	Aid to Tourism, Travel, or Hospitality	EC is 2.35
2.12	Aid to Other Impacted Industries	EC is 2.36
2.13	Other Economic Support**^	EC is 2.37, re-named Other Economic Impact
2.14	Rehiring Public Sector Staff	EC is 3.2
3: Services to Disproportionately Impacted Communities		
3.1	Education Assistance: Early Learning**^	EC is 2.14
3.2	Education Assistance: Aid to High-Poverty Districts ^	EC is 2.24
3.3	Education Assistance: Academic Services**^	EC is 2.25, social and emotional services will now be tracked under this EC
3.4	Education Assistance: Social, Emotional, and Mental Health Services**^	EC is 2.26, if social and emotional services, EC is 2.25;
3.5	Education Assistance: Other**^	EC is 2.37, collected under Other Economic Impact



January 2022 Expenditure Categories		April 2022 Guidance
3.6	Healthy Childhood Environments: Child Care**^	EC is 2.11
3.7	Healthy Childhood Environments: Home Visiting**^	EC is 2.12
3.8	Healthy Childhood Environments: Services to Foster Youth or Families Involved in Child Welfare System**^	EC is 2.13
3.9	Healthy Childhood Environments: Other**^	EC is 2.37, collected under Other Economic Impact
3.10	Housing Support: Affordable Housing**^	EC is 2.15
3.11	Housing Support: Services for Unhoused Persons**^	EC is 2.16
3.12	Housing Support: Other Housing Assistance**^	EC is 2.18
3.13	Social Determinants of Health: Other**^	EC is 2.37, collected under Other Economic Impact
3.14	Social Determinants of Health: Community Health Workers or Benefits Navigators**^	EC is 2.19
3.15	Social Determinants of Health: Lead Remediation^	EC is 2.20
3.16	Social Determinants of Health: Community Violence Interventions**^	EC is 1.11
5: Infrastructure		
5.16	Broadband: "Last Mile" projects	EC is 5.19
5.17	Broadband: Other projects	EC is 5.20
7: Administrative		
7.2	Evaluation and Data Analysis	EC is 3.4 and has been renamed Effective Service Delivery
7.3	Transfers to Other Units of Government	EC is 7.2
7.4	Transfers to Non-entitlement Units (States and territories only)	To be separately reported as part of NEU/Non-UGLG module. Refer to Part 2 Section D.



Appendix 2: Evidenced-Based Intervention Additional Information

What is evidence-based?

For the purposes of the SLFRF, with the exception of investments in educational services (see additional information below), evidence-based refers to interventions with strong or moderate evidence as defined below:

Strong evidence means that the evidence base can support causal conclusions for the specific program proposed by the applicant with the highest level of confidence. This consists of one or more well-designed and well-implemented experimental studies conducted on the proposed program with positive findings on one or more intended outcomes.

Moderate evidence means that there is a reasonably developed evidence base that can support causal conclusions. The evidence base consists of one or more quasi-experimental studies with positive findings on one or more intended outcomes OR two or more non-experimental studies with positive findings on one or more intended outcomes. Examples of research that meet the standards include: well-designed and well-implemented quasi-experimental studies that compare outcomes between the group receiving the intervention and a matched comparison group (i.e., a similar population that does not receive the intervention).

Preliminary evidence means that the evidence base can support conclusions about the program's contribution to observed outcomes. The evidence base consists of at least one non-experimental study. A study that demonstrates improvement in program beneficiaries over time on one or more intended outcomes OR an implementation (process evaluation) study used to learn and improve program operations would constitute preliminary evidence. Examples of research that meet the standards include: (1) outcome studies that track program beneficiaries through a service pipeline and measure beneficiaries' responses at the end of the program; and (2) pre- and post-test research that determines whether beneficiaries have improved on an intended outcome.

For investments in educational services, "evidence-based", consistent with the American Rescue Plan Act, has the meaning in section 8101(21) of the Elementary and Secondary Education Act of 1965, as amended (20 U.S.C. 6301 *et seq.*). Please see page 16 of this [Frequently Asked Questions resource](#) on the Department of Education's Elementary and Secondary School Emergency Relief Programs and Governor's Emergency Education Relief Programs for more information.

**Appendix 3: Expenditure Categories under the Interim Final Rule**

1: Public Health	
1.1	COVID-19 Vaccination ^
1.2	COVID-19 Testing ^
1.3	COVID-19 Contact Tracing
1.4	Prevention in Congregate Settings (Nursing Homes, Prisons/Jails, Dense Work Sites, Schools, etc.)*
1.5	Personal Protective Equipment
1.6	Medical Expenses (including Alternative Care Facilities)
1.7	Capital Investments or Physical Plant Changes to Public Facilities that respond to the COVID-19 public health emergency
1.8	Other COVID-19 Public Health Expenses (including Communications, Enforcement, Isolation/Quarantine)
1.9	Payroll Costs for Public Health, Safety, and Other Public Sector Staff Responding to COVID-19
1.10	Mental Health Services*
1.11	Substance Use Services*
1.12	Other Public Health Services
2: Negative Economic Impacts	
2.1	Household Assistance: Food Programs* ^
2.2	Household Assistance: Rent, Mortgage, and Utility Aid* ^
2.3	Household Assistance: Cash Transfers* ^
2.4	Household Assistance: Internet Access Programs* ^
2.5	Household Assistance: Eviction Prevention* ^
2.6	Unemployment Benefits or Cash Assistance to Unemployed Workers*
2.7	Job Training Assistance (e.g., Sectoral job-training, Subsidized Employment, Employment Supports or Incentives)* ^
2.8	Contributions to UI Trust Funds
2.9	Small Business Economic Assistance (General)* ^
2.10	Aid to Nonprofit Organizations*
2.11	Aid to Tourism, Travel, or Hospitality
2.12	Aid to Other Impacted Industries
2.13	Other Economic Support* ^
2.14	Rehiring Public Sector Staff
3: Services to Disproportionately Impacted Communities	
3.1	Education Assistance: Early Learning* ^
3.2	Education Assistance: Aid to High-Poverty Districts ^
3.3	Education Assistance: Academic Services* ^
3.4	Education Assistance: Social, Emotional, and Mental Health Services* ^
3.5	Education Assistance: Other* ^
3.6	Healthy Childhood Environments: Child Care* ^
3.7	Healthy Childhood Environments: Home Visiting* ^
3.8	Healthy Childhood Environments: Services to Foster Youth or Families Involved in Child Welfare System* ^
3.9	Healthy Childhood Environments: Other* ^
3.10	Housing Support: Affordable Housing* ^
3.11	Housing Support: Services for Unhoused Persons* ^



3.12	Housing Support: Other Housing Assistance* ^
3.13	Social Determinants of Health: Other* ^
3.14	Social Determinants of Health: Community Health Workers or Benefits Navigators* ^
3.15	Social Determinants of Health: Lead Remediation ^
3.16	Social Determinants of Health: Community Violence Interventions* ^
4: Premium Pay	
4.1	Public Sector Employees
4.2	Private Sector: Grants to Other Employers
5: Infrastructure	
5.1	Clean Water: Centralized Wastewater Treatment
5.2	Clean Water: Centralized Wastewater Collection and Conveyance
5.3	Clean Water: Decentralized Wastewater
5.4	Clean Water: Combined Sewer Overflows
5.5	Clean Water: Other Sewer Infrastructure
5.6	Clean Water: Stormwater
5.7	Clean Water: Energy Conservation
5.8	Clean Water: Water Conservation
5.9	Clean Water: Nonpoint Source
5.10	Drinking water: Treatment
5.11	Drinking water: Transmission & Distribution
5.12	Drinking water: Transmission & Distribution: Lead Remediation
5.13	Drinking water: Source
5.14	Drinking water: Storage
5.15	Drinking water: Other water infrastructure
5.16	Broadband: "Last Mile" projects
5.17	Broadband: Other projects
6: Revenue Replacement	
6.1	Provision of Government Services
7: Administrative	
7.1	Administrative Expenses
7.2	Evaluation and Data Analysis
7.3	Transfers to Other Units of Government
7.4	Transfers to Non-entitlement Units (States and territories only)

**Revision Log**

Version	Date Published	Summary of changes
1.0	June 17, 2021	Initial publication
1.1	June 24, 2021	- Pg. 12, removed references to “summary” level with respect to reporting by Expenditure Categories in the Interim Report to avoid confusion. - Pg. 13, revised the coverage period end date for the Interim Report from June 30, 2021 to July 31, 2021 to align with the IFR. - Pg. 13, removed references to “summary” level with respect to reporting by Expenditure Categories in the Interim Report to avoid confusion. - Pg. 31, removed references to “summary level” with respect to Expenditure Categories in Appendix 1 to avoid confusion.
1.1	September 30, 2021	Announced the extension in the Project and Expenditure Report submission date, originally due on October 31, 2021.
2.0	November 5, 2021	- Updated Subrecipient Monitoring section to clarify beneficiaries and recipients. - Updated references to Interim Final Rule comment period as comment period is closed. - Updated reporting tiers, thresholds and timelines in Part 2 Table 2, Reporting Requirements by recipient type, as well as Part 2 A and Part 2 B. - Updated reporting periods for Interim Report and Project and Expenditure reports. - Added concept of Adopted Budget to Project and Expenditure Report data fields. - Noted phase in of Required Programmatic Data in the Project and Expenditure Report. - Removed certain data fields from the Ineligible Activities: Tax Offset Provision under the Recovery Plan. - Separated reporting of NEU Distributions (for States and territories) from the Interim Report and Project and Expenditure Reports as information will be provided on an ongoing basis.
2.1	November 15, 2021	Updated pages 9 and 11 to note that civil rights certification is not applicable to Tribal Governments.
3.0	February 28, 2022	Updated to incorporate reporting updates under the final rule

ATTACHMENT D

SCOPE OF WORK

The Board of County Commissioners is directing to provide the Recipient a total sum not to exceed \$185,950 of ARPA Funds, of which \$150,000 may be used by the Recipient to fund the pre-construction costs of a new storage facility and \$35,950 may be used by the Recipient for staff salaries, wages and benefits.

Expenses under this grant must meet the eligibility criteria outlined below:

1. Eligible Costs

Pre-Construction Costs

Funds totaling up to \$150,000 are to be used for pre-construction costs of the new storage facility at 154 W Alder St, the vacant lot adjacent to the current food bank to be incurred from March 1, 2020 thru December 31, 2024.

Pre-construction costs may include:

- Architectural work to design a 3,000 sq. ft. facility to be used for the dry and cold food storage;
- Surveying;
- Contracting; and
- Permitting

Staffing Costs

Funds totaling up to \$35,950 may be used to reimburse for the incremental personnel costs incurred by the Recipient from March 1, 2020 thru December 31, 2024 as a result of the substantial increase in food assistance processed by the Recipient and the operational staffing changes made in response to the COVID-19 public health emergency, including:

These costs may include:

- Regular Salaries, Wages and Benefit costs for staff added during the pandemic

2. Program Funding and Award Amount

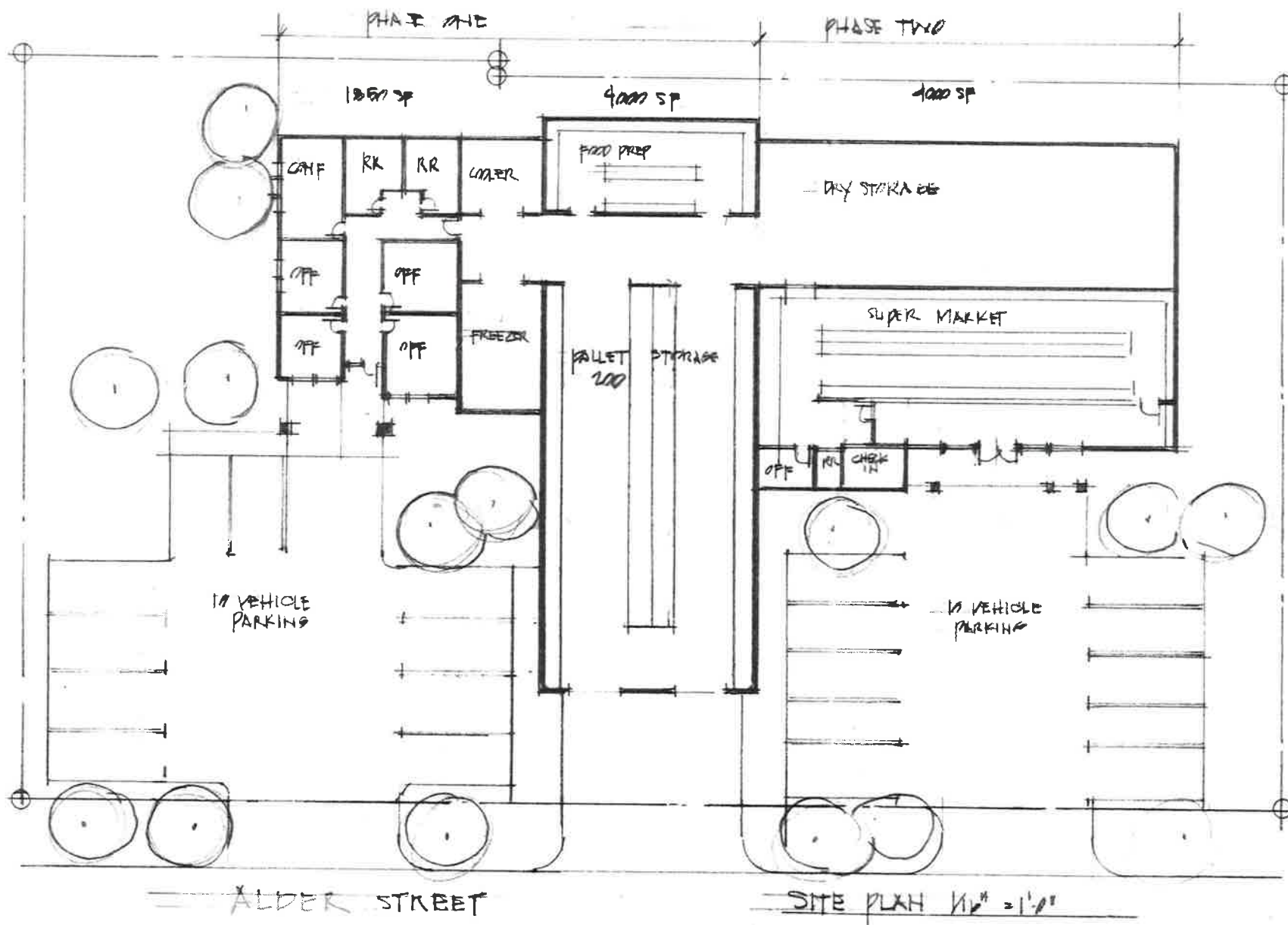
The County shall make \$185,950 of ARPA funds available under the IGA that will be paid to the Recipient on a reimbursement basis.

All funds are to be disbursed no later than December 31, 2024.

3. Reimbursement Process:

The ARPA funding will be provided via reimbursement to the Recipient upon its submission to the County of expenditure details, together with copies of invoices, payroll records, receipts and other supporting documentation for each expense for which reimbursement is requested, along with a signed certification by the Recipient that such expenses represent eligible expenses incurred by the Recipient based on the eligibility criteria outlined above and that such expenses have not been nor will be reimbursed under any other government or private entity program. The Recipient may only submit one request for Reimbursement per month.

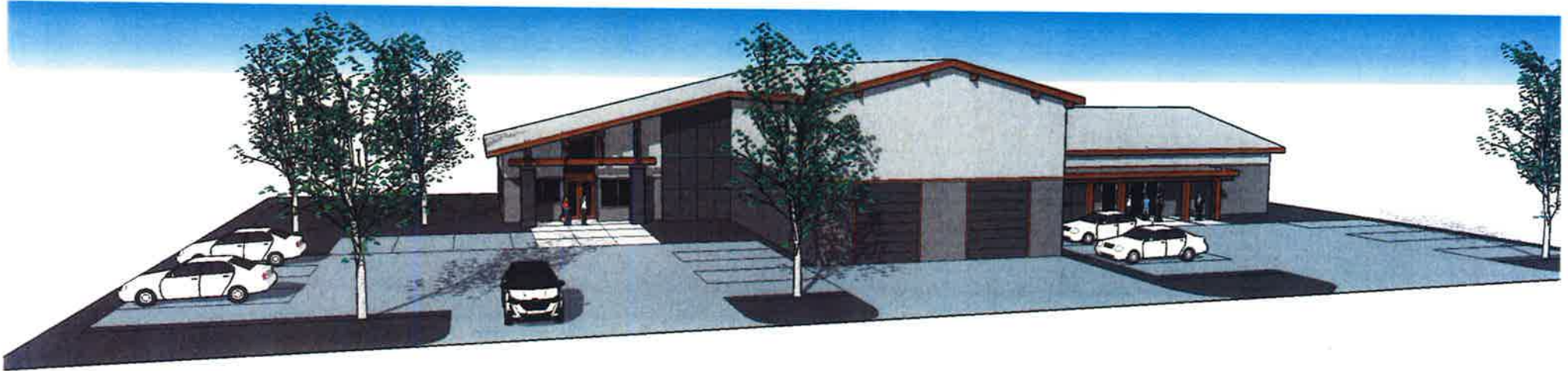
This shall ensure the eligibility of the expenditures consistent with the application requirements prior to payment.



2378
 REGISTERED
 ARCHITECT
 WILLIAM A. LINDBERG
 STATE OF WASHINGTON

PROPOSED NEW
 SEATTLE FOOD BANK

LINDBERG
 119 South Praborby Street, Suite 10
 Port Angeles, WA 98142







Current facility during distribution



Only permanent storage area



Temporary storage units



Temporary storage units



Temporary storage units





AGENDA ITEM SUMMARY

(Must be submitted NLT 3PM Wednesday for next week agenda)

2d
3/22/22

Department: Prosecuting Attorney's Office

WORK SESSION ☒ Meeting Date: 3/21/2022

REGULAR AGENDA ☒ Meeting Date: 3/22/2022

Required originals approved and attached? ☐
Will be provided on:

Item summary:

- | | | |
|---|---|--------------------------------------|
| ☐ Call for Hearing | ☒ Contract/Agreement/MOU - Contract # | |
| ☐ Resolution | ☐ Proclamation | ☐ Budget Item |
| ☐ Draft Ordinance | ☐ Final Ordinance | ☐ Other |

Documents exempt from public disclosure attached: ☐

Executive summary:

The One Washington Memorandum of Understanding between Washington Municipalities is a proposed allocation agreement to utilize in the distribution of Opioid Funds received from entities within the pharmaceutical supply chain as a result of opioid related litigation. A copy of the agreement is attached.

This MOU was discussed in Executive Session on March 8, 2022. No substantive changes to the agreement were made after the Executive Session.

Budgetary impact: (Is there a monetary impact? If so, are funds for this already allocated or is a budget change necessary? If this is a contract and a budget change is necessary, the budget change form must be submitted with the item at work session and for the regular agenda) **If a budget action is required, has it been submitted and a copy attached?** ☐
None.

Recommended action: (Does the Board need to act? If so, what is the department's recommendation?)

Consider the attached agreement and sign the agreement if supportive of the proposed allocation structure.

County Official signature & print name: Elizabeth Stanley, DPA

A handwritten signature in black ink, appearing to read "Elizabeth Stanley", written over a horizontal line.

Name of Employee/Stakeholder attending meeting: Elizabeth Stanley

Relevant Departments: BOCC, HHS, CCSO, Risk

Date submitted: 3/16/2022

* Work Session Meeting - Submit 1 single sided/not stapled copy
** Regular Meeting - Submit 1 single sided/not stapled copy and originals (1 or 3 copies)

ONE WASHINGTON MEMORANDUM OF UNDERSTANDING BETWEEN WASHINGTON MUNICIPALITIES

Whereas, the people of the State of Washington and its communities have been harmed by entities within the Pharmaceutical Supply Chain who manufacture, distribute, and dispense prescription opioids;

Whereas, certain Local Governments, through their elected representatives and counsel, are engaged in litigation seeking to hold these entities within the Pharmaceutical Supply Chain of prescription opioids accountable for the damage they have caused to the Local Governments;

Whereas, Local Governments and elected officials share a common desire to abate and alleviate the impacts of harms caused by these entities within the Pharmaceutical Supply Chain throughout the State of Washington, and strive to ensure that principals of equity and equitable service delivery are factors considered in the allocation and use of Opioid Funds; and

Whereas, certain Local Governments engaged in litigation and the other cities and counties in Washington desire to agree on a form of allocation for Opioid Funds they receive from entities within the Pharmaceutical Supply Chain.

Now therefore, the Local Governments enter into this Memorandum of Understanding (“MOU”) relating to the allocation and use of the proceeds of Settlements described.

A. Definitions

As used in this MOU:

1. “Allocation Regions” are the same geographic areas as the existing nine (9) Washington State Accountable Community of Health (ACH) Regions and have the purpose described in Section C below.
2. “Approved Purpose(s)” shall mean the strategies specified and set forth in the Opioid Abatement Strategies attached as Exhibit A.
3. “Effective Date” shall mean the date on which a court of competent jurisdiction, including any bankruptcy court, enters the first Settlement by order or consent decree. The Parties anticipate that more than one Settlement will be administered according to the terms of this MOU, but that the first entered Settlement will trigger allocation of Opioid Funds in accordance with Section B herein, and the formation of the Regional Abatement Advisory Councils in Section E.
4. “Litigating Local Government(s)” shall mean Local Governments that filed suit against any Pharmaceutical Supply Chain Participant pertaining to the Opioid epidemic prior to September 1, 2020.

5. “Local Government(s)” shall mean all counties, cities, and towns within the geographic boundaries of the State of Washington.

6. “National Settlement Agreements” means the national opioid settlement agreements dated July 21, 2021 involving Johnson & Johnson, and distributors AmerisourceBergen, Cardinal Health and McKesson as well as their subsidiaries, affiliates, officers, and directors named in the National Settlement Agreements, including all amendments thereto.

7. “Opioid Funds” shall mean monetary amounts obtained through a Settlement as defined in this MOU.

8. “Opioid Abatement Council” shall have the meaning described in Section C below.

9. “Participating Local Government(s)” shall mean all counties, cities, and towns within the geographic boundaries of the State that have chosen to sign on to this MOU. The Participating Local Governments may be referred to separately in this MOU as “Participating Counties” and “Participating Cities and Towns” (or “Participating Cities or Towns,” as appropriate) or “Parties.”

10. “Pharmaceutical Supply Chain” shall mean the process and channels through which controlled substances are manufactured, marketed, promoted, distributed, and/or dispensed, including prescription opioids.

11. “Pharmaceutical Supply Chain Participant” shall mean any entity that engages in or has engaged in the manufacture, marketing, promotion, distribution, and/or dispensing of a prescription opioid, including any entity that has assisted in any of the above.

12. “Qualified Settlement Fund Account,” or “QSF Account,” shall mean an account set up as a qualified settlement fund, 468b fund, as authorized by Treasury Regulations 1.468B-1(c) (26 CFR §1.468B-1).

13. “Regional Agreements” shall mean the understanding reached by the Participating Local Counties and Cities within an Allocation Region governing the allocation, management, distribution of Opioid Funds within that Allocation Region.

14. “Settlement” shall mean the future negotiated resolution of legal or equitable claims against a Pharmaceutical Supply Chain Participant when that resolution has been jointly entered into by the Participating Local Governments. “Settlement” expressly does not include a plan of reorganization confirmed under Title 11 of the United States Code, irrespective of the extent to which Participating Local Governments vote in favor of or otherwise support such plan of reorganization.

15. “Trustee” shall mean an independent trustee who shall be responsible for the ministerial task of releasing Opioid Funds that are in QSF account to Participating Local Governments as authorized herein and accounting for all payments into or out of the trust.

16. The “Washington State Accountable Communities of Health” or “ACH” shall mean the nine (9) regions described in Section C below.

B. Allocation of Settlement Proceeds for Approved Purposes

1. All Opioid Funds shall be held in a QSF and distributed by the Trustee, for the benefit of the Participating Local Governments, only in a manner consistent with this MOU. Distribution of Opioid Funds will be subject to the mechanisms for auditing and reporting set forth below to provide public accountability and transparency.

2. All Opioid Funds, regardless of allocation, shall be utilized pursuant to Approved Purposes as defined herein and set forth in Exhibit A. Compliance with this requirement shall be verified through reporting, as set out in this MOU.

3. The division of Opioid Funds shall first be allocated to Participating Counties based on the methodology utilized for the Negotiation Class in *In Re: National Prescription Opiate Litigation*, United States District Court for the Northern District of Ohio, Case No. 1:17-md-02804-DAP. The allocation model uses three equally weighted factors: (1) the amount of opioids shipped to the county; (2) the number of opioid deaths that occurred in that county; and (3) the number of people who suffer opioid use disorder in that county. The allocation percentages that result from application of this methodology are set forth in Exhibit B. In the event any county does not participate in this MOU, that county’s percentage share shall be reallocated proportionally amongst the Participating Counties by applying this same methodology to only the Participating Counties.

4. Allocation and distribution of Opioid Funds within each Participating County will be based on regional agreements as described in Section C.

C. Regional Agreements

1. For the purpose of this MOU, the regional structure for decision-making related to opioid fund allocation will be based upon the nine (9) pre-defined Washington State Accountable Community of Health Regions (Allocation Regions). Reference to these pre-defined regions is solely for the purpose of

drawing geographic boundaries to facilitate regional agreements for use of Opioid Funds. The Allocation Regions are as follows:

- King County (Single County Region)
- Pierce County (Single County Region)
- Olympic Community of Health Region (Clallam, Jefferson, and Kitsap Counties)
- Cascade Pacific Action Alliance Region (Cowlitz, Grays Harbor, Lewis, Mason, Pacific, Thurston, Lewis, and Wahkiakum Counties)
- North Sound Region (Island, San Juan, Skagit, Snohomish, and Whatcom Counties)
- SouthWest Region (Clark, Klickitat, and Skamania Counties)
- Greater Columbia Region (Asotin, Benton, Columbia, Franklin, Garfield, Kittitas, Walla Walla, Whitman, and Yakima Counties)
- Spokane Region (Adams, Ferry, Lincoln, Pend Oreille, Spokane, and Stevens Counties)
- North Central Region (Chelan, Douglas, Grant, and Okanogan Counties)

2. Opioid Funds will be allocated, distributed and managed within each Allocation Region, as determined by its Regional Agreement as set forth below. If an Allocation Region does not have a Regional Agreement enumerated in this MOU, the default mechanism for allocation, distribution and management of Opioid Funds described in Section C.4.a will apply.

3. King County's Regional Agreement is reflected in Exhibit C to this MOU.

4. All other Allocation Regions that have not specified in this MOU a methodology for allocating, distributing and managing Opioid Funds, will apply the following default methodology:

- a. Opioid Funds shall be allocated within each region by taking the allocation for a Participating County from Exhibit B and apportioning those funds between that Participating County and its Participating Cities and Towns. Exhibit B also sets forth the allocation to Participating Counties and the Participating Cities or Towns within the Counties based on a default allocation formula. As set forth above in B.3, to determine the allocation to a county, this formula utilizes: (1) the amount of opioids shipped to the county; (2) the number of opioid deaths that occurred in that county; and (3) the number of people who suffer opioid use disorder in that county. To determine the allocation within a county, the formula utilizes historical federal data showing how the specific Counties and the Cities and Towns within the Counties have made opioids epidemic-related expenditures in the past. This is the same methodology used in the National Settlement Agreements for county and intra-county allocations. A Participating County, and the Cities and Towns within it may enter into

a separate intra-county allocation agreement to modify how the Opioid Funds are allocated amongst themselves, provided the modification is in writing and agreed to by all Participating Local Governments in the County. Such an agreement shall not modify any of the other terms or requirements of this MOU.

b. 10% of the Opioid Funds received by the Region will be reserved, on an annual basis, for administrative costs related to the OAC. The OAC will provide an annual accounting for actual costs and any reserved funds that exceed actual costs will be reallocated to Participating Local Governments within the Region.

c. Cities and towns with a population of less than 10,000 shall be excluded from the allocation, with the exception of cities and towns that are Litigating Participating Local Governments. The portion of the Opioid Funds that would have been allocated to a city or town with a population of less than 10,000 that is not a Litigating Participating Local Government shall be redistributed to Participating Counties in the manner directed in C.4.a above.

d. Each Participating County, City, or Town may elect to have its share re-allocated to the OAC in which it is located. The OAC will then utilize this share for the benefit of Participating Local Governments within that Allocation Region, consistent with the Approved Purposes set forth in Exhibit A. A Participating Local Government's election to forego its allocation of Opioid Funds shall apply to all future allocations unless the Participating Local Government notifies its respective OAC otherwise. If a Participating Local Government elects to forego its allocation of the Opioid Funds, the Participating Local Government shall be excused from the reporting requirements set forth in this Agreement.

e. Participating Local Governments that receive a direct payment maintain full discretion over the use and distribution of their allocation of Opioid Funds, provided the Opioid Funds are used solely for Approved Purposes. Reasonable administrative costs for a Participating Local Government to administer its allocation of Opioid Funds shall not exceed actual costs or 10% of the Participating Local Government's allocation of Opioid Funds, whichever is less.

f. A Local Government that chooses not to become a Participating Local Government will not receive a direct allocation of Opioid Funds. The portion of the Opioid Funds that would have been allocated to a Local Government that is not a Participating Local Government shall be redistributed to Participating Counties in the manner directed in C.4.a above.

g. As a condition of receiving a direct payment, each Participating Local Government that receives a direct payment agrees to undertake the following actions:

- i. Developing a methodology for obtaining proposals for use of Opioid Funds.
- ii. Ensuring there is opportunity for community-based input on priorities for Opioid Fund programs and services.
- iii. Receiving and reviewing proposals for use of Opioid Funds for Approved Purposes.
- iv. Approving or denying proposals for use of Opioid Funds for Approved Purposes.
- v. Receiving funds from the Trustee for approved proposals and distributing the Opioid Funds to the recipient.
- vi. Reporting to the OAC and making publicly available all decisions on Opioid Fund allocation applications, distributions and expenditures.

h. Prior to any distribution of Opioid Funds within the Allocation Region, The Participating Local Governments must establish an Opioid Abatement Council (OAC) to oversee Opioid Fund allocation, distribution, expenditures and dispute resolution. The OAC may be a preexisting regional body or may be a new body created for purposes of executing the obligations of this MOU.

i. The OAC for each Allocation Region shall be composed of representation from both Participating Counties and Participating Towns or Cities within the Region. The method of selecting members, and the terms for which they will serve will be determined by the Allocation Region's Participating Local Governments. All persons who serve on the OAC must have work or educational experience pertaining to one or more Approved Uses.

j. The Regional OAC will be responsible for the following actions:

- i. Overseeing distribution of Opioid Funds from Participating Local Governments to programs and services within the Allocation Region for Approved Purposes.
- ii. Annual review of expenditure reports from Participating Local Jurisdictions within the Allocation

Region for compliance with Approved Purposes and the terms of this MOU and any Settlement.

- iii. In the case where Participating Local Governments chose to forego their allocation of Opioid Funds:
 - (i) Approving or denying proposals by Participating Local Governments or community groups to the OAC for use of Opioid Funds within the Allocation Region.
 - (ii) Directing the Trustee to distribute Opioid Funds for use by Participating Local Governments or community groups whose proposals are approved by the OAC.
 - (iii) Administrating and maintaining records of all OAC decisions and distributions of Opioid Funds.
- iv. Reporting and making publicly available all decisions on Opioid Fund allocation applications, distributions and expenditures by the OAC or directly by Participating Local Governments.
- v. Developing and maintaining a centralized public dashboard or other repository for the publication of expenditure data from any Participating Local Government that receives Opioid Funds, and for expenditures by the OAC in that Allocation Region, which it shall update at least annually.
- vi. If necessary, requiring and collecting additional outcome-related data from Participating Local Governments to evaluate the use of Opioid Funds, and all Participating Local Governments shall comply with such requirements.
- vii. Hearing complaints by Participating Local Governments within the Allocation Region regarding alleged failure to (1) use Opioid Funds for Approved Purposes or (2) comply with reporting requirements.

5. Participating Local Governments may agree and elect to share, pool, or collaborate with their respective allocation of Opioid Funds in any manner they choose, so long as such sharing, pooling, or collaboration is used for Approved Purposes and complies with the terms of this MOU and any Settlement.

6. Nothing in this MOU should alter or change any Participating Local Government's rights to pursue its own claim. Rather, the intent of this MOU is to join all parties who wish to be Participating Local Governments to agree upon an allocation formula for any Opioid Funds

from any future binding Settlement with one or more Pharmaceutical Supply Chain Participants for all Local Governments in the State of Washington.

7. If any Participating Local Government disputes the amount it receives from its allocation of Opioid Funds, the Participating Local Government shall alert its respective OAC within sixty (60) days of discovering the information underlying the dispute. Failure to alert its OAC within this time frame shall not constitute a waiver of the Participating Local Government's right to seek recoupment of any deficiency in its allocation of Opioid Funds.

8. If any OAC concludes that a Participating Local Government's expenditure of its allocation of Opioid Funds did not comply with the Approved Purposes listed in Exhibit A, or the terms of this MOU, or that the Participating Local Government otherwise misused its allocation of Opioid Funds, the OAC may take remedial action against the alleged offending Participating Local Government. Such remedial action is left to the discretion of the OAC and may include withholding future Opioid Funds owed to the offending Participating Local Government or requiring the offending Participating Local Government to reimburse improperly expended Opioid Funds back to the OAC to be re-allocated to the remaining Participating Local Governments within that Region.

9. All Participating Local Governments and OAC shall maintain all records related to the receipt and expenditure of Opioid Funds for no less than five (5) years and shall make such records available for review by any other Participating Local Government or OAC, or the public. Records requested by the public shall be produced in accordance with Washington's Public Records Act RCW 42.56.001 *et seq.* Records requested by another Participating Local Government or an OAC shall be produced within twenty-one (21) days of the date the record request was received. This requirement does not supplant any Participating Local Government or OAC's obligations under Washington's Public Records Act RCW 42.56.001 *et seq.*

D. Payment of Counsel and Litigation Expenses

1. The Litigating Local Governments have incurred attorneys' fees and litigation expenses relating to their prosecution of claims against the Pharmaceutical Supply Chain Participants, and this prosecution has inured to the benefit of all Participating Local Governments. Accordingly, a Washington Government Fee Fund ("GFF") shall be established that ensures that all Parties that receive Opioid Funds contribute to the payment of fees and expenses incurred to prosecute the claims against the Pharmaceutical Supply Chain Participants, regardless of whether they are litigating or non-litigating entities.

2. The amount of the GFF shall be based as follows: the funds to be deposited in the GFF shall be equal to 15% of the total cash value of the Opioid Funds.

3. The maximum percentage of any contingency fee agreement permitted for compensation shall be 15% of the portion of the Opioid Funds allocated to the Litigating Local Government that is a party to the contingency fee agreement, plus expenses attributable to that Litigating Local Government. Under no circumstances may counsel collect more for its work on behalf of a Litigating Local Government than it would under its contingency agreement with that Litigating Local Government.

4. Payments from the GFF shall be overseen by a committee (the “Opioid Fee and Expense Committee”) consisting of one representative of the following law firms: (a) Keller Rohrbach L.L.P.; (b) Hagens Berman Sobol Shapiro LLP; (c) Goldfarb & Huck Roth Riojas, PLLC; and (d) Napoli Shkolnik PLLC. The role of the Opioid Fee and Expense Committee shall be limited to ensuring that the GFF is administered in accordance with this Section.

5. In the event that settling Pharmaceutical Supply Chain Participants do not pay the fees and expenses of the Participating Local Governments directly at the time settlement is achieved, payments to counsel for Participating Local Governments shall be made from the GFF over not more than three years, with 50% paid within 12 months of the date of Settlement and 25% paid in each subsequent year, or at the time the total Settlement amount is paid to the Trustee by the Defendants, whichever is sooner.

6. Any funds remaining in the GFF in excess of: (i) the amounts needed to cover Litigating Local Governments’ private counsel’s representation agreements, and (ii) the amounts needed to cover the common benefit tax discussed in Section C.8 below (if not paid directly by the Defendants in connection with future settlement(s), shall revert to the Participating Local Governments *pro rata* according to the percentages set forth in Exhibits B, to be used for Approved Purposes as set forth herein and in Exhibit A.

7. In the event that funds in the GFF are not sufficient to pay all fees and expenses owed under this Section, payments to counsel for all Litigating Local Governments shall be reduced on a *pro rata* basis. The Litigating Local Governments will not be responsible for any of these reduced amounts.

8. The Parties anticipate that any Opioid Funds they receive will be subject to a common benefit “tax” imposed by the court in *In Re: National Prescription Opiate Litigation*, United States District Court for the Northern District of Ohio, Case No. 1:17-md-02804-DAP (“Common Benefit Tax”). If this occurs, the Participating Local Governments shall first seek to have the settling

defendants pay the Common Benefit Tax. If the settling defendants do not agree to pay the Common Benefit Tax, then the Common Benefit Tax shall be paid from the Opioid Funds and by both litigating and non-litigating Local Governments. This payment shall occur prior to allocation and distribution of funds to the Participating Local Governments. In the event that GFF is not fully exhausted to pay the Litigating Local Governments' private counsel's representation agreements, excess funds in the GFF shall be applied to pay the Common Benefit Tax (if any).

E. General Terms

1. If any Participating Local Government believes another Participating Local Government, not including the Regional Abatement Advisory Councils, violated the terms of this MOU, the alleging Participating Local Government may seek to enforce the terms of this MOU in the court in which any applicable Settlement(s) was entered, provided the alleging Participating Local Government first provides the alleged offending Participating Local Government notice of the alleged violation(s) and a reasonable opportunity to cure the alleged violation(s). In such an enforcement action, any alleging Participating Local Government or alleged offending Participating Local Government may be represented by their respective public entity in accordance with Washington law.

2. Nothing in this MOU shall be interpreted to waive the right of any Participating Local Government to seek judicial relief for conduct occurring outside the scope of this MOU that violates any Washington law. In such an action, the alleged offending Participating Local Government, including the Regional Abatement Advisory Councils, may be represented by their respective public entities in accordance with Washington law. In the event of a conflict, any Participating Local Government, including the Regional Abatement Advisory Councils and its Members, may seek outside representation to defend itself against such an action.

3. Venue for any legal action related to this MOU shall be in the court in which the Participating Local Government is located or in accordance with the court rules on venue in that jurisdiction. This provision is not intended to expand the court rules on venue.

4. This MOU may be executed in two or more counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument. The Participating Local Governments approve the use of electronic signatures for execution of this MOU. All use of electronic signatures shall be governed by the Uniform Electronic Transactions Act, C.R.S. §§ 24-71.3-101, *et seq.* The Parties agree not to deny the legal effect or enforceability of the MOU solely because it is in electronic form or because an electronic record was used in its formation. The Participating Local Government agree not to object to the admissibility of the MOU in the form of an electronic record, or a paper copy

of an electronic document, or a paper copy of a document bearing an electronic signature, on the grounds that it is an electronic record or electronic signature or that it is not in its original form or is not an original.

5. Each Participating Local Government represents that all procedures necessary to authorize such Participating Local Government's execution of this MOU have been performed and that the person signing for such Party has been authorized to execute the MOU.

[Remainder of Page Intentionally Left Blank – Signature Pages Follow]

This One Washington Memorandum of Understanding Between Washington Municipalities is signed this _____ day of _____, 2022 by:

Name & Title Mark Ozias, Chair

On behalf of Board of Commissioners of Clallam County

4894-0031-1574, v. 2



AGENDA ITEM SUMMARY

(Must be submitted NLT 3PM Wednesday for next week agenda)

2e
3/22/22

Department: Finance

WORK SESSION ☒ **Meeting Date:** **03/21/2022**

REGULAR AGENDA ☒ **Meeting Date:** **03/22/2022**

Required originals approved and attached? ☒
Will be provided on:

Item summary:

- | | |
|---|--|
| ☐ Call for Hearing | ☒ Contract/Agreement/MOU - Contract # 19961.21.002 |
| ☐ Resolution | ☐ Proclamation ☐ Budget Item |
| ☐ Draft Ordinance | ☐ Final Ordinance ☐ Other Monthly Review |

Documents exempt from public disclosure attached: ☐

ARPA SUBRECIPIENT AGREEMENT AMENDMENT 2—CLALLAM ECONOMIC DEVELOPMENT COUNCIL FOR PROVISION OF ECONOMIC ASSISTANCE GRANTS TO SMALL BUSINESSES AND NONPROFITS:

As reported by Commissioner Peach in his report to the BOCC during the March 8, 2022 BOCC meeting, the Clallam EDC Lifeboat 3 Grant Selection Committee completed its review and approval of 49 eligible applications received for the third and final round of Lifeboat 3 funding available under the ARPA Subrecipient Agreement between the County and Clallam EDC. Following the same scoring criteria/methodology used in the previous two rounds of the Lifeboat 3 program, the EDC Grant Selection Committee has proposed the awarding of \$643,916 of funds broken down as follows:

- Sequim—7 businesses totaling \$103,933;
- Port Angeles—10 businesses totaling \$108,525;
- County West End—10 businesses totaling \$143,000;
- Non-Profits—10 non-profits totaling \$140,000 (5 in Sequim for \$55k, 1 in Forks for \$20k, and 4 in PA for \$65k);
- Startup Businesses—12 businesses totaling \$148,458 (6 in PA for \$70k, 6 in Sequim for \$78.5k)

TOTAL PROPOSED ROUND 3 LIFEBOAT 3 GRANTS--\$643,916

On March 14, 2022, Clallam EDC submitted this final round of proposed grants for review by County staff. We anticipate completing this review and finalizing amounts to be distributed to EDC for awarding Round 3 funds based on confirmed eligible recipients by the end of March with funds expected to be distributed in early April.

* Work Session Meeting - Submit 1 single sided/not stapled copy Agenda Item Summary --ARPA Subrecipient Agreement Amendment 2-- EDC 03212022.docx

** Regular Meeting – Submit 1 single sided/not stapled copy and originals (1 or 3 copies)

Revised: 3-04-2019

To date, the County and EDC have distributed a total of \$2,541,936 of ARPA-funded Lifeboat 3 awards to recipients (including \$469,064 for child care service license exempt and non-license exempt providers), leaving \$388,064 remaining to fund this last round of Lifeboat 3. As a result, the amount of this third round of Lifeboat 3 proposed awards exceeds the amount of remaining funding available under the original ARPA Funding committed in this subrecipient agreement by **\$255,852**.

Consequently, the EDC and the EDC Lifeboat 3 Grant Selection Committee are requesting an additional allocation of ARPA funds to cover this funding shortfall. This request is being made in the interest of insuring consistency in grading of applications across all three rounds of funding, avoiding unfairly reducing award levels provided to Round 3 Lifeboat 3 recipients as compared to earlier rounds, avoiding penalizing applicants that had previously applied for funding but could not fully satisfy all eligibility criteria until Round 3, and to avoid turning away eligible recipients in need of this assistance due to insufficient funding being available, most of which have not received any funding assistance to date.

To respond to this request, attached for your review and approval is a second amendment to the ARPA Subrecipient Agreement for Small Business & Nonprofit Economic Assistance Grants with Clallam EDC which was executed by the County on August 10, 2021 and subsequently amended on December 21, 2021. This proposed amendment will accomplish the following:

- Increase the total committed ARPA funding for the EDC Lifeboat 3 program from \$3,000,000 to \$3,255,852, an increase of \$255,852;
- The amount allocated to child care provider small businesses, non-profits and special districts will be reduced from \$500,000 to \$469,064 to reflect the actual distribution of Lifeboat 3 child care provider funds awarded to all eligible applicants by EDC earlier this year, with the \$30,936 of unutilized child care-allotted funds being repurposed for this final round of Lifeboat 3 funding to non-child care small businesses and non-profits;
- EDC's compensation under this subrecipient will remain the same, capped at \$300,000. However, as a result of the total ARPA funding increase, EDC's indirect rate will be effectively decreasing from 10% to approximately 9.21%, thus requiring a minor change in the Attachment E—"Compensation" section of the original agreement.

All of other terms and conditions of the original agreement, as subsequently amended, are unchanged.

Budgetary impact: (Is there a monetary impact? If so, are funds for this already allocated or is a budget change necessary? If this is a contract and a budget change is necessary, the budget change form must be submitted with the item at work session and for the regular agenda) **If a budget action is required, has it been submitted and a copy attached?** ☐

No additional funds will be needed as sufficient budgeted funds exist within the ARPA special revenue fund's unanticipated services to cover this increase.

Recommended action: (Does the Board need to act? If so, what is the department's recommendation?)

* Work Session Meeting - Submit 1 single sided/not stapled copy Agenda Item Summary --ARPA Subrecipient Agreement Amendment 2-- EDC 03212022.docx

** Regular Meeting – Submit 1 single sided/not stapled copy and originals (1 or 3 copies)

Revised: 3-04-2019

We request the Commissioner's approval to execute this amendment during the 03/22/2022 BOCC meeting so that staff can proceed in releasing these additional funds requested once staff has completed its review of the Round 3 A-19 submission.

County Official signature & print name:  Mark Lane_____

Name of Employee/Stakeholder attending meeting: _____Mark Lane, Rich Meier, Chelsea Millar, Colleen McAleer (Clallam EDC)_____

Relevant Departments: ____Finance, BOCC_____

Date submitted:

March 16, 2022

* Work Session Meeting - Submit 1 single sided/not stapled copy Agenda Item Summary --ARPA Subrecipient Agreement Amendment 2-- EDC 03212022.docx

** Regular Meeting – Submit 1 single sided/not stapled copy and originals (1 or 3 copies)

Revised: 3-04-2019



ARPA SUBRECIPIENT AGREEMENT AMENDMENT #2

THIS AMENDMENT is entered into between CLALLAM COUNTY, a political subdivision of the State of Washington, (hereinafter called "County" or "Clallam County") and Clallam County Economic Development Council, an Associate Economic Development ("ADO") within Clallam County ("Subrecipient"), and changes the following attachments to the agreement entered into on August 10, 2021, as subsequently amended by Amendment 1 on December 21, 2021.

This Amendment is comprised of the text found on Attachment 1.

The term of this Amendment shall commence on the 15th day of March, 2022 and shall terminate as provided elsewhere in the Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement on this day of 20 .

SUBRECIPIENT

CLALLAM COUNTY BOARD OF COMMISSIONERS

Print name: Colleen McAleer

Mark Ozias, Chair

Title: Executive Director

Date: _____ 20

Originals: BOCC
Clallam EDC
Finance Department

THIS CONTRACT HAS BEEN APPROVED AS TO
FORM BY THE CLALLAM COUNTY PROSECUTING
ATTORNEY. APPROVED BY DEE BOUGHTON ON
03/16/2022

AMENDMENTS TO THE ORIGINAL AGREEMENT

Item 2, page 2, is amended to read as follows:

2. ARPA Funds. The County agrees to provide the Subrecipient a total sum not to exceed \$3,255,852 to be used for provision of small business and non-profit economic support grants, with \$469,064 to be specifically allocated for small businesses, nonprofits and special districts that provide child care services, and for reimbursement of the Subrecipient's indirect administrative costs as specified in Attachment E, conditioned on the requirement that such funds will be disbursed by the Subrecipient to eligible organizations no later than December 31, 2024 based on eligibility criteria outlined in Attachment D."

1st Paragraph, of Attachment D "Scope of Work" is amended to read as follows:

"The Board of Commissioners is directing up to \$3,255,852 to small business and non-profit relief using federal ARPA funding, of which \$469,064 is to be allocated specifically to small businesses, nonprofits and special districts that provide child care services in Clallam County, with the remaining \$2,786,788 allocated to (i) other eligible small businesses and nonprofits located in Clallam County whose operations and financial condition were adversely impacted by the COVID-19 public health emergency, including a reduction in revenues, increase in operating costs related to implementing COVID-19 prevention or mitigation tactics or due to other operating cost increases experienced during the pandemic, business disruption or closure, event cancellation, and/or other similar circumstances during the pandemic that created a financial hardship, and (ii) for reimbursement of the Subrecipient's indirect administrative costs as specified in Attachment E. These funds must be fully distributed by December 31, 2024. The intent of this grant is to provide economic support grants through the Lifeboat3 Program based on applicants meeting the eligible business and non-profit criteria outlined in Item 1 below."

Item #3 of Attachment D is amended to read as follows:

"3. Program Funding and Award Amount

The County shall make \$3,255,852 of ARPA funds available to the Lifeboat3 program that will be paid to CCEDC following receipt and approval of monthly A-19 equivalent reimbursement requests submitted by CCEDC detailing the small business and non-profit economic support grants to be disbursed by CCEDC based on eligible applications received, reviewed and certified by the Subrecipient as meeting the eligibility requirements herein until such ARPA funds are depleted. The amount of each economic support grant provided under the Lifeboat3 program shall range as follows:

- For Small Businesses and Non-Profits (Excluding Child Care Service Providers)--from \$5,000 up to a maximum of \$20,000;
- For Small Businesses, Non-Profits and Special Districts that provide Licensed, Non-Exempt Child Care services in Clallam County-- from \$5,000 up to a maximum of \$20,000;

- For Small Businesses, Non-Profits and Special Districts that provide Licensed, Exempt Child Care Services in Clallam County--from \$5,000 up to a maximum of \$60,000.

In the event that CCEDC identifies an applicant for which it believes an award in excess of the aforementioned award maximums is warranted based on the demonstrated severity of the negative economic impact sustained by the applicant due to the COVID public health emergency, the importance of the applicant's business/organization to the local economy of the County, the significance of mitigation actions taken by the applicant during the COVID pandemic for which no prior reimbursement funding was provided, and other relevant factors, the CCEDC may request approval of an award amount higher than the maximum from the County. Approval of such a request will be subject to the County receiving, reviewing and approving of sufficient additional justification and documentation to be provided by the CCEDC that supports the higher requested grant amount to be awarded.

All funds are to be disbursed no later than December 31, 2024."

Attachment E "Compensation" is amended to read as follows:

To achieve the elements outlined in Exhibit A: Scope of Work, CCEDC's compensation for its indirect administrative costs of the program during the contract period shall not exceed 9.21% of the ARPA funding provided to the Subrecipient and disbursed under the program, or up to \$300,000, with such compensation to be paid to the Subrecipient by the County as follows:

- 7.06%, or up to \$230,000, shall be paid from the County's Opportunity Fund, with the stipulation that such funds must be applied entirely toward financing the costs of personnel utilized by CCEDC in support of its operations including performance of its duties under this Agreement ; and
- 2.15%, or up to \$70,000, shall be paid from the ARPA funds paid to the Subrecipient by the County under this Agreement.

All other terms or conditions of the original Agreement as previously amended, not described or mentioned here remain unchanged and continue to have their full force and effect.



AGENDA ITEM SUMMARY

(Must be submitted NLT 3PM Wednesday for next week agenda)

3a
3/22/22

Department: BOCC

WORK SESSION ☒ Meeting Date: 3-14-22

REGULAR AGENDA ☒ Meeting Date: 3-22-22

Item summary:

☒ Call for Hearing

☐ Contract/Agreement/MOU - Contract #

☐ Resolution

☐ Proclamation

☐ Budget Item

☒ Draft Ordinance

☐ Final Ordinance

☐ Other

Executive summary:

Clallam County Has an affordable housing crisis. HB 1590 was enacted by the Washington State Legislature and the bill authorizes cities and counties to impose a sales and use tax up to 1/10th of 1% for affordable housing. The City of Port Angeles has already passed this tax. The estimated funds that would be generated from this tax are attached.

This tax by itself will only solve a small portion of the problem. However if this funding source is coupled with other funding including 1406, ARPA, Opportunity Fund, and matched with State funds such as the Housing Trust Fund, real progress can be made on this issue.

Finally, it is recommended that the newly proposed "Housing Solutions Committee" with a wide ranging interest in housing in both the public, nonprofit, and private sector be the recommending entity for the allocation of these funds. It is also recommended that the success of this funding be tracked and reviewed for ten years to measure the success of this program before reauthorizing this tax.

Budgetary impact: (Is there a monetary impact? If so, are funds for this already allocated or is a budget change necessary? If this is a contract and a budget change is necessary, the budget change form must be submitted with the item at work session and for the regular agenda) **If a budget action is required, has it been submitted and a copy attached?** ☐
None.

Recommended action: (Does the Board need to act? If so, what is the department's recommendation?)

Discussion and request a call for hearing to be held on Tuesday, April 5, 2022 regarding an Ordinance adding a Chapter to the Clallam County Code Titled Additional Sales and Use Tax – Housing and Related Services

County Official signature & print name: Loni Gores Loni Gores, Clerk

Name of Employee/Stakeholder attending meeting: Board of Commissioners, Prosecuting Attorney's Office

Relevant Departments: Board of Commissioners

Date submitted: 3-3-22

* Work Session Meeting - Submit 1 single sided/not stapled copy

** Regular Meeting – Submit 1 single sided/not stapled copy and originals (1 or 3 copies)

Affordable Housing sales and use tax 3-22-22

Revised: 3-04-2019

PUBLIC HEARING

An ordinance adding a Chapter to Clallam County Code Titled
Additional Sales and Use Tax – Housing and Related Services

NOTICE: The Clallam County Board of Commissioners will conduct a public hearing on Tuesday April 5, 2022 at 10:30 a.m., or as soon thereafter as possible in the Commissioners' Meeting Room of the Clallam County Courthouse, 223 East 4th Street, Room 160, Port Angeles, Washington. The public hearing is to consider the ordinance listed above. All proposed ordinances are available on the County website www.clallam.net or a free copy can be mailed to you upon request.

Public comments are encouraged. Submit written comments to the address below before the hearing or present comments in person at the public hearing.

In compliance with the Americans with Disabilities Act, reasonable accommodations are available upon request. The facility is considered "barrier free" and accessible to those with physical disabilities.

PROPOSER: Clallam County Board of Commissioners
223 East 4th Street, Suite 4
Port Angeles, WA 98362-3015
Telephone: 360.417.2233

FORMAL IDENTIFICATION: Ordinance Additional Sales and Use Tax – Housing and Related Services

SUMMARY OF PROPOSED CHANGES:

Section added – Additional sales and use tax – Housing and related services.
See copy of full Ordinance at: <http://www.clallam.net/bocc/drafts.html>

Publish: March 27, 2022

Bill: Board of Commissioners

Loni Gores, CMC, Clerk of the Board

Ordinance _____

An ordinance adding a Chapter to Clallam County Code Titled
Additional Sales and Use Tax – Housing and Related Services

BE IT ORDAINED BY THE BOARD OF CLALLAM COUNTY COMMISSIONERS:

Additional sales and use tax – Housing and related services, is added to read as follows:

Section .010 Tax Imposed. There is hereby imposed an additional sales and use tax, separate and apart from any other sales and use tax imposed by this title, upon every taxable event occurring in the county, to be used for housing and related services as authorized by RCW [82.14.530](#).

Section .020 Applicability of Tax. As used in this section, the term “taxable event” has the same meaning as in RCW [82.14.020](#)(3), as it now exists or may be amended.

Section .030 Rate of Tax. The rate of the sales and use tax imposed by this chapter shall be one-tenth of one percent of the selling price, in the case of a sales tax, or the value of the article used, in the case of a use tax.

Section .040 Administration and Collection. The tax shall be imposed upon and collected from those persons from whom the state sales tax or use tax is collected pursuant to Chapters [82.08](#) and [82.12](#) RCW.

Section .050 Use of Funds. Moneys collected from the tax shall be used solely for those housing and related services authorized by RCW [82.14.530](#), as it now exists or may be amended.

Section .060 Administration of Funds. The funds shall be collected in a Clallam County fund dedicated to affordable housing, and shall be administered by the board of county commissioners or the board’s designee.

ADOPTED this _____ day of _____ 2022

BOARD OF CLALLAM COUNTY COMMISSIONERS

Mark Ozias, Chair

Randy Johnson

ATTEST:

Loni Gores, CMC, Clerk of the Board

Bill Peach

Sales and use tax for housing and related services.

(1)(a)(i) A county legislative authority may submit an authorizing proposition to the county voters at a special or general election and, if the proposition is approved by a majority of persons voting, impose a sales and use tax in accordance with the terms of this chapter. The title of each ballot measure must clearly state the purposes for which the proposed sales and use tax will be used. The rate of tax under this section may not exceed one-tenth of one percent of the selling price in the case of a sales tax, or value of the article used, in the case of a use tax.

(ii) As an alternative to the authority provided in (a)(i) of this subsection, a county legislative authority may impose, without a proposition approved by a majority of persons voting, a sales and use tax in accordance with the terms of this chapter. The rate of tax under this section may not exceed one-tenth of one percent of the selling price in the case of a sales tax, or value of the article used, in the case of a use tax.

(b)(i) If a county does not impose the full tax rate authorized under (a) of this subsection by September 30, 2020, any city legislative authority located in that county may:

(A) Submit an authorizing proposition to the city voters at a special or general election and, if the proposition is approved by a majority of persons voting, impose the whole or remainder of the sales and use tax rate in accordance with the terms of this chapter. The title of each ballot measure must clearly state the purposes for which the proposed sales and use tax will be used; or

(B) Impose, without a proposition approved by a majority of persons voting, the whole or remainder of the sales and use tax rate in accordance with the terms of this chapter.

(ii) The rate of tax under this section may not exceed one-tenth of one percent of the selling price in the case of a sales tax, or value of the article used, in the case of a use tax.

(iii) A county with a population of greater than one million five hundred thousand may impose the tax authorized under (a)(ii) of this subsection only if the county plans to spend at least thirty percent of the moneys collected under this section that are attributable to taxable activities or events within any city with a population greater than sixty thousand located in that county within that city's boundaries.

(c) If a county imposes a tax authorized under (a) of this subsection after a city located in that county has imposed the tax authorized under (b) of this subsection, the county must provide a credit against its tax for the full amount of tax imposed by a city.

(d) The taxes authorized in this subsection are in addition to any other taxes authorized by law and must be collected from persons who are taxable by the state under chapters **82.08** and **82.12** RCW upon the occurrence of any taxable event within the county for a county's tax and within a city for a city's tax.

(2)(a) Notwithstanding subsection (4) of this section, a minimum of sixty percent of the moneys collected under this section must be used for the following purposes:

(i) Constructing or acquiring affordable housing, which may include emergency, transitional, and supportive housing and new units of affordable housing within an existing structure, and facilities providing housing-related services, or acquiring land for these purposes; or

(ii) Constructing or acquiring behavioral health-related facilities, or acquiring land for these purposes; or

(iii) Funding the operations and maintenance costs of new units of affordable housing and facilities where housing-related programs are provided, or newly constructed evaluation and treatment centers.

(b) The affordable housing and facilities providing housing-related programs in (a)(i) of this subsection may only be provided to persons within any of the following population groups whose income is at or below sixty percent of the median income of the county imposing the tax:

(i) Persons with behavioral health disabilities;

(ii) Veterans;

(iii) Senior citizens;

(iv) Persons who are homeless or at-risk of being homeless, including families with children;

(v) Unaccompanied homeless youth or young adults;

(vi) Persons with disabilities; or

(vii) Domestic violence survivors.

(c) The remainder of the moneys collected under this section must be used for the operation, delivery, or evaluation of behavioral health treatment programs and services or housing-related services.

(3)(a) A county that imposes the tax under this section must consult with a city before the county may construct or acquire any of the facilities authorized under subsection (2)(a) of this section within the city limits.

(b) Among other priorities, a county that acquires a facility under subsection (2)(a) of this section must provide an opportunity for 15 percent of the units provided at that facility to be provided to individuals who are living in or near the city in which the facility is located, or have ties to that community. The provisions of this subsection (3)(b) do not apply if the county is unable to identify sufficient individuals within the city in need of services that meet the criteria provided in subsection (2)(b) of this section. This prioritization must not jeopardize United States department of housing and urban development funding for the continuum of care program.

(4) A county that has not imposed the tax authorized under RCW 82.14.460 prior to October 9, 2015, but imposes the tax authorized under this section after a city in that county has imposed the tax authorized under RCW 82.14.460 prior to October 9, 2015, must enter into an interlocal agreement with that city to determine how the services and provisions described in subsection (2) of this section will be allocated and funded in the city.

(5) To carry out the purposes of subsection (2)(a) and (b) of this section, the legislative authority of the county or city imposing the tax has the authority to issue general obligation or revenue bonds within the limitations now or hereafter prescribed by the laws of this state, and may use, and is authorized to pledge, up to fifty percent of the moneys collected under this section for repayment of such bonds, in order to finance the provision or construction of affordable housing, facilities where housing-related programs are provided, or evaluation and treatment centers described in subsection (2)(a)(iii) of this section.

(6)(a) Moneys collected under this section may be used to offset reductions in state or federal funds for the purposes described in subsection (2) of this section.

(b) No more than ten percent of the moneys collected under this section may be used to supplant existing local funds.

[2021 c 27 § 1; 2020 c 222 § 1; 2015 3rd sp.s. c 24 § 701.]

NOTES:

Effective date—2021 c 27: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [April 14, 2021]." [2021 c 27 § 3.]

Construction—2015 3rd sp.s. c 24: See note following RCW 36.160.030.

Johnson, Randy

From: Lane, Mark
Sent: Thursday, February 17, 2022 3:55 PM
To: Johnson, Randy
Subject: HB1406 & HB1590
Attachments: HB1590 Affordable Housing Revenue Impact to Clallam County--20 Year Projection (Based on 2020-2021 data).xlsx

Hi Randy,

Here is a quick status recap of the **HB1406 Funds**:

Revenue (based on tax rates of .0146% for Unincorporated County, and .0073% for Cities of Sequim & Forks—0% for PA):

Actual Revenue—2021 from Affordable Housing Tax Credit -- \$148,935
Budgeted Revenue—2022 from Affordable and Supportive Housing Tax Credit --\$156,000

Reserves:

Available Funding at the end of January, 2022 \$317,375
Projected Ending Reserves—2022 \$461,810

HB1590—Sales & Use Tax .1%, amended RCW 82.14.530

--prior to 6/11/2020, this tax could only be enacted upon voter approval. However, following a legislative amendment made, voter approval is now option and the tax can now be approved by a County or city's legislative body with a simple majority vote.

-- Cities may not impose the tax if the County imposes the tax first.

Allowed Uses:

At least 60% of tax collected must be used for:

- Construction of affordable housing,
- Construction of mental and behavioral health-related facilities, or
- Funding the operations and maintenance costs of new affordable housing units and facilities where housing-related programs are provided, or newly constructed evaluation and treatment centers.
- Recipients of provided affordable housing must have income at or below 60% of County AMI and be:
 1. Persons with behavioral health disabilities
 2. Veterans
 3. Senior Citizens
 4. Homeless, or at-risk of being homeless, families with children
 5. Unaccompanied homeless youth or young adults
 6. Person with disabilities; or
 7. Domestic Violence Survivors

The remaining tax collected must be used for the operation, delivery, or evaluation of mental and behavioral health treatment programs and services or housing-related services. No more than 10% of the tax collected can be used to supplant existing local funds.

The County must coordinate with cities before building facilities within the city; and must enter into interlocal agreements with those cities that have imposed this tax. Also county must credit back the .1% tax to cities that have already adopted this tax (i.e. no double dip).

Per the RCW, the County's legislative authority imposing the tax has the authority to issue general obligation or revenue bonds and may pledge up to 50% of the taxes collected for repayment of such bonds in order to finance the provision or construction of affordable housing, facilities where housing-related programs are provided, or evaluation and treatment centers.

Cities within the County that have implemented the HB1590 sales tax include just the City of Port Angeles (effective 4/1/2020). Sequim and Forks have not implemented the tax.

In terms of the estimated tax revenue potential of this, please see the attached analysis for estimated tax impact if Clallam County imposed tax over a 20 year period using model similar to the one I developed for the HB1406 impact, updated for tax growth since that analysis was done. I have assumed the tax would commence on January 1, 2023 and that no tax is collected on PA city taxable sales (since we have to credit back to them the .1% they're already imposing), but have assumed the County imposes the .1% in the unincorporated parts of the County as well as the Cities of Forks and Sequim as it appears if the cities don't implement their own tax we have the ability to on their tax bases.

Let me know if you have any questions.

Mark Lane

Chief Financial Officer

Clallam County

223 E 4th St, Suite 4

Port Angeles, WA 98362

Ph 360-417-2383

Email: mlane@co.clallam.wa.us

Johnson, Randy

From: Gores, Alanna
Sent: Friday, March 04, 2022 2:00 PM
To: Johnson, Randy; Peach, Bill; Fleming, Holden; Winborn, Mary Ellen; Clark, Donella
Subject: FW: ADU updating

ADU comment received.

*Loni Gores
Clerk of the Board
Commissioners Office
223 East 4th Street, Suite 4
Port Angeles, WA 98362
Phone: 360-417-2256*

From: Ozias, Mark <mozias@co.clallam.wa.us>
Sent: Friday, March 4, 2022 2:00 PM
To: Ron Gilles <rgilles@olypen.com>
Cc: Gores, Alanna <agores@co.clallam.wa.us>
Subject: Re: ADU updating

Ron,

Thanks for writing; I have included the Clerk of the Board on this reply to ensure that all of the Commissioners have the chance to see your note.

One of the specific considerations we have asked DCD for additional analysis about relate to the impact of reducing the minimum size to 1.25 acres.

Sincerely,

Mark Ozias
Clallam County Commissioner

From: Ron Gilles <rgilles@olypen.com>
Sent: Friday, March 4, 2022 12:54 PM
To: Ozias, Mark
Cc: Clark, Donella
Subject: ADU updating

*** EXTERNAL EMAIL *** This message was sent from outside our County network.

Mark & Donella,

Just heard from Marguerite Glover at our MLS meeting about the County planning to update the ADU ordinance.

I would like to be able to send comments in for review. In addition, there are other brokers that would like to make comments too since we deal with a lot of land sales in the County.

So basis comments I have are as follows;

Would like to see if possible that the minimum acreage of 1.5 acres that an ADU is allowed be reduced to 1.00 acre because of the Affordable Housing issues we are facing here in Sequim & Port Angeles?

Would also like to see that a Park model type home be allowed if connected to the proper utilities like septic/sewer, water & power?

Also an RV or travel trailer if connected to the proper utilities like septic/sewer, water & power? We had to use our travel trailer for housing for friend of my wife Andrea to stay in for a week last year. Because she had a recent kidney transplant and the Covid issues going required isolation for her protection. So this important option to have available.

These are some of the main items on my list right now.

Thanks,

Ron Gilles

~~Designated Broker, GRI, CNE, ABR, CRS~~

Professional Real Estate

329 S. Sequim Avenue

Office 360.683.3564 -- Fax 360.683.3956

Cell 360.808.2242

ron@realestatesequim.com

Mailing

P.O. Box 607

Sequim, WA 98382

CLALLAM COUNTY
HB1590 AFFORDABLE HOUSING SALES TAX .1%
PROJECTED REVENUE TO CLALLAM COUNTY (2023-2042)

	2020	
TOTAL SALES BASE--CLALLAM COUNTY--UNINCORP	\$ 552,046,959	(PER DEPT OF REVENUE 2020 ANNUAL)
TOTAL SALES BASE--PORT ANGELES	\$ 440,884,224	(PER DEPT OF REVENUE 2020 ANNUAL)
TOTAL SALES BASE--SEQUIM	\$ 419,290,134	(PER DEPT OF REVENUE 2020 ANNUAL)
TOTAL SALES BASE--FORKS	\$ 72,703,696	(PER DEPT OF REVENUE 2020 ANNUAL)
TOTAL SALES BASE--CLALLAM COUNTY	\$ 1,484,925,013	(PER DEPT OF REVENUE 2020 ANNUAL)

COUNTY ESTIMATED REVENUE FROM HB1590--YEAR 1 (BASED ON TTM Q2 2021 SALES BASE)

	FULL YEAR--BASED Q2 2020
CLALLAM COUNTY--UNINCORP	0.1000% \$ 552,046.96
PORT ANGELES	0.0000% \$ -
SEQUIM	0.1000% \$ 419,290.13
FORKS	0.1000% \$ 72,703.70
TOTAL REVENUE TO THE COUNTY	\$ 1,044,040.79

ACTUAL SALES TAX GROWTH--2021 FOR COUNTY (BASED ON 2021 CLALLAM COUNTY .1% CD/MH SALES TAX GROWTH) 21.0%

HISTORIC 10 YEAR AVERAGE SALES TAX GROWTH--BY MUNICIPALITY (SEE "10 YR HISTORIC SALES TAX GROWTH" TAB):

TOTAL SALES BASE 10 YEAR AVG GROWTH--CLALLAM COUNTY--UNINCORP	9.52%
TOTAL SALES BASE 10 YEAR AVG GROWTH--PORT ANGELES	4.48%
TOTAL SALES BASE 10 YEAR AVG GROWTH--SEQUIM	6.15%
TOTAL SALES BASE 10 YEAR AVG GROWTH--FORKS	1.62%
TOTAL SALES BASE 10 YEAR AVG GROWTH--CLALLAM COUNTY	6.33%

ASSUMED TAX GROWTH RATE--2022-2039

CLALLAM COUNTY--UNINCORP	2.00%
PORT ANGELES	2.00%
SEQUIM	2.00%
FORKS	2.00%

ESTIMATED AFFORDABLE HOUSING REVENUE (PER RCW, AMOUNT CAPPED ANNUALLY BASED ON 2019 SALES BASE)

	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20
	2023	2024	2025	2026	2027	2028	2029	2030	2031	2032	2033	2034	2035	2036	2037	2038	2039	2040	2041	2042
ESTIMATED SALE BASE--BY JURISDICTION:																				
ESTIMATED TOTAL SALES BASE--CLALLAM COUNTY--UNINCORP	\$ 710,236,966	\$ 724,441,706	\$ 738,930,540	\$ 753,709,151	\$ 768,783,334	\$ 784,159,000	\$ 799,842,180	\$ 815,839,024	\$ 832,155,805	\$ 848,798,921	\$ 865,774,899	\$ 883,090,397	\$ 900,752,205	\$ 918,767,249	\$ 937,142,594	\$ 955,885,446	\$ 975,003,155	\$ 994,503,218	\$ 1,014,393,282	\$ 1,034,681,148
ESTIMATED TOTAL SALES BASE--PORT ANGELES	\$ 567,220,358	\$ 578,564,765	\$ 590,136,061	\$ 601,938,782	\$ 613,977,558	\$ 626,257,109	\$ 638,782,251	\$ 651,557,896	\$ 664,589,054	\$ 677,880,835	\$ 691,438,452	\$ 705,267,221	\$ 719,372,565	\$ 733,760,016	\$ 748,435,217	\$ 763,403,921	\$ 778,671,999	\$ 794,245,439	\$ 810,130,348	\$ 826,332,955
ESTIMATED TOTAL SALES BASE--SEQUIM	\$ 539,438,444	\$ 550,227,213	\$ 561,231,758	\$ 572,456,393	\$ 583,905,521	\$ 595,583,631	\$ 607,495,304	\$ 619,645,210	\$ 632,038,114	\$ 644,678,876	\$ 657,572,454	\$ 670,723,903	\$ 684,138,381	\$ 697,821,149	\$ 711,777,571	\$ 726,013,123	\$ 740,533,385	\$ 755,344,053	\$ 770,450,934	\$ 785,859,953
ESTIMATED TOTAL SALES BASE--FORKS	\$ 93,537,065	\$ 95,407,807	\$ 97,315,963	\$ 99,262,282	\$ 101,247,528	\$ 103,272,478	\$ 105,337,928	\$ 107,444,686	\$ 109,593,580	\$ 111,785,452	\$ 114,021,161	\$ 116,301,584	\$ 118,627,616	\$ 121,000,168	\$ 123,420,171	\$ 125,888,575	\$ 128,406,346	\$ 130,974,473	\$ 133,593,963	\$ 136,265,842
TOTAL ESTIMATED SALES BASE--CLALLAM COUNTY	\$ 1,910,432,835	\$ 1,948,643,517	\$ 1,987,616,349	\$ 2,027,368,638	\$ 2,067,915,972	\$ 2,109,274,252	\$ 2,151,459,699	\$ 2,194,488,854	\$ 2,238,378,592	\$ 2,283,146,125	\$ 2,328,809,009	\$ 2,375,385,150	\$ 2,422,892,815	\$ 2,471,350,632	\$ 2,520,777,605	\$ 2,571,193,119	\$ 2,622,616,942	\$ 2,675,069,242	\$ 2,728,570,587	\$ 2,783,141,960

AFFORDABLE HOUSING TAX RATE--BY JURISDICTION:

CLALLAM COUNTY--UNINCORP	0.1000%	0.1000%	0.1000%	0.1000%	0.1000%	0.1000%	0.1000%	0.1000%	0.1000%	0.1000%	0.1000%	0.1000%	0.1000%	0.1000%	0.1000%	0.1000%	0.1000%	0.1000%	0.1000%	0.1000%
PORT ANGELES	0.0000%	0.0000%	0.0000%	0.0000%	0.0000%	0.0000%	0.0000%	0.0000%	0.0000%	0.0000%	0.0000%	0.0000%	0.0000%	0.0000%	0.0000%	0.0000%	0.0000%	0.0000%	0.0000%	0.0000%
SEQUIM	0.1000%	0.1000%	0.1000%	0.1000%	0.1000%	0.1000%	0.1000%	0.1000%	0.1000%	0.1000%	0.1000%	0.1000%	0.1000%	0.1000%	0.1000%	0.1000%	0.1000%	0.1000%	0.1000%	0.1000%
FORKS	0.1000%	0.1000%	0.1000%	0.1000%	0.1000%	0.1000%	0.1000%	0.1000%	0.1000%	0.1000%	0.1000%	0.1000%	0.1000%	0.1000%	0.1000%	0.1000%	0.1000%	0.1000%	0.1000%	0.1000%

ESTIMATED AFFORDABLE HOUSE SALES TAX CREDIT REVENUE TO COUNTY:

CLALLAM COUNTY--UNINCORP	\$ 710,237	\$ 724,442	\$ 738,931	\$ 753,709	\$ 768,783	\$ 784,159	\$ 799,842	\$ 815,839	\$ 832,156	\$ 848,799	\$ 865,775	\$ 883,090	\$ 900,752	\$ 918,767	\$ 937,143	\$ 955,885	\$ 975,003	\$ 994,503	\$ 1,014,393	\$ 1,034,681
PORT ANGELES	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
SEQUIM	\$ 539,438	\$ 550,227	\$ 561,232	\$ 572,456	\$ 583,906	\$ 595,584	\$ 607,495	\$ 619,645	\$ 632,038	\$ 644,679	\$ 657,572	\$ 670,724	\$ 684,138	\$ 697,821	\$ 711,778	\$ 726,013	\$ 740,533	\$ 755,344	\$ 770,451	\$ 785,860
FORKS	\$ 93,537	\$ 95,408	\$ 97,316	\$ 99,262	\$ 101,248	\$ 103,272	\$ 105,338	\$ 107,445	\$ 109,594	\$ 111,785	\$ 114,021	\$ 116,302	\$ 118,628	\$ 121,000	\$ 123,420	\$ 125,889	\$ 128,406	\$ 130,974	\$ 133,594	\$ 136,266

TOTAL ESTIMATED AFFORDABLE HOUSING SALES TAX CREDIT REVENUE TO COUNTY	\$ 1,343,212	\$ 1,370,077	\$ 1,397,478	\$ 1,425,428	\$ 1,453,936	\$ 1,483,015	\$ 1,512,675	\$ 1,542,929	\$ 1,573,787	\$ 1,605,263	\$ 1,637,369	\$ 1,670,116	\$ 1,703,518	\$ 1,737,589	\$ 1,772,340	\$ 1,807,787	\$ 1,843,943	\$ 1,880,822	\$ 1,918,438	\$ 1,956,807
---	--------------	--------------	--------------	--------------	--------------	--------------	--------------	--------------	--------------	--------------	--------------	--------------	--------------	--------------	--------------	--------------	--------------	--------------	--------------	--------------

TOTAL AFFORDABLE SALES TAX REVENUE OVER 20 YEAR PERIOD

\$ 32,636,530

CLALLAM COUNTY
HB1590 AFFORDABLE HOUSING TAX CREDIT
HISTORIC SALES TAX GROWTH--10 YEARS (SOURCE: DEPT OF REVENUE)

	<u>2020</u>	<u>2019</u>	<u>2018</u>	<u>2017</u>	<u>2016</u>	<u>2015</u>	<u>2014</u>	<u>2013</u>	<u>2012</u>	<u>2011</u>
TOTAL SALES BASE--CLALLAM COUNTY--UNINCORP	\$ 552,046,959	\$ 513,852,859	\$ 469,529,885	\$ 438,895,620	\$ 396,757,024	\$ 370,454,337	\$ 338,732,560	\$ 327,503,156	\$ 287,188,489	\$ 282,802,332
TOTAL SALES BASE--PORT ANGELES	\$ 440,884,224	\$ 410,001,531	\$ 396,982,526	\$ 369,550,414	\$ 400,750,469	\$ 370,467,643	\$ 306,582,450	\$ 308,604,193	\$ 303,837,881	\$ 304,488,440
TOTAL SALES BASE--SEQUIM	\$ 419,290,134	\$ 416,985,369	\$ 395,878,966	\$ 354,864,549	\$ 316,766,361	\$ 297,913,593	\$ 277,333,247	\$ 261,972,372	\$ 251,329,145	\$ 259,665,849
TOTAL SALES BASE--FORKS	\$ 72,703,696	\$ 68,118,953	\$ 60,352,201	\$ 55,746,844	\$ 54,790,313	\$ 48,936,465	\$ 52,035,076	\$ 50,584,504	\$ 47,315,168	\$ 62,556,713
TOTAL SALES BASE--CLALLAM COUNTY	\$ 1,484,925,013	\$ 1,408,958,712	\$ 1,322,743,578	\$ 1,219,057,427	\$ 1,169,064,167	\$ 1,087,772,038	\$ 974,683,333	\$ 948,664,225	\$ 889,670,683	\$ 909,513,334
TOTAL SALES BASE ANNUAL GROWTH--CLALLAM COUNTY--UNINCORP	7.43%	9.44%	6.98%	10.62%	7.10%	9.36%	3.43%	14.04%	1.55%	
TOTAL SALES BASE ANNUAL GROWTH--PORT ANGELES	7.53%	3.28%	7.42%	-7.79%	8.17%	20.84%	-0.66%	1.57%	-0.21%	
TOTAL SALES BASE ANNUAL GROWTH--SEQUIM	0.55%	5.33%	11.56%	12.03%	6.33%	7.42%	5.86%	4.23%	-3.21%	
TOTAL SALES BASE ANNUAL GROWTH--FORKS	6.73%	12.87%	8.26%	1.75%	11.96%	-5.95%	2.87%	6.91%	-24.36%	
TOTAL SALES BASE ANNUAL GROWTH--CLALLAM COUNTY	5.39%	6.52%	8.51%	4.28%	7.47%	11.60%	2.74%	6.63%	-2.18%	

TOTAL SALES BASE 10 YEAR AVG GROWTH--CLALLAM COUNTY--UNINCORP	9.52%
TOTAL SALES BASE 10 YEAR AVG GROWTH--PORT ANGELES	4.48%
TOTAL SALES BASE 10 YEAR AVG GROWTH--SEQUIM	6.15%
TOTAL SALES BASE 10 YEAR AVG GROWTH--FORKS	1.62%
TOTAL SALES BASE 10 YEAR AVG GROWTH--CLALLAM COUNTY	6.33%

CLALLAM COUNTY
HB1590 AFFORDABLE HOUSING SALES TAX .1%
PROJECTED REVENUE TO CLALLAM COUNTY (2023-2042)

	2020	
TOTAL SALES BASE--CLALLAM COUNTY--UNINCORP	\$ 552,046,959	(PER DEPT OF REVENUE 2020 ANNUAL)
TOTAL SALES BASE--PORT ANGELES	\$ 440,884,224	(PER DEPT OF REVENUE 2020 ANNUAL)
TOTAL SALES BASE--SEQUIM	\$ 419,290,134	(PER DEPT OF REVENUE 2020 ANNUAL)
TOTAL SALES BASE--FORKS	\$ 72,703,696	(PER DEPT OF REVENUE 2020 ANNUAL)
TOTAL SALES BASE--CLALLAM COUNTY	\$ 1,484,925,013	(PER DEPT OF REVENUE 2020 ANNUAL)

COUNTY ESTIMATED REVENUE FROM HB1590--YEAR 1 (BASED ON TTM Q2 2021 SALES BASE)

		FULL YEAR-BASED
		Q4 2020
CLALLAM COUNTY--UNINCORP	0.1000%	\$ 552,046.96
PORT ANGELES	0.0000%	\$ -
SEQUIM	0.1000%	\$ 419,290.13
FORKS	0.1000%	\$ 72,703.70
TOTAL REVENUE TO THE COUNTY		\$ 1,044,040.79

ACTUAL SALES TAX GROWTH--2021 FOR COUNTY (BASED ON 2021 CLALLAM COUNTY .1% CD/MH SALES TAX GROWTH)

21.0%

HISTORIC 10 YEAR AVERAGE SALES TAX GROWTH--BY MUNICIPALITY (SEE "10 YR HISTORIC SALES TAX GROWTH" TAB):

TOTAL SALES BASE 10 YEAR AVG GROWTH--CLALLAM COUNTY--UNINCORP	9.52%
TOTAL SALES BASE 10 YEAR AVG GROWTH--PORT ANGELES	4.48%
TOTAL SALES BASE 10 YEAR AVG GROWTH--SEQUIM	6.15%
TOTAL SALES BASE 10 YEAR AVG GROWTH--FORKS	1.62%
TOTAL SALES BASE 10 YEAR AVG GROWTH--CLALLAM COUNTY	6.33%

ASSUMED TAX GROWTH RATE--2022-2039

CLALLAM COUNTY--UNINCORP	6.00%
PORT ANGELES	6.00%
SEQUIM	6.00%
FORKS	6.00%

ESTIMATED AFFORDABLE HOUSING REVENUE (PER RCW, AMOUNT CAPPED ANNUALLY BASED ON 2019 SALES BASE)

	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20
	2023	2024	2025	2026	2027	2028	2029	2030	2031	2032	2033	2034	2035	2036	2037	2038	2039	2040	2041	2042
ESTIMATED SALE BASE--BY JURISDICTION:																				
ESTIMATED TOTAL SALES BASE--CLALLAM COUNTY--UNINCORP	\$ 710,236,966	\$ 752,851,184	\$ 798,022,256	\$ 845,903,591	\$ 896,657,806	\$ 950,457,275	\$ 1,007,484,711	\$ 1,067,933,794	\$ 1,132,009,822	\$ 1,199,930,411	\$ 1,271,926,235	\$ 1,348,241,810	\$ 1,429,136,318	\$ 1,514,884,497	\$ 1,605,777,567	\$ 1,702,124,221	\$ 1,804,251,674	\$ 1,912,506,775	\$ 2,027,257,181	\$ 2,148,892,612
ESTIMATED TOTAL SALES BASE--PORT ANGELES	\$ 567,220,358	\$ 601,253,580	\$ 637,328,794	\$ 675,568,522	\$ 716,102,633	\$ 759,068,791	\$ 804,612,919	\$ 852,889,694	\$ 904,063,076	\$ 958,306,860	\$ 1,015,805,272	\$ 1,076,753,588	\$ 1,141,358,804	\$ 1,209,840,332	\$ 1,282,430,752	\$ 1,359,376,597	\$ 1,440,939,193	\$ 1,527,395,544	\$ 1,619,039,277	\$ 1,716,181,633
ESTIMATED TOTAL SALES BASE--SEQUIM	\$ 539,438,444	\$ 571,804,751	\$ 606,113,036	\$ 642,479,818	\$ 681,028,608	\$ 721,890,324	\$ 765,203,743	\$ 811,115,968	\$ 859,782,926	\$ 911,369,902	\$ 966,052,096	\$ 1,024,015,221	\$ 1,085,456,135	\$ 1,150,583,503	\$ 1,219,618,513	\$ 1,292,795,624	\$ 1,370,363,361	\$ 1,452,585,163	\$ 1,539,740,273	\$ 1,632,124,689
ESTIMATED TOTAL SALES BASE--FORKS	\$ 93,537,065	\$ 99,149,289	\$ 105,098,247	\$ 111,404,141	\$ 118,088,390	\$ 125,173,693	\$ 132,684,115	\$ 140,645,162	\$ 149,083,872	\$ 158,028,904	\$ 167,510,638	\$ 177,561,276	\$ 188,214,953	\$ 199,507,850	\$ 211,478,321	\$ 224,167,020	\$ 237,617,042	\$ 251,874,064	\$ 266,986,508	\$ 283,005,698
TOTAL ESTIMATED SALES BASE--CLALLAM COUNTY	\$ 1,910,432,835	\$ 2,025,060,831	\$ 2,146,564,361	\$ 2,275,358,103	\$ 2,411,879,469	\$ 2,556,592,118	\$ 2,709,987,525	\$ 2,872,586,656	\$ 3,044,941,735	\$ 3,227,638,119	\$ 3,421,296,285	\$ 3,626,573,942	\$ 3,844,168,257	\$ 4,074,818,232	\$ 4,319,307,205	\$ 4,578,465,516	\$ 4,853,173,326	\$ 5,144,363,604	\$ 5,453,025,299	\$ 5,780,206,695

AFFORDABLE HOUSING TAX RATE--BY JURISDICTION:

CLALLAM COUNTY--UNINCORP	0.1000%	0.1000%	0.1000%	0.1000%	0.1000%	0.1000%	0.1000%	0.1000%	0.1000%	0.1000%	0.1000%	0.1000%	0.1000%	0.1000%	0.1000%	0.1000%	0.1000%	0.1000%	0.1000%	0.1000%
PORT ANGELES	0.0000%	0.0000%	0.0000%	0.0000%	0.0000%	0.0000%	0.0000%	0.0000%	0.0000%	0.0000%	0.0000%	0.0000%	0.0000%	0.0000%	0.0000%	0.0000%	0.0000%	0.0000%	0.0000%	0.0000%
SEQUIM	0.1000%	0.1000%	0.1000%	0.1000%	0.1000%	0.1000%	0.1000%	0.1000%	0.1000%	0.1000%	0.1000%	0.1000%	0.1000%	0.1000%	0.1000%	0.1000%	0.1000%	0.1000%	0.1000%	0.1000%
FORKS	0.1000%	0.1000%	0.1000%	0.1000%	0.1000%	0.1000%	0.1000%	0.1000%	0.1000%	0.1000%	0.1000%	0.1000%	0.1000%	0.1000%	0.1000%	0.1000%	0.1000%	0.1000%	0.1000%	0.1000%

ESTIMATED AFFORDABLE HOUSE SALES TAX CREDIT REVENUE TO COUNTY:

CLALLAM COUNTY--UNINCORP	\$ 710,237	\$ 752,851	\$ 798,022	\$ 845,904	\$ 896,658	\$ 950,457	\$ 1,007,485	\$ 1,067,934	\$ 1,132,010	\$ 1,199,930	\$ 1,271,926	\$ 1,348,242	\$ 1,429,136	\$ 1,514,884	\$ 1,605,778	\$ 1,702,124	\$ 1,804,252	\$ 1,912,507	\$ 2,027,257	\$ 2,148,893
PORT ANGELES	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
SEQUIM	\$ 539,438	\$ 571,805	\$ 606,113	\$ 642,480	\$ 681,029	\$ 721,890	\$ 765,204	\$ 811,116	\$ 859,783	\$ 911,370	\$ 966,052	\$ 1,024,015	\$ 1,085,456	\$ 1,150,584	\$ 1,219,619	\$ 1,292,796	\$ 1,370,363	\$ 1,452,585	\$ 1,539,740	\$ 1,632,125
FORKS	\$ 93,537	\$ 99,149	\$ 105,098	\$ 111,404	\$ 118,088	\$ 125,174	\$ 132,684	\$ 140,645	\$ 149,084	\$ 158,029	\$ 167,511	\$ 177,561	\$ 188,215	\$ 199,508	\$ 211,478	\$ 224,167	\$ 237,617	\$ 251,874	\$ 266,987	\$ 283,006

TOTAL ESTIMATED AFFORDABLE HOUSING SALES TAX CREDIT REVENUE TO COUNTY	\$ 1,343,212	\$ 1,423,805	\$ 1,509,234	\$ 1,599,788	\$ 1,695,775	\$ 1,797,521	\$ 1,905,373	\$ 2,019,695	\$ 2,140,877	\$ 2,269,329	\$ 2,405,489	\$ 2,549,818	\$ 2,702,807	\$ 2,864,976	\$ 3,036,874	\$ 3,219,087	\$ 3,412,232	\$ 3,616,966	\$ 3,833,984	\$ 4,064,023
---	--------------	--------------	--------------	--------------	--------------	--------------	--------------	--------------	--------------	--------------	--------------	--------------	--------------	--------------	--------------	--------------	--------------	--------------	--------------	--------------

TOTAL AFFORDABLE SALES TAX REVENUE OVER 20 YEAR PERIOD

\$ 49,410,865



AGENDA ITEM SUMMARY

(Must be submitted NLT 3PM Wednesday for next week agenda)

36
3/22/22

Department: BOCC

WORK SESSION ☒ Meeting Date: 3/14/22

REGULAR AGENDA ☒ Meeting Date: 3/22/22

Item summary:

- | | | |
|--|--|--------------------------------------|
| ☐ Call for Hearing | ☐ Contract/Agreement/MOU - Contract # | |
| ☒ Resolution | ☐ Proclamation | ☐ Budget Item |
| ☐ Draft Ordinance | ☐ Final Ordinance | ☐ Other |

Documents exempt from public disclosure attached: ☐

Executive summary:

A vacancy exists on the Solid Waste Advisory Committee for the Clallam County Alternate Representative. Also, under Resolution 104, 2020 the position for Christy Cox was listed incorrectly.

Public Works/Roads Department endorses the appointment of David Hanna to the Solid Waste Advisory Committee.

Public Works/Roads Department approves of correcting the positions for Christy Cox to the At-large representative position.

Budgetary impact: (Is there a monetary impact? If so, are funds for this already allocated or is a budget change necessary? If this is a contract and a budget change is necessary, the budget change form must be submitted with the item at work session and for the regular agenda) **If a budget action is required, has it been submitted and a copy attached?** ☐

None

Recommended action: (Does the Board need to act? If so, what is the department's recommendation?)
Approve and sign a resolution to appoint and correct.

County Official signature & print name: Loni Gores Loni Gores, Clerk

Name of Employee/Stakeholder attending meeting: Board of Commissioners, Public Works/Roads

Relevant Departments: Board of Commissioners, Public Works

Date submitted: 3-4-22

* Work Session Meeting - Submit 1 single sided/not stapled copy
** Regular Meeting - Submit 1 single sided/not stapled copy and originals (1 or 3 copies)



RESOLUTION _____, 2022

APPOINTING A MEMBER and CORRECTING A MEMBER POSTION
ON THE SOLID WASTE ADVISORY COMMITTEE

THE BOARD OF CLALLAM COUNTY COMMISSIONERS finds as follows:

1. A vacancy exists on the Solid Waste Advisory Committee for the Clallam County Alternate representative.
2. Public Works/Roads Department endorses the appointment of David Hanna as the Clallam County Alternate representative.
3. Resolution 104, 2020 reappointed Christy Cox to the Agriculture Community Category Representative for a term ending December 31, 2023. The Resolution listed in incorrect position.
4. Public Works/Roads Department approves of correcting the position for Christy Cox to the At-large representative position.

NOW, THEREFORE, BE IT RESOLVED by the Clallam County Board of Commissioners, in consideration of the above findings of fact:

1. **David Hanna** is appointed as the Clallam County Alternate representative for a standing term.
2. **Christy Cox** is reappointed was the At-large representative for a term ending December 31, 2023.

PASSED AND ADOPTED this 22 day of March 2022

BOARD OF CLALLAM COUNTY COMMISSIONERS

Mark Ozias, Chair

ATTEST:

Randy Johnson

Loni Gores, CMC, Clerk of the Board

Bill Peach

A22.177
Appointee
Public Works



AGENDA ITEM SUMMARY

(Must be submitted NLT 3PM Wednesday for next week agenda)

30
3/22/22

Department: BOCC

WORK SESSION ☒ Meeting Date: 3/14/22

REGULAR AGENDA ☒ Meeting Date: 3/22/22

Item summary:

- | | | |
|--|--|--------------------------------------|
| ☐ Call for Hearing | ☐ Contract/Agreement/MOU - Contract # | |
| ☒ Resolution | ☐ Proclamation | ☐ Budget Item |
| ☐ Draft Ordinance | ☐ Final Ordinance | ☐ Other |

Documents exempt from public disclosure attached: ☐

Executive summary:

A vacancy exists on the Homelessness Task Force for the Health and Human Services Department Alternate representative.

The Health and Human Services Department Director endorses the appointment of Christine Dunn to the Homelessness Task Force.

Budgetary impact: (Is there a monetary impact? If so, are funds for this already allocated or is a budget change necessary? If this is a contract and a budget change is necessary, the budget change form must be submitted with the item at work session and for the regular agenda) **If a budget action is required, has it been submitted and a copy attached?** ☐
None

Recommended action: (Does the Board need to act? If so, what is the department's recommendation?)
Approve and sign a resolution to appoint.

County Official signature & print name: Loni Gores Loni Gores, Clerk

Name of Employee/Stakeholder attending meeting: Board of Commissioners, Health and Human Resources Department

Relevant Departments: Board of Commissioners, Health and Human Services Department

Date submitted: 3-9-22

* Work Session Meeting - Submit 1 single sided/not stapled copy
** Regular Meeting - Submit 1 single sided/not stapled copy and originals (1 or 3 copies)



RESOLUTION _____, 2022

APPOINTING A MEMBER TO THE HOMELESSNESS TASK FORCE

THE BOARD OF CLALLAM COUNTY COMMISSIONERS finds as follows:

1. A vacancy exists on the Homelessness Task Force for the Health and Human Services Department Alternate representative.
2. The Health and Human Services Department Director endorses the appointment of Christine Dunn to the Homelessness Task Force.

NOW, THEREFORE, BE IT RESOLVED by the Board of Clallam County Commissioners, in consideration of the above findings of fact:

1. **Christine Dunn** is appointed as the Health and Human Services Department Alternate representative for a term expiring December 31, 2024.

PASSED AND ADOPTED this 4th day of January 2022

BOARD OF CLALLAM COUNTY COMMISSIONERS

Mark Ozias, Chair

Randy Johnson

Bill Peach

ATTEST:

Loni Gores, CMC, Clerk of the Board

c: A22.50
Appointee(s)
HHS



AGENDA ITEM SUMMARY

(Must be submitted NLT 3PM Wednesday for next week agenda)

3d
3/22/22

Department: Prosecuting Attorney's Office

WORK SESSION ☒ **Meeting Date: 3/21/2022**

REGULAR AGENDA ☒ **Meeting Date: 3/22/2022**

Required originals approved and attached? ☐

Will be provided on:

Item summary:

- | | | |
|---|--|--|
| ☐ Call for Hearing | ☐ Contract/Agreement/MOU - Contract # | |
| ☐ Resolution | ☐ Proclamation | ☐ Budget Item |
| ☐ Draft Ordinance | ☐ Final Ordinance | ☒ Other – Litigation |

Documents exempt from public disclosure attached: ☐

Executive summary:

Clallam County is a creditor in the Mallinckrodt PLC Chapter 11 Bankruptcy as a result of the County's claims against Mallinckrodt relating to their role in the opioid crisis. Mallinckrodt proposed a Plan of Reorganization and on August 31, 2021, the BOCC voted to accept the plan. Clallam County's vote was entered into the record of the bankruptcy proceeding in US Federal Bankruptcy Court.

Mallinckrodt's Chapter 11 Plan of Reorganization was confirmed in the Bankruptcy Court on March 2, 2022, however the Plan cannot have its Effective Date until after an insolvency proceeding in Ireland has been completed.

The Irish Proceeding will allow Mallinckrodt, which is an Irish company, to reorganize in Ireland and make the changes necessary for it to perform the Chapter 11 Plan. A proposed "Scheme of Arrangement" (which is like a Chapter 11 Plan under the U.S. Bankruptcy Code) has now been filed in the Irish proceeding. The proposed Scheme of Arrangement incorporates, without any changes, the treatment of governmental and tribal creditors under Mallinckrodt's confirmed Chapter 11 Plan. A memorandum summarizing the Scheme of Arrangement is attached.

Clallam County is being asked to enter a vote approving or rejecting the Scheme of Arrangement.

Budgetary impact: (Is there a monetary impact? If so, are funds for this already allocated or is a budget change necessary? If this is a contract and a budget change is necessary, the budget change form must be submitted with the item at work session and for the regular agenda) **If a budget action is required, has it been submitted and a copy attached?** ☐
None.

Recommended action: (Does the Board need to act? If so, what is the department's recommendation?)
Approve or reject the Scheme of Arrangement.

* Work Session Meeting - Submit 1 single sided/not stapled copy

** Regular Meeting – Submit 1 single sided/not stapled copy and originals (1 or 3 copies)

Agenda Item Summary - Irish Proceeding
Revised: 3-04-2019

County Official signature & print name: Elizabeth Stanley, DPA



Name of Employee/Stakeholder attending meeting: Elizabeth Stanley

Relevant Departments: PAO, BOCC

Date submitted: 3/16/2022

* Work Session Meeting - Submit 1 single sided/not stapled copy

** Regular Meeting – Submit 1 single sided/not stapled copy and originals (1 or 3 copies)

Agenda Item Summary - Irish Proceeding

Revised: 3-04-2019

Questions? Call Loni Gores, Clerk of the Board, ext 2256

THE HIGH COURT

2022 No. 25 COS

IN THE MATTER OF

MALLINCKRODT PUBLIC LIMITED COMPANY

AND IN THE MATTER OF

PART 10 OF THE COMPANIES ACT 2014

EXPLANATORY MEMORANDUM TO ACCOMPANY EXAMINER'S PROPOSALS

Examinership

On 14 February 2022 (the **Fixed Date**) Mallinckrodt Public Limited Company (the **Company**) petitioned the High Court in Ireland (the **Irish Court**) for the appointment of an examiner pursuant to Part 10 of the Companies Act 2014 (the **Act**). By Order of the Court made on 14 February 2022, Michael McAteer of Grant Thornton, 13-18 City Quay, Dublin 2 was appointed examiner of the Company on an interim basis. By further Order of the Irish Court made on 28 February 2022, the Irish Court confirmed the examinership of the Company and appointed Mr McAteer as examiner to the Company. As a consequence of filing of the petition, the Company is under the protection of the Irish Court pursuant to Part 10 of the Act.

Explanatory Memorandum

This explanatory memorandum is prepared in compliance with section 540 (11) of the Act. This explanatory memorandum provides a summary of the Examiner's Proposals for a scheme of arrangement between the Company and its respective Members and Creditors (the **Irish Scheme**), and the effect on the various classes of Members and Creditors and should be read in conjunction with the Irish Scheme.

Capitalised terms used but not defined in this explanatory memorandum shall have the same meaning ascribed to them as in the Irish Scheme. In the event of any ambiguity or difference between the terms of this explanatory memorandum and the Irish Scheme, the terms of the Irish Scheme shall apply.

The Company

The Company is registered in Ireland under the Companies Act 2014 and is the ultimate parent company of the Mallinckrodt Group. The Company is a publicly owned pharmaceutical company and is a global leader in the development, manufacture, marketing and distribution of speciality pharmaceutical products and therapies.

The combination of the significant number of complex legal proceedings which the Mallinckrodt Group has had to defend in recent years, together with the impact of COVID-19, has had a severe impact on the balance sheet of both the Company and the Group and has detrimentally impacted the future viability of the Company.

Restructuring

The Company engaged with certain of its creditors regarding a possible restructuring of its debts. Following extensive negotiations, the Company, the Supporting Unsecured Noteholders and the Supporting Governmental Opioid Claimants entered into the Restructuring Support Agreement. Under the terms of the Restructuring Support Agreement, the Supporting Unsecured Noteholders and the Supporting Governmental Opioid Claimants have agreed, subject to the terms and conditions of the Restructuring Support Agreement, to support the restructuring of the Company's existing debt obligations through the Plan (under Chapter 11 of the Bankruptcy Code in the United States) and this examinership in Ireland.

The terms embodied in the Restructuring Support Agreement and the Plan and the various ancillary documents represent a global compromise that is in the best interests of the Company, Creditors, employees and other stakeholders. A copy of the Plan is available on the website of the Examiner's serving agent, Prime Clerk LLC (**Prime Clerk**).

The Company and certain other members of the Mallinckrodt Group filed a voluntary petition for relief under Chapter 11 of the Bankruptcy Code on 12 October 2020. Chapter 11 is the principal business reorganisation chapter of the Bankruptcy Code. Upon the filing of the petition, the Company was immediately afforded the benefits and became subject to the limitations of the Bankruptcy Code. The Company and certain of its subsidiaries have continued to operate their business in the ordinary course as they had been doing prior to the filing of the petitions.

The Plan, as amended, details the manner in which it is proposed the liabilities and the existing equity interests of the Company will be restructured in the context of the Chapter 11 Case.

The Plan was confirmed by the Bankruptcy Court on 2 March 2022. The Plan is conditional upon (among other things) the approval of the Irish Scheme by the Irish Court and the Irish Scheme having become effective in accordance with its terms or becoming effective concurrently with effectiveness of the Plan.

Meetings of Members and Creditors

Notice of meetings has been issued to all Members and Creditors of the Company in the classes whose interests will be impaired and unimpaired by the Irish Scheme (the **Meetings**). The Meetings will take place on 4 April 2022 between 1p.m. and 10p.m. GMT/8a.m. and 5p.m. EST.

Every Member and every Creditor is entitled to be represented in person or by proxy and to vote at any meeting of which it has received notice. Where any Member or Creditor wishes to be represented and/or vote by proxy at the relevant Meeting, a proxy must be submitted electronically through the online fillable form on the dedicated section of the online portal maintained by Prime Clerk before 4p.m.

GMT/11a.m. EST on 24 March 2022, or 31 March 2022, depending on the relevant class.

Care should be taken to execute the forms of proxy in accordance with the notes on the face of the proxy form.

It is not necessary to submit a proof of debt with a proxy form in order to vote at a meeting of creditors.

If a creditor has transferred its debt (or any part of it) before or after receipt of the Irish Scheme but prior to the meetings of the creditors, the notice of the meeting, the proxy forms, the Irish Scheme and this memorandum should be transmitted to the purchaser/transferee. The purchaser/transferee may request the transferring creditor to complete a proxy form on its behalf for the purpose of voting at the relevant meeting of creditors.

Pursuant to Part 10 of the Act, the Irish Scheme may be approved by the Irish Court and become binding on the Company and all of its Members and Creditors where the Irish Scheme has been approved by at least one impaired class of creditors by a simple majority in number representing a majority in value of those creditors voting in person or by proxy at a meeting.

Where the Irish Scheme is approved by the Irish Court, the Irish Court will fix a date upon which the Irish Scheme will become binding on the Company and all of its Members and Creditors, known as the **Effective Date**.

Class of Members

There is only one class of Members in the Company and the interests of the Members are being impaired pursuant to the terms of the Irish Scheme. The Members are the holders of the Existing Shares immediately prior to the Effective Date.

The Members shall receive no distribution on account of their holding of the Existing Shares under the Irish Scheme or under the Plan. On the Effective Date, the Existing Shares and all and any rights attaching or relating thereto will be cancelled.

Classes of Creditors

There are 34 classes of creditors of the Company as at the Fixed Date. The interests or claims of 5 classes of creditors are not being impaired pursuant to the terms of the Irish Scheme. The classes of unimpaired creditors are as follows:

1. Other Secured Claims;
2. First Lien Revolving Credit Facility Claims;
3. First Lien Notes Claims;
4. Relevant Administrative Claims; and
5. Preferential Claims

The interests or claims of 29 classes of creditors are being impaired pursuant to the terms of the Irish Scheme. The classes of impaired creditors are as follows:

1. 2024 First Lien Term Loan Claims;
2. 2025 First Lien Term Loan Claims;
3. Second Lien Notes Claims;
4. Guaranteed Unsecured Notes Claims;
5. Acthar Claims;
6. Generics Price Fixing Claims;
7. Asbestos Claims;
8. Environmental Claims;
9. Other General Unsecured Claims;
10. 4.75% Unsecured Notes Claims;
11. Trade Claims;
12. State Opioid Claims;
13. Municipal Opioid Claims;
14. Tribe Opioid Claims;
15. U.S. Government Opioid Claims;
16. Third-Party Payor Opioid Claims;
17. PI Opioid Claims;
18. NAS PI Opioid Claims;
19. Hospital Opioid Claims;
20. Ratepayer Opioid Claims;
21. NAS Monitoring Opioid Claims;
22. Emergency Room Physicians Opioid Claims;
23. Other Opioid Claims;
24. No Recovery Opioid Claims;
25. Released Co-Defendant Claims;
26. Settled Federal / State Acthar Claims;
27. Intercompany Claims;
28. Subordinated Claims; and
29. Unexercised Equity Interest Claims.

Other Secured Claims

The Holders of the Other Secured Claims against the Company are not impaired by the Irish Scheme and the Other Secured Claims will be treated in accordance with the terms of the Plan.

First Lien Revolving Credit Facility Claims

The Holders of the First Lien Revolving Credit Facility Claims against the Company are not impaired by the Irish Scheme and the First Lien Revolving Credit Facility Claims will be treated in accordance with the terms of the Plan.

First Lien Notes Claims

The Holders of the First Lien Notes Claims against the Company are not impaired by the Irish Scheme and the First Lien Notes Claims will be treated in accordance with the terms of the Plan.

Relevant Administrative Claims

The Holders of the Relevant Administrative Claims are not impaired by the Irish Scheme.

The Relevant Administrative Claims will be treated in accordance with the terms of the Plan (including, without limitation, Article II of the Plan).

Preferential Claims

The Holders of the Preferential Claims are not impaired by the Irish Scheme.

The Preferential Claims shall be paid in full when they fall due in the ordinary course.

2024 First Lien Term Loan Claims

The Holders of the 2024 First Lien Term Loan Claims are impaired by the Irish Scheme.

The 2024 First Lien Term Loan Claims against the Company shall be treated in accordance with the terms of the Plan (including, without limitation, Article III.B.2.b of the Plan) so that, as further set forth in the Plan, each Holder of the 2024 First Lien Term Loan Claims shall receive on the Effective Date, in full and final satisfaction, settlement, release, and discharge of such Claims, at the option of the Company, either:

- a. its Pro Rata Share of the New Takeback Term Loans attributable to the 2024 First Lien Term Loan Claims (which shall be issued in an amount equal to the 2024 First Lien Term Loans Outstanding Amount) **plus** repayment in full in Cash of its Pro Rata Share of the First Lien Term Loans Accrued and Unpaid Interest attributable to the 2024 First Lien Term Loan Claims **plus** its Pro Rata Share of the Term Loan Exit Payment attributable to the 2024 First Lien Term Loan Claims; or
- b. repayment of such Claims in full in Cash of its Pro Rata Share of an amount equal to the 2024 First Lien Term Loans Outstanding Amount **plus** repayment in full in Cash of its Pro Rata Share of the First Lien Term Loans Accrued and Unpaid Interest attributable to the 2024 First Lien Term Loan Claims **plus** its Pro Rata Share of the Term Loan Exit Payment attributable to the 2024 First Lien Term Loan Claims.

2025 First Lien Term Loan Claims

The Holders of the 2025 First Lien Term Loan Claims are impaired by the Irish Scheme.

The 2025 First Lien Term Loan Claims against the Company shall be treated in accordance with the terms of the Plan (including, without limitation, Article III.B.2.c of the Plan) so that, as further set forth in the Plan, each Holder of the 2025 First Lien Term Loan Claims shall receive on the Effective Date, in full and final satisfaction, settlement, release, and discharge of such Claims, at the option of the Company, either:

- a. its Pro Rata Share of the New Takeback Term Loans attributable to the 2025 First Lien Term Loan Claims (which shall be issued in an amount equal to the 2025 First Lien Term Loans Outstanding Amount) **plus** repayment in full in Cash of its Pro Rata Share of the First Lien Term Loans Accrued and Unpaid Interest attributable to the 2025 First Lien Term Loan Claims **plus** its Pro Rata Share of the Term Loan Exit Payment attributable to the 2025 First Lien Term Loan Claims; or
- b. repayment of such Claims in full in Cash of its Pro Rata Share of an amount equal to the 2025 First Lien Term Loans Outstanding Amount **plus** repayment in full in Cash of its Pro Rata Share of the First Lien Term Loans Accrued and Unpaid Interest attributable to the 2025 First Lien Term Loan Claims **plus** its Pro Rata Share of the Term Loan Exit Payment attributable to the 2025 First Lien Term Loan Claims.

Second Lien Notes Claims

The Holders of the Second Lien Notes Claims against the Company are impaired by the Irish Scheme.

Each Holder of the Second Lien Notes Claims shall receive on the Effective Date, in full and final satisfaction, settlement, release, and discharge of such Claims, its Pro Rata Share of (i) the New Second Lien Notes in accordance with the terms of the Plan (including, without limitation, Article III.B.4 of the Plan) and (ii) payment in cash of accrued and unpaid interest on the Second Lien Notes Claims.

Guaranteed Unsecured Notes Claims

The Holders of the Guaranteed Unsecured Notes Claims against the Company are impaired by the Irish Scheme.

Each Holder of a Guaranteed Unsecured Notes Claim shall in accordance with the terms of the Plan (including, without limitation, Article III.B.5 of the Plan) on the Effective Date (or as soon as practicable thereafter) receive its Pro Rata Share of (i) the Takeback Second Lien Notes; and (ii) 100% of New Mallinckrodt Ordinary Shares, subject to dilution on account of the New Opioid Warrants and the Management Incentive Plan, in exchange for full and final satisfaction, settlement, release, and discharge of each Guaranteed Unsecured Notes Claim.

Acthar Claims

The Holders of the Acthar Claims are impaired by the Irish Scheme.

Without prejudice to their rights pursuant to the Plan, the Holders of the Acthar Claims against the Company shall not receive any payment, dividend or other distribution pursuant to the Irish Scheme (save as provided for in the Plan) and, with effect from the Effective Date, the Acthar Claims against the Company shall be deemed to have been settled, discharged, waived, released and extinguished in full, and the Company shall cease to have any liability or obligation with respect to such Claims.

Generics Price Fixing Claims

The Holders of the Generics Price Fixing Claims are impaired by the Irish Scheme.

Without prejudice to their rights pursuant to the Plan, the Holders of the Generics Price Fixing Claims against the Company shall not receive any payment, dividend or other distribution pursuant to the Irish Scheme (save as provided for in the Plan) and, with effect from the Effective Date, the Generics Price Fixing Claims against the Company shall be deemed to have been settled, discharged, waived, released and extinguished in full, and the Company shall cease to have any liability or obligation with respect to such Claims.

Asbestos Claims

The Holders of the Asbestos Claims are impaired by the Irish Scheme.

Without prejudice to their rights pursuant to the Plan, the Holders of the Asbestos Claims against the Company shall not receive any payment, dividend or other distribution pursuant to the Irish Scheme (save as provided for in the Plan) and, with effect from the Effective Date, the Asbestos Claims against the Company shall be deemed to have been settled, discharged, waived, released and extinguished in full, and the Company shall cease to have any liability or obligation with respect to such Claims.

Environmental Claims

The Holders of the Environmental Claims are impaired by the Irish Scheme.

Without prejudice to their rights pursuant to the Plan, the Holders of the Environmental Claims against the Company shall not receive any payment, dividend or other distribution pursuant to the Irish Scheme (save as provided for in the Plan) and, with effect from the Effective Date, the Environmental Claims against the Company shall be deemed to have been settled, discharged, waived, released and extinguished in full, and the Company shall cease to have any liability or obligation with respect to such Claims.

Other General Unsecured Claims

The Holders of the Other General Unsecured Claims are impaired by the Irish Scheme.

Without prejudice to their rights pursuant to the Plan, the Holders of the Other General Unsecured Claims against the Company shall not receive any payment, dividend or other distribution pursuant to the Irish Scheme (save as provided for in the Plan) and, with effect from the Effective Date, the Other General Unsecured Claims against the Company shall be deemed to have been settled, discharged, waived, released and extinguished in full, and the Company shall cease to have any liability or obligation with respect to such Claims.

4.75% Unsecured Notes Claims

The Holders of the 4.75% Unsecured Notes Claims are impaired by the Irish Scheme.

Without prejudice to their rights pursuant to the Plan, the Holders of the 4.75% Unsecured Notes Claims against the Company shall not receive any payment, dividend or other distribution pursuant to the Irish Scheme (save as provided for in the Plan) and, with effect from the Effective Date, the 4.75% Unsecured Notes Claims against the Company shall be deemed to have been settled, discharged, waived, released and extinguished in full, and the Company shall cease to have any liability or obligation with respect to such Claims.

Trade Claims

The Holders of the Trade Claims are impaired by the Irish Scheme.

Without prejudice to their rights pursuant to the Plan, the Holders of the Trade Claims against the Company shall not receive any payment, dividend or other distribution pursuant to the Irish Scheme (save as provided for in the Plan) and, with effect from the Effective Date, the Trade Claims against the Company shall be deemed to have been settled, discharged, waived, released and extinguished in full, and the Company shall cease to have any liability or obligation with respect to such Claims.

State Opioid Claims

The Holders of the State Opioid Claims are impaired by the Irish Scheme.

Without prejudice to their rights pursuant to the Plan, the Holders of the State Opioid Claims against the Company shall not receive any payment, dividend or other distribution pursuant to the Irish Scheme (save as provided for in the Plan) and, with effect from the Effective Date, the State Opioid Claims against the Company shall be deemed to have been settled, discharged, waived, released and extinguished in full against the Company, and the Company shall cease to have any liability or obligation with respect to such Claims.

Municipal Opioid Claims

The Holders of the Municipal Opioid Claims are impaired by the Irish Scheme.

Without prejudice to their rights pursuant to the Plan, the Holders of the Municipal Opioid Claims against the Company shall not receive any payment, dividend or other distribution pursuant to the Irish Scheme (save as provided for in the Plan) and, with effect from the Effective Date, the Municipal Opioid Claims against the Company shall be deemed to have been settled, discharged, waived, released and extinguished in full against the Company, and the Company shall cease to have any liability or obligation with respect to such Claims.

Tribe Opioid Claims

The Holders of the Tribe Opioid Claims are impaired by the Irish Scheme.

Without prejudice to their rights pursuant to the Plan, the Holders of the Tribe Opioid Claims against the Company shall not receive any payment, dividend or other

distribution pursuant to the Irish Scheme (save as provided for in the Plan) and, with effect from the Effective Date, the Tribe Opioid Claims against the Company shall be deemed to have been settled, discharged, waived, released and extinguished in full against the Company, and the Company shall cease to have any liability or obligation with respect to such Claims.

U.S. Government Opioid Claims

The Holders of the U.S. Government Opioid Claims are impaired by the Irish Scheme.

Without prejudice to their rights pursuant to the Plan, the Holders of the U.S. Government Opioid Claims against the Company shall not receive any payment, dividend or other distribution pursuant to the Irish Scheme (save as provided for in the Plan) and, with effect from the Effective Date, the U.S. Government Opioid Claims against the Company shall be deemed to have been settled, discharged, waived, released and extinguished in full against the Company, and the Company shall cease to have any liability or obligation with respect to such Claims.

Third-Party Payor Opioid Claims

The Holders of the Third-Party Payor Opioid Claims are impaired by the Irish Scheme.

Without prejudice to their rights pursuant to the Plan, the Holders of the Third-Party Payor Opioid Claims against the Company shall not receive any payment, dividend or other distribution pursuant to the Irish Scheme (save as provided for in the Plan) and, with effect from the Effective Date, the Third-Party Payor Opioid Claims against the Company shall be deemed to have been settled, discharged, waived, released and extinguished in full against the Company, and the Company shall cease to have any liability or obligation with respect to such Claims.

PI Opioid Claims

The Holders of the PI Opioid Claims are impaired by the Irish Scheme.

Without prejudice to their rights pursuant to the Plan, the Holders of the PI Opioid Claims against the Company shall not receive any payment, dividend or other distribution pursuant to the Irish Scheme (save as provided for in the Plan) and, with effect from the Effective Date, the PI Opioid Claims against the Company shall be deemed to have been settled, discharged, waived, released and extinguished in full against the Company, and the Company shall cease to have any liability or obligation with respect to such Claims.

NAS PI Opioid Claims

The Holders of the NAS PI Opioid Claims are impaired by the Irish Scheme.

Without prejudice to their rights pursuant to the Plan, the Holders of the NAS PI Opioid Claims against the Company shall not receive any payment, dividend or other distribution pursuant to the Irish Scheme (save as provided for in the Plan) and, with effect from the Effective Date, the NAS PI Opioid Claims against the Company shall

be deemed to have been settled, discharged, waived, released and extinguished in full against the Company, and the Company shall cease to have any liability or obligation with respect to such Claims.

Hospital Opioid Claims

The Holders of the Hospital Opioid Claims are impaired by the Irish Scheme.

Without prejudice to their rights pursuant to the Plan, the Holders of the Hospital Opioid Claims against the Company shall not receive any payment, dividend or other distribution pursuant to the Irish Scheme (save as provided for in the Plan) and, with effect from the Effective Date, the Hospital Opioid Claims against the Company shall be deemed to have been settled, discharged, waived, released and extinguished in full against the Company, and the Company shall cease to have any liability or obligation with respect to such Claims.

Ratepayer Opioid Claims

The Holders of the Ratepayer Opioid Claims are impaired by the Irish Scheme.

Without prejudice to their rights pursuant to the Plan, the Holders of the Ratepayer Opioid Claims against the Company shall not receive any payment, dividend or other distribution pursuant to the Irish Scheme (save as provided for in the Plan) and, with effect from the Effective Date, the Ratepayer Opioid Claims against the Company shall be deemed to have been settled, discharged, waived, released and extinguished in full against the Company, and the Company shall cease to have any liability or obligation with respect to such Claims.

NAS Monitoring Opioid Claims

The Holders of the NAS Monitoring Opioid Claims are impaired by the Irish Scheme.

Without prejudice to their rights pursuant to the Plan, the Holders of the NAS Monitoring Opioid Claims against the Company shall not receive any payment, dividend or other distribution pursuant to the Irish Scheme (save as provided for in the Plan) and, with effect from the Effective Date, the NAS Monitoring Opioid Claims against the Company shall be deemed to have been settled, discharged, waived, released and extinguished in full against the Company, and the Company shall cease to have any liability or obligation with respect to such Claims.

Emergency Room Physicians Opioid Claims

The Holders of the Emergency Room Physicians Opioid Claims are impaired by the Irish Scheme.

Without prejudice to their rights pursuant to the Plan, the Holders of the NAS Monitoring Opioid Claims against the Company shall not receive any payment, dividend or other distribution pursuant to the Irish Scheme (save as provided for in the Plan) and, with effect from the Effective Date, the NAS Monitoring Opioid Claims against the Company shall be deemed to have been settled, discharged, waived, released and extinguished in full against the Company, and the Company shall cease to have any liability or obligation with respect to such Claims.

Other Opioid Claims

The Holders of the Other Opioid Claims are impaired by the Irish Scheme.

Without prejudice to their rights pursuant to the Plan, the Holders of the Other Opioid Claims against the Company shall not receive any payment, dividend or other distribution pursuant to the Irish Scheme (save as provided for in the Plan) and, with effect from the Effective Date, the Other Opioid Claims against the Company shall be deemed to have been settled, discharged, waived, released and extinguished in full against the Company, and the Company shall cease to have any liability or obligation with respect to such Claims.

No Recovery Opioid Claims

The Holders of the No Recovery Opioid Claims are impaired by the Irish Scheme.

Without prejudice to their rights pursuant to the Plan, the Holders of the No Recovery Opioid Claims against the Company shall not receive any payment, dividend or other distribution pursuant to the Irish Scheme and, with effect from the Effective Date, the No Recovery Opioid Claims against the Company shall be deemed to have been settled, discharged, waived, released and extinguished in full against the Company, and the Company shall cease to have any liability or obligation with respect to such Claims.

Released Co-Defendant Claims

The Holders of the Released Co-Defendant Claims are impaired by the Irish Scheme.

Without prejudice to their rights pursuant to the Plan, the Holders of the Released Co-Defendant Claims against the Company shall not receive any payment, dividend or other distribution pursuant to the Irish Scheme and, with effect from the Effective Date, the Released Co-Defendant Claims against the Company shall be deemed to have been settled, discharged, waived, released and extinguished in full against the Company, and the Company shall cease to have any liability or obligation with respect to such Claims.

Settled Federal/State Acthar Claims

The Holders of the Settled Federal/State Acthar Claims are impaired by the Irish Scheme.

Without prejudice to their rights pursuant to the Plan, the Holders of the Settled Federal/State Acthar Claims shall not receive any payment, dividend or other distribution pursuant to the Irish Scheme (save as provided for in the Plan) and, with effect from the Effective Date, the Settled Federal/State Acthar Claims shall be deemed to have been settled, discharged, waived, released and extinguished in full as against the Company, and the Company shall cease to have any liability or obligation with respect to such Claims.

Intercompany Claims

The Holders of the Intercompany Claims are impaired by the Irish Scheme.

Without prejudice to their rights pursuant to the Plan, the Holders of the Intercompany Claims shall not receive any payment, dividend or other distribution pursuant to the Irish Scheme (save as provided for in the Plan) and, with effect from the Effective Date, the Intercompany Claims shall be deemed to have been settled, discharged, waived, released and extinguished in full as against the Company, and the Company shall cease to have any liability or obligation with respect to such Claims.

Subordinated Claims

The Holders of the Subordinated Claims are impaired by the Irish Scheme.

Without prejudice to their rights pursuant to the Plan, the Holders of the Subordinated Claims shall not receive any payment, dividend or other distribution pursuant to the Irish Scheme (save as provided for in the Plan) and, with effect from the Effective Date, the Subordinated Claims shall be deemed to have been settled, discharged, waived, released and extinguished in full as against the Company, and the Company shall cease to have any liability or obligation with respect to such Claims.

Unexercised Equity Interest Claims

The Holders of the Unexercised Equity Interest Claims are impaired by the Irish Scheme.

The Unexercised Equity Interest Claims and any and all rights attaching or relating thereto will be extinguished and cancelled and the Holders of such Unexercised Equity Interest Claims shall have no Claim whatsoever and howsoever arising against the Company in respect of such Unexercised Equity Interest Claims and the Holders of such Unexercised Equity Interest will not receive any distribution or retain any property on account of such Unexercised Equity Interest Claims.

The Holders of the Unexercised Equity Interest Claims will not receive any form of dividend or payment under the Irish Scheme in return for the cancellation of their rights under the Unexercised Equity Interest Claims.

Michael McAteer
Examiner

THE HIGH COURT

2022 No. 25 COS

IN THE MATTER OF

**MALLINCKRODT PUBLIC LIMITED
COMPANY**

AND IN THE MATTER OF

**PART 10 OF THE COMPANIES ACT
2014**

**EXPLANATORY MEMORANDUM TO
ACCOMPANY EXAMINER'S
PROPOSALS**

**A&L Goodbody LLP
International Financial Services
Centre
25-28 North Wall Quay, Dublin 1
D01 H104
01437841**