AGENDA

BOARD OF CLALLAM COUNTY COMMISSIONERS

223 East 4th Street Room 160

Port Angeles, Washington

Tuesday, January 2, 2024 – 10:00 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: https://www.clallamcountywa.gov/669/Live-Archived-Meetings-Online

Public comment can be directed to the Clerk of the Board at 360-417-2256 or Loni.Gores@clallamcountywa.gov

CALL TO ORDER, PLEDGE OF ALLEGIANCE, ROLL CALL

- **Selection of Chair and Vice Chair for 2024**

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 payroll for the period ending December 15

Approval of payroll

1b. Approval of minutes for the week of December 25

Approval of minutes

1c. Letter of Support for Home Depot Foundation grant

Letter of support

REPORTS AND PRESENTATIONS

CONTRACTS AND AGREEMENTS

2a. Agreement with Habitat for Humanity of Clallam County for American Rescue Plan Act Funds ARPA

Agreement

BIDS AND AWARDS

3a. Approval of Developmental Disabilities funding recommendations 2024

Approval of recommendations

ADMINISTRATION

4a. Resolution designating Commissioner involvement on advisory Boards 2024

Resolution

4b. Resolution reappointing Ioana Bociu to the Marine Resources Committee

Resolution

4c. Resolution appointing Patricia Willits to the Conservation Futures Program Advisory Board

Resolution

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 January 1-5:

Monday, January 1:
Courthouse closed

Tuesday, January 2:
9:00 a.m. Work Session
10:00 a.m. Board Meeting

Wednesday, January 3:
8:00 a.m. Coffee with Colleen

Friday, January 5:
9:00 a.m. Housing Solutions Committee 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

JAN 0 2 2024

Payroll Ending: 12/15/2023

Gross Earnings:	**$912,810.77**
Benefits Paid:	**$189,703.78**
Total Expenditures:	**$1,102,514.55**

STATE OF WASHINGTON)
)
COUNTY OF CLALLAM)

This is to certify that the foregoing 'Labor Distribution Totals by Fund' Report for the period herein indicated is a full, true, and correct representation of the earnings and benefits paid to all Clallam County employees as recorded in the books of original entry maintained by this office.

WITNESS MY HAND THIS 22nd DAY OF December 2023

KAREN WAHLSTEN FOR SHOONA RIGGS, CLALLAM COUNTY AUDITOR

CLALLAM COUNTY BOARD OF COMMISSIONERS does hereby certify that the payroll herein specified has been disbursed and that the earnings and benefits listed above are approved for payment:

BOARD OF COMMISSIONERS
CLALLAM COUNTY, WASHINGTON

RANDY JOHNSON

MARK OZIAS

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MIKE FRENCH

(County Administrator)

Payroll and Benefits Paid for semi-monthly payroll: December 22, 2023

Fund Name	Fund Number	Gross Earnings Paid by Fund #	Benefits Paid by Fund #	Employees Paid by Fund #	Total Expenditures
COUNTY (Semi-Monthly)					
General Fund	00100	669,814.87	136,292.70	212	806,107.57
HHS	11301	24,019.74	4,867.71	10	28,887.45
Prosecutor-Local Crime Victim	11701	2,589.07	467.05	1	3,056.12
Auditor-Doc Preservation	12401	2,072.17	417.19	2	2,489.36
Noxious Weed Control	13001	2,814.50	626.27	1	3,440.77
Veterans Relief	19914	4,363.31	874.85	2	5,238.16
Affordable Housing Sales Tax	19951	4,348.15	842.61	1	5,190.76
HR-Risk Management	50401	13,391.06	2,415.67	4	15,806.73
HR-Workers Compensation	50501	1,744.56	319.12	2	2,063.68
		725,157.43	**147,123.17**		**872,280.60**
ROADS					
PW - Roads	10101	148,568.43	33,932.56	60	182,500.99
PW - Flood Control	10135	4,220.06	861.58	4	5,081.64
PW - Broadband Infrastructure	30805	690.51	152.79	1	843.30
PW - Solid Waste	40201	351.96	75.06	4	427.02
Clallam Bay/Sekiu Sewer	41401	8,539.93	1,974.52	3	10,514.45
PW - Carlsborg Sewer M&O	42401	1,414.13	303.45	6	1,717.58
ER&R	50301	23,868.32	5,280.65	16	29,148.97
		187,653.34	**42,580.61**		**230,233.95**
TOTALS		**912,810.77**	**189,703.78**		**1,102,514.55**

Prepared by:

Sherry Price, Deputy Auditor

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SEMI-MONTHLY

Labor Distribution Totals By Fund

CLALLAM COUNTY

12/01/2023 to 12/15/2023-2 Cycle sc

Fund Worked : 00100
 # Emps : 212

Earnings Code & Description		Amount	Hours
r	REGULAR	560,765.84	16,465.01
o25v	OT X 2.5 - CORR VOLUNTEER/SHRF	23,957.18	300.50
o15s	OVERTIME X 1.5 - SHERIFF DEPT	7,699.75	148.00
vp	VACATION PAYOFF	6,645.73	171.22
cu	COMP USED	1,830.61	59.78
accred	ACCREDITATION PAY	1,206.68	
mil	MILITARY LEAVE	888.33	34.00
fl	FUNERAL LEAVE	767.61	19.25
o15j	OVERTIME x 1.5 - JUV DETENTION	598.72	16.00
adml	ADMINISTRATIVE LEAVE PAID	341.60	14.50
phsm	PHONE STIPEND SMART PHONE	180.00	
uapr	URINE ANALYSIS PREMIUM	156.00	
aaas	AA/AS EDUCATION INCENTIVE	112.42	
well	WELLNESS INCENTIVE	88.26	147.10

Earnings Code & Description		Amount	Hours
v	VACATION	26,562.79	800.32
s	SICK	20,512.22	633.74
fh	FLOATING HOLIDAY	7,498.02	243.35
sc15	HHS SCANNING PROJ OT X 1.5	4,577.93	97.25
movexp	MOVING EXPENSES	1,573.00	
auto	AUTO ALLOWANCE CONTRACTUAL	1,020.00	
stby	STANDBY PAY	771.80	20.00
aute	AUTO ALLOWANCE ELECTED	680.00	
bsba	BS/BA EDUCATION INCENTIVE	593.52	
oth	OVERTIME X 1.5 - HOURLY	339.76	23.50
fto	FTO PREMIUM	163.13	83.00
asp	SHERIFF ACTING SUPERVISOR PAY	118.13	72.50
detpay	DETECTIVE PAY	100.92	
aspd	SHERIFF ACTING SUP PAY DEPUTY	64.92	33.00
	Totals:	**669,814.87**	**19,382.02**

Deduction Code and Description		Amount
fedtx	FEDERAL WITHHOLDING TAX	58,541.80
pers2	PERS 2 RETIREMENT	29,062.12
icm457	ICMA DEFERRED COMP	10,579.25
psers	PSERS RETIREMENT	5,770.96
fmlatx	WA Paid Family & Medical Leave	3,682.40
udteam	UNION DUES - TEAMSTERS	3,223.80
rth457	ROTH-ICMA DEFERRED COMP	2,528.98
l&i	L&I - SELF INSURED	1,302.98
dshsca	DSHS CHILD SUPPORT CALIFORNIA	750.00
udpd	UNION DUES - 1619 D	548.58
udmp	UNION DUES - 1619 MP	401.44
udlc	UNION DUES - 1619 LC	369.74
udtint	TEAMSTERS INIT FEE or ADJ	250.00
udps	UNION DUES - 1619 S	36.63

Deduction Code and Description		Amount
socsec	SOCIAL SECURITY	39,325.78
401a	401A DEFERRED COMPENSATION	14,584.64
medtx	MEDICARE TAX	9,626.08
leoff2	LEOFF 2 RETIREMENT	5,328.38
wacare	WA Long-Term Care	3,313.32
pers3	PERS 3 RETIREMENT	3,126.79
n457	NATIONWIDE 457	1,487.50
h457	MASSMUTUAL 457	1,185.37
dshs	DSHS CHILD SUPPORT	724.88
pers1	PERS 1 RETIREMENT	446.12
udcd	UNION DUES - 1619 CD C	401.44
evggar	EVERGREEN FIN GARNISHMENT	335.91
udcs	UNION DUES - 1619 CS	61.76
garnfe	GARNISHMENT FEE	1.50
	Totals:	**196,998.15**

Benefit Code and Description		Amount
pers2	PERS 2 RETIREMENT	42,805.81
401a	401A DEFERRED COMPENSATION	12,402.50

Benefit Code and Description		Amount
socsec	SOCIAL SECURITY	39,888.12
l&i	L&I - SELF INSURED	11,566.93

Fund Worked : 00100
 # Emps : 212

Benefit Code and Description		Amount
medtx	MEDICARE TAX	9,757.58
pers3	PERS 3 RETIREMENT	4,405.65
fmlatx	WA Paid Family & Medical Leave	1,378.71
pers1	PERS 1 RETIREMENT	708.59
leofcu	LEOFF RETIREMENT CATCH UP	-0.03
psers	PSERS RETIREMENT	8,489.24
leoff2	LEOFF 2 RETIREMENT	3,323.22
unemp	UNEMPLOYMENT	1,257.43
fedtx	FEDERAL WITHHOLDING TAX	308.95

Totals:	**136,292.70**	
Gross Earnings by Fund:	**669,814.87**	**19,382.02**
Total Fund Deductions:	**196,998.15**	
Fund Net:	**472,816.72**	

Labor Distribution Totals By Fund
CLALLAM COUNTY
12/01/2023 to 12/15/2023-2 Cycle sc

Fund Worked : 11301
 # Emps : 10

Earnings Code & Description		Amount	Hours
r	REGULAR	19,264.43	659.00
s	SICK	510.84	18.50
fh	FLOATING HOLIDAY	213.23	8.00
sc15	HHS SCANNING PROJ OT X 1.5	3,680.73	82.00
v	VACATION	350.51	10.50
	Totals:	**24,019.74**	**778.00**

Deduction Code and Description		Amount
fedtx	FEDERAL WITHHOLDING TAX	2,010.90
socsec	SOCIAL SECURITY	1,489.23
medtx	MEDICARE TAX	348.30
icm457	ICMA DEFERRED COMP	179.10
rth457	ROTH-ICMA DEFERRED COMP	123.10
l&i	L&I - SELF INSURED	59.52
h457	MASSMUTUAL 457	32.14
pers2	PERS 2 RETIREMENT	1,527.67
401a	401A DEFERRED COMPENSATION	710.06
udteam	UNION DUES - TEAMSTERS	283.21
fmlatx	WA Paid Family & Medical Leave	139.80
wacare	WA Long-Term Care	121.46
udtint	TEAMSTERS INIT FEE or ADJ	50.00
	Totals:	**7,074.49**

Benefit Code and Description		Amount
pers2	PERS 2 RETIREMENT	2,289.08
medtx	MEDICARE TAX	348.30
l&i	L&I - SELF INSURED	292.69
unemp	UNEMPLOYMENT	48.06
socsec	SOCIAL SECURITY	1,489.23
401a	401A DEFERRED COMPENSATION	347.99
fmlatx	WA Paid Family & Medical Leave	52.36
	Totals:	**4,867.71**

Gross Earnings by Fund:	**24,019.74**	**778.00**
Total Fund Deductions:	**7,074.49**	
Fund Net:	**16,945.25**	

Labor Distribution Totals By Fund
CLALLAM COUNTY
12/01/2023 to 12/15/2023-2 Cycle sc

Fund Worked : 11701
 # Emps : 1

Earnings Code & Description		Amount	Hours
r	REGULAR	2,589.07	88.00
	Totals:	**2,589.07**	**88.00**

Deduction Code and Description		Amount
pers2	PERS 2 RETIREMENT	164.67
fedtx	FEDERAL WITHHOLDING TAX	90.51
udteam	UNION DUES - TEAMSTERS	33.00
wacare	WA Long-Term Care	15.02
socsec	SOCIAL SECURITY	160.52
medtx	MEDICARE TAX	37.54
fmlatx	WA Paid Family & Medical Leave	15.07
l&i	L&I - SELF INSURED	6.96
	Totals:	**523.29**

Benefit Code and Description		Amount
pers2	PERS 2 RETIREMENT	246.74
medtx	MEDICARE TAX	37.54
fmlatx	WA Paid Family & Medical Leave	5.64
socsec	SOCIAL SECURITY	160.52
l&i	L&I - SELF INSURED	11.43
unemp	UNEMPLOYMENT	5.18
	Totals:	**467.05**

Gross Earnings by Fund:	**2,589.07**	**88.00**
Total Fund Deductions:	**523.29**	
Fund Net:	**2,065.78**	

Labor Distribution Totals By Fund
CLALLAM COUNTY
12/01/2023 to 12/15/2023-2 Cycle sc

Fund Worked : 12401
 # Emps : 2

Earnings Code & Description		Amount	Hours
r	REGULAR	1,993.00	85.38
cu	COMP USED	15.08	0.50
v	VACATION	60.32	2.00
s	SICK	3.77	0.13
	Totals:	**2,072.17**	**88.01**

Deduction Code and Description		Amount
fedtx	FEDERAL WITHHOLDING TAX	142.87
socsec	SOCIAL SECURITY	128.47
medtx	MEDICARE TAX	30.05
icm457	ICMA DEFERRED COMP	24.99
wacare	WA Long-Term Care	12.01
pers2	PERS 2 RETIREMENT	131.78
401a	401A DEFERRED COMPENSATION	42.26
udteam	UNION DUES - TEAMSTERS	26.49
fmlatx	WA Paid Family & Medical Leave	12.06
l&i	L&I - SELF INSURED	6.75
	Totals:	**557.73**

Benefit Code and Description		Amount
pers2	PERS 2 RETIREMENT	197.48
401a	401A DEFERRED COMPENSATION	41.44
l&i	L&I - SELF INSURED	11.09
unemp	UNEMPLOYMENT	4.15
socsec	SOCIAL SECURITY	128.47
medtx	MEDICARE TAX	30.05
fmlatx	WA Paid Family & Medical Leave	4.51
	Totals:	**417.19**

Gross Earnings by Fund:	**2,072.17**	**88.01**
Total Fund Deductions:	**557.73**	
Fund Net:	**1,514.44**	

Labor Distribution Totals By Fund
CLALLAM COUNTY
12/01/2023 to 12/15/2023-2 Cycle sc

Fund Worked : 13001
 # Emps : 1

Earnings Code & Description		Amount	Hours
r	REGULAR	1,215.34	38.00
fh	FLOATING HOLIDAY	511.75	16.00
v	VACATION	831.55	26.00
s	SICK	255.86	8.00
	Totals:	**2,814.50**	**88.00**

Deduction Code and Description		Amount
fedtx	FEDERAL WITHHOLDING TAX	226.37
socsec	SOCIAL SECURITY	174.50
medtx	MEDICARE TAX	40.81
fmlatx	WA Paid Family & Medical Leave	16.38
l&i	L&I - SELF INSURED	6.33
pers2	PERS 2 RETIREMENT	179.00
401a	401A DEFERRED COMPENSATION	140.73
udmp	UNION DUES - 1619 MP	30.88
wacare	WA Long-Term Care	16.32
	Totals:	**831.32**

Benefit Code and Description		Amount
pers2	PERS 2 RETIREMENT	268.22
l&i	L&I - SELF INSURED	74.69
medtx	MEDICARE TAX	40.81
unemp	UNEMPLOYMENT	5.63
socsec	SOCIAL SECURITY	174.50
401a	401A DEFERRED COMPENSATION	56.29
fmlatx	WA Paid Family & Medical Leave	6.13
	Totals:	**626.27**

Gross Earnings by Fund:	**2,814.50**	**88.00**
Total Fund Deductions:	**831.32**	
Fund Net:	**1,983.18**	

Labor Distribution Totals By Fund
CLALLAM COUNTY
12/01/2023 to 12/15/2023-2 Cycle sc

Fund Worked : 19914
 # Emps : 2

Earnings Code & Description		Amount	Hours
r	REGULAR	4,363.31	152.00
	Totals:	**4,363.31**	**152.00**

Deduction Code and Description		Amount
pers2	PERS 2 RETIREMENT	277.51
fedtx	FEDERAL WITHHOLDING TAX	264.43
udteam	UNION DUES - TEAMSTERS	66.00
fmlatx	WA Paid Family & Medical Leave	25.40
l&i	L&I - SELF INSURED	12.02
	Totals:	**1,177.97**

Deduction Code and Description		Amount
socsec	SOCIAL SECURITY	270.53
401a	401A DEFERRED COMPENSATION	173.51
medtx	MEDICARE TAX	63.26
wacare	WA Long-Term Care	25.31

Benefit Code and Description		Amount
pers2	PERS 2 RETIREMENT	415.82
401a	401A DEFERRED COMPENSATION	87.26
l&i	L&I - SELF INSURED	19.74
unemp	UNEMPLOYMENT	8.73

Benefit Code and Description		Amount
socsec	SOCIAL SECURITY	270.53
medtx	MEDICARE TAX	63.26
fmlatx	WA Paid Family & Medical Leave	9.51
	Totals:	**874.85**

Gross Earnings by Fund:	**4,363.31**	**152.00**
Total Fund Deductions:	**1,177.97**	
Fund Net:	**3,185.34**	

Labor Distribution Totals By Fund
CLALLAM COUNTY
12/01/2023 to 12/15/2023-2 Cycle sc

Fund Worked : 19951
 # Emps : 1

Earnings Code & Description		Amount	Hours
r	REGULAR	3,418.47	72.00
v	VACATION	379.83	8.00
fh	FLOATING HOLIDAY	379.85	8.00
auto	AUTO ALLOWANCE CONTRACTUAL	170.00	
	Totals:	**4,348.15**	**88.00**

Deduction Code and Description		Amount
fedtx	FEDERAL WITHHOLDING TAX	579.69
pers2	PERS 2 RETIREMENT	265.73
medtx	MEDICARE TAX	63.05
wacare	WA Long-Term Care	25.22
socsec	SOCIAL SECURITY	269.59
401a	401A DEFERRED COMPENSATION	208.91
fmlatx	WA Paid Family & Medical Leave	25.31
l&i	L&I - SELF INSURED	6.33
	Totals:	**1,443.83**

Benefit Code and Description		Amount
pers2	PERS 2 RETIREMENT	398.18
401a	401A DEFERRED COMPENSATION	83.56
l&i	L&I - SELF INSURED	10.39
unemp	UNEMPLOYMENT	8.36
socsec	SOCIAL SECURITY	269.59
medtx	MEDICARE TAX	63.05
fmlatx	WA Paid Family & Medical Leave	9.48
	Totals:	**842.61**

Gross Earnings by Fund:	**4,348.15**	**88.00**
Total Fund Deductions:	**1,443.83**	
Fund Net:	**2,904.32**	

Labor Distribution Totals By Fund
CLALLAM COUNTY
12/01/2023 to 12/15/2023-2 Cycle sc

Fund Worked : 50401
 # Emps : 4

Earnings Code & Description		Amount	Hours
r	REGULAR	13,150.19	290.13
v	VACATION	70.87	2.00
auto	AUTO ALLOWANCE CONTRACTUAL	170.00	
	Totals:	**13,391.06**	**292.13**

Deduction Code and Description		Amount
fedtx	FEDERAL WITHHOLDING TAX	1,742.64
pers2	PERS 2 RETIREMENT	416.06
medtx	MEDICARE TAX	203.65
401a	401A DEFERRED COMPENSATION	159.22
fmlatx	WA Paid Family & Medical Leave	55.46
h457	MASSMUTUAL 457	567.94
socsec	SOCIAL SECURITY	405.58
icm457	ICMA DEFERRED COMP	167.15
wacare	WA Long-Term Care	77.67
l&i	L&I - SELF INSURED	20.99
	Totals:	**3,816.36**

Benefit Code and Description		Amount
h457	MASSMUTUAL 457	636.55
401a	401A DEFERRED COMPENSATION	464.81
medtx	MEDICARE TAX	203.65
unemp	UNEMPLOYMENT	26.45
pers2	PERS 2 RETIREMENT	623.41
socsec	SOCIAL SECURITY	405.58
l&i	L&I - SELF INSURED	34.45
fmlatx	WA Paid Family & Medical Leave	20.77
	Totals:	**2,415.67**

Gross Earnings by Fund:	**13,391.06**	**292.13**
Total Fund Deductions:	**3,816.36**	
Fund Net:	**9,574.70**	

Labor Distribution Totals By Fund
CLALLAM COUNTY
12/01/2023 to 12/15/2023-2 Cycle sc

Fund Worked : 50501
 # Emps : 2

Earnings Code & Description		Amount	Hours
r	REGULAR	1,480.05	31.98
fh	FLOATING HOLIDAY	35.21	0.40
v	VACATION	211.70	3.60
s	SICK	17.60	0.20
	Totals:	**1,744.56**	**36.18**

Deduction Code and Description		Amount
fedtx	FEDERAL WITHHOLDING TAX	208.39
401a	401A DEFERRED COMPENSATION	113.69
socsec	SOCIAL SECURITY	60.14
fmlatx	WA Paid Family & Medical Leave	5.64
l&i	L&I - SELF INSURED	2.20
icm457	ICMA DEFERRED COMP	161.28
pers2	PERS 2 RETIREMENT	109.91
medtx	MEDICARE TAX	25.36
wacare	WA Long-Term Care	5.63
	Totals:	**692.24**

Benefit Code and Description		Amount
pers2	PERS 2 RETIREMENT	166.27
401a	401A DEFERRED COMPENSATION	58.12
l&i	L&I - SELF INSURED	3.63
fmlatx	WA Paid Family & Medical Leave	2.11
socsec	SOCIAL SECURITY	60.14
medtx	MEDICARE TAX	25.36
unemp	UNEMPLOYMENT	3.49
	Totals:	**319.12**

Gross Earnings by Fund:	**1,744.56**	**36.18**
Total Fund Deductions:	**692.24**	
Fund Net:	**1,052.32**	

Labor Distribution Totals By Fund
CLALLAM COUNTY
12/01/2023 to 12/15/2023-2 Cycle sc

Fund Worked : - Totals -
 # Emps : 228

Earnings Code & Description		Amount	Hours
r	REGULAR	608,239.70	17,881.50
o25v	OT X 2.5 - CORR VOLUNTEER/SHRF	23,957.18	300.50
fh	FLOATING HOLIDAY	8,638.06	275.75
o15s	OVERTIME X 1.5 - SHERIFF DEPT	7,699.75	148.00
cu	COMP USED	1,845.69	60.28
auto	AUTO ALLOWANCE CONTRACTUAL	1,360.00	
mil	MILITARY LEAVE	888.33	34.00
fl	FUNERAL LEAVE	767.61	19.25
o15j	OVERTIME x 1.5 - JUV DETENTION	598.72	16.00
adml	ADMINISTRATIVE LEAVE PAID	341.60	14.50
phsm	PHONE STIPEND SMART PHONE	180.00	
uapr	URINE ANALYSIS PREMIUM	156.00	
aaas	AA/AS EDUCATION INCENTIVE	112.42	
well	WELLNESS INCENTIVE	88.26	147.10
v	VACATION	28,467.57	852.42
s	SICK	21,300.29	660.57
sc15	HHS SCANNING PROJ OT X 1.5	8,258.66	179.25
vp	VACATION PAYOFF	6,645.73	171.22
movexp	MOVING EXPENSES	1,573.00	
accred	ACCREDITATION PAY	1,206.68	
stby	STANDBY PAY	771.80	20.00
aute	AUTO ALLOWANCE ELECTED	680.00	
bsba	BS/BA EDUCATION INCENTIVE	593.52	
oth	OVERTIME X 1.5 - HOURLY	339.76	23.50
fto	FTO PREMIUM	163.13	83.00
asp	SHERIFF ACTING SUPERVISOR PAY	118.13	72.50
detpay	DETECTIVE PAY	100.92	
aspd	SHERIFF ACTING SUP PAY DEPUTY	64.92	33.00
	Totals:	**725,157.43**	**20,992.34**

Deduction Code and Description		Amount
fedtx	FEDERAL WITHHOLDING TAX	63,807.60
pers2	PERS 2 RETIREMENT	32,134.45
icm457	ICMA DEFERRED COMP	11,111.77
psers	PSERS RETIREMENT	5,770.96
fmlatx	WA Paid Family & Medical Leave	3,977.52
wacare	WA Long-Term Care	3,611.96
rth457	ROTH-ICMA DEFERRED COMP	2,652.08
n457	NATIONWIDE 457	1,487.50
dshsca	DSHS CHILD SUPPORT CALIFORNIA	750.00
udpd	UNION DUES - 1619 D	548.58
udmp	UNION DUES - 1619 MP	432.32
udlc	UNION DUES - 1619 LC	369.74
udtint	TEAMSTERS INIT FEE or ADJ	300.00
udps	UNION DUES - 1619 S	36.63
socsec	SOCIAL SECURITY	42,284.34
401a	401A DEFERRED COMPENSATION	16,133.02
medtx	MEDICARE TAX	10,438.10
leoff2	LEOFF 2 RETIREMENT	5,328.38
udteam	UNION DUES - TEAMSTERS	3,632.50
pers3	PERS 3 RETIREMENT	3,126.79
h457	MASSMUTUAL 457	1,785.45
l&i	L&I - SELF INSURED	1,424.08
dshs	DSHS CHILD SUPPORT	724.88
pers1	PERS 1 RETIREMENT	446.12
udcd	UNION DUES - 1619 CD C	401.44
evggar	EVERGREEN FIN GARNISHMENT	335.91
udcs	UNION DUES - 1619 CS	61.76
garnfe	GARNISHMENT FEE	1.50
	Totals:	**213,115.38**

Benefit Code and Description		Amount
pers2	PERS 2 RETIREMENT	47,411.01
401a	401A DEFERRED COMPENSATION	13,541.97
socsec	SOCIAL SECURITY	42,846.68
l&i	L&I - SELF INSURED	12,025.04

Fund Worked : - Totals -
 # Emps : 228

Benefit Code	Description	Amount
medtx	MEDICARE TAX	10,569.60
pers3	PERS 3 RETIREMENT	4,405.65
fmlatx	WA Paid Family & Medical Leave	1,489.22
pers1	PERS 1 RETIREMENT	708.59
fedtx	FEDERAL WITHHOLDING TAX	308.95

Benefit Code	Description	Amount
psers	PSERS RETIREMENT	8,489.24
leoff2	LEOFF 2 RETIREMENT	3,323.22
unemp	UNEMPLOYMENT	1,367.48
h457	MASSMUTUAL 457	636.55
leofcu	LEOFF RETIREMENT CATCH UP	-0.03
	Totals:	**147,123.17**

Grand Total Gross Earnings:	**725,157.43**	**20,992.34**
Grand Total Deductions:	**213,115.38**	
Grand Total Net:	**512,042.05**	

ROADS

Labor Distribution Totals By Fund

CLALLAM COUNTY

12/01/2023 to 12/15/2023-2 Cycle s

Fund Worked : 10101
 # Emps : 60

Earnings Code & Description		Amount	Hours
r	REGULAR	127,519.13	3,963.45
s	SICK	6,509.25	200.50
o15r	OVERTIME X 1.5 - ROADS DEPT	1,535.58	36.50
auto	AUTO ALLOWANCE CONTRACTUAL	340.00	
v	VACATION	10,024.40	333.50
fh	FLOATING HOLIDAY	1,583.64	53.50
cu	COMP USED	1,349.05	45.25
c15r	COMP EARNED X 1.5 ROADS	-292.62	-6.50
	Totals:	**148,568.43**	**4,626.20**

Deduction Code and Description		Amount
fedtx	FEDERAL WITHHOLDING TAX	12,315.39
pers2	PERS 2 RETIREMENT	9,103.86
401a	401A DEFERRED COMPENSATION	2,550.39
udteam	UNION DUES - TEAMSTERS	1,541.65
wacare	WA Long-Term Care	764.17
c13gar	CHAPTER 13 GARNISHMENT	538.00
pers3	PERS 3 RETIREMENT	280.04
garnfe	GARNISHMENT FEE	0.50
socsec	SOCIAL SECURITY	9,244.09
icm457	ICMA DEFERRED COMP	3,142.33
medtx	MEDICARE TAX	2,161.87
fmlatx	WA Paid Family & Medical Leave	867.44
h457	MASSMUTUAL 457	553.01
l&i	L&I - SELF INSURED	318.82
udmp	UNION DUES - 1619 MP	171.75
	Totals:	**43,553.31**

Benefit Code and Description		Amount
pers2	PERS 2 RETIREMENT	13,597.61
l&i	L&I - SELF INSURED	4,953.88
medtx	MEDICARE TAX	2,155.25
fmlatx	WA Paid Family & Medical Leave	323.71
socsec	SOCIAL SECURITY	9,215.77
401a	401A DEFERRED COMPENSATION	2,861.18
pers3	PERS 3 RETIREMENT	528.61
unemp	UNEMPLOYMENT	296.55
	Totals:	**33,932.56**

Gross Earnings by Fund:	**148,568.43**	**4,626.20**
Total Fund Deductions:	**43,553.31**	
Fund Net:	**105,015.12**	

Labor Distribution Totals By Fund
CLALLAM COUNTY
12/01/2023 to 12/15/2023-2 Cycle s

Fund Worked : 10135
 # Emps : 4

Earnings Code & Description		Amount	Hours
r	REGULAR	4,220.06	108.25
	Totals:	**4,220.06**	**108.25**

Deduction Code and Description		Amount
fedtx	FEDERAL WITHHOLDING TAX	353.41
socsec	SOCIAL SECURITY	261.82
medtx	MEDICARE TAX	61.23
udmp	UNION DUES - 1619 MP	31.85
fmlatx	WA Paid Family & Medical Leave	24.57
l&i	L&I - SELF INSURED	7.69

Deduction Code and Description		Amount
401a	401A DEFERRED COMPENSATION	323.90
pers2	PERS 2 RETIREMENT	215.80
pers3	PERS 3 RETIREMENT	39.80
icm457	ICMA DEFERRED COMP	25.87
wacare	WA Long-Term Care	24.49
h457	MASSMUTUAL 457	6.59
	Totals:	**1,377.02**

Benefit Code and Description		Amount
pers2	PERS 2 RETIREMENT	323.71
401a	401A DEFERRED COMPENSATION	93.77
medtx	MEDICARE TAX	61.23
fmlatx	WA Paid Family & Medical Leave	9.20

Benefit Code and Description		Amount
socsec	SOCIAL SECURITY	261.82
pers3	PERS 3 RETIREMENT	78.46
l&i	L&I - SELF INSURED	24.94
unemp	UNEMPLOYMENT	8.45
	Totals:	**861.58**

Gross Earnings by Fund:	**4,220.06**	**108.25**
Total Fund Deductions:	**1,377.02**	
Fund Net:	**2,843.04**	

Labor Distribution Totals By Fund
CLALLAM COUNTY
12/01/2023 to 12/15/2023-2 Cycle s

Fund Worked : 30805
 # Emps : 1

Earnings Code & Description		Amount	Hours
r	REGULAR	690.51	13.00
	Totals:	**690.51**	**13.00**

Deduction Code and Description		Amount
fedtx	FEDERAL WITHHOLDING TAX	55.64
pers3	PERS 3 RETIREMENT	33.38
medtx	MEDICARE TAX	10.05
wacare	WA Long-Term Care	4.01
socsec	SOCIAL SECURITY	42.95
icm457	ICMA DEFERRED COMP	20.03
fmlatx	WA Paid Family & Medical Leave	4.02
l&i	L&I - SELF INSURED	0.85
	Totals:	**170.93**

Benefit Code and Description		Amount
pers3	PERS 3 RETIREMENT	65.81
401a	401A DEFERRED COMPENSATION	20.72
medtx	MEDICARE TAX	10.05
unemp	UNEMPLOYMENT	1.38
socsec	SOCIAL SECURITY	42.95
l&i	L&I - SELF INSURED	10.38
fmlatx	WA Paid Family & Medical Leave	1.50
	Totals:	**152.79**

Gross Earnings by Fund:	**690.51**	**13.00**
Total Fund Deductions:	**170.93**	
Fund Net:	**519.58**	

Labor Distribution Totals By Fund
CLALLAM COUNTY
12/01/2023 to 12/15/2023-2 Cycle s

Fund Worked : 40201
 # Emps : 4

Earnings Code & Description		Amount	Hours
r	REGULAR	351.96	9.25

Earnings Code & Description		Amount	Hours
	Totals:	**351.96**	**9.25**

Deduction Code and Description		Amount
fedtx	FEDERAL WITHHOLDING TAX	30.03
pers2	PERS 2 RETIREMENT	20.69
medtx	MEDICARE TAX	5.11
fmlatx	WA Paid Family & Medical Leave	2.05
icm457	ICMA DEFERRED COMP	1.68
l&i	L&I - SELF INSURED	0.66

Deduction Code and Description		Amount
socsec	SOCIAL SECURITY	21.83
401a	401A DEFERRED COMPENSATION	8.40
udmp	UNION DUES - 1619 MP	2.50
wacare	WA Long-Term Care	2.03
pers3	PERS 3 RETIREMENT	1.28
udteam	UNION DUES - TEAMSTERS	0.51
	Totals:	**96.77**

Benefit Code and Description		Amount
pers2	PERS 2 RETIREMENT	31.01
401a	401A DEFERRED COMPENSATION	7.31
medtx	MEDICARE TAX	5.11
fmlatx	WA Paid Family & Medical Leave	0.77

Benefit Code and Description		Amount
socsec	SOCIAL SECURITY	21.83
l&i	L&I - SELF INSURED	5.80
pers3	PERS 3 RETIREMENT	2.53
unemp	UNEMPLOYMENT	0.70
	Totals:	**75.06**

Gross Earnings by Fund:	**351.96**	**9.25**
Total Fund Deductions:	**96.77**	
Fund Net:	**255.19**	

Labor Distribution Totals By Fund
CLALLAM COUNTY
12/01/2023 to 12/15/2023-2 Cycle s

Fund Worked : 41401
 # Emps : 3

Earnings Code & Description		Amount	Hours
r	REGULAR	7,400.94	232.00
o15r	OVERTIME X 1.5 - ROADS DEPT	1,138.99	22.00
	Totals:	**8,539.93**	**254.00**

Deduction Code and Description		Amount
pers2	PERS 2 RETIREMENT	543.14
fedtx	FEDERAL WITHHOLDING TAX	363.48
udteam	UNION DUES - TEAMSTERS	97.83
fmlatx	WA Paid Family & Medical Leave	49.71
401a	401A DEFERRED COMPENSATION	45.57
socsec	SOCIAL SECURITY	529.48
medtx	MEDICARE TAX	123.83
icm457	ICMA DEFERRED COMP	68.12
wacare	WA Long-Term Care	49.54
l&i	L&I - SELF INSURED	18.71
	Totals:	**1,889.41**

Benefit Code and Description		Amount
pers2	PERS 2 RETIREMENT	813.86
l&i	L&I - SELF INSURED	373.24
401a	401A DEFERRED COMPENSATION	98.41
unemp	UNEMPLOYMENT	17.09
socsec	SOCIAL SECURITY	529.48
medtx	MEDICARE TAX	123.83
fmlatx	WA Paid Family & Medical Leave	18.61
	Totals:	**1,974.52**

Gross Earnings by Fund:	**8,539.93**	**254.00**
Total Fund Deductions:	**1,889.41**	
Fund Net:	**6,650.52**	

Labor Distribution Totals By Fund
CLALLAM COUNTY
12/01/2023 to 12/15/2023-2 Cycle s

Fund Worked : 42401
 # Emps : 6

Earnings Code & Description		Amount	Hours
r	REGULAR	1,414.13	39.05
	Totals:	**1,414.13**	**39.05**

Deduction Code and Description		Amount
fedtx	FEDERAL WITHHOLDING TAX	121.94
pers2	PERS 2 RETIREMENT	84.88
medtx	MEDICARE TAX	20.52
fmlatx	WA Paid Family & Medical Leave	8.22
udteam	UNION DUES - TEAMSTERS	7.25
pers3	PERS 3 RETIREMENT	3.85
socsec	SOCIAL SECURITY	87.70
401a	401A DEFERRED COMPENSATION	33.77
icm457	ICMA DEFERRED COMP	14.25
wacare	WA Long-Term Care	8.20
udmp	UNION DUES - 1619 MP	6.73
l&i	L&I - SELF INSURED	2.81
	Totals:	**400.12**

Benefit Code and Description		Amount
pers2	PERS 2 RETIREMENT	127.17
401a	401A DEFERRED COMPENSATION	29.08
medtx	MEDICARE TAX	20.52
fmlatx	WA Paid Family & Medical Leave	3.08
socsec	SOCIAL SECURITY	87.70
l&i	L&I - SELF INSURED	25.48
pers3	PERS 3 RETIREMENT	7.59
unemp	UNEMPLOYMENT	2.83
	Totals:	**303.45**

Gross Earnings by Fund:	**1,414.13**	**39.05**
Total Fund Deductions:	**400.12**	
Fund Net:	**1,014.01**	

Labor Distribution Totals By Fund
CLALLAM COUNTY
12/01/2023 to 12/15/2023-2 Cycle s

Fund Worked : 50301
 # Emps : 16

Earnings Code & Description		Amount	Hours
r	REGULAR	22,040.80	718.75
cu	COMP USED	282.78	10.00
o15r	OVERTIME X 1.5 - ROADS DEPT	149.04	3.00
s	SICK	1,039.26	33.50
fl	FUNERAL LEAVE	252.60	8.00
v	VACATION	103.84	3.50
	Totals:	**23,868.32**	**776.75**

Deduction Code and Description		Amount
pers2	PERS 2 RETIREMENT	1,488.99
fedtx	FEDERAL WITHHOLDING TAX	1,397.49
medtx	MEDICARE TAX	339.50
icm457	ICMA DEFERRED COMP	219.20
wacare	WA Long-Term Care	135.61
l&i	L&I - SELF INSURED	54.94
h457	MASSMUTUAL 457	14.08
socsec	SOCIAL SECURITY	1,451.53
401a	401A DEFERRED COMPENSATION	340.73
udteam	UNION DUES - TEAMSTERS	255.26
fmlatx	WA Paid Family & Medical Leave	136.27
dshs	DSHS CHILD SUPPORT	102.00
udmp	UNION DUES - 1619 MP	34.21
garnfe	GARNISHMENT FEE	0.50
	Totals:	**5,970.31**

Benefit Code and Description		Amount
pers2	PERS 2 RETIREMENT	2,274.68
l&i	L&I - SELF INSURED	653.93
medtx	MEDICARE TAX	346.12
unemp	UNEMPLOYMENT	47.74
socsec	SOCIAL SECURITY	1,479.85
401a	401A DEFERRED COMPENSATION	426.29
fmlatx	WA Paid Family & Medical Leave	52.04
	Totals:	**5,280.65**

Gross Earnings by Fund:	**23,868.32**	**776.75**
Total Fund Deductions:	**5,970.31**	
Fund Net:	**17,898.01**	

Labor Distribution Totals By Fund
CLALLAM COUNTY
12/01/2023 to 12/15/2023-2 Cycle s

Fund Worked : - Totals -
 # Emps : 66

Earnings Code & Description		Amount	Hours
r	REGULAR	163,637.53	5,083.75
s	SICK	7,548.51	234.00
cu	COMP USED	1,631.83	55.25
auto	AUTO ALLOWANCE CONTRACTUAL	340.00	
c15r	COMP EARNED X 1.5 ROADS	-292.62	-6.50
v	VACATION	10,128.24	337.00
o15r	OVERTIME X 1.5 - ROADS DEPT	2,823.61	61.50
fh	FLOATING HOLIDAY	1,583.64	53.50
fl	FUNERAL LEAVE	252.60	8.00
	Totals:	**187,653.34**	**5,826.50**

Deduction Code and Description		Amount
fedtx	FEDERAL WITHHOLDING TAX	14,637.38
pers2	PERS 2 RETIREMENT	11,457.36
401a	401A DEFERRED COMPENSATION	3,302.76
udteam	UNION DUES - TEAMSTERS	1,902.50
wacare	WA Long-Term Care	988.05
c13gar	CHAPTER 13 GARNISHMENT	538.00
pers3	PERS 3 RETIREMENT	358.35
dshs	DSHS CHILD SUPPORT	102.00
socsec	SOCIAL SECURITY	11,639.40
icm457	ICMA DEFERRED COMP	3,491.48
medtx	MEDICARE TAX	2,722.11
fmlatx	WA Paid Family & Medical Leave	1,092.28
h457	MASSMUTUAL 457	573.68
l&i	L&I - SELF INSURED	404.48
udmp	UNION DUES - 1619 MP	247.04
garnfe	GARNISHMENT FEE	1.00
	Totals:	**53,457.87**

Benefit Code and Description		Amount
pers2	PERS 2 RETIREMENT	17,168.04
l&i	L&I - SELF INSURED	6,047.65
medtx	MEDICARE TAX	2,722.11
fmlatx	WA Paid Family & Medical Leave	408.91
socsec	SOCIAL SECURITY	11,639.40
401a	401A DEFERRED COMPENSATION	3,536.76
pers3	PERS 3 RETIREMENT	683.00
unemp	UNEMPLOYMENT	374.74
	Totals:	**42,580.61**

Grand Total Gross Earnings:	**187,653.34**	**5,826.50**
Grand Total Deductions:	**53,457.87**	
Grand Total Net:	**134,195.47**	

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JAN 02 2024

BOARD of CLALLAM COUNTY COMMISSIONERS
MINUTES for the week of December 25 – 29, 2023

EXECUTIVE SESSION – December 20, 23 at 1 p.m.

The Prosecuting Attorney's Office requests an Executive Session with the Board of Commissioners on Pursuant to RCW 42.30.110, an executive session will be held at 1 p.m., Wednesday, December 20, 2023 in the Commissioners Small Conference Room, 223 East 4th Street, Port Angeles, Room 150. No Zoom option will be available.

The Board of Commissioners will discuss with the Prosecuting Attorney's Office potential/pending litigation.

Per RCW 42.30.110(i), the Board may recess into executive session "to discuss with legal counsel representing the agency litigation . . . to which the agency, the governing body, or a member acting in an official capacity is, or is likely to become, a party, when public knowledge regarding the discussion is likely to result in an adverse legal or financial consequence to the agency."

Any action will be taken in a open public meeting.

The Board convened in open session at 1:01 p.m. to discuss potential/pending litigation. Present were Commissioners Ozias, French and Johnson, Chief Civil Prosecuting Attorney Boughton, Prosecuting Attorney Nichols, Deputy Director Human Resources/Administrator/Risk Reyes, Administrator Mielke, and Chief Financial Officer Lane.
ACTION TAKEN: CRJm to recess to executive session for 1 hour, CMFs, mc

Board recessed into executive session at 1:03 p.m.

Board convened in open session at 2:02 p.m. and CMO noted the executive session will be extended for 30 minutes.

Board convened in open session at 2:32 p.m.

ACTION TAKEN: CMFm to direct staff to draft a letter consistent with the conversation held in executive session. The letter will be signed by all three Commissioners and delivered to Judge Neupert, CRJs

Discussion was held.

AMENDED ACTION TAKEN: CMF amended the motion to direct staff to draft a letter consistent with the discussion held in executive session. The letter will be signed by all three Commissioners and delivered to Judge Neupert. The letter will also be added to the consent agenda at the next open public meeting, CRJs

Discussion was held.

AMENDED ACTION TAKEN: CMF amended the motion to direct staff to draft a letter consistent with the discussion held in executive session. The letter will be signed by all three Commissioners and delivered to Judge Neupert. The letter will be addressed during the correspondences section during the work session on December 26, 2023, CRJs, mc

Meeting concluded at 2:53 p.m.

WORK SESSION – 9 a.m.

The work session convened at 9 a.m., Tuesday, December 26, 2023. Present were Commissioners Ozias, Johnson and French, and Administrator Mielke.

Items of discussion per the agenda published December 21 were:

- Calendar/Correspondence
- Resolution reappointing Ioana Bociu to the Marine Resources Committee
- Resolution appointing Patricia Willits to the Conservation Futures Program Advisory Board
- Developmental Disabilities funding recommendations 2024
- Pre-application questionnaire with Department of Commerce for Secure Federal Funding Initiative Grant Recompete
- Agreement with Habitat for Humanity of Clallam County for American Rescue Plan Act Funds (ARPA)

Meeting concluded at 10:03 a.m.

REGULAR MEETING OF THE BOARD OF CLALLAM COUNTY COMMISSIONERS

Chair Ozias called the meeting to order at 10:30 a.m., Tuesday, December 26, 2023. Also present were Commissioners Johnson and French and Administrator Mielke.

REQUEST FOR MODIFICATIONS/APPROVAL OF AGENDA

ACTION TAKEN: CRJm to adopt the agenda as presented, CMFs, mc

PUBLIC COMMENT

- Gayle Baker, Sequim, commented on Towne Road (see attached)
- Henry Howe, Sequim, commented on Towne Road

CONSENT AGENDA

1a Approval of vouchers for the weeks of December 11 and 18
1b Approval of payroll for the period ending November 30
1c Approval of minutes for the week of December 11

ACTION TAKEN: CRJm to adopt the consent agenda as presented, CMFs, mc

REPORTS AND PRESENTATIONS

- CMF commented on Recompete, Operational Area meeting, meeting with Beaver Grocery and Health and Human Services Environmental Health
- CRJ commented on subset Housing Solutions Committee meeting, Natural Resources Innovations Center (NRIC) meeting, Winter Ice Village
- CMO commented on Legislative Steering Committee

CONTRACTS AND AGREEMENTS

2a Contract amendment 15 with Department of Health for WIC Nutrition, Drinking Water Group A Programs, and On-Site Sewage System Local Management Plan Implementation

ACTION TAKEN: CRJm to approve, CMFs, mc

2b Agreement with Department of Ecology for Clallam County Marine Resources County Projects

ACTION TAKEN: CRJm to approve, CMFs, mc

2c Agreement with Harper Ridgeview Funeral Chapel for Coroner services

ACTION TAKEN: CRJm to approve, CMFs, mc

2d Agreement with Department of Commerce for STOP Violence Against Women Formula Grant Program

ACTION TAKEN: CRJm to approve, CMFs, mc

DRAFT

2e Agreement with Department of Commerce for STOP Violence Against Women Formula Grant Program
ACTION TAKEN: CRJm to approve, CMFs, mc

2f Agreement amendment 1 with Olympic Peninsula Humane Society for animal sheltering services
ACTION TAKEN: CRJm to approve, CMFs, mc

2g Agreement amendment 7 with Terraphase Engineering dba Robinson Noble to extend the contract to finish the scope of work
ACTION TAKEN: CRJm to approve, CMFs, mc

2h Agreement amendment 1 with Public Works for Hotel/Motel Tax Fund agreement extension
ACTION TAKEN: CRJm to approve, CMFs, mc

2i Agreement amendment 2 with Public Works for Hotel/Motel Tax Fund agreement extension
ACTION TAKEN: CRJm to approve, CMFs, mc

2j Agreement with DCG Watershed for Bullman Beach Water System
ACTION TAKEN: CRJm to approve, CMFs, mc

2k Agreement with Peninsula Behavioral Health for Behavioral Health Funds/$39,529.69
ACTION TAKEN: CRJm to approve, CMFs, mc

2l Agreement with Peninsula Behavioral Health for Behavioral Health Funds/$166,500
ACTION TAKEN: CRJm to approve, CMFs, mc

2m Agreement with Peninsula Behavioral Health for Behavioral Health Funds/$24,000
ACTION TAKEN: CRJm to approve, CMFs, mc

2n Agreement with First Step Family Support Center for Behavioral Health Funds/$200,000
ACTION TAKEN: CRJm to approve, CMFs, mc

2o Agreement with The Boys & Girls Clubs of the Olympic Peninsula for Behavioral Health Funds/$25,446.30
ACTION TAKEN: CRJm to approve, CMFs, mc

2p Agreement with West End Outreach Services for Behavioral Health Funds/$77,468
ACTION TAKEN: CRJm to approve, CMFs, mc

2q Agreement with Transformations by Olympic Angels for Behavioral Health Funds/$39,674.77
ACTION TAKEN: CRJm to approve, CMFs, mc

2r Agreement with Sequim School District for Behavioral Health Funds/$306,450
ACTION TAKEN: CRJm to approve, CMFs, mc

2s Agreement with Reflections Counseling Services Group for Behavioral Health Funds/$205,500
ACTION TAKEN: CRJm to approve, CMFs, mc

2t Agreement with Reflections Counseling Services Group for Behavioral Health Funds/$284,700
ACTION TAKEN: CRJm to approve, CMFs, mc

2u Agreement with Port Angeles Fire Department for Behavioral Health Funds/$351,871.24
ACTION TAKEN: CRJm to approve, CMFs, mc

2v Agreement with Olympic Personal Growth Center for Behavioral Health Funds/$58,860
ACTION TAKEN: CRJm to approve, CMFs, mc

DRAFT

2w Agreement with Olympic Peninsula Community Clinic for Behavioral Health Funds/$220,000
ACTION TAKEN: CRJm to approve, CMOs, mc (CMF abstained)

ADMINISTRATION

3a Resolution authorizing the Board of Equalization to convene
ACTION TAKEN: CRJm to adopt, CMFs, mc

3b Resolution reappointing Charles Meyer, Lourene O'Brien, and Alan Barnard to the Sheriff's Citizens Advisory Committee
ACTION TAKEN: CRJm to adopt, CMFs, mc

3c Resolution reappointing Annie O'Rourke, Mattias Jarvegren, and Carla Sebastian to the Permit Advisory Board
ACTION TAKEN: CRJm to adopt, CMFs, mc

3d Resolution reappointing Gregory McCarry to the Housing Solutions Committee
ACTION TAKEN: CRJm to adopt, CMFs, mc

3e Resolution reappointing Nikki Booth, Thomas Butler, and Kenneth Reandeau to the Planning Commission
ACTION TAKEN: CRJm to adopt, CMFs, mc

3f Resolution reappointing Sarah Woodard and Sharon Maggard to the Homelessness Task Force
ACTION TAKEN: CRJm to adopt, CMFs, mc

3g Resolution reappointing Bill Hermann, Johanna Bartee, and Joseph Murray to the Opportunity Fund Board
ACTION TAKEN: CRJm to adopt, CMFs, mc

3h Resolution reappointing Robert Vreeland, Ann Soule, and Lyn Muench to the Marine Resources Committee
ACTION TAKEN: CRJm to adopt, CMFs, mc

3i Resolution appointing and reappointing various members to the Solid Waste Advisory Committee
ACTION TAKEN: CRJm to adopt, CMFs, mc

3j Resolution reappointing various members to the Trails Advisory Committee
ACTION TAKEN: CRJm to adopt, CMFs, mc

3k Resolution reappointing Richard Hendrickson to the Boundary Review Board
ACTION TAKEN: CRJm to adopt, CMFs, mc

PUBLIC COMMENT

Prior to public comment, a Towne Road update is given from Bruce Emery, Director of Community Development and Joe Donisi, Road/Public Works Department

- Karen Hubert, Sequim, commented on item 2r, Towne Road
- Gayle Baker, commented on Towne Road
- Isabelle Dunlop, Sequim, commented on Towne Road
- Jeff Tozzer, Sequim, commented on Towne Road
- Eileen Damian, Sequim, commented on Towne Road
- Tom Ash, Sequim, commented on Towne Road
- Pepai Whipple, Sequim, commented on Towne Road
- Enid Phreaner, Sequim, commented on Towne Road
- John Zey, Sequim, commented on Towne Road
- Derrick Eberle, Sequim, commented on Towne Road

DRAFT

Board held discussion regarding Towne Road.
ACTION TAKEN: CMF moved to affirm that Clallam County has selected Option 2 as the preferred option for completion of Towne Road, and has requested that the Public Works Department bring back to the Board a strategy to accomplish Option 2, and to be completed in a timely fashion with the desire to complete the project by the end of the 2024 construction season, CRJs, mc

Meeting concluded at 12:16 p.m. and continued to 9 a.m., Tuesday January 2, 2024.

PASSED AND ADOPTED this 2nd day of January 2024.

BOARD OF CLALLAM COUNTY COMMISSIONERS

Mark Ozias

ATTEST:

Randy Johnson

Loni Gores, MMC, Clerk of the Board

Mike French

KEY TO ABBREVIATIONS:

ATM	Administrator Todd Mielke	m	moved
CMO	Commissioner Mark Ozias	mc	motion carried
CRJ	Commissioner Randy Johnson	s	seconded
CMF	Commissioner Mike French		

DRAFT

Gayle Baker
Public Comment
12/20/23

Clallam County Commissioners
% Loni.Gores@clallamcountywa.gov

Public Comment
December 26, 2023
Gayle Baker

Commissioners! Please pass a resolution to commit to the completion of Towne Road in 2024 within the budget set by the grant you previously signed off on. The electronic gate is a waste of taxpayer money with the primary beneficiaries Mr. & Mrs. Eberle and the Jamestown S'Klallam Tribe; the Tribe gets more land and the Eberle's get a gate they don't have to pay for, but which yields them access to lower Towne Road whenever they desire to use it. Yay for them!

Too bad for those people whose homes may burn down or those who may not be able to evacuate the area in case of a tsunami or flood. So sorry for the folks on the other two roads that now have the traffic that used to use Towne Road. And not so good for the taxpayers that have paid for all the changes to the road and surrounding land in the first place—including the overpayment for 24th District Representative, Steve Tharinger's house—a house that was purchased with county funds to facilitate relocation of the berm and road.

Too bad for the taxpayers who paid for the Tribe's premature breach of the levy—and I'm not convinced that wasn't on purpose considering the benefit they have derived as a result of that premature breach—which shuts down Towne Road and gets them their wish that the road remains closed. Is it true the land around the levy reverts to the tribe if Towne Road remains closed for another two and a half years?

Mark Ozias has shown his utter disregard for the citizens of Clallam County, instead catering to the interests of the Eberles' and the Jamestown Tribe. According to PDC records, Mr. Ozias had $3,425 in campaign donations in 2023--$1,800 (or 53%) of that amount was from the Jamestown Tribe--Commissioner Ozias's biggest donor by far. Makes me wonder if Towne Road would be open if not for those two big donations.[1] No PDC record of any donation to Mr. French or Mr. Johnson by the Jamestown Tribe. Commissioner Johnson and Commissioner French, you two have the votes that can open this road. You are supposed to be voting independently according to your district needs and the needs of the county as a whole. Do what's right for the community and open Towne Road!

The Sherriff is on record that the road should be open and stay open, the Fire Chief is on record that the road should be open. More people have written letters to the Commissioners wanting Towne Road open than letters to keep it closed. Open Towne Road! Director Energy is on Record to open Towne Rd.

It is your duty as commissioners to uphold the oath you swore when you took office. It goes something like this:

I, _____, do solemnly swear [or affirm] that I will support the Constitution of the United States and the Constitution and laws of the State of Washington, and all local ordinances, and that I will faithfully and impartially perform and discharge the duties of the office of _____, according to the law and the best of my ability.[2]

Gayle Baker
7458 Old Olympic Hwy
Sequim, WA 98382

[1] https://apollo.pdc.wa.gov/public/registrations/campaign-finance-report/110161472
[2] https://mrsc.org/stay-informed/mrsc-insight/october-2023/oath-of-office

1c

JAN 02 2024

AGENDA ITEM SUMMARY

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

Department: BOCC

WORK SESSION ☒ **Meeting Date: 1-2-24**

REGULAR AGENDA ☒ **Meeting Date: 1-2-24**

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 – Letter of Support

Documents exempt from public disclosure attached: ☐

Executive summary:
The North Olympic Regional Veteran's Housing Network has been notified they are a finalist for the Home Depot Foundation Veteran Grant (which is national) for its Minsky Place facility in Sequim. The Commissioners will review a letter of support for the grant application.

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?)
Review and approve letter.

County Official signature & print name: Loni Gores Loni Gores, Clerk

Name of Employee/Stakeholder attending meeting: Board of Commissioners

Relevant Departments: Board of Commissioners

Date submitted: 12-28-23

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* 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)

Letter of Support for Home Depot Foundation grant 1-2-24
Revised: 3-04-2019

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

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@clallamcountywa.gov

MARK OZIAS, District 1
RANDY JOHNSON, District 2
MIKE FRENCH, District 3

TODD MIELKE, County Administrator

January 2, 2024

RE: Home Depot Foundation Veteran Support

Dear Home Depot Foundation Committee Members:

Our agency supports North Olympic Regional Veteran's Housing Network (NORVHN) in their creation of Minsky Place in Sequim, Washington. This 6-bedroom group home will become a new home to the Veterans living there, aid them in their mental wellness, stabilize their medical needs and provide a source of comfort for them as they are able to age in place. Additionally, they will be creating a new full-time Case Manager position who will be able to attend local meetings and perform outreach within our community for other Veterans who are in need.

Through NORVHN's work over the last dozen years, they have focused exclusively on Veterans through their sheltering program and their permanent supportive program on the Olympic Peninsula. We are delighted to have them creating a housing program in Sequim, where there are very few options for Veterans, let alone those who are low income and who need additional support.

We strongly encourage The Home Depot Foundation to support their award of this grant to aid our rural community with housing, Veteran support and hope.

Thank you for your support and consideration,

Sincerely,

BOARD OF CLALLAM COUNTY COMMISSIONERS

Mark Ozias | Randy Johnson | Mike French

DRAFT

2a

JAN 02 2024

AGENDA ITEM SUMMARY

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

Department: BOCC

WORK SESSION ☒ **Meeting Date: 12/26/2023**

REGULAR AGENDA ☒ **Meeting Date: 1/2/2024**

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

Item summary:

☐ Call for Hearing

☒ Contract/Agreement/MOU - Contract # 19961-23.005

☐ Resolution

☐ Proclamation

☐ Budget Item

☐ Draft Ordinance

☐ Final Ordinance

☐ Other

Documents exempt from public disclosure attached: ☐

Executive summary:

ARPA DIRECT GRANT ASSISTANCE AGREEMENT – HABITAT FOR HUMANITY – SEQUIM AVENUE AFFORDABLE HOUSING DEVELOPMENT INFRASTRUCTURE

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 Recover 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").

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 Childcare 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.

In August 2021, Habitat for Humanity of Clallam County was awarded $100,000 of ARPA funds to support the restart and completion of affordable housing projects in Clallam County that were

previously place on hold due to high construction material or contractor/subcontractor costs encountered during the COVID-19 public health emergency. These funds were to be used in support of funding affordable housing units built in Clallam County for low-income households with incomes of 30-80% of County AMI. As of December 31, 2021, all funds were expended for affordable housing construction costs.

In October of 2022 the Clallam County Board of Commissioners committed an additional $1 million of the remaining ARPA funds to Affordable Housing Projects in Clallam County. Since then, $300,000 was committed to Peninsula Housing Authority for their Mutual-Self Help Program, $40,000 to North Olympic Regional Veteran's Housing Network and additional $200,000 to Peninsula Housing Authority for the purchase of the Ox Bow Apartments. There remains $460,000 of funds available that have been committed to affordable housing projects.

ARPA DIRECT ASSISTANCE GRANT –HABITAT FOR HUMANITY – 2ND REQUEST – $500,000 - SEQUIM AVE AFFORDABLE HOUSING INFRASTRUCTURE

In February of 2023, Habitat for Humanity of Clallam County submitted an Executive Summary to the Clallam County Board of Commissioners outlining their need for $500,000 of ARPA Funds to help cover gaps in funding for the infrastructure and development of Phase One of their affordable housing project located at Brownfield Rd/Sequim Ave in Sequim Washington. In 2021 & 2022, Habitat purchased 2 parcels of land for a total of 10 acres within Sequim city limits to build affordable housing in a 2 Phase project. Phase 1 upon completion will include 50 units of affordable housing for low-income households with incomes between 30-80% of County AMI. The development's land and related infrastructure will be retained and owned by Habitat for Humanity of Clallam County through a Land Trust and the deed of trust for each unit will require that the unit may only be sold to a subsequent buyer meeting the 30-80% County AMI requirement, ensuring these units remain affordable housing.

On April 10, 2023, the request was brought before the BOCC for consideration. The BOCC had requested additional information from Habitat for Humanity including a breakdown of cost estimates. There was also a discussion of potentially reimbursing the land purchase from 2022 instead of advancing ARPA funds for the infrastructure improvements to be completed. Staff has reviewed this option and determined that it would create multiple compliance and legal issues concerning real estate ownership that should be avoided. With Habitat's strong track record of compliance in managing advanced covid-relief grants, advancing funds to get needed working capital distributed as soon as possible would be the best and most viable option.

Current estimates for the supporting infrastructure for the development is $5,773,350.00 excluding the permitting, GFC and Impact fees to the City of Sequim. As covered in more detail in the attached design and construction estimates received by Habitat for Humanity for this Phase 1 infrastructure project, these costs (excluding tax) are broken down as follows:

Excavating, Surveying, Site Prep & Concrete	$3,933,898.00
Paving – 4" Asphalt Mainline, Curb/Utility Patching	$ 180,950.00
Water, Sewer, and Stormwater Utility Improvements	$1,658,500.00
	$5,773,350.00

The City of Sequim City Council has recently voted in favor of waiving 50% of the Park Impact fees for this project. The full Park Impact fees for each 4-plex unit that would have been $6,347 will now be $3,173.50 each. Impact fees are not paid until the Certificate of Occupancy is issued after construction is completed.

Habitat applied for their Conditional Use Permit with the City of Sequim on October 20, 2023. It could take up to 180 days to get through the process but believe it could be expedited with the approval of the CHIP Grant in January 2024. Work is scheduled to begin regardless in the first half of 2024.

To date, Habitat for Humanity has the following funding secured or in development:

- Secured $1 million - MacKenzie Scott Foundation.
- Secured $500,000 – CHIP funding leveraging current Habitat Mortgages
- Secured $50,000 – United Way Donation
- Pending $2 million – Community Funded Project funds – Congressmen Derek Kilmer awarded funds to Habitat for the Sequim Ave project –should know in December if funding will be in Federal Budget.
- Pending $2 million - The City of Sequim in partnership with Habitat Clallam has applied for a CHIP Grant from WA Department of Commerce in the amount of $2,000,000. Funding will be used for the GFC fees for the development. Funds expected to be awarded in January 2024.
- Total Funding Secured $1.55 million
- Total Pending $4.00 million

The proposed Direct Assistance ARPA Grant would advance Habitat for Humanity the full grant amount of $500,000 upon execution of the agreement. Funds can be used for the infrastructure costs listed above excluding the impact fees to the City of Sequim. Reporting of actual expenditures and supporting documentation would be required quarterly until funds have been fully expended. All funding must be spent by September 30, 2026.

EVALUATION OF PROJECT ELIGIBILITY FOR ARPA FUNDS

On December 12, 2023, the Deputy Secretary to the US Treasury distributed a communication to all counties in receipt of ARPA funds requesting during the post-pandemic response phase to focus remaining ARPA funds on two underlying structural issues that were highlighted and worsened during the pandemic—affordable housing and workforce development. To that end, the US Department of the Treasury established affordable housing as a top priority, issuing additional guidance in July 2022 as outlined in the attached Treasury "Affordable Housing How-to-Guide" to make housing affordability investments easier to make for counties, including increasing flexibility to fully finance certain long-term affordable housing loans and expanding eligible projects to include an expanded list of federal housing programs, including:

- National Housing Trust Fund,
- Home Investment Partnerships Program,
- Low-Income Housing Tax Credit,
- The Public Housing Capital Fund,

- Section 202 Supportive Housing for the Elderly Program and Section 811 Supportive Housing for Persons with Disabilities,
- Project-Based Rental Assistance,
- Affordable Housing projects provided by a Tribal government that are eligible for funding under the Indian Housing Block Grant Program, and
- Multifamily Preservation & Revitalization Program.

Treasury also broadened the presumptive eligible uses of ARPA funds to include allowing ARPA funds to be used to finance the development, repair or operation any affordable rental housing that provides long-term affordability of 20 years or more to households at or below 65% of the local AMI through a covenant, land use restriction agreement, or other enforceable legal requirement. However, Treasury under FAQ 2.14 of the SLFRF 2022 Final Rule FAQ allows for provision of ARPA funding to alleviate the negative economic impacts of the pandemic on housing availability of up to 80% of AMI so long as the assistance is reasonably proportional to the need created by the negative economic impact. The Treasury also plans to release updated guidance in the new year that further expands recipients' flexibility to invest SLFRF in increasing housing supply in their communities.

Based on this guidance, staff believes the Clallam Habitat for Humanity Sequim Avenue affordable housing project and the related infrastructure needed to support the building of these affordable housing units for which these funds are being requested represent an eligible use of the County's ARPA funds under US Treasury guidance and aligns with the priorities the US Treasury has requested counties focus their remaining ARPA funds to address in this post-pandemic period.

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. This has been included in the 2024 budget.

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

Staff recommends the approval of the Direct Assistance ARPA grant contract during the December 26th, 2023 work session meeting and execution of the attached agreement on January 2, 2024.

County Official signature & print name: Mark Lane

Name of Employee/Stakeholder attending meeting: Angi Klahn, Colleen Robinson (Habitat)

Relevant Departments: BOCC

Date submitted: 12/20/2023

ARPA DIRECT GRANT ASSISTANCE AGREEMENT

This ARPA Direct Grant Assistance Agreement ("Agreement") is dated as of _____ day of _____, 2024, by and between Clallam County, a Washington political subdivision ("County"), and Habitat for Humanity of Clallam County (Federal Tax ID 91-1535386, UEI# PRLSAL6ENHM5, DUNS # 001778575), 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 ALN 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"). $7,510,320 was outlayed to the County on May 28, 2021. The remaining $7,510,320 of funds were disbursed by Treasury to the County in June 2022. Use of funds were for limited purposes identified in the Interagency Agreement between the Treasury and Clallam County designated under FAIN #SLFRP2169 ("IGA"), identified as Attachment A, the 2023 Coronavirus State and Local Fiscal Recovery Funds Interim Final Rule ("2023 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 2023 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 homelessness, 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;

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

e. ProvidING emergency relief from natural disasters or the negative economic impacts of natural disasters;

f. Funding projects eligible under the 26 surface transportation programs specified in the 2023 CAA;

g. Funding projects eligible under Title 1 of the Housing and Community Development Act of 1974.

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 and developing affordable housing in Clallam County to meet the housing needs of low income households, those residents residing in Qualified Census Tracts, and other vulnerable populations or geographic areas disproportionately-impacted by the COVID-19 public health emergency in the County who are experiencing housing insecurity, substandard living conditions or homelessness, which is consistent with Item 5 (b) of the Eligible Uses of ARPA Funds outlined above.

WHEREAS, the Recipient is a Clallam County non-profit that provides affordable homeownership to Clallam County residents that have an average household income range of 30-80% of County AMI. Such low-income residents were negatively economically impacted during the COVID-19 public health emergency, whereby this segment of the County's population was disproportionately impacted by the pandemic due to the severe shortage of affordable housing available in the County that placed such households at higher risk of experiencing housing insecurity.

WHEREAS, the Recipient has recently purchased ten acres in two parcels in Sequim, Washington, to construct an affordable housing development. This development will serve low-income workforce affordable housing for Family Partners under shared equity mortgages with payments no more than 30% of their income and require partners to contribute 250 work hour per adult on the project. The project will be constructed in two phases, Sequim Avenue ("Phase 1") and Miller Road ("Phase 2"), each phase upon completion providing 40-42 new units of affordable housing. The Recipient plans to start infrastructure construction on Phase 1 by the end of 2023.

WHEREAS, $5.773 million in infrastructure investments including engineering design, site preparation, roads, sewer, utilities hookup, street lighting and permitting is required for Phase 1 prior to affordable housing construction. The Recipient has secured $1.55 million dollars to fund the Phase 1 infrastructure project commencing. Additional pending funding of $2 million is expected to be awarded through community funded project funds and an additional $2 million of CHIPS grant funding is being sought through Washington State Department of Commerce grant. As additional funding is needed to fully fund this project, The Recipient is requesting $500,000 in ARPA funding to help partially bridge the funding gap.

WHEREAS, the Recipient will retain ownership of the infrastructure improvements through a Land Trust and the Deed of Trust issued for each housing unit to be located in Phase 1 and Phase 2 that will require that the unit may only be sold to a subsequent buyer meeting the 30-80% AMI requirements, thereby ensuring these units remain affordable housing.

WHEREAS, the County believes the provision of economic support to the Recipient is necessary and appropriate given the Recipient's critical role in providing affordable housing to impacted, low-income residents of Clallam County and the favorable impact completion of these projects will have in developing additional affordable housing in Clallam County. Given the impact the Covid-19 pandemic has had on the availability of affordable housing and those low to moderate income households experiencing housing insecurity in Clallam County, the project represents an eligible use of ARPA funds and is proportional to the need as outlined previously.

WHEREAS, the County and Recipient desire to enter into this Agreement so that the County may advance ARPA Funds to the Recipient via a direct economic support grant to provide needed economic support and cash flow needed to enable the Recipient as allowed under the IGA and 2023 Interim Final Rule to fund the design, site preparation, surveys and construction of the infrastructure associated with Phase 1 of this new affordable housing project.

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, 2026, unless terminated by the County in writing.

2. ARPA Funds. The County agrees to provide the Recipient a total sum not to exceed $500,000, which shall be used by Recipient to support design development, engineering, surveying, and construction costs associated with installing necessary infrastructure for Phase 1 of the affordable housing development in Sequim, Washington. As funds are needed to address immediate cash flow needs of the Recipient that hinder the project progress, the County agrees to disburse funds to the Recipient upon the execution of this Agreement. All funds advanced to the Recipient must be expended no later than September 30, 2026, based on eligibility criteria outlined in Attachment D, with unspent grant funds

advanced to the Recipient by the County to be refunded to the County upon earlier of the end of the term of Agreement, or the termination of the Agreement by the County.

3. Reporting Requirements. To facilitate the County's compliance with reporting requirements for usage of ARPA funding under IGA and to insure the ARPA funds provided to the Recipient are utilized in accordance with Attachment D, the Recipient will submit one A-19 equivalent request schedule per month to the County on or before the 10th day following the end of each calendar month during the term of the Agreement, detailing how the ARPA funds were utilized by the Recipient in support of affordable housing projects in Clallam County, until such time as such funds are fully depleted. Within 30 days of funds being fully depleted, the Recipient shall provide an executive summary narrative describing how the funds granted under this Agreement were utilized in support of affordable housing projects in Clallam County. Failure to provide any of the required documentation may result in termination of the Agreement and refunding all remaining unspent grant funds paid to the Subrecipient by the County.

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 Phase 1 infrastructure improvements shall be used only in support of affordable housing located in Phase 1, that such improvements shall be retained by the Recipient through a Land Trust and that all units located in Phase 1 will be subject to a perpetual Deed of Trust requiring that units may only be sold to a subsequent buyer meeting the 30-80% AMI requirements applicable to affordable housing designations.

6. Non-Discrimination. The Recipient shall provide affordable housing ownership assistance services to clients in Phase 1 based solely upon the basis of need and meeting household AMI limits of 80% or less and shall not 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 Phase 1 affordable housing development cease to be used as affordable housing for owners with household incomes of 80% AMI or less, or if the Recipient sells the property to another person or entity, the Recipient shall return the above-described ARPA funds actually received by Recipient 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 written 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, 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, 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
Habitat for Humanity of Clallam County
Attn: Colleen Robinson, Chief Executive Officer
PO Box 1479
728 E Front Street
Port Angeles, WA 98362

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 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 Limitation 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 the 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 wavier 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 _____ day of _____, 2024.

RECIPIENT

By: Colleen Robinson

Print Name: Colleen Robinson

Its: Chief Executive Officer

DATED this 20 day of Dec., 2023.

APPROVED AS TO FORM by DPA Boughton

BOARD OF COUNTY COMMISSIONERS
CLALLAM COUNTY, WASHINGTON

MARK OZIAS, Chair

RANDY JOHNSON, Commissioner

MIKE FRENCH, Commissioner

ATTEST:

L. Gores, Clerk of the Board

ATTACHMENT A

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

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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:	DUNS Number: 075739235
CLALLAM COUNTY 223 EAST FOURTH STREET, SUITE 4 PORT ANGELES, Washington, 98362-3015	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: MARK OZIAS
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.

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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.

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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;

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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.

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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.

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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

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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

Recipient

5/19/2021

Date

DocuSigned by:
MARK OZIAS
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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
2023 INTERIM FINAL RULE
DATED 9-20-2023

DEPARTMENT OF THE TREASURY

31 CFR Part 35

RIN 1505–AC81

Coronavirus State and Local Fiscal Recovery Funds

AGENCY: Department of the Treasury.

ACTION: Interim final rule.

SUMMARY: The Secretary of the Treasury is issuing an interim final rule to implement the amendments made by the Consolidated Appropriations Act, 2023 with respect to 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 September 20, 2023.

Comment date: Comments must be received on or before November 20, 2023.

ADDRESSES: Please submit comments electronically through the Federal eRulemaking Portal: *https://www.regulations.gov*. Comments can be mailed to the Office of Recovery Programs, 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 captioned with "Coronavirus State and Local Fiscal Recovery Funds 2023 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 *https://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: Jessica Milano, Acting Chief Recovery Officer, Office of Recovery Programs, Department of the Treasury, (844) 529–9527.

SUPPLEMENTARY INFORMATION:

I. Introduction

Overview

Since the first case of coronavirus disease 2019 (COVID–19) was discovered in the United States in January 2020, the pandemic has caused severe, intertwined public health and economic crises. In March 2021, as these crises continued, the American Rescue Plan Act of 2021 (ARPA) [1] established the Coronavirus State and Local Fiscal Recovery Funds (SLFRF) to provide state, local, and Tribal governments [2] with the resources needed to respond to the pandemic and its economic effects and to build a stronger, more equitable economy during the recovery. Upon enactment, the ARPA provided that SLFRF funds [3] 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.

The U.S. Department of the Treasury (Treasury) issued an interim final rule implementing the SLFRF program on May 10, 2021 (the 2021 interim final rule).[4] Treasury received over 1,500 public comments on the 2021 interim final rule.

Executive Summary of the 2022 Final Rule

On January 6, 2022, Treasury issued a final rule which responded to public comments and made several clarifications and changes to the provisions of the 2021 interim final rule to provide broader flexibility and greater simplicity in the SLFRF program.[5] The 2022 final rule provided for the following:

- *Public Health and Negative Economic Impacts:* Recipients may use SLFRF funds for a non-exhaustive list of programs, services, and capital expenditures that support an eligible COVID–19 public health or economic response. Recipients must serve "impacted" and "disproportionately impacted" classes of beneficiaries: impacted classes experienced the general, broad-based impacts of the pandemic, while disproportionately impacted classes faced more severe impacts, often due to preexisting disparities.

Public health eligible uses include COVID–19 mitigation and prevention, medical expenses, behavioral healthcare, and preventing and responding to violence. Negative economic impact eligible uses include assistance to households such as job training, rent, mortgage, or utility aid, affordable housing development, childcare; assistance to small businesses or nonprofits such as through loans or grants to mitigate financial hardship; assistance to impacted industries like travel, tourism, and hospitality that faced substantial pandemic impacts; or assistance to address impacts to the public sector, for example by hiring public sector workers to pre-pandemic levels.

- *Premium Pay:* Recipients may provide premium pay to a broad set of essential workers.
- *Revenue Loss:* Recipients may determine revenue loss due to the COVID–19 public health emergency by claiming the standard allowance of up to $10 million or completing the full revenue loss calculation. Recipients may use funds under revenue loss for government services.
- *Water, Sewer, and Broadband Infrastructure:* Recipients may use SLFRF funds for eligible broadband infrastructure investments to improve access, affordability, and reliability; and for eligible water and sewer infrastructure investments, including a broad range of lead remediation and stormwater management projects.

Impact of SLFRF

Since the launch of the SLFRF program, Treasury has disbursed 99.99% of SLFRF funds to approximately 30,000 state, local, and

[1] Sec. 9901, Public Law 117–2, 135 Stat. 223.

[2] Throughout this **SUPPLEMENTARY INFORMATION**, Treasury uses "state, local, and Tribal governments" or "recipients" to refer generally to governments receiving SLFRF funds; this includes states, territories, Tribal governments, counties, metropolitan cities, and nonentitlement units of local government.

[3] The ARPA added section 602 of the Social Security Act, which created the State Fiscal Recovery Fund, and section 603 of the Social Security Act, which created the Local Fiscal Recovery Fund (together, SLFRF). Sections 602 and 603 contain substantially similar eligible uses; the primary difference between the two sections is that section 602 established a fund for states, territories, and Tribal governments and section 603 established a fund for metropolitan cities, nonentitlement units of local government, and counties.

[4] *See* 86 FR 26786 (May 17, 2021).

[5] *See* 87 FR 4338 (Jan. 27, 2022).

Tribal governments, and these recipients have moved swiftly to deploy this funding in their communities. According to data reported to Treasury through March 31, 2023,[6] states and the largest local governments have budgeted nearly 80% of their total available SLFRF funds. Recipients are using SLFRF funds across a wide variety of eligible uses to meet the unique needs of their communities.[7] Recipients have been using SLFRF funds to shore up state and local finances, helping to avoid a repeat of the Great Recession when state and local government budgets were a drag on the overall economy for 14 quarters of the recovery.[8] Recipients reported that they budgeted nearly $100 billion for over 53,000 revenue replacement projects to provide fiscal stability through the provision of government services. Recipients have also budgeted over $12 billion across over 5,800 projects to respond to the public health needs of the COVID–19 pandemic including by providing testing, vaccinations, staffing, and outreach to underserved communities; budgeted $17 billion in projects to meet housing needs including through rental assistance, development and preservation of affordable housing, and permanent supportive housing services; budgeted over $11 billion to support workers through job training for populations impacted by the pandemic, to provide premium pay, and to invest in public sector capacity building; and budgeted over $26 billion for water, sewer, and broadband infrastructure projects. Overall, the impact of the SLFRF program is already proving to be transformative for communities across the country as recipients use SLFRF funds to build a more equitable economic recovery and help the country be better prepared for future crises.

Overview of the Consolidated Appropriations Act, 2023

On December 29, 2022, the Consolidated Appropriations Act, 2023 (the 2023 CAA) was signed into law by the President,[9] amending sections 602 and 603 of the Social Security Act to give state, local, and Tribal governments more flexibility to use SLFRF funds to provide emergency relief from natural disasters, build critical infrastructure, and support community development.

Generally, the 2023 CAA does not alter the existing eligible use categories originally provided by the ARPA. All eligible uses described in the 2022 final rule remain available to recipients. The 2023 CAA codifies the option for recipients to use up to $10 million, which Treasury termed the "standard allowance," to replace lost revenue and use that funding to provide government services in lieu of calculating revenue loss according to the formula set forth in the 2022 final rule. Otherwise, the 2023 CAA provides for new eligible uses.

The 2023 CAA provides that state, local, and Tribal governments may use SLFRF funds to provide emergency relief from natural disasters or the negative economic impacts of natural disasters, including temporary emergency housing, food assistance, financial assistance for lost wages, or other immediate needs. As described later in this interim final rule, the emergency relief from natural disasters eligible use category is subject to the same program administration requirements as the four existing eligible uses in the SLFRF program, including the obligation deadline of December 31, 2024, and expenditure deadline of December 31, 2026.

The 2023 CAA also grants the authority for recipients to use SLFRF funds for additional infrastructure projects, including projects eligible under certain Department of Transportation programs (Surface Transportation projects) and projects eligible under Title I of the Housing and Community Development Act of 1974 (Title I projects). The 2023 CAA also provides additional requirements that apply to SLFRF funds used for Surface Transportation and Title I projects. These additional requirements provided for in the 2023 CAA are outlined below:

- The total amount of SLFRF funds a recipient may direct toward Surface Transportation and Title I projects is capped at the greater of $10 million and 30% of a recipient's total SLFRF award.
- Except as otherwise determined by the Secretary, the use of SLFRF funds for Surface Transportation and Title I projects is also subject to certain other laws, including the requirements of titles 23, 40, and 49 of the U.S. Code, title I of the Housing and Community Development Act of 1974, and the National Environmental Policy Act of 1969.
- SLFRF funds used for Surface Transportation and Title I projects must supplement, not supplant, other Federal, state, territorial, Tribal, and local government funds (as applicable) that are otherwise available for these projects. This provision does not apply to funds used under the emergency relief from natural disasters eligible use category.
- Recipients must obligate funds used for Surface Transportation projects and Title I projects by December 31, 2024 (the same obligation deadline that applies to the other eligible uses) and must expend funds by September 30, 2026. This expenditure deadline is three months earlier than the expenditure deadline for all other eligible uses.
- Treasury may delegate oversight and administration of the requirements associated with funds used for Surface Transportation projects and Title I projects to the appropriate Federal agency. This interim final rule discusses how the Department of Transportation will oversee funds expended for certain Surface Transportation projects.

Sections 602 and 603 of the Social Security Act specify two restrictions on uses of funds: for recipients other than Tribal governments, funds may not be used for deposits into any pension fund and, in the case of states and territories only, funds may not be used to directly or indirectly offset a reduction in net tax revenue resulting from a change in law, regulation, or administrative interpretation during the covered period. The 2023 CAA did not amend these restrictions.

Thus, sections 602(c)(1) and 603(c)(1) of the Social Security Act, as amended by the 2023 CAA, provide that SLFRF 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;

[6] U.S. Department of the Treasury, April 2023 Quarterly and Annual Reporting Analysis, *https://home.treasury.gov/system/files/136/April-2023-Reporting-Blog-Post.pdf.*

[7] The figures included in this interim final rule include Project and Expenditure reporting data covering the period ending March 31, 2023 from the all SLFRF recipients. It includes quarterly data reported by states, territories, and metropolitan cities and counties with a population over 250,000 or an allocation over $10 million, non-entitlement units of local government allocated more than $10 million, and Tribal governments allocated over $30 million from January 1, 2023–March 31, 2023 and annual data reported by metropolitan cities and counties with populations less than 250,000 and an allocation less than $10 million, Tribal governments with an allocation less than $30 million, and non-entitlement units of local government allocated less than $10 million from April 1, 2022 to March 31, 2023.

[8] Press Release, U.S. Department of the Treasury, Remarks by Secretary of the Treasury Janet L. Yellen at National Association of Counties 2023 Legislative Conference (Feb. 14, 2023).

[9] Public Law 117–328 (Dec. 29, 2022).

(c) For the provision of government services up to an amount equal to the greater of—

(i) The amount of the reduction in revenue due to the COVID–19 public health emergency relative to revenue collected in the most recent full fiscal year prior to the emergency; or

(ii) $10,000,000

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

(e) To provide emergency relief from natural disasters or the negative economic impacts of natural disasters, including temporary emergency housing, food assistance, financial assistance for lost wages, or other immediate needs.

Sections 602(c)(4) and 603(c)(5) of the Social Security Act, as amended by the Infrastructure Investment and Jobs Act, provide that SLFRF funds may be used for an authorized Bureau of Reclamation project for purposes of satisfying any non-Federal matching requirement required for the project.[10]

Sections 602(c)(5) and 603(c)(6) of the Social Security Act, as added by the 2023 CAA, provide that SLFRF funds may be used for Surface Transportation projects and Title I projects, including in some cases to satisfy a non-Federal share requirement applicable to certain projects or to repay a loan provided under one of the Surface Transportation programs.

Structure of the Supplementary Information

Following this Introduction, this **SUPPLEMENTARY INFORMATION** is organized into four sections: (1) Eligible Uses, (2) Discussion of Revenue Loss and Program Administration Provisions, (3) Comments and Effective Date, and (4) Regulatory Analyses. Recipients seeking information regarding the original four eligible uses in the SLFRF program generally may reference the 2022 final rule and other SLFRF program guidance.

The Eligible Uses section describes the standards for determining eligible uses of funds in each of the eligible use categories provided in the 2023 CAA:

(1) Emergency Relief from Natural Disasters
(2) Surface Transportation Projects and Title I Projects
  a. Surface Transportation Projects
  b. Title I Projects

As with the 2022 final rule, each eligible use category has separate and distinct standards for assessing whether a use of funds is eligible. Standards, restrictions, or other provisions in one eligible use category do not apply to other categories. Therefore, recipients should first determine which eligible use category a potential use of funds fits within, then assess whether the potential use of funds meets the eligibility standard or criteria for that category. Recipients using funds for Surface Transportation projects receiving funding from the Department of Transportation must consult with the Department of Transportation before using SLFRF funds for these projects.

In the Emergency Relief from Natural Disasters section of this interim final rule, Treasury identifies a non-exhaustive list of specific uses of funds that are eligible, called "enumerated eligible uses," that provide emergency relief from the physical or negative economic impacts of natural disasters. The sections discussing Surface Transportation projects and Title I projects specifically describe the eligible projects articulated by the statute.

The Discussion of Revenue Loss and Program Administration Provisions section provides additional information, where relevant, to clarify the availability of the standard allowance, discuss program requirements applicable to the new eligible uses, and describe relevant distinctions between the requirements of the 2022 final rule and this interim final rule. This section includes:

(1) Revenue Loss
(2) Timeline for Use of SLFRF Funds
(3) Use of Funds for Match or Cost-Share Requirements
(4) Reporting
(5) Uniform Guidance

Next, the Comments and Effective Date section discusses the effective date and comment period for this interim final rule. Finally, the Regulatory Analyses section provides Treasury's analysis of the impacts of this rulemaking, as required by several laws, regulations, and Executive Orders. This section discusses the impact of the amendments in the 2023 CAA, where relevant. Please reference the 2022 final rule for the regulatory analyses of the impacts of the 2022 final rule.

Throughout this **SUPPLEMENTARY INFORMATION**, statements using the terms "should" or "must" refer to requirements. Statements using the term "encourage" or "advise" refer to recommendations, not requirements.

This **SUPPLEMENTARY INFORMATION** references three rule-making documents. Statements referencing "the 2021 interim final rule" refer to the rule released May 10, 2021, and published May 17, 2021. Statements referencing "the 2022 final rule" refer to the rule released January 6, 2022 and published January 27, 2022. Statements referencing "this interim final rule" reference this rule, released August 4, 2023, and published September 20, 2023.

Uses of Funds Not Specifically Identified as Eligible in This Interim Final Rule

Even if a use of funds is not specifically identified as eligible in this interim final rule, recipients may still be able to direct SLFRF funds toward that purpose as described further below.

First, the eligible uses described in the 2022 final rule remain available to recipients, and recipients may continue to pursue eligible projects under the 2022 final rule. For example, under the revenue loss eligible use category, recipients have broad latitude to use funds for government services up to their amount of revenue loss due to the pandemic, provided that other restrictions on use do not apply. A potential use of funds that does not fit within the other eligible use categories in this interim final rule or in the 2022 final rule may be permissible as a government service. Please reference the 2022 final rule for further information.

Second, the eligible use category for providing emergency relief from natural disasters provides a non-exhaustive list of enumerated eligible uses, which means that the listed eligible uses include some, but not all, of the uses of funds that could be eligible under this eligible use category. This interim final rule outlines a standard for determining other eligible forms of emergency relief, beyond those specifically enumerated. If a recipient would like to pursue a use of funds to provide emergency relief that is not specifically enumerated, the recipient should use the standards and associated guidance to assess whether the use of funds is eligible.

Third, as described further below, many of the uses in the Title I projects eligible use category are also eligible in the public health and negative economic impacts eligible use category, discussed in the 2022 final rule, where there is no cap on the amount of SLFRF funds that may be directed toward an eligible use. Furthermore, the public health and negative economic impacts eligible use category also offers a standard for determining if other uses of funds, beyond those specifically enumerated, are eligible. Recipients seeking to use SLFRF funds for Title I projects may consider the relevant eligible uses and available funding levels to determine which eligible use category best supports their community's needs. As noted above, this interim final rule did

[10] *See* section 40909 of Public Law 117–58, 135 Stat. 429, 1126 (Nov. 15, 2021).

not alter the public health and negative economic impacts eligible use category. Please see the 2022 final rule for more information.

Request for Comments

Treasury seeks comment on sections addressing the new eligible uses, Emergency Relief from Natural Disasters, Surface Transportation projects, and Title I projects. To better facilitate public comment, Treasury has included specific questions in the relevant sections of 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 the new eligible uses.

II. Eligible Uses

A. Emergency Relief From Natural Disasters

Background

The 2023 CAA amended sections 602 and 603 of the Social Security Act to permit recipients to use SLFRF funds to "provide emergency relief from natural disasters or the negative economic impacts of natural disasters, including temporary emergency housing, food assistance, financial assistance for lost wages, or other immediate needs." As state, local, and Tribal governments spend billions of dollars a year to respond to the impacts of natural disasters that are growing in size, scale, and frequency, often as a result of climate change,[11] this new eligible use supports recipients in responding to the varied and evolving needs of their communities with SLFRF funds already on hand.

Since 1980, there have been 341 natural disasters in the United States that reached or exceeded damages valued at $1 billion, causing 15,821 deaths and resulting in nearly $2.5 trillion in damages.[12] In recent years, costly U.S. natural disasters have become even more frequent, in part due to the impacts of climate change, which are known to create more frequent and intense droughts and storms,[13] lengthen wildfire seasons in the Western States,[14] and increase heavy rainfall events in the contiguous 48 states.[15] In 2020, 2021, and 2022, there were an average of 20 weather and climate disasters each year that reached or exceeded damages valued at $1 billion, compared to an average of 12.8 weather and climate disasters annually from 2010 to 2019.[16] From 2020 to 2022 alone, these billion-dollar natural disasters caused 1,460 deaths and resulted in damages valued at $434.6 billion.[17]

The impacts of natural disasters range from loss of life and other consequences for health and safety to destruction of property and infrastructure and disruption of economic activity. The increasing prevalence of natural disasters and corresponding increased costs of responding to and recovering from natural disasters places additional burden on state, local, and Tribal governments.[18] This burden is experienced throughout communities, including through strains placed on public infrastructure and on households, ranging from impacts to housing, food, water, wages, and other needs.

The U.S. Census Bureau found that approximately 3.3 million people were displaced from their homes by natural disasters in 2022.[19] Even when individuals and families in an impacted area are not displaced after a natural disaster, they may face significant costs to repair homes to become livable again.[20] Natural disasters also can disrupt regular access to food and water, causing food insecurity and reliance on support from disaster relief organizations.[21] Furthermore, the damage caused by natural disasters can cause short-term earnings losses, as it may physically prevent individuals from working, whether due to housing displacement, physical barriers in accessing their place of employment or business, sustained damage to their place of employment or business, or injuries sustained as a result of the natural disaster.[22] Natural disasters also can generate a significant volume of debris [23] and damage buildings and infrastructure that provide critical or essential services to the general public, such as educational, utility, emergency, medical, and other services, creating strains on local governments and other responders.

While the impacts of a natural disaster can be widespread, communities that are historically underserved often experience heightened impacts as a result of underlying disparities and ability to prepare for disasters,[24] resiliency of homes to natural disasters,[25] risk of food insecurity,[26] ability to recover financially after a natural disaster,[27] and ultimately their ability to quickly return to social and economic life after a natural disaster.[28] Tribal governments, for example, are the first and sometimes the only responders to natural disasters that impact their communities.[29] Despite this responsibility, Tribal emergency management capacity has been underfunded over the years,

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[11] Billion-dollar disaster events account for the majority (>80%) of the damage from all recorded U.S. weather and climate events per NCEI and Munich Re. NOAA National Centers for Environmental Information (NCEI), U.S. Billion-Dollar Weather and Climate Disasters (2023), *https://www.ncei.noaa.gov/access/billions/*, DOI: 10.25921/stkw-7w73.

[12] *See id.*

[13] U.S. Department of the Interior, US Geological Survey, Climate FAQ: How can climate change affect natural disasters? (2023), *https://www.usgs.gov/faqs/how-can-climate-change-affect-natural-disasters#:~:text=With%20increasing%20global%20surface%20temperatures,more%20powerful%20storms%20to%20develop.*

[14] NOAA NCEI, U.S. Billion-Dollar Weather and Climate Disasters (2023), *https://www.ncei.noaa.gov/access/billions/*, DOI: 10.25921/stkw-7w73.

[15] In recent years, a larger percentage of precipitation has come in the form of intense single-day events. Environmental Protection Agency, "Climate Change Indicators: Heavy Precipitation," Figure 1: Extreme One-Day Precipitation Events in the Contiguous 48 states, 1910–2020 (Aug. 1, 2022). *https://www.epa.gov/climate-indicators/climate-change-indicators-heavy-precipitation.*

[16] NOAA NCEI, U.S. Billion-Dollar Weather and Climate Disasters (2023), *https://www.ncei.noaa.gov/access/billions/*, DOI: 10.25921/stkw-7w73.

[17] *See id.*

[18] *See id.*

[19] U.S. Census Bureau. Household Pulse Survey: Displaced in Last Year by Natural Disaster (2023). *https://www.census.gov/data-tools/demo/hhp/#/?measures=DISPLACED.*

[20] Harvard University's Joint Center for Housing Studies estimates that disaster-related home repairs and improvements cost $300 million in annual spending for every $10 billion in disaster losses incurred in the three years prior. Kermit. Baker & Alexander Hermann, Joint Center for Housing Studies of Harvard University. *Rebuilding from 2017's Natural Disasters: When, For What, and How Much?, https://www.jchs.harvard.edu/blog/rebuilding-from-2017s-natural-disasters-when-for-what-and-how-much.*

[21] Centers for Disease Control and Prevention, Natural Disaster and Severe Weather, *Food and Water Needs: Preparing for a Disaster or Emergency* (Jan. 29, 2019).

[22] Jeffrey A. Groen, et al, Census Bureau, Center for Economic Studies. *Storms and Jobs: The Effect of Hurricanes on Individuals' Employment and Earnings over the Long Term, https://www2.census.gov/ces/wp/2015/CES-WP-15-21.pdf.*

[23] Linda Luther, Congressional Research Service, R44941, Disaster Debris Management: Requirements, Challenges, and Federal Agency Roles (2017).

[24] Federal Emergency Management Agency (FEMA), 2022–2026 FEMA Strategic Plan (2023).

[25] Substance Abuse and Mental Health Services Administration, Disaster Technical Assistance Center Supplemental Research Bulleting, *Greater Impacts: How Disasters Affect People of Low Socioeconomic Status* (2017).

[26] Kevin M. Fitzpatrick, et al., *Food Insecurity in the Post-Hurricane Harvey Setting: Risks and Resources in the Midst of Uncertainty*, 17(22), Int. J. Environ. Res.Public Health 8424, (2020).

[27] Caroline Ratcliffe, et al., Urban Institute, Insult to Injury Natural Disasters and Residents' Financial Health 7 (2019).

[28] FEMA, 2022–2026 FEMA Strategic Plan (2023).

[29] National Congress of American Indians, Indian Country FY 2022 Budget Request (2023), 47–54. *https://www.ncai.org/resources/ncai-publications/NCAI_IndianCountry_FY2022_BudgetRequest.pdf.*

limiting Tribal governments' access to disaster resources before, during, or after the disaster strikes.[30]

This interim final rule provides significant flexibility for recipients to use SLFRF funds to provide emergency relief from the widespread physical and negative economic impacts of natural disasters. Recognizing that communities that have been historically underserved often experience deeper impacts of natural disasters due in part to differences that exist prior to the occurrence of a natural disaster, Treasury encourages recipients to consider how the emergency relief they provide supports all communities in resuming their lives after a natural disaster and building resiliency to future natural disasters.

In the section that follows, this interim final rule discusses how recipients may use SLFRF funds to provide emergency relief from the physical or negative economic impacts of natural disasters, including the standards for identifying a natural disaster and responsive emergency relief.

1. Standards for Providing Emergency Relief From Natural Disasters

This section of the interim final rule discusses the standards for providing emergency relief from the physical or negative economic impacts of natural disasters. Generally, a recipient should undertake the following two-step process:

1. Identify a natural disaster that has occurred or is expected to occur imminently, or a natural disaster that is threatened to occur in the future.

2. Identify emergency relief that responds to the physical or negative economic impacts, or potential physical or negative economic impacts, of the identified natural disaster. The emergency relief must be related and reasonably proportional to the impact identified.

This interim final rule implements the framework described above by defining natural disaster, defining emergency relief, and providing a non-exhaustive list of examples of emergency relief that may be provided. In addition to this non-exhaustive list, recipients may use the two-step framework above to identify and provide additional types of emergency relief in response to the physical or negative economic impacts, or the potential for such impacts, of an identified natural disaster.

The eligible uses set forth in this interim final rule provide flexibility to recipients to respond to the widespread physical and economic impacts of natural disasters in their communities. Treasury encourages recipients to consider how the provision of emergency relief can support communities that have been historically underserved and are more at risk of the impacts of natural disasters.

2. Identifying Natural Disasters

This interim final rule explains that for the purposes of the SLFRF program, a natural disaster is defined as a hurricane, tornado, storm, flood, high water, wind-driven water, tidal wave, tsunami, earthquake, volcanic eruption, landslide, mudslide, snowstorm, drought, or fire, in each case attributable to natural causes, that causes or may cause substantial damage, injury, or imminent threat to civilian property or persons. A natural disaster may also include another type of natural catastrophe, attributable to natural causes, that causes, or may cause substantial damage, injury, or imminent threat to civilian property or persons. This definition provides recipients the flexibility to determine an event to be a natural disaster even if it is not of a type specifically listed in the definition. This definition is based on the definition of natural disaster under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*) (the Stafford Act), which provides the statutory authority for most Federal disaster response activities, including as they pertain to Federal Emergency Management Agency (FEMA) assistance and programs.[31] The Stafford Act provides the framework for an orderly means of assistance by the Federal government to state, local, and Tribal governments in carrying out their responsibilities to alleviate the suffering and damage that result from such disasters.[32]

3. Identifying Emergency Relief

This interim final rule defines emergency relief as assistance that is needed to save lives and to protect property and public health and safety, or to lessen or avert the threat of catastrophe. This definition of emergency relief is based on the Stafford Act's definition of "emergency."[33]

Emergency relief must be related and reasonably proportional to the physical or negative economic impacts of a natural disaster that has occurred or is expected to occur imminently, or to the potential physical or negative economic impacts of a natural disaster that is threatened to occur in the future. Emergency relief that bears no relation or is grossly disproportionate to the type or extent of the impacts of the natural disaster would not be an eligible use.

In the case of a response to a natural disaster that has occurred or is expected to occur imminently, communities, individuals, or areas that did not or are not expected to experience the natural disaster or its negative economic impacts would not be eligible to receive emergency relief in response to the natural disaster. In evaluating whether a use is reasonably proportional, recipients should consider relevant factors about the natural disaster's actual or imminent physical or negative economic impacts and the emergency relief to be provided, including the availability of other assistance such as insurance or other Federal assistance. For more information, recipients should reference the section titled Duplication of Benefits below. Recipients should also consider the efficacy, cost, cost effectiveness, and time to delivery of the response.

When providing emergency relief from a natural disaster that is threatened to occur in the future, mitigation activities to address the potential physical or economic impacts of the natural disaster in a community where the natural disaster is unlikely to occur would not be considered a related and reasonably proportional response because there would not be an established need to provide emergency relief from that natural disaster, for example.

Available emergency relief based on the immediacy of the natural disaster. This section discusses how recipients may distinguish between a natural disaster that has already occurred or is expected to occur imminently, and the threat of a future occurrence of a natural disaster. As discussed, recipients may provide emergency relief from natural disasters in the form of assistance that is needed to save lives and to protect property and public health and safety or to lessen or avert the threat of catastrophe.

To provide emergency relief before, during, or after a natural disaster that has already occurred or is expected to occur imminently, the recipient should first identify how the disaster meets the definition of natural disaster as described above. The natural disaster

[30] *See Id.*

[31] *See* 42 U.S.C. 5195a(a)(2).

[32] FEMA, Stafford Act, as *Amended*, P–592 vol. 1 (2021).

[33] *See* 42 U.S.C. 5122(1) ("'Emergency' means any occasion or instance for which, in the determination of the President, Federal assistance is needed to supplement State and local efforts and capabilities to save lives and to protect property and public health and safety, or to lessen or avert the threat of a catastrophe in any part of the United States.")

that has occurred or is imminent must be, or have been, the subject of an emergency declaration or designation applicable to the recipient's geography and jurisdiction in the form of (1) an emergency declaration pursuant to the Stafford Act; (2) an emergency declaration by the Governor of a state pursuant to state law; or (3) an emergency declaration made by a Tribal government. If one of the declarations listed in (1)–(3) is not available, recipients may satisfy this requirement through the designation of an event as a natural disaster by the chief executive (or equivalent) of the recipient government, provided that the chief executive documents that the event meets the definition of natural disaster provided above. Recipients should maintain documentation consistent with the terms and conditions of the award agreement. Note that if the governor of a state declares an emergency for the entire state, the local governments within that state are not also required to declare an emergency in order to use SLFRF funds to provide emergency relief. A recipient government does not need to submit to Treasury for approval of the designation of a natural disaster; Treasury will defer to the reasonable determination of the recipient's chief executive (or equivalent) in making such a designation. For information about duplication of benefits requirements when responding to natural disasters with Stafford Act declarations, please reference the section titled Duplication of Benefits below.

As discussed above, Treasury's definition of emergency relief includes assistance to lessen or avert the threat of a future natural disaster, based on the Stafford Act definition of "emergency," which enables recipients to provide mitigation activities. By providing mitigation activities that would reduce the threat of a future natural disaster's potential impacts, the recipient will have reduced the severity of threats to life, risks of loss of economic activity, and costs to private and public entities to respond and recover, because less damage will be incurred.

To provide emergency relief in the form of mitigation activities, to lessen or avert the threat of a future natural disaster, a recipient should document evidence of historical patterns or predictions of natural disasters (as defined above) that would reasonably demonstrate the likelihood of the future occurrence of a natural disaster in its community. A recipient should use this evidence to support its determination that mitigation activities would be related and reasonably proportional to the threat of a natural disaster that it is addressing. For example, a recipient could utilize FEMA's National Risk Index [34] to represent the community's relative risk for hurricanes to establish the likelihood of a future hurricane, or a Tribal government could cite Indigenous Traditional Ecological Knowledge to determine future risks.[35]

4. Eligible Types of Emergency Relief

Sections 602 and 603 of the Social Security Act, as amended by the 2023 CAA, provide a non-exhaustive list of four types of emergency relief from natural disasters or their negative economic impacts that may be provided using SLFRF funds: temporary emergency housing, food assistance, financial assistance from lost wages, and other immediate needs. This interim final rule discusses and expands on this list, to enable recipients both to complement existing disaster relief funding and to address gaps in assistance.

To facilitate implementation, this interim final rule identifies a non-exhaustive list of eligible emergency relief, which means that the listed eligible uses include some, but not all, of the uses of funds that could be eligible. This non-exhaustive list of eligible emergency relief does not distinguish between emergency relief from the physical impacts of natural disasters and emergency relief from the negative economic impacts of natural disasters. However, the list does distinguish between emergency relief provided from a declared or designated natural disaster that has occurred or is expected to occur imminently, and emergency relief provided from the threat of a future natural disaster. To assess whether additional types of emergency relief would be eligible under this category beyond the non-exhaustive list provided below, recipients should first identify a natural disaster and then identify emergency relief that responds to the natural disaster's physical or negative economic impacts according to the standards discussed in the prior section.

Treasury has included references to programs currently administered by FEMA in the discussion of the eligible uses below. These references do not impose any of the associated requirements of these FEMA-administered programs. Furthermore, recipients are not required to receive pre-approval from FEMA or Treasury to use SLFRF funds for these eligible uses.

Duplication of Benefits. As a general matter, recipients may not claim use of Federal financial assistance to cover a cost that the recipient is covering with another Federal award, by insurance, or from another source,[36] and subrecipients are bound by the same requirements as recipients.[37] Specific requirements apply when recipients use Federal funds to provide assistance with respect to losses suffered as a result of a major disaster or emergency declared under the Stafford Act (disaster losses). Under the emergency relief from natural disasters eligible use category, certain duplication of benefits requirements under the Stafford Act, in addition to all relevant Uniform Guidance cost principles requirements, would apply to recipients using funds for events that both a) satisfy this interim final rule's definition of natural disaster and b) form the basis for a Stafford Act declaration of an emergency or major disaster. Accordingly, if a recipient uses SLFRF funds to cover disaster losses under the emergency relief from natural disasters eligible use category, it must abide by the Stafford Act's prohibition on duplication of benefits: Recipients may not provide financial assistance to a person, business concern, or other entity with respect to disaster losses for which such beneficiary will receive financial assistance under any other program or from insurance or any other source.[38] A recipient may provide assistance with respect to disaster losses to a person, business concern, or other entity that is or may be entitled to receive assistance for those losses from another source, if such person, business concern, or other entity has not received the other benefits by the time of application for SLFRF funds and the person, business concern, or other entity agrees to repay any duplicative

[34] *See* FEMA's National Risk Index available at *https://hazards.fema.gov/nri/hurricane.*

[35] Memorandum from the White House Office of Science and Technology Policy & the White House Council on Environmental Quality on Indigenous Traditional Ecological Knowledge and Federal Decision Making (Nov. 15, 2021). For example, a Tribe may be able to rely on Indigenous Traditional Ecological Knowledge in considering the threat of wildfires on Tribal lands.

[36] *See, e.g.,* 2 CFR 200.1 *Definitions* (defining "improper payment" to include "duplicate payments"); 2 CFR 200.403 *Factors affecting allowability of costs* (providing that "in order to be allowable under Federal awards" costs must "[b]e necessary and reasonable for the performance of the Federal award and be allocable thereto under these principles" and "[n]ot be included as a cost . . . of any other federally-financed program in either the current or a prior period").

[37] 2 CFR 200.101(b)(2) ("The terms and conditions of Federal awards (including this part [2 CFR part 200, the Uniform Guidance]) flow down to subawards to subrecipients unless a particular section of this part or the terms and conditions of the Federal award specifically indicate otherwise.").

[38] *See* 5 U.S.C. 5155(a).

assistance to the SLFRF recipient.[39] Recipients may also use SLFRF funds to provide assistance for any portion of disaster losses not covered by other benefits.[40]

To ensure compliance with the Stafford Act's prohibition on duplication of benefits, SLFRF recipients are advised to review FEMA's guidance codified at 44 CFR 206.191.

FEMA's guidance sets forth a "delivery sequence" for assistance with disaster losses, providing that sources of assistance later in the sequence are considered "duplicative" if paid despite the availability of other sources of assistance earlier in the sequence.[41] That is, if two sources provide assistance for the same disaster losses, the assistance provided later in the delivery sequence is considered duplicative and must not be paid or if paid must be repaid when the duplication of benefits occurs. While not listed in section 206.191's delivery sequence, recipients should treat SLFRF funds as last in the delivery sequence, unless the recipient, in consultation with the appropriate FEMA Regional Administrator or state disaster-assistance administrator, determines that another sequence is appropriate.[42] For example, assistance with disaster losses would generally be duplicative of insurance covering those same losses because insurance comes first in the delivery sequence. In that case, SLFRF funds should not be used to cover any portion of the disaster losses for which insurance benefits are received. The recipient is responsible for preventing and rectifying duplication of benefits with respect to disaster losses and should coordinate with the relevant FEMA Regional Administrator and state disaster assistance administrator, or other relevant agencies providing disaster assistance, as described in FEMA's guidance.

To facilitate compliance with the Stafford Act's prohibition on duplication of benefits, Treasury intends to require recipients to report their use of SLFRF funds to provide assistance with respect to disaster losses. Recipients are further required to notify subrecipients and contractors that, when providing assistance in response to a Stafford Act Declaration, they are responsible for ensuring that beneficiaries disclose any other assistance received for the same disaster losses prior to receiving assistance with SLFRF funds. Treasury further intends to make the reported information available to FEMA, the relevant FEMA Regional Administrator, and other agencies providing assistance with respect to disaster losses, as appropriate.

Non-Federal Matching Requirements. The emergency relief enumerated eligible uses do not add any new authority for recipients to use SLFRF funds to satisfy non-Federal matching requirements of other Federal programs. Instead, as described in the 2022 final rule, recipients may use SLFRF funds under the revenue loss eligible use category to satisfy non-Federal matching requirements. The newly eligible Surface Transportation projects and Title I projects, discussed later in this interim final rule, also provide recipients the ability to use funds to satisfy non-Federal cost share requirements in certain instances. Recipients seeking to use SLFRF funds for non-Federal matching requirements should reference the section titled Use of Funds for Match or Cost-Share Requirements in this interim final rule and the 2022 final rule for additional information.

a. Declared or Designated Natural Disasters

Below, Treasury is providing a non-exhaustive list of eligible uses that recipients may provide as emergency relief from the physical or negative economic impacts of a natural disaster that has a declaration or designation, as described above.

Temporary emergency housing. Recipients may provide emergency relief from the physical or negative economic impacts of a natural disaster in the form of temporary emergency housing to individuals and households including by providing funds for temporary housing for households who are unable to live in their home following a natural disaster. Examples of temporary emergency housing could include rental assistance or reimbursement for hotel costs; providing a temporary housing unit when individuals are facing challenges finding permanent housing due to shortages caused by a natural disaster; establishing other temporary emergency housing, including congregate and non-congregate shelter (*i.e.*, sheltering individuals in motels, hotels, dorms, etc.) before, during, or after a natural disaster; or providing shelter following an evacuation due to a natural disaster. Given the varying potential impacts of a natural disaster, recipients have flexibility to determine the length of time to provide temporary emergency housing based on the impact of the natural disaster and the housing conditions in their jurisdiction.

Food assistance. Recipients may provide emergency relief from the physical or negative economic impacts of a natural disaster in the form of food assistance. As is the case across the SLFRF program, recipients may administer programs through a range of other entities, including nonprofit and for-profit entities, to carry out eligible uses on behalf of the recipient government, including to provide emergency relief in the form of food assistance.

Financial assistance for lost wages. Recipients may provide emergency relief from the physical or negative economic impacts of a natural disaster in the form of financial assistance for lost wages. As with all forms of emergency relief under this eligible use category, financial assistance for lost wages must be related and reasonably proportional to the impact identified. In making this determination, recipients should consider all sources of available relief and other resources available to the potential beneficiaries of financial assistance.

Generally, Federal financial assistance programs directed toward individuals are designed to target individuals with a specific set of circumstances or to provide those who earn up to a specific income threshold with a specified amount of assistance. For example, the Coronavirus Aid, Relief, and Economic Security Act (CARES Act), Public Law 116–136, 134 Stat. 281 (March 27, 2020) provided an eligible individual a refundable tax credit of up to $1,200 ($2,400 for eligible individuals filing a joint tax return), plus $500 per qualifying child of the eligible individual. The credit was reduced for taxpayers with adjusted gross income that exceeded a threshold. The threshold was $150,000 in the case of a joint return, $112,500 in the case of a head of household, and $75,000 otherwise. An advance refund of this credit, referred to by the IRS as an Economic Impact Payment, was made during 2020.[43]

Recipients may provide financial assistance for lost wages by providing supplemental benefits to individuals who are participating in state unemployment insurance programs or

[39] *See* 5 U.S.C. 5155(b)(1).

[40] *See* 5 U.S.C. 5155(b)(3).

[41] 44 CFR 206.191(d).

[42] As provided in FEMA's guidance, "If following the delivery sequence concept would adversely affect the timely receipt of essential assistance by a disaster victim, an agency may offer assistance which is the primary responsibility of another agency." 44 CFR 206.191(d)(4).

[43] For more information on Treasury's Economic Impact Payments provided in response to the COVID–19 public health emergency, *see https://home.treasury.gov/policy-issues/coronavirus/assistance-for-american-families-and-workers/economic-impact-payments.*

the Department of Labor's Disaster Unemployment Assistance (DUA) program at the time the natural disaster occurred or following the natural disaster. Supplemental benefits can be provided to any person who is impacted by the natural disaster and receiving state unemployment insurance program benefits or DUA program benefits.

The amount of financial assistance for lost wages paid as a supplemental benefit to participants in the programs discussed above must not exceed $400 a week for the duration of the need for emergency relief. This limit was determined to be reasonably proportional through the review of other assistance for lost wages, such as the FEMA COVID–19 Assistance Program for Lost Wages,[44] which offered participants the option to provide claimants a lost wages supplement of up to $400, providing additional financial assistance for individuals who were participants in other Federal financial assistance programs during the height of the COVID–19 emergency. To provide other types of direct financial assistance to individuals impacted by natural disasters, please refer to the section titled Cash Assistance below.

Other immediate needs. As discussed above, natural disasters cause varied damage to persons, property, and infrastructure. Recipients may provide emergency relief from the physical or negative economic impacts of natural disasters for other immediate needs not discussed above. Below, this interim final rule discusses examples of eligible uses available to state, local, and Tribal governments using SLFRF funds to address other immediate needs.

Emergency Protective Measures. Recipients may use SLFRF funds to provide emergency protective measures, such as those described in Category B of FEMA's Public Assistance program to respond before, during, or after a natural disaster.[45] By referencing Category B eligible uses as an illustrative list of the types of emergency protective measure recipients may pursue with SLFRF funds, Treasury is seeking to simplify the administrability of this eligible use through a framework that may already be familiar to recipients. As noted above, recipients are not required to comply with the requirements associated with FEMA's Public Assistance program and are not required to receive pre-approval from FEMA or Treasury to use SLFRF funds for this purpose. Category B of FEMA's Public Assistance program includes assistance like emergency access, medical care and transport, emergency operations center related costs and other activities traditionally undertaken as part of emergency response. In considering what "other activities" are eligible under this category, recipients are encouraged to refer to Chapter 7 Section II of FEMA's Public Assistance Program and Policy Guide, which discusses Category B Emergency Protection Measures.[46] For Category B Emergency Protection Measures that are only eligible under FEMA's Public Assistance program as direct Federal assistance, recipients may use SLFRF funds to provide these services directly, such as emergency communications or public transportation.

Other examples of emergency protective measures include: transporting and pre-positioning equipment and resources; flood fighting; firefighting; purchasing and distributing supplies and commodities; provision of medical care and transport; evacuation and sheltering; provision of childcare; demolition of structures; search and rescue to locate survivors, household pets, and service animals requiring assistance; use or lease of temporary generators for facilities that provide essential community services; dissemination of information to the public to provide warnings and guidance about health and safety hazards; searching to locate and recover human remains; storage and interment of unidentified human remains; mass mortuary services; construction of emergency berms or temporary levees to provide protection from floodwaters or landslides; emergency repairs necessary to prevent further damage, such as covering a damaged roof to prevent infiltration of rainwater; buttressing, shoring, or bracing facilities to stabilize them or prevent collapse; emergency slope stabilization; mold remediation; extracting water and clearing mud, silt, or other accumulated debris from eligible facilities; taking actions to save the lives of animals; and snow removal.

Debris Removal. Recipients may use SLFRF funds for debris removal activities. Generally, this includes the clearance, removal, and disposal of vegetative debris (including tree limbs, branches, stumps, or trees), construction and demolition debris, sand, mud, silt, gravel, rocks, boulders, white goods, and vehicle and vessel wreckage. These eligible uses are described further in Category A of FEMA's Public Assistance program.[47] As noted above, recipients are not required to receive pre-approval from FEMA or Treasury to use SLFRF funds for these eligible uses. Recipients are also not required to comply with the requirements associated with FEMA's Public Assistance program.

Public Infrastructure Repair. Recipients may use SLFRF funds to restore public infrastructure damaged by a natural disaster, including roads, bridges, and utilities. Recipients may restore public infrastructure to its pre-disaster size, capacity, and function in accordance with applicable laws, codes, and standards. As part of restoring public infrastructure damaged by a natural disaster, recipients also may undertake activities that make this restored infrastructure more resilient to future natural disasters, helping to mitigate the impacts of future natural disasters. For more information on how to incorporate mitigation activities into a public infrastructure project, please see the section titled Threat of Future Natural Disaster: Mitigation Activities below.

Increased operational and payroll costs. When providing emergency relief from the physical or negative economic impacts of natural disasters, recipients may need to increase government services due to suddenly lacking or limited resources or may need to leverage existing government services or government facilities to be responsive as quickly and effectively as possible. Recipients may use SLFRF funds for increased operating costs, including payroll costs and costs for government facilities and government services used before, during, or after a natural disaster. This may include social services that are directly responsive to an impact from the disaster, representing an increased cost of providing those services due to the disaster.

Cash Assistance. Recipients may use SLFRF funds to provide cash assistance for uninsured or underinsured expenses caused by the disaster such as repair or replacement of personal property and vehicles, or funds for moving and storage, medical, dental, childcare, funeral expenses, behavioral health services, and other miscellaneous items. The eligible uses are generally modeled on FEMA's Individuals and Households program, which provides money and services to individuals who have experienced a disaster whose property has been damaged or destroyed and whose losses are not covered by

[44] Memorandum from President Trump on Authorizing the Other Needs Assistance Program for Major Disaster Declarations Related to Coronavirus Disease 2019 (Aug. 8, 2020).

[45] FEMA, FP 104–009–02, Public Assistance Program and Policy Guide Version 4 (2020).

[46] *See id.*

[47] *See id.*

insurance.[48] Consistent with the provision of emergency relief discussed throughout this section, recipients are not required to comply with the requirements associated with FEMA's Individuals and Households program to use SLFRF funds for these eligible uses. Furthermore, recipients are not required to receive pre-approval from FEMA or Treasury to use SLFRF funds for these eligible uses.

Recognizing that low-income households often experience deeper challenges recovering financially from a natural disaster,[49] recipients may also design cash assistance programs that serve low-income households that have been impacted by a natural disaster. Consistent with Treasury's definition of low-income household in the public health and negative economic impacts eligible use category in the 2022 final rule, for this purpose a low-income household is one with (i) income at or below 185 percent of the Federal Poverty Guidelines for the size of its household based on the most recently published poverty guidelines by the Department of Health and Human Services 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 the Department of Housing and Urban Development. Treasury will presume that cash assistance provided to low-income households impacted by a natural disaster is related and reasonably proportional emergency relief to address the negative economic impacts of natural disasters.

In designing a cash assistance program targeted to low-income households impacted by a natural disaster, recipients are not required to apply a specific dollar threshold for permissible payments and instead, recipients have flexibility in determining the appropriate level of cash assistance. This approach enables recipients to respond to the particularized natural disaster impacts for their low-income community members.

Home Repairs for Uninhabitable Primary Residences. Recipients may use SLFRF funds to rebuild homes or provide home repairs not covered by insurance to make residences that meet the criteria below habitable again. The residence must be a primary residence and be uninhabitable as a result of a natural disaster. As part of making home repairs, recipients may undertake activities that make restored homes more resilient to future natural disasters, helping to mitigate the impacts of future natural disasters. For more information on how to incorporate mitigation activities into home repair projects, please see the section titled Threat of Future Natural Disaster: Mitigation Activities below. This eligible use is generally modeled off of FEMA's Individuals and Households program, which provides money and services to individuals who have experienced a disaster whose property has been damaged or destroyed and whose losses are not covered by insurance.[50] Uses of funds that are eligible under FEMA's Individuals and Households program are eligible under the SLFRF, but recipients are not required to comply with the requirements associated with FEMA's Individuals and Households program and are not required to receive pre-approval from FEMA or Treasury to use SLFRF funds for these eligible uses.

b. Threat of Future Natural Disaster: Mitigation Activities

In addition to the emergency relief described above, recipients also may provide emergency relief to lessen or avert the threat of a natural disaster and its potential physical or negative economic impacts through mitigation activities. Some examples of eligible mitigation activities include the eligible project types described in FEMA's Hazard Mitigation Assistance Guidance, such as structure elevation, mitigation reconstruction, dry flood proofing, structural retrofitting, non-structure retrofitting, wind retrofit, and infrastructure retrofit.[51] Recipients are not required to receive pre-approval from FEMA or Treasury to use SLFRF funds for these eligible uses. Recipients are also not required to comply with the other requirements associated with FEMA's Hazard Mitigation Assistance programs.

Mitigation activities may be stand-alone projects that reduce or eliminate the potential impacts of the threat of a natural disaster or may be incorporated into repair or reconstruction projects that address the impacts of a natural disaster. For example, if a recipient is repairing the roof of a home damaged by a wildfire, the roof can be strengthened or fireproofed to make it more resilient to future wildfires as well. Similarly, recipients repairing roads damaged by flooding can incorporate drainage or pervious pavement that would result in a reduced or eliminated impact of flooding in the future, thereby decreasing future costs of repair and impact to the community. As discussed above, when identifying the threat of a natural disaster, a recipient must have documented evidence that historical patterns or predictions that reasonably demonstrate the likelihood of future occurrence of a natural disaster in the community.

Mitigation Activities with Capital Expenditures Exceeding $1 Million. In the case of mitigation activities with total expected capital expenditures of $1 million or greater, recipients other than Tribal governments must complete and meet the substantive requirements of a Written Justification for the capital expenditures in their project. Recipients will submit this Written Justification to Treasury as part of the Project & Expenditure report. Treasury will amend the Compliance and Reporting Guidance to describe how recipients will submit this information.

As discussed in Timeline for Use of SLFRF Funds section, SLFRF funds for this eligible use must be obligated by December 31, 2024, and expended by December 31, 2026. Capital expenditures may involve long lead-times, and the Written Justification may support recipients in analyzing proposed capital expenditures to confirm that they conform to the obligation and expenditure timing requirements. Further, such large projects may be less likely to be reasonably proportional to the potential impacts identified. Treasury is adopting the Written Justification requirement in recognition of this and the need for consistent documentation and reporting to support monitoring and compliance with the ARPA and this interim final rule. For projects with capital expenditures that only repair or restore infrastructure to pre-disaster conditions and do not include mitigation activities, recipients are not required to complete a Written Justification.

As noted above, Tribal governments are not required to complete the Written Justification for mitigation activities with total capital expenditures of $1 million or greater. Tribal governments generally have limited administrative capacity due to their small size and corresponding limited ability to supplement staffing for short-term programs. In addition, Tribal governments are already subject to

[48] FEMA, A guide to the Disaster Declaration process and Federal Disaster Assistance, *https://www.fema.gov/pdf/rrr/dec_proc.pdf.*

[49] Caroline Ratcliffe et al., Urban Institute, Insult to Injury Natural Disasters and Residents' Financial Health 7 (2019).

[50] FEMA, A Guide to the Disaster Declaration Process and Federal Disaster Assistance, *https://www.fema.gov/pdf/rrr/dec_proc.pdf.*

[51] FEMA, Hazard Mitigation Assistance Guide Hazard Mitigation Grant Program, Pre-Disaster Mitigation Program, and Flood Mitigation Assistance Program (2015), *https://www.fema.gov/sites/default/files/2020-07/fy15_HMA_Guidance.pdf.*

unique considerations that require additional administrative processes and administrative burden for Tribal government decision making, including capital expenditures. Tribal governments generally are subject to a jurisdictionally complex set of rules and regulations in the case of improvements to land for which the title is held in trust by the United States for a Tribe (Tribal Trust Lands). This includes the requirement in certain circumstances to seek the input or approval of one or more Federal agencies such as the Department of the Interior, which holds fee title of Tribal Trust Lands.

As a result of their limited administrative capacity and the unique and complex rules and regulations applicable to Tribal governments operating on Tribal Trust Lands, Tribal governments would experience significant and redundant administrative burden by also being required to complete a Written Justification for applicable capital expenditures. While Tribal governments are not required to complete the Written Justification, associated substantive requirements continue to apply, including the requirement that a capital expenditure must be related and reasonably proportional to the extent and type of the threat or impact being addressed. Note that, as a general matter, Treasury may also request further information on SLFRF expenditures and projects, including capital expenditures, as part of the regular SLFRF reporting and compliance process, including to assess their eligibility under this interim final rule.

Written Justification Requirements for Mitigation Capital Expenditures. For non-Tribal government recipients pursuing mitigation activities where a Written Justification is required, the Written Justification must (1) describe the emergency relief provided by the mitigation activity; (2) explain why a capital expenditure is appropriate to address the need for emergency relief; and (3) compare the proposed mitigation activity capital expenditure against alternative capital expenditures that could be made. The information required by the Written Justification reflects the framework applicable to all uses under the emergency relief from natural disasters eligible use category, providing justification for the relatedness and reasonable proportionality of the capital expenditure in response to the potential impact identified.

1. *Description of emergency relief to be provided and potential impact to be addressed:* Recipients should provide a description of the specific mitigation activities that provide emergency relief and explain why emergency relief is needed to lessen or avert the potential impacts of the natural disaster that is threatened to occur in the future. When appropriate, recipients may provide quantitative information on the extent and type of assistance needed to provide emergency relief, such as the number of individuals or entities that may be affected. As discussed above, when recipients identify a natural disaster that is threatened to occur in the future, recipients must document evidence of historical patterns or predictions of natural disasters that would reasonably demonstrate the likelihood of future occurrence of a natural disaster in their communities. In the Written Justification, recipients should use this evidence, along with considerations of efficacy, cost, cost effectiveness, and time to delivery, to support their determinations that mitigation activities would be related and reasonably proportional.

2. *Explanation of why a mitigation capital expenditure is appropriate:* Recipients should provide an assessment demonstrating why a mitigation activity capital expenditure is appropriate to address the specified potential impact identified. This should include an explanation of why existing capital equipment, property, or facilities would be inadequate to addressing the potential impact of the threat of a natural disaster and why policy changes or additional funding to pertinent programs or services would be insufficient without the corresponding capital expenditures. Recipients are not required to demonstrate that the potential impacts would be irremediable but for the additional capital expenditure; rather, they may show that other interventions would be inefficient, costly, or otherwise not reasonably designed to remedy the need for emergency relief without additional capital expenditure.

3. *Comparison of the proposed capital expenditure against alternative capital expenditures:* Recipients should provide an objective comparison of the proposed mitigation capital expenditure against at least two alternative capital expenditures and demonstrate why their proposed capital expenditure is superior to alternative capital expenditures that could be made. Specifically, recipients should assess the proposed capital expenditure against at least two alternative types or sizes of capital expenditures that are potentially effective and reasonably feasible. Where relevant, recipients should compare the proposal against the alternative of improving existing capital assets already owned or leasing other capital assets. Recipients should use quantitative data when available, although they are encouraged to supplement with qualitative information and narrative description. Recipients that complete analyses with minimal or no quantitative data should provide an explanation for doing so.

In determining whether their proposed mitigation activity capital expenditure is superior to alternative capital expenditures, recipients should consider the following factors against each selected alternative.

a. A comparison of the effectiveness of the capital expenditures in addressing the need for mitigation identified. Recipients should generally consider the effectiveness of the mitigation capital expenditures in addressing the potential impacts of the threatened natural disasters over the useful life of the capital asset and may consider metrics such as the number of individuals or entities served, when such individuals or entities are estimated to be served, the relative time horizons of the project, and consideration of any uncertainties or risks involved with the capital expenditure.

b. A comparison of the expected total cost of the capital expenditures. Recipients should consider the expected total cost of the mitigation capital expenditure required to construct, purchase, install, or improve the capital assets intended to address the need for emergency relief from the threat of the natural disaster identified. Recipients should include pre-development costs in their calculation and may choose to include information on ongoing operational costs, although this information is not required. Recipients should balance the effectiveness and costs of the proposed capital expenditure against alternatives and demonstrate that their proposed capital expenditure is superior. Further, recipients should choose the most cost-effective option unless it substantively reduces the effectiveness of the capital investment in addressing the need for emergency relief from the threat of the natural disaster identified.

Because, in all cases, uses of SLFRF funds to provide emergency relief from natural disasters must be related and reasonably proportional to actual or potential physical or negative economic impacts of a natural disaster, some capital expenditures may not be eligible.

In selecting the $1 million threshold, Treasury recognized that mitigation activity capital expenditures vary widely in size and therefore would

benefit from tiered treatment to implement eligibility standards while minimizing administrative burden. The $1 million threshold for whether a recipient needs to complete a Written Justification will allow recipients a simplified pathway to complete smaller projects.

Expenditures from closely related activities directed toward a common purpose are considered part of the scope of one project. These expenditures can include capital expenditures, as well as expenditures on related programs, services, or other interventions. A project includes expenditures that are interdependent (*e.g.*, acquisition of land, construction of the facility on the land, and purchase of equipment), or are of the same or similar type and would be utilized for a common purpose (*e.g.*, acquisition of barricades that would be used to provide emergency relief from natural disasters). Recipients must not segment a larger project into smaller projects in order to evade review. A recipient undertaking a set of identical or similar projects may complete one Written Justification comprehensively addressing the entire set of projects.

Treasury employs a risk-based approach to overall program management and monitoring, which may result in heightened scrutiny on larger projects. Accordingly, recipients pursuing projects with larger mitigation capital expenditures should complete more detailed analyses for their Written Justification, commensurate with the scale of the project.

Strong Labor Standards in Construction. As discussed in the 2022 final rule, Treasury continues to encourage recipients to carry out public infrastructure and mitigation activities in ways that produce high-quality work, avert disruptive and costly delays, and promote efficiency. Treasury encourages recipients to use strong labor standards, including project labor agreements and community benefits agreements that offer wages at or above the prevailing rate and include local hire provisions. Treasury also recommends that recipients prioritize in their procurement decisions employers that can demonstrate that their workforce meets high safety and training standards (*e.g.*, professional certification, licensure, and/or robust in-house training), that hire local workers and/or workers from historically underserved communities, and that directly employ their workforce or have policies and practices in place to ensure contractors and subcontractors meet high labor standards. Treasury further encourages recipients to prioritize employers (including contractors and subcontractors) without recent violations of Federal and state labor and employment laws.

Treasury believes that such practices will promote effective and efficient delivery of high-quality projects and support the economic recovery through strong employment opportunities for workers. Such practices will reduce likelihood of potential project challenges like work stoppages or safety accidents, while ensuring a reliable supply of skilled labor and minimizing disruptions, such as those associated with labor disputes or workplace injuries. That will, in turn, promote on-time and on-budget delivery.

Furthermore, among other requirements contained in 2 CFR part 200, Appendix II, all contracts made by a recipient or subrecipient in excess of $100,000 with respect to projects that involve employment of mechanics or laborers must include a provision for compliance with certain provisions of the Contract Work Hours and Safety Standards Act, 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR part 5). Treasury will continue to seek information from recipients on their workforce plans and public infrastructure and mitigation activities undertaken with SLFRF funds.

5. Administration

As discussed above, generally, the emergency relief from natural disasters eligible use category is subject to the same program administration requirements as the existing eligible uses in the SLFRF program, as discussed in the 2022 final rule, including the obligation deadline of December 31, 2024 and expenditure deadline of December 31, 2026. As discussed in this interim final rule, recipients may use SLFRF funds under this eligible use category for costs incurred beginning December 29, 2022, regardless of the date of the declared disaster. As with all other eligible uses in the SLFRF program, the general restrictions on use outlined in the 2022 final rule apply to funds expended under the emergency relief from natural disasters eligible use category. Additionally, recipients may reference the section titled Distinguishing Subrecipients versus Beneficiaries of the 2022 final rule for clarification of the distinction between subrecipients and beneficiaries.

Recipients are not required to obtain project pre-approval from Treasury or any other Federal agency when using SLFRF funds for natural disaster projects unless otherwise required by Federal law. While reference to FEMA, the Department of Labor, or other Federal emergency assistance programs is provided to assist recipients in understanding the types of emergency relief projects eligible to be funded with SLFRF funds, recipients do not need to apply for funding from the applicable state programs or through any Federal programs. Similarly, this interim final rule generally does not incorporate program requirements or guidance that attach to other Federal emergency programs. However, as noted above, recipients should be aware of other Federal or state laws or regulations that may apply to projects, independent of SLFRF funding conditions, that may require approval from another Federal or state agency.

Question 1: Are there other types of services or costs that Treasury should consider as enumerated eligible uses to provide emergency relief from the physical or negative economic impacts of natural disasters? Describe how these provide emergency relief from natural disasters.

Question 2: What, if any, additional criteria should Treasury consider to ensure that emergency relief responds to the physical or negative economic impacts of natural disasters?

Question 3: What additional clarity or guidance would benefit recipients in identifying eligible mitigation activities?

B. Using Funds for Surface Transportation and Title I Projects

To support SLFRF recipients in meeting the infrastructure needs of their communities, the 2023 CAA also provided the authority for recipients to use SLFRF funds for certain infrastructure projects, including projects eligible under certain programs administered by the Department of Transportation (Surface Transportation projects) and projects eligible under Title I of the Housing and Community Development Act of 1974 (Title I projects).[52] The 2023 CAA imposes requirements on SLFRF funds used for Surface Transportation projects and Title I projects beyond those requirements that apply to all other SLFRF eligible use categories. In the sections separately discussing Surface Transportation projects and Title I projects below, this interim final rule summarizes the types of eligible projects within each category, provides references to relevant guidance for the projects, and discusses how the requirements imposed by the 2023 CAA apply to each category.

The 2023 CAA provides that the total amount of SLFRF funds that a recipient

[52] *See* 42 U.S.C. 802(c)(5) and 803(c)(6).

may use for Surface Transportation projects and Title I projects together shall not exceed the greater of $10 million and 30% of a recipient's SLFRF allocation. This limitation does not apply to SLFRF funds used for the other eligible uses in the SLFRF program, including funds used for the provision of government services under the revenue loss eligible use category.

This limitation applies to the total amount of SLFRF funds that a recipient may use for Surface Transportation projects and Title I projects taken together. For example, an SLFRF recipient with an allocation of $20 million would have $10 million (as $10 million is greater than 30% of the recipient's allocation—$6 million) to direct to Surface Transportation projects and Title I projects. This recipient could direct, for example, $5 million toward Surface Transportation projects and $5 million toward Title I projects, or $3 million toward Surface Transportation projects and $7 million toward Title I projects. This same recipient may choose to spend additional funding over and above this $10 million on projects that might otherwise be eligible as Surface Transportation or Title I projects under a different eligible use category, such as the revenue loss eligible use category, under which recipients may use SLFRF funds for the provision of government services.

The 2023 CAA provides that, except as otherwise determined by the Secretary or the head of a Federal agency to whom oversight and administration of the requirements have been delegated, the requirements of other laws, including titles 23, 40, and 49 of the U.S. Code, title I of the Housing and Community Development Act of 1974 (HCDA), and the National Environmental Policy Act of 1969 (NEPA), apply to recipients' use of SLFRF funds for Surface Transportation projects and Title I projects. These requirements include the project approval and certification requirements of titles 23, 40, and 49 of the U.S. Code and title I of the HCDA and the regulations adopted thereunder.[53] The application of the Surface Transportation project approval requirements to the SLFRF program means that recipients must obtain the approval of the Secretary or the head of the Federal agency to whom authority has been delegated by the Secretary prior to obligating and expending funds on Surface Transportation projects. Title I of the HCDA provides for project-level approval only in the case of project environmental review. The application of this requirement to the SLFRF program means that recipients must comply with the environmental review requirements set forth in the HUD statute and regulations, submit a certification to Treasury, and receive approval prior to obligating and expending funds on Title I projects, as discussed below.

The provisions of the 2023 CAA reflect an intent that the usual requirements that apply to Surface Transportation projects funded by DOT should generally also apply to such projects as funded by Treasury under the SLFRF program but also a recognition that the DOT regulatory requirements would need to be harmonized with the particular structure of the SLFRF program. Treasury interprets the "except as otherwise determined" clause referenced above to permit Treasury to determine not to apply certain requirements of the cross-referenced statutes when such requirements would conflict with the existing SLFRF framework or otherwise would be likely to preclude recipients from exercising the additional authorities provided by the 2023 CAA.

As a general matter, DOT must approve recipients' use of funds for projects funded by DOT. However, under the existing SLFRF framework, Treasury provided funds to recipients either in full or in two tranches rather than disbursing funds to recipients after approving the use of funds for particular projects, and recipients must obligate and expend such funds by set deadlines. If the SLFRF program did not have obligation and expenditure deadlines, recipients might have time to go through a process of receiving Treasury approval under Pathway Two prior to using the funds that they had already received on Surface Transportation projects. But it is possible that recipients will seek to use funds under Pathway Two for hundreds of Surface Transportation projects in total, and application of the statutory and regulatory approval requirements to such a large volume of projects likely would preclude recipients from carrying out such projects while meeting the statutory deadlines for obligation and expenditure of funds. To ensure that recipients are able to exercise the additional authorities provided by the 2023 CAA prior to the December 31, 2024 obligation deadline, Treasury has determined not to require recipients to obtain the approval of the Secretary prior to obligating and expending funds on Surface Transportation projects that present less risk, as described under the streamlined framework of Pathway Two in the section that follows. Treasury expects far fewer recipients to seek to use SLFRF funds for higher-risk projects involving greater complexity. By not applying the approval requirements to the more numerous but less risky types of projects, Treasury will avoid the likelihood that most recipients would effectively be unable to engage in any Surface Transportation projects other than those qualifying for Pathway One.

The approval requirements will apply to Surface Transportation projects that do not meet the streamlined framework criteria, and as discussed further below, Treasury will design a process, based in part on the comments to this interim final rule, for recipients seeking to fund these larger, more complex projects. Similarly, as discussed further below, project-level certification requirements related to environmental review contemplated by title I of the HCDA will apply to the use of SLFRF funds for the Title I projects eligible use category. Treasury provides more information regarding approval and certification requirements applicable to Surface Transportation projects and Title I projects, respectively, in the sections titled Pathway Two: Surface Transportation Projects Not Receiving Funding from DOT and Applicable Requirements for Title I Projects below.

Recipients using funds for Surface Transportation projects that are subject to approval requirements must satisfy NEPA environmental review requirements. Recipients using funds for Surface Transportation projects that are not subject to approval requirements (pursuant to the streamlined approach described under Pathway Two in the section that follows) are not required to conduct NEPA environmental reviews. Recipients using funds for Title I projects must satisfy NEPA environmental review requirements based on the procedures set forth in title I of the HCDA, the associated regulations, and as implemented by Treasury. For more information about how the requirements of NEPA apply to Surface Transportation projects and Title I projects, respectively, refer to the sections titled Pathway Two: Applicable Requirements and Applicable Requirements for Title I Projects below. As discussed in Treasury's guidance to date, NEPA does not apply to the other eligible uses in the SLFRF program as described in the 2022 final rule, though recipients that blend SLFRF funds with

[53] The application of these approval and certification requirements to SLFRF for these projects is indicated by the statute's specific reference to NEPA. NEPA only applies to federal actions such as a federal agency approval. Without application of the approval requirements of the cross-referenced statutes, there would be no generally applicable federal action associated with the use of SLFRF funds for Surface Transportation projects and Title I projects.

other Federal funds may be subject to additional requirements associated with the other Federal funds.[54]

As is the case with all projects using SLFRF funds, projects must comply with applicable Federal statutes, regulations, and executive orders, including environmental laws and Federal civil rights and nondiscrimination requirements,[55] which include prohibitions on discrimination on the basis of race, color, national origin, sex (including sexual orientation and gender identity), religion, disability, age, or familial status (having children under the age of 18).[56] State, Tribal, and local procurement, contracting, and conflicts-of-interest laws and regulations, including, for example, required procurement processes for contractor selection or competitive price setting, also may apply to recipients' use of SLFRF funds.

The 2023 CAA provides that SLFRF funds used for Surface Transportation projects and Title I projects must supplement, not supplant other Federal, state, territorial, Tribal, and local government funds (as applicable) that are otherwise available for these projects. This interim final rule discusses below how the supplement, not supplant provision applies to uses of funds for Surface Transportation projects and Title I projects. The non-supplant requirement does not apply to the other SLFRF eligible use categories, including the emergency relief from natural disasters eligible use category.

The 2023 CAA provides that funds used for Surface Transportation projects and Title I projects must be obligated by December 31, 2024 and expended by September 30, 2026. The expenditure deadline for these eligible uses provided by the 2023 CAA is earlier than the December 31, 2026 expenditure deadline associated with the other eligible uses in the program, including emergency relief from natural disasters.

The 2023 CAA provides that Treasury may delegate to the appropriate Federal agency oversight and administration of the requirements associated with the use of funds for Surface Transportation projects and Title I projects. As discussed below, Treasury is delegating oversight and administration of Surface Transportation projects under Pathway One (described below) to the Department of Transportation (DOT). Recipients that direct SLFRF funds toward Surface Transportation projects under Pathway One will be required to complete the existing DOT reporting requirements that already apply to projects funded by DOT and to report certain information to Treasury. See the sections titled Pathway One: Delegation of Authority and Discussion of Revenue Loss and Program Administration Provisions for further information.

Below, this interim final rule discusses how recipients may use SLFRF funds for Surface Transportation projects and Title I projects, respectively.

1. Surface Transportation Projects

Background

As added by the 2023 CAA, sections 602(c)(5) and 603(c)(6) of the Social Security Act provide that state, local, and Tribal governments may use SLFRF funds, subject to limitations, for surface transportation infrastructure projects (Surface Transportation projects) eligible under certain programs administered by DOT. As described above, recipients may only use the greater of 30% of their SLFRF award and $10 million, not to exceed a recipient's allocation, for all Surface Transportation projects (described in this section) and Title I projects (described in the section that follows) taken together.

Under the Surface Transportation projects eligible use category, SLFRF funds may be used for a project eligible under any of sections 117, 119, 124, 133, 148, 149, 151(f), 165, 167, 173, 175, 176, 202, 203, and 204 of title 23 of the U.S. Code; an activity to carry out section 134 of title 23 of the U.S. Code; a project eligible under the Rebuilding American Infrastructure with Sustainability and Equity (RAISE) grant program; a project eligible for credit assistance under the Transportation Infrastructure Finance and Innovation Act (TIFIA) program under chapter 6 of title 23 of the U.S. Code; a project that furthers the completion of a designated route of the Appalachian Development Highway System under section 14501 of title 40 of the U.S. Code; a project eligible under any of sections 5307, 5309, 5311, 5337, 5339, and 6703 of title 49 of the U.S. Code; or a project eligible under the bridge replacement, rehabilitation, preservation, protection, and construction program under paragraph (1) under the heading "HIGHWAY INFRASTRUCTURE PROGRAM" under the heading "FEDERAL HIGHWAY ADMINISTRATION" under the heading "DEPARTMENT OF TRANSPORTATION" under title VIII of division J of the Infrastructure Investment and Jobs Act.

The statute also provides that, to the extent consistent with guidance or rules issued by the Secretary or the head of a Federal agency to which the Secretary has delegated authority, recipients may use SLFRF funds to satisfy a non-Federal share requirement applicable to a project eligible under section 117 of title 23, sections 5309 or 6701 of title 49, or a project eligible for credit assistance under the TIFIA program under chapter 6 of title 23. Additionally, in the case of a project eligible for credit assistance under the TIFIA program, recipients may use SLFRF funds to repay a loan provided under such program.

The 2023 CAA provides that the requirements of the relevant titles of the U.S. Code and the National Environmental Policy Act of 1969 apply to the use of the SLFRF for Surface Transportation projects, except as otherwise determined by the Secretary or the head of a Federal agency to whom oversight and administration of the requirements have been delegated. Additionally, SLFRF funds may only be used to supplement, and not supplant, other Federal, state, territorial, Tribal, and local government funds (as applicable) that are otherwise available for the eligible project.

Overview

There are different ways in which recipients may use SLFRF funds for Surface Transportation projects under the new authority provided by the 2023 CAA. In this interim final rule, Treasury has organized discussion of the Surface Transportation projects eligible use category in terms of three "pathways."

First, recipients may use SLFRF funds (i) in the case of existing eligible projects that receive funding from DOT, to expand the project or to cover additional unexpected costs associated with the project and (ii) in the case of eligible projects that have not yet received but will receive funding from DOT prior to December 31, 2024, the obligation deadline for the SLFRF program, to contribute SLFRF funds to expand the scope of the project, to cover additional unexpected costs, or in other

[54] For additional information about blending and braiding SLFRF funds with other funding sources, refer to SLFRF Final Rule FAQ 4.8, available at *https://home.treasury.gov/system/files/136/SLFRF-Final-Rule-FAQ.pdf.*

[55] Applicable federal civil rights and non-discrimination laws include Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d; Title VIII of the Civil Rights Act of 1968 (the Fair Housing Act), as amended by the Fair Housing Amendments Act of 1988, 42 U.S.C. 3602, et seq; Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. 794; Title IX of the Education Amendments Act of 1972, 20 U.S.C. 1681; and the Age Discrimination Act of 1975, 42 U.S.C. 6101 et. seq.

[56] As described in SLFRF Final Rule FAQ 12.1, award terms and conditions for Treasury's pandemic recovery programs, including SLFRF, do not impose antidiscrimination requirements on Tribal governments beyond what would otherwise apply under Federal law.

ways that supplement DOT funding, as described in the section titled Prohibition on Supplanting Other Funds. In each case, the Surface Transportation project must be subject to DOT's oversight during the period that SLFRF funds are used for the project. Recipients pursuing Surface Transportation projects that are receiving or will receive funding from DOT should be prepared to work with DOT to determine whether the use of SLFRF funds for a particular project meets the relevant requirements. In addition, the project must meet the requirements and restrictions that apply to Surface Transportation projects funded through the SLFRF program described further below. Furthermore, in the case of projects funded under certain DOT programs like INFRA and RAISE, the addition of Federal funds—including SLFRF funds—to an existing project is subject to approval from DOT. Throughout this interim final rule, Treasury refers to this eligible use as "Pathway One."

Second, this interim final rule lays out a pathway for all SLFRF recipients, including those that may not typically or currently be a direct recipient of DOT funding, to use SLFRF funds to finance Surface Transportation projects that will be overseen and administered by Treasury. Within this pathway, Treasury is articulating a streamlined framework for recipients to use up to $10 million in SLFRF funds per project on Surface Transportation projects that do not include DOT funding but meet certain parameters. Though these projects do not include DOT funding, recipients may choose to blend SLFRF funds with other sources of funds to carry out the projects. Recipients using SLFRF funds for these projects are not required to consult with DOT and instead these projects will be administered and overseen by Treasury. Throughout this interim final rule, Treasury refers to this eligible use as "Pathway Two." For additional information, refer to the section titled Pathway Two: Surface Transportation Projects not Receiving Funding from DOT.

Recipients interested in financing Surface Transportation projects outside of the parameters of the streamlined framework in Pathway Two may submit a notice of intent to Treasury, as described further below in the section titled Pathway Two: Surface Transportation Projects not Receiving Funding from DOT. Based on these notices of intent and comments to this interim final rule, Treasury will provide instructions as to how recipients may apply for approval to carry out their proposed projects and guidance as to any additional requirements associated with such projects.

Third, recipients may use SLFRF funds to repay a TIFIA loan or to satisfy a non-Federal share requirement for projects under four Surface Transportation programs: INFRA Grants, Fixed Guideway Capital Investment Grants, Mega Grants, and projects eligible for credit assistance under the TIFIA program. Recipients should consult with DOT before pursuing projects under this third pathway. Throughout this interim final rule, Treasury refers to this eligible use as "Pathway Three." For more information, refer to the section titled Pathway Three: Non-Federal Share Requirements for Certain Surface Transportation Requirements.

In the following sections, this interim final rule discusses the specific types of Surface Transportation projects that are eligible uses of SLFRF funds and the applicable requirements and limitations.

Prohibition on Supplanting Other Funds

For all three pathways for Surface Transportation projects, recipients must comply with the requirement provided in the 2023 CAA that funds used for Surface Transportation projects shall "supplement, and not supplant, other Federal, State, territorial, Tribal, and local government funds (as applicable) otherwise available for such uses." The phrase "other . . . funds available for such uses" refers to (i) in the case of non-Federal funds, non-SLFRF funds that have been obligated for specific uses that are eligible under the Surface Transportation projects eligible use category or (ii) in the case of Federal funds, funds that a Federal agency has committed to a particular project pursuant to an award agreement or otherwise, including funds identified in an awarded DOT grant agreement for use on Surface Transportation projects.

Under prong (i), for the purpose of identifying non-Federal funds that have been obligated for specific uses, the definition of "obligation" used in the 2022 final rule applies, which is "an order placed for property and services and entering into contracts, subawards, and similar transactions that require payment." [57] As such, a recipient may not de-obligate funds that were obligated for specific uses that are eligible under this section (*e.g.*, by cancelling, amending, renegotiating, or otherwise revising or abrogating a contract, subaward, or similar transaction that requires payment) and replace those previously obligated funds with SLFRF funds under this eligible use category.

The restriction in prong (ii) on replacing funds that a Federal agency has committed to a particular project pursuant to an award agreement or otherwise applies to all funding sources covered by the commitment. For example, for DOT-funded projects subject to a grant agreement, the restriction extends to DOT funds, other Federal funds, and any other funds identified by the recipient for the purpose of satisfying cost-share requirements of the project.

Thus, a recipient may not de-obligate funds and replace those previously obligated funds with SLFRF funds under this eligible use category. Nor may a recipient use SLFRF to replace Federal or non-Federal funds identified in a Federal commitment, such as an award agreement. However, a recipient may use SLFRF funds under this eligible use category:

(1) to provide additional funding to a project without reducing the amount of other funds obligated to such project, thereby funding additional activities or expanding the scope of projects; or

(2) to undertake a project for which funds have not been previously obligated or identified in a Federal commitment, such as an award agreement.

For example, consider a municipal road project. The recipient has not yet entered into an award agreement with DOT but is expecting that Federal funds from DOT will make up a certain amount of the project funds and is planning on using local funds to satisfy cost-share requirements. Because the recipient has not yet entered into an award agreement with DOT, even if the project is included in the transportation improvement program (TIP) or a statewide transportation improvement program (STIP), the recipient may choose to alter the funding mixture to include SLFRF funding, after consulting with DOT. However, if in that same scenario, the recipient had entered into an award agreement with DOT that included a certain amount of DOT funding and a remaining amount of funds from local sources, then the funds for the project may not be replaced with SLFRF funds. The recipient could not supplant Federal or non-Federal funds identified to DOT as part of the grant award or terminate or renegotiate an existing contract for the construction of the project and use SLFRF funds to replace the funds previously identified or obligated for that purpose. In this scenario, recipients would be able to use

[57] See Final Rule FAQ 13.17 for additional information about obligations. This approach applies a concrete standard that is known to SLFRF recipients and administrable by Treasury.

SLFRF funds to expand the scope of a project or cover unexpected costs, after consulting with DOT.

In the case of projects previously included within a TIP or STIP that have received funding from DOT, recipients should reflect increased overall project funding resulting from the addition of SLFRF funds within the STIP or TIP, even when the sources of project funding may have changed prior to identification in the DOT grant award or obligation.

a. Pathway One: Surface Transportation Projects Receiving Funding From DOT

This section of the interim final rule describes how recipients may use SLFRF funds under Pathway One (i) in the case of existing eligible projects that are receiving funding from DOT to expand the project or to cover additional unexpected costs associated with the project and (ii) in the case of eligible projects that have not yet but will receive funding from DOT prior to December 31, 2024, the obligation deadline for the SLFRF program, to contribute SLFRF funds to the project, to expand the project, to cover additional unexpected costs, or in other ways that supplement DOT funding. In each case, the Surface Transportation project must be subject to DOT's oversight during the period that SLFRF funds are used for the project. Recipients seeking to use SLFRF funds for Surface Transportation projects under Pathway One should consult with DOT and refer to the requirements discussed in the following subsection. Generally, and as discussed further below, when using SLFRF funds under Pathway One, the statutory requirements that normally apply when carrying out Surface Transportation projects funded by DOT continue to apply. In the case of some DOT-funded programs like INFRA and RAISE, the addition of other Federal funds—including SLFRF funds—to an existing project is subject to approval from DOT. This interim final rule describes how recipients may use SLFRF funds under Pathway One, summarizes the programs under which recipients may direct SLFRF funds toward eligible projects, and outlines the requirements associated with this pathway. Recipients using SLFRF funds under Pathway One must comply with the requirement that SLFRF funds supplement and not supplant other funds, described above.

In the case of existing projects currently receiving funding from DOT, recipients may use SLFRF funds to expand the project and to cover additional unexpected costs associated with the project. Using SLFRF funds for these purposes is a way for recipients to supplement but not supplant funds in existing projects receiving funding from DOT. In each case, the project must meet the requirements and restrictions that apply to Surface Transportation projects funded through the SLFRF program.

For eligible projects that have not yet but will receive funding from DOT prior to the SLFRF program's December 31, 2024, obligation deadline, recipients also may contribute SLFRF funds to the project, as long as the project meets the requirements and restrictions that apply to Surface Transportation projects funded through the SLFRF program, including the non-supplant requirements. For these projects that have not yet been funded, recipients may have more flexibility to contribute SLFRF funds for purposes beyond expanding the scope of the project and covering additional unexpected costs, because there may be more ways to supplement DOT funding without supplanting other funds. For example, in addition to using SLFRF funds to expand project scope or to cover additional unexpected costs that may arise, recipients may also be able to commit SLFRF funds in the initial planning phase of the project as part of the recipient's cost-share obligation, to the extent that DOT rules permit Federal funds to constitute a portion of the project's cost sharing or matching requirement. Recipients should note that planned contributions of SLFRF funds to a project that has not yet received funding from DOT will affect the determination of total Federal funds that would support the project and may affect calculations of the non-Federal funds cost-share contribution required in order to be in compliance with DOT requirements.

Under Pathway One, recipients may use SLFRF funds for projects eligible under the programs described below. This interim final rule briefly summarizes each program and references existing implementation guidance, where available. Recipients should refer to the relevant program guidance for DOT programs of interest for further information and detail about the types of projects eligible under those programs.

- *INFRA Grants*[58]—602(c)(5)(B)(i) of the Social Security Act—Also known as Nationally Significant Multimodal Freight & Highway Projects, INFRA awards are competitive grants for multimodal freight and highway projects of national or regional significance to improve the safety, efficiency, and reliability of the movement of freight and people in and across rural and urban areas. For additional information about INFRA Grants, see *USDOT INFRA Grant Program*.[59]
- *National Highway Performance Program (NHPP)*[60]—602(c)(5)(B)(ii) of the Social Security Act—The NHPP provides formula funding with the purposes of providing support for the condition and performance of the National Highway System (NHS) or for the construction of new facilities on the NHS; ensuring that investments of Federal-aid funds in highway construction are directed to support progress toward the achievement of performance targets established in an asset management plan of a state for the NHS; and providing support for activities to increase the resiliency of the NHS to mitigate the cost of damages from sea level rise, extreme weather events, flooding, wildfires, or other natural disasters. For additional information about NHPP, see *Implementation Guidance for the National Highway Performance Program (NHPP) as Revised by the Bipartisan Infrastructure Law*.[61]
- *Bridge Investment Program (BIP)*[62]—602(c)(5)(B)(iii) of the Social Security Act—The BIP awards competitive discretionary grants to improve the safety, efficiency, and reliability of the movement of people and freight by funding projects to replace, rehabilitate, preserve, or protect bridges in the National Bridge Inventory, including projects to replace or rehabilitate bridge-sized culverts for the purpose of improving flood control and improved habitat connectivity. It has a focus on improving the condition of bridges in poor condition and supporting activities to prevent bridges in fair condition from dropping to poor condition. For additional information on the BIP, see *Bridge Investment Program (BIP) Questions and Answers (Q&As)*.[63]

[58] *See* 23 U.S.C. 117.

[59] *See* the U.S. Department of Transportation's INFRA Grants Program website at *https://www.transportation.gov/grants/infra-grants-program*.

[60] *See* 23 U.S.C. 119.

[61] U.S. Department of Transportation, Federal Highway Administration, Implementation Guidance for the National Highway Performance Program (NHPP) as Revised by the Bipartisan Infrastructure Law (Jun. 1, 2022), *https://www.fhwa.dot.gov/specialfunding/nhpp/bil_nhpp_implementation_guidance-05_25_22.pdf*.

[62] *See* 23 U.S.C. 124.

[63] U.S. Department of Transportation, Federal Highway Administration, Bridge Investment Program (BIP) Questions and Answers (Q&As) (Aug. 18, 2022), *https://www.fhwa.dot.gov/bridge/bip/qa.cfm*.

• *Surface Transportation Block Grant Program (STBG)*[64]—602(c)(5)(B)(iv) of the Social Security Act—The STBG provides flexible funding that may be used for projects to preserve and improve the conditions and performance on any Federal-aid highway, bridge and tunnel projects on any public road, pedestrian and bicycle infrastructure, and transit capital projects, including intercity bus terminals. For additional information on the STBG, see *Implementation Guidance for the Surface Transportation Block Grant Program (STBG) as Revised by the Bipartisan Infrastructure Law.*[65]

• *Highway Safety Improvement Program (HSIP)*[66]—602(c)(5)(B)(vi) of the Social Security Act—The HSIP provides formula funding with the purpose of helping to achieve a significant reduction in traffic fatalities and serious injuries on all public roads, including non-state-owned public roads and roads on Tribal land. HSIP funds are typically available for defined highway safety improvement projects, as well as "specified safety projects." For additional information on the HSIP, see the *Highway Safety Improvement Program (HSIP) Eligibility Guidance.*[67]

• *Congestion Mitigation and Air Quality Improvement Program (CMAQ)*[68]—602(c)(5)(B)(vii) of the Social Security Act—The CMAQ provides a flexible funding source for transportation projects and programs to help meet the requirements of the Clean Air Act. Funding is available to reduce congestion and improve air quality for areas that do not meet the National Ambient Air Quality Standards for ozone, carbon monoxide, or particulate matter (nonattainment areas) and for former nonattainment areas that are now in compliance (maintenance areas). A wide range of transportation projects leading to reduction in emissions are eligible for support under the CMAQ, including projects involving new transit, alternative fuels, shared micro-mobility, traffic flow improvements, and demand management. For additional information on CMAQ, see the *Congestion Mitigation and Air Quality (CMAQ) Improvement Program Fact Sheet.*[69]

• *Charging and Fueling Infrastructure Discretionary Grant Program (CFI Program)*[70]—602(c)(5)(B)(viii) of the Social Security Act—Established in the Bipartisan Infrastructure Law, the CFI Program provides competitive grants to strategically deploy publicly accessible electric vehicle charging and alternative fueling infrastructure in the places people live and work—urban and rural areas alike—in addition to along designated Alternative Fuel Corridors. For additional information about the CFI Program, see *Charging and Fueling Infrastructure Grant Program.*[71]

• *Territorial and Puerto Rico Highway Program*[72]—602(c)(5)(B)(ix) of the Social Security Act—The Territorial and Puerto Rico highway program allocates funds to the Commonwealth of Puerto Rico for a highway program, as well as to American Samoa, the Commonwealth of the Northern Mariana Islands, Guam, and the U.S. Virgin Islands to assist in constructing and improving a system of arterial and collector highways and necessary inter-island connectors. For additional information on the Territorial and Puerto Rico Highway program, see the *Territorial and Puerto Rico Highway Program Fact Sheet.*[73]

• *National Highway Freight Program (NHFP)*[74]—602(c)(5)(B)(x) of the Social Security Act—The NHFP provides funding intended to improve the condition and performance of the National Highway Freight Network (NHFN) and support several goals, including:

- investing in infrastructure and operational improvements that strengthen economic competitiveness, reduce congestion, reduce the cost of freight transportation, improve reliability, and increase productivity;
- improving the safety, security, efficiency, and resiliency of freight transportation in rural and urban areas;
- improving the state of good repair of the NHFN;
- using innovation and advanced technology to improve NHFN safety, efficiency, and reliability;
- improving the efficiency and productivity of the NHFN;
- improving State flexibility to support multi-State corridor planning and address highway freight connectivity; and
- reducing the environmental impacts of freight movement on the NHFN.

For additional information on the NHFP, see *Implementation Guidance for the National Highway Freight Program as Revised by the Bipartisan Infrastructure Law.*[75]

• *Rural Surface Transportation Grant Program*[76]—602(c)(5)(B)(xi) of the Social Security Act—The Rural Surface Transportation Grant Program provides competitive grants to support projects to improve and expand the surface transportation infrastructure in rural areas to increase connectivity, improve the safety and reliability of the movement of people and freight, and generate regional economic growth and improve quality of life. Grant funds typically support highway, bridge, or tunnel projects eligible under the NHPP, the STBG program, or the Tribal Transportation Program; highway freight projects eligible under the NHFP; highway safety improvement projects; projects on a publicly-owned highway or bridge improving access to certain facilities that support the economy of a rural area; integrated mobility management systems, transportation demand management systems, or on-demand mobility services. For additional information about the Rural Surface Transportation Grant Program, see *the Rural Surface Transportation Grant website.*[77]

• *Carbon Reduction Program (CRP)*[78]—602(c)(5)(B)(xii) of the Social Security Act—Established in the Bipartisan Infrastructure Law,[79] CRP provides funds by formula for a wide-range of projects designed to reduce transportation emissions, defined as carbon dioxide emissions from on-road highway sources. For additional

[64] *See* 23 U.S.C. 133.

[65] U.S. Department of Transportation, Federal Highway Administration, Implementation Guidance for the Surface Transportation Block Grant Program (STBG) as Revised by the Bipartisan Infrastructure Law (Jun. 1, 2022), *https://www.fhwa.dot.gov/specialfunding/stp/bil_stbg_implementation_guidance-05_25_22.pdf.*

[66] *See* 23 U.S.C. 148.

[67] U.S. Department of Transportation, Federal Highway Administration, Highway Safety Improvement Program (HSIP) Eligibility Guidance (Feb. 2, 2022), *https://safety.fhwa.dot.gov/hsip/rulemaking/docs/BIL_HSIP_Eligibility_Guidance.pdf.*

[68] *See* 23 U.S.C. 149.

[69] U.S. Department of Transportation, Federal Highway Administration, Congestion Mitigation and Air Quality (CMAQ) Improvement Program Fact Sheet (Feb. 8, 2022), *https://www.fhwa.dot.gov/bipartisan-infrastructure-law/cmaq.cfm.*

[70] *See* 23 U.S.C. 151(f).

[71] U.S. Department of Transportation, Federal Highway Administration, Charging and Fueling Infrastructure Grant Program (Mar. 30, 2023), *https://www.fhwa.dot.gov/environment/cfi/.*

[72] *See* 23 U.S.C. 165

[73] U.S. Department of Transportation, Federal Highway Administration, Territorial and Puerto Rico Highway Program Fact Sheet (Feb. 24. 2022), *https://www.fhwa.dot.gov/bipartisan-infrastructure-law/territorial_puerto_rico_hp_fact_sheet.cfm.*

[74] *See* 23 U.S.C. 167.

[75] U.S. Department of Transportation, Federal Highway Administration, Implementation Guidance for the National Highway Freight Program as Revised by the Bipartisan Infrastructure Law (Dec. 14, 2022), *https://ops.fhwa.dot.gov/freight/documents/NHFP_Implementation_Guidance.pdf.*

[76] *See* 23 U.S.C. 173.

[77] *See* the U.S. Department of Transportation's Rural Surface Transportation Grant website at *https://www.transportation.gov/grants/rural-surface-transportation-grant.*

[78] *See* 23 U.S.C. 175.

[79] Public Law 117–58.

information on eligible projects under CRP, see the *Carbon Reduction Program (CRP) Implementation Guidance.*[80]

- *Promoting Resilient Operations for Transformative, Efficient, and Cost-Saving Transportation (PROTECT)*[81]—602(c)(5)(B)(xiii) of the Social Security Act—Established in the Bipartisan Infrastructure Law, the PROTECT Program provides both formula funding and competitive funding for projects that, among other activities, provide resilience improvements; strengthen and protect evacuation routes; and protect at-risk coastal infrastructure. For additional information on the PROTECT Formula Program, see *Promoting Resilient Operations for Transformative, Efficient, and Cost-Saving Transportation (PROTECT) Formula Program Implementation Guidance.*[82]
- *Tribal Transportation Program (TTP)*[83]—602(c)(5)(B)(xiv) of the Social Security Act—TTP provides formula funding to Tribal governments to aid in providing safe and adequate transportation and public road access to and within Indian reservations, Indian lands, and Alaska Native Village communities, contributing to the economic development, self-determination, and employment of Indians and Native Americans. TTP funds a wide range of eligible transportation activities including the construction and maintenance of roads and bridges. For additional information about TTP, see *Tribal Transportation Program Fact Sheet.*[84]
- *Federal Lands Transportation Program (FLTP)*[85]—602(c)(5)(B)(xv) of the Social Security Act—FLTP provides funds to improve the transportation infrastructure owned and maintained by Federal agencies with land and natural resource management responsibilities. Eligible projects under FLTP include construction and maintenance of transit facilities and transportation projects eligible under Title 23 that are on a public network that provides access to, adjacent to, or through Federal lands. For additional information on FLTP, see *Implementation Guidance for the Federal Lands Transportation Program.*[86]
- *Federal Lands Access Program (FLAP)*[87]—602(c)(5)(B)(xvi) of the Social Security Act—FLAP provides formula funding to improve transportation facilities that provide access to, are adjacent to, or are located within Federal lands. FLAP supplements state and local resources for public roads, transit systems, and other transportation facilities, with an emphasis on high-use recreation sites and economic generators. For additional information on FLAP, see the *Implementation Guidance for the Federal Lands Access Program.*[88]
- *Rebuilding American Infrastructure with Sustainability and Equity (RAISE) Grant Program*—602(c)(5)(B)(xvii) of the Social Security Act—The RAISE Grant Program helps communities build transportation projects that have significant local or regional impact and improve safety and equity. RAISE provides funds through competitive grants to state, local, Tribal, and territorial governments, among others, for surface transportation capital projects, including highway, bridge, or other road projects eligible under title 23 of the U.S. Code; public transportation projects eligible under chapter 53 of title 49 of the U.S. Code; passenger and freight rail transportation projects; port infrastructure investments; the surface transportation components of an airport project eligible for assistance under part B of subtitle VII of title 49 of the U.S. Code; intermodal projects; projects to replace or rehabilitate a culvert or prevent stormwater runoff; projects investing in surface transportation facilities that are located on Tribal land; and other surface transportation infrastructure projects that the Secretary of Transportation considers to be necessary to advance the goals of the program—including public road and non-motorized projects that are not otherwise eligible under title 23 of the U.S. Code, transit-oriented development projects, mobility on-demand projects that expand access and reduce transportation cost burden, and intermodal projects. The addition of Federal funds, including SLFRF funds, to an existing RAISE project is subject to the Department of Transportation's approval. For more information on RAISE grants, see *Notice of Funding Opportunity for the Department of Transportation's National Infrastructure Investments (i.e., the Rebuilding American Infrastructure with Sustainability and Equity (RAISE) Grant Program) under the Infrastructure Investment and Jobs Act ("Bipartisan Infrastructure Law"), Amendment No. 2.*[89]
- *Transportation Infrastructure Finance and Innovation Act (TIFIA)*[90]—602(c)(5)(B)(xviii) of the Social Security Act—The TIFIA Program provides Federal credit assistance in the form of direct loans, loan guarantees, and standby lines of credit to finance surface transportation projects of national and regional significance. Eligible projects typically include highways and bridges; intelligent transportation systems; intermodal connectors; transit vehicles and facilities; intercity buses and facilities; freight transfer facilities; pedestrian bicycle infrastructure networks; transit-oriented development; rural infrastructure projects; passenger rail vehicles and facilities; surface transportation elements of port projects; and airports that meet certain standards of credit worthiness and readiness. For additional information about TIFIA, see *TIFIA Program Overview.*[91]
- *Urbanized Formula Grants*[92]—602(c)(5)(B)(xx) of the Social Security Act—The Urbanized Area Formula Funding Program makes Federal resources available for transit capital assistance in urbanized areas and for transportation-related planning.[93]

[80] U.S. Department of Transportation, Federal Highway Administration, Carbon Reduction Program (CRP) Implementation Guidance (Apr. 21, 2022), *https://www.fhwa.dot.gov/environment/sustainability/energy/policy/crp_guidance.pdf.*

[81] *See* 23 U.S.C. 176.

[82] U.S. Department of Transportation, Federal Highway Administration, Promoting Resilient Operations for Transformative, Efficient, and Cost-Saving Transportation (PROTECT) Formula Program Implementation Guidance (Jul. 29, 2022), *https://www.fhwa.dot.gov/environment/sustainability/resilience/policy_and_guidance/protect_formula.pdf.*

[83] *See* 23 U.S.C. 202.

[84] U.S. Department of Transportation, Federal Highway Administration, Tribal Transportation Program Fact Sheet (Oct. 26, 2022), *https://www.fhwa.dot.gov/bipartisan-infrastructure-law/ttp.cfm.*

[85] *See* 23 U.S.C. 203.

[86] U.S. Department of Transportation, Federal Highway Administration, Implementation Guidance for the Federal Lands Transportation Program (Jun. 29, 2022), *https://highways.dot.gov/sites/fhwa.dot.gov/files/docs/federal-lands/programs/federal-lands-transportation-program/8186/fltp-guidance-cleared.pdf.*

[87] *See* 23 U.S.C. 204.

[88] U.S. Department of Transportation, Federal Highway Administration, Implementation Guidance for the Federal Lands Access Program (Aug. 6, 2018), *https://highways.dot.gov/sites/fhwa.dot.gov/files/docs/federal-lands/programs/federal-lands-access-program/6971/flap-implem-guidance.pdf.*

[89] U.S. Department of Transportation, Notice of Funding Opportunity for the Department of Transportation's National Infrastructure Investments (*i.e.*, the Rebuilding American Infrastructure with Sustainability and Equity (RAISE) Grant Program) under the Infrastructure Investment and Jobs Act ("Bipartisan Infrastructure Law"), Amendment No. 2 (Jan. 3, 2023), *https://www.transportation.gov/sites/dot.gov/files/2023-02/RAISE%202023%20NOFO%20Amendment2.pdf.*

[90] *See* 23 U.S.C. Chapter 6.

[91] *See* the U.S. Department of Transportation's TIFIA Program Overview website at *https://www.transportation.gov/buildamerica/financing/tifia.*

[92] *See* 49 U.S.C. 5307.

[93] While Urbanized Area Formula Grants typically may be used to support operating expenses, operating expenses are not an eligible use of SLFRF spending for projects eligible under section 602(c)(5)(B)(xx) of the Social Security Act. See operating expenses within the Pathway One applicable requirements section for more information.

Eligible activities under the Urbanized Formula grants typically include: planning, engineering, design, and evaluation of transit projects and other technical transportation-related studies; capital investments in bus and bus-related activities such as replacement, overhaul, and rebuilding of buses, crime prevention and security equipment and construction of maintenance and passenger facilities; and capital investments in new and existing fixed guideway systems including rolling stock, overhaul and rebuilding of vehicles, track, signals, communications, and computer hardware and software. In addition, associated transit improvements and certain expenses associated with mobility management programs are eligible under the program. For additional information about Urbanized Formula Grants, see *Urbanized Area Formula Program Guidance.*[94]

- *Fixed Guideway Capital Investment Grants* [95]—602(c)(5)(B)(xxi) of the Social Security Act—The Fixed Guideway Capital Investment Grants Program is a discretionary grant program that funds transit capital investments, including heavy rail, commuter rail, light rail, streetcars, and bus rapid transit. More details are available in the Federal Transit Administration's *Capital Investment Grants Policy Guidance.*[96]
- *Formula Grants for Rural Areas* [97]—602(c)(5)(B)(xxii) of the Social Security Act—The Formula Grants for Rural Areas Program provides capital and planning assistance to support public transportation in rural areas with populations of less than 50,000, where many residents often rely on public transit to reach their destinations.[98] The program also provides funding for training and technical assistance through the Rural Transportation Assistance Program. Eligible activities typically include planning, capital, job access and reverse commute projects, and the acquisition of public transportation services. For additional information about Formula Grants for Rural Areas, see *Formula Grants Rural Areas Program Guidance.*[99]
- *State of Good Repair Grants* [100]—602(c)(5)(B)(xxiii) of the Social Security Act—The State of Good Repair Grants Program provides capital assistance for maintenance, replacement, and rehabilitation projects of high-intensity fixed guideway and bus systems to help transit agencies maintain assets in a state of good repair. Capital projects eligible for State of Good Repair Grants funds typically include projects to replace and rehabilitate rolling stock; track; line equipment and structures; signals and communications; power equipment and substations; passenger stations and terminals; security equipment and systems; maintenance facilities and equipment; and operational support equipment computer hardware and software. For additional information about State of Good Repair Grants, see *State of Good Repair Grant Program Guidance.*[101]
- *Grants for Buses and Bus Facilities* [102]—602(c)(5)(B)(xxiv) of the Social Security Act—The Grants for Buses and Bus Facilities Program provides funding to help support capital projects to replace, rehabilitate, and purchase buses, vans, and related equipment, and to construct bus-related facilities, including technological changes or innovations to modify low or no emission vehicles or facilities. For additional information about Grants for Buses and Bus Facilities, see *Buses and Bus Facilities Program Guidance.*[103]
- *National culvert removal, replacement, and restoration grant program (Culvert AOP Program)* [104]—602(c)(5)(B)(xxv) of the Social Security Act—Established by the Bipartisan Infrastructure Law, the Culvert AOP Program awards grants for projects for the replacement, removal, and repair of culverts or weirs that meaningfully improve or restore fish passage for anadromous fish. Anadromous fish species are born in freshwater such as streams and rivers, spend most of their lives in the marine environment, and migrate back to freshwater to spawn. For additional information on the Culvert AOP Program, see the *National Culvert Removal, Replacement, and Restoration Grants (Culvert AOP Program)* website.[105]
- *Bridge Replacement, Rehabilitation, Preservation, Protection, and Construction Program (Bridge Formula Program or BFP)* [106]—602(c)(5)(B)(xxvii) of the Social Security Act—Established by the Bipartisan Infrastructure Law, BFP provides formula funds for highway bridge replacement, rehabilitation, preservation, protection, and construction projects on public roads. For additional information of BFP, see *Bridge Formula Program (BFP) Implementation Guidance.*[107]
- Additionally, as provided by section 602(c)(5) of the Social Security Act, Surface Transportation projects also include activities to carry out metropolitan transportation planning [108] and projects that further the completion of a designated route of the Appalachian Development Highway System (ADHS) [109]—a system of designated corridors and roadways within the 13 States that make up the Appalachian Region. With regard to metropolitan transportation planning, requirements leading to the development of transportation improvement plans are described in section 134 of title 23 of the U.S. Code and section 5303 of title 49 of the U.S. Code.

b. Pathway One: Applicable Requirements

Recipients using SLFRF funds for Surface Transportation projects under Pathway One must comply with certain

[94] U.S. Department of Transportation, Federal Transit Administration, Urbanized Area Formula Program Guidance, 79 FR 2930 (Feb. 27, 2020), *https://www.transit.dot.gov/regulations-and-guidance/fta-circulars/urbanized-area-formula-program-program-guidance-and.*

[95] *See* 49 U.S.C. 5309.

[96] U.S. Department of Transportation, Federal Transit Administration, Capital Investment Grants Policy Guidance (Jan. 12, 2023), *https://www.transit.dot.gov/sites/fta.dot.gov/files/2023-01/CIG-Policy-Guidance-January-2023.pdf.*

[97] *See* 49 U.S.C. 5311.

[98] While Rural Area Formula Grants typically may be used to support operating expenses, operating expenses are not an eligible use of SLFRF spending for projects eligible under section 602(c)(5)(B)(xxii) of the Social Security Act. See operating expenses within the Pathway One applicable requirements section for more information.

[99] U.S. Department of Transportation, Federal Transit Administration, Formula Grants Rural Areas Program Guidance and Application Instructions, 79 FR 63663 (Feb. 27, 2020), *https://www.transit.dot.gov/regulations-and-guidance/fta-circulars/formula-grants-rural-areas-program-guidance-and-application.*

[100] *See* 49 U.S.C. 5337.

[101] U.S. Department of Transportation, Federal Transit Administration, State of Good Repair Grant Program Guidance and Application Instructions (May 29, 2020), *https://www.transit.dot.gov/regulations-and-guidance/fta-circulars/state-good-repair-grant-program-guidance-and-application.*

[102] *See* 49 U.S.C. 5339.

[103] U.S. Department of Transportation, Federal Transit Administration, Buses and Bus Facilities Program Guidance and Application Instructions (Feb. 27, 2020), *https://www.transit.dot.gov/regulations-and-guidance/fta-circulars/bus-and-bus-facilities-program-guidance-and-application.*

[104] *See* 49 U.S.C. 6703.

[105] U.S. Department of Transportation, Federal Highway Administration, National Culvert Removal, Replacement, & Restoration Grants (Culvert Hydraulics Aquatic Organisms Passage Program) website Program Overview (Jan. 31, 2023), *https://www.fhwa.dot.gov/engineering/hydraulics/culverthyd/aquatic/culvertaop.cfm.*

[106] *See* title VIII of division J of Public Law 117–58.

[107] U.S. Department of Transportation, Federal Highway Administration, Bridge Formula Program (BFP) Implementation Guidance (Jan. 14, 2022), *https://www.fhwa.dot.gov/bridge/bfp/20220114.cfm.*

[108] *See section* 602(c)(5)(B)(v) of the Social Security Act. *See also* 23 U.S.C. 134 for more details.

[109] *See* section 602(c)(5)(B)(xix) of the Social Security Act. *See also* 40 U.S.C. 14501 for more details on the Appalachian Development Highway System.

requirements and restrictions established by the 2023 CAA, in addition to the other applicable provisions of section 602 and 603 of the Social Security Act, the 2022 final rule, and recipients' award terms and conditions. As described earlier in this interim final rule, recipients may only use the greater of 30% of their award and $10 million (not to exceed their total award) for Surface Transportation projects (described in this section) and Title I projects (described in the following section), taken together. As also described earlier in this interim final rule, recipients using SLFRF funds for Surface Transportation projects must obligate funds by December 31, 2024, and expend funds by September 30, 2026. In the section that follows, this interim final rule describes the additional requirements that apply to Surface Transportation projects funded with SLFRF funds under Pathway One.

Pathway One: Application of Titles 23, 40, and 49 of the U.S. Code. Sections 602(c)(5)(C)(iii) and 603(c)(6)(B)(iii) of the Social Security Act provide that the requirements of titles 23, 40, and 49 of the U.S. Code apply to Surface Transportation projects, except as otherwise determined by the Secretary or the head of a Federal agency to which the Secretary has delegated authority. When using SLFRF funds under Pathway One, the statutory requirements that normally apply when carrying out such projects continue to apply. Recipients should consult with DOT before using SLFRF funds for these projects. The responsibility for completing or ensuring compliance with all requirements falls to the recipient, as would typically be the case for a DOT-funded project in the absence of SLFRF funds. Immediately below, this interim final rule summarizes some of the requirements that generally apply:

- Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Uniform Act) [110]—The Uniform Act is a Federal law that establishes minimum standards for Federally funded programs and projects that require the acquisition of real property or displace persons from their homes, businesses, or farms. The Act's protections and assistance apply to the acquisition, rehabilitation, or demolition of real property for Federal or Federally funded projects. The provisions of the Uniform Act and its implementing regulations apply to all activities funded with a recipient's SLFRF award, as described in the SLFRF award terms and conditions.
- Prevailing Wage and Employee Protection Requirements—The Surface Transportation projects are generally subject to wage and employee protection requirements, including the requirements of 23 U.S.C. 113 and 49 U.S.C. 5333(a) and (b), applying Davis-Bacon prevailing wage protections for highway and transit projects, respectively, receiving Federal financial assistance.
- Title VI of the Civil Rights Act of 1964—Title VI of the Civil Rights Act of 1964 states that no person in the Unites States shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity for which the recipient receives Federal assistance. As with all activities funded with a recipients' SLFRF award, the requirements of Title VI and Treasury's implementing regulations at 31 CFR part 22 apply to SLFRF funds used for Surface Transportation projects.
- Buy America Provisions—Buy America requirements were established pursuant to section 165 of the Surface Transportation Assistance Act of 1982 to ensure that transportation infrastructure projects are built with American-made products.[111] These requirements have been implemented by various DOT modes through statute and regulation.[112]
- Planning Requirements—Generally, projects that are eligible for funding under title 23 of the U.S. Code or 49 U.S.C. Chapter 53 must meet planning requirements laid out in law or regulation, including the requirement that the project be included within a Statewide Transportation Improvement Program, which is a statewide prioritized listing or program of transportation projects covering a period of four years that is consistent with the long-range statewide transportation plan, metropolitan transportation plans, and relevant Transportation Improvement Program. Recipients using SLFRF funds for Surface Transportation projects under Pathway One must continue to comply with applicable planning requirements.

Pathway One: Limitations on Operating Expenses. Sections 602(c)(5) and 603(c)(6) of the Social Security Act provide that SLFRF funds may not be used for operating expenses of the Surface Transportation projects. Specifically, recipients that use SLFRF funds for projects eligible under Urbanized Formula Grants, Fixed Guideway Capital Investment Grants, Formula Grants for Rural Areas, State of Good Repair Grants, or Grants for Buses and Bus Facilities may not use SLFRF funds for operating expenses of these projects. DOT typically defines operating expenses as those costs necessary to operate and manage a public transportation system. Operating expenses usually include costs such as driver salaries, the cost of fuel, and the cost of equipment and supplies having a useful life of less than one year. For this purpose, operating expenses do not include preventive maintenance activities. This limitation does not apply to other Surface Transportation projects or to other uses of SLFRF funds, including under the revenue loss eligible use category.

Pathway One: Projects that Demonstrate Progress Towards a State of Good Repair or Support Achieving Performance Targets. Section 602(c)(5)(C)(iii)(III) of the Social Security Act provides that, except as otherwise determined by the Secretary or the head of the Federal agency to which the Secretary has delegated authority, states may use funds for Surface Transportation projects, as applicable, that demonstrate progress in achieving a state of good repair as required by the state's asset management plan under 23 U.S.C. 119(e) and that support the achievement of one or more performance targets of the state established under 23 U.S.C. 150. Treasury interprets this provision to impose a mandatory requirement for states to comply with one of the two prongs in section 602(c)(5)(C)(iii)(III). Treasury understands the statute's provision that states "may" use funds for applicable projects that meet this requirement to mean that states may only use funds for such projects that meet this requirement, because this provision is included in the section titled "Application of Requirements" alongside two other subparagraphs that impose mandatory requirements when recipients use funds on Surface Transportation projects and because otherwise, the provision would have no practical effect.[113] But Treasury reads

[110] 42 U.S.C. 4601 *et seq.*

[111] *See* Public Law 97–424, 96 Stat. 2097 (Jan. 6, 1983).

[112] *See, e.g.*, 23 U.S.C. 313 (Federal Highway Administration Buy America statute); 49 U.S.C. 5323(j) (Federal Transit Administration Buy America statute); 49 CFR part 661 (Federal Transit Administration Buy America regulation); and 23 CFR 635.410 (Federal Highway Administration Buy America regulation).

[113] To treat the provisions of section 602(c)(5)(C)(iii)(III) as completely optional would give these provisions no meaning, because states would be permitted to carry out projects in the manner contemplated by the provision regardless of whether the statute identified this ability or not. Such a reading would render the provisions as

the word "and" as disjunctive, such that states need only comply with either subparagraph (aa) or (bb).[114] While it may be possible for a state to carry out some types of Surface Transportation projects in a way that both demonstrates progress in achieving a state of good repair as required by the state's asset management plan under 23 U.S.C. 119(e) and that supports the achievement of one or more performance targets of the state established under 23 U.S.C. 150, Treasury is concerned that an interpretation that requires states to meet both criteria would effectively read certain programs out of the list of programs that Congress specifically provided in section 602(c)(5)(B) of the Social Security Act.

This interim final rule provides that only projects eligible under title 23 of the U.S. Code, or that otherwise would be subject to the requirements of title 23, will be subject to the requirement to either demonstrate progress in achieving a state of good repair under 23 U.S.C. 119(e) or support the achievement of one or more state performance targets under 23 U.S.C. 150. Section 602(c)(5)(C)(iii)(III) of the Social Security Act provides that this requirement applies to Surface Transportation projects "as applicable," and it would not make sense for these conditions to apply to projects eligible under titles 40 or 49 of the U.S. Code as that would effectively make such projects unavailable to states, despite the inclusion of these types of projects in section 602(c)(5)(B) of the Social Security Act.

Pathway One: Application of Non-Federal Cost Share Requirements to SLFRF Funds. Generally, the non-Federal cost share provisions associated with projects and programs administered by DOT require a certain percentage of funds to be contributed from non-Federal sources. When other Federal funds are added to a transportation infrastructure project, the total amount of Federal funds associated with the project increases. In the case of some programs, this addition increases the overall amount of funds required from non-Federal sources, as is the case with the State of Good Repair Grant Formula Program (49 U.S.C. 5337(e)), the Railcar Vehicle Replacement Program (49 U.S.C. 5337(f)), and Grants for Buses and Bus Facilities Program (49 U.S.C. 5339). In the case of other programs, the addition of Federal funds, like SLFRF, will not increase the overall amount of funds required from non-Federal sources.

As described above, the requirements of titles 23, 40, and 49 of the U.S. Code apply to recipients using SLFRF funds for Surface Transportation projects under Pathway One, except as otherwise determined by the Secretary. This provision permits Treasury to determine not to apply certain requirements of the cross-referenced statutes when such requirements would conflict with the existing SLFRF framework or otherwise are likely to preclude recipients from to exercising the additional authorities provided by the statute. For these reasons, recipients using SLFRF funds for Surface Transportation projects under Pathway One will not be required to contribute cost-sharing or matching funds alongside those SLFRF funds. In other words, the use of SLFRF funds on its own will not result in the application of an additional cost-share requirement beyond the cost-share requirement that already applies to DOT grantees carrying out projects with DOT funds. This approach is consistent with the way recipients are permitted to use SLFRF funds under the 2022 final rule, which does not require recipients to provide cost sharing or matching funds in order to use their SLFRF funds.[115] If Treasury were to apply cost-share requirements to the SLFRF funds used in Pathway One, on top of the cost-share requirements that already apply to the projects as funded by DOT, recipients would be required to source additional matching funds before being able to carry out a Surface Transportation project, which would frustrate the flexibility provided by the statutory framework and inhibit SLFRF recipients' ability to use funds already received prior to the approaching obligation and expenditure deadlines.

Because SLFRF funds are Federal funds, using SLFRF funds under Pathway One will still impact the cost-share requirements that apply to certain Surface Transportation projects due to differences in applicable non-Federal cost share requirements across DOT projects and programs. In some cases, DOT programs are capped in the amount of Federal funds that may be used in a project, regardless of whether those funds are provided by DOT or another Federal source. This is true, for example, of the State of Good Repair Grant Formula Program (49 U.S.C. 5337(e)), the Railcar Vehicle Replacement Program (49 U.S.C. 5337(f)), and Grants for Buses and Bus Facilities Program (49 U.S.C. 5339) noted above. In those and other similar scenarios, recipients can contribute SLFRF funds up to the maximum Federal funds limit without an accompanying increase in non-Federal share, but once that maximum is reached, the statutory cost share applicable to the project will apply to the SLFRF funds. However, in the case of many other programs, the approach described above will provide an avenue for recipients to use funds for Surface Transportation projects under Pathway One without requiring additional non-Federal share contributions. Recipients using SLFRF funds for Surface Transportation projects under Pathway One must consult with DOT to determine the applicable non-Federal cost share requirements.

Pathway One: Delegation of Authority. Sections 602(c)(5)(C)(iv) and 603(c)(6)(B)(iv) of the Social Security Act provide that the Secretary may delegate oversight and administration of the requirements applicable to Surface Transportation projects to the appropriate Federal agency. Given DOT's expertise and experience with oversight and administration of their own infrastructure projects, Treasury is delegating authority for oversight and administration of Surface Transportation projects under Pathway One. As such, recipients proposing to spend SLFRF on such projects must follow DOT guidance for determining the eligibility of using SLFRF funds for a proposed project. Recipients using SLFRF funds for such projects will be required to comply with the relevant existing DOT reporting requirements associated with an existing Surface Transportation project that is receiving DOT funds. Recipients using SLFRF funds under Pathway One will also be required to report certain information to Treasury, including, among other things, the amount of SLFRF funds directed toward Surface Transportation projects and Title I projects to ensure that recipients comply with the cap on funds associated with these eligible use categories. See the section titled Reporting for additional information. Treasury and DOT will work together to issue guidance to provide recipients additional clarity on how the delegation

surplusage. Instead, statutes should be read to give effect to all provisions, "so that no part will be inoperative or superfluous." *See, e.g., Ysleta Del Sur Pueblo* v. *Texas*, 596 U.S. _, 124 S. Ct. 1929, 1939 (2022) (internal citation omitted).

[114] As discussed in *United States* v. *Fisk*, 70 U.S. 445, 447 (1865), it can be necessary "to construe 'or' as meaning 'and,' and again 'and' as meaning 'or'" (emphasis omitted). While the word "and" usually is conjunctive and the literal meaning of the words "and" and "or" generally should be followed, it may be appropriate to interpret "and" as disjunctive when the statutory meaning is questionable or confusing. *See also* Singer, Norman J. et al., *Sutherland Statutes and Statutory Construction* § 21:14 (7th ed. 2010).

[115] *See* section 7 of the SLFRF Award Terms and Conditions.

of oversight and administration will apply to Pathway One projects.

c. Pathway Two: Surface Transportation Projects Not Receiving Funding From DOT

This section describes Pathway Two, through which recipients may use SLFRF funds for Surface Transportation projects that are not receiving funding from DOT, whether or not SLFRF funds are blended with other sources of funds. This second pathway is available to all SLFRF recipients, including those that do not routinely apply for or receive funding directly from DOT.

In this interim final rule, Treasury is articulating a streamlined framework under Pathway Two for recipients to undertake certain projects that are expected to pose less financial, compliance, and environmental risk. In this streamlined framework, Treasury has determined not to require recipients to submit an application to, or receive approval from, Treasury to conduct a project that meets certain criteria, as discussed further below.

To pursue projects outside the thresholds described in the streamlined framework, recipients must submit a notice of intent to Treasury through the process described further below. Treasury will evaluate the projects included in these notices of intent, along with comments to this interim final rule, to design and implement the framework for approving these projects. For information, refer to the section titled Pathway Two: Notice of Intent for Projects Outside Streamlined Framework.

As summarized earlier, Treasury has determined to adopt a streamlined approach for projects that qualify for the RAISE grant program and that meet criteria that indicate lower risk. Projects eligible under the DOT RAISE program are among the types of projects added by the 2023 CAA as eligible uses of SLFRF. Under the RAISE program, as detailed in the RAISE Notice of Funding Opportunity, recipients must submit applications to DOT and receive approval from DOT for their proposed projects.

In this streamlined approach, Treasury has determined not to require recipients to submit an application to, or receive approval from, Treasury to conduct a project that would be eligible under the RAISE grant program and meets the other criteria applicable to the streamlined framework, as would normally be required when DOT administers the program pursuant to the RAISE Notice of Funding Opportunity. Depending on the nature of the project, a recipient may nevertheless be required to obtain approval pursuant to a specific requirement under titles 23, 40 or 49 or the regulations adopted by DOT thereunder. For example, a project that involves new construction, reconstruction, resurfacing (except for maintenance resurfacing), restoration, or rehabilitation of a national highway must meet the design standards approved by DOT; if the recipient wishes to vary from these standards, it must apply to DOT for an exception.[116]

The eligibility of projects under the RAISE program is described in the "*Notice of Funding Opportunity for the Department of Transportation's National Infrastructure Investments (i.e., the Rebuilding American Infrastructure with Sustainability and Equity (RAISE) Grant Program) under the Infrastructure Investment and Jobs Act ("Bipartisan Infrastructure Law"), Amendment No. 2*" (2023 RAISE Grant NOFO) under "*3. Other*" in "*C. Eligibility Information*."[117] These projects include highway, bridge, or other road projects eligible under title 23 of the U.S. Code; public transportation projects eligible under chapter 53 of title 49 of the U.S. Code; passenger and freight rail transportation projects; port infrastructure investments; the surface transportation components of an airport project eligible for assistance under part B of subtitle VII of title 49 of the U.S. Code; intermodal projects; projects to replace or rehabilitate a culvert or prevent stormwater runoff; projects investing in surface transportation facilities that are located on Tribal land; and other surface transportation infrastructure projects that the Secretary of Transportation considers to be necessary to advance the goals of the RAISE program—including public road and non-motorized projects that are not otherwise eligible under title 23 of the U.S. Code, transit-oriented development projects, mobility on-demand projects that expand access and reduce transportation cost burden, and intermodal projects.

For a RAISE-eligible project to qualify for the streamlined approach, it must satisfy the following criteria:

- *Contribute no more than $10 million in SLFRF funds.* The recipient's contribution of SLFRF funding to the project under Pathway Two must not exceed $10 million.
- *Limited to activities that typically do not have a significant environmental impact.* The entire project scope must be limited to the set of actions or activities identified by DOT as meeting the criteria for categorical exclusion as listed under 23 CFR 771.116(c)(1)–(22), 771.117(c)(1)–(30), and 771.118(c)(1)–(16). The recipient also must determine that those actions do not involve unusual circumstances, as described in 23 CFR 771.116(b), 771.117(b), and 771.118(b). Such unusual circumstances include significant environmental impacts; substantial controversy on environmental grounds; significant impact on properties protected by section 4(f) of the Department of Transportation Act of 1966[118] or section 106 of the National Historic Preservation Act (NHPA);[119] or inconsistencies with any Federal, state, or local law, requirement, or administrative determination relating to the environmental aspects of the action. In considering whether the effects of a proposed action are significant, recipients should analyze the potentially affected environment and degree of the effects of the action consistent with how a Federal agency would analyze it, as described in 40 CFR 1501.3(b). For example, an action may be significant if—in the short-term or the long-term and either individually or cumulatively—it greatly alters or impacts planned growth or land use for the area; requires the relocation of large numbers of people; has a strong effect on any natural, cultural, recreational, historic, or other resource; significantly impacts air, noise, or water quality; greatly affects travel patterns; or has some other form of environmental impact that is significant.

Without the streamlined framework, recipients likely would not be able to engage within required timelines in the types of projects that Congress has authorized.[120] As approximately 30,000 SLFRF recipients could seek to use funds for hundreds of Surface Transportation projects under Pathway Two, application of the statutory and regulatory approval requirements to such a volume of projects likely would preclude recipients from carrying out such projects while meeting the statutory deadlines for obligation and expenditure of funds. By contrast, Treasury expects far fewer recipients to seek to use SLFRF funds for higher-risk projects involving greater complexity, given the approaching obligation deadline of December 31, 2024. The

[116] *See* 23 CFR part 625.

[117] U.S. Department of Transportation, FY 2023 RAISE Grants Notice of Funding Opportunity, *https://www.transportation.gov/sites/dot.gov/files/2023-02/RAISE%202023%20NOFO%20Amendment2.pdf.*

[118] *See* 23 U.S.C. 138.

[119] *See* 54 U.S.C. 306108.

[120] Although Treasury is only adopting the streamlined approach for projects eligible for the RAISE program, as discussed above, this program includes most eligible types of projects.

approval requirements apply to Surface Transportation projects that do not meet the above streamlined framework criteria, and Treasury will design a process for recipients seeking to finance larger projects, based in part on the comments to this interim final rule, as discussed further below.

Recipients using SLFRF funds for an eligible project under Pathway Two must maintain records to support their determination that the project meets the relevant requirements and the criteria described above, including qualifying as an "eligible project" under the RAISE grant program, not exceeding $10 million in SLFRF funds, and being limited to activities that typically do not have a significant environmental impact as outlined above. Recipients should be prepared to attest to having completed these determinations as part of their ongoing reporting to Treasury. Treasury will amend its reporting guidance to provide reporting requirements applicable to projects conducted under Pathway Two.

Treasury aligned the streamlined framework for projects under Pathway Two with the projects available under the RAISE grant program because these projects substantially overlap with the projects available under the other programs referenced in section 602(c)(5)(B) of the Social Security Act. Furthermore, the RAISE program's availability on a competitive basis to most SLFRF recipients means that the program and its requirements are already familiar to many recipients, enabling them to quickly and clearly assess the eligibility of a proposed project and meet the obligation and expenditure deadlines.

Based on Treasury's initial conversations with DOT and stakeholders with an interest in Surface Transportation projects, it is Treasury's expectation that compliance with the streamlined framework will substantially address the risks and policy concerns associated with projects that the requirement to submit an application for DOT approval under the RAISE program is meant to address.

The requirement to obtain DOT approval allows DOT to assess whether the project meets eligibility requirements, whether a recipient has the financial and technical capability to design and carry out the project, whether the recipient has received required permits and will comply with applicable law, and how the project will impact the environment.[121] Environmental risk is addressed by the requirement to qualify for one of the NEPA categorical exclusions, absent any unusual circumstances, which is cross-referenced in the third criterion. Categorical exclusions (absent unusual circumstances) represent the class of actions that DOT has determined, after review by the Council on Environmental Quality, do not typically individually or cumulatively have a significant effect on the human environment and for which, therefore, neither an environmental assessment nor an environmental impact statement is normally required under DOT's environmental review process.[122] Further, the risk of a project being ineligible for a specific DOT program is less of a concern under Pathway Two than it would be under certain specific DOT programs, given that the scope of eligible projects as added by the 2023 CAA is so wide. There is generally less risk of a recipient not having the financial or technical capabilities to complete a project in the case of a project that would meet the $10 million threshold.

As noted above, projects eligible under the RAISE grant program substantially overlap with the projects available under the other programs referenced in section 602(c)(5)(B) of the Social Security Act, and the program is available on a competitive basis to most SLFRF recipients. These projects, therefore, represent the types of projects that SLFRF recipients may be expected to undertake under Pathway Two, and Treasury qualitatively reviewed recent RAISE grants as well as earlier grants awarded through the similar TIGER and BUILD programs, covering fiscal years 2012 through 2022, to develop a better understanding of the types of projects that recipients may choose to undertake.[123] Treasury observed that projects funded by these grants generally present reduced financial complexity and compliance risk and are narrower in scope. Adjusted for inflation, applicants awarded less than $10 million in TIGER, BUILD, or RAISE grant funding have generally carried out a wide range of projects including: road repairs, sidewalk installment and replacement, bike and pedestrian trails, pedestrian bridges, replacement of existing vehicle bridges, intermodal or transit-oriented infrastructure build-outs, marine facility investments, and railway repairs and expansion. These projects were generally focused on maintenance or upgrades of existing infrastructure and thus were significantly less likely to expand the overall footprint of surface transportation projects. This suggests that these types of projects tend to carry fewer complexities and are the types of Surface Transportation projects with which nearly all SLFRF recipients are familiar as part of the normal course of maintaining surface transportation in their respective geographic areas.

Approximately half of TIGER, BUILD, and RAISE awards under $10 million fund transportation infrastructure; the other half are planning or research grants. Treasury observed in its review that nearly 80% of the transportation infrastructure awards under $10 million did not meaningfully expand the footprint of existing infrastructure. Furthermore, of the awards that may have required a footprint expansion, nearly half of those awards were for bike and pedestrian trails and bridges, which are expected to be less environmentally impactful, time intensive, and complex than new roads, vehicle bridges, rail lines, or multimodal infrastructure. Based on this analysis, nearly 90% of awards did not require an expansion of the footprint of a project and over 75% of projects were maintenance or upgrade oriented. When reviewing awards above $10 million, Treasury found increasing complexity among awards that was not present in significant numbers below the $10 million threshold. This complexity involved awards that crossed multi-jurisdictional boundaries or significantly expanded the footprint, such as bridge reconstruction and widening over a major river between two states and a project for a multimodal transportation center.

Although compliance with the streamlined framework criteria does not alone address these risks as fully as agency review of the project would, Treasury believes it reasonable to permit projects funded with $10 million or less in SLFRF funds and that fit within the DOT NEPA categorical exclusions to go forward without the application of approval requirements to enable recipients to successfully pursue these projects within the time remaining in the program.

Pathway Two: Notice of Intent for Projects Outside Streamlined

[121] Given that RAISE is a competitive grant program, the approval process also involves the selection of the most meritorious projects, but this objective is not relevant to the SLFRF program, under which recipients are provided funds by Treasury in advance for projects of their own choosing.

[122] *See* 23 CFR 771.116, 771.117, and 771.118.

[123] The TIGER, BUILD, and RAISE grant programs are discretionary grants awarded by DOT to fund road, rail, transit, and port projects that promise to achieve national objectives. The programs have different names but share similar goals and eligibility requirements. The names reflect the changing priorities and themes of the DOT over time. The programs were first created in 2009 as part of the American Recovery and Reinvestment Act of 2009 and have since funded hundreds of projects in all 50 states, the District of Columbia, and Puerto Rico.

Framework. As described earlier, Treasury recognizes that recipients may want to use SLFRF funds (without any funding from DOT) to pursue projects that do not meet the three criteria for the streamlined framework described above (*i.e.*, a project not eligible under the RAISE program, a project above the $10 million threshold, or a project including activities that do not fall within the categorical exclusions). To do so, recipients must submit a notice of intent to Treasury. The notice of intent must be submitted to *NOI-SLFRF@Treasury.gov* and is due by December 20, 2023. Ideally, the notice of intent will provide the following information:

- Project description, including description of how the project meets the applicable requirements under the relevant Surface Transportation program;
- Dollar value of SLFRF-financed portion of the project, including confirmation that the SLFRF-funded portion will not exceed the greater of $10 million or 30% of the recipient's total SLFRF award;
- Total expected project cost;
- Presence of other Federal funding;
- Status of NEPA review;
- Recipients' plans to source the project in accordance with the Buy America requirements set forth in titles 23, 40, and 49 of the U.S. Code, as applicable;
- Brief assessment of project readiness, including recipient's assessment of its ability to obligate and expend funds for the SLFRF-financed portion of the project in accordance with the December 31, 2024 obligation deadline and September 30, 2026, expenditure deadline; and
- Brief assessment of recipient's institutional, managerial, and financial capability to ensure proper planning, management, and completion of the project.

Treasury will evaluate the projects included in these notices of intent, along with comments to this interim final rule, to design and implement a framework for approving these projects.

d. Pathway Two: Applicable Requirements

Recipients using SLFRF funds under Pathway Two must comply with certain requirements and restrictions. These requirements and restrictions are in addition to the eligibility criteria applicable to the streamlined Pathway Two framework discussed above. As described earlier in this interim final rule, recipients may only use the greater of 30% of their award and $10 million (not to exceed their award) for Surface Transportation projects (described in this section) and Title I projects (described in the following section), taken together. For example, an SLFRF recipient with an allocation of $20 million would have $10 million (as $10 million is greater than 30% of the allocation, or $6 million) to direct to Surface Transportation projects and Title I projects. If this recipient chose to expend $10 million toward a Surface Transportation project under the streamlined framework in Pathway Two, it would have expended the full amount of SLFRF funds available under the cap and would not be able to pursue any additional Surface Transportation projects or any Title I projects. Recipients using SLFRF funds under Pathway Two must also comply with the requirement that SLFRF funds supplement and not supplant other funds, described earlier in this interim final rule. Also as described earlier in this interim final rule, for Surface Transportation projects, recipients must obligate funds by December 31, 2024, and expend funds by September 30, 2026. In the section that follows, this interim final rule describes how the requirements of NEPA and titles 23, 40, and 49 of the U.S. Code apply to SLFRF funds used for Surface Transportation projects under Pathway Two.

Pathway Two: NEPA. As described above, recipients using funds for Surface Transportation projects that qualify for the streamlined framework under Pathway Two, and that are therefore not subject to approval requirements, are not required to conduct NEPA environmental reviews. Recipients are reminded, however, that projects supported with payments from SLFRF may still be subject to NEPA review and other environmental statutes such as section 106 of the NHPA that impose conditions on a Federal agency's approval of a project if they are also funded by other Federal financial assistance programs or have certain Federal licensing or registration requirements. In addition, a project that qualifies for the streamlined framework may still be subject to limitations or prohibitions as a result of the application of other environmental statutes.

For projects under Pathway Two outside of the streamlined framework, recipients must submit a notice of intent as outlined above, and the requirements of NEPA and other environmental laws, such as section 106 of the NHPA, that impose limits on a Federal agency's approval of a project, apply to these Surface Transportation projects. Treasury will provide additional information about the application and administration of environmental requirements to projects under Pathway Two not qualifying for the streamlined framework at a later date, following review of the comments to this interim final rule and the notices of intent submitted by recipients.

Pathway Two: Application of Titles 23, 40, and 49 of the U.S. Code. The 2023 CAA provides that, except as otherwise determined by the Secretary, the requirements of titles 23, 40, and 49 of the U.S. Code apply to SLFRF funds used for Surface Transportation projects. Generally, the requirements provided within the following sections of titles 23, 40, and 49 apply to recipients' use of SLFRF funds under Pathway Two, because these sections govern the types of Surface Transportation projects that recipients may undertake pursuant to the 2023 CAA:

- Title 23: All parts of title 23
- Title 40: Chapters 141 and 145
- Title 49: Chapters 53, 55, 67, 471, and subtitle V

More specifically, applicable provisions include those relating to the following requirements:

- Underlying project requirements. For example, if a recipient intends to use SLFRF funds under Pathway Two for an INFRA project that would be eligible under title 23 (as contemplated by the RAISE program), then in addition to complying with the requirements established in the RAISE NOFO, the recipient must also comply with the project eligibility and execution requirements that govern the INFRA program, set forth at 23 U.S.C. 117.
- Design, planning, construction, operation, maintenance, vehicle weight limit, and toll requirements with respect to particular projects. For a discussion of planning requirements specifically related to STIPs and TIPs, please see below.
- Location requirements for particular projects. For example, pursuant to 23 U.S.C. 133(c), recipients of the Surface Transportation Block Grant program may not undertake a project on a road functionally classified as a local road or a rural minor collector unless the road was on a Federal-aid highway system on January 1, 1991, subject to certain exceptions. Recipients using SLFRF funds for projects pursuant to sections 602(c)(5)(B)(iv) and 603(c)(6)(A) of the Social Security Act as added by the 2023 CAA, which provided that projects eligible under the Surface Transportation Block Grant program are eligible uses of the SLFRF, must comply with the location requirements of 23 U.S.C. 133(c) with respect to such projects. Recipients seeking to use funds

under the streamlined framework under Pathway Two are reminded that the "public road and nonmotorized projects not otherwise eligible under title 23" prong of the 2023 RAISE NOFO would include local road projects.

- Project approval requirements. The approval requirements of titles 23, 40, and 49 of the U.S. Code apply to Pathway Two projects other than those that qualify for the streamlined framework described above. Treasury has determined not to require recipients to submit an application to, or receive approval from, Treasury to conduct a project that would be eligible under the RAISE grant program and meets the criteria of the streamlined framework of Pathway Two. As discussed above, depending on the nature of the project, a recipient may nevertheless be required to obtain approval pursuant to a specific requirement under titles 23, 40 or 49 or the regulations adopted by DOT thereunder.
- Procurement requirements. For example, the requirements of 23 U.S.C. 112 generally apply. Please see discussion below in the section titled Pathway Two: Buy America Requirements for a discussion of the specific applicability of Buy American requirements under 23 U.S.C. 313 and the Infrastructure Investment and Jobs Act.
- Wage and labor requirements. For example, the requirements of 23 U.S.C. 113, imposing Davis-Bacon prevailing wage protections for highway projects, apply.
- Compliance requirements. Compliance provisions apply to the extent that they require recipients to establish and maintain measures to oversee the eligible projects that they are undertaking.
- Definitions of terms used in the provisions above.

In addition, the RAISE program includes eligibility for projects with applicable requirements that are found outside of titles 23, 40, and 49. If a recipient would like to use SLFRF funds for a project eligible under the RAISE program but governed by laws outside titles 23, 40, and 49, the general principles described above for titles 23, 40, and 49 will apply, and recipients may ask Treasury for more detail about the specific requirements that apply to the particular project.

Recipients using SLFRF funds for Surface Transportation projects under Pathway Two must meet the relevant requirements outlined above, which will depend on the project type and whether the project ordinarily would be overseen by the Federal Highway Administration (FHWA), Federal Transit Administration (FTA), Federal Railroad Administration (FRA), or other relevant DOT administrations. For example, for projects that ordinarily would be overseen by FHWA, applicable Federal laws include those set forth in title 23 of the U.S. Code, chapters 141 and 145 of title 40 of the U.S. Code (if undertaking a project related to the completion of a designated route of the Appalachian Development Highway System), chapter 67 of title 49 of the U.S. Code (if undertaking a project related to national culvert removal, replacement, or restoration), and applicable regulations.[124] For projects that ordinarily would be overseen by the FTA, applicable Federal laws include the requirements of chapters 53, 55, and 67 of title 49 of the U.S. Code and chapter VI of title 49 of the Code of Federal Regulations. For projects that ordinarily would be overseen by the FRA, applicable Federal laws include those described in chapters 55 and 67 and subtitle V of title 49 of the U.S. Code.

Restrictions that apply to projects regardless of the source of funds of the project apply as they would to any other project carried out by a recipient. For example, the design and construction standards set forth in 23 CFR part 625 apply to construction, reconstruction, resurfacing (except for maintenance resurfacing), restoration, or rehabilitation of a highway that is part of the national highway system, regardless of what funds are used for such activities.[125] For all of the requirements under titles 23, 40, and 49 that apply to recipients' use of funds to undertake projects under this framework, the associated DOT regulations also apply, unless Treasury states otherwise.[126]

Pathway Two: Inapplicable requirements of title 23, 40, and 49 of the U.S. Code. The Secretary has determined that certain sections of the relevant chapters of titles 23, 40, and 49 of the U.S. Code do not apply to recipients' use of SLFRF funds for Surface Transportation projects under Pathway Two when such requirements would conflict with the existing SLFRF framework or otherwise are likely to preclude recipients from exercising the additional authorities provided by the statute. For these reasons, the following types of provisions generally do not apply:

- Grant size requirements. Limitations on the size of grants that DOT can award to grantees do not apply to SLFRF recipients using funds to carry out Surface Transportation projects. For example, under the Rural Surface Transportation Grant Program, DOT generally may only award grants in amounts not less than $25 million.[127] SLFRF recipients are not subject to this funding minimum when using SLFRF funds for projects eligible under the Rural Surface Transportation Grant Program. These limitations conflict with the SLFRF statutory framework and are likely to preclude recipients from exercising the additional authorities provided by the statute: they apply by their terms to DOT rather than to recipients, and recipients have already received their SLFRF payments from Treasury. Instead, recipients are subject to the aggregate limit on the use of SLFRF for Surface Transportation projects and Title I projects discussed above. Recipients wishing to use the streamlined framework for a particular project are also limited to using $10 million of the SLFRF for such project.
- Allocation requirements that require states to distribute funds received under certain programs to their local governments or to spend funds received under certain programs for the benefit of particular areas. Treasury has determined for example, that the requirements of 23 U.S.C. 133(h) are not applicable to the SLFRF program, as they conflict with the SLFRF statutory framework and are likely to preclude certain recipients from exercising the additional authorities provided by the statute. The 2023 CAA amendments make clear that SLFRF recipients are permitted to use funds for projects carried out by the recipient itself. Furthermore, all SLFRF recipients are eligible to use their funds for Surface Transportation projects, so it is unnecessary to require states to further distribute amounts for the specific benefit of their localities that may not receive DOT funding directly. Finally, even if Treasury were to apply these allocation requirements to the SLFRF program, a state that wanted to use

[124] For an illustrative list of the other applicable laws, rules, regulations, executive orders, polices, guidelines, and requirements as they relate to a RAISE grant project overseen by the FHWA, *see https://www.transportation.gov/grants/raise/raise-fy2022-fhwa-exhibits-october-18-2022.*

[125] *See* 23 CFR 625.3(d). Application of these requirements to projects funded under the SLFRF includes the provision for determinations by the Division Administrator in certain instances as provided for by 23 CFR 625.3(e).

[126] The 2023 CAA provides that the requirements of titles 23, 40, and 49 of the U.S. Code apply to funds used for Surface Transportation projects, except as otherwise determined by the Secretary. Treasury is also applying the associated regulations because they generally inform and provide context for how to apply with the requirements set forth in the statute.

[127] *See* 23 U.S.C. 173(i).

SLFRF funds for a project eligible under a program subject to an allocation requirement could in most if not all cases avoid the requirement by citing a different program without an allocation requirement as the authority for its uses of funds.

- Non-Federal cost-share requirements. As discussed under Pathway One, titles 23, 40, and 49 include cost-share requirements that generally apply to projects under transportation programs. However, recipients using SLFRF funds for Surface Transportation projects under Pathway Two are not required to contribute cost-sharing or matching funds alongside those SLFRF funds. This approach is consistent with the way recipients spend SLFRF funds under the 2022 final rule, which does not require recipients to provide cost sharing or matching funds in order to use their SLFRF funds.[128] If Treasury were to apply cost-share requirements to the SLFRF funds used in Pathway Two, recipients would be required to source additional matching funds before being able to carry out a Surface Transportation project, which would frustrate the flexibility provided by the 2023 CAA and inhibit recipients' ability to use funds already received prior to the approaching obligation and expenditure deadlines.
- Reporting requirements that would normally apply when DOT provides funding for a project. SLFRF recipients generally are not required to report their use of SLFRF funds for a project under Pathway Two to DOT or any other agency other than Treasury. Instead, recipients are required to provide a detailed accounting of their uses of funds and report such information as Treasury shall require pursuant to section 602(d)(2) and 603(d). Treasury will amend its reporting guidance to provide reporting requirements applicable to projects conducted under Pathway Two.

Pathway Two: STIP and TIP. The statutory provisions of titles 23, 40, and 49 related to STIP and TIP inclusion, generally do not apply to SLFRF funds used for Surface Transportation projects under Pathway Two. Typically, applicants for RAISE funding need to demonstrate that a project that is required to be included in the relevant state, metropolitan, and local planning documents has been or will be included in such documents. Such local planning documents include the STIP or TIP. This requirement for inclusion in planning documents provides useful context on how specific projects fit within broader transportation investments. The requirement that certain projects be addressed in these planning documents, however, is inconsistent with the 2023 CAA amendments' provision of authority to local governments themselves to undertake Surface Transportation projects with funds on hand rather than through funding overseen by state or regional entities and therefore would likely preclude certain recipients from exercising the additional authorities provided by the statute. Accordingly, these planning requirements do not apply to recipients' use of SLFRF funds for Surface Transportation projects under Pathway Two.

However, as discussed above, requirements that apply to projects regardless of the source of funds of the project apply as they would to any other project carried out by a recipient. Pursuant to 23 CFR 450.218(h), a STIP must contain all regionally significant projects requiring an action by the FHWA or FTA despite source of funds, and must also contain (if appropriate and included in any TIPs), all regionally significant projects proposed to be funded with Federal funds, among others. [129] For this reason, if a project receiving SLFRF funds under this framework is regionally significant and requires an action by the FHWA or the FTA, it will still be required to be included in the STIP or TIP. If a project receiving SLFRF funds under this framework is included in a TIP, for informational and conformity purposes, it also may be required to be included in the STIP.

Pathway Two: Buy America Requirements. Under titles 23 and 49 of the U.S. Code, programs overseen by the FHWA, FTA, and FRA are subject to Buy America domestic content procurement preference provisions related to steel, iron, and manufactured goods. These Buy America provisions provide that DOT shall not obligate funds to carry out projects under titles 23 and 49 unless steel, iron, and manufactured products used in such project are produced in the United States.[130] Recipients generally must satisfy the Buy America requirements of titles 23, 40, and 49 of the U.S. Code when funds are used on Surface Transportation projects under Pathway Two. However, recipients are not required to satisfy the Buy America requirements in the case of Surface Transportation projects meeting the criteria for streamlined projects under Pathway Two that result in lower-risk uses of funds. Treasury expects that recipients may seek to use funds for hundreds of lower-risk projects, and application of the Buy America requirements to such a volume of projects likely would preclude recipients from carrying out such projects while meeting the statutory deadlines for obligation and expenditure of funds. Treasury expects that developing the recipient compliance process and addressing requests for waivers for potentially hundreds of lower-risk projects in time for recipients to carry out such projects while meeting the statutory deadlines for obligation and expenditure of funds could inhibit recipients' ability to use SLFRF funds in the time remaining in the program in line with the flexibility provided by the statutory framework. By contrast, Treasury expects far fewer recipients to seek to use SLFRF funds for higher-risk projects involving greater complexity, in light of the approaching obligation deadline of December 31, 2024, and expenditure deadline of September 30, 2026. The Buy America requirements apply to Surface Transportation projects that do not meet the criteria, and Treasury will work with recipients seeking to fund projects outside of the streamlined framework, as discussed further above.

Pathway Two: Projects that demonstrate progress towards a state of good repair or support achieving performance targets. Consistent with the requirements applicable to Pathway One, states using SLFRF funds under Pathway Two for Surface Transportation projects eligible under title 23 of the U.S. Code, or that otherwise would be subject to the requirements of title 23, must either demonstrate progress in achieving a state of good repair or support the achievement of one or more performance targets. This requirement would not apply when states use SLFRF funds for Surface Transportation projects eligible under programs authorized by laws outside of title 23 of the U.S. Code, for the reasons discussed above.

[128] *See* section 7 of the SLFRF Award Terms and Conditions.

[129] "Regionally significant project" is defined in 23 CFR 450.104 to mean "a transportation project . . . that is on a facility that serves regional transportation needs (such as access to and from the area outside the region; major activity centers in the region; major planned developments such as new retail malls, sports complexes, or employment centers; or transportation terminals) and would normally be included in the modeling of the metropolitan area's transportation network. At a minimum, this includes all principal arterial highways and all fixed guideway transit facilities that offer an alternative to regional highway travel."

[130] *See* 23 U.S.C. 313 for FHWA, 49 U.S.C. 5323 for FTA, and 49 U.S.C. 22905(a) and 49 U.S.C. 24395 for FRA.

Pathway Two: Limitations on Operating Expenses. Consistent with the requirements described in Pathway One, recipients may not use SLFRF funds under this pathway for operating expenses in projects that would be eligible under Urbanized Formula Grants, Fixed Guideway Capital Investment Grants, Formula Grants for Rural Areas, State of Good Repair Grants, or Grants for Buses and Bus Facilities. For this purpose, operating expenses do not include preventive maintenance activities. Public transportation projects eligible under chapter 53 of title 49 of the U.S. Code are eligible projects under the RAISE grant program and therefore are available for SLFRF recipients to pursue under Pathway Two, pursuant to other requirements as outlined above. Given the statutory limitation on using SLFRF funds for operating expenses on projects eligible under the above-mentioned programs, such limits also apply to projects eligible under the programs with statutory limitations on using SLFRF funds for operating expenses that recipients may pursue under Pathway Two. This limitation does not apply to other Surface Transportation projects under Pathway Two or to other uses of SLFRF funds, including under the revenue loss eligible use category.

e. Pathway Three: Non-Federal Share Requirements for Certain Surface Transportation Projects

This section discusses the third pathway for using SLFRF funds for Surface Transportation projects. Sections 602(c)(5)(A) and 603(c)(6)(A) of the Social Security Act provide that SLFRF funds may be used to satisfy non-Federal share requirements for projects eligible under INFRA Grants (23 U.S.C. 117), Fixed Guideway Capital Investment Grants (49 U.S.C. 5309), or Mega Grants (49 U.S.C. 6701), as well as projects eligible for credit assistance under the TIFIA program (23 U.S.C. chapter 6). Recipients may also use SLFRF funds to repay a loan provided under the TIFIA program. These eligible activities are referred to as Pathway Three.

Recipients may use SLFRF funds under Pathway Three for projects that have, or will prior to the SLFRF obligation deadline, receive funding from DOT under one of the above-referenced programs. Recipients must comply with the requirement that they may only use the greater of 30% of their award and $10 million for Surface Transportation projects and Title I projects, taken together. Recipients using SLFRF funds under Pathway Three must also comply with the requirement that SLFRF funds supplement and not supplant other funds, described earlier in this interim final rule.

As discussed above, the requirements of titles 23, 40, and 49 of the U.S. Code include cost-share requirements that generally apply to projects under transportation programs, and these requirements apply to the use of SLFRF for Surface Transportation projects. However, given the specific provision in sections 602(c)(5)(A) and 603(c)(6)(A) of the Social Security Act that SLFRF may be used to meet the non-Federal share requirements of the three programs referenced above, if a recipient uses SLFRF funds to satisfy the non-Federal share requirements for projects eligible under one of those programs, DOT will not treat the SLFRF funds as Federal funds for this limited purpose and will credit SLFRF toward applicable cost-share or non-Federal match requirements accordingly. For example, under the INFRA program, Federal funds other than the participating DOT funds generally do not satisfy non-Federal cost share requirements, and Federal funds together must contribute not more than 80% of a project's costs. SLFRF funds used to cover the applicable non-Federal cost share requirements of a project under Pathway Three will not be treated as Federal funds and therefore are not considered against the 80% limit on Federal funding sources. Recipients using SLFRF funds to satisfy non-Federal cost share requirements under Pathway Three must consult with DOT to understand the applicable non-Federal cost share requirements and how SLFRF funds may be used for these purposes.

Although the statute expressly permits recipients to use SLFRF funds to satisfy non-Federal cost share requirements for the above-referenced programs, as with any use of funds to meet non-Federal cost share requirements, the requirements associated with the project, as administered by DOT, continue to apply to the use of all the funding for the project unless otherwise provided by DOT.

Under Pathway Three, recipients will be required to comply with the relevant existing DOT reporting requirements associated with the Surface Transportation project for which they are using SLFRF funds for non-Federal share requirements. Recipients will be required to report certain information to Treasury, including the amount of SLFRF funds directed toward Surface Transportation projects and Title I projects, to ensure that recipients comply with the cap on funds associated with these eligible use categories.

As discussed in the 2022 final rule, recipients may continue to use SLFRF funds available under the revenue loss eligible use category to satisfy non-Federal matching requirements. See the 2022 final rule for further information.

Question 1: What, if any, additional clarification should Treasury provide as relates to determining whether Surface Transportation projects are eligible uses of the SLFRF?

Question 2: What additional information or clarification is needed for recipients to understand the applicable program requirements for Pathway One for Surface Transportation projects?

Question 3: What are the advantages and disadvantages of the eligibility criteria for the streamlined framework outlined in Pathway Two? Do these criteria adequately account for project risk in a manner that is both accurate and administrable? Why or why not?

Question 4: What additional information or clarification is needed for recipients to understand the applicable program requirements for Pathway Two?

Question 5: With respect to Pathway Two, what information should Treasury consider in developing the framework for projects outside the streamlined framework, in addition to the information that recipients will provide in the notices of intent? What types of projects do recipients intend to pursue under Pathway Two that would not be covered by the streamlined approach?

2. Title I Projects

Background

The 2023 CAA amends sections 602 and 603 of the Social Security Act to permit recipients to use SLFRF funds for certain infrastructure projects, including projects eligible under Title I of the Housing and Community Development Act of 1974 (Title I projects).[131] As described earlier in this interim final rule, recipients may only use the greater of 30% of their SLFRF award and $10 million, not to exceed a recipient's allocation, for all Surface Transportation projects (described in the prior section) and Title I projects (described in this section) taken together.

In title I of the HCDA (Title I), Congress consolidated several complex and overlapping Federal assistance programs focused on community development into a more flexible block of funds distributed through a formula

[131] *See* 42 U.S.C. 5301 *et seq.*

allocation, known as the Community Development Block Grant (CDBG) and administered by the Department of Housing and Urban Development (HUD).[132] Annual allocations through the CDBG program are based on population and various other measures, including poverty, age of housing, and housing overcrowding.[133] CDBG funds are available to states and units of general local government (cities and counties); Tribal governments are eligible for Indian CDBG (ICDBG) grants that are awarded on a mainly competitive basis in the form of single purpose grants, and occasionally on a noncompetitive, first-come first-served basis to alleviate imminent threats to public health or safety.[134]

There are varied ways that different government entities may be eligible for CDBG.[135] To reflect the structure of the SLFRF program, under which each recipient received an individual award from Treasury and expends funds on its own behalf, Treasury's implementation of the Title I eligible use category for non-Tribal recipients aligns to HUD's treatment of entitlement grants under CDBG. For Tribal governments using SLFRF funds under the Title I eligible use category, Treasury's implementation generally reflects HUD's treatment of Tribal government grantees under ICDBG single purpose grants, as further described below.

As discussed in the 2022 final rule, various types of activities that are eligible under the CDBG program are also eligible uses of the SLFRF program under the public health and negative economic impacts eligible use category, including homeownership assistance, investing in affordable housing preservation and repairs, and rehabilitation or demolition of blighted or abandoned properties. As noted above, the 2023 CAA did not alter the existing four eligible use categories under the SLFRF program, and the eligible uses articulated in the 2022 final rule in the public health and negative economic impacts eligible use category remain unchanged. As such, recipients wishing to pursue these types of projects with SLFRF funds may want to continue doing so under the public health and negative economic impacts eligible use category rather than complying with the additional requirements of the new Title I projects eligible use category.

The new Title I projects eligible use category makes additional activities available to SLFRF recipients, up to the cap on funds for this eligible use category. As described in the section titled Use of Funds to Satisfy Non-Federal Share Requirements, this includes using SLFRF funds for non-Federal match or cost-share requirements of a Federal financial assistance program in support of activities that would be eligible under Title I.[136] By permitting state, local, and Tribal governments to use SLFRF funds for Title I projects, the statute provides additional flexibility for recipients to use SLFRF funds to meet the needs of their communities and provides clarity for recipients that may already have experience pursuing projects under Title I. The Title I requirements for programs administered by HUD are already familiar to many SLFRF recipients, which will help state, local, and Tribal governments to supplement funding more easily for existing projects under Title I or to pursue new projects using a familiar set of program requirements. Below, this interim final rule discusses eligible projects and applicable requirements for the Title I eligible use category.

Unlike Pathway Two for Surface Transportation projects, discussed in the previous section, the interim final rule does not provide a "streamlined framework" for Title I projects. Title I projects differ from Surface Transportation projects in several meaningful ways. First, as discussed above, the project approval and certification requirements of titles 23, 40, and 49 of the U.S. Code and title I of the HCDA generally must be satisfied prior to recipients obligating and expending funds on Surface Transportation projects and Title I projects. However, under CDBG, there is no formal approval on a project-by project-basis by HUD other than in the case of projects subject to certain environmental reviews.[137] Accordingly, it is more feasible for recipients to determine to use SLFRF funds for Title I projects, to submit required environmental information prior to undertaking projects, and to obtain Treasury approval, all in time for the 2024 obligation and 2026 expenditure deadlines, even if a large number of SLFRF recipients decide to spend funds under this eligible use category. Second, as mentioned above, many of the eligible activities under Title I projects are already available to SLFRF recipients under the public health and negative economic impacts eligible use category, including using funds for capital expenditures, for which recipients are able to use their full SLFRF award toward eligible uses and are not subject to the limitations discussed in this section. In the case of Surface Transportation projects, recipients are only able to undertake similar activities as a government service through the revenue loss eligible use category. For these reasons, Treasury anticipates that recipients will undertake fewer projects under the Title I projects eligible use category.

Prohibition on Supplanting Other Funds. The 2023 CAA provides that funds used for Title I projects shall "supplement, and not supplant, other Federal, State, territorial, Tribal, and local government funds (as applicable) otherwise available for such uses." The phrase "other . . . funds available for such uses" refers to (i) in the case of non-Federal funds, non-SLFRF funds that have been obligated for specific uses that are eligible under the Title I eligible use category or (ii) in the case of Federal funds, funds that a Federal agency has committed to a particular project pursuant to an award agreement or otherwise.

Under prong (i), for the purpose of identifying non-Federal funds that have been obligated for specific uses, the definition of "obligation" used in the 2022 final rule applies, which is "an order placed for property and services and entering into contracts, subawards, and similar transactions that require payment."[138] As such, under prong (i),

[132] *See* 42 U.S.C. 5301.

[133] *See* 42 U.S.C. 5306.

[134] *See* 24 CFR 1003.100(a).

[135] HUD's implementation of CDBG varies based on the type of CDBG grantees, with specific treatment for entitlement grants (including metropolitan city and urban county grantees), nonentitlement funds (including HUD-administered Small Cities and Insular Area programs), and state-administered CDBG nonentitlement funds. For example, in the state CDBG program, a state's primary function is to administer CDBG grants for non-entitlement units of government, rather than to undertake eligible activities as grantees themselves. Meanwhile, entitlement grantees of CDBG are able to expend their CDBG allocations directly and without being subject to certain limitations that exist under the state CDBG program.

[136] SLFRF funds also remain available under the revenue loss eligible use category up to the amount of revenue lost due to the pandemic for the provision of government services. As described in the 2022 final rule, the provision of government services means any service traditionally provided by a government, which means that recipients could also choose to use SLFRF funds in the revenue loss eligible use category for community development activities.

[137] While CDBG activities are outlined in planning documents submitted to HUD, these planning documents cover a grantee's programmatic plans for all HUD awards (not just those authorized under Title I) on an annual basis with respect to action plans and a multi-year basis with respect to consolidated plans. Based on the structure of the SLFRF program, certification and approval requirements associated with these plans are irrelevant for the SLFRF program. In any event, HUD does not affirmatively approve CDBG grantees' planning documents, but the agency may disapprove plans as necessary.

[138] See Final Rule FAQ 13.17 for additional information about obligations. This approach

a recipient may not de-obligate funds that were obligated for specific uses that are eligible under this section (*e.g.*, by cancelling, amending, renegotiating, or otherwise revising or abrogating a contract, subaward, or similar transaction that requires payment) and replace those previously obligated funds with SLFRF funds under this eligible use category.

The restriction in prong (ii), on replacing funds that a Federal agency has committed to a particular project pursuant to an award agreement or otherwise, applies to all funding sources covered by the commitment. Prong (ii) does not apply to HUD funds provided to a CDBG grantee for activities included in its annual action plan, because imposition of this restriction would be inconsistent with the substantial flexibility that the CDBG program otherwise provides its grantees. For example, a CDBG grantee's annual action plan reflects planned spending on activities across multiple HUD-administered programs, and grantees have significant flexibility to amend plans to reflect adjusted planned spending throughout the year.

Thus, a recipient may not de-obligate funds and replace those previously obligated funds with SLFRF funds under this eligible use category. Nor may a recipient use SLFRF funds to replace Federal or non-Federal funds identified in a Federal commitment, such as an award agreement.

However, a recipient may use SLFRF funds (1) to provide additional funding to a project without reducing the amount of other funds obligated to such project, thereby funding additional activities or expanding the scope of projects; (2) to undertake a project for which funds have not been previously obligated or identified in a Federal commitment, such as an award agreement. For example, if a recipient had obligated non-SLFRF funds for the construction of a community garden, SLFRF funds under this eligible use category could be used to provide additional resources to that project or to undertake a separate eligible project, but the recipient could not terminate or renegotiate an existing contract for the construction of that garden and use SLFRF funds to replace the funds previously obligated for that purpose. SLFRF recipients that are also CDBG grantees (but not ICDBG grantees) should note that HUD program requirements related to timely expenditures of CDBG funds—providing that "a grantee cannot have more than 1.5 times their annual allocation sitting in their line of credit at the U.S. Treasury"—continue to apply to CDBG funds.[139] Accordingly, Treasury encourages SLFRF recipients that are also CDBG grantees to continue to spend their CDBG funds in compliance with such requirements.

a. Eligible Title I Projects

Recipients may use SLFRF funds for Title I projects, which includes any projects that are currently eligible activities, programs, and projects under CDBG and ICDBG, as described further below. Principally, Title I authorizes CDBG and ICDBG, as well as several other grant programs with largely overlapping eligible activities as CDBG.[140] As discussed below, grants made under these other Title I programs do not cover eligible activities incremental to what is allowable under CDBG and ICDBG, and thus their incorporation here would not make any additional eligible uses under Title I available to SLFRF recipients.

In the Title I eligible use category, recipients may use SLFRF funds for any of the activities listed in section 105(a) of the HCDA (42 U.S.C. 5305(a)). When carrying out these activities, recipients should comply with the related eligibility requirements set forth at 24 CFR 570.201–570.209 with respect to recipients that are not Tribal governments and 24 CFR 1003.201–1003.209 with respect to Tribal governments. Recipients may refer to additional HUD guidance for further information about the projects eligible under CDBG, including guidance about complying with the national objectives and other program requirements.[141] Below is an illustrative list of Title I projects for which recipients may use SLFRF funds pursuant to section 105(a) of the HCDA:

- Acquisition of certain real property for a public purpose, subject to certain limitations;
- Disposition of certain property, subject to certain limitations and rules;
- Acquisition, construction, reconstruction, rehabilitation, or installation of public facilities and improvements, clearance and remediation activities;
- Public services, subject to the limitation discussed below;
- Interim assistance where immediate action is required for certain activities such as street repair, and costs to complete an urban renewal project under Title I;
- Relocation payments for relocated families, businesses, nonprofit organizations, and farm operations, under certain conditions;
- Payments to housing owners for loss of certain rental income;
- Certain housing services;
- Acquisition, construction, reconstruction, rehabilitation, or installation of privately owned utilities;
- Rehabilitation and reconstruction of housing, conversion of structures to housing, or construction of certain housing;
- Homeownership assistance;
- Technical assistance to entities to increase capacity to carry out CDBG-eligible projects;
- Assistance to certain institutions of higher education to carry out eligible activities;
- Administration activities including general management, oversight, and coordination costs, fair housing activities, indirect costs, and submission of applications for Federal programs;
- Planning activities including the development of plans and studies, policy planning, and management and capacity building activities; and
- Satisfying the non-Federal share requirements of a Federal financial assistance program in support of activities that would be eligible under the CDBG and ICDBG programs, as discussed below.

Use of SLFRF Funds to Satisfy Non-Federal Match of Cost-Share Requirements Under Title I. As noted above, recipients may use SLFRF funds, subject to the cap on funds for this eligible use category, to meet the non-Federal match or cost-share requirements of a Federal financial assistance program in support of activities that would be eligible under the CDBG and ICDBG programs and would comply with all applicable CDBG and ICDBG requirements. Recipients should analyze the projects and activities for which they intend to use SLFRF funds to meet non-Federal share

applies a concrete standard that is known to SLFRF recipients and administrable by Treasury.

[139] CDBG grantees have a line of credit that includes the amount of CDBG funds that are available for those grantees. According to program rules on timely expenditures, "a grantee cannot have more than 1.5 times their annual allocation sitting in their line of credit at the U.S. Treasury." Moreover, if a grantee "chronically has more than 1.5 times their allocation in their line of credit as of 60 days prior to the end of the grantee's program year, HUD can withhold future grants until the grantee effectively spends their existing resources." For more information, see Basically CDBG for Entitlements, Chapter 11: Financial Management, Section 11.7 ("Timely Expenditure of Funds") (Sept. 2017), available at *https://www.hud.gov/sites/documents/DOC_16480.PDF*.

[140] *See* 42 U.S.C. 5301 *et seq.*

[141] *See e.g.*, Department of Housing and Urban Development, Guide to National Objectives and Eligible Activities for CDBG Entitlement Communities, Chapter 2: Categories of Eligible Activities (Jan. 2014), available at *https://www.hud.gov/sites/documents/DOC_17133.PDF*.

requirements to confirm that the project or activity would constitute an eligible activity under section 105 of the HCDA and would comply with HUD's statutory, regulatory, and other requirements applicable to CDBG and ICDBG activities.

As articulated in the 2022 final rule, SLFRF funds remain available under the revenue loss eligible use category to meet non-Federal matching requirements. For discussion of the use of SLFRF funds for non-Federal matching requirements under the revenue loss eligible use category or as otherwise authorized by statute, see the 2022 final rule. For discussion of the use of SLFRF funds for non-Federal matching requirements for Surface Transportation projects, see the Surface Transportation projects section.

Use of Loans and Revolving Loan Funds Towards Eligible Activities Under Title I. CDBG and ICDBG grantees generally may utilize financing vehicles such as loans and revolving loan funds to carry out eligible activities. For example, sections 105(a)(14), (22), and (25) of the HCDA provide that CDBG recipients may use their funds to provide loans or finance revolving loan funds for certain activities.[142]

Recipients using SLFRF funds for Title I projects may extend credit, by making loans using SLFRF funds or using SLFRF to establish revolving loan funds, to support activities that are eligible uses of funds under CDBG. Such activities are subject to Treasury's existing guidance on loans under the SLFRF program,[143] as well as Treasury's guidance on program income, in light of the nature of the SLFRF program where these funds are available for a limited time, not on a recurring basis, and subject to approaching obligation and expenditure deadlines.[144] As a reminder, extensions of credit with SLFRF funds are subject to program requirements as described in the Applicable Requirements for Title I Projects section of this interim final rule and the cap on funds that applies to this eligible use category.

Other Supplemental Assistance. From time to time, Congress appropriates additional funding for certain activities that are generally available under CDBG but are limited to addressing specific challenges that communities face. Even though these activities largely mirror those eligible under Title I, this supplemental assistance is not authorized under Title I. Accordingly, they are not separately eligible categories of activities under Title I for purposes of the SLFRF program. For example, recipients may be familiar with CDBG-Disaster Recovery (CDBG–DR) and CDBG-Mitigation (CDBG–MIT). These forms of supplemental assistance appropriate emergency supplemental funds on a case-by-case basis for specific disasters and permit recipients, in addition to their regular CDBG credit line or ICDBG grants, to spend funds on certain eligible activities related to disaster relief, long-term recovery, restoration of housing and infrastructure, economic revitalization and mitigation. When additional funds are appropriated through CDBG–DR or CDBG–MIT, HUD is typically granted authority to grant waivers and impose alternative requirements to those existing Title I requirements that govern the CDBG and ICDBG programs. Such waivers or alternative requirements are not applicable to this eligible use category, as this supplemental assistance is not a project under Title I and such authority is not provided for in the HCDA, but rather in the individual CDBG–DR or CDBG–MIT appropriations.

Nonetheless, recipients considering using SLFRF funds to respond to both the near- and long-term consequences of disasters are reminded that the eligible activities under section 105 of Title I are very flexible and may address certain disaster relief and disaster mitigation needs. Accordingly, SLFRF recipients may pursue such activities under the Title I projects eligible use as long as all requirements are met. In addition, recipients may provide emergency relief from the physical and negative economic impacts of natural disasters, including mitigation activities, through the eligible use category discussed in the section titled Emergency Relief from Natural Disasters of this interim final rule.

Other Title I Programs Not Available Under the SLFRF Program. Certain sections of Title I authorize HUD to make grants and loans to governments under different programs in addition to CDBG. These programs are listed below and, other than the section 108 Loan Guarantee program, are considered inactive by HUD:

- Special Purpose Grants [145]
- Urban Development Action Grant Program [146]
- John Heinz Neighborhood Development Program [147]
- Section 108 Loan Guarantee Program [148]

While the 2023 CAA amended the SLFRF program to permit recipients to use SLFRF funds for Title I projects, some of these programs address HUD's programmatic authorities rather than expanding eligible uses available to HUD grantees. Therefore, these programs are not relevant for purposes of implementing this Title I eligible use under the SLFRF program. For example, Special Purpose Grants are competitively awarded by HUD to the same recipients as CDBG and ICDBG, as well as an expanded set of recipient types (*e.g.*, Historically Black Colleges and Universities as direct recipients of grants) to undertake certain of the activities available under CDBG. This program expands HUD's grantmaking authority rather than expanding eligible uses available to grantees under Title I, and therefore is not included as a new eligible project under the SLFRF program. Similarly, the John Heinz Neighborhood Development Program authorizes HUD to provide Federal matching funds to eligible neighborhood development organizations on a competitive basis, expanding the entities to which HUD may award grants rather than expanding eligible uses for Title I grantees.

Similarly, the Section 108 Loan Guarantee Program authorizes HUD to provide loan guarantees to recipients of CDBG, as opposed to authorizing an eligible activity by grantees themselves.[149] The Urban Development Action Grant program authorizes HUD to issue grants to cities and urban counties experiencing severe economic distress to help stimulate economic development activity needed to aid in economic recovery by undertaking eligible activities under CDBG, as enumerated under section 105(a) of the HCDA.[150] Both of these programs address HUD's programmatic authority and do not provide HUD grantees eligible activities beyond those already available under CDBG and ICDBG, and therefore these programs are not relevant for purposes of implementing this Title I eligible use under the SLFRF program.

Additionally, HUD can award imminent threat grants under ICDBG to Tribal governments. Imminent threat grants alleviate an imminent threat to public health or safety that requires immediate resolution and are awarded only after the HUD Office of Native American Programs determines that

[142] *See* 42 U.S.C. 5305(a).

[143] *See id.*

[144] *See* id. at FAQ 13.11. How does Treasury treat program income?

[145] *See* 42 U.S.C. 5307.

[146] *See* 42 U.S.C. 5318.

[147] *See* 42 U.S.C. 5318a.

[148] *See* 42 U.S.C. 5308.

[149] *See* 42 U.S.C. 5308.

[150] *See* 42 U.S.C. 5318.

such conditions exist and if funds are available for such grants.[151] Grants made under this program do not authorize eligible activities incremental to what is allowable under ICDBG single purpose grants, and thus their incorporation here would not make any additional eligible uses under Title I available to SLFRF recipients. Accordingly, imminent threat grants are not separately eligible as Title I projects. Given the eligible activities available to ICDBG grantees under imminent threat grants are the same as are available under single purpose grants, Tribal government recipients of SLFRF are still able to use SLFRF funds for projects they generally could fund with ICDBG imminent threat grants under the Title I projects eligible use category. As described further below, the applicability of program requirements for Tribal governments will mirror the program requirements grantees comply with under ICDBG single purpose grants. As noted above, recipients may provide emergency relief from the physical and negative economic impacts of natural disasters, including mitigation activities, through the eligible use category discussed in the section titled Emergency Relief from Natural Disasters of this interim final rule.

Ineligible Activities Under Title I. The HUD regulations implementing the eligible activities under CDBG and ICDBG provide that certain projects are generally not eligible CDBG activities, and accordingly, SLFRF recipients may not use SLFRF funds for those projects.[152] The activities that are generally ineligible under CDBG and ICDBG are the following, subject to certain exceptions as described more fully at 24 CFR 570.207 with respect to SLFRF recipients that are not Tribal governments and 24 CFR 1003.207 with respect to Tribal government recipients:

- Buildings or portions thereof used for the general conduct of government
- General government expenses
- Political activities
- Purchase of equipment
- Operating and maintenance expenses
- New housing construction
- Income payments

Recipients may reference the "Activities Specified as Ineligible" section of HUD's Guide to National Objectives and Eligible Activities for CDBG Entitlement Communities for more information.[153] However, while the projects listed above are not eligible uses of SLFRF funds as a Title I project, they still may be eligible uses of SLFRF funds under other SLFRF eligible use categories. See the 2022 final rule for additional information. As with all other eligible uses in the SLFRF program, the general restrictions on use outlined in the 2022 final rule apply to SLFRF funds used for Title I projects, unless the applicable requirements of Title I provide otherwise.

b. Applicable Requirements for Title I Projects

Recipients using SLFRF funds for Title I projects must comply with certain requirements and restrictions. These requirements and restrictions are in addition to the eligibility requirements discussed above. As described earlier in this interim final rule, recipients may only use the greater of 30% of their award and $10 million (not to exceed their award) for Title I projects (described in this section) and Surface Transportation projects (described above), taken together. Also as described earlier in this interim final rule, for Title I projects, recipients must obligate funds by December 31, 2024 and expend funds by September 30, 2026. In the section that follows, this interim final rule describes how the requirements of Title I, NEPA, and the associated implementing regulations apply to SLFRF funds used for Title I projects.

The 2023 CAA provides that, except as otherwise determined by the Secretary, the requirements of Title I and NEPA apply to SLFRF funds used for Title I projects. Accordingly, state, local, and Tribal governments that use SLFRF funds for Title I projects generally must comply with Title I requirements and the associated regulations, except where noted below.[154] In addition, recipients must comply with NEPA requirements, as implemented by Title I and the associated HUD regulations, and as adapted to the SLFRF program by Treasury. Unless Title I provides otherwise or Treasury has otherwise clarified, SLFRF recipients should continue to comply with SLFRF regulations and guidance as found in the 2022 final rule, SLFRF Compliance and Reporting Guidance, and other guidance released by Treasury for SLFRF. In the section that follows, this interim final rule discusses the requirements of Title I that apply to recipients using SLFRF funds under this eligible use category and the requirements of Title I that do not apply to recipients using SLFRF funds under this eligible use category.

Treasury has determined not to apply certain requirements of Title I when such requirements conflict with the existing SLFRF framework or otherwise are likely to preclude recipients from exercising the additional authorities provided by the statute. For example, and as discussed above, Treasury determined that the project-level approval and certification requirements generally must be satisfied prior to recipients obligating and expending funds on Title I projects. Under CDBG, while projects are outlined in planning documents submitted to HUD, there is no formal approval on a project-by project-basis by HUD other than projects subject to certain environmental reviews.[155] Accordingly, only these project-level requirements must be satisfied, as described further below. On the other hand, recipients are not required to provide the Title I certification requirements that apply at the consolidated and annual planning level, because that level of planning and the associated certifications conflict with the SLFRF program framework under which recipients already have funds in hand and are authorized to use funds for discrete projects, rather than being required to design an annual process for how funding will be used. Furthermore, to require recipients to prepare consolidated and annual plans and undergo a public review process likely would preclude recipients from exercising the additional authorities provided by the statute, under which recipients have limited time remaining to determine how to obligate and expend funds. In contrast, certain of the applicable requirements discussed below also would apply at the aggregate CDBG funding level, like the primary objective, but those requirements are more readily adaptable as project-level requirements, consistent with the SLFRF framework, and Treasury has taken that approach as described further below. The requirements of Title I generally apply to recipients using SLFRF funds for Title I projects, with some modification to harmonize the provisions with the SLFRF framework, as discussed further below. The statutory requirements include the following:

[151] *See* 24 CFR 1003.100(a).

[152] *See* 24 CFR 570.207 and 1003.207.

[153] *See e.g.*, Department of Housing and Urban Development, Guide to National Objectives and Eligible Activities for CDBG Entitlement Communities, Chapter 2: Categories of Eligible Activities, 2–87 (Jan. 2014), available at *https://www.hud.gov/sites/documents/DOC_17133.PDF.*

[154] Treasury is applying the regulations associated with the applicable provisions of Title I because they generally inform and provide context for how to apply with the requirements set forth in the statute.

[155] *See* 42 U.S.C. 5304(g) and 24 CFR part 58.

- Activity eligibility requirements, including the following requirements articulated in section 105 of the HCDA:
  - CDBG Primary Objective requirement
  - CDBG National Objectives requirement
  - Public Services Cap
- Definitions relevant for project administration, oversight, and execution
- Procurement requirements
- Wage and labor requirements
- Environmental requirements and related project approval requirements (environmental certifications)

For each of the applicable requirements, the associated HUD regulations generally will apply as well. Specifically, HUD regulations related to these requirements apply where they:

- Enumerate and clarify eligible activities under CDBG
- Specify cost caps or the method to calculate costs caps
- Direct recipients to the applicability of other Federal laws and regulations

CDBG Primary Objective. Section 101(c) of the HCDA describes the "primary objective" of Title I as "the development of viable urban communities, by providing decent housing and a suitable living environment and expanding economic opportunities, principally for persons of low and moderate income." [156] Section 101(c) of the HCDA further provides that not less than 70% of the aggregate funds provided to non-Tribal CDBG grantees under section 106 of the HCDA shall be used for the support of activities that benefit persons of low and moderate income. Under ICDBG, Tribal governments must use not less than 70% of each single purpose grant to principally benefit low- and moderate-income persons.[157] This 70% threshold requirement is referred to as the "primary objective" requirement.

Section 102(a)(20) of the HCDA defines low- and moderate-income persons to mean families and individuals whose incomes do not exceed 80% of median income of the area involved, based on data published most recently by HUD, with adjustments for smaller and larger families; [158] it also authorizes HUD to establish income thresholds that are higher or lower because of unusually high or low incomes in such area.[159] HUD regulations for CDBG grantees implement the statutory definition by aligning low- and moderate-income designations for CDBG activities to Section 8's very low- and low-income thresholds respectively,[160] which HUD publishes annually.[161] CDBG grantees are then required to comply with the requirements of 24 CFR 570.200(a)(3) and its cross-referenced provisions to determine compliance with the primary objective, including requirements associated with area benefit activities, limited clientele activities, housing activities, and job creation or retention activities.

With respect to Tribal governments, HUD awards ICDBG single-purpose grants on a competitive basis and determines that an applicant sufficiently addresses the primary objective based, in part, on data made available by the Federal government, including HUD, and on data provided by Tribes. Specifically, HUD regulations for ICDBG grantees implement the statutory definition of low- and moderate-income persons by defining a "low and moderate income beneficiary" as a family, household, or individual whose income does not exceed 80 percent of the median income for the area, as determined by HUD, with adjustments for smaller and larger households or families.[162] The regulations permit HUD to adjust the ceiling based on HUD's findings that such variations are necessary because of unusually high or low household or family incomes. ICDBG grantees then follow the provisions of 24 CFR 1003.208 to determine compliance with the primary objective, including requirements associated with area benefit activities, limited clientele activities, housing activities, and job creation or retention activities. In each of these activity areas, the regulations provide criteria for the activity to be considered to benefit low- and moderate-income persons. In some instances, the criteria rely on Census Bureau data or instead Tribes may provide survey data.[163]

Under the HUD CDBG regulations, non-Tribal CDBG grantees may elect to apply the 70% requirement to their CDBG funds expended over a 1-, 2-, or 3-year period, and a majority of these CDBG grantees elect a 3-year period. For example, a non-Tribal CDBG grantee that elects a 3-year period must use at least 70% of its CDBG funds over that 3-year period to principally benefit low- and moderate-income persons. For ICDBG grants, the 70% requirement applies to each single purpose grant.[164]

Treasury is implementing the primary objective requirement by requiring recipients to direct at least 70% of their SLFRF funds used for Title I projects over the course of the SLFRF program to projects that principally benefit low- and moderate-income persons. Non-Tribal recipients must refer to low- and moderate-income thresholds as defined by HUD regulations at 24 CFR 570.3, which align such income thresholds to data published most recently by HUD for Section 8 low- and very low-income levels. To determine if an activity principally benefits low- and moderate-income persons, the requirements of 24 CFR 570.200(a)(3) apply.

Tribal government recipients must refer to the low- and moderate-income thresholds as defined by HUD at 24 CFR. 1003.4, and to the requirements of 24 CFR 1003.208 to determine if an activity principally benefits low- and moderate-income persons, subject to the following clarification. Recognizing that some Tribes do not have access to the above-referenced Census Bureau data and may not have the ability to conduct a survey within the short-time frame necessary to meet SLFRF obligation deadlines, Treasury is providing an alternative to satisfy the definition of "low and moderate income" as part of complying with the primary objective requirement. Instead of relying on Census data, Tribal governments may demonstrate that beneficiaries of Title I assistance are low or moderate income based on an attestation by the Tribe that these beneficiaries are receiving or are eligible to receive needs-based services provided by the Tribe. Needs-based services are defined as services administered by the Tribal government on the basis of an individual's income. Tribal governments undertaking Title I projects may rely on this self-attestation, in lieu of relying on Census Bureau or Section 8 data, when complying with

[156] *See* 42 U.S.C. 5301(c).

[157] *See* 24 CFR 1003.208.

[158] *See* 42 U.S.C. 5302(a)(20)(a).

[159] *See* 42 U.S.C. 5302(a)(20)(b).

[160] *See* 24 CFR 570.3.

[161] HUD's Office of Policy Development and Research publishes annual income limits for certain housing-related programs, and develops these limits based on Median Family Income estimates and Fair Market Rent area definitions. *See https://www.huduser.gov/portal/datasets/il.html#2022_data.*

[162] *See* 24 CFR 1003.4.

[163] *See e.g.,* 24 CFR 1003.208(a)(3), which states that "in determining whether there is a sufficiently large percentage of low- and moderate-income persons residing in the area served by an activity . . . the most recently available decennial census information shall be used to the fullest extent feasible, together with the Section 8 income limits that would have applied at the time the income information was collected by the Census Bureau. Grantees that believe that the census data does not reflect current relative income levels in an area, or where census boundaries do not coincide sufficiently well with the service area of an activity, may conduct (or have conducted) a current survey of the residents of the area to determine the percent of such persons that are low and moderate income."

[164] *See* 24 CFR 1003.208.

the primary objective requirement. If a Tribal government prefers to demonstrate that its project satisfies the primary objective in accordance with the terms of 24 CFR 1003.4 and 1003.208, rather than providing the alternative attestation, the Tribe may do so. As described earlier in this section, recipients may use SLFRF funds to supplement, but not supplant, an existing CDBG or ICDBG project. Accordingly, where Tribal governments use SLFRF funds to supplement funds for existing ICDBG projects, the Tribal government may rely on HUD's prior determination of compliance with the requirements of 24 CFR 1003.208 for the existing project, since HUD would have already vetted the existing projects during the ICDBG application process.

As discussed in the 2021 interim final rule, 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.[165] Further, mixed income communities, with a significant share of Tribal members at the lowest levels of income, are often not included in eligible qualified census tracts. Additionally, as discussed in the 2022 final rule, Tribal governments may face administrability challenges with operationalizing an income-based standard, and data on incomes of Tribal members in a respective Tribe is not readily available as presently this data is not collected at the Tribal membership level.[166]

For these reasons, using decennial Census Bureau data in determining if an activity benefits low- and moderate-income beneficiaries as described in 24 CFR 1003.208(a)(3) would present similar challenges for many of the SLFRF Tribal government recipients, where location-based Census data may inaccurately portray the income and economic conditions of a Tribe. Additionally, requiring Tribes to conduct and provide survey data on residents of their areas would frustrate their ability to utilize SLFRF funds for Title I projects within the obligation and expenditure timelines provided by the 2023 CAA. If a Tribe delivers needs-based services (*e.g.*, housing services, child assistance, etc.), the Tribe generally also has verified income eligibility of the recipients of those services, as Tribes ordinarily restrict eligibility for these activities based on the income of applicants.

[165] *See* 86 FR 26786 (May 17, 2021).

[166] For instance, data from the American Community Survey is based on geographical location rather than Tribal membership. U.S. Census Bureau. My Tribal Area, *https://www.census.gov/Tribal/Tribal_glossary.php.*

The total amount of SLFRF funds used for Title I projects from the cost incurred date of December 29, 2022 through September 30, 2026 must meet the primary objective requirements as described above. By applying these requirements over the course of the SLFRF program, this interim final rule aligns CDBG primary objective compliance for SLFRF funds used for Title I projects with the obligation and expenditure deadlines on SLFRF funds in general. Although CDBG state and local government grantees have the option to elect their own 1-, 2-, or 3-year reporting periods, and ICDBG Tribal grantees apply the CDBG primary objective requirement for their specific grant allocations, SLFRF recipients are not required to obligate or expend SLFRF funds on an annual basis and instead must comply with obligation and expenditure deadlines over the full period of performance, with flexibility to adjust and add programs prior to the obligation deadline. This alignment makes the CDBG primary objective requirement administrable by SLFRF recipients over the SLFRF period of performance and coordinates related reporting with SLFRF program closeout timelines. Recipients may reference Chapter 4 of HUD's Guide to National Objectives and Eligible Activities for CDBG Entitlement Communities for more details on how to satisfy the primary objective requirement with their funds. Recipients' use of SLFRF funds for Title I projects and their compliance with the primary objective will be assessed separately from HUD's assessment of CDBG grantees' compliance with requirements for use of their CDBG funds.

CDBG National Objectives. In addition to describing the CDBG primary objective requirement, section 101(c) of the HCDA also provides that states and units of general local governments may only use CDBG funds for the support of community development activities that are directed toward certain specific objectives, which are referred to as the national objectives. HUD regulations provide that the national objectives of the CDBG program are to:

- Benefit low- and moderate-income persons,
- Prevent or eliminate slums or blight, and
- Meet other community development needs having a particular urgency because existing conditions pose a serious and immediate threat to the health or welfare of the community and other financial resources are not available to meet such needs.[167]

ICDBG grantees administering single purpose grants are not subject to the same requirement that activities must align with at least one national objective. As discussed above, Tribal governments administering an ICDBG single purpose grant must use at least 70% of each grant to principally benefit low- and moderate-income persons, but otherwise may use their ICDBG grant aligned to purposes as approved in their ICDBG application.[168]

Treasury is implementing the national objectives requirement by providing that for non-Tribal SLFRF recipients, each Title I project funded by SLFRF funds must satisfy at least one CDBG national objective in accordance with relevant HUD regulations set forth at 24 CFR 570.208.[169] Thus all recipients, except for Tribal governments, using SLFRF funds for Title I projects must meet at least one national objective as described above, and compliance with this requirement will be assessed separately from existing CDBG national objectives requirements applicable to CDBG grantees. Tribal government recipients that use SLFRF funds for Title I projects are not subject to this requirement, reflecting that there is no requirement for Tribal government grantees under ICDBG to use their funds for any specific national objective outside of the primary objective. For more information on the CDBG national objectives, see Chapter 3 of HUD's Guide to National Objectives and Eligible Activities for CDBG Entitlement Communities.[170]

Applicability of Public Services Cap. Section 105(a)(8) of the HCDA provides that the provision of public services is an eligible activity under Title I[171] but that not more than 15% of a grantee's

[167] *See* 24 CFR 570.208(a)–570.208(c) and Department of Housing and Urban Development, Guide to National Objectives and Eligible Activities for CDBG Entitlement Communities, Chapter 3: Meeting a National Objective (Jan. 2014), available at *https://www.hudexchange.info/sites/onecpd/assets/File/CDBG-National-Objectives-Eligible-Activities-Chapter-3.pdf.*

[168] *See* 24 CFR 1003.208.

[169] *See* CFR 570.208 and Department of Housing and Urban Development, Guide to National Objectives and Eligible Activities for CDBG Entitlement Communities, Chapter 2: Categories of Eligible Activities (Jan. 2014), available at *https://www.hudexchange.info/sites/onecpd/assets/File/CDBG-National-Objectives-Eligible-Activities-Chapter-2.pdf.*

[170] *See* Department of Housing and Urban Development, Guide to National Objectives and Eligible Activities for CDBG Entitlement Communities, Chapter 3: Meeting a National Objective (Jan. 2014), available at *https://www.hudexchange.info/sites/onecpd/assets/File/CDBG-National-Objectives-Eligible-Activities-Chapter-3.pdf.*

[171] *See* 42 U.S.C. 5305(a)(8).

CDBG allocation may be spent on eligible "public services" activities.[172] This 15% public services cap is applied annually to CDBG grantees and on a grant-by-grant basis for ICDBG grantees.

Treasury is implementing this requirement by providing that not more than 15% of SLFRF funds used for Title I projects over the course of the SLFRF program may be spent under the "public services" category, in accordance with relevant HUD regulations set forth at 24 CFR 570.201(e) for non-Tribal recipients and at 24 CFR 1003.201(e) for Tribal recipients. Thus, the total amount of SLFRF funds used for Title I projects for costs incurred from December 29, 2022 through September 30, 2026 must meet the public services cap as described above, and compliance with this requirement will be assessed separately from existing CDBG and ICDBG public services cap compliance on CDBG and ICDBG grantees. The approach to align public services cap compliance to SLFRF program obligation and expenditure deadlines and the accompanying rationale mirror the approach taken for SLFRF recipients' compliance to the CDBG primary objective, as outlined earlier in this section. This alignment makes the public services cap administrable by SLFRF recipients over the SLFRF period of performance and coordinates related reporting with SLFRF program closeout timelines. For more information on activities considered public services for purposes of the 15% cap, or more information on the public services cap itself, see Chapter 7 of HUD's "Basically CDBG" Guide.[173]

Applicability of Planning and Administrative Costs Cap. Section 105(a)(13) of the HCDA provides that the payment of reasonable administrative costs and carrying charges related to the planning and execution of community development and housing activities is an eligible activity under Title I.[174] HUD regulations implement this provision for non-Tribal recipients at 24 CFR 570.205 and 570.206 and for Tribal recipients at 24 CFR 1003.205 and 206. In addition, HUD regulations at 24 CFR 570.200(g) provide that non-Tribal grantees may expend no more than 20% of any CDBG annual grant for planning and program administrative costs. HUD regulations for Tribal governments include the same requirement.[175] The planning and administrative cap is applied annually to CDBG grantees and on a grant-by-grant basis for ICDBG grantees.

Treasury is implementing this requirement by providing that not more than 20% of SLFRF funds used for Title I projects over the course of the SLFRF program may be spent on planning and administrative costs, in accordance with relevant HUD regulations set forth at 24 CFR 570.200(g), 570.205, and 570.206 for non-Tribal recipients and at 24 CFR 1003.205 and 1003.206 for Tribal recipients. Thus, the total amount of SLFRF funds used for Title I projects for costs incurred from December 29, 2022 through September 30, 2026 must meet the planning and administrative costs cap as described above, and compliance with this requirement will be assessed separately from existing CDBG and ICDBG planning and administrative costs cap compliance for CDBG and ICDBG grantees. As discussed above, recipients are not required to obligate or expend SLFRF funds on an annual basis and instead must comply with obligation and expenditure deadlines over the full period of performance, with flexibility to adjust and add programs prior to the obligation deadline. Accordingly, this alignment makes the planning and administrative costs cap administrable by SLFRF recipients over the SLFRF period of performance and coordinates related reporting with SLFRF program closeout timelines. For more information on activities considered planning and administrative costs for purposes of the 20% cap, or more information on the planning and administrative costs cap itself, see Chapter 11 of HUD's "Basically CDBG" Guide.[176]

While the 20% planning and administrative costs cap will apply to recipients using funds for Title I projects, recipients should note that the 2022 final rule provides additional flexibility for recipients to use SLFRF funds on administrative expenses. In addition to the ability to use SLFRF funds for certain types of administrative expenses under the public health and negative economic impacts eligible use category, Treasury clarified in the 2022 final rule that coverage of direct and indirect administrative expenses is a permissible use of SLFRF funds under other eligible use categories, with further detail provided in Treasury's Compliance and Reporting Guidance. As described in the 2022 final rule, recipients can also use SLFRF funds under the public health and negative economic impacts category to support a broad set of uses to restore and support public sector employment, including filling vacancies or adding additional employees up to 7.5% over pre-pandemic levels. Furthermore, recipients may use earned income from interest earned on SLFRF payments to defray administrative expenses of the program.[177] Finally, recipients may use funds under the revenue loss eligible use category for the provision of government services, which may include various activities, such as administrative expenses.

Labor Standards Requirements. Section 110 of the HCDA provides that Federal prevailing wage rate requirements in accordance with the Davis-Bacon Act and other regulations related to contractors and subcontractors per 40 U.S.C. 3145 apply to construction work financed by Title I.[178] HUD regulations and guides clarify that these labor standards include the Davis-Bacon Act, the Copeland Anti-Kickback Act, the Contract Work Hours and Safety Standards Act, and Section 3 of the Housing and Urban Development Act of 1968, and apply to CDBG projects.[179] Section 107(e)(2) of the HCDA provides the authority to waive the labor standards requirements under section 110 of the HCDA for ICDBG grants, and HUD waives applicability of such labor standards for ICDBG grantees in 24 CFR 1003.603.

Treasury is implementing this requirement by providing that prevailing wage rate requirements in accordance with the Davis-Bacon Act and other labor standards applied by HUD to construction work under Title I apply to Title I projects funded by non-Tribal recipients of the SLFRF program, in accordance with HUD regulations for Title I labor standards requirements set forth at 24 CFR 570.603 for non-Tribal recipients.[180] SLFRF recipients are

[172] *See* 42 U.S.C. 5305(a)(8).

[173] *See* Department of Housing and Urban Development, Basically CDBG for Entitlements, Chapter 7: Public Services (Sept. 2017), available at *https://www.hud.gov/sites/documents/DOC_16476.PDF.*

[174] *See* 42 U.S.C. 5305(a)(13).

[175] *See* 24 CFR 1003.206.

[176] Department of Housing and Urban Development, Basically CDBG for Entitlements, Chapter 11: Financial Management, Sections 11.1–11.2 (Sept. 2017), available at *https://www.hud.gov/sites/documents/DOC_16480.PDF.*

[177] *See* Treasury's SLFRF Final Rule FAQ 2.15: "Can I use SLFRF funds to raise public sector wages and hire public sector workers?," available at *https://home.treasury.gov/system/files/136/SLFRF-Final-Rule-FAQ.pdf.*

[178] *See* 42 U.S.C. 5310.

[179] *See* Department of Housing and Urban Development, Basically CDBG, Chapter 16: Labor Standards, Sections 16.1.1 (Sept. 2017), available at *https://www.hud.gov/sites/documents/CDBG CHAPTER16.PDF.*

[180] In other SLFRF eligible use categories, labor standards requirements pursuant to the Davis-Bacon Act generally do not apply to projects funded solely with SLFRF funds (except for certain SLFRF-funded construction projects undertaken by the District of Columbia). *See* Treasury's SLFRF Final Rule FAQ 6.15: "Are eligible water, sewer, and broadband infrastructure projects, eligible capital

encouraged to consult HUD guidance that provides general information on labor standards and directs CDBG grantees to do the following:

- Include all applicable labor standards language and the appropriate wage decision in construction bid and contract documents,[181]
- Enforce labor standards requirements during construction, such as good construction management techniques and issuance of notices to proceed and payments tied to compliance with the labor requirements, payroll reviews, and worker interviews,[182]
- Pay any wage restitution promptly where underpayments of wages have occurred and are found during payroll or other reviews,[183] and
- Maintain documentation to demonstrate compliance with labor standards requirements such as bid and contract documents, payroll forms, signed statements of compliance, and documentation of on-site job interviews.[184]

Consistent with the ICDBG program, these labor standards will not apply to Title I projects funded by Tribal government recipients of SLFRF funds.[185] For more information on Title I labor standards requirements, see Chapter 16.1.1 of HUD's "Basically CDBG" Guide,[186] HUD's "Davis-Bacon and Labor Standards: Agency/Contractor Guide," [187] and HUD's "Davis-Bacon and Labor Standards: Contractor Guide Addendum." [188]

BEAD Program Requirements. The 2023 CAA provides that the requirements of the Broadband Equity, Access, and Deployment (BEAD) program as outlined in section 60102 of the Infrastructure Investment and Jobs Act (IIJA) apply to recipients undertaking projects with SLFRF funds under Title I that relate to broadband infrastructure.[189] Recipients should refer to program guidance, guides, and FAQs provided by the Department of Commerce's National Telecommunications and Information Administration for more information about BEAD requirements.[190]

As outlined in the 2022 final rule, in addition to broadband-related activities available under eligible Title I projects, recipients also may undertake broadband infrastructure projects to make necessary investments to expand affordable access to broadband internet. Broadband projects available under the broadband eligible use category are not subject to BEAD program requirements and there is no limit on the amount of SLFRF funds a recipient may dedicate to such projects.

Environmental Requirements. The 2023 CAA provides that the requirements of NEPA apply to recipients' use of SLFRF funds for Title I projects. Accordingly, and for the reasons discussed above, recipients using funds for Title I projects must satisfy NEPA environmental review requirements based on the procedures set forth in section 104(g) of the HCDA, as implemented at 24 CFR part 58, and as adapted to the SLFRF program by Treasury.

Section 104(g) of the HCDA authorizes the HUD Secretary, in lieu of the environmental protection procedures otherwise applicable pursuant to NEPA, to promulgate regulations providing for the release of funds for particular projects to recipients of Title I assistance who assume all of the responsibilities for environmental review, decision making, and action pursuant to NEPA. Section 104(g) further provides that the HUD Secretary shall approve the release of funds for projects subject to these procedures 15 days after the grantee has requested release of funds and submitted a certification. The HUD Secretary's approval of the certification is deemed to satisfy her responsibilities under NEPA and other provisions of law identified in the regulations insofar as those responsibilities relate to the release of funds for projects covered by the certification. HUD regulations at 24 CFR part 58 provide additional substantive and procedural information for compliance with this provision, including providing that certain projects do not require grantees to request release of funds or submit a certification.

Before recipients use SLFRF funds for Title I projects that trigger the environmental compliance process contemplated by Title I and 24 CFR part 58, the SLFRF recipients must comply with the environmental review requirements set forth in the HUD statute and regulations, submit a certification to Treasury, and receive approval. Because SLFRF funds have already been distributed to recipients, recipients are not required to submit a request for release of funds. As noted above, under Title I, CDBG grantees directly or indirectly assume all responsibilities for environmental review, decision making, and action pursuant to NEPA, and this approach also applies to recipients using the SLFRF funds for Title I projects. Following issuance of this interim final rule, Treasury will publish guidance describing the environmental compliance process in greater detail, including the certification's contents and the process for submitting it.

As noted above, under the regulations at 24 CFR part 58, certain projects do not require HUD grantees to submit a certification or obtain HUD's approval for funds to be released for a particular project. Similarly, SLFRF recipients are not required to submit certifications or obtain Treasury approval for a Title I project that either is:

- An "exempt activity" as contemplated by 24 CFR 58.34(a), or
- "Categorically excluded" and not subject to 24 CFR 58.5, as contemplated by 24 CFR 58.35(b), provided that the extraordinary circumstances described in 24 CFR 58.35(c) are not present.

If a project meets either of the two criteria above, recipients may begin using SLFRF funds for the project right away. Recipients should refer to HUD's definition of extraordinary circumstances provided at 24 CFR 58.2(a)(3).[191] If a recipient determines

expenditures under the public health and negative economic impacts eligible use category, and eligible projects under the revenue loss eligible use category subject to the Davis-Bacon Act?," available at *https://home.treasury.gov/system/files/136/SLFRF-Final-Rule-FAQ.pdf.*

[181] *See* Department of Housing and Urban Development, Basically CDBG for Entitlements, Chapter 16: Labor Standards, Section 16.1.2 (Sept. 2017), available at *https://www.hud.gov/sites/documents/CDBGCHAPTER16.PDF.*

[182] *See id.* at Section 16.1.3.

[183] *See id.* at Section 16.1.4.

[184] *See id.* at Section 16.1.5.

[185] *See* 24 CFR 1003.603.

[186] *See* Department of Housing and Urban Development, Basically CDBG for Entitlements, Chapter 16: Labor Standards, Sections 16.1.1 (Sept. 2017), available at *https://www.hud.gov/sites/documents/CDBGCHAPTER16.PDF.*

[187] *See* Department of Housing and Urban Development, Davis-Bacon and Labor Standards: Agency Contractor Guide (Aug. 2022), available at *https://files.hudexchange.info/resources/documents/Davis-Bacon-and-Labor-Standards-Agency-and-Contractor-Guide.pdf.*

[188] *See id.*

[189] *See* 42 U.S.C. 802(c)(5)(C)(iii)(II) and 803(c)(6)(B)(iii)(II).

[190] *See* Section 1.2 of NTIA's BEAD Program "Letter of Intent and Initial Planning Funding Grant Application Guidance," available at *https://broadbandusa.ntia.doc.gov/sites/default/files/2022-05/BEAD%20Planning%20Application%20Guidance.pdf.*

[191] 24 CFR 58.2(a)(3) defines extraordinary circumstances as a situation in which an environmental assessment (EA) or environmental impact statement (EIS) is not normally required but, due to unusual conditions, an EA or EIS is appropriate. Indicators of unusual conditions are: (i) actions that are unique or without precedent; (ii) actions that are substantially similar to those that normally require an EIS; (iii) actions that are likely to alter existing HUD policy or HUD mandates; or (iv) actions that, due to unusual physical conditions on the site or in the vicinity, have the potential for a significant impact on the environment or in which the environment could have a significant impact on users of the facility.

that its project presents extraordinary circumstances, the recipient must submit a certification to Treasury and receive approval prior to using SLFRF funds for the project, as will be discussed in Treasury's forthcoming guidance regarding the environmental compliance process.

To claim an activity or project as exempt pursuant to 24 CFR 58.34(a), recipients must document in writing their determination that the activity or project is exempt and meets the conditions specified for such exemption. For categorically excluded projects, recipients are required to maintain a well-organized written record of the process and determinations, including those related to the evaluation of whether the project presents extraordinary circumstances, made with respect to the categorical exclusion, which HUD refers to as an Environmental Review Record. Treasury will provide additional information on the Environmental Review Record requirements following issuance of this interim final rule.

Inapplicable sections of Title I. This the following sections of Title I do not apply to SLFRF-funded Title I projects:

- Section 103 of the HCDA (authorizing HUD to make grants)
- Sections 104(a)–(f), (h)–(j), and (l)–(m) of the HCDA (certain CDBG grant prerequisites, including consolidated plan, annual plan, plan publication, citizen participation, and associated certifications; performance and evaluation submission to HUD; revolving loan fund distributions; program income provisions applicable to certain CDBG grantees; eligible CDBG grantees; and community development plans)
- Sections 105(b), (d), (e), and (g) of the HCDA (services provided by HUD; HUD directive to establish regulations and guidance)
- Sections 106–109 of the HCDA (HUD allocation and distribution requirements; other grant programs under Title I; and nondiscrimination requirements)
- Sections 111–122 of the HCDA (noncompliance remedies; other grant authorizations; administrative requirements including as relates to reporting, duplication of benefits, and agency consultation; interstate agreements; transition provisions; emergency funding provisions)

As noted above and discussed further below, Treasury has determined not to apply the foregoing requirements of Title I because such requirements conflict with the existing SLFRF framework or otherwise are likely to preclude recipients from exercising the additional authorities provided by the statute. HUD regulations associated with the statutory provisions noted above also do not apply to recipients using SLFRF funds for Title I projects.

Prerequisite for Receiving, and Distribution of, CDBG Grants. Generally, the requirements under section 104 of the HCDA noted above are prerequisites for receiving annual CDBG allocations or relate to how HUD may distribute funds to its grantees. As discussed above, the planning prerequisites and associated certifications conflict with the SLFRF program framework under which recipients already have funds in hand and are authorized to use funds for discrete projects, rather than being required to design an annual process for how funding will be used. Furthermore, to require recipients to prepare consolidated and annual plans and undergo a public review process likely would preclude recipients from exercising the additional authorities provided by the statute, under which recipients have limited time remaining to determine how to obligate and expend funds. While such requirements will not apply to SLFRF funds used for Title I projects, Treasury encourages recipients to engage with their communities on the projects they are undertaking with SLFRF funds in general. For example, certain SLFRF recipients are required to publish and submit to Treasury a Recovery Plan performance report that must be posted on an easily discoverable web page on the recipient's public-facing website. The Recovery Plan provides the public and Treasury both retrospective and prospective information on the projects recipients are undertaking or planning to undertake with program funding, and how they are planning to ensure program outcomes are achieved in an effective, efficient, and equitable manner.[192]

HUD Programmatic Authority. Certain additional provisions are not applicable to the SLFRF program because they conflict with the SLFRF framework in that they are only relevant in the context of HUD's programmatic authorities rather than Treasury's administration of Title I projects and recipients' use of funds for the eligible projects and activities that the statute makes available. For example, sections 108, 111, 112, and 113 of the HCDA provide certain authorities and impose certain responsibilities on HUD that it would not make sense to impose on Treasury's administration of Title I projects, including those related to providing loan guarantees, remedying noncompliance, providing grants to settle outstanding urban renewal loans, promulgating regulations, and reporting.

Question 1: What, if any, additional clarification should Treasury provide as it relates to determining eligibility of projects under the Title I eligible use, or complying with program requirements such as CDBG national objectives or spending caps?

Question 2: What additional information or clarification is needed for recipients to understand Treasury's guidance on how recipients can use loans and revolving loan funds to support Title I eligible uses?

Question 3: What if any additional flexibilities would benefit recipients in terms of the use of revolving loan funds across the SLFRF program or for particular uses in the Title I projects eligible use category? Please include a discussion of how additional flexibilities would comply with the December 31, 2024 obligation and December 31, 2026 expenditure deadlines.

Question 4: What additional information or clarification is needed for recipients to understand Treasury's guidance on how to comply with environmental review requirements for Title I projects?

Question 5: What activities not already eligible under the public health and negative economic impacts eligible use category, as articulated in the 2022 final rule, are recipients interested in undertaking under the Title I projects eligible use category?

III. Discussion of Revenue Loss and Program Administration Provisions

The 2023 CAA codified the "standard allowance" discussed in the 2022 final rule under the revenue loss eligible use category. The section that follows discusses the revenue loss eligible use category as described in the 2022 final rule, as well as the program administration provisions to support recipients in understanding how this interim final rule will interact with previously established elements of the SLFRF program. As noted above, the 2023 CAA generally did not alter the existing eligible uses articulated in the 2022 final rule. Recipients may continue to use SLFRF funds for the eligible uses described under the 2022 final rule.

[192] Treasury publishes the Recovery Plans submitted by recipients each year on its website. For additional detail on Treasury's guidance on SLFRF recipients' compliance and reporting responsibilities, *see https://home.treasury.gov/policy-issues/coronavirus/assistance-for-state-local-and-tribal-governments/state-and-local-fiscal-recovery-funds/recipient-compliance-and-reporting-responsibilities.*

A. Revenue Loss

Summary of the 2022 final rule: As stated above, the ARPA amended the Social Security Act to provide that SLFRF funds may be used "for the provision of government services to the extent of the reduction in revenue of such . . . government due to the COVID–19 public health emergency relative to revenues collected in the most recent full fiscal year of the . . . government prior to the emergency." In the 2022 final rule, Treasury provided two options for how recipients may determine their amount of revenue loss. A recipient may claim a standard allowance of up to $10 million in total, not to exceed the recipient's allocation, for the entire period of performance, or calculate revenue loss on an annual basis according to the four-step formula described in the 2022 final rule. The 2022 final rule also provided additional clarifications, including how recipients that are determining revenue loss according to the formula should calculate general revenue and select their calculation date. The 2022 final rule maintained Treasury's definition of government services articulated in the 2021 interim final rule which provided that, generally speaking, services provided by recipient governments are "government services," unless Treasury has stated otherwise.

The 2022 final rule also noted that Treasury intended to amend its reporting forms to provide a mechanism for recipients to make a one-time, irrevocable election to utilize either the revenue loss formula or the standard allowance. Treasury's guidance and Final Rule FAQs included directions for recipients to indicate this choice in their Project and Expenditure Reports due April 30, 2022, and as described in subsequent guidance, recipients were able to update their revenue loss election, as appropriate, in future reporting cycles through the April 2023 reporting period. Upon update, any prior revenue loss election was superseded.

The Consolidated Appropriations Act, 2023: The 2023 CAA provided SLFRF funds may be used "for the provision of government services up to an amount equal to the greater of—

(i) the amount of the reduction in revenue of such . . . government due to the COVID–19 public health emergency relative to revenue collected in the most recent full fiscal year of such . . . government prior to the emergency; or:

(ii) $10,000,000."

Thus, the 2023 CAA codified the framework articulated in the 2022 final rule that recipients may determine their revenue loss by calculating revenue loss according to the formula or claiming up to $10 million, not to exceed a recipient's allocation.

Recipients need not make any changes to their current revenue loss determination and may continue with their previous determination. Recipients who would like to update their revenue loss determination will be able to update their revenue loss determination, as appropriate, through the April 2025 reporting period. Upon update, any prior revenue loss election will be superseded. Recipients continue to be required to employ a consistent methodology across the period of performance (*i.e.*, choose either the standard allowance or the full formula) and may not elect one approach for certain reporting years and the other approach for different reporting years.

Recipients must still communicate to Treasury the method for determining revenue loss, calculating according to the formula or claiming up to $10,000,000, not to exceed the recipient's allocation.

B. Program Administration Provisions

1. Timeline for Use of SLFRF Funds

Summary of the 2022 final rule: In the 2022 final rule, Treasury maintained the timeline for using SLFRF funds outlined in the 2021 interim final rule. Recipient may only use funds to cover costs incurred during the period beginning March 3, 2021, and ending December 31, 2024. The final rule provided that a cost shall be considered to have been incurred if the recipient has incurred an obligation with respect to such cost. Under the 2022 final rule, recipients must expend all funds by December 31, 2026. The 2023 CAA did not alter these timelines for existing eligible uses described in the 2022 final rule. The eligible uses added by the 2023 CAA are subject to slightly different treatment, as discussed below.

Consolidated Appropriations Act, 2023: For the three eligible uses added by the 2023 CAA (emergency relief from natural disasters, Surface Transportation projects, and Title I projects), recipients may use SLFRF funds to cover costs incurred beginning December 29, 2022, which is the date that the 2023 CAA was enacted. Consistent with the discussion in the 2021 interim final rule with respect to the original eligible uses, SLFRF funds are available for the new eligible uses on a prospective basis. Similarly, consistent with the 2021 interim final rule, permitting recipients to incur costs beginning December 29, 2022, provides flexibility for recipients that may have been incurring costs in anticipation of the issuance of this interim final rule. Treasury considered adopting March 3, 2021, as the date that recipients may begin incurring costs under the new eligible uses but declined to do so because these eligible uses are available on a prospective basis and because March 3, 2021, would be inconsistent with the non-supplant requirement applicable to the majority of projects and activities available under the new eligible uses.[193]

As discussed earlier in this interim final rule, under the emergency relief from natural disasters eligible use category, recipients must comply with the December 31, 2024, obligation deadline and the December 31, 2026, expenditure deadline articulated in the 2022 final rule. For Surface Transportation projects and Title I projects, funds must be obligated by December 31, 2024 and must be expended by September 30, 2026. This expenditure deadline is three months earlier than the December 31, 2026, expenditure deadline that applies to the other eligible uses.

The 2022 final rule provides that a cost is considered to have been incurred for purposes of the December 31, 2024, statutory deadline if the recipient has incurred an obligation with respect to such cost by December 31, 2024. The 2022 final rule defines an obligation as "an order placed for property and services and entering into contracts, subawards, and similar transactions that require payment." Treasury is maintaining this definition of obligation for the new eligible uses provided in the 2023 CAA.

[193] The statute's application of the non-supplant provision to the Surface Transportation projects eligible use category and Title I projects eligible use category but not to the emergency relief from natural disasters eligible use category makes sense only if recipients may not use SLFRF funds to cover expenses incurred prior to the enactment of the 2023 CAA. The concern that recipients would supplant, after the date of enactment, funds previously dedicated to eligible uses is not particularly relevant in the case of natural disasters, which are generally unexpected and impose extraordinary costs on state, local, and Tribal governments.

The use of December 29, 2022 is also supported by comparing the 2023 CAA amendments to the Infrastructure Investment and Jobs Act (IIJA) amendments to the ARPA from November 2021. In the IIJA, Congress included a "clarification of authority" to use SLFRF funds to meet match requirements for authorized Bureau of Reclamation water projects. The clarification stated that the amendments took effect "as if included in the enactment" of the ARPA. Accordingly, in the final rule, Treasury incorporated this eligible use and applied the March 3, 2021 cost incurred date that applied to all the other eligible uses in the ARPA. The absence of similar language in the 2023 CAA suggests Congress did not intend to apply the same retroactive approach.

2. Use of Funds for Match or Cost-Share Requirements

Summary of the 2022 final rule: In the 2022 final rule, Treasury discussed its determination that SLFRF funds available for the provision of government services, up to the amount of the recipient's reduction in revenue due to the public health emergency, generally may be used to meet the non-Federal cost-share or matching requirements of other Federal programs. The final rule also clarified that SLFRF funds beyond those that are available under the revenue loss eligible use category for the provision of government services 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, as discussed in the 2022 final rule, section 40909 of the Infrastructure Investment and Jobs Act provides that SLFRF funds may be used to meet the non-Federal match requirements of any authorized Bureau of Reclamation project, and section 60102 of the Infrastructure Investment and Jobs Act provides that SLFRF funds may be used to meet the non-Federal match requirements of the broadband infrastructure program authorized under that section. See the 2022 final rule for further discussion.

The Consolidated Appropriations Act, 2023: As discussed above, the 2023 CAA did not alter the existing eligible uses of SLFRF funds. Recipients may still use SLFRF funds in the revenue loss eligible use category to meet non-Federal matching requirements, as described in the 2022 final rule. As described in the Surface Transportation projects section of this interim final rule, the 2023 CAA provided that recipients may use SLFRF funds for non-Federal matching requirements for certain Surface Transportation programs. As described in the Title I projects section of this interim final rule, the 2023 CAA provided that recipients may use SLFRF funds for Title I projects, which includes using funds for non-Federal cost share and matching requirements of a Federal financial assistance program in support of activities that would be eligible under the CDBG and ICDBG programs. See the sections titled Surface Transportation projects and Title I projects of this interim final rule for further information.

3. Reporting

Summary of the 2022 final rule: The 2022 final rule maintained Treasury's authority to collect information from recipients through requested reports and any additional requests for information. The 2022 final rule also maintained Treasury's flexibility to extend or accelerate reporting deadlines and to modify requested content for the Interim Report, Project and Expenditure reports, and Recovery Plan Performance reports. Since the publication of the 2021 interim final rule, Treasury issued supplementary reporting guidance in the Compliance and Reporting Guidance and in the User Guide: Treasury's Portal for Recipient Reporting (User Guide).[194] Treasury continues to issue updated guidance prior to each reporting period clarifying any modifications to requested report content.

The Consolidated Appropriations Act, 2023: Generally, recipients using SLFRF funds for the eligible uses provided in the 2023 CAA will be required to report on these uses of funds in their Project and Expenditure reports and Recovery Plan Performance reports. For example, recipients using funds to provide emergency relief from natural disasters will generally be required to provide information regarding the declaration or designation associated with a natural disaster and for mitigation activity expenditures greater than $1 million, a written justification. Recipients using funds for Surface Transportation projects under Pathway One will generally be required to confirm which DOT program they are directing funds and attest to meeting additional statutory requirements like supplement, not supplant and state of good repair. Recipients using funds for Surface Transportation projects under Pathway Two will generally be required to provide additional information regarding the parameters of the streamlined framework and attest to meeting additional statutory requirements like supplement, not supplant and state of good repair. Recipients using funds for Title I projects will generally be required to provide information regarding the category of CDBG activities, the primary objective, and the national objectives, and attest to meeting additional statutory requirements like supplement, not supplant and environmental certifications. Like all eligible use categories in the SLFRF program, recipients will be required to provide general financial information and a project description for the new eligible uses categories discussed in this interim final rule. Treasury intends to update its reporting forms, Compliance and Reporting Guidance, and User Guide to further describe recipients' reporting responsibilities for SLFRF funds directed toward these eligible uses.

As described above, Treasury is delegating authority to DOT to oversee and administer Surface Transportation projects under Pathway One. As such, recipients using SLFRF funds for such projects will be required to comply with the relevant existing DOT reporting requirements associated with the Surface Transportation project that is receiving DOT funding for which they are adding SLFRF funds. DOT may provide additional guidance, as appropriate, for recipients using SLFRF funds under Pathway One for a Surface Transportation project that is receiving funding from DOT. Recipients using SLFRF funds under Pathway One will also be required to report certain information to Treasury, including the amount of SLFRF funds directed toward Surface Transportation projects and Title I projects to ensure that recipients comply with the cap on funds associated with these eligible use categories.

Recipients using SLFRF funds under Pathway Two for a Surface Transportation project that is not receiving funding from DOT and funded solely with SLFRF funds will only have reporting responsibilities to Treasury.

Under Pathway Three, recipients will be required to comply with the relevant existing DOT reporting requirements associated with the Surface Transportation project which they are using SLFRF funds for non-Federal share requirements. Recipients will also be required to report certain information to Treasury, including the amount of SLFRF funds directed toward Surface Transportation projects and Title I projects to ensure that recipients comply with the cap on funds associated with these eligible use categories.

4. Uniform Guidance

Summary of the 2022 final rule: The 2022 final rule states that recipients of SLFRF funds are subject to the provisions of the Uniform Guidance (2 CFR part 200) from the date of award to the end of the period of performance on December 31, 2026, unless otherwise specified in this rule or program specific guidance.

The Consolidated Appropriations Act, 2023: Consistent with the 2022 final rule, recipients using SLFRF funds, whether for the eligible uses described in the 2022 final rule or the eligible uses described in this interim final rule, are subject to the provisions of the Uniform

[194] U.S. Department of the Treasury, Recipient Compliance and Reporting Responsibilities (Nov. 5, 2021), *https://home.treasury.gov/policy-issues/coronavirus/assistance-for-state-local-and-tribal-governments/state-and-local-fiscal-recovery-funds/recipient-compliance-and-reporting-responsibilities.*

Guidance, unless stated otherwise by Treasury.[195] Recipients using SLFRF for Surface Transportation projects and Title I projects, respectively, must also comply with the administrative requirements described above in the Surface Transportation projects and Title I projects sections.

IV. Comments and Effective Date

This interim final rule is being issued without advance notice and public comment to allow for immediate implementation of the changes to the SLFRF program resulting from the amendments made by the State, Local, Tribal, and Territorial Fiscal Recovery, Infrastructure, and Disaster Relief Flexibility Act, part of the Consolidated Appropriations Act, 2023, Public Law 117–328 (Dec. 29, 2022). 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." This interim final rule implements statutory conditions on the eligible uses of the SLFRF funds and addresses the 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." 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 this interim final rule. These comments must be submitted on or before November 20, 2023.

V. Regulatory Analyses

Executive Orders 12866, 13563, and 14094

Regulatory Impact Assessment

This interim final rule is a "significant regulatory action" under section 3(f)(1) of Executive Order 12866 for the purposes of Executive Orders 12866 and 13563 because it may shift how state, local, and Tribal governments spend SLFRF funds annually by $200 million or more, with an effect on the economy.

As explained below, this regulation meets a substantial need: ensuring that recipients—states, territories, Tribal governments, and local governments—of SLFRF funds fully understand the requirements and parameters of the program as set forth in the Social Security Act and are able to deploy funds in a manner that best reflects Congress' intent to provide necessary relief to recipient governments adversely impacted by the COVID–19 public health emergency. Furthermore, as required by Executive Order 12866 as amended, Treasury has weighed the costs and benefits of this interim final rule and varying alternatives and has reasonably determined that the benefits of this interim final rule to recipients and their communities far outweigh any costs. The rule has been reviewed by the Office of Management and Budget (OMB) in accordance with Executive Order 12866 as amended.

Executive Orders 12866, 13563, and 14094

Under Executive Order 12866, as amended by Executive Order 14094, 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 as amended defines a significant regulatory action as an action likely to result in a rule that may, among other things, have an annual effect on the economy of $200 million or more. This interim final rule may shift spending decisions by recipient governments by $200 million, therefore, it is subject to review by OMB under section 3(f)(1) of Executive Order 12866 as amended.

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 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."

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 Orders 12866, 13563, and 14094. This Regulatory Impact Analysis discusses the need for regulatory action, the potential benefits, and the potential costs. 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.

Need for Regulatory Action

This interim final rule implements new eligible uses for the $350 billion SLFRF program provided in the 2023 CAA, which Congress passed to provide additional flexibility in how state, local, and Tribal governments respond to the unique needs of their communities. As the agency charged with execution of these programs, Treasury has concluded that this interim final rule is needed to ensure that recipients of SLFRF funds fully understand the requirements and parameters of the program as modified by the 2023 CAA and deploy funds in a manner that best reflects Congress' mandate for targeted fiscal relief. This interim final rule provides additional flexibility in the use of $350 billion in grant funds already disbursed from the Federal government to state, local, and Tribal governments. As noted earlier,

[195] *See* FAQ Section 13. "Uniform Guidance" U.S. Department of the Treasury, Coronavirus State and Local Fiscal Recovery Funds Final Rule: Frequently Asked Questions (Apr. 2023), *https://home.treasury.gov/system/files/136/SLFRF-Final-Rule-FAQ.pdf.*

Treasury has disbursed nearly all of the $350 billion appropriated SLFRF funds. 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 state, local, and Tribal governments while maintaining their flexibility to respond to local needs; and limiting administrative burdens.

Analysis of Benefits

Relative to a pre-2023 CAA baseline, no additional resources are provided to state, local, and Tribal governments under the SLFRF program. Instead, state, local, and Tribal governments will have additional flexibility in how they use available SLFRF funds, that have already been disbursed, with the option to pursue additional eligible uses under this interim final rule to meet the needs of their communities. Treasury believes that this additional flexibility may 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.

This interim final rule provides benefits by implementing the new eligible use categories, as defined in the 2023 CAA: providing emergency relief from natural disasters or the negative economic impacts of natural disasters, using funds for Surface Transportation projects, and using funds for Title I projects.

These benefits are achieved in this interim final rule through a broadly flexible approach that sets clear guidelines on these additional eligible uses of SLFRF funds and provides state, local, and Tribal government officials discretion to direct SLFRF funds to areas of greatest need within their jurisdiction, within available eligible use categories. While preserving recipients' overall flexibility, this interim final rule includes several provisions that implement statutory requirements and will help support use of SLFRF funds to achieve the intended benefits. Preserving flexibility for recipients not only serves an important public policy goal by allowing them to meet particularized and diverse needs of their local communities but also enhances the economic benefits of this interim final rule by allowing recipients to choose eligible uses of funds that provide the highest utility in their jurisdictions.

The remainder of this section clarifies how Treasury's approach to key provisions in this interim final rule will contribute to greater realization of benefits from the program. Treasury considered issuing guidance rather than an interim final rule; however, Treasury determined that issuing an interim final rule that amends the regulatory text of the 2022 final rule was appropriate to bring the regulatory requirements in line with the 2023 CAA.

Emergency Relief From Natural Disasters

The eligible use category for providing emergency relief from natural disasters or the negative economic impacts of natural disasters covers a range of eligible uses of funds, including temporary emergency housing, food assistance, financial assistance for lost wages, other immediate needs, and mitigation activities. Treasury has structured this eligible use to minimize recipient administrative burden while also maintaining flexibility for recipients to provide emergency relief to address the particular needs of their communities after experiencing a natural disaster or prior to a natural disaster that is expected to occur imminently, or to avert the threat of a future natural disaster. In this interim final rule, Treasury enumerated eligible uses of SLFRF funds to provide emergency relief from the physical and negative economic impacts of natural disasters. Some of these enumerated eligible uses include temporary emergency housing, food assistance, financial assistance for lost wages, emergency protective measures, debris removal, repairing damage to public infrastructure, home repairs for uninsured primary residences, cash assistance, and mitigation activities to avert the potential impacts of a future natural disaster. In addition to the enumerated eligible uses, Treasury provides a framework whereby recipient may identify a natural disaster and identify emergency relief that responds to the physical or negative economic impacts of a natural disaster. The emergency relief must be related and reasonably proportional to the to the impact identified. By enumerating eligible uses, Treasury is reducing administrative burden for recipients through a clear list of uses of SLFRF funds they may consider providing as appropriate. By providing a framework for recipients to design their own emergency relief, Treasury is providing flexibility for recipients to direct SLFRF funds to the needs of their unique communities.

Surface Transportation Projects

In the eligible use category Surface Transportation projects, Treasury provides three pathways under which recipients may direct SLFRF funds towards Surface Transportation projects, subject to the cap on SLFRF funds for this eligible use. First, recipients may use SLFRF funds under Pathway One for Surface Transportation projects receiving funding from DOT. Recipients who use SLFRF funds for these projects must comply with all related DOT requirements for these projects. Second, recipients may use SLFRF funds under Pathway Two for Surface Transportation projects, that are not receiving funding from DOT, whether or not SLFRF funds are blended with other sources of funds. This second pathway is available to all SLFRF recipients, including those that do not routinely apply for or receive funding directly from DOT. Treasury is articulating a streamlined framework for recipients to undertake certain projects (1) fit the description of "eligible projects" under the RAISE grant program as described in the 2023 Notice of Funding Opportunity; (2) contribute SLFRF funds no greater than $10 million, and (3) with an entire project scope that is limited to actions or activities that typically do not have a significant environmental impact, absent unusual circumstances, as described in 23 CFR 771.116(b), 771.117(b), and 771.118(b). Recipients that use SLFRF funds for these projects must comply certain requirements, as articulated in the Surface Transportation projects section, and only report these projects to Treasury. Recipients seeking to use SLFRF funds for Surface Transportation projects under Pathway Two outside of the parameters of the streamlined framework must submit a notice of intent to Treasury. Treasury will use the notices of intent it receives along with comments on this interim final rule to develop a pathway for these types of projects. Third, recipients may use SLFRF funds under Pathway Three for non-Federal share requirements for certain DOT programs, as well as to repay TIFIA loans. By providing three pathways for recipients to pursue Surface Transportation projects with SLFRF funds, Treasury is providing flexibility for recipients to use SLFRF funds for DOT projects they are already pursuing and for recipient to also pursue new projects, particularly for those recipients that do not have any existing projects funded by DOT, subject to the requirements outlined in the Surface Transportation projects section.

Title I Projects

The Title I projects eligible use category discusses how recipients may direct SLFRF funds toward Title I projects, subject to the cap on funds for this eligible use category. In this eligible use category, Treasury has provided that recipients may use SLFRF funds for CDBG and ICDBG projects, in alignment with the applicable administrative provisions. By aligning with CDBG and ICDBG, programs with which many recipients already are familiar, Treasury is reducing administrative burden. Treasury also discusses the CDBG and ICDBG provisions that apply to SLFRF funds. By analyzing which provisions are applicable to the unique requirements of the SLFRF program, including modifying certain requirements for this eligible use category in light of the SLFRF period of performance and the statutory requirement that SLFRF funds be obligated by December 31, 2024 and expended by September 30, 2026, Treasury is further reducing administrative burden for recipients.

Analysis of Costs

This regulatory action will not generate significant administrative costs relative to a pre-2023 CAA baseline. This interim final rule may result in state, local, and Tribal governments shifting SLFRF funds to new eligible uses included in the Social Security Act but does not result in additional funds being disbursed to SLFRF recipients. In addition, SLFRF recipients generally have already established processes required to administer their SLFRF funds, oversee subrecipients and beneficiaries, and file periodic reports with Treasury. As such, Treasury expects that the total costs required to administer SLFRF funds will not change significantly. Treasury expects that the administrative burden associated with the SLFRF program will remain moderate for a grant program of its size. Under the final rule implementing the SLFRF program as enacted in the ARPA, Treasury noted administrative costs as a generally allowable use of SLFRF funds, which defrays administrative expenses to recipients that may be needed to comply with reporting requirements. Treasury is maintaining this approach to administrative costs in this interim final rule. Treasury has also made clear in guidance that SLFRF funds may be used to cover certain expenses related to administering programs established using SLFRF funds.

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 modified by the 2023 CAA. 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 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." This interim final rule implements statutory conditions on the eligible uses of the SLFRF grants and addresses 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 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 2023 CAA amends sections 602 and 603 of the Social Security Act to make SLFRF available to provide emergency relief from natural disasters or their negative economic impacts, along with authority to use funds for an extensive list of eligible uses related to infrastructure, incorporated into the Social Security Act by cross-reference to other statutory provisions. As noted above, Congress authorized use of funds for emergency relief. *American Fed'n of Gov't Employees* v. *Block*, 655 F.2d 1153, 1156 (D.C. Cir. 1981). Expeditious promulgation of the interim final rule would make these funds available to provide emergency relief to natural disasters more quickly and would avoid a delay that would be contrary to the public interest. In addition, SLFRF funds are available to cover costs incurred through December 31, 2024. Following the ordinary requirements of notice-and-comment rulemaking would result in the passage of a significant amount of time before recipients are able to use funds for time sensitive needs related to natural disaster relief, and it would provide recipients a very limited amount of time to plan for and finance newly eligible infrastructure projects before the obligation deadline arrives in the following year. By linking the effectiveness of the amendments with the promulgation of a rule or issuance of guidance on a 60-day timeline, as provided in the 2023 CAA, Congress "clearly envisioned very speedy adoption of the mandated changes." *Petry* v. *Block*, 737 F.2d 1193, 1200 (D.C. Cir. 1984). Further, Congress, "by setting an effective date so close to the date of enactment, expressed its belief that implementation of the amendments to the [program] was urgent." *Philadelphia Citizens in Action* v. *Schweiker*, 669 F.2d 877, 884–885 (3d Cir. 1982) (finding good cause under circumstances, including statutory time limits, where APA procedures would have been "virtually impossible," like a circumstance in which an agency promulgated a regulation to implement a statute that was enacted on August 13 and became effective on October 1). 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. 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 rule qualifies under the definition set forth in 5 U.S.C. 804(2) 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). Under the CRA, such a rule generally may take effect no earlier than 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 the SLFRF program have been reviewed and approved by OMB pursuant to the Paperwork Reduction Act (44 U.S.C. Chapter 35) (PRA) and assigned control number 1505–0271. 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. This interim final rule is not altering the previously approved information collections for the SLFRF program. The table below includes the estimates of hourly burden under this program that have been approved in previously approved information collections.

Reporting	Number respondents	Number responses per respondent	Total responses	Hours per response	Total burden in hours	Cost to respondents ($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
Tribal Employment Information Form	584	1	584	.75 (45 minutes)	438	21,374
Request for Extension Form	96	1	96	1	96	4,685
Annual Recovery Plan Performance Report	430	1	430	100	43,000	2,098,400
NEU Distribution Template	55	2	110	10	1,100	53,680
Non-UGLG Distribution Template	55	2	110	5	550	26,840
Transfer Forms	1,500	1	1,500	1	1,500	73,200
NEU Agreements and Supporting Documentation	26,000	1	26,000	.5	13,000	634,400
Project and Expenditure Report (quarterly)	2,000	4	8,000	6	48,000	2,342,400
Project and Expenditure Report (annual)	29,000	1	29,000	6	174,000	8,491,200
Total	64,770		78,880		284,209	13,869,339

* 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.

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 APA 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 or any other law 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. Because 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

Community development, Disaster assistance, Executive compensation, State and Local Governments, Public health emergency, Tribal governments, Transportation.

For the reasons stated in the preamble, the United States Department of the Treasury amends 31 CFR part 35 as follows:

PART 35—PANDEMIC RELIEF PROGRAMS

■ 1. The authority citation for part 35 continues to read as follows:

Authority: 42 U.S.C. 802(f); 42 U.S.C. 803(f); 31 U.S.C. 321; 12 U.S.C. 5701–5710; Division N, Title V, Subtitle B, Pub. L. 116–260, 134 Stat. 1182 (12 U.S.C. 4703a); 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 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.

Authority: 42 U.S.C. 802(f); 42 U.S.C. 803(f); section 102(c) of Division LL of the Consolidated Appropriations Act, 2023 (Pub. L. 117–328).

§ 35.1 Purpose.

This part implements sections 602 and 603 of the Social Security Act, as added by section 9901 of the American Rescue Plan Act (Subtitle M of Title IX of Pub. L. 117–2) and amended by section 102 of Division LL of the Consolidated Appropriations Act, 2023 (Pub. L. 117–328).

§ 35.2 Applicability.

This part 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.

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.

Capital expenditures has the same meaning given in 2 CFR 200.1.

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 that reduces any tax (by providing for a reduction in a rate, a rebate, a deduction, a credit, or otherwise) or delays the imposition of any tax or tax increase. 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 or territory, the period that:

(1) Begins on March 3, 2021; and

(2) Ends on the last day of the fiscal year of such State or territory in which all funds received by the State or territory 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 lasting 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.*).

Delivery sequence means the order in which disaster relief agencies and organizations provide assistance pursuant to 44 CFR 206.191.

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.

Disaster loss means a loss suffered as a result of a major disaster or emergency declared under section 401 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5170).

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 childcare; 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; and 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 non-public 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 non-public 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.

Emergency relief means assistance that is needed to save lives and to protect property and public health and safety, or to lessen or avert the threat of catastrophe.

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 and 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 also includes revenue from liquor stores that are owned and operated by state and local governments. General revenue does not include revenues from utilities, except recipients may choose to include revenue from utilities that are part of their own government as general revenue provided the recipient does so consistently over the remainder of the period of performance. Revenue from Tribal business enterprises must be included in general revenue.

Infrastructure Investment and Jobs Act means the Infrastructure Investment and Jobs Act, Public Law 117–58, 135 Stat. 429 (Nov. 15, 2021).

Intergovernmental transfers means money received from other governments, including grants and shared taxes.

Low-income household means a household with:

(1) Income at or below 185 percent of the Federal Poverty Guidelines for the size of its household based on the poverty guidelines published most recently by the Department of Health and Human Services; or

(2) Income at or below 40 percent of the Area Median Income for its county and size of household based on data published most recently by the

Department of Housing and Urban Development.

Micro-business means a small business that has five or fewer employees, one or more of whom owns the small business.

Moderate-income household means a household with:

(1) Income at or below 300 percent of the Federal Poverty Guidelines for the size of its household based on poverty guidelines published most recently by the Department of Health and Human Services; or

(2) Income at or below 65 percent of the Area Median Income for its county and size of household based on data published most recently by the Department of Housing and Urban Development.

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.

Natural disaster means any hurricane, tornado, storm, flood, high water, wind-driven water, tidal wave, tsunami, earthquake, volcanic eruption, landslide, mudslide, snowstorm, drought, or fire, in each case attributable to natural causes, that causes or may cause substantial damage, injury, or imminent threat to civilian property or persons. "Natural disaster" may also include another type of natural catastrophe, attributable to natural causes, that causes or may cause substantial damage, injury, or imminent threat to civilian property or persons.

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 for that reporting year.

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) or 501(c)(19) 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.

Operating expenses means costs necessary to operate and manage a public transportation system, including driver salaries, fuel, and items having a useful life of less than one year. Operating expenses do not include preventive maintenance activities.

Pension fund means a defined benefit plan and does not include a defined contribution plan.

Period of performance means the time period described in § 35.5 during which a recipient may obligate and expend funds in accordance with sections 602(c)(1), 602(c)(5)(E), 603(c)(1), and 603(c)(6)(D) of the Social Security Act and this subpart.

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 in total over the period of performance with respect to any single eligible worker. Premium pay may be awarded to non-hourly and part-time eligible workers performing essential work. 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 per hour 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 worker's 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).

Surface Transportation project means any of the following:

(1) A project eligible under 23 U.S.C. 117;

(2) A project eligible under 23 U.S.C. 119;

(3) A project eligible under 23 U.S.C. 124, as added by the Infrastructure Investment and Jobs Act;

(4) A project eligible under 23 U.S.C. 133;

(5) An activity to carry out 23 U.S.C. 134;

(6) A project eligible under 23 U.S.C. 148;

(7) A project eligible under 23 U.S.C. 149;

(8) A project eligible under 23 U.S.C. 151(f), as added by the Infrastructure Investment and Jobs Act;

(9) A project eligible under 23 U.S.C. 165;

(10) A project eligible under 23 U.S.C. 167;

(11) A project eligible under 23 U.S.C. 173, as added by the Infrastructure Investment and Jobs Act;

(12) A project eligible under 23 U.S.C. 175, as added by the Infrastructure Investment and Jobs Act;

(13) A project eligible under 23 U.S.C. 176, as added by the Infrastructure Investment and Jobs Act;

(14) A project eligible under 23 U.S.C. 202;

(15) A project eligible under 23 U.S.C. 203;

(16) A project eligible under 23 U.S.C. 204;

(17) A project eligible under the program for national infrastructure investments commonly known as the "Rebuilding American Infrastructure with Sustainability and Equity" grant program;

(18) A project eligible for credit assistance under the Transportation Infrastructure Finance and Innovation Act program under 23 U.S.C. chapter 6;

(19) A project that furthers the completion of a designated route of the

Appalachian Development Highway System under 40 U.S.C. 14501;

(20) A project eligible under 49 U.S.C. 5307;

(21) A project eligible under 49 U.S.C. 5309;

(22) A project eligible under 49 U.S.C. 5311;

(23) A project eligible under 49 U.S.C. 5337;

(24) A project eligible under 49 U.S.C. 5339;

(25) A project eligible under 49 U.S.C. 6703, as added by the Infrastructure Investment and Jobs Act;

(26) A project eligible under the bridge replacement, rehabilitation, preservation, protection, and construction program under paragraph (1) under the heading 'HIGHWAY INFRASTRUCTURE PROGRAM' under the heading 'FEDERAL HIGHWAY ADMINISTRATION' under the heading 'DEPARTMENT OF TRANSPORTATION' under title VIII of division J of the Infrastructure Investment and Jobs Act; and

(27) A project eligible under 49 U.S.C. 6701 for the purpose set forth in § 35.6(h)(1)(i)(C).

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.

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.

Title I project means an activity eligible under section 105(a) of the Housing and Community Development Act of 1974 (42 U.S.C. 5305(a)).

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 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)).

§ 35.4 Reservation of authority, reporting.

(a) *Reservation of authority.* Nothing in this part 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 part, 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 period of performance, recipients shall provide to the Secretary or her delegate, as applicable, periodic reports providing detailed accounting of the uses of funds, modifications to a State or Territory's tax revenue sources, and such other information as the Secretary or her delegate, as applicable, 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 for the purposes enumerated in § 35.6 (b) through (f) to cover costs incurred during the period beginning March 3, 2021, and ending December 31, 2024, subject to the restrictions set forth in sections 602(c)(2) and 603(c)(2) of the Social Security Act, as applicable. A recipient may only use funds for the purposes enumerated in § 35.6 (g) through (h) to cover costs incurred during the period beginning December 29, 2022, and ending December 31, 2024, subject to the restrictions set forth in sections 602(c)(2), 602(c)(5)(C), 603(c)(2), and 603(c)(6)(B) 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. A recipient must return funds obligated for a use identified in § 35.6 (b) through (g) by December 31, 2024, but not expended by December 31, 2026. A recipient must return funds obligated for a use identified in § 35.6 (h) by December 31, 2024, but not expended by September 30, 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 (h) 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 if the use meets the criteria provided in paragraph (b)(1) of this section or is enumerated in paragraph (b)(3) of this section; provided that, in the case of a use of funds for a capital expenditure under paragraph (b)(1) or (b)(3) of this section, the use of funds must also meet the criteria provided in paragraph (b)(4) of this section. Treasury may also articulate additional eligible programs, services, or capital expenditures from time to time that satisfy the eligibility criteria of this paragraph (b), which

shall be eligible under this paragraph (b).

(1) *Identifying eligible responses to the public health emergency or its negative economic impacts.*

(i) A program, service, or capital expenditure is eligible under this paragraph (b)(1) if a recipient identifies a harm or impact to a beneficiary or class of beneficiaries caused or exacerbated by the public health emergency or its negative economic impacts and the program, service, or capital expenditure responds to such harm.

(ii) A program, service, or capital expenditure responds to a harm or impact experienced by an identified beneficiary or class of beneficiaries if it is reasonably designed to benefit the beneficiary or class of beneficiaries that experienced the harm or impact and is related and reasonably proportional to the extent and type of harm or impact experienced.

(2) *Identified harms: presumptions of impacted and disproportionately impacted beneficiaries.* A recipient may rely on the following presumptions to identify beneficiaries presumptively impacted or disproportionately impacted by the public health emergency or its negative economic impacts for the purpose of providing a response under paragraph (b)(1) or (b)(3) of this section:

(i) Households or populations that experienced unemployment; experienced increased food or housing insecurity; qualify for the Children's Health Insurance Program (42 U.S.C. 1397aa *et seq.*), Childcare Subsidies through the Child Care and Development Fund Program (42 U.S.C. 9857 *et seq.* and 42 U.S.C. 618), or Medicaid (42 U.S.C. 1396 *et seq.*); if funds are to be used for affordable housing programs, qualify for the National Housing Trust Fund (12 U.S.C. 4568) or the Home Investment Partnerships Program (42 U.S.C. 12721 *et seq.*); if funds are to be used to address impacts of lost instructional time for students in kindergarten through twelfth grade, any student who did not have access to in-person instruction for a significant period of time; and low- and moderate-income households and populations are presumed to be impacted by the public health emergency or its negative economic impacts;

(ii) The general public is presumed to be impacted by the public health emergency for the purposes of providing the uses set forth in paragraphs (b)(3)(i)(A) and (b)(3)(i)(C) of this section; and

(iii) The following households, communities, small businesses, and nonprofit organizations are presumed to be disproportionately impacted by the public health emergency or its negative economic impacts:

(A) Households and populations residing in a qualified census tract; households and populations receiving services provided by Tribal governments; households and populations residing in the territories; households and populations receiving services provided by territorial governments; low-income households and populations; households that qualify for Temporary Assistance for Needy Families (42 U.S.C. 601 *et seq.*), the Supplemental Nutrition Assistance Program (7 U.S.C. 2011 *et seq.*), Free and Reduced Price School Lunch and/or Breakfast programs (42 U.S.C. 1751 *et seq.* and 42 U.S.C. 1773), Medicare Part D Low-income Subsidies (42 U.S.C. 1395w-114), Supplemental Security Income (42 U.S.C. 1381 *et seq.*), Head Start (42 U.S.C. 9831 *et seq.*), Early Head Start (42 U.S.C. 9831 *et seq.*), the Special Supplemental Nutrition Program for Women, Infants, and Children (42 U.S.C. 1786), Section 8 Vouchers (42 U.S.C. 1437f), the Low-Income Home Energy Assistance Program (42 U.S.C. 8621 *et seq.*), Pell Grants (20 U.S.C. 1070a), and, if SLFRF funds are to be used for services to address educational disparities, Title I eligible schools;

(B) Small businesses operating in a qualified census tract, operated by Tribal governments or on Tribal lands, or operating in the territories; and

(C) Nonprofit organizations operating in a qualified census tract, operated by Tribal governments or on Tribal lands, or operating in the territories.

(3) *Enumerated eligible uses: responses presumed reasonably proportional.* A recipient may use funds to respond to the public health emergency or its negative economic impacts on a beneficiary or class of beneficiaries for one or more of the following purposes unless such use is grossly disproportionate to the harm caused or exacerbated by the public health emergency or its negative economic impacts:

(i) Responding to the public health impacts of the public health emergency for purposes including:

(A) COVID–19 mitigation and prevention in a manner that is consistent with recommendations and guidance from the Centers for Disease Control and Prevention, including vaccination programs and incentives; testing programs; contact tracing; isolation and quarantine; mitigation and prevention practices in congregate settings; acquisition and distribution of medical equipment for prevention and treatment of COVID–19, including personal protective equipment; COVID–19 prevention and treatment expenses for public hospitals or health care facilities, including temporary medical facilities; establishing or enhancing public health data systems; installation and improvement of ventilation systems in congregate settings, health facilities, or other public facilities; and assistance to small businesses, nonprofits, or impacted industries to implement mitigation measures;

(B) Medical expenses related to testing and treating COVID–19 that are provided in a manner consistent with recommendations and guidance from the Centers for Disease Control and Prevention, including emergency medical response expenses, treatment of long-term symptoms or effects of COVID–19, and costs to medical providers or to individuals for testing or treating COVID–19;

(C) Behavioral health care, including prevention, treatment, emergency or first-responder programs, harm reduction, supports for long-term recovery, and behavioral health facilities and equipment; and

(D) Preventing and responding to increased violence resulting from the public health emergency, including community violence intervention programs, or responding to increased gun violence resulting from the public health emergency, including payroll and covered benefits associated with community policing strategies; enforcement efforts to reduce gun violence; and investing in technology and equipment;

(ii) Responding to the negative economic impacts of the public health emergency for purposes including:

(A) Assistance to households and individuals, including:

(1) Assistance for food; emergency housing needs; burials, home repairs, or weatherization; internet access or digital literacy; cash assistance; and assistance accessing public benefits;

(2) Paid sick, medical, or family leave programs, or assistance to expand access to health insurance;

(3) Childcare, early learning services, home visiting, or assistance for child welfare-involved families or foster youth;

(4) Programs to address the impacts of lost instructional time for students in kindergarten through twelfth grade;

(5) Development, repair, and operation of affordable housing and services or programs to increase long-term housing security;

(6) Financial services that facilitate the delivery of Federal, State, or local benefits for unbanked and underbanked individuals;

(7) Benefits for the surviving family members of individuals who have died from COVID–19, including cash assistance to surviving spouses or dependents of individuals who died of COVID–19;

(8) Assistance for individuals who want and are available for work, including those who are unemployed, have looked for work sometime in the past 12 months, who are employed part time but who want and are available for full-time work, or who are employed but seeking a position with greater opportunities for economic advancement;

(9) Facilities and equipment related to the provision of services to households provided in paragraphs (b)(3)(ii)(A)(*1*) through(*8*) of this section;

(10) The following expenses related to Unemployment Trust Funds:

(i) Contributions to a recipient Unemployment Trust Fund and repayment of principal amounts due on advances received under Title XII of the Social Security Act (42 U.S.C. 1321) up to an amount equal to (a) the difference between the balance in the recipient's Unemployment Trust Fund as of January 27, 2020, and the balance of such account as of May 17, 2021, plus (b) the principal amount outstanding as of May 17, 2021, on any advances received under Title XII of the Social Security Act between January 27, 2020, and May 17, 2021; provided that if a recipient repays principal on Title XII advances or makes a contribution to an Unemployment Trust Fund after April 1, 2022, such recipient shall not reduce average weekly benefit amounts or maximum benefit entitlements prior to December 31, 2024; and

(ii) Any interest due on such advances received under Title XII of the Social Security Act (42 U.S.C. 1321); and

(11) A program, service, capital expenditure, or other assistance that is provided to a disproportionately impacted household, population, or community, including:

(i) Services to address health disparities of the disproportionately impacted household, population, or community;

(ii) Housing vouchers and relocation assistance;

(iii) Investments in communities to promote improved health outcomes and public safety such as parks, recreation facilities, and programs that increase access to healthy foods;

(iv) Capital expenditures and other services to address vacant or abandoned properties;

(v) Services to address educational disparities; and

(vi) Facilities and equipment related to the provision of these services to the disproportionately impacted household, population, or community.

(B) Assistance to small businesses, including:

(*1*) Programs, services, or capital expenditures that respond to the negative economic impacts of 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, or providing technical assistance; and

(*2*) A program, service, capital expenditure, or other assistance that responds to disproportionately impacted small businesses, including rehabilitation of commercial properties; storefront and façade improvements; technical assistance, business incubators, and grants for start-ups or expansion costs for small businesses; and programs or services to support micro-businesses;

(C) Assistance to nonprofit organizations including programs, services, or capital expenditures, including loans or grants to mitigate financial hardship such as declines in revenues or increased costs, or technical assistance;

(D) Assistance to tourism, travel, hospitality, and other impacted industries for programs, services, or capital expenditures, including support for payroll costs and covered benefits for employees, compensating returning employees, support for operations and maintenance of existing equipment and facilities, and technical assistance; and

(E) Expenses to support public sector capacity and workforce, including:

(1) 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;

(2) Payroll, covered benefit, and other costs associated with programs or services to support the public sector workforce and with the recipient:

(i) Hiring or rehiring staff to fill budgeted full-time equivalent positions that existed on January 27, 2020, but that were unfilled or eliminated as of March 3, 2021; or

(ii) Increasing the number of its budgeted full-time equivalent employees by up to the difference between the number of its budgeted full-time equivalent employees on January 27, 2020, multiplied by 1.075, and the number of its budgeted full-time equivalent employees on March 3, 2021, provided that funds shall only be used for additional budgeted full-time equivalent employees above the recipient's number of budgeted full-time equivalent employees as of March 3, 2021;

(3) 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; and

(4) Costs associated with addressing administrative needs of recipient governments that were caused or exacerbated by the pandemic.

(4) *Capital expenditures.* A recipient, other than a Tribal government, must prepare a written justification for certain capital expenditures according to Table 1 of paragraph (b) of this section. Such written justification must include the following elements:

(i) Describe the harm or need to be addressed;

(ii) Explain why a capital expenditure is appropriate; and

(iii) Compare the proposed capital expenditure to at least two alternative capital expenditures and demonstrate why the proposed capital expenditure is superior.

TABLE 1 TO PARAGRAPH (b)

If a project has total expected capital expenditures of	and the use is enumerated in (b)(3), then	and the use is not enumerated in (b)(3), then
Less than $1 million	No Written Justification required	No Written Justification required.
Greater than or equal to $1 million, but less than $10 million.	Written Justification required but recipients are not required to submit as part of regular reporting to Treasury.	Written Justification required and recipients must submit as part of regular reporting to Treasury.

TABLE 1 TO PARAGRAPH (b)—Continued

If a project has total expected capital expenditures of	and the use is enumerated in (b)(3), then	and the use is not enumerated in (b)(3), then
$10 million or more	Written Justification required and recipients must submit as part of regular reporting to Treasury.	

(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 that have eligible workers who perform essential work, 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:

(1) The eligible worker's total wages and remuneration, including the premium pay, is less than or equal to 150 percent of the greater of such eligible worker's residing State's or county's average annual wage for all occupations as defined by the Bureau of Labor Statistics' Occupational Employment and Wage Statistics;

(2) The eligible worker is not exempt from the Fair Labor Standards Act overtime provisions (29 U.S.C. 207); or

(3) The recipient has submitted to the Secretary a written justification that explains how providing premium pay to the eligible worker is responsive to the eligible worker performing essential work during the COVID–19 public health emergency (such as a description of the eligible workers' duties, health, or financial risks faced due to COVID–19, and why the recipient determined that the premium pay was responsive despite the worker's higher income).

(d) *Providing government services.* A recipient may use funds for the provision of government services up to an amount equal to the greater of:

(1) $10,000,000; or

(2) the amount of the reduction in the recipient's general revenue due to the COVID–19 public health emergency, which equals the sum of the reduction in revenue, calculated as of each date identified in paragraph (d)(2)(i) of this section and according to the formula in paragraph (d)(2)(ii) of this section:

(i) A recipient must make a one-time election to calculate the reduction in its general revenue using information as of either:

(A) December 31, 2020, December 31, 2021, December 31, 2022, and December 31, 2023; or

(B) The last day of each of the recipient's fiscal years ending in 2020, 2021, 2022, and 2023.

(ii) A reduction in a recipient's general revenue for each date identified in paragraph (d)(2)(i) equals:

$$Max\{[Base\ Year\ Revenue^{*}(1+Growth\ Adjustment)^{\wedge}(n_t/12)]-Actual\ General\ Revenue;0\}$$

Where:

(A) Base Year Revenue is the recipient's general revenue for the most recent full fiscal year prior to the COVID–19 public health emergency;

(B) Growth Adjustment is equal to the greater of 5.2 percent (or 0.052) and the recipient's average annual revenue growth over the three full fiscal years prior to the COVID–19 public health emergency;

(C) n equals the number of months elapsed from the end of the base year to the calculation date;

(D) Subscript t denotes the specific calculation date; and

(E) Actual General Revenue is a recipient's actual general revenue collected during the 12-month period ending on each calculation date identified in paragraph (d)(2)(i) of this section, except:

(*1*) For purposes of all calculation dates on or after April 1, 2022, in the case of any change made after January 6, 2022, to any law, regulation, or administrative interpretation that reduces any tax (by providing for a reduction in a rate, a rebate, a deduction, a credit, or otherwise) or delays the imposition of any tax or tax increase and that the recipient assesses has had the effect of decreasing the amount of tax revenue collected during the 12-month period ending on the calculation date relative to the amount of tax revenue that would have been collected in the absence of such change, the recipient must add to actual general revenue the amount of such decrease in tax revenue;

(*2*) For purposes of any calculation date on or after April 1, 2022, in the case of any change made after January 6, 2022, to any law, regulation, or administrative interpretation that increases any tax (by providing for an increase in a rate, the reduction of a rebate, a deduction, or a credit, or otherwise) or accelerates the imposition of any tax or tax increase and that the recipient assesses has had the effect of increasing the amount of tax revenue collected during the 12-month period ending on the calculation date relative to the amount of tax revenue that would have been collected in the absence of such change, the recipient must subtract from actual general revenue the amount of such increase in tax revenue; and

(*3*) If the recipient makes a one-time election to adjust general revenue to reflect tax changes made during the period beginning on January 27, 2020 and ending on January 6, 2022, for purposes of each calculation date identified in paragraph (d)(2)(i) of this section:

(*i*) In the case of any change made during such prior period to any law, regulation, or administrative interpretation that reduces any tax (by providing for a reduction in a rate, a rebate, a deduction, a credit, or otherwise) or delays the imposition of any tax or tax increase and that the recipient assesses has had the effect of decreasing the amount of tax revenue collected during the 12-month period ending on the calculation date relative to the amount of tax revenue that would have been collected in the absence of such change, the recipient must add to actual general revenue the amount of such decrease in tax revenue; and

(*ii*) In the case of any change made during such prior period to any law, regulation, or administrative interpretation that increases any tax (by providing for an increase in a rate, the reduction of a rebate, a deduction, or a credit, or otherwise) or accelerates the imposition of any tax or tax increase and that the recipient assesses has had the effect of increasing the amount of tax revenue collected during the 12-month period ending on the calculation date relative to the amount of tax revenue that would have been collected in the absence of such change, the recipient must subtract from actual general revenue the amount of such increase in tax revenue; and

(*4*) With respect to any calculation date during the period beginning on January 6, 2022, and ending on March 31, 2022, if the recipient makes the

election in paragraph (d)(3) of this section, the recipient must also make the adjustments referenced in paragraph (d)(3) of this section with respect to any such changes in law, regulation, or administrative interpretation during the period beginning on January 6, 2022, and ending on such calculation date.

(e) *Making necessary investments in water, sewer, and broadband infrastructure.* A recipient may use funds to make the following investments in water, sewer, and broadband infrastructure.

(1) *Water and sewer investments*—(i) *Clean Water State Revolving Fund projects.* Projects or activities of the type that meet the eligibility requirements of section 603(c) of the Federal Water Pollution Control Act (33 U.S.C. 1383(c));

(ii) *Additional stormwater projects.* Projects to manage, reduce, treat, or recapture stormwater or subsurface drainage water regardless of whether such projects would improve water quality if such projects would otherwise meet the eligibility requirements of section 603(c)(5) of the Federal Water Pollution Control Act (33 U.S.C. 1383(c)(5));

(iii) *Drinking Water State Revolving Fund projects.* Projects or activities of the type that meet the eligibility requirements of section 1452 of the Safe Drinking Water Act (42 U.S.C. 300j–12) as implemented by the regulations adopted by the Environmental Protection Agency (EPA) under 40 CFR 35.3520, provided that:

(A) The recipient is not required to comply with the limitation under 40 CFR 35.3520(c)(2) to acquisitions of land from willing sellers or the prohibition under 40 CFR 35.3520(e)(6) on uses of funds for certain Tribal projects; and

(B) In the case of lead service line replacement projects, the recipient must replace the full length of the service line and may not replace only a partial portion of the service line.

(iv) *Additional lead remediation and household water quality testing.* Projects or activities to address lead in drinking water or provide household water quality testing that are within the scope of the programs the EPA is authorized to establish under sections 1459A(b)(2), 1459B(b)(1), 1464(d)(2), and 1465 of the Safe Drinking Water Act (42 U.S.C. 300j–19a(b)(2), 300j–19b(b)(1), 300j–24(d)(2), and 300j–25), provided that:

(A) In the case of lead service line replacement projects, the recipient must replace the full length of the service line and may not replace only a partial portion of the service line; and

(B) In the case of projects within the scope of the program the EPA is authorized to establish under section 1459B(b)(1) of the Safe Drinking Water Act, the recipient may determine the income eligibility of homeowners served by lead service line replacement projects in its discretion.

(v) *Drinking water projects to support increased population.* Projects of the type that meet the eligibility requirements of 40 CFR 35.3520 other than the requirement of 40 CFR 35.3520(b)(1) to address present or prevent future violations of health-based drinking water standards, if the following conditions are met:

(A) The project is needed to support increased population, with need assessed as of the time the project is undertaken;

(B) The project is designed to support no more than a reasonable level of projected increased need, whether due to population growth or otherwise;

(C) The project is a cost-effective means for achieving the desired level of service; and

(D) The project is projected to continue to provide an adequate level of drinking water over its estimated useful life.

(vi) *Dams and reservoirs.* Rehabilitation of dams and reservoirs if the following conditions are met:

(A) The project meets the requirements of 40 CFR 35.3520 other than the following requirements:

(1) The prohibition on the rehabilitation of dams and reservoirs in paragraphs (e)(1) and (e)(3) of 40 CFR 35.3520; and

(2) The requirement in paragraph (b)(1) of 40 CFR 35.3520 that the project is needed to address present or prevent future violations of health-based drinking water standards, provided that if the dam or reservoir project does not meet this requirement, the project must be needed to support increased population, with need assessed as of the time the project is undertaken, and the project must be projected to continue to provide an adequate level of drinking water over its estimated useful life;

(B) The primary purpose of the dam or reservoir is for drinking water supply;

(C) The project is needed for the provision of drinking water supply, with need assessed as of the time the project is initiated;

(D) The project is designed to support no more than a reasonable level of projected increased need, whether due to population growth or otherwise; and

(E) The project is a cost-effective means for achieving the desired level of service.

(vii) *Private wells.* Rehabilitation of private wells, testing initiatives to identify contaminants in private wells, and treatment activities and remediation projects that address contamination in private wells, if the project meets the requirements of 40 CFR 35.3520 other than the limitation to certain eligible systems under paragraph (a) of 40 CFR 35.3520.

(2) *Broadband investments*—(i) *General.* Broadband infrastructure if the following conditions are met:

(A) The broadband infrastructure is designed to provide service to households and businesses with an identified need, as determined by the recipient, for such infrastructure;

(B) The broadband infrastructure is designed to, upon completion:

(1) Reliably meet or exceed symmetrical 100 Mbps download speed and upload speeds; or

(2) 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 reliably meeting or exceeding symmetrical 100 Mbps download speed and upload speeds:

(i) Reliably meet or exceed 100 Mbps download speed and between at least 20 Mbps and 100 Mbps upload speed; and

(ii) Be scalable to a minimum of 100 Mbps download speed and 100 Mbps upload speed; and

(C) The service provider for a completed broadband infrastructure investment project that provides service to households is required, for as long as the SLFRF-funded broadband infrastructure is in use, by the recipient to:

(1) Participate in the Federal Communications Commission's Affordable Connectivity Program (ACP) through the lifetime of the ACP; or *(2)* Otherwise provide access to a broad-based affordability program to low-income consumers in the proposed service area of the broadband infrastructure that provides benefits to households commensurate with those provided under the ACP through the lifetime of the ACP.

(ii) *Cybersecurity infrastructure investments.* Cybersecurity infrastructure investments that are designed to improve the reliability and resiliency of new and existing broadband infrastructure. Such investments may include the addition or modernization of network security hardware and software tools designed to strengthen cybersecurity for the end-users of these networks.

(f) *Meeting the non-Federal matching requirements for Bureau of Reclamation projects.* A recipient may use funds to

meet the non-Federal matching requirements of any authorized Bureau of Reclamation project.

(g) *Natural Disaster Emergency Relief.* Subject to paragraph (g)(3) of this section, a recipient may use funds to provide emergency relief from the physical impacts or negative economic impacts of a natural disaster, including the forms of emergency relief identified in paragraph (g)(2) of this section, if the use meets the criteria provided in paragraph (g)(1) of this section.

(1) *Identifying emergency relief from the physical or negative economic impacts of a natural disaster.* A recipient provides emergency relief from the physical impacts or negative economic impacts of a natural disaster when the recipient:

(i) Identifies either:

(A) a natural disaster that has occurred or is expected to occur imminently and that has been the subject of an emergency declaration or designation applicable to the recipient's geography and jurisdiction in the form of:

(1) an emergency declaration pursuant to the Stafford Act;

(2) an emergency declaration by the Governor of a state pursuant to state law;

(3) an emergency declaration made by a Tribal government; or

(4) a designation as a natural disaster by the chief executive (or equivalent) of the recipient, provided that the chief executive (or equivalent) documents that the event meets the definition of natural disaster; or

(B) a natural disaster that is threatened to occur in the future, provided that the recipient documents evidence of historical patterns or predictions of natural disasters that would reasonably demonstrate the likelihood of the future occurrence of a natural disaster in the recipient's jurisdiction; and

(ii) Provides emergency relief that responds to and is related and reasonably proportional to:

(A) the physical or negative economic impacts of the natural disaster identified in paragraph (g)(1)(i)(A) of this section, or

(B) the potential physical or negative economic impacts of the natural disaster identified in paragraph (g)(1)(i)(B) of this section.

(2) *Enumerated eligible uses.* A recipient may use funds to provide emergency relief from

(i) the physical or negative economic impacts of natural disasters identified under paragraph (g)(1)(i)(A) of this section by engaging in one of the following activities, provided that the emergency relief is related and reasonably proportional to the physical or negative economic impacts of the natural disaster identified:

(A) Temporary emergency housing, food assistance, and financial assistance for lost wages;

(B) Emergency protective measures, including assistance for emergency access, medical care and transport, emergency operations center related costs, and other activities traditionally undertaken as part of emergency response;

(C) Debris removal activities, including the clearance, removal, and disposal of vegetative debris, construction and demolition debris, sand, mud, silt, gravel, rocks, boulders, white goods, and vehicle and vessel wreckage;

(D) Restoration of public infrastructure damaged by a natural disaster, including roads, bridges, and utilities;

(E) Increased operational costs, including payroll costs and costs for government facilities and government services;

(F) Cash assistance for uninsured or underinsured expenses, and cash assistance serving low-income households; or

(G) Home repairs for uninhabitable primary residences; or

(ii) the potential physical or negative economic impacts of natural disasters identified under paragraph (g)(1)(i)(B) of this section by using funds for mitigation activities, provided that the emergency relief is related and reasonably proportional to the potential physical or negative economic impacts of the natural disaster identified, and provided further that if funds are used for capital expenditures under this paragraph, a recipient, other than a Tribal government, must prepare a written justification for activities under this paragraph (g)(2)(ii) with total capital expenditures of $1 million or greater. Such written justification must include the following elements:

(A) Describe the emergency relief provided by the mitigation activity and why it is needed to lessen or avert the potential impacts of the natural disaster that is threatened to occur in the future;

(B) Explain why the capital expenditure is appropriate to address the need for emergency relief; and

(C) Compare the proposed capital expenditure to at least two alternative capital expenditures and demonstrate why the proposed capital expenditure is superior.

(3) *Duplication of benefits.* (A) A recipient may not provide financial assistance under this paragraph (g) to a person, business concern, or other entity with respect to disaster losses for which such beneficiary will receive financial assistance under any other program or from insurance or any other source.

(B) A recipient may provide assistance with respect to disaster losses to a person, business concern, or other entity that is or may be entitled to receive assistance for those losses from another source, if such person, business concern, or other entity has not received the other benefits by the time of application for assistance and the person, business concern, or other entity agrees to repay any duplicative assistance to the recipient. A recipient providing assistance with respect to disaster losses shall coordinate with the relevant Regional Administrator of the Federal Emergency Management Agency and state disaster-assistance administrator. Recipients shall notify subrecipients and contractors that, when providing assistance with respect to disaster losses, those entities are responsible for ensuring that beneficiaries disclose any other assistance received for the same disaster losses prior to receiving assistance under this paragraph (g).

(C) Funds shall be used last in the delivery sequence unless the recipient, in consultation with the appropriate Regional Administrator of the Federal Emergency Management Agency or state disaster-assistance administrator, determines that another sequence is appropriate.

(h) *Certain infrastructure projects.* A recipient may use funds for Surface Transportation projects as set forth in paragraph (h)(1) of this section and for Title I projects as set forth in paragraph (h)(2) of this section, subject to the requirements set forth in paragraph (h)(3) of this section.

(1) *Surface Transportation projects.* A recipient may use funds for Surface Transportation projects in the manner set forth in paragraph (h)(1)(i) of this section, subject to the requirements and limitations set forth in paragraph (h)(1)(ii) of this section.

(i)(A) A recipient may use funds to expand the scope of, to cover additional costs associated with, or to otherwise supplement funding for a project receiving funding from the Department of Transportation at the time that the funds are obligated and expended for the project.

(B) A recipient may use funds for a Surface Transportation project that is not funded by the Department of Transportation at the time the funds are obligated and expended.

(C) A recipient may use funds to satisfy non-Federal share requirements

for a project eligible under the provisions identified in paragraphs (1), (18), (21), and (27) of the definition of "Surface Transportation project" in § 35.3 or to repay a loan provided under the Transportation Infrastructure Finance and Innovation Act program under 23 U.S.C. chapter 6.

(ii) The following limitations and requirements apply to funds used for Surface Transportation projects under paragraphs (h)(1)(i)(A) and (h)(1)(i)(B) of this section.

(A) Funds used for Surface Transportation projects eligible under the provisions set forth in paragraphs (20) through (24) of the definition of "Surface Transportation projects" in § 35.3 shall not be used for operating expenses of such a project.

(B) Except as otherwise determined by the Secretary or the head of the Federal agency to which the Secretary has delegated authority, the requirements of titles 23, 40, and 49 of the U.S. Code, and the associated implementing regulations, apply to Surface Transportation projects, including but not limited to the following:

(*1*) Project eligibility requirements;

(*2*) Project approval requirements, provided that such requirements shall not apply to Surface Transportation projects undertaken pursuant to paragraph (h)(1)(i)(B) of this section that meet the following criteria:

(*i*) The project qualifies as an "eligible project" under the program described in paragraph (17) of the definition of Surface Transportation project set forth in § 35.3;

(*ii*) The recipient does not use more than $10 million in funds for the project; and

(*iii*) The entire project scope, including for avoidance of doubt any portion of the project funded through other sources, is limited to the actions or activities listed under 23 CFR 771.116(c)(1) through(22), 23 CFR 771.117(c)(1) through(30), and 23 CFR 771.118(c)(1) through(16), provided that the actions or activities do not involve unusual circumstances, as described in 23 CFR 771.116(b), 23 CFR 771.117(b), and 23 CFR 771.118(b).

(*3*) Wage and employee protection requirements, including the requirements set forth at 23 U.S.C. 113 and 49 U.S.C. 5333(a) and (b);

(*4*) Domestic preference procurement requirements, including the requirements set forth at 23 U.S.C. 313, 49 U.S.C. 5323(j), 49 CFR part 661, and 23 CFR 635.410, provided that such requirements shall not apply to Surface Transportation projects undertaken pursuant to paragraph (h)(1)(i)(B) of this section that meet the criteria set forth in paragraph (h)(1)(ii)(B)(*2*)(*i*) through (*iii*) of this section;

(*5*) Project design, planning, construction, operation, maintenance, vehicle weight limit, and toll requirements, provided that the requirement to include Surface Transportation projects in a state transportation improvement program or transportation improvement program shall not apply to Surface Transportation projects undertaken pursuant to paragraph (h)(1)(i)(B) of this section except in circumstances when the project is regionally significant and requires action by an office of the Department of Transportation pursuant to 23 CFR 450.218.

(C) Except as otherwise determined by the Secretary or the head of the Federal agency to which the Secretary has delegated authority, the requirements of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), and the associated implementing regulations, apply to Surface Transportation projects.

(D) When a State uses funds for a Surface Transportation project eligible under title 23 of the U.S. Code or that otherwise would be subject to the requirements of title 23, the project must either:

(1) Demonstrate progress in achieving a state of good repair as required by the State's asset management plan under 23 U.S.C. 119(e), or

(2) Support the achievement of one or more performance targets of the State established under 23 U.S.C. 150.

(2) *Title I projects.* A recipient may use funds for Title I projects, subject to the following limitations and requirements:

(i) Except as otherwise determined by the Secretary or the head of the Federal agency to which the Secretary has delegated authority, the requirements of Title I of the Housing and Community Development Act of 1974 (42 U.S.C. 5301 *et seq.*), and the associated implementing regulations, apply to Title I projects, including:

(A) At least 70 percent of funds used for such projects, in the aggregate, must be used for projects that principally benefit low- and moderate-income persons, in accordance with the definitions and requirements set forth at 24 CFR 570.3, 24 CFR 570.200(a)(3), and 24 CFR 570.208(a) for recipients that are not Tribal governments, and at 24 CFR 1003.4 and 1003.208 for Tribal government recipients; provided, however, that Tribal governments may demonstrate that beneficiaries of Title I assistance are "low and moderate income beneficiaries," as defined at 24 CFR 1003.4, based on an attestation by the Tribal government that these beneficiaries are receiving or are eligible to receive services administered by the Tribal government on the basis of an individual's income.

(B) In the case of recipients that are not Tribal governments, funds used for projects must satisfy at least one of the national objectives as set forth in 24 CFR 570.208.

(C) Not more than 15 percent of funds used for such projects, in the aggregate, may be used for public services activities and projects eligible under 42 U.S.C. 5305(a)(8).

(D) Not more than 20 percent of funds used for such projects, in the aggregate, may be used for planning and administrative costs, as described at 24 CFR 570.200(g), 570.205, and 570.206 with respect to recipients that are not Tribal governments, and as described at 24 CFR 1003.205 and 1003.206 with respect to recipients that are Tribal governments.

(E) In the case of recipients that are not Tribal governments, funds used for such projects must satisfy the requirements set forth at 42 U.S.C. 5310 and 24 CFR 570.603.

(F) Prior to commencing a Title I project, a recipient must comply with the environmental protection measures set forth at 42 U.S.C. 5304(g) and the implementing regulations set forth at 24 CFR 570.604, 24 CFR 1003.605, and 24 CFR part 58, provided that the certification contemplated by 42 U.S.C. 5304(g) shall be submitted to the Secretary and not the Secretary of the Department of Housing and Urban Development.

(ii) To the extent a Title I project relates to broadband infrastructure, the requirements of section 60102 of the Infrastructure Investment and Jobs Act shall apply.

(3) *Requirements applicable to Surface Transportation projects and Title I projects.* (i) The total amount of funds that a recipient may use for costs incurred for projects set forth in paragraphs (h)(1) and (h)(2) of this section, taken together, shall not exceed the greater of $10,000,000 and 30 percent of the recipient's total award received pursuant to payment or transfer of funds made under section 602 or 603 of the Social Security Act.

(ii) Funds used for the projects set forth in paragraph (h) of this section must supplement, and not supplant, other Federal, State, territorial, Tribal, and local government funds (as applicable) that

(A) in the case of non-Federal funds, have been obligated for activities or projects that are eligible as part of any

Surface Transportation project or Title I project, as applicable, or

(B) in the case of Federal funds, a Federal agency has committed to a particular project pursuant to an award agreement or otherwise.

§ 35.7 Pensions.

A recipient (other than a Tribal government) 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) of this section.

§ 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, the Secretary 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.* The Secretary 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) *Initial notice.* If the Secretary calculates an amount subject to recoupment under paragraph (b) of this section, Treasury will provide the recipient an initial written notice of the amount subject to recoupment along with an explanation of such amounts.

(d) *Request for reconsideration.* Unless the Secretary extends or accelerates the time period, within 60 calendar days of receipt of an initial notice of recoupment provided under paragraph (c) of this section, a recipient may submit a written request to the Secretary 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 the Secretary 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 the Secretary extends or accelerates the time period, within 60 calendar days of receipt of the recipient's request for reconsideration provided pursuant to paragraph (d) of this section or the expiration of the period for requesting reconsideration provided under 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. A recipient must invoke and exhaust the procedures available under this subpart prior to seeking judicial review of a decision under § 35.10.

(f) *Repayment of funds.* Unless the Secretary extends or accelerates the time period, a recipient shall repay to the Secretary any amounts subject to recoupment in accordance with instructions provided by the Secretary:

(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.

(g) *Other remedial actions.* Prior to seeking recoupment or taking other appropriate action pursuant to paragraphs (c), (d), (e), or (f) of this section, the Secretary may notify the recipient of potential violations and provide the recipient an opportunity for informal consultation and remediation.

§ 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 at least May 10, 2022 and not more than 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 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 part 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 the Secretary pursuant to section 603(b)(2)(B) of the Social Security Act shall distribute the amount of the payment to nonentitlement units of local 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. For purposes of this section 35.12, a nonentitlement unit of local government's most recent budget shall mean the nonentitlement unit of local government's total annual budget, including both operating and capital expenditure budgets, in effect 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 section 35.12.

(c) *Units of general local government.* Each State or Territory that receives a payment from the Secretary 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 A.

Kayla Arslanian,

Executive Secretary.

[FR Doc. 2023–17446 Filed 9–19–23; 8:45 am]

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ATTACHMENT C

U.S. DEPARTMENT OF TREASURY
COMPLIANCE AND REPORTING GUIDANCE FOR CORONAVIRUS STATE AND LOCAL FISCAL RECOVERY FUNDS
DATED 11-30-2023

Compliance and Reporting Guidance

State and Local Fiscal Recovery Funds

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 2021 interim final rule ("2021 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 2021 IFR and its eligible use categories. On January 6, 2022, the U.S. Department of the Treasury ("Treasury") adopted the 2022 final rule implementing the SLFRF program. The 2022 final rule became effective on April 1, 2022. Prior to the 2022 final rule effective date, the 2021 IFR remained in effect; funds used consistently with the 2021 IFR while it was in effect were in compliance with the SLFRF program. However, recipients could choose to take advantage of the 2022 final rule's flexibilities and simplifications 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 2021 IFR and the 2022 final rule.

On December 29, 2022, the Consolidated Appropriations Act, 2023 was enacted, amending the SLFRF program to provide additional flexibility for recipients to use SLFRF funds for three new eligible use categories. The 2023 interim final rule ("2023 IFR") was published in the federal register on September 20, 2023. The 2023 IFR became effective upon publication.

To support recipients in complying with the 2022 final rule and the 2023 IFR, this reporting guidance reflects the 2022 final rule and the 2023 IFR 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 2022 final rule, the 2023 IFR, other program guidance including the 2022 Final Rule FAQs, 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 CRF Part 200), and 2021 SLFRF Compliance Supplement – Technical Update, 2022 SLFRF Compliance Supplement, and 2023 SLFRF Compliance Supplement. Please see the Assistance Listing in SAM.gov under assistance listing number (formerly known as the CFDA number) 21.027 for more information.

Please Note: This guidance document applies to the SLFRF program only and does not change or 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.

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Part 2: Reporting Requirements

This section provides information on the reporting requirements for the SLFRF program.

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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.

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 an 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 2021 IFR, 2022 final rule, and 2023 IFR, other applicable federal statutes and 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[1] 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 seven 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

[1] The SLFRF rule defines "COVID-19 public health emergency" as "the period beginning on January 27, 2020 and lasting until the termination of the national emergency concerning the COVID-19 outbreak declared pursuant to the National Emergencies Act." See 31 CFR 35.3. As discussed in Final Rule FAQ 4.11, following the termination of the National Emergency on April 10, 2023, recipients generally may continue to make investments using their SLFRF funds without changes, with the exception of projects in the premium pay eligible use category. Please refer to FAQ 4.11 for more information.

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;
4. To make necessary investments in water, sewer, or broadband infrastructure;
5. To provide emergency relief from natural disasters or the negative economic impacts of natural disasters;
6. For projects eligible under the 26 surface transportation programs specified in the 2023 CAA (Surface Transportation projects); or
7. For projects eligible under Title I of the Housing and Community Development Act of 1974 (Title I projects).

In addition, sections 602(c)(4) and 603(c)(5) of the Social Security Act, as amended by the Infrastructure Investment and Jobs Act, provide that SLFRF funds may be used for an authorized Bureau of Reclamation project for purposes of satisfying any non-Federal matching requirement required for the project.

Treasury adopted the 2021 IFR in May 2021 and the 2022 final rule on January 6, 2022 to implement the first four eligible use categories and other restrictions on the use of funds under the SLFRF program. The 2022 final rule took effect on April 1, 2022, and the 2021 IFR remained in effect until that time, although recipients could choose to take advantage of the 2022 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 2021 IFR and the 2022 final rule.

On December 29, 2022, the Consolidated Appropriations Act, 2023 was enacted, amending the SLFRF program to provide additional flexibility for recipients to use SLFRF funds for three new eligible use categories. The 2023 IFR was published in the federal register on September 20, 2023. The 2023 IFR became effective upon publication.

It is the recipient's responsibility to ensure all SLFRF award funds are used in compliance with the program's 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 2022 Final Rule and 2023 IFR

Treasury's 2022 final rule and 2023 IFR detail recipients' compliance responsibilities and provides additional information on eligible and restricted uses of SLFRF award funds and reporting requirements.

1. **Eligible and Restricted Uses of SLFRF Funds.** As described in the SLFRF statute and summarized above, there are seven 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 2022 final rule and 2023 IFR establish a framework for determining whether a specific project would be eligible under the SLFRF program, including some helpful definitions. For example, Treasury's 2022 final rule and 2023 IFR establish:

- 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;
- 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;
- A framework for determining how to provide emergency relief from a natural disaster;
- Three pathways for using SLFRF funds for Surface Transportation projects along with the associated statutory requirements; and
- A list of eligible Title I projects by reference to the activities that are eligible under the Community Development Block Program, along with the associated statutory requirements.

Treasury's 2022 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 2022 final rule for more information on these restrictions and to the 2023 IFR for how these restrictions apply to the eligible uses added by the Consolidated Appropriations Act, 2023.

Treasury's 2022 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 2022 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. Treasury's 2023 IFR outlines that under the Surface Transportation projects eligible use category, recipients may use SLFRF funds to satisfy non-federal cost share requirements for certain programs under Pathway Three. In addition, under the Title I projects eligible use category, recipients may use SLFRF funds to satisfy the non-federal share requirements of a federal financial assistance program in support of activities that would be eligible under the CDBG and ICDBG programs.

SLFRF funds beyond those that are available under the circumstances described above 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.

Treasury's 2023 IFR describes the additional statutory restrictions that apply to the Surface Transportation projects and Title I projects eligible use categories. First, the total amount of SLFRF funds that a recipient may use for Surface Transportation projects and Title I projects, taken together, cannot exceed the greater of $10 million and 30% of a recipient's SLFRF allocation. Second, recipients using SLFRF funds for Surface Transportation projects and Title I projects must supplement, and not supplant, other federal, state, territorial, Tribal, and local government funds (as applicable) otherwise available for such uses. For the Surface Transportation projects eligible use category, recipients using funds for projects eligible for Urbanized Formula Grants, Fixed Guideway Capital Investment Grants, Formula Grants for Rural Areas, State of Good Repair Grants, or Grants for Buses and Bus Facilities may not use SLFRF funds for operating expenses of these projects.

2. **Eligible Costs Timeframe.** For eligible use categories described in the 2022 final rule, 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 incurred for projects by the recipient State, territorial, local, or Tribal government prior to March 3, 2021 are not eligible, as provided for in Treasury's 2022 final rule.

   For eligible use categories described in the 2023 IFR, recipients may use SLFRF funds for the three new eligible uses for costs incurred beginning December 29, 2022. Consistent with the existing eligible uses, recipients must obligate SLFRF funds for the new eligible uses by December 31, 2024. Recipients must expend SLFRF funds obligated to provide emergency relief from natural disasters by December 31, 2026. Recipients must expend SLFRF funds obligated for Surface Transportation projects and Title I projects by September 30, 2026. Costs for projects described in the 2023 IFR that are incurred by the recipient State, territorial, local, or Tribal government prior to December 29, 2022 are not eligible under these three eligible use categories.

   Recipients may, in certain circumstances, use SLFRF award funds for the eligible use categories described in Treasury's 2022 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 during 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, "incurred" means the recipient has incurred an obligation, which has the same meaning given to "financial obligation" in 2 CFR 200.1. See 31 CFR 35.5(b).

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 2022 final rule, 2023 IFR, and Part 2 of this guidance provide more detail around SLFRF reporting requirements.

4. **Expenditure Categories**. Treasury's 2022 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 report on a broader set of eligible uses and associated Expenditure Categories ("EC"), which began 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 2021 IFR.

The 2023 IFR implements the amendments to the SLFRF program made by the Consolidated Appropriations Act, 2023, which provides additional flexibility for recipients to use SLFRF funds to respond to natural disasters, build critical infrastructure, and support community development. The additional ECs associated with the 2023 IFR began with the October 2023 Project and Expenditure Report. These ECs also may be found in Appendix 1.

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. Additional details about applicability of certain provisions of the Uniform Guidance may be found in:

- SLFRF 2022 final rule;

- SLFRF Assistance Listing;
- SLFRF 2022 Final Rule FAQs, including FAQ 4.9, 10.1, and Section 13; and
- SLFRF 2023 IFR.

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 2022 final rule, 2023 IFR, and the recipient's Award Terms and Conditions, to determine and record eligible uses of SLFRF funds. Per 2 CFR 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. Please note that as outlined in 2022 Final Rule FAQ 13.15, only a subset of the Uniform Guidance requirements at 2 CFR Part 200 Subpart E (Cost Principles) applies to recipients' use of funds in the revenue loss eligible use category.

   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.

   Treasury's 2023 IFR outlines that under the Surface Transportation projects eligible use category, recipients may use SLFRF funds to satisfy non-federal cost share requirements for certain programs under Pathway Three. In addition, under the Title I projects eligible use category, recipients may use SLFRF funds to satisfy the non-federal share requirements of a federal financial assistance program in support of activities that would be eligible under the CDBG and ICDBG programs.

   SLFRF funds beyond those that are available under the circumstances described above 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 2022 final rule for further details if they seek to utilize SLFRF funds as a match for these projects.

Treasury's 2022 final rule, 2023 IFR, 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.[3][4] Each category of cost should be treated consistently in like circumstances as direct or indirect, and 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 2022 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 and Unique Entity Identifier Requirements.** Under the SLFRF program, recipients are responsible for ensuring that award funds are used for eligible purposes. Accordingly, 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 develop and maintain procedures for obtaining information evidencing a given beneficiary's, subrecipient's, or contractor's eligibility, including ensuring subrecipients and contractors are in good standing in accordance with 2 CFR 200.214 and 2 CFR Part 200, Appendix II, paragraph (H).

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[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.

Further, recipients and subrecipients are required to obtain a valid Unique Entity Identifier (UEI), which is assigned by SAM.gov. Pursuant to the award term regarding 2 CFR Part 25, Appendix A, which is incorporated by reference in the SLFRF Financial Assistance Agreement, recipients are required to maintain current information in SAM.gov for the duration of the period of performance of the SLFRF award. A recipient may not make a subaward to a subrecipient unless that subrecipient has obtained and provided to the recipient a UEI. Subrecipients are not required to complete full SAM.gov registration to obtain a UEI. A UEI is not required with respect to beneficiaries and contractors. Implementing risk-based due diligence for eligibility determinations is a best practice to augment your organization's existing controls.

5. **Property Management.** Any purchase of real or personal property with SLFRF funds must be consistent with the Uniform Guidance at 2 CFR Part 200, Subpart D, unless stated otherwise by Treasury. For example, as outlined in 2022 Final Rule FAQ 13.15, only a subset of the Uniform Guidance requirements at 2 CFR Part 200 Subpart D (Post Federal Award Requirements) applies to recipients' use of funds in the revenue loss eligible use category. Furthermore, as outlined in 2022 Final Rule FAQ 13.16, Treasury has clarified the use and disposition requirements for real and personal property, supplies, and equipment purchased with SLFRF funds.

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 eligible uses under the 2022 final rule, all funds remain subject to statutory and regulatory 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. For eligible uses under the 2023 IFR, recipients may use SLFRF funds for costs incurred beginning December 29, 2022. Consistent with the existing eligible uses, recipients must obligate SLFRF funds for the new eligible uses by December 31, 2024. Recipients must expend SLFRF funds obligated to provide emergency relief from natural disasters by December 31, 2026. Recipients must expend SLFRF funds obligated for Surface Transportation projects and Title I projects by September 30, 2026. Any funds not expended 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, unless stated otherwise by Treasury. As outlined in 2022 Final Rule FAQ 13.15, only a subset of the Uniform Guidance requirements at 2 CFR Part 200 Subpart D (Post Federal Award Requirements) applies to recipients' use of funds in the revenue loss eligible use category. The procurement standards set forth in the Uniform Guidance at 2 CRF 200.317 through 2 CRF 200.327 are not included in 2022 Final Rule FAQ 13.15's list of applicable Subpart D requirements that apply to recipients' use of funds in the revenue loss eligible use category.

   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 certain circumstances. 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. In addition, the Uniform Guidance at 2 CFR 200.214, 2 CFR Part 180, and Treasury's implementing regulations at 31 CFR Part 19, prohibit recipients from entering into

contracts with suspended or debarred parties. The procurement standards outlined in the Uniform Guidance require an infrastructure for competitive bidding and contractor oversight, including maintaining written standards of conduct. 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 has clarified in its 2022 Final Rule FAQs that recipients may add program income to the Federal award. Any program income generated from SLFRF funds must be used for the purposes and under the conditions of the Federal award. Further, 2022 Final Rule FAQ 4.9 provides additional information about program income requirements applicable to certain eligible uses, and 2022 Final Rule FAQ 13.15 clarifies that only a subset of the Uniform Guidance requirements at 2 CFR 200 Subpart D (Post Federal Award Requirements) applies to recipients' use of funds in the revenue loss eligible use category. The list of applicable Subpart D requirements in 2022 Final Rule FAQ 13.15 does not include the program income requirements in 2 CFR 200.307.

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 located within counties that are not units of general local government. 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.

    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 are not subrecipients under the SLFRF program. They are SLFRF recipients that 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.

Please note that as outlined in 2022 Final Rule FAQ 13.14, recipients' use of funds in the revenue loss eligible use category does not give rise to subrecipient relationships. As a result, subaward reporting is not required for projects in the revenue loss eligible use category.

12. **Special Tests and Provisions.** From time-to-time, 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 2022 final rule, 2023 IFR, 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 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.[5]

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.[6] 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. For example, the SLFRF Compliance Supplement describes an alternative to the Single Audit for eligible recipients. Recipients should consult the Compliance Supplement for more information about the alternative compliance examination engagement. 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

[5] See flexibility provided in https://www.whitehouse.gov/wp-content/uploads/2021/03/M_21_20.pdf.
[6] 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.

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 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 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 non-tribal recipients submit data for post-award compliance reviews, including information such as a narrative describing their Title VI compliance status. As explained in Treasury FAQ 12.1, the award terms and conditions for Treasury's pandemic recovery programs, including the SLFRF program, 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 18.

- **Project and Expenditure Report:** Report on projects funded, expenditures, and contracts and subawards equal to or greater than $50,000, and other information. See Section B, page 19.

- **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 40.

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. *Note: NEUs were not required to submit an Interim Report*	By January 31, 2022, and then the last day of the month after the end of each quarter thereafter *Note: NEUs were not required to submit a Project and Expenditure Report on January 31, 2022. The first reporting date for NEUs was April 30, 2022.*	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			
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		By April 30, 2022, and then annually thereafter	
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 2021 IFR.

States, U.S. territories, metropolitan cities, counties, and Tribal governments were required to submit a one-time interim report with expenditures[7] 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 obligations[8] 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 6.1[9]): Key inputs into the revenue replacement formula in the 2021 IFR and estimated revenue loss due to the COVID-19 public health emergency calculated using the formula in the 2021 IFR 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

[7] 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).
[8] 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.
[9] See Appendix 3 for the full Expenditure Category (EC) list. Please note that Appendix 3 includes the expenditure categories under the 2021 IFR, 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 2021 IFR, 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 an 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 covered 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	April 30, 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 covered from March 3, 2021 to March 31, 2022 and was required to 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 is required in Project and Expenditure Reports for both quarterly and annual reporting:

Projects: Provide information on all SLFRF funded projects. Projects are defined as a grouping of closely related activities that together are intended to achieve a specific goal or are directed toward a common purpose. These activities can include new or existing eligible government services or investments funded in whole or in part by SLFRF funding. For each project, the recipient is 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 an understanding of the major activities that will occur, and must be between 50 and 250 words.

Project descriptions for the emergency relief from natural disasters eligible use category must describe the natural disaster the recipient is responding to, including the type of event, and how the emergency relief is related to and reasonably proportional to the natural disaster.

a. 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 is 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 also is 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 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 began 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:

a. What Impacted and/or Disproportionally Impacted population does this project primarily serve? Please select the population primarily served.
b. 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 populations[10] • Households that experienced unemployment • Households that experienced increased food or housing insecurity • Households that qualify for certain federal programs[11]	• Low-income households and populations[12] • Households and populations residing in Qualified Census Tracts • Households that qualify for certain federal programs[13] • Households receiving services provided by Tribal governments

[10] 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).

[11] 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.

[12] 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.

[13] 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

	Impacted	Disproportionately Impacted
	• 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 economic impact of the pandemic other than those listed above (please specify)	• Households residing in the U.S. territories or receiving services from these governments • For services to address educational disparities, Title I eligible schools[14] • 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 equal to or greater than $50,000. As noted in Treasury's Project & Expenditure User Guides, subaward reporting for funds spent under the revenue loss eligible use category has not been required in past reporting periods. Please note that as outlined in 2022 Final Rule FAQ

Supplemental Nutrition Program for Women, Infants, and Children ("WIC"), Section 8 Vouchers, Low-Income Home Energy Assistance Program ("LIHEAP"), and Pell Grants.

[14] 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.

13.14, Treasury is not collecting subaward data for projects categorized under the revenue loss eligible use category.

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.

In general, recipients will be asked to provide the following information for each Contract, Grant, Loan, Transfer, or Direct Payment equal to or greater than $50,000:

- Subrecipient identifying and demographic information (e.g., 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, and 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 for them. The recipient is responsible for the subrecipients' compliance with registering and maintaining an updated profile on SAM.gov.

In accordance with the SLFRF Financial Assistance agreement, recipients must include a subrecipient's Unique Entity Identifier (UEI) in the SLFRF Project and Expenditure report. Beginning with the October 2023 report, subrecipients reported without a UEI will require recipients to select a justification for the missing UEI for the reported subrecipient. The justifications are as follows:

- Subrecipient facing delay in obtaining UEI from the U.S. General Services Administration
- Recipient was delayed in collecting a UEI from its subrecipient due to recipient's internal control issue and recipient must describe the internal control issue and planned corrective action.

- Recipient was unable to contact subrecipient:
  - Services the subrecipient provided were completed after April 4, 2022 and recipient is continuing to work to collect its subrecipient's UEI
  - Services the subrecipient provided were completed prior to April 4, 2022

Recipients will also be required to report a timeline for obtaining and reporting the UEI for all reasons excluding services that were completed prior to April 4, 2022.

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 governments[15]

i. Ineligible Activities: Tax Offset Provision (States and territories only): Section 602(c)(2)(A) of the Social Security Act prohibits a State or territory from using SLFRF funds to directly or indirectly offset a reduction in the net tax revenue of the State or territory resulting from a change in law, regulation, or administrative interpretation during the covered period (the "Tax Offset Provision"). The 2022 Final Rule implements the Tax Offset Provision at 31 CFR § 35.8. Violations of the Tax Offset Provision may be subject to recoupment. The following information is required for Treasury to ensure SLFRF funding is not used for ineligible activities related to the Tax Offset Provision.

For each reporting year, in the quarterly reporting cycle occurring 90 days after the end of the recipient's fiscal year, States and territories will report certain items related to the Tax Offset Provision, as detailed below. For example, if a recipient's fiscal year ends June 30, 2022, reporting on the Tax Offset Provision for fiscal year 2022 will be due in October 2022. All States and territories reported on the Tax Offset Provision for fiscal year 2021 in July 2022.

As indicated in the 2022 final rule, Treasury is implementing a tiered approach to reporting on the Tax Offset Provision, which is described below. Although Treasury is implementing a tiered approach to reporting, recipients should maintain records to support their compliance with the Tax Offset Provision.

The terms "reporting year," "baseline," "covered change," "covered period," "net reduction in total spending," and "tax revenue" are defined in the 2022 Final Rule, 31 CFR § 35.3. For purposes of calculating a net reduction in total spending, total spending for the fiscal year ending 2019 should be reported on an inflation-adjusted basis, consistent with the 2022 Final Rule. Similarly, for purposes of calculating baseline tax revenue, tax revenue for the fiscal year 2019 should be reported on an inflation-adjusted basis, consistent with the 2022 Final Rule.

For purposes of reporting actual tax revenue for the requested fiscal year and baseline tax revenue for the fiscal year ending 2019,[16] (a) if available, recipients should report information using audited financials and (b) recipients may provide data on a cash, accrual, or modified accrual basis, but must be consistent in their approach across all reporting periods. Similarly, for purposes of calculating a net reduction in total spending, recipients should report data using audited financials where available.

Recipients will first answer a series of summary questions to determine the tiering of their tax offset reporting:

[15] 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.
[16] Tax revenue for fiscal year ending 2019 is relevant for calculating the recipient's baseline.

Summary Questions

- Do you have revenue-reducing covered change(s) to report for the requested fiscal year and for future fiscal years? Yes/No
  - If no, recipients have no further reporting requirements in the tax offset section. (Remaining summary questions will be greyed out).
  - If yes, recipients will complete part 1 and additional fields.
- Is the aggregate value of your revenue-reducing covered change(s) for the requested fiscal year less than the de minimis? Yes/No.
  - If yes, recipients will complete parts 1 and 2, and no further reporting is required in the tax offset section. (Remaining summary questions will be greyed out).
  - If no, recipients will complete parts 1, 2 and additional fields.
- Do you have a reduction in net tax revenue for the requested fiscal year, meaning that actual tax revenue for the requested fiscal year is less than baseline tax revenue? Yes/No.
  - If yes, recipients will complete parts 1, 2, and 3 and additional fields.
  - If no, recipients will complete parts 1, 2, and 3, and no further reporting is required in the tax offset section. (Remaining summary questions will be greyed out).
- Do you have revenue-increasing covered change(s) and/or covered spending cuts to report for the requested fiscal year? Yes/No
  - If yes, recipients will complete parts 1, 2, 3, and 4.
  - If no, recipients will complete the revenue reduction cap.

Reporting Part 1: Revenue-reducing Covered Changes

- Do you have revenue-reducing covered change(s) to report for the requested fiscal year and for future fiscal years? Yes/No
  - If yes, complete grid or upload spreadsheet with the name of each revenue-reducing covered change and the value of the revenue-reducing covered change for the requested fiscal year and for future fiscal years.
  - If no, a recipient has no revenue-reducing covered changes to report, no additional reporting is required.
- Enter in the aggregate value of all revenue-reducing covered change(s) for the requested fiscal year.[17]

Revenue-reducing Covered Changes: Guidance

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 revenue-reducing 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 revenue-reducing 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.

[17] The 2022 final rule defines covered change. "Covered change means a change in law, regulation, or administrative interpretation that reduces any tax (by providing for a reduction in a rate, a rebate, a deduction, a credit, or otherwise) or delays the imposition of any tax or tax increase. 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."

Reporting Part 2: Baseline Revenue and De Minimis Threshold

- Enter Baseline Revenue:
- Enter in the aggregate value of the revenue-reducing covered change(s) for the requested fiscal year as a percentage of baseline revenue:
- Is the aggregate value of the revenue-reducing covered change(s) for the requested fiscal year less than one percent of baseline revenue? Y/N
    - If yes, a recipient's aggregate value of the revenue-reducing covered changes in the reporting year is less than the *de minimis threshold*, and no additional reporting is required.

Baseline Revenue: Guidance
Baseline has the meaning defined in the 2022 Final Rule, 31 CFR 35.3.

Recipients must determine whether the aggregate value of the revenue-reducing covered changes in the reporting year is less than one percent of baseline revenue (the de minimis threshold).

Reporting Part 3: Actual Tax Revenue and Reduction in Net Tax Revenue

- Enter Actual Tax Revenue for the requested fiscal year:
- Enter Reduction in Net Tax Revenue: baseline revenue minus actual tax revenue
    - If the value of the reduction in net tax revenue is zero or negative (meaning that actual tax revenue is equal to or greater than baseline revenue), no additional reporting is required.

Actual Tax Revenue: Guidance
Actual tax revenue means the tax revenue received by the recipient government in the reporting year. Tax revenue has the meaning defined in the 2022 Final Rule, 31 CFR 35.3.

Reduction in Net Tax Revenue: Guidance
The reduction in net tax revenue is equal to baseline revenue minus actual tax revenue in each reporting year. If this value is zero or negative, there is no reduction in net tax revenue.

Reporting Part 4: Revenue-increasing Covered Changes and Covered Spending Cuts

- Do you have revenue-increasing covered change(s) and/or covered spending cuts to report for the requested fiscal year? Yes/No.
- If yes, complete grid or upload spreadsheet with the name of each revenue-increasing covered change and the value.
- Enter in the aggregate value of revenue-increasing covered change(s):

- Enter net reduction in total spending for the requested fiscal year:
- Complete grid or upload spreadsheet of specific spending cuts and the corresponding "reporting unit", including the name of the reporting unit, description of the spending cut, the amount of the reduction in spending in the reporting unit for the reporting year relative to its inflation-adjusted FY 2019 level, the amount of any Fiscal Recovery Funds spent in the reporting unit in the reporting year, and the amount by which the reduction in spending in the reporting unit in the reporting year exceeds the Fiscal Recovery Funds spent in the reporting unit in the reporting year, if at all.
- Enter the aggregate value of covered spending cuts.
- Enter the aggregate value of revenue-increasing covered changes + the aggregate value of covered spending cuts.
- Enter the total value of revenue-reducing covered changes minus the total of (aggregate value of revenue-increasing covered changes + aggregate value of covered spending cuts).

- Is the aggregate value of revenue-reducing covered changes minus the total of (aggregate value of revenue-increasing changes + aggregate value of covered spending cuts) negative or equal to zero? (Yes/No)
    - If yes, recipients have no further reporting requirements related to the Tax Offset Provision.
    - If no, recipients must move on to the calculation of the revenue reduction cap.

Revenue-increasing covered changes: Guidance
If a recipient has revenue-reducing covered changes, the aggregate value of which exceed the de minimis threshold, and its actual tax revenue does not exceed baseline tax revenue, a recipient must report the value of covered changes that have had or that the recipient predicts will have the effect of increasing tax revenue in a given reporting year (revenue-increasing covered changes), similar to the way it would in the ordinary course of its budgeting process. The value of these revenue-increasing covered changes may be reported based on estimated values produced by a budget model, incorporating reasonable assumptions, that aligns with the recipient's existing approach for measuring the effects of fiscal policies, and that measures relative to a current law baseline. The revenue-increasing 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 revenue-increasing 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, reporting should be produced by the agency of the recipient responsible for estimating the costs and effects of fiscal policy changes. Recipients should maintain records regarding revenue-increasing covered changes and estimates of such changes.

Net reduction in total spending, and tables of specific spending cuts: Guidance
Recipients may cut spending in certain areas to pay for revenue-reducing covered changes, up to the amount of the recipient's net reduction in total spending. To calculate the amount of spending cuts that are available to offset a reduction in tax revenue, the recipient must first consider whether there has been a reduction in total net spending, excluding Fiscal Recovery Funds (net reduction in total spending). As defined in the 2022 Final Rule, 35 CFR 35.3, net reduction in total spending is measured as the recipient government's total spending for a given reporting year excluding Fiscal Recovery 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 for that reporting year. If that calculation yields a positive value, there has been a net reduction in total spending; if it yields zero or a negative value, there has not been a net reduction in total spending. If there has been no net reduction in total spending, a recipient will have no spending cuts to offset a reduction in net tax revenue.

Next, a recipient must determine and aggregate the value of spending cuts in each "reporting unit." "Reporting units" are departments, agencies, or authorities of the recipient's government. For each reporting unit, the recipient must report (1) the amount of the reduction in spending in the reporting unit for the reporting year relative to its inflation-adjusted FY 2019 level, (2) the amount of any Fiscal Recovery Funds spent in the reporting unit in the reporting year, and (3) the amount by which the reduction in spending in the reporting year exceeds the Fiscal Recovery funds spent in the reporting unit in the reporting year. If a recipient has not spent amounts received from the Fiscal Recovery Funds in a reporting unit, the full amount of the reduction in spending counts as a covered spending cut and may be included in the aggregate value of spending cuts. If the recipient has spent amounts received from the Fiscal Recovery Funds, such amounts 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 reporting unit would be eligible to offset a reduction in net tax revenue. Only such amounts

above the amount of Fiscal Recovery Funds spent on the reporting unit should be included in the aggregate value of spending cuts.

To align with existing reporting and accounting, the 2022 Final Rule considers the department, agency, or authority from which spending has been cut and whether the recipient government has spent amounts received from the Fiscal Recovery Funds on that same department, agency, or authority. Some commenters on the 2021 interim final rule argued that the methodology for identifying offsetting spending cuts at the department, agency, or authority level was too restrictive, but as discussed in the 2022 final rule, Treasury maintained the approach of requiring this reporting at the department, agency, or authority level. Recipients are encouraged to define reporting units in a manner consistent with their existing budget process and should, to the extent possible, report using the same reporting unit in each reporting year. Spending cuts must be reported relative to FY 2019 spending levels, adjusted for inflation, and excluding Fiscal Recovery Funds from reporting year spending levels.

Recipients should maintain records regarding spending cuts.

Reporting Part 5: Revenue Reduction Cap
The "revenue reduction cap," together with Part 3, ensures that recipient governments can use organic revenue growth to offset the cost of revenue-reducing covered changes. If, based on the calculations completed so far, a recipient has not yet demonstrated how its revenue-reducing covered changes were offset by non-SLFRF sources, the reporting portal will auto-calculate the revenue reduction cap, which will be the lesser of the following two amounts:

- Reduction in Net Tax Revenue (baseline tax revenue minus actual tax revenue) [pre-populated from Part 3] and
- Aggregate Value of revenue-reducing covered changes minus (total of (aggregate value of revenue-increasing changes + aggregate value of covered spending cuts) [pre-populated from Part 4].

j. Required Programmatic Data (other than water, sewer, and broadband 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 began 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 proportional to a public health or negative economic impact of COVID-19.[18]

   Note: The 2022 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

[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 2022 final rule.

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 fields required starting 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 (*Collection began 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 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, provide a written justification (*Collection began in July 2022)*
- For projects with total expected capital expenditures of over $10 million, provide labor reporting as outlined for infrastructure projects on pages 37 and 38 (*Collection began July 2022*)

3. 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)

4. Small Business Economic Assistance (EC 1.8, 2.29-2.33) – *Collection began April 2022*
   - Number of small businesses served (by program if recipient establishes multiple separate small business assistance programs)

5. Assistance to Non-Profits (EC 1.9, 2.34)- *Collection began April 2022*
   - Number of Non-Profits served (by program if recipient establishes multiple separate non-profit assistance programs)

6. Aid to Travel, Tourism, and Hospitality or Other Impacted Industries (EC 1.10, 2.35-2.36) – *Collection began 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 2022 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)

7. 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]

[19] For more information on NCES identification numbers see https://nces.ed.gov/ccd/districtsearch/ (districts) and https://nces.ed.gov/ccd/schoolsearch/ (schools).

8. 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

9. Rehiring Public Sector Staff (EC 3.2) – *Collection began in January 2022*:
   - Number of FTEs rehired by governments under this authority

10. Premium Pay (both Public Sector EC 4.1 and Private Sector EC 4.2) – *Collection began in January 2022; additional field began in 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 2022 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 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 began April 2022)*

11. Revenue replacement (EC 6.1) – *Collection began in August 2021*:
    As outlined in the 2022 final rule, recipients have the option to make a one-time decision to calculate revenue loss according to the formula outlined in the 2022 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 was provided during the April 30, 2022 reporting deadline. Recipients may update their revenue loss determination, as appropriate, through the April 2025 reporting period. Upon update, any prior revenue loss election will be superseded. Recipients must use a consistent methodology across the period of performance (i.e., choose either the standard allowance or the full formula) and may not elect one approach for certain reporting years and the other approach for different reporting years.

    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. 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 that elect to use this standard allowance will make this election instead of calculating lost revenue using the formula.

For recipients calculating revenue loss according to the formula, the 2022 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 2022 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 provided in the user guide posted at www.treasury.gov/SLFRPReporting).

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*.

12. Emergency Relief from Natural Disasters (EC 8) – *Collection began October 2023*:
For EC 8.1-8.11
    - Identify the natural disaster declaration or designation
        - Emergency Declaration or Major Declaration pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act
            - If responding to a natural disaster that is the subject of an emergency declaration pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act:
                - Provide the declaration identification number;
                - Have SLFRF funds provided financial assistance to a person, business concern, or other entity with respect to disaster losses? If providing financial assistance to a person, business concern, or other entity with respect to disaster losses, recipients are responsible for ensuring compliance with the duplication of benefits requirements described in the interim final rule at 31 CFR 35.6(g)(3). Disaster losses are losses suffered as a result of a major disaster or emergency declared under the Stafford Act.
        - Emergency declaration by the Governor of a state pursuant to respective state law without a Stafford Act Declaration
        - Emergency declaration by a Tribal government without a Stafford Act Declaration
            Designation of an event of a natural disaster by the chief executive or equivalent of recipient government with the event meeting the definition of natural disaster that does not also have a Stafford Act Declaration

    For EC 8.6, 8.7, 8.12, 8.13
    - Does this project include a capital expenditure?
    - Total expected cost of capital expenditures funded with SLFRF in a project, including pre-development costs, if applicable
    - For projects with total expected capital expenditures of over $10 million, provide labor reporting as outlined for infrastructure projects on pages 37 and 38
    - For EC 8.12 (not EC 8.6, 8.7, 8.13): For recipients (except for Tribal governments) using SLFRF for mitigation activities with SLFRF-funded capital expenditures over $1 million, provide a written justification. Recipients that incorporate mitigation

activities into repairing public infrastructure or home repairs should report their projects in EC 8.12.

13. Surface Transportation (EC 9) – *Collection began October 2023 (Additional fields may be phased in through future reporting periods):*
    - EC 9.1-9.3: Supplement, Not Supplant Attestation: The SLFRF funds used for this project are supplementing not supplanting other federal, state, territorial, Tribal, and local government funds (as applicable) that are otherwise available for these projects.
    - EC 9.1: Surface Transportation Projects Receiving Funding from Department of Transportation (DOT)
        - Select the relevant program under which your DOT-funded project falls (check one box):
            - INFRA Grants
            - National Highway Performance Program (NHPP)
            - Bridge Investment Program (BIP)
            - Surface Transportation Block Grant Program (STBG)
            - Highway Safety Improvement Program (HSIP)
            - Congestion Mitigation and Air Quality Improvement Program (CMAQ)
            - Charging and Fueling Infrastructure Discretionary Grant Program (CFI Program)
            - Territorial and Puerto Rico Highway Program
            - National Highway Freight Program (NHFP)
            - Rural Surface Transportation Grant Program
            - Carbon Reduction Program (CRP)
            - Promoting Resilient Operations for Transformative, Efficient, and Cost-Saving Transportation (PROTECT)
            - Tribal Transportation Program (TTP)
            - Federal Lands Transportation Program (FLTP)
            - Federal Lands Access Program (FLAP)
            - Rebuilding American Infrastructure with Sustainability and Equity (RAISE) Grant Program
            - Transportation Infrastructure Finance and Innovation Act (TIFIA)
            - Urbanized Formula Grants
            - Fixed Guideway Capital Investment Grants
            - Formula Grants for Rural Areas
            - State of Good Repair Grants
            - Grants for Buses and Bus Facilities
            - National culvert removal, replacement, and restoration grant program (Culvert AOP Program)
            - Bridge Replacement, Rehabilitation, Preservation, Protection, and Construction Program (Bridge Formula Program or BFP)
            - Metropolitan transportation planning
            - Projects that further the completion of a designated route of the Appalachian Development Highway System (ADHS)
        - FAIN number(s) for associated DOT project
        - Was DOT consulted prior to using SLFRF funds for this project? Yes/No.
        - For States using funds for projects eligible under title 23 of the U.S. Code or otherwise subject to the requirements of title 23 of the U.S. Code, select whether the project will:

        - Demonstrate progress in achieving a state of good repair as required by the State's asset management plan under 23 U.S.C. 119(e); and (Yes/No)
        - Support the achievement of 1 or more performance targets of the State established under 23 U.S.C. 150. (Yes/No)
        - This project is not a project eligible under title 23 of the U.S. Code or otherwise subject to the requirements of title 23 of the U.S. Code.
    - Limitation on Operating Expenses Attestation (only for Urbanized Formula Grants, Fixed Guideway Capital Investment Grants, Formula Grants for Rural Areas, State of Good Repair Grants, or Grants for Buses and Bus Facilities): The SLFRF funds associated with this project are not being used for operating expenses.
- EC 9.2: Surface Transportation Projects Not Receiving Funding from DOT (Streamlined Framework)
    - Select the eligible project type from the 2023 RAISE Grant NOFO for which the recipient is using SLFRF funds.
        - Highway, bridge, or other road projects eligible under title 23 of the U.S. Code
        - Public transportation projects eligible under chapter 53 of title 49, U.S.C.
        - Passenger and freight rail transportation projects
        - Port infrastructure investments (including inland port infrastructure and land ports of entry)
        - The surface transportation components of an airport project eligible for assistance under part B of subtitle VII of title 49, U.S.C.
        - Intermodal projects
        - Projects to replace or rehabilitate a culvert or prevent stormwater runoff for the purpose of improving habitat for aquatic species while advancing the goals of the RAISE program
        - Projects investing in surface transportation facilities that are located on Tribal land and for which title or maintenance responsibility is vested in the Federal Government
        - Public road and non-motorized projects that are not otherwise eligible under title 23, United States Code
        - Transit-oriented development projects
        - Mobility on-demand projects that expand access and reduce transportation cost burden
        - Planning projects
    - For States using funds for projects eligible under title 23 of the U.S. Code or otherwise subject to the requirements of title 23 of the U.S. Code, select whether the project will:
        - Demonstrate progress in achieving a state of good repair as required by the State's asset management plan under 23 U.S.C. 119(e); and (Yes/No)
        - Support the achievement of 1 or more performance targets of the State established under 23 U.S.C. 150. (Yes/No)
        - This project is not a project eligible under title 23 of the U.S. Code or otherwise subject to the requirements of title 23 of the U.S. Code.
    - Environmental Impact Attestation: The entire project scope is limited to the set of actions or activities identified by DOT as meeting the criteria for categorical exclusion as listed under 23 CFR 771.116(c)(1)-(22), 771.117(c)(1)-(30), and

771.118(c)(1)-(16). These actions do not involve unusual circumstances, as described in 23 CFR 771.116(b), 771.117(b), and 771.118(b).
    - Requirements Attestation: The project satisfies the requirements of titles 23, 40, and 49 of the U.S. Code that apply to this project and the associated DOT implementing regulations.
    - Limitation on Operating Expenses Attestation (only for Urbanized Formula Grants, Fixed Guideway Capital Investment Grants, Formula Grants for Rural Areas, State of Good Repair Grants, or Grants for Buses and Bus Facilities): The SLFRF funds associated with this project are not being used for operating expenses.
- For EC 9.3: Non-federal share requirements for a Surface Transportation project or repaying a TIFIA loan
    - Select the DOT program for which you are using SLFRF funds to satisfy non-federal share requirements or to repay a TIFIA loan
        - INFRA Grants
        - Fixed Guideway Capital Investment Grants
        - Mega Grants
        - Projects eligible for credit assistance under the TIFIA program
        - Repayment of TIFIA loan
    - FAIN number(s) for associated DOT projects

14. Title I (EC 10) – *Collection began October 2023:*
    - Environmental Review Type: Indicate the type of environmental review required by the project
        - Exempt Activity (per 24 CFR 58.34(a))
        - Categorically Excluded and not subject to 24 CFR 58.5 (per 24 CFR 58.35(b)) with no extraordinary circumstances (per 24 CFR 58.35(c))
        - Other - *Treasury will provide additional guidance on project certification and approval requirements and instructions for how to provide associated environmental information in a future reporting period.*
    - Supplement, Not Supplant Attestation: The SLFRF funds used for this project are supplementing not supplanting other federal, state, territorial, Tribal, and local government funds (as applicable) otherwise available for such uses.
    - Requirements Attestation: The project satisfies the requirements of title I of the Housing and Community Development Act of 1974 that apply to this project and the associated HUD implementing regulations.
    - Does this Title I project relate to broadband infrastructure? (Yes/No).
    - For non-Tribal government recipients:
        - Designate which of the three National Objectives the project aligns to:
            - Benefit low- and moderate-income persons
            - Prevent of eliminate slums or blight
            - Meet other particularly urgent community development needs
        - Labor Standards Attestation: All labor standards requirements applicable under this eligible use category have been satisfied by the recipient.
        - For Tribal government recipients: Are you satisfying the definition of "low and moderate income" for the primary objective requirement based on project beneficiaries receiving or being eligible to receive needs-based services provided by the Tribe, instead of relying on Census data? Needs-based services are defined as services administered by the Tribal government on the basis of an individual's income.

- If yes: Attestation: The project beneficiaries are receiving or are eligible to receive needs-based services provided by the Tribal government.

k. Required Programmatic Data for Water, Sewer, and Broadband 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 water, sewer, and broadband 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 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

[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.

    - 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)*
   - Median Household Income of service area *(Collection began in April 2022)*
   - Lowest Quintile Income of the service area *(Collection began in April 2022)*

3. Broadband projects (EC 5.19-5.21) *Collection includes new fields that began in July 2022. Additional fields will be phased in through future reporting periods, as noted below.*

   Overall Project Information
   - 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.
   - Confirm that the service provider for the project has, or will upon completion of the project, either participated in the Federal Communications Commission (FCC)'s Affordable Connectivity Program (ACP) or otherwise provided access to a broad-based affordability program that provides benefits to households commensurate with those provided under the ACP to low-income consumers in the proposed service area of the broadband infrastructure *(applicable only to projects that provide service to households)*.

   Detailed Project Information
   - Project technology type(s) (Planned/Actual)
     - Fiber
     - Coaxial Cable
     - Terrestrial Fixed Wireless
     - Other (specify)
   - Total miles of fiber deployed (Planned/Actual)
   - Total number of funded locations served (Planned/Actual)
     - Total number of funded locations served, broken out by speeds:
       - Pre-SLFRF Investment:
         - Number receiving 25/3 Mbps or below
         - Number receiving between 25/3 Mbps and 100/20 Mbps
       - Post-SLFRF Investment (Planned/Actual):
         - Number receiving minimum 100/100 Mbps
         - Number receiving minimum 100/20 Mbps and scalable to minimum 100/100 Mbps
     - Total number of funded locations served, broken out by type (Planned/Actual):
       - Residential
         - Total Housing Units
       - Business
       - Community anchor institution

- Speed tiers offered, corresponding non-promotional prices, including associated fees, and data allowance for each speed tier of broadband service (*collection to be phased in a future reporting period)*

Location-by-Location Project Information
For each location served by a Project, the recipient must collect from the subrecipient or contractor and submit the following information to Treasury using a predetermined file format that will be provided by Treasury (*collection of certain fields will begin in October 2022, as specified below*):

- Latitude/longitude at the structure where service will be installed (*required starting October 2022)*Technology used to offer service at the location (*required starting October 2022)*
- Location type (*required starting October 2022)*
  - Residential
    - If Residential, Number of Housing Units
  - Business
  - Community anchor institution
- Speed tier at the location pre-SLFRF investment (*collection to be phased in)*
  - 25/3 Mbps or below
  - Between 25/3 Mbps and 100/20 Mbps
- Speed and latency at the location post-SLFRF investment (*collection to be phased in)*
  - Maximum download speed offered
  - Maximum download speed delivered
  - Maximum upload speed offered
  - Maximum upload speed delivered
  - Latency
- Standardized FCC Identifiers
  - Fabric ID # (Broadband Serviceable Fabric Locations)
  - FCC Issued Provider ID #

I. Additional Required Programmatic Data for States, U.S. territories, and metropolitan cities and counties with a population that exceeds 250,000 residents only: As noted in the Recovery Plan Performance Report section of this guidance, states, U.S. territories, and metropolitan cities and counties with a population over 250,000 are required to provide additional data in the Project and Expenditure report for projects in the following expenditure categories. Treasury recognizes that recipients are reporting a broad set of projects under the following expenditure categories. It may be the case that a recipient is reporting a project under an expenditure category that is an eligible use of SLFRF funds for that expenditure category, in accordance with the 2022 final rule, but is not designed to meet the associated performance indicators. In these instances, recipients may report a "0" in these data fields. As described in the Performance Report section of the Recovery Plan Performance Report section, recipients have discretion on the full suite of performance indicators for inclusion in their Recovery Plans, including the list of required data for each expenditure category, where relevant.

1. Use of Evidence (for relevant ECs noted in Appendix 1)—*Collection began April 2022*
   - The dollar amount of the total project spending that is allocated towards evidence-based interventions
   - Whether a program evaluation of the project is being conducted

2. Household Assistance (EC 2.2), Long-Term Housing Security (EC 2.15-2.16) and Housing Support (EC 2.17-2.18):
   - Number of households receiving eviction prevention services (including legal representation)

- Number of affordable housing units preserved or developed

3. Assistance to Unemployed or Underemployed Workers (EC 2.10) and Community Violence Interventions (EC 1.11):
   - 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

4. Addressing Educational Disparities (EC 2.24-2.26) and Addressing Impacts of Lost Instructional Time (EC 2.27):
   - Number of students participating in evidence-based tutoring programs[21]

5. Healthy Childhood Environments (EC 2.11-2.14):
   - Number of children served by childcare and early learning services (pre-school/pre-K/ages 3-5)
   - Number of families served by home visiting

m. NEU Documentation (NEUs only): Each NEU is also required to provide the following information once its 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 are 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

States, territories, and metropolitan cities and counties with a population that exceeds 250,000 residents (i.e., Tier 1 recipients) will also be required to publish and submit to Treasury a Recovery Plan performance report ("Recovery Plan"). Each Recovery Plan must be posted on an easily discoverable webpage on the public-facing website of the recipient by the same date the recipient submits the report to Treasury. Treasury recommends that Recovery Plans be accessible within three clicks or fewer from the homepage of the recipient's website. Within Treasury's reporting portal, recipients must upload a link to the publicly available Recovery Plan and provide required data.

The Recovery Plan provides the public and Treasury both retrospective and prospective information on the projects recipients are undertaking or planning to undertake 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 that 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 required by Treasury. Treasury provided a template (located at www.treasury.gov/SLFRP) but recipients may modify this template as appropriate for their jurisdiction, provided the modified template meets Treasury's requirements,

[21] 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.

outlined below. Through the Recovery Plan, recipients may link to public documents, including, but not limited to, legislation, dashboards, survey results, community engagement reports, and equity frameworks to support the Recovery Plan narrative. The Recovery Plan should include key performance indicators identified by the recipient and some mandatory indicators identified by Treasury, as noted below.

The initial Recovery Plan covered the period from the date of award to July 31, 2021 and was required to 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 are required to submit the report to Treasury after the end of the 12-month period by July 31. The Recovery Plan should include both retrospective information covering the time period of the Recovery Plan along with prospective information on future work to be undertaken with SLFRF funds or on the planning that has been undertaken during the covered period. **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 or 60 days after receiving funding
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	April 30, 2027

Recovery Plans submitted as part of reporting are used by Treasury, third party organizations, the public, and other stakeholders to obtain a comprehensive understanding of SLFRF's largest recipients' planned and actual usage of SLFRF funding, including the jurisdiction's policy goals, its strategy for achieving them, and specific projects or initiatives underway. Alignment of data reported in Project and Expenditure reports and Recovery Plans is expected by both Treasury and SLFRF's many stakeholders. Finally, Recovery Plans will be posted publicly by Treasury to provide transparency about how program funds are being used by recipient governments.

The Recovery Plan must include, at a minimum, the following information:

1. Executive Summary

In this section, recipients should provide a high-level overview of the jurisdiction's intended and actual uses of funding including, but not limited to: the jurisdiction's strategy, goals, and plan for using Fiscal Recovery Funds to respond to the pandemic and promote 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

In this section, recipients should describe in further detail the strategy and goals of their jurisdiction's SLFRF program, such as how their jurisdiction's approach would help support a strong and equitable recovery from the COVID-19 pandemic and economic downturn. Recipients should describe how their intended and actual uses of funds will achieve their goals. Given the broad eligible uses of funds established by the 2022 final rule and the 2023 IFR and the specific needs of different jurisdictions, recipients should also explain how the funds would support the communities, populations, or individuals in their jurisdiction. Recipients should describe how their use of funds supports their overall strategy and goals in the following areas:

a. Public Health (EC 1): As relevant, describe how funds are being used to respond to COVID-19, the broader health impacts of COVID-19, and the COVID-19 public health emergency, including community violence interventions and behavioral health.
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 services to households (such as affordable housing, job training, and childcare), small businesses, non-profits, and impacted industries.
c. Public Health-Negative Economic Impact: Public Sector Capacity (EC 3): As relevant, describe how funds are being used to support public sector workforce and capacity, including public sector payroll, rehiring of public sector workers, and building of public sector capacity.
d. Premium Pay (EC 4): As relevant, describe the approach, goals, and sectors or occupations served in any premium pay program. Describe how the approach prioritizes low-income workers and/or any particular group of eligible workers.
e. Water, sewer, and broadband infrastructure (EC 5): As relevant, describe the approach, goals, and types of projects being pursued. Where relevant, recipients should note how projects contribute to addressing climate change and/or how projects benefit disadvantaged communities in line with the Justice40 Initiative.[22]
f. Revenue Replacement (EC 6): Describe the loss in revenue, including if electing the standard allowance, due to the COVID-19 public health emergency, and how funds have been used to provide government services, including any funds used under revenue loss for non-federal cost-share or matching requirements of other federal programs.
g. Emergency Relief from Natural Disasters (EC 8): As relevant, describe how funds are being used to provide emergency relief from natural disasters that have occurred or are expected to occur imminently, or are threatened to occur in the future.
h. Surface Transportation (EC 9): As relevant, describe how funds are being used to support projects eligible under the 26 transportation programs specified in the Consolidated Appropriations Act, 2023.
i. Title I (EC 10): As relevant, describe how funds are being used for activities that are eligible under section 105(a) of the Housing and Community Development Act of 1974 (Title I projects), which are the activities eligible under the Community Development Block Grant (CDBG) and Indian Community Development Block Grant (ICDBG) programs.

If appropriate, recipients may also include information on their jurisdiction's use (or planned use) of other federal recovery funds, including other programs under the American Rescue Plan such as Emergency Rental Assistance, the Homeowner Assistance Fund, the Capital Projects Fund, the State Small Business Credit Initiative, and so forth, to provide broader context on the overall approach for pandemic recovery. Jurisdictions may also address use of SLFRF funds in coordination with, or in preparation for, funding available through the Infrastructure Investment and Jobs Act.

3. Promoting equitable outcomes

Treasury encourages uses of funds that advance strong, equitable growth, including economic and racial equity. 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. Recipients also are encouraged to review the definition and discussion of equity in Executive Order 14091, Further Advancing Racial Equity and Support for Underserved Communities Through the Federal Government, as issued on February 16, 2023.

[22] See Executive Order 14008, on Tackling the Climate Crisis at Home and Abroad; OMB, CEQ, & CPO, M-21-28,Interim Implementation Guidance for the Justice40 Initiative (July 20, 2021) https://www.whitehouse.gov/wp-content/uploads/2021/07/M-21-28.pdf; OMB, CEQ, & CPO, M-23-09, Addendum to the Interim Implementation Guidance for the Justice40 Initiative, M-21-28, on using the Climate and Economic Justice Screening Tool (CEJST) (Jan. 27, 2023), https://www.whitehouse.gov/wp-content/uploads/2023/01/M-23-09_Signed_CEQ_CPO.pdf

In this section, recipients should describe, as applicable, their efforts to promote equitable outcomes, including economic and racial equity, and their efforts to design, implement, and measure their SLFRF program and projects with equity in mind.

In describing their efforts to **design** their SLFRF program and projects with equity in mind, recipients may consider the following:

a. Goals: Are there particular historically underserved, marginalized, or adversely affected groups that recipients intend to serve within their jurisdiction?
b. Awareness: How equitable and practical is the ability for residents or businesses to become aware of the services funded by 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: How are intended outcomes focused on closing gaps and/or reaching universal levels of service? How is the considering disaggregating outcomes by race, ethnicity, and other equity dimensions where relevant for the policy objective?

In describing their efforts to **implement** their SLFRF program and projects with equity in mind, recipients may consider the following:

a. Goals and Targets: Please describe how planned or current uses of funds prioritize economic and racial equity as a goal, name specific targets intended to produce meaningful equity results at scale, and include initiatives to achieve those targets.
b. Project Implementation: In addition, please explain how the jurisdiction's overall equity strategy translates into focus areas for SLFRF projects and the specific services or programs offered by the jurisdiction in the following Expenditure Category, as indicated in the 2022 final rule.

> 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); services to provide long-term housing security and housing supports, address educational disparities, or provide child care and early learning services; and other strategies that provide impacted and disproportionately impacted communities with services to address the negative economic impacts of the pandemic

The first annual Recovery Plan, due in 2021, was required to describe initial efforts and intended outcomes to promote equity, as applicable. Beginning in 2022, each annual Recovery Plan 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, as applicable. Each jurisdiction should describe any constraints or challenges that impacted project success in terms of increasing equity. In particular, this section should describe the geographic and demographic distribution of funding, including whether it is targeted toward traditionally marginalized communities (recipients may reference the demographic data information in their Project and Expenditure Reports as relevant).

4. Community Engagement

In this section, recipients should describe how their jurisdiction's planned or current use of funds incorporates community engagement strategies including written feedback through surveys, project proposals, and related documents; oral feedback through community meetings, issue-specific listening sessions, stakeholder interviews, focus groups, and additional public engagement; as well as other forms of input, such as steering committees, taskforces, and digital campaigns that capture diverse feedback from the community. Recipients may describe completed or planned community

engagement strategies specifically focused on their SLFRF program and projects or community engagement strategies that included SLFRF among other government programs. Recipients should also describe how community engagement strategies support their equity goals, including engagement with communities that have historically faced significant barriers to services, such as people of color, people with low incomes, limited English proficient populations, and other traditionally underserved groups.

5. Labor Practices

In this section, recipients should describe workforce practices on any infrastructure projects or capital expenditures being pursued. 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**

In this section of the Recovery Plan, recipients should describe whether and how evidence-based interventions and/or program evaluation are incorporated into their SLFRF program. Recipients may include links to evidence standards, evidence dashboards, evaluation policies, and other public facing tools that are used to track and communicate the use of evidence and evaluation for Fiscal Recovery Funds. 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.[23]

In the Project Inventory section of the Recovery Plan (see Section 8 below), recipients should identify whether SLFRF funds are being used for evidence-based interventions[24] and/or if projects are being evaluated through rigorous program evaluations that are designed to build evidence. In the Project Inventory, recipients must briefly describe the goals of the project and the evidence base for the interventions funded by the project. As part of the Project Inventory section, recipients must also specifically identify the dollar amount of the total project spending that is allocated towards evidence-based interventions for each project in the Expenditure Categories noted with an asterisk in Appendix 1. Please note that to increase consistency, the Project and Expenditure report now also includes fields for recipients to identify the dollar amount of the total project spending that is allocated to evidence-based interventions and to indicate if a program evaluation of the project is being conducted.

Recipients are encouraged to reference 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.

Recipients are exempt from reporting on evidence-based interventions in cases where a program evaluation is being conducted. In such cases where a recipient is conducting a program evaluation, recipients 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 the completed evaluation if relevant).[25] Once the evaluation has been completed, recipients must post the evaluation publicly and link to the completed evaluation in

[23] For more information on learning agendas, please see OMB M-19-23

[24] As noted in Appendix 2, evidence-based refers to interventions with strong or moderate levels of evidence.

[25] For more information on the required standards for program evaluation, see OMB M-20-12.

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 might, for example, 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.

Appendix 2 contains additional information on evidence-based interventions for the purposes of the Recovery Plan.

7. Performance Report

In this section, recipients should describe how performance management is incorporated into their SLFRF program, including how they are tracking their overarching jurisdictional goals for these funds as well as measuring results for individual projects. 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. Recipients may include links to performance management dashboards, performance management policies, and other public facing tools that are used to track and communicate the performance of Fiscal Recovery Funds. In addition to outlining in this section their high-level approach to performance management, recipients must also include key performance indicators for each SLFRF project in the Project Inventory section (described below in #8).

Performance indicators should include both output and outcome measures. Output measures, such as the 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 models[26] to identify their output and outcome measures.

While the initial Recovery Plan focused heavily on early output goals, recipients should include the related outcome goal for each project and provide updated information on achieving these outcome goals in subsequent 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. As described in the 2022 final rule, 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 perform program evaluations.

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 should be included in the Project Inventory, but this data will also need to be entered directly into the Treasury reporting portal as part of the Project and Expenditure report, as Treasury has added these fields (for Tier 1 recipients only) to the Project and Expenditure report. Below is a list of required data for each Expenditure Category, where relevant.

a. Household Assistance (EC 2.2), Long-Term Housing Security (EC 2.15-2.16) and Housing Support (EC 2.17-2.18):

[26] 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.

- Number of households receiving eviction prevention services (including legal representation)
- Number of affordable housing units preserved or developed

b. Assistance to Unemployed or Underemployed Workers (EC 2.10) and Community Violence Interventions (EC 1.11):
   - 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. Addressing Educational Disparities (EC 2.24-2.26) and Addressing Impacts of Lost Instructional Time (EC 2.27):
   - Number of students participating in evidence-based tutoring programs[27]

d. Healthy Childhood Environments (EC 2.11-2.14):
   - Number of children served by childcare and early learning services (pre-school/pre-K/ages 3-5)
   - Number of families served by home visiting

The initial report should have included 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 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.

8. Project Inventory

In this section, recipients should list the name and provide a brief description of each SLFRF funded project. Projects are defined as a grouping of closely related activities that together are intended to achieve a specific goal or are directed toward a common purpose. These activities can include new or existing eligible government services or investments funded in whole or in part by SLFRF funding.

For each project, recipients should include the project name, funding amount, identification number (the same identification number created by the recipient that matches the identification number used in the quarterly Project and Expenditure Report), project Expenditure Category (see Appendix 1), and a description of the project that includes an overview of the main activities of the project, approximate timeline, primary delivery mechanisms and partners, and intended outcomes. Each jurisdiction should also 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 projects, where relevant, recipients should describe how the project contributes to addressing climate change and/or advances the Justice40 Initiative[28], which sets a target of providing 40 percent of the overall benefits of certain federal investments, including climate and clean energy investments to disadvantaged communities.

As noted above in section 6, the Project Inventory must also include information about the dollar amount of the total project spending that is allocated towards evidence-based interventions (or describe how projects are being evaluated as noted above). As described above in section 7, the Project Inventory must also contain information about the performance indicators for each project,

[27] 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.).

[28] See Executive Order 14008, On Tackling the Climate Crisis at Home and Abroad and the Interim Implementation Guidance for the Justice40 Initiative, OMB M-21-28.

including both those measures that recipients have defined for each project as well as the mandatory performance indicators defined by Treasury.

Recipients have flexibility in the presentation and format of their Project Inventory, provided it includes the minimum required information. Recipients have the option of downloading a spreadsheet of the information entered into their Project and Expenditure Report to assist them in creating the Project Inventory in their Recovery Plan. However, recipients must ensure that their Project Inventory contains the additional information required by this guidance, including but not limited to information about performance measures and evidence/evaluation for each project. In all cases, recipients must post publicly (and submit to Treasury) a single PDF file of their Recovery Plan, which includes the Project Inventory.

D. Distributions to NEUs

Each state and territory is required to provide regular updates on their NEU distributions as well as their distributions to units of general local government within counties that are not units of general local government. 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 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) of the Social Security Act, 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 2022 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 began reporting on a broader set of eligible uses and associated Expenditure Categories ("EC"), starting with the April 2022 Project and Expenditure Report than they did in their interim reports, initial Recovery Plans, and January 2022 Project and Expenditure Report. The table below includes the ECs from the 2022 final rule, as well as a reference to previous ECs aligned with the 2021 IFR and used for reporting before this date.

Treasury's 2023 IFR describes how recipients may use SLFRF funds to provide emergency relief from natural disasters, build surface transportation infrastructure, and support community development. This table was updated in September 2023 to reflect the new eligible uses described in the 2023 IFR.

The ECs 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 ECs 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[29]	Previous EC[30]
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

[29] Under the 2022 final rule to be used starting with April 2022 reports or the 2023 IFR to be used starting with the October 2023 reports

[30] Under the 2021 IFR to be used in Interim Report and January 2022 Project and Expenditure Report

Expenditure Category	EC[29]	Previous EC[30]
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
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

Expenditure Category	EC[29]	Previous EC[30]
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
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: Water, Sewer, and Broadband 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

Expenditure Category	EC[29]	Previous EC[30]
8: Emergency Relief from Natural Disasters		
Temporary Emergency Housing	8.1	-
Food Assistance	8.2	-
Financial Assistance for Lost Wages	8.3	-
Other Immediate Needs: Emergency Protective Measures	8.4	-
Other Immediate Needs: Debris Removal	8.5	-
Other Immediate Needs: Public Infrastructure Repair	8.6	-
Other Immediate Needs: Home Repairs for Uninhabitable Primary Residences	8.7	-
Other Immediate Needs: Cash Assistance for Uninsured or Underinsured Expenses	8.8	-
Other Immediate Needs: Cash Assistance for Low Income Households	8.9	-
Other Immediate Needs: Increased Operational and Payroll Costs	8.10	-
Other Emergency Relief: Natural Disaster that Has Occurred/Expected to Occur Imminently	8.11	-
Mitigation Activities	8.12	
Other Emergency Relief: Natural Disaster that is Threatened to Occur in the Future	8.13	-
9: Surface Transportation projects		
Surface Transportation Projects receiving funding from DOT	9.1	-
Surface Transportation Projects not receiving funding from DOT: Streamlined Framework	9.2	-
Non-federal share requirements for a Surface Transportation project or repaying a TIFIA loan	9.3	-
10: Title I projects		
Acquisition of real property	10.1	-
Acquisition, construction, reconstruction, or installation of public works, sites, or other public purposes	10.2	-
Code enforcement in deteriorated or deteriorating areas	10.3	-
Clearance, demolition, removal, reconstruction, and rehabilitation	10.4	-
Removal of barriers restricting mobility and accessibility of elderly and handicapped persons	10.5	-
Payments to housing owners for losses of rental income for holding units for relocation of displaced persons	10.6	-
Disposition or retention of real property	10.7	-
Provision of public services	10.8	-
Payment of non-federal match or cost-share requirements of a federal financial assistance program in support of activities that would be eligible under Title I	10.9	-
Payment of the cost of completing a project funded under title I of the Housing Act of 1949	10.10	
Relocation payments and assistance for displaced individuals, families, businesses, organizations, and farm operations	10.11	-
Community development plan or policy-planning-management capacity development	10.12	-
Payment of reasonable administrative costs related to establishing and administering federally approved enterprise zones, administering the HOME program, or planning and executing community development and housing activities.	10.13	-
Provision of assistance for activities carried out by public or private nonprofit entities	10.14	-

Expenditure Category	EC[29]	Previous EC[30]
Assistance to carry out a neighborhood revitalization or community economic development or energy conservation project, or for development of shared housing opportunities	10.15	-
Development of energy use strategies	10.16	-
Assistance to private, for-profit entities to carry out economic development projects	10.17	-
Rehabilitation or development of housing assisted under 42 U.S.C. 1437o	10.18	-
Technical assistance to public or nonprofit entities to increase their capacity to carry out neighborhood revitalization or economic development activities	10.19	-
Housing services	10.20	-
Assistance to institutions of higher education	10.21	-
Assistance to public and private organizations, agencies, and other entities to facilitate economic development	10.22	-
Activities necessary to make essential repairs and to pay operating expenses to maintain habitability of housing units acquired through tax foreclosure proceedings	10.23	-
Direct assistance to facilitate and expand homeownership	10.24	-
Construction or improvement of tornado-safe-shelters and assistance to nonprofit and for-profit entities for such construction or improvement	10.25	-
Lead-based paint hazard evaluation and reduction	10.26	-

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 2022 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 about 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 aligned with the 2021 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 2021 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 2022 final rule
4.0	June 10, 2022	• Updated Recovery Plan guidance to incorporate minor revisions • Updated language around certain data fields that were required for April 2022 reporting • Updated data fields for Ineligible Activities: Tax Offset Provision for the Project and Expenditure report • Updated Broadband data fields
4.1	June 17, 2022	• Updated clerical errors in Ineligible Activities: Tax Offset Provision
4.2	August 15, 2022	• Updated to clarify resources for Uniform Guidance applicability and add a reference to an alternative to the Single Audit available for eligible recipients
5.0	September 20, 2022	• Updated to note phase in of broadband location by location data fields
5.1	June 1, 2023	• Updated to include Fabric ID and Provider ID fields for broadband location by location data collection.

Version	Date Published	Summary of changes
5.2	September 27, 2023	• Updated to reflect changes from the 2023 Interim Final Rule • Updated reporting related to subrecipient Unique Entity Identifier (UEI)
5.3	November 30, 2023	• Additional guidance associated with additional programmatic data (performance indicators) required from Tier 1 recipients
5.4	December 14, 2023	• Update related to Unique Entity Identifier (UEI) requirements

ATTACHMENT D

SCOPE OF WORK

The Board of Commissioners is directing to provide the Recipient a total sum not to exceed $500,000 of ARPA Funds which may be used by the Recipient to cover preliminary surveys, design engineering and other development, site preparation and construction costs associated with the infrastructure needed to support the Recipient's affordable housing development to be located on Sequim Avenue in Sequim, Washington. As such funding is needed to address immediate cash flow constraints that are hindering the projects progress, the County agrees to fully distribute such funds to the Recipient upon execution of this Agreement, conditioned that such funds are utilized in support of the completion of this affordable housing project.

Expenses under this grant must meet the eligibility criteria outlined below:

1. **Eligible Uses of Funds**

   These costs may include:

   Design Development Costs

   - Surveys, environmental reports, feasibility studies, architectural design and planning, and other development costs associated with the infrastructure required for the affordable housing development but EXCLUDING permitting, General Facility Charges (GFC), and impact fees.

   Site Preparation and Infrastructure Construction Costs

   - Costs associated with the landsite preparation, grading and construction costs of roads, sewer, water, stormwater, lighting, sidewalks, and other infrastructure needed for the affordable housing development at the Phase 1 location.

   Eligible expenses must have been incurred no earlier than July 1, 2022, in support of this project.

2. **Program Funding and Award Amount**

   The County shall make $500,000 of ARPA funds available under the IGA that will be paid to the Recipient upon execution of the agreement.

   All funds are to be expended no later than September 30, 2026.

3. **Reporting**

   The Recipient will provide Quarterly A-19 equivalent report, copies of supporting invoices, and signed certification detailing survey, design development, site preparation, and

construction costs for the infrastructure improvements needed for the affordable housing project at the Phase 1 location funded by the ARPA funds received by the Recipient until such funds are fully depleted.

Within 30 days of funds being fully depleted, the Recipient shall provide an executive summary narrative describing how the funds granted under this Agreement were utilized in support of affordable housing projects for low-income households in Clallam County.

U.S. DEPARTMENT OF THE TREASURY

AFFORDABLE HOUSING HOW-TO GUIDE:

How to Use State and Local Fiscal Recovery Funds for Affordable Housing Production and Preservation

In partnership with the U.S. Department of Housing and Urban Development

JULY 2022

The Coronavirus State and Local Fiscal Recovery Funds (SLFRF) program, a part of the American Rescue Plan, delivers $350 billion to state, local, and Tribal governments across the country to support their response to and recovery from the COVID-19 pandemic. Recipient governments have a once in a generation opportunity to invest these SLFRF dollars to boost the supply of affordable housing. Under the program's final rule, "Development, repair, and operation of affordable housing and services or programs to increase long-term housing security" is an enumerated eligible use to respond to the negative economic impacts of the pandemic on households and communities.

To assist recipients in implementing these funds for affordable housing, the Department of the Treasury and the Department of Housing and Urban Development have prepared this guide, which provides a summary of updated guidance related to SLFRF recipients' ability to use SLFRF funds to invest in affordable housing. The guidance, which can be found in Final Rule FAQs 2.14 and 4.9, clarifies and expands on the framework in the SLFRF final rule. This "how-to" guide provides examples of how recipients can combine and "layer" SLFRF with other sources of funding to maximize resources and meet housing needs.

SLFRF Affordable Housing Updates at a Glance:

- **Expanded Presumptive Eligibility.** SLFRF permits funds to be used, among other uses, to combat the public health and negative economic impacts (PH-NEI) of the pandemic. Treasury has updated its guidance to clarify two presumptively eligible ways to use SLFRF to fund affordable housing investments under the final rule.[1]

    - **Option 1:** SLFRF funds used for affordable housing projects under the PH-NEI eligible use category are presumptively eligible if the project meets certain core requirements of the following expanded list of federal housing programs:
        - National Housing Trust Fund (HTF)
        - HOME Investment Partnerships Program (HOME)
        - Low-Income Housing Credit (LIHTC)
        - Public Housing Capital Fund
        - Section 202 Supportive Housing for the Elderly Program
        - Section 811 Supportive Housing for Persons with Disabilities Program
        - Project-Based Rental Assistance
        - Multifamily Preservation & Revitalization Program
        - Affordable housing projects provided by a Tribal government if they would be eligible for funding under the Indian Housing Block Grant program, the Indian Community Development Block Grant program, or the Bureau of Indian Affairs Housing Improvement Program

The program requirements of these federal housing programs that must be met for presumptive eligibility have been clarified to include four core requirements:

1. Resident income restrictions;
2. The affordability period and related covenant requirements for assisted units;
3. Tenant protections; and
4. Housing quality standards.

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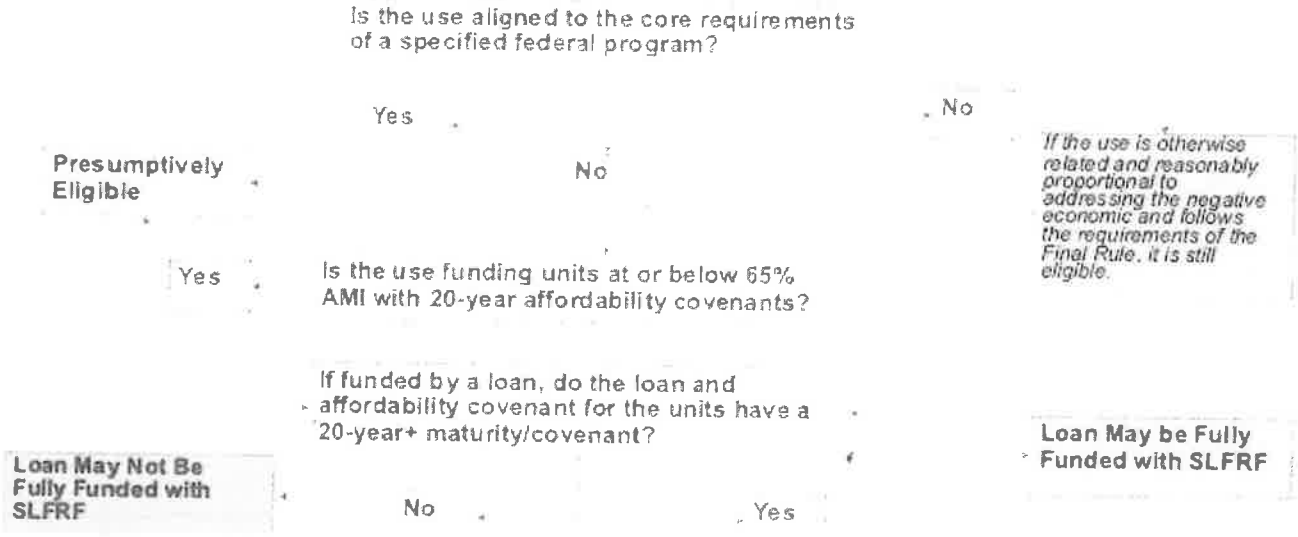
1. Refer to Final Rule FAQs 2.14 and 4.9 for additional information about presumptively eligible affordable housing investments and other program requirements.

- **Option 2:** SLFRF funds used for affordable rental housing under the PH-NEI eligible use category are presumptively eligible uses if the units funded serve households at or below 65% of AMI for a period of 20 years or greater.
- A broader range of affordable housing investments may also be eligible uses of SLFRF funds under the final rule if they are related and are reasonably proportional to addressing the negative economic impacts of the pandemic and otherwise meet the final rule's requirements. Depending on the needs of the local rental market, it may be reasonably proportional to address the negative economic impacts of the pandemic by funding units (e.g., up to 80% AMI) that do not fall into the presumptively eligible categories listed above.

- Loan Flexibilities. SLFRF can now be used to fund the full principal amount of certain loans that finance long-term affordable housing investments. Among other requirements, the loans must have maturity and affordability covenants of 20 years or longer, including but not limited to loans that fund low-income housing tax credit (LIHTC) projects.[2]

Eligibility of Development, Repair, and Operation of Affordable Housing Under the Final Rule



Additional Uses

- Recipients may consider offering down payment assistance. Examples of this assistance include:
  - contributions to a homeowner's equity at origination; or
  - establishing a post-closing mortgage reserve account on behalf of the borrower that may be utilized to make a missed or partial mortgage payment at any point during the life of the loan (e.g., if the borrower faces financial stress).
- Homeownership assistance that would be eligible under the Community Development Block Grant (24 CFR 507.201(n)) is also an eligible use of SLFRF funds.

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2 Refer to Final Rule FAQ 4.9 for additional information and requirements for using SLFRF to fund affordable housing loans.

Flexibilities and Requirements for Long-Term Loans for Affordable Housing:

Treasury has concluded that the features of certain long-term loans significantly mitigate concerns about funds being deployed for purposes of recycling funds, potentially for ineligible uses, following the SLFRF program's expenditure deadline. Treasury has determined that SLFRF funds may be used to finance certain loans that support affordable housing investments. Specifically, under the PH-NEI eligible use category, recipients may use SLFRF funds to make loans to finance affordable housing projects, funding the full principal amount of the loan, if the loan and project meet the following requirements:

1. The loan has a term of not less than 20 years;
2. The affordable housing project being financed has an affordability period of not less than 20 years after the project or assisted units are available for occupancy after having received the SLFRF investment; and
3. To protect affordability, the project owners of any properties receiving SLFRF loans which also receive LIHTC financing must agree to waive their right to request a qualified contract as defined in Section 42(h)(6)(F) of the Internal Revenue Code and repay any loaned funds if the property becomes noncompliant.

Loans that fund investments in affordable housing projects under the PH-NEI eligible use category which meet the above criteria will be considered to be expended at the point of disbursement to the borrower, and repayments on such loans are not subject to program income rules. Loan modifications will be permitted if the modifications do not result in repayment of all or substantially all funds to the lender prior to the end of the affordability period. To reduce administrative complexity, the start date of the 20-year affordability covenant may conform to the start date of other covenants on the same project or units that are required by another source of federal or state funding associated with the project or units.

Layering SLFRF with Other Funding Opportunities

SLFRF may be combined with a wide range of other federal, state, local, and private resources to meet housing needs. The rest of this guide provides an overview of possible combinations and uses of resources. Recipients using SLFRF in conjunction with another federal program must comply with all related statutory and regulatory requirements and policies of both programs, including the capital expenditure requirements and the requirement that if a project is only partially funded with SLFRF, the portion of the project funded must be an eligible use under the SLFRF program.[3]

1. **Flexible funding for new construction and substantial rehabilitation of affordable housing**

SLFRF may help fill gaps and expedite the construction or rehabilitation of thousands of affordable housing projects around the nation that face funding gaps, in many cases due to the impacts of COVID-19 and the resulting economic challenges on materials and labor costs. Recipients also could use these funds to support "shovel ready" projects that have received other funding approvals from federal, state, local government, or private sources. Examples include:

3 For more information about capital expenditure requirements, refer to the final rule and pages 30-31 of the Overview of the Final Rule. For more information about blending and braiding SLFRF funds, refer to Final Rule FAQ 4.8.

- **LIHTC projects:** SLFRF may fill funding gaps to projects that received an allocation of 9 or 4 percent LIHTC, for new construction or preservation of affordable rental housing.
- **Federal Housing Administration (FHA) multifamily mortgage insurance:** HUD's Office of Multifamily Housing insures new construction and substantial rehabilitation loans for the construction or substantial rehabilitation of rental or cooperative housing under section 221(d)(4) of the National Housing Act. These loans are often not sufficient to cover the entire cost of these transactions, and SLFRF could provide necessary additional financing to make the projects financially viable. The 221(d)(4) program includes key goals and requirements related to federal wage rates and environmental reviews.
- **HOME and HTF:** The HOME program, through which funds are provided to state and local governments designated as Participating Jurisdictions (PJs), and HTF, which provides formula funds to states, may be used for acquisition, rehabilitation, and new construction of affordable homeownership or rental housing. Recipients may align SLFRF with these HUD programs to meet affordable housing production and repair goals.
- **HOME-ARP:** The American Rescue Plan provided funding to PJs to assist qualifying populations. SLFRF may be layered with HOME-ARP to acquire, rehabilitate, or newly construct rental housing for eligible populations.
- **Project-Based Vouchers (PBVs):** Recipients may partner with their local Public Housing Authorities (PHAs), which may be able to award PBVs to build or rehabilitate units pursuant to section 8(o)(13) of the U.S. Housing Act of 1937.
- **Recapitalization of Public Housing through HUD's Rental Assistance Demonstration (RAD):** Many PHAs are undertaking substantial rehabilitation of public housing or repositioning public housing and adding new homes under RAD. SLFRF may fill gaps in these RAD transactions or may be used as a flexible source to support Faircloth-to-RAD housing transactions, which allow PHAs to add new affordable housing.
- **Community Development Block Grants (CDBG) and Section 108 Loan Guarantee Program:** SLFRF may be combined with CDBG funding that states, metropolitan cities, and urban counties receive annually to support rehabilitation, conversion, or reconstruction projects. Recipients may align SLFRF with CDBG or Section 108 Loan Guarantee Program financing to make eligible affordable housing investments.

2. **Rehabilitation and Adaptive Reuse**

Recipients may use SLFRF to acquire properties that will be transitioned into affordable housing for households that experienced the negative economic impacts of the pandemic. This could include acquisition of market rate rental properties, motels, or commercial properties that will be converted to affordable housing, or acquisition and preservation of publicly supported affordable housing. SLFRF may finance retrofits and weatherization of properties to improve energy efficiency, potentially by leveraging new federal funding such as the Department of Energy's Weatherization Assistance Program, or infrastructure resources.

Opportunities for layering with **FHA Multifamily mortgage insurance include:**

- **HUD's Mortgage Insurance for Purchase or Refinancing of Existing Multifamily Rental Housing under Section 223(f) of the National Housing Act:** FHA insures loans that offer fixed-rate, non-recourse financing for up to 35 years and allow for a modest number of repairs and energy efficiency retrofits as part of the transaction. A jurisdiction could layer SLFRF with a Section 223(f) loan to finance property acquisition or refinance.
- **FHA Risk Share:** In the Risk Share model, HUD delegates authority to HFAs to underwrite multifamily loans in exchange for taking on a portion of the risk in the transaction. Recipients may layer SLFRF resources with a Risk Share loan to fund the acquisition or refinancing of affordable properties. Currently 37 HFAs are approved to use Risk-Share and 22 of those have active programs with the Federal Financing Bank-Risk Sharing Initiative to maximize these purchase/refinance opportunities.

SLFRF also may be used to convert vacant or abandoned properties to affordable housing in disproportionately impacted communities. For example, SLFRF may be:

- layered with Section 108 Loan Guarantee Program funds for the eligible housing portion of a mixed use development;
- combined with HOME or HTF to provide deeply affordable units within mixed income developments;
- utilized to convert office buildings to condominiums for homeownership;
- employed to finance the conversion of industrial or commercial properties to housing; or
- used to acquire vacant lots for affordable housing development.

Predevelopment

Recipients may use SLFRF to help fund pre-project development activities, which could include site work and land acquisition, that precede housing development or rehabilitation of affordable housing.

- **Land acquisition:** Recipients may use SLFRF to acquire land for future development or within existing land acquisition programs for purposes of affordable housing investments, including those funded with CDBG or Section 108 Loan Guarantee Program funds.
- **Predevelopment and site work:** SLFRF may be used for predevelopment activity and site work to lay the ground for affordable housing development. Recipients planning to layer SLFRF with HOME for new construction should review HUD environmental review and planning requirements.

Please note that this Affordable Housing Guide is provided for informational purposes only and is intended to provide examples of ways that recipients can consider using SLFRF to invest in the development, repair, and operation of affordable housing. The examples provided in this document are derived from the eligible uses of funds discussed in the SLFRF final rule and associated guidance, including the Final Rule FAQs. Recipients should refer to Treasury's final rule and guidance for more information about SLFRF eligible uses and other program requirements, including Final Rule FAQ 4.8, which provides more information about requirements for blending and braiding SLFRF funds. SLFRF funds are also subject to the terms and conditions of the agreement entered into by Treasury and the respective jurisdiction, which incorporate the provisions of the final rule and the guidance that implements this program.

For More Information:

Resources from Treasury for State and Local Fiscal Recovery Funds

Please visit the State and Local Recovery Funds website, final rule, final rule overview, final rule FAQs, and Compliance and Reporting Guidance. Questions should be sent to slfrf@treasury.gov.

Resources from the Department of Housing and Urban Development

Low-Income Housing Tax Credit
Mortgage Insurance for Purchase or Refinancing of Existing Multifamily Rental Housing
Housing Finance Agency Risk Sharing
HOME Investment Partnerships Program
Housing Trust Fund
Project Based Vouchers
Recapitalization of Public Housing through HUD's Rental Assistance Demonstration (RAD)
Community Development Block Grants
Section 108 Loan Guarantee Program
HOME-ARP

Jamestown EXCAVATING

ESTIMATE ONLY
FOR INTERNAL USE ONLY

Customer:	Habitat for Humanity	Contact Name:	Colleen Robinson
Address:	Sequim Ave & Brownfield Rd	Date:	11/7/2023
City/State/Zip:	Sequim, WA 98382	Architect:	
Phone:	360.775.3742	Plan Date:	October 2023 (CV-01, SP-01, CG-01, UT-01)
Email:	colleen@habitatclallam.org	Bid Type:	Budget
Fax:		Property Status:	Residential

Project Budget Numbers:

CLASS	EQUIP	DESCRIPTION	QTY	UNIT	PRICE EA	TOTAL PRICE
		MOB/DEMOB	1	LS	$50,000.00	$50,000.00
		Survey - Jamestown Survey	1	LS	$26,750.00	$26,750.00
		Asphalt - Lakeside	1	LS	$180,950.00	$180,950.00 *
		Jamestown Excavating				
		Erosion Control (silt fence, inlet protection, etc.)	1	LS	$30,200.00	$30,200.00
		Clear and Grub (stripping site 3")	1	LS	$50,950.00	$50,950.00
		Construction Entrances (2)	1	LS	$15,540.00	$15,540.00
		Site Dirt Work	1	LS	$42,130.00	$42,130.00
		Retaining Wall Footings, Footing Drains, and Backfill)	1	LS	$87,309.00	$87,309.00
		Bio Retenion/ Storm Detention Ponds	1	LS	$90,710.00	$90,710.00
		Sewer (Main, Structures, Laterals)	1	LS	$419,078.00	$419,078.00
		Storm (Main, Structures, French Drain, Roof Drains, etc.)	1	LS	$830,047.00	$830,047.00
		Water (Main, Services, Fire Line, Hydrants, Hot Taps, etc.)	1	LS	$572,596.00	$572,596.00
		Electrical Trench and Backill	1	LS	$68,379.00	$68,379.00
		Road Subgrade and Asphalt Prep	1	LS	$92,550.00	$92,550.00
		Curb Prep	1	LS	$42,640.00	$42,640.00
		Gen Pad Prep	1	LS	$660.00	$660.00
		Prep for Sidewalks	1	LS	$57,892.00	$57,892.00
		Punch List	1	LS	$8,180.00	$8,180.00
		Jamestown Concrete				
		Generator Pad	1	LS	$4,200.00	$4,200.00
		Sidewalks	1	LS	$165,825.00	$165,825.00
		Curbs	1	LS	$132,717.00	$132,717.00
		Retaining Walls	1	LS	$357,700.00	$357,700.00
		Extras - Includes prep and concrete				
		Driveways (50 Driveways)	1	LS	$244,545.00	$244,545.00
		Patio's (40 patios and 50 entrance steps)	1	LS	$207,009.00	$207,009.00
					Sub-Total:	$3,778,557.00
			Tax Rate: 8.90%		Tax:	$336,291.57
					Total:	$4,114,848.57

* Included on separate estimate from Lakeside Industries.

LAKESIDE INDUSTRIES

Olympic Peninsula Division
lakesideindustries.com
P.O. Box 728 / Port Angeles, WA 98362
ph: 360.452.7803 / fax: 360.457.7932
Washington Contractor License No. LAKESI*274JD
Oregon Contractor License No. CCB 108542
Equal Opportunity Employer

PROPOSAL CONTRACT AGREEMENT

To:	Habitat For Humanity Of Clallam County	**Contact:**	Colleen Robinson
Address:	PO Box 1479	**Phone:**	360.460.5560
	Port Angeles, WA 98362	**Fax:**	
Project Name:	Habitat Sequim Multi Family Paving Budget Numbers	**Bid Number:**	
Project Location:	Brownsfield Rd & Sequim Ave, Sequim, WA	**Bid Date:**	10/20/2023
Attachments:	Lakeside Contract Provisions.pdf		

Item #	Item Description	Estimated Quantity	Unit	Unit Price	Total Price
1	**4" Asphalt Paving (Mainline)** - Work To Include: · Apply Herbicide To Grade Prepared By Others; · Supply, Place And Compact 4" Of 1/2" HMA In Two Equal Lifts And Seal New Asphalt Joints. **APPROX. 39,700ft2**	1,000.00	TON	$158.00	$158,000.00
2	**Curb/Utility Patching** - Work To Include: · Same Scope Of Work As Item 1. **APPROX. 3,600ft2**	90.00	TON	$255.00	$22,950.00

Total Bid Price: $180,950.00

Notes:

- **Approximate Total (Plus sales tax where applicable)** Total price to be based on actual quantity or measured unless otherwise specified.
- Price Based on **03** Mobilizations. Additional Mobilizations are $**4,500.00** Each.
- Price Excludes: Layout, Survey, or Engineering; Erosion Control; Utility Location and/or Adjustment; Premium Pay for Night, Holiday, or Weekend Work; Prime Coat; Rock or Grading; Insurance Premium over Standard Insurance; Base Repair; Temp Ramp Placement/Removal; Grinding; MTD/V; Cleaning Between Lifts; Tax; Permits; Bond; Testing; Sawcutting; Curbing; Concrete Protection; Crack Sealing; Seal Coat; Striping and Sweeping.
- Subgrades must be firm and unyielding.
- Performance Bond not included in bid price. If required please add 1% to total cost of bid.
- Bid based on approved contract; This proposal & Lakeside Provisions to be a part of all contract documents.
- **Lakeside Industries** is not responsible for designed cross slopes of less than 1% that hold water after paving is complete.
- Price based on current petroleum cost. Price escalation to be linked to the WSDOT/ODOT asphalt binder index.
- Unless Contracting Party has signed and returned this Agreement with in thirty (30) days of the date first stated above, **LAKESIDE INDUSTRIES'** proposal shall be null and void.
- CONTRACTING PARTY'S SIGNATURE ON ONE COPY RETURNED TO **LAKESIDE INDUSTRIES INC.** WILL RENDER THIS A LEGAL CONTRACT FOR THE PERFORMANCE OF THE ABOVE WORK. CONTRACTING PARTY'S SIGNATURE ALSO ACKNOWLEDGES RECEIPT OF **LAKESIDE INDUSTRIES INC.** NOTICE TO CUSTOMER' STATEMENT ATTACHED HERETO.
- Working Hours to be Monday through Friday 7:00am - 6:00pm.
- Per **WSDOT Standard Spec 5-04.3(13)**: Asphalt to be installed prior to utilities adjusted to final grade.
- Finegrade from a balance of +/- 0.05', and be deemed acceptable by **Lakeside Industries** prior to commencement of paving operations.
- Prices are based on all paving to be completed prior to the installation of an obstructions in paving areas (overhead canopies, covers, gates, gate accessories, fences, bollards).
- Installation of HMA only. All preparation by others.
- Traffic Control Included for Lakeside Work Only.
- Prices quoted are for budgeting purposes only. Final pricing contingent on final approved plans, scope & timeframe.

Payment Terms:

NET 30 - Payment in full due within 30 days of completion of work.

LDC | Surveying Engineering Planning

October 27, 2023

City of Sequim
152 W Cedar St
Sequim, WA 98382

Habitat for Humanity Sequim Ave Development – CHIP Grant

To whom it may concern,

The purpose of this letter is to summarize the projected costs for the water, sewer, and storm for the subject project.

Funds awarded under this grant will be used for $1,658,500 in capital expenditures for the Sequim Ave Development project, an affordable 50-unit owner-occupied townhome/duplex project. The location of the project is at the southeast corner of the Brownfield Rd and Sequim Ave intersection (TPN: 033029229020)

Project activities will include and be limited to the construction of the following utility improvements:
Water utility improvements: Installation of water main per plan sheets UT-01 to include:

- S Sequim Ave/E Brownfield Rd – Live tap of existing water main at the western and northern entrances to the project site. (using select or native material for backfill). Estimated cost included in the following line item.
- Installation of 1,010 LF of new looped 8" water main from the northern live tap through the project site to the southern live tap. (using select or native material for backfill). Estimated at $121,000
- Installation of 2 new fire hydrants on-site. Estimated at $4,000
- Installation of new domestic services to each townhome (50). Estimated at $175,000
- Installation of new fire line to each townhome (15). Estimated at $150,000
- Testing, flushing, and inspections as required by the city of Sequim water department.

Sewer utility improvements: Installation of sewer per plan sheets UT-01 to include:

- Installation of 980 LF of new 8" gravity sewer system on-site that drains to the north. (using select or native material for backfill). Estimated at $60,000
- Installation of 1,015 LF of new 2" force main sewer system on-site that pumps out west. (using select or native material for backfill). Estimated at $40,000
- Installation of a sewer pump station/system on the north side of the site. Estimated at $500,000
- Installation of a backup generator within an enclosure to provide emergency backup power to the grinder pump system. Estimated costs included in pump station line item.
- Installation of 9 sewer manholes. Estimated at $50,000
- Installation of 785 LF of 6" side sewers. Estimated at $36,000
- Install side services to each townhome including a clean out at the entrance to the building per city of Olympia standards. (50). Estimated at $50,000
- Testing & inspections per city of Sequim requirements

Stormwater utility improvements: Installation of storm piping and infiltration pond per plan sheets CG-01 to include:

- Installation of 1,090 LF of storm pipe. (using select or native material for backfill). Estimated at $40,000
- Installation of roof drain lines. (3,500 LF). Estimated at $110,000
- Installation of 60 roof drain cleanouts. Estimated at $60,000
- Installation of 24 Type 1 catch basins. Estimated at $45,000
- Installation of 1 Type 2 catch basin. Estimated at $7,500

321 Cleveland Avenue SE, Suite 209 • Tumwater, WA 98501 • ph: 425.806.1869 • fx: 425.482.2893 • www.LDCcorp.com

- Installation of stormwater infiltration gallery (9,000 CF). Estimated at $25,000
- Installation of stormwater detention pond (29,300 CF). Estimated at $20,000
- Installation of stormwater infiltration pond (7,000 CF). Estimated at $15,000
- Installation of 2 Diffuser Tee Outfalls. Estimated at $5,000
- Installation of 6" French drain line (1,175 LF). Estimated at $75,000
- Installation of 1 Contech Modular Wetland and 3 Contech CDS Pretreatment devices. Estimated at $70,000
- Testing and inspections per city of Sequim requirements

Sincerely,

LDC, Inc.

Tyrell E. Bradley

Tyrell Bradley
Principal Engineer
Olympia Office

LDC, Inc. • Surveying • Engineering • Planning • www.LDCcorp.com

3a

JAN 02 2024

AGENDA ITEM SUMMARY

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

Department: Health & Human Services

WORK SESSION ☒ **Meeting Date:** December 26, 2023

REGULAR AGENDA ☒ **Meeting Date:** January 2, 2024

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 2024 DD RFP Funding Proposals

Documents exempt from public disclosure attached: ☐

Executive summary:
The attached report was submitted to the Developmental Disabilities Advisory Committee (DDAC) on December 12, 2023 after the RFP Review Committee recommended the attached allocations. The full DDAC has approved these recommendations and has requested these recommendations be forwarded to the BOCC for their approval.

If these recommendations are approved by the BOCC, Clallam County Health and Human Services Developmental Disabilities will develop statements of work and contracts for final BOCC approval. 2024 Developmental Disabilities RFP recommendations are in the amount of $305,023.68.

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?** ☐
Funds for proposals are in the HHS Developmental Disabilities Mileage Funds.

Recommended action: (Does the Board need to act? If so, what is the department's recommendation?)
Please approve per the DDAC recommendations.

County Official signature & print name: Kevin LoPiccolo

Name of Employee/Stakeholder attending meeting: Kelley Lawrence, Kevin LoPiccolo and Jenny Oppelt

Relevant Departments: Health & Human Services

Date submitted: December 19, 2023

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* Work Session Meeting - Submit 1 single sided/not stapled copy Agenda Item Summary - 2024 RFP DD for January 1, 2024 - December 31, 2025 - Funding Proposals
** 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

2024 Developmental Disabilities RFP Summaries and Recommendations

Proposals: $400,000 was available for Services and Programs supporting individuals who experience intellectual and developmental disabilities with designated millage funds. Priorities for this RFP were provided by DDAC Committee Members and Community Participants at the April 11, 2023, Developmental Disability Advisory Committee (DDAC) Meeting for the purpose of developing our 2024/2025 Clallam County Biennial Community Plan.

Following the April 11, 2023, DDAC Meeting -- a sub-committee of the DDAC reviewed all of the suggestions and ideas provided at the April 11, 2023, DDAC Meeting and developed the priorities for the Clallam County Developmental Disabilities Request for Proposals (RFP) for January 1, 2024 – December 31, 2025. These priorities were, then, submitted to the DDAC for approval. Following the DDAC approval of the RFP priorities – the RFP was submitted to the Clallam County Board of Commissioners (BOCC) for final approval.

The priorities for the Clallam County Developmental Disabilities Request for Proposals (RFP) for January 1, 2024 – December 31, 2025, are:

- **Parent Support Services**
- **Early Intervention Services**
- **Training and Education for Individuals with Intellectual and Developmental Disabilities and/or their families and/or informal supports**

Clallam County Health and Human Services · Developmental Disabilities received "6" proposals.

The RFP Review Committee recommendations are given below:

Organization Name	Proposal Title	Description	Score (max 100)	Requested Amount	Funded Amount	Details
Clallam Mosaic	Parent to Parent Support Services	A service where individuals with intellectual and developmental disabilities, their families and caregivers can access one source of information, advocacy and support. P2P would facilitate identification of needed services when required and assist in navigating systems to access essential services regarding community, individual supports, family, advocacy, health and planning.		$36,588.00	$0.00	The proposal is ineligible for submission because the "Agency / Organization submitting the proposal offer segregated services to individuals who experience IDD."

Concerned Citizens	Bridges to the Future	To introduce educational outreach meetings in Clallam County to increase the knowledge and power it brings to families and participants living with developmental disabilities and increasing access to services with hands on help to get through the maze of paperwork.	74	$46,460.00	$45,020.00	*New program* Partially funded due to a miscalculation on Personnel budget.
Concerned Citizens	Childfind and Outreach Specialist	To reach all children and their families ages 0-3 and make Early Intervention Services available to more families in the large geographic areas of Clallam County and educating them on the services available and helping them access them.	88.25	$65,850.00	$65,850.00	*Existing program* Fully funded.
Concerned Citizens	Fun Activities & Community Events	To create inclusive events (Music, Art, Dancing) in the West End of Clallam County for the public to include Community Inclusion clients to practice social skills and promote and maintain pre-employment skills. Existing options currently are extremely limited in Forks. For those unable to afford event fees in the East End, a small expense fund will be available to cover admission fees and supplies.	89.25	$24,780.00	$23,788.00	*New program* Partially funded due to 10% of salaries only being on Personnel and not Benefits.
First Step Family Support Center	Supported Parenting Program	Supported Parenting Services is for families where at least one parent experiences an intellectual and developmental disability. The program will assist a parent(s) in providing a safe living environment for the child to thrive. The goal is for parents to have the chance to be fully included in their children's lives and receive the assistance they need to help them be successful in their role as their child's parent.	92.5	$90,500.00	$88,382.23	*Existing program* Partially funded due to 10% of salaries only being on Personnel and not Benefits.
Morningside	Eye on Empowerment Course	A 38-week training and educational program to reach adults and youth who experience intellectual and developmental disabilities in an integrated setting to acquire knowledge and skills that will	80.75	$37,735.75	$37,735.75	*Existing program* Fully funded.

		enrich the lives they live and improve their employment opportunities. The intended result for each attendee is to understand the services available in order to become more capable and self-directed in pursuing their adult lives, to confidently seek employment, to interact in their community and to live fulfilling lives.				
Pierce Jones & Associates	Emergency Preparedness	An In-Person educational program on emergency preparedness focusing on individuals who experience intellectual and developmental disabilities. Training courses will emphasize and use an interactive model in learning about: emergency preparedness kits, task analysis, hands-on training, sheltering in place and what to do if there is an order to evacuate. Additional presentations will be provided by the America Red Cross, the Fire Department and the Clallam County Emergency Management Team. The goal is to build confidence in each person's ability to be self-sufficient and a leader in their home and community.	81.5	$44,247.70	$44,247.70	*Existing program* Fully funded.
		TOTAL		**$346,161.45**	**$305,023.68**	

The total amount of all proposals recommended for funding is $305,023.68. (Total available: $400,000; Balance: $94,976.32)

The following individuals were members of the "2024 RFP Development Disabilities Review Committee". Each member had no financial interests in any entity eligible to submit a proposal.

RFP Review Committee

Pam Hicks: Developmental Disabilities Advisory Committee Member (DDAC)
Laura Johns: Developmental Disabilities Advisory Committee Member (DDAC)
Carina Robinson: Washington State Department of Social and Health Services (DSHS) Developmental Disabilities Administration (DDA) Administrator, Region 3, Clallam and Jefferson Counties
Raandi Simpson-Goss: Washington State Department of Social and Health Services (DSHS) Developmental Disabilities Administration (DDA) Case Resource Manager (CRM), Region 3, Clallam and Jefferson Counties

County Staff (Attending in a Non-Voting Capacity)

Kevin LoPiccolo: Clallam County Health & Human Services Director
Jenny Oppelt: Clallam County Health & Human Services Deputy Director
Kelley Lawrence: Clallam County Coordinator for Developmental Disabilities
Jennifer Charles: Clallam County Administrative Specialist for Developmental Disabilities

Clallam County Health & Human Services · Developmental Disabilities provided each member of the "RFP Review Committee" a copy of the RFP, evaluation and scoring forms and a copy of each proposal along with organization audits or financial records for their evaluation prior to the presentation day by proposers. The RFP process followed was similar to previously executed RFP processes performed in Clallam County Health & Human Services.

On December 6, 2023, the RFP Review Committee assembled "In Person" where the "4" agencies who submitted proposals provided a short presentation of their proposal(s) and then answered questions posed by the RFP Review Committee members. The information provided by the Proposers helped clarify elements of the proposals which ultimately helped in determining the final recommendations of the RFP Review Committee (i.e. recommended for funding/not recommended for funding).

This report was submitted, reviewed and approved by the Developmental Disabilities Advisory Committee (DDAC) on December 12, 2023. The DDAC, additionally, recommended that the report be forwarded to the Board of County Commissioners for funding approval.

If these recommendations are approved by the Board of County Commissioners the Clallam County Health & Human Services Department · Developmental Disabilities will develop statements of work and contracts for final approval from the Board of County Commissioners.

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JAN 0 2 2024

AGENDA ITEM SUMMARY

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

Department: BOCC

WORK SESSION ☒ **Meeting Date: 12/4/23**
REGULAR AGENDA ☒ **Meeting Date: 1/2/24**

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:
Individual Commissioners serve on, or act as a liaison to, various state and local advisory boards and commissions and wish to confirm these appointments by resolution.
Discussion and Resolution designating Commissioner involvement on advisory boards for 2024.

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 Resolution designating Commissioner involvement on advisory boards for 2024.

County Official signature & print name: Loni Gores Loni Gores

Name of Employee/Stakeholder attending meeting: Board of Commissioners

Relevant Departments: Board of Commissioners

Date submitted: November 29, 2023

RESOLUTION _____, 2024
DESIGNATING COMMISSIONER INVOLVEMENT ON ADVISORY BOARDS

THE BOARD OF CLALLAM COUNTY COMMISSIONERS finds as follows:

1. Individual Commissioners serve on, or act as a liaison to, various state and local advisory boards and commissions and wish to confirm these appointments by resolution.
2. A work session was held December 4, 2023 and the Commissioners stated their preferences.

NOW, THEREFORE, BE IT RESOLVED by the Board of Clallam County Commissioners, in consideration of the above findings of fact:

1. All three Commissioners will serve on the Board of Health, the Clallam County Finance Committee, the Olympic Area Agency on Aging (CRJ lead), the Housing Solutions Committee (CRJ lead) and as members of the Washington State Association of Counties (WSAC), and individually as follows:

MARK OZIAS
Behavioral Health Advisory Board
Canvassing Board (Alternate)
Clallam Transit System
Housing Solutions Committee (Alternate)
Lodging Tax Advisory Committee (Alternate)
Clallam County Marine Resources Committee
North Olympic Development Council
Olympic Area Agency on Aging (Alternate)
Olympic Coast National Marine Sanctuary Advisory Council
Olympic Consortium Board (Alternate)
Salish Behavioral Health Associated Services Organization
Sequim Chamber of Commerce Ex-Officio Member
Solid Waste Advisory Committee
Tribal Liaison – Jamestown S'Klallam
Washington State Association of Counties – Legislative Steering Committee
Washington State Association of Counties – Board of Directors

RANDY JOHNSON
Clallam County Disability Board
Clallam Transit System (Alternate)
Conservation Futures Program Advisory Board
Department of Natural Resources Carbon Solutions Committee
Economic Development Council Board
Heritage Advisory Board
Homelessness Task Force
Housing Solutions Committee
Law and Justice Council
Lodging Tax Advisory Committee
Noxious Weed Control Board
Olympic Area Agency on Aging
Olympic Consortium Board
Olympic Region Clean Air Agency (Alternate)
Port Angeles Chamber of Commerce
Salish Behavioral Health Associated Services Organization (Alternate)
Veterans' Affairs Liaison
Washington Timber Counties Caucus
William Shore Memorial Pool District

DRAFT

Mike French
Canvassing Board
Clallam Bay/Sekiu Chamber of Commerce Liaison
Clallam Bay/Sekiu Community Action Team
Clallam Bay/Sekiu Sewer Advisory Committee
Clallam Transit System
Crescent Community Advisory Council
Developmental Disability Advisory Committee
Forks Chamber of Commerce Liaison
Housing Solutions Committee (Alternate)
Law Library Board of Trustees
Neah Bay Chamber of Commerce Liaison
Olympic Area Agency on Aging (Alternate)
Olympic Community Action Programs (OlyCAP)
Olympic Region Clean Air Agency
Peninsula Regional Transportation Planning Organization
Trails Advisory Committee
Tribal Liaison – Lower Elwha/Quileute/Makah
Veterans' Affairs Liaison (Alternate)
William Shore Memorial Pool District

PASSED AND ADOPTED this 2nd day of January 2024

BOARD OF CLALLAM COUNTY COMMISSIONERS

Mike French

Randy Johnson

Mark Ozias

ATTEST:

Loni Gores, MMC, Clerk of the Board

DRAFT

4b

JAN 02 2024

AGENDA ITEM SUMMARY

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

Department: BOCC

WORK SESSION ☒ **Meeting Date: 12/26/23**

REGULAR AGENDA ☒ **Meeting Date: 1/2/24**

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 Marine Resources Committee due to the expiration of terms.

A press release was issued during the month of November 2023 soliciting applications from interested citizens, and the current member with an expiring term was notified. Two applications were received.

The member with the expiring term advised the Commissioner's Office in writing that they are interested in continuing service and asked to be considered for another term.

The Department of Community Development endorses the reappointment of Ioana Bociu to the Marine Resources Committee.

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 reappoint.

County Official signature & print name: Loni Gores Loni Gores, Clerk

Name of Employee/Stakeholder attending meeting: Board of Commissioners, Department of Community Development – Rebecca Mahan

Relevant Departments: Board of Commissioners, Department of Community Development

Date submitted: 12-15-23

RESOLUTION _____, 2024

REAPPOINTING A MEMBER TO THE
MARINE RESOURCES COMMITTEE

THE BOARD OF CLALLAM COUNTY COMMISSIONERS finds as follows:

1. A vacancy exists on the Marine Resources Committee due to the expiration of terms.

2. A press release was issued during the month of November 2023 soliciting applications from interested citizens, and the current member with an expiring term was notified. Two applications were received.

3. The member with the expiring term advised the Commissioner's Office in writing that they are interested in continuing service and asked to be considered for another term.

4. The Department of Community Development endorses the reappointment of Ioana Bociu to the Marine Resources Committee.

NOW, THEREFORE, BE IT RESOLVED by the Clallam County Board of Commissioners, in consideration of the above findings of fact:

1. **Ioana Bociu** is reappointed to serve as the Academic Community Alternate representative for a term ending December 31, 2027.

PASSED AND ADOPTED this 2nd day of January 2024

BOARD OF CLALLAM COUNTY COMMISSIONERS

_____
Mike French

ATTEST:

_____
Randy Johnson

_____
Loni Gores, CMC, Clerk of the Board

_____
Mark Ozias

A22.164
Appointee
DCD

DRAFT

HC

JAN 02 2024

AGENDA ITEM SUMMARY

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

Department: BOCC

WORK SESSION ☒ **Meeting Date: 12-26-23**

REGULAR AGENDA ☒ **Meeting Date: 1-2-24**

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 Conservation Futures Program Advisory Board due to the expiration of a term.

A press release was issued during the month of November 2023 soliciting applications from interested citizens. Two applications were received.

The Director of the Department of Community Development supports the appointment of Patricia Willits to the Conservation Futures Program Advisory Board.

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 and Department of Community Development

Relevant Departments: Board of Commissioners and Department of Community Development

Date submitted: 12-15-23

RESOLUTION _____, 2024

APPOINTING A MEMBER TO THE
CONSERVATION FUTURES PROGRAM ADVISORY BOARD

THE BOARD OF CLALLAM COUNTY COMMISSIONERS finds as follows:

1. A vacancy exists on the Conservation Futures Program Advisory Board due to the expiration of a term.

2. A press release was issued during the month of November 2023 soliciting applications from interested citizens. Two applications were received.

3. The Director of the Department of Community Development supports the appointment of Patricia Willits to the Conservation Futures Program Advisory Board.

NOW, THEREFORE, BE IT RESOLVED by the Clallam County Board of Commissioners, in consideration of the above findings of fact:

1. **Patricia Willits** is appointed to serve as the At-large representative for term ending December 31, 2027.

PASSED AND ADOPTED this 2nd of January 2024

BOARD OF CLALLAM COUNTY COMMISSIONERS

_____
Mike French

ATTEST: _____
Randy Johnson

_____ _____
Loni Gores, Clerk of the Board Mark Ozias

cc: A22.33
Appointee (s)
BOCC

DRAFT