WORK SESSION AGENDA

BOARD OF CLALLAM COUNTY COMMISSIONERS

223 East 4th Street Room 160

Port Angeles, Washington

Monday, August 23, 2021 – 8:00 a.m.

****ATTENTION****

In response to the current Governors order Clallam County is now operating under the Washington Ready Plan. To be in compliance with the Washington Ready Plan and to reduce the spread of COVID the following general requirements for COVID safety for meetings held in the Board of Commissioners Board Room are as follows:

1. All attendees are encouraged to provide contact information on a sign in sheet which will be retained for 28 days for contact tracing purposes.
2. Public seating areas and Board member seating must be arranged to ensure physical distancing is maintained.
3. Meeting attendees must follow current face covering guidelines.
4. No food or drink should be consumed in the BOCC Board Room.
5. Meeting organizers shall clean or arrange to have cleaned high-touch surfaces before and after each meeting.
6. Hand sanitizing stations will be available in the BOCC Board Room.
7. Keep doors and windows open where possible to improve ventilation.
8. The Chair of the meeting shall ensure current masking and social distancing practices are enforced and practiced by all event attendees.

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

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

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

Administration – 9 a.m.

1. Calendar/Correspondence

2. Agreement with Washington State Health Care Authority for Substance Use Disorder Prevention Services

   Agreement

3. Discussion and request for authorization to move forward with Permit Planning project

   Discussion and request

4. Discussion of long term plan for addressing space concerns of Jail facilities

Discussion

5. Agreement with Washington State Department of Commerce through the Multi-Jurisdictional Drug-Task Force Program for Olympic Peninsula Narcotics Enforcement Team (OPNET) operating costs

   Agreement

Public Works

6. Notice of call for bids to be received no later than 10 a.m. Tuesday, September 28, 2021 for Sequim-Dungeness Way/Woodcock Road Round-about, CRP C1257

   Notice of call for bids

Budget

7. Agreement with Habitat for Humanity Clallam County for American Rescue Plan Act funds (2d)

   Agreement

8. Discussion and request to adjust American Rescue Plan Act funds for Food Support for Local Food Banks category

   Discussion and request

Department of Natural Resources - 1 p.m.
*** Quarterly income report**

Report

General Discussion/Items for Future Agendas

A. Commissioners Conversation Meeting – TBD Topic (September 13 – 7:30 a.m.)

B. Continued Work Session Meeting – TBD Topic (September 13 – 1 p.m.)

C. Olympic National Forest update (October TBD)

D. Noise Ordinance (TBD)

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

- Other items may be added at the discretion of the Board and additional Work Sessions may be scheduled if more time is needed to allow for adequate discussion.
- 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.

AGENDA ITEM SUMMARY

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

2 8/23/21

Department: Juvenile Services

WORK SESSION ☒ **Meeting Date: 08/23/2021**

REGULAR AGENDA ☒ **Meeting Date: 08/31/2021**

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

Item summary:

☐ Call for Hearing

☒ Contract/Agreement/MOU Contract #851.21.005

☐ Resolution

☐ Proclamation

☐ Budget Item

☐ Draft Ordinance

☐ Final Ordinance

☐ Other Discussion only

Documents exempt from public disclosure attached: ☐

Executive summary:
The Community Prevention and Wellness Initiative aims to "increase the capacity to implement direct and environmental substance use disorder (SUD) prevention services in the community to prevent and reduce the misuse and abuse of alcohol, tobacco, marijuana, opioids, and other drugs.

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?** ☐

Budget change will be necessary to account for increased revenue and expenditures.

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

County Official signature & print name: Jody Jacobsen Jody Jacobsen

Name of Employee/Stakeholder attending meeting: Cindy Hanson & Rachel Ray

Relevant Departments: _____

Date submitted: 08/13/2021

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* Work Session/Reg Meeting - Submit 2 single sided/not stapled copies + 2 AIS and 3 originals (stapled) + AIS
** Regular Meeting – Submit 1 single sided/not stapled copy and originals (1 or 3 copies)

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

#851.21.005

DocuSign Envelope ID: E5001708-A73F-4B69-A274-8E80E77C83D2

Washington State Health Care Authority	**CLIENT SERVICES CONTRACT** for CPWI Prevention Services - Cohort 7	HCA Contract Number: K5533

This Contract is by and between the State of Washington Health Care Authority (HCA) and the Contractor identified below.

CONTRACTOR NAME	CONTRACTOR DOING BUSINESS AS (DBA)		
Clallam County Juvenile & Family Services			
CONTRACTOR ADDRESS | Street	City	State	Zip Code
1912 W 18TH ST	PORT ANGELES	WA	98363

CONTRACTOR CONTACT	CONTRACTOR TELEPHONE	CONTRACTOR E-MAIL ADDRESS
Cynthia L Hanson	360-565-2646	chanson@co.clallam.wa.us

Is Contractor a Subrecipient under this Contract?	CFDA NUMBER(S):	FFATA Form Required
☒YES ☐NO		☒YES ☐NO

HCA PROGRAM	HCA DIVISION/SECTION
Substance Use Disorder Prevention	Division of Behavioral Health and Recovery
HCA CONTACT NAME AND TITLE Isaac Wulff	HCA CONTACT ADDRESS 626 8th Avenue SE PO Box 42730 Olympia, WA 98504-2730
HCA CONTACT TELEPHONE (360) 725- 1058	HCA CONTACT E-MAIL ADDRESS isaac.wulff@hca.wa.gov

CONTRACT START DATE	CONTRACT END DATE	TOTAL MAXIMUM CONTRACT AMOUNT
July 1, 2021	June 30, 2023	$220,000

The following Attachments and Exhibits are attached and are incorporated into this Contract by reference:

☒ **Attachments (specify):**

Attachment 1: Statement of Work
Attachment 2: Confidential Information Security Requirements
Attachment 3: Business Associate Agreement
Attachment 4: Data Use, Security and Confidentiality
Attachment 5: Federal Compliance, Certifications and Assurances
Attachment 6: Federal Funding Accountability and Transparency Act (FFATA) Data Collection Form
Attachment 7: SAMHSA Award Terms
Attachment 8: Federal Award Identification for Subrecipients

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

CONTRACTOR SIGNATURE	PRINTED NAME AND TITLE	DATE SIGNED
HCA SIGNATURE DocuSigned by: Rochelle Amerine 71E17FE8BC774E7...	PRINTED NAME AND TITLE Rachelle Amerine, Contracts Administrator	DATE SIGNED 7/30/2021

Approved as to form only by:

Elizabeth Stanley
Civil Deputy Prosecuting Attorney
Clallam County

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ATTACHMENT 1 - STATEMENT OF WORK

ATTACHMENT 2 - CONFIDENTIAL INFORMATION SECURITY REQUIREMENTS

ATTACHMENT 3 – BUSINESS ASSOCIATE AGREEMENT

ATTACHMENT 4 - DATA USE, SECURITY, AND CONFIDENTIALITY

ATTACHMENT 5 – FEDERAL COMPLIANCE, CERTIFICATIONS, AND ASSURANCES

ATTACHMENT 6 - FEDERAL FUNDING ACCOUNTABILITY AND TRANSPARENCY ACT (FFATA) DATA COLLECTION FORM

ATTACHMENT 7 - SUBSTANCE ABUSE AND MENTAL HEALTH SERVICES ADMINISTRATION (SAMHSA) AWARD TERMS

ATTACHMENT 8 - FEDERAL AWARD IDENTIFICATION FOR SUBRECIPIENTS

RECITALS

The state of Washington, acting by and through the Health Care Authority (HCA), issued a Request for Applications (RFA) dated April 19, 2021, (Exhibit A) to seek out parties interested in participating in the Community Prevention and Wellness Initiative (CPWI) as a Cohort 7 Coalition in accordance with its authority under chapters 39.26 and 41.05 RCW.

Clallam County Juvenile & Family Services submitted a timely Response to HCA's RFA #2021HCA4 (Exhibit B).

HCA evaluated all properly submitted Responses to the above-referenced RFA and has identified **Clallam County Juvenile & Family Services** as the Apparent Successful Applicant.

HCA has determined that entering into a Contract with **Clallam County Juvenile & Family Services** will meet HCA's needs and will be in the State's best interest.

NOW THEREFORE, HCA awards to **Clallam County Juvenile & Family Services** this Contract, the terms and conditions of which will govern Contractor's providing to HCA the Community Prevention and Wellness Services.

Both parties agree to the following terms and conditions:

1. DEFINITIONS

"Administrative Costs" or **"Indirect Costs"** are elements of costs incurred by the Contractor as costs that are necessary to administrate or operate a program that are not considered direct program costs. Admin/indirect costs are those elements of cost incurred by the entity or organization as a whole and are not generally subject to the direct control of the individual department managers. Criteria for Administrative/Indirect Costs, Contract-Specific Direct Costs, and Shared Direct Costs are outlined in the Substance Use Disorder Prevention and Mental Health Promotion Services Billing Guide. Further, all references to the term "Admin" or "Indirect" are hereby replaced by "Admin/Indirect."

"Agent" shall mean the Washington State Health Care Authority Director and/or the Director's delegate authorized in writing to act on behalf of the Director.

"Allowable Cost" means an expenditure which meets the test of the appropriate executive office of the president of the United States' Office of Management and Budget (OMB) circular. The most significant factors which determine whether a cost is allowable are the extent to which the cost is:

- Necessary and reasonable;
- Allocable;
- Authorized or not prohibited under Washington state or local laws and regulations;
- Adequately documented.

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

"Awards and Revenues" or **"A&R"** details the Contractor's Awards and Revenues. For new funding starting 7/1/2021, the Awards and Revenue will be sent separately from the Contract and is incorporated within the Contract by reference to the Award and Revenues. The Contractor must budget and bill according to each Award and Revenues.

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

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

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

"Certified Prevention Professional" or **"CPP"** means the Prevention Specialist certification recognized by the International Credentialing and Reciprocity Consortium (IC&RC) and supported by the Prevention Specialist Certification Board of Washington, www.pscbw.com.

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

"**Coalition**" means a formal arrangement for cooperation and collaboration between groups or sectors of a community. Each participant in the Coalition retains their identity, but all agree to work together toward a common goal of building a safe, healthy, and drug-free community.

"**Community**" means an approved geographic area within school district boundaries, or within High School Attendance Areas (HSAA) and their feeder schools.

"Community Prevention and Wellness Initiative" or **"CPWI"** means the HCA substance use disorder prevention delivery system that focuses prevention services in high-need communities in Washington State as approved by HCA.

"**Confidential Information**" means information that is protected from disclosure to the public or other unauthorized persons under chapter 42.56 RCW or other federal or state laws. Confidential information includes, but is not limited to, personal information.

"**Contract**" or "**Agreement**" means the entire written agreement between HCA and Contractor, including any exhibits, documents, or materials incorporated by reference. The parties may execute this contract in multiple counterparts, each of which is deemed an original and all of which constitute only one agreement. E-mail (electronic mail) or fax (facsimile) transmission of a signed copy of this contract shall be the same as delivery of an original.

"Contractor" means the individual or entity performing services pursuant to this contract and includes the Contractor's owners, members, officers, directors, partners, employees, and/or agents, unless otherwise stated in this Contract. For purposes of any permitted subcontract, "Contractor" includes any subcontractor and its owners, members, officers, directors, partners, employees, and/or agents.

"**CSAP**" means SAMHSA's Center for Substance Abuse Prevention. CSAP works with federal, state, public, and private organizations to develop a comprehensive prevention system.

"Cultural Competency" means a set of congruent behaviors, attitudes and policies that come together in a system, or agency, and enables that system or agency to work effectively in cross-cultural situations. A culturally competent system of care acknowledges and incorporates at all levels the importance of language and culture, assessment of cross-cultural relations, knowledge and

acceptance of dynamics of cultural differences, and expansion of cultural knowledge and adaptation of services, to meet culturally unique needs.

"Data" means information produced, furnished, acquired, or used by Contractor in meeting requirements under this contract. This includes Personal Information and Protected Health Information.

"**DBHR**" means the "**Division of Behavioral Health and Recovery**," a division of HCA, or its successors.

"**DEA**" means the United States federal "**Drug Enforcement Agency**".

"**Debarment**" means an action taken by a federal agency or official to exclude a person or business entity from participating in transactions involving certain federal funds.

"**Dedicated Marijuana Account**" or **"DMA"** means revenue generated by taxation of retail marijuana as a result of the implementation of Initiative 502 (I-502) as authorized by the Washington State Legislature in 2E2SHB 2136.

"DUNS" or "**Data Universal Numbering System**" means a unique identifier for businesses. DUNS numbers are assigned and maintained by Dun and Bradstreet (D&B) and are used for a variety of purposes, including applying for government contracting opportunities.

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

"**Encrypt**" means to encode confidential information into a format that can only be read by those possessing a "key"; a password, digital certificate or other mechanism available only to authorized users. Encryption must use a key length of at least 128 bits.

"Ensure" means to make sure that something will happen or will be available within the resources identified in the Consideration.

"EPA" means the Environmental Protection Agency.

"**Evidence-Based Program**" or "**EBP**" means a program that has been tested in heterogeneous or intended populations that can be implemented with a set of procedures to all successful replication in Washington. An EBP has had multiple randomized and/or statistically-controlled evaluations, or one large multiple-site randomized and/or statistically-controlled evaluations, and the weight of the evidence from a systematic review demonstrates sustained improvements in at least one of the desired outcomes.

"For Profit" means a business or institution initiated or operated for the purpose of making a profit.

"General Fund State" or **"GFS"** or **"SFG"** means the administrative/indirect allocation awarded for Substance Abuse Block Grant.

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

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

"**Health Disparities**" means a particular type of health difference that is closely linked with social, economic, and/or environmental disadvantage. Health disparities adversely affect groups of people who have systematically experienced greater obstacles to health based on their racial or ethnic group; religion; socioeconomic status; gender; age; mental health; cognitive sensory, or physical disability; sexual orientation or gender identity; geographic location; or other characteristics historically linked to discrimination or exclusion." (Healthy People 2020).

"**Health Equity**" means the attainment of the highest level of health for all people. Achieving health equity requires valuing everyone equally with focused and ongoing societal efforts to address avoidable inequalities, historical and contemporary injustices, and the elimination of health and health care disparities." (Healthy People 2020)

"**Innovative Program**" means a program that does not fall into the other categories of Evidence-based, Research-based, or Promising.

"**Media Materials and Publications**" means:

- News Release: A brief written announcement the agency provides to reporters highlighting key events, research, results, new funding and programs, and other news;
- Paid Media: Any advertising space/time that is purchased for prevention/coalition messages (printed publications/newspapers, online, outdoor, on-screen, TV and radio);
- Earned Media: Published news stories (print, broadcast or online) resulting from the Contractor's Agreements with reporters;
- Donated Media, including public service announcements. Any free advertising space or time from broadcast, print, outdoor, online, and other advertising vendors;
- Social Media: Also referred to as new media: messaged posted online of Facebook, Twitter, YouTube, Instagram, Snapchat, and similar sites; and
- Other Media Material and Publications: Other print and video materials that are created under this Contract.

"Office of Contracts and Procurement" or **"OCP"** means the Washington State Health Care Authority central headquarters contracting office, or successor section or office.

"OMB" means the Office of Management and Budget of the executive office of the president of the United States.

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

"**Partnerships for Success**" or **"PFS"** means the Federal Substance Abuse and Mental Health Services Administration (SMHSAA) Grant 2013 and 2018, CFDA number 93.243.

"Personal information" means information identifiable to any person, including, but not limited to, information that relates to a person's name, health, finances, education, business, use or receipt of governmental services or other activities, addresses, telephone numbers, social security numbers, driver license numbers, other identifying numbers, and any financial identifiers.

"Physically Secure" means that access is restricted through physical means to authorized individuals only.

"Prevention Activity Data" means information input to the "Substance Abuse Disorder Prevention Mental Health Promotion Online Reporting System" or "Minerva" or its successor to record all active prevention services including outcome measures. This information will be used to verify services identified in A-19 invoices prior to payment and must be entered into Minerva by the close of business of the fifteenth (15th) of each month for prevention activities provided during the previous month.

"**Prevention System Manager**" or **"PSM"** means the designee assigned to manage day to day responsibilities associated with this Contract.

"**Program Income"** means gross income earned by the non-Federal entity that is directly generated by a supported activity or earned as a result of the Federal award during the period of performance.

"Promising Program" means a program that is based on statistical analyses or a well-established theory of change, shows potential for meeting the "evidence-based" or "research-based" criteria, and could include the use of a program that is evidence-based for outcomes other than the alternative use.

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

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

"Public information" means information that can be released to the public. It does not need protection from unauthorized disclosure, but does need protection from unauthorized change that may mislead the public or embarrass HCA.

"RCW" means the revised code of Washington. All references in this contract to RCW chapters or sections shall include any successor, amended, or replacement statute. Pertinent RCW chapters can be accessed at: http://apps.leg.wa.gov/rcw/.

"**Regular Annual Schedule"** means consistent, reliable services with a pattern of implementation intervals throughout the year.

"**Regulation**" means any federal, state, or local regulation, rule, or ordinance.

"Research-Based Program" means a program that has been tested with a single randomized and/or statistically controlled evaluation, demonstrates sustained desirable outcomes; or where the weight of the evidence from a systematic review supports sustained outcomes as identified in the term "evidence-based," but does not meet the full criteria for "evidence-based."

"SAMHSA" means the Substance Abuse and Mental Health Services Administration.

"**Secured Area**" means an area to which only authorized representatives of the entity possessing the confidential information have access. Secured areas may include buildings, rooms or locked storage

containers (such as a filing cabinet) within a room, as long as access to the confidential information is not available to unauthorized personnel.

"**Sensitive Information**" means information that is not specifically protected by law, but should be limited to official use only, and protected against unauthorized access.

"**State Opioid Response**" or "**SOR**" or "**SOR II**" means the Federal Substance Abuse and Mental Health Services Administration (SAMHSA) Grant, CFDA number 93.788.

"**Statement of Work**" or "**SOW**" means a detailed description of the work activities the Contractor is required to perform under the terms and conditions of this Contract, including the deliverables and timelines identified in Attachment 1.

"**Subcontract**" means any separate agreement or contract between the Contractor and an individual or entity ("Subcontractor") to perform all or a portion of the duties and obligations that the contractor is obligated to perform pursuant to this contract.

"**Substance Abuse Block Grant**" or "**SABG**" means Federal Substance Abuse Block Grant funded by the Substance Abuse and Mental Health Services Administration (SAMHSA), CFDA number 93.959.

"**Substance Use Disorder**" or "**SUD**" means a cluster of cognitive, behavioral, and physiological symptoms indicating that an individual continues using the substance despite significant substance-related problems. The diagnosis of a Substance Use Disorder is based on a pathological pattern of behaviors related to the use of the substances.

"**Substance Use Disorder Prevention and Mental Health Promotion Services Billing Guide**" means the Supplementary Instructions and Fiscal Policy Standards for Reimbursable Costs as used by HCA, located at https://www.hca.wa.gov/billers-providers-partners/prior-authorization-claims-and-billing/provider-billing-guides-and-fee-schedules#t.

"**Substance Use Disorder Prevention and Mental Health Promotion Online Reporting System**" or "**Minerva**" or its successor means the management information system maintained by HCA that collects planning, demographic, and prevention service data.

"**Successor**" means any entity which, through amalgamation, consolidation, or other legal succession becomes invested with rights and assumes burdens of the original contractor.

"**Subaward**" means an award provided by a pass-through entity to a subrecipient for the subrecipient to carry out part of a federal award received by the pass-through entity. It does not include payments to a contractor or payments to an individual that is a beneficiary of a federal program. A subaward may be provided through any form of legal agreement, including any agreements that the pass-through entity considers a contract.

"**Sub-Recipient**" means a non-federal entity that receives a subaward from a pass-through entity to carry out part a federal program, but does not include an individual that is a beneficiary of such a program. A sub-recipient may also be a recipient of other federal awards directly from a federal awarding agency.

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

"Vendor" means a dealer, distributor, merchant, or other seller providing goods or services that are required for the conduct of a federal program. These goods or services may be for an organization's own use or for the use of beneficiaries of the federal program.

"WAC" means the Washington administrative code. All references in this contract to WAC chapters or sections shall include any successor, amended, or replacement regulation. Pertinent WAC chapters or sections can be accessed at: http://apps.leg.wa.gov/wac/.

2. PURPOSE

The purpose of this contract is to obtain CPWI Prevention Services in order to increase capacity to implement direct and environmental substance use disorder prevention services in high need communities qualified to immediately implement identified evidence-based practices and programs to prevent and reduce the misuse and abuse of alcohol, tobacco, marijuana, opioids, and/or other drugs.

3. TERM

The initial term of this Contract will commence on **July 1, 2021**, and continue through **June 30, 2023**, unless terminated sooner as provided herein.

This Contract may be extended in whatever time increments HCA deems appropriate.

Work performed prior to full contract execution, signed by the authorized representatives of both parties will be at the sole risk of the Contractor. HCA will not pay any costs incurred before a Contract or subsequent amendment is fully executed.

4. APPLICABLE LAW

These legal resources identified below are incorporated by reference and include but are not limited to the following:

i. 21 CFR Food and Drugs Chapter I, Subchapter C, Drugs: General;

ii. 42 CFR Subchapter A-General Provisions, Part 2 Confidentiality of Alcohol and Drug Abuse Patient Records;

iii. Omnibus Crime Control and Safe Streets Act of 1968;

iv. 45 CFR Public Welfare, Part 96 Block Grants, Subpart L Substance Abuse Block Grant;

v. Uniform Administrative Requirements, Cost Principles, and Audit Requirements for HHS Award, 45 CFR Part 75, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for HHS Awards;

vi. Substance Use Disorder Prevention and Mental Health Promotion Services Billing Guide https://www.hca.wa.gov/billers-providers-partners/prior-authorization-claims-and-billing/provider-billing-guides-and-fee-schedules#t;

vii. Title VI of the Civil Rights Act of 1964;

viii. Section 504 of the Rehabilitation Act of 1973;

ix. Title II of the Americans with Disabilities Act of 1990;

x. Title IX of the Education Amendments of 1972;

xi. The Age Discrimination Act of 1975; and

xii. The Department of Justice Non-Discrimination Regulations at 28 CFR Part 42, Subparts C, D, E and G, and 28 CFR Parts 35 and 39.

If this Contract is not supported by federal funds, then all references to Federal laws and regulations do not apply.

5. PERFORMANCE STANDARDS

Contractor is expected to adhere to the following performance standards throughout the duration of this Contract:

i. Adherence to all applicable state and federal laws, including but limited to all legal resources identified in Section 4 of this Contract;

ii. Use of professional judgment;

iii. Collaboration with HCA staff in Contractor's conduct of services;

iv. Conformance with HCA directions regarding the delivery of services;

v. Timely, accurate and informed communications;

vi. Regular completion and updating of project plans, reports, documentation, and communications;

vii. Ensure all services and activities provided by the Contractor or subcontractors are designed and delivered in such a manner sensitive to the needs of all diverse populations;

viii. Regular, punctual attendance at all meetings; and

ix. Provision of high quality services.

6. CONTRACTOR AND HCA CONTRACT MANAGERS

Contractor's Contract Manager or designee will have prime responsibility and final authority for the services provided under this Contract and be the principal point of contact for the HCA Contract Manager for all business matters, performance matters, and administrative activities.

HCA's Contract Manager or designee is responsible for monitoring the Contractor's performance and will be the contact person for all communications regarding Contract performance and deliverables. The HCA Contract Manager or designee has the authority to accept or reject the services provided and must approve Contractor's invoices prior to payment.

The contact information provided below may be changed by written notice of the change (email acceptable) to the other party.

CONTRACTOR Contract Manager Information	HEALTH CARE AUTHORITY Contract Manager Information

Name:	Cynthia L Hanson	Name:	Isaac Wulff
Address:	1912 W 18th St Port Angeles, WA 98363	Address:	621 8th Avenue SE P.O. Box 42730 Olympia, WA 98504
Phone:	360-565-2646	Phone:	(360) 725- 1058
Email:	chanson@co.clallam.wa.us	Email:	isaac.wulff@hca.wa.gov

7. CONTRACTOR MONITORING

HCA will monitor the performance of the Contractor against goals and performance standards as stated in Attachment 1: *Statement of Work*. Substandard performance as determined by HCA will constitute non-compliance with this Contract. If action to correct such substandard performance is not taken by the Contractor within a reasonable period of time after being notified by HCA, suspension or termination procedures will be initiated.

7.1. Subrecipient Compliance

If the Contractor is a subrecipient (as defined in 45 CFR 75.351) of federal awards, then the Contractor shall:

i. Maintain records that identify, in its accounts, all federal awards received and expended and the federal programs under which they were received, by Catalog of Federal Domestic Assistance (CFDA) title and number, award number and year, name of the federal agency, and name of the pass-through entity;

ii. Maintain internal controls that provide reasonable assurance that the Contractor is managing federal awards in compliance with laws, regulations, and provisions of contracts or grant agreements that could have a material effect on each of its federal programs;

iii. Prepare appropriate financial statements, including a schedule of expenditures of federal awards;

iv. Incorporate 45 CFR Part 75, Subpart F, Audit Requirements, into all agreements between the Contractor and its Subcontractors who are sub-recipients;

v. Comply with any future amendments to 45 CFR Part 75, Subpart F, Audit Requirements, and any successor or replacement Circular or regulation;

vi. Comply with the applicable requirements of 45 CFR Part 75, Subpart E, Cost Principles, and any future amendments to 45 CFR Part 75, Subpart E, Cost Principles, and any successor or replacement; and

vii. Comply with the Omnibus Crime Control and Safe Streets Act of 1968, Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, Title II of the Americans with Disabilities Act of 1990, Title IX of the Education Amendments of 1972, The Age Discrimination Act of 1975, and The Department of Justice Non-Discrimination Regulations, 28 C.F.R. Part 42, Subparts C, D, E, and G, and 28 C.F.R. Part 35 and 39.

(Go to www.ojp.usdoj.gov/ocr/statutes.htm for additional information and access to the aforementioned Federal laws and regulations.)

7.1.1. Single Audit Compliance

If the Contractor is a subrecipient and expends $750,000 or more in federal awards from any and/or all sources in any fiscal year, the Contractor shall procure and pay for a single audit or a program-specific audit for that fiscal year. Upon completion of each audit, the Contractor shall:

i. Submit to the HCA contact person the data collection form and reporting package specified in 45 CFR Part 75, Subpart F, Audit Requirements reports required by the program-specific audit guide (if applicable), and a copy of any management letters issued by the auditor.

ii. Follow-up and develop corrective action for all audit findings; in accordance with 45 CFR Part 75, Subpart F, Audit Requirements, including preparing a "Summary Schedule of Prior Audit Findings."

7.2. Monitoring Activities

The Contractor is required to meet or exceed the monitoring activities, as outlined below. Compliance will be monitored throughout the performance period to assess risk. Concern will be addressed through a Corrective Action Plan. Monitoring activities may include, but are not limited to:

i. Review of financial and performance reports;

ii. Monitoring and documenting the completion of Contract deliverables;

iii. Documentation of phone calls, meetings (e.g. agendas, sign-in sheets, meeting minutes), e-mails and correspondence;

iv. Review of reimbursement requests and supporting documentation to ensure allowability and consistency with Contract work plan, budget and Federal requirements;

v. Observation and documentation of Contract-related activities, such as trainings and events;

vi. On-site visits or desk audits to review records and inventories, to verify source documentation for reimbursement requests and performance reports, and to verify completion of deliverables.

7.2.1. Corrective Action Plans

HCA may require the Contractor to develop a Corrective Action Plan (CAP), which must be submitted for approval to HCA within fifteen (15) calendar days of notification unless otherwise specified. CAPs may require modification to any policies or procedures by the Contractor relating to fulfillment of its obligations pursuant to this

Contract. HCA, at its sole discretion, may extend or reduce the time allowed for corrective action depending upon the nature of the situation.

i. CAPs must at a minimum include:
   a. A brief description of the finding(s), including all relevant information specific to the issue(s);
   b. Specific actions taken and to be taken by the Contractor, including a timetable and a description of the monitoring to be performed.

ii. CAPs are subject to approval by HCA. HCA may:
   a. Accept the plan as submitted;
   b. Accept the plan with specified modifications;
   c. Request a modified plan;
   d. Reject the plan.

7.2.2. Extension to Deliverables

The Contractor must request **prior** written approval from the HCA Contract Manager to waive or extend a due date identified in Attachment 1: *Statement of Work* and, once approved, submit those deliverables and the associated costs on the next scheduled reimbursement due date.

Waiving or missing deadlines serves as an indicator for assessing an agency's level of risk of noncompliance with the regulations, requirements, and the terms and conditions of the Contract and may increase required monitoring activities.

Any request for a waiver or extension of a due date identified in Attachment 1: *Statement of Work* will be treated as a request for an Amendment of the Contract. This request must be submitted to the HCA Contract Manager sufficiently in advance of the due date to provide adequate time for HCA to review and consideration and may be granted or denied within HCA's sole discretion.

8. COMPENSATION AND BILLING

8.1. Consideration and Source of Funds

Total consideration payable to the Contractor for satisfactory performance of the work under this Contract is up to a maximum of **$220,000**, including any and all expenses, in accordance with the *Award and Revenues*.

Funding for any additional periods past the initial term are contingent on satisfactory completion of all contract requirements and continued state and/or federal funding. Contractors may be required to submit an updated Action Plan and Budget to HCA in order to receive funding for additional terms.

Funding that supports this Contract comes from state and/or federal grant funds, HCA, and the Catalog of Federal Domestic Assistance (CFDA) as listed within the Awards and

Revenue. Any state or federal funds obligated under this Contract which are not expended according to the timeline on the Awards and Revenues, may not be used or carried forward to any other Contract or time period.

Subrecipients shall only use federal award funds under this Contract to supplement existing funds and will not use them to replace (supplant) non-federal funds that have been budgeted for the same purpose. The Subrecipient may be required to demonstrate and document that a reduction in non-federal resources occurred for reasons other than the receipt or expected receipt of federal funds.

8.2. Reimbursements

HCA shall reimburse the Contractor only for actual incurred and allowable costs for the services identified in this Contract and in accordance with the Substance Use Disorder Prevention and Mental Health Promotion Services Billing Guide.

The Contractor shall not bill and HCA shall not pay for services performed under this contract, if the contractor has charged or will charge another agency of the state of Washington or any other party for the same services.

Reimbursement requests will not be approved for payment until the Contractor is current with all reporting requirements contained in this Contract.

HCA shall not make any payments in advance or anticipation of the delivery of services to be provided pursuant to this Contract.

All work under this Contract must end on or before the funding source end date and the final reimbursement request must be submitted to HCA within forty-five (45) calendar days after the funding source end date, except as otherwise authorized by either (1) written amendment of this Contract or (2) written notification from the HCA to the Contractor.

Upon expiration of the Contract, any claims for payment for costs due and payable under this Contract that are incurred prior to the expiration date must be submitted by the Contractor to HCA within sixty (60) calendar days after the Contract expiration date or within forty-five (45) calendar days after the funding source end date, whichever comes first, except as otherwise authorized by either (1) written amendment of this Contract or (2) written notification from the HCA to the Contractor.

The Contractor must submit invoices for costs due and payable under this contract within ninety (90) days of the date services were provided or within sixty (60) calendar days after the Contract expiration date or within forty-five (45) calendar days after the funding source end date, whichever comes first, except as otherwise authorized by either (1) written amendment of this Contract or (2) written notification from HCA to the Contractor.

HCA is under no obligation to pay any claims that are submitted forty-six (46) or more days after the funding source end date, sixty-one (61) or more calendar days after the Contract expiration date, or ninety-one (91) or more calendar days after the date of services were

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

Payment shall be considered timely if made by HCA within thirty (30) business days after receipt and acceptance by HCA of the properly completed invoices. Payments shall be sent to the address designated by the Contractor on page one (1) of this Contract. HCA may, at its sole discretion, withhold payment claimed by the Contractor for services rendered if Contractor fails to satisfactorily comply with any term or condition of this Contract.

8.3. Invoice System

The Contractor shall submit invoices using State Form A-19 Invoice Voucher, or such other form as designated by HCA. Consideration for services rendered shall be payable upon receipt of properly completed invoices which shall be submitted via email to: A-19DBHR@hca.wa.gov by the Contractor not more often than monthly unless otherwise specified. Please include the contract number in the subject line of the email, followed by the Prevention System Naming Convention and cc the Contract Manager or designee when submitting the invoice. Contractor may bill for cost reimbursement for month of service if appropriate service data is provided in Minerva.

Invoices must describe and document to HCA's satisfaction a description of the work performed, the progress of the project, and fees. If expenses are invoiced, invoices must provide a detailed breakdown of each type. All fund sources are to be billed for separately as outlined on the A-19 Invoice Voucher. All invoices will be reviewed and must be approved by the Contract Manager or his/her designee prior to payment. HCA shall not be obligated to reimburse the Contractor for any services or activities performed prior to having a fully executed copy of this Contract. The Contractor shall ensure all expenditures for services and activities under the Contract are submitted on the A-19 invoice and have the associated appropriate Minerva data entry.

HCA will deny incorrect or incomplete invoices to the Contractor for correction and reissue. The Contract Number must appear on all invoices, bills of lading, packages, and correspondence relating to this Contract.

In order to receive payment for services or products provided to a state agency, Contractor must register with the Statewide Payee Desk at https://ofm.wa.gov/it-systems/statewide-vendorpayee-services/receiving-payment-state. Payment will be directly deposited in the bank account or sent to the address Contractor designated in its registration.

Administrative/indirect costs shall be billed separately from direct prevention services as indicated on the A-19 invoice.

i. Administrative/Indirect costs are defined in Section 1. Definitions.

ii. The Contractor shall use no more than eight percent 8% of each fund source allocation for administrative/indirect costs.

i. Contractor may bill up to 8% of total costs to Administrative/Indirect by fund source as specified on the A&R however the following also applies:

1. Administrative/Indirect costs must be billed in proportion to direct expenses. Administrative/Indirect should be charged using the following formula: Direct costs / (1 - allowed admin/indirect rate) = Total costs; Total costs - Direct costs = Admin/indirect costs.

2. Administrative/Indirect costs are to be reconciled at the end of each fund source time period to ensure adherence.

iii. No SABG funds allocated in this contract shall be used for administrative/indirect costs unless otherwise specified on the A&R. Admin/indirect for SABG is allocated as GFS unless otherwise specified.

HCA reserves the right to reduce the Prevention funds awarded in the Contract if the Contractor expenditures are below 60% of expected levels during each fiscal quarter. Expenditures will be reviewed quarterly.

SOR, PFS, DMA, and GFS funds may not be carried forward from year to year, based upon their respective fiscal year.

8.4. Payments for Unallowable Costs and/or Overpayments

If it is determined by the HCA, or during the course of a required audit, that the Contractor has been paid unallowable costs under this Contract, HCA may require the Contractor to reimburse HCA in accordance with 45 CFR Part 75, Subpart E, Cost Principles.

In the event that overpayments or erroneous payments have been made to the Contractor under this Contract, HCA will provide written notice to Contractor and Contractor shall refund the full amount to HCA within thirty (30) calendar days of the notice.

8.5. State and Federal Funding Requirements

The Contractor shall comply with the following:

i. Comply with all applicable provisions of the Notice of Awards for the SOR and PFS grants, SABG, and any other federal grants noted on the Awards and Revenues;

ii. Comply with RCW 69.50.540 Dedicated Marijuana Account Appropriations;

iii. Maintain records that identify, in its accounts, all federal awards received and expended and the federal programs under which they were received, by CFDA title and number, award number and year, name of the federal agency, and name of the pass-through entity;

iv. Maintain internal controls that provide reasonable assurance that the Subrecipient is managing federal awards in compliance with laws, regulations, and provisions of

contracts or grant agreements that could have a material effect on each of its federal programs;

v. The Contractor shall ensure that Charitable Choice Requirements of 42 CFR Part 54 are followed and that Faith-Based Organizations (FBO) are provided opportunities to compete with traditional alcohol/drug abuse prevention providers for funding;

vi. If the Contractor subcontracts with FBOs, the Contractor shall require the FBO to meet the requirements of 42 CFR Part 54 as follows:

a. Applicants/recipients for/of services shall be provided with a choice of prevention providers.

b. The FBO shall facilitate a referral to an alternative provider within a reasonable time frame when requested by the recipient of services.

c. The FBO shall report to the Contractor all referrals made to alternative providers.

d. The FBO shall provide recipients with a notice of their rights.

e. The FBO provides recipients with a summary of services that includes any inherently religious activities. Prepare appropriate financial statements, including a schedule of expenditures of federal awards.

f. Funds received from the federal block grant must be segregated in a manner consistent with Federal regulations.

vii. No funds may be expended for religious activities.

9. Subcontracting

Neither the Contractor nor any Subcontractor shall enter into subcontracts for any of the work contemplated under this Contract without obtaining prior written approval of the HCA. In no event shall the existence of the subcontract operate to release or reduce the liability of the contractor to the HCA for any breach in the performance of the Contractor's duties. This clause does not include contracts of employment between the Contractor and personnel assigned to work under this Contract.

Additionally, the Contractor is responsible for ensuring that all terms, conditions, assurances and certifications set forth in this Contract are carried forward to any subcontracts. Contractor and its subcontractors agree not to release, divulge, publish, transfer, sell or otherwise make known to unauthorized persons Confidential Information without the express written consent of HCA or as provided by law.

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

HCA has no contractual obligations to any subcontractor or vendor under contract to the Contractor. The Contractor is fully responsible for all contractual obligations, financial or otherwise, to their subcontractors.

9.1. Subcontract Language

It is the Contractor's sole responsibility to ensure that its subcontractors performing services under this Contract are meeting the requirements below and as otherwise outlined in this Contract when providing services to patients, clients, or persons seeking assistance, which include but are not limited to:

i. Subcontractor's identifying information including DUNS number and Zip code +4 of subcontractor;

ii. Applicable definitions;

iii. Identification of purpose and term of subcontract;

iv. Federal and state laws as applicable;

   a. This includes, but not limited to 45 CFR Part 75, Uniform Administrative Requirements, Cost Principles, and Audit Requirements, if applicable to the subcontractor

v. Subrecipient requirements as applicable;

vi. Identification of funding sources and associated funding requirements;

vii. Determination of eligible clients;

viii. Compensation and billing arrangement in compliance with the terms of this contract and the Substance Use Disorder Prevention and Mental Health Promotion Services Billing Guide (see definitions for more information);

ix. Termination and contract closeout language as applicable to include:

   a. That termination of a subcontract shall not be grounds for a fair hearing for the service applicant or a grievance for the recipient if similar services are immediately available in the county; and

   b. What actions the Subrecipient will take in the event of a termination of a subcontractor to ensure all prevention data on services provided have been entered into Minerva.

x. How service recipients will be informed of their right to a grievance in the case of:

   a. Denial or termination of service; and

   b. Failure to act upon a request for services with reasonable promptness.

xi. Statement of work and/or identification of deliverables and plan for monitoring;

xii. Identification of data entry into Minerva, as applicable;

xiii. Authorization for Contractor to conduct an inspection of any and all subcontractor facilities where services are performed including for contract monitoring activities;

   a. Requirement that subcontractors will perform background checks on its employees and independent contractors used to perform the services.

xiv. FBO requirements if applicable;

xv. Insurance requirements;

xvi. Debarment and suspension certification;

xvii. Protection of confidential Information and restrictions on the providing and sharing of data;

xviii. Business Associate Agreement in compliance with the requirements of HIPAA;

xix. Federal compliance, certifications, and assurances as applicable;

xx. SAMHSA award terms as applicable; and

xxi. Identifying unallowable uses of federal funds if applicable.

9.2. Subcontract Monitoring

9.2.1. Contracts

The Contractor shall obtain prior approval before entering into any subcontracting arrangement.

In addition, the Contractor shall submit to the DBHR Contract Manager identified on page one (1) of this Contract at least one of the following for review within 30 business days of the intended start date of the subcontract:

i. Copy of the proposed subcontract; or

ii. Copy of the Contractor's standard contract template; or

iii. Certify in writing that the subcontractor meets all requirements under the Contract and that the subcontract contains all required language under the Contract, including any data security, confidentiality and/or Business Associate language, as appropriate.

9.2.2. On-Site Monitoring

The Contractor shall:

i. Conduct a subcontractor review which shall include at least one (1) on-site visit, annually, to each subcontractor site providing services to monitor fiscal and programmatic compliance with subcontract performance criteria for the purpose of documenting that the subcontractors are fulfilling the requirements of the subcontract unless otherwise specified.

ii. Submit written documentation of each on-site visit upon completion to Contract Manager or designee. A copy of the full report shall be kept on file by the Contractor.

9.2.3. Minerva Monitoring

The Contractor shall ensure that subcontractors have entered services funded under this Contract in Minerva.

i. Ensure accurate and unduplicated reporting. Contractor may not require subcontractor to enter duplicate prevention service data that is entered into Minerva into an additional system.

ii. Ensure proper training of staff and designated back-up staff for Minerva data entry to meet report due dates.

9.2.4. Additional Monitoring Activities

The Contractor shall maintain records of additional monitoring activities in the Contractor's subcontractor file and make them available to HCA upon request including any audit and any independent documentation.

9.2.5. Subcontractor Termination Requirements

When terminating a subcontract, the Contractor shall withhold the final payment of any subcontract until all required Minerva reporting is complete. This also applies to all subcontractor closures.

10. REMEDIAL ACTION

10.1. Causes

HCA may initiate remedial action if HCA determines any of the following situations exists:

i. A problem exists that negatively impacts individuals receiving services under this Contract;

ii. The Contractor has failed to perform any of the requirements or services required under this Contract;

iii. The Contractor has failed to develop, produce, and/or deliver to HCA any of the statements, reports, data, data corrections, accountings, claims, and/or documentation required under this Contracts;

iv. The Contractor has failed to perform any administrative functions required under this Contract, where administrative function is defined as any obligation other than the actual provision of mental health services;

v. The Contractor has failed to implement corrective action required by the state and within HCA prescribed timeframes.

11. THIRD-PARTY BENEFICIARIES

Although HCA and Contractor mutually recognize that services under this Contract may be provided by the Contractor to individuals receiving services under the Medicaid program, and chapters 71.05, 71.24, and 71.34 RCW, it is not the intention of either HCA or the Contractor that such individuals, or any other persons, occupy the position of intended third-party beneficiaries of the obligations assumed by either party to this Contract.

12. DISPUTES

12.1. Requesting a Dispute

Requests must be sent by certified mail or other method providing a signed receipt to the following address:

Office of Contracts and Procurements
Health Care Authority
PO Box 42702
Olympia, WA 98504-2702

Requests must be received by Contract Services no later than twenty-eight (28) calendar days after this Contract expiration or termination.

Requests must identify in writing the spokesperson for the Contractor, if other than the Contractor's signatory.

12.2. Content of the dispute REQUEST:

The party requesting a dispute resolution shall submit a statement that:

i. Identifies the issue(s) in dispute;

ii. Identifies the relative positions of the parties; and

iii. Requests resolution through the current HCA process

12.3. Action on the request:

HCA shall notify the non-requesting party that the request has been made, notify both parties of the dispute resolution process to be followed, and manage the process to its conclusion.

The Contractor shall provide pertinent information as requested by the person assigned to resolve the dispute.

Contractor and HCA agree that, the existence of a dispute notwithstanding, they will continue without delay to carry out all their respective responsibilities under this Contract that are not affected by the dispute Insurance.

13. INSURANCE

The Contractor shall at all times comply with the following insurance requirements.

13.1. General Liability Insurance

The Contractor certifies by signing this Contract that either:

i. The Contractor is self-insured or insured through a risk pool and shall pay for losses for which it is found liable; or

ii. The Contractor maintains the types and amounts of insurance identified below and shall, if requested by HCA, provide certificates of insurance to that effect to the HCA Contract Manager:

a. The Contractor shall maintain Commercial General Liability Insurance, or Business Liability Insurance, including coverage for bodily injury, property damage, and

contractual liability, with the following minimum limits: Each Occurrence - $1,000,000; General Aggregate - $2,000,000. The policy shall include liability arising out of premises, operations, independent contractors, products-completed operations, personal injury, advertising injury, and liability assumed under an insured contract. The State of Washington, Health Care Authority (HCA), and elected and appointed officials, and employees of the state, shall be named as additional insureds.

b. Professional Liability (PL) Insurance. The Contractor shall maintain PL Insurance or Errors & Omissions, with the following minimum limits: Each Occurrence - $1,000,000; Aggregate - $2,000,000.

13.2. Worker's Compensation

The Contractor shall comply with all applicable Worker's Compensation, occupational disease, and occupational health and safety laws and regulations. The State of Washington and HCA shall not be held responsible for claims filed for Worker's Compensation under Title 51 RCW by the Contractor or its employees under such laws and regulations.

13.3. Employees and Volunteers

Insurance required of the Contractor under the Contract shall include coverage for the acts and omissions of the Contractor's employees and volunteers. In addition, the Contractor shall ensure that all employees and volunteers who use vehicles to transport clients or deliver services have personal automobile insurance and current driver's licenses.

13.4. Subcontractors

The Contractor shall ensure that all subcontractors have and maintain insurance with the same types and limits of coverage as required of the Contractor under this Contract.

13.5. Separation of Insureds

All insurance policies shall include coverage for cross liability and contain a "Separation of Insureds" provision.

13.6. Insurers

Unless Contractor is self-insured or insured through a risk pool and shall pay for losses for which it is found liable, the Contractor shall obtain insurance from insurance companies identified as an admitted insurer/carrier in the State of Washington, with a Best's Reports' rating of B++, Class VII, or better. Surplus Lines insurance companies will have a rating of A-, Class VII, or better.

13.7. Evidence of Coverage

The Contractor, upon request by HCA staff, submits a copy of the Certificate of Insurance or other evidence of self-insurance or insurance through a risk pool, policy, and additional

insured endorsement for each coverage required of the Contractor under this Contract. The Certificate of Insurance shall identify the Washington State Health Care Authority (HCA) as the Certificate Holder. A duly authorized representative of each insurer, showing compliance with the insurance requirements specified in this Contract, shall execute each Certificate of Insurance. The Contractor is not required to submit to the HCA copies of Certificates of Insurance for personal automobile insurance required of the Contractor's employees and volunteers under the Contract. The Contractor shall maintain copies of Certificates of Insurance for each subcontractor as evidence that each subcontractor maintains insurance as required by the Contract.

13.8. Material Changes

The insurer shall give HCA forty-five (45) business days advance written notice of cancellation or non-renewal. If cancellation is due to non-payment of premium, the insurer shall give HCA ten (10) business days advance written notice of cancellation.

13.9. General

By requiring insurance, the State of Washington and HCA do not represent that the coverage and limits specified will be adequate to protect the Contractor. Such coverage and limits shall not be construed to relieve the Contractor from liability in excess of the required coverage and limits and shall not limit the Contractor's liability under the indemnities and reimbursements granted to the State and HCA in this Contract. All insurance provided in compliance with this Contract shall be primary as to any other insurance or self-insurance programs afforded to or maintained by the State.

14. NOTICES

Whenever one party is required to give notice to the other party under this Contract, it shall be deemed given if mailed by United States Postal Service, registered or certified mail, return receipt requested, postage prepaid and addressed as follows:

i. In the case of notice to the Contractor, notice shall be sent to the point of contact identified on page one (1) of this Contract;

ii. In the case of notice to HCA, notice shall be sent to:

Office of Contracts and Procurements
Washington State Health Care Authority
P.O. Box 42702
Olympia, WA 98504-2702
contracts@hca.wa.gov

Said notice shall become effective on the date delivered as evidenced by the return receipt or the date returned to sender for non-delivery other than for insufficient postage. Either party may at any time change its address for notification purposes by mailing a notice in accordance with this

Section, stating the change and setting forth the new address, which shall be effective on the tenth (10th) day following the effective date of such notice unless a later day is specified in the notice.

15. TAXES, FEES AND LICENSES

15.1. Taxes

Where required by state statute or regulation, the Contractor shall pay for and maintain in current status and all taxes that are necessary for performance under this Contract. Unless otherwise indicated, HCA agrees to pay State of Washington sales or use taxes on all applicable consumer services and materials purchased. The Contractor shall not charge federal excise taxes and the HCA agrees to furnish the Contractor with an exemption certificate where appropriate.

In general, Contractors engaged in retail sales activities within the State of Washington are required to collect and remit sales tax to the Department of Revenue (DOR). In general, out-of-state Contractors must collect and remit "use tax" to DOR if the activity carried on by the seller in the State of Washington is significantly associated with the Contractor's ability to establish or maintain a market for its products in Washington State. Examples of such activity include where the Contractor either directly or by an agent or representative:

i. Maintains an in-state office, distribution house, sales house, warehouse, service enterprise, or any other in-state place of business;

ii. Maintains an in-state inventory or stock of goods for sale;

iii. Regularly solicits orders from purchasers located within the State of Washington via sales representatives entering the State of Washington;

iv. Sends other staff into the State of Washington (e.g. product safety engineers, etc.) to interact with purchasers in an attempt to establish or maintain market(s); or

v. Other factors identified in Chapter 458-20 WAC.

15.2. Fees/Licenses

Contractor shall pay for and maintain in a current status, any license fees, assessments, permit changes, etc., which are necessary for contract performance. It is the Contractor's sole responsibility to monitor and determine any changes of the enactment of any subsequent regulations for said fees, assessments or charges and to immediately comply with said changes or regulations during the entire term of this Contract.

16. ACCESS TO DATA

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

17. AMENDMENT

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

18. ANTITRUST ASSIGNMENT

The Contractor hereby assigns to the State of Washington any and all of its claims for price fixing or overcharges which arise under the antitrust laws of the United States, or the antitrust laws of the State of Washington, relating to the goods, products or services obtained under this Contract.

19. ASSIGNMENT

Contractor may not assign or transfer all or any portion of this Contract or any of its rights hereunder, or delegate any of its duties hereunder, except delegations as set forth in Section 9: *Subcontracting*, without the prior written consent of HCA. Any permitted assignment will not operate to relieve Contractor of any of its duties and obligations hereunder, nor will such assignment affect any remedies available to HCA that may arise from any breach of the provisions of this Contract or warranties made herein, including but not limited to, rights of setoff. Any attempted assignment, transfer or delegation in contravention of this Subsection of the Contract will be null and void. HCA may assign this Contract to any public agency, commission, board, or the like, within the political boundaries of the State of Washington, with written notice of thirty (30) calendar days to Contractor.

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

20. ASSURANCES

HCA and the Contractor agree that all activity pursuant to this Contract will be in accordance with all applicable federal, state and local laws, rules, and regulations.

21. ATTORNEY'S FEES

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

22. BILLING LIMITATIONS

The HCA shall pay the Contractor only for authorized services provided in accordance with this Contract.

The HCA shall not pay any claims for payment for services submitted more than twelve (12) months after the calendar month in which the services were performed. HCA within the special terms and conditions of this contract may reduce length of time following the provision of services in which the contractor may submit claims for payment.

23. CHANGE IN STATUS

In the event of substantive change in the legal status, organization structure, or fiscal reporting responsibility of the Contractor, the Contractor agrees to notify the Office of Contracts and Procurement (OCP) of the change. The Contractor shall provide notice as soon as practicable, but no later than thirty (30) calendar days after such a change takes effect.

24. COMPLIANCE WITH APPLICABLE LAW

At all times during the term of this Contract, the Contractor shall comply with all applicable federal, state, and local laws and regulations, including but not limited to, nondiscrimination laws and regulations.

25. CONFLICT OF INTEREST

Notwithstanding any determination by the Executive Ethics Board or other tribunal, the HCA may, in its sole discretion, by written notice to the Contractor terminate this Contract if it is found after due notice and examination by the Agent that there is a violation of the Ethics in Public Service Act, Chapter 42.52 RCW; or any similar statute involving the Contractor in the procurement of, or services under this Contract.

In the event this Contract is terminated as provided above, the HCA shall be entitled to pursue the same remedies against the Contractor as it could pursue in the event of a breach of this Contract by the Contractor. The rights and remedies of the HCA provided for in this Section shall not be exclusive and are in addition to any other rights and remedies provided by the law. The existence of facts upon which the Agent makes any determination under this Section shall be an issue and may be reviewed as provided in the "Disputes" Section of this Contract.

26. CONFORMANCE

If any provision of this Contract violates any statute or rule of law of the State of Washington, it is considered modified to conform to that statute or rule of law.

27. CONTRACTOR CERTIFICATION REGARDING ETHICS

The Contractor certifies that the Contractor is now, and shall remain, in compliance under Chapter 42.52 RCW, Ethics in Public Service, throughout the term of this Contract.

28. COVENANT AGAINST CONTINGENT FEES

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

29. DEBARMENT CERTIFICATIONS

The Contractor, by signature to this Contract, certifies that the Contractor is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any Federal department or agency from participating in transactions (Debarred). The Contractor also agrees to include the above requirement in any and all Subcontracts into which it enters. The Contractor shall immediately notify the HCA Contact designated on the cover page of this Contract if, during the term of this Contract, the Contractor becomes debarred. HCA may immediately terminate this Contract by providing Contractor written notice if Contractor becomes Debarred during the term of this Contract.

30. FORCE MAJEURE

If the Contractor is prevented from performing any of its obligations hereunder in whole or in part as a result of a major epidemic, act of God, war, terrorist acts, civil disturbance, court order, or any other cause beyond its control, such nonperformance shall not be grounds for termination for default. Immediately upon the occurrence of any such event, the Contractor shall commence to use its best efforts to provide, directly or indirectly, alternate and, to the extent practicable, comparable performance. Nothing in this Section shall be construed to prevent HCA from terminating this Contract for reasons other than for default during the period of event set forth above, or for default, if such default occurred prior to such event.

31. FRAUD AND ABUSE REQUIREMENTS

The Contractor shall report in writing all verified cases of fraud and abuse, including fraud and abuse by the Contractor's employees and/or subcontractors, within five (5) business days, to the HCA Contact designated on page one (1) of this Contract. The report shall include the following information:

i. Subject(s) of complaint by name and either provider/subcontractor type or employee position;

ii. Source of complaint by name and provider/subcontractor type or employee position;

iii. Nature of compliant;

iv. Estimate of the amount of funds involved; and

v. Legal and administrative disposition of case.

32. GOVERNING LAW AND VENUE

This Contract shall be construed and interpreted in accordance with the laws of the state of Washington and the venue of any action brought hereunder shall be in Superior Court for Thurston County.

33. HEALTH AND SAFETY

Contractor shall perform any and all of its obligations under this Contract in a manner that does not compromise the health and safety of any HCA client with whom the Contractor has contact.

34. HOLD HARMLESS AND INDEMNIFICATION

i. The Contractor shall be responsible for and shall indemnify, defend, and hold HCA harmless from all claims, loss, liability, damages, or fines arising out of or relating to:

   a. The Contractor's or any Subcontractor's performance or failure to perform this Contract, or

   b. The acts or omissions of the Contractor or any Subcontractor;

ii. The Contractor waives its immunity under Title 51 RCW to the extent it is required to indemnify, defend, and hold harmless the State and its agencies, officials, agents, or employees.

iii. Nothing in this Section shall be construed as a modification or limitation on the Contractor's obligation to procure insurance in accordance with this Contract or the scope of said insurance.

35. INDEPENDENT CONTRACTOR

The parties intend that an independent contractor relationship will be created by this Contract. The Contractor and his or her employees or agents performing under this Contract are not employees or agents of HCA. The Contractor, his or her employees, or agents performing under this Contract will not hold himself/herself out as, nor claim to be, an officer or employee of HCA by reason hereof, nor will the Contractor, his or her employees, or agent make any claim of right, privilege or benefit that would accrue to such officer or employee.

All payments accrued on account of payroll taxes, unemployment contributions, and other taxes, insurance or other expenses for the Contractor or its staff shall be the sole responsibility of the Contractor.

36. INDUSTRIAL INSURANCE COVERAGE

The Contractor shall comply with the provisions of Title 51 RCW, Industrial Insurance. If the Contractor fails to provide industrial insurance coverage or fails to pay premiums or penalties on behalf of its employees, as may be required by law, HCA may collect from the Contractor the full amount payable to the Industrial Insurance accident fund. HCA may deduct the amount owed by the Contractor to the accident fund from the amount payable to the Contractor by HCA under this Contract, and transmit the deducted amount to the Department of Labor and Industries, (L&I) Division of Insurance Services. This provision does not waive any of L&I's rights to collect from the Contractor.

37. INSPECTION

The Contractor shall, at no cost, provide HCA, or any of its officers, or to any other authorized agent or officer of the state of Washington or the federal government, and the Office of the State Auditor with reasonable access to Contractor's place of business, Contractor's records, and HCA client records, wherever located. These inspection rights are intended to allow HCA and the Office of the State Auditor to monitor, audit, and evaluate the Contractor's performance and compliance

with applicable laws, regulations, and these Contract terms. These inspection rights shall survive for six (6) years following this Contract's termination or expiration.

38. LIMITATION OF AUTHORITY

Only the Agent or Agent's delegate by writing (delegation to be made prior to action) shall have the express, implied, or apparent authority to alter, amend, modify, or waive any clause or condition of this Contract. Furthermore, any alteration, amendment, modification, or waiver of any Section or condition of this Contract is not effective or binding unless made in writing and signed by the Agent or Agent's delegate.

39. MAINTENANCE OF RECORDS

The Contractor shall maintain records relating to this Contract and the performance of the services described herein. The records include, but are not limited to, accounting procedures and practices, which sufficiently and properly reflect all direct and indirect costs of any nature expended in the performance of this Contract. All records and other material relevant to this Contract shall be retained for six (6) years after expiration or termination of this Contract.

Without agreeing that litigation or claims are legally authorized, if any litigation, claim, or audit is started before the expiration of the six (6) year period, the records shall be retained until all litigation, claims, or audit findings involving the records have been resolved.

40. PAY EQUITY

i. Contractor represents and warrants that, as required by Washington state law (Engrossed House Bill 1109, Sec. 211), during the term of this Contract, it agrees to equality among its workers by ensuring similarly employed individuals are compensated as equals. For purposes of this provision, employees are similarly employed if: (i) the individuals work for Contractor, (ii) the performance of the job requires comparable skill, effort, and responsibility, and (iii) the jobs are performed under similar working conditions. Job titles alone are not determinative of whether employees are similarly employed.

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

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

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

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

41. PUBLICITY

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

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

42. RECORDS AND DOCUMENTS REVIEW

i. The Contractor must maintain books, records, documents, magnetic media, receipts, invoices, or other evidence relating to this Contract and the performance of the services rendered, along with accounting procedures and practices, all of which sufficiently and properly reflect all direct and indirect costs of any nature expended in the performance of this Contract. At no additional cost, these records, including materials generated under this Contract, are subject at all reasonable times to inspection, review, or audit by HCA, the Office of the State Auditor, and state and federal officials so authorized by law, rule, regulation, or agreement [See 42 USC 1396a(a)(27)(B); 42 USC 1396a(a)(37)(B); 42 USC 1396a(a)(42(A); 42 CFR 431, Subpart Q; and 42 CFR 447.202].

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

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

43. REGISTRATION WITH THE STATE OF WASHINGTON

The Contractor shall be responsible for registering with Washington State agencies, including but not limited to, the Washington State Department of Revenue, the Washington Secretary of State's Corporations Division, and the Washington State Office of Financial Management, Division of Information Services' Statewide Vendors program.

44. REMEDIES NON-EXCLUSIVE

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

45. RIGHTS IN DATA/OWNERSHIP

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

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

Contractor will execute all documents and perform such other proper acts as HCA may deem necessary to secure for HCA the rights pursuant to this section.

Contractor will not use or in any manner disseminate any Work Product to any third party, or represent in any way Contractor ownership of any Work Product, without the prior written permission of HCA. Contractor will take all reasonable steps necessary to ensure that its agents, employees, or Subcontractors will not copy or disclose, transmit or perform any Work Product or any portion thereof, in any form, to any third party.

Material that is delivered under this Contract, but that does not originate therefrom ("Preexisting Material"), must be transferred to HCA with a nonexclusive, royalty-free, irrevocable license to publish, translate, reproduce, deliver, perform, display, and dispose of such Preexisting Material, and to authorize others to do so. Contractor agrees to obtain, at its own expense, express written consent of the copyright holder for the inclusion of Preexisting Material. HCA will have the right to modify or remove any restrictive markings placed upon the Preexisting Material by Contractor.

Contractor must identify all Preexisting Material when it is delivered under this Contract and must advise HCA of any and all known or potential infringements of publicity, privacy or of intellectual property affecting any Preexisting Material at the time of delivery of such Preexisting Material. Contractor must provide HCA with prompt written notice of each notice or claim of copyright infringement or infringement of other intellectual property right worldwide received by Contractor with respect to any Preexisting Material delivered under this Contract.

46. SEVERABILITY

If any term or condition of this Contract is held invalid by any court, the remainder of this Contract remains valid and in full force and effect.

47. SITE SECURITY

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

48. SURVIVABILITY

The terms and conditions contained in this Contract which, by their sense and context, are intended to survive the expiration or termination of this particular agreement shall survive. Surviving terms include, but are not limited to: Billing Limitations; Confidentiality, Disputes; Indemnification and Hold Harmless, Inspection, Maintenance of Records, Notice of Overpayment, Ownership of Material, Termination for Default, Termination Procedure, and Treatment of Property.

49. SYSTEM SECURITY

Unless otherwise provided, the Contractor agrees not to attach any Contractor-supplied computers, peripherals, or software to HCA Network without prior written authorization. HCA's Security Administrator. Contractor-supplied computer equipment, including both hardware and software, must be reviewed by HCA's Security Administrator prior to being connected to any HCA network connection and that it must have up-to-date anti-virus software and personal firewall software installed and activated on it.

Unauthorized access to HCA networks and systems is a violation of HCA Policy 06-03 and constitutes computer trespass in the first degree pursuant to RCW 9A.52.110. Violation of any of these laws or policies could result in termination of this Contract and other penalties.

50. TERMINATION FOR CONVENIENCE

Except as otherwise provided in this Contract, the Agent, or designee, may, by giving thirty (30) calendar days written notice, beginning on the second day after the mailing, terminate this Contract in whole or in part when it is in the best interest of HCA. If this Contract is so terminated, HCA shall be liable only for payment in accordance with the terms of this Contract for services rendered prior to the effective date of termination.

51. TERMINATION FOR DEFAULT

In the event HCA determines the Contractor has failed to comply with the terms and conditions of this Contract, HCA has the right to suspend or terminate this Contract. HCA shall notify the Contractor in writing of the need to take corrective action. If corrective action is not taken within ten (10) business days, this Contract may be terminated. HCA reserves the right to suspend all or part of this Contract, withhold further payments, or prohibit the Contractor from incurring additional obligations of funds during investigation of the alleged compliance breach and pending corrective action by Contractor or a decision by HCA to terminate this Contract.

In the event of termination, Contractor shall be liable for damages as authorized by law including, but not limited to, any cost difference between the original contract and the replacement or cover contract and all administrative/indirect costs directly related to the replacement contract, e.g., cost of the competitive bidding, mailing, advertising, and staff time. The termination shall be deemed a "Termination for Convenience" if it is determined that:

i. Contractor was not in default, or

ii. Failure to perform was outside of Contractor's control, fault or negligence.

52. TERMINATION DUE TO CHANGE IN FUNDING

HCA's ability to make payments is contingent on funding availability. In the event funding from state, federal, or other sources is withdrawn, reduced, or limited in any way after the effective date and prior to completion or expiration date of this Contract, HCA, at its sole discretion, and with fifteen (15) Calendar Days' notice, may elect to terminate the Contract, in whole or part, or to renegotiate the

Contract subject to new funding limitations and conditions. HCA may also elect to suspend performance of the Agreement until HCA determines the funding insufficiency is resolved. HCA may exercise any of these options.

53. TERMINATION OR EXPIRATION PROCEDURES

The following terms and conditions apply upon Contract termination or expiration:

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

ii. HCA shall pay to Contractor the agreed upon price, if separately stated, for completed work and service accepted by HCHA's program staff and the amount agreed upon by Contractor and HCA for:

   a. Completed work and services for which no separate price is stated;

   b. Partially completed work and services;

   c. Other property or services which are accepted by HCA's program staff; and

   d. The protection and preservation of property unless the termination is for default, in which case the Agent or designee shall determine the extent of the liability. Failure to agree with such determination shall be a dispute within the meaning of the "Disputes" Section of the Contract. HCA may withhold from any amounts due Contractor such sum as the Agent or designee determines to be necessary to protect HCA against potential loss or liability.

iii. The rights and remedies of HCA provided in this Section shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Contract.

iv. After receipt of notice of termination, and except as otherwise directed by the Agent or designee, Contractor shall:

   a. Stop work under this Contract on the date, and to the extent specified in the notice;

   b. Place no further orders or subcontracts for materials, services, or facilities except as may be necessary for completion of such portion of the work under this Contract that is not terminated;

   c. Assign to HCA, in the manner, at the times, and to the extent directed by the Agent or designee, all the rights, title, and interest of Contractor under the orders and subcontracts so terminated; in which case HCA has the right, at its discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts;

   d. Settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, with the approval or ratification of the Agent or designee to the extent the Agent or designee may require, which approval or ratification shall be final for all the purposes of this Section;

   e. Transfer title to HCA and deliver in the manner, at the times, and to the extent directed by the Agent or designee any property which, if this Contract has been completed, would have been required to be furnished to HCA;

f. Complete performance of such part of the work as shall not have been terminated by the Agent or designee; and

g. Take such action as may be necessary, or as the Agent or designee may direct, for the protection and preservation of the property related to this Contract which is in the possession of Contractor and in which HCA has or may acquire an interest.

53.1. Contract Closeout

Upon termination or lapse of this Contract in whole or in part for any reason including completion of the project, the following provisions may apply:

i. Upon written request by Contractor, HCA may make or arrange for payments to Contractor of allowable reimbursable costs not covered by previous payments.

ii. Disposition of program assets (including the return and/or transfer of all unused materials, equipment, unspent cash advances, and program income balances) to include creating an inventory list of all property purchased or furnished by HCA for use by Contractor during performance of this Contract.

iii. Contractor shall submit within thirty (30) calendar days after the date of expiration of this Contract, all financial, performance and other reports required by this Contract, and in addition, will cooperate in a program audit by HCA or its designee as requested; and

iv. Closeout of funds will not occur unless all requirements of the Contract's associated state and federal funds are met and all outstanding issues with Contractor have been resolved to the satisfaction of HCA.

Contractor's obligation to HCA shall not end until all closeout requirements are completed. Notwithstanding the foregoing, the terms of this Contract shall remain in effect during any period that Contractor has control of the Contract's associated state and federal funds, including program income.

54. TREATMENT OF PROPERTY

All property purchased or furnished by HCA for use by Contractor during this Contract term shall remain with HCA or transferred by request of HCA. Title to all property purchased or furnished by Contractor for which Contractor is entitled to reimbursement by HCA under this Contract shall pass to and vest in HCA upon termination or lapse or this Contract unless otherwise specified by HCA. Contractor shall protect, maintain, and insure all HCA property in its possession against loss or damage and shall return HCA property to HCA upon Contract termination or expiration unless otherwise specified by HCA.

55. WAIVER

Waiver of any breach or default on any occasion shall not be deemed to be a waiver of any subsequent breach or default. Any waiver shall not be construed to be a modification of the terms and conditions of this Contract. Only the HCA Contracts Administrator or designee has the authority to waive any term or condition of this Contract on behalf of HCA.

56. ORDER OF PRECEDENCE

i. The federal statute authorizing the grant program and any other federal statutes directly affecting performance of the award including the Federal Funding Accountability and Transparency Act (FFATA), as applicable)

ii. Applicable state laws not in conflict with any applicable federal laws

iii. Attachment 3: Business Associate Agreement

iv. Attachment 4: Data Use, Security and Confidentiality

v. Attachment 2: Confidential Information Security Requirements

vi. Terms and conditions of this Contract

vii. Program regulations

viii. National policy requirements

ix. Administrative regulations, cost principles and audit requirements

x. Attachment 1: Statement of Work

xi. Exhibit A: HCA RFA# 2021HCA4;

xii. Exhibit B: Contractor's Response to HCA RFA#2021HCA4; and

xiii. Any other provision, term, or material incorporated herein by reference or otherwise incorporated.

ATTACHMENT 1 - Statement of Work

Contractor shall ensure services, and staff, and otherwise do all things necessary for or incidental to the performance of work, as set forth below. Prevention programs and services include, but are not limited to:

1. Coordination of Prevention Services

Contractor shall ensure:

i. The provision of CPWI services in accordance with the CPWI Community Coalition Guide located on the Athena Forum website https://www.theathenaforum.org/cpwi-community-coalition-guide which outlines the minimal standards to participate in the CPWI. Contractor shall plan to reach the ideal benchmarks related to the community coalition's efforts and staffing to include:

   a. Hire or identify a minimum of one (1) part-time (0.5 FTE) staff member to serve as the qualified Community Coalition Coordinator upon contract execution. Full-time employment (1.0 FTE) for the Community Coalition Coordinator is allowable and strongly recommended in order to meet the scope of the project.

      I. Ensure Community Coalition Coordinator(s) meet required position qualifications and workstation requirements found in the CPWI Community Coalition Guide.

      II. Confirm an office space in the designated community for the Community Coalition Coordinator.

      III. Contractor shall submit a completed Community Coalition Coordinator Qualification Checklist to Contract Manager or designee for review. HCA shall review and respond within five (5) business days.

   b. Ensure Community Coalition Coordinators are Certified Prevention Professionals (CPP).

      I. Ensure currently certified Community Coalition Coordinator(s) maintain CPP credential status, and

      II. Ensure Certified Prevention Professional (CPP) certification within eighteen (18) months of new Community Coalition Coordinator start date.

      III. HCA reserves the right to require Contractor to develop a Community Coalition Coordinator training plan if candidate does not meet required qualifications.

ii. Contractor Contact on page one (1) of this Contract and primary fiscal staff or their designee(s) shall attend an annual contractor training or meeting that will be scheduled for four (4) hours in duration. Date and location will be announced by DBHR at least thirty (30) business days prior to the training.

iii. Contractor shall ensure that a regular annual schedule of direct prevention services for public dissemination is established.

a. Regular annual schedule shall take into account items including, but not limited to: implementation times that maximize participation and service outcomes; local needs and gaps; leveraged resources; and, other locally identified factors that influence service delivery throughout the year.

b. Regular annual schedule and community dissemination plan shall be identified as part of the CPWI Action Plan and Budget Update and submitted to Contract Manager or designee for HCA review annually in accordance with the timeline in the CPWI Community Coalition Guide.

I. Submit an annual Action Plan and Budget with projected expenditures, including salary and benefits for HCA funded prevention staff, program costs, training and travel to the Contract Manager or designee, according to the CPWI Community Coalition Guide or within thirty (30) business days upon request. A template will be provided at least thirty (30) business days prior to due date, unless otherwise specified. For Cohorts 1 – 4 an updated Action Plan and Budget is due by June 15 of each year that this Contract is active. For Cohort 5 and 6, an updated Action Plan and Budget are due August 1 and August 15 of each year that this Contract is active, unless otherwise specified.

II. Budget adjustments that are ten percent (10%) or more of the total of the approved Contractor and/or CPWI coalition budget shall submit a budget revision for approval to Contract Manager or designee at least fifteen (15) business days prior to expending adjusted budget items. Approval must be granted prior to expending funds.

III. Enter approved programs, based on the priorities, goals and objectives described in the approved Strategic Plan, into Minerva within thirty (30) business days of Action Plan approval or as directed by PSM.

IV. Ensure sixty percent (60%) of programs supported by HCA funds will be replications or approved adaptations of "Evidence-based Practice" substance abuse prevention programs as identified in the list provided by DBHR. Ensure that all of the programs supported by HCA meet the Center for Substance Abuse Prevention's (CSAP) Principles of Substance Abuse Prevention, found on the Athena Forum Website: www.TheAthenaForum.org/CSAPprinciples.

1. For cohorts who receive DMA funds, and for cohorts 5 and 6, use the associated EBP list at https://www.theathenaforum.org/cpwi-cohort-6-program-and-strategies-guidance for further directives on supported programs by fund source.

2. For cohorts 5, 6, and 7 coalitions are also required to implement the Starts with One opioid prevention campaign and participate in the National Drug Take Back Days in October and April, according to the Drug Enforcement Agency (DEA) guidelines, recommendations, and regulations. https://www.deadiversion.usdoj.gov/drug_disposal/takeback/poc.htm.

V. Food costs are generally unallowable during program implementation except within the following parameters:

1. Light refreshment costs for training events and meetings lasting longer than two (2) hours in duration are allowable.

2. Ensure that light refreshment costs do not exceed $3.00 per person.

3. Meals may be provided for participants using SABG and DMA funds only if:

   a. The training is four (4) hours or more in duration; or

   b. The program is a recurring, direct service in the family domain, lasting two (2) hours or more in duration and must be approved in the strategic plan.

4. Meals are not allowable costs with either the PFS or SOR funds.

5. Contractor shall adhere to current state per-diem rates for meals accessible at www.ofm.wa.gov/policy/10.90.htm.

6. No more than a total of $1,000 may be spent on food or light refreshments per CPWI Coalition per year.

VI. Dedicated Marijuana Account Funds (DMA) shall be used for program and strategy training and implementation.

1. All programs planned and implemented with DMA shall be programs selected from the current DBHR provided youth marijuana use prevention and reduction program list located at https://www.theathenaforum.org/EBP.

   a. No less than eighty-five percent (85%) of DMA funds shall be expended on evidence-based or research-based programs on the identified program list.

      i. At the end of each SFY, Contractor must ensure this requirement is met.

   b. Up to fifteen percent (15%) of DMA funds may expended on Promising Programs on the identified program list.

      i. At the end of each SFY, Contractor must ensure this requirement is met.

VII. Contractor is encouraged to collaborate and partner with community-based organizations that operate within or serve the CPWI community.

VIII. If funding permits Contractor to provide Community Based Coordination services in addition to meeting CPWI requirements, (i.e., Counties with communities that each have at least $130,000 per community of DBHR funding budgeted for CPWI implementation, annually) services may be provided at the county or regional level. Services shall reflect work of Contractor staff coordinating, organizing, building capacity, and providing education and information related to prevention initiatives at the county level with a goal to expand CPWI communities.

1. If applicable to Contractor, develop plan for services listed above and submit to Contract Manager or designee for review and approval within sixty (60) business days of expected implementation.

2. Prevention Training

i. Contractor shall participate in all required training events identified by HCA and listed in the CPWI Community Coalition Guide.

ii. Non-Required Training in CPWI

a. In the absence of trainings identified in the approved strategic plan, all additional (non-required) training paid for by HCA shall be approved by Contract Manager or designee prior to training and meet the approved goals and objectives in approved Strategic Plan.

b. Contractor shall ensure any requests for training in addition to the approved training in the Strategic plan are requested in writing and sent directly to the Contract Manager or designee, a minimum of ten (10) business days before the date of the proposed training. Trainings shall relate to one (1) of the following four (4) categories:

I. Coalition building and community organization.

II. Capacity building regarding prevention theory and practice.

III. Capacity building for Evidence-based Practice and environmental strategy implementation, related to the goals and objectives of the coalition's approved strategic plan.

IV. Capacity building in non-CPWI communities to expand CPWI efforts and meets overall goals and objectives of CPWI may be approved by Contract Manager or designee upon request.

c. Contractor shall ensure training paid for by HCA that requires travel follows state travel reimbursement guidelines and rates accessible at www.ofm.wa.gov/policy/10.90.htm.

d. Contractor shall bill for training events on an A-19 per billing code according to the Substance Use Disorder and Mental Health Promotion Services Billing Guide and record training events in the HCA Substance Use Disorder Prevention and Mental Health Promotion Online Reporting Systems or Minerva in accordance with the monthly reporting requirements described in Section 3 c., Prevention Report Schedule/Due Dates.

3. Media Materials

i. HCA must be cited as the funding source in news releases, publications, and advertising messages created with or about HCA funding. The funding source shall be cited as: Washington State Health Care Authority. The HCA logo may also be used in place of the above citation.

ii. Media materials and publications developed with HCA funds, including messaging specifically directed to youth, shall be submitted to the Contract Manager or designee for approval prior to publication (HCA will respond within five (5) business days).

a. Exceptions: Contractor does not need to submit the following items to Contract Manager or designee:

i. Newsletters and fact sheets.

ii. News coverage resulting from interviews with reporters. This includes online news coverage.

iii. Newspaper editorials or letters to the editor.

iv. Posts on Facebook, YouTube, Tumblr, Twitter, Instagram, Snapchat and other social media sites.

v. When a statewide media message is developed by HCA, is localized, and if the only change is the local coalition information and funding source acknowledgment from coalition or public health entities.

vi. When a national prevention media campaign is developed by SAMHSA, is localized, and if the only change is the local coalition information and funding source acknowledgement from coalition or public health entities.

4. Secure Prescription Take-Back and Lock Box Project

Contractors who implement a Secure Prescription Take-Back and/or Lock Box project must ensure the following additional requirements:

i. The Secure Prescription Take-Back and/or Lock Box project must align with the community needs assessment and will increase local capacity to address prescription drug misuse and abuse by reducing social availability of prescriptions in the community.

ii. Contractor shall provide the services and staff, and otherwise do all things necessary for or incidental to the Secure Prescription Take-Back and/or Lock Box project as set forth below:

a. Enhance community capacity to practice safe disposal of medications by promoting permanent secure drop box in the location where community readiness has been established. (Installation and disposal must follow all DEA rules and all federal and state laws and regulations).

b. Collaborate with community partners to maintain and/or enhance policies and procedures necessary to maintain a permanent secure medicine take-back drop box.

c. Overtime wages for law enforcement officers and staff as outlined in strategic plan and outside of normal duties and other real costs (including mileage reimbursement) associated with transporting and properly disposing of collected medicines at EPA approved locations may be permitted depending upon source of funds and must be approved by the Contract Manager in advance.

d. Create, utilize, and disseminate public education information materials to increase awareness of the secure medicine take-back project, local treatment resources, naloxone information and medical response (Good Samaritan law) cards.

e. Disseminate public information including information on local treatment resources, naloxone information and medical response cards and posters. (Print ready materials are available online at www.stopoverdose.org).

f. Utilize publications already available through HCA/DBHR and other websites. (i.e., SAMHSA Opioid Overdose Toolkit, and downloadable/printable materials on www.stopoverdose.org and www.takebackyourmeds.org.

g. Submit locally-developed educational and informational materials to HCA/DBHR for approval at least ten (10) business days prior to publication.

h. Prior to purchasing home medication lock boxes or bags Contractor will submit to HCA/DBHR in writing a plan for the purchase and distribution of home medication storage device including the cost and source of the home storage devices, the number of devices to be purchased, a clear plan for distribution, and method for tracking the use of the devices. Contractor must also demonstrate how the distributed home medication devices will be altered (by engraving, indelible ink, or other means) to have no cash value.

i. Contractor is required to maintain records of pre and post surveys for lock box distribution and record in Minerva upon request from HCA/DBHR.

5. Reporting Requirements.

i. Prevention Reporting Requirements

Contractor shall report on all requirements as identified in the HCA Substance Use Disorder Prevention and Mental Health Promotion Online Reporting System or Minerva. HCA reserves the right to add reporting requirements based on requirements of grants.

ii. Prevention Activity Data Reports

Contractor shall:

a. Ensure that monthly prevention activities are reported in Minerva in accordance with the requirements and timelines set forth.

b. Ensure accurate and unduplicated reporting.

c. Ensure proper training of staff and designated staff for back-up Minerva data entry to meet report due dates.

d. If special circumstances arise and Contractor is unable to enter the data by the reporting deadline(s), Contractor shall ensure any requests for extensions to reporting deadlines are requested in writing and sent directly to the PSM via email five (5) business days before the report due date.

e. The maximum extension request permitted is ten (10) business days.

f. Monthly invoices submitted with active data entry extensions will be denied and may be re-submitted by Contractor once data for the month(s) in question is complete.

g. Contractors with three (3) or more consecutive months of data entry extensions or late reporting or four (4) or more program data entry extensions or late reporting within a six (6) month period shall be required to submit a Corrective Action Plan to HCA.

   I. Extensions granted due to Minerva technical issues will be excluded from this count.

h. Ensure all required demographic information is provided for individual participant; population reach; aggregate; environmental and mentoring or 1-to-1 services in Minerva.

i. Report Community Coalition Coordination Staff Hours in Minerva for each month of the calendar year.

j. Complete prevention reporting, according to the Schedule/Due Dates below:

Reporting Period	Report(s)	Report Due Dates	Reporting System
Annually	Enter programs listed on approved Strategic Action Plan by HCA into Minerva.	Within 30 business days of Strategic Action Plan approval	Minerva
As Requested	GPRA Measures	As Requested	Minerva
Monthly	Prevention activity data input for all active services including community coalition coordination staff hours and efforts, services, participant information, training, evaluation tools and assessments.	15th of each month for activities from the previous month	Minerva
Quarterly	CPWI Quarterly Reporting	October 15, January 15, April 15, July 15	Minerva
As Requested	As required by SAMHSA	As Requested	Minerva or as required

iii. Outcome Measures

a. Contractor shall report on all required evaluation tools identified in Minerva that measure primary program objective.

   I. Pre/Post test are required for all recurring direct service programs.

   II. The Coalition Assessment Tool is required to be completed by coalition members.

III. Specific surveys for Information Dissemination or Environmental strategies/programs based on specific program to be determined and approved in Action Plan.

b. Special situations and exceptions regarding evaluation tools identified in Minerva include, but are not limited to, the following:

I. Contractor may negotiate with the Contract Manager or designee to reduce multiple administrations of surveys to individual participants.

II. Participants in recurring program groups in which the majority of participants are younger than ten (10) years old on the date of that group's first service.

iv. Performance Work Statement/Evaluation.

a. Contractor shall ensure program results show positive outcomes for at least half of the participants in each program group as determined by Activity Log with individual participant sessions.

I. "Positive outcomes" means that at least half of the participants in a group report positive improvement or maintenance as determined by the program measurable objective between pre and post-tests.

II. Positive outcomes will be determined using the pre-test and post-test data reported in Minerva.

III. Evaluation of Minerva data will occur on the 15th of the month following the final date of service for each group.

b. HCA shall use the following protocol for evaluation:

I. Matched pre-test and post-test pairs will be used in the analysis.

II. To allow for normal attendance drop-off, a 20% leeway will be given for missing post-tests.

III. If there are missing post-tests for entered pre-tests in excess of 20% of pre-tests, missing post-test will be counted as a negative outcome.

Example: there are ten (10) pre-tests and seven (7) post-tests. The denominator would be eight (8) and the maximum numerator would be seven (7).

c. Different groups, as determined by Activity Logs, receiving the same program will be clustered by school district.

I. In cases where multiple providers are serving the same school district, groups will be clustered by school district and provider.

II. The results of one (1) provider in a given school district will not impact another provider in the same district.

1. In cases where the survey instrument selected for a given program includes more than one scale, the scale that is most closely aligned with the measurable objective linked to the program in Minerva will be used.
2. Results for groups, as determined by Activity Logs, with services that span two (2) contracting periods will be analyzed in the contracting period that the post-test was administered.

III. If fewer than half of the participants in a group, as determined by Activity Log, within a given school district, report positive change in the intended outcome:

1. Contractor shall submit a Performance Improvement Plan (PIP) for the non-compliant program to the Contract Manager or designee or designee within forty-five (45) calendar days of notice by HCA.
2. Reimbursement for the CSAP Category row on the A-19 for that program will be held until the PIP is approved by Contractor Manager or designee or their designee.
3. If a second group, as determined by Activity Log, within that same school district has fewer than half of the participants report positive change in the intended outcome, then the following steps will be taken:

   a. In cases where there is no active non-compliant program, Contractor shall discontinue implementation of that program within the specified geography.

   b. In cases where the same programs as the non-compliant program are active and continuing in the same school district, those groups, as determined by Activity Logs, will be allowed to complete the expected number of sessions. No new groups, as determined by Activity Logs, will be started.

   c. Following the conclusion of all groups, as determined by Activity Logs, completing the program, results will be reviewed for those groups.

   d. If the results do not show positive change for each group, as determined by Activity Logs, Contractor shall take the following action:

      i. In cases where the program is being delivered by a single provider in the specified geography, Contractor shall discontinue implementation of that program in the specified geography.

      ii. In cases where the program is being delivered by multiple providers in the specified geography, Contractor shall discontinue implementation of that program by the underperforming provider in the specified geography.

IV. A program that resulted in the need for a Performance Improvement Plan and Plan during the former Contract period will not carry that record forward into the the new Contract period. Implement and monitor prevention programs and reporting to assure compliance with these guidelines.

6. Requirements

i. Background Checks.

a. The Contactor shall ensure a criminal background check is conducted for all staff members, case managers, outreach staff members, etc. or volunteers who have unsupervised access to children, adolescents, vulnerable adults, and persons who have developmental disabilities.

b. When providing services to youth, Contractor shall ensure that requirements of WAC 388-06-0170 are met.

ii. Services and Activities to Racial/Ethnic Minorities and Diverse Populations.

Contractor shall:

a. Ensure all services and activities provided by Contractor or subcontractor under this Contract shall be designed and delivered in a manner sensitive to the needs of all diverse populations.

b. Initiate actions to ensure or improve access, retention, and cultural relevance of prevention or other appropriate services, for racial/ethnic minorities and other diverse populations in need of prevention services as identified in their needs assessment.

c. Take the initiative to strengthen working relationships with other agencies serving these populations. Contractor shall require its subcontractors to adhere to these requirements.

iii. Continuing Education.

Ensure that continuing education is provided for employees of any entity providing prevention activities in accordance with42 USC 300x-28(b) and 45 CFR 96.132(b).

iv. Single Source Funding.

a. Contractor shall ensure all subcontractors that Single Source Funding means that a subcontractor can use only one (1) source of funds at any given time.

b. Each cost reimbursement Prevention service provided must be billed only one (1) time through the source selected for funding this expense. At no time may the same expense be billed through more than one (1) funding source.

ATTACHMENT 2 - Confidential Information Security Requirements

1. Definitions

In addition to the definitions set out in Section 2: *Definitions* of this Contract for **CPWI Cohort 7 - Prevention Services**, the definitions below apply to this Attachment.

i. "Hardened Password" means a string of characters containing at least three of the following character classes: upper case letters; lower case letters; numerals; and special characters, such as an asterisk, ampersand, or exclamation point.

   a. Passwords for external authentication must be a minimum of 10 characters long.

   b. Passwords for internal authentication must be a minimum of 8 characters long.

   c. Passwords used for system service or service accounts must be a minimum of 20 characters long.

ii. "Portable/Removable Media" means any Data storage device that can be detached or removed from a computer and transported, including but not limited to: optical media (e.g. CDs, DVDs); USB drives; or flash media (e.g. CompactFlash, SD, MMC).

iii. "Portable/Removable Devices" means any small computing device that can be transported, including but not limited to: handhelds/PDAs/Smartphones; Ultramobile PC's, flash memory devices (e.g. USB flash drives, personal media players); and laptops/notebook/tablet computers. If used to store Confidential Information, devices should be Federal Information Processing Standards (FIPS) Level 2 compliant.

iv. "Secured Area" means an area to which only Authorized Users have access. Secured Areas may include buildings, rooms, or locked storage containers (such as a filing cabinet) within a room, as long as access to the Confidential Information is not available to unauthorized personnel.

v. "Transmitting" means the transferring of data electronically, such as via email, SFTP, web services, AWS Snowball, etc.

vi. "Trusted System(s)" means the following methods of physical delivery: (1) hand-delivery by a person authorized to have access to the Confidential Information with written acknowledgement of receipt; (2) United States Postal Service ("USPS") first class mail, or USPS delivery services that include Tracking, such as Certified Mail, Express Mail or Registered Mail; (3) commercial delivery services (e.g. FedEx, UPS, DHL) which offer tracking and receipt confirmation; and (4) the Washington State Campus mail system. For electronic transmission, the Washington State Governmental Network (SGN) is a Trusted System for communications within that Network.

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

2. Confidential Information Transmitting

i. When transmitting HCA's Confidential Information electronically, including via email, the Data must be encrypted using NIST 800-series approved algorithms (http://csrc.nist.gov/publications/PubsSPs.html). This includes transmission over the public internet.

ii. When transmitting HCA's Confidential Information via paper documents, the Receiving Party must use a Trusted System.

3. Protection of Confidential Information

Contractor agrees to store Confidential Information as described:

i. Data at Rest:

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

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

1. Confidential Information provided by HCA on Removable Media will be encrypted with NIST 800-series approved algorithms. Encryption keys will be stored and protected independently of the Data.

2. HCA's data must not be stored by the Receiving Party on Portable Devices or Media unless specifically authorized within the Data Share Agreement. If so authorized, the Receiving Party must protect the Data by:

i. Encrypting with NIST 800-series approved algorithms. Encryption keys will be stored and protected independently of the data;

ii. Control access to the devices with a Unique User ID and Hardened Password or stronger authentication method such as a physical token or biometrics;

iii. Keeping devices in locked storage when not in use;

iv. Using check-in/check-out procedures when devices are shared;

v. Maintain an inventory of devices; and

vi. Ensure that when being transported outside of a Secured Area, all devices with Data are under the physical control of an Authorized User.

ii. Paper documents. Any paper records containing Confidential Information must be protected by storing the records in a Secured Area that is accessible only to authorized personnel. When not in use, such records must be stored in a locked container, such as a file cabinet, locking drawer, or safe, to which only authorized persons have access.

4. Confidential Information Segregation

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

The HCA Confidential Information must be kept in one of the following ways:

a. on media (e.g. hard disk, optical disc, tape, etc.) which will contain only HCA Data; or

b. in a logical container on electronic media, such as a partition or folder dedicated to HCA's Data; or

c. in a database that will contain only HCA Data; or

d. within a database and will be distinguishable from non-HCA Data by the value of a specific field or fields within database records; or

e. when stored as physical paper documents, physically segregated from non-HCA Data in a drawer, folder, or other container.

When it is not feasible or practical to segregate HCA Confidential Information from non-HCA data, then both the HCA Confidential Information and the non-HCA data with which it is commingled must be protected as described in this Attachment.

5. Confidential Information Shared with Subcontractors

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

6. Confidential Information Disposition

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

i. For HCA's Confidential Information stored on network disks, deleting unneeded Confidential Information is sufficient as long as the disks remain in a Secured Area and otherwise meet the requirements listed in Section 4: *Confidential Information Segregation*, above. Destruction of the Confidential Information as outlined in this section of this Attachment may be deferred until the disks are retired, replaced, or otherwise taken out of the Secured Area.

ATTACHMENT 3 - BUSINESS ASSOCIATE AGREEMENT

This BUSINESS ASSOCIATE AGREEMENT is made between **Clallam County Juvenile & Family Services** (Business Associate) and the Washington State Health Care Authority (HCA). This agreement does not expire or automatically terminate except as stated in Section 5.

This Agreement relates to **K5533** between the Business Associate and HCA unless otherwise agreed. Business Associate is or may be a "Business Associate" of HCA as defined in the HIPAA Rules. If there is a conflict between the provisions of this Agreement and provisions of other contracts, this Agreement controls; otherwise, the provisions in this Agreement do not replace any provisions of any other contracts. If the other Contract is terminated, this Agreement nonetheless continues in effect.

This Business Associate Agreement supersedes any existing Business Associate Agreement the Business Associate may have with HCA. It also supersedes any "business associate" section in an underlying Contract.

1. DEFINITIONS

Access attempts - Information systems are the frequent target of probes, scans, "pings," and other activities that may or may not indicate threats, whose sources may be difficult or impossible to identify, and whose motives are unknown, and which do not result in access or risk to any information system or PHI. Those activities are "access attempts."

Day - means business days observed by Washington State government unless otherwise specified.

Catch-all definitions - The following terms used in this Agreement have the same meaning as those terms in the HIPAA Rules: Breach, Business Associate, Data Aggregation, Designated Record Set, Disclosure, Health Care Operations, Individual, Minimum Necessary, Notice of Privacy Practices, Secretary, Security Incident, Unsecured Protected Health Information (PHI), and Use.

Clients or Individuals - "Clients" or "individuals" are people who have health or other coverage or benefits from or through HCA. They include Medicaid clients, Public Employees Benefits Board subscribers and enrollees, and others.

Contract or Underlying Contract - "Contract" or "underlying contract" means all agreements between Business Associate and HCA under which Business Associate is a "business associate" as defined in the Security or Privacy Rules. The terms apply whether there is one such agreement or more than one, and if there is more than one the terms include them all even though a singular form is used except as otherwise specified. The terms include agreements now in effect and agreements that become effective after the effective date of this Agreement.

Effective Date - "Effective Date" means the date of the signature with the latest date affixed to the Agreement.

HIPAA Rules; Security, Breach Notification, and Privacy Rules - "HIPAA Rules" means the Privacy, Security, Breach Notification, and Enforcement Rules at 45 CFR Part 160 and Part 164, as now in effect and as modified from time to time. In part 164 of title 45 CFR, the "Security Rule" is subpart C (beginning with §164.302), the "Breach Notification Rule" is subpart D (beginning with § 164.400), and the "Privacy Rule" is subpart E (beginning with § 164.500).

Protected Health Information or PHI - "Protected Health Information" has the same meaning as in the HIPAA Rules except that in this Agreement the term includes only information created

by Business Associate or any of its contractors, or received from or on behalf of HCA, and relating to Clients. "PHI" means Protected Health Information.

2. OBLIGATIONS AND ACTIVITIES OF BUSINESS ASSOCIATE

i. Limits

Business Associate will not use or disclose PHI other than as permitted or required by the Contract or this Agreement or as required by law. Except as otherwise limited in this Agreement, Business Associate may use or disclose PHI on behalf of, or as necessary for purposes of the underlying contract, if such use or disclosure of PHI would not violate the Privacy Rule if done by a Covered Entity and is the minimum necessary.

ii. Safeguards

Business Associate will use appropriate safeguards, and will comply with the Security Rule with respect to electronic PHI, to prevent use or disclosure of PHI other than as provided for by the Contract or this Agreement. Business Associate will store and transfer PHI in encrypted form.

iii. Reporting Security Incidents

Business Associate will report security incidents that materially interfere with an information system used in connection with PHI. Business Associate will report those security incidents to HCA within five (5) days of their discovery by Business Associate. If such an incident is also a Breach or may be a Breach, subsection 3 applies instead of this provision.

Access Attempts shall be recorded in Business Associate's system logs. Access Attempts are not categorically considered unauthorized Use or Disclosure, but Access Attempts do fall under the definition of Security Incident and Business Associate is required to report them to HCA.

Since Business Associate's reporting and HCA's review of all records of Access Attempts would be materially burdensome to both parties without necessarily reducing risks to information systems or PHI, the parties agree that Business Associate will review logs and other records of Access Attempts, will investigate events where it is not clear whether or not an apparent Access Attempt was successful, and determine whether an Access Attempt:

a. Was in fact a "successful" unauthorized Access to, or unauthorized Use, Disclosure, modification, or destruction of PHI subject to this Agreement, or

b. Resulted in material interference with Business Associate's information system used with respect to PHI subject to this Agreement, or

c. Caused an unauthorized Use or Disclosure.

Subject to Business Associate's performance as described herein. This provision shall serve as Business Associate's notice to HCA that Access Attempts will occur and are anticipated to continue occurring with respect to Business Associate's information systems. HCA acknowledges this notification, and Business Associate is not required to provide further notification of Access Attempts unless they are successful as described in this Section 2 in which case Business Associate will report them in accordance with this Section 2.

3. BREACH NOTIFICATION

"Breach" is defined in the Breach Notification Rule. The time when a Breach is considered to have been discovered is explained in that Rule. HCA, or its designee, is responsible for determining whether an unauthorized Use or Disclosure constitutes a Breach under the Breach Notification Rule, RCW 42.56.590 or RCW 19.255.010, or other law or rule, and for any notification under the Breach Notification Rule, RCW 42.56.590 or RCW 19.255.010, or other law or rule.

Business Associate will notify HCA of any unauthorized use or disclosure and any other possible Breach within five (5) business days of discovery. If Business Associate does not have full details at that time, it will report what information it has, and provide full details within fifteen business (15) days after discovery. The initial report may be oral. Business Associate will give a written report to HCA, however, as soon as possible. To the extent possible, these reports must include the following:

i. The identification of each individual whose PHI has been or may have been accessed, acquired, or disclosed;

ii. The nature of the unauthorized Use or Disclosure, including a brief description of what happened, the date of the event(s), and the date of discovery;

iii. A description of the types of PHI involved;

iv. The investigative and remedial actions the Business Associate or its subcontractor took or will take to prevent and mitigate harmful effects, and protect against recurrence;

v. Any details necessary for a determination of the potential harm to Individuals whose PHI is believed to have been Used or Disclosed and the steps such Individuals should take to protect themselves; and

vi. Such other information as HCA may reasonably request.

If Business Associate determines that it has or may have an independent notification obligation under any state breach notification laws, Business Associate will promptly notify HCA. In any event, Business Associate will notify HCA of its intent to give any notification under a state breach notification law no fewer than ten (10) business days before giving such notification.

If Business Associate or any subcontractor or agent of Business Associate actually makes or causes, or fails to prevent, a use or disclosure constituting a Breach within the meaning of the Breach Notification Rule, and if notification of that use or disclosure must (in the judgment of HCA) be made under the Breach Notification Rule, or RCW 42.56.590 or RCW 19.255.010, or other law or rule, then:

i. HCA may choose to make any notifications to the individuals, to the Secretary, and to the media, or direct Business Associate to make them or any of them.

ii. In any case, Business Associate will pay the reasonable costs of notification to individuals, media, and governmental agencies and of other actions HCA reasonably considers appropriate to protect clients (such as paying for regular credit watches in some cases), and

iii. Business Associate will compensate HCA clients for harms caused to them by the Breach or possible Breach described above.

Business Associate's obligations regarding breach notification survive the termination of this Agreement and continue for as long as Business Associate maintains the PHI and for any breach or possible breach at any time.

4. SUBCONTRACTORS

Business Associate will ensure that any subcontractors or agents that create, receive, maintain, or transmit PHI on behalf of the Business Associate agree to protective restrictions, conditions, and requirements at least as strict as those that apply to the Business Associate with respect to that information. Upon request by HCA, Business Associate will identify to HCA all its subcontractors and provide copies of its agreements (including business associate agreements or contracts) with them. The fact that Business Associate subcontracted or otherwise delegated any responsibility to a subcontractor or anyone else does not relieve Business Associate of its responsibilities.

5. ACCESS

Business Associate will make available PHI in a designated record set to the HCA as necessary to satisfy HCA's obligations under 45 CFR § 164.524. Business Associate will give the information to HCA within five (5) business days of the request from the individual or HCA, whichever is earlier. If HCA requests, Business Associate will make that information available directly to the individual. If Business Associate receives a request for access directly from the individual, Business Associate will inform HCA of the request within three (3) business days, and if requested by HCA it will provide the access in accordance with the HIPAA Rules.

6. AMENDING PHI

Business Associate will make any amendments to PHI in a designated record set as directed or agreed to by the HCA pursuant to 45 CFR § 164.526, or take other measures requested by HCA to satisfy HCA's obligations under that provision. If Business Associate receives a request for amendment directly from an individual, Business Associate will both acknowledge it and inform HCA within three (3) business days, and if HCA so requests act on it within ten (10) business days and inform HCA of its actions.

7. ACCOUNTING

Business Associate will maintain and make available to HCA the information required to provide an accounting of disclosures as necessary to satisfy HCA's obligations under 45 CFR § 164.528. If Business Associate receives an individual's request for an accounting, it will either provide the accounting as required by the Privacy Rule or, at its option, pass the request on to HCA within ten (10) business days after receiving it.

8. OBLIGATIONS

To the extent the Business Associate is to carry out one or more of HCA's obligations under the Privacy Rule, it will comply with the requirements of that rule that apply to HCA in the performance of such obligations.

9. BOOKS, ETC.

Business Associate will make its internal practices, books, and records available to the Secretary for purposes of determining compliance with the HIPAA Rules.

10. MITIGATION

Business Associate will mitigate, to the extent practicable, any harmful effect of a use or disclosure of PHI by Business Associate or any of its agents or subcontractors in violation of the requirements of any of the HIPAA Rules, this Agreement, or the Contract.

11. INDEMNIFICATION

To the fullest extent permitted by law, Business Associate will indemnify, defend, and hold harmless the State of Washington, HCA, and all officials, agents, and employees of the State from and against all claims of any kind arising out of or resulting from the performance of this Agreement, including Breach or violation of HIPAA Rules.

12. PERMITTED USES AND DISCLOSURES BY BUSINESS ASSOCIATE

i. Limited Use and Disclosure

Except as provided in this Section 3, Business Associate may use or disclose PHI only as necessary to perform the services set forth in the Contract.

ii. General Limitation

Business Associate will not use or disclose PHI in a manner that would violate the Privacy Rule if done by HCA.

iii. Required by Law

Business Associate may use or disclose PHI as required by law.

iv. De-Identifying

Business Associate may de-identified PHI in accordance with 45 CFR § 164.514(a)-(c).

v. Minimum Necessary

Business Associate will make uses and disclosures of only the minimum necessary PHI, and will request only the minimum necessary PHI.

13. DISCLOSURE FOR MANAGEMENT AND ADMINISTRATION OF BUSINESS ASSOCIATE

Subject to subsection 3.6.2, Business Associate may disclose PHI for the proper management and administration of Business Associate or to carry out the legal responsibilities of the Business Associate.

The disclosures mentioned in subsection 3.6.1 above are permitted only if either:

a. The disclosures are required by law, or

b. Business Associate obtains reasonable assurances from the person to whom the information is disclosed that the information will remain confidential and used or further disclosed only as required by law or for the purposes for which it was disclosed to the person, and that the person will notify Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.

i. **Aggregation**

Business Associate may use PHI to provide data aggregation services relating to the health care operations of the HCA, if those services are part of the Contract.

14. ACTIVITIES OF HCA

i. **Notice of Privacy Practices**

HCA will provide a copy of its current notice of privacy practices under the Privacy Rule to Business Associate on request. HCA will also provide any revised versions of that notice by posting on its website, and will send it on request.

ii. **Changes in Permissions**

HCA will notify Business Associate of any changes in, or revocation of, the permission by an individual to use or disclose his or her PHI, to the extent that such changes may affect Business Associate's use or disclosure of PHI.

iii. **Restrictions**

HCA will notify Business Associate of any restriction on the use or disclosure of PHI that HCA has agreed to or is required to abide by under 45 CFR § 164.522, to the extent that such restriction may affect Business Associate's use or disclosure of PHI. Business Associate will comply with any such restriction.

15. TERM AND TERMINATION

i. **Term**

This Agreement is effective as of the earliest of:

a. The first date on which Business Associate receives or creates PHI subject to this Agreement, or

b. The effective date of the Contract, or if there is more than one Contract then the effective date of the first one to be signed by both parties.

This Agreement continues in effect until the earlier of:

a. Termination of the provision of Services under the Contract or, if there is more than one Contract, under the last of the Contracts under which services are terminated,

b. The termination of this Agreement as provided below, or

c. The written agreement of the parties.

ii. **Termination for Cause**

HCA may terminate this Agreement and the Contract (or either of them), if HCA determines Business Associate has violated a material term of the Agreement. The termination will be effective as of the date stated in the notice of termination.

iii. Obligations of Business Associate upon termination

The obligations of the Business Associate under this subsection 5.3 survive the termination of the Agreement. Upon termination of this Agreement for any reason, Business Associate will:

a. Retain only that PHI that is necessary for Business Associate to continue its proper management and administration or to carry out its legal responsibilities;

b. Return to HCA or, if agreed to by HCA, destroy the PHI that the Business Associate and any subcontractor of Business Associate still has in any form (for purposes of this subsection 5.3, to destroy PHI is to render it unusable, unreadable, or indecipherable to the extent necessary to establish it is not Unsecured PHI, and Business Associate will provide HCA with appropriate evidence of destruction within ten (10) business days of the destruction);

c. Continue to use appropriate safeguards and comply with the Security Rule with respect to electronic PHI to prevent use or disclosure of the PHI, other than as provided for in this Agreement, for as long as Business Associate retains any of the PHI (for purposes of this subsection 5.3, If the PHI is destroyed it shall be rendered unusable, unreadable or indecipherable to the extent necessary to establish it is not Unsecured PHI. Business Associate will provide HCA with appropriate evidence of destruction);

d. Not use or disclose any PHI retained by Business Associate other than for the purposes for which the PHI was retained and subject to the same conditions that applied before termination;

e. Return to HCA, or, if agreed to by HCA, destroy, the PHI retained by Business Associate when it is no longer needed by Business Associate for its proper management and administration or to carry out its legal responsibilities; and

f. Business Associate's obligations relating to providing information to the Secretary and other government survive the termination of this Agreement for any reason.

iv. Successor

Nothing in this Agreement limits the obligations of Business Associate under the Contract regarding giving data to HCA or to a successor Business Associate after termination of the Contract.

16. MISCELLANEOUS

i. Amendment

The Parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for compliance with the requirements of the HIPAA Rules and any other applicable law.

ii. Interpretation

Any ambiguity in this Agreement shall be interpreted to permit compliance with the HIPAA Rules.

iii. HCA Contact for Reporting and Notification Requirements

Business Associate will address all reporting and notification communications required in this Agreement to:

Attn: HCA Privacy Officer
Washington State Health Care Authority
626 8th Avenue SE
P.O. Box 42704
Olympia, WA 98504-2700
Telephone: 360-725-2108
E-mail: PrivacyOfficer@hca.wa.gov

ATTACHMENT 4 - Data Use, Security, and Confidentiality

1. Definitions

In addition to the definitions set out in Section 2: *Definitions,* of the Contract, the definitions below apply to this Attachment:

"**Authorized User**" means an individual or individuals with an authorized business need to access HCA's Confidential Information under this Contract.

"**Client**" means an individual who is eligible for or receiving services.

"**Data**" means the information that is disclosed or exchanged as described by this Contract. For purposes of this Contract, Data means the same as "Confidential Information."

"**Disclosure**" means the release, transfer, provision of, access to, or divulging in any other manner of information outside the entity holding the information.

"**Personal Information**" means information identifiable to any person, including, but not limited to, information that relates to a person's name, health, finances, education, business, use, or receipt of governmental services or other activities, address, telephone numbers, social security numbers, driver's license numbers, credit card numbers, any other identifying numbers, and any financial identifiers.

"**Regulation**" means any federal, state, or local regulation, rule, or ordinance.

"**Use**" includes the sharing, employment, application, utilization, examination, or analysis of Data.

2. Description of Data

i. Contractors collect various data elements associated with prevention programming and service delivery. The Data will be provided by contractors on a monthly and a quarterly basis and entered into Minerva.

ii. Data Use Purpose. *(if more detail from purpose of overarching agreement is needed (i.e., more restrictions, etc.)* The data is used by state and local providers for contract management, program monitoring and to evaluate outcomes.

iii. Data elements associated with prevention programming including but not limited to:

a. Program and service details such as:

i. Name of program

ii. Program length in time and date

iii. Target service populations

iv. Target age groups

v. Location of activity in city, county, and zip code

vi. Number of participants

vii. Survey instruments used as well as fidelity plan

viii. Indirect and direct hours contributed by program staff and community coalition coordinators

ix. EBP status

x. CSAP strategy and service code

xi. IOM category

xii. Target substance and behavioral health problem

iv. The Data may be linked with the following: contract management and cost analysis via PowerBI.

3. Data Classification

The State classifies data into categories based on the sensitivity of the data pursuant to the Security policy and standards promulgated by the Office of the state of Washington Chief Information Officer. (See Section 4, Data Security, of Securing IT Assets Standards No. 141.10 in the State Technology Manual at https://ocio.wa.gov/policy/securing-information-technology-assets. Section 4 is hereby incorporated by reference.)

The Data that is the subject of this Contract may be in any of the Categories indicated below:

☐ Category 1 – Public Information

Public information is information that can be or currently is released to the public. It does not need protection from unauthorized disclosure, but does need integrity and availability protection controls.

☐ Category 2 – Sensitive Information

Sensitive information may not be specifically protected from disclosure by law and is for official use only. Sensitive information is generally not released to the public unless specifically requested.

☒ Category 3 – Confidential Information

Confidential information is information that is specifically protected from disclosure by law. It may include but is not limited to:

- Personal Information about individuals, regardless of how that information is obtained;
- Information concerning employee personnel records;
- Information regarding IT infrastructure and security of computer and telecommunications systems;

☐ Category 4 – Confidential Information Requiring Special Handling.

Category 4 Data is information that is specifically protected from disclosure and for which:

- Especially strict handling requirements are dictated, such as by statutes, regulations, or agreements;
- Serious consequences could arise from unauthorized disclosure, such as threats to health and safety, or legal sanctions.

4. Constraints on Use of Data

i. The Data being shared/accessed is owned and belongs to HCA.

ii. This Contract does not constitute a release of the Data for Contractor's discretionary use. Contractor must use the Data received or accessed under this Contract only to carry out the purpose of this Contract. Any analyses, use, or reporting that is not within the Purpose of this Contract is not permitted without HCA's prior written consent.

iii. Any disclosure of Data contrary to this Contract is unauthorized and is subject to penalties identified in law.

5. Security of Data

i. Data Protection

a. Contractor must protect and maintain all Confidential Information gained by reason of this Contract, information that is defined as confidential under state or federal law or regulation, or Data that HCA has identified as confidential, against unauthorized use, access, disclosure, modification or loss. This duty requires Contractor to employ reasonable security measures, which include restricting access to the Confidential Information by:

b. Allowing access only to staff that have an authorized business requirement to view the Confidential Information; and

c. Physically securing any computer, documents, or other media containing the Confidential Information.

ii. Data Security Standards

Contractor must comply with the Data Security Requirements set out in Attachment 4, *Confidential Information Security Requirements*, and the Washington OCIO Security Standard, 141.10, which will include any successor, amended, or replacement regulation (https://ocio.wa.gov/policy/securing-information-technology-assets.) The Security Standard 141.10 is hereby incorporated by reference into this Contract.

iii. Data Disposition

For the purposes of this section "fiscal year" is from July 1 to June 30.

Upon request by HCA, at the end of the Contract term, when no longer needed, or 6 years after the end of the fiscal year in which the Data is received, Confidential Information/Data must be returned to HCA or disposed of as set out in Attachment 4, *Confidential Information Security Requirements*, except as required to be maintained for compliance or accounting purposes.

6. Data Confidentiality and Non-Disclosure

i. Data Confidentiality and Non-Disclosure

a. Data Confidentiality

Contractor will not use, publish, transfer, sell or otherwise disclose any Confidential Information gained by reason of this Contract for any purpose that is not directly connected with the purpose of this Contract, except:

- as provided by law; or
- with the prior written consent of the person or personal representative of the person who is the subject of the Confidential Information.

b. Penalties for Unauthorized Disclosure of Data

Contractor must ensure that all employees or Subcontractors who will have access to the Data described in this Contract (including both employees who will use the Data and IT support staff) are instructed and made aware of the use restrictions and protection requirements of this Contract before gaining access to the Data identified herein. Contractor will also instruct and make any new employee aware of the use restrictions and protection requirements of this Contract before they gain access to the Data.

State laws (including RCW 74.04.060 and RCW 70.02.020) and federal regulations (including HIPAA Privacy and Security Rules, 45 CFR Part 160 and Part 164; Confidentiality of Alcohol and Drug Abuse Patient Records, 42 CFR, Part 2; and Safeguarding Information on Applicants and Beneficiaries, 42 CFR Part 431, Subpart F) prohibit unauthorized access, use, or disclosure of Confidential Information. Contractor must comply with all applicable federal laws and regulations concerning collection, use, and disclosure of Personal Information and PHI. Violation of these laws may result in criminal or civil penalties or fines.

Contractor accepts full responsibility and liability for any noncompliance by itself, its employees, and its Subcontractors with these laws and any violations of the Contract.

c. Data Shared with Subcontractors

If Data access is to be provided to a Subcontractor under this Contract, Contractor must include all of the Data security terms, conditions and requirements set forth in this Contract in any such Subcontract. However, no subcontract will terminate Contractor's legal responsibility to HCA for any

work performed under this Contract nor for oversight of any functions and/or responsibilities it delegates to any subcontractor.

ii. **Data Breach Notification**

The Breach or potential compromise of Data must be reported to the HCA Privacy Officer at PrivacyOfficer@hca.wa.gov within two (2) business days of discovery. If Contractor does not have full details, it will report what information it has, and provide full details within fifteen (15) business days of discovery. To the extent possible, these reports must include the following:

a. The identification of each individual whose PHI has been or may have been improperly accessed, acquired, used, or disclosed;

b. The nature of the unauthorized use or disclosure, including a brief description of what happened, the date of the event(s), and the date of discovery;

c. A description of the types of Data involved;

d. The investigative and remedial actions Contractor or its Subcontractor took or will take to prevent and mitigate harmful effects, and protect against recurrence;

e. Any details necessary for a determination of the potential harm to individuals whose Data is believed to have been used or disclosed and the steps those individuals should take to protect themselves; and

f. Any other information HCA reasonably requests.

iii. Contractor must take actions to mitigate the risk of loss and comply with any notification or other requirements imposed by law or HCA including but not limited to 45 C.F.R. Part 164, Subpart D; RCW 42.56.590; RCW 19.255.010; or WAC 284-04-625.

iv. If notification of the Breach or possible Breach must, in the judgement of HCA, be made under the HIPAA Breach Notification Rule, or RCW 42.56.590 or RCW 19.255.010, or other law or rule, then:

a. HCA may choose to make any required notifications to the individuals, to the U.S. Department of Health and Human Services (DHHS) Secretary, and to the media, or direct Contractor to make them or any of them.

b. In any case, Contractor will pay the reasonable costs of notification to individuals, media, and governmental agencies and of other actions HCA reasonably considers appropriate to protect HCA clients, such as paying for regular credit watches in some cases.

c. Contractor will compensate HCA clients for harms caused to them by any Breach or possible Breach.

v. Any breach of this clause may result in termination of the Contractor and the demand for return or disposition, as described in Section 5.iii, of all Confidential Information.

vi. Contractor's obligations regarding Breach notification survive the termination of this Contract and continue for as long as Contractor maintains the Confidential Information and for any Breach or possible Breach at any time.

7. Inspection

HCA reserves the right to monitor, audit, or investigate compliance with this Contract in regards to the Personal Information and PHI of Enrollees collected, used, or acquired by Contractor during the term of this Contract and for six (6) years following termination or expiration of this Contract. HCA will have access to Contractor's records and place of business for this purpose. All HCA representatives conducting onsite audits of Contractor agree to keep confidential any patient-identifiable information which may be reviewed during the course of any site visit or audit.

8. Indemnification for Unauthorized Use or Release

The Contractor must indemnify and hold HCA and its employees harmless from any damages related to the Contractor's or Subcontractor's unauthorized use or release of Personal Information or PHI of Enrollees.

ATTACHMENT 5 – Federal Compliance, Certifications, and Assurances

I. **FEDERAL COMPLIANCE** - The use of federal funds requires additional compliance and control mechanisms to be in place. The following represents the majority of compliance elements that may apply to any federal funds provided under this contract. For clarification regarding any of these elements or details specific to the federal funds in this contract, contact: **Isaac Wulff**.

a. Source of Funds **SABG COVID ENHANCEMENT**: This agreement is being funded partially or in full through Cooperative Agreement number **B08T1083519**, the full and complete terms and provisions of which are hereby incorporated into this Contract. Federal funds to support this agreement are identified by the Catalog of Federal Domestic Assistance (CFDA) number **93.959** in the amount of **$156,000**. The sub-awardee is responsible for tracking and reporting the cumulative amount expended under HCA Contract **K5533**.

b. *Period of Availability of Funds 7/1/2021 – 6/30/2023:* Pursuant to 45 CFR 92.23, Sub-awardee may charge to the award only costs resulting from obligations of the funding period specified in **B08T1083519** unless carryover of unobligated balances is permitted, in which case the carryover balances may be charged for costs resulting from obligations of the subsequent funding period. All obligations incurred under the award must be liquidated no later than 90 days after the end of the funding period.

c. Source of Funds **SOR**: This agreement is being funded partially or in full through Cooperative Agreement number **B08T1083519**, the full and complete terms and provisions of which are hereby incorporated into this Contract. Federal funds to support this agreement are identified by the Catalog of Federal Domestic Assistance (CFDA) number **93.788** in the amount of **$19,444**. The sub-awardee is responsible for tracking and reporting the cumulative amount expended under HCA Contract **K5533**.

d. *Period of Availability of Funds 7/1/2021 – 6/30/2023:* Pursuant to 45 CFR 92.23, Sub-awardee may charge to the award only costs resulting from obligations of the funding period specified in **B08T1083519** unless carryover of unobligated balances is permitted, in which case the carryover balances may be charged for costs resulting from obligations of the subsequent funding period. All obligations incurred under the award must be liquidated no later than 90 days after the end of the funding period.

e. Source of Funds **SOR II**: This agreement is being funded partially or in full through Cooperative Agreement number **H79T1083286**, the full and complete terms and provisions of which are hereby incorporated into this Contract. Federal funds to support this agreement are identified by the Catalog of Federal Domestic Assistance (CFDA) number **93.788** in the amount of **$44,556**. The sub-awardee is responsible for tracking and reporting the cumulative amount expended under HCA Contract **K5533**.

f. *Period of Availability of Funds 7/1/2021 – 6/30/2023:* Pursuant to 45 CFR 92.23, Sub-awardee may charge to the award only costs resulting from obligations of the funding period specified in **H79T1083286** unless carryover of unobligated balances is permitted, in which case the carryover balances may be charged for costs resulting from obligations of the subsequent funding period. All obligations incurred under the award must be liquidated no later than 90 days after the end of the funding period.

g. *Single Audit Act:* A sub-awardee (including private, for-profit hospitals and non-profit institutions) shall adhere to the federal Office of Management and Budget (OMB) Super Circular 2 CFR200.501 and 45 CFR 75.501. A sub-awardee who expends $750,000 or more in federal awards during a given fiscal year shall have a single or program-specific audit for that year in accordance with the provisions of OMB Super Circular 2 CFR 200.501 and 45 CFR 75.501.

h. *Modifications:* This agreement may not be modified or amended, nor may any term or provision be waived or discharged, including this particular Paragraph, except in writing, signed upon by both parties.

1. Examples of items requiring Health Care Authority prior written approval include, but are not limited to, the following:
   i. Deviations from the budget and Project plan.
   ii. Change in scope or objective of the agreement.
   iii. Change in a key person specified in the agreement.
   iv. The absence for more than one (1) months or a 25% reduction in time by the Project Manager/Director.
   v. Need for additional funding.
   vi. Inclusion of costs that require prior approvals as outlined in the appropriate cost principles.
   vii. Any changes in budget line item(s) of greater than twenty percent (20%) of the total budget in this agreement.
2. No changes are to be implemented by the Sub-awardee until a written notice of approval is received from the Health Care Authority.

i. *Sub-Contracting:* The sub-awardee shall not enter into a sub-contract for any of the work performed under this agreement without obtaining the prior written approval of the Health Care Authority. If sub-contractors are approved by the Health Care Authority, the subcontract, shall contain, at a minimum, sections of the agreement pertaining to Debarred and Suspended Vendors, Lobbying certification, Audit requirements, and/or any other project Federal, state, and local requirements.

j. *Condition for Receipt of Health Care Authority Funds:* Funds provided by Health Care Authority to the sub-awardee under this agreement may not be used by the sub-awardee as a match or cost-sharing provision to secure other federal monies without prior written approval by the Health Care Authority.

k. *Unallowable Costs:* The sub-awardees' expenditures shall be subject to reduction for amounts included in any invoice or prior payment made which determined by HCA not to constitute allowable costs on the basis of audits, reviews, or monitoring of this agreement.

l. *Supplanting Compliance: The SABG Block Grant will not be used to supplant State funding of alcohol and other drug prevention and treatment programs. (45 CFR section 96.123(a)(10)).*

m. *Citizenship/Alien Verification/Determination:* The Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) of 1996 (PL 104-193) states that federal public benefits should be made available only to U.S. citizens and qualified aliens. Entities that offer a service defined as a "federal public benefit" must make a citizenship/qualified alien determination/ verification of applicants at the time of application as part of the eligibility criteria. Non-US citizens and unqualified aliens are not eligible to receive the services. PL 104-193 also includes specific reporting requirements.

n. *Federal Compliance:* The sub-awardee shall comply with all applicable State and Federal statutes, laws, rules, and regulations in the performance of this agreement, whether included specifically in this agreement or not.

o. *Civil Rights and Non-Discrimination Obligations* During the performance of this agreement, the Contractor shall comply with all current and future federal statutes relating to nondiscrimination. These include but are not limited to: Title VI of the Civil Rights Act of 1964 (PL 88-352), Title IX of the Education Amendments of 1972 (20 U.S.C. §§ 1681-1683 and 1685-1686), section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 794), the Age Discrimination Act of 1975 (42 U.S.C. §§ 6101- 6107), the Drug Abuse Office and Treatment Act of 1972 (PL 92-255), the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (PL 91-616), §§523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. §§290dd-3 and 290ee-3), Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§3601 et seq.), and the Americans with Disability Act

(42 U.S.C., Section 12101 et seq.) http://www.hhs.gov/ocr/civilrights.

HCA Federal Compliance Contact Information
Federal Grants and Budget Specialist Health Care Policy
Washington State Health Care Authority
Post Office Box 42710
Olympia, Washington 98504-2710

II. **CIRCULARS 'COMPLIANCE MATRIX'** - The following compliance matrix identifies the OMB Circulars that contain the requirements which govern expenditure of federal funds. These requirements apply to the Washington State Health Care Authority (HCA), as the primary recipient of federal funds and then follow the funds to the sub-awardee **Clallam County Juvenile & Family Services**. The federal Circulars which provide the applicable administrative requirements, cost principles and audit requirements are identified by sub-awardee organization type.

	OMB CIRCULAR		
ENTITY TYPE	**ADMINISTRATIVE REQUIREMENTS**	**COST PRINCIPLES**	**AUDIT REQUIREMENTS**
State. Local and Indian Tribal Governments and Governmental Hospitals	OMB Super Circular 2 CFR 200.501 and 45 CFR 75.501		
Non-Profit Organizations and Non-Profit Hospitals			
Colleges or Universities and Affiliated Hospitals			
For-Profit Organizations			

III. **STANDARD FEDERAL CERTIFICATIONS AND ASSURANCES** - Following are the Assurances, Certifications, and Special Conditions that apply to all federally funded (in whole or in part) agreements administered by the Washington State Health Care Authority.

CERTIFICATIONS

1. CERTIFICATION REGARDING DEBARMENT AND SUSPENSION

The undersigned (authorized official signing for the contracting organization) certifies to the best of his or her knowledge and belief, that the contractor, defined as the primary participant in accordance with 45 CFR Part 76, and its principals:

I. are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal Department or agency have not within a 3-year period preceding this contract been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property; are not presently indicted or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in Section 2 of this certification; and have not within a 3-year period preceding this contract had one or more public transactions (Federal, State, or local) terminated for cause or default.

Should the contractor not be able to provide this certification, an explanation as to why should be placed after the assurances page in the contract.

The contractor agrees by signing this contract that it will include, without modification, the clause titled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion--Lower Tier Covered Transactions" in all lower tier covered transactions (i.e., transactions with sub-grantees and/or contractors) and in all solicitations for lower tier covered transactions in accordance with 45 CFR Part 76.

2. CERTIFICATION REGARDING DRUG-FREE WORKPLACE REQUIREMENTS

The undersigned (authorized official signing for the contracting organization) certifies that the contractor will, or will continue to, provide a drug-free workplace in accordance with 45 CFR Part 76 by:

I. Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition; Establishing an ongoing drug-free awareness program to inform employees about:

   a. The dangers of drug abuse in the workplace;

   b. The contractor's policy of maintaining a drug-free workplace;

   c. Any available drug counseling, rehabilitation, and employee assistance programs; and

   d. The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

II. Making it a requirement that each employee to be engaged in the performance of the contract be given a copy of the statement required by paragraph (I) above;

III. Notifying the employee in the statement required by paragraph (I), above, that, as a condition of employment under the contract, the employee will—

   a. Abide by the terms of the statement; and

   b. Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five (5) calendar days after such conviction;

IV. Notifying the agency in writing within ten calendar days after receiving notice under paragraph (III)(b) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to every contract officer or other designee on whose contract activity the convicted employee was working, unless the Federal agency has designated a central point for the receipt of such notices. Notice shall include the identification number(s) of each affected grant;

V. Taking one of the following actions, within thirty (30) calendar days of receiving notice under paragraph (III) (b), with respect to any employee who is so convicted—

   a. Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

   b. Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

VI. Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (I) through (V).

For purposes of paragraph (V) regarding agency notification of criminal drug convictions, HCA has designated the following central point for receipt of such notices:

Legal Services Manager
WA State Health Care Authority
PO Box 42700

Olympia, WA 98504-2700

3. CERTIFICATION REGARDING LOBBYING

Title 31, United States Code, Section 1352, entitled "Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions," generally prohibits recipients of Federal grants and cooperative agreements from using Federal (appropriated) funds for lobbying the Executive or Legislative Branches of the Federal Government in connection with a SPECIFIC grant or cooperative agreement. Section 1352 also requires that each person who requests or receives a Federal grant or cooperative agreement must disclose lobbying undertaken with non-Federal (nonappropriated) funds. These requirements apply to grants and cooperative agreements EXCEEDING $100,000 in total costs (45 CFR Part 93).

The undersigned (authorized official signing for the contracting organization) certifies, to the best of his or her knowledge and belief, that:

VII. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

VIII. If any funds other than Federally appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure of Lobbying Activities," in accordance with its instructions. (If needed, Standard Form-LLL, "Disclosure of Lobbying Activities," its instructions, and continuation sheet are included at the end of this application form.)

IX. The undersigned shall require that the language of this certification be included in the award documents for all subcontracts at all tiers (including subcontracts, subcontracts, and contracts under grants, loans and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

4. CERTIFICATION REGARDING PROGRAM FRAUD CIVIL REMEDIES ACT (PFCRA)

The undersigned (authorized official signing for the contracting organization) certifies that the statements herein are true, complete, and accurate to the best of his or her knowledge, and that he or she is aware that any false, fictitious, or fraudulent statements or claims may subject him or her to criminal, civil, or administrative penalties. The undersigned agrees that the contracting organization will comply with the Public Health Service terms and conditions of award if a contract is awarded.

5. CERTIFICATION REGARDING ENVIRONMENTAL TOBACCO SMOKE

Public Law 103-227, also known as the Pro-Children Act of 1994 (Act), requires that smoking not be permitted in any portion of any indoor facility owned or leased or contracted for by an entity and used routinely or regularly for the provision of health, day care, early childhood development services, education or library services to children under the age of 18, if the services are funded by Federal programs either directly or through State or local governments, by Federal grant, contract, loan, or loan guarantee. The law also applies to children's services that are provided in indoor facilities that are constructed, operated, or maintained with such Federal funds. The law does not apply to children's services provided in private residence, portions of facilities used for inpatient drug or alcohol

treatment, service providers whose sole source of applicable Federal funds is Medicare or Medicaid, or facilities where WIC coupons are redeemed.

Failure to comply with the provisions of the law may result in the imposition of a civil monetary penalty of up to $1,000 for each violation and/or the imposition of an administrative compliance order on the responsible entity.

By signing the certification, the undersigned certifies that the contracting organization will comply with the requirements of the Act and will not allow smoking within any portion of any indoor facility used for the provision of services for children as defined by the Act.

The contracting organization agrees that it will require that the language of this certification be included in any subcontracts which contain provisions for children's services and that all sub-recipients shall certify accordingly.

The Public Health Services strongly encourages all recipients to provide a smoke-free workplace and promote the non-use of tobacco products. This is consistent with the PHS mission to protect and advance the physical and mental health of the American people.

6. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS INSTRUCTIONS FOR CERTIFICATION

I. By signing and submitting this proposal, the prospective contractor is providing the certification set out below.

II. The inability of a person to provide the certification required below will not necessarily result in denial of participation in this covered transaction. The prospective contractor shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective contractor to furnish a certification or an explanation shall disqualify such person from participation in this transaction.

III. The certification in this clause is a material representation of fact upon which reliance was placed when the department or agency determined to enter into this transaction. If it is later determined that the prospective contractor knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause of default.

IV. The prospective contractor shall provide immediate written notice to the department or agency to whom this contract is submitted if at any time the prospective contractor learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

V. The terms covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction, principal, proposal, and voluntarily excluded, as used in this clause, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549. You may contact the person to whom this contract is submitted for assistance in obtaining a copy of those regulations.

VI. The prospective contractor agrees by submitting this contract that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by HCA.

VII. The prospective contractor further agrees by submitting this contract that it will include the clause titled ``Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion -- Lower Tier Covered Transaction," provided by HHS, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

VIII. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Non-procurement List (of excluded parties).

IX. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

X. Except for transactions authorized under paragraph 6 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, HCA may terminate this transaction for cause or default.

7. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS -- PRIMARY COVERED TRANSACTIONS

I. The prospective contractor certifies to the best of its knowledge and belief, that it and its principals:

a. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

b. Have not within a three-year period preceding this contract been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

c. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph 7(I)(b) of this certification; and

d. Have not within a three-year period preceding this contract had one or more public transactions (Federal, State or local) terminated for cause or default.

II. Where the prospective contractor is unable to certify to any of the statements in this certification, such prospective contractor shall attach an explanation to this proposal.

CONTRACTOR SIGNATURE REQUIRED

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL	TITLE
Please also print or type name:	
ORGANIZATION NAME: (if applicable)	DATE

ATTACHMENT 6 - Federal Funding Accountability and Transparency Act (FFATA) Data Collection Form

This Contract is supported by federal funds that require compliance with the Federal Funding Accountability and Transparency Act (FFATA or the Transparency Act). The purpose of the Transparency Act is to make information available online so the public can see how federal funds are spent.

To comply with the act and be eligible to enter into this contract, your organization must have a Data Universal Numbering System (DUNS®) number. A DUNS® number provides a method to verify data about your organization. If you do not already have one, you may receive a DUNS® number free of charge by contacting Dun and Bradstreet at www.dnb.com.

Required Information about your organization and this contract will be made available on USASpending.gov by the Washington State Health Care Authority (HCA) as required by P.L. 109-282. As a tool to provide the information, HCA encourages registration with the Central Contractor Registry (CCR) because less data entry and re-entry is required by both HCA and your organization. You may register with CCR on-line at https://www.uscontractorregistration.com/.

Contractor must complete this form and return it to the Health Care Authority (HCA).

CONTRACTOR

1. Legal Name	2. DUNS Number
Clallam County Juvenile & Family Services	07-573-9235
3. Principle Place of Performance 1912 W 18th St	
3a. City Port Angeles	3b. State WA
3c. Zip+4: 98363	3d. Country USA

4. Are you registered in CCR (https://www.uscontractorregistration.com/)? ☒YES (skip to page 2. Sign, date and return) ☐NO

5. In the preceding fiscal year did your organization:

   a. Receive 80% or more of annual gross revenue from federal contracts, subcontracts, grants, loans, sub grants, and/or cooperative agreements; **and**

   b. $25,000,000 or more in annual gross revenues from federal contracts, subcontracts, grants, loans, subgrants, and/or cooperative agreements; **and**

   c. The public does not have access to information about the compensation of the executives through periodic reports filed with the IRS or the Security and Exchange Commission per 2 CFR Part 170.330

   ☐ NO (skip the remainder of this section - Sign, date and return)

   ☐ YES (You must report the names and total compensation of the top 5 highly compensated officials of your organization).

Name Of Official	Total Compensation
1.	
2.	
3.	
4.	
5.	

Note: "Total compensation" means the cash and noncash dollar value earned by the executive during the sub-recipient's past fiscal year of the following (for more information see 17 CFR 229.402 (c)(2)).

By signing this document, the Contractor Authorized Representative attests to the information.

Signature of Contractor Authorized Representative	Date

HCA will not endorse the Contractor's subaward until this form is completed and returned.

FOR HEALTH CARE AUTHORITY USE ONLY

HCA Contract Number: K5533
Sub-award Project Description (see instructions and examples below) Coordination and implementation of prevention programs and strategies designed to prevent or delay the misuse and abuse of alcohol, marijuana, tobacco, opioids, and other drugs, increase mental health promotion and prevent suicide in support of the Community Prevention and Wellness Initiative (CPWI).

Instructions for Sub-award Project Description:

In the first line of the description provide a title for the sub-award that captures the main purpose of the subrecipients work. Then, indicate the name of the subrecipient and provide a brief description that captures the overall purpose of the sub-award, how the funds will be used, and what will be accomplished.

Example of a Sub-award Project Description:

Increase Healthy Behaviors: Educational Services District XYZ will provide training and technical assistance to chemical dependency centers to assist the centers to integrate tobacco use into their existing addiction treatment programs. Funds will also be used to assist centers in creating tobacco free treatment environments.

ATTACHMENT 7 - Substance Abuse and Mental Health Services Administration (SAMHSA) Award Terms

By drawing or otherwise obtaining funds as a subawardee or contractor of a non-federal entity drawing or otherwise obtaining funds from SAMHSA, a branch of the United States Department of Health and Human Services (HHS), you agree to the following pass-through terms and conditions.

Name	Language
Acceptance of the Terms of an Award	This Subaward is subject to the SAMHSA Fiscal Year 2021 – Award Standard Terms, included directly, or incorporated by reference on the Notice of Award (NoA) support the grant.
Non-Supplanting	Federal award funds must supplement, not supplant, nonfederal funds. All recipients who receive awards under programs that prohibit supplanting by law must ensure that federal funds do not supplant funds that have been budgeted for the same purpose through non-federal sources. Applicants or award recipients may be required to demonstrate and document that a reduction in non-federal resources occurred for reasons other than the receipt of expected receipt of federal funds. Block grant funds (SABG and MHBG) will not be used to supplant state funding of alcohol and other drug prevention programs. See 45 CFR § 98.123
Unallowable Costs	All costs incurred prior to the award issue date and costs not consistent with the funding opportunity, 45 CFR Part 75, and the HHS Grants Policy Statement, are not allowable under this subaward.
Marijuana Restrictions	Grant funds may not be used, directly or indirectly, to purchase, prescribe, or provide marijuana treatment using marijuana. Treatment in this context includes the treatment or opioid use disorder. Grant funds also cannot be provided to any individual who or organization that provides or permits marijuana use for the purposes of treating substance use or mental disorders. *See, e.g.,* 45 CFR 75.300(a); 21 USC 812(c)(10) and 841. This prohibition does not apply to those providing such treatment in the context of clinical research permitted by the DEA and under an FDA-approved investigational new drug application where the article being evaluated is marijuana or a constituent thereof that is otherwise a banned controlled substances under the federal law.
Executive Pay	The Consolidated Appropriations Act, 2021 (Public Law 116-260), signed into law on December 27, 2020 restricts the amount of direct salary to Executive Level II of the Federal Executive Pay scale. Effective January 3, 2021, the salary limitation for Executive Level II is **$199,300**.
Promotional Items	SAMHSA grant funds may not be used for Promotional Items. Promotional Items include but are not limited to: Clothing and commemorative items such as pens, mugs/cups, folders/folios, lanyards, and conference bags.
Acknowledgment of Federal Funding at Conferences and Meetings	When a conference is funded by a grant or cooperative agreement, the recipient must include the following statement in all conference materials (including promotional materials, agenda, and internet stites): *Funding for this conference was made possible 9in part) by (insert grant or cooperative agreement award number) from SAMHSA. The views expressed in written conference materials or publications and by speakers and moderators do not necessarily reflect the official policies of the Department of Health and Human Services; nor does mention of trade names, commercial practices, or organizations imply endorsements by the U.S. Government.*

Rights in Data and Publications	As applicable, recipients agree to the requirements for intellectual property, rights in data, access to research data, publications, and sharing research tools, and intangible property and copyrights as described in 45 CFR 75.322 and the HHS Grants Policy Statement. HCA may copyright any work that is subject to copyright and was developed, or for which ownership was acquired, under a Federal Award. SAMHSA reserves a royalty-free, nonexeclusive and irrevocable right to reproduce, publish, or otherwise use the work for Federal purposes, and to authorize others to do so.
Mandatory Disclosures	Consistent with 45 CFR 75.113, Subrecipients must disclose, in a timely manner, in writing to HCA and the HHS Office of Inspector General (OIG), all information related to violations, or suspected violations, of Federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the Federal award. Disclosures must be sent in writing to HCA and the HHS OIG at the following addresses: U.S. Department of Health and Human Services Office of Inspector General ATTN: Mandatory Grant Disclosures, Intake Coordinator 330 Independence Avenue, SW, Cohen Building Room 5527 Washington DC 20201 Fax: (202) 205-0604 (include "Mandatory Grant Disclosures" in subject line or email) MandatoryGranteeDisclosures@oig.hhs.gov Failure to make required disclosures can result in any of the remedies described in 45 CFR 75.371 remedies for noncompliance, including suspension or debarment (See 2 CFR parts 180 & 376 and 31 USC 3321)
Lobbying Restrictions	Per 45 CFR §75.215, Subrecipients are subject to the restrictions on lobbying as set forth in 45 CFR part 93. U.S.C. > Title 18 > Part I > Chapter 93 > Section 1913, No part of the money appropriated by any enactment of Congress shall, in the absence of express authorization by Congress, be used directly or indirectly to pay for any personal service, advertisement, telegram, telephone, letter, printed or written matter, or other device, intended or designed to influence in any manner a Member of Congress, a jurisdiction, or an official of any government, to favor, adopt, or oppose, by vote or otherwise, any legislation, law, ratification, policy, or appropriation, whether before or after the introduction of any bill, measure, or resolution proposing such legislation, law, ratification, policy, or appropriation; but this shall not prevent officers or employees of the United States or of its departments or agencies from communicating to any such Member or official, at his/her request, or to Congress or such official, through the proper official channels, requests for any legislation, law, ratification, policy, or appropriations which they deem necessary for the efficient conduct of the public business, or from making any communication whose prohibition by this section might, in the opinion of the Attorney General, violate the Constitution or interfere with the conduct of foreign policy, counter-intelligence, intelligence, or national security activities. Violations of this section shall constitute as a violation of section 1352 (a) of Title 31.
Drug Free Workplace	The Drug-Free Workplace Act of 1988 (41 U.S.C. § 701 et seq.) requires that all organizations receiving grants from any Federal agency agree to maintain a drug-free workplace. By signing this Contract, you agree that the grantee will provide a drug-free workplace and will comply with the requirement to notify NIH if an employee is convicted

	of violating a criminal drug statute. Failure to comply with these requirements may be cause for debarment. Government wide requirements for Drug-Free Workplace for Financial Assistance are found in 2 CFR part 182; HHS implementing regulations are set forth in 2 CFR part 382.400. All recipients of NIH grant funds must comply with the requirements in Subpart B (or Subpart C if the recipient is an individual) of part 382.
Trafficking Victims Protection Act of 2000 (22 USC 7104(G)), as amended, and 2 CFR Part 175	The Trafficking Victims Protection Act of 2000 authorizes termination of financial assistance provided to a private entity, without penalty to the Federal government, if the recipient or subrecipient engages in certain activities related to trafficking in persons. SAMHSA or HCA may unilaterally terminate this award, without penalty, if a private entity recipient, or a private entity subrecipient, or their employees: a) Engage in severe forms of trafficking in persons during the period of time that the award is in effect; b) Procure a commercial sex act during the period of time that the award is in effect; or, c) Use forced labor in the performance of the award or subawards under the award. The text of the full award term is available at 2 C.F.R. § 175.15(b). See http://www.gpo.gov/fdsys/pkg/CFR-2012-title2-vol1/pdf/CFR-2012-title2-vol1-sec175-15.pdf
Confidentiality of Alcohol and Drug Abuse Patient Records	The regulations (42 CFR 2) are applicable to any information about alcohol and other drug abuse patients obtained by a "program" (42 CFR 2.11), if the program is federally assisted in any manner (42 CFR 2.12b). Accordingly, all project patient records are confidential and may be disclosed and used only in accordance with 42 CFR Part 2. The Subrecipient is responsible for assuring compliance with these regulations and principles, including responsibility for assuring the security and confidentiality of all electronically transmitted patient material.
Healthy People 2020	Healthy People 2020 is a national initiative led by HHS that set priorities for all SAMHSA programs. The initiative has two major goals: (1) increase the quality and years of a healthy life; and (2) eliminate our country's health disparities. The program consists of 28 focus areas and 467 objectives. SAMHSA has actively participated in the work groups of all the focus areas and is committed to the achievement of the Healthy People 2020 goals. Healthy People 2010 and the conceptual framework for the forthcoming Healthy People 2020 process can be found online at: http://www.healthypeople.gov/
Accessibility Provisions	Recipients of Federal financial assistance (FFA) from HHS must administer their programs in compliance with Federal civil rights law. This means that recipients of HHS funds must ensure equal access to their programs without regard to a person's race, color, national origin, disability, age, and in some circumstances, sex and religion. This includes ensuring your programs are accessible to persons with limited English proficiency. The HHS Office for Civil Rights also provides guidance on complying with civil rights laws enforced by HHS. Please see: http://www.hhs.gov/ocr/civilrights/understanding/section1557/index.html. Recipients of FFA also have specific legal obligations for serving qualified individuals with disabilities. Please see- http://www.hhs.gov/ocr/civilrights/understanding/disability/index.html. Please contact the HHS Office for Civil Rights for more information about obligations and prohibitions under Federal civil rights laws at https://www.hhs.gov/civil- rights/index.html or call 1-800-368-1019 or TDD 1-800- 537-7697. Also note that it is an HHS Departmental goal to ensure access to quality, culturally competent care, including long-term services and supports, for vulnerable populations.

	For further guidance on providing culturally and linguistically appropriate services, recipients should review the National Standards for Culturally and Linguistically Appropriate Services in Health and Health Care at https://minorityhealth.hhs.gov/omh/browse.aspx?lvl=1&lvlid=6.
Legislative Mandates	Certain statutory provisions under P.L. 115-245, Department of Defense and Labor, Health and Human Services, and Education Appropriations Act, 2019, Division B, Title V, Title II, General Provisions limit the use of funds on SAMHSA grants, cooperative agreements, and contract awards. Such provisions are subject to change annually based on specific appropriation language that restricts the use of grant funds. The full text of P.L. 115-245 is available at https://www.congress.gov/bill/115th-congress/housebill/6157/text? Format=txt.
Ad Hoc Submissions	Throughout the project period, SAMHSA may determine that a grant requires submission of additional information beyond the standard deliverables. This information may include, but is not limited to, the following: • Payroll • Purchase orders • Contract documentation • Proof of project implementation

ATTACHMENT 8 - Federal Award Identification for Subrecipients

(Reference 45 CFR 75.352)

Substance Abuse Prevention and Treatment Block Grant (SABG) - COVID Enhancement

(i) Subrecipient name (which must match the name associated with its unique entity identifier);	Clallam County Juvenile & Family Services
(ii) Subrecipient's unique entity identifier; (DUNS)	07-573-9235
(iii) Federal Award Identification Number (FAIN);	B08TI083519
(iv) Federal Award Date (see §200.39 Federal award date);	03/11/2021
(v) Subaward Period of Performance Start and End Date;	07/01/2021 – 6/30/2023
(vi) Amount of Federal Funds Obligated by this action;	$156,000
(vii) Total Amount of Federal Funds Obligated to the subrecipient;	$156,000
(xiii) Total Amount of the Federal Award;	$35,415,872
(ix) Federal award project description, as required to be responsive to the Federal Funding Accountability and Transparency Act (FFATA);	Substance Abuse Prevention and Treatment Block Grant
(x) Name of Federal awarding agency, pass-through entity, and contact information for awarding official,	SAMHSA WA State Health Care Authority Keri Waterland, Assistant Director DBHR 626 8th Ave SE; Olympia, WA 98504-5330 Keri.waterland@hca.wa.gov
(xi) CFDA Number and Name; the pass-through entity must identify the dollar amount made available under each Federal award and the CFDA number at time of disbursement;	93.959 Substance Abuse Prevention and Treatment Block Grant
(xii) Identification of whether the award is R&D; and	☐ Yes ☒ No
(xiii) Indirect cost rate for the Federal award (including if the de minimis rate is charged per §200.414 Indirect (F&A) costs).	de minimus (10%)

State Opioid Response (SOR)

(i) Subrecipient name (which must match the name associated with its unique entity identifier);	Clallam County Juvenile & Family Services
(ii) Subrecipient's unique entity identifier; (DUNS)	07-573-9235
(iii) Federal Award Identification Number (FAIN);	H79TI081705
(iv) Federal Award Date (see §200.39 Federal award date);	09/21/2020
(v) Subaward Period of Performance Start and End Date;	07/01/2021 – 6/30/2023
(vi) Amount of Federal Funds Obligated by this action;	$19,444
(vii) Total Amount of Federal Funds Obligated to the subrecipient;	$19,444
(xiii) Total Amount of the Federal Award;	$2,430,884
(ix) Federal award project description, as required to be responsive to the Federal Funding Accountability and Transparency Act (FFATA);	Washington State Opioid Response (SOR) Grant No Cost Extension
(x) Name of Federal awarding agency, pass-through entity, and contact information for awarding official,	SAMHSA WA State Health Care Authority Keri Waterland, Assistant Director DBHR 626 8th Ave SE; Olympia, WA 98504-5330 Keri.waterland@hca.wa.gov
(xi) CFDA Number and Name; the pass-through entity must identify the dollar amount made available under each Federal award and the CFDA number at time of disbursement;	93.788, Washington State Opioid Response (SOR) Grant
(xii) Identification of whether the award is R&D; and	☐ Yes ☒ No
(xiii) Indirect cost rate for the Federal award (including if the de minimis rate is charged per §200.414 Indirect (F&A) costs).	de minimus (10%)

State Opioid Response II (SOR II)

(i) Subrecipient name (which must match the name associated with its unique entity identifier);	Clallam County Juvenile & Family Services
(ii) Subrecipient's unique entity identifier; (DUNS)	07-573-9235
(iii) Federal Award Identification Number (FAIN);	H79TI083286
(iv) Federal Award Date (see §200.39 Federal award date);	08/27/2020
(v) Subaward Period of Performance Start and End Date;	07/01/2021 – 6/30/2023
(vi) Amount of Federal Funds Obligated by this action;	$44,556
(vii) Total Amount of Federal Funds Obligated to the subrecipient;	$44,556
(xiii) Total Amount of the Federal Award;	$27,173,792
(ix) Federal award project description, as required to be responsive to the Federal Funding Accountability and Transparency Act (FFATA);	Washington State Opioid Response II (SOR II) Grant
(x) Name of Federal awarding agency, pass-through entity, and contact information for awarding official,	SAMHSA WA State Health Care Authority Keri Waterland, Assistant Director DBHR 626 8th Ave SE; Olympia, WA 98504-5330 Keri.waterland@hca.wa.gov
(xi) CFDA Number and Name; the pass-through entity must identify the dollar amount made available under each Federal award and the CFDA number at time of disbursement;	93.788, Washington State Opioid Response II (SOR II) Grant
(xii) Identification of whether the award is R&D; and	☐ Yes ☒ No
(xiii) Indirect cost rate for the Federal award (including if the de minimis rate is charged per §200.414 Indirect (F&A) costs).	de minimus (10%)

DocuSign

Certificate Of Completion

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Janet Stevens
626 8th Ave SE
Olympia, WA 98501
janet.stevens@hca.wa.gov
IP Address: 198.239.12.174

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Signer Events	Signature	Timestamp
Rachelle Amerine rachelle.amerine@hca.wa.gov Contracts Administrator CloudPWR OBO Washington State Health Care Authority-Sub Account Security Level: Email, Account Authentication (None) **Electronic Record and Signature Disclosure:** Not Offered via DocuSign	DocuSigned by: Rachelle Amerine 71E17FEBBC774E7... Signature Adoption: Pre-selected Style Using IP Address: 147.55.199.235	Sent: 7/30/2021 12:05:09 PM Viewed: 7/30/2021 12:22:21 PM Signed: 7/30/2021 12:22:52 PM
Jody L.E. Jacobson Jjacobsen@co.clallam.wa.us Security Level: Email, Account Authentication (None) **Electronic Record and Signature Disclosure:** Not Offered via DocuSign		Sent: 7/30/2021 12:22:55 PM

In Person Signer Events	Signature	Timestamp

Editor Delivery Events	Status	Timestamp

Agent Delivery Events	Status	Timestamp

Intermediary Delivery Events	Status	Timestamp

Certified Delivery Events	Status	Timestamp

Carbon Copy Events	Status	Timestamp
Isaac Wulff Isaac.Wulff@hca.wa.gov Security Level: Email, Account Authentication (None) **Electronic Record and Signature Disclosure:** Accepted: 2/9/2021 10:39:42 AM ID: aac376e7-ba82-45de-ba84-159e7590d971	COPIED	Sent: 7/30/2021 12:05:10 PM
Heidi Jones heidi.jones@hca.wa.gov Security Level: Email, Account Authentication (None) **Electronic Record and Signature Disclosure:** Not Offered via DocuSign	COPIED	Sent: 7/30/2021 12:05:09 PM

Carbon Copy Events	Status	Timestamp
Cassandra Bryden cassie.bryden@hca.wa.gov Security Level: Email, Account Authentication (None) **Electronic Record and Signature Disclosure:** Not Offered via DocuSign	COPIED	Sent: 7/30/2021 12:05:10 PM
Cynthia L. Hanson chanson@co.clallam.wa.us Security Level: Email, Account Authentication (None) **Electronic Record and Signature Disclosure:** Not Offered via DocuSign	COPIED	Sent: 7/30/2021 12:22:55 PM Viewed: 7/30/2021 12:55:22 PM
HCA Financial Services FINANCIALSVC@HCA.WA.GOV Security Level: Email, Account Authentication (None) **Electronic Record and Signature Disclosure:** Not Offered via DocuSign		

Witness Events	Signature	Timestamp

Notary Events	Signature	Timestamp

Envelope Summary Events	Status	Timestamps
Envelope Sent	Hashed/Encrypted	7/30/2021 12:05:10 PM

Payment Events	Status	Timestamps

Electronic Record and Signature Disclosure

3
8/23/21

AGENDA ITEM SUMMARY

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

Department: INFORMATION TECHNOLOGY

WORK SESSION ☒ **Meeting Date:** **AUGUST 23, 2021**

REGULAR AGENDA ☐ **Meeting Date:**

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 Discussion

Documents exempt from public disclosure attached: ☐

Executive summary:

Pursuant to the BOCC meeting held on 06/28, the Information Technology Department would like to have the Commissioners final approval to engage with Tyler Systems on the implementation of a new Permit Planning System. As discussed, there is existing funding in the IT Capital Budget for the implementation and first year licensing costs.

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

No New Budgetary Impact at this time – funds exist in the current budget for the implementation.

Recommended action: (Does the Board need to act? If so, what is the department's recommendation?)
Request the Board of Commissioners give their final authorization to proceed with the engagement of Tyler Systems and implementation of the Permit Planning project as previously presented.

County Official signature & print name: _____

Name of Employee/Stakeholder attending meeting: MARK DOTEN

Relevant Departments: INFORMATION TECHNOLOGY, LEAD DEPARTMENT

Date submitted: AUGUST 18, 2021

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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)

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

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8/23/21

AGENDA ITEM SUMMARY

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

Department: Sheriff

WORK SESSION ☒ **Meeting Date: 08/23/21**

REGULAR AGENDA ☐ **Meeting Date:**

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
☒ Discussion

Documents exempt from public disclosure attached: ☐

Executive summary:
With the approval of the contract to replace aging control mechanisms in the Clallam County Jail, Sheriff Benedict would like to discuss with the Board of Commissioners and the County Facility Manager what the long term plan is for the Jail to cope with an inadequate medical infrastructure, insufficient space for at least two rooms for video arraignments and hearings, and no space for inmate video visitation. All of these upgrades are necessary for both continuing accreditation and to conform to best practices for detention facilities. Addressing these issues before replacing all of the Jail control systems might save significant money in the future.

Budgetary impact: Costs are unknown at this time.

Recommended action: Decision how best to move forward.

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

Name of Employee/Stakeholder attending meeting: Sheriff Benedict

Relevant Departments: Sheriff's Office and Facilities Department

Date submitted: 08/18/21

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8/23/21

AGENDA ITEM SUMMARY

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

Department: Sheriff's Office

WORK SESSION ☒ **Meeting Date: 08/23/21**

REGULAR AGENDA ☒ **Meeting Date: 08/31/21**

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

Item summary:

☐ Call for Hearing
☒ Contract/Agreement/MOU - Contract # 11008-21-01
☐ Resolution
☐ Proclamation
☒ Budget Item
☐ Draft Ordinance
☐ Final Ordinance
☐ Other

Documents exempt from public disclosure attached: ☐

Executive summary:
The Washington State Department of Commerce through the Multi-Jurisdictional Drug-Task Force Program has awarded Clallam County an amount of $176,196 to support operating costs of the Olympic Peninsula Narcotics Enforcement Team (OPNET) for the performance period of 07/01/21 – 06/30/22.

This funding will be used to reimburse OPNET costs associated with the investigation and prosecution of drug trafficking activities, violent crimes and other organized criminal organizations operating in Clallam County at levels normally above the capacity of local law enforcement agencies to adequately pursue.

Budgetary impact: **If a budget action is required, has it been submitted and a copy attached?** ☒
A budget change form is submitted to receipt and expend an amount of $82,022 in the FY2021 11008.811 Sheriff – OPNET Drug fund. The remainder of the funding will be accounted for in the OPNET Drug fund FY2022 budget.

Recommended action:
Recommend approval and signature by the Board.

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

Name of Employee/Stakeholder attending meeting: Sheriff Benedict and Chief Deputy King

Relevant Departments: Sheriff's Office

Date submitted: 08/18/21

Washington State Department of Commerce

Interagency Agreement with

Clallam County

through

Multi-Jurisdictional Drug-Gang Task Force Program

For

To investigate and prosecute drug trafficking, violent crime and other organized criminal organizations operating at levels normally above the capacity of local law enforcement to adequately pursue.

Start date: July 1, 2021

TABLE OF CONTENTS

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Special Terms and Conditions

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FACE SHEET

Contract Number: F18-31440-003

Washington State Department of Commerce
Community Services and Housing Division
Office of Crime Victims Advocacy
Multi-Jurisdictional Drug-Gang Task Force Program

1. Contractor	**2. Contractor Doing Business As (optional)**
Clallam County Clallam County Sheriff's Office 223 E. 4th Street, Ste 12 Port Angeles, WA 98362	Olympic Peninsula Narcotics Enforcement Team
3. Contractor Representative	**4. COMMERCE Representative**
Brian J. King Chief Criminal Deputy 360-417-2544 bking@co.clallam.wa.us	William Johnston Program Manager 360-725-3030 Bill.johnston@commerce.wa.gov 1011 Plum Street SE P.O. Box 2525 Olympia, WA 98504-2525

5. Contract Amount	**6. Funding Source**	**7. Start Date**	**8. End Date**
$176,196	**Federal:** ☒ **State:** ☐ **Other:** ☐ **N/A:** ☐	July 1, 2021	June 30, 2022

9. Federal Funds (as applicable)	**Federal Agency**	**CFDA Number:**	**Indirect Rate (if applicable):**
$176,196	Department of Justice	16 738	33.33%

10. Tax ID #	**11. SWV #**	**12. UBI #**	**13. DUNS #**
91-6001298	0000200-05	054-004-559	075739235

14. Contract Purpose

To investigate and prosecute drug trafficking, violent crime and other organized criminal organizations operating at levels normally above the capacity of local law enforcement to adequately pursue.

15. Signing Statement

COMMERCE, defined as the Department of Commerce, and the Contractor, as defined above, acknowledge and accept the terms of this Contract and Attachments and have executed this Contract on the date below and warrant they are authorized to bind their respective agencies. The rights and obligations of both parties to this Contract are governed by this Contract and the following documents hereby incorporated by reference: Attachment "A" – Scope of Work, Attachment "B" – Budget, and Attachment "C" – Reporting.

FOR CONTRACTOR	**FOR COMMERCE**
Clallam County Board of Commissioners Mark Ozias, Chair of the Board	Diane Klontz, Assistant Director
Date	Date
Elyza Stanley Approved as to form only by Deputy Prosecuting Attorney Elizabeth Stanley	**APPROVED AS TO FORM ONLY BY ASSISTANT ATTORNEY GENERAL 07/17/2019.** **APPROVAL ON FILE.**

SPECIAL TERMS AND CONDITIONS

1. AUTHORITY

COMMERCE and Contractor enter into this Contract pursuant to the authority granted by the Interlocal Cooperation Act, Chapter 39.34 RCW.

2. ACKNOWLEDGMENT OF FEDERAL FUNDS

Federal Award Date: October 1, 2018
Federal Award Identification Number (FAIN): 2018-DJ-BX-0187
Total amount of the federal award: $3,334,947
Awarding official: Matt Dummermuth

The Contractor agrees that any publications (written, visual, or sound) but excluding press releases, newsletters, and issue analyses, issued by the Contractor describing programs or projects funded in whole or in part with federal funds under this Contract, shall contain the following statements:

"This project was supported by Grant No. 2018-DJ-BX-0187 awarded by Department of Justice. Points of view in this document are those of the author and do not necessarily represent the official position or policies of the Department of Justice. Grant funds are administered by the Office of Crime Victims Advocacy, Community Services and Housing Division, Washington State Department of Commerce."

3. CONTRACT MANAGEMENT

The Representative for each of the parties shall be responsible for and shall be the contact person for all communications and billings regarding the performance of this Contract.

The Representative for COMMERCE and their contact information are identified on the Face Sheet of this Contract.

The Representative for the Contractor and their contact information are identified on the Face Sheet of this Contract.

4. COMPENSATION

COMMERCE shall pay an amount not to exceed $176,196 for the performance of all things necessary for or incidental to the performance of work under this Contract as set forth in the Scope of Work.

5. EXPENSES

Contractor shall receive reimbursement for travel and other expenses as identified below or as authorized in advance by COMMERCE as reimbursable. The maximum amount to be paid to the Contractor for authorized expenses shall not exceed $176,196 which amount is included in the Contract total above.

6. INDIRECT COSTS

Contractor shall provide their indirect cost rate that has been negotiated between their entity and the federal government. If no such rate exists a *de minimis* indirect cost rate of 10% of modified total direct costs (MTDC) will be used.

7. BILLING PROCEDURES AND PAYMENT

COMMERCE will pay Contractor upon acceptance of services provided and receipt of properly completed invoices, which shall be submitted to the Representative for COMMERCE not more often than monthly, but at least quarterly.

The invoices shall describe and document, to COMMERCE's satisfaction, a description of the work performed, the progress of the project, and fees. The invoice shall include the Contract Number F18-31440-003.

Payment shall be considered timely if made by COMMERCE within thirty (30) calendar days after receipt of properly completed invoices. Payment shall be sent to the address designated by the Contractor.

COMMERCE may, in its sole discretion, terminate the Contract or withhold payments claimed by the Contractor for services rendered if the Contractor fails to satisfactorily comply with any term or condition of this Contract.

No payments in advance or in anticipation of services or supplies to be provided under this Agreement shall be made by COMMERCE.

Invoices and End of Fiscal Year

Invoices are due on the 20th of the month following the provision of services.

Final invoices for a state fiscal year may be due sooner than the 20th and Commerce will provide notification of the end of fiscal year due date.

The grantee must invoice for all expenses from the beginning of the contract through June 30, regardless of the contract start and end date.

Duplication of Billed Costs

The Contractor shall not bill COMMERCE for services performed under this Agreement, and COMMERCE shall not pay the Contractor, if the Contractor is entitled to payment or has been or will be paid by any other source, including grants, for that service.

Disallowed Costs

The Contractor is responsible for any audit exceptions or disallowed costs incurred by its own organization or that of its subcontractors.

8. SUBCONTRACTOR DATA COLLECTION

Contractor will submit reports, in a form and format to be provided by Commerce and at intervals as agreed by the parties, regarding work under this Agreement performed by subcontractors and the portion of funds expended for work performed by subcontractors, including but not necessarily limited to minority-owned, woman-owned, and veteran-owned business subcontractors. "Subcontractors" shall mean subcontractors of any tier.

9. AUDIT

If the Contractor is a subrecipient and expends $750,000 or more in federal awards from any and/or all sources in any fiscal year, the Grantee shall procure and pay for a single audit or a program-specific audit for that fiscal year. Upon completion of each audit, the Grantee shall:

A. Submit to COMMERCE the reporting package specified in OMB Super Circular 2 CFR 200.501, reports required by the program-specific audit guide (if applicable), and a copy of any management letters issued by the auditor.
B. Submit to COMMERCE follow-up and developed corrective action plans for all audit findings.

If the Grantee is a subrecipient and expends less than $750,000 in federal awards from any and/or all sources in any fiscal year, the Grantee shall notify COMMERCE they did not meet the single audit requirement.

The Grantee shall send all single audit documentation to auditreview@commerce.wa.gov.

10. DEBARMENT

A. Grantee, defined as the primary participant and it principals, certifies by signing these General Terms and Conditions that to the best of its knowledge and belief that they:

i. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency.

ii. Have not within a three-year period preceding this Grant, been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public or private agreement or transaction, violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, receiving stolen property, making false claims, or obstruction of justice;

iii. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of federal Executive Order 12549; and

iv. Have not within a three-year period preceding the signing of this Grant had one or more public transactions (Federal, State, or local) terminated for cause of default.

B. Where the Grantee is unable to certify to any of the statements in this Grant, the Grantee shall attach an explanation to this Grant.

C. The Grantee agrees by signing this Grant that it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by COMMERCE.

D. The Grantee further agrees by signing this Grant that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," as follows, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions:

LOWER TIER COVERED TRANSACTIONS

i. The lower tier Grantee certifies, by signing this Grant that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

ii. Where the lower tier Grantee is unable to certify to any of the statements in this Grant, such contractor shall attach an explanation to this Grant.

E. The terms **covered transaction, debarred, suspended, ineligible, lower tier covered transaction, person, primary covered transaction, principal, and voluntarily excluded**, as used in this section, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549. You may contact COMMERCE for assistance in obtaining a copy of these regulations.

11. INSURANCE

Each party certifies that it is self-insured under the State's or local government self-insurance liability program, and shall be responsible for losses for which it is found liable.

12. ORDER OF PRECEDENCE

In the event of an inconsistency in this Contract, the inconsistency shall be resolved by giving precedence in the following order:

- Applicable federal and state of Washington statutes and regulations
- Special Terms and Conditions
- General Terms and Conditions
- Attachment A – Scope of Work
- Attachment B – Budget
- Attachment C – Reporting

SPECIAL TERMS AND CONDITIONS

GENERAL TERMS AND CONDITIONS

1. DEFINITIONS

As used throughout this Contract, the following terms shall have the meaning set forth below:

A. "Authorized Representative" shall mean the Director and/or the designee authorized in writing to act on the Director's behalf.

B. "COMMERCE" shall mean the Department of Commerce.

C. "Contract" or "Agreement" means the entire written agreement between COMMERCE and the Contractor, including any attachments, documents, or materials incorporated by reference. E-mail or facsimile transmission of a signed copy of this contract shall be the same as delivery of an original.

D. "Contractor" shall mean the entity identified on the face sheet performing service(s) under this Contract, and shall include all employees and agents of the Contractor.

E. "Personal Information" shall mean information identifiable to any person, including, but not limited to, information that relates to a person's name, health, finances, education, business, use or receipt of governmental services or other activities, addresses, telephone numbers, social security numbers, driver license numbers, other identifying numbers, and any financial identifiers.

F. "State" shall mean the state of Washington.

G. "Subcontractor" shall mean one not in the employment of the Contractor, who is performing all or part of those services under this Contract under a separate contract with the Contractor. The terms "subcontractor" and "subcontractors" mean subcontractor(s) in any tier.

2. ALL WRITINGS CONTAINED HEREIN

This Contract contains all the terms and conditions agreed upon by the parties. No other understandings, oral or otherwise, regarding the subject matter of this Contract shall be deemed to exist or to bind any of the parties hereto.

3. AMENDMENTS

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

4. ASSIGNMENT

Neither this Contract, work thereunder, nor any claim arising under this Contract, shall be transferred or assigned by the Contractor without prior written consent of COMMERCE.

5. CONFIDENTIALITY AND SAFEGUARDING OF INFORMATION

A. "Confidential Information" as used in this section includes:

i. All material provided to the Contractor by COMMERCE that is designated as "confidential" by COMMERCE;

ii. All material produced by the Contractor that is designated as "confidential" by COMMERCE; and

iii. All personal information in the possession of the Contractor that may not be disclosed under state or federal law.

B. The Contractor shall comply with all state and federal laws related to the use, sharing, transfer, sale, or disclosure of Confidential Information. The Contractor shall use Confidential Information solely for the purposes of this Contract and shall not use, share, transfer, sell or disclose any Confidential Information to any third party except with the prior written consent of COMMERCE or as may be required by law. The Contractor shall take all necessary steps to assure that Confidential Information is safeguarded to prevent unauthorized use, sharing, transfer, sale or disclosure of Confidential Information or violation of any state or federal laws related thereto. Upon request, the Contractor shall provide COMMERCE with its policies and procedures on

confidentiality. COMMERCE may require changes to such policies and procedures as they apply to this Contract whenever COMMERCE reasonably determines that changes are necessary to prevent unauthorized disclosures. The Contractor shall make the changes within the time period specified by COMMERCE. Upon request, the Contractor shall immediately return to COMMERCE any Confidential Information that COMMERCE reasonably determines has not been adequately protected by the Contractor against unauthorized disclosure.

C. Unauthorized Use or Disclosure. The Contractor shall notify COMMERCE within five (5) working days of any unauthorized use or disclosure of any confidential information, and shall take necessary steps to mitigate the harmful effects of such use or disclosure.

6. COPYRIGHT

Unless otherwise provided, all Materials produced under this Contract shall be considered "works for hire" as defined by the U.S. Copyright Act and shall be owned by COMMERCE. COMMERCE shall be considered the author of such Materials. In the event the Materials are not considered "works for hire" under the U.S. Copyright laws, the Contractor hereby irrevocably assigns all right, title, and interest in all Materials, including all intellectual property rights, moral rights, and rights of publicity to COMMERCE effective from the moment of creation of such Materials.

"Materials" means all items in any format and includes, but is not limited to, data, reports, documents, pamphlets, advertisements, books, magazines, surveys, studies, computer programs, films, tapes, and/or sound reproductions. "Ownership" includes the right to copyright, patent, register and the ability to transfer these rights.

For Materials that are delivered under the Contract, but that incorporate pre-existing materials not produced under the Contract, the Contractor hereby grants to COMMERCE a nonexclusive, royalty-free, irrevocable license (with rights to sublicense to others) in such Materials to translate, reproduce, distribute, prepare derivative works, publicly perform, and publicly display. The Contractor warrants and represents that the Contractor has all rights and permissions, including intellectual property rights, moral rights and rights of publicity, necessary to grant such a license to COMMERCE.

The Contractor shall exert all reasonable effort to advise COMMERCE, at the time of delivery of Materials furnished under this Contract, of all known or potential invasions of privacy contained therein and of any portion of such document which was not produced in the performance of this Contract. The Contractor shall provide COMMERCE with prompt written notice of each notice or claim of infringement received by the Contractor with respect to any Materials delivered under this Contract. COMMERCE shall have the right to modify or remove any restrictive markings placed upon the Materials by the Contractor.

7. DISPUTES

In the event that a dispute arises under this Agreement, it shall be determined by a Dispute Board in the following manner: Each party to this Agreement shall appoint one member to the Dispute Board. The members so appointed shall jointly appoint an additional member to the Dispute Board. The Dispute Board shall review the facts, Agreement terms and applicable statutes and rules and make a determination of the dispute. The Dispute Board shall thereafter decide the dispute with the majority prevailing. The determination of the Dispute Board shall be final and binding on the parties hereto. As an alternative to this process, either of the parties may request intervention by the Governor, as provided by RCW 43.17.330, in which event the Governor's process will control.

8. GOVERNING LAW AND VENUE

This Contract shall be construed and interpreted in accordance with the laws of the state of Washington, and any applicable federal laws, and the venue of any action brought hereunder shall be in the Superior Court for Thurston County.

9. INDEMNIFICATION

Each party shall be solely responsible for the acts of its employees, officers, and agents.

10. LICENSING, ACCREDITATION AND REGISTRATION

The Contractor shall comply with all applicable local, state, and federal licensing, accreditation and registration requirements or standards necessary for the performance of this Contract.

11. RECAPTURE

In the event that the Contractor fails to perform this Contract in accordance with state laws, federal laws, and/or the provisions of this Contract, COMMERCE reserves the right to recapture funds in an amount to compensate COMMERCE for the noncompliance in addition to any other remedies available at law or in equity.

Repayment by the Contractor of funds under this recapture provision shall occur within the time period specified by COMMERCE. In the alternative, COMMERCE may recapture such funds from payments due under this Contract.

12. RECORDS MAINTENANCE

The Contractor shall maintain books, records, documents, data and other evidence relating to this contract and performance of the services described herein, including but not limited to accounting procedures and practices that sufficiently and properly reflect all direct and indirect costs of any nature expended in the performance of this contract.

The Contractor shall retain such records for a period of six (6) years following the date of final payment. At no additional cost, these records, including materials generated under the contract, shall be subject at all reasonable times to inspection, review or audit by COMMERCE, personnel duly authorized by COMMERCE, the Office of the State Auditor, and federal and state officials so authorized by law, regulation or agreement.

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

13. SAVINGS

In the event funding from state, federal, or other sources is withdrawn, reduced, or limited in any way after the effective date of this Contract and prior to normal completion, COMMERCE may suspend or terminate the Contract under the "Termination for Convenience" clause, without the ten calendar day notice requirement. In lieu of termination, the Contract may be amended to reflect the new funding limitations and conditions.

14. SEVERABILITY

The provisions of this contract are intended to be severable. If any term or provision is illegal or invalid for any reason whatsoever, such illegality or invalidity shall not affect the validity of the remainder of the contract.

15. SUBCONTRACTING

The Contractor may only subcontract work contemplated under this Contract if it obtains the prior written approval of COMMERCE.

If COMMERCE approves subcontracting, the Contractor shall maintain written procedures related to subcontracting, as well as copies of all subcontracts and records related to subcontracts. For cause, COMMERCE in writing may: (a) require the Contractor to amend its subcontracting procedures as they relate to this Contract; (b) prohibit the Contractor from subcontracting with a particular person or entity; or (c) require the Contractor to rescind or amend a subcontract.

Every subcontract shall bind the Subcontractor to follow all applicable terms of this Contract. The Contractor is responsible to COMMERCE if the Subcontractor fails to comply with any applicable term

or condition of this Contract. The Contractor shall appropriately monitor the activities of the Subcontractor to assure fiscal conditions of this Contract. In no event shall the existence of a subcontract operate to release or reduce the liability of the Contractor to COMMERCE for any breach in the performance of the Contractor's duties.

Every subcontract shall include a term that COMMERCE and the State of Washington are not liable for claims or damages arising from a Subcontractor's performance of the subcontract.

16. SURVIVAL

The terms, conditions, and warranties contained in this Contract that by their sense and context are intended to survive the completion of the performance, cancellation or termination of this Contract shall so survive.

17. TERMINATION FOR CAUSE

In the event COMMERCE determines the Contractor has failed to comply with the conditions of this contract in a timely manner, COMMERCE has the right to suspend or terminate this contract. Before suspending or terminating the contract, COMMERCE shall notify the Contractor in writing of the need to take corrective action. If corrective action is not taken within 30 calendar days, the contract may be terminated or suspended.

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

COMMERCE reserves the right to suspend all or part of the contract, withhold further payments, or prohibit the Contractor from incurring additional obligations of funds during investigation of the alleged compliance breach and pending corrective action by the Contractor or a decision by COMMERCE to terminate the contract. A termination shall be deemed a "Termination for Convenience" if it is determined that the Contractor: (1) was not in default; or (2) failure to perform was outside of his or her control, fault or negligence.

The rights and remedies of COMMERCE provided in this contract are not exclusive and are in addition to any other rights and remedies provided by law.

18. TERMINATION FOR CONVENIENCE

Except as otherwise provided in this Contract, COMMERCE may, by ten (10) business days written notice, beginning on the second day after the mailing, terminate this Contract, in whole or in part. If this Contract is so terminated, COMMERCE shall be liable only for payment required under the terms of this Contract for services rendered or goods delivered prior to the effective date of termination.

19. TERMINATION PROCEDURES

Upon termination of this contract, COMMERCE, in addition to any other rights provided in this contract, may require the Contractor to deliver to COMMERCE any property specifically produced or acquired for the performance of such part of this contract as has been terminated. The provisions of the "Treatment of Assets" clause shall apply in such property transfer.

COMMERCE shall pay to the Contractor the agreed upon price, if separately stated, for completed work and services accepted by COMMERCE, and the amount agreed upon by the Contractor and COMMERCE for (i) completed work and services for which no separate price is stated, (ii) partially completed work and services, (iii) other property or services that are accepted by COMMERCE, and (iv) the protection and preservation of property, unless the termination is for default, in which case the Authorized Representative shall determine the extent of the liability of COMMERCE. Failure to agree with such determination shall be a dispute within the meaning of the "Disputes" clause of this contract. COMMERCE may withhold from any amounts due the Contractor such sum as the Authorized Representative determines to be necessary to protect COMMERCE against potential loss or liability.

The rights and remedies of COMMERCE provided in this section shall not be exclusive and are in addition to any other rights and remedies provided by law or under this contract.

After receipt of a notice of termination, and except as otherwise directed by the Authorized Representative, the Contractor shall:

A. Stop work under the contract on the date, and to the extent specified, in the notice;

B. Place no further orders or subcontracts for materials, services, or facilities except as may be necessary for completion of such portion of the work under the contract that is not terminated;

C. Assign to COMMERCE, in the manner, at the times, and to the extent directed by the Authorized Representative, all of the rights, title, and interest of the Contractor under the orders and subcontracts so terminated, in which case COMMERCE has the right, at its discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts;

D. Settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, with the approval or ratification of the Authorized Representative to the extent the Authorized Representative may require, which approval or ratification shall be final for all the purposes of this clause;

E. Transfer title to COMMERCE and deliver in the manner, at the times, and to the extent directed by the Authorized Representative any property which, if the contract had been completed, would have been required to be furnished to COMMERCE;

F. Complete performance of such part of the work as shall not have been terminated by the Authorized Representative; and

G. Take such action as may be necessary, or as the Authorized Representative may direct, for the protection and preservation of the property related to this contract, which is in the possession of the Contractor and in which the Authorized Representative has or may acquire an interest.

20. TREATMENT OF ASSETS

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

A. Any property of COMMERCE furnished to the Contractor shall, unless otherwise provided herein or approved by COMMERCE, be used only for the performance of this contract.

B. The Contractor shall be responsible for any loss or damage to property of COMMERCE that results from the negligence of the Contractor or which results from the failure on the part of the Contractor to maintain and administer that property in accordance with sound management practices.

C. If any COMMERCE property is lost, destroyed or damaged, the Contractor shall immediately notify COMMERCE and shall take all reasonable steps to protect the property from further damage.

D. The Contractor shall surrender to COMMERCE all property of COMMERCE prior to settlement upon completion, termination or cancellation of this contract

All reference to the Contractor under this clause shall also include Contractor's employees, agents or Subcontractors.

21. WAIVER

Waiver of any default or breach shall not be deemed to be a waiver of any subsequent default or breach. Any waiver shall not be construed to be a modification of the terms of this Contract unless stated to be such in writing and signed by Authorized Representative of COMMERCE.

Scope of Work

OUTCOME:

Work performed by the Multi-Jurisdictional Drug-Gang Task Force shall have the outcome specified in the Contractor's Application for funding and this Agreement. To reach this outcome, COMMERCE will provide funding and external evaluation of the task force; and the Contractor will provide for the task force's organization, oversight, administration, supervision and mission, staffing and support, and other items necessary to carry out this Agreement

To reach this goal, the Contractor shall provide or perform the following:

INTERIM OUTCOMES AND PERFORMANCE MEASURES:

1. **The Regional Task Force continuously meets/exceeds Byrne JAG Gang-Drug Task Force Program Model Personnel staffing**, as measured by:
   - Minimum of four (4) commissioned officers dedicated to the project (full time), or three (3) commissioned officers at a reduced funding level. In either case, one(1) of the commissioned officers shall be a full-time supervisor. Such officers shall work out a common location. Such officers shall work out of a common location.
   - Support staff (minimum of half-time).
   - Prosecutorial support of one (1) dedicated prosecutor/deputy prosecutor, or sufficient prosecutorial support such that no case submitted by the task force is rejected due to lack of staffing;
   - Gang Liaison (may be another member of the local task force).
   - Analyst (Optional).
2. **Participation—the Task Force shall organize and govern participating partners**, as measured by:
   - Contribution of least one (1) dedicated law enforcement officer by a minimum of three (3) local law enforcement agencies in the service area, or two (2) local law enforcement agencies if funded at a reduced funding level.
     - Local law enforcement agencies for this purpose includes city, county and tribal agencies.
     - Aggregated cash contributions from jurisdictions not large enough to fully dedicate individual officers, sufficient to support 90% of the full cost of a dedicated officer, may count as participation by local law enforcement agency for each officer so supported.
     - The Washington State Patrol may substitute for one of the local law enforcement agencies in small and rural task forces.
3. **Task Force Mission—The Governance Board shall determine the Task Force Mission and set the priorities for work to be accomplished,** as measured by:
   - A primary focus on cooperative, investigative work to identify, interdict, dismantle, and prosecute mid- to upper-level criminal organizations engaged in illicit gang, gun, and drug activities.
4. **JAG Task Force Peer Review Participation—Task Force Governance Boards shall assure that JAG Grant compliance is achieved,** as measured by:
   - Task Force will agree to an audit of its performance, a minimum of once per biennium, as described in COMMERCE's Byrne JAG Task Force Peer Review Program Guide; and to participate in a follow-up of the Peer Review within the following year.

- Task Force will participate in support of the Peer Review process by allowing assigned staff to volunteer as members of Peer Review Teams during audits in other jurisdictions.

5. **Peer Review, Grant Compliance Monitoring, and State and Federal Audit Results—Task Force management and staff will review COMMERCE's Policies and Procedures and Task Force internal rules and policies, as well as requirements and policies of the Contract fiscal agent to assure JAG Grant compliance**, as measured by:
   - No repeat findings or discrepancies.
   - No recommendations requiring a reply by endorsement, or restructuring task force management.
   - No findings or discrepancies indicative of failure to maintain sound financial management.
   - No finding of non-compliance with grant requirements.
6. **Other Fiscal and Administrative requirements,** as measured by:
   - "FIFO" or First-In/First-Out tracking and quarterly reporting of Program Income funds (Forfeitures).
   - Timely submission of Contractor's A-19 (Reimbursement Requests/Vouchers) by the 15th of the month following the reported quarter (as per COMMERCE's *Policy and Procedures Guide*).
   - Compliance with all policies and procedures included in the current version of the Public Safety Unit's *Criminal Justice Policy and Procedures Guide.*
7. **Commander's Conference (Semi-Annual) Training Attendance—Task Force Governance Boards shall establish policy to assure that key supervisory/management staff achieve JAG grant compliance,** as measured by:
   - Attendance by key personnel as mandatory unless waiver is granted by COMMERCE

PERFORMANCE MEASURES AND DELIVERABLES:

1. **Quarterly Performance Measures—Task Force Governance Boards will set measures to assure Task Force success by achievement of the critical performance measures reported in the Periodic Activity Report (PAR),** as measured by a:
   - Minimum of 40 percent of Task Force arrests will be for multiple arrests cases.
   - Prosecutorial success rate of 80 percent of case results received with outcomes of "guilty," "pled," and/or "verdict" received.
   - Forfeiture success rate of 90 percent.
   - Minimum of 40 percent of task force cases disrupted/dismantled which consist of five (5) or more individuals where investigations have demonstrated an involvement in the criminal enterprise.
2. **Quarterly Program Performance Activity Report (INTERIM OUTCOMES AND PERFORMANCE MEASURES 1 AND 2)—Task Force management will plan for, collect, and report program performance data,** as measured by:
   - Timely submission per published scheduled Due Dates (See COMMERCE Task Force Application Report Schedule).
   - Entry of all applicable data as prescribed by the PAR Form User's Guide.
3. **Active cooperation and response to Evaluation Findings and Discrepancies (Interim OUTCOMES AND PERFORMANCE MEASURES 3 THROUGH 6)—administrative and compliance monitoring, and Peer Review Evaluations**, as measured by:
   - Assessment and response to discrepancies and findings noted in monitoring and peer review evaluations.
   - Item-by-item demonstration of corrective action either through submitted written response or during a Peer Review or Monitoring follow-up visit (normally conducted approximately six [6] months after a Peer Review Evaluation).

4. **Commanders Conference Registration (INTERIM OUTCOMES AND PERFORMANCE MEASURES 7),** as measured by:
   - Advance registration and/or on-site sign-in and handout collection

Budget

GENERAL:

The total budget awarded under this Agreement shall be the amount specified in Block 5 of this Agreement's Face Sheet.

The total Federal funds awarded under this Agreement shall be the amount specified in Block 9 of this Agreement's Face Sheet.

Allocation of funds between categories of expense shall be:

Category of Expense	Amount
Salaries	$ 61,817
Benefits	$ 28,005
Overtime	$ 1,000
Goods & Services	$ 64,771
Indirect	$ 20,603
Total	$176,196

The Contractor may vary from the approved distribution of funds by shifting up to ten percent (10%) of the total awarded funds between categories of expense. This authority to shift funds is limited by the following: grant funds may not be shifted into zero budgeted categories of expense except Benefits, and any shifts made may not constitute a significant change to the Scope of Work (Attachment A).

PERFORMANCE BASED INCENTIVES AND CONSEQUENCES:

1. **Delay and Disallowance of Reimbursement Requests Due to Late Performance Reporting**

   Past due performance reports will result in withholding of requested reimbursements until the reports are received. Should a report be received after the due date, but not in sufficient time for enclosure in the corresponding federal quarterly report, the report will be rejected and no payment will be authorized for the missed quarter. For the first three quarters of this award, missed data and the corresponding expenditures may be submitted during the following quarter. However, lack of timely submission of the fourth quarter's activity report will result in loss of all funds not previously reimbursed; and if disbursement of funds to reimburse expenditures incurred during the unreported quarter has been made, repayment shall be required.

2. **Delay and Disallowance of Reimbursement Requests Due to Non-Compliance with Federal Pre-Requisites to Receive Funding**

   During any period in which the Contractor is non-compliant with essential federal pre-requisites to receive federal funds, all expenditures will be disallowed. Eligibility of expenditures for reimbursement will resume on the date that the Contractor is deemed to be fully compliant with the essential federal pre-requisites as specified below:

   - DUNS (Data Universal Numbering System) number is registered in the Central Contract Registry portion of Grants.Gov (www.grants.gov), and the registration is current.

   - An Equal Employment Opportunity Plan The Contractor has been prepared and signed into effect within the last two years, and a copy has been forwarded to COMMERCE, and if appropriate to the Office of Civil Rights, U.S. Department of Justice.

   - Center of Task Force Leadership and Integrity Training through the www.ctfli.org website has been completed by all personnel dedicated to the task force not later than 120 days of being dedicated to the task force, but in any case within two years of the effective date of this Agreement. Dedicated personnel includes personnel assigned as investigative personnel, acting in supervisory and/or executive management, administrative, analytical or prosecutorial support of the task force,

- Failure to respond to audit, monitoring or evaluation findings by the specified response date.

- **Reduction in the Quarterly Reimbursable Funds Due to Non-Compliance with the Task Force Staffing and Participation Model:**

Reporting staffing and/or "local" agency participation below that specified by the Task Force Model on any Periodic Activity Report (quarterly activity report) shall cause the maximum amount that may be reimbursed for that quarter to be reduced in accordance with the Task Force Model summarized below.

Compliance Level	% of Base Allocation	Dedicated Personnel		Participating 'Local' Agencies*4,5
Full Compliance	100%	4.0 Law Enforcement *1 1.0 Prosecutor *2 .5 Support Staff *3		3 Agencies
Low 'Local' Agency Participation	88%	4.0 Law Enforcement *1 1.0 Prosecutor *2 .5 Support Staff *3		2 Agencies
Low 'Local' Personnel Dedication	75%	3.0 Law Enforcement *1 1.0 Prosecutor *2 .5 Support Staff *3		3 Agencies
Low in both 'Local' Agency Participation and 'Local' Personnel Dedication	63%	3.0 Law Enforcement *1 1.0 Prosecutor *2 .5 Support Staff *3		2 Agencies
Too Low – Not Eligible for Funding	0%	Any level below: 3.0 Law Enforcement *1 1.0 Prosecutor *2 .5 Support Staff *3	or	1 Agency

*1 Staffing standard for commissioned law enforcement personnel is four 100% dedicated officers

*2 Staffing standard for Prosecutors/Deputy Prosecutors is one 100% dedicated prosecutor, or demonstration that no task force generated case is declined due to staffing – any staffing below this level is considered "Low Local Personnel Dedication"

*3 Staffing standard for task force administrative/support staff is one half-time individual – any staffing below this is considered "Low Local Personnel Dedication"

*4 Washington State Patrol may count as a 'Local' agency for those task forces considered as 'Rural' or 'Urban' in the "Counties Like Us" reporting grouping
Federal agency assigned personnel may count as 'Local' provided they report first to the task force's management structure and that they have standing authority to participate in any case selected for investigation by the task force.

*5 Aggregated cash contributions from jurisdictions not large enough to fully dedicate individual officers, but which are sufficient to support 90% of the full cost of a dedicated officer, may count as participation by a 'Local' Agency for each officer so supported

For this purpose the maximum amount which may be reimbursed for one quarter is one-fourth of the total award (as specified in Block 5 of this Agreement's Face Sheet) reduced in accordance with the above table. The Non-compliance penalty is lost to the Contractor during the balance of this Agreement's duration.

In the event that the Contractor has already been reimbursed beyond the reimbursable amount authorized for the quarter as calculated above, the corresponding expenditure is disallowed. Any funds so disallowed may be applied against authorized expenditures of the next quarter, if the quarter for which the disallowance is made is not the last calendar quarter of this Agreement. Should any funds be disallowed for the last calendar quarter of this Agreement, disallowed funds must be returned to COMMERCE.

Budget

COMMERCE reserves the right to waive this reduction/disallowance in event the reported non-compliance is considered a brief and minor anomaly not materially affecting task force operations or safety. Such a waiver is at the sole discretion of COMMERCE.

Reporting

F18-31440-0##

<Contractor>

<NTF Start Year>

Jurisdictional Law Enforcement Module

Respond for the Contracting Jurisdiction, Not the Task Force

<Task Force Title>

1. Task Force Area Population	Q1 Jul-Sep	Q2 Oct-Dec	Q3 Jan-Mar	Q4 Apr-Jun	Year to Date
Population					

2. Which resources did your jurisdiction's law enforcement agency (S.O. or P.D.) access this reporting period, regardless of JAG funding?	Q1 Jul-Sep	Q2 Oct-Dec	Q3 Jan-Mar	Q4 Apr-Jun	Year to Date
a. Crimesolutions.gov					-
b. NTTAC (National Training and Technical Assistance					-
c. NCJP.org					-
d. Evidence Based Policing Matrix					-
e. What Works in Reentry Clearinghouse					-
f. Research in practice					-
g. Other: NW-HIDTA, WSIN					-

3. Any systematic survey of citizens sponsored or conducted by the jurisdiction's law enforcement agency (S.O. or P.D.) this reporting period.	Q1 Jul-Sep	Q2 Oct-Dec	Q3 Jan-Mar	Q4 Apr-Jun	Year to Date
a. Public satisfaction with police services					-
b. Public satisfaction with prosecution services					-
c. Public perceptions of crime.disorder problems					-
d. Personal crime experiences of citizens					-
e. None of the above surveys were conducted					-
f Unsure/Don't know					-

4. How often was your jurisdiction's law enforcement agency (S.O. or P.D.) involved in the following community activities this reporting period?	Q1 Jul-Sep	Q2 Oct-Dec	Q3 Jan-Mar	Q4 Apr-Jun	Year to Date
a. Hosted community meetings					-
b. Attended community meetings, advisory boards, or roundtables					-
c. Distributed a general public newsletter, email or other bulletin					-
d. Attended commuity events (e.g. national night out, block party, festival)					-
e. Conducted social media					-
f. Outreach to minority populations					-
g. Other:					-

5. In the last year, which of the following did your law enforcement agency (S.O. or P.D.) use to foster communityinvolvement. Regardless of fund	Q1 Jul-Sep	Q2 Oct-Dec	Q3 Jan-Mar	Q4 Apr-Jun	Year to Date
a. Citizen Review Board/other review board with citizen represention					-
b. Citizen's Police Academy					-
c. Internships for university or high school students					-
d. Volunteer program					-
e. Auxillary police officer program					-
f. Police cadet program					-
g. K-12 school programs					-
h. Youth athletic programs					-
i. Other: _____					-
j. None of the above surveys were conducted					-
k. Unsure/Don't know					-

Reporting

6. For each of the following topics, indicate if the training has been offered or required for officers or recruits in your agency ***in the past 12 months***. If offered inducate mode of delivery, frequency, mode of documentation number of officers/recruits completing the training and the length of the course.

Q1 Sep-Oct	Training Offered	Delievery	Training Frequency	Documentation	# Officers/ recruits trained	Length of course (hours)
a. Use of force						
b. De-escalation of conflict						
c. Racial and ethnic bias						
d. Gender bias						
e. Bias toward lesbian, gay, bisexual, and transgendered (LGBT) individuals						
f. Community engagement (e.g. community policing and problem solving)						

8. Law enforcement agency's (S.O. or P.D.) commissioned officer strength the last day of the reporting period, regardless of funding source:	Q1 Jul-Sep	Q2 Oct-Dec	Q3 Jan-Mar	Q4 Apr-Jun	Year to Date

9. Law enforcement agency's (S.O. or P.D.) civilian employee strength the last day of the reporting period, regardless of funding source: regardless of funding source:	Q1 Jul-Sep	Q2 Oct-Dec	Q3 Jan-Mar	Q4 Apr-Jun	Year to Date

10. Prosecutor's Officer - Number of Prosecutors/Deputy Prosecutors:	Q1 Jul-Sep	Q2 Oct-Dec	Q3 Jan-Mar	Q4 Apr-Jun	Year to Date

11. Prosecutor's Officer - Number of Non-Attorney Staff:	Q1 Jul-Sep	Q2 Oct-Dec	Q3 Jan-Mar	Q4 Apr-Jun	Year to Date

12. Does the Agency utilize a strategic management accountability system to gather and disseminate information within the agency (e.g. CompStat, stratified policing)?	Q1 Jul-Sep	Q2 Oct-Dec	Q3 Jan-Mar	Q4 Apr-Jun	Year to Date

End of 1st Reporting Section

Reporting

<Task Force Title> **F18-31440-0## - <Contractor>** **Total Award: <Award $>**	**Quarterly Performance Activity Reporting** **Jul 2021 - Sep 2021**

Task Force Staffing

- FTEs are based upon the business standard of 520 Hrs/Qtr
- Report FTEs in decimals (not fractions, percent or hours)
- Report only FTEs supporting the Task Force (other duties go unreported)
- Do Not Count Prosecutor's Offices as Law Enf. Agencies (Double Counts Jurisdictions)

Please use standard abbreviations examples: S.O. P.D. Pros. - Not X.X.S.O.

	Agency	Position	Q1 Jul-Sep Grant Supported FTE	Q1 Jul-Sep Other Supported FTE	Q2 Oct-Dec Grant Supported FTE	Q2 Oct-Dec Other Supported FTE	Q3 Jan-Mar Grant Supported FTE	Q3 Jan-Mar Other Supported FTE	Q4 Apr-Jun Grant Supported FTE	Q4 Apr-Jun Other Supported FTE	Year to Date Grant Supported FTE	Year to Date Other Supported FTE
13												
14												
15												
16												
17												
18												
19												
20												
21												
22												
23												
24												
25												
26												
27												
28												
29												
30												
31												
32												

	Categorization of Personnel Assigned	* Commanders not assigned on a full-time basis to the task force do not count for this purpose					
33	# of Law Enf. Officers (full commission*)						
34	# of Non-LEO investigators						
35	# of Analysts						
36	# of Prosecutors/Deputy Prosecutors						
37	# of Other Personnel Assigned (Support)						
	Agencies Assigning Personnel						
38	# Local Law Enf. Agencies						
39	# State Law Enf. Agencies (Full Commission)						
40	# Federal Law Enf. Agencies						
41	Total # Law Enf Agencies						

	Overtime		Q1 Jul-Sep	Q2 Oct-Dec	Q3 Jan-Mar	Q4 Apr-Jun	Year to Date
42	**Overtime**	All TF Overtime Hours					
43		JAG Overtime Hours Paid to **Law Enf & Support**					
44		TF Overtime Hours Paid by JAG to **Prosecution Personnel**					
45		# Law Enforcement Individuals Receiving JAG Overtime					
46		# Prosecution Individuals Receiving JAG Overtime					

End of 2nd Reporting Section

Reporting

F18-31440-0##

Performance

	<Contractor>		Q1 Jul-Sep	Q2 Oct-Dec	Q3 Jan-Mar	Q4 Apr-Jun	Year to Date	
56	Open/Closed	Cont'd into this Report Period						
57		Opened During this Report Period						
58		Nbr Closed No Arrests						
59		Nbr Closed 1Arrests						
60		Nbr Closed Multiple Arrests						
61		Open at End of this Report Period						
62		Multi-Arrest Case Percentage						Std=40%
63		Case Closed Percentage						

	ARRESTS		Q1 Jul-Sep	Q2 Oct-Dec	Q3 Jan-Mar	Q4 Apr-Jun	Year to Date
64	Felony Arrests	Total Felony Arrests					
65		Gang & Drug Orgs					
66		Nbr Drug Orgs					
67		Other (Specify)					
68	Felony 2ndry Nexus Employees = Employees of the contracting jurisdiction or assigned to the task force	Violence					
69		Homicide					
70		Firearms					
71		Property Crime					
72		ID Theft					
73		Auto Theft					
74		Gun Trafficking					
75		Human Trafficking excluding Employees					
76		Employees for Human Trafficking					
77		Money Laundering					
78		OCEDETF					
79		Other (Specify) (Overtype)					
80	Misdemeanor Primary Nexus	Nbr Gang Orgs					
81		Gang & Drug Orgs					
82		Nbr Drug Orgs					
83		Other (Specify)					
84	Misdemeanor Secondary Nexus	Violence					
85		Homicide					
86		Firearms					
87		Property Crime					
88		ID Theft					
89		Auto Theft					
90		Gun Trafficking					
91		Human Trafficking					
92		Money Laundering					
93		OCEDETF					
		WARRANT					

Reporting

	Prosecution		Q1 Jul-Sep	Q2 Oct-Dec	Q3 Jan-Mar	Q4 Apr-Jun	Year to Date	
118	State	Nbr Felony Accepted for Pros						
119		Nbr Misdemeanor Accepted for Pros						
120		Felony Results Received						
121		Misdemeanor Results Received						
122		GuiltyVerdict/Plea - Felony						
123		GuiltyVerdict/Plea - Misdemeanor						
124		Gang Nexus						
125		Gang & Drug Nexus						
126		Drug Nexus						
127		Other (Specify)						
128		Firearm Violation						
129	Federal	Nbr Felony Accepted for Pros						
133		GuiltyVerdict/Plea - Felony						
140	Overall Prosecution	Success Rate						Std=80%

	Forfeitures		Q1 Jul-Sep	Q2 Oct-Dec	Q3 Jan-Mar	Q4 Apr-Jun	Year to Date	
141	State Process	Number Initiated						
142		# Successful						
143		# Un-Successful						
144		Currency Amt Forfeited						
145		Real Property (Realized $ Value)						
146		Other (Cars, et al.) (Realized $ Value)						
153		Success Rate						Std=90%

	Firearms		Q1 Jul-Sep	Q2 Oct-Dec	Q3 Jan-Mar	Q4 Apr-Jun	Year to Date	
154	Firearms	# Seized						
155		Nbr Forfeited						
156		# Rpt'd to ATF						
157		Percent Rpt'd to ATF						Tgt=90%

	Drug Removals		Q1 Jul-Sep	Q2 Oct-Dec	Q3 Jan-Mar	Q4 Apr-Jun	Year to Date
158	Drug Removals	Cocaine (grams)					
159		Crack Cocaine (grams)					
160		Oxycotin (Dosage Units)					
161		Oxycodone (Dosage Units)					
		Fentanyl Dosage Units					
		Fentanyl Grams					
162		Diverted Pharmaceutical (Dosage Units)					
163		Hallucinogens (Grams)					
164		Heroin (All forms) (Grams)					
165		Marijuana, Bulk (Grams)					
166		Grows Indoor Dismantled					
167		Grows Indoor Nbr Plants					
168		Grows Outdoor Dismantled					
169		Grows Outdoor Nbr Plants					
170		Nbr Grows Illicit Medical MJ					
171		Nbr Plants Illicit Medical MJ Grows					
172		Meth (Grams)					
173		Meth Crystal (ICE) (Grams)					

End of 3rd Reporting Section

Reporting

F18-31440-0##

<Contractor>

Project Activities

(Activities the task force got involved in/supported)

*Items of specific Federal interest	#REF!	Task Force Focus/Activities Select Frequency of Activity from DropDown	(Respond for the Task Force, Not the Jurisdiction)				
			Q1 Jul-Sep	Q2 Oct-Dec	Q3 Jan-Mar	Q4 Apr-Jun	Year to Date
*	a	All Crime					
	b	Alcohol/Tobacco Enf.					
*	c	Advocated Diversion to Alt Sanctions					
*	d	Auto Theft					
*	e	Burglary					
	f	CeaseFire Campaign					
*	g	Child Abuse					
*	h	Child Pornography					
	i	Cognative Skill Development					
*	j	Community Engagement (chief's roundtables, community advisory boards)					
*	k	Community Outreach					
	l	Community Policing					
*	m	Community Problem Solving					
	n	Courts - Any Specialty Court					
	o	Crime Prevention					
*	p	Cyber Crime					
	q	Disorder/Quality of Life					
*	r	Diverted Mentally Ill from Pros to Services					
	s	Domestic Violence Enf.					
	aa	Drug Crime/Organizations					
	ab	Drug Prevention/Intervention					
	ac	Drugs Street					
	ad	Educational Events					
	ae	Employment					
*	af	Evaluation: Problem/Decision Support					
*	ag	Evaluation: Track Performance					
	ah	Evidence Based Policing					
	ai	Forensics					
	aj	Fugitive Apprehension					
	ak	Gang Ldrs					
	al	Gang Crime/Org					
	am	Gangs Violence					
	an	Gang Prevention/Intervention					
*	aq	Gun Crime/Trafficking					
*	ar	Hate Crime					
*	as	High-Rate/Impact Offenders					
	au	Homicide					
*	av	Hot Spot Patrols					
	ax	Human Trafficking/Sex Crime					
	ay	ID Theft					
	az	Indigent Defense					
	ba	Intervention Teams (Multi-disciplinary)					
	bc	Media Campaign					
	bf	Money Laundering					
*	bh	Offender Call-In/Notification					
*	bl	Prescription Drug Crime					
	bj	Property Crime					
*	bk	Prostitution					
	bl	Pro-Social					
*	bm	Referred Individuals to Services					
	bn	SafeStreets Opns					
	bo	School/Campus Security					
	bp	Sex Offender Tracking					
	bq	Sexual Assualt					
*	br	Status Offenses (truancy, underage drinking, etc)					
	bs	Terrorism Prep/Prev.					
*	bt	Traffic Enforcement/Accidents					
*	bv	Victimization Assessment Tool Used					
	bw	Violent Crime					
	bx	Violence Prevention/Intervention					
*	bz	White Collar Crime					
	ca	Other-OverType					

Reporting

	Partnerships Agencies the Task Force works with on a routine basis	The Partner is actively involved in the program? Q1 Jul-Sep	Q2 Oct-Dec	Q3 Jan-Mar	Q4 Apr-Jun	Year to Date
a	State/Tribal Leadership					
b	Local Leadership					
c	Federal Law Enforcement					
d	State Law Enforcement					
e	Local Law Enforcement					
f	Tribal Law Enforcement					
g	U.S. Attorney's Office					
h	Prosecution					
i	Child Protective Services					
j	Community-Based Service Providers					
k	Community Groups					

	Tracking Task Force Success Factors Select Frequency of Activity from DropDown	Tracking Frequency Q1 Jul-Sep	Q2 Oct-Dec	Q3 Jan-Mar	Q4 Apr-Jun	Year to Date
a	General Crime					
b	Specific Crimes (see Lines 1-81 above)					
c	Offender Recidivism					
d	Victimization					
e	Repeat Victimization					
f	Community satisfaction with law enforcement					
g	Citizen fear of crime/victimization					
h	Citizen complaints					
i	Officer use of force					
j	Number of individuals receiving direct services					
k	Citations issued in lieu of arrest					
l	Other measures of success Multiple arrest cases as a percent of cases with arrest Disrupted criminal organizations as a percent of arrest cases Prosecution Success Rate Forfeiture Success Rate					
	Trend: Overall Increase-Null-Decrease					

	Narrative	*Comment on unusual activities for a task force, impact (especially community impact) not adequately reflected in statistics.*
Q1	Narrative	Q1 Jul-Sep
a		

	Goals	*List Goals, Desired Outcomes & Planned Funding Use (4-5 lines)*
Q1	Goals, Desired Outcomes & Planned Funding Use	Q1 Jul-Sep

	Accomplishments	*List progress/accomplishments towards Goals, in major activities, and any obstacles encountered (4-5 lines)*
Q1	Accomplishments	Q1 Jul-Sep

	Major Objectives/Plans	*List major objectives - activities - accomplishments, planned for the next 6 months (4-5 lines)*
Q1	Objectives-Activities-Plans	Q1 Jul-Sep

End of 4th Reporting Section

Reporting

DEATH IN CUSTODY REPORTING ACT

As of the Oct-Dec'19 reporting quarter (Due Jan 15, 2020) this is a mandatory reporting requirement for the Justice Assistance Grant. All active JAG awards will be reduced by 10% if the state is not fully compliant.

1. Was there a reportable death in your jurisdiction during the reporting quarter? **1**
   A reportable death refers to the death of a individual who was detained, arrested, en route to incarceration, or incarerated in a city or county facility (to include a
   A. ___Yes *If Yes, complete the following for for each such death*
   B. ___No *Stop*
2. Decedent Information
   A Name _____ _____ _____
   First *Middle* *Last*
   B. SSN _____
   C. Gender
      1. ___Male
      2. ___Female
      3. ___Other Gender Identity, specify: _____
   D. Race
      1. ___American Indian or Alaska Native
      2. ___Asian
      3. ___Black or African American
      4. ___Native Hawaiin or other Pacific Islander
      5. ___White
      6. ___Unknown
   E. Ethnicity
      1. ___Hispanic, Latino, or Spanish origin
      2. ___Not Hispanic, Latino, or Spanish origin
      3. ___Unknown
   F. Birth Year (YYYY). If unknown enter"9999"
3. Date, Time, Location of Death
   A. Date of Facility Admission/Arrest (MM-DD-YYYY): _____
   B. Date of Death (MM-DD-YYYY) _____
   C. Time of Death (24-hour clock)_____
   D. Location of Death
      1. Location Name (if applicable). This could be any named location (facility, business, park, hospital, etc.) _____
      2. Street Address: _____
      3. City: _____
      4. State: _____
      5. ZIP: _____
   E. Facility Type: (*Mark only one*)
      1. ___Municipal or county jail/lock-up
      2. ___State prison
      3. ___State run boot camp prison
      4. ___Contracted boot camp/prison
      5. ___Any state of contract facility
      6. ___Other correctional facility (*including juvenile facilities*)
      7. ___None of the above
4. Name of Department that detained, arrested, or was in the process of arresting the deceased
   _____
5. Manner of death: (*Mark only one*) **1**
   A. ___Accident
   B. ___Attributed to use of force by law enforcement or corrections officer
   C. ___Homicide
   D. ___Natural causes
   E. ___Suicide
   F. ___Unavailable, investigation pending
   G. ___Other, Specify:
6. Circumstances leading to death: (e.g. details surrounding an event that may have led to death, the number and affiliation of any parties involved in the incident, the location and characteristics of an incident, other contextnrelated to the death)

End of 5th Reporting Section

COPY

CLALLAM COUNTY BUDGET CHANGE FORM

Date Submitted: 08/18/21 **Budget Hearing/Meeting Date:** 09/28/21

X **Supplemental Appropriation** – increased expenditures due to unanticipated federal, state, or local funds

__ **Debatable Emergency** – public emergency other than a non-debatable emergency which could not reasonably have been foreseen at the time of making the budget, requiring the expenditure of money not provided for in the budget.

__ **Non-debatable Emergency** – for the relief of a stricken community requiring immediate address; to meet mandatory expenditures required by law

__ **Budget Revision** – transfers or reallocations between departments within the same fund, or anytime a reallocation within the same budget would authorize a new permanent position or a new capital purchase

__ **Budget Reduction** – a reduction in revenues and/or expenditures

Budget Number xxxxx.xxx.	11008.811	**Budget Name**	Sheriff - OPNET Drug

REVENUE/SOURCE

BUDGET NUMBER xxxxx.xxx.	DEPT NAME	BARS NUMBER xxxxx.xx.xxxx	ACCOUNT DESCRIPTION	AMOUNT
11008.811	Sheriff – OPNET Drug	33316.73.8000	Narcotics Task Force Program	84,022
Total				84,022

EXPENDITURES

BUDGET NUMBER xxxxx.xxx.	DEPT NAME	BARS NUMBER xxxxx.xx.xxxx	ACCOUNT DESCRIPTION	AMOUNT
11008.811	Sheriff – OPNET Drug	52123.10.0010	Regular Time	25,000
		52123.10.0500	Overtime	500
		52123.20.0020	Benefits	9,254
		52123.31.0010	Office Supplies	700
		52123.31.0020	Operating Supplies	2,500
		52123.31.0026	Uniforms & Clothing	1,500
		52123.32.0015	Gasoline	2,500
		52123.35.0010	Small Tools and Minor Equipment	5,000
		52123.41.0020	Professional Services	15,000
		52123.41.5120	Public Works	500
		52123.42.0015	Cellular Phone	625
		52123.43.0020	Travel – Training	1,500
		52123.45.0010	Building/Office Rental	3,600
		52123.48.0040	Equipment – Repair and Maintenance	500
		52123.48.0042	Vehicle – Repair and Maintenance	1,000
		52123.49.0030	Printing and Binding	100
		52123.49.0049	Document Destruction	100
		52123.49.0058	Seizure Costs	2,000
		52123.49.0060	Registration	500
		50800.00.0000	Ending Fund Balance	11,643
Total				84,022

Revenue/Source and Expenditure totals must agree.

REASON FOR BUDGET ACTION:

Funding from WA State Department of Commerce Multi-Jurisdictional Drug-Gang Task Force Program grant award #F18-31440-003 that is anticipated to be expended in FY2021 but not already budgeted for.

County Official Approval: WJ Benedict

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

Revised: J:\SDATA\BUDGETS_2021\Budget Changes\11008 JAG supplemental 092821.docx

6
8/23/21

AGENDA ITEM SUMMARY

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

Department: Public Works/Road

WORK SESSION ☒ **Meeting Date: 8/23/2021**

REGULAR AGENDA ☒ **Meeting Date: 08/31/2021**

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

Item summary:

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

Documents exempt from public disclosure attached: ☐

Executive summary:
This item is the Notice of Invitation to Bid for the contract for the Sequim-Dungeness Way & Woodcock Road Roundabout Project, CRP C1257. Work includes the improvement of the intersection of Sequim-Dungeness Way & Woodcock Road by constructing a 160 foot diameter roundabout, and other related work.

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?** ☐

This item has been budgeted for in both the 6-Year TIP and Annual Construction Programs. It is a federally funded project.

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

That the Commissioners review, approve & authorize the Chair to sign this call for bids.

County Official signature & print name: Mary Peterson ,Mary Peterson for Ross Tyler

Name of Employee/Stakeholder attending meeting: Ross Tyler

Relevant Departments: Road Dept.

Date submitted: 08/18/2021

NOTICE OF INVITATION FOR BIDS

SEALED BIDS will be received by the Board of Clallam County Commissioners at 223 East Fourth Street, Room 150, Port Angeles, Washington until 10:00 a.m., Tuesday, **September 28, 2021,** at which time they will be publicly opened and read aloud for:

The improvement of the intersection of Sequim-Dungeness Way and Woodcock Road by constructing a 160 foot diameter round-about, and other related work.

Complete plans and specifications may be obtained from the office of the Public Works Department, Courthouse, 223 E. 4th St., Ste. 6, Port Angeles, WA 98362, (360) 417-2319. Questions regarding this project may be directed to Nick Dostie at (360) 417-2306.

The sealed bids must be clearly marked on the outside of the envelope, **"BID PROPOSAL – SEQUIM-DUNGENESS WY/WOODCOCK RD ROUND-ABOUT, CRP C1257"**. Address bid proposal to: Board of Clallam County Commissioners, 223 E. 4th St., Ste. 4, Port Angeles, WA 98362 or hand-deliver to 223 E. 4th St., Room 150, Port Angeles, Washington. Bid documents delivered to other offices and received late by the Commissioners' Office will not be considered nor will bids received by facsimile or e-mail.

Clallam County will determine the lowest responsible bidder in accordance with the terms of Clallam County Code Section 3.12.070 and reserves the right to reject any and all bids and to waive informalities in the process or to accept the bid which in its estimation best serves the interests of Clallam County.

Clallam County, in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252,42 U.S.C. 2000d to 2000d-4) and the Regulations, hereby notifies all bidders that will affirmatively ensure that any contract entered into pursuant to this advertisement, disadvantaged business enterprises will be afforded full and fair opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, or national origin in consideration for an award.

The attached contract plans, these contract provisions and the Standard Specifications for the above-described project are hereby

APPROVED THIS _____ DAY OF _____, 20___.

BOARD OF CLALLAM COUNTY COMMISSIONERS

_____
Mark Ozias, Chair

ATTEST:

_____
Loni Gores, CMC, Clerk of the Board

Please Publish: Peninsula Daily News/Seattle Daily Journal - September 3, 10 & 17
Please Bill: Clallam County Public Works - September 3, 10 & 17

7
8/23/24
2d

AGENDA ITEM SUMMARY

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

Department: Finance

WORK SESSION ☒ **Meeting Date:** **08/23/2021** ✓

REGULAR AGENDA ☒ **Meeting Date:** **08/24/2021**

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

Item summary:

☐ Call for Hearing

☒ Contract/Agreement/MOU - Contract # 19961.21.003

☐ Resolution

☐ Proclamation

☐ Budget Item

☐ Draft Ordinance

☐ Final Ordinance

Documents exempt from public disclosure attached: ☐

ARPA SUBRECIPIENT AGREEMENT—HABITAT FOR HUMANITY CLALLAM COUNTY-- FOR PROVISION OF AFFORDABLE HOUSING ECONOMIC SUPPORT:

BACKGROUND

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

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

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

Based on discussions held during this Work Session in which affordable housing requests from various entities including Habitat for Humanity, Peninsula Housing Coalition, and North Olympic Regional

Veteran's Housing Network were discussed, the BOCC approved the initial granting of $360,000 of ARPA-funded directed toward supporting affordable housing initiatives.

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

(1) To respond to the COVID-19 public health emergency or its negative economic impacts, including assistance to households, small businesses, and nonprofits, or aid to impacted industries such as tourism, travel, and hospitality;

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

(3) For the provision of government services to the extent of the reduction in revenue due to the COVID-19 public health emergency relative to revenues collected in the most recent full fiscal year prior to the emergency;

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

(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; and

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

As provided under FAQs 2.11 and 2.17 of US Treasury's Coronavirus State and Local Fiscal Recovery Funds Frequently Asked Questions, ARPA funds may be used to support those segments of the population and geographies who were disproportionately negatively impacted by the pandemic, which include populations that reside within Qualified Census Tracts, those who have experienced unemployment, increased food or housing insecurity, or are of low- or moderate income (i.e. those whose household income are below 80% of the County's average median income). As a result, we believe the provision of affordable housing economic support using ARPA funds to those low to

moderate income households experiencing housing insecurity in Clallam County represents an eligible and proper use of ARPA funds to address the negative economic impacts of the COVID-19 pandemic.

HABITAT FOR HUMANITY OF CLALLAM COUNTY—OVERVIEW OF THEIR MISSION, THE IMPACT OF COVID-19 ON ITS AFFORDABLE HOUSING EFFORTS, AND RESULTING NEED FOR ARPA FUNDING

As outlined in the attached application and overview, Habitat for Humanity of Clallam County (HFHCC) has been providing affordable homeownership to Clallam County residents since 1991, building to date 35 homes for qualified first time homebuyers whose household income is between 30% to 80% of AMI that would not qualify for a traditional mortgage. In order to qualify for assistance through HFHCC, an applicant must also demonstrate a need for housing due to substandard conditions, cost burdening (i.e. paying more than 30% of income for housing), or doubling up of families residing in one dwelling. Qualifying households must be able to pay an affordable mortgage held by HFHCC as well as contribute 250 hours per adult of sweat equity into the construction of the home. Mortgage repayments funds paid to HFHCC by family partners are used to replenish a revolving fund that HFHCC can then use to build future Habitat homes in the County. HFHCC applies a 20-year shared appreciation schedule with its family partners which helps ensure homes remain affordable housing.

Like many non-profits, HFHCC was negatively financially impacted by the COVID pandemic in the following ways:

- During the months of March-May 2020, HFHCC was forced to close both of its Habitat Stores in Clallam County due to the COVID-19 public health emergency and to comply with restrictions placed on businesses via the Governor's Proclamation 20-05 and subsequent COVID-19 related proclamations. As a result of these stores closing, HFHCC experienced a 153% or $68k drop in store revenue in the 2nd quarter of 2020 as compared to prior year;

- In addition to revenue impact of COVID, HFHCC also experienced a dramatic increase in its building and contractor costs due to the COVID-19 public health emergency. As has been widely reported on, home construction material costs increased dramatically during the pandemic due to supply chain and labor shortage disruptions, coupled with high demand for building materials during the pandemic. As reported in a May article by Marcus Lu appearing in Visual Capitalist, lumber costs alone have increased 377% during the pandemic, which by way of example $50,000 of lumber that would have been able to construct 10 comparable homes in May 2020 could only be used to complete 2.5 single family homes in May 2021. As a result of the continued pandemic-related effects on the building industry costs, HFHCC's construction material costs are exceeding expected 2021 current home build costs by 35% to 50%.

- As a result of these revenue and building cost impacts stemming from the pandemic, HFHCC's cash flow has been severely impacted, which has impaired their ability to cover funding gaps that are occurring between the planned cost of current builds underway in the 14 home Maloney Heights community in Port Angeles, and forcing them to delay construction or putting planned projects on hold until building material costs stabilize, resulting in affected low income family partners to remain in an insecure or substandard housing situation.

- HFHCC has requested $100,000 of ARPA funds to provide it with sufficient cash flow to cover the funding gaps on these current build and on-hold affordable housing projects. As a reimbursement-based draw down of these funds will impede HFHCC cash flow and reserves to pay for materials on these projects, HFHCC has asked for these funds to be released in advance.

HFHCC SUBRECIPIENT AGREEMENT

Based on guidance received from the WA State Department of Commerce, we have structured this awarding of ARPA funds to HFHCC as a subrecipient agreement rather than as a direct beneficiary grant, given that HFHCC use of ARPA funds to be provided are being limited to being used solely for affordable housing building costs, which are being incurred in support of building affordable housing dwellings that will ultimately be owned by eligible low income households.

Using the ARPA Subrecipient Agreement template developed for earlier subrecipient agreements executed with Clallam PUD and EDC, we have prepared the attached subrecipient agreement to engage HFHCC as a subrecipient of County ARPA funding to receive $100,000 in support of affordable housing current build and on-hold projects undertaken by HFHCC in the County on behalf of eligible low income households who meet the eligibility criteria established in Attachment D of the Agreement.

Eligible Use Criteria:

- Funds are to be used for affordable housing construction costs, including contractor, subcontractor and building material expenses incurred by HFHCC from March 1, 2021 thru December 31, 2024 for current build affordable housing unit projects, or for restarted affordable housing projects that were previously placed on hold due to high construction material or contractor/subcontractor costs encountered during the COVID pandemic; and
- Funds may only 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 mentioned earlier, disbursement of funds to HFHCC by the County will be made following execution of this Agreement rather than on a reimbursement basis. HFHCC will be required to submit monthly A-19 equivalent reports to the County detailing affordable housing construction costs for each affordable housing unit project funded by the ARPA funds and certified by HFHCC as meeting the eligibility requirements outlined in the agreement. The agreement also requires the submission to the County of an executive summary narrative describing how the ARPA funds granted under this agreement were utilized in support of affordable housing projects for low income households in Clallam County, with such report due within 30 days of all ARPA funds being expended.

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

Approval of this contract will authorize the release of $100,000 of ARPA funds from the American Rescue Plan Act special revenue fund to HFHCC upon execution of this Agreement.

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

In an effort to support HFHCC efforts to cover funding gaps in its current build affordable housing projects and to resume affordable projects on hold, we request the Commissioner's feedback and approval to proceed in submitting this agreement for approval during the next BOCC meeting scheduled on Tuesday, August 24, 2021.

County Official signature & print name: _____Mark Lane_____

Name of Employee/Stakeholder attending meeting: _____Mark Lane, Chelsea Lierly_____

Relevant Departments: ____Finance, BOCC_____

Date submitted:

August 18, 2021

Status: **Reviewed**

Entry #: 2

Date Submitted: 7/27/2021 1:31 PM

Proceed to the request form

APPLICANT BACKGROUND INFORMATION:

Business/Organization Name
Habitat for Humanity of Clallam County

Legal Name if different from Business/Organization Name

Address
728 E Front St, PO Box 1479, Port Angeles, Washington 98362

Mailing Address (if different)
PO Box 1479, Port Angeles, Washington 98362

WA State UBI
601346070

TIN (Tax Identification Number)
91-1535386

Date Business/Organization Opened*
10/1/1991

Organization Type
Non-Profit

Other contact names (if applicable)
COLLEEN ROBINSON

Phone
(360) 775-3742

Email for the person responsible for grant
COLLEEN@HABITATCLALLAM.ORG

COVID-19 IMPACTS:

What is the amount of money you are requesting:
$100,000.00

Please select the eligible use category that fits your needs:
Negative Economic Impacts

Please describe the negative financial and operational impact COVID-19 has had on your organization.
Habitat Clallam's new home construction is a homeownership program, which allows our family partners to build personal wealth and stability and establish their permanent place in our community. As a result of the State wide shut down in 2020 due to COVID-19 our Habitat Stores were closed March – May, the loss of revenue for 2nd Qtr. 2020 over 2nd Qtr. 2019 was 153%, severely impacting our cash flow.
In July of 2019, our Affiliate made a commitment to complete 8-homes in 3-years at our Maloney Heights 14-home community in Port Angeles. In light of the fact that prior to this commitment our Affiliate built 1-home every 12 to 18 months this was an ambitious goal, however, to date we have completed 5-homes. In November 2020, we selected 2-more family partners (homes 6 & 7 of our goal of 8 by July 2022) and in March 2021, we began site work on their homes. However, the spiraling cost of building material has forced Habitat Clallam to put one of these homes on hold, causing a local family to continue living in substandard housing with 2-children. In addition, the home we continue to build is costing nearly 50% more than the same house model we built a year ago.
To further support our case, here are two articles substantiating the current high cost of construction materials.
• https://www.visualcapitalist.com/visualizing-explosion-lumber-prices-50k/
• https://angelesmillwork.com/may-lumber-commodities-report/?fbclid=IwAR3iZ-zypZQ5YoB_AU_gFC8V7NGhVKxNdO1YXJmkzkLiGBHnaL_Mg6ntB9g
• 2020 vs 2021 Habitat home materials increase in cost example: In July 2020 1-sheet of 4x8 OSB cost $25.60 in June 2021 $99.60 an increase of $74 per sheet

Please briefly describe how you would use any funds that were awarded under this program:
Habitat Clallam is requesting $100,000 of the Clallam County designated ARPA funds to continue building Habitat homes for Clallam County residents in 2021. The ARPA funds will ensure that current partner families will not be put on hold for long. A draw down payment schedule from Clallam County would continue to impede our building process as we do not have the cash reserves to pay for materials and then be reimbursed, receiving the funding in full so we can restart the second home will be critical to our building process and cash flow. Habitat will submit documentation of costs to the County monthly (or a time frame preferred by the County) clearly showing funds used for building materials.

Please briefly describe the impact to your organization if you do not receive the funds requested:
Habitat for Humanity of Clallam County (HFHCC) may need to halt all new construction until construction material cost stabilize. HFHCC currently has 6-lots to build affordable homes for affordable home ownership. Two are currently under construction, those would be halted the other 4-lots would not begin construction. With the dire need for affordable housing in Clallam County this would be a tragedy.
HFHCC believes affordable housing plays an important role in strong and stable communities. This is emphasized in the recent study Housing is Critical Infrastructure: Social and Economic Benefits of Building More Housing was prepared by Rosen Consulting Group for the National Association of REALTORS®. This report highlights the size of the existing underbuilding gap, consequences of underinvesting in housing, benefits of building more housing and the role of housing infrastructure in communities in response to address the nation's housing shortage and affordability crisis. This study was completed in June 2021, link to the complete study:
https://cdn.nar.realtor/sites/default/files/documents/Housing-is-Critical-Infrastructure-Social-and-Economic-Benefits-of-Building-More-Housing-6-15-2021.pdf
Affordable housing availability in Clallam County is at an all time low.

Please indicate how much, if any, other COVID-relief funding your organization has received and what it was used for.
Round 1 of PPP - $39,135.00 - received April 22, 2020. Used for staff wages
United Way of Clallam County * COVID Relief Fund - $5,000 - awarded December 10, 2020 - used for expenses incurred by COVID-19 safety requirements.

Please indicate any other COVID-related relief that you have applied for or will be applying for that you are awaiting a response.
None

If your request for funding is related to a water, sewer, or broadband infrastructure project, please indicate how this project meets the infrastructure requirements criteria under ARPA. For water/sewer projects, the project must be eligible to receive financial assistance through the Environmental Protection Agency's Clean Water State Revolving Funds (CWSRF) or Drinking Water State Revolving Fund (DWSRF). For Broadband projects, the project must target unserved or underserved households or businesses not currently served by a wireline connection that delivers at least 25 mbps download speeds and 3 mbps of upload speeds and the project as designed will deliver minimum download and upload speeds of 100 mbps.
Funding request related to Affordable Housing.

If applicable, please describe how the funding if awarded, would enable your organization to provide assistance to disproportionately impacted by COVID-19 populations, households or geographic areas including addressing health disparities, building stronger neighborhoods and communities as it relates to homelessness, affordable housing, addressing educational disparities worsened by COVID, and promoting healthy childhood environments.

When the home is completed and we receive the Occupancy Permit, our families are given an affordable mortgage. Their monthly payment is never more than 30% of their income. The income is put back into the revolving fund for Humanity to build the next homes, and so on and so on.

In Washington State in 2020, 1 in 7 households paid more than 50% of their income on housing (fact sheet included). Even before the coronavirus pandemic, nearly one-third of households in the United States faced housing cost burdens – due to increased housing costs and growing income inequality. As the economic fallout from the pandemic continues, millions of families are at risk of losing their homes and more than 37 million households are cost-burdened, with little income to afford food, health care and other necessities.

As home prices — for rental and ownership — continue to outpace wage growth in the United States, families often find themselves struggling in other major areas of their lives as basic needs are pitted against each other. Nutrition, education, transportation, child care, health care. Students from low-income families who change schools frequently are at risk of lower math scores and can be overall more likely to drop out. Children who live in homes with leaking roofs, broken windows, rodents, nonfunctioning heaters or stoves, peeling paint, exposed wiring, or unsafe or unclean environments often experience greater emotional and behavioral problems. Nearly 1 in 4 people worldwide live in conditions that harm health, safety, prosperity and opportunities. Nowhere in the U.S. will a full-time minimum wage job pay for a median one-bedroom apartment; in 30 states, two minimum-wage jobs won't cover the rent.

However, bringing housing costs to an affordable level can make all the difference in the life — and future — of a family. By building and restoring safe, clean and healthy housing, Habitat works to eliminate children's experiences of substandard housing, thereby supporting their growth and development." Strong and secure homes contribute to strong and secure families.

From the abundance of economic benefits to a greater sense of community pride, increasing home affordability is foundational to the health of communities across the country. Habitat is a hand up, not a hand out and we fully believe through shelter we empower.

Has your organization been made ineligible to receive federal assistance due to debarment, suspension, ineligibility or by voluntary exclusion for lower tier covered transactions?

No

Additional Comments

HFHCC follows Equal Housing Opportunity fair housing laws – we specifically serve families that fall between 30-80% of AMI. Our family partners are first time homebuyers, they have a need for housing for example, living in substandard housing, families doubling up or are cost burdened by paying more than 33% of their income on housing and are willing to partner with HFHCC and put 250 hours of sweat equity into the building of their home.

Habitat Clallam builds safe, decent affordable homes, our current model is 1,000 sq. feet, 3-bedrooms, 1-bath and a detached small storage shed (no garage). Included in our request is a spreadsheet of CIP (Construction in Process) from the same model home built throughout 2020 and completed in 2021. Construction material costs are running 35% to 50% higher for our current 2021 home builds. Example: Exterior doors - 45% higher and Interior doors are double what they cost for our last home build.

Habitat builds our homes with volunteers, this building model helps us to keep our home affordable; our paid Construction Manager oversees all construction.

With the loss of revenue due to our Habitat Store closures and the spiraling cost of construction materials providing affordable housing for homeownership has become a challenge for our Habitat Affiliate.

In submitting this application I swear under penalty of perjury under the laws of the State of Washington that the foregoing information contained in this application is true and correct to the best of my knowledge and belief.

Yes

Certification:

Name

Colleen Robinson

Title

Chief Executive Officer

Date

7/27/2021

Please provide any other supporting materials that would assist us in assessing your application (pre-COVID or COVID); financial statements, operational metrics, key invoices/quotes, a detailed list for proposed use of funds, project plans for water, sewer or broadband infrastructure projects, etc.

Revenue Reduction.pdf
35.55 KB

Total Costs of McClure Build.xlsx
29.12 KB

Upload your completed W-9 here in pdf or jpg

W-9 with Signature.pdf
1.22 MB

Habitat for Humanity of Clallam County

We build **strength, stability, self-reliance and shelter.**

August 5, 2021

Clallam County Courthouse
Attn: Clallam County Commissioners Johnson, Ozias, Peach & Mark Lane, CFO
223 E 4th Street, #4
Port Angeles, WA 98362

RE: Clallam County ARPA (American Rescue Plan Act) Funds Request

EXECUTIVE SUMMARY

Overview

Habitat for Humanity of Clallam County (HFHCC) has been providing affordable homeownership to Clallam County residents since 1991, building 35 modest, safe, decent homes. HFHCC serves residences that fall between 30-60% of AMI, traditionally first time homebuyers that would not qualify for a traditional mortgage. To qualify for our HFHCC program residences must demonstrate a need for housing i.e. substandard conditions, cost burdened (paying more than 30% of their income on housing), or families doubling up in one dwelling. In addition, they must be able to pay an affordable mortgage that goes into the revolving fund for Humanity to build future Habitat homes and be willing to partner with HFHCC. This partnership is a sweat equity component of 250-hours per adult (18-years or older) that will be living in the home. HFHCC has a paid Construction Manager, but volunteers working alongside our Family Partners primarily build Habitat homes. A 20-year shared appreciation schedule between HFHCC and our Family Partners helps ensures that homes stay affordable housing. See **Attachment A**

The Problem

Data from recent surveys has shown that COVID-19 disproportionally affected low-income families. The spiraling cost of construction materials, supply chain issues and lost revenue from Habitat Stores closures had a negative financial impact causing limitations on our construction progress in our 14-home community; Maloney Heights in Port Angeles.

- As a result of the State wide shut down in 2020 due to COVID-19 our Habitat Stores were closed March – May, the loss of revenue for 2nd Qtr. 2020 over 2nd Qtr. 2019 was 153%, severely impacting our cash flow.
- Material costs 2020 vs. 2021 – exterior doors are 45% more and interior doors have more than doubled.
- Angeles Millwork & Lumber Company lumber costs in July 2020 1-sheet of 4x8 OSB: $25.60 in June 2021 $99.60 an increase of $74 per sheet.

To further support our case, here are two articles substantiating the current high cost of construction materials.

- https://www.visualcapitalist.com/visualizing-explosion-lumber-prices-50k/
- https://angelesmillwork.com/may-lumber-commodities-report/?fbclid=IwAR3iZ-zypZQ5YoB_AU_gFC8V7NGhVKxNdO1YXJmkzkLiGBHnaL_Mg6ntB9g

The Solution

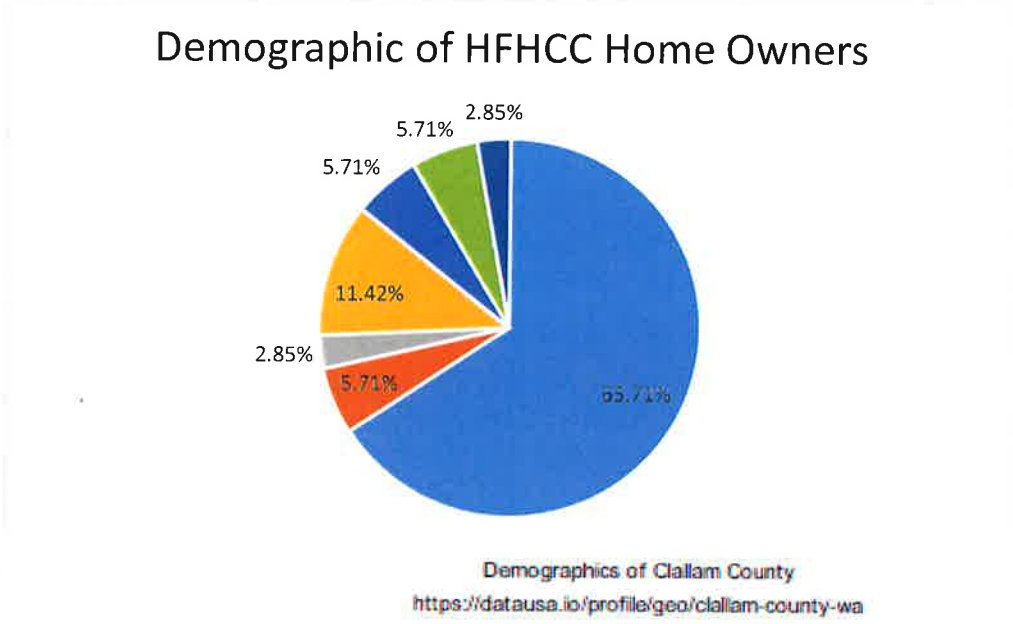
HFHCC is requesting $100,000 of the Clallam County designated ARPA funds to continue building Habitat homes for Clallam County residents. This request is In light of the negative financial impact of lost revenue incurred by HFHCC from its store closures; and due to higher building and operating costs being incurred by the public COVID emergency due to supply chain disruptions, COVID mitigation costs, and other economic impacts of COVID that have constrained HFHCC financial ability to cover funding gaps in our construction program.
Further, we are requesting the funds be distributed in a lump sum payment to address HFHCC's immediate cash flow constraints and enable us to proceed with completing affordable housing projects within Clallam County.

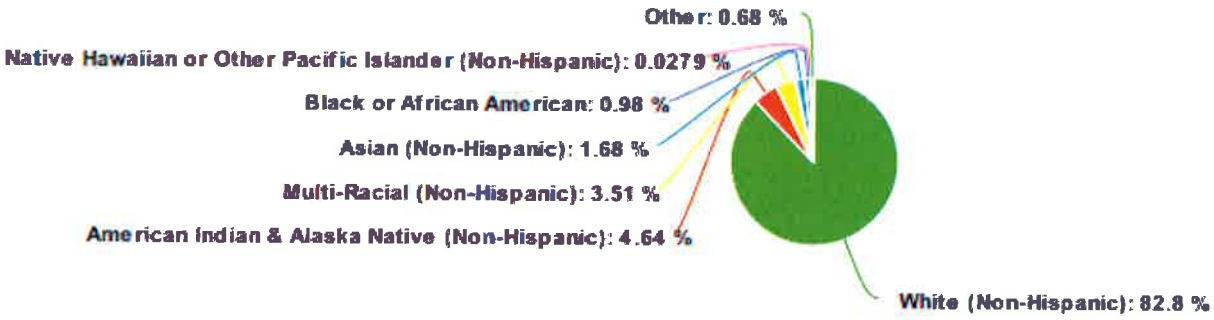
Habitat for Humanity of Clallam County

We build **strength, stability, self-reliance** and **shelter.**

Highlights

These graphs illustrate the family demographic served by HFHCC since 1991 (Building 35-homes) in comparison to Clallam County (2019 Census data) as a whole.





In July of 2019, our Affiliate made a commitment to complete 8-homes in 3-years at our Maloney Heights 14-home community in Port Angeles. In light of the fact that prior to this commitment our Affiliate built 1-home every 12 to 18 months this was an ambitious goal, however, to date we have completed 5-homes. In November 2020, we selected 2-more family partners (homes 6 & 7 of 8) and in March 2021, we began site work on their homes. Spiraling construction costs required us to put one of the homes on hold.

Home ownership for low-income families means they are building personal wealth through their home equity and establishing their permanency in the community. Habitat for Humanity is a hand-up not a hand-out.

Habitat for Humanity of Clallam County

We build **strength, stability, self-reliance** and **shelter.**

ATTACHMENT A

Share Appreciation (Equity)

A shared equity mortgage is an arrangement under which a "lender" and a borrower share ownership of a property. The borrower must occupy the property. When the property sells, the allocation of equity goes to each party according to their equity contribution.

Through volunteer labor and donations of money and materials, Habitat for Humanity of Clallam County builds simple, decent houses. ... Habitat homes are built with donated labor, resources and funds. The home is then sold to the selected "partner" family via a geared to income, low interest mortgage. A Family Partner does not pay more than 30% of their income for their mortgage payment.

Shared equity/appreciation models enable Habitat affiliates or the communities in which they work to retain or recapture the benefits of public and private subsidies that support access to affordable homeownership.

Timeline	Shared Appreciation Owed to Habitat Clallam
Fifth to Sixth Anniversary	93.3%
Sixth to Seventh Anniversary	86.6%
Seventh to Eighth Anniversary	80.0%
Eighth to Ninth Anniversary	73.3%
Ninth to Tenth Anniversary	67.7%
Tenth to Eleventh Anniversary	60.0%
Eleventh to Twelfth Anniversary	53.3%
Twelfth to Thirteenth Anniversary	46.6%
Thirteenth to Fourteenth Anniversary	40.0%
Fourteenth to Fifteenth Anniversary	33.3%
Fifteenth to Sixteenth Anniversary	26.6%
Sixteenth to Seventeenth Anniversary	20.0%
Seventeenth to Eighteenth Anniversary	13.3%
Eighteenth to Nineteenth Anniversary	6.6%
Nineteenth to Twentieth Anniversary	0.0%

Respectfully submitted by:

Colleen Robinson

Chief Executive Officer
Habitat for Humanity of Clallam County
360-460-5560 – cell
colleen@habitatclallam.org

1996 1. 21. 003

ARPA SUBRECIPIENT AGREEMENT

This ARPA Subrecipient Agreement ("Agreement") is dated as of the _____ day of _____, 2021, by and between Clallam County, a Washington political subdivision ("County"), and Habitat for Humanity of Clallam County (Federal Tax ID 91-1535386, DUNS # 001778575), a Washington state non-profit 501(c)(3) organization ("Subrecipient").

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

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

(1) To respond to the COVID-19 public health emergency or its negative economic impacts, including assistance to households, small businesses, and nonprofits, or aid to impacted industries such as tourism, travel, and hospitality;
(2) To respond to workers performing essential work during the COVID-19 public health emergency by providing premium pay to eligible workers;
(3) For the provision of government services to the extent of the reduction in revenue due to the COVID-19 public health emergency relative to revenues collected in the most recent full fiscal year prior to the emergency; and
(4) To make necessary investments in water, sewer, or broadband infrastructure;
(5) To address the disparate impact of COVID-19 on certain populations and geographics, additional eligible services may include:

a. Addressing health disparities and the social determinants of health, including community health workers, public benefits navigators, remediation of lead paint or other lead hazards, and community violence intervention programs;

b. Building stronger neighborhoods and communities, including supportive housing and other services for individuals experiencing 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; and

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

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

WHEREAS, the County desires to allocate portions of the ARPA Funds awarded to Clallam County in support of non-profit organizations and other agencies engaged in supporting 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 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 Subrecipient, a Clallam County non-profit organization that provides affordable homeownership to Clallam County residents that have an average household income range of 30-80% of County AMI, has incurred substantial negative economic impact during the COVID-19 public health emergency which has significantly impaired its ability to fund and complete planned affordable housing projects in Clallam County. Such economic impacts experienced by the Subrecipient include the following:

- The Subrecipient was forced to close both of its Habitat Stores in Clallam County during the months of March-May 2020 due to the COVID-19 public health emergency and the restrictions placed on businesses via the Governor's Proclamation 20-05 and subsequent COVID-19-related proclamations. As a result of these store closures, the Subrecipient incurred a $68,156 or 153% drop in revenue in the 2nd quarter of 2020 in comparison to the prior year;
- The Subrecipient also experienced a sharp increase in its building costs due to the COVID-19 public health emergency. Home construction material costs increased dramatically during the pandemic due to supply chain and labor shortage disruptions, coupled with high demand for building materials during the pandemic. As a result, construction material costs are exceeding 2021 current home build costs between 35% to 50% higher;
- As reported in a May 8, 2021 Visual Capitalist article by Marcus Lu, lumber prices alone have increased 377% during the pandemic, resulting in $50,000 worth of lumber in May 2021 only being sufficient to build approximately 2.5 single family housing units, as compared to constructing slightly over 10 similarly sized single family housing units in May 2020.
- The Subrecipient also incurred higher operating costs as a result of COVID mitigation costs incurred at its facilities in order to comply with COVID safety protocols.

- Due to the impact of the lost revenue from its Habitat store closures coupled with the significant increase in building material costs incurred by the Subrecipient in its affordable housing building efforts, the resulting impact to the Subrecipient's cash flow and reserves has impaired the Subrecipient's ability to cover funding gaps in its affordable housing construction projects created by the higher than expected costs of building materials. This has resulted in delays or suspension of planned Subrecipient affordable housing building projects in Clallam County and forced affected low income households to remain in an insecure or substandard housing situation.

WHEREAS, the County believes the provision of economic support to the Subrecipient is necessary and appropriate given the Subrecipient's critical role in providing affordable housing to impacted, vulnerable residents of Clallam County, the severe financial impact the loss of store revenues and higher building materials and operating costs incurred by the Subrecipient due to the COVID-19 emergency are having on the Subrecipient's ability to fully cover funding gaps of its planned affordable housing projects created by higher than expected building material costs during the pandemic, and represents an eligible use of ARPA Funds as outlined previously;

WHEREAS, the County and Subrecipient desire to enter into this Agreement so that the County may advance ARPA Funds to the Subrecipient to provide the Subrecipient with additional cash flow needed to enable the Subrecipient to proceed with completing affordable housing projects for low income households experiencing housing insecurity within Clallam County as allowed under the IGA and Interim Final Rule.

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

1. Effective Date and Term. This Agreement shall commence when last executed by all parties and remain in effect until December 31, 2024, unless terminated by the County in writing.

2. ARPA Funds. The County agrees to provide the Subrecipient a total sum not to exceed $100,000, which may be used by the Subrecipient to fund completion of affordable housing projects in Clallam County. As funds are needed to address immediate cash flow needs of the Subrecipient that are hindering its ability to complete pending affordable housing projects, the County agrees to disburse funds to the Subrecipient upon execution of this Agreement. All funds advanced to the Subrecipient must be expended no later than December 31, 2024 based on eligible uses of funds outlined in Attachment D, with any unspent grant funds advanced to the Subrecipient by the County to be refunded to the County upon earlier of the end of the term of the Agreement, or the termination of the Agreement by the County.

3. Subrecipient's Use of ARPA Funds. The Subrecipient shall ensure that the ARPA Funds requests are necessary Eligible Uses under one of the following cost categories: a) 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, 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; d) To make necessary investments in water, sewer, or broadband infrastructure; and e) To address the disparate impact of COVID-19 on certain populations and geographics by provision of services to address health disparities and the social determinants of health, to build stronger neighborhoods and communities, to address educational disparities exacerbated by COVID-19, and promoting healthy childhood environments.

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. Reporting Requirements. To facilitate the County's compliance with reporting requirements for usage of ARPA funding under the IGA and to insure the ARPA funds provided to the Subrecipient are utilized in accordance with Attachment D, the Subrecipient 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 Subrecipient 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 Subrecipient 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.

6. Termination. The County may terminate this Agreement, for convenience or otherwise and for no consideration or damages, upon prior notice to the Subrecipient.

7. 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 Subrecipient 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.

8. Indemnification. The Subrecipient 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 Subrecipient, its officers, directors, employees, and/or agents relating to the Subrecipient's performance or failure to perform under this Agreement. The section shall survive the expiration or termination of this Agreement.

9. Compliance with Laws, Guidelines. The Subrecipient shall comply with all federal, state, and local laws and all requirements (including debarment and other required certifications and audits) of the IGA, Interim Final Rule, and Compliance & Reporting Guidelines to the extent applicable, when disbursing ARPA Funds to subrecipients or when seeking Reimbursement from the County.

10. Maintenance and Audit of Records. The Subrecipient shall maintain records, books, documents, and other materials relevant to its performance under this Agreement. These records shall be subject to inspection, review and audit by the County or its designee, the Washington State Auditor's Office and as required by the IGA, Interim Final Rule and Compliance & Reporting Guidelines for five (5) years following termination of this Agreement. If it is determined during the course of the audit that the Subrecipient was reimbursed for unallowable costs under this Agreement, the Subrecipient agrees to promptly reimburse the County for such payments upon request.

11. 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:

Subrecipient
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

12. 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.

13. 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.

14. Time. Time is of the essence in this Agreement.

15. 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 Indemnification and Maintenance and Audit of Records.

16. Amendment. No amendment or modification to the Agreement will be effective without the prior written consent of the authorized representatives of the parties.

17. 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 waiver thereof; nor shall any single or partial exercise by the County of any right hereunder preclude any other or further exercise thereof or the exercise of any other right. The remedies herein provided are cumulative and not exclusive of any remedy available to the County at law or in equity.

18. Binding Effect. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors.

19. Assignment. The Subrecipient 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 Subrecipient 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 _____, 2021.

SUBRECIPIENT

By: Colleen Robinson

Print Name: Colleen Robinson

Its: Chief Executive Officer

DATED this 17 day of August, 2021.

APPROVED AS TO FORM by DPA Stanley

BOARD OF COUNTY COMMISSIONERS
CLALLAM COUNTY, WASHINGTON

MARK OZIAS, Chair

RANDY JOHNSON, Commissioner

BILL PEACH, Commissioner

ATTEST:

L. Gores, Clerk of the Board

ATTACHMENT A

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

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

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

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

Recipient: DocuSigned by: 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.

9. Compliance with Applicable Law and Regulations.
   a. Recipient agrees to comply with the requirements of section 603 of the Act, regulations adopted by Treasury pursuant to section 603(f) of the Act, and guidance issued by Treasury regarding the foregoing. Recipient also agrees to comply with all other applicable federal statutes, regulations, and executive orders, and Recipient shall provide for such compliance by other parties in any agreements it enters into with other parties relating to this award.

   b. Federal regulations applicable to this award include, without limitation, the following:

      i. Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, 2 C.F.R. Part 200, other than such provisions as Treasury may determine are inapplicable to this Award and subject to such exceptions as may be otherwise provided by Treasury. Subpart F – Audit Requirements of the Uniform Guidance, implementing the Single Audit Act, shall apply to this award.

      ii. Universal Identifier and System for Award Management (SAM), 2 C.F.R. Part 25, pursuant to which the award term set forth in Appendix A to 2 C.F.R. Part 25 is hereby incorporated by reference.

      iii. Reporting Subaward and Executive Compensation Information, 2 C.F.R. Part 170, pursuant to which the award term set forth in Appendix A to 2 C.F.R. Part 170 is hereby incorporated by reference.

      iv. OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement), 2 C.F.R. Part 180, including the requirement to include a term or condition in all lower tier covered transactions (contracts and subcontracts described in 2 C.F.R. Part 180, subpart B) that the award is subject to 2 C.F.R. Part 180 and Treasury's implementing regulation at 31 C.F.R. Part 19.

      v. Recipient Integrity and Performance Matters, pursuant to which the award term set forth in 2 C.F.R. Part 200, Appendix XII to Part 200 is hereby incorporated by reference.

      vi. Governmentwide Requirements for Drug-Free Workplace, 31 C.F.R. Part 20.

      vii. New Restrictions on Lobbying, 31 C.F.R. Part 21.

      viii. Uniform Relocation Assistance and Real Property Acquisitions Act of 1970 (42 U.S.C. §§ 4601-4655) and implementing regulations.

      ix. Generally applicable federal environmental laws and regulations.

   c. Statutes and regulations prohibiting discrimination applicable to this award include, without limitation, the following:

      i. Title VI of the Civil Rights Act of 1964 (42 U.S.C. §§ 2000d et seq.) and Treasury's implementing regulations at 31 C.F.R. Part 22, which prohibit discrimination on the basis of race, color, or national origin under programs or activities receiving federal financial assistance;

ii. The Fair Housing Act, Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§ 3601 et seq.), which prohibits discrimination in housing on the basis of race, color, religion, national origin, sex, familial status, or disability;

iii. Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of disability under any program or activity receiving federal financial assistance;

iv. The Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101 et seq.), and Treasury's implementing regulations at 31 C.F.R. Part 23, which prohibit discrimination on the basis of age in programs or activities receiving federal financial assistance; and

v. Title II of the Americans with Disabilities Act of 1990, as amended (42 U.S.C. §§ 12101 et seq.), which prohibits discrimination on the basis of disability under programs, activities, and services provided or made available by state and local governments or instrumentalities or agencies thereto.

10. Remedial Actions. In the event of Recipient's noncompliance with section 603 of the Act, other applicable laws, Treasury's implementing regulations, guidance, or any reporting or other program requirements, Treasury may impose additional conditions on the receipt of a subsequent tranche of future award funds, if any, or take other available remedies as set forth in 2 C.F.R. § 200.339. In the case of a violation of section 603(c) of the Act regarding the use of funds, previous payments shall be subject to recoupment as provided in section 603(e) of the Act.

11. Hatch Act. Recipient agrees to comply, as applicable, with requirements of the Hatch Act (5 U.S.C. §§ 1501-1508 and 7324-7328), which limit certain political activities of State or local government employees whose principal employment is in connection with an activity financed in whole or in part by this federal assistance.

12. False Statements. Recipient understands that making false statements or claims in connection with this award is a violation of federal law and may result in criminal, civil, or administrative sanctions, including fines, imprisonment, civil damages and penalties, debarment from participating in federal awards or contracts, and/or any other remedy available by law.

13. Publications. Any publications produced with funds from this award must display the following language: "This project [is being] [was] supported, in whole or in part, by federal award number [enter project FAIN] awarded to [name of Recipient] by the U.S. Department of the Treasury."

14. Debts Owed the Federal Government.
    a. Any funds paid to Recipient (1) in excess of the amount to which Recipient is finally determined to be authorized to retain under the terms of this award; (2) that are determined by the Treasury Office of Inspector General to have been misused; or (3) that are determined by Treasury to be subject to a repayment obligation pursuant to section 603(e) of the Act and have not been repaid by Recipient shall constitute a debt to the federal government.

    b. Any debts determined to be owed the federal government must be paid promptly by

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

15. Disclaimer.
    a. The United States expressly disclaims any and all responsibility or liability to Recipient or third persons for the actions of Recipient or third persons resulting in death, bodily injury, property damages, or any other losses resulting in any way from the performance of this award or any other losses resulting in any way from the performance of this award or any contract, or subcontract under this award.

    b. The acceptance of this award by Recipient does not in any way establish an agency relationship between the United States and Recipient.

16. Protections for Whistleblowers.
    a. In accordance with 41 U.S.C. § 4712, Recipient may not discharge, demote, or otherwise discriminate against an employee in reprisal for disclosing to any of the list of persons or entities provided below, information that the employee reasonably believes is evidence of gross mismanagement of a federal contract or grant, a gross waste of federal funds, an abuse of authority relating to a federal contract or grant, a substantial and specific danger to public health or safety, or a violation of law, rule, or regulation related to a federal contract (including the competition for or negotiation of a contract) or grant.

    b. The list of persons and entities referenced in the paragraph above includes the following:
        i. A member of Congress or a representative of a committee of Congress;
        ii. An Inspector General;
        iii. The Government Accountability Office;
        iv. A Treasury employee responsible for contract or grant oversight or management;
        v. An authorized official of the Department of Justice or other law enforcement agency;
        vi. A court or grand jury; or
        vii. A management official or other employee of Recipient, contractor, or subcontractor who has the responsibility to investigate, discover, or address misconduct.

    c. Recipient shall inform its employees in writing of the rights and remedies provided under this section, in the predominant native language of the workforce.

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

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

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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.

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

4. Recipient acknowledges and agrees that compliance with the assurances constitutes a condition of continued receipt of federal financial assistance and is binding upon Recipient and Recipient's successors, transferees, and assignees for the period in which such assistance is provided.

5. Recipient acknowledges and agrees that it must require any sub-grantees, contractors, subcontractors, successors, transferees, and assignees to comply with assurances 1-4 above, and agrees to incorporate the following language in every contract or agreement subject to Title VI and its regulations between the Recipient and the Recipient's sub-grantees, contractors, subcontractors, successors, transferees, and assignees:

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

6. Recipient understands and agrees that if any real property or structure is provided or improved with the aid of federal financial assistance by the Department of the Treasury, this assurance obligates the Recipient, or in the case of a subsequent transfer, the transferee, for the period during which the real property or structure is used for a purpose for which the federal financial assistance is extended or for another purpose involving the provision of similar services or benefits. If any personal property is provided, this assurance obligates the Recipient for the period during which it retains ownership or possession of the property.

7. Recipient shall cooperate in any enforcement or compliance review activities by the Department of the Treasury of the aforementioned obligations. Enforcement may include investigation, arbitration, mediation, litigation, and monitoring of any settlement agreements that may result from these actions. The Recipient shall comply with information requests, on-site compliance reviews and reporting requirements.

8. Recipient shall maintain a complaint log and inform the Department of the Treasury of any complaints of discrimination on the grounds of race, color, or national origin, and limited English proficiency covered by Title VI of the Civil Rights Act of 1964 and implementing regulations and provide, upon request, a list of all such reviews or proceedings based on the complaint, pending or completed, including outcome. Recipient also must inform the Department of the Treasury if Recipient has received no complaints under Title VI.

9. Recipient must provide documentation of an administrative agency's or court's findings of non-compliance of Title VI and efforts to address the non-compliance, including any voluntary compliance or other

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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	5/19/2021
Recipient	Date

DocuSigned by:
MARK OZIAS
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Signature of Authorized Official

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ATTACHMENT B

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

DEPARTMENT OF THE TREASURY

31 CFR Part 35

RIN 1505–AC77

Coronavirus State and Local Fiscal Recovery Funds

AGENCY: Department of the Treasury.

ACTION: Interim final rule.

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

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

Comment date: Comments must be received on or before July 16, 2021.

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

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

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

SUPPLEMENTARY INFORMATION:

I. Background Information

A. Overview

Since the first case of coronavirus disease 2019 (COVID–19) was discovered in the United States in January 2020, the disease has infected over 32 million and killed over 575,000 Americans.[1] The disease has impacted every part of life: As social distancing became a necessity, businesses closed, schools transitioned to remote education, travel was sharply reduced, and millions of Americans lost their jobs. In April 2020, the national unemployment rate reached its highest level in over seventy years following the most severe month-over-month decline in employment on record.[2] As of April 2021, there were still 8.2 million fewer jobs than before the pandemic.[3] During this time, a significant share of households have faced food and housing insecurity.[4] Economic disruptions impaired the flow of credit to households, State and local governments, and businesses of all sizes.[5] As businesses weathered closures and sharp declines in revenue, many were forced to shut down, especially small businesses.[6]

Amid this once-in-a-century crisis, State, territorial, Tribal, and local governments (State, local, and Tribal governments) have been called on to respond at an immense scale. Governments have faced myriad needs to prevent and address the spread of COVID–19, including testing, contact tracing, isolation and quarantine, public communications, issuance and enforcement of health orders, expansions to health system capacity like alternative care facilities, and in recent months, a massive nationwide mobilization around vaccinations. Governments also have supported major efforts to prevent COVID–19 spread through safety measures in settings like nursing homes, schools, congregate living settings, dense worksites, incarceration settings, and public facilities. The pandemic's impacts on behavioral health, including the toll of pandemic-related stress, have increased the need for behavioral health resources.

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

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

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

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

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

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

[5] Board of Governors of the Federal Reserve System, Monetary Policy Report (June 12, 2020), *https://www.federalreserve.gov/monetarypolicy/2020-06-mpr-summary.htm.*

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

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

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

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

Finally, although the pandemic's impacts have been widespread, both the public health and economic impacts of the pandemic have fallen most severely on communities and populations disadvantaged before it began. Low-income communities, people of color, and Tribal communities have faced higher rates of infection, hospitalization, and death,[10] as well as higher rates of unemployment and lack of basic necessities like food and housing.[11] Pre-existing social vulnerabilities magnified the pandemic in these communities, where a reduced ability to work from home and, frequently, denser housing amplified the risk of infection. Higher rates of pre-existing health conditions also may have contributed to more severe COVID–19 health outcomes.[12] Similarly, communities or households facing economic insecurity before the pandemic were less able to weather business closures, job losses, or declines in earnings and were less able to participate in remote work or education due to the inequities in access to reliable and affordable broadband infrastructure.[13] Finally, though schools in all areas faced challenges, those in high poverty areas had fewer resources to adapt to remote and hybrid learning models.[14] Unfortunately, the pandemic also has reversed many gains made by communities of color in the prior economic expansion.[15]

B. The Statute and Interim Final Rule

On March 11, 2021, the American Rescue Plan Act (ARPA) was signed into law by the President.[16] Section 9901 of ARPA amended Title VI of the Social Security Act[17] (the Act) to add section 602, which establishes the Coronavirus State Fiscal Recovery Fund, and section 603, which establishes the Coronavirus Local Fiscal Recovery Fund (together, the Fiscal Recovery Funds).[18] The Fiscal Recovery Funds are intended to provide support to State, local, and Tribal governments (together, recipients) in responding to the impact of COVID–19 and in their efforts to contain COVID–19 on their communities, residents, and businesses. The Fiscal Recovery Funds build on and expand the support provided to these governments over the last year, including through the Coronavirus Relief Fund (CRF).[19]

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

(a) To respond to the public health emergency or its negative economic impacts, including assistance to households, small businesses, and nonprofits, or aid to impacted industries such as tourism, travel, and hospitality;

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

(c) For the provision of government services to the extent of the reduction in revenue due to the COVID–19 public health emergency relative to revenues collected in the most recent full fiscal year prior to the emergency; and

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

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

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

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

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

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

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

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

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

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

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

[17] 42 U.S.C. 801 *et seq.*

[18] Sections 602, 603 of the Act.

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

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

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

Implementation of the Fiscal Recovery Funds also reflect the importance of public input, transparency, and accountability. Treasury seeks comment on all aspects of the interim final rule and, to better facilitate public comment, has included specific questions throughout this **SUPPLEMENTARY INFORMATION**. Treasury encourages State, local, and Tribal governments in particular to provide feedback and to engage with Treasury regarding issues that may arise regarding all aspects of this interim final rule and Treasury's work in administering the Fiscal Recovery Funds. In addition, the interim final rule establishes certain regular reporting requirements, including by requiring State, local, and Tribal governments to publish information regarding uses of Fiscal Recovery Funds payments in their local jurisdiction. These reporting requirements reflect the need for transparency and accountability, while recognizing and minimizing the burden, particularly for smaller local governments. Treasury urges State, territorial, Tribal, and local governments to engage their constituents and communities in developing plans to use these payments, given the scale of funding and its potential to catalyze broader economic recovery and rebuilding.

II. Eligible Uses

A. Public Health and Economic Impacts

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

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

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

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

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

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

1. Responding to COVID–19

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

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

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

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

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

Other response and adaptation costs include capital investments in public facilities to meet pandemic operational needs, such as physical plant improvements to public hospitals and health clinics or adaptations to public buildings to implement COVID–19 mitigation tactics. In recent months, State, local, and Tribal governments across the country have mobilized to support the national vaccination campaign, resulting in over 250 million doses administered to date.[25]

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

Other areas of public health have also been negatively impacted by the COVID–19 pandemic. For example, in one survey in January 2021, over 40 percent of American adults reported symptoms of depression or anxiety, up from 11 percent in the first half of 2019.[26] The proportion of children's emergency department visits related to mental health has also risen noticeably.[27] Similarly, rates of substance misuse and overdose deaths have spiked: Preliminary data from the CDC show a nearly 30 percent increase in drug overdose mortality from September 2019 to September 2020.[28] Stay-at-home orders and other pandemic responses may have also reduced the ability of individuals affected by domestic violence to access services.[29] Finally, some preventative public health measures like childhood vaccinations have been deferred and potentially forgone.[30]

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

Similarly, low-income and socially vulnerable communities have seen the most severe health impacts. For example, counties with high poverty rates also have the highest rates of infections and deaths, with 223 deaths per 100,000 compared to the U.S. average of 175 deaths per 100,000, as of May 2021.[33] Counties with high social vulnerability, as measured by factors such as poverty and educational attainment, have also fared more poorly than the national average, with 211 deaths per 100,000 as of May 2021.[34]

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

[24] *Id.*

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

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

[27] Leeb, *supra* note 4.

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

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

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

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

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

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

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

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

Continued

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

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

Eligible Public Health Uses. The Fiscal Recovery Funds provide resources to meet and address these emergent public health needs, including through measures to counter the spread of COVID–19, through the provision of care for those impacted by the virus, and through programs or services that address disparities in public health that have been exacerbated by the pandemic. To facilitate implementation and use of payments from the Fiscal Recovery Funds, the interim final rule identifies a non-exclusive list of eligible uses of funding to respond to the COVID–19 public health emergency. Eligible uses listed under this section build and expand upon permissible expenditures under the CRF, while recognizing the differences between the ARPA and CARES Act, and recognizing that the response to the COVID–19 public health emergency has changed and will continue to change over time. To assess whether additional uses would be eligible under this category, recipients should identify an effect of COVID–19 on public health, including either or both of immediate effects or effects that may manifest over months or years, and assess how the use would respond to or address the identified need.

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

- *COVID–19 Mitigation and Prevention.* A broad range of services and programming are needed to contain COVID–19. Mitigation and prevention efforts for COVID–19 include vaccination programs; medical care; testing; contact tracing; support for isolation or quarantine; supports for vulnerable populations to access medical or public health services; public health surveillance (*e.g.*, monitoring case trends, genomic sequencing for variants); enforcement of public health orders; public communication efforts; enhancement to health care capacity, including through alternative care facilities; purchases of personal protective equipment; support for prevention, mitigation, or other services in congregate living facilities (*e.g.*, nursing homes, incarceration settings, homeless shelters, group living facilities) and other key settings like schools;[40] ventilation improvements in congregate settings, health care settings, or other key locations; enhancement of public health data systems; and other public health responses.[41] They also include capital investments in public facilities to meet pandemic operational needs, such as physical plant improvements to public hospitals and health clinics or adaptations to public buildings to implement COVID–19 mitigation tactics. These COVID–19 prevention and mitigation programs and services, among others, were eligible expenditures under the CRF and are eligible uses under this category of eligible uses for the Fiscal Recovery Funds.[42]
- *Medical Expenses.* The COVID–19 public health emergency continues to have devastating effects on public health; the United States continues to average hundreds of deaths per day and the spread of new COVID–19 variants has raised new risks and genomic surveillance needs.[43] Moreover, our understanding of the potentially serious and long-term effects of the virus is growing, including the potential for symptoms like shortness of breath to continue for weeks or months, for multi-organ impacts from COVID–19, or for post-intensive care syndrome.[44] State and local governments may need to continue to provide care and services to address these near- and longer-term needs.[45]

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

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

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

[37] Milena Almagro et al., Racial Disparities in Frontline Workers and Housing Crowding During COVID–19: Evidence from Geolocation Data (Sept. 22, 2020), NYU Stern School of Business (forthcoming), *available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3695249;* Grace McCormack et al., Economic Vulnerability of Households with Essential Workers, JAMA 324(4):388–90 (2020), *available at https://jamanetwork.com/journals/jama/fullarticle/2767630.*

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

[39] *See, e.g.*, Centers for Disease Control and Prevention, *supra* note 34; Benfer & Wiley, *supra* note 38; Nathaniel M. Lewis et al., Disparities in COVID–19 Incidence, Hospitalizations, and Testing, by Area-Level Deprivation—Utah, March 3–July 9, 2020, Morb. Mortal. Wkly. Rep. 69(38):1369–73 (Sept. 25, 2020), *https://www.cdc.gov/mmwr/volumes/69/wr/mm6938a4.htm.*

[40] This includes implementing mitigation strategies consistent with the Centers for Disease Control and Prevention's (CDC) Operational Strategy for K–12 Schools through Phased Prevention, *available at https://www.cdc.gov/coronavirus/2019-ncov/community/schools-childcare/operation-strategy.html.*

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

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

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

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

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

• *Behavioral Health Care.* In addition, new or enhanced State, local, and Tribal government services may be needed to meet behavioral health needs exacerbated by the pandemic and respond to other public health impacts. These services include mental health treatment, substance misuse treatment, other behavioral health services, hotlines or warmlines, crisis intervention, overdose prevention, infectious disease prevention, and services or outreach to promote access to physical or behavioral health primary care and preventative medicine.

• *Public Health and Safety Staff.* Treasury recognizes that responding to the public health and negative economic impacts of the pandemic, including administering the services described above, requires a substantial commitment of State, local, and Tribal government human resources. As a result, the Fiscal Recovery Funds may be used for payroll and covered benefits expenses for public safety, public health, health care, human services, and similar employees, to the extent that their services are devoted to mitigating or responding to the COVID–19 public health emergency.[46] Accordingly, the Fiscal Recovery Funds may be used to support the payroll and covered benefits for the portion of the employee's time that is dedicated to responding to the COVID–19 public health emergency. For administrative convenience, the recipient may consider public health and safety employees to be entirely devoted to mitigating or responding to the COVID–19 public health emergency, and therefore fully covered, if the employee, or his or her operating unit or division, is primarily dedicated to responding to the COVID–19 public health emergency. Recipients may consider other presumptions for assessing the extent to which an employee, division, or operating unit is engaged in activities that respond to the COVID–19 public health emergency, provided that the recipient reassesses periodically and maintains records to support its assessment, such as payroll records, attestations from supervisors or staff, or regular work product or correspondence demonstrating work on the COVID–19 response. Recipients need not routinely track staff hours.

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

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

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

• Funding community health workers to help community members access health services and services to address the social determinants of health;[49]

• Funding public benefits navigators to assist community members with navigating and applying for available Federal, State, and local public benefits or services;

• Housing services to support healthy living environments and neighborhoods conducive to mental and physical wellness;

• Remediation of lead paint or other lead hazards to reduce risk of elevated blood lead levels among children; and

• Evidence-based community violence intervention programs to prevent violence and mitigate the increase in violence during the pandemic.[50]

2. Responding to Negative Economic Impacts

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

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

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

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

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

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

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

education, and travel declined precipitously, over 20 million jobs were lost in March and April 2020.[51] Although many have returned to work, as of April 2021, the economy remains 8.2 million jobs below its pre-pandemic peak,[52] and more than 3 million workers have dropped out of the labor market altogether relative to February 2020.[53]

Rates of unemployment are particularly severe among workers of color and workers with lower levels of educational attainment; for example, the overall unemployment rate in the United States was 6.1 percent in April 2021, but certain groups saw much higher rates: 9.7 percent for Black workers, 7.9 percent for Hispanic or Latino workers, and 9.3 percent for workers without a high school diploma.[54] Job losses have also been particularly steep among low wage workers, with these workers remaining furthest from recovery as of the end of 2020.[55] A severe recession—and its concentrated impact among low-income workers—has amplified food and housing insecurity, with an estimated nearly 17 million adults living in households where there is sometimes or often not enough food to eat and an estimated 10.7 million adults living in households that were not current on rent.[56] Over the course of the pandemic, inequities also manifested along gender lines, as schools closed to in-person activities, leaving many working families without child care during the day.[57] Women of color have been hit especially hard: The labor force participation rate for Black women has fallen by 3.2 percentage points[58] during the pandemic as compared to 1.0 percentage points for Black men[59] and 2.0 percentage points for White women.[60]

As the economy recovers, the effects of the pandemic-related recession may continue to impact households, including a risk of longer-term effects on earnings and economic potential. For example, unemployed workers, especially those who have experienced longer periods of unemployment, earn lower wages over the long term once rehired.[61] In addition to the labor market consequences for unemployed workers, recessions can also cause longer-term economic challenges through, among other factors, damaged consumer credit scores[62] and reduced familial and childhood wellbeing.[63] These potential long-term economic consequences underscore the continued need for robust policy support.

Impacts on Businesses. The pandemic has also severely impacted many businesses, with small businesses hit especially hard. Small businesses make up nearly half of U.S. private-sector employment[64] and play a key role in supporting the overall economic recovery as they are responsible for two-thirds of net new jobs.[65] Since the beginning of the pandemic, however, 400,000 small businesses have closed, with many more at risk.[66] Sectors with a large share of small business employment have been among those with the most drastic drops in employment.[67] The negative outlook for small businesses has continued: As of April 2021, approximately 70 percent of small businesses reported that the pandemic has had a moderate or large negative effect on their business, and over a third expect that it will take over 6 months for their business to return to their normal level of operations.[68]

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

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

[52] *Id.*

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

[54] U.S. Bureau of Labor Statistics, Labor Force Statistics from the Current Population Survey: Employment status of the civilian population by sex and age (May 8 2021), *https://www.bls.gov/news.release/empsit.t01.htm* (last visited May 8, 2021); U.S. Bureau of Labor Statistics, Labor Force Statistics from the Current Population Survey: Employment status of the civilian noninstitutional population by race, Hispanic or Latino ethnicity, sex, and age (May 8, 2021), *https://www.bls.gov/web/empsit/cpseea04.htm* (last visited May 8, 2021); U.S. Bureau of Labor Statistics, Labor Force Statistics from the Current Population Survey: Employment status of the civilian noninstitutional population 25 years and over by educational attainment (May 8, 2021), *https://www.bls.gov/web/empsit/cpseea05.htm* (last visited May 8, 2021).

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

[56] Center on Budget and Policy Priorities, Tracking the COVID–19 Recession's Effects on Food, Housing, and Employment Hardships, *https://www.cbpp.org/research/poverty-and-inequality/tracking-the-covid-19-recessions-effects-on-food-housing-and* (last visited May 8, 2021).

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

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

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

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

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

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

[63] Irwin Garfinkel, Sara McLanahan, Christopher Wimer, eds., Children of the Great Recession, Russell Sage Foundation (Aug. 2016), *available at https://www.russellsage.org/publications/children-great-recession.*

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

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

[66] Biden, *supra* note 6.

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

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

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

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

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

economic and financial challenges due to the pandemic.[72]

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

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

The negative economic impacts of the COVID–19 pandemic are particularly pronounced in certain communities and families. Low- and moderate-income jobs make up a substantial portion of both total pandemic job losses,[74] and jobs that require in-person frontline work, which are exposed to greater risk of contracting COVID–19.[75] Both factors compound pre-existing vulnerabilities and the likelihood of food, housing, or other financial insecurity in low- and moderate-income families and, given the concentration of low- and moderate-income families within certain communities,[76] raise a substantial risk that the effects of the COVID–19 public health emergency will be amplified within these communities.

These compounding effect of recessions on concentrated poverty and the long-lasting nature of this effect were observed after the 2007–2009 recession, including a large increase in concentrated poverty with the number of people living in extremely poor neighborhoods more than doubling by 2010–2014 relative to 2000.[77] Concentrated poverty has a range of deleterious impacts, including additional burdens on families and reduced economic potential and social cohesion.[78] Given the disproportionate impact of COVID–19 on low-income households discussed above, there is a risk that the current pandemic-induced recession could further increase concentrated poverty and cause long-term damage to economic prospects in neighborhoods of concentrated poverty.

The negative economic impacts of COVID–19 also include significant impacts to children in disproportionately affected families and include impacts to education, health, and welfare, all of which contribute to long-term economic outcomes.[79] Many low-income and minority students, who were disproportionately served by remote or hybrid education during the pandemic, lacked the resources to participate fully in remote schooling or live in households without adults available throughout the day to assist with online coursework.[80] Given these trends, the pandemic may widen educational disparities and worsen outcomes for low-income students,[81] an effect that would substantially impact their long-term economic outcomes. Increased economic strain or material hardship due to the pandemic could also have a long-term impact on health, educational, and economic outcomes of young children.[82] Evidence suggests that adverse conditions in early childhood, including exposure to poverty, food insecurity, housing insecurity, or other economic hardships, are particularly impactful.[83]

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

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

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

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

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

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

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

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

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

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

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

[81] A Department of Education survey found that, as of February 2021, 42 percent of fourth grade students nationwide were offered only remote education, compared to 48 percent of economically disadvantaged students, 54 percent of Black students and 57 percent of Hispanic students. Large districts often disproportionately serve low-income students. *See* Institute of Education Sciences, Monthly School Survey Dashboard, *https://ies.ed.gov/schoolsurvey/* (last visited Apr. 26, 2021). In summer 2020, a review found that 74 percent of the largest 100 districts chose remote learning only. *See* Education Week, School Districts' Reopening Plans: A Snapshot (Jul. 15, 2020), *https://www.edweek.org/leadership/school-districts-reopening-plans-a-snapshot/2020/07* (last visited May 4, 2021).

[82] HHS, *supra* note 79.

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

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

[85] Moreno & Sobrepena, *supra* note 73.

eligible under this category, the recipient should assess whether, and the extent to which, there has been an economic harm, such as loss of earnings or revenue, that resulted from the COVID–19 public health emergency and whether, and the extent to which, the use would respond or address this harm.[86] A recipient should first consider whether an economic harm exists and whether this harm was caused or made worse by the COVID–19 public health emergency. While economic impacts may either be immediate or delayed, assistance or aid to individuals or businesses that did not experience a negative economic impact from the public health emergency would not be an eligible use under this category.

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

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

- *Assistance to Unemployed Workers.* This includes assistance to unemployed workers, including services like job training to accelerate rehiring of unemployed workers; these services may extend to workers unemployed due to the pandemic or the resulting recession, or who were already unemployed when the pandemic began and remain so due to the negative economic impacts of the pandemic.
- *State Unemployment Insurance Trust Funds.* Consistent with the approach taken in the CRF, recipients may make deposits into the state account of the Unemployment Trust Fund established under section 904 of the Social Security Act (42 U.S.C. 1104) up to the level needed to restore the pre-pandemic balances of such account as of January 27, 2020 or to pay back advances received under Title XII of the Social Security Act (42 U.S.C. 1321) for the payment of benefits between January 27, 2020 and May 17, 2021, given the close nexus between Unemployment Trust Fund costs, solvency of Unemployment Trust Fund systems, and pandemic economic impacts. Further, Unemployment Trust Fund deposits can decrease fiscal strain on Unemployment Insurance systems impacted by the pandemic. States facing a sharp increase in Unemployment Insurance claims during the pandemic may have drawn down positive Unemployment Trust Fund balances and, after exhausting the balance, required advances to fund continuing obligations to claimants. Because both of these impacts were driven directly by the need for assistance to unemployed workers during the pandemic, replenishing Unemployment Trust Funds up to the pre-pandemic level responds to the pandemic's negative economic impacts on unemployed workers.
- *Assistance to Households.* Assistance to households or populations facing negative economic impacts due to COVID–19 is also an eligible use. This includes: Food assistance; rent, mortgage, or utility assistance; counseling and legal aid to prevent eviction or homelessness; cash assistance (discussed below); emergency assistance for burials, home repairs, weatherization, or other needs; internet access or digital literacy assistance; or job training to address negative economic or public health impacts experienced due to a worker's occupation or level of training. As discussed above, in considering whether a potential use is eligible under this category, a recipient must consider whether, and the extent to which, the household has experienced a negative economic impact from the pandemic. In assessing whether a household or population experienced economic harm as a result of the pandemic, a recipient may presume that a household or population that experienced unemployment or increased food or housing insecurity or is low- or moderate-income experienced negative economic impacts resulting from the pandemic. For example, a cash transfer program may focus on unemployed workers or low- and moderate-income families, which have faced disproportionate economic harms due to the pandemic. Cash transfers must be reasonably proportional to the negative economic impact they are intended to address. Cash transfers grossly in excess of the amount needed to address the negative economic impact identified by the recipient would not be considered to be a response to the COVID–19 public health emergency or its negative impacts. In particular, when considering the appropriate size of permissible cash transfers made in response to the COVID–19 public health emergency, State, local and Tribal governments may consider and take guidance from the per person amounts previously provided by the Federal Government in response to the COVID–19 crisis. Cash transfers that are grossly in excess of such amounts would be outside the scope of eligible uses under sections 602(c)(1)(A) and 603(c)(1)(A) and could be subject to recoupment. In addition, a recipient could provide survivor's benefits to surviving family members of COVID–19 victims, or cash assistance to widows, widowers, and dependents of eligible COVID–19 victims.
- *Expenses to Improve Efficacy of Economic Relief Programs.* State, local, and Tribal governments may use payments from the Fiscal Recovery Funds to improve efficacy of programs addressing negative economic impacts, including through use of data analysis, targeted consumer outreach, improvements to data or technology infrastructure, and impact evaluations.
- *Small Businesses and Non-profits.* As discussed above, small businesses and non-profits faced significant challenges in covering payroll, mortgages or rent, and other operating costs as a result of the public health emergency and measures taken to contain the spread of the virus. State, local, and Tribal governments may provide assistance to small businesses to adopt safer operating procedures, weather periods of closure, or mitigate financial hardship resulting from the COVID–19 public health emergency, including:
  - Loans or grants to mitigate financial hardship such as declines in revenues or impacts of periods of business closure, for example by supporting payroll and benefits costs, costs to retain employees, mortgage, rent, or utilities costs, and other operating costs;
  - Loans, grants, or in-kind assistance to implement COVID–19 prevention or mitigation tactics, such as physical

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

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

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

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

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

• *Aid to Impacted Industries.* Sections 602(c)(1)(A) and 603(c)(1)(A) recognize that certain industries, such as tourism, travel, and hospitality, were disproportionately and negatively impacted by the COVID–19 public health emergency. Aid provided to tourism, travel, and hospitality industries should respond to the negative economic impacts of the pandemic on those and similarly impacted industries. For example, aid may include assistance to implement COVID–19 mitigation and infection prevention measures to enable safe resumption of tourism, travel, and hospitality services, for example, improvements to ventilation, physical barriers or partitions, signage to facilitate social distancing, provision of masks or personal protective equipment, or consultation with infection prevention professionals to develop safe reopening plans.

Aid may be considered responsive to the negative economic impacts of the pandemic if it supports businesses, attractions, business districts, and Tribal development districts operating prior to the pandemic and affected by required closures and other efforts to contain the pandemic. For example, a recipient may provide aid to support safe reopening of businesses in the tourism, travel, and hospitality industries and to business districts that were closed during the COVID–19 public health emergency, as well as aid for a planned expansion or upgrade of tourism, travel, and hospitality facilities delayed due to the pandemic.

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

To facilitate transparency and accountability, the interim final rule requires that State, local, and Tribal governments publicly report assistance provided to private-sector businesses under this eligible use, including tourism, travel, hospitality, and other impacted industries, and its connection to negative economic impacts of the pandemic. Recipients also should maintain records to support their assessment of how businesses or business districts receiving assistance were affected by the negative economic impacts of the pandemic and how the aid provided responds to these impacts.

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

Specifically, Treasury will presume that certain types of services, outlined below, are eligible uses when provided in a QCT, to families and individuals living in QCTs, or when these services are provided by Tribal governments.[90] Recipients may also provide these services to other populations, households, or geographic areas disproportionately impacted by the pandemic. In identifying these disproportionately impacted communities, recipients should be able to support their determination that the pandemic resulted in disproportionate public health or economic outcomes to the specific populations, households, or geographic areas to be served. The interim final rule identifies a non-exclusive list of uses that address the disproportionate negative economic effects of the COVID–19 public health emergency, including:

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

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

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

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

[90] HUD, *supra* note 48.

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

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

- Services to address homelessness such as supportive housing, and to improve access to stable, affordable housing among unhoused individuals;
- Affordable housing development to increase supply of affordable and high-quality living units; and
- Housing vouchers, residential counseling, or housing navigation assistance to facilitate household moves to neighborhoods with high levels of economic opportunity and mobility for low-income residents, to help residents increase their economic opportunity and reduce concentrated areas of low economic opportunity.[93]

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

- New, expanded, or enhanced early learning services, including pre-kindergarten, Head Start, or partnerships between pre-kindergarten programs and local education authorities, or administration of those services;
- Providing assistance to high-poverty school districts to advance equitable funding across districts and geographies;
- Evidence-based educational services and practices to address the academic needs of students, including tutoring, summer, afterschool, and other extended learning and enrichment programs; and
- Evidence-based practices to address the social, emotional, and mental health needs of students;

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

- New or expanded high-quality childcare to provide safe and supportive care for children;
- Home visiting programs to provide structured visits from health, parent educators, and social service professionals to pregnant women or families with young children to offer education and assistance navigating resources for economic support, health needs, or child development; and
- Enhanced services for child welfare-involved families and foster youth to provide support and training on child development, positive parenting, coping skills, or recovery for mental health and substance use challenges.

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

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

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

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

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

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

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

[94] *See* supra notes 52 and 84.

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

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

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

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

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

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

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

Question 6: What other measures, presumptions, or considerations could be used to assess "impacted industries" affected by the COVID–19 public health emergency?

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

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

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

B. Premium Pay

Fiscal Recovery Funds payments may be used by recipients to provide premium pay to eligible workers performing essential work during the COVID–19 public health emergency or to provide grants to third-party employers with eligible workers performing essential work.[95] These are workers who have been and continue to be relied on to maintain continuity of operations of essential critical infrastructure sectors, including those who are critical to protecting the health and wellbeing of their communities.

Since the start of the COVID–19 public health emergency in January 2020, essential workers have put their physical wellbeing at risk to meet the daily needs of their communities and to provide care for others. In the course of this work, many essential workers have contracted or died of COVID–19.[96] Several examples reflect the severity of the health impacts for essential workers. Meat processing plants became "hotspots" for transmission, with 700 new cases reported at a single plant on a single day in May 2020.[97] In New York City, 120 employees of the Metropolitan Transit Authority were estimated to have died due to COVID–19 by mid-May 2020, with nearly 4,000 testing positive for the virus.[98] Furthermore, many essential workers are people of color or low-wage workers.[99] These workers, in particular, have borne a disproportionate share of the health and economic impacts of the pandemic. Such workers include:

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

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

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

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

[97] *See, e.g.*, The Lancet, The plight of essential workers during the COVID–19 pandemic, Vol. 395, Issue 10237:1587 (May 23, 2020), *available at https://www.thelancet.com/journals/lancet/article/PIIS0140-6736%2820%2931200-9/fulltext.*

[98] *Id.*

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

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

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

The Fiscal Recovery Funds will help respond to the needs of essential workers by allowing recipients to remunerate essential workers for the elevated health risks they have faced and continue to face during the public health emergency. To ensure that premium pay is targeted to workers that faced or face heightened risks due to the character of their work, the interim final rule defines essential work as work involving regular in-person interactions or regular physical handling of items that were also handled by others. A worker would not be engaged in essential work and, accordingly may not receive premium pay, for telework performed from a residence.

Sections 602(g)(2) and 603(g)(2) define eligible worker to mean "those workers needed to maintain continuity of operations of essential critical infrastructure sectors and additional sectors as each Governor of a State or territory, or each Tribal government, may designate as critical to protect the health and well-being of the residents of their State, territory, or Tribal government."[103] The rule incorporates this definition and provides a list of industries recognized as essential critical infrastructure sectors.[104] These sectors include healthcare, public health and safety, childcare, education, sanitation, transportation, and food production and services, among others as noted above. As provided under sections 602(g)(2) and 603(g)(2), the chief executive of each recipient has discretion to add additional sectors to this list, so long as additional sectors are deemed critical to protect the health and well-being of residents.

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

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

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

Furthermore, because premium pay is intended to compensate essential workers for heightened risk due to COVID–19, it must be entirely additive to a worker's regular rate of wages and other remuneration and may not be used to reduce or substitute for a worker's normal earnings. The definition of premium pay also clarifies that premium pay may be provided retrospectively for work performed at any time since the start of the COVID–19 public health emergency, where those workers have yet to be compensated adequately for work previously performed.[107] Treasury encourages recipients to prioritize providing retrospective premium pay where possible, recognizing that many essential workers have not yet received additional compensation for work conducted over the course of many

[101] McCormack, *supra* note 37.

[102] *Id.*

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

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

[105] County median annual wage is taken to be that of the metropolitan or nonmetropolitan area that includes the county. *See* U.S. Bureau of Labor Statistics, State Occupational Employment and Wage Estimates, *https://www.bls.gov/oes/current/oessrcst.htm* (last visited May 1, 2021); U.S. Bureau of Labor Statistics, May 2020 Metropolitan and Nonmetropolitan Area Estimates listed by county or town, *https://www.bls.gov/oes/current/county_links.htm* (last visited May 1, 2021).

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

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

months. Essential workers who have already earned premium pay for essential work performed during the COVID–19 public health emergency remain eligible for additional payments, and an essential worker may receive both retrospective premium pay for prior work as well as prospective premium pay for current or ongoing work.

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

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

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

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

C. Revenue Loss

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

Many State, local, and Tribal governments are experiencing significant budget shortfalls, which can have a devastating impact on communities. State government tax revenue from major sources were down 4.3 percent in the six months ended September 2020, relative to the same period 2019.[109] At the local level, nearly 90 percent of cities have reported being less able to meet the fiscal needs of their communities and, on average, cities expect a double-digit decline in general fund revenues in their fiscal year 2021.[110] Similarly, surveys of Tribal governments and Tribal enterprises found majorities of respondents reporting substantial cost increases and revenue decreases, with Tribal governments reporting reductions in healthcare, housing, social services, and economic development activities as a result of reduced revenues.[111] These budget shortfalls are particularly problematic in the current environment, as State, local, and Tribal governments work to mitigate and contain the COVID–19 pandemic and help citizens weather the economic downturn.

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

Sections 602(c)(1)(C) and 603(c)(1)(C) of the Act allow recipients facing budget shortfalls to use payments from the Fiscal Recovery Funds to avoid cuts to government services and, thus, enable State, local, and Tribal governments to continue to provide valuable services and ensure that fiscal austerity measures do not hamper the broader economic recovery. The interim final rule implements these provisions by establishing a definition of "general revenue" for purposes of calculating a loss in revenue and by providing a methodology for calculating revenue lost due to the COVID–19 public health emergency.

General Revenue. The interim final rule adopts a definition of "general revenue" based largely on the components reported under "General Revenue from Own Sources" in the Census Bureau's Annual Survey of State and Local Government Finances, and for purposes of this interim final rule, helps to ensure that the components of general revenue would be calculated in a consistent manner.[115] By relying on a methodology that is both familiar and comprehensive, this approach minimizes burden to recipients and provides consistency in the measurement of general revenue across a diverse set of recipients.

The interim final rule defines the term "general revenue" to include revenues collected by a recipient and generated from its underlying economy and would capture a range of different types of tax revenues, as well as other types of revenue that are available to support government services.[116] In calculating revenue, recipients should sum across all revenue streams covered as general revenue. This approach minimizes the administrative burden for recipients, provides for greater consistency across recipients, and presents a more accurate representation of the overall impact of

[108] ARPA, *supra* note 16.

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

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

[111] Surveys conducted by the Center for Indian Country Development at the Federal Reserve Bank of Minneapolis in March, April, and September 2020. *See* Moreno & Sobrepena, *supra* note 73.

[112] *See, e.g.,* Fitzpatrick, Haughwout & Setren, Fiscal Drag from the State and Local Sector?, Liberty Street Economics Blog, Federal Reserve Bank of New York (June 27, 2012), *https://www.libertystreeteconomics.newyorkfed.org/2012/06/fiscal-drag-from-the-state-and-local-sector.html;* Jiri Jonas, Great Recession and Fiscal Squeeze at U.S. Subnational Government Level, IMF Working Paper 12/184, (July 2012), *available at https://www.imf.org/external/pubs/ft/wp/2012/wp12184.pdf;* Gordon, *supra* note 9.

[113] State and local government general revenue from own sources, adjusted for inflation using the GDP price index. U.S. Census Bureau, Annual Survey of State Government Finances and U.S. Bureau of Economic Analysis, National Income and Product Accounts.

[114] U.S. Bureau of Labor Statistics, All Employees, State Government [CES9092000001] and All Employees, Local Government [CES9093000001], retrieved from FRED, Federal Reserve Bank of St. Louis, *https://fred.stlouisfed.org/series/CES9092000001* and *https://fred.stlouisfed.org/series/CES9093000001* (last visited Apr. 27, 2021).

[115] U.S. Census Bureau, Annual Survey of State and Local Government Finances, *https://www.census.gov/programs-surveys/gov-finances.html* (last visited Apr. 30, 2021).

[116] The interim final rule would define tax revenue in a manner consistent with the Census Bureau's definition of tax revenue, with certain changes (*i.e.,* inclusion of revenue from liquor stores and certain intergovernmental transfers). Current charges are defined as "charges imposed for providing current services or for the sale of products in connection with general government activities." It includes revenues such as public education institution, public hospital, and toll revenues. Miscellaneous general revenue comprises of all other general revenue of governments from their own sources (*i.e.,* other than liquor store, utility, and insurance trust revenue), including rents, royalties, lottery proceeds, and fines.

the COVID–19 public health emergency on a recipient's revenue, rather than relying on financial reporting prepared by each recipient, which vary in methodology used and which generally aggregates revenue by purpose rather than by source.[117]

Consistent with the Census Bureau's definition of "general revenue from own sources," the definition of general revenue in the interim final rule would exclude refunds and other correcting transactions, proceeds from issuance of debt or the sale of investments, and agency or private trust transactions. The definition of general revenue also would exclude revenue generated by utilities and insurance trusts. In this way, the definition of general revenue focuses on sources that are generated from economic activity and are available to fund government services, rather than a fund or administrative unit established to account for and control a particular activity.[118] For example, public utilities typically require financial support from the State, local, or Tribal government, rather than providing revenue to such government, and any revenue that is generated by public utilities typically is used to support the public utility's continued operation, rather than being used as a source of revenue to support government services generally.

The definition of general revenue would include all revenue from Tribal enterprises, as this revenue is generated from economic activity and is available to fund government services. Tribes are not able to generate revenue through taxes in the same manner as State and local governments and, as a result, Tribal enterprises are critical sources of revenue for Tribal governments that enable Tribal governments to provide a range of services, including elder care, health clinics, wastewater management, and forestry.

Finally, the term "general revenue" includes intergovernmental transfers between State and local governments, but excludes intergovernmental transfers from the Federal Government, including Federal transfers made via a State to a local government pursuant to the CRF or as part of the Fiscal Recovery Funds. States and local governments often share or collect revenue on behalf of one another, which results in intergovernmental transfers. When attributing revenue to a unit of government, the Census Bureau's methodology considers which unit of government imposes, collects, and retains the revenue and assigns the revenue to the unit of government that meets at least two of those three factors.[119] For purposes of measuring loss in general revenue due to the COVID–19 public health emergency and to better allow continued provision of government services, the retention and ability to use the revenue is a more critical factor. Accordingly, and to better measure the funds available for the provision of government services, the definition of general revenue would include intergovernmental transfers from States or local governments other than funds transferred pursuant to ARPA, CRF, or another Federal program. This formulation recognizes the importance of State transfers for local government revenue.[120]

Calculation of Loss. In general, recipients will compute the extent of the reduction in revenue by comparing actual revenue to a counterfactual trend representing what could have been expected to occur in the absence of the pandemic. This approach measures losses in revenue relative to the most recent fiscal year prior to the COVID–19 public health emergency by using the most recent pre-pandemic fiscal year as the starting point for estimates of revenue growth absent the pandemic. In other words, the counterfactual trend starts with the last full fiscal year prior to the COVID–19 public health emergency and then assumes growth at a constant rate in the subsequent years. Because recipients can estimate the revenue shortfall at multiple points in time throughout the covered period as revenue is collected, this approach accounts for variation across recipients in the timing of pandemic impacts.[121] Although revenue may decline for reasons unrelated to the COVID–19 public health emergency, to minimize the administrative burden on recipients and taking into consideration the devastating effects of the COVID–19 public health emergency, any diminution in actual revenues relative to the counterfactual pre-pandemic trend would be presumed to have been due to the COVID–19 public health emergency.

For purposes of measuring revenue growth in the counterfactual trend, recipients may use a *growth adjustment* of either 4.1 percent per year or the recipient's average annual revenue growth over the three full fiscal years prior to the COVID–19 public health emergency, whichever is higher. The option of 4.1 percent represents the average annual growth across all State and local government "General Revenue from Own Sources" in the most recent three years of available data.[122] This approach provides recipients with a standardized growth adjustment when calculating the counterfactual revenue trend and thus minimizes administrative burden, while not disadvantaging recipients with revenue growth that exceeded the national average prior to the COVID–19 public health emergency by permitting these recipients to use their own revenue growth rate over the preceding three years.

Recipients should calculate the extent of the reduction in revenue as of four points in time: December 31, 2020; December 31, 2021; December 31, 2022; and December 31, 2023. To calculate the extent of the reduction in revenue at each of these dates, recipients should follow a four-step process:

- *Step 1:* Identify revenues collected in the most recent full fiscal year prior to the public health emergency (*i.e.,* last full fiscal year before January 27, 2020), called the *base year revenue.*
- *Step 2:* Estimate *counterfactual revenue,* which is equal to *base year revenue* * [(1 + *growth adjustment*) ^ (*n*/12)], where *n* is the number of months elapsed since the end of the base year to the calculation date, and *growth adjustment* is the greater of 4.1 percent and the recipient's average annual revenue growth in the three full fiscal

[117] Fund-oriented reporting, such as what is used under the Governmental Accounting Standards Board (GASB), focuses on the types of uses and activities funded by the revenue, as opposed to the economic activity from which the revenue is sourced. *See* Governmental Accounting Standards Series, Statement No. 54 of the Governmental Accounting Standards Board: Fund Balance Reporting and Governmental Fund Type Definitions, No. 287–B (Feb. 2009).

[118] *Supra* note 116.

[119] U.S. Census Bureau, Government Finance and Employment Classification Manual (Dec. 2000), *https://www2.census.gov/govs/class/classfull.pdf.*

[120] For example, in 2018, state transfers to localities accounted for approximately 27 percent of local revenues. U.S. Census Bureau, Annual Survey of State and Local Government Finances, Table 1 (2018), *https://www.census.gov/data/datasets/2018/econ/local/public-use-datasets.html.*

[121] For example, following the 2007–09 recession, local government property tax collections did not begin to decline until 2011, suggesting that property tax collection declines can lag downturns. *See* U.S. Bureau of Economic Analysis, Personal current taxes: State and local: Property taxes [S210401A027NBEA], retrieved from Federal Reserve Economic Data, Federal Reserve Bank of St. Louis, *https://fred.stlouisfed.org/graph/?g=r3YI* (last visited Apr. 22, 2021). Estimating the reduction in revenue at points throughout the covered period will allow for this type of lagged effect to be taken into account during the covered period.

[122] Together with revenue from liquor stores from 2015 to 2018. This estimate does not include any intergovernmental transfers. A recipient using the three-year average to calculate their growth adjustment must be based on the definition of general revenue, including treatment of intergovernmental transfers. 2015–2018 represents the most recent available data. *See* U.S. Census Bureau, State & Local Government Finance Historical Datasets and Tables (2018), *https://www.census.gov/programs-surveys/gov-finances/data/datasets.html.*

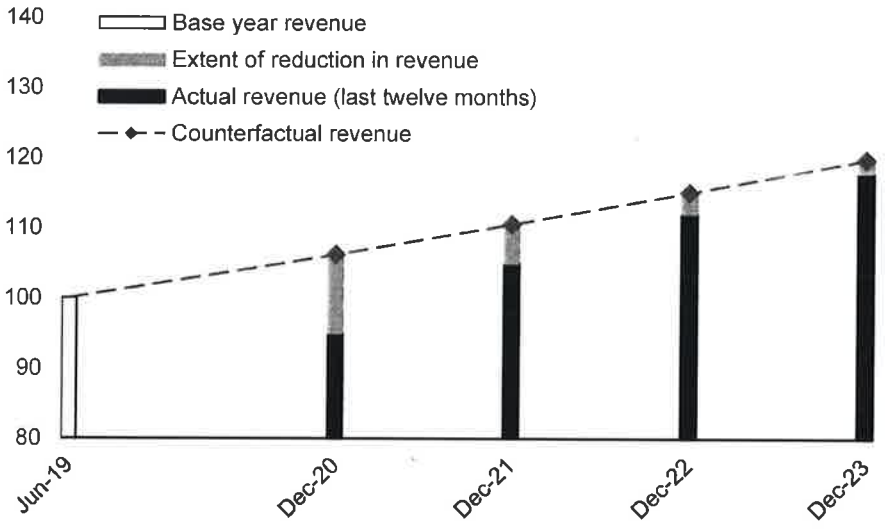
years prior to the COVID–19 public health emergency.

- *Step 3:* Identify *actual revenue,* which equals revenues collected over the past twelve months as of the calculation date.
- *Step 4:* The extent of the reduction in revenue is equal to *counterfactual revenue* less *actual revenue.* If actual revenue exceeds counterfactual revenue, the extent of the reduction in revenue is set to zero for that calculation date.

For illustration, consider a hypothetical recipient with *base year revenue* equal to 100. In Step 2, the hypothetical recipient finds that 4.1 percent is greater than the recipient's average annual revenue growth in the three full fiscal years prior to the public health emergency. Furthermore, this recipient's base year ends June 30. In this illustration, *n* (months elapsed) and *counterfactual revenue* would be equal to:

As of:	12/31/2020	12/31/2021	12/31/2022	12/31/2023
n (months elapsed)	18	30	42	54
Counterfactual revenue:	106.2	110.6	115.1	119.8

The overall methodology for calculating the reduction in revenue is illustrated in the figure below:



Upon receiving Fiscal Recovery Fund payments, recipients may immediately calculate revenue loss for the period ending December 31, 2020.

Sections 602(c)(1)(C) and 603(c)(1)(C) of the Act provide recipients with broad latitude to use the Fiscal Recovery Funds for the provision of government services. Government services can include, but are not limited to, maintenance or pay-go funded building [123] of infrastructure, including roads; modernization of cybersecurity, including hardware, software, and protection of critical infrastructure; health services; environmental remediation; school or educational services; and the provision of police, fire, and other public safety services. However, expenses associated with obligations under instruments evidencing financial indebtedness for borrowed money would not be considered the provision of government services, as these financing expenses do not directly provide services or aid to citizens. Specifically, government services would not include interest or principal on any outstanding debt instrument, including, for example, short-term revenue or tax anticipation notes, or fees or issuance costs associated with the issuance of new debt. For the same reasons, government services would not include satisfaction of any obligation arising under or pursuant to a settlement agreement, judgment, consent decree, or judicially confirmed debt restructuring in a judicial, administrative, or regulatory proceeding, except if the judgment or settlement required the provision of government services. That is, satisfaction of a settlement or judgment itself is not a government service, unless the settlement required the provision of government services. In addition, replenishing financial reserves (*e.g.,* rainy day or other reserve funds) would not be considered provision of a government service, since such expenses do not directly relate to the provision of government services.

Question 13: Are there sources of revenue that either should or should not be included in the interim final rule's measure of "general revenue" for recipients? If so, discuss why these sources either should or should not be included.

Question 14: In the interim final rule, recipients are expected to calculate the reduction in revenue on an aggregate basis. Discuss the advantages and disadvantages of, and any potential concerns with, this approach, including circumstances in which it could be necessary or appropriate to calculate the reduction in revenue by source.

Question 15: Treasury is considering whether to take into account other factors, including actions taken by the recipient as well as the expiration of the COVID–19 public health emergency, in determining whether to presume that revenue losses are "due to" the COVID–

[123] Pay-go infrastructure funding refers to the practice of funding capital projects with cash-on-hand from taxes, fees, grants, and other sources, rather than with borrowed sums.

19 public health emergency. Discuss the advantages and disadvantages of this presumption, including when, if ever, during the covered period it would be appropriate to reevaluate the presumption that all losses are attributable to the COVID–19 public health emergency.

Question 16: Do recipients anticipate lagged revenue effects of the public health emergency? If so, when would these lagged effects be expected to occur, and what can Treasury to do support these recipients through its implementation of the program?

Question 17: In the interim final rule, paying interest or principal on government debt is not considered provision of a government service. Discuss the advantages and disadvantages of this approach, including circumstances in which paying interest or principal on government debt could be considered provision of a government service.

D. Investments in Infrastructure

To assist in meeting the critical need for investments and improvements to existing infrastructure in water, sewer, and broadband, the Fiscal Recovery Funds provide funds to State, local, and Tribal governments to make necessary investments in these sectors. The interim final rule outlines eligible uses within each category, allowing for a broad range of necessary investments in projects that improve access to clean drinking water, improve wastewater and stormwater infrastructure systems, and provide access to high-quality broadband service. Necessary investments are designed to provide an adequate minimum level of service and are unlikely to be made using private sources of funds. Necessary investments include projects that are required to maintain a level of service that, at least, meets applicable health-based standards, taking into account resilience to climate change, or establishes or improves broadband service to unserved or underserved populations to reach an adequate level to permit a household to work or attend school, and that are unlikely to be met with private sources of funds.[124]

It is important that necessary investments in water, sewer, or broadband infrastructure be carried out in ways that produce high-quality infrastructure, avert disruptive and costly delays, and promote efficiency. Treasury encourages recipients to ensure that water, sewer, and broadband projects use strong labor standards, including project labor agreements and community benefits agreements that offer wages at or above the prevailing rate and include local hire provisions, not only to promote effective and efficient delivery of high-quality infrastructure projects but also to support the economic recovery through strong employment opportunities for workers. Using these practices in construction projects may help to ensure a reliable supply of skilled labor that would minimize disruptions, such as those associated with labor disputes or workplace injuries.

To provide public transparency on whether projects are using practices that promote on-time and on-budget delivery, Treasury will seek information from recipients on their workforce plans and practices related to water, sewer, and broadband projects undertaken with Fiscal Recovery Funds. Treasury will provide additional guidance and instructions on the reporting requirements at a later date.

1. Water and Sewer Infrastructure

The ARPA provides funds to State, local, and Tribal governments to make necessary investments in water and sewer infrastructure.[125] By permitting funds to be used for water and sewer infrastructure needs, Congress recognized the critical role that clean drinking water and services for the collection and treatment of wastewater and stormwater play in protecting public health. Understanding that State, local, and Tribal governments have a broad range of water and sewer infrastructure needs, the interim final rule provides these governments with wide latitude to identify investments in water and sewer infrastructure that are of the highest priority for their own communities, which may include projects on privately-owned infrastructure. The interim final rule does this by aligning eligible uses of the Fiscal Recovery Funds with the wide range of types or categories of projects that would be eligible to receive financial assistance through the Environmental Protection Agency's (EPA) Clean Water State Revolving Fund (CWSRF) or Drinking Water State Revolving Fund (DWSRF).[126]

Established by the 1987 amendments[127] to the Clean Water Act (CWA),[128] the CWSRF provides financial assistance for a wide range of water infrastructure projects to improve water quality and address water pollution in a way that enables each State to address and prioritize the needs of their populations. The types of projects eligible for CWSRF assistance include projects to construct, improve, and repair wastewater treatment plants, control non-point sources of pollution, improve resilience of infrastructure to severe weather events, create green infrastructure, and protect waterbodies from pollution.[129] Each of the 51 State programs established under the CWSRF have the flexibility to direct funding to their particular environmental needs, and each State may also have its own statutes, rules, and regulations that guide project eligibility.[130]

The DWSRF was modeled on the CWSRF and created as part of the 1996 amendments to the Safe Drinking Water Act (SDWA),[131] with the principal objective of helping public water systems obtain financing for improvements necessary to protect public health and comply with drinking water regulations.[132] Like the CWSRF,

[124] Treasury notes that using funds to support or oppose collective bargaining would not be included as part of "necessary investments in water, sewer, or broadband infrastructure."

[125] Sections 602(c)(1)(D), 603(c)(1)(D) of the Act.

[126] Environmental Protection Agency, Drinking Water State Revolving fund, *https://www.epa.gov/dwsrf* (last visited Apr. 30, 2021); Environmental Protection Agency, Clean Water State Revolving Fund, *https://www.epa.gov/cwsrf* (last visited Apr. 30, 2021).

[127] Water Quality Act of 1987, Public Law 100–4.

[128] Federal Water Pollution Control Act as amended, codified at 33 U.S.C. 1251 *et seq.*, common name (Clean Water Act). In 2009, the American Recovery and Reinvestment Act created the Green Project Reserve, which increased the focus on green infrastructure, water and energy efficient, and environmentally innovative projects. Public Law 111–5. The CWA was amended by the Water Resources Reform and Development Act of 2014 to further expand the CWSRF's eligibilities. Public Law 113–121. *The CWSRF's eligibilities were further expanded in 2018 by the America's Water Infrastructure Act of 2018, Public Law 115–270.*

[129] *See* Environmental Protection Agency, The Drinking Water State Revolving Funds: Financing America's Drinking Water, EPA–816–R–00–023 (Nov. 2000), *https://nepis.epa.gov/Exe/ZyPDF.cgi/200024WB.PDF?Dockey=200024WB.PDF; See also* Environmental Protection Agency, *Learn About the Clean Water State Revolving Fund, https://www.epa.gov/cwsrf/learn-about-clean-water-state-revolving-fund-cwsrf (last visited Apr. 30, 2021).*

[130] 33 U.S.C. 1383(c). *See also Environmental Protection Agency, Overview of Clean Water State Revolving Fund Eligibilities (May 2016), https://www.epa.gov/sites/production/files/2016-07/documents/overview_of_cwsrf_eligibilities_may_2016.pdf; Claudia Copeland, Clean Water Act: A Summary of the Law, Congressional Research Service (Oct. 18, 2016), https://fas.org/sgp/crs/misc/RL30030.pdf; Jonathan L Ramseur, Wastewater Infrastructure: Overview, Funding, and Legislative Developments, Congressional Research Service (May 22, 2018), https://fas.org/sgp/crs/misc/R44963.pdf.*

[131] 42 U.S.C. 300j–12.

[132] Environmental Protection Agency, Drinking Water State Revolving Fund Eligibility Handbook, (June 2017), *https://www.epa.gov/sites/production/files/2017-06/documents/dwsrf_eligibility_handbook_june_13_2017_updated_508_version.pdf;* Environmental Protection Agency, Drinking Water

the DWSRF provides States with the flexibility to meet the needs of their populations.[133] The primary use of DWSRF funds is to assist communities in making water infrastructure capital improvements, including the installation and replacement of failing treatment and distribution systems.[134] In administering these programs, States must give priority to projects that ensure compliance with applicable health and environmental safety requirements; address the most serious risks to human health; and assist systems most in need on a per household basis according to State affordability criteria.[135]

By aligning use of Fiscal Recovery Funds with the categories or types of eligible projects under the existing EPA state revolving fund programs, the interim final rule provides recipients with the flexibility to respond to the needs of their communities while ensuring that investments in water and sewer infrastructure made using Fiscal Recovery Funds are necessary. As discussed above, the CWSRF and DWSRF were designed to provide funding for projects that protect public health and safety by ensuring compliance with wastewater and drinking water health standards.[136] The need to provide funding through the state revolving funds suggests that these projects are less likely to be addressed with private sources of funding; for example, by remediating failing or inadequate infrastructure, much of which is publicly owned, and by addressing non-point sources of pollution. This approach of aligning with the EPA state revolving fund programs also supports expedited project identification and investment so that needed relief for the people and communities most affected by the pandemic can deployed expeditiously and have a positive impact on their health and wellbeing as soon as possible. Further, the interim final rule is intended to preserve flexibility for award recipients to direct funding to their own particular needs and priorities and would not preclude recipients from applying their own additional project eligibility criteria.

In addition, responding to the immediate needs of the COVID–19 public health emergency may have diverted both personnel and financial resources from other State, local, and Tribal priorities, including projects to ensure compliance with applicable water health and quality standards and provide safe drinking and usable water.[137] Through sections 602(c)(1)(D) and 603(c)(1)(D), the ARPA provides resources to address these needs. Moreover, using Fiscal Recovery Funds in accordance with the priorities of the CWA and SWDA to "assist systems most in need on a per household basis according to state affordability criteria" would also have the benefit of providing vulnerable populations with safe drinking water that is critical to their health and, thus, their ability to work and learn.[138]

Recipients may use Fiscal Recovery Funds to invest in a broad range of projects that improve drinking water infrastructure, such as building or upgrading facilities and transmission, distribution, and storage systems, including replacement of lead service lines. Given the lifelong impacts of lead exposure for children, and the widespread nature of lead service lines, Treasury encourages recipients to consider projects to replace lead service lines.

Fiscal Recovery Funds may also be used to support the consolidation or establishment of drinking water systems. With respect to wastewater infrastructure, recipients may use Fiscal Recovery Funds to construct publicly owned treatment infrastructure, manage and treat stormwater or subsurface drainage water, facilitate water reuse, and secure publicly owned treatment works, among other uses. Finally, consistent with the CWSRF and DWSRF, Fiscal Recovery Funds may be used for cybersecurity needs to protect water or sewer infrastructure, such as developing effective cybersecurity practices and measures at drinking water systems and publicly owned treatment works.

Many of the types of projects eligible under either the CWSRF or DWSRF also support efforts to address climate change. For example, by taking steps to manage potential sources of pollution and preventing these sources from reaching sources of drinking water, projects eligible under the DWSRF and the ARPA may reduce energy required to treat drinking water. Similarly, projects eligible under the CWSRF include measures to conserve and reuse water or reduce the energy consumption of public water treatment facilities. Treasury encourages recipients to consider green infrastructure investments and projects to improve resilience to the effects of climate change. For example, more frequent and extreme precipitation events combined with construction and development trends have led to increased instances of stormwater runoff, water pollution, and flooding. Green infrastructure projects that support stormwater system resiliency could include rain gardens that provide water storage and filtration benefits, and green streets, where vegetation, soil, and engineered systems are combined to direct and filter rainwater from impervious surfaces. In cases of a natural disaster, recipients may also use Fiscal Recovery Funds to provide relief, such as interconnecting water systems or rehabilitating existing wells during an extended drought.

Question 18: What are the advantages and disadvantages of aligning eligible uses with the eligible project type requirements of the DWSRF and CWSRF? What other water or sewer project categories, if any, should Treasury consider in addition to DWSRF and CWSRF eligible projects? Should Treasury consider a broader general category of water and sewer projects?

Question 19: What additional water and sewer infrastructure categories, if any, should Treasury consider to address and respond to the needs of unserved, undeserved, or rural communities? How do these projects differ from DWSFR and CWSRF eligible projects?

Question 20: What new categories of water and sewer infrastructure, if any, should Treasury consider to support State, local, and Tribal governments in mitigating the negative impacts of climate change? Discuss emerging technologies and processes that support resiliency of water and sewer infrastructure. Discuss any challenges faced by States and local governments when pursuing or implementing climate resilient infrastructure projects.

Question 21: Infrastructure projects related to dams and reservoirs are generally not eligible under the CWSRF and DWSRF categories. Should Treasury consider expanding eligible

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Infrastructure Needs Survey and Assessment: Sixth Report to Congress (March 2018), *https://www.epa.gov/sites/production/files/2018-10/documents/corrected_sixth_drinking_water_infrastructure_needs_survey_and_assessment.pdf.*

[133] *Id.*

[134] *Id.*

[135] 42 U.S.C. 300j–12(b)(3)(A).

[136] Environmental Protection Agency, Learn About the Clean Water State Revolving Fund, *https://www.epa.gov/cwsrf/learn-about-clean-water-state-revolving-fund-cwsrf* (last visited Apr. 30, 2021); 42 U.S.C. 300j–12.

[137] House Committee on the Budget, State and Local Governments are in Dire Need of Federal Relief (Aug. 19, 2020), *https://budget.house.gov/publications/report/state-and-local-governments-are-dire-need-federal-relief.*

[138] Environmental Protection Agency, Drinking Water State Revolving Fund (Nov. 2019), *https://www.epa.gov/sites/production/files/2019-11/documents/fact_sheet_-_dwsrf_overview_final_0.pdf;* Environmental Protection Agency, National Benefits Analysis for Drinking Water Regulations, *https://www.epa.gov/sdwa/national-benefits-analysis-drinking-water-regulations* (last visited Apr. 30, 2020).

infrastructure under the interim final rule to include dam and reservoir projects? Discuss public health, environmental, climate, or equity benefits and costs in expanding the eligibility to include these types of projects.

2. Broadband Infrastructure

The COVID–19 public health emergency has underscored the importance of universally available, high-speed, reliable, and affordable broadband coverage as millions of Americans rely on the internet to participate in, among critical activities, remote school, healthcare, and work. Recognizing the need for such connectivity, the ARPA provides funds to State, territorial, local, and Tribal governments to make necessary investments in broadband infrastructure.

The National Telecommunications and Information Administration (NTIA) highlighted the growing necessity of broadband in daily lives through its analysis of NTIA Internet Use Survey data, noting that Americans turn to broadband internet access service for every facet of daily life including work, study, and healthcare.[139] With increased use of technology for daily activities and the movement by many businesses and schools to operating remotely during the pandemic, broadband has become even more critical for people across the country to carry out their daily lives.

By at least one measure, however, tens of millions of Americans live in areas where there is no broadband infrastructure that provides download speeds greater than 25 Mbps and upload speeds of 3 Mbps.[140] By contrast, as noted below, many households use upload and download speeds of 100 Mbps to meet their daily needs. Even in areas where broadband infrastructure exists, broadband access may be out of reach for millions of Americans because it is unaffordable, as the United States has some of the highest broadband prices in the Organisation for Economic Co-operation and Development (OECD).[141] There are disparities in availability as well; historically, Americans living in territories and Tribal lands as well as rural areas have disproportionately lacked sufficient broadband infrastructure.[142] Moreover, rapidly growing demand has, and will likely continue to, quickly outpace infrastructure capacity, a phenomenon acknowledged by various states around the country that have set scalability requirements to account for this anticipated growth in demand.[143]

The interim final rule provides that eligible investments in broadband are those that are designed to provide services meeting adequate speeds and are provided to unserved and underserved households and businesses. Understanding that States, territories, localities, and Tribal governments have a wide range of varied broadband infrastructure needs, the interim final rule provides award recipients with flexibility to identify the specific locations within their communities to be served and to otherwise design the project.

Under the interim final rule, eligible projects are expected to be designed to deliver, upon project completion, service that reliably meets or exceeds symmetrical upload and download speeds of 100 Mbps. There may be instances in which it would not be practicable for a project to deliver such service speeds because of the geography, topography, or excessive costs associated with such a project. In these instances, the affected project would be expected to be designed to deliver, upon project completion, service that reliably meets or exceeds 100 Mbps download and between at least 20 Mbps and 100 Mbps upload speeds and be scalable to a minimum of 100 Mbps symmetrical for download and upload speeds.[144] In setting these standards, Treasury identified speeds necessary to ensure that broadband infrastructure is sufficient to enable users to generally meet household needs, including the ability to support the simultaneous use of work, education, and health applications, and also sufficiently robust to meet increasing household demands for bandwidth. Treasury also recognizes that different communities and their members may have a broad range of internet needs and that those needs may change over time.

In considering the appropriate speed requirements for eligible projects, Treasury considered estimates of typical households demands during the pandemic. Using the Federal Communication Commission's (FCC) Broadband Speed Guide, for example, a household with two telecommuters and two to three remote learners today are estimated to need 100 Mbps download to work simultaneously.[145] In households with more members, the demands may be greater, and in households with fewer members, the demands may be less.

In considering the appropriate speed requirements for eligible projects, Treasury also considered data usage patterns and how bandwidth needs have changed over time for U.S. households and businesses as people's use of technology in their daily lives has evolved. In the few years preceding the pandemic, market research data showed that average upload speeds in the United States surpassed over 10 Mbps in 2017[146] and continued to increase significantly, with the average upload speed as of November, 2019 increasing to 48.41 Mbps,[147] attributable, in part to a shift to using broadband and the internet by individuals and businesses

[139] *See, e.g., https://www.ntia.gov/blog/2020/more-half-american-households-used-internet-health-related-activities-2019-ntia-data-show; https://www.ntia.gov/blog/2020/nearly-third-american-employees-worked-remotely-2019-ntia-data-show;* and generally, *https://www.ntia.gov/data/digital-nation-data-explorer.*

[140] As an example, data from the Federal Communications Commission shows that as of June 2020, 9.07 percent of the U.S. population had no available cable or fiber broadband providers providing greater than 25 Mbps download speeds and 3 Mbps upload speeds. Availability was significantly less for rural versus urban populations, with 35.57 percent of the rural population lacking such access, compared with 2.57 percent of the urban population. Availability was also significantly less for tribal versus non-tribal populations, with 35.93 percent of the tribal population lacking such access, compared with 8.74 of the non-tribal population. Federal Communications Commission, Fixed Broadband Deployment, *https://broadbandmap.fcc.gov/#/* (last visited May 9, 2021).

[141] How Do U.S. Internet Costs Compare To The Rest Of The World?, BroadbandSearch Blog Post, *available at https://www.broadbandsearch.net/blog/internet-costs-compared-worldwide.*

[142] *See, e.g.,* Federal Communications Commission, Fourteenth Broadband Deployment Report, *available at https://docs.fcc.gov/public/attachments/FCC-21-18A1.pdf.*

[143] *See, e.g.,* Illinois Department of Commerce & Economic Opportunity, Broadband Grants, h (last visited May 9, 2021), *https://www2.illinois.gov/dceo/ConnectIllinois/Pages/BroadbandGrants.aspx;* Kansas Office of Broadband Development, Broadband Acceleration Grant, *https://www.kansascommerce.gov/wp-content/uploads/2020/11/Broadband-Acceleration-Grant.pdf* (last visited May 9, 2021); New York State Association of Counties, Universal Broadband: Deploying High Speed Internet Access in NYS (Jul. 2017), *https://www.nysac.org/files/BroadbandUpdateReport2017(1).pdf.*

[144] This scalability threshold is consistent with scalability requirements used in other jurisdictions. *Id.*

[145] Federal Communications Commission, Broadband Speed Guide, *https://www.fcc.gov/consumers/guides/broadband-speed-guide* (last visited Apr. 30, 2021).

[146] Letter from Lisa R. Youngers, President and CEO of Fiber Broadband Association to FCC, WC Docket No. 19–126 (filed Jan. 3, 2020), including an Appendix with research from RVA LLC, *Data Review Of The Importance of Upload Speeds* (Jan. 2020), and Ookla speed test data, *available at https://ecfsapi.fcc.gov/file/101030085118517/FCC%20RDOF%20Jan%203%20Ex%20Parte.pdf.*Additional information on historic growth in data usage is provided in Schools, Health & Libraries Broadband Coalition, *Common Sense Solutions for Closing the Digital Divide,* Apr. 29, 2021.

[147] *Id. See also* United States's Mobile and Broadband internet Speeds—Speedtest Global Index, *available at https://www.speedtest.net/global-index/united-states#fixed.*

to create and share content using video sharing, video conferencing, and other applications.[148]

The increasing use of data accelerated markedly during the pandemic as households across the country became increasingly reliant on tools and applications that require greater internet capacity, both to download data but also to upload data. Sending information became as important as receiving it. A video consultation with a healthcare provider or participation by a child in a live classroom with a teacher and fellow students requires video to be sent and received simultaneously.[149] As an example, some video conferencing technology platforms indicate that download and upload speeds should be roughly equal to support two-way, interactive video meetings.[150] For both work and school, client materials or completed school assignments, which may be in the form of PDF files, videos, or graphic files, also need to be shared with others. This is often done by uploading materials to a collaboration site, and the upload speed available to a user can have a significant impact on the time it takes for the content to be shared with others. [151] These activities require significant capacity from home internet connections to both download and upload data, especially when there are multiple individuals in one household engaging in these activities simultaneously.

This need for increased broadband capacity during the pandemic was reflected in increased usage patterns seen over the last year. As OpenVault noted in recent advisories, the pandemic significantly increased the amount of data users consume. Among data users observed by OpenVault, per-subscriber average data usage for the fourth quarter of 2020 was 482.6 gigabytes per month, representing a 40 percent increase over the 344 gigabytes consumed in the fourth quarter of 2019 and a 26 percent increase over the third quarter 2020 average of 383.8 gigabytes.[152] OpenVault also noted significant increases in upstream usage among the data users it observed, with upstream data usage growing 63 percent—from 19 gigabytes to 31 gigabytes—between December, 2019 and December, 2020.[153] According to an OECD Broadband statistic from June 2020, the largest percentage of U.S. broadband subscribers have services providing speeds between 100 Mbps and 1 Gbps.[154]

Jurisdictions and Federal programs are increasingly responding to the growing demands of their communities for both heightened download and upload speeds. For example, Illinois now requires 100 Mbps symmetrical service as the construction standard for its state broadband grant programs. This standard is also consistent with speed levels, particularly download speed levels, prioritized by other Federal programs supporting broadband projects. Bids submitted as part of the FCC in its Rural Digital Opportunity Fund (RDOF), established to support the construction of broadband networks in rural communities across the country, are given priority if they offer faster service, with the service offerings of 100 Mbps download and 20 Mbps upload being included in the "above baseline" performance tier set by the FCC.[155] The Broadband Infrastructure Program (BBIP) [156] of the Department of Commerce, which provides Federal funding to deploy broadband infrastructure to eligible service areas of the country also prioritizes projects designed to provide broadband service with a download speed of not less than 100 Mbps and an upload speed of not less than 20 Mbps.[157]

The 100 Mbps upload and download speeds will support the increased and growing needs of households and businesses. Recognizing that, in some instances, 100 Mbps upload speed may be impracticable due to geographical, topographical, or financial constraints, the interim final rule permits upload speeds of between at least 20 Mbps and 100 Mbps in such instances. To provide for investments that will accommodate technologies requiring symmetry in download and upload speeds, as noted above, eligible projects that are not designed to deliver, upon project completion, service that reliably meets or exceeds symmetrical speeds of 100 Mbps because it would be impracticable to do so should be designed so that they can be scalable to such speeds. Recipients are also encouraged to prioritize investments in fiber optic infrastructure where feasible, as such advanced technology enables the next generation of application solutions for all communities.

Under the interim final rule, eligible projects are expected to focus on locations that are unserved or underserved. The interim final rule treats users as being unserved or underserved if they lack access to a wireline connection capable of reliably delivering at least minimum speeds of 25 Mbps download and 3 Mbps upload as households and businesses lacking this level of access are generally not viewed as being able to originate and receive high-quality voice, data, graphics, and video telecommunications. This threshold is consistent with the FCC's benchmark for an "advanced telecommunications capability." [158] This threshold is also consistent with thresholds used in other Federal programs to identify eligible areas to be served by programs to improve broadband services. For example, in the FCC's RDOF program, eligible areas include those without current (or already funded) access to terrestrial broadband service providing 25 Mbps download and 3 Mbps upload speeds.[159] The Department of Commerce's BBIP also considers households to be "unserved" generally if they lack access to broadband service

[148] *Id.*

[149] One high definition Zoom meeting or class requires approximately 3.8 Mbps/3.0 Mbps (up/down).

[150] *See, e.g.,* Zoom, System Requirements for Windows, macOS, and Linux, *https://support.zoom.us/hc/en-us/articles/201362023-System-requirements-for-Windows-macOS-and-Linux#h_d278c327-e03d-4896-b19a-96a8f3c0c69c* (last visited May 8, 2021).

[151] By one estimate, to upload a one gigabit video file to YouTube would take 15 minutes at an upload speed of 10 Mbps compared with 1 minute, 30 seconds at an upload speed of 100 Mbps, and 30 seconds at an upload speed of 300 Mbps. *Reviews.org:* What is Symmetrical internet? (March 2020).

[152] OVBI: Covid-19 Drove 15 percent Increase in Broadband Traffic in 2020, OpenVault, Quarterly Advisory, (Feb. 10, 2021), *available at https://openvault.com/ovbi-covid-19-drove-51-increase-in-broadband-traffic-in-2020; See* OpenVault's data set incorporates information on usage by subscribers across multiple continents, including North America and Europe. Additional data and detail on increases in the amount of data users consume and the broadband speeds they are using is provided in *OpenVault Broadband Insights Report Q4,* Quarterly Advisory (Feb. 10, 2021), *available at https://openvault.com/complimentary-report-4q20/.*

[153] OVBI Special Report: 202 Upstream Growth Nearly 4X of Pre-Pandemic Years, OpenVault, Quarterly Advisory, (April 1, 20201), *available at https://openvault.com/ovbi-special-report-2020-upstream-growth-rate-nearly-4x-of-pre-pandemic-years/;* Additional data is provided in *OpenVault Broadband Insights Pandemic Impact on Upstream Broadband Usage and Network Capacity, available at https://openvault.com/upstream-whitepaper/.*

[154] Organisation for Economic Co-operation and Development, Fixed broadband subscriptions per 100 inhabitants, per speed tiers (June 2020), *https://www.oecd.org/sti/broadband/5.1-FixedBB-SpeedTiers-2020-06.xls www.oecd.org/sti/broadband/broadband-statistics.*

[155] *Rural Digital Opportunity Fund,* Report and Order, 35 FCC Rcd 686, 690, para. 9 (2020), *available at https://www.fcc.gov/document/fcc-launches-20-billion-rural-digital-opportunity-fund-0.*

[156] The BIPP was authorized by the Consolidated Appropriations Act, 2021, Section 905, Public Law 116–260, 134 Stat. 1182 (Dec. 27, 2020).

[157] Section 905(d)(4) of the Consolidated Appropriations Act, 2021.

[158] *Deployment Report, supra* note 142.

[159] *Rural Digital Opportunity Fund, supra* note 156.

with a download speed of not less than 25 Mbps download and 3 Mbps upload, among other conditions. In selecting an area to be served by a project, recipients are encouraged to avoid investing in locations that have existing agreements to build reliable wireline service with minimum speeds of 100 Mbps download and 20 Mbps upload by December 31, 2024, in order to avoid duplication of efforts and resources.

Recipients are also encouraged to consider ways to integrate affordability options into their program design. To meet the immediate needs of unserved and underserved households and businesses, recipients are encouraged to focus on projects that deliver a physical broadband connection by prioritizing projects that achieve last mile-connections. Treasury also encourages recipients to prioritize support for broadband networks owned, operated by, or affiliated with local governments, non-profits, and co-operatives—providers with less pressure to turn profits and with a commitment to serving entire communities.

Under sections 602(c)(1)(A) and 603(c)(1)(A), assistance to households facing negative economic impacts due to COVID–19 is also an eligible use, including internet access or digital literacy assistance. As discussed above, in considering whether a potential use is eligible under this category, a recipient must consider whether, and the extent to which, the household has experienced a negative economic impact from the pandemic.

Question 22: What are the advantages and disadvantages of setting minimum symmetrical download and upload speeds of 100 Mbps? What other minimum standards would be appropriate and why?

Question 23: Would setting such a minimum be impractical for particular types of projects? If so, where and on what basis should those projects be identified? How could such a standard be set while also taking into account the practicality of using this standard in particular types of projects? In addition to topography, geography, and financial factors, what other constraints, if any, are relevant to considering whether an investment is impracticable?

Question 24: What are the advantages and disadvantages of setting a minimum level of service at 100 Mbps download and 20 Mbps upload in projects where it is impracticable to set minimum symmetrical download and upload speeds of 100 Mbps? What are the advantages and disadvantages of setting a scalability requirement in these cases? What other minimum standards would be appropriate and why?

Question 25: What are the advantages and disadvantages of focusing these investments on those without access to a wireline connection that reliably delivers 25 Mbps download by 3 Mbps upload? Would another threshold be appropriate and why?

Question 26: What are the advantages and disadvantages of setting any particular threshold for identifying unserved or underserved areas, minimum speed standards or scalability minimum? Are there other standards that should be set (e.g., latency)? If so, why and how? How can such threshold, standards, or minimum be set in a way that balances the public's interest in making sure that reliable broadband services meeting the daily needs of all Americans are available throughout the country with the providing recipients flexibility to meet the varied needs of their communities?

III. Restrictions on Use

As discussed above, recipients have considerable flexibility to use Fiscal Recovery Funds to address the diverse needs of their communities. To ensure that payments from the Fiscal Recovery Funds are used for these congressionally permitted purposes, the ARPA includes two provisions that further define the boundaries of the statute's eligible uses. Section 602(c)(2)(A) of the Act provides that States and territories may not "use the funds . . . to either directly or indirectly offset a reduction in . . . net tax revenue . . . resulting from a change in law, regulation, or administrative interpretation during the covered period that reduces any tax . . . or delays the imposition of any tax or tax increase." In addition, sections 602(c)(2)(B) and 603(c)(2) prohibit any recipient, including cities, nonentitlement units of government, and counties, from using Fiscal Recovery Funds for deposit into any pension fund. These restrictions support the use of funds for the congressionally permitted purposes described in Section II of this Supplementary Information by providing a backstop against the use of funds for purposes outside of the eligible use categories.

These provisions give force to Congress's clear intent that Fiscal Recovery Funds be spent within the four eligible uses identified in the statute—(1) to respond to the public health emergency and its negative economic impacts, (2) to provide premium pay to essential workers, (3) to provide government services to the extent of eligible governments' revenue losses, and (4) to make necessary water, sewer, and broadband infrastructure investments—and not otherwise. These four eligible uses reflect Congress's judgment that the Fiscal Recovery Funds should be expended in particular ways that support recovery from the COVID–19 public health emergency. The further restrictions reflect Congress's judgment that tax cuts and pension deposits do not fall within these eligible uses. The interim final rule describes how Treasury will identify when such uses have occurred and how it will recoup funds put toward these impermissible uses and, as discussed in Section VIII of this **SUPPLEMENTARY INFORMATION**, establishes a reporting framework for monitoring the use of Fiscal Recovery Funds for eligible uses.

A. Deposit Into Pension Funds

The statute provides that recipients may not use Fiscal Recovery Funds for "deposit into any pension fund." For the reasons discussed below, Treasury interprets "deposit" in this context to refer to an extraordinary payment into a pension fund for the purpose of reducing an accrued, unfunded liability. More specifically, the interim final rule does not permit this assistance to be used to make a payment into a pension fund if both:

1. The payment reduces a liability incurred prior to the start of the COVID–19 public health emergency, and

2. the payment occurs outside the recipient's regular timing for making such payments.

Under this interpretation, a "deposit" is distinct from a "payroll contribution," which occurs when employers make payments into pension funds on regular intervals, with contribution amounts based on a pre-determined percentage of employees' wages and salaries.

As discussed above, eligible uses for premium pay and responding to the negative economic impacts of the COVID–19 public health emergency include hiring and compensating public sector employees. Interpreting the scope of "deposit" to exclude contributions that are part of payroll contributions is more consistent with these eligible uses and would reduce administrative burden for recipients. Accordingly, if an employee's wages and salaries are an eligible use of Fiscal Recovery Funds, recipients may treat the employee's covered benefits as an eligible use of Fiscal Recovery Funds. For purposes of the Fiscal Recovery Funds, covered benefits include costs of all types of leave (vacation, family-related, sick, military, bereavement, sabbatical, jury duty), employee insurance (health, life, dental, vision), retirement (pensions, 401(k)), unemployment benefit plans

(Federal and State), workers' compensation insurance, and Federal Insurance Contributions Act taxes (which includes Social Security and Medicare taxes).

Treasury anticipates that this approach to employees' covered benefits will be comprehensive and, for employees whose wage and salary costs are eligible expenses, will allow all covered benefits listed in the previous paragraph to be eligible under the Fiscal Recovery Funds. Treasury expects that this will minimize the administrative burden on recipients by treating all the specified covered benefit types as eligible expenses, for employees whose wage and salary costs are eligible expenses.

Question 27: Beyond a "deposit" and a "payroll contribution," are there other types of payments into a pension fund that Treasury should consider?

B. Offset a Reduction in Net Tax Revenue

For States and territories (recipient governments [160]), section 602(c)(2)(A)—the offset provision—prohibits the use of Fiscal Recovery Funds to directly or indirectly offset a reduction in net tax revenue resulting from a change in law, regulation, or administrative interpretation [161] during the covered period. If a State or territory uses Fiscal Recovery Funds to offset a reduction in net tax revenue, the ARPA provides that the State or territory must repay to the Treasury an amount equal to the lesser of (i) the amount of the applicable reduction attributable to the impermissible offset and (ii) the amount received by the State or territory under the ARPA. *See* Section IV of this **SUPPLEMENTARY INFORMATION**. As discussed below Section IV of this **SUPPLEMENTARY INFORMATION**, a State or territory that chooses to use Fiscal Recovery Funds to offset a reduction in net tax revenue does not forfeit its entire allocation of Fiscal Recovery Funds (unless it misused the full allocation to offset a reduction in net tax revenue) or any non-ARPA funding received.

The interim final rule implements these conditions by establishing a framework for States and territories to determine the cost of changes in law, regulation, or interpretation that reduce tax revenue and to identify and value the sources of funds that will offset—*i.e.*, cover the cost of—any reduction in net tax revenue resulting from such changes. A recipient government would only be considered to have used Fiscal Recovery Funds to offset a reduction in net tax revenue resulting from changes in law, regulation, or interpretation if, and to the extent that, the recipient government could not identify sufficient funds from sources other than the Fiscal Recovery Funds to offset the reduction in net tax revenue. If sufficient funds from other sources cannot be identified to cover the full cost of the reduction in net tax revenue resulting from changes in law, regulation, or interpretation, the remaining amount not covered by these sources will be considered to have been offset by Fiscal Recovery Funds, in contravention of the offset provision. The interim final rule recognizes three sources of funds that may offset a reduction in net tax revenue other than Fiscal Recovery Funds—organic growth, increases in revenue (*e.g.*, an increase in a tax rate), and certain cuts in spending.

In order to reduce burden, the interim final rule's approach also incorporates the types of information and modeling already used by States and territories in their own fiscal and budgeting processes. By incorporating existing budgeting processes and capabilities, States and territories will be able to assess and evaluate the relationship of tax and budget decisions to uses of the Fiscal Recovery Funds based on information they likely have or can obtain. This approach ensures that recipient governments have the information they need to understand the implications of their decisions regarding the use of the Fiscal Recovery Funds—and, in particular, whether they are using the funds to directly or indirectly offset a reduction in net tax revenue, making them potentially subject to recoupment.

Reporting on both the eligible uses and on a State's or territory's covered tax changes that would reduce tax revenue will enable identification of, and recoupment for, use of Fiscal Recovery Funds to directly offset reductions in tax revenue resulting from tax relief. Moreover, this approach recognizes that, because money is fungible, even if Fiscal Recovery Funds are not explicitly or directly used to cover the costs of changes that reduce net tax revenue, those funds may be used in a manner inconsistent with the statute by indirectly being used to substitute for the State's or territory's funds that would otherwise have been needed to cover the costs of the reduction. By focusing on the cost of changes that reduce net tax revenue—and how a recipient government is offsetting those reductions in constructing its budget over the covered period—the framework prevents efforts to use Fiscal Recovery Funds to indirectly offset reductions in net tax revenue for which the recipient government has not identified other offsetting sources of funding.

As discussed in greater detail below in this preamble, the framework set forth in the interim final rule establishes a step-by-step process for determining whether, and the extent to which, Fiscal Recovery Funds have been used to offset a reduction in net tax revenue. Based on information reported annually by the recipient government:

- First, each year, each recipient government will identify and value the changes in law, regulation, or interpretation that would result in a reduction in net tax revenue, as it would in the ordinary course of its budgeting process. The sum of these values in the year for which the government is reporting is the amount it needs to "pay for" with sources other than Fiscal Recovery Funds (total value of revenue reducing changes).
- Second, the interim final rule recognizes that it may be difficult to predict how a change would affect net tax revenue in future years and, accordingly, provides that if the total value of the changes in the year for which the recipient government is reporting is below a de minimis level, as discussed below, the recipient government need not identify any sources of funding to pay for revenue reducing changes and will not be subject to recoupment.
- Third, a recipient government will consider the amount of actual tax revenue recorded in the year for which they are reporting. If the recipient government's actual tax revenue is greater than the amount of tax revenue received by the recipient for the fiscal year ending 2019, adjusted annually for inflation, the recipient government will not be considered to have violated the offset provision because there will not have been a reduction in net tax revenue.
- Fourth, if the recipient government's actual tax revenue is less than the amount of tax revenue received by the recipient government for the fiscal year ending 2019, adjusted annually for inflation, in the reporting year the recipient government will identify any sources of funds that have been used to permissibly offset the total value of covered tax changes other than Fiscal Recovery Funds. These are:
  - State or territory tax changes that would increase any source of general

[160] In this sub-section, "recipient governments" refers only to States and territories. In other sections, "recipient governments" refers more broadly to eligible governments receiving funding from the Fiscal Recovery Funds.

[161] For brevity, referred to as "changes in law, regulation, or interpretation" for the remainder of this preamble.

fund revenue, such as a change that would increase a tax rate; and

○ Spending cuts in areas not being replaced by Fiscal Recovery Funds.

The recipient government will calculate the value of revenue reduction remaining after applying these sources of offsetting funding to the total value of revenue reducing changes—that, is, how much of the tax change has not been paid for. The recipient government will then compare that value to the difference between the baseline and actual tax revenue. A recipient government will not be required to repay to the Treasury an amount that is greater than the recipient government's actual tax revenue shortfall relative to the baseline (*i.e.,* fiscal year 2019 tax revenue adjusted for inflation). This "revenue reduction cap," together with Step 3, ensures that recipient governments can use organic revenue growth to offset the cost of revenue reductions.

• Finally, if there are any amounts that could be subject to recoupment, Treasury will provide notice to the recipient government of such amounts. This process is discussed in greater detail in Section IV of this **SUPPLEMENTARY INFORMATION**.

Together, these steps allow Treasury to identify the amount of reduction in net tax revenue that both is attributable to covered changes and has been directly or indirectly offset with Fiscal Recovery Funds. This process ensures Fiscal Recovery Funds are used in a manner consistent with the statute's defined eligible uses and the offset provision's limitation on these eligible uses, while avoiding undue interference with State and territory decisions regarding tax and spending policies.

The interim final rule also implements a process for recouping Fiscal Recovery Funds that were used to offset reductions in net tax revenue, including the calculation of any amounts that may be subject to recoupment, a process for a recipient government to respond to a notice of recoupment, and clarification regarding amounts excluded from recoupment. *See* Section IV of this **SUPPLEMENTARY INFORMATION.**

The interim final rule includes several definitions that are applicable to the implementation of the offset provision.

Covered change. The offset provision is triggered by a reduction in net tax revenue resulting from "a change in law, regulation, or administrative interpretation." A covered change includes any final legislative or regulatory action, a new or changed administrative interpretation, and the phase-in or taking effect of any statute or rule where the phase-in or taking effect was not prescribed prior to the start of the covered period. Changed administrative interpretations would not include corrections to replace prior inaccurate interpretations; such corrections would instead be treated as changes implementing legislation enacted or regulations issued prior to the covered period; the operative change in those circumstances is the underlying legislation or regulation that occurred prior to the covered period. Moreover, only the changes within the control of the State or territory are considered covered changes. Covered changes do not include a change in rate that is triggered automatically and based on statutory or regulatory criteria in effect prior to the covered period. For example, a state law that sets its earned income tax credit (EITC) at a fixed percentage of the Federal EITC will see its EITC payments automatically increase—and thus its tax revenue reduced—because of the Federal Government's expansion of the EITC in the ARPA.[162] This would not be considered a covered change. In addition, the offset provision applies only to actions for which the change in policy occurs during the covered period; it excludes regulations or other actions that implement a change or law substantively enacted prior to March 3, 2021. Finally, Treasury has determined and previously announced that income tax changes—even those made during the covered period—that simply conform with recent changes in Federal law (including those to conform to recent changes in Federal taxation of unemployment insurance benefits and taxation of loan forgiveness under the Paycheck Protection Program) are permissible under the offset provision.

Baseline. For purposes of measuring a reduction in net tax revenue, the interim final rule measures actual changes in tax revenue relative to a revenue baseline (baseline). The baseline will be calculated as fiscal year 2019 (FY 2019) tax revenue indexed for inflation in each year of the covered period, with inflation calculated using the Bureau of Economic Analysis's Implicit Price Deflator.[163]

FY 2019 was chosen as the starting year for the baseline because it is the last full fiscal year prior to the COVID–19 public health emergency.[164] This baseline year is consistent with the approach directed by the ARPA in sections 602(c)(1)(C) and 603(c)(1)(C), which identify the "most recent full fiscal year of the [State, territory, or Tribal government] prior to the emergency" as the comparator for measuring revenue loss. U.S. gross domestic product is projected to rebound to pre-pandemic levels in 2021,[165] suggesting that an FY 2019 pre-pandemic baseline is a reasonable comparator for future revenue levels. The FY 2019 baseline revenue will be adjusted annually for inflation to allow for direct comparison of actual tax revenue in each year (reported in nominal terms) to baseline revenue in common units of measurement; without inflation adjustment, each dollar of reported actual tax revenue would be worth less than each dollar of baseline revenue expressed in 2019 terms.

Reporting year. The interim final rule defines "reporting year" as a single year within the covered period, aligned to the current fiscal year of the recipient government during the covered period, for which a recipient government reports the value of covered changes and any sources of offsetting revenue increases ("in-year" value), regardless of when those changes were enacted. For the fiscal years ending in 2021 or 2025 (partial years), the term "reporting year" refers to the portion of the year falling within the covered period. For example, the reporting year for a fiscal year beginning July 2020 and ending June 2021 would be from March 3, 2021 to July 2021.

Tax revenue. The interim final rule's definition of "tax revenue" is based on the Census Bureau's definition of taxes, used for its Annual Survey of State Government Finances.[166] It provides a consistent, well-established definition with which States and territories will be familiar and is consistent with the approach taken in Section II.C of this **SUPPLEMENTARY INFORMATION** describing the implementation of sections 602(c)(1)(C) and 603(c)(1)(C) of the Act, regarding revenue loss. Consistent with the approach described in Section II.C of this **SUPPLEMENTARY INFORMATION**, tax

[162] *See, e.g.,* Tax Policy Center, How do state earned income tax credits work?, *https://www.taxpolicycenter.org/briefing-book/how-do-state-earned-income-tax-credits-work/* (last visited May 9, 2021).

[163] U.S. Department of Commerce, Bureau of Economic Analysis, GDP Price Deflator, *https://www.bea.gov/data/prices-inflation/gdp-price-deflator* (last visited May 9, 2021).

[164] Using Fiscal Year 2019 is consistent with section 602 as Congress provided for using that baseline for determining the impact of revenue loss affecting the provision of government services. *See* section 602(c)(1)(C).

[165] Congressional Budget Office, An Overview of the Economic Outlook: 2021 to 2031 (February 1, 2021), *available at https://www.cbo.gov/publication/56965.*

[166] U.S. Census Bureau, Annual Survey of State and Local Government Finances Glossary, *https://www.census.gov/programs-surveys/state/about/glossary.html* (last visited Apr. 30, 2021).

revenue does not include revenue taxed and collected by a different unit of government (*e.g.,* revenue from taxes levied by a local government and transferred to a recipient government).

Framework. The interim final rule provides a step-by-step framework, to be used in each reporting year, to calculate whether the offset provision applies to a State's or territory's use of Fiscal Recovery Funds:

(1) *Covered changes that reduce tax revenue.* For each reporting year, a recipient government will identify and value covered changes that the recipient government predicts will have the effect of reducing tax revenue in a given reporting year, similar to the way it would in the ordinary course of its budgeting process. The value of these covered changes may be reported based on estimated values produced by a budget model, incorporating reasonable assumptions, that aligns with the recipient government's existing approach for measuring the effects of fiscal policies, and that measures relative to a current law baseline. The covered changes may also be reported based on actual values using a statistical methodology to isolate the change in year-over-year revenue attributable to the covered change(s), relative to the current law baseline prior to the change(s). Further, estimation approaches should not use dynamic methodologies that incorporate the projected effects of macroeconomic growth because macroeconomic growth is accounted for separately in the framework. Relative to these dynamic scoring methodologies, scoring methodologies that do not incorporate projected effects of macroeconomic growth rely on fewer assumptions and thus provide greater consistency among States and territories. Dynamic scoring that incorporates macroeconomic growth may also increase the likelihood of underestimation of the cost of a reduction in tax revenue.

In general and where possible, reporting should be produced by the agency of the recipient government responsible for estimating the costs and effects of fiscal policy changes. This approach offers recipient governments the flexibility to determine their reporting methodology based on their existing budget scoring practices and capabilities. In addition, the approach of using the projected value of changes in law that enact fiscal policies to estimate the net effect of such policies is consistent with the way many States and territories already consider tax changes.[167]

(2) *In excess of the de minimis.* The recipient government will next calculate the total value of all covered changes in the reporting year resulting in revenue reductions, identified in Step 1. If the total value of the revenue reductions resulting from these changes is below the de minimis level, the recipient government will be deemed not to have any revenue-reducing changes for the purpose of determining the recognized net reduction. If the total is above the de minimis level, the recipient government must identify sources of in-year revenue to cover the full costs of changes that reduce tax revenue.

The de minimis level is calculated as 1 percent of the reporting year's baseline. Treasury recognizes that, pursuant to their taxing authority, States and territories may make many small changes to alter the composition of their tax revenues or implement other policies with marginal effects on tax revenues. They may also make changes based on projected revenue effects that turn out to differ from actual effects, unintentionally resulting in minor revenue changes that are not fairly described as "resulting from" tax law changes. The de minimis level recognizes the inherent challenges and uncertainties that recipient governments face, and thus allows relatively small reductions in tax revenue without consequence. Treasury determined the 1 percent level by assessing the historical effects of state-level tax policy changes in state EITCs implemented to effect policy goals other than reducing net tax revenues.[168] The 1 percent de minimis level reflects the historical reductions in revenue due to minor changes in state fiscal policies.

(3) *Safe harbor.* The recipient government will then compare the reporting year's actual tax revenue to the baseline. If actual tax revenue is greater than the baseline, Treasury will deem the recipient government not to have any recognized net reduction for the reporting year, and therefore to be in a safe harbor and outside the ambit of the offset provision. This approach is consistent with the ARPA, which contemplates recoupment of Fiscal Recovery Funds only in the event that such funds are used to offset a reduction in net tax revenue. If net tax revenue has not been reduced, this provision does not apply. In the event that actual tax revenue is above the baseline, the organic revenue growth that has occurred, plus any other revenue-raising changes, by definition must have been enough to offset the in-year costs of the covered changes.

(4) *Consideration of other sources of funding.* Next, the recipient government will identify and calculate the total value of changes that could pay for revenue reduction due to covered changes and sum these items. This amount can be used to pay for up to the total value of revenue-reducing changes in the reporting year. These changes consist of two categories:

(a) *Tax and other increases in revenue.* The recipient government must identify and consider covered changes in policy that the recipient government predicts will have the effect of increasing general revenue in a given reporting year. As when identifying and valuing covered changes that reduce tax revenue, the value of revenue-raising changes may be reported based on estimated values produced by a budget model, incorporating reasonable assumptions, aligned with the recipient government's existing approach for measuring the effects of fiscal policies, and measured relative to a current law baseline, or based on actual values using a statistical methodology to isolate the change in year-over-year revenue attributable to the covered change(s). Further, and as discussed above, estimation approaches should not use dynamic scoring methodologies that incorporate the effects of macroeconomic growth because growth is accounted for separately under the interim final rule. In general and where possible, reporting should be produced by the agency of the recipient government responsible for estimating the costs and effects of fiscal policy changes. This approach offers recipient governments the flexibility to determine their reporting methodology based on their existing budget scoring practices and capabilities.

(b) *Covered spending cuts.* A recipient government also may cut spending in certain areas to pay for covered changes that reduce tax revenue, up to the amount of the recipient government's net reduction in total spending as described below. These changes must be reductions in government outlays not in an area where the recipient government has spent Fiscal Recovery Funds. To better align with existing reporting and accounting, the interim final rule considers the department, agency, or

[167] *See, e.g.,* Megan Randall & Kim Rueben, Tax Policy Center, Sustainable Budgeting in the States: Evidence on State Budget Institutions and Practices (Nov. 2017), *available at https://www.taxpolicycenter.org/sites/default/files/publication/149186/sustainable-budgeting-in-the-states_1.pdf.*

[168] Data provided by the Urban-Brookings Tax Policy Center for state-level EITC changes for 2004–2017.

authority from which spending has been cut and whether the recipient government has spent Fiscal Recovery Funds on that same department, agency, or authority. This approach was selected to allow recipient governments to report how Fiscal Recovery Funds have been spent using reporting units already incorporated into their budgeting process. If they have not spent Fiscal Recovery Funds in a department, agency, or authority, the full amount of the reduction in spending counts as a covered spending cut, up to the recipient government's net reduction in total spending. If they have, the Fiscal Recovery Funds generally would be deemed to have replaced the amount of spending cut and only reductions in spending above the amount of Fiscal Recovery Funds spent on the department, agency, or authority would count.

To calculate the amount of spending cuts that are available to offset a reduction in tax revenue, the recipient government must first consider whether there has been a reduction in total net spending, excluding Fiscal Recovery Funds (net reduction in total spending). This approach ensures that reported spending cuts actually create fiscal space, rather than simply offsetting other spending increases. A net reduction in total spending is measured as the difference between total spending in each reporting year, excluding Fiscal Recovery Funds spent, relative to total spending for the recipient's fiscal year ending in 2019, adjusted for inflation. Measuring reductions in spending relative to 2019 reflects the fact that the fiscal space created by a spending cut persists so long as spending remains below its original level, even if it does not decline further, relative to the same amount of revenue. Measuring spending cuts from year to year would, by contrast, not recognize any available funds to offset revenue reductions unless spending continued to decline, failing to reflect the actual availability of funds created by a persistent change and limiting the discretion of States and territories. In general and where possible, reporting should be produced by the agency of the recipient government responsible for estimating the costs and effects of fiscal policy changes. Treasury chose this approach because while many recipient governments may score budget legislation using projections, spending cuts are readily observable using actual values.

This approach—allowing only spending reductions in areas where the recipient government has not spent Fiscal Recovery Funds to be used as an offset for a reduction in net tax revenue—aims to prevent recipient governments from using Fiscal Recovery Funds to supplant State or territory funding in the eligible use areas, and then use those State or territory funds to offset tax cuts. Such an approach helps ensure that Fiscal Recovery Funds are not used to "indirectly" offset revenue reductions due to covered changes.

In order to help ensure recipient governments use Fiscal Recovery Funds in a manner consistent with the prescribed eligible uses and do not use Fiscal Recovery Funds to indirectly offset a reduction in net tax revenue resulting from a covered change, Treasury will monitor changes in spending throughout the covered period. If, over the course of the covered period, a spending cut is subsequently replaced with Fiscal Recovery Funds and used to indirectly offset a reduction in net tax revenue resulting from a covered change, Treasury may consider such change to be an evasion of the restrictions of the offset provision and seek recoupment of such amounts.

(5) *Identification of amounts subject to recoupment.* If a recipient government (i) reports covered changes that reduce tax revenue (Step 1); (ii) to a degree greater than the de minimis (Step 2); (iii) has experienced a reduction in net tax revenue (Step 3); and (iv) lacks sufficient revenue from other, permissible sources to pay for the entirety of the reduction (Step 4), then the recipient government will be considered to have used Fiscal Recovery Funds to offset a reduction in net tax revenue, up to the amount that revenue has actually declined. That is, the maximum value of reduction in revenue due to covered changes which a recipient government must cover is capped at the difference between the baseline and actual tax revenue.[169] In the event that the baseline is above actual tax revenue and the difference between them is less than the sum of revenue reducing changes that are not paid for with other, permissible sources, organic revenue growth has implicitly offset a portion of the reduction. For example, if a recipient government reduces tax revenue by $1 billion, makes no other changes, and experiences revenue growth driven by organic economic growth worth $500 million, it need only pay for the remaining $500 million with sources other than Fiscal Recovery Funds. The revenue reduction cap implements this approach for permitting organic revenue growth to cover the cost of tax cuts.

Finally, as discussed further in Section IV of this **SUPPLEMENTARY INFORMATION**, a recipient government may request reconsideration of any amounts identified as subject to recoupment under this framework. This process ensures that all relevant facts and circumstances, including information regarding planned spending cuts and budgeting assumptions, are considered prior to a determination that an amount must be repaid. Amounts subject to recoupment are calculated on an annual basis; amounts recouped in one year cannot be returned if the State or territory subsequently reports an increase in net tax revenue.

To facilitate the implementation of the framework above, and in addition to reporting required on eligible uses, in each year of the reporting period, each State and territory will report to Treasury the following items:

- Actual net tax revenue for the reporting year;
- Each revenue-reducing change made to date during the covered period and the in-year value of each change;
- Each revenue-raising change made to date during the covered period and the in-year value of each change;
- Each covered spending cut made to date during the covered period, the in-year value of each cut, and documentation demonstrating that each spending cut is covered as prescribed under the interim final rule;

Treasury will provide additional guidance and instructions the reporting requirements at a later date.

Question 28: Does the interim final rule's definition of tax revenue accord with existing State and territorial practice and, if not, are there other definitions or elements Treasury should consider? Discuss why or why not.

Question 29: The interim final rule permits certain spending cuts to cover the costs of reductions in tax revenue, including cuts in a department, agency, or authority in which the recipient government is not using Fiscal Recovery Funds. How should Treasury and recipient governments consider the scope of a department, agency, or authority for the use of funds to ensure spending cuts are not being substituted with Fiscal Recovery Funds while also avoiding an overbroad definition of that captures spending that is, in fact, distinct?

Question 30: Discuss the budget scoring methodologies currently used by States and territories. How should the interim final rule take into consideration differences in approaches? Please discuss the use of

[169] This cap is applied in § 35.8(c) of the interim final rule, calculating the amount of funds used in violation of the tax offset provision.

practices including but not limited to macrodynamic scoring, microdynamic scoring, and length of budget windows.

Question 31: If a recipient government has a balanced budget requirement, how will that requirement impact its use of Fiscal Recovery Funds and ability to implement this framework?

Question 32: To implement the framework described above, the interim final rule establishes certain reporting requirements. To what extent do recipient governments already produce this information and on what timeline? Discuss ways that Treasury and recipient governments may better rely on information already produced, while ensuring a consistent application of the framework.

Question 33: Discuss States' and territories' ability to produce the figures and numbers required for reporting under the interim final rule. What additional reporting tools, such as a standardized template, would facilitate States' and territories' ability to complete the reporting required under the interim final rule?

C. Other Restrictions on Use

Payments from the Fiscal Recovery Funds are also subject to pre-existing limitations provided in other Federal statutes and regulations and may not be used as non-Federal match for other Federal programs whose statute or regulations bar the use of Federal funds to meet matching requirements. For example, payments from the Fiscal Recovery Funds may not be used to satisfy the State share of Medicaid.[170]

As provided for in the award terms, payments from the Fiscal Recovery Funds as a general matter will be subject to the provisions of the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (2 CFR part 200) (the Uniform Guidance), including the cost principles and restrictions on general provisions for selected items of cost.

D. Timeline for Use of Fiscal Recovery Funds

Section 602(c)(1) and section 603(c)(1) require that payments from the Fiscal Recovery Funds be used only to cover costs incurred by the State, territory, Tribal government, or local government by December 31, 2024. Similarly, the CARES Act provided that payments from the CRF be used to cover costs incurred by December 31, 2021.[171] The definition of "incurred" does not have a clear meaning. With respect to the CARES Act, on the understanding that the CRF was intended to be used to meet relatively short-term needs, Treasury interpreted this requirement to mean that, for a cost to be considered to have been incurred, performance of the service or delivery of the goods acquired must occur by December 31, 2021. In contrast, the ARPA, passed at a different stage of the COVID–19 public health emergency, was intended to provide more general fiscal relief over a broader timeline. In addition, the ARPA expressly permits the use of Fiscal Recovery Funds for improvements to water, sewer, and broadband infrastructure, which entail a longer timeframe. In recognition of this, Treasury is interpreting the requirement in section 602 and section 603 that costs be incurred by December 31, 2024, to require only that recipients have obligated the Fiscal Recovery Funds by such date. The interim final rule adopts a definition of "obligation" that is based on the definition used for purposes of the Uniform Guidance, which will allow for uniform administration of this requirement and is a definition with which most recipients will be familiar.

Payments from the Fiscal Recovery Funds are grants provided to recipients to mitigate the fiscal effects of the COVID–19 public health emergency and to respond to the public health emergency, consistent with the eligible uses enumerated in sections 602(c)(1) and 603(c)(1).[172] As such, these funds are intended to provide economic stimulus in areas still recovering from the economic effects of the pandemic. In implementing and interpreting these provisions, including what it means to "respond to" the COVID–19 public health emergency, Treasury takes into consideration pre-pandemic facts and circumstances (*e.g.*, average revenue growth prior to the pandemic) as well as impact of the pandemic that predate the enactment of the ARPA (*e.g.*, replenishing Unemployment Trust balances drawn during the pandemic). While assessing the effects of the COVID–19 public health emergency necessarily takes into consideration the facts and circumstances that predate the ARPA, use of Fiscal Recovery Funds is forward looking.

As discussed above, recipients are permitted to use payments from the Fiscal Recovery Funds to respond to the public health emergency, to respond to workers performing essential work by providing premium pay or providing grants to eligible employers, and to make necessary investments in water, sewer, or broadband infrastructure, which all relate to prospective uses. In addition, sections 602(c)(1)(C) and 603(c)(1)(C) permit recipients to use Fiscal Recovery Funds for the provision of government services. This clause provides that the amount of funds that may be used for this purpose is measured by reference to the reduction in revenue due to the public health emergency relative to revenues collected in the most recent full fiscal year, but this reference does not relate to the period during which recipients may use the funds, which instead refers to prospective uses, consistent with the other eligible uses.

Although as discussed above the eligible uses of payments from the Fiscal Recovery Funds are all prospective in nature, Treasury considers the beginning of the covered period for purposes of determining compliance with section 602(c)(2)(A) to be the relevant reference point for this purpose. The interim final rule thus permits funds to be used to cover costs incurred beginning on March 3, 2021. This aligns the period for use of Fiscal Recovery Funds with the period during which these funds may not be used to offset reductions in net tax revenue. Permitting Fiscal Recovery Funds to be used to cover costs incurred beginning on this date will also mean that recipients that began incurring costs in the anticipation of enactment of the ARPA and in advance of the issuance of this rule and receipt of payment from the Fiscal Recovery Funds would be able to cover them using these payments.[173]

As set forth in the award terms, the period of performance will run until December 31, 2026, which will provide recipients a reasonable amount of time to complete projects funded with payments from the Fiscal Recovery Funds.

IV. Recoupment Process

Under the ARPA, failure to comply with the restrictions on use contained in sections 602(c) and 603(c) of the Act may result in recoupment of funds.[174] The interim final rule implements these provisions by establishing a process for recoupment.

Identification and Notice of Violations. Failure to comply with the restrictions on use will be identified based on reporting provided by the

[170] *See* 42 CFR 433.51 and 45 CFR 75.306.

[171] Section 1001 of Division N of the Consolidated Appropriations Act, 2021 amended section 601(d)(3) of the Act by extending the end of the covered period for CRF expenditures from December 30, 2020 to December 31, 2021.

[172] Sections 602(a), 603(a), 602(c)(1) and 603(c)(1) of the Act.

[173] Given the nature of this program, recipients will not be permitted to use funds to cover pre-award costs, *i.e.*, those incurred prior to March 3, 2021.

[174] Sections 602(e) and 603(e) of the Act.

recipient. As discussed further in Sections III.B and VIII of this **SUPPLEMENTARY INFORMATION**, Treasury will collect information regarding eligible uses on a quarterly basis and on the tax offset provision on an annual basis. Treasury also may consider other information in identifying a violation, such as information provided by members of the public. If Treasury identifies a violation, it will provide written notice to the recipient along with an explanation of such amounts.

Request for Reconsideration. Under the interim final rule, a recipient may submit a request for reconsideration of any amounts identified in the notice provided by Treasury. This reconsideration process provides a recipient the opportunity to submit additional information it believes supports its request in light of the notice of recoupment, including, for example, additional information regarding the recipient's use of Fiscal Recovery Funds or its tax revenues. The process also provides the Secretary with an opportunity to consider all information relevant to whether a violation has occurred, and if so, the appropriate amount for recoupment.

The interim final rule also establishes requirements for the timing of a request for reconsideration. Specifically, if a recipient wishes to request reconsideration of any amounts identified in the notice, the recipient must submit a written request for reconsideration to the Secretary within 60 calendar days of receipt of such notice. The request must include an explanation of why the recipient believes that the finding of a violation or recoupable amount identified in the notice of recoupment should be reconsidered. To facilitate the Secretary's review of a recipient's request for reconsideration, the request should identify all supporting reasons for the request. Within 60 calendar days of receipt of the recipient's request for reconsideration, the recipient will be notified of the Secretary's decision to affirm, withdraw, or modify the notice of recoupment. Such notification will include an explanation of the decision, including responses to the recipient's supporting reasons and consideration of additional information provided.

The process and timeline established by the interim final rule are intended to provide the recipient with an adequate opportunity to fully present any issues or arguments in response to the notice of recoupment.[175] This process will allow the Secretary to respond to the issues and considerations raised in the request for reconsideration taking into account the information and arguments presented by the recipient along with any other relevant information.

Repayment. Finally, the interim final rule provides that any amounts subject to recoupment must be repaid within 120 calendar days of receipt of any final notice of recoupment or, if the recipient has not requested reconsideration, within 120 calendar days of the initial notice provided by the Secretary.

Question 34: Discuss the timeline for requesting reconsideration under the interim final rule. What, if any, challenges does this timeline present?

V. Payments in Tranches to Local Governments and Certain States

Section 603 of the Act provides that the Secretary will make payments to local governments in two tranches, with the second tranche being paid twelve months after the first payment. In addition, section 602(b)(6)(A)(ii) provides that the Secretary may withhold payment of up to 50 percent of the amount allocated to each State and territory for a period of up to twelve months from the date on which the State or territory provides its certification to the Secretary. Any such withholding for a State or territory is required to be based on the unemployment rate in the State or territory as of the date of the certification.

The Secretary has determined to provide in this interim final rule for withholding of 50 percent of the amount of Fiscal Recovery Funds allocated to all States (and the District of Columbia) other than those with an unemployment rate that is 2.0 percentage points or more above its pre-pandemic (*i.e.*, February 2020) level. The Secretary will refer to the latest available monthly data from the Bureau of Labor Statistics as of the date the certification is provided. Based on data available at the time of public release of this interim final rule, this threshold would result in a majority of States being paid in two tranches.

Splitting payments for the majority of States is consistent with the requirement in section 603 of the Act to make payments from the Coronavirus Local Fiscal Recovery Fund to local governments in two tranches.[176] Splitting payments to States into two tranches will help encourage recipients to adapt, as necessary, to new developments that could arise over the coming twelve months, including potential changes to the nature of the public health emergency and its negative economic impacts. While the U.S. economy has been recovering and adding jobs in aggregate, there is still considerable uncertainty in the economic outlook and the interaction between the pandemic and the economy.[177] For these reasons, Treasury believes it will be appropriate for a majority of recipients to adapt their plans as the recovery evolves. For example, a faster-than-expected economic recovery in 2021 could lead a recipient to dedicate more Fiscal Recovery Funds to longer-term investments starting in 2022. In contrast, a slower-than-expected economic recovery in 2021 could lead a recipient to use additional funds for near-term stimulus in 2022.

At the same time, the statute contemplates the possibility that elevated unemployment in certain States could justify a single payment. Elevated unemployment is indicative of a greater need to assist unemployed workers and stimulate a faster economic recovery. For this reason, the interim final rule provides that States and territories with an increase in their unemployment rate over a specified threshold may receive a single payment, with the expectation that a single tranche will better enable these States and territories to take additional immediate action to aid the unemployed and strengthen their economies.

Following the initial pandemic-related spike in unemployment in 2020, States' unemployment rates have been trending back towards pre-pandemic levels. However, some States' labor markets are healing more slowly than others. Moreover, States varied widely in their pre-pandemic levels of unemployment, and some States remain substantially further from their pre-

[175] The interim final rule also provides that Treasury may extend any deadlines.

[176] With respect to Federal financial assistance more generally, States are subject to the requirements of the Cash Management Improvement Act (CMIA), under which Federal funds are drawn upon only on an as needed basis and States are required to remit interest on unused balances to Treasury. Given the statutory requirement for Treasury to make payments to States within a certain period, these requirements of the CMIA and Treasury's implementing regulations at 31 CFR part 205 will not apply to payments from the Fiscal Recovery Funds. Providing funding in two tranches to the majority of States reflects, to the maximum extent permitted by section 602 of the Act, the general principles of Federal cash management and stewardship of Federal funding, yet will be much less restrictive than the usual requirements to which States are subject.

[177] The potential course of the virus, and its impact on the economy, has contributed to a heightened degree of uncertainty relative to prior periods. *See, e.g.*, Dave Altig et al., Economic uncertainty before and during the COVID–19 pandemic, J. of Public Econ. (Nov. 2020), *available at https://www.sciencedirect.com/science/article/abs/pii/S0047272720301389.*

pandemic starting point. Consequently, Treasury is delineating States with significant remaining elevation in the unemployment rate, based on the net difference to pre-pandemic levels.

Treasury has established that significant remaining elevation in the unemployment rate is a net change in the unemployment rate of 2.0 percentage points or more relative to pre-pandemic levels. In the four previous recessions going back to the early 1980s, the national unemployment rate rose by 3.6, 2.3, 2.0, and 5.0 percentage points, as measured from the start of the recession to the eventual peak during or immediately following the recession.[178] Each of these increases can therefore represent a recession's impact on unemployment. To identify States with significant remaining elevation in unemployment, Treasury took the lowest of these four increases, 2.0 percentage points, to indicate states where, despite improvement in the unemployment rate, current labor market conditions are consistent still with a historical benchmark for a recession.

No U.S. territory will be subject to withholding of its payment from the Fiscal Recovery Funds. For Puerto Rico, the Secretary has determined that the current level of the unemployment rate (8.8 percent, as of March 2021[179]) is sufficiently high such that Treasury should not withhold any portion of its payment from the Fiscal Recovery Funds regardless of its change in unemployment rate relative to its pre-pandemic level. For U.S. territories that are not included in the Bureau of Labor Statistics' monthly unemployment rate data, the Secretary will not exercise the authority to withhold amounts from the Fiscal Recovery Funds.

VI. Transfer

The statute authorizes State, territorial, and Tribal governments; counties; metropolitan cities; and nonentitlement units of local government (counties, metropolitan cities, and nonentitlement units of local government are collectively referred to as "local governments") to transfer amounts paid from the Fiscal Recovery Funds to a number of specified entities. By permitting these transfers, Congress recognized the importance of providing flexibility to governments seeking to achieve the greatest impact with their funds, including by working with other levels or units of government or private entities to assist recipient governments in carrying out their programs. This includes special-purpose districts that perform specific functions in the community, such as fire, water, sewer, or mosquito abatement districts.

Specifically, under section 602(c)(3), a State, territory, or Tribal government may transfer funds to a "private nonprofit organization . . . a Tribal organization . . . a public benefit corporation involved in the transportation of passengers or cargo, or a special-purpose unit of State or local government."[180] Similarly, section 603(c)(3) authorizes a local government to transfer funds to the same entities (other than Tribal organizations).

The interim final rule clarifies that the lists of transferees in sections 602(c)(3) and 603(c)(3) are not exclusive. The interim final rule permits State, territorial, and Tribal governments to transfer Fiscal Recovery Funds to other constituent units of government or private entities beyond those specified in the statute. Similarly, local governments are authorized to transfer Fiscal Recovery Funds to other constituent units of government (*e.g.*, a county is able to transfer Fiscal Recovery Funds to a city, town, or school district within it) or to private entities. This approach is intended to help provide funding to local governments with needs that may exceed the allocation provided under the statutory formula.

State, local, territorial, and Tribal governments that receive a Federal award directly from a Federal awarding agency, such as Treasury, are "recipients." A transferee receiving a transfer from a recipient under sections 602(c)(3) and 603(c)(3) will be a subrecipient. Subrecipients are entities that receive a subaward from a recipient to carry out a program or project on behalf of the recipient with the recipient's Federal award funding. The recipient remains responsible for monitoring and overseeing the subrecipient's use of Fiscal Recovery Funds and other activities related to the award to ensure that the subrecipient complies with the statutory and regulatory requirements and the terms and conditions of the award. Recipients also remain responsible for reporting to Treasury on their subrecipients' use of payments from the Fiscal Recovery Funds for the duration of the award.

Transfers under sections 602(c)(3) and 603(c)(3) must qualify as an eligible use of Fiscal Recovery Funds by the transferor. Once Fiscal Recovery Funds are received, the transferee must abide by the restrictions on use applicable to the transferor under the ARPA and other applicable law and program guidance. For example, if a county transferred Fiscal Recovery Funds to a town within its borders to respond to the COVID–19 public health emergency, the town would be bound by the eligible use requirements applicable to the county in carrying out the county's goal. This also means that county A may not transfer Fiscal Recovery Funds to county B for use in county B because such a transfer would not, from the perspective of the transferor (county A), be an eligible use in county A.

Section 603(c)(4) separately provides for transfers by a local government to its State or territory. A transfer under section 603(c)(4) will not make the State a subrecipient of the local government, and such Fiscal Recovery Funds may be used by the State for any purpose permitted under section 602(c). A transfer under section 603(c)(4) will result in a cancellation or termination of the award on the part of the transferor local government and a modification of the award to the transferee State or territory. The transferor must provide notice of the transfer to Treasury in a format specified by Treasury. If the local government does not provide such notice, it will remain legally obligated to Treasury under the award and remain responsible for ensuring that the awarded Fiscal Recovery Funds are being used in accordance with the statute and program guidance and for reporting on such uses to Treasury. A State that receives a transfer from a local government under section 603(c)(4) will be bound by all of the use restrictions set forth in section 602(c) with respect to the use of those Fiscal Recovery Funds, including the prohibitions on use of such Fiscal Recovery Funds to offset certain reductions in taxes or to make deposits into pension funds.

Question 35: What are the advantages and disadvantages of treating the list of transferees in sections 602(c)(3) and 603(c)(3) as nonexclusive, allowing States and localities to transfer funds to entities outside of the list?

Question 36: Are there alternative ways of defining "special-purpose unit of State or local government" and

[178] Includes the period during and immediately following recessions, as defined by the National Bureau of Economic Research. National Bureau of Economic Research, US Business Cycle Expansions and Contractions, *https://www.nber.org/research/data/us-business-cycle-expansions-and-contractions* (last visited Apr. 27, 2021). Based on data from U.S. Bureau of Labor Statistics, Unemployment Rate [UNRATE], retrieved from FRED, Federal Reserve Bank of St. Louis, *https://fred.stlouisfed.org/series/UNRATE* (last visited Apr. 27, 2021).

[179] U.S. Bureau of Labor Statistics, Economic News Release—Table 1. Civilian labor force and unemployment by state and selected area, seasonally adjusted, *https://www.bls.gov/news.release/laus.t01.htm* (last visited Apr. 30, 2021).

[180] Section 602(c)(3) of the Act.

"public benefit corporation" that would better further the aims of the Funds?

VII. Nonentitlement Units of Government

The Fiscal Recovery Funds provides for $19.53 billion in payments to be made to States and territories which will distribute the funds to nonentitlement units of local government (NEUs); local governments which generally have populations below 50,000. These local governments have not yet received direct fiscal relief from the Federal Government during the COVID–19 public health emergency, making Fiscal Recovery Funds payments an important source of support for their public health and economic responses. Section 603 requires Treasury to allocate and pay Fiscal Recovery Funds to the States and territories and requires the States and territories to distribute Fiscal Recovery Funds to NEUs based on population within 30 days of receipt unless an extension is granted by the Secretary. The interim final rule clarifies certain aspects regarding the distribution of Fiscal Recovery by States and territories to NEUs, as well as requirements around timely payments from the Fiscal Recovery Funds.

The ARPA requires that States and territories allocate funding to NEUs in an amount that bears the same proportion as the population of the NEU bears to the total population of all NEUs in the State or territory, subject to a cap (described below). Because the statute requires States and territories to make distributions based on population, States and territories may not place additional conditions or requirements on distributions to NEUs, beyond those required by the ARPA and Treasury's implementing regulations and guidance. For example, a State may not impose stricter limitations than permitted by statute or Treasury regulations or guidance on an NEU's use of Fiscal Recovery Funds based on the NEU's proposed spending plan or other policies. States and territories are also not permitted to offset any debt owed by the NEU against the NEU's distribution. Further, States and territories may not provide funding on a reimbursement basis—*e.g.,* requiring NEUs to pay for project costs up front before being reimbursed with Fiscal Recovery Funds payments—because this funding model would not comport with the statutory requirement that States and territories make distributions to NEUs within the statutory timeframe.

Similarly, States and territories distributing Fiscal Recovery Funds payments to NEUs are responsible for complying with the Fiscal Recovery Funds statutory requirement that distributions to NEUs not exceed 75 percent of the NEU's most recent budget. The most recent budget is defined as the NEU's most recent annual total operating budget, including its general fund and other funds, as of January 27, 2020. Amounts in excess of such cap and therefore not distributed to the NEU must be returned to Treasury by the State or territory. States and territories may rely for this determination on a certified top-line budget total from the NEU.

Under the interim final rule, the total allocation and distribution to an NEU, including the sum of both the first and second tranches of funding, cannot exceed the 75 percent cap. States and territories must permit NEUs without formal budgets as of January 27, 2020 to self-certify their most recent annual expenditures as of January 27, 2020 for the purpose of calculating the cap. This approach will provide an administrable means to implement the cap for small local governments that do not adopt a formal budget.

Section 603(b)(3) of the Social Security Act provides for Treasury to make payments to counties but provides that, in the case of an amount to be paid to a county that is not a unit of general local government, the amount shall instead be paid to the State in which such county is located, and such State shall distribute such amount to each unit of general local government within such county in an amount that bears the same proportion to the amount to be paid to such county as the population of such units of general local government bears to the total population of such county. As with NEUs, States may not place additional conditions or requirements on distributions to such units of general local government, beyond those required by the ARPA and Treasury's implementing regulations and guidance.

In the case of consolidated governments, section 603(b)(4) allows consolidated governments (*e.g.,* a city-county consolidated government) to receive payments under each allocation based on the respective formulas. In the case of a consolidated government, Treasury interprets the budget cap to apply to the consolidated government's NEU allocation under section 603(b)(2) but not to the consolidated government's county allocation under section 603(b)(3).

If necessary, States and territories may use the Fiscal Recovery Funds under section 602(c)(1)(A) to fund expenses related to administering payments to NEUs and units of general local government, as disbursing these funds itself is a response to the public health emergency and its negative economic impacts. If a State or territory requires more time to disburse Fiscal Recovery Funds to NEUs than the allotted 30 days, Treasury will grant extensions of not more than 30 days for States and territories that submit a certification in writing in accordance with section 603(b)(2)(C)(ii)(I). Additional extensions may be granted at the discretion of the Secretary.

Question 37: What are alternative ways for States and territories to enforce the 75 percent cap while reducing the administrative burden on them?

Question 38: What criteria should Treasury consider in assessing requests for extensions for further time to distribute NEU payments?

VIII. Reporting

States (defined to include the District of Columbia), territories, metropolitan cities, counties, and Tribal governments will be required to submit one interim report and thereafter quarterly Project and Expenditure reports through the end of the award period on December 31, 2026. The interim report will include a recipient's expenditures by category at the summary level from the date of award to July 31, 2021 and, for States and territories, information related to distributions to nonentitlement units. Recipients must submit their interim report to Treasury by August 31, 2021. Nonentitlement units of local government are not required to submit an interim report.

The quarterly Project and Expenditure reports will include financial data, information on contracts and subawards over $50,000, types of projects funded, and other information regarding a recipient's utilization of the award funds. The reports will include the same general data (*e.g.,* on obligations, expenditures, contracts, grants, and subawards) as those submitted by recipients of the CRF, with some modifications. Modifications will include updates to the expenditure categories and the addition of data elements related to specific eligible uses, including some of the reporting elements described in sections above. The initial quarterly Project and Expenditure report will cover two calendar quarters from the date of award to September 30, 2021, and must be submitted to Treasury by October 31, 2021. The subsequent quarterly reports will cover one calendar quarter and must be submitted to Treasury within 30 days after the end of each calendar quarter.

Nonentitlement units of local government will be required to submit

annual Project and Expenditure reports until the end of the award period on December 31, 2026. The initial annual Project and Expenditure report for nonentitlement units of local government will cover activity from the date of award to September 30, 2021 and must be submitted to Treasury by October 31, 2021. The subsequent annual reports must be submitted to Treasury by October 31 each year.

States, territories, metropolitan cities, and counties with a population that exceeds 250,000 residents will also be required to submit an annual Recovery Plan Performance report to Treasury. The Recovery Plan Performance report will provide the public and Treasury information on the projects that recipients are undertaking with program funding and how they are planning to ensure project outcomes are achieved in an effective, efficient, and equitable manner. Each jurisdiction will have some flexibility in terms of the form and content of the Recovery Plan Performance report, as long as it includes the minimum information required by Treasury. The Recovery Plan Performance report will include key performance indicators identified by the recipient and some mandatory indicators identified by Treasury, as well as programmatic data in specific eligible use categories and the specific reporting requirements described in the sections above. The initial Recovery Plan Performance report will cover the period from the date of award to July 31, 2021 and must be submitted to Treasury by August 31, 2021. Thereafter, Recovery Plan Performance reports will cover a 12-month period, and recipients will be required to submit the report to Treasury within 30 days after the end of the 12-month period. The second Recovery Plan Performance report will cover the period from July 1, 2021 to June 30, 2022, and must be submitted to Treasury by July 31, 2022. Each annual Recovery Plan Performance report must be posted on the public-facing website of the recipient. Local governments with fewer than 250,000 residents, Tribal governments, and nonentitlement units of local government are not required to develop a Recovery Plan Performance report.

Treasury will provide additional guidance and instructions on the reporting requirements outlined above for the Fiscal Recovery Funds at a later date.

IX. Comments and Effective Date

This interim final rule is being issued without advance notice and public comment to allow for immediate implementation of this program. As discussed below, the requirements of advance notice and public comment do not apply "to the extent that there is involved . . . a matter relating to agency . . . grants." [181] The interim final rule implements statutory conditions on the eligible uses of the Fiscal Recovery Funds grants, and addresses the payment of those funds, the reporting on uses of funds, and potential consequences of ineligible uses. In addition and as discussed below, the Administrative Procedure Act also provides an exception to ordinary notice-and-comment procedures "when the agency for good cause finds (and incorporates the finding and a brief statement of reasons therefor in the rules issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest." [182] This good cause justification also supports waiver of the 60-day delayed effective date for major rules under the Congressional Review Act at 5 U.S.C. 808(2). Although this interim final rule is effective immediately, comments are solicited from interested members of the public and from recipient governments on all aspects of the interim final rule.

These comments must be submitted on or before July 16, 2021.

X. Regulatory Analyses

Executive Orders 12866 and 13563

This interim final rule is economically significant for the purposes of Executive Orders 12866 and 13563. Treasury, however, is proceeding under the emergency provision at Executive Order 12866 section 6(a)(3)(D) based on the need to act expeditiously to mitigate the current economic conditions arising from the COVID–19 public health emergency. The rule has been reviewed by the Office of Management and Budget (OMB) in accordance with Executive Order 12866. This rule is necessary to implement the ARPA in order to provide economic relief to State, local, and Tribal governments adversely impacted by the COVID–19 public health emergency.

Under Executive Order 12866, OMB must determine whether this regulatory action is "significant" and, therefore, subject to the requirements of the Executive Order and subject to review by OMB. Section 3(f) of Executive Order 12866 defines a significant regulatory action as an action likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more, or adversely affect a sector of the economy; productivity; competition; jobs; the environment; public health or safety; or State, local, or Tribal governments or communities in a material way (also referred to as "economically significant" regulations);

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impacts of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles stated in the Executive order.

This regulatory action is an economically significant regulatory action subject to review by OMB under section 3(f) of Executive Order 12866. Treasury has also reviewed these regulations under Executive Order 13563, which supplements and explicitly reaffirms the principles, structures, and definitions governing regulatory review established in Executive Order 12866. To the extent permitted by law, section 1(b) of Executive Order 13563 requires that an agency:

(1) Propose or adopt regulations only upon a reasoned determination that their benefits justify their costs (recognizing that some benefits and costs are difficult to quantify);

(2) Tailor its regulations to impose the least burden on society, consistent with obtaining regulatory objectives taking into account, among other things, and to the extent practicable, the costs of cumulative regulations;

(3) Select, in choosing among alternative regulatory approaches, those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity);

(4) To the extent feasible, specify performance objectives, rather than the behavior or manner of compliance a regulated entity must adopt; and

(5) Identify and assess available alternatives to direct regulation, including providing economic incentives—such as user fees or marketable permits—to encourage the desired behavior, or providing information that enables the public to make choices.

Executive Order 13563 also requires an agency "to use the best available

[181] 5 U.S.C. 553(a)(2).

[182] 5 U.S.C. 553(b)(3)(B); *see also* 5 U.S.C. 553(d)(3) (creating an exception to the requirement of a 30-day delay before the effective date of a rule "for good cause found and published with the rule").

techniques to quantify anticipated present and future benefits and costs as accurately as possible." OMB's Office of Information and Regulatory Affairs (OIRA) has emphasized that these techniques may include "identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes."

Treasury has assessed the potential costs and benefits, both quantitative and qualitative, of this regulatory action, and is issuing this interim final rule only on a reasoned determination that the benefits exceed the costs. In choosing among alternative regulatory approaches, Treasury selected those approaches that would maximize net benefits. Based on the analysis that follows and the reasons stated elsewhere in this document, Treasury believes that this interim final rule is consistent with the principles set forth in Executive Order 13563.

Treasury also has determined that this regulatory action does not unduly interfere with States, territories, Tribal governments, and localities in the exercise of their governmental functions.

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

Need for Regulatory Action. This interim final rule implements the $350 billion Fiscal Recovery Funds of the ARPA, which Congress passed to help States, territories, Tribal governments, and localities respond to the ongoing COVID–19 public health emergency and its economic impacts. As the agency charged with execution of these programs, Treasury has concluded that this interim final rule is needed to ensure that recipients of Fiscal Recovery Funds fully understand the requirements and parameters of the program as set forth in the statute and deploy funds in a manner that best reflects Congress' mandate for targeted fiscal relief.

This interim final rule is primarily a transfer rule: It transfers $350 billion in aid from the Federal Government to states, territories, Tribal governments, and localities, generating a significant macroeconomic effect on the U.S. economy. In making this transfer, Treasury has sought to implement the program in ways that maximize its potential benefits while minimizing its costs. It has done so by aiming to target relief in key areas according to the congressional mandate; offering clarity to States, territories, Tribal governments, and localities while maintaining their flexibility to respond to local needs; and limiting administrative burdens.

Analysis of Benefits. Relative to a pre-statutory baseline, the Fiscal Recovery Funds provide a combined $350 billion to State, local, and Tribal governments for fiscal relief and support for costs incurred responding to the COVID–19 pandemic. Treasury believes that this transfer will generate substantial additional economic activity, although given the flexibility accorded to recipients in the use of funds, it is not possible to precisely estimate the extent to which this will occur and the timing with which it will occur. Economic research has demonstrated that state fiscal relief is an efficient and effective way to mitigate declines in jobs and output during an economic downturn.[183] Absent such fiscal relief, fiscal austerity among State, local, and Tribal governments could exert a prolonged drag on the overall economic recovery, as occurred following the 2007–09 recession.[184]

This interim final rule provides benefits across several areas by implementing the four eligible funding uses, as defined in statute: Strengthening the response to the COVID–19 public health emergency and its economic impacts; easing fiscal pressure on State, local, and Tribal governments that might otherwise lead to harmful cutbacks in employment or government services; providing premium pay to essential workers; and making necessary investments in certain types of infrastructure. In implementing the ARPA, Treasury also sought to support disadvantaged communities that have been disproportionately impacted by the pandemic. The Fiscal Recovery Funds as implemented by the interim final rule can be expected to channel resources toward these uses in order to achieve substantial near-term economic and public health benefits, as well as longer-term benefits arising from the allowable investments in water, sewer, and broadband infrastructure and aid to families.

These benefits are achieved in the interim final rule through a broadly flexible approach that sets clear guidelines on eligible uses of Fiscal Recovery Funds and provides State, local, and Tribal government officials discretion within those eligible uses to direct Fiscal Recovery Funds to areas of greatest need within their jurisdiction. While preserving recipients' overall flexibility, the interim final rule includes several provisions that implement statutory requirements and will help support use of Fiscal Recovery Funds to achieve the intended benefits. The remainder of this section clarifies how Treasury's approach to key provisions in the interim final rule will contribute to greater realization of benefits from the program.

- *Revenue Loss:* Recipients will compute the extent of reduction in revenue by comparing actual revenue to a counterfactual trend representing what could have plausibly been expected to occur in the absence of the pandemic. The counterfactual trend begins with the last full fiscal year prior to the public health emergency (as required by statute) and projects forward with an annualized growth adjustment. Treasury's decision to incorporate a growth adjustment into the calculation of revenue loss ensures that the formula more fully captures revenue shortfalls relative to recipients' pre-pandemic expectations. Moreover, recipients will have the opportunity to re-calculate revenue loss at several points throughout the program, recognizing that some recipients may experience revenue effects with a lag. This option to re-calculate revenue loss on an ongoing basis should result in more support for recipients to avoid harmful cutbacks in future years. In calculating revenue loss, recipients will look at general revenue in the aggregate, rather than on a source-by-source basis. Given that recipients may have experienced offsetting changes in revenues across sources, Treasury's approach provides a more accurate representation of the effect of the pandemic on overall revenues.
- *Premium Pay:* Per the statute, recipients have broad latitude to designate critical infrastructure sectors and make grants to third-party employers for the purpose of providing premium pay or otherwise respond to essential workers. While the interim final rule generally preserves the flexibility in the statute, it does add a requirement that recipients give written justification in the case that premium pay would increase a worker's annual pay above a certain threshold. To set this threshold, Treasury analyzed data

[183] Gabriel Chodorow-Reich et al., Does State Fiscal Relief during Recessions Increase Employment? Evidence from the American Recovery and Reinvestment Act, American Econ. J.: Econ. Policy, 4:3 118–45 (Aug. 2012), *available at https://www.aeaweb.org/articles?id=10.1257/pol.4.3.118.*

[184] *See, e.g.,* Fitzpatrick, Haughwout & Setren, Fiscal Drag from the State and Local Sector?, Liberty Street Economics Blog, Federal Reserve Bank of New York (June 27, 2012), *https://www.libertystreeteconomics.newyorkfed.org/2012/06/fiscal-drag-from-the-state-and-local-sector.html;* Jiri Jonas, Great Recession and Fiscal Squeeze at U.S. Subnational Government Level, IMF Working Paper 12/184, (July 2012), *available at https://www.imf.org/external/pubs/ft/wp/2012/wp12184.pdf;* Gordon, *supra* note 9.

from the Bureau of Labor Statistics to determine a level that would not require further justification for premium pay to the vast majority of essential workers, while requiring higher scrutiny for provision of premium pay to higher-earners who, even without premium pay, would likely have greater personal financial resources to cope with the effects of the pandemic. Treasury believes the threshold in the interim final rule strikes the appropriate balance between preserving flexibility and helping encourage use of these resources to help those in greatest need. The interim final rule also requires that eligible workers have regular in-person interactions or regular physical handling of items that were also handled by others. This requirement will also help encourage use of financial resources for those who have endured the heightened risk of performing essential work.

- *Withholding of Payments to Recipients:* Treasury believes that for the vast majority of recipient entities, it will be appropriate to receive funds in two separate payments. As discussed above, withholding of payments ensures that recipients can adapt spending plans to evolving economic conditions and that at least some of the economic benefits will be realized in 2022 or later. However, consistent with authorities granted to Treasury in the statute, Treasury recognizes that a subset of States with significant remaining elevation in the unemployment rate could face heightened additional near-term needs to aid unemployed workers and stimulate the recovery. Therefore, for a subset of State governments, Treasury will not withhold any funds from the first payment. Treasury believes that this approach strikes the appropriate balance between the general reasons to provide funds in two payments and the heightened additional near-term needs in specific States. As discussed above, Treasury set a threshold based on historical analysis of unemployment rates in recessions.
- *Hiring Public Sector Employees:* The interim final rule states explicitly that recipients may use funds to restore their workforces up to pre-pandemic levels. Treasury believes that this statement is beneficial because it eliminates any uncertainty that could cause delays or otherwise negatively impact restoring public sector workforces (which, at time of publication, remain significantly below pre-pandemic levels).

Finally, the interim final rule aims to promote and streamline the provision of assistance to individuals and communities in greatest need, particularly communities that have been historically disadvantaged and have experienced disproportionate impacts of the COVID–19 crisis. Targeting relief is in line with Executive Order 13985, ''Advancing Racial Equity and Support for Underserved Communities Through the Federal Government,'' which laid out an Administration-wide priority to support ''equity for all, including people of color and others who have been historically underserved, marginalized, and adversely affected by persistent poverty and inequality.'' [185] To this end, the interim final rule enumerates a list of services that may be provided using Fiscal Recovery Funds in low-income areas to address the disproportionate impacts of the pandemic in these communities; establishes the characteristics of essential workers eligible for premium pay and encouragement to serve workers based on financial need; provides that recipients may use Fiscal Recovery Funds to restore (to pre-pandemic levels) state and local workforces, where women and people of color are disproportionately represented; [186] and targets investments in broadband infrastructure to unserved and underserved areas. Collectively, these provisions will promote use of resources to facilitate the provision of assistance to individuals and communities with the greatest need.

Analysis of Costs. This regulatory action will generate administrative costs relative to a pre-statutory baseline. This includes, chiefly, costs required to administer Fiscal Recovery Funds, oversee subrecipients and beneficiaries, and file periodic reports with Treasury. It also requires States to allocate Fiscal Recovery Funds to nonentitlement units, which are smaller units of local government that are statutorily required to receive their funds through States.

Treasury expects that the administrative burden associated with this program will be moderate for a grant program of its size. Treasury expects that most recipients receive direct or indirect funding from Federal Government programs and that many have familiarity with how to administer and report on Federal funds or grant funding provided by other entities. In particular, States, territories, and large localities will have received funds from the CRF and Treasury expects them to rely heavily on established processes developed last year or through prior grant funding, mitigating burden on these governments.

Treasury expects to provide technical assistance to defray the costs of administration of Fiscal Recovery Funds to further mitigate burden. In making implementation choices, Treasury has hosted numerous consultations with a diverse range of direct recipients—States, small cities, counties, and Tribal governments—along with various communities across the United States, including those that are underserved. Treasury lacks data to estimate the precise extent to which this interim final rule generates administrative burden for State, local, and Tribal governments, but seeks comment to better estimate and account for these costs, as well as on ways to lessen administrative burdens.

Executive Order 13132

Executive Order 13132 (entitled Federalism) prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial, direct compliance costs on State, local, and Tribal governments, and is not required by statute, or preempts state law, unless the agency meets the consultation and funding requirements of section 6 of the Executive order. This interim final rule does not have federalism implications within the meaning of the Executive order and does not impose substantial, direct compliance costs on State, local, and Tribal governments or preempt state law within the meaning of the Executive order. The compliance costs are imposed on State, local, and Tribal governments by sections 602 and 603 of the Social Security Act, as enacted by the ARPA. Notwithstanding the above, Treasury has engaged in efforts to consult and work cooperatively with affected State, local, and Tribal government officials and associations in the process of developing the interim final rule. Pursuant to the requirements set forth in section 8(a) of Executive Order 13132, Treasury certifies that it has complied with the requirements of Executive Order 13132.

Administrative Procedure Act

The Administrative Procedure Act (APA), 5 U.S.C. 551 *et seq.*, generally requires public notice and an opportunity for comment before a rule

[185] Executive Order on Advancing Racial Equity and Support for Underserved Communities through the Federal Government (Jan. 20, 2021) (86 FR 7009, January 25, 2021), *https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/20/executive-order-advancing-racial-equity-and-support-for-underserved-communities-through-the-federal-government/* (last visited May 9, 2021).

[186] David Cooper, Mary Gable & Algernon Austin, Economic Policy Institute Briefing Paper, The Public-Sector Jobs Crisis: Women and African Americans hit hardest by job losses in state and local governments, *https://www.epi.org/publication/bp339-public-sector-jobs-crisis* (last visited May 9, 2021).

becomes effective. However, the APA provides that the requirements of 5 U.S.C. 553 do not apply "to the extent that there is involved . . . a matter relating to agency . . . grants." The interim final rule implements statutory conditions on the eligible uses of the Fiscal Recovery Funds grants, and addresses the payment of those funds, the reporting on uses of funds, and potential consequences of ineligible uses. The rule is thus "both clearly and directly related to a federal grant program." *National Wildlife Federation* v. *Snow,* 561 F.2d 227, 232 (D.C. Cir. 1976). The rule sets forth the "process necessary to maintain state . . . eligibility for federal funds," *id.,* as well as the "method[s] by which states can . . . qualify for federal aid," and other "integral part[s] of the grant program," *Center for Auto Safety* v. *Tiemann,* 414 F. Supp. 215, 222 (D.D.C. 1976). As a result, the requirements of 5 U.S.C. 553 do not apply.

The APA also provides an exception to ordinary notice-and-comment procedures "when the agency for good cause finds (and incorporates the finding and a brief statement of reasons therefor in the rules issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest." 5 U.S.C. 553(b)(3)(B); *see also* 5 U.S.C. 553(d)(3) (creating an exception to the requirement of a 30-day delay before the effective date of a rule "for good cause found and published with the rule"). Assuming 5 U.S.C. 553 applied, Treasury would still have good cause under sections 553(b)(3)(B) and 553(d)(3) for not undertaking section 553's requirements. The ARPA is a law responding to a historic economic and public health emergency; it is "extraordinary" legislation about which "both Congress and the President articulated a profound sense of 'urgency.'" *Petry* v. *Block,* 737 F.2d 1193, 1200 (D.C. Cir. 1984). Indeed, several provisions implemented by this interim final rule (sections 602(c)(1)(A) and 603(c)(1)(A)) explicitly provide funds to "respond to the public health emergency," and the urgency is further exemplified by Congress's command (in sections 602(b)(6)(B) and 603(b)(7)(A)) that, "[t]o the extent practicable," funds must be provided to Tribes and cities "not later than 60 days after the date of enactment." *See Philadelphia Citizens in Action* v. *Schweiker,* 669 F.2d 877, 884 (3d Cir. 1982) (finding good cause under circumstances, including statutory time limits, where APA procedures would have been "virtually impossible"). Finally, there is an urgent need for States to undertake the planning necessary for sound fiscal policymaking, which requires an understanding of how funds provided under the ARPA will augment and interact with existing budgetary resources and tax policies. Treasury understands that many states require immediate rules on which they can rely, especially in light of the fact that the ARPA "covered period" began on March 3, 2021. The statutory urgency and practical necessity are good cause to forego the ordinary requirements of notice-and-comment rulemaking.

Congressional Review Act

The Administrator of OIRA has determined that this is a major rule for purposes of Subtitle E of the Small Business Regulatory Enforcement and Fairness Act of 1996 (also known as the Congressional Review Act or CRA) (5 U.S.C. 804(2) *et seq.*). Under the CRA, a major rule takes effect 60 days after the rule is published in the **Federal Register**. 5 U.S.C. 801(a)(3). Notwithstanding this requirement, the CRA allows agencies to dispense with the requirements of section 801 when the agency for good cause finds that such procedure would be impracticable, unnecessary, or contrary to the public interest and the rule shall take effect at such time as the agency promulgating the rule determines. 5 U.S.C. 808(2). Pursuant to section 808(2), for the reasons discussed above, Treasury for good cause finds that a 60-day delay to provide public notice is impracticable and contrary to the public interest.

Paperwork Reduction Act

The information collections associated with State, territory, local, and Tribal government applications materials necessary to receive Fiscal Recovery Funds (*e.g.,* payment information collection and acceptance of award terms) have been reviewed and approved by OMB pursuant to the Paperwork Reduction Act (44 U.S.C. chapter 35) (PRA) emergency processing procedures and assigned control number 1505–0271. The information collections related to ongoing reporting requirements, as discussed in this interim final rule, will be submitted to OMB for emergency processing in the near future. Under the PRA, an agency may not conduct or sponsor and a respondent is not required to respond to, an information collection unless it displays a valid OMB control number.

Estimates of hourly burden under this program are set forth in the table below. Burden estimates below are preliminary.

Reporting	Number of respondents (estimated)	Number of responses per respondent	Total responses	Hours per response	Total burden in hours	Cost to respondent ($48.80 per hour*)
Recipient Payment Form	5,050	1	5,050	.25 (15 minutes)	1,262.5	$61,610
Acceptance of Award Terms	5,050	1	5,050	.25 (15 minutes)	1,262.5	61,610
Title VI Assurances	5,050	1	5,050	.50 (30 minutes)	2,525	123,220
Quarterly Project and Expenditure Report.	5,050	4***	20,200	25	505,000	24,644,000
Annual Project and Expenditure Report from NEUs.	TBD	1 per year	†20,000–40,000	15	300,000–600,000	14,640,000–29,280,000
Annual Recovery Plan Performance report.	418	1 per year	418	100	41,800	2,039,840
Total	(**)	N/A	55,768–75,768	141	851,850–1,151,850	41,570,280–56,210,280

*Bureau of Labor Statistics, U.S. Department of Labor, Occupational Outlook Handbook, Accountants and Auditors, on the internet at *https://www.bls.gov/ooh/business-and-financial/accountants-and-auditors.htm* (visited March 28, 2020). Base wage of $33.89/hour increased by 44 percent to account for fully loaded employer cost of employee compensation (benefits, etc.) for a fully loaded wage rate of $48.80.

**5,050–TBD.

***Per year after first year.

† (Estimate only).

Periodic reporting is required by section 602(c) of Section VI of the Social Security Act and under the interim final rule.

As discussed in Section VIII of this **SUPPLEMENTARY INFORMATION**, recipients of Fiscal Recovery Funds will be required to submit one interim report and thereafter quarterly Project and Expenditure reports until the end of the award period. Recipients must submit interim reports to Treasury by August

31, 2021. The quarterly Project and Expenditure reports will include financial data, information on contracts and subawards over $50,000, types of projects funded, and other information regarding a recipient's utilization of the award funds.

Nonentitlement unit recipients will be required to submit annual Project and Expenditure reports until the end of the award period. The initial annual Project and Expenditure report for Nonentitlement unit recipients must be submitted to Treasury by October 31, 2021. The subsequent annual reports must be submitted to Treasury by October 31 each year. States, territories, metropolitan cities, and counties with a population that exceeds 250,000 residents will also be required to submit an annual Recovery Plan Performance report to Treasury. The Recovery Plan Performance report will include descriptions of the projects funded and information on the performance indicators and objectives of the award. Each annual Recovery Plan Performance report must be posted on the public-facing website of the recipient. Treasury will provide additional guidance and instructions on the all the reporting requirements outlined above for the Fiscal Recovery Funds program at a later date.

These and related periodic reporting requirements are under consideration and will be submitted to OMB for approval under the PRA emergency provisions in the near future.

Treasury invites comments on all aspects of the reporting and recordkeeping requirements including: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information. Comments should be sent by the comment deadline to the *www.regulations.gov* docket with a copy to the Office of Information and Regulatory Affairs, U.S. Office of Management and Budget, 725 17th Street NW, Washington, DC 20503; or email to *oira_submission@omb.eop.gov*.

Regulatory Flexibility Analysis

The Regulatory Flexibility Act (RFA) generally requires that when an agency issues a proposed rule, or a final rule pursuant to section 553(b) of the Administrative Procedure Act or another law, the agency must prepare a regulatory flexibility analysis that meets the requirements of the RFA and publish such analysis in the **Federal Register**. 5 U.S.C. 603, 604.

Rules that are exempt from notice and comment under the APA are also exempt from the RFA requirements, including the requirement to conduct a regulatory flexibility analysis, when among other things the agency for good cause finds that notice and public procedure are impracticable, unnecessary, or contrary to the public interest. Since this rule is exempt from the notice and comment requirements of the APA, Treasury is not required to conduct a regulatory flexibility analysis.

List of Subjects in 31 CFR Part 35

Executive compensation, Public health emergency, State and local governments, Tribal governments.

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

PART 35—PANDEMIC RELIEF PROGRAMS

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

Authority: 42 U.S.C. 802(f); 42 U.S.C. 803(f); 31 U.S.C. 321; Division N, Title V, Subtitle B, Pub. L. 116–260, 134 Stat. 1182; Section 104A, Pub. L. 103–325, 108 Stat. 2160, as amended (12 U.S.C. 4701 *et seq.*); Pub. L. 117–2, 135 Stat. 4 (42 U.S.C. 802 *et seq.*).

■ 2. Revise the part heading to read as set forth above.

■ 3. Add subpart A to read as follows:

Subpart A—Coronavirus State and Local Fiscal Recovery Funds

Sec.

35.1 Purpose.
35.2 Applicability.
35.3 Definitions.
35.4 Reservation of authority, reporting.
35.5 Use of funds.
35.6 Eligible uses.
35.7 Pensions.
35.8 Tax.
35.9 Compliance with applicable laws.
35.10 Recoupment.
35.11 Payments to States.
35.12 Distributions to nonentitlement units of local government and units of general local government.

§ 35.1 Purpose.

This subpart implements section 9901 of the American Rescue Plan Act (Subtitle M of Title IX of Pub. L. 117–2), which amends Title VI of the Social Security Act (42 U.S.C. 801 *et seq.*) by adding sections 602 and 603 to establish the Coronavirus State Fiscal Recovery Fund and Coronavirus Local Fiscal Recovery Fund.

§ 35.2 Applicability.

This subpart applies to States, territories, Tribal governments, metropolitan cities, nonentitlement units of local government, counties, and units of general local government that accept a payment or transfer of funds made under section 602 or 603 of the Social Security Act.

§ 35.3 Definitions.

As used in this subpart:

Baseline means tax revenue of the recipient for its fiscal year ending in 2019, adjusted for inflation in each reporting year using the Bureau of Economic Analysis's Implicit Price Deflator for the gross domestic product of the United States.

County means a county, parish, or other equivalent county division (as defined by the Census Bureau).

Covered benefits include, but are not limited to, the costs of all types of leave (vacation, family-related, sick, military, bereavement, sabbatical, jury duty), employee insurance (health, life, dental, vision), retirement (pensions, 401(k)), unemployment benefit plans (Federal and State), workers' compensation insurance, and Federal Insurance Contributions Act taxes (which includes Social Security and Medicare taxes).

Covered change means a change in law, regulation, or administrative interpretation. A change in law includes any final legislative or regulatory action, a new or changed administrative interpretation, and the phase-in or taking effect of any statute or rule if the phase-in or taking effect was not prescribed prior to the start of the covered period.

Covered period means, with respect to a State, Territory, or Tribal government, the period that:

(1) Begins on March 3, 2021; and

(2) Ends on the last day of the fiscal year of such State, Territory, or Tribal government in which all funds received by the State, Territory, or Tribal government from a payment made under section 602 or 603 of the Social Security Act have been expended or returned to, or recovered by, the Secretary.

COVID–19 means the Coronavirus Disease 2019.

COVID–19 public health emergency means the period beginning on January 27, 2020 and until the termination of the national emergency concerning the COVID–19 outbreak declared pursuant to the National Emergencies Act (50 U.S.C. 1601 *et seq.*).

Deposit means an extraordinary payment of an accrued, unfunded liability. The term deposit does not refer to routine contributions made by an employer to pension funds as part of the employer's obligations related to payroll, such as either a pension contribution consisting of a normal cost component related to current employees or a component addressing the amortization of unfunded liabilities calculated by reference to the employer's payroll costs.

Eligible employer means an employer of an eligible worker who performs essential work.

Eligible workers means workers needed to maintain continuity of operations of essential critical infrastructure sectors, including health care; emergency response; sanitation, disinfection, and cleaning work; maintenance work; grocery stores, restaurants, food production, and food delivery; pharmacy; biomedical research; behavioral health work; medical testing and diagnostics; home- and community-based health care or assistance with activities of daily living; family or child care; social services work; public health work; vital services to Tribes; any work performed by an employee of a State, local, or Tribal government; educational work, school nutrition work, and other work required to operate a school facility; laundry work; elections work; solid waste or hazardous materials management, response, and cleanup work; work requiring physical interaction with patients; dental care work; transportation and warehousing; work at hotel and commercial lodging facilities that are used for COVID–19 mitigation and containment; work in a mortuary; work in critical clinical research, development, and testing necessary for COVID–19 response.

(1) With respect to a recipient that is a metropolitan city, nonentitlement unit of local government, or county, workers in any additional sectors as each chief executive officer of such recipient may designate as critical to protect the health and well-being of the residents of their metropolitan city, nonentitlement unit of local government, or county; or

(2) With respect to a State, Territory, or Tribal government, workers in any additional sectors as each Governor of a State or Territory, or each Tribal government, may designate as critical to protect the health and well-being of the residents of their State, Territory, or Tribal government.

Essential work means work that:

(1) Is not performed while teleworking from a residence; and

(2) Involves:

(i) Regular in-person interactions with patients, the public, or coworkers of the individual that is performing the work; or

(ii) Regular physical handling of items that were handled by, or are to be handled by patients, the public, or coworkers of the individual that is performing the work.

Funds means, with respect to a recipient, amounts provided to the recipient pursuant to a payment made under section 602(b) or 603(b) of the Social Security Act or transferred to the recipient pursuant to section 603(c)(4) of the Social Security Act.

General revenue means money that is received from tax revenue, current charges, and miscellaneous general revenue, excluding refunds and other correcting transactions, proceeds from issuance of debt or the sale of investments, agency or private trust transactions, and intergovernmental transfers from the Federal Government, including transfers made pursuant to section 9901 of the American Rescue Plan Act. General revenue does not include revenues from utilities. Revenue from Tribal business enterprises must be included in general revenue.

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

Metropolitan city has the meaning given that term in section 102(a)(4) of the Housing and Community Development Act of 1974 (42 U.S.C. 5302(a)(4)) and includes cities that relinquish or defer their status as a metropolitan city for purposes of receiving allocations under section 106 of such Act (42 U.S.C. 5306) for fiscal year 2021.

Net reduction in total spending is measured as the State or Territory's total spending for a given reporting year excluding its spending of funds, subtracted from its total spending for its fiscal year ending in 2019, adjusted for inflation using the Bureau of Economic Analysis's Implicit Price Deflator for the gross domestic product of the United States.

Nonentitlement unit of local government means a "city," as that term is defined in section 102(a)(5) of the Housing and Community Development Act of 1974 (42 U.S.C. 5302(a)(5)), that is not a metropolitan city.

Nonprofit means a nonprofit organization that is exempt from Federal income taxation and that is described in section 501(c)(3) of the Internal Revenue Code.

Obligation means an order placed for property and services and entering into contracts, subawards, and similar transactions that require payment.

Pension fund means a defined benefit plan and does not include a defined contribution plan.

Premium pay means an amount of up to $13 per hour that is paid to an eligible worker, in addition to wages or remuneration the eligible worker otherwise receives, for all work performed by the eligible worker during the COVID–19 public health emergency. Such amount may not exceed $25,000 with respect to any single eligible worker. Premium pay will be considered to be in addition to wages or remuneration the eligible worker otherwise receives if, as measured on an hourly rate, the premium pay is:

(1) With regard to work that the eligible worker previously performed, pay and remuneration equal to the sum of all wages and remuneration previously received plus up to $13 per hour with no reduction, substitution, offset, or other diminishment of the eligible worker's previous, current, or prospective wages or remuneration; or

(2) With regard to work that the eligible worker continues to perform, pay of up to $13 that is in addition to the eligible worker's regular rate of wages or remuneration, with no reduction, substitution, offset, or other diminishment of the workers' current and prospective wages or remuneration.

Qualified census tract has the same meaning given in 26 U.S.C. 42(d)(5)(B)(ii)(I).

Recipient means a State, Territory, Tribal government, metropolitan city, nonentitlement unit of local government, county, or unit of general local government that receives a payment made under section 602(b) or 603(b) of the Social Security Act or transfer pursuant to section 603(c)(4) of the Social Security Act.

Reporting year means a single year or partial year within the covered period, aligned to the current fiscal year of the State or Territory during the covered period.

Secretary means the Secretary of the Treasury.

State means each of the 50 States and the District of Columbia.

Small business means a business concern or other organization that:

(1) Has no more than 500 employees, or if applicable, the size standard in number of employees established by the Administrator of the Small Business Administration for the industry in which the business concern or organization operates; and

(2) Is a small business concern as defined in section 3 of the Small Business Act (15 U.S.C. 632).

Tax revenue means revenue received from a compulsory contribution that is exacted by a government for public purposes excluding refunds and corrections and, for purposes of § 35.8, intergovernmental transfers. Tax revenue does not include payments for a special privilege granted or service rendered, employee or employer assessments and contributions to finance retirement and social insurance trust systems, or special assessments to pay for capital improvements.

Territory means the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, the Commonwealth of the Northern Mariana Islands, or American Samoa.

Tribal enterprise means a business concern:

(1) That is wholly owned by one or more Tribal governments, or by a corporation that is wholly owned by one or more Tribal governments; or

(2) That is owned in part by one or more Tribal governments, or by a corporation that is wholly owned by one or more Tribal governments, if all other owners are either United States citizens or small business concerns, as these terms are used and consistent with the definitions in 15 U.S.C. 657a(b)(2)(D).

Tribal government means the recognized governing body of any Indian or Alaska Native tribe, band, nation, pueblo, village, community, component band, or component reservation, individually identified (including parenthetically) in the list published by the Bureau of Indian Affairs on January 29, 2021, pursuant to section 104 of the Federally Recognized Indian Tribe List Act of 1994 (25 U.S.C. 5131).

Unemployment rate means the U–3 unemployment rate provided by the Bureau of Labor Statistics as part of the Local Area Unemployment Statistics program, measured as total unemployment as a percentage of the civilian labor force.

Unemployment trust fund means an unemployment trust fund established under section 904 of the Social Security Act (42 U.S.C. 1104).

Unit of general local government has the meaning given to that term in section 102(a)(1) of the Housing and Community Development Act of 1974 (42 U.S.C. 5302(a)(1)).

Unserved and underserved households or businesses means one or more households or businesses that are not currently served by a wireline connection that reliably delivers at least 25 Mbps download speed and 3 Mbps of upload speed.

§ 35.4 Reservation of authority, reporting.

(a) *Reservation of authority.* Nothing in this subpart shall limit the authority of the Secretary to take action to enforce conditions or violations of law, including actions necessary to prevent evasions of this subpart.

(b) *Extensions or accelerations of timing.* The Secretary may extend or accelerate any deadline or compliance date of this subpart, including reporting requirements that implement this subpart, if the Secretary determines that such extension or acceleration is appropriate. In determining whether an extension or acceleration is appropriate, the Secretary will consider the period of time that would be extended or accelerated and how the modified timeline would facilitate compliance with this subpart.

(c) *Reporting and requests for other information.* During the covered period, recipients shall provide to the Secretary periodic reports providing detailed accounting of the uses of funds, all modifications to a State or Territory's tax revenue sources, and such other information as the Secretary may require for the administration of this section. In addition to regular reporting requirements, the Secretary may request other additional information as may be necessary or appropriate, including as may be necessary to prevent evasions of the requirements of this subpart. False statements or claims made to the Secretary may result in criminal, civil, or administrative sanctions, including fines, imprisonment, civil damages and penalties, debarment from participating in Federal awards or contracts, and/or any other remedy available by law.

§ 35.5 Use of funds.

(a) *In general.* A recipient may only use funds to cover costs incurred during the period beginning March 3, 2021, and ending December 31, 2024, for one or more of the purposes enumerated in sections 602(c)(1) and 603(c)(1) of the Social Security Act, as applicable, including those enumerated in section § 35.6, subject to the restrictions set forth in sections 602(c)(2) and 603(c)(2) of the Social Security Act, as applicable.

(b) *Costs incurred.* A cost shall be considered to have been incurred for purposes of paragraph (a) of this section if the recipient has incurred an obligation with respect to such cost by December 31, 2024.

(c) *Return of funds.* A recipient must return any funds not obligated by December 31, 2024, and any funds not expended to cover such obligations by December 31, 2026.

§ 35.6 Eligible uses.

(a) *In general.* Subject to §§ 35.7 and 35.8, a recipient may use funds for one or more of the purposes described in paragraphs (b) through (e) of this section

(b) *Responding to the public health emergency or its negative economic impacts.* A recipient may use funds to respond to the public health emergency or its negative economic impacts, including for one or more of the following purposes:

(1) *COVID–19 response and prevention.* Expenditures for the mitigation and prevention of COVID–19, including:

(i) Expenses related to COVID–19 vaccination programs and sites, including staffing, acquisition of equipment or supplies, facilities costs, and information technology or other administrative expenses;

(ii) COVID–19-related expenses of public hospitals, clinics, and similar facilities;

(iii) COVID–19 related expenses in congregate living facilities, including skilled nursing facilities, long-term care facilities, incarceration settings, homeless shelters, residential foster care facilities, residential behavioral health treatment, and other group living facilities;

(iv) Expenses of establishing temporary public medical facilities and other measures to increase COVID–19 treatment capacity, including related construction costs and other capital investments in public facilities to meet COVID–19-related operational needs;

(v) Expenses of establishing temporary public medical facilities and other measures to increase COVID–19 treatment capacity, including related construction costs and other capital investments in public facilities to meet COVID–19-related operational needs;

(vi) Costs of providing COVID–19 testing and monitoring, contact tracing, and monitoring of case trends and genomic sequencing for variants;

(vii) Emergency medical response expenses, including emergency medical transportation, related to COVID–19;

(viii) Expenses for establishing and operating public telemedicine capabilities for COVID–19-related treatment;

(ix) Expenses for communication related to COVID–19 vaccination programs and communication or enforcement by recipients of public health orders related to COVID–19;

(x) Expenses for acquisition and distribution of medical and protective supplies, including sanitizing products and personal protective equipment;

(xi) Expenses for disinfection of public areas and other facilities in

response to the COVID–19 public health emergency;

(xii) Expenses for technical assistance to local authorities or other entities on mitigation of COVID–19-related threats to public health and safety;

(xiii) Expenses for quarantining or isolation of individuals;

(xiv) Expenses of providing paid sick and paid family and medical leave to public employees to enable compliance with COVID–19 public health precautions;

(xv) Expenses for treatment of the long-term symptoms or effects of COVID–19, including post-intensive care syndrome;

(xvi) Expenses for the improvement of ventilation systems in congregate settings, public health facilities, or other public facilities;

(xvii) Expenses related to establishing or enhancing public health data systems; and

(xviii) Mental health treatment, substance misuse treatment, and other behavioral health services.

(2) *Public health and safety staff.* Payroll and covered benefit expenses for public safety, public health, health care, human services, and similar employees to the extent that the employee's time is spent mitigating or responding to the COVID–19 public health emergency.

(3) *Hiring State and local government staff.* Payroll, covered benefit, and other costs associated with the recipient increasing the number of its employees up to the number of employees that it employed on January 27, 2020.

(4) *Assistance to unemployed workers.* Assistance, including job training, for individuals who want and are available for work, including those who have looked for work sometime in the past 12 months or who are employed part time but who want and are available for full-time work.

(5) *Contributions to State unemployment insurance trust funds.* Contributions to an unemployment trust fund up to the level required to restore the unemployment trust fund to its balance on January 27, 2020 or to pay back advances received under Title XII of the Social Security Act (42 U.S.C. 1321) for the payment of benefits between January 27, 2020 and May 17, 2021.

(6) *Small businesses.* Assistance to small businesses, including loans, grants, in-kind assistance, technical assistance or other services, that responds to the negative economic impacts of the COVID–19 public health emergency.

(7) *Nonprofits.* Assistance to nonprofit organizations, including loans, grants, in-kind assistance, technical assistance or other services, that responds to the negative economic impacts of the COVID–19 public health emergency.

(8) *Assistance to households.* Assistance programs, including cash assistance programs, that respond to the COVID–19 public health emergency.

(9) *Aid to impacted industries.* Aid to tourism, travel, hospitality, and other impacted industries that responds to the negative economic impacts of the COVID–19 public health emergency.

(10) *Expenses to improve efficacy of public health or economic relief programs.* Administrative costs associated with the recipient's COVID–19 public health emergency assistance programs, including services responding to the COVID–19 public health emergency or its negative economic impacts, that are not federally funded.

(11) *Survivor's benefits.* Benefits for the surviving family members of individuals who have died from COVID–19, including cash assistance to widows, widowers, or dependents of individuals who died of COVID–19.

(12) *Disproportionately impacted populations and communities.* A program, service, or other assistance that is provided in a qualified census tract, that is provided to households and populations living in a qualified census tract, that is provided by a Tribal government, or that is provided to other households, businesses, or populations disproportionately impacted by the COVID–19 public health emergency, such as:

(i) Programs or services that facilitate access to health and social services, including:

(A) Assistance accessing or applying for public benefits or services;

(B) Remediation of lead paint or other lead hazards; and

(C) Community violence intervention programs;

(ii) Programs or services that address housing insecurity, lack of affordable housing, or homelessness, including:

(A) Supportive housing or other programs or services to improve access to stable, affordable housing among individuals who are homeless;

(B) Development of affordable housing to increase supply of affordable and high-quality living units; and

(C) Housing vouchers and assistance relocating to neighborhoods with higher levels of economic opportunity and to reduce concentrated areas of low economic opportunity;

(iii) Programs or services that address or mitigate the impacts of the COVID–19 public health emergency on education, including:

(A) New or expanded early learning services;

(B) Assistance to high-poverty school districts to advance equitable funding across districts and geographies; and

(C) Educational and evidence-based services to address the academic, social, emotional, and mental health needs of students; and

(iv) Programs or services that address or mitigate the impacts of the COVID–19 public health emergency on childhood health or welfare, including:

(A) New or expanded childcare;

(B) Programs to provide home visits by health professionals, parent educators, and social service professionals to individuals with young children to provide education and assistance for economic support, health needs, or child development; and

(C) Services for child welfare-involved families and foster youth to provide support and education on child development, positive parenting, coping skills, or recovery for mental health and substance use.

(c) *Providing premium pay to eligible workers.* A recipient may use funds to provide premium pay to eligible workers of the recipient who perform essential work or to provide grants to eligible employers, provided that any premium pay or grants provided under this paragraph (c) must respond to eligible workers performing essential work during the COVID–19 public health emergency. A recipient uses premium pay or grants provided under this paragraph (c) to respond to eligible workers performing essential work during the COVID–19 public health emergency if it prioritizes low- and moderate-income persons. The recipient must provide, whether for themselves or on behalf of a grantee, a written justification to the Secretary of how the premium pay or grant provided under this paragraph (c) responds to eligible workers performing essential work if the premium pay or grant would increase an eligible worker's total wages and remuneration above 150 percent of such eligible worker's residing State's average annual wage for all occupations or their residing county's average annual wage, whichever is higher.

(d) *Providing government services.* For the provision of government services to the extent of a reduction in the recipient's general revenue, calculated according to paragraphs (d)(1) and (2) of this section.

(1) *Frequency.* A recipient must calculate the reduction in its general revenue using information as-of December 31, 2020, December 31, 2021, December 31, 2022, and December 31, 2023 (each, a calculation date) and following each calculation date.

(2) *Calculation.* A reduction in a recipient's general revenue equals:

$$Max\ \{[Base\ Year\ Revenue * (1 + Growth\ Adjustment)^{\left(\frac{n_t}{12}\right)}] - Actual\ General\ Revenue_t; 0\}$$

Where:

Base Year Revenue is the recipient's general revenue for the most recent full fiscal year prior to the COVD–19 public health emergency;

Growth Adjustment is equal to the greater of 4.1 percent (or 0.041) and the recipient's average annual revenue growth over the three full fiscal years prior to the COVID–19 public health emergency.

n equals the number of months elapsed from the end of the base year to the calculation date.

Actual General Revenue is a recipient's actual general revenue collected during 12-month period ending on each calculation date;

Subscript *t* denotes the specific calculation date.

(e) *To make necessary investments in infrastructure.* A recipient may use funds to make investments in:

(1) *Clean Water State Revolving Fund and Drinking Water State Revolving Fund investments.* Projects or activities of the type that would be eligible under section 603(c) of the Federal Water Pollution Control Act (33 U.S.C. 1383(c)) or section 1452 of the Safe Drinking Water Act (42 U.S.C. 300j–12); or,

(2) *Broadband.* Broadband infrastructure that is designed to provide service to unserved or underserved households and businesses and that is designed to, upon completion:

(i) Reliably meet or exceed symmetrical 100 Mbps download speed and upload speeds; or

(ii) In cases where it is not practicable, because of the excessive cost of the project or geography or topography of the area to be served by the project, to provide service meeting the standards set forth in paragraph (e)(2)(i) of this section:

(A) Reliably meet or exceed 100 Mbps download speed and between at least 20 Mbps and 100 Mbps upload speed; and

(B) Be scalable to a minimum of 100 Mbps download speed and 100 Mbps upload speed.

§ 35.7 Pensions.

A recipient may not use funds for deposit into any pension fund.

§ 35.8 Tax.

(a) *Restriction.* A State or Territory shall not use funds to either directly or indirectly offset a reduction in the net tax revenue of the State or Territory resulting from a covered change during the covered period.

(b) *Violation.* Treasury will consider a State or Territory to have used funds to offset a reduction in net tax revenue if, during a reporting year:

(1) *Covered change.* The State or Territory has made a covered change that, either based on a reasonable statistical methodology to isolate the impact of the covered change in actual revenue or based on projections that use reasonable assumptions and do not incorporate the effects of macroeconomic growth to reduce or increase the projected impact of the covered change, the State or Territory assesses has had or predicts to have the effect of reducing tax revenue relative to current law;

(2) *Exceeds the de minimis threshold.* The aggregate amount of the measured or predicted reductions in tax revenue caused by covered changes identified under paragraph (b)(1) of this section, in the aggregate, exceeds 1 percent of the State's or Territory's baseline;

(3) *Reduction in net tax revenue.* The State or Territory reports a reduction in net tax revenue, measured as the difference between actual tax revenue and the State's or Territory's baseline, each measured as of the end of the reporting year; and

(4) *Consideration of other changes.* The aggregate amount of measured or predicted reductions in tax revenue caused by covered changes is greater than the sum of the following, in each case, as calculated for the reporting year:

(i) The aggregate amount of the expected increases in tax revenue caused by one or more covered changes that, either based on a reasonable statistical methodology to isolate the impact of the covered change in actual revenue or based on projections that use reasonable assumptions and do not incorporate the effects of macroeconomic growth to reduce or increase the projected impact of the covered change, the State or Territory assesses has had or predicts to have the effect of increasing tax revenue; and

(ii) Reductions in spending, up to the amount of the State's or Territory's net reduction in total spending, that are in:

(A) Departments, agencies, or authorities in which the State or Territory is not using funds; and

(B) Departments, agencies, or authorities in which the State or Territory is using funds, in an amount equal to the value of the spending cuts in those departments, agencies, or authorities, minus funds used.

(c) *Amount and revenue reduction cap.* If a State or Territory is considered to be in violation pursuant to paragraph (b) of this section, the amount used in violation of paragraph (a) of this section is equal to the lesser of:

(1) The reduction in net tax revenue of the State or Territory for the reporting year, measured as the difference between the State's or Territory's baseline and its actual tax revenue, each measured as of the end of the reporting year; and,

(2) The aggregate amount of the reductions in tax revenues caused by covered changes identified in paragraph (b)(1) of this section, minus the sum of the amounts in identified in paragraphs (b)(4)(i) and (ii).

§ 35.9 Compliance with applicable laws.

A recipient must comply with all other applicable Federal statutes, regulations, and Executive orders, and a recipient shall provide for compliance with the American Rescue Plan Act, this subpart, and any interpretive guidance by other parties in any agreements it enters into with other parties relating to these funds.

§ 35.10 Recoupment.

(a) *Identification of violations*—(1) *In general.* Any amount used in violation of § 35.5, § 35.6, or § 35.7 may be identified at any time prior to December 31, 2026.

(2) *Annual reporting of amounts of violations.* On an annual basis, a recipient that is a State or Territory must calculate and report any amounts used in violation of § 35.8.

(b) *Calculation of amounts subject to recoupment*—(1) *In general.* Except as provided in paragraph (b)(2) of this section, Treasury will calculate any amounts subject to recoupment resulting from a violation of § 35.5, § 35.6, or § 35.7 as the amounts used in violation of such restrictions.

(2) *Violations of § 35.8.* Treasury will calculate any amounts subject to recoupment resulting from a violation of § 35.8, equal to the lesser of:

(i) The amount set forth in § 35.8(c); and,

(ii) The amount of funds received by such recipient.

(c) *Notice.* If Treasury calculates an amount subject to recoupment under paragraph (b) of this section, Treasury will provide the recipient a written notice of the amount subject to recoupment along with an explanation of such amounts.

(d) *Request for reconsideration.* Unless Treasury extends the time period, within 60 calendar days of receipt of a notice of recoupment provided under paragraph (c) of this section, a recipient may submit a written request to Treasury requesting reconsideration of any amounts subject to recoupment under paragraph (b) of this section. To request reconsideration of any amounts subject to recoupment, a recipient must submit to Treasury a written request that includes:

(1) An explanation of why the recipient believes all or some of the amount should not be subject to recoupment; and

(2) A discussion of supporting reasons, along with any additional information.

(e) *Final amount subject to recoupment.* Unless Treasury extends the time period, within 60 calendar days of receipt of the recipient's request for reconsideration provided pursuant to paragraph (d) of this section, the recipient will be notified of the Secretary's decision to affirm, withdraw, or modify the notice of recoupment. Such notification will include an explanation of the decision, including responses to the recipient's supporting reasons and consideration of additional information provided.

(f) *Repayment of funds.* Unless Treasury extends the time period, a recipient shall repay to the Secretary any amounts subject to recoupment in accordance with instructions provided by Treasury:

(1) Within 120 calendar days of receipt of the notice of recoupment provided under paragraph (c) of this section, in the case of a recipient that does not submit a request for reconsideration in accordance with the requirements of paragraph (d) of this section; or

(2) Within 120 calendar days of receipt of the Secretary's decision under paragraph (e) of this section, in the case of a recipient that submits a request for reconsideration in accordance with the requirements of paragraph (d) of this section.

§ 35.11 Payments to States.

(a) *In general.* With respect to any State or Territory that has an unemployment rate as of the date that it submits an initial certification for payment of funds pursuant to section 602(d)(1) of the Social Security Act that is less than two percentage points above its unemployment rate in February 2020, the Secretary will withhold 50 percent of the amount of funds allocated under section 602(b) of the Social Security Act to such State or territory until the date that is twelve months from the date such initial certification is provided to the Secretary.

(b) *Payment of withheld amount.* In order to receive the amount withheld under paragraph (a) of this section, the State or Territory must submit to the Secretary at least 30 days prior to the date referenced in paragraph (a) the following information:

(1) A certification, in the form provided by the Secretary, that such State or Territory requires the payment to carry out the activities specified in section 602(c) of the Social Security Act and will use the payment in compliance with section 602(c) of the Social Security Act; and,

(2) Any reports required to be filed by that date pursuant to this subpart that have not yet been filed.

§ 35.12 Distributions to nonentitlement units of local government and units of general local government.

(a) *Nonentitlement units of local government.* Each State or Territory that receives a payment from Treasury pursuant to section 603(b)(2)(B) of the Social Security Act shall distribute the amount of the payment to nonentitlement units of government in such State or Territory in accordance with the requirements set forth in section 603(b)(2)(C) of the Social Security Act and without offsetting any debt owed by such nonentitlement units of local governments against such payments.

(b) *Budget cap.* A State or Territory may not make a payment to a nonentitlement unit of local government pursuant to section 603(b)(2)(C) of the Social Security Act and paragraph (a) of this section in excess of the amount equal to 75 percent of the most recent budget for the nonentitlement unit of local government as of January 27, 2020. A State or Territory shall permit a nonentitlement unit of local government without a formal budget as of January 27, 2020, to provide a certification from an authorized officer of the nonentitlement unit of local government of its most recent annual expenditures as of January 27, 2020, and a State or Territory may rely on such certification for purposes of complying with this paragraph (b).

(c) *Units of general local government.* Each State or Territory that receives a payment from Treasury pursuant to section 603(b)(3)(B)(ii) of the Social Security Act, in the case of an amount to be paid to a county that is not a unit of general local government, shall distribute the amount of the payment to units of general local government within such county in accordance with the requirements set forth in section 603(b)(3)(B)(ii) of the Social Security Act and without offsetting any debt owed by such units of general local government against such payments.

(d) *Additional conditions.* A State or Territory may not place additional conditions or requirements on distributions to nonentitlement units of local government or units of general local government beyond those required by section 603 of the Social Security Act or this subpart.

Laurie Schaffer,

Acting General Counsel.

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ATTACHMENT C

U.S. DEPARTMENT OF TREASURY
COMPLIANCE AND REPORTING GUIDANCE FOR CORONAVIRUS STATE AND LOCAL FISCAL RECOVERY FUNDS
DATED 6-17-2021

Compliance and Reporting Guidance

State and Local Fiscal Recovery Funds

June 24, 2021

Version: 1.1

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 Funds, 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.

This guidance 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 SLFRF implementing regulation, and other regulatory and statutory requirements, including regulatory requirements under the Uniform Guidance (2 CRF Part 200). Please see the Assistance Listing in SAM.gov under assistance listing number (formerly known as CFDA number), 21.027 for more information.

Please Note: This guidance document applies to the SLFRF program only and does not change nor impact reporting and compliance requirements for the Coronavirus Relief Fund ("CRF") established by the CARES Act.

This guidance includes two parts:

Part 1: General Guidance

This section provides an orientation to recipients' compliance responsibilities and the U.S. Department of the Treasury's ("Treasury") expectations and recommends best practices where appropriate under the SLFRF Program.

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B. Statutory Eligible Uses..... P. 3
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Part 2: Reporting Requirements

This section provides information on the reporting requirements for the SLFRF program.

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B. Project and Expenditure Report..... P. 15
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Part 1: General Guidance

This section provides an orientation on recipients' compliance responsibilities and Treasury's expectations and recommended best practices where appropriate under the SLFRF program.

Recipients under the SLFRF program are the eligible entities identified in sections 602 and 603 of the Social Security Act as added by section 9901 of the American Rescue Plan Act of 2021 (the "SLFRF statute") that receive a SLFRF award. Subrecipients under the SLFRF program are entities that receive a subaward from a recipient to carry out the purposes (program or project) of the SLFRF award on behalf of the recipient.

Recipients are accountable to Treasury for oversight of their subrecipients, including ensuring their subrecipients comply with the SLFRF statute, SLFRF Award Terms and Conditions, Treasury's Interim Final Rule, and reporting requirements, as applicable.

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, and abuse associated with their SLFRF award;
- Many SLFRF-funded projects respond to the COVID-19 public health emergency and meet urgent community needs. Swift and effective implementation is vital, and recipients must balance facilitating simple and rapid program access widely across the community and maintaining a robust documentation and compliance regime;
- SLFRF-funded projects should advance shared interests and promote equitable delivery of government benefits and opportunities to underserved communities, as outlined in Executive Order 13985, On Advancing Racial Equity and Support for Underserved Communities Through the Federal Government; and
- Transparency and public accountability for SLFRF award funds and use of such funds are critical to upholding program integrity and trust in all levels of government, and SLFRF award funds should be managed consistent with Administration guidance per Memorandum M-21-20 and Memorandum M-20-21.

B. Statutory Eligible Uses

As a recipient of an SLFRF award, your organization has substantial discretion to use the award funds in the ways that best suit the needs of your constituents – as long as such use fits into one of the following four statutory categories:

1. To respond to the COVID-19 public health emergency or its negative economic impacts;
2. To respond to workers performing essential work during the COVID-19 public health emergency by providing premium pay to such eligible workers of the recipient, or by providing grants to eligible employers that have eligible workers who performed essential work;
3. For the provision of government services, to the extent of the reduction in revenue of such recipient due to the COVID–19 public health emergency, relative to revenues collected in the most recent full fiscal year of the recipient prior to the emergency; and
4. To make necessary investments in water, sewer, or broadband infrastructure.

Treasury adopted an Interim Final Rule to implement these eligible use categories and other restrictions on the use of funds under the SLFRF program.[1] It is the recipient's responsibility to ensure all SLFRF award funds are used in compliance with these requirements. In addition, recipients should be mindful of any additional compliance obligations that may apply – for example, additional restrictions imposed upon other sources of funds used in conjunction with SLFRF award funds, or statutes and regulations that may independently apply to water, broadband, and sewer infrastructure projects. Recipients should ensure they maintain proper documentation supporting determinations of costs and applicable compliance requirements, and how they have been satisfied as part of their award management, internal controls, and subrecipient oversight and management.

C. Treasury's Rule

Treasury's Interim Final Rule details recipients' compliance responsibilities and provides additional information on eligible and restricted uses of SLFRF award funds and reporting requirements. Your organization should review and comply with the information contained in Treasury's Interim Final Rule, and any subsequent final rule when building appropriate controls for SLFRF award funds.

1. **Eligible and Restricted Uses of SLFRF Funds.** As described in the SLFRF statute and summarized above, there are four enumerated eligible uses of SLFRF award funds. As a recipient of an award under the SLFRF program, your organization is responsible for complying with requirements for the use of funds. In addition to determining a given project's eligibility, recipients are also responsible for determining subrecipient's or beneficiaries' eligibility and must monitor use of SLFRF award funds.

   To help recipients build a greater understanding of eligible uses, Treasury's Interim Final Rule establishes a framework for determining whether a specific project would be eligible under the SLFRF program, including some helpful definitions. For example, Treasury's Interim Final Rule establishes:

   - A framework for determining whether a project "responds to" a "negative economic impact" caused by the COVID-19 public health emergency;
   - Definitions of "eligible employers", "essential work," "eligible workers", and "premium pay" for cases where premium pay is an eligible use;
   - A definition of "general revenue" and a formula for calculating revenue lost due to the COVID-19 public health emergency;
   - A framework for eligible 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; and
   - A framework for eligible broadband projects designed to provide service to unserved or underserved households, or businesses at speeds sufficient to enable users to generally meet household needs, including the ability to support the simultaneous use of work, education, and health applications, and also sufficiently robust to meet increasing household demands for bandwidth.

   Treasury's Interim Final Rule also provides more information on four important restrictions on use of SLFRF award funds: recipients may not deposit SLFRF funds into a pension fund; recipients that are States or territories may not use SLFRF funds to offset a reduction in net tax revenue caused by the recipient's change in law, regulation, or administrative

[1] Treasury's Interim Final Rule is effective as of May 17, 2021, and public comments are due July 16, 2021. This guidance may be clarified consistent with the final rule. https://www.govinfo.gov/content/pkg/FR-2021-05-17/pdf/2021-10283.pdf

interpretation; and, recipients may not use SLFRF funds as non-Federal match where prohibited. In addition, the Interim Final Rule clarifies certain uses of SLFRF funds outside the scope of eligible uses, including that recipients generally 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 Interim Final Rule for more information on these restrictions.

2. **Eligible Costs Timeframe.** Your organization, as a recipient of an SLFRF award, may use SLFRF funds to cover eligible costs that your organization incurred during the period that begins on March 3, 2021 and ends on December 31, 2024, as long as the award funds for the obligations incurred by December 31, 2024 are expended by December 31, 2026. Costs for projects incurred by the recipient State, territorial, local, or Tribal government prior to March 3, 2021 are not eligible, as provided for in Treasury's Interim Final Rule.

   Recipients may use SLFRF award funds to provide assistance to households, businesses, and individuals within the eligible use categories described in Treasury's Interim Final Rule for costs that those households, businesses and individuals incurred prior to March 3, 2021. For example,

   a. Public Health/Negative Economic Impacts: Recipients may use SLFRF award funds to provide assistance to households – such as rent, mortgage, or utility assistance – for costs incurred by the household prior to March 3, 2021, provided that the recipient State, territorial, local or Tribal government did not incur the cost of providing such assistance prior to March 3, 2021.
   b. Premium Pay: Recipients may provide premium pay retrospectively for work performed at any time since the start of the COVID-19 public health emergency. Such premium pay must be "in addition to" wages and remuneration already received and the obligation to provide such pay must not have been incurred by the recipient prior to March 3, 2021.
   c. Revenue Loss: Treasury's Interim Final Rule gives recipients broad latitude to use funds for the provision of government services to the extent of reduction in revenue. While calculation of lost revenue begins with the recipient's revenue in the last full fiscal year prior to the COVID-19 public health emergency and includes the 12-month period ending December 31, 2020, 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. 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 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. For the purposes of determining expenditure eligibility, Treasury's Interim Final Rule provides that "incurred" has the same meaning given to "financial obligation" in 2 CFR § 200.1.

3. **Reporting.** Generally, recipients must submit one initial interim report, quarterly or annual Project and Expenditure reports which include subaward reporting, and in some cases annual Recovery Plan reports. Treasury's Interim Final Rule and Part 2 of this guidance provide more detail around SLFRF reporting requirements.

Assistance Listing

The Assistance Listing for the Coronavirus State and Local Fiscal Recovery Funds (CSLFRF) 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 Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, 2 CFR Part 200 (the "Uniform Guidance"). In all instances, your organization should review the Uniform Guidance requirements applicable to your organization's use of SLFRF funds, and SLFRF-funded projects. Recipients should consider how and whether certain aspects of the Uniform Guidance apply.

The following sections provide a general summary of your organization's compliance responsibilities under applicable statutes and regulations, including the Uniform Guidance, as described in the 2020 OMB Compliance Supplement Part 3. Compliance Requirements (issued August 18, 2020). 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 Interim Final Rule 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.

SLFRF Funds may be, but are not required to be, used along with other funding sources for a given project. Note that SLFRF Funds may not be used for a non-Federal cost share or match where prohibited by other Federal programs, e.g., funds may not be used for the State share for Medicaid.[2]

Treasury's Interim Final Rule and 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, or not in accordance with 2 CFR Part 200, Subpart F 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.[3] 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. 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.[4][5] 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 Interim Final Rule for details.

3. **Cash Management.** SLFRF payments made to recipients are not subject to the requirements of the Cash Management Improvement Act and Treasury's implementing regulations at 31 CFR part 205 or 2 CFR 200.305(b)(8)-(9).

   As such, recipients can place funds in interest-bearing accounts, do not need to remit interest to Treasury, and are not limited to using that interest for eligible uses under the SLFRF award.

4. **Eligibility.** Under this program, recipients are responsible for ensuring funds are used for eligible purposes. Generally, recipients must develop and implement policies and procedures, and record retention, to determine and monitor implementation of criteria for

[2] See 42 CFR 433.51 and 45 CFR 75.306.
[3] Recipients also may use SLFRF funds directly for administrative costs to improve efficacy of programs that respond to the COVID-19 public health emergency. 31 CFR 35.6(b)(10).
[4] 2 CFR 200.413 Direct Costs.
[5] 2 CFR 200.414 Indirect Costs.

determining the eligibility of beneficiaries and/or subrecipients. Your organization, and if applicable, the subrecipient(s) administering a program on behalf of your organization, will need to maintain procedures for obtaining information evidencing a given beneficiary, subrecipient, or contractor's eligibility including a valid SAM.gov registration. Implementing risk-based due diligence for eligibility determinations is a best practice to augment your organization's existing controls.

5. **Equipment and Real Property Management.** Any purchase of equipment or real property with SLFRF funds must be consistent with the Uniform Guidance at 2 CFR Part 200, Subpart D. Equipment and real property acquired under this program must be used for the originally authorized purpose. Consistent with 2 CFR 200.311 and 2 CFR 200.313, any equipment or real property acquired using SLFRF funds shall vest in the non-Federal entity. Any acquisition and maintenance of equipment or real property must also be in compliance with relevant laws and regulations.

6. **Matching, Level of Effort, Earmarking.** There are no matching, level of effort, or earmarking compliance responsibilities associated with the SLFRF award. SLFRF funds may only be used for non-Federal match in other programs where costs are eligible under both SLFRF and the other program and use of such funds is not prohibited by the other program.

7. **Period of Performance.** Your organization should also develop and implement internal controls related to activities occurring outside the period of performance. For example, each recipient should articulate each project's policy on allowability of costs incurred prior to award or start of the period of performance. All funds remain subject to statutory requirements that they must be used for costs incurred by the recipient during the period that begins on March 3, 2021, and ends on December 31, 2024, and that award funds for the financial obligations incurred by December 31, 2024 must be expended by December 31, 2026. Any funds not used must be returned to Treasury.

8. **Procurement, Suspension & Debarment.** Recipients are responsible for ensuring that any procurement using SLFRF funds, or payments under procurement contracts using such funds are consistent with the procurement standards set forth in the Uniform Guidance at 2 CFR 200.317 through 2 CFR 200.327, as applicable. The Uniform Guidance establishes in 2 CFR 200.319 that all procurement transactions for property or services must be conducted in a manner providing full and open competition, consistent with standards outlined in 2 CFR 200.320, which allows for non-competitive procurements only in circumstances where at least one of the conditions below is true: the item is below the micro-purchase threshold; the item is only available from a single source; the public exigency or emergency will not permit a delay from publicizing a competitive solicitation; or after solicitation of a number of sources, competition is determined inadequate.[6] Recipients must have and use documented procurement procedures that are consistent with the standards outlined in 2 CFR 200.317 through 2 CFR 200.320. The Uniform Guidance requires an infrastructure for competitive bidding and contractor oversight, including maintaining written standards of conduct and prohibitions on dealing with suspended or debarred parties. Your organization must ensure adherence to all applicable local, State, and federal procurement laws and regulations.

9. **Program Income.** Generally, program income includes, but is not limited to, income from fees for services performed, the use or rental or 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

[6] 2 CFR 200.320(c)(1)-(3) and (5)

should calculate, document, and record the organization's program income. Additional controls that your organization should implement include written policies that explicitly identify appropriate allocation methods, accounting standards and principles, compliance monitoring checks for program income calculations, and records.

The Uniform Guidance outlines the requirements that pertain to program income at 2 CFR 200.307. Treasury intends to provide additional guidance regarding program income and the application of 2 CFR 200.307(e)(1), including with respect to lending programs.

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.

11. **Subrecipient Monitoring.** SLFRF recipients that are pass-through entities as defined 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.

12. **Special Tests and Provisions.** Treasury has set a deadline of July 16, 2021, for receipt of public comment on its Interim Final Rule and will adopt a final rule responding to these comments. In addition, Treasury may add clarifications to the implementing guidance.

Across each of the compliance requirements above, Treasury described some best practices for development of internal controls. The table below provides a brief description and 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
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, and Treasury's Interim Final Rule. Recipients should ensure they remain in compliance with all Award Terms and Conditions. These obligations include the following items in addition to those described above:

1. **SAM.gov Requirements.** All eligible recipients are also required to have an active registration with the System for Award Management (SAM) (https://www.sam.gov). To ensure timely receipt of funding, Treasury has stated that Non-entitlement Units of Government (NEUs) who have not previously registered with SAM.gov may do so after receipt of the award, but before the submission of mandatory reporting.[7]

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 any authorized oversight body, including but not limited to the Government Accountability Office ("GAO"), Treasury's Office of Inspector General ("OIG"), and the Pandemic Relief Accountability Committee ("PRAC").

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.[8] Recipients and subrecipients may also refer to the Office of

[7] See flexibility provided in https://www.whitehouse.gov/wp-content/uploads/2021/03/M_21_20.pdf.
[8] 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, the GAO, the PRAC and the Treasury's OIG.

Management and Budget (OMB) Compliance Supplements for audits of federal funds and related guidance and the Federal Audit Clearinghouse to see examples and single audit submissions.

4. **Civil Rights Compliance**. Recipients of Federal financial assistance from the Treasury are required to meet legal requirements relating to nondiscrimination and nondiscriminatory use of Federal funds. Those requirements include ensuring that entities receiving Federal financial assistance from the Treasury do not deny benefits or services, or otherwise discriminate on the basis of race, color, national origin (including limited English proficiency), disability, age, or sex (including sexual orientation and gender identity), in accordance with the following authorities: Title VI of the Civil Rights Act of 1964 (Title VI) Public Law 88-352, 42 U.S.C. 2000d-1 et seq., and the Department's implementing regulations, 31 CFR part 22; Section 504 of the Rehabilitation Act of 1973 (Section 504), Public Law 93-112, as amended by Public Law 93-516, 29 U.S.C. 794; Title IX of the Education Amendments of 1972 (Title IX), 20 U.S.C. 1681 et seq., and the Department's implementing regulations, 31 CFR part 28; Age Discrimination Act of 1975, Public 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 recipients submit data for post-award compliance reviews, including information such as a narrative describing their Title VI compliance status.

Part 2: Reporting Guidance

There are three types of reporting requirements for the SLFRF program.

- **Interim Report:** Provide initial overview of status and uses of funding. This is a one-time report. **See Section A, page 13.**
- **Project and Expenditure Report:** Report on projects funded, expenditures, and contracts and subawards over $50,000, and other information. **See Section B, page 15.**
- **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 23.**

Table 2: Reporting requirements by recipient type

<table>
<tr><th>Recipient</th><th>Interim Report</th><th>Project and Expenditure Report</th><th>Recovery Plan Performance Report</th></tr>
<tr><td>States, U.S. territories, metropolitan cities and counties with a population that exceeds 250,000 residents</td><td rowspan="3">By August 31, 2021, with expenditures by category</td><td rowspan="2">By October 31, 2021, and then 30 days after the end of each quarter thereafter[9]</td><td>By August 31, 2021, and annually thereafter by July 31 [10]</td></tr>
<tr><td>Metropolitan cities and counties with a population below 250,000 residents which received more than $5 million in SLFRF funding</td><td rowspan="2">Not required</td></tr>
<tr><td>Tribal Governments</td></tr>
<tr><td>Metropolitan cities and counties with a population below 250,000 residents which received less than $5 million in SLFRF funding</td><td rowspan="2">By October 31, 2021, and then annually thereafter[11]</td></tr>
<tr><td>NEUs</td><td>Not required</td></tr>
</table>

The remainder of this document describes these reporting requirements. A users' guide will be provided with additional information on how and where to submit required reports.

[9] Interim Final Rule Page 111
[10] Interim Final Rule page 112
[11] Interim Final Rule Page 111

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. Changes from CRF to 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. SLFRF quarterly reporting will be due 30 days from quarter end.
- **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.

A. Interim Report

States, U.S. territories, metropolitan cities, counties, and Tribal governments are required to submit a one-time interim report with expenditures[12] by Expenditure Category from the date of award to July 31, 2021. The recipient will be required to enter obligations[13] and expenditures and, for each, select the specific expenditure category from the available options. See Appendix 1 for Expenditure Categories (EC).

1. Required Programmatic Data

Recipients will also be required to provide the following information if they have or plan to have expenditures in the following Expenditure Categories.

a. Revenue replacement (EC 6.1[14]): Key inputs into the revenue replacement formula in the Interim Final Rule and estimated revenue loss due to the Covid-19 public health emergency calculated using the formula in the Interim Final Rule as of December 31, 2020.
- Base year general revenue (e.g., revenue in the last full fiscal year prior to the public health emergency)
- Fiscal year end date
- Growth adjustment used (either 4.1 percent or average annual general revenue growth over 3 years prior to pandemic)
- Actual general revenue as of the twelve months ended December 31, 2020
- 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 and/or template to be provided in users' guide)

[12] 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).
[13] 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.
[14] See Appendix 1 for the full Expenditure Category (EC) list. References to Expenditure Categories are identified by "EC" followed by numbers from the table in Appendix 1.

In calculating general revenue and the other items discussed above, recipients should use audited data if it is available. When audited data is not available, recipients are not required to obtain audited data if substantially accurate figures can be produced on an unaudited basis. Recipients should use their own data sources to calculate general revenue, and do 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 may 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 exclude 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 attempt 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 will be required to submit a description of services provided. This description may be in narrative or in another form, and recipients are encouraged to report based on their existing budget processes and to minimize administrative burden. For example, a recipient with $100 in revenue replacement funds available could indicate that $50 were used for law enforcement operating expenses and $50 were used for pay-go building of sidewalk infrastructure. As discussed in the Interim Final Rule, these services can include a broad range of services but may not be used directly for pension deposits or debt service.

Reporting requirements will 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 must indicate that Fiscal Recovery Funds were not used to make a deposit in a pension fund.

b. Distributions to NEUs - States and territories only (EC 7.4): Information on SLFRF distributions to eligible NEUs. Each State and territory will be asked to provide an update on distributions to individual NEUs, including whether the NEU 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. States and territories should be prepared to report on their information, including the following:

- NEU name
- NEU DUNS number
- NEU Taxpayer Identification Number (TIN)
- NEU Recipient Number (a unique identification code for each NEU assigned by the State 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 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)

For each eligible NEU that declined funding and requested a transfer to the State under Section 603(c)(4), the State 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.

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.

B. Project and Expenditure Report

All recipients are required to submit Project and Expenditure Reports.

1. Quarterly Reporting

The following recipients are required to submit quarterly Project and Expenditure Reports:

- States, U.S. territories, and Tribal governments
- Metropolitan cities and counties that received more than $5 million in SLFRF funding

For these recipients, the initial quarterly Project and Expenditure Report will cover two calendar quarters from the date of award to September 30, 2021 and must be submitted to Treasury by October 31, 2021. The subsequent quarterly reports will cover one calendar quarter and must be submitted to Treasury within 30 calendar days after the end of each calendar quarter. Quarterly reports are not due concurrently with applicable annual reports. The table below summarizes the quarterly report timelines:

Report	Year	Quarter	Period Covered	Due Date
1	2021	2 and 3	Award Date – September 30	October 31, 2021
2	2021	4	October 1 – December 31	January 31, 2022
3	2022	1	January 1 – March 31	April 30, 2022
4	2022	2	April 1 – June 30	July 31, 2022
5	2022	3	July 1 – September 30	October 31, 2022
6	2022	4	October 1 – December 31	January 31, 2023
7	2023	1	January 1 – March 31	April 30, 2023
8	2023	2	April 1 – June 30	July 31, 2023
9	2023	3	July 1 – September 30	October 31, 2023
10	2023	4	October 1 – December 31	January 31, 2024
11	2024	1	January 1 – March 31	April 30, 2024
12	2024	2	April 1 – June 30	July 31, 2024
13	2024	3	July 1 – September 30	October 31, 2024
14	2024	4	October 1 – December 31	January 31, 2025
15	2025	1	January 1 – March 31	April 30, 2025
16	2025	2	April 1 – June 30	July 31, 2025
17	2025	3	July 1 – September 30	October 31, 2025
18	2025	4	October 1 – December 31	January 31, 2026
19	2026	1	January 1 – March 31	April 30, 2026
20	2026	2	April 1 – June 30	July 31, 2026

Report	Year	Quarter	Period Covered	Due Date
21	2026	3	July 1 – September 30	October 31, 2026
22	2026	4	October 1 – December 31	March 31, 2027

2. Annual Reporting

The following recipients are required to submit annual Project and Expenditure Reports:

- Metropolitan cities and counties that received less than $5 million in SLFRF funding.
- NEUs. To facilitate reporting, each NEU will need a NEU Recipient Number. This is a unique identification code for each NEU assigned by the State to the NEU as part of its request for funding.

For these recipients, the initial Project and Expenditure Report will cover from the date of award to September 30, 2021 and must be submitted to Treasury by October 31, 2021. The subsequent annual reports will cover one calendar year and must be submitted to Treasury by October 31. The table below summarizes the report timelines:

Report	Period Covered	Due Date
1	Award Date – September 30, 2021	October 31, 2021
2	October 1, 2021 – September 30, 2022	October 31, 2022
3	October 1, 2022 – September 30, 2023	October 31, 2023
4	October 1, 2023 – September 30, 2024	October 31, 2024
5	October 1, 2024 – September 30, 2025	October 31, 2025
6	October 1, 2025 – September 30, 2026	October 31, 2026
7	October 1, 2026 – December 31, 2026	March 31, 2027

3. Required Information

The following information will be required in Project and Expenditure Reports:

a. Projects: Provide information on all SLFRF funded projects. Projects are new or existing eligible government services or investments funded in whole or in part by SLFRF funding. For each project, the recipient will be required to enter the project name, identification number (created by the recipient), project expenditure category (see Appendix 1), description, and status of completion. Project descriptions must describe the project in sufficient detail to provide understanding of the major activities that will occur, and will be required to be between 50 and 250 words. Projects should be defined to include only closely related activities directed toward a common purpose. In particular, recipients should review the Required Programmatic Data described below and define their projects at a sufficient level of granularity to report these metrics for a reasonably specific activity or set of activities in each project.

   Note: For each project, the recipient will be asked to select the appropriate Expenditure Category based on the scope of the project (see Appendix 1). Projects should be scoped to align to a single Expenditure Category. For select Expenditure Categories, the recipient will also be asked to provide additional programmatic data (described further below).

b. 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. Project Demographic Distribution: Recognizing the disproportionate impact of the pandemic-related recession on low-income communities, recipients must report whether certain types of projects[15] are targeted to economically disadvantaged communities, as defined by HUD's Qualified Census Tract.[16] Recipients will be asked to identify whether or not the project is serving an economically disadvantaged community. To minimize the administrative burden on recipients while ensuring that this important aspect of program performance is tracked, recipients may assume that the funds for a project count as being targeted towards economically disadvantaged communities if the project funds are spent on:
   - A program or service is provided at a physical location in a Qualified Census Tract (for multi-site projects, if a majority of sites are within Qualified Census Tracts);
   - A program or service where the primary intended beneficiaries live within a Qualified Census Tract;
   - A program or service for which the eligibility criteria are such that the primary intended beneficiaries earn less than 60 percent of the median income for the relevant jurisdiction (e.g., State, county, metropolitan area, or other jurisdiction); or
   - A program or service for which the eligibility criteria are such that over 25 percent of intended beneficiaries are below the federal poverty line.

   Recipients may use reasonable estimates to determine if a project meets one of these criteria, including identifying the intended beneficiaries of a program or service in terms of income characteristics, geographic location, or otherwise estimating the beneficiaries of a program based on its eligibility criteria. Recipients do not need to track information on each individual beneficiary to make the determination of whether or not the project is serving an economically disadvantaged community. If a recipient is unable to measure economic characteristics of the primary intended beneficiaries of a program or service due to data limitations or for other reasons, that program or service may not be counted as targeted to economically disadvantaged communities. Treasury recognizes that in some circumstances, recipients may fund eligible programs or services that benefit economically disadvantaged communities but may lack adequate data to assess conclusively that such a program or service is targeted to economically disadvantaged communities based on the criteria described above.

e. Subawards: Each recipient shall also provide detailed obligation and expenditure information for any contracts and grants awarded, loans issued, transfers made to other government entities, and direct payments made by the recipient that are greater than or equal to $50,000.

[15] Specifically recipients must report this information for projects in the Expenditure Categories that are marked with "^" in the expenditure category listing in Appendix 1 of this guidance

[16] HUD defines as a QCT as having "50 percent of households with incomes below 60 percent of the Area Median Gross Income (AMGI) or have a poverty rate of 25 percent or more." To view median income area for their jurisdiction, recipients may visit the U.S. Census website on median incomes and select the geography for their jurisdiction and relevant unit of measurement (household or individual) for the project.

Recipients do not also 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 greater than or equal to $50,000:

- Subrecipient identifying and demographic information (e.g., DUNS number and location)
- Award number (e.g., Award number, Contract number, Loan number)
- Award date, type, amount, and description
- Award payment method (reimbursable or lump sum payment(s))
- For loans, expiration date (date when loan expected to be paid in full)
- Primary place of performance
- Related project name(s)
- Related project identification number(s) (created by the recipient)
- Period of performance start date
- Period of performance end date
- Quarterly obligation amount
- Quarterly expenditure amount
- Project(s)
- Additional programmatic performance indicators for select Expenditure Categories (see below)

Aggregate reporting is required for contracts, grants, transfers made to other government entities, loans, direct payments, and payments to individuals that are below $50,000. This information will be accounted for by expenditure category at the project level.

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 defined at 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 must be reported. The recipient is responsible for the subrecipients' compliance with registering and maintaining an updated profile on SAM.gov.

f. Civil Rights Compliance: Treasury will request information on recipients' compliance with Title VI of the Civil Rights Act of 1964 on an annual basis. This information may include a narrative describing the recipient's compliance with Title VI, along with other questions and assurances.

g. Required Programmatic Data (other than infrastructure projects): For all projects listed under the following Expenditure Categories (see Appendix 1), the information listed must be provided in each report.

1. Payroll for Public Health and Safety Employees (EC 1.9):
   - Number of government FTEs responding to COVID-19 supported under this authority

2. Household Assistance (EC 2.1-2.5):
   - Brief description of structure and objectives of assistance program(s) (e.g., nutrition assistance for low-income households)
   - Number of individuals served (by program if recipient establishes multiple separate household assistance programs)
   - Brief description of recipient's approach to ensuring that aid to households responds to a negative economic impact of Covid-19, as described in the Interim Final Rule

3. Small Business Economic Assistance (EC 2.9):
   - Brief description of the structure and objectives of assistance program(s) (e.g., grants for additional costs related to Covid-19 mitigation)
   - Number of small businesses served (by program if recipient establishes multiple separate small businesses assistance programs)
   - Brief description of recipient's approach to ensuring that aid to small businesses responds to a negative economic impact of COVID-19, as described in the Interim Final Rule

4. Aid to Travel, Tourism, and Hospitality or Other Impacted Industries (EC 2.11-2.12):
   - If aid is provided to industries other than travel, tourism, and hospitality (EC 2.12), a description of pandemic impact on the industry and rationale for providing aid to the industry
   - Brief narrative description of how the assistance provided responds to negative economic impacts of the COVID-19 pandemic
   - For each subaward:
     - Sector of employer (Note: additional detail, including list of sectors to be provided in a users' guide)
     - Purpose of funds (e.g., payroll support, safety measure implementation)

5. Rehiring Public Sector Staff (EC 2.14):
   - Number of FTEs rehired by governments under this authority

6. Education Assistance (EC 3.1-3.5):
   - 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.[17]

[17] For more information on NCES identification numbers see https://nces.ed.gov/ccd/districtsearch/ (districts) and https://nces.ed.gov/ccd/schoolsearch/ (schools).

7. Premium Pay (both Public Sector EC 4.1 and Private Sector EC 4.2):
   - List of sectors designated as critical to the health and well-being of residents by the chief executive of the jurisdiction, if beyond those included in the Interim Final Rule (Note: a list of sectors will be provided in the forthcoming users' guide).
   - Number of workers to be served
   - Employer sector for all subawards to third-party employers (i.e., employers other than the State, local, or Tribal government) (Note: a list of sectors will be provided in the forthcoming users' guide).
   - For groups of workers (e.g., an operating unit, a classification of worker, etc.) or, to the extent applicable, individual workers, for whom premium pay would increase total pay above 150 percent of their residing State's average annual wage, or their residing county's[18] average annual wage, whichever is higher, on an annual basis:
     - 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.

8. Revenue replacement (EC 6.1):
   Under the Interim Final Rule, recipients calculate revenue loss using data as of four discrete points during the program: December 31, 2020, December 31, 2021, December 31, 2022, and December 31, 2023. Revenue loss calculated as of December 31, 2020 will be reported in the Interim Report, as described above. For future calculation dates, revenue loss will be reported only in the Quarter 4 reports due January 31, 2022, January 31, 2023, and January 31, 2024. Reporting on revenue loss should include:
   - General revenue collected over the past 12 months as of the most recent calculation date, as outlined in the Interim Final Rule (for example, for the January 31, 2022 report, recipients should provide 12 month general revenue as of December 31, 2021);
   - Calculated revenue loss due to the Covid-19 public health emergency; and
   - An explanation of how the revenue replacement funds were allocated to government services (note: additional instructions and/or template to be provided in user guide).

   In calculating general revenue and the revenue loss due to the COVID-19 public health emergency, recipients should follow the same guidance as described above for the Interim Report.

h. Required Programmatic Data for Infrastructure Projects (EC 5): For all projects listed under the Water, Sewer, and Broadband Expenditure Categories (see Appendix 1), more detailed project-level information is required. Each project will be required to report expenditure data as described above, but will also report the following information:

[18] *County* means a county, parish, or other equivalent county division (as defined by the Census Bureau). See 31 CFR 35.3.

1. All infrastructure projects (EC 5):
   - Projected/actual construction start date (month/year)
   - Projected/actual initiation of operations date (month/year)
   - Location (for broadband, geospatial location data)
   - For projects over $10 million:
     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.[19]

        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;
        - How the recipient will minimize risks of labor disputes and disruptions that would jeopardize timeliness and cost-effectiveness of the project; and
        - How the recipient will provide a safe and healthy workplace that avoids delays and costs associated with workplace illnesses, injuries, and fatalities;
        - Whether workers on the project will receive wages and benefits that will secure an appropriately skilled workforce in the context of the local or regional labor market; and
        - Whether the project has completed a project labor agreement.
     c. Whether the project prioritizes local hires.
     d. Whether the project has a Community Benefit Agreement, with a description of any such agreement.

[19] 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.

2. Water and sewer projects (EC 5.1-5.15):
   - National Pollutant Discharge Elimination System (NPDES) Permit Number (if applicable; for projects aligned with the Clean Water State Revolving Fund)
   - Public Water System (PWS) ID number (if applicable; for projects aligned with the Drinking Water State Revolving Fund)

3. Broadband projects (EC 5.16-5.17):
   - Speeds/pricing tiers to be offered, including the speed/pricing of its affordability offering
   - Technology to be deployed
   - Miles of fiber
   - Cost per mile
   - Cost per passing
   - Number of households (broken out by households on Tribal lands and those not on Tribal lands) projected to have increased access to broadband meeting the minimum speed standards in areas that previously lacked access to service of at least 25 Mbps download and 3 Mbps upload
     - Number of households with access to minimum speed standard of reliable 100 Mbps symmetrical upload and download
     - Number of households with access to minimum speed standard of reliable 100 Mbps download and 20 Mbps upload
   - Number of institutions and businesses (broken out by institutions on Tribal lands and those not on Tribal lands) projected to have increased access to broadband meeting the minimum speed standards in areas that previously lacked access to service of at least 25 Mbps download and 3 Mbps upload, in each of the following categories: business, small business, elementary school, secondary school, higher education institution, library, healthcare facility, and public safety organization
     - Specify the number of each type of institution with access to the minimum speed standard of reliable 100 Mbps symmetrical upload and download; and
     - Specify the number of each type of institution with access to the minimum speed standard of reliable 100 Mbps download and 20 Mbps upload

i. Distributions to NEUs - States and territories only (EC 7.4): Information on SLFRF distributions to eligible NEUs. Each State and territory will be asked to provide an update on distributions to individual NEUs, including whether the NEU 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. States and territories should be prepared to report on their information, including the following:
   - NEU name
   - NEU DUNS number
   - NEU Taxpayer Identification Number (TIN)
   - NEU Recipient Number (a unique identification code for each NEU assigned by the State 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 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)

For each eligible NEU that declined funding and requested a transfer to the State under Section 603(c)(4), the State 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.

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.

j. NEU Documentation (NEUs only): Each NEU will also be asked to provide the following information with their first report submitted by October 31, 2021:
   - 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

C. Recovery Plan Performance Report

States, territories, metropolitan cities, and counties with a population that exceeds 250,000 residents will also be required to publish and submit to Treasury a Recovery Plan performance report ("Recovery Plan"). Each Recovery Plan must be posted on the public-facing website of the recipient by the same date the recipient submits the report to Treasury. This reporting requirement includes uploading a link to the publicly available document report along with providing data in the Treasury reporting portal.

The Recovery Plan will provide the public and Treasury information on the projects recipients are undertaking with program funding and how they are planning to ensure program outcomes are achieved in an effective, efficient, and equitable manner. While this guidance outlines some minimum requirements for the Recovery Plan, each recipient is encouraged to add information to the plan they feel is appropriate to provide information to their constituents on efforts they are taking to respond to the pandemic and promote economic recovery. Each jurisdiction may determine the general form and content of the Recovery Plan, as long as it includes the minimum information determined by Treasury. Treasury will provide a recommended template but recipients may modify this template as appropriate for their jurisdiction. The Recovery Plan will include key performance indicators identified by the recipient and some mandatory indicators identified by Treasury.

The initial Recovery Plan will cover the period from the date of award to July 31, 2021 and must be submitted to Treasury by August 31, 2021. Thereafter, the Recovery Plan will cover a 12-month period and recipients will be required to submit the report to Treasury within 30 days after the end of the 12-month period (by July 31). The table below summarizes the report timelines:

Annual Report	Period Covered	Due Date
1	Award Date – July 31, 2021	August 31, 2021
2	July 1, 2021 – June 30, 2022	July 31, 2022
3	July 1, 2022 – June 30, 2023	July 31, 2023
4	July 1, 2023 – June 30, 2024	July 31, 2024
5	July 1, 2024 – June 30, 2025	July 31, 2025
6	July 1, 2025 – June 30, 2026	July 31, 2026
7	July 1, 2026 – December 31, 2026	March 31, 2027

The Recovery Plan will include, at a minimum, the following information:

1. Executive Summary
Provide a high-level overview of the jurisdiction's intended and actual uses of funding including, but not limited to: the jurisdiction's plan for use of funds to promote a response to the pandemic and economic recovery, key outcome goals, progress to date on those outcomes, and any noteworthy challenges or opportunities identified during the reporting period.

2. Uses of Funds
Describe in further detail your jurisdiction's intended and actual uses of the funds, such as how your jurisdiction's approach would help support a strong and equitable recovery from the COVID-19 pandemic and economic downturn. Describe any strategies employed to maximize programmatic impact and effective, efficient, and equitable outcomes. Given the broad eligible uses of funds and the specific needs of the jurisdiction, please also explain how the funds would support the communities, populations, or individuals in your jurisdiction. Your description should address how you are promoting each of the following, to the extent they apply:

a. Public Health (EC 1): As relevant, describe how funds are being used to respond to COVID-19 and the broader health impacts of COVID-19 and the COVID-19 public health emergency.
b. Negative Economic Impacts (EC 2): As relevant, describe how funds are being used to respond to negative economic impacts of the COVID-19 public health emergency, including to households and small businesses.
c. Services to Disproportionately Impacted Communities (EC 3): As relevant, describe how funds are being used to provide services to communities disproportionately impacted by the COVID-19 public health emergency.
d. Premium Pay (EC 4): As relevant, describe the approach, goals, and sectors or occupations served in any premium pay program. Describe how your approach prioritizes low-income workers.
e. Water, sewer, and broadband infrastructure (EC 5): Describe the approach, goals, and types of projects being pursued, if pursuing.
f. Revenue Replacement (EC 6): Describe the loss in revenue due to the COVID-19 public health emergency and how funds have been used to provide government services.

Where appropriate, recipients should also include information on your jurisdiction's use (or planned use) of other federal recovery funds including other programs under the American Rescue Plan such as the Emergency Rental Assistance, Housing Assistance, and so forth, to provide broader context on the overall approach for pandemic recovery.

3. Promoting equitable outcomes
Describe efforts to promote equitable outcomes, including how programs were designed with equity in mind. Please include in your description how your jurisdiction will consider and measure equity at the various stages of the program, including:

a. Goals: Are there particular historically underserved, marginalized, or adversely affected groups that you intend to serve within your jurisdiction?
b. Awareness: How equal and practical is the ability for residents or businesses to become aware of the services funded by the SLFRF?
c. Access and Distribution: Are there differences in levels of access to benefits and services across groups? Are there administrative requirements that result in disparities in ability to complete applications or meet eligibility criteria?

d. Outcomes: Are intended outcomes focused on closing gaps, reaching universal levels of service, or disaggregating progress by race, ethnicity, and other equity dimensions where relevant for the policy objective?

Treasury encourages uses of funds that promote strong, equitable growth, including racial equity. Please describe how your jurisdiction's planned or current use of funds prioritizes economic and racial equity as a goal, names specific targets intended to produce meaningful equity results at scale, and articulates the strategies to achieve those targets. In addition, please explain how your jurisdiction's overall equity strategy translates into the specific services or programs offered by your jurisdiction in the following Expenditure Categories:

a. Negative Economic Impacts (EC 2): assistance to households, small businesses, and non-profits to address impacts of the pandemic, which have been most severe among low-income populations. This includes assistance with food, housing, and other needs; employment programs for people with barriers to employment who faced negative economic impacts from the pandemic (such as residents of low-income neighborhoods, minorities, disconnected youth, the unemployed, formerly incarcerated people, veterans, and people with disabilities); and other strategies that provide disadvantaged groups with access to education, jobs, and opportunity.
b. Services to Disproportionately Impacted Communities (EC 3): services to address health disparities and the social determinants of health, build stronger neighborhoods and communities (e.g., affordable housing), address educational disparities (e.g., evidence-based tutoring, community schools, and academic, social-emotional, and mental health supports for high poverty schools), and promote healthy childhood environments (e.g., home visiting, child care).

The initial report must describe efforts to date and intended outcomes to promote equity. Each annual report thereafter must provide an update, using qualitative and quantitative data, on how the recipients' approach achieved or promoted equitable outcomes or progressed against equity goals during the performance period. Please also describe any constraints or challenges that impacted project success in terms of increasing equity. In particular, this section must describe the geographic and demographic distribution of funding, including whether it is targeted toward traditionally marginalized communities.

For the purposes of the SLFRF, equity is defined in the Executive Order 13985 On Advancing Racial Equity and Support for Underserved Communities Through the Federal Government, as issued on January 20, 2021.

4. Community Engagement

Please describe how your jurisdiction's planned or current use of funds incorporates written, oral, and other forms of input that capture diverse feedback from constituents, community-based organizations, and the communities themselves. Where relevant, this description must include how funds will build the capacity of community organizations to serve people with significant barriers to services, including people of color, people with low incomes, limited English proficient populations, and other traditionally underserved groups.

5. Labor Practices

Describe workforce practices on any infrastructure projects being pursued (EC 5). How are projects using strong labor standards to promote effective and efficient delivery of high-quality infrastructure projects while also supporting the economic recovery through strong employment opportunities for workers? For example, report whether any of the following practices are being utilized: project labor agreements, community benefits agreements, prevailing wage requirements, and local hiring.

6. Use of Evidence

The Recovery Plan should identify whether SLFRF funds are being used for evidence-based interventions[20] and/or if projects are being evaluated through rigorous program evaluations that are designed to build evidence. Recipients must briefly describe the goals of the project, and the evidence base for the interventions funded by the project. Recipients must specifically identify the dollar amount of the total project spending that is allocated towards evidence-based interventions for each project in the Public Health (EC 1), Negative Economic Impacts (EC 2), and Services to Disproportionately Impacted Communities (EC 3) Expenditure Categories.[21]

Recipients are exempt from reporting on evidence-based interventions in cases where a program evaluation is being conducted. Recipients are encouraged to use relevant evidence Clearinghouses, among other sources, to assess the level of evidence for their interventions and identify evidence-based models that could be applied in their jurisdiction; such evidence clearinghouses include the U.S. Department of Education's What Works Clearinghouse, the U.S. Department of Labor's CLEAR, and the Childcare & Early Education Research Connections and the Home Visiting Evidence of Effectiveness clearinghouses from Administration for Children and Families, as well as other clearinghouses relevant to particular projects conducted by the recipient. In such cases where a recipient is conducting a program evaluation in lieu of reporting the amount of spending on evidence-based interventions, they must describe the evaluation design including whether it is a randomized or quasi-experimental design; the key research questions being evaluated; whether the study has sufficient statistical power to disaggregate outcomes by demographics; and the timeframe for the completion of the evaluation (including a link to completed evaluation if relevant).[22] Once the evaluation has been completed, recipients must post the evaluation publicly and link to the completed evaluation in the Recovery Plan. Once an evaluation has been completed (or has sufficient interim findings to determine the efficacy of the intervention), recipients should determine whether the spending for the evaluated interventions should be counted towards the dollar amount categorized as evidence-based for the relevant project.

For all projects, recipients may be selected to participate in a national evaluation, which would study their project along with similar projects in other jurisdictions that are focused on the same set of outcomes. In such cases, recipients may be asked to share information and data that is needed for the national evaluation.

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]

Appendix 2 contains additional information on evidence-based interventions for the purposes of the Recovery Plan.

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[20] As noted in Appendix 2, evidence-based refers to interventions with strong or moderate levels of evidence.

[21] Of note, recipients are only required to report the amount of the total funds that are allocated to evidence-based interventions in the areas of Public Health, Negative Economic Impacts, and Services to Disproportionately Impacted Communities that are marked by an asterisk in Appendix 1: Expenditure Categories.

[22] For more information on the required standards for program evaluation, see OMB M-20-12.

[23] For more information on learning agendas, please see OMB M-19-23

7. Table of Expenses by Expenditure Category

Please include a table listing the amount of funds used in each Expenditure Category (See Appendix 1). The table should include cumulative expenses to date within each category, and the additional amount spent within each category since the last annual Recovery Plan.

8. Project Inventory

List the name and provide a brief description of all SLFRF funded projects. Projects are new or existing eligible government services or investments funded in whole or in part by SLFRF funding. For each project, include the project name, funding amount, identification number (created by the recipient and used thereafter in the quarterly Program and Expenditure Report), project Expenditure Category (see Appendix 1), and a description of the project which includes an overview of the main activities of the project, the approximate timeline, primary delivery mechanisms and partners, if applicable, and intended outcomes. Include a link to the website of the project if available. This information will provide context and additional detail for the information reported quarterly in the Project and Expenditure Report.

For infrastructure investment projects (EC 5), project-level reporting will be more detailed, as described for the Project and Expenditure Report above. Projects in this area may be grouped by Expenditure Category if needed, with further detail (such as the specific project name and identification number) provided in the Project and Expenditure Report. For infrastructure projects, descriptions should note how the project contributes to addressing climate change.

9. Performance Report

The Recovery Plan must include key performance indicators for the major SLFRF funded projects undertaken by the recipient. The recipient has flexibility in terms of how this information is presented in the Recovery Plan, and may report key performance indicators for each project, or may group projects with substantially similar goals and the same outcome measures. In some cases, the recipient may choose to include some indicators for each individual project as well as crosscutting indicators.

Performance indicators should include both output and outcome measures. Output measures, such as number of students enrolled in an early learning program, provide valuable information about the early implementation stages of a project. Outcome measures, such as the percent of students reading on grade level, provide information about whether a project is achieving its overall goals. Recipients are encouraged to use logic models[24] to identify their output and outcome measures. While the initial report will focus heavily on early output goals, recipients must include the related outcome goal for each project and provide updated information on achieving these outcome goals in annual reports. In cases where recipients are conducting a program evaluation for a project (as described above), the outcome measures in the performance report should be aligned with those being evaluated in the program. To support their performance measurement and program improvement efforts, recipients are permitted to use funds to make improvements to data or technology infrastructure and data analytics, as well as program evaluations.

10. Required Performance Indicators and Programmatic Data

While recipients have discretion on the full suite of performance indicators to include, a number of mandatory performance indicators and programmatic data must be included. These are necessary to allow Treasury to conduct oversight as well as understand and aggregate program outcomes across recipients. This section provides an overview of the mandatory performance indicators and programmatic data. This information may be included in each recipient's Recovery Plan as they determine most appropriate, including combining with the

[24] 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.

section above, but this data will also need to be entered directly into the Treasury reporting portal. Below is a list of required data for each Expenditure Category:

a. Household Assistance (EC 2.2 & 2.5) and Housing Support (EC 3.10-3.12):
   - Number of people or households receiving eviction prevention services (including legal representation)
   - Number of affordable housing units preserved or developed

b. Negative Economic Impacts (EC 2):
   - Number of workers enrolled in sectoral job training programs
   - Number of workers completing sectoral job training programs
   - Number of people participating in summer youth employment programs

c. Education Assistance (EC 3.1-3.5):
   - Number of students participating in evidence-based tutoring programs[25]

d. Healthy Childhood Environments (EC 3.6-3.9):
   - Number of children served by childcare and early learning (pre-school/pre-K/ages 3-5)
   - Number of families served by home visiting

The initial report should include the key indicators above. Each annual report thereafter should include updated data for the performance period as well as prior period data, and a brief narrative adding any additional context to help the reader interpret the results and understand the any changes in performance indicators over time. To the extent possible, Treasury also encourages recipients to provide data disaggregated by race, ethnicity, gender, income, and other relevant factors.

11. Ineligible Activities: Tax Offset Provision (States and territories only)
The following information is required for Treasury to ensure SLFRF funding is not used for ineligible activities.

In each reporting year, States and territories will report certain items related to the Tax Offset Provision 31 CFR 35.8, as detailed below. As indicated in the Interim Final Rule, Treasury is seeking comment on reporting requirements related to the Tax Offset Provision, including ways to better rely on information already produced by States and territories and to minimize burden.

The terms "reporting year," "baseline," "covered change," "net reduction in total spending," and "tax revenue" are defined in the Interim 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 Interim Final Rule, 31 CFR 35.3. Similarly, for purposes of calculating baseline, tax revenue for the fiscal year 2019 should be reported on an inflation-adjusted basis, consistent with the Interim Final Rule, 31 CFR 35.3.

For purposes of reporting actual tax revenue and calculating tax revenue for the fiscal year ending 2019,[26] (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

[25] 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.
[26] Tax revenue for fiscal year ending 2019 is relevant for calculating the recipient's baseline.

a net reduction in total spending, recipients should report data using audited financials where available.

a. Revenue-reducing Covered Changes:
For each reporting year, a recipient must report the value of covered changes that the recipient predicts will have the effect of reducing tax revenue in a given reporting year (revenue-reducing covered changes), similar to the way it would in the ordinary course of its budgeting process. The value of these covered changes may be reported based on estimated values produced by a budget model, incorporating reasonable assumptions, that aligns with the recipient government's existing approach for measuring the effects of fiscal policies, and that measures relative to a current law baseline. The covered changes may also be reported based on actual values using a statistical methodology to isolate the change in year-over-year revenue attributable to the covered change(s), relative to the current law baseline prior to the change(s). Estimation approaches should not use dynamic methodologies that incorporate the projected effects of the policies on macroeconomic growth. In general and where possible, reported values should be produced by the agency of the recipient government responsible for estimating the costs and effects of fiscal policy changes. Recipients must maintain records regarding the identification and predicted effects of revenue-reducing covered changes.

b. Baseline Revenue:
Baseline has the meaning defined in the Interim Final Rule, 31 CFR 35.3.

Whether the revenue-reducing covered changes are in excess of the *de minimis*.
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.

c. Actual Tax Revenue:
Actual tax revenue means the actual tax revenue received by the recipient government in the reporting year. Tax revenue has the meaning defined in the Interim Final Rule, 31 CFR 35.3.

d. Reduction in Net Tax Revenue:
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.

e. Any revenue-increasing covered changes:
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 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 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, 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-reducing covered changes and estimates of such changes.

f. Net reduction in total spending, and tables of specific spending cuts:
Recipients must report on spending cuts. 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 in the Interim 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. If that subtraction yields a positive value, there has been a net reduction; if it yields zero or a negative value, there has not been a net reduction. 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," as defined below. For each reporting unit, the recipient must report (1) the amount of the reduction in spending in the reporting unit relative to its inflation-adjusted FY 2019 level, (2) the amount of any Fiscal Recovery Funds spent in the reporting unit, and (3) the amount by which the reduction in spending exceeds the Fiscal Recovery funds spent in the reporting unit. 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 aggregate 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 of spending cuts.

To align with existing reporting and accounting, the Interim 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. Recipients may also choose to report at a more granular sub-department level. Recipients are encouraged to define and report spending in departments, sub-departments (e.g., bureaus), agencies, or authorities (each a "reporting unit") 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. For example, if a State health department maintains separate budgets for different units (e.g., medical and public health units), those units may be reported and considered separately. 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. As discussed in the Interim Final Rule, in order to help ensure governments use Fiscal Recovery Funds in a manner consistent with the prescribed eligible uses and do not use Fiscal Recovery Funds to indirectly offset a reduction in net tax revenue resulting from a covered change, Treasury will monitor changes in spending throughout the covered period. Evasions of the Tax Offset Provision may be subject to recoupment.

Appendix 1: Expenditure Categories

The Expenditure Categories (EC) listed below must be used to categorize each project as noted in Part 2 above. The term "Expenditure Category" refers to the detailed level (e.g., 1.1 COVID-10 Vaccination). When referred to as a category (e.g., EC 1) it includes all Expenditure Categories within that level.

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[27]	
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)

*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 disadvantaged communities (see Project Demographic Distribution section above for details)

[27] Definitions for water and sewer Expenditure Categories can be found in the EPA's handbooks. For "clean water" expenditure category definitions, please see: https://www.epa.gov/sites/production/files/2018-03/documents/cwdefinitions.pdf. For "drinking water" expenditure category definitions, please see: https://www.epa.gov/dwsrf/drinking-water-state-revolving-fund-national-information-management-system-reports.

Appendix 2: Evidenced-Based Intervention Additional Information

What is evidence-based?
For the purposes of the SLFRF, evidence-based refers to interventions with strong or moderate evidence as defined below:

Strong evidence means the evidence base that can support causal conclusions for the specific program proposed by the applicant with the highest level of confidence. This consists of one or more well-designed and well-implemented experimental studies conducted on the proposed program with positive findings on one or more intended outcomes.

Moderate evidence means that there is a reasonably developed evidence base that can support causal conclusions. The evidence base consists of one or more quasi-experimental studies with positive findings on one or more intended outcomes OR two or more non-experimental studies with positive findings on one or more intended outcomes. Examples of research that meet the standards include: well-designed and well-implemented quasi-experimental studies that compare outcomes between the group receiving the intervention and a matched comparison group (i.e., a similar population that does not receive the intervention).

Preliminary evidence means that the evidence base can support conclusions about the program's contribution to observed outcomes. The evidence base consists of at least one non-experimental study. A study that demonstrates improvement in program beneficiaries over time on one or more intended outcomes OR an implementation (process evaluation) study used to learn and improve program operations would constitute preliminary evidence. Examples of research that meet the standards include: (1) outcome studies that track program beneficiaries through a service pipeline and measure beneficiaries' responses at the end of the program; and (2) pre- and post-test research that determines whether beneficiaries have improved on an intended outcome.

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.

THE DEPARTMENT OF THE TREASURY
1789

ATTACHMENT D

CR

SCOPE OF WORK

The Board of Commissioners is directing up to $100,000 to be disbursed to the Subrecipient to support the completion of affordable housing projects in Clallam County using federal ARPA funding. As such funding is needed to address immediate cash flow constraints that are hindering the Subrecipient's ability to cover funding gaps in planned affordable housing projects due to increased building material costs, the County agrees to fully distribute such funds to the Subrecipient upon execution of this Agreement, conditioned that such funds are utilized in support of completion of affordable housing units in Clallam County and that such funds are expended no later than December 31, 2024.

Expenses under this grant must meet the eligibility criteria outlined below:

1. **Eligible Uses of Funds**

   Funds are to be used for affordable housing construction costs, including contractor, subcontractor and building material expenses incurred by the Subrecipient from March 1, 2021 thru December 31, 2024 for current build affordable housing unit projects, or for restarted affordable housing projects that were previously placed on hold due to high construction material or contractor/subcontractor costs encountered during the COVID pandemic. Such funds may only 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.

2. **Program Funding and Award Amount**

   The County shall make $100,000 of ARPA funds available that will be paid to Subrecipient upon execution of this Agreement.

3. **Reporting**

   The Subrecipient will provide an A-19 equivalent report, copies of supporting invoices, and signed certification detailing affordable housing construction costs for each affordable housing unit project funded by the ARPA funds received by the Subrecipient, including indication of the respective affordable housing project recipient's household income level as a percentage of County AMI, until such funds are fully depleted.

   Within 30 days of funds being fully depleted, the Subrecipient 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.

8
8/23/24

AGENDA ITEM SUMMARY

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

Department: BOCC - Finance

WORK SESSION ☒ **Meeting Date: August 23, 2021**

REGULAR AGENDA ☐ **Meeting Date:**

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 ARPA – Food Security to Local Food Banks Discussion

Documents exempt from public disclosure attached: ☐

Executive summary:

Continuing from the Work Session on August 16th, 2021, the Board of County Commissioners want to discuss the request from New Hope Food Bank in Clallam Bay requesting an additional $225,000 (in addition to their $50,000 already approved) to purchase and renovate the vacant Bank of America building to better fit their growing needs due to the COVID-19 pandemic and to be in a more accessible location for community members. The original request submitted from New Hope Food Bank was for $50,000 but after the Board of County Commissioners allocated the $700,000 of funding on July 6th, 2021 for *Food Security to Local Food Banks* New Hope Food Bank was made aware of the sale of the Bank of America building and realized their request would be substantially more. New Hope Food Bank also has approximately $26,000 dollars in savings that they plan to put forward to the purchasing/renovating of the Bank of America building if they are to receive the awarded funds they have requested through the county. They understand this would reduce their total potentially awarded amount to $250,000 instead of $275,000.

Similarly, the Port Angeles Food Bank has submitted a request for additional funds apart from the original amount allocated on July 6th, 2021 for *Food Security to Local Food Banks*. Their original $408,000 has been increased to $1,348,000.

The Chair of the Peninsula Food Coalition is overseeing all *Food Security to Local Food Banks* requests for ARPA funds and will be providing an update on both of these requests.

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

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* Work Session Meeting - Submit 1 single sided/not stapled copy ARPA Funds - New Hope Food Bank - Port Angeles Food Bank 8.23.21
** 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

Recommended action: (Does the Board need to act? If so, what is the department's recommendation?)
To bring the approved funding level up to $925,000 for the ARPA funds committed by the BOCC to the *Food Support for Local Banks* category in order to provide the additional needed to support New Hope Food Bank's funding request in support of its transition to a new facility.

County Official signature & print name: Chelsea Lierly Chelsea Lierly

Name of Employee/Stakeholder attending meeting: Chelsea Lierly and Mark Lane

Relevant Departments: BOCC and Finance

Date submitted: 8/18/2021

Status: **Reviewed**

Entry #: 4

Date Submitted: 8/2/2021 10:20 AM

APPLICANT BACKGROUND INFORMATION:

Business/Organization Name
New Hope Food Bank

Legal Name if different from Business/Organization Name
same

Address
16693 Highway 112, Clallam Bay, Washington 98326

Mailing Address (if different)
PO Box 336, Clallam Bay, Washington 98326

WA State UBI
601-234-733

TIN (Tax Identification Number)
91-1352736

Date Business/Organization Opened*
4/30/1971

Organization Type
Non-Profit

Name of Business/Organization Owner/Principal Contact
Alice M Langebartel

Other contact names (if applicable)
Tom Hull

Phone
(360) 963-2452

Email for the person responsible for grant
cbaog01@gmail.com

COVID-19 IMPACTS:

What is the amount of money you are requesting:
$275,000.00

Please select the eligible use category that fits your needs:
Negative Economic Impacts

Please describe the negative financial and operational impact COVID-19 has had on your organization.

AMERICAN RESCUE PLAN ACT – FUNDING REQUEST FOR CLALLAM COUNTY
NEW HOPE FOOD BANK,

The New Hope Food Bank (NHFB) is a 501(c)3 non-profit organization and has been in existence for more than 30 years in a single-wide mobile home on property belonging to the Clallam Bay Assembly of God Church and has been provided oversight, volunteer workers, and other volunteers from different churches in our community for the NHFB.

The economy in our very rural area of Clallam Bay/Sekiu has been hit hard with businesses going bankrupt, others moving out of our area because of the negative impacts sustained. Clallam Bay/ Sekiu is a seasonal rural area that offer fishing, hiking, bird watching, surfing, camping, etc. The COVID-19 has negatively impacted our area economy because businesses had to shut down, churches had to close their doors, and many have not recovered from these negative impacts to our small rural area.

The New Hope Food Bank respectfully is looking to request funding to help our food bank and community by purchasing a building and property of its own. This property is situated behind what used to be the general grocery store who went bankrupt due to the economy, and is adjacent to another business known as Morgan's, which was a restaurant that went out of business. Many of the small businesses have suffered negative financial and operational impacts and have left the area.

The building and property the New Hope Food Bank are requesting to purchase with funding from the ARPA Grant opportunity was the only banking business in our rural area known as the Bank of America. They pulled out of our rural area because of the negative downturn in the economy.

COVID-19 provided an extreme negative impact to our food bank and provided challenges to our operational structure, extra layers of health implementations, strained our volunteers who continued to give their all to making the food bank viable to serve our communities affected by COVID-19. The New Hope Food Bank received more food and produce from other government agencies that tested the size and conditions of our single-wide mobile home, which is in need of a new building. The single-wide mobile is in need of extensive repairs and renovations and the storage area is inadequate to meet the needs of our community.

Because of COVID-19, the New Hope Food Bank is in need of a larger building, which will need some modifications to accommodate our freezers, refrigerators and storage space and would give easier access to our community members because we would be located in the downtown area, and this would make easier access for our volunteers who bring the food from the Forks food bank that receives food from Northwest Harvest and USDA through the Port Angeles Food Bank. The single-wide mobile is no longer a viable building, with its repairs, electrical and extreme renovations it would cost, this would put the New Hope Food Bank in a negative financial and operational situation to which we could lose the ability to subcontract with these services, which in turn would negatively affect our community members who need and depend on the food bank services here in Clallam Bay/Sekiu.

Please briefly describe how you would use any funds that were awarded under this program:
The funds would be used to purchase a building and property that once was used for the Bank of America. They had to leave due to the downturn in the economy. The funding would also go towards renovations to meet the food bank requirements, i.e. storage for food products, freezers, refrigerators, offloading area for easy access for our volunteers to unload cases of food boxes, produce boxes, etc. This funding would provide a better non-profit location, building, property and access to more community members who need and depend on our services.

Please briefly describe the impact to your organization if you do not receive the funds requested:
If we do not receive the funds requested, we would probably have to close our doors and wait until we can raise the funds ourselves, which could take a few years. COVID-19 has really put the New Hope Food Bank in an organizational and financial situation to where we could not build a new building at this time and would need to postpone getting a new building, plus we would have to close our doors and no longer subcontract with USDA and Northwest Harvest programs that have been such a reliable source of food.

Please indicate how much, if any, other COVID-relief funding your organization has received and what it was used for.
The New Hope Food Bank has not been provided with any other COVID-relief funding. The New Hope Food Bank subcontracts with USDA and Northwest Harvest. We received more in food products. We receive small donations from church members and the Albert Haller Grant, which helps us to buy our Thanksgiving and Christmas Holiday food baskets and fill them with all the things to provide a Thanksgiving Dinner and Christmas Dinner for those who would otherwise go without.

Please indicate any other COVID-related relief that you have applied for or will be applying for that you are awaiting a response.
This is the only grant that the New Hope Food Bank has applied for during this COVID-19 pandemic because most grants don't provide the amount of money needed to buy a building and property to house our food bank.

If your request for funding is related to a water, sewer, or broadband infrastructure project, please indicate how this project meets the infrastructure requirements criteria under ARPA. For water/sewer projects, the project must be eligible to receive financial assistance through the Environmental Protection Agency's Clean Water State Revolving Funds (CWSRF) or Drinking Water State Revolving Fund (DWSRF). For Broadband projects, the project must target unserved or underserved households or businesses not currently served by a wireline connection that delivers at least 25 mbps download speeds and 3 mbps of upload speeds and the project as designed will deliver minimum download and upload speeds of 100 mbps.
NA

If applicable, please describe how the funding if awarded, would enable your organization to provide assistance to disproportionately impacted by COVID-19 populations, households or geographic areas including addressing health disparities, building stronger neighborhoods and communities as it relates to homelessness, affordable housing, addressing educational disparities worsened by COVID, and promoting healthy childhood environments.
COVID-19 has affected our small rural communities populations, and households because many would not come out to get their food baskets because of the COVID-19 pandemic. People were afraid to go anywhere. Drugs and Alcohol have also had a huge impact on our little rural community many of which don't have good housing, vehicles and food. If awarded this funding, it will put New Hope Food Bank, closer to these people in the community to better serve them and hopefully build stronger neighborhoods and therefore, communities.

Has your organization been made ineligible to receive federal assistance due to debarment, suspension, ineligibility or by voluntary exclusion for lower tier covered transactions?
No

Additional Comments
I have attached pictures and the legal description of the property and building the New Hope Food Bank is looking to purchase and renovate with these grant funds. Thank you for this grant opportunity and taking the time to review our proposal.

In submitting this application I swear under penalty of perjury under the laws of the State of Washington that the foregoing information contained in this application is true and correct to the best of my knowledge and belief.
Yes

Certification:

Name
Alice Langebartel

Title
NHFB Secretary/Coordinator

Date
8/2/2021

Please provide any other supporting materials that would assist us in assessing your application (pre-COVID or COVID); financial statements, operational metrics, key invoices/quotes, a detailed list for proposed use of funds, project plans for water, sewer or broadband infrastructure projects, etc.

Photos of BofA CB.pdf
2.14 MB

Legal Description BofA CB.pdf
53.59 KB

image.png
1.32 MB

Upload your completed W-9 here in pdf or jpg

W9.pdf
1.03 MB

Status: **Reviewed**

Entry #: 12

Date Submitted: 8/18/2021 2:41 PM

APPLICANT BACKGROUND INFORMATION:

Business/Organization Name
Port Angeles Food Bank

Legal Name if different from Business/Organization Name
Port Angeles Food Bank

Address
632 N. Oakridge Dr., PO Box 1885, Port Angeles, Washington 98362

Mailing Address (if different)

WA State UBI
601-663-951

TIN (Tax Identification Number)
911192596

Date Business/Organization Opened*
1/10/1980

Organization Type
Non-Profit

Name of Business/Organization Owner/Principal Contact
Emily Dexter

Other contact names (if applicable)
Emily Dexter

Phone
(360) 452-8568

Email for the person responsible for grant
edexter@portangelesfoodbank.org

COVID-19 IMPACTS:

What is the amount of money you are requesting:
$1,348,000.00

Please select the eligible use category that fits your needs:
Public Health

Please describe the negative financial and operational impact COVID-19 has had on your organization.

The negative financial and operation impact COVID-19 had on the Port Angeles Food Bank is due to the increased need of our local residents and the county food systems required us to move to a new location that had adequate cold and dry storage. While we had a long-term goal of moving to a larger facility, the pandemic made that move immediately necessary. In order to keep volunteers, staff, and clients safe and dry in the winter months we did what was necessary and signed a lease on a building that would fit the immediate need and also work for the future.

During an unprecedented global pandemic, we not only pivoted to an entirely new model of providing food to our community, but we also upgraded operations at the Port Angeles Food Bank by relocating to a considerably larger facility. The Peninsula Daily News was incredibly generous and allowed us to use their extra warehouse space when we started receiving 2,000 weekly boxes of emergency food coming to Clallam County last year. When we outgrew, even that extra space, it was abundantly clear we had to move immediately. The increased amount of dry and cold storage space has had an immediate positive impact, and the new facility has sufficient space for our future growth as the emergency food HUB for Clallam County, moving over 100k lbs a month. The PAFB became the emergency food HUB for Clallam Co overnight and that meant we needed to increase our capacity to scale up transportation of food to the west end. For reference, our average lbs of food in and out of our old location prior to the pandemic was 2500lbs. Our new location has more than enough dry storage space with over 50,000cuft with a loading dock to allow for large trucks, sufficient cooler space at 650sqft plus an additional 5,400sqft when needed for overflow, sufficient freezer space of 575sqft, as well as space inside the building to create a 2,000sqft open market area to bring everyone inside the facility again to shop socially distanced with equity and dignity. In contrast, the previous location had only 4,600sqft of warehouse space, a 1,200sqft market area including the lobby, and 600sqft of combined refrigeration. The Port Angeles Food Bank supported ~13 area pantries with over 5,000 households and 100,000lbs of food a month in 2020, and we expect this capacity to continue to grow in future years. Clallam County food banks fed at least 19,341unique individuals at least once and 7300 households (not including tribes). It's also important to know that this is the MINIMUM number as counting was not perfected for the mass distributions.

The PAFB became the emergency food HUB for Clallam Co overnight and that meant we needed to increase our capacity to scale up transportation of food to the Forks Food Bank, New Hope Food Bank, and Clallam Fire #5 on a regular basis.

Please briefly describe how you would use any funds that were awarded under this program:

The PAFB would like to change our request from 408,000 to 1,348,000 which includes building renovations of 1,300,000 allowing the renovated facility to open in the Winter of 2022 and 48,000 in staff retention and incentivization to increase staff included in the previous ask.

Renovations include a new shopping market allowing for socially distanced shopping, office spaces for staff and supportive services to increase access to state and federal food programs as well as other necessary services, and a commercial kitchen to process excess food, reducing waste and providing ready to eat food to those that are experiencing health disparities with some of the food we have available.

The cost to purchase the building is $900k and the necessary improvements are $2.8M. The PAFB has been awarded 1.05M from the State (not covid related) and is providing 600k from our reserves and is currently looking for the remaining $1.2M to complete renovations by Q1 2022.

This request does NOT include the $400k/year for the next 5 years to maintain the adequate staffing level required to meet the increased long-term need caused by the Covid-19 pandemic totaling an additional $2M from the next allocation.

Please briefly describe the impact to your organization if you do not receive the funds requested:

If we do not receive this funding we risk stalling construction, which will put our timeline in jeopardy and risk increased staff burnout & turnover having a lasting impact on our services. We will continue a drive-through distribution and be limited in our ability to meet the growing need of Clallam County.

At risk of losing employees, services impacted, can't provide level of service requested of us.
Possible construction stalling
No access to indoor shopping
Cannot respond to need
Staff burnout
Risk of losing employees
Less food moving around the county
Turning away food coming into the county
Resulting in county residents not receiving the basic need of food.

Please indicate how much, if any, other COVID-relief funding your organization has received and what it was used for.

• Washington State Dept. of Agriculture funding for PAFB was used to purchase a refrigerated truck, delivery van, freezer in new facility, supplies, equipment and wages to facilitate covid related improvements.

o PAFB also passed through $278k in funding to the pantries listed below in grant opportunities

• Clallam Co. Cares funding was used for forklift, refrigeration and new facility rent, PPE, Mass Distribution Food, new hire wages

• OLYCAP Passthrough funding was used for covid related utilities, janitorial, and food expenses

WSDA Clallam CO. CARES OlyCAP CARES
Pass through Total Covid
related funding
PAFB $278,258.32 $71,950.00 $18,032.00 $368,240.32
OlyCAP $31,460.59
SFB $129,611.83
FFB $105,398.08
S Army $9,892.12
New Hope $1,887.63

$556,508.57

Please indicate any other COVID-related relief that you have applied for or will be applying for that you are awaiting a response.

Requested 900k from Kilmer for purchase of the building – confident we will receive
Requested 500k from Cantwell towards building – not confident
Requested 800k from Murray towards building – not confident
WSDA future funding opportunities, unspecified amount

If your request for funding is related to a water, sewer, or broadband infrastructure project, please indicate how this project meets the infrastructure requirements criteria under ARPA. For water/sewer projects, the project must be eligible to receive financial assistance through the Environmental Protection Agency's Clean Water State Revolving Funds (CWSRF) or Drinking Water State Revolving Fund (DWSRF). For Broadband projects, the project must target unserved or underserved households or businesses not currently served by a wireline connection that delivers at least 25 mbps download speeds and 3 mbps of upload speeds and the project as designed will deliver minimum download and upload speeds of 100 mbps.

If applicable, please describe how the funding if awarded, would enable your organization to provide assistance to disproportionately impacted by COVID-19 populations, households or geographic areas including addressing health disparities, building stronger neighborhoods and communities as it relates to homelessness, affordable housing, addressing educational disparities worsened by COVID, and promoting healthy childhood environments.

We have seen the number of families we are serving increase during COVID by 250%. As a result, our capacity to meet the rising needs of hungry people impacted by COVID across Clallam County has been severely strained by inadequate staffing, and lack of adequate storage and transportation infrastructure. The new facility addresses these constraints in a variety of ways. Our expanded freezer and cold storage will allow us to greatly increase the amount of food we are able to accept and distribute to other food pantries around the County, increasing their capabilities and helping them address disparities in their communities. Our newly expanded facility will have expanded kitchen and deli services to allow for a shopping experience similar to a grocery store, where people have choices, increased access to nutritious basic foods, and availability of ready-to-go meals, to better address health disparities and hunger in our communities.

If awarded funding we will be able to complete construction and continue providing excellent services to our residents and supporting other county emergency food providers. Our renovations being complete allows all of the above disproportionately impacted populations to have a dignified and equitable experiencing shopping for food without disparity. We will be able to better deliver food to those without reliable transportation and continue providing nutritious food to the students of the Port Angeles School District.

Has your organization been made ineligible to receive federal assistance due to debarment, suspension, ineligibility or by voluntary exclusion for lower tier covered transactions?

No

Additional Comments

This funding would be an incredible benefit to the entire Clallam County food system. Thank you for your consideration, incredibly difficult work, and for all your support throughout this pandemic. We appreciate you, go team!

In submitting this application I swear under penalty of perjury under the laws of the State of Washington that the foregoing information contained in this application is true and correct to the best of my knowledge and belief.

Yes

Certification:

Name
Emily Dexter

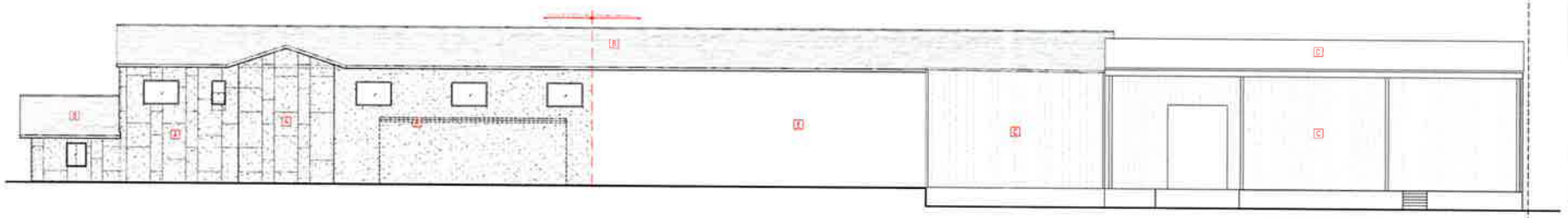
Title
Executive Director

Date
8/18/2021

Please provide any other supporting materials that would assist us in assessing your application (pre-COVID or COVID); financial statements, operational metrics, key invoices/quotes, a detailed list for proposed use of funds, project plans for water, sewer or broadband infrastructure projects, etc.

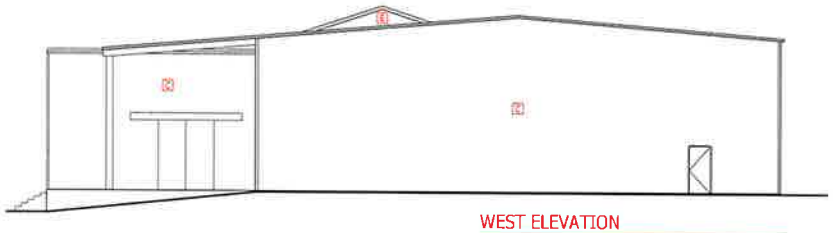
Upload your completed W-9 here in pdf or jpg

W9 Signed 2021.pdf
91.79 KB



NORTH ELEVATION

SCALE: 1/8" = 1'-0"

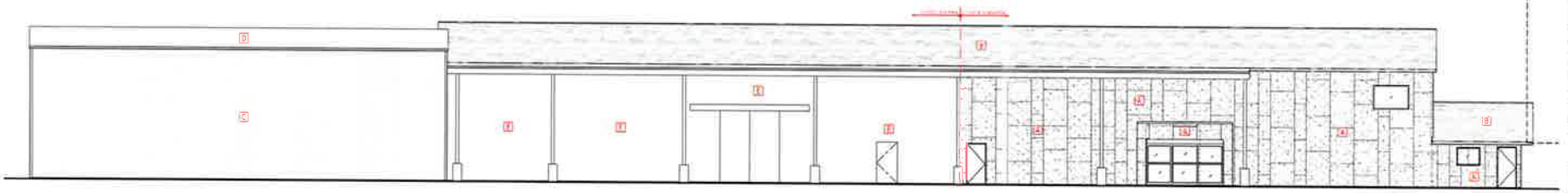


WEST ELEVATION

SCALE: 1/8" = 1'-0"

EAST ELEVATION

SCALE: 1/8" = 1'-0"



SOUTH ELEVATION

SCALE: 1/8" = 1'-0"

FINISHES:

- A — NEW CEMENTIOUS FIBER BOARD (SMOOTH) - PAINT
- B — NEW ASPHALT SHINGLE ROOFING
- C — EXISTING PRE-FINISHED METAL SIDING
- D — EXISTING PRE-FINISHED METAL ROOFING
- E — EXISTING PLYWOOD SIDING TO REMAIN

SHEET NOTES:

REFER TO SECTIONS AND DETAILS FOR ADDITIONAL INFORMATION.

REFER TO DOOR AND WINDOW SCHEDULES FOR ADDITIONAL INFORMATION.

REVISIONS

NO.	BY	DATE
1		06-27-2021

FOR DESIGN DEVELOPMENT

ENOVIC & ASSOCIATES INCORPORATED
351 E. 6TH STREET, SUITE 105
PORT ANGELES, WA 98362
PHONE: (360) 417-0950
FAX: (360) 417-0514
EMAIL: JENOVIC@OLYNET

EXTERIOR ELEVATIONS

PROJECT: 820 SOUTH PARKSIDE RESIDENCE

CLIENT: PORT ANGELES FOOD BANK

SCALE: AS INDICATED

DATE: June 25, 2021

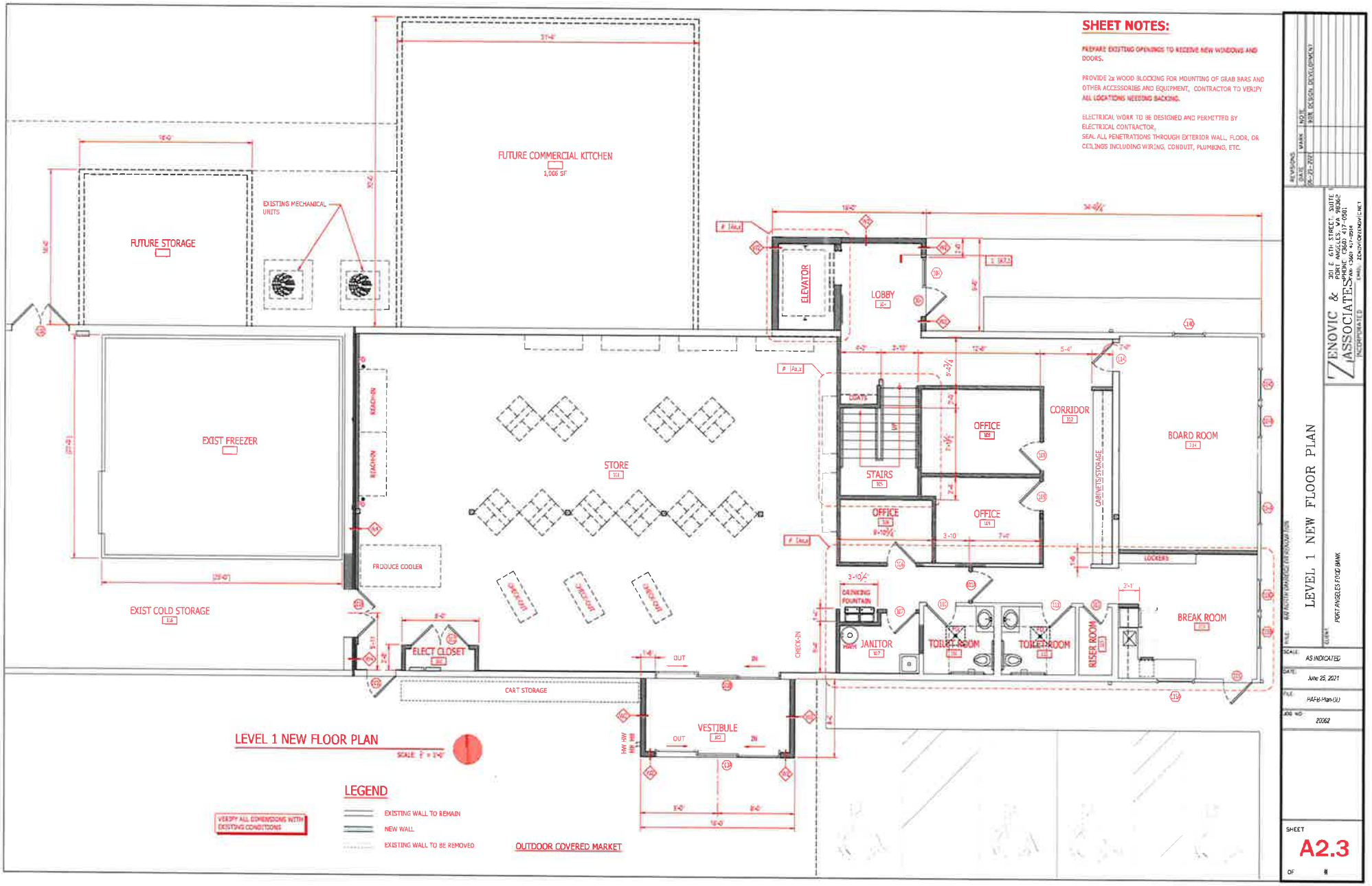
FILE: HAHN Han-JJU

JOB NO: 20062

SHEET

A3.1

OF #



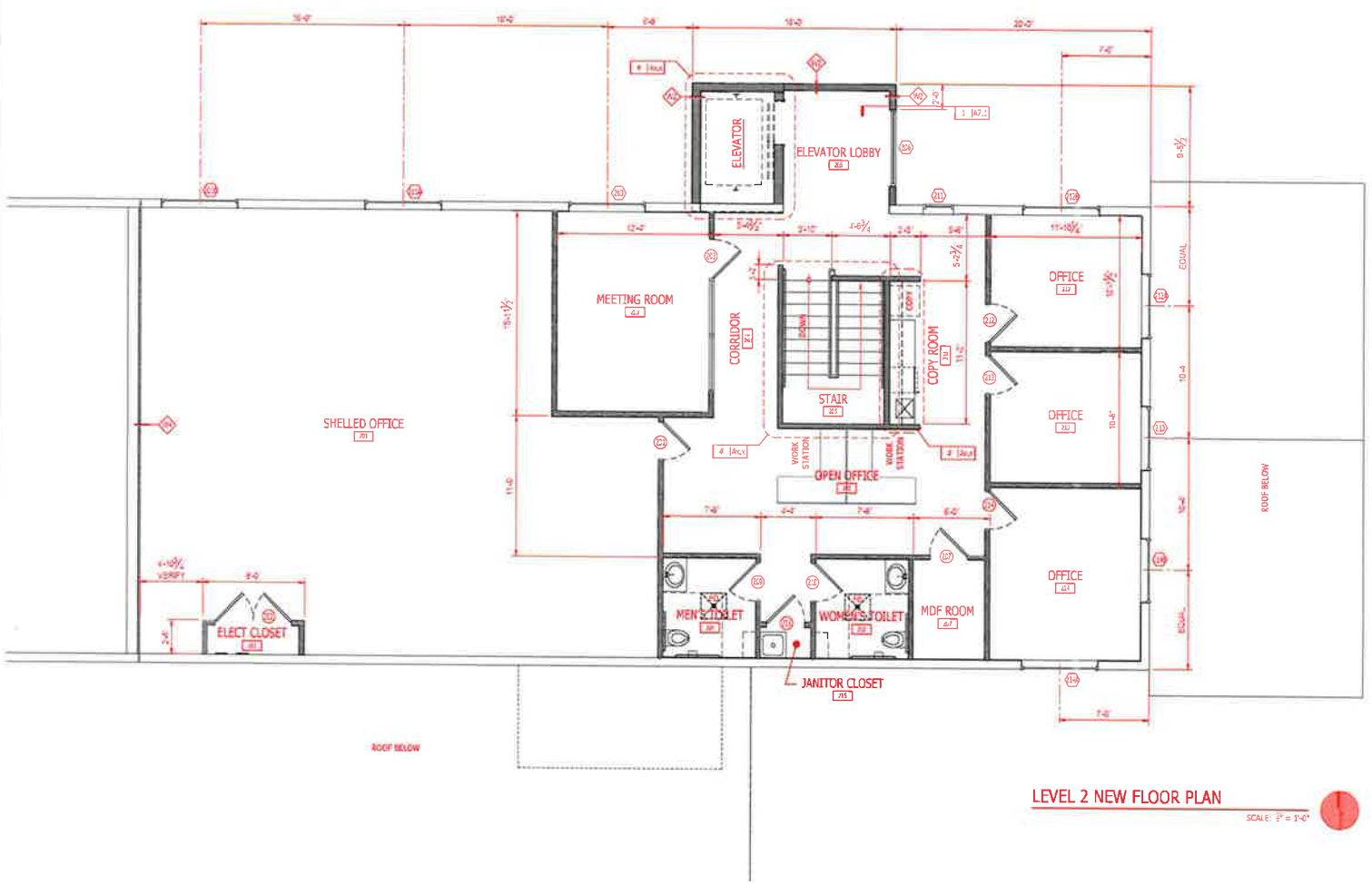
ZENOVIC & ASSOCIATES INCORPORATED
3511 E. 6TH STREET, SUITE 1
PORT ANGELES, WA 98362
PHONE (360) 417-0981
FAX (360) 417-0914
EMAIL: ZENOVICARCH@NET

LEVEL 1 NEW FLOOR PLAN

PORT ANGELES FOOD BANK

SCALE: AS INDICATED
DATE: June 25, 2021
FILE: HAFH-Plan-LU
JOB NO: 20062

SHEET A2.3
OF #



LEVEL 2 NEW FLOOR PLAN

SCALE: 1/4" = 1'-0"

SHEET NOTES:

PREPARE EXISTING OPENINGS TO RECEIVE NEW WINDOWS AND DOORS.

PROVIDE 2x WOOD BLOCKING FOR MOUNTING OF GRAB BARS AND OTHER ACCESSORIES AND EQUIPMENT. CONTRACTOR TO VERIFY ALL LOCATIONS NEEDING BACKING.

ELECTRICAL WORK TO BE DESIGNED AND PERMITTED BY ELECTRICAL CONTRACTOR.
SEAL ALL PENETRATIONS THROUGH EXTERIOR WALL, FLOOR, OR CEILINGS INCLUDING WIRING, CONDUIT, PLUMBING, ETC.

VERIFY ALL DIMENSIONS WITH EXISTING CONDITIONS

LEGEND

- EXISTING WALL TO REMAIN
- NEW WALL
- EXISTING WALL TO BE REMOVED

REVISIONS

MARK	NOTE	DATE
1	MDS DESIGN DEVELOPMENT	06-22-2021

ENOVIC & ASSOCIATES INCORPORATED
350 E 6TH STREET, SUITE 4
PORT ANGELES, WA 98362
PHONE (360) 417-0301 ## (360) 417-0304
EMAIL ZENOVICZENOVIC.NET

LEVEL 2 NEW FLOOR PLAN

CLIENT: PORT ANGELES FOOD BANK

PROJECT: 64 NORTHWOODS DEVELOPMENT

SCALE: AS INDICATED

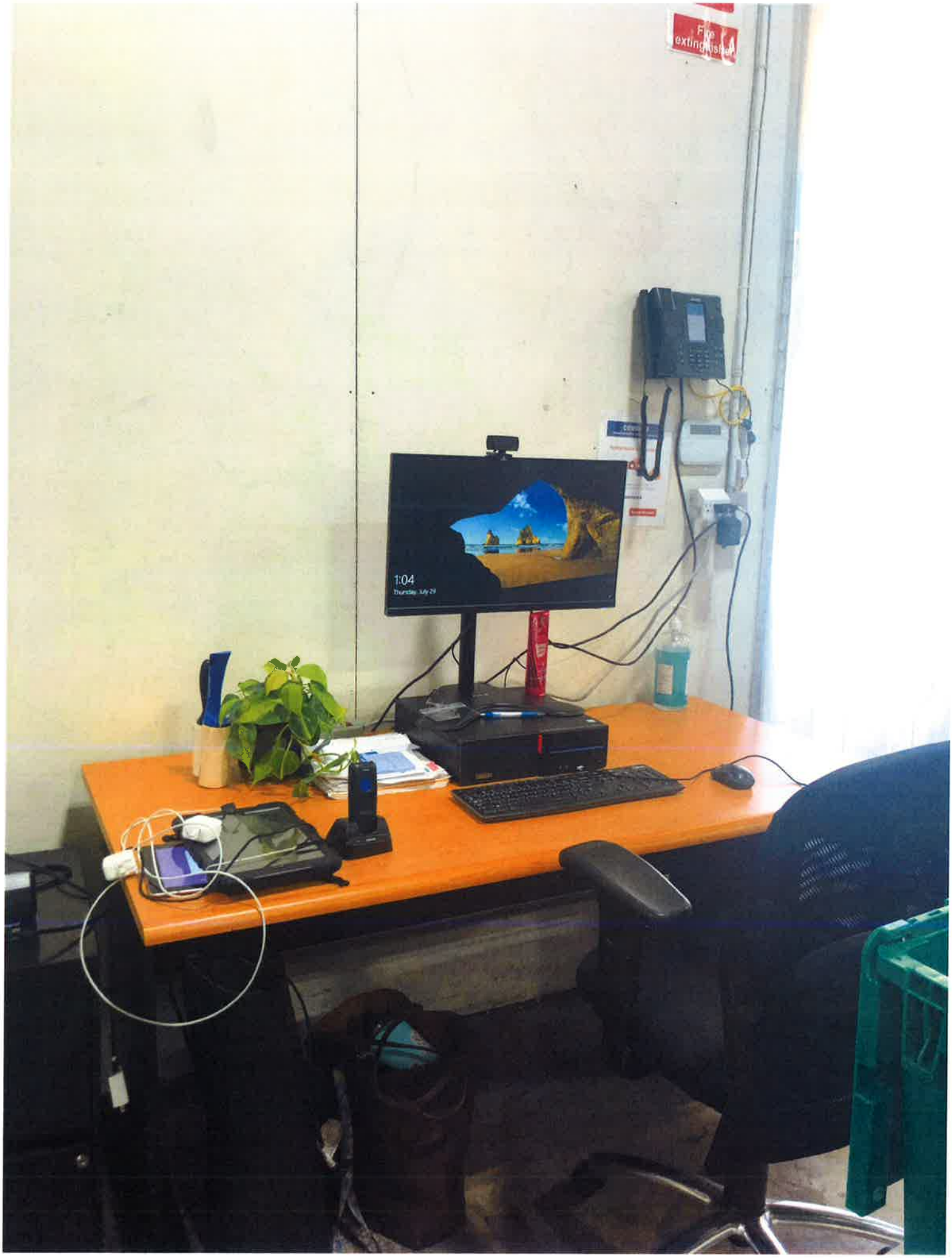
DATE: June 25, 2021

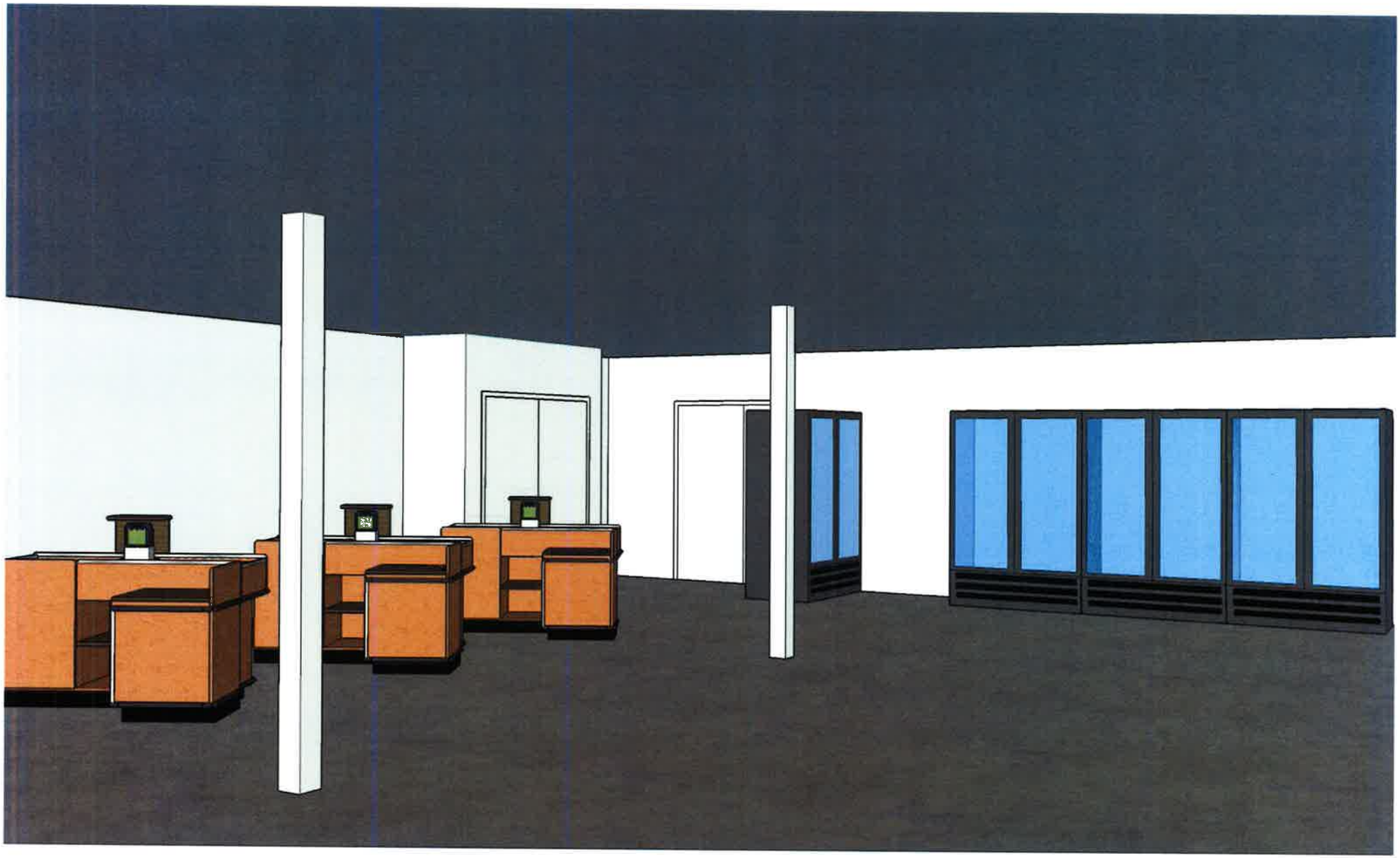
FILE: HAB-Plan.DU

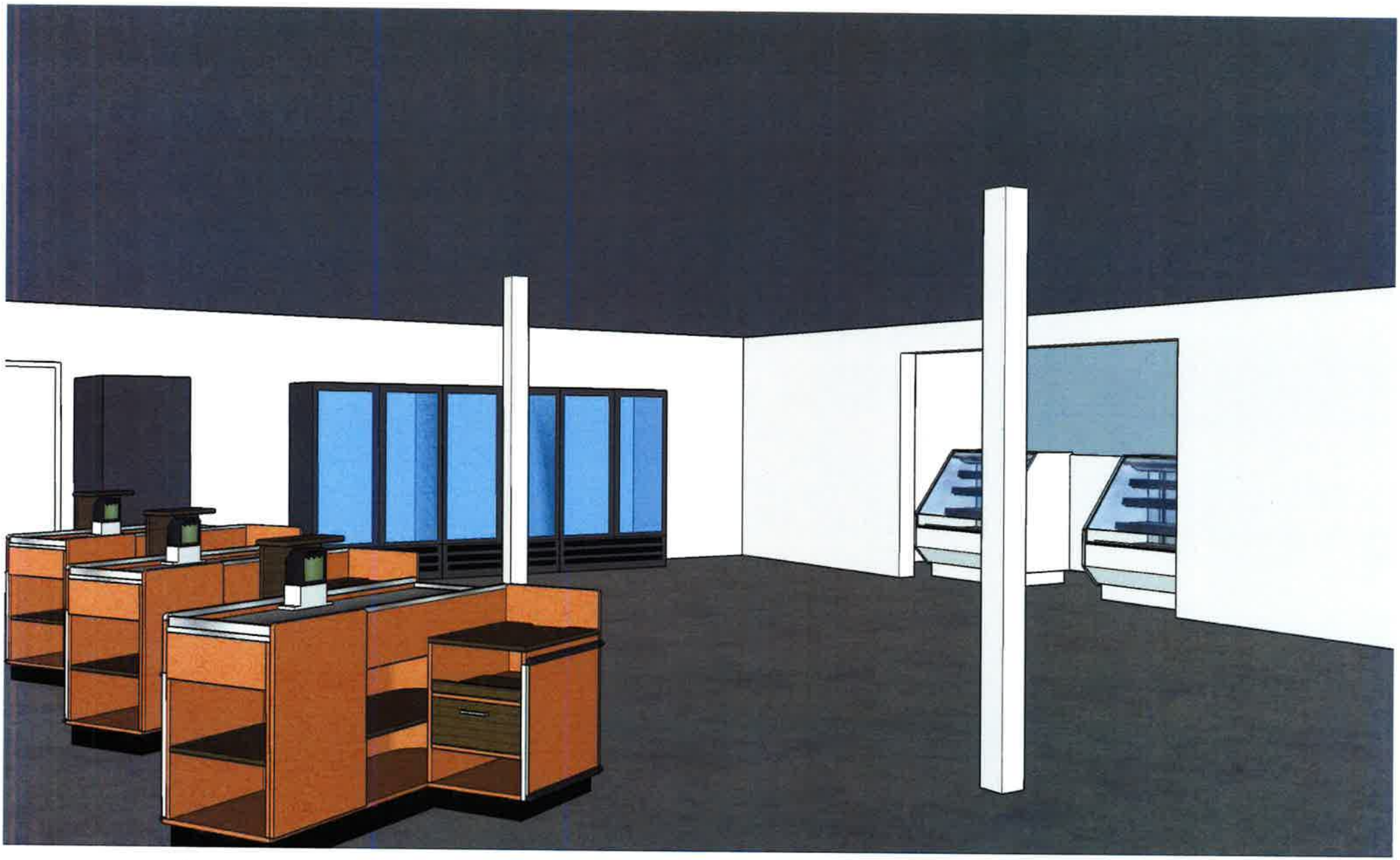
JOB NO: 20362

SHEET A2.4

OF 8


Fire extinguisher
1:04

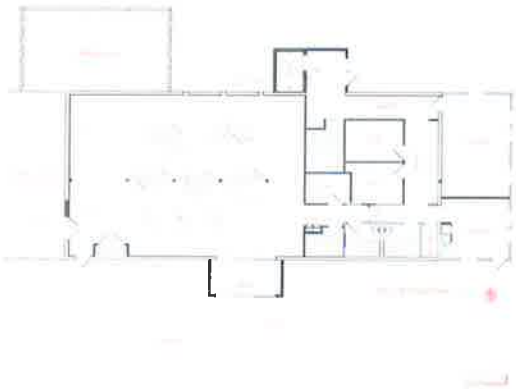




INVESTING IN THE PORT ANGELES FOOD BANK IS AN INVESTMENT IN CLALLAM COUNTY

Feeding Clallam County

- 4 food pantries
- 3 local tribes
- 2 meal programs
- ~10 partner organizations
- 5,000 households
- 200,000 meals a month



Feeding Clallam County Better

- 15,000sqft dry storage
- 6,000sqft refrigeration
- 575sqft freezer
- 2,000sqft grocery store
- 2,000sqft to expand services

THE PORT ANGELES FOOD BANK IS A NO-BARRIER FOOD PANTRY AND FOOD BANK NOURISHING ANYONE IN NEED IN CLALLAM COUNTY WITH RESPECT, DIGNITY, EQUALITY, AND KINDNESS

Port Angeles Food Bank

I HAVE THE AUDACITY TO BELIEVE THAT PEOPLE EVERYWHERE CAN HAVE THREE MEALS A DAY FOR THEIR BODIES, EDUCATION AND CULTURE FOR THE MINDS AND DIGNITY, EQUALITY AND FREEDOM FOR THEIR SPIRITS. ~ MARTIN LUTHER KING, JR.

The Port Angeles Food Bank (PAFB) is the lead distributing Food Bank in Clallam County Washington. Providing nourishing food to the Port Angeles community as well as delivering food to several other food pantries in the County, including multiple tribes in the region. It has evolved from a small all-volunteer organization 30 years ago to a vital resource for the well-being of the Port Angeles community and for the County as a whole. It routinely serves between 15% and 20% of the population in Port Angeles.

Now a professionally managed organization still staffed by more than 40 volunteers, the PAFB is seeking to purchase and remodel its first ever building that will enable it to expand its capabilities and extend its benefits to our neighbors in need. This funding request is to convert an aging beer warehouse into a state-of-the-art integrated food hub that will greatly improve the PAFB's ability to "Nourish our Community." The funds to purchase the building are being generated by fund-raising and cash reserves built up over the decades by careful management.

This "shovel-ready" project will provide 10 — 20 jobs for the remodeling and several new jobs at the PAFB to work with our local farmers and food providers to recover food now ending up in landfills. Other programs like a community garden on unused land near our building and marketing local specialty foods will create an ongoing food-based enterprise aimed at strengthening our community for the long haul.

Please support our vision of "Nourishing our Community" by making it possible for us to repurpose this building into a vibrant center that will combat food insecurity and be a growth engine for Clallam County.

DNR Report 8/23/21 @ 1pm

MEETING INFORMATION

CLALLAM COUNTY BOARD OF COMMISSIONERS

ATTENTION

In response to the current Governors order Clallam County has moved Phase 3 of the Healthy Washington Roadmap to Recovery Plan. To be in compliance with the Healthy Washington Roadmap to Recovery Plan the following general requirements for COVID safety for meetings held in the Board of Commissioners Board Room are as follows:

1. All attendees are encouraged to provide contact information on a sign in sheet which will be retained for 28 days for contact tracing purposes.
2. Public seating areas and Board member seating must be arranged to ensure physical distancing is maintained.
3. Meeting attendees must follow current face covering guidelines.
4. No food or drink should be consumed in the BOCC Board Room.
5. Meeting organizers shall clean or arrange to have cleaned high-touch surfaces before and after each meeting.
6. Hand sanitizing stations will be available in the BOCC Board Room.
7. Keep doors and windows open where possible to improve ventilation.
8. The Chair of the meeting shall ensure current masking and social distancing practices are enforced and practiced by all event attendees.

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

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

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

DNR Joint meeting 8/23/21 @ 1pm

Clallam County

2021 Quarterly Income Report – Quarter 2

The Washington State Department of Natural Resources manages more than 600,000 acres of state forestlands in Washington. State forestlands generate revenue that helps support counties and local services. The lands are located in 21 counties, though the amount of acreage of trust land varies considerably by county. This report provides county-specific information regarding quarterly revenue from state forestlands.

ALL REVENUE[1] distributed to Clallam County in Calendar Quarter 2 (April 1 - June 30, 2021). Due to the specific date monies are received by the Department and the cutoff dates used by the State Treasurer for wire transfers, the revenue for the current period may be different than actual remittances received by the county.

$1,592,765.30

ALL REVENUE[1] accrued for Clallam County this calendar year, 2021, as of June 30, 2021. For reporting purposes, DNR follows the modified accrual basis of accounting per Generally Accepted Accounting Principles (GAAP). Under this measurement focus, revenues are recognized and recorded when they become both measurable and available, i.e., when invoiced.

$2,732,397.00

NET VALUE[2] of State Forestland timber in Clallam County under contract as of June 30, 2021.

$9,723,222.36

Click here for 10-Year Distribution History.

Click here for detail about timber sales under contract.

[1] **All revenue refers to distributions from timber and non-timber sources.**

[2] **Net value of timber includes the estimated value of timber currently under contract and does not include the estimated value from non-timber sources.**

There are two types of state forestlands: State Forest Transfer lands, and State Forest Purchase lands.

1. **State Forest *Transfer* Lands.** These are lands acquired by counties through tax foreclosures that were subsequently turned over to the state. The Department of Natural Resources currently manages more than 538,000 acres of these forestlands in trust for 20 counties. Revenue from State Forestlands is distributed in accordance with RCW 79.64.110. Based on population, Skamania and Wahkiakum Counties have different distribution requirements compared with other counties.
2. **State Forest *Purchase* Lands.** State-issued bonds were used to acquire certain parcels of forestland from private owners. Typically, these forestlands had been logged and were in need of active management. Allocation of revenue from these lands was determined when purchase was authorized, as follows: 26.5 percent to the county in which the property is located; 50 percent to DNR for management expenses; and the remaining 23.5 percent to the State General Fund.

State Forestlands

Current as of 04/09/2021

	State Forest Transfer	State Forest Purchase	Total Acres
Clallam	93,018	242	93,260
Clark	26,497	3,850	30,347
Cowlitz	11,083	275	11,358
Grays Harbor	2,315	29,033	31,348
Jefferson	14,706	16	14,722
King	22,908	0	22,908
Kitsap	7,561	79	7,640
Kittitas	0	3	3
Klickitat	20,360	41	20,401
Lewis	39,999	3,069	43,067
Mason	28,344	561	28,905
Okanogan	42	0	42
Pacific	14,839	8,163	23,002
Pierce	8,880	3,339	12,219
Skagit	86,146	2	86,148
Skamania	37,917	4,461	42,378
Snohomish	62,480	1,681	64,161
Stevens	160	41	201
Thurston	20,019	23,531	43,550
Wahkiakum	12,405	0	12,405
Whatcom	29,241	996	30,237
Total Acres	**538,918**	**79,384**	**618,302**

CLALLAM COUNTY

Table 2: STATE FORESTLANDS -TIMBER SALES UNDER CONTRACT

(NOTE: 30 month timeline - updated every quarter)

LUMP SUM SALES[1]	Contract #	Estimated total sale value to be distributed to the County*	Total Sale Distributions to the County through 6/30/2021	Estimated Remaining Value to be Distributed to the County	Contract End Date
Sadie Hawkins	97154	57,000.00	51,496.82	5,503.18	10/31/2021
Park Line	97443	3,884.19	4,081.06	(196.87)	10/31/2021
Foot Trail	97642	1,273,930.73	276,072.99	997,857.74	10/31/2022
Willey Ridge VRH VDT	98103	59,251.50		59,251.50	10/31/2024
Boulderdash	98722	386,278.20	296,984.26	89,293.94	10/15/2022
Spruced Up	98878	216,279.79	62,978.61	153,301.18	10/15/2021
Whiskey Creek Limit	99241	1,383,736.95	65,000.80	1,318,736.15	9/30/2022
Falls Creek	99249	644,907.75	644,907.67	0.08	10/15/2022
South Chicago	99255	1,141,938.00	317,132.24	824,805.76	10/30/2021
Flutterby	99655	569,157.19		569,157.19	8/31/2021
Kings Silver	100646	849,960.75		849,960.75	10/31/2022
Good Golly	100647	136,643.64		136,643.64	10/15/2022
Golly G	100648	681,996.00		681,996.00	10/31/2023
Clark Flats VRH VDT	100651	1,012,872.98		1,012,872.98	10/31/2023
Salty View	100653	1,522,607.10		1,522,607.10	10/31/2023
Shu Tye	100656	65,628.00		65,628.00	10/31/2022
For What It's Worth	100852	197,116.75		197,116.75	9/30/2023
Tomauder	100885	248,850.00		248,850.00	7/31/2022
Homeward	101114	754,403.48		754,403.48	6/30/2023
Total		**11,206,442.98**		**9,487,788.53**	

SCALE SALES[2]	Contract #	Estimated total sale value to be distributed to the County*	Total Sale Distributions to the County through 6/30/2021	Estimated Remaining Value to be Distributed to the County	Contract End Date
Agate Bay VDT VRH	96309	304,433.39	195,809.56	108,623.83	10/31/2021
Total		**304,433.39**		**108,623.83**	

SORT SALES[3]	Contract #	Estimated total NET sale value to be distributed to the County*	Total Sale Distributions to the County through 6/30/2021	Estimated Remaining NET Value to be Distributed to the County	Harvest Contract End Date
Texas Showdown Sort 1	101616	15,600.00		15,600.00	4/30/2022
Texas Showdown Sort 2	101617	34,000.00		34,000.00	4/30/2022
Texas Showdown Sort 3	101618	10,000.00		10,000.00	4/30/2022
Texas Showdown Sort 4	101619	50,000.00		50,000.00	4/30/2022
Texas Showdown Sort 5	101620	4,300.00		4,300.00	4/30/2022
Texas Showdown Sort 6	101621	4,400.00		4,400.00	4/30/2022
Texas Showdown Sort 7	101622	2,500.00		2,500.00	4/30/2022
Texas Showdown Sort 8	101623	-		-	4/30/2022
Texas Showdown Sort 9	101624	110.00		110.00	4/30/2022
Texas Showdown Sort 10	101795	5,900.00		5,900.00	4/30/2022
Total		**126,810.00**		**126,810.00**	

Net Estimated Remaining Value of State Forestland Timber Under Contract **9,723,222.36**

1-LUMP SUM SALES **Purchaser bids a fixed total sale value. Distributions occur throughout the contract as timber is harvested and invoiced. Contract can be extended.**

2-SCALE SALES **Purchaser bids a fixed price per thousand board feet for the biddable species; prices for all other species are set by DNR prior to auction. The total value for scale sales are estimates only, actual value will depend upon the amount of timber volume harvested by species. Distributions occur throughout the contract as timber is harvested and invoiced. Contract can be extended.**

3-SORT SALES **1) Contractor hired by DNR harvests timber, delivers logs to individual purchasers of log sorts, and the harvester is paid for those services from the gross proceeds. Purchaser bids a delivered log value, per thousand board feet. The net value (after payment of harvesting costs) are estimates only until the project is completed. Actual net value will depend upon the amount of timber volume harvested by sort. 2) Distribution occurs once all operations are completed and the sale revenues and expenditures have been audited. Partial distributions may occasionally occur to provide revenue for the beneficiaries, or to meet the statutory requirement to maintain less than $5 million in the Contract Harvest Revolving Fund at the end of each calendar year under RCW 79.15.520.**

Estimated Distribution Window	SORTS Contract End Date

If you are interested in more information related to state trust land distribution, please contact:

mona.griswold@dnr.wa.gov 360-374-2800

NOTE: This table shows revenue from timber only, it does not include non-timber revenue.

CLALLAM COUNTY REVENUE PROJECTIONS FOR 2021 (ALL NUMBERS ARE ESTIMATES AND ARE SUBJECT TO CHANGE)

SALES CURRENTLY UNDER CONTRACT.

SALE NAME	CONTRACT NO.	SALE TYPE	SALE DATE	EXP. DATE	Total Volume	TOTAL VALUE	% COUNTY	Total Value to County	TAX DIST.	2018 TRANSFERS	2019 TRANSFERS	2020 TRANSFERS	1st Quarter		2nd Quarter		3rd Quarter		4th Quarter		PROJECTED 3RD- 4TH QUARTER	Yearly Total Wired	SALE TOTAL WIRE TO COUNTY	2022 under contract
													Projected	Wired to County	Projected	Wired to County	Projected	Wired to County	Projected	Wired to County				
AGATE BAY CT	C3000096309	WEIGHT SCALE	6/13/2018	10/31/2021	4,550	$898,829	45.16%	$304,433	153-100%	$29,147	$10,176	$34,194	$0	$54,959	$58,700	$67,333	$50,000		$58,557		$108,557	$122,292	$195,809	CLOSED
PARK LINE	C3000097443	LUMP SUM	1/30/2019	10/31/2021	3,373	$602,200	0.86%	$3,884	503-100%	N/A	$3,021	$863	$0	$0	$0	$0	$0		$0		$0	$0	$3,884	CLOSED
OZETTE	C3000097814	LUMP SUM	4/24/2019	AUDIT	3,814	$682,226	100.00%	$511,670	502-100%	N/A	N/A	$398,323	$0	$65,814	$47,533	$0	$0		$47,533		$47,533	$65,814	$464,137	CLOSED
BURNT BLOCK	C3000097513	LUMP SUM	4/24/2019	CLOSED	4239	$1,034,137	14.88%	$115,410	202-100%	N/A	N/A	$104,247	$0	$11,085	$0	$0	$0		$0		$0	$11,085	$115,332	CLOSED
BOULDER DASH	C3000098722	LUMP SUM	8/28/2019	10/31/2022	7202	$924,000	55.74%	$386,278	502-100%	N/A	N/A	$21,416	$0	$47,240	$100,000	$228,328	$55,000		$89,294		$144,294	$275,569	$296,985	CLOSED
FALLS CREEK	C3000099249	LUMP SUM	2/26/2020	CLOSED	6432	$859,878	100.00%	$644,908	302-100%	N/A	N/A	$587,926	$0	$0	$0	$56,981	$0		$0		$0	$56,981	$644,907	CLOSED
FOOT TRAIL	C3000097642	LUMP SUM	3/25/2020	10/31/2022	6472	$1,734,478	97.93%	$1,273,931	101-100%	N/A	N/A	$0	$0	$0	$65,000	$276,073	$0		$100,000		$100,000	$276,073	$276,073	$897,858
LONE SPRUCE	C3000091527	LUMP SUM	5/27/2020	CLOSED	3650	$881,233.50	94.29%	$623,186	502-100%	N/A	N/A	$422,954	$0	$205,813	$0	$0	$0		$0		$0	$205,813	$628,767	CLOSED
SPRUCED UP	C3000098878	LUMP SUM	5/27/2020	9/30/2022	7672	$1,922,487.00	14.52%	$209,359	502-100%	N/A	N/A	$1,088	$0	$61,890	$40,000	$0	$0		$25,000		$25,000	$61,890	$62,978	$121,381
SOUTH CHICAGO	C3000099255	LUMP SUM	6/17/2020	10/31/2022	8984	$1,602,720.00	95.70%	$1,150,352	153-100%	N/A	N/A	$0	$0	$142,049	$145,000	$175,083	$50,000		$145,000		$195,000	$317,132	$317,132	$638,220
HOT LEAD SORTS	VARIOUS	SORT	6/17/2020	CLOSED	4925	$885,525.00	33.00%	$508,438	503-100%	N/A	N/A	$20	$0	$1,118	$508,438	$509,427	$0		$0		$0	$510,545	$510,565	CLOSED
WHISKY CK. LIMIT	C3000099241	LUMP SUM	8/26/2020	10/31/2022	9692	$2,710,419.57	70.56%	$1,434,354	102-9.05%	N/A	N/A	$5,883	$0	$0	$5,883	$5,883	$0		$0		$0	$5,883	$11,766	$118,134
									153-90.95%	N/A	N/A	$59,118	$0	$0	$59,118	$59,118	$0		$0		$0	$59,118	$118,236	$1,187,218
POWERLINE ALDER	30-100692	DIRECT SALE	9/10/2020	CLOSED	156	$14,384.85	100.00%	$10,789	153-100%	N/A	N/A	$0	$0	$10,789	$0	$0	$0		$0		$0	$10,789	$10,789	CLOSED
FLUTTERBY	C3000099655	LUMP SUM	10/28/2020	12/31/2022	3282	$1,005,001.00	75.51%	$569,157	102-43.24%	N/A	N/A	$0	$0	$0	$82,035	$0	$0		$21,620		$21,620	$0	$0	$224,483
									153-56.76%	N/A	N/A	$0	$0	$0	$107,685	$0	$0		$28,380		$28,380	$0	$0	$294,673
KINGS SILVER	C3000100646	LUMP SUM	10/28/2020	10/31/2022	3094	$1,133,281	100.00%	$849,961	202-100%	N/A	N/A	$0	$0	$0	$0	$0	$0		$300,000		$300,000	$0	$0	$549,961
HOMEWARD	C3000101114	LUMP SUM	12/16/2020	9/30/2022	4527	$1,267,000	79.39%	$754,403	502-5%	N/A	N/A	$0	$0	$0	$0	$0	$23,500		$6,250		$29,750	$0	$0	$7,970
									506-95%	N/A	N/A	$0	$0	$0	$0	$0	$446,500.00		$118,750.00		$565,250	$0	$0	$151,432
GOOD GOLLY	C30000100647	LUMP SUM	12/16/2020	10/15/2022	6554	$1,936,148	9.41%	$136,644	502-100%	N/A	N/A	N/A	$0	$0	$0	$0	$34,166.00		$34,166.00		$68,332	$0	$0	$68,332
FOR WHAT IT'S WORTH	C3000100852	LUMP SUM	1/27/2021	9/30/2023	5100	$1,188,166	22.12%	$197,117	502-100%	N/A	N/A	N/A	$0	$0	$0	$0	$0.00		$50,000.00		$50,000	$0	$0	$147,117
SALTY VIEW	C3000100653	LUMP SUM	2/24/2021	10/31/2023	8628	$2,387,841	85.02%	$1,522,607	151-10.47%	N/A	N/A	N/A	$0	$0	$0	$0	$0.00		$0.00		$0	$0	$0	$159,417
									102-19.51%	N/A	N/A	N/A	$0	$0	$0	$0	$0.00		$0.00		$0	$0	$0	$297,061
									153-70.01%	N/A	N/A	N/A	$0	$0	$0	$0	$0.00		$0.00		$0	$0	$0	$1,065,977
TEXAS SHOWDOWN SORTS	VARIOUS	SORT	2/24/2021	4/30/2022	6055	$2,667,956	6.13%	$100,812	202-75%	N/A	N/A	N/A	$0	$0	$0	$0	$0.00		$0.00		$0	$0	$0	$64,812
									203-25%	N/A	N/A	N/A	$0	$0	$0	$0	$0.00		$0.00		$0	$0	$0	$35,999
TOMAUDER	C3000100885	LUMP SUM	3/24/2021	10/31/2022	1853	$331,800	100.00%	$248,850	302- 100%	N/A	N/A	N/A	$0	$0	$0	$0	$0.00		$0.00		$0	$0	$0	$248,850
POWERLINE ALDER 2	C3000102050	DIRECT SALE	3/24/2021	10/31/2021	146.7	$43,465	100.00%	$32,599	153-100%	N/A	N/A	N/A	$0	$0	$0	$32,599	$0.00		$0.00		$0	$32,599	$32,599	CLOSED
SUZY J BLOWDOWN	C3000101178	DIRECT SALE	10/1/2020	CLOSED	214	$13,000	100.00%	$9,750	153-100%	N/A	N/A	N/A	$0	$9,750	$0	$0	$0.00	$0.00	$0.00	$0.00	$0	$9,750	$9,750	CLOSED
SADIE HAWKINS	C3000097154	LUMP SUM	5/29/2019	CLOSED	302	$76,000	100.00%	$57,000	153-100%	N/A	N/A	N/A	$0	$0	$0	$51,496	$0.00		$0.00		$0	$51,496	$51,496	CLOSED
				TOTALS	110,917	26,802,175		$ 11,655,892		$29,147	$13,197	$1,636,032	$0	$610,507	$1,219,391	$1,462,321	$659,166	$0	$1,024,550	$0	$1,683,716	$2,072,828	$3,751,204	$6,278,895

SALES PROJECTED TO BE SOLD IN CALANDAR YEAR 2021 (ALL NUMBERS ARE ESTIMATES AND ARE SUBJECT TO CHANGE)

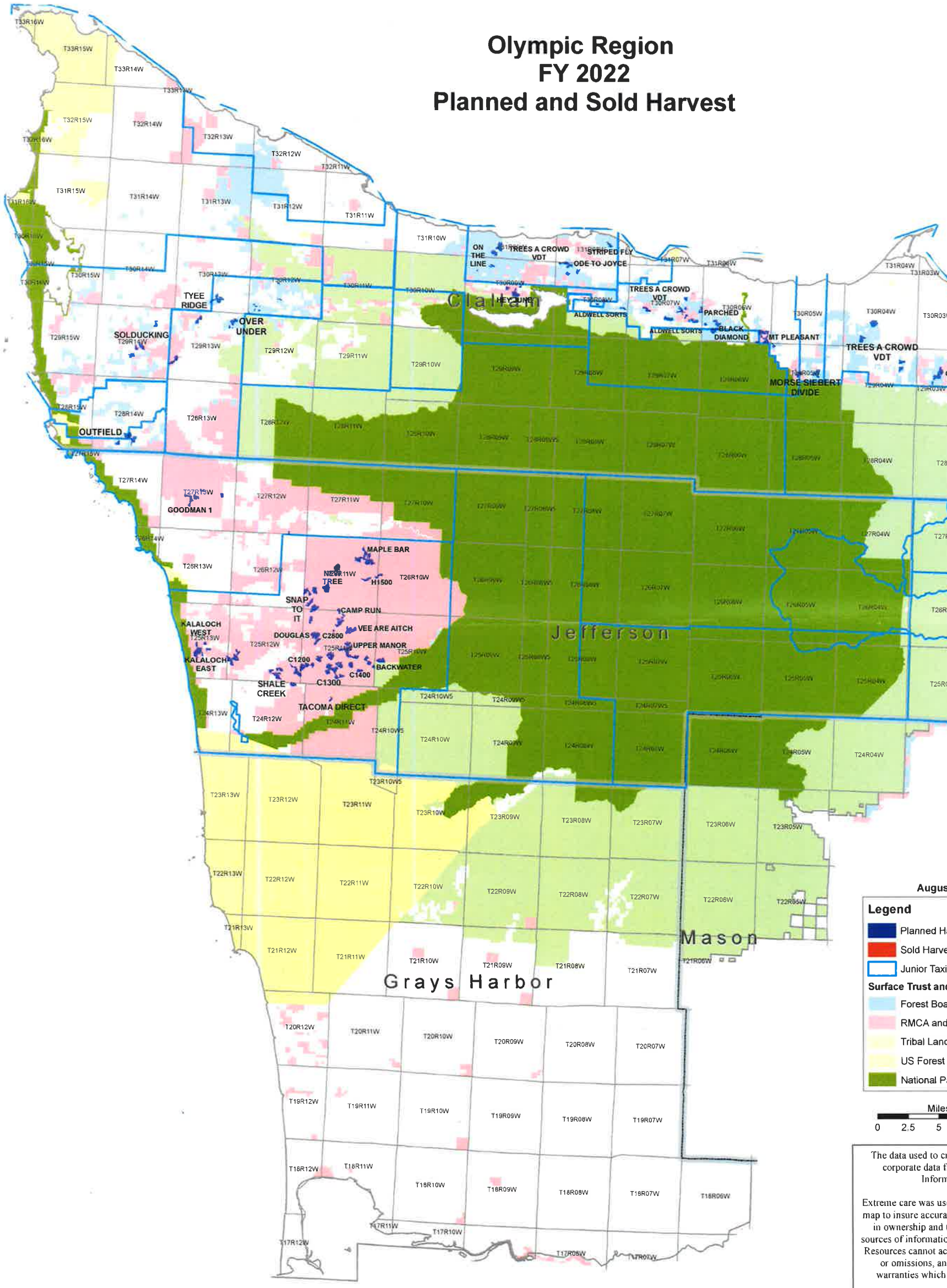
SOLDUCKING	TBD	LUMP SUM	10/27/2021	10/31/2023	4902	$1,127,460.00	46.00%	$388,974	502-100%	N/A	N/A	N/A	$0		$0		$0		$0		$0	$0	$0	$349,140
CENTER 21 THIN	TBD	WEIGHT SCALE	11/17/2021	10/31/2024	4652	$500,000.00	30.00%	$112,500	TBD	N/A	N/A	N/A	$0		$0		$0		$0		$0	$0	$0	$112,500
BLACK DIAMOND	TBD	LUMP SUM	11/17/2021	10/31/2023	5469	$1,531,320.00	100.00%	$1,148,490	101-50%	N/A	N/A	N/A	$0		$0		$0		$0		$0	$0	$0	$423,675
									102-50%	N/A	N/A	N/A	$0		$0		$0		$0		$0	$0	$0	$423,675
MT. PLEASANT	TBD	LUMP SUM	12/15/2021	10/31/2023	5498	$1,456,970.00	16.00%	$174,836	101-33%	N/A	N/A	N/A	$0		$0		$0		$0		$0	$0	$0	$42,280
									102-66%	N/A	N/A	N/A	$0		$0		$0		$0		$0	$0	$0	$85,841
				TOTALS	131438	$31,417,925		$13,480,692		$29,147	$13,197	$1,636,032	$0	$610,507	$1,219,391	$1,462,321	$659,166		$1,024,550		$1,683,716	$2,072,828	$3,751,204	$7,716,006

ALL NUMBERS ARE ESTIMATES AND ARE SUBJECT TO CHANGE

All revenue figures are for calendar years, and already have DNR management fees deducted.

	1st- 2nd qtr
All Revenue:	$2,293,990.30
Non-timber:	$221,162.02
Com. Sites	$192,872.36
ROW/RUP	$24,859.20
LEASES	$420.28
SPECIAL FOREST PROD.	$3,010.18
Timber:	$2,072,828.28

Olympic Region
FY 2022
Planned and Sold Harvest



August 10, 2021

Legend

- Planned Harvest - FY 2022
- Sold Harvest - FY 2022
- Junior Taxing Districts

Surface Trust and Major Public Lands

- Forest Board
- RMCA and other
- Tribal Lands and Reservations
- US Forest Service
- National Park Service

Miles
0 2.5 5 10

The data used to create this map is statewide, corporate data from DNR's Geographic Information System.

Extreme care was used during compilation of this map to insure accuracy. However, due to changes in ownership and the need to rely on outside sources of information, the Department of Natural Resources cannot accept responsibility for errors or omissions, and, therefore, there are no warranties which accompany this material.

WASHINGTON STATE DEPARTMENT OF
NATURAL RESOURCES
HILARY S. FRANZ | COMMISSIONER OF PUBLIC LANDS