

Statement Regarding Compliance with the Coronavirus State and Local Fiscal Recovery Funds Interim Final Rule and Final Rule

U.S. Department of the Treasury

On January 6, 2022, the U.S. Department of the Treasury (Treasury) adopted a final rule implementing the Coronavirus State and Local Fiscal Recovery Funds (SLFRF). The final rule responds to comments received on the interim final rule and will take effect on April 1, 2022. Until that time, the interim final rule remains in effect. This statement clarifies the transition from compliance with the interim final rule to compliance with the final rule. Recipients should also review the final rule for additional information.

State, territorial, local, and Tribal governments (together, recipients) must comply with the final rule beginning on April 1, 2022, when the final rule takes effect. Prior to April 1, 2022, recipients may take actions and use funds in a manner consistent with the final rule, and Treasury will not take action to enforce the interim final rule if a use of funds is consistent with the terms of the final rule, regardless of when the SLFRF funds were used.¹

This includes, but is not limited to, the following uses of SLFRF funds:

- Responses to the Negative Economic Impacts of the Public Health Emergency. The final rule expands the enumerated list of eligible uses of SLFRF funds in this category, including health insurance subsidies and paid sick and family leave, as well as making affordable housing development, childcare, early learning services, and services to address learning loss available to any impacted household.
- Responses to the Disproportionate Public Health and Economic Impacts of the Pandemic in Certain Communities. The final rule expands the list of enumerated eligible uses of SLFRF funds for disproportionately impacted communities, including for investments in neighborhoods that promote improved health and safety outcomes, services to address vacant or abandoned properties, and expanded assistance to small businesses.
- Capital Expenditures to Respond to the Public Health and Negative Economic Impacts of the Pandemic. The final rule clarifies that capital expenditures can be eligible in this category, when meeting certain standards, and provides an enumerated list of eligible capital expenditures.
- Responses to Restore and Bolster Government Employment. The final rule expands the uses of funds available to restore and bolster government employment, including restoring employment by hiring up to 7.5% above a recipient's pre-pandemic baseline employment level, funding for employees that experienced pay reductions or were furloughed, maintaining current compensation levels to prevent layoffs, and worker retention incentives.

¹ This means that Treasury will not take action to enforce uses of the interim final rule to the extent that the recipient wishes to change its planned uses of SLFRF funds in a manner consistent with the final rule.

- Government Services to the Extent of Revenue Loss. The interim final rule and final rule both permit recipients to use SLFRF funds for government services in an amount equal to revenue lost due to the pandemic. As discussed in the final rule, Treasury is permitting recipients to determine the amount of revenue lost due to the pandemic either according to a formula or by claiming a standard allowance of up to \$10 million, not to exceed their total award allocation. A recipient that plans to use the standard allowance will make a one-time election and report it to Treasury through regular programmatic reporting. In advance of making this election, a recipient may begin to use up to \$10 million of SLFRF funds for government services.

Furthermore, the final rule adjusts the revenue loss calculation formula to (i) permit recipients to calculate revenue loss on a calendar year or fiscal year basis so long as the recipient employs a consistent methodology throughout the period of performance and (ii) include revenue from certain utilities. Treasury will update reporting guidance to clarify how recipients electing to use a fiscal year basis will adjust prior calculations, and a recipient may adjust its prior calculations to reflect these changes prior to April 1, 2022.

- Investments in Broadband Infrastructure. The final rule expands eligible areas for investment in broadband infrastructure to include locations where the recipient has identified need for additional broadband investment. Further, the final rule allows for modernization of cybersecurity for existing and new broadband infrastructure, regardless of their speed delivery standards.
- Investments in Water and Sewer Infrastructure. The final rule expands the list of eligible water and sewer infrastructure projects to include a broader set of project types, including certain dam and reservoir rehabilitation projects, additional stormwater projects, private well projects, and a broader range of projects that remediate lead in water.

Prior to April 1, 2022, the interim final rule remains in effect. Accordingly, recipients may obligate and expend funds in a manner consistent with the interim final rule prior to April 1, 2022.

In addition, Treasury recognizes that recipients have taken steps to use SLFRF funds for projects in a manner consistent with the interim final rule. To the extent that a recipient has taken significant steps toward obligating SLFRF funds in a manner consistent with the interim final rule prior to January 6, 2022, Treasury will generally not take action to enforce provisions contained in the final rule, to the extent that they are more restrictive than those in the interim final rule. Such significant steps include initiation of procurement or grantmaking actions, detailed planning of projects or programs, appropriation of funds, and other significant planning steps. Consistent with this approach, Treasury is providing specific guidance with respect to compliance with the following aspects of the final rule:

- State Unemployment Insurance Trust Funds. Under the interim final rule, a recipient may use SLFRF funds to make deposits into its state account of the Unemployment Insurance 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 balance 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. Under the final rule, a recipient that uses SLFRF funds to make a deposit into its Unemployment Insurance Trust Fund may not take action to reduce average weekly benefit amounts or reduce the number of weeks of benefits payable (i.e., the maximum benefit entitlements).² If a recipient (i) has taken significant steps toward making a deposit into its Unemployment Trust Fund prior to January 6, 2022 or (ii) has made a deposit into its Unemployment Trust Fund prior to April 1, 2022, the recipient will not be subject to limitations on reduction of benefits included in the final rule.³

- Definition of Low-Income and Moderate-Income Households. Under the interim final rule, a “low- and moderate-income” standard was used to determine presumptive eligibility for certain services. In response to comments requesting additional clarification as to what constitutes low income and moderate income, the final rule includes a definition of low-income household and a definition of moderate-income household.
 - For any program, service, or project available to low- and moderate-income households, the recipient may continue to use eligibility criteria for low-income and moderate-income households that they developed consistent with the interim final rule if the recipient (i) has taken significant steps toward obligating SLFRF funds for that program, service, or project prior to January 6, 2022 or (ii) has obligated funds for that program, service, or project prior to April 1, 2022. Recipients that have not taken significant steps toward obligating SLFRF funds prior to January 6, 2022 should either change eligibility criteria to reflect the definition of low-income households and/or moderate-income households included in the final rule or be able to determine that the class of households they seek to serve experienced a negative economic impact resulting from the pandemic.

 - Treasury will consider a reasonable definition of low- and moderate-income developed by the recipient to be consistent with the interim final rule; this includes reasonable definitions that are higher than the definition contained in the final rule. As with all provisions under the interim final rule, recipients should be able to support their determination of how to define low- and moderate-income under the interim final rule.

² See final rule section 35.6(b)(3)(ii)(A)(10).

³ See final rule for additional information.

- Capital Expenditures. The final rule includes a framework for determining whether a capital expenditure would be eligible as a response to the public health emergency or its negative economic impacts, which includes a requirement to prepare a written justification for projects with actual or expected capital expenditures of \$1 million or more. A recipient is not required to prepare or submit a written justification as required under the final rule if the recipient (i) has taken significant steps toward obligating SLFRF funds for that project prior to January 6, 2022 or (ii) has obligated funds for such project prior to April 1, 2022.
- Broadband Infrastructure. The final rule includes a requirement that recipients must require service providers for a broadband project that provides service to households either to participate in the Federal Communications Commission’s Affordable Connectivity Program (ACP) or provide access to a broad-based affordability program to low-income consumers in the proposed service area of the broadband infrastructure that provides benefits to households commensurate with those provided under the ACP. If a recipient (i) has taken significant steps toward obligating SLFRF funds for a broadband infrastructure project prior to January 6, 2022 or (ii) has obligated funds for a broadband infrastructure project prior to April 1, 2022, the recipient will not be subject to this requirement.
- Government Services to the Extent of Revenue Loss. In addition to the changes discussed above, the final rule requires recipients to exclude the effects of tax changes adopted after January 6, 2022 from the calculation of revenue lost due to the COVID-19 public health emergency, if using the full revenue loss formula rather than the standard allowance. These changes affect the calculation of revenue loss for calculation dates after the April 1, 2022 effective date, regardless of when SLFRF funds are obligated for government services.

The final rule includes additional information regarding these and other transitions. Please contact SLFRP@treasury.gov with additional questions.