The State and Local Fiscal Recovery Fund Final Rule

The American Rescue Plan Act (ARPA) established, among its many initiatives, the Coronavirus State and Local Fiscal Recovery Fund (SLFRF) program, which provides approximately $195 billion in new federal fiscal assistance to state governments. The SLFRF is designed to ensure state and local governing bodies can sustain important services during the pandemic, including providing health care and vaccines, mitigating economic impacts, supporting families and building a strong recovery. In January 2022, the U.S. Department of Treasury (Treasury) issued its Final Rule, which will take effect April 1, 2022 and implement the SLFRF. The Final Rule made amendments to the Interim Final Rule to further simplify guidance and provide greater discretion in the use of funds.

This brief summarizes the revisions incorporated in the Final Rule for each of the four key eligible use categories: public sector revenues, public health and economic response, premium pay for essential workers and water, sewer and broadband infrastructure.

Public Sector Revenues

During the coronavirus pandemic, governments have experienced a decrease in revenue as business and individual economic behavior changed. Recognizing the need to continue providing services with fewer resources, the ARPA outlines an eligible use of the SLFRF to fund government services at an amount equal to the reduction of revenue attributed to the COVID-19 public health emergency.

The calculation of public sector revenue loss uses three factors:

1. The *base year revenue* based on fiscal or calendar year receipts prior to the pandemic,
2. The *counterfactual revenue* estimate of what state revenue could have been without the pandemic intervening, calculated on the number of months from the end of the base year to date of calculation and the three-year average of the annual revenue growth, and
3. The *actual revenue* received in the 12 months prior to the time of calculation date.

The revenue loss is found by comparing the counterfactual revenue and actual revenue. If the projected revenue is greater than actual, this amount is the revenue loss states can use for government operations over the expenditure period.

The Final Rule provides a second option for each state to use a standard allowance of $10 million of SLFRF for provision of government services.

The use of SLFRF for government services is the most flexible category, available with streamlined reporting and compliance requirements. **Examples of eligible use of funds for government services has been expanded in the Final Rule to include:**

- Construction of schools and hospitals
- Road building and maintenance, and other infrastructure
- Health services
- General government administration, staff and administrative facilities
- Environmental remediation
- Provision of police, fire and other public safety services (including purchase of fire trucks and police vehicles)

Public Health and Economic Response

SLFRF funds may be used to respond to a broad range of public health and economic impacts of the pandemic for households, communities, businesses and the public sector. The Final Rule **clarifies that recipients may use funds for capital expenditures** that support an eligible COVID-19 public health or economic response. Recipients **must complete written justification for capital expenditures at or over $1 million** to explain why the proposal capital expenditure is superior to alternatives. **The Final Rule also allows for a broader set of uses to restore and support government employment**, including hiring above a recipient's pre-pandemic baseline, providing funds to employees that experienced pay cuts or furloughs, avoiding layoffs and providing retention incentives.

New Eligible Use Categories

The Final Rule expands the set of households and communities defined as "impacted" or "disproportionately impacted" by the pandemic, thereby allowing recipients to provide responses to a broad set of households and entities without requiring additional analysis. **The Final Rule adds the following eligible households, small businesses, non-profit organizations and industries:**

Impacted Households
- Households that qualify for certain federal programs

Disproportionately Impacted Households
- Low-income households (those at or below 185% of Federal Poverty Guidelines or 40% of Average Median Income)
- Households residing in U.S. territories or receiving services from territorial governments
- Households that qualify for certain federal programs

Impacted Small Businesses
- To assess which small businesses were impacted, recipients may consider Increased Costs

Disproportionately Impacted Small Business
- Eligible if operating in U.S. territories

Impacted Non-Profit Organizations
- To assess which nonprofit organizations were impacted recipients may consider increased costs

Disproportionately Impacted Non-Profit Organizations

- Eligible if operating in U.S. territories

Impacted industries

- Experienced at least 8% employment loss from pre-pandemic levels

New Eligible Uses

The Final Rule provides a broader set of enumerated eligible uses for these communities as part of the COVID-19 public health and economic response, including making affordable housing, child care and early learning services eligible in all impacted communities and making certain community development and neighborhood revitalization activities eligible within disproportionately impacted communities. **The Final Rule adds the following eligible uses for households and small businesses:**

Impacted Households

- Health insurance coverage expansion and paid sick and family leave
- Financial services for unbanked and underbanked households
- Affordable housing development and permanent supportive housing
- Child care, early leaning and initiatives addressing learning loss for K-12 students

Disproportionately Impacted Households

- Improvements to vacant and abandoned property

Small Businesses

- Rehabilitation of commercial properties and storefront and facade improvement
- Technical assistance, business incubators &and grants for start-up or expansions
- Support for microbusinesses (e.g., child care, transportation)

Premium Pay for Essential Workers

SLFRF may be used "to respond to workers performing essential work during the COVID-19 public health emergency by providing premium pay to eligible workers of the government that are performing such essential work, or by providing grants to eligible employers that have eligible workers who perform essential work." According to the Final Rule, premium pay must: 1) go to eligible workers, 2) be for workers performing essential work and 3) be responsive to workers performing essential work during the COVID-19 public health emergency.

Eligible workers are "those needed to maintain continuity of operations of essential critical infrastructure sectors and additional sectors as each government may designate as critical to protect the health and wellbeing of [its] residents." **The Final Rule clarifies that all public employees of recipient governments are considered eligible.** In addition to critical infrastructure sectors, defined in the Interim Final Rule, the chief executive (or equivalent) of a recipient government may designate additional non-public sectors as critical so long as doing so is necessary to protect the health and wellbeing of residents of such jurisdiction.

Premium pay is responsive to workers performing essential work if those workers meet income qualifications or if the recipient submits justification to the Treasury. This ensures premium pay prioritizes low- to moderate-income workers who face the greatest mismatch between compensation and employment-related health risk. **The Final Rule expands the way states can provide premium pay for essential workers.** Workers receiving premium pay must:

- Earn at or below 150 percent of their state or county's average annual wage, **OR**
- **Are not exempt from Fair Labor Standards Act overtime rules** (*this is an added option that was not included in the Interim Final Rule*), **OR**
- Recipient provides written justification of how it meets needs.

Water, Sewer and Broadband Infrastructure

The Water and Sewer section of the Final Rule allows recipients to use funds for Clean Water State Revolving Fund Projects and Drinking Water State Revolving Fund Projects. **With the Final Rule, there are additional eligible projects:**

- A broad list of additional lead remediation activities, including lead testing and lead service line replacement including replacement of faucets, fixtures and internal plumbing in schools and child care facilities
- Additional stormwater infrastructure, including culvert repair, resizing and removal and replacement of storm sewers
- Residential wells
- Certain dam and reservoir rehabilitation

The Broadband Infrastructure section of the Final Rule is for recipients to make essential investments in broadband infrastructure. Recipients are encouraged to invest funds in locations without dependable wireless internet of at least 100/20 Mbps speed but can invest more broadly in locations that need more investment. The Final Rule also requires enrollment in a low-income subsidy program. Recipients must require providers of services to households to either: take part in the Affordable Connectivity Program or provide access to a broad-based low-income affordability program comparable to the Affordable Connectivity Program.

Sources and Resources

- Treasury SLFRF Final Rule
- Treasury SLFRF final rule overview
- Treasury SLFRF Quick Reference Guide
- Treasury SLFRF Final Rule Webinar slide deck