



LEGAL GUIDANCE ON COVID-19

Overview

This document provides guidance for public bodies related to the current COVID-19 related public health emergency and the laws and declarations associated with it. The guidance is specifically focused on Public Employees – Classification and Emergency Leave, the Public Bid Law, the Local Government Budget Act, Open Meetings Law, and other emergency related guidance for public entities.

This guidance is based on the LLA's Legal section's interpretation of the various COVID-19 related laws and proclamations. Further questions may be directed to 225.339.3871. However, this guidance is not a substitute for legal advice. No actions should be taken by a public entity without consultation with their attorney and/or the Attorney General.

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Important Update from US Treasury

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I. [Federal Acts](#)

A. [The FFCRA](#)

On March 18, 2020, the U.S. Congress passed and the President signed the Families First Coronavirus Response Act (FFCRA). This new law goes into effect on April 1, 2020, and it will remain in effect until December 31, 2020. The FFCRA includes many provisions, including free coronavirus testing, food assistance and medical services' budget increases. It also includes the Emergency Paid Sick Leave Act and the Emergency Family and Medical Leave Expansion Act. These two acts provides for broad changes for employers regarding paid sick leave, paid family and medical leave along with tax credits for the paid leave, and an expansion of unemployment insurance.

B. [The CARES Act](#)

On March 27, 2020, the U.S. Congress passed and the President signed the “Coronavirus Aid, Relief, and Economic Security Act” — the “CARES Act.” The Act:

- Creates the Coronavirus Relief Fund, which allocates \$150 billion to state and local governments nationwide to assist in expenses associated with the COVID-19 outbreak. Louisiana will receive \$1.8 billion in funds, with the State then allocating 45% to local governments and retaining the remaining 55%. See [Q.67](#).
- Provides various forgivable loans and other loan programs for small and mid-sized businesses, but attaches conditions designed to encourage businesses to retain employee or re-hire laid off employees (the “Payroll Protection Program”);
- Extends and increases benefit levels for unemployment insurance payments, and makes unemployment insurance payments available to sole proprietors, independent contractors and workers with limited employment histories; and
- Makes certain clarifying changes to the Families First Coronavirus Response Act regarding the availability of paid sick leave for rehired employees (i.e., employees who were laid off by an employer after March 1, 2020, and then re-hired, may have access to paid family and medical leave in certain instances).
- Provides the CDC with an additional \$4.3 billion, available until September 30, 2024. (As noted below in Part C, previous federal action—enactment of CPRSAA—provided the CDC with \$2.2 billion.) About one-third of the additional CDC funding (\$1.5 billion) is for grants to and cooperative agreements with states, localities, tribes, and territories. Louisiana, through the Louisiana Department of Health (LDH), will receive at least \$8.6 million from the CDC pursuant to the CARES Act grant.

C. Coronavirus Preparedness and Response Supplemental Appropriations Act

On March 6, 2020, the U.S. Congress passed and the President signed the Coronavirus Preparedness and Response Supplemental Appropriations Act, 2020 (P.L. 116-123) (CPRSAA). The bill provides \$8.3 billion in emergency funding for federal agencies to respond to the coronavirus outbreak. Of the \$8.3 billion, \$6.7 billion (81%) is designated for the domestic response and \$1.6 billion (19%) for the international response. Key highlights are below.

Domestic Efforts:

Of the \$6.7 billion designated for the domestic response:

- The majority (\$6.2 billion) is for the Department of Health and Human Services (HHS) including:
 - \$3.4 billion for the Office of the Secretary – Public Health and Social Services Emergency Fund (PHSSEF), which includes more than \$2 billion for the Biomedical Advanced Research and Development Authority (BARDA) (for the research and development of vaccines, therapeutics, and diagnostics), \$300 million in contingency funding for the purchase of vaccines, therapeutics, and diagnostics to be used if deemed necessary by the Secretary of HHS, and \$100 million for the Health Resources and Services Administration (HRSA) for grants under the Health Center Program, which aims to improve health care to people who are geographically isolated and economically or medically vulnerable.
 - \$1.9 billion for the Centers for Disease Control and Prevention (CDC), which includes \$950 million for state and local response efforts, of which \$475 million must be allocated within 30 days of the enactment of the bill, and \$300 million for the replenishment of the Infectious Diseases Rapid Response Reserve Fund, which supports U.S. efforts to respond to an infectious disease emergency. Louisiana, through LDH, will receive at least \$7.8 million from the CDC pursuant to this CPRSAA grant.
 - \$836 million for the National Institute of Allergy and Infectious Diseases (NIAID), which conducts research on therapies, vaccines, diagnostics, and other health technologies, at the National Institutes of Health (NIH).
 - \$61 million for the Food and Drug Administration (FDA) for the development and review of vaccines, therapeutics, medical devices and countermeasures, address potential supply chain interruptions, and support enforcement of counterfeit products.

- \$20 million is for the Small Business Administration (SBA) disaster loans program to support SBA's administration of loan subsidies that will be made available to entities financially impacted as a result of the coronavirus.
- The bill also includes a waiver removing restrictions on Medicare providers allowing them to offer telehealth services to beneficiaries regardless of whether the beneficiary is in a rural community, at an estimated cost of \$500 million.

International Efforts:

Of the \$1.6 billion designated for the international response:

The majority, \$986 million, is provided to the United States Agency for International Development (USAID) including funding provided through:

- \$435 million for the Global Health Programs (GHP) account to support health systems responding to the coronavirus outbreak overseas.
- \$300 million for the International Disaster Assistance (IDA) account to support humanitarian assistance needs resulting from the coronavirus outbreak.
- \$250 million for the Economic Support Fund (ESF) account to support economic, security and stabilization efforts resulting from the coronavirus outbreak
- \$1 million for the Office of the Inspector General (OIG) for oversight of coronavirus response activities.

The State Department receives \$264 million to support consular operations, emergency evacuations, and other needs at U.S. embassies.

\$300 million is provided to CDC to support global disease detection and emergency response efforts.

Expenditure Period:

The bill specified that funding could be disbursed over a multi-year period, although the periods vary by agency and account. For instance, Congress specified funding provided through the CDC "to remain available until September 30, 2022," funding provided through the FDA "to remain available until expended," and funding provided through NIAID "to remain available until September 30, 2024."

D. American Rescue Plan

On March 11, 2021, the U.S. Congress passed and the President signed the “American Rescue Plan” (ARPA). Among the several provisions within the ARPA, the Act:

- Creates the ARPA Recovery Fund, which allocates \$350 billion to state and local governments nationwide for fiscal recovery. The funds will be distributed to states, tribes, and territories based on a formula that considers the state's share of the nation's unemployment. Half of the funds will be distributed within 60 days of the Act passage; remaining half will be distributed *one year after first distribution*.
 - Municipalities with populations over 50,000
 - Calculation to apportion funds will be based on Community Development Block Grant (CDBG) formula.
 - Receive funding directly from the U.S. Treasury.
 - Municipalities with populations under 50,000
 - Calculation to apportion funds will be based on population but payment cannot exceed 75% of the municipality's annual budget as of January 27, 2020.
 - U.S. Treasury will send funds to State, which will then have 30 days from receipt to distribute.

The State of Louisiana will receive approximately \$3 billion; Louisiana parishes and municipalities will receive approximately \$2 billion.

Both the state and local governments can only use the funds for specific purposes. They are: (1) to respond to the public health emergency or negative economic impacts associated with the emergency; (2) to support essential work; (3) to backfill a reduction in revenue that has occurred since 2018-19; or (4) for water, sewer, or broadband infrastructure.

State and local governments have until **December 31, 2024** to use the funds

- US Treasury guidance states that December 31, 2024 is the deadline to allocate funds; recipients have until December 31, 2026 to have all work complete;
- Extends the “Payroll Protection Program” created in the CARES Act;
- Extends Federal supplement to unemployment insurance payments until September 6, 2021;

- Extends the option to employers to voluntarily provide Emergency Paid Sick Leave Act (EPSL) and Expanded Family Medical Leave Act (FMLA) and receive the payroll tax credit until September 30, 2021([See Q.2](#));
- Creates the Elementary and Secondary School Emergency Relief Fund, a \$122 billion fund that will be allocated to States and school districts to help safely reopen and sustain the safe operation of schools and address the impact of the coronavirus pandemic on the nation's students.

The amount of each grant to States shall be in the same proportion as each State received under part A of title I of the Elementary and Secondary Education Act of 1965 in the most recent fiscal year. Louisiana will receive approximately \$2.6 billion;

- Appropriates \$40 billion to the Higher Education Emergency Relief Fund (HEERF) created by the CARES Act to assist in COVID-19 response; and
- Provides funding to set up community vaccination sites and scale up testing and tracing.

II. [Presidential Declarations](#)

A. [National Emergencies Act Declaration and Stafford Act Declaration](#)

On March 13, 2020, President Trump announced a national emergency in response to the coronavirus outbreak. The announcement includes two types of emergency declarations: one under the National Emergencies Act (NEA) and one under the Stafford Disaster Relief and Emergency Assistance Act.

The NEA declaration marks the beginning of the national emergency as March 1, 2020. This declaration does the following:

- Empowers the Secretary of Health and Human Services (HHS) to exercise authority under Section 1135 of the Social Security Act (SSA) to waive or modify certain requirements of Medicare, Medicaid, and State Children's Health Insurance programs and of the Health Insurance Portability and Accountability Act Privacy Rule throughout the duration of the emergency. These waivers will loosen restrictions on telehealth usage and certain requirements for hospitals and healthcare providers so they can better respond to the crisis.
- Requires the Secretary of HHS to provide advanced written notice of the waiver to Congress as required by the SSA. This notice must include a description of the specific provisions that will be waived, the health care providers to whom the waiver will apply, the relevant geographic area, and the period of time for which the waiver or modification will be in effect. The proclamation states that its directives are consistent with the SSA's requirements.

- It clarifies that nothing in the proclamation should impair or otherwise affect executive branch authority or the functions of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals. It also states that it does not create any substantive or procedural right or benefit enforceable by law.

The Stafford Act Declaration

- Section 501(b) of the Stafford Act grants the president authority to declare a national emergency. Once an emergency is declared, the act allows state governments and tribal authorities to request disaster assistance from the federal government.
- In its March 13, 2020 letter to the director of the Federal Emergency Management Agency (FEMA) and the secretaries of the Department of Homeland Security, Department of the Treasury, and the Department of Health and Human Services, the White House outlines the legal basis for its emergency declaration in response to COVID-19. The letter states that the federal government has the power to respond to a pandemic that began abroad under its authority to regulate interstate matters and foreign commerce and to conduct foreign relations—citing 42 U.S.C. § 264, which concerns regulations to control communicable diseases, as an example of that authority. In addition, the letter states, the federal government is responsible for securing the nation's borders and controlling the entry of foreign nationals.

B. Major Disaster Declaration for Louisiana

On March 24, 2020, the President approved Governor Edwards' request for a major disaster declaration in Louisiana. With this approval, federal emergency aid has been made available for the State of Louisiana to supplement the State, tribes and local recovery efforts in the areas affected by the COVID-19 pandemic beginning on January 20, 2020, and continuing.

Federal funding is now available to state, tribal, and eligible local governments and certain private nonprofit organizations on a cost-sharing basis for emergency protective measures, including direct federal assistance under Public Assistance, for all areas affected by COVID-19, at a federal cost share of 75 percent.

George A. Robinson has been named as the Federal Coordinating Officer for federal recovery operations in the affected area. Additional designations may be made at a later date if requested by the State and warranted by the results of further assessments.

III. Governor's Proclamations

Louisiana Governor John Bel Edwards has signed several Proclamations related to COVID-19. Following is each with a brief summary and date signed:

1. [JBE 2020-25](#) (March 11, 2020) – declares a public health emergency related to COVID-19; empowers the Governor’s Office of Homeland Security and Emergency Preparedness (GOHSEP) and the Secretary of the Louisiana Department of Health (LDH) to take all actions necessary; provides for suspension of certain provisions of the State Procurement Code and Public Bid Law requirements for the procurement of services or supplies needed for the public health emergency; imposes travel restrictions for State employees; and implements the laws against price gouging.
2. [JBE 2020-27](#) (March 13, 2020) – provides additional measures related to COVID-19; limits public gatherings of 250 people or more; closes all public schools until April 13, 2020; suspends deadlines for administrative hearings; suspends fees and other licensing requirements of the Office of Motor Vehicles; authorizes State departments or agencies and political subdivisions the authority to extend non-essential deadlines for up to 30 days, if necessary; requests the Legislature to consider a suspension resolution for the suspension of certain legal requirements; prohibits any charitable gaming activities from March 13, 2020 through April 12, 2020; and suspends certain provisions of laws related to unemployment insurance.
3. [JBE 2020-28](#) (March 13, 2020) – reschedules elections, including absentee and early voting periods, due to COVID-19; reschedules the April 4, 2020 Presidential primary election to June 20, 2020; and reschedules the May 9, 2020 elections to July 25, 2020. Provides that the deadline for calling of special elections and proposition elections for the April 4, 2020 election and the May 9, 2020 election shall not be extended.
4. [JBE 2020-29](#) (March 14, 2020) – provides additional measures related to COVID-19; suspends certain provisions regarding the limit of hours operators of commercial vehicles may drive; provides for out of state health care providers to operate within the state; suspends certain fees of the Office of Vital Statistics; and suspends certain laws related to unemployment insurance.
5. [JBE 2020-30](#) (March 16, 2020) – provides additional measures to slow the spread of COVID-19 and to ensure uninterrupted supply chains; limits public gatherings of 50 people or more until April 13, 2020; closes all casinos, video poker establishments, movie theaters, bars, bowling alleys and fitness centers/gyms statewide; limits all food establishments to delivery or carry out service only statewide; provides for the participation in public meetings by telephone or teleconference; suspends certain legal deadlines; and suspends certain provisions of the State Procurement Code and Public Bid Law.
6. [JBE 2020-32](#) (March 19, 2020) -- waives some education requirements in the law; further suspends certain provisions of the Public Bid Law; authorizes the use of telehealth; and suspends some laboratory requirements to speed the process of coronavirus testing, among other things.
7. [JBE 2020-33](#) (March 22, 2020) – provides for a statewide Stay at Home order to slow the spread of COVID-19 beginning March 23, 2020 until April 13, 2020, except for essentials such as food or medical services; limits public gathers of 10 people or more until April 13,

2020. The provisions of the order do not apply to airports, medical facilities, office buildings, manufacturing facilities, or grocery stores; closes places of amusement, museums, malls, hair and nail salons, massage parlors and tattoo shops. Provides for the closure of all State office buildings to the public, except that essential State functions shall continue.

8. [JBE 2020-37](#) (March 26, 2020) – provides additional measures for COVID-19 response in Louisiana, including provisions related to first responders, law enforcement and granting emergency authority to the insurance commissioner. Provides for issues concerning notary publics during the COVID-19 Emergency.
9. [JBE 2020-38](#) (March 31, 2020) -- eases medical licensure laws to make it easier for health care professionals out of state to come to Louisiana to practice during the COVID-19 outbreak and directs funerals to occur as expeditiously as possible with limitations on attendance.
10. [JBE 2020-41](#) (April 2, 2020) -- extends Stay at Home order until April 30, 2020 to slow the spread of COVID-19, which extends the length of time that schools and some businesses are closed and continues limits on the size of gatherings; continues suspension of certain provisions of Public Bid Law; and extends closure of State office buildings to the public, except that essential State functions shall continue.
11. [JBE 2020-43](#) (April 7, 2020) -- provides for the renewal of the waiver of certain provisions of law related to unemployment and workers' compensation (See [JBE 2020-27](#) and [JBE 2020-29](#)), extends the suspension of legal deadlines to April 30, 2020 and also deems health care workers and first responders who work for the state as essential for purposes of the exclusion from Emergency Paid Sick Leave Act and Emergency FMLA Expansion Act under the federal Families First Coronavirus Response Act.
12. [JBE 2020-46](#) (April 14, 2020) – provides for the rescheduling of elections due to COVID-19. The presidential primary election is rescheduled from June 20, 2020 to July 11, 2020; the July 25, 2020 election is reschedule to August 15, 2020; early voting and deadlines to request absentee ballots are also rescheduled.
13. [JBE 2020-52](#) (April 30, 2020) – extends Louisiana's Stay at Home order until May 15, 2020, as the state continues to slow the spread of COVID-19 to meet the White House threshold criteria for reopening the State's economy. Businesses that previously were directed to be closed will remain closed, including salons, barber shops, bars and casinos. Businesses that are deemed essential under the third phase of federal CISA guidance will still be open. Non-essential retail and other businesses in Louisiana continue to be able to open with no more than 10 people total inside, including employees and customers. Noteworthy changes in the order include: (1) Malls will remain closed to the public, but stores may open for curbside delivery; (2) Restaurants will be allowed to open their outside areas for patrons to eat meals only, without tableside service; and (3) All employees of a business who have contact with the public must wear a mask or face covering.

14. [JBE 2020-58](#) (May 14, 2020) -- formally declares that Louisiana will enter into Phase One of its Roadmap to a Resilient Louisiana on Friday, May 15, when the Stay at Home order will be lifted and more businesses will be allowed to open with strict social distancing, enhanced sanitation and required masks for employees helping the public. See [Q.103](#).
15. [JBE 2020-59](#) (May 14, 2020) -- extends legal deadlines that had previously been delayed in March. The order also suspends other provisions, including the Public Bid Law, necessary to respond to COVID-19 and extends the provisions for the participation in public meetings by telephone or video conference in JBE 2020-30. These deadlines, including the moratorium on evictions, will continue until June 5. See [Q.104](#)
16. [JBE 2020-74](#) (June 4, 2020) -- formally declares that Louisiana will enter into Phase Two of its Roadmap to a Resilient Louisiana on Friday, June 5, 2020. As with Phase One, High Risk individuals are encouraged to stay home during Phase Two and personal hygiene and social distancing requirements, including face coverings, remain the same. The major changes in Phase Two include allowing churches, places of worship and many more businesses to operate at 50 percent capacity with social distancing, masks for public-facing employees and increased sanitization. In addition, the order strongly recommends that businesses consider offering temperature checks before a person can enter and posting the symptoms of COVID-19 outside with a request that symptomatic individuals not enter. See [Q.105](#).
17. [JBE 2020-75](#) (June 4, 2020) -- outlines extensions of legal deadlines and other administrative matters including extending the provisions for the participation in public meetings by telephone or video conference as set out in JBE 2020-30, as extended in JBE 2020-59. Some Office of Motor Vehicles and other deadlines remain suspended until July 31. Other legal and administrative deadlines are suspended until June 15, including evictions and foreclosure procedures. Legal prescription remains suspended through July 5. See [Q.106](#).
18. [JBE 2020-83](#) (June 25, 2020) – continues Louisiana being in Phase Two of the Roadmap to a Resilient Louisiana until Friday, July 24, 2020. The major change with this extension is that indoor gatherings are limited to 250 people. Otherwise, the same guidelines and restrictions outlined in JBE 2020-74 continue to apply.
19. [JBE 2020-84](#) (June 25, 2020) – continues the same extension of legal deadlines and other administrative matters, including the extension of provisions for the participation in public meetings by telephone and video conference as set out in JBE 2020-75.
20. [JBE 2020-89](#) (July 11, 2020) – supplements JBE 2020-83 with a mask/face covering mandate, closure of bars to on premises consumption and limits gathering sizes to no more than 50 people. See [Q.106](#).
21. [JBE 2020-96](#) (July 23, 2020) - continues Louisiana being in Phase Two of the Roadmap to a Resilient Louisiana until Friday, August 7, 2020.
22. [JBE 2020-97](#) (July 23, 2020) – continues the same extension of legal deadlines and other administrative matters as set out in JBE 2020-84.

23. [JBE 2020-101](#) (August 6, 2020) – continues Louisiana being in Phase Two of the Roadmap to a Resilient Louisiana until Friday, August 28, 2020.
24. [JBE 2020-102](#) (August 6, 2020) – continues the same extension of legal deadlines and administrative matters as set out in [JBE 2020-84](#).
25. [JBE 2020-110](#) (August 26, 2020) – continues Louisiana being in Phase Two of the Roadmap to a Resilient Louisiana until Friday, September 11, 2020.
26. [JBE 2020-111](#) (August 26, 2020) – continues the same extension of legal deadlines and administrative matters as set out in [JBE 2020-84](#), as extended by [JBE 2020-102](#).
27. [JBE 2020-117](#) (September 11, 2020) -- formally declares that Louisiana will enter into Phase Three of its Roadmap to a Resilient Louisiana on Friday, September 11, 2020. High Risk individuals are still encouraged to stay home during Phase Three unless performing essential activities. Personal hygiene and social distancing requirements, including face coverings, for all individuals remain the same. The major changes in Phase Three include allowing churches, places of worship and many businesses to operate at 75 percent capacity with social distancing, masks for public-facing employees and increased sanitization. Bars may reopen subject to certain restrictions in parishes that do not have high incidence of illness and only if local governments choose to opt in. See [Q.108](#).
28. [JBE 2020-118](#) (September 10, 2020) – renews the same extension of legal deadlines and administrative matters as set out in [JBE 2020-111](#). See [Q.109](#).
29. [JBE 2020-134](#) (October 8, 2020) – extends Phase Three until November 6, 2020.
30. [JBE 2020-135](#) (October 8, 2020) – renews the same extensions of legal deadlines and administrative matters as set out in [JBE 2020-118](#).
31. [JBE 2020-158](#) (November 5, 2020) – extends Phase Three until December 4, 2020.
32. [JBE 2020-159](#) (November 5, 2020) -- renews the same extensions of legal deadlines and administrative matters as set out in [JBE 2020-118](#).
33. [JBE 2020-168](#) (November 24, 2020) – moves Louisiana back into a modified Phase Two until December 23, 2020. See [Q.110](#).
34. [JBE 2020-174](#) (December 4, 2020) – renews the same extensions of legal deadlines and administrative matters as set out in [JBE 2020-118](#). See [Q.109](#).
35. [JBE 2020-209](#) (December 22, 2020) – extends the modified Phase Two until January 13, 2021.
36. [JBE 2020-210](#) (December 22, 2020) – renews the same extensions of legal deadlines and administrative matters as set out in [JBE 2020-118](#).
37. [JBE 2021-6](#) (January 12, 2021) – extends the modified Phase Two until February 10, 2021.
38. [JBE 2021-7](#) (January 12, 2021) – renews the same extensions of legal deadlines and administrative matters as set out in [JBE 2020-118](#).

39. [JBE 2021-17](#) (February 10, 2021) – extends the modified Phase Two until March 3, 2021.
40. [JBE 2021-18](#) (February 10, 2021) – renews the same extensions of legal deadlines and administrative matters as set out in [JBE 2021-7](#).
41. [JBE 2021-29](#) (March 2, 2021) –moves Louisiana into a modified Phase Three until March 31, 2021. See [Q.109](#).
42. [JBE 2021-30](#) (March 2, 2021) –renews the same legal extensions of deadlines and administrative matters as set out in [JBE 2021-18](#).
43. [JBE 2021-66](#) (March 30, 2021) – extends Phase Three until April 28, 2021, but removes several restrictions from the previous modified Phase Three ([JBE 2021-29](#)) including lifting occupancy limits on bars, restaurants, salons, gyms, malls and casinos, but maintains social distancing and mask mandate requirements. See [Q.109](#).
44. [JBE 2021-67](#) (March 30, 2021) – renews the same legal extensions of deadlines and administrative matters as set out in [JBE 2021-30](#).
45. [JBE 2021-79](#) (April 27, 2021) – extends Phase Three until May 26, 2021 with the same restrictions as set forth in [JBE 2021-66](#) but removes the statewide mask mandate.
46. [JBE 2021-80](#) (April 27, 2021) – renews the same legal extensions of deadlines and administrative matters as set out in [JBE 2021-67](#).
47. [JBE 2021-93](#) (May 25, 2021) – extends Phase Three until June 23, 2021, with same restrictions as set forth in [JBE 2021-79](#).
48. [JBE 2021-94](#) (May 26, 2021) – renews the same legal extensions of deadlines and administrative matters as set out in [JBE 2021-80](#).
49. [JBE 2021-117](#) (June 22, 2021) – extends Phase Three until July 21, 2021, with the same restrictions as set forth in [JBE 2021-93](#).
50. [JBE 2021-118](#) (June 22, 2021) renews the same legal extensions of deadlines and administrative matters as set out in [JBE 2021-94](#).
51. [JBE 2021-131](#) (July 21, 2021) – extends Phase Three until August 11, 2021, with the same restrictions as set forth in [JBE 2021-117](#) and with added encouragement of face coverings unless vaccinated.
52. [JBE 2021-132](#) (July 21, 2021) renews the same legal extensions of deadlines and administrative matters as set out in [JBE 2021-118](#).
53. [JBE 2021-133](#) (July 23, 2021) - amends [JBE 2021-131](#) to add authorization to Local Educational Agencies, early child care centers, and institutes of higher education to require face coverings.
54. [JBE 2021-137](#) (August 2, 2021) - extends Phase Three until September 1, 2021 and reinstates state-wide mask mandate when indoors in any place outside of a private residence regardless of vaccination status until September 1, 2021. See [Q.111](#) for exceptions.

55. [JBE 2021-145](#) (August 6, 2021) - renews the same legal extensions of deadlines and administrative matters as set out in in [JBE 2021-132](#).
56. [JBE 2021-167](#) (August 31, 2021) - extends Phase Three until September 29, 2021 with the same restrictions as set forth in [JBE 2021-137](#).
57. [JBE 2021-168](#) (August 31, 2021) - renews the same legal extensions of deadlines and administrative matters as set out in in [JBE 2021-145](#).
58. [JBE 2021-181](#) (September 28, 2021) – extends Phase Three, including the mask mandate, until October 27, 2021, with the same restrictions as set forth in [JBE 2021-167](#).
59. [JBE 2021-182](#) (September 28, 2021) – renews the same legal extensions of deadlines and administrative matters as set out in [JBE 2021-168](#).
60. [JBE 2021-203](#) (October 26, 2021) – extends Phase Three but removes mask mandate, except for public schools grades K through 12, until November 24, 2021. Other restrictions, as set forth in [JBE 2021-181](#) remain.
61. [JBE 2021-204](#) (October 26, 2021) – renews the same legal extensions of deadlines and administrative matters as set out in [JBE 2021-182](#)
62. [JBE 2021-219](#) (November 23, 2021) –extends Phase Three until December 22, 2021, with the same restrictions as set forth in [JBE 2021-203](#).
63. [JBE 2021-220](#) (November 23, 2021) – renews the same legal extensions of deadlines and administrative matters as set out in [JBE 2021-204](#).
64. [JBE 2021-234](#) (December 21, 2021) – extends Phase Three until January 19, 2022 and authorizes agency and department heads of all offices of the State to implement a face covering policy, which may include a face covering requirement for employees and/or members of the public. Other restrictions as set forth in [JBE 2021-219](#) remain.
65. [JBE 2021-235](#) (December 21, 2021) – renews same legal extensions of deadlines and administrative matters as set out in [JBE 2021-220](#).
66. [JBE 2022-6](#) (January 19, 2022) – extends Phase Three until February 16, 2022 with the same restrictions as set forth in [JBE 2021-234](#).
67. [JBE 2022-7](#) (January 19, 2022) – renews same legal extensions of deadlines and administrative matters as set out in [JBE 2021-235](#).
68. [JBE 2022-17](#) (February 15, 2022) – extends Phase Three until March 16, 2022 without required mitigation measures. While there is no statewide mask mandate, there are still federal regulations requiring them in health care settings and on transit. In addition, local governments, school districts, and businesses may choose to require masks as they see fit, based on the level of COVID in their communities.
69. [JBE 2022-18](#) (February 15, 2022) – renews the same legal extensions of deadlines and administrative matters as set out in [JBE 2022-17](#).

Note: [JBE 2022-17](#) and [JBE 2022-18](#) were allowed to expire without the Governor renewing either. Therefore, the statewide public health emergency related to COVID-19 ended on March 16, 2022.

Questions and Answers

A. Public Employees – Classification and Emergency Leave

Q.1. May public bodies compensate employees who are unable to work due to COVID-19 related office closures?

- A.1.** The Attorney General has opined that public entities may compensate employees who are unable to work due to COVID-19 related office closures. See, AG Letter to the Louisiana Legislative Auditor (LLA) dated March 23, 2020. [[Click here](#)]. The Attorney General states that the payment of emergency leave is not gratuitous because of the reciprocal obligations of the parties, as the employees who are unable to work due to COVID-19 office closures must stand ready to return to work when emergency declarations are lifted. The Attorney General also states that the payment of this emergency leave does not relieve employees of their obligation under leave policies their agencies may have in place in regard to compensatory, annual or sick leave.

If you have any questions concerning compensation, these questions should be directed to: 1) your own attorney; 2) the Attorney General; and/or 3) LLA-Legal.

Q.2. What are the rules regarding employee emergency paid sick leave under the Families First Coronavirus Response Act?

- A.2.** Under the Families First Coronavirus Response Act (HR 6201), which takes effect as of **April 1, 2020**, employers with fewer than 500 employees, and public employers of any size, must provide 80 hours of paid sick leave to full-time employees who are unable to work or telework for specific reasons related to the COVID-19 virus. Additionally, such employers must provide part-time employees with sick leave based on their average hours worked over a two week period. Note that employers are prohibited from requiring employees to find a replacement worker or use other sick time before this sick leave. For more information, see Division E of the [Families First Coronavirus Response Act](#).

Note: The 80 hours is the maximum entitlement an employee may receive across employers. That is, the 80-hour cap on emergency paid sick leave applies to each individual, regardless of the number of jobs held. An employee who takes 80 hours of paid sick leave with one employer is not entitled to any more paid sick leave with another employer. Conversely, if an employee uses only 40 hours of paid sick leave before switching employers, the second employer must provide the remainder if a qualifying need arises before Dec. 31, 2020.*

* Pursuant to the Consolidated Appropriation Act (2021), Public Law 116-159, even though the FFCRA paid leave benefits are no longer mandatory after December 31, 2020,

employers may *voluntarily* continue to provide the paid leave benefit with the option of claiming the payroll tax credit until March 31, 2021. The American Rescue Act (2021) Public Law 117-2, extended this date to September 30, 2021.

The American Rescue Act also reset the 80 hours of paid sick leave available beginning April 1, 2021. That means an employee who exhausted all 80 hours of this sick leave will be eligible to use 80 more hours beginning April 1, 2021.

Additionally, the American Rescue Act added three more qualifying reasons for being entitled to use this sick leave:

- Obtaining the COVID-19 vaccine;
- Recovering from an illness or condition related to receiving the COVID-19 vaccine; and
- Seeking or awaiting results of a COVID-19 diagnosis test after exposure to COVID-19.

Q.3. Can an employee be asked to leave work or stay home if they are showing symptoms of the coronavirus?

- A.3.** Yes, employers are permitted to request that an employee leave work or stay at home if they show symptoms of the coronavirus. In a recent release from the US Equal Employment Opportunity Commission (EEOC), the EEOC asserts that the Americans with Disabilities Act (ADA) does not conflict with employers following the advice of the Center for Disease Control (CDC) advising employees who become ill with symptoms of COVID-19 to leave the workplace. The EEOC has indicated that an ADA-covered employer may take the body temperature of employees during the COVID-19 pandemic as a precautionary measure. See *What You Should Know About the ADA, the Rehabilitation Act, and COVID-19*, March 19, 2020, from the EEOC [here](#).

For procedures regarding State Civil Service employees, please see the [Emergency Civil Service Rules, Chapter 27 - Response to Coronavirus Disease 19 \("COVID-19"\)](#) adopted by the Civil Service Commission on March 18, 2020.

Q.4. Who are critical infrastructure workers?

- A.4.** The Department of Homeland Security has issued guidance as to what may be considered the essential critical infrastructure workforce.

While this list is advisory in nature, and not considered to be a Federal law or standard, it provides some direction as to what workers and businesses may be considered critical.

Healthcare and public health workers of various types are described on the list, as well as law enforcement, public safety and first responders. Certain workers in the food and agriculture industry are listed, as well as certain workers in the energy, utility,

transportation, communication, information technology, manufacturing, financial services and other related sectors.

More information can be found at the Cybersecurity and Infrastructure Security Agency of the Department of Homeland Security: <https://www.cisa.gov/>.

Q.5. Are public entities entitled to seek reimbursement for paid sick leave and paid FMLA benefits through tax credits provided in the FFCRA?

A.5. No. The provisions of the FFCRA regarding tax credits, specifically Section 7001(e)(4), exclude Federal, State, and local government public employers from receiving the credits. However, this section does apply to private employers and nonprofits and these employers may receive tax credits to cover their costs of providing employees with required paid sick leave and expanded family and medical leave for reasons related to COVID-19, from April 1, 2020, through December 31, 2020*. Private employers and nonprofits may receive more information on these tax credits here:

<https://www.irs.gov/newsroom/covid-19-related-tax-credits-for-required-paid-leave-provided-by-small-and-midsize-businesses-faqs>

Q.6. Is an employer required to continue health coverage for an employee who is taking emergency paid sick leave or Emergency Expanded FMLA under the Families First Coronavirus Response Act?

A.6. Yes, according to guidance from the U.S. Department of Labor, employees are entitled to continued group health coverage, including any family coverage, during their entitled leave under the FFCRA on the same terms as if they continued to work. The employee is responsible for continuing to make any required normal employee contributions for their health coverage.

Q.7. May an employer require an employee to supplement or adjust the employee's pay mandated under the FFCRA with paid leave the employee may have accrued under the employer's paid leave policies?

A.7. No, according to guidance from the U.S. Department of Labor, under the FFCRA, only the employee may decide whether to use existing accrued paid leave (i.e. vacation, annual, sick leave) to supplement the amount they receive from emergency paid sick leave or expanded FMLA leave. If the employee agrees to use their accrued paid leave, the accrued paid leave may be used to supplement the pay mandated under the FFCRA.

Q.8. May an employer provide employees compensation beyond the amounts mandated for emergency paid sick leave and expanded FMLA leave under the FFCRA?

A.8. Yes, an employer by formal policy may provide compensation beyond the amounts mandated by the FFCRA. However, any additional compensation will not be eligible for

reimbursement through tax credits provided to employers other than government employers under the FFCRA.

Public employers should work with its legal counsel to ensure that any such formal paid leave policy comports with Article VII, §14 of the Louisiana Constitution and the AG's Guidance on pay during the declared COVID-19 Emergency.

Q.9. If an employee has already utilized their 12 weeks of FMLA leave for the current 12 month period, may they still receive leave for COVID-19 related reasons?

A.9. According to guidance from the U.S. Department of Labor, eligible employees are still entitled to emergency paid sick leave under the FFCRA, regardless of how much leave they have already taken under the FMLA.

However, for employers and eligible employees that were subject to the FMLA prior to April 1, 2020, the employee's eligibility for expanded FMLA leave under the FFCRA will depend on how much FMLA leave the employee has already taken for the 12 month period utilized by the employer for the purposes of the FMLA.

According to the DOL, the FMLA, including any expanded leave under the FFCRA, continues to be limited to 12 weeks for a 12 month period.

In other words, the FFCRA's 12 weeks of COVID-19 Expanded FMLA leave is not in addition to the FLMA's standard entitlement of 12 weeks' leave in a 12-month period.

Employers should consult with their legal counsel and HR staff in determining an employee's remaining FMLA leave eligibility.

Q.10. Are health care workers and first responders eligible for paid sick leave under the federal Emergency Paid Sick Leave Act or the expanded FMLA?

A.10. No. JBE 2020-41 deems health care workers and first responders who work for the state as essential for purposes of the federal Family First Coronavirus Response Act. They are excluded from receiving paid sick leave under the federal Emergency Paid Sick Leave Act or expanded family and medical leave under The Emergency Family and Medical Leave Expansion Act

Q.11. Do the paid leave provisions in the FFCRA apply to quasi-public non-profits?

A.11. An employer, including a religious or nonprofit organization, with fewer than 50 employees (small business) is exempt from providing (a) paid sick leave due to school or place of care closures or child care provider unavailability for COVID-19 related reasons and (b) expanded family and medical leave due to school or place of care closures or child care provider unavailability for COVID-19 related reasons when doing so would jeopardize

the viability of the small business as a going concern. A small business may claim this exemption if an authorized officer of the business has determined that:

- The provision of paid sick leave or expanded family and medical leave would result in the small business's expenses and financial obligations exceeding available business revenues and cause the small business to cease operating at a minimal capacity;
- The absence of the employee or employees requesting paid sick leave or expanded family and medical leave would entail a substantial risk to the financial health or operational capabilities of the small business because of their specialized skills, knowledge of the business, or responsibilities; or
- There are not sufficient workers who are able, willing, and qualified, and who will be available at the time and place needed, to perform the labor or services provided by the employee or employees requesting paid sick leave or expanded family and medical leave, and these labor or services are needed for the small business to operate at a minimal capacity.

Q.12. How does the US Department of Labor require unscheduled hours be tracked and compensated when employees are teleworking?

A.12. The U.S. Department of Labor, Wage and Hour Division, (WHD) issued a [Field Assistance Bulletin 2020-5](#) to assist employers' regarding their obligation to properly track compensable work performed by employees teleworking or otherwise working remotely away from the worksite. Even with telework or other remote work schedules, employers are obligated to track hours actually worked by employees, regardless of whether the employees were scheduled to work or not.

The standard rule under the Fair Labor Standards Act (FLSA) that employers are required to pay employees for all hours worked, including work not requested but "suffered or permitted" to be performed ([29 C.F.R. §785.11](#)) is more complex when dealing with flexible or non-traditional schedules, including telework or remote working. However, the employers' obligation remains the same; that is, when the employer has actual or constructive knowledge of additional, unscheduled hours worked by their employees, that work must be compensated. [29 C.F.R. §785.12](#). The employers are required to exercise control, or due diligence, to ensure that work is not performed that they do not want to be performed. [29 C.F.R. §785.13](#).

In [Bulletin 2020-5](#), the WHD notes that one way an employer may exercise due diligence to know the additional hours their employees worked is by providing a "reasonable reporting procedure for non-scheduled time and then compensating employees for all reported hours of work, even hours not requested by the employer." In order to be deemed "reasonable," a time reporting procedure cannot discourage employees from reporting unscheduled hours worked. An employer is not required to undertake further efforts to

uncover unreported hours if an employee fails to report unscheduled hours worked through such a reporting procedure.

B. Public Bid Law/Emergency Purchasing

Q.13. What are the requirements for political subdivisions in documenting disaster-related procurement during the COVID-19 emergency?

A.13. The public entity must ensure that every contract that is negotiated shall be supported by written determination and findings by the public entity justifying the emergency.

If contract action is taken pursuant to telephone or other oral offers, written confirmation of the accepted offer must be included in the file.

The file of the public entity must contain:

- A minimum of the description of the work to be performed;
- The name and address of each offeror quoting; and
- The performance time and terms of each offer.

If quotes lower than the accepted quote are not accepted, reasons for rejection must be in the file.

Records must be kept a minimum of 6 years.

For additional information on Emergency Procurement, please see the Section IV Emergencies, of [LLA's Public Bid Law FAQ](#).

Q.14. Are public bid laws suspended?

A.14. The Louisiana Public Bid Law (La. R.S. 38:2211, et seq.) and its corresponding rules and regulations relating to deadlines for advertisement for bids and public works contracts are suspended for State executive branch agencies for any goods or services necessary to respond to the COVID-19 emergency. See Proclamation Number [JBE 2020-32](#), March 19, 2020 as extended by [JBE 2020-52](#) (April 30, 2020) [JBE 2020-59](#) (May 14, 2020) [JBE 2020-75](#) (June 4, 2020), [JBE 2020-84](#) (June 25, 2020), [JBE 2020-97](#) (July 23, 2020), [JBE 2020-102](#) (August 6, 2020), [JBE 2020-111](#) (August 26, 2020), [JBE 2020-118](#) (September 10, 2020), [JBE 2020-135](#) (October 8, 2020), [JBE 2020-159](#) (November 5, 2020), [JBE 2020-174](#) (December 4, 2020), [JBE 2020-210](#) (December 22, 2020), [JBE 2021-7](#) (January 12, 2021), [JBE 2021-18](#) (February 10, 2021), [JBE 2021-30](#) (March 2, 2021), [JBE 2021-67](#) (March 30, 2021), [JBE 2021-80](#) (April 27, 2021), [JBE 2021-94](#) (May 25, 2021), [JBE 2021-118](#) (June 22, 2021), [JBE 2021-132](#) (July 21, 2021), [JBE 2021-145](#) (August 6, 2021), [JBE 2021-168](#) (August 31, 2021) [JBE 2021-182](#) (September 28, 2021) [JBE 2021-204](#) (October 26, 2021), [JBE 2021-220](#) (November 23, 2021), [JBE 2021-235](#) (December 21, 2021), [JBE 2022-7](#) (January 19, 2022) and [JBE 2022-18](#) (February 15, 2022). [JBE 2022-18](#) was allowed to expire without the Governor renewing it. Therefore,

the suspension of the rules and regulations regarding the public bid law ended on March 16, 2022.

Q.15. How can an entity ensure it follows the proper procedures for FEMA reimbursement?

A.15. To be eligible for FEMA reimbursement, an entity must follow the Procurement Standards for Disasters on or after December 26, 2014 found at 2 CFR Part 200 §200.317 – 200.326. Important aspects of these standards include:

2 CFR 200.319 requires

- Full and open competition;
- Geographical preferences are not favored, unless Federal Law provides for one, or in the case of A/E services;
- Written selection procedures identifying all requirements that offerors must fulfill;
- Ensure all pre-qualified lists of persons, firms or products are current and include enough qualified sources to ensure maximum open and free competition;
- FEMA considers “piggybacking” contracts non-competitive.

2 CFR 200.320 has significant conflicts with state small purchase thresholds and procedures

- 2 CFR 200.320(a) provides a threshold for micro-purchases of \$10,000, unless specified to another amount under 48 CFR 2.101
 - Must distribute equitably among qualified suppliers
 - Awarded without soliciting competitive quotations if the price is reasonable
- 2 CFR 200.320(b) provides a threshold of less than \$250,000 (or current Simplified Acquisition Threshold as defined in 48 CFR 2.101) for small purchases
 - Price quotes from adequate number of qualified sources
 - Must document

For more information regarding compliance with Federal FEMA guidelines please contact Louisiana GOHSEP at <https://gohsep.la.gov/> or go to the FEMA website here:

<https://www.fema.gov/media-library/assets/documents/111781>

C. Local Government Budget Act

Q.16. Is a political subdivision required to amend its budget in order to expend State or Federal funds obtained to respond to the Covid-19 emergency?

A.16. Yes, the AG has opined that the political subdivision must amend its budget to appropriate these additional funds in order to expend them. See [AG Op. No. 10-0232](#).

Q.17. Is a political subdivision still required to adopt a budget during this emergency period?

A.17. Yes, the requirements for a political subdivision to adopt its budget have not been suspended.

Q.18. What if a political subdivision is unable to adopt its budget?

A.18. The political subdivision will continue to operate on 50% of its last adopted budget, as finally amended. See [R.S. 39:1312](#).
Political subdivisions operating under a Home-Rule Charter should also consult their charter's provisions. See [AG Op. No. 14-0024](#).

Q.19. Are FEMA funds considered revenue for budgeting purpose?

A.19. FEMA funds are not treated differently from other revenue for budgeting purposes and should be included in a political subdivision's annual budget even if only shown as an estimated amount. If the receipt of FEMA funds after the budget has been adopted results in a political subdivision having a change in operations, the budget must be amended to reflect receipt of the funds [AG Op. No. 10-0232](#).

D. Open Meetings Law

Q.20. May public bodies hold meetings via teleconference or video conference during the COVID-19 public health emergency?

A.20. Normally, the Open Meetings Law does not allow a member to attend a meeting remotely via teleconference or video conference. On March 16, 2020, however, the Governor issued Proclamation No. [JBE 2020-30](#), which provides that attendance at essential governmental meetings may be via teleconference or video conference during the pendency of the COVID-19 emergency for all state agencies, boards, commissions and local political subdivisions of the State. On May 14, 2020, these provisions were extended by [JBE 2020-59](#) for Phase 1 of the State's re-opening and again on June 4, 2020, by [JBE 2020-75](#) for Phase 2 of the State's re-opening.

See also Attorney General Memorandum of March 19, 2020 [[Click here](#)]

During the 2020 Regular Session, the Legislature enacted R.S. 42:17.1, which creates an exception to the Open Meetings Law when the governor declares a state of emergency when certain exceptions are met. See [Act 302 of the 2020 Regular Session](#).

Note: [JBE 2022-17](#) and [JBE 2022-18](#) were allowed to expire without the Governor renewing either. Therefore, the statewide public health emergency related to COVID-19 ended on March 16, 2022.

R.S. 42:17.1 provides that a public body may conduct and its members may attend and participate in a meeting via electronic means (telephone or video conference) provided *all* of the following occur:

- (1) The governor has declared a state of emergency or disaster involving a geographic area within the jurisdiction of the public body and the nature of the emergency or disaster would cause a meeting of the public body conducted pursuant to the open meetings law to be detrimental to the health, safety, or welfare of the public.
- (2) The presiding officer of the public body certifies on the notice of the meeting that the agenda of the meeting is limited to one or more of the following items:
 - (a) A matter directly related to the public body's response to the disaster or emergency and which is critical to the health, safety, or welfare of the public.
 - (b) A matter that, if they are delayed, will cause curtailment of vital public services or severe economic dislocation and hardship.
 - (c) A matter that is critical to continuation of the business of the public body and that is not able to be postponed due to a legal requirement or other deadline that cannot be postponed or delayed by the public body.
 - (d) Other matters that are critical or time-sensitive and that in the determination of the presiding officer should not be delayed; however, such matters shall not be considered at the meeting unless the members of the body present at the meeting approve the consideration of the matters by a two-thirds vote.**
- (3) No later than 24 hours prior to a meeting conducted under new law, the public body shall provide for all of the following:
 - (a) The notice and agenda for the meeting shall be posted on the website of the public body, emailed to any member of the public or the news media who requests notice of meetings of the public body, and widely distributed to every known news media outlet that broadcasts or publishes news within the geographic area within the jurisdiction of the public body.
 - (b) Detailed information regarding how members of the public may participate in the meeting and submit comments regarding matters on the agenda, which information shall be posted on the website of the public body, emailed to any

member of the public or the news media who requests notice of meetings of the public body, and widely distributed to every known news media outlet that broadcasts or publishes news within the geographic area within the jurisdiction of the public body.

The telephone or video conference meeting under this exception must be conducted as follows:

- (1) The public body shall provide a mechanism to receive public comment electronically both prior to and during the meeting.
- (2) The public body shall properly identify and acknowledge all public comments during the meeting and shall maintain those comments in its record of the meeting.
- (3) The presiding officer of the public body shall ensure that each person participating in the meeting is properly identified.
- (4) The presiding officer shall ensure that all parts of the meeting, excluding any matter discussed in executive session, are clear and audible to all participants in the meeting including the public.

** Added by [Act 42 of the 2020 2nd Extraordinary Session](#).

Q.21. Are there any special notice requirements for meetings held via teleconference or video conference?

A.21. Yes, a public body that does hold a meeting via teleconference or video conference shall provide written certification, signed by the agency head or chief executive officer, that the public body was otherwise unable to operate due to quorum requirements of [R.S. 42:19](#). All public bodies shall post this notice in the same time, manner and place as they would a normal agenda pursuant to [R.S. 42:19](#).

Sample language that a public entity may use for this written certification is as follows:

Certification of Meeting Conducted Pursuant to La. R.S. 42:17.1

In accordance with R.S. 42:17.1 this notice shall serve as certification of the [public entity's] inability to otherwise operate in accordance with the Louisiana Open Meetings Law due to such a meeting being detrimental to the health, safety, and/or welfare of the public as a result of the public health emergency, as declared by Governor John Bel Edwards on March 11, 2020 by JBE 2020-25.

The [public entity] will provide for attendance at its essential government meeting on [date] via [video or telephone] conference. It is essential that the [public entity] continue to operate to address [matters directly related to its response to the disaster or emergency and/or matters that if delayed

will cause a curtailment of vital public services or severe economic dislocation and hardship and/or matters that are critical to the continuation of its business and that are not able to be postponed due to legal requirements and/or other matters that presiding officer has determined are critical or time-sensitive].

Considering the foregoing, and in accordance with R.S. 42:17:1 and JBE 2020-25, the [public entity's] meeting on [date] at [time] will be held via [video or telephone] conference and in a manner that will allow for observation and input by members of the public, as set forth below.

The meeting may be observed at [meeting access information]. Members of the public may submit public comment on an agenda item by [describe method such as use of chat box during meeting, or by sending an email to [email address] or leaving a voicemail at [phone number] no later than [time] on [date]]. All public comments will be properly identified and acknowledged during the meeting.

Certified this __ day of ____, 20__.

Signature of Agency Head/
Chief Executive Officer

Q.22. Are the quorum requirements of La. R.S. 42:19 applicable?

A.22. Yes, the quorum requirements for a public body to convene a meeting are still applicable.

Q.23. Are public bodies still required to keep minutes?

A.23. Yes, public bodies are still required to keep minutes and make them available to the public within a reasonable time pursuant to [R.S. 42:20](#).

Q.24. Do the public comment requirements change during an emergency?

A.24. No, the provisions of [R.S. 42:14](#) that require public bodies to allow a public comment period before acting on an agenda item upon which a vote is to be taken are still applicable. School boards are additionally required to have a public comment period preceding each agenda item.

However, the Attorney General Guidance linked above [\[Q.19.\]](#) provides guidance on reasonable rules and restrictions that are allowed regarding such public comment periods. These reasonable rules and restrictions may include (1) limiting the amount of time for each speaker; (2) limiting the number of people in a meeting room to comply with Public Health Emergency Proclamation Number [JBE 2020-30](#) or guidance from the Centers for Disease Control and Prevention; or (3) establishing procedures to receive public comments via video, email, facsimile, telephone or other means for a certain period preceding the meeting and having an administrator read the comments to the members during the public comment period of the meeting. This will serve to adhere to the public

comment requirement in [R.S. 42:14](#), and allow interested persons to socially distance themselves while still having a mechanism to participate.

Q.25. Does the method of canceling a public meeting change during an emergency?

A.25. No. The cancellation of a meeting is done in the usual manner, even during an emergency.

E. Donations and Suspension of Collections

Q.26. Can a political subdivision donate the use of its equipment or personnel to another political subdivision in order to address the COVID-19 emergency?

A.26. Yes, political subdivisions by written agreement, such as a Cooperative Endeavor Agreement (CEA), can allow for the donated use of their equipment or personnel to another political subdivision.

Authority for this is found in [Article VII, Section 14\(B\)\(14\)](#), which provides:

**(B) Authorized Uses. Nothing in this Section shall prevent. . .
(14) pursuant to a written agreement, the donation of the use of public equipment and personnel by a political subdivision upon request to another political subdivision for an activity or function the requesting political subdivision is authorized to exercise.**

See also [R.S 33:4712.18](#).

For additional information on CEAs, please see the [LLA's Guidance on Cooperative Endeavor Agreements](#). This document includes discussions on Article VII, Section 14, various AG opinions discussing its application, and a sample CEA.

Q.27. Can a public entity suspend cutting off municipal utilities for non-payment during the COVID-19 emergency? Can the public entity forgive any unpaid utility bills?

A.27. Yes, it appears that the public entity can formally suspend cutting off utilities during the COVID-19 emergency. See Governor Edwards' Emergency Proclamation [JBE 2020-30](#), as extended by [JBE 2020-43](#), [JBE 2020-52](#), [JBE 2020-59](#) and [JBE 2020-75](#) which provides for suspension of all legal deadlines.

The public entity may not waive or otherwise forgive unpaid utility bills, as this would violate Article VII, Section 14 of the Louisiana Constitution. However, the public entity can formally suspend any late fees during the emergency.

Q.28. Can a privately-owned utility company suspend cutting off municipal utilities for non-payment during the COVID-19 emergency?

- A.28.** Yes, all privately-owned utilities subject to oversight by the Public Service Commission are prohibited from cutting off services to customers for non-payment pursuant to the [PSC's Executive Order issued on March 13, 2020](#). All other privately-owned utilities may by resolution of its board suspend cutting off services to customers for non-payment.

Q.29. May the utility company and/or public entity enter into a repayment plan with users for the deferred/missed utility payments?

- A.29.** Yes, the provisions in Governor Edwards' Emergency Proclamation [JBE 2020-30](#) as extended by [JBE 2020-43](#), [JBE 2020-52](#), [JBE 2020-59](#) and [JBE 2020-75](#), allows suspension of the collection of utilities, but the public entity may not waive or otherwise forgive unpaid utility bills. Therefore, a written repayment plan may be implemented by the utility company and/or public entity for its utility customers. Any repayment plan should be crafted to provide for full repayment within a reasonable amount of time. The repayment plan should also provide for disconnection of utilities for non-payment following conclusion of the COVID-19 emergency.

F. Assessments and Ad Valorem Taxes

Q.30. What impact will the COVID-19 emergency have on the 2020 Assessments?

- A.30.** All questions regarding the 2020 assessments should be directed to the Parish Assessor or to the Louisiana Tax Commission (LTC).

Q.31. What impact will the COVID-19 emergency have on payment of ad valorem taxes?

- A.31.** All questions regarding the payment of ad valorem taxes should be directed to the taxing authority (the city, Parish, etc.).

G. Audit, Income Tax and Legal Deadlines

Q.32. Are government or quasi-public agencies still required to submit their annual financial report by the regular statutory deadline?

- A.32.** If a government or quasi-public agency cannot meet its deadline due to Covid-19 related delays, the agency may submit a disaster extension request through the LLA online portal at <https://www.la.gov/local-government-entities/extension-request-form/index.shtml>. The LLA will accept disaster extension requests no earlier than one month before the statutory deadline. That is, please do not submit an extension request until June 1 for a June 30 deadline.

Q.33. If a quasi-public entity receives an SBA Payroll Protection Program (PPP) loan under the CARES Act and uses those funds to retain or re-hire employees, which under the provisions of the Act makes the loan forgivable, are those funds considered public funds for audit purposes? Must the quasi-public entity include the proceeds from an SBA loan under the CARES Act in determining its appropriate level of financial reporting under the Audit Law?

A.33. No. The PPP loans work the same way as other SBA loans. That is, the bank (lender) provides private money to the borrower (the quasi-public entity) with the Federal government acting as a guarantor of the loan. Even if a quasi-public entity meets the requirements to have the loan forgiven, the Federal government repays the bank. Therefore, the loan funds, unless co-mingled with public funds, remain private funds even if the loan becomes forgivable under the terms of the Act. As private funds, these funds should be excluded in determining the quasi-public entity's required level of financial reporting under the Audit Law.

Q.34. Have the deadlines for State and Federal taxes been extended for individuals?

A.34. Yes. The deadline for both income tax filings and payments has been pushed back from April 15, 2020 (Federal) and May 15, 2020 (State), until July 15, 2020.

On July 15, 2020, the State Department of Revenue issued Information Bulletin No. 20-014 extending the State deadline further to July 17, 2020. This extension was due to technical issues with the Department of Revenue's website that occurred on July 15, 2020.

Q.35. Have legal deadlines been extended?

A.35. Yes, all legal deadlines have been suspended until June 15, 2020. See Proclamation No. [JBE 2020-41 as extended by JBE 2020-52 JBE 2020-59 and JBE 2020-75](#).

Liberative prescriptive and preemptive periods applicable to legal proceedings, as well as tax legal proceedings, and legal proceedings of administrative agencies and boards, are suspended until July 5, 2020.

Q.36. Does the legal deadline suspension extend to Public Records Requests?

A.36. Yes, the Attorney General has opined that the suspension of legal deadlines by the Governor in [JBE 2020-30](#) includes deadlines in the Public Records Act. See <https://www.ag.state.la.us/Article/9745>

H. Ethics

Q.37. How does the Code of Governmental Ethics apply to contracting during the COVID-19 emergency?

A.37. Questions regarding the Code of Governmental Ethics and its application should be directed to the Louisiana Board of Ethics. www.ethics.la.gov

Q.38. Has the May 15th deadline for submitting Personal Financial Disclosure (PFD) forms to the Louisiana Board of Ethics been extended?

A.38. No. The Louisiana Board of Ethics has advised that all 2019 PFD are due by May 15, 2020, in accord with R.S. 42:1124, et seq. If the official has not filed their taxes by May 15, 2020, they can leave that portion on the first page of the report unchecked. It will not be considered a “red” flag if a person files the report by May 15th and has not checked on of the boxes on the cover page.

If this changes, the Board of Ethics will post a notice on their website at <http://www.ethics.la.gov/>.

I. Quasi-Public Qualification for the Payroll Protection Program

Q.39. What is the Payroll Protection Program?

A.39. The CARES Act allocates \$350 billion for the Small Business Administration (SBA) to establish the Payroll Protection Program (PPP), which is designed to provide a direct incentive for small businesses to keep their workers on the payroll. Under the PPP, businesses can receive loans up to \$10 million per business. These loans become forgivable if all employees are kept on the payroll for eight weeks and the money is used for payroll, rent, mortgage interest, or utilities.

Q.40. What entities are eligible to participate in the Payroll Protection Program?

- A.40.** The following entities affected by Coronavirus (COVID-19) may be eligible:
- Any small business concern that meets SBA’s size standards (either the industry based sized standard or the alternative size standard)
 - Any business, 501(c)(3) non-profit organization, 501(c)(19) veterans’ organization, or Tribal business concern (sec. 31(b)(2)(C) of the Small Business Act) that meets the SBA size requirements; * The American Rescue Plan of 2021 expanded eligibility for PPP loans to virtually all 501(c) organizations. The only ones not eligible are 501(c)(4) social welfare organizations and 501(c)(7) social clubs.

- Any business with a NAICS Code that begins with 72 (Accommodations and Food Services) that has more than one physical location and employs less than 500 per location; and
- Sole proprietors, independent contractors, and self-employed persons.

Q.41. Are state and local governments eligible to receive SBA loans under the PPP?

A.41. No. The PPP program does not apply to state and local government entities. However, certain quasi-public 501(c)(3) entities may be eligible.

Q.42. What are the terms and conditions of the SBA loans under the PPP and are they forgivable?

A.42. SBA loans under the PPP will be fully forgiven if the funds are used for payroll costs, interest on mortgages, rent, and utilities.

No collateral or personal guarantees are required. Neither the government nor lenders will charge small businesses any fees.

Forgiveness is based on the employer maintaining or quickly rehiring employees and maintaining salary levels. Forgiveness will be reduced if full-time headcount declines, or if salaries and wages decrease

Initially, the loans required that at least 75% of the forgiven amount must have been used for payroll; however, on June 5, 2020, PPP was amended by the PPP Flexibility Act, which now requires that at least 60% of the forgiven amount must have been used for payroll.

As amended, this loan has a maturity of 5 years and an interest rate of 1%. Borrowers now have 24 weeks to spend the loan proceeds instead of the original 8 weeks. This means borrowers have until December 31, 2020 to restore their workforce to pre-COVID-19 levels in order to obtain full forgiveness instead of the previous June 30, 2020 deadline.

And loan payments are deferred for six months from the date the borrower is told the amount of their forgiveness. Additionally, borrowers are now eligible to delay paying payroll taxes even if they received PPP loans.

Finally, the Amendment creates two new exceptions that allow borrowers to achieve full forgiveness even if they do not fully restore their workforce. These are in addition to previous guidance that let companies exclude workers who turned down good-faith offers of re-employment. Borrowers can now also reduce workforce requirements based on the inability to find qualified employees or if they were unable to restore operations to Feb. 15, 2020, levels due to COVID-19 restrictions.

Q.43. Are faith-based organizations eligible to receive loans under the PPP?

A.43. Yes. Faith-based organizations, including houses of worship, are eligible to receive SBA loans under the PPP.

Q.44. May a CPA engaged to perform the audits and reviews of a quasi-public agency or body under the Audit Law, serve as the entity's "agent" for the purpose of SBA loan applications under the Payroll Protection Program?

A.44. No. The AICPA, in a statement on this issue, has cautioned CPAs that, for assurance clients, being an agent impairs independence.

Q.45. May quasi-public entities utilize funds obtained under the PPP to cover costs of providing paid leave to employees?

A.45. Generally, yes. PPP loans cover payroll costs, including costs for employee vacation, parental, family, medical, and sick leave. However, the CARES Act excludes qualified Emergency Paid Sick Leave and Expanded FMLA Leave wages for which a credit is allowed under Sections 7001 and 7003 of the Families First Coronavirus Response Act (FFRCA). Therefore, proceeds from PPP loans may be used to cover paid leave provided to employees other than Emergency Paid Sick Leave and Expanded FMLA Leave provided under the FFCRA.

Q.46. Does the CARES Act exclude any employees from eligible payroll costs under the PPP?

A.46. Yes. The CARES Act excludes from the definition of payroll costs any employee compensation in excess of an annual salary of \$100,000.

This exclusion applies only to cash compensation, not to non-cash benefits such as:

- Employer contributions to defined-benefit or defined-contribution retirement plans;
- Payments for the employee benefits consisting of group health care coverage, including insurance premiums; and
- Payment of state and local taxes assessed on compensation of employees.

Q.47. Do businesses or nonprofits with adequate sources of liquidity to support ongoing operations qualify for a PPP loan?

A.47. Although the CARES Act suspends the ordinary requirement that borrowers must be unable to obtain credit elsewhere, borrowers still must certify in good faith that their PPP loan request is necessary. Specifically, before submitting a PPP application, all borrowers, including nonprofits, should review carefully the required certification that "current economic uncertainty makes this loan request necessary to support the ongoing operations of the Applicant."

Borrowers must make this certification in good faith, taking into account their current business activity and their ability to access other sources of liquidity sufficient to support their ongoing operations in a manner that is not significantly detrimental to the business. For example, it is unlikely that a public company with substantial market value and access to capital markets will be able to make the required certification in good faith, and such a company should be prepared to demonstrate to SBA, upon request, the basis for its certification.

J. EEOC COVID-19 Related Guidance

Q.48. How much information may an employer request from an employee who calls in sick, in order to protect the rest of its workforce during the COVID-19 pandemic?

A.48. During a pandemic, ADA-covered employers may ask such employees if they are experiencing symptoms of the pandemic virus. For COVID-19, these include symptoms such as fever, chills, cough, shortness of breath, or sore throat. Employers must maintain all information about employee illness as a confidential medical record in compliance with the ADA.

Q.49. When screening employees entering the workplace during this time, may an employer only ask employees about the COVID-19 symptoms EEOC has identified as examples, or may it ask about any symptoms identified by public health authorities as associated with COVID-19?

A.49. As public health authorities and doctors learn more about COVID-19, they may expand the list of associated symptoms. Employers should rely on the CDC, other public health authorities, and reputable medical sources for guidance on emerging symptoms associated with the disease. These sources may guide employers when choosing questions to ask employees to determine whether they would pose a direct threat to health in the workplace. For example, additional symptoms beyond fever or cough may include new loss of smell or taste as well as gastrointestinal problems, such as nausea, diarrhea, and vomiting.

Q.50. When may an ADA-covered employer take the body temperature of employees during the COVID-19 pandemic?

A.50. Generally, measuring an employee's body temperature is a medical examination. Because the CDC and state/local health authorities have acknowledged community spread of COVID-19 and issued attendant precautions, this pandemic is considered a "direct threat" as defined by the EEOC. Therefore, employers may measure employees' body temperature. However, employers should be aware that some people with COVID-19 do not have a fever.

Q.51. May an ADA-covered employer send employees home if they display influenza-like symptoms during a pandemic?

A.51. Yes. The CDC states that employees who become ill with symptoms of influenza-like illness at work during a pandemic should leave the workplace. Advising such workers to go home is not a disability-related action if the illness is akin to COVID-19 or symptoms associated with it. Additionally, the action would be permitted under the ADA if the illness were serious enough to pose a direct threat.

Q.52. Does the ADA allow employers to require employees to stay home if they have symptoms of the COVID-19?

A.52. Yes. The CDC states that employees who become ill with symptoms of COVID-19 should leave the workplace. The ADA does not interfere with employers following this advice.

Q.53. May an employer store in existing medical files information it obtains related to COVID-19, including the results of taking an employee's temperature or the employee's self-identification as having this disease, or must the employer create a new medical file system solely for this information?

A.53. The ADA requires that all medical information about a particular employee be stored separately from the employee's personnel file, thus limiting access to this confidential information. An employer may store all medical information related to COVID-19 in existing medical files. This includes an employee's statement that he has the disease or suspects he has the disease, or the employer's notes or other documentation from questioning an employee about symptoms.

Q.54. If an employer requires all employees to have a daily temperature check before entering the workplace, may the employer maintain a log of the results?

A.54. Yes. The employer needs to maintain the confidentiality of this information.

Q.55. May an employer disclose the name of an employee to a public health agency when it learns that the employee has COVID-19?

A.55. Yes.

Q.56. May a temporary staffing agency or a contractor that places an employee in an employer's workplace notify the employer if it learns the employee has COVID-19?

A.56. Yes. The staffing agency or contractor may notify the employer and disclose the name of the employee, because the employer may need to determine if this employee had contact with anyone in the workplace.

Q.57. If an employer is hiring, may it screen applicants for symptoms of COVID-19?

A.57. Yes. An employer may screen job applicants for symptoms of COVID-19 after making a conditional job offer, as long as it does so for all entering employees in the same type of job. This ADA rule applies whether or not the applicant has a disability. However, employers should be aware that some people with COVID-19 do not have a fever.

Additionally, an employer may delay the start date of an applicant who has COVID-19 or symptoms associated with it because under CDC guidance such an individual should not be in the workplace.

Q.58. May an employer withdraw a job offer when it needs the applicant to start immediately but the individual has COVID-19 or symptoms of it?

A.58. Based on current CDC guidance, this individual cannot safely enter the workplace, and therefore, the employer may withdraw the job offer.

Q.59. May an employer postpone the start date or withdraw a job offer because the individual is 65 years old or pregnant, both of which place them at higher risk from COVID-19?

A.59. No. The fact that the CDC has identified those who are 65 or older, or pregnant women, as being at greater risk does not justify unilaterally postponing the start date or withdrawing a job offer. However, an employer may choose to allow telework or to discuss with these individuals if they would like to postpone the start date.

Q.60. When employees return to work, does the ADA allow employers to require a doctor's note certifying fitness for duty?

A.60. Yes. Such inquiries are permitted under the ADA either because they would not be disability-related or, if the pandemic were truly severe, they would be justified under the ADA standards for disability-related inquiries of employees. As a practical matter, however, doctors and other health care professionals may be too busy during and immediately after a pandemic outbreak to provide fitness-for-duty documentation. Therefore, new approaches may be necessary, such as reliance on local clinics to provide a form, a stamp, or an e-mail to certify that an individual does not have the pandemic virus.

Q.61. May an employer administer a COVID-19 test (a test to detect the presence of the COVID-19 virus) before permitting employees to enter the workplace?

A.61. The ADA requires that any mandatory medical test of employees be "job related and consistent with business necessity." Applying this standard to the current circumstances of the COVID-19 pandemic, employers may take steps to determine if employees entering the workplace have COVID-19 because an individual with the virus will pose a direct threat to the health of others. Therefore, an employer may choose to administer COVID-19 testing to employees before they enter the workplace to

determine if they have the virus. Please note: the EEOC's guidance doesn't shed any light on the legality of businesses using antibody tests.

Based on guidance from medical and public health authorities, even if employees are tested, employers should still require - to the greatest extent possible - that employees observe infection control practices (such as social distancing, regular handwashing, and other measures) in the workplace to prevent transmission of COVID-19.

Q.62. May an employer covered by the ADA and Title VII of the Civil Rights Act of 1964 compel all of its employees to take the influenza vaccine regardless of their medical conditions or their religious beliefs during a pandemic?

A.62. No. An employee may be entitled to an exemption from a mandatory vaccination requirement based on an ADA disability that prevents him from taking the influenza vaccine. This would be a reasonable accommodation barring undue hardship (significant difficulty or expense). Similarly, under Title VII of the Civil Rights Act of 1964, once an employer receives notice that an employee's sincerely held religious belief, practice, or observance prevents him from taking the influenza vaccine, the employer must provide a reasonable accommodation unless it would pose an undue hardship as defined by Title VII ("more than *de minimis* cost" to the operation of the employer's business, which is a lower standard than under the ADA)

Q.63. If a job may only be performed at the workplace, are there reasonable accommodations for individuals with disabilities absent undue hardship that could offer protection to an employee who, due to a preexisting disability, is at higher risk from COVID-19?

A.63. There may be reasonable accommodations that could offer protection to an individual whose disability puts him at greater risk from COVID-19 and who therefore requests such actions to eliminate possible exposure. Even with the constraints imposed by a pandemic, some accommodations may meet an employee's needs on a temporary basis without causing undue hardship on the employer. Note: the accommodation offered by the employer only needs to be reasonable, it does not have to be the one preferred by the employee.

Q.64. As government stay-at-home orders and other restrictions are modified or lifted in your area, how will employers know what steps they can take consistent with the ADA to screen employees for COVID-19 when entering the workplace?

A.64. The ADA permits employers to make disability-related inquiries and conduct medical exams if job-related and consistent with business necessity. Inquiries and reliable medical exams meet this standard if it is necessary to exclude employees with a medical condition that would pose a direct threat to health or safety.

Direct threat is to be determined based on the best available objective medical evidence. The guidance from CDC or other public health authorities is such

evidence. Therefore, employers will be acting consistent with the ADA as long as any screening implemented is consistent with advice from the CDC and public health authorities for that type of workplace at that time.

For example, this may include continuing to take temperatures and asking questions about symptoms (or require self-reporting) of all those entering the workplace. Similarly, the CDC recently posted information on return by certain types of critical workers.

Employers should make sure not to engage in unlawful disparate treatment based on protected characteristics in decisions related to screening and exclusion.

Q.65. An employer requires returning workers to wear personal protective gear and engage in infection control practices. Some employees ask for accommodations due to a need for modified protective gear. Must an employer grant these requests?

A.65. An employer may require employees to wear protective gear (for example, masks and gloves) and observe infection control practices (for example, regular hand washing and social distancing protocols).

However, where an employee with a disability needs a related reasonable accommodation under the ADA (e.g., non-latex gloves, modified face masks for interpreters or others who communicate with an employee who uses lip reading, or gowns designed for individuals who use wheelchairs), or a religious accommodation under Title VII (such as modified equipment due to religious garb), the employer should discuss the request and provide the modification or an alternative if feasible and not an undue hardship on the operation of the employer's business under the ADA or Title VII.

Q.66. Where can employers find more information on EEOC guidelines during a pandemic?

A.66. More EEOC guidelines can be found here:

https://www.eeoc.gov/eeoc/newsroom/wysk/wysk_ada_rehabilitaion_act_coronavirus.cfm

https://www.eeoc.gov/laws/guidance/upload/pandemic_flu.pdf

K. CARES -- Coronavirus Relief Fund Expenses

Q.67. May governments use Coronavirus Relief Fund monies for payroll expenses?

A.67. The CARES Act requires that the payments from the Fund only be used to cover expenses that –

- (1) are necessary expenditures incurred due to the public health emergency with respect to the Coronavirus Disease 2019 (COVID-19);
- (2) were not accounted for in the budget most recently approved as of March 27, 2020 (the date of enactment of the CARES Act) for the State or government; and
- (3) were incurred during the period that begins on March 1, 2020, and ends on December 30, 2020.

Q.68. How does a government determine whether payroll expenses for public health or public safety employees satisfy the “substantially dedicated” condition?

A.68. On May 4, 2020, the US Department of Treasury issued the following clarification to determine “substantially dedicated:”

“The Fund is designed to provide ready funding to address unforeseen financial needs and risks created by the COVID-19 public health emergency. For this reason, and as a matter of administrative convenience in light of the emergency nature of this program, a State, territorial, local, or Tribal government may presume that payroll costs for public health and public safety employees are payments for services substantially dedicated to mitigating or responding to the COVID-19 public health emergency, unless the chief executive (or equivalent) of the relevant government determines that specific circumstances indicate otherwise.”

Q.69. What would qualify as a “substantially different use” for purposes of the Fund eligibility?

A.69. Costs incurred for a “substantially different use” include, but are not necessarily limited to, costs of personnel and services that were budgeted for in the most recently approved budget but which, due entirely to the COVID-19 public health emergency, have been diverted to substantially different functions. This would include, for example, the costs of redeploying corrections facility staff to enable compliance with COVID-19 public health precautions through work such as enhanced sanitation or enforcing social distancing measures; the costs of redeploying police to support management and enforcement of stay-at-home orders; or the costs of diverting educational support staff or faculty to develop online learning capabilities, such as through providing information technology support that is not part of the staff or faculty’s ordinary responsibilities. Note that a public function does not become a “substantially different use” merely because it is provided from a different location or through a different manner. For example, although developing online instruction capabilities may be a substantially different use of funds, online instruction itself is not a substantially different use of public funds than classroom instruction.

Q.70. What are examples of eligible expenses under Coronavirus Relief Fund?

A.70. Eligible expenditures include, but are not limited to, payment for:

1. Medical expenses such as:

- COVID-19-related expenses of public hospitals, clinics, and similar facilities.
 - Expenses of establishing temporary public medical facilities and other measures to increase COVID-19 treatment capacity, including related construction costs.
 - Costs of providing COVID-19 testing, including serological testing.
 - Emergency medical response expenses, including emergency medical transportation, related to COVID-19.
 - Expenses for establishing and operating public telemedicine capabilities for COVID-19 related treatment.
2. Public health expenses such as:
- Expenses for communication and enforcement by State, territorial, local, and Tribal governments of public health orders related to COVID-19.
 - Expenses for acquisition and distribution of medical and protective supplies, including sanitizing products and personal protective equipment, for medical personnel, police officers, social workers, child protection services, and child welfare officers, direct service providers for older adults and individuals with disabilities in community settings, and other public health or safety workers in connection with the COVID-19 public health emergency.
 - Expenses for disinfection of public areas and other facilities, *e.g.*, nursing homes, in response to the COVID-19 public health emergency.
 - Expenses for technical assistance to local authorities or other entities on mitigation of COVID-19-related threats to public health and safety.
 - Expenses for public safety measures undertaken in response to COVID-19.
 - Expenses for quarantining individuals.
3. Payroll expenses for public safety, public health, health care, human services, and similar employees are presumed to be substantially dedicated to mitigating or responding to the COVID-19 public health emergency unless the chief executive (or equivalent) of the relevant government determines that specific circumstances indicate otherwise.
4. Expenses of actions to facilitate compliance with COVID-19-related public health measures, such as:
- Expenses for food delivery to residents, including, for example, senior citizens and other vulnerable populations, to enable compliance with COVID-19 public health precautions.
 - Expenses to facilitate distance learning, including technological improvements, in connection with school closings to enable compliance with COVID-19 precautions.
 - Expenses to improve telework capabilities for public employees to enable compliance with COVID-19 public health precautions.

- Expenses of providing paid sick and paid family and medical leave to public employees to enable compliance with COVID-19 public health precautions.
 - COVID-19-related expenses of maintaining state prisons and county jails, including as relates to sanitation and improvement of social distancing measures, to enable compliance with COVID-19 public health precautions.
 - Expenses for care for homeless populations provided to mitigate COVID-19 effects and enable compliance with COVID-19 public health precautions.
5. Expenses associated with the provision of economic support in connection with the COVID-19 public health emergency, such as:
- Expenditures related to the provision of grants to small businesses to reimburse the costs of business interruption caused by required closures.
 - Expenditures related to a State, territorial, local, or Tribal government payroll support program.
 - Unemployment insurance costs related to the COVID-19 public health emergency if such costs will not be reimbursed by the federal government pursuant to the CARES Act or otherwise.
6. Any other COVID-19-related expenses reasonably necessary to the function of government that satisfy the Fund's eligibility criteria.

Q.71. What are ineligible expenses under Coronavirus Relief Fund?

A.71. The following is a list of examples of costs that would *not* be eligible expenditures of payments from the Fund.

1. Expenses for the State share of Medicaid.
2. Damages covered by insurance.
3. Payroll or benefits expenses for employees whose work duties are not substantially dedicated to mitigating or responding to the COVID-19 public health emergency.
4. Expenses that have been or will be reimbursed under any federal program, such as the reimbursement by the federal government pursuant to the CARES Act of contributions by States to State unemployment funds.
5. Reimbursement to donors for donated items or services.
6. Workforce bonuses other than hazard pay or overtime.
7. Severance pay.
8. Legal settlements.

Q.72. May funds used for payroll expenses be used to cover an employee's entire payroll cost or just the portion of time spent mitigating or responding to the COVID-19 public health emergency?

A.72. According to US Treasury guidance, as a matter of administrative convenience, the entire payroll cost of an employee whose time is spent substantially dedicated to mitigating or responding to the COVID-19 public health emergency is eligible, provided that such payroll costs are incurred by December 30, 2020. An employer may also track time spent by employees related to COVID-19 and apply fund payments on that basis, but would need to do so consistently within the relevant agency or department.

Q.73. Is there a specific definition of "hazard pay"?

A.73. Hazard pay means additional pay for performing hazardous duty or work involving physical hardship, in each case that is related to COVID-19.

Q.74. May "hazard pay" be granted retroactively?

A.74. Yes. In [AG Op. No. 20-0074](#) the Attorney General opines that an entity may grant its essential critical infrastructure workers/front-line employees retroactive hazard pay for past performance of a quantifiable amount of hazardous work provide the public entity determines that the pay meets the *Cabela's* test. The *Cabela's* test requires that the public entity have the legal authority to make the expenditure of public funds and must show all of the following:

1. A public purpose for the expenditure that comports with the governmental purpose for which the public entity has the legal authority to pursue;
2. That the expenditure, taken as a whole, does not appear to be gratuitous;
3. That the public entity has a demonstrable, objective, and reasonable expectation of receiving something real and substantial in exchange for the expenditure.

In the specific circumstances involved in that Opinion, the entity determined that its critical care workers would have received hazard pay at the time the work was performed but for budgetary constraints involving the receipt of CARES Act funds. In that case, the Attorney General concludes that payment of the hazard pay would not be gratuitous, as the US Treasury guidelines allow for CARES Act funds to be used for hazard pay.

Q.75. May funds be used to satisfy the non-federal matching requirement under the Stafford Act?

A.75. Yes. According to U.S. Treasury guidance, state and local governments may use these funds to meet the non-federal matching requirements for Stafford Act assistance to the extent such matching requirements entail COVID-19 related costs that otherwise satisfy the Coronavirus Relief Fund's eligibility criteria and the Stafford Act.

Please note: FEMA funding is still dependent on FEMA's determination of eligibility under the Stafford Act. Currently, the non-federal matching share is 25%, but that percentage could change in the future.

Q.76. May fund payments be provided to non-profits for distribution to individuals in need of financial assistance, such as rent relief?

A.76. Yes. According to U.S. Treasury guidance, non-profits may be used by state and local governments to distribute assistance. State and local governments have discretion in tailoring their assistance programs but the financial assistance must relate to COVID-19.

Q.77. May recipients use fund payments to remarket the recipient's convention facilities and tourism industry?

A.77. Yes. According to U.S. Treasury guidance, if the costs of such marketing satisfy the requirements of the CARES Act, this is an eligible expenditure. For example, expenses incurred to publicize the resumption of activities and steps taken to ensure a safe experience may be needed due to the COVID-19 public health emergency. However, expenses related to developing a long-term plan to reposition a recipient's convention and tourism industry and infrastructure would most likely not be incurred due to the public health emergency.

Q.78. May fund payments be used to cover increased administrative leave costs of public employees who could not telework in the event of a stay at home order or a case of COVID-19 in the workplace?

A.78. The CARES Act requires that payments be used only to cover costs that were not accounted for in the budget most recently approved as of March 27, 2020. As stated in the US Treasury Guidance, a cost meets this requirement if either (a) the cost cannot lawfully be funded using a line item, allotment, or allocation within that budget or (b) the cost is for a substantially different use from any expected use of funds in such a line item, allotment, or allocation. If the cost of an employee was allocated to administrative leave to a greater extent than was expected, the cost of such administrative leave may be covered using payments from the fund.

Q.79. What is the Coronavirus Local Recovery Allocation Program (Allocation Program) created by SB189?

A.79. The Legislature created the Allocation Program to assist local government units with Coronavirus Relief Fund eligible expenses as provided in the CARES Act. See [Q.70](#). "Local government units" means parish, municipality, town, township, village or other unit of general government below the State level with parish wide jurisdiction, including, but not limited to, sheriffs, coroners and district attorneys.

Funding for the Allocation Program is \$511,178,704.00.

The Commissioner of Administration is administering the program. Local governments must submit an application for reimbursement for eligible expenses signed by the chief

executive certifying that the proposed uses of the funds are consistent with the CARES Act. Within 15 calendar days after receiving the submission, the Commissioner and GOHSEP shall review. If approved, within 5 days thereafter, GOHSEP will disburse funds.

For more information, please contact the Division of Administration here: <https://louisianacares.la.gov/>

Q.80. What is the Louisiana Main Street Recovery Program (Recovery Program) created by SB 189?

A.80. The Legislature created the Recovery Program to assist “eligible businesses” with Coronavirus Relief Fund eligible expenses as provided in the CARES Act. See [Q.70](#). An “eligible business” is a for profit corporation, a limited liability company, a partnership, or a sole proprietorship that meets the criteria set for in the statute.

Funding for the Recovery Program is \$300 Million.

The Treasurer is administering the Recovery Program and must, no later than July 1, 2020, announce the start date of the program.

Eligible businesses may receive grants of up to \$15,000 each under this program. Businesses that have not received other federal assistance or compensation from an insurance company for business interruption will be given a priority in the first 21 days from the start of the program. Thereafter, the needs of other eligible businesses will also be addressed, according to the plan created by the Treasurer, as approved by the JLCB. The Treasurer is to submit that plan to the JLCB for approval no later than June 21, 2020.

Additionally, \$40 Million in grants must go to minority businesses, as defined in the statute, within the first 60 days from the start of the program.

Eligible businesses must submit an application to the Treasurer signed by the chief executive certifying that the proposed use of the grant funds are consistent with the CARES Act. Within 15 calendar days after receiving the submission, the Treasurer shall review. If approved, within 5 days thereafter, funds will be disbursed.

L. ARPA - Coronavirus State and Local Fiscal Recovery Fund

Important Update from US Treasury

On 10/30/2024, the US Treasury issued an update on the requirement that ARPA SLFRF funds must be “obligated” by December 31, 2024. Treasury clarified that SLFRF funds may only be used to cover costs incurred by December 31, 2024; a cost is considered incurred if a recipient has incurred an obligation by that date.



All recipients must expend their SLFRF funds by December 31, 2026, except for Surface Transportation and Title I projects, which have an earlier deadline of September 30, 2026.

An obligation is:

An order placed for property and services and entry into contracts, subawards, and similar transactions that require payment, which may include:

- An order placed for property or services
- Contract
- Subaward
- Similar transactions that require payment, which may include: Certain interagency agreements (including MOUs).
- Under certain circumstances, payroll expenses for recipients' employees.
- A requirement under federal law or regulation or a provision of the SLFRF award terms and conditions to which the recipient becomes subject as a result of receiving or expending SLFRF funds.

An obligation is NOT:

- An adopted budget or budget amendment
- An appropriation of SLFRF funds
- An executive order
- A resolution
- A written or oral intention to enter into a contract
- A grant of legal authority to enter into a contract
- Claiming funds under the revenue loss category
- Moving SLFRF funds to a general fund as revenue loss but not further establishing an obligation with those funds by 12/31/24

Q.81. What are the funding objectives for the Coronavirus Fiscal Recovery Fund?

A.81. State and local governments must use the Coronavirus Fiscal Recovery Funds for the following specific purposes:

1. Support public health response

- Fund COVID-19 mitigation efforts, medical expenses, behavioral healthcare, & certain public health and safety staff;

2. Replace public sector revenue loss

- Provide government services to the extent of the reduction in revenue experienced due to the pandemic;
- Treasury Final Rule (1/6/22) provides recipients with two options to identify loss revenue:

1. Recipients may elect a “standard allowance” of up to \$10 million to spend on government services through the period of performance.
 - Not to exceed award amount, but may be entire award if less than \$10 million
 - This option allows streamlined reporting
2. Recipients may calculate their actual revenue loss according to the formula articulated in the Final Rule.
 - Calculation will be performed four times – either at end of calendar year (December 31, 2020, December 31, 2021, December 31, 2022, and December 31, 2023) or end of each fiscal year of recipient.
 - Recipients cannot switch between these approaches after an election is made.
 - For those recipients that choose the calculation rather than the “standard allowance,” the Government Finance Office Association (GFOA) has created an Excel spreadsheet to help local governments calculate their lost revenue amounts. A recipient does not have to be a member of GFOA to use this spreadsheet.
<https://naco.sharefile.com/share/view/s41a8f7bd327b462fb84de7c386c36071>
3. **Water & Sewer infrastructure**
 - Make necessary investments to improve access to clean water & invest in wastewater and stormwater infrastructure;
4. **Address negative economic impacts**
 - Respond to economic harm to workers, families, small businesses, impacted industries, and the public sector.
5. **Premium pay for essential workers**
 - Offer additional support to those who have and will bear the greatest health risks because of their service in critical infrastructure sectors;
6. **Broadband infrastructure**
 - Make necessary investments to provide unserved or underserved locations with new or expanded broadband access.
7. **Equity-Focused Services**
 - Address systemic public health and economic challenges that have contributed to the unequal impact of the pandemic.

The US Treasury has created a webpage with links to the Final Rule, FAQs and Reporting Guidance for Fiscal Recovery Funds here:

<https://home.treasury.gov/policy-issues/coronavirus/assistance-for-state-local-and-tribal-governments/state-and-local-fiscal-recovery-funds>

A summary of the changes made in the Final Rule can be found on the LLA’s website [\[here\]](#).

Q.82. What are examples of eligible uses for the Coronavirus Fiscal Recovery Funds?

A.82. Following are non-exclusive examples for the use of Fiscal Recovery Funds:

1. Support public health response

- Services to contain and mitigate the spread of COVID-19, including vaccination, medical expenses, testing, quarantine costs, capacity enhancements, and related activities;
- Behavioral healthcare services, including mental health or substance abuse treatment, crisis intervention and related services;
- Payroll and covered benefits for public health, healthcare, human services, and public safety response to the extent they work on the COVID-19 response.

2. Replace public sector revenue loss

- Once a recipient has identified a reduction in revenue, Treasury Final Rule gives them broad latitude to use funds for the provision of government services to the extent of reduction in revenue.
- Government services can include, but are not limited to, maintenance of infrastructure or pay-go spending for building new infrastructure, including roads; modernization of cybersecurity, and protection of critical infrastructure; health services; environmental remediation; school or educational services; and the provision of police, fire, and other public safety services.
- Treasury Rule restricts use of revenue loss funds for those items not considered government services; that is, paying interest or principal on outstanding debt, replenishing rainy day or other reserve funds, as these uses of funds do not entail direct provision of services to citizens.

3. Water & Sewer infrastructure

- Includes improvements to infrastructure, such as building or upgrading facilities and transmission, distribution, and storage systems;
- Eligible uses aligned to the Environmental Protection Agency project categories for the Clean Water State Revolving Fund and Drinking Water Revolving Funds. See [Q.91](#).
- Treasury Final Rule (1/6/22) Expands eligible uses for water and sewer projects to include culvert repair, dam and reservoir rehabilitation and stormwater infrastructure, among others.

4. Address negative economic impacts

- Deliver assistance to workers and families, including support for unemployed workers, aid to households, and survivor's benefits to families of COVID-19 victims;
- Support small businesses with loans, grants, in-kind assistance, and counseling programs;

- Speed the recovery of impacted industries, including tourism, travel, and hospitality sectors;
- Rebuild public sector capacity by rehiring staff, replenishing state unemployment insurance funds to January 2020 levels, and implementing economic relief programs.

5. Premium pay for essential workers

- Provide premium pay to essential workers, both directly and through grants to third-party employers;
- Defined as an amount up to \$13 per hour in addition to wages or remuneration the work otherwise receives and in an aggregate amount not to exceed \$25,000 per eligible worker.
- Prioritize low- and moderate-income workers, who facet the greatest mismatch between employment-related health risks and compensation;
- Key sectors include healthcare, grocery and food services, education, childcare, sanitation and transit.
- Must be fully additive to a worker's wages. See [Q.87](#).

6. Broadband infrastructure

- Focus on households and businesses without access to broadband and those with connections that do not provide minimally acceptable speeds;
- Fund projects that deliver reliable service with minimum 100 Mbps download/100 Mbps upload speeds unless impracticable;
- Complement broadband investments made through Capital Projects Fund. See [Q.94](#).
- Treasury Final Rule (1/6/22) expands use of funds for the modernization of cybersecurity for existing and new broadband infrastructure, including the modernization of hardware and software.

7. Equity-Focused Services

- Additional flexibility for the hardest-hit communities and families to address health disparities, address educational disparities, and promote healthy childhood environments;
- Broadly applicable to Qualified Census Tracts, other disproportionately impacted areas, and when provided by Tribal governments.

[Q.83](#). What are ineligible uses for the Coronavirus Fiscal Recovery Funds?

A.83. The ARPA specifies two ineligible use of Fiscal Recovery Funds:

1. States and territories may not use this funding to directly or indirectly offset a reduction in net tax revenue due to a change in the law from March 3, 2021 through the last day of the fiscal year in which the funds provided have been spent.

- If a State or territory cuts taxes, they must demonstrate how they paid for the tax cut from sources other than the Fiscal Recovery Funds (i.e., enacting policies to raise other sources of revenue, cutting spending or higher revenue from economic growth);
 - If Fiscal Recovery Funds have been used to offset tax cuts, the amount used for this purpose must be paid back to the Treasury.
2. No recipient may use this funding to make a deposit to a pension fund.
- Treasury rules define “deposit” as an extraordinary contribution to a pension fund for the purpose of reducing an accrued, unfunded liability.
 - While pension deposits are prohibited, recipients may use funds for routine payroll contribution for employees whose wages and salaries are an eligible use of funds.

In addition, the Treasury rules identify several other ineligible uses including funding debt service, legal settlements or judgments, and deposits into rainy day funds or financial reserves.

Treasury Final Rule (1/6/22) clarifies that ‘if the judgment or settlement requires the recipient to provide services that are otherwise eligible under an [Recovery Fund] eligible use category, specifically, if the settlement or judgment requires the recipient to provide services to respond to the COVID-19 public health emergency or its negative economic impacts or to provide government services, then those costs are eligible uses of the [Recovery Fund] funds. ‘

Finally, general infrastructure spending is **not** covered as an eligible use outside of water, sewer, and broadband investments or above the amount allocated under the revenue loss provision. See [Q.90](#).

Q.84. What records must be kept by governments receiving funds?

- A.84.** Financial records and supporting documents related to awards under the ARPA Fiscal Recovery Funds must be retained for a period of five years after all funds have been expended or returned to Treasury, whichever is later. This includes those which demonstrate the award funds were used for eligible purposes in accord with the ARPA, Treasury’s regulations implementing those sections, and Treasury’s guidance on eligible use of funds.

Q.85. What provisions of the Uniform Guidance for grants apply to these funds? Will the Single Audit requirements apply?

A.85. Most of the provisions of the Uniform Guidance (2 CFR Part 200) apply to this program, including the Uniform Administrative Requirements, Cost Principles and the Single Audit Act requirements.

Exclusions:

- 2 CFR Part 200 Subpart C the following provisions do not apply:
 - 2 CFR §200.204 (Notices of Funding Opportunities);
 - 2 CFR §200.205 (Federal awarding agency review of merit of proposal);
 - 2 CFR §200.210 (Pre-award costs); and
 - 2 CFR §200.213 (Reporting a determination that a non-Federal entity is not qualified for a Federal award).
- 2 CFR Part 200 Subpart D the following provisions do not apply:
 - 2 CFR §200.308 (revision of budget or program plan);
 - 2 CFR §200.309 (modifications to period of performance); and
 - 2 CFR §200.305(b)(8) and (9) (Federal Payment).

Recipients should refer to the Assistance Listing on [beta.Sam.gov](https://beta.sam.gov) for details on the specific provisions of the Uniform Guidance that do not apply to this program.

Q.86. May ARPA Coronavirus Fiscal Recovery Funds be used to reimburse recipients for costs incurred by state and local governments in responding to the public health emergency and its negative impacts prior to passage of the ARPA?

A.86. As stated in the ARPA, in most cases, Fiscal Recovery Funds are to be used to cover costs incurred beginning on March 3, 2021.

Q.87. What criteria should recipients use in identifying essential workers to receive premium pay?

A.87. Essential workers are those needed to maintain continuity of operations of essential critical infrastructure and who (1) regularly perform in-person work (teleworking is not eligible), and (2) interact with others at work, or physically handle items handled by others.

Critical infrastructure sectors include healthcare, education and childcare, transportation, sanitation, grocery and food production, and public health and safety, and State, local and Tribal governments, among others, as provided in the Final Rule. Governments receiving Fiscal Recovery Funds have the discretion to add additional sectors to this list, so long as the sectors are considered critical to protect the health and well-being of residents.

Premium pay is defined as an amount up to \$13 per hour in addition to wages or remuneration the work otherwise receives and in an aggregate amount not to exceed \$25,000 per eligible worker.

The Treasury emphasizes the need for recipients to prioritize premium pay for lower income workers. Premium pay that would increase a worker's total pay above 150% of the greater of the state or county (parish) average annual wage requires specific justification for how it responds to the needs of these workers.

Treasury Final Rule (1/6/22) clarifies that recipients who elect to provide premium pay must confirm that the pay "responds to" workers performing essential work during the public health emergency in 1 of 3 ways:

- Eligible worker receiving premium pay is earning (with premium included) at or below 150% of the greater of the state or county (parish) average annual wage for all occupations as defined by Bureau of Labor's Statistics' Occupational Employment and Wage Statistics;
- Eligible worker receiving premium pay is not exempt from the Fair Labor Standards Act overtime provisions; or
- If a worker does not meet either of the above, the recipient must submit written justification to Treasury detailing how the premium pay is otherwise responsive to workers performing essential work during public health emergency.

Q.88. May recipients provide premium pay retroactively for work already performed?

A.88. Yes. The US Treasury encourages recipients to consider providing premium pay retroactively for work performed during the pandemic. The National Emergency Act signed by President Trump on March 13, 2020 marks the beginning of the emergency as March 1, 2020. Additionally, in [AG Op. No. 21-0107](#), the Attorney General opines that an entity may grant its essential critical infrastructure workers/employees retroactive premium pay for past performance of a quantifiable amount of essential work provided the public entity determines that the pay meets the *Cabela's* test and adheres to the Interim Final Rule issued by the US Treasury. The *Cabela's* test requires that the public entity have the legal authority to make the expenditure of public funds and must show all of the following:

1. A public purpose for the expenditure that comports with the governmental purpose for which the public entity has the legal authority to pursue;
2. That the expenditure, taken as a whole, does not appear to be gratuitous;
3. That the public entity has a demonstrable, objective, and reasonable expectation of receiving something real and substantial in exchange for the expenditure.

In that opinion, the Attorney General states that a public entity has the legal authority to compensate its employees. Therefore, the first prong of the *Cabela's* test is met. As to the second prong, the Attorney General states that the requirements of the ARPA and the Interim Final Rule "ensure that the premium pay is not gratuitous. The premium pay is to compensate essential workers, who earn lower wages, live in socioeconomically vulnerable communities, and have not yet been compensated for the heightened risk they faced and continue to face, for the essential work during the COVID-19 public health emergency."

As to the third prong of the *Cabela's* test, that is a fact-specific inquiry. The Attorney General states that the public entity must conclude that it received something “real and substantial in exchange for an expenditure of public funds in the form of retroactive premium pay.” If the entity concludes that “retroactive premium pay is tied to a quantifiable amount of essential work performed by eligible workers during the COVID-19 public health emergency” then Art. 7, Sec. 14 would not prohibit the retroactive payment.

All determinations by the public entity as to which employees are eligible to receive premium pay and how the *Cabela's* test is met in the retroactive payment of premium pay should be documented.

See also, [AG Op. No. 21-0101](#) wherein the Attorney General opines that elected officials, such as a mayor or council member, would not be considered an essential worker/front-line employee under Treasury Rule. However, the US Department of Treasury is the ultimate arbiter of whether a local government has used ARPA Fiscal Recovery Funds properly.

And see, [AG Op. No. 22-0038](#) wherein the Attorney General distinguishes [AG Op. No. 21-0101](#) concerning mayors and council members to opine that the determination of whether an elected official, such as a chief of police or city marshal, is considered an “eligible worker” who performed “essential work” under ARPA and is therefore eligible to receive retroactive premium pay is one that must be made by the public entity. This is a fact-intensive determination. The Attorney General again notes that the US Department of Treasury is the ultimate arbiter of whether a local government has used ARPA Fiscal Recovery Funds properly.

See also, [AG Op. No. 22-0073](#) and [AG Op. No. 22-0089](#) wherein the Attorney General discusses the authority of the public entity to determine which employees and/or elected officials qualify as “eligible workers” for the purposes of receiving premium pay under the ARPA U.S. Treasury guidelines. In [AG Op. No. 22-0073](#), the Attorney General also opines that CARES funds may not be used for premium pay, but may be used, in some instances, for retroactive hazard pay under U.S. Treasury CARES Act Coronavirus Relief Fund guidelines.

Q.89. May recipients use funds to satisfy nonfederal matching requirements under the Stafford Act? May recipients use funds to satisfy nonfederal matching requirements generally?

- A.89.** The Interim Final Rule stated that Fiscal Recovery Funds are subject to pre-existing limitations 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 other than as discussed below.

The Final Rule (1/6/22) clarifies that to the extent Fiscal Recovery Funds constitute “lost revenue” they may be used to satisfy most nonfederal matching requirements. A specific

example that the Final Rule provides is that “lost revenue” may be used to satisfy nonfederal matching requirements under the Stafford Act; however, the Final Rule also explicitly states they may not be used for Medicaid. *For all federal grant programs, recipients should verify with the relevant funding agency as to whether ARPA Fiscal Recovery Funds that constitute “lost revenue” may be used to satisfy nonfederal matching requirements.*

Additionally, when the U.S. Congress enacted the Infrastructure Investment and Jobs Act (IIJA), they specifically provided in the law that ARPA Fiscal Recovery Funds may be used to meet the nonfederal match requirements of authorized Bureau of Reclamation projects and certain broadband projects. *Recipients should consult the Final Rule for further details if they seek to utilize ARPA Fiscal Recovery Funds as a match for these projects.*

Q.90. May recipients use funds to invest in infrastructure other than water, sewer, and broadband projects (e.g. roads, public facilities)?

A.90. To the extent the ARPA Fiscal Recovery Funds represent “lost revenue,” they may be used for general infrastructure other than water, sewer, and broadband infrastructure. Otherwise, ARPA Fiscal Recovery Funds may not be used for general infrastructure unless it is considered a response to the public health emergency and/or its negative economic impacts, except as noted below.

A general infrastructure project typically would not be considered a response to the public health emergency and its negative economic impacts unless the project responds to a specific pandemic-related public health need (e.g., investments in facilities for the delivery of vaccines) or a specific negative economic impact of the pandemic (e.g., affordable housing in a Qualified Census Tract).

In addition, the ARPA Flex Act has expanded use of ARPA Fiscal Recovery Funds as noted in [Q.101](#).

Q.91. What types of water and sewer projects are eligible uses of funds?

A.91. The Treasury Interim Final Rule generally aligns eligible uses of the 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 Clean Water State Revolving Fund (CWSRF) or Drinking Water State Revolving Fund (DWSRF).

Under the DWSRF, categories of eligible projects include: treatment, transmission and distribution (including lead service line replacement), source rehabilitation and decontamination, storage, consolidation, and new systems development. Complete list linked [here](#).

Under the CWSRF, categories of eligible projects include: construction of publicly-owned treatment works, nonpoint source pollution management, national estuary program projects, decentralized wastewater treatment systems, stormwater systems, water conservation, efficiency, and reuse measures, watershed pilot projects, energy efficiency measures for publicly-owned treatment works, water reuse projects, security measures at publicly-owned treatment works, and technical assistance to ensure compliance with the Clean Water Act. Complete list linked [here](#).

Additionally, the Treasury Final Rule (1/6/22) expands eligible uses for water and sewer projects to include culvert repair, dam and reservoir rehabilitation and stormwater infrastructure, among others.

Q.92. May construction on eligible water, sewer, or broadband infrastructure projects continue past December 31, 2024, assuming funds have been obligated prior to that date?

A.92. Yes. Treasury is interpreting the requirement that costs be incurred by December 31, 2024 to only require that recipients have obligated the funds by such date. The period of performance will run until December 31, 2026, which will provide recipients a reasonable amount of time to complete projects funded with Fiscal Recovery Funds.

Q.93. May recipients use funds as a non-federal match for the Clean Water State Revolving Fund (CWSRF) or Drinking Water State Revolving Fund (DWSRF)?

A.93. Recipients may not use funds as a nonfederal match for the CWSRF and DWSRF due to prohibitions in utilizing federal funds as a nonfederal match in the authorizing statutes and regulations of the CWSRF and DWSRF.

Recipients must verify with the funding agency to confirm that they use ARPA funds to the extent they represent lost revenue as their nonfederal match for the CWSRF or DWSRF.

Q.94. What types of broadband projects are eligible?

A.94. The Treasury Interim Final Rule requires eligible projects to reliably deliver minimum speeds of 100 Mbps download and 100 Mbps upload. In cases where it is impracticable due to geography, topography, or financial cost to meet those standards, projects must reliably deliver at least 100 Mbps download speed, at least 20 Mbps upload speed, and be scalable to a minimum of 100 Mbps download speed and 100 Mbps upload speed.

Projects must also be designed to serve unserved or underserved households and businesses, defined as those that are not currently served by a wireline connection that reliably delivers at least 25 Mbps download speed and 3 Mbps of upload speed.

Recipients may also use funds to provide assistance to households facing negative economic impacts due to Covid-19, including digital literacy training and other programs that promote access to the Internet. Recipients may also use funds for modernization of cybersecurity, including hardware, software, and protection of critical infrastructure, as part of provision of government services up to the amount of revenue lost due to the public health emergency.

Treasury Final Rule (1/6/22) expands use of funds for the modernization of cybersecurity for existing and new broadband infrastructure, including the modernization of hardware and software.

Q.95. Are the requirements for using ARPA Fiscal Recovery Fund monies for payroll expenses for public safety, public health, health care, human services, and similar employee different from the requirements for the use of CARES Act Relief Fund monies for these same expenses?

A.95. Yes. While many of the expenses authorized under the CARES Act Relief Fund are also eligible uses under the ARPA Fiscal Recovery Fund, the requirement to use ARPA Fiscal Recovery Fund for these payroll expenses is different.

ARPA Fiscal Recovery Fund monies may be used for payroll and covered benefits for public safety, public health, health care, human services, and similar employees, *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 a public health and safety employee 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 (e.g., more than half of the employee's time is dedicated) to responding to the COVID-19 public health emergency.

Recipients may use presumptions for assessing whether an employee, division, or operating unit is primarily dedicated to COVID-19 response. The recipient should maintain 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. Recipients should periodically reassess their determinations.

Q.96. Which governments are “recipients” eligible to receive funds?

A.96. The following governments are eligible to receive funds:

- States and the District of Columbia
- Territories
- Tribal Governments

- Counties/Parishes
- Metropolitan cities (municipalities with populations of 50,000 or more)
- Non-entitlement units, or smaller local governments (municipalities with populations less than 50,000)

The US Treasury will distribute funds directly to each eligible state, territory, county/parish, metropolitan city, and tribal government. Smaller local governments that are classified as non-entitlement units (NEUs) will receive funds through their applicable state government.

Q.97. Are special-purpose units of government and non-profits or private organizations eligible to receive funds?

A.97. Yes. Special-purpose units of local government will not receive funding allocations; however, a state, territory, local, or Tribal government may transfer funds to a special-purpose unit of government. Special-purpose districts perform specific functions in the community, such as fire, water, sewer or mosquito abatement districts. In the same way, a state, territory, local or Tribal government may transfer funds to non-profit organizations and public benefit corporations.

A transferee receiving a transfer from a recipient are considered 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.

Q.98. May recipients use Fiscal Recovery Funds to pay for vaccine incentive programs (e.g., cash or in-kind transfers, lottery programs, or other incentives for individuals who get vaccinated)?

A.98. Yes. According to U.S. Treasury guidance, recipients may use Coronavirus State and Local Fiscal Recovery Funds to respond to the COVID-19 public health emergency, including expenses related to COVID-19 vaccination programs. See 31 CFR 35.6(b)(1)(i). Programs that provide incentives reasonably expected to increase the number of people who choose to get vaccinated, or that motivate people to get vaccinated sooner than they otherwise would have, are an allowable use of funds so long as such costs are reasonably proportional to the expected public health benefit.

Q.99. Act 410 of the 2021 Regular Session creates the Louisiana Water Infrastructure Program (State Water Program) using \$300 million of ARPA Fiscal Recovery Funds. The State Water Program will provide grants to community water and sewer systems and requires a “local match” for funding. May Parishes and municipalities that take part in the State Water Program use the ARPA Fiscal Recovery Funds they received as their “local match?”

A.99. Yes, assuming the State Water Program funds water and sewer projects that meet the eligibility requirements under the Federal Environmental Protection Agency (EPA) guidelines. The Treasury Interim Final Rule (Rule) generally aligns eligible uses of the ARPA Funds for water and sewer infrastructure projects with the wide range of types or categories of projects that *would be eligible* to receive financial assistance through the EPA’s Clean Water State Revolving Fund (CWSRF) or Drinking Water State Revolving Fund (DWSRF). See [Q.91](#).

The only prohibition under the Treasury Rule is against using ARPA Funds for nonfederal matches with Federal programs. This prohibition does not apply to State programs, including the State Water Program.

Q.100. May ARPA Funds be used for drainage projects and roads?

A.100. ARPA Funds may be used for draining projects if the drainage project otherwise meets either the EPA’s CWSRF or DWSRF eligibility requirements. Both CWSRF and DWSRF list drainage projects as examples of eligible projects. Recipients of ARPA Funds should examine the CWSRF and DWSRF guidelines (See [Q.91](#).) to ensure their drainage projects is of the kind eligible for use of ARPA Funds.

If the drainage projects are not of the kind eligible under CWSRF or DWSRF, then the recipients may only use ARPA Funds for these projects to the extent they represent lost revenue.

ARPA Funds that represent lost revenue may be used for general services, which includes construction or maintenance of roads. Additionally, there may be road work done in conjunction with water and sewer projects that are eligible under the EPA’s CWSRF or DWSRF requirements. Recipients should examine the CWSRF and DWSRF guidelines (See [Q.91](#).) to determine eligibility.

Q.101. What is ARPA Flex?

A.101. The US Congress enacted the ARPA Flex Act as part of the Fiscal Year 2023 omnibus appropriations bill on December 23, 2022. ARPA Flex allows local governments to invest the greater of \$10 million or 30% of their total ARPA Fiscal Recovery funds as follows:

- To provide emergency relief from natural disasters, including temporary emergency housing, food assistance, financial assistance for lost wages, and other immediate needs;
- To provide funding for any program, project, or service that would also be eligible under HUD's Community Development Block Grant program; and
- To provide funding for transportation infrastructure projects and provide matching funds for the below:
 - Nationally Significant Freight & Highway Projects Program;
 - Transportation Infrastructure Finance Improvement Act (TIFIA) Loan Program (in addition to satisfying the TIFIA local match requirement, these funds may be used to repay an existing TIFIA loan);
 - Fixed Guideway Capital Investment Grant Program; and
 - National Infrastructure Project Assistance.

The US Treasury is expected to issue rules finalizing the ARPA Flex changes sometime in February/March 2023. This question will be updated at that time.

M. Additional Emergency Related Guidance

Q.102. Where can information be found on the process for issuance of an emergency declaration for my parish?

A.102. For information concerning issuance of emergency disaster declarations by Parish Presidents, please see the [LLA's Guidance on Emergency Declarations by Parish Presidents](#).

Q.103. Where can the Governor's emergency proclamations be found?

A.103. The latest proclamations by Governor Edwards can be found [here](#).

Q.104. Where can additional guidance from the Attorney General on the COVID-19 emergency be found?

A.104. The latest guidance from the Attorney General can be found [here](#).

Q.105. Is there any additional emergency guidance available for local governments?

A.105. Yes, please see the [LMA's Mayor's Guide to Emergency Management and Disaster Management](#).

Q.106. Is there any additional accounting guidance available for local governments?

A.106. The Governmental Accounting Standards Board (GASB) launched a portal with an "emergency response toolkit" to help cities and states quickly identify authoritative accounting guidance that could be relevant during the COVID-19 crisis. The toolbox provides rule references for a list of about 20 topics, including on debt extinguishment, disposals of operations, going concern, and mergers between governments.

Please see the GASB announcement [here](#) for more information.

N. Reopening "Roadmap to a Resilient Louisiana"

Q.107. What are the provisions of 58-JBE-2020 to move Louisiana into Phase One of "Roadmap to a Resilient Louisiana?"

A.107. [58-JBE-2020](#), signed on May 14, 2020, formally declares that Louisiana will enter into Phase One of its Roadmap to a Resilient Louisiana on Friday, May 15, when the Stay at Home order will be lifted. The order provides the following:

"New Normal" for All People:

- Everyone should wear appropriate face coverings in public except children under 2 and individuals with severe breathing issues
- Everyone should practice good hygiene
 - Wash hands with soap and water for at least 20 seconds; use hand sanitizer if soap and water not available
- Clean high-touch surfaces and high traffic areas frequently
- Avoid touching your face
- Sneeze and cough into tissue, elbow or mask
- Maintain physical distance of at least 6 feet from non-household contacts
- Sick individuals stay home, isolate from household contacts, and contact medical providers

Now Open with Limitations (25% occupancy, sanitation, spacing for physical distancing):

- Churches
- Solo and non-contact sports
- Barbers and salons
- Museums, zoos, aquariums (no tactile exhibits)
- Gyms and fitness centers
- In malls, only stores with exterior entrances
- Restaurants, coffee shops and cafes
- Bars and breweries with LDH food permit – takeout, delivery and dine-in seating only

- Theaters
- Casinos and Video Poker
- Racetracks (not open to spectators)

Limiting to 25% of normal occupancy allows for physical distancing. Occupancy capacity is based on both the gross square footage and the use of a building as well as the amount of space required for individuals to stay six feet apart. This occupancy capacity includes customers and employees. For more specific guidance and resources visit: <https://opensafely.la.gov/PublicLinks.aspx>

The following businesses remain closed: massage establishments and spas, tattoo parlors, carnivals, amusement parks, water parks, trampoline parks, arcades, fairs, bars and breweries without LDH food permits, pool halls, bowling alleys, contact sports, children's play centers, playgrounds, theme parks, adult entertainment venues, and other similar businesses.

High-risk individuals are encouraged to stay home during Phase 1

- Individuals 65 years old or older
- Long-term care facility residents
- Vulnerable individuals: immunocompromised OR one or more of the following health conditions with poor control:
 - High blood pressure
 - Diabetes
 - Obesity
 - Chronic kidney disease
 - Heart disease

Q.108. What are the provisions of 59-JBE-2020 for Phase One of “Roadmap to a Resilient Louisiana?”

A.108. [59-JBE-2020](#), signed on May 14, 2020, provides the following provisions for Phase One:

- Extends legal deadlines that had previously been delayed in March to June 5, 2020.
- Suspends other provisions of law necessary to respond to COVID-19 including:
 - Public Bid Law
 - Procurement
 - Open Meetings Law (attendance by teleconference or videoconference to obtain quorum)
 - DMV and Vital Records fees
- Extends moratorium on evictions until June 5, 2020

Q.109. What are the provisions of 74-JBE-2020 to move Louisiana into Phase Two of “Roadmap to a Resilient Louisiana?”

A.109. [74-JBE-2020](#), signed on June 4, 2020, formally declares that Louisiana will enter into Phase Two of its Roadmap to a Resilient Louisiana on Friday, June 5. As with Phase One, High Risk Individuals are encouraged to stay home and guidelines regarding social distancing, personal hygiene (including frequent hand washing) and wearing face coverings remains the same. Major changes in Phase Two include allowing churches, places of worship and many more businesses to operate at 50 percent capacity with social distancing, masks for public-facing employees and increased sanitization. In addition, the order strongly recommends that businesses consider offering temperature checks before a person can enter and posting the symptoms of COVID-19 outside with a request that symptomatic individuals not enter.

[83-JBE-2020](#), signed on June 25, 2020, continues Phase Two until July 24, 2020. This new proclamation limits indoor gatherings to 250 people. Otherwise, the same restrictions and guidelines contained in 74-JBE-2020 apply.

[96-JBE-2020](#), signed on July 23, 2020, continues Phase Two until August 7, 2020.

[101-JBE-2020](#), signed on August 6, 2020, continues Phase Two until August 28, 2020

[110-JBE-2020](#), signed on August 26, 2020, continues Phase Two until September 11, 2020.

OVERVIEW OF BUSINESSES THAT CAN OPEN:

Businesses that will be able to open at 50 percent occupancy include:

- Restaurants, cafes and coffee shops
- Shopping malls (including food courts, following restaurant guidance)
- Gyms and fitness centers
- Barber and beauty shops and nail salons
- Movie theaters
- Racetracks (not open to spectators)
- Museums (including children's museums), zoos, aquariums (no tactile exhibits)
- Bars and breweries (take out service only per [89 JBE 2020](#) as extended by [96-JBE-2020](#), [101-JBE-2020](#) and [110-JBE-2020](#)).
- Massage establishments, spas, and tattoo establishments (under strict guidance from LDH), esthetician services (under strict guidance from the Cosmetology Board)
- Pool halls, bowling alleys and skating rinks (children must be accompanied by an adult)
- Event Centers and wedding venues
- Outdoor playgrounds and play centers (children must be accompanied by an adult)

Casinos and video poker establishments may open at 50 percent occupancy, but limited to 75 percent of their gaming positions, with spacing to allow for social distancing and with enhanced sanitation. Plans must be submitted to the Gaming Control Board which will issue guidance to these facilities.

No crowds of more than 50 people in any single indoor spaces at one time or outdoor spaces where individuals are in close proximity to one another who are not immediate family members. This crowd size limitation is not applicable to essential businesses.

([89-JBE-2020](#), as extended by [96-JBE-2020](#), [101-JBE-2020](#) and [110-JBE-2020](#))

Arcades and trampoline parks may open under approved plans by the State Fire Marshal, with minors accompanied by parents.

Summer camps were allowed to open with restrictions in Phase One, and additional guidance will be issued. Sleep-away camps are not allowed in Phase Two.

The following businesses remain closed: carnivals, amusement parks, water parks, fairs, contact sports, children's indoor play centers, theme parks, concert and music halls, and other similar businesses. Live entertainment is not permitted inside any building or indoor function.

The Governor encourages businesses that can allow employees to work remotely to consider doing so, especially if an employee is at high risk for becoming seriously ill from COVID-19 or shares a household with a high-risk person.

Face Covering Order ([89 JBE 2020](#))

Every individual shall wear a face covering over the nose and mouth when inside a commercial establishment or any other building or space open to the public, whether indoor or outdoor, including public and commercial modes of transportation. This does not apply:

- When social distancing can be maintained or when the only contact is with immediate family;
- To any child under the age of 8;
- Any individual with a medical condition preventing them from wearing a face covering;
- Any individual consuming food or drink;
- Any individual communicating with the hearing impaired;
- Any individual giving a speech for broadcast or to an audience;
- Any individual temporarily removing face covering for identification purposes.

All businesses or organizations, including all offices of the State, its political subdivisions and all other governmental offices, shall require persons who enter their premises to wear a face covering unless the above exceptions apply or the business is in a parish that has opted out of the face covering requirement.

Q.110. What are the provisions of 75-JBE-2020 for Phase Two of “Roadmap to a Resilient Louisiana?”

A.110. [75-JBE-2020](#), signed on June 4, 2020, provides the following provisions for Phase Two:

- Extends legal deadlines that had previously been delayed in March to June 15, 2020.
- Liberative prescriptive and preemptive periods applicable to legal proceedings, as well as tax legal proceedings, and legal proceedings of administrative agencies and boards, are suspended until July 5, 2020.
- Suspends other provisions of law necessary to respond to COVID-19 including:
 - Public Bid Law
 - Procurement
 - Open Meetings Law (attendance by teleconference or videoconference to obtain quorum) (See [Q.20.](#))
 - Some Office of Motor Vehicles and other deadlines remain suspended until July 31.
- Extends moratorium on evictions until June 15, 2020.

The provisions of [75-JBE-2020](#) were extended by [84-JBE-2020](#), and subsequently by [JBE 2020-97](#), [101-JBE-2020](#) and [110-JBE-2020](#) which expired on September 11, 2020.

Q.111. What are the provisions of 117-JBE-2020 for Phase Three of “Roadmap to a Resilient Louisiana?”

A.111. [JBE 2020-117](#), signed on September 11, 2020, formally declares that Louisiana will enter into Phase Three of its Roadmap to a Resilient Louisiana on Friday, September 11, 2020. High Risk Individuals are encouraged to stay home unless performing essential activities as follows:

- Obtaining food, medicine, and other similar goods;
- Obtaining medical care and treatment and other similar vital services;
- Going to and from an individual’s workplace;
- Going to and from the home of a family member;
- Going to and from an individual’s place of worship;
- Engaging in outdoor activity, providing individuals maintain a distance of at least six feet from one another.

Pursuant to [JBE 2021-66](#) (March 30, 2021) these restrictions do not apply to people who have been fully vaccinated (someone who is at least two weeks beyond receiving a full administration of a COVID-19 vaccine).

For all individuals, the guidelines regarding social distancing, personal hygiene (including frequent hand washing) and wearing face coverings remains the same.

Major changes in Phase Three include allowing churches, places of worship and many more businesses to operate at 75 percent capacity with social distancing, masks for public-facing employees and increased sanitization.

In addition, bars may reopen for on-premises consumption in Phase Three but only in certain parishes and only if the parish “opts in.” Parishes with a positivity rate of 5 percent or lower for two consecutive weeks may opt-in to open bars for on premises consumption under the restrictions in the Governor’s order.

This two-week percent positivity will be updated every two weeks by the Louisiana Department of Health (LDH), with the next update scheduled for September 16, 2020.

When re-opened, bars will be able to open at 25 percent capacity, up to 50 people, indoors for customers seated for tableside service. They may have no more than 50 customers outdoors, socially distanced, seated for tableside service. No live music will be allowed. All drinks must be ordered at the table and delivered by bar staff to the table. Sale and service of alcohol at bars, when they reopen, must end at 10 p.m., with all patrons cleared from the building by 11 p.m. When re-opened, no one under the age of 21 is permitted in any bar.

Phase Three also prohibits the sale or service of alcohol for on premises consumption at all establishments, including restaurants and casinos, after 10 p.m.

Nursing home visitation will continue to be prohibited in Phase Three. LDH is working on a pilot program to begin to allow visitation at nursing homes with no new cases for 14 days and in parishes without high numbers of COVID-19. LDH will release details of this pilot program at a later date.

On October 8, 2020, the Governor signed [JBE 2020-134](#), which extended Phase Three until November 6, 2020. On November 5, 2020, the Governor signed [JBE 2020-158](#), which extended Phase Three until December 4, 2020.

On March 2, 2021, the Governor signed [JBE 2021-29](#), which moved Louisiana into a modified Phase Three until March 31, 2021.

As with the original Phase Three, most businesses will operate at 75 percent capacity with social distancing, masks for public-facing employees and increased sanitization.

The major changes under the modified Phase Three are:

- No capacity limit on churches and places of worship.
- Gyms and fitness centers will remain at 50 percent of their capacity.
- Bars in all parishes will be able to open for indoor service at 25 percent capacity, not to exceed 250 people, but those in parishes where the percent positivity is 5 percent or lower for two consecutive weeks may have indoor service at 50 percent capacity, not to exceed 250 people. Alcohol sales still must end at 11:00 p.m. and no one younger than 21 years old can enter a bar.

- Live music will be allowed indoors under additional guidance provided by the State Fire Marshal.
- Indoor gatherings may operate at 50 percent capacity with a cap of 250 people. Outdoor events may operate at 50 percent of their capacity, with no cap on attendance, but six feet of social distancing must be practiced.
- Conventions, conferences, indoor sporting events and fairs and festivals may operate at up to 50 percent capacity with six feet of social distancing required, if they receive approval from the State Fire Marshal and the Louisiana Department of Health.
- Strict masking continues to be required for all gatherings and events.

On March 30, 2021, the Governor signed [JBE 2021-66](#), which extended Phase Three until April 28, 2021, but removes several restrictions from the previous modified Phase Three ([JBE 2021-29](#)).

Major changes in the further modified Phase Three include:

- Lifting occupancy limits on bars, restaurants, salons, gyms, malls and casinos;
- Social distancing and mask mandate requirements remain.

On April 27, 2021, the Governor signed [JBE 2021-79](#), which extended Phase Three until May 26, 2021 but lifted the statewide mask mandate. Individual businesses and local governing authorities may still require masking. On May 25, 2021, the Governor signed [JBE 2021-93](#), which extended Phase Three until June 23, 2021. On June 22, 2021, the Governor signed [JBE 2021-117](#), which extended Phase 3 until July 21, 2021. On July 21, 2021, the Governor signed [JBE 2021-131](#), which extended Phase 3 until August 11, 2021. On August 2, 2021, the Governor signed [JBE 2021-137](#) which extended Phase Three and reinstated the state-wide mask mandate when indoors in any place outside of a private residence regardless of vaccination status until September 1, 2021. The following exceptions apply:

1. Individuals who will not come in contact with any other individual (outside of their immediate household members) or who will be able to maintain strict social distancing of six feet apart from any other individual (outside of their immediate household members);
2. Any child under the age of five not enrolled in a kindergarten program (although children between the ages of two and five are encouraged to wear face coverings);
3. Any individual with a medical condition that prevents the wearing of a face covering;
4. Any individual who is consuming food or drinks;
5. Any individual seeing to communicate with someone who has or is suspected of having a communication disorder;
6. Any individual giving a speech for broadcast or to an audience;

7. Any individual temporarily removing his or her face covering for identification purposes;
8. Any athlete participating in organized athletic activities.

On August 31, 2021, the Governor signed [JBE 2021-167](#), which extended Phase Three, including the mask mandate, until September 29, 2021. On September 28, 2021, the Governor signed [JBE 2021-181](#), which extended Phase Three, including the mask mandate, until October 27, 2021. On October 26, 2021, the Governor signed [JBE 2021-203](#), which extended Phase Three until November 24, 2021 but removed the mask mandate except for public schools grades K through 12. On November 23, 2021, the Governor signed [JBE 2021-219](#), which extended Phase Three until December 22, 2021. On December 21, 2021, the Governor signed [JBE 2021-234](#), which extended Phase Three until January 19, 2022 and authorized agency and department heads of all offices of the State to implement a face covering policy, which may include a face covering requirement for employees and/or members of the public. On January 19, 2022, the Governor signed [JBE 2022-6](#), which extends Phase Three as modified by [JBE 2021-234](#), until February 16, 2022. On February 15, 2022, the Governor signed [JBE 2022-17](#), which extended Phase Three until March 16, 2022, without required mitigation measures. While there is no statewide mask mandate, there are still federal regulations requiring them in health care settings and on transit. In addition, local governments, school districts, and businesses may choose to require masks as they see fit, based on the level of COVID in their communities. [JBE 2022-17](#) was allowed to expire without the Governor renewing it. Therefore, the statewide public health emergency related to COVID-19 ended on March 16, 2022.

Q.112. What are the provisions of 118-JBE-2020 for Phase Three of “Roadmap to a Resilient Louisiana?”

- A.112.** [JBE 2020-118](#), signed on September 10, 2020, renews legal and administrative extensions as provided in [JBE 2020-111](#) including the suspension of provisions of the Public Bid Law and Procurement Code **when necessary to respond to** the COVID-19 public health emergency. On October 8, 2020, the Governor signed [JBE 2020-135](#), which renewed these extensions and suspensions until November 6, 2020. On November 5, 2020, the Governor signed [JBE 2020-159](#), which renewed these extensions and suspensions until December 4, 2020. On December 4, 2020, the Governor signed [JBE 2020-174](#), which renewed these extensions and suspensions until December 23, 2020. On December 22, 2020, the Governor signed [JBE 2020-210](#), which renewed these extensions and suspensions until January 13, 2021. On January 12, 2021, the Governor signed [JBE 2021-7](#), which renewed these extensions and suspensions until February 10, 2021; extended until March 3, 2021 when the Governor signed [JBE 2021-18](#) (signed on February 10, 2021); extended until March 31, 2021, when the Governor signed [JBE 2021-30](#) (signed on March 2, 2021); extended until April 28, 2021, when the Governor signed [JBE 2021-67](#) (signed on March 30, 2021); extended until May 26, 2021, when the Governor signed [JBE 2021-80](#) (signed on April 27, 2021); extended until June 23, 2021 when the Governor signed [JBE 2021-94](#) (signed May 25, 2021); extended until July 21, 2021, when the Governor signed [JBE 2021-118](#) (signed June 22, 2021); extended until August 11, 2021, when the Governor signed [JBE 2021-132](#) (signed July 21, 2021);

extended until September 1, 2021, when the Governor signed [JBE 2021-145](#) (signed August 6, 2021); extended until September 29, 2021, when the Governor signed [JBE 2021-168](#) (signed August 31, 2021) extended to October 27, 2021, when the Governor signed [JBE 2021-182](#) (signed September 28, 2021), extended to November 24, 2021, when the Governor signed [JBE 2021-204](#), extended to December 22, 2021, when the Governor signed [JBE 2021-220](#) (signed November 23, 2021), extended to January 19, 2022, when the Governor signed [JBE 2021-235](#) (signed December 21, 2021), extended to February 16, 2022, when the Governor signed [JBE 2022-7](#) (signed January 19, 2022), and extended to March 16, 2022, when the Governor signed [JBE 2022-18](#) (signed February 15, 2022). [JBE 2022-18](#) was allowed to expire without the Governor renewing it. Therefore, the statewide public health emergency related to COVID-19 ended on March 16, 2022.

Q.113. What are the provisions of 168-JBE-2020 for Modified Phase Two of “Roadmap to a Resilient Louisiana?”

A.113. [JBE 2020-168](#), signed on November 24, 2020, moves Louisiana back into a modified Phase Two until December 23, 2020, extended until January 13, 2021, with [JBE 2020-209](#), signed on December 22, 2020, extended until February 10, 2021 with [JBE 2021-6](#), signed on January 12, 2021, and extended until March 3, 2021, with [JBE 2021-17](#).

Major changes to Louisiana’s COVID-19 restrictions during Modified Phase Two include the below:

- All Louisianans are encouraged to avoid gatherings of individuals not part of their households.
- All businesses, private and public sectors, are encouraged to use remote work where they can.
- All restaurants are limited to 50% of their indoor capacity. Restaurants should move as much dining outdoors as they can. Social distancing is required.
- For bars in parishes above 5% positivity, bars are closed to indoor sales and consumption but open for outdoor consumption at tables only and at 25% capacity, with a maximum of 50 people. Social distancing is required. Take-out and delivery will still be available.
- Retail businesses at 50% capacity, except for essential businesses, as defined by federal guidance from the Cybersecurity and Infrastructure Security Agency.
- Gyms may be open at 50% of their capacity.
- Places of worship will remain at a maximum of 75% of their capacity or the number of people who can physically distance with at least six feet between each immediate household. The State Fire Marshal will put out additional COVID mitigation measures to make services safer.
- Barber and beauty shops, and nail salons may open at 50% of their capacity.
- Movie theaters may open at 50% of their capacity.

- Indoor gatherings at event/receptions centers are limited to 25% capacity or up to 75 individuals.
- Outdoor gatherings at event/reception centers are limited to 25% capacity or up to 150 individuals when strict physical distancing is not possible.
- All sporting events will be capped at 25% capacity.
- Louisiana's statewide mask mandate remains in place.

O. School Reopening and Virtual Learning Expenses

Q.114. Do school boards have the authority to expend funds to provide computers, Internet services and equipment necessary for such services to students within its system who remain home due to the COVID-19 public health emergency?

A.114. In [AG Op. No. 20-0077](#), the Attorney General opines that school boards do have the authority to expend funds to provide computers, Internet services and equipment necessary for such services to students within its system who remain home due to the COVID-19 public health emergency provided the school board is able to demonstrate that the purchase of the equipment and Internet services for its students will deliver a benefit generally commensurate with the expenditure of funds. Additionally, the Attorney General notes that the school system will be required by R.S. 17:100.7 to adopt a policy for the use of equipment and Wi-Fi access in conformity with the statutory requirements and must utilize both device-based and Internet service provider technology that limits the use of the system to educational purposes as described in the statute and that blocks access to harmful materials.

This guidance is based on the LLA's Legal section's interpretation of the various COVID-19 related laws and proclamations. Further questions may be directed to 225.339.3871. However, this guidance is not a substitute for legal advice. No actions should be taken by a public entity without consultation with their attorney and/or the Attorney General.