



American Rescue Plan Act

SUMMARY OF US TREASURY FINAL RULE AND FAQS FOR THE CORONAVIRUS STATE & LOCAL FISCAL RECOVERY FUND

The Coronavirus State and Local Fiscal Recovery Funds (SLFRF), a part of the American Rescue Plan, delivers \$350 billion to state, local, and Tribal governments across the country to support their response to and recovery from the COVID-19 public health emergency.

State of Louisiana received \$3 billion

Parishes & Municipalities received \$2 billion

Municipalities with less than 50,000 population received \$315 million

Under the SLFRF program, funds must be used for costs incurred on or after March 3, 2021 (with certain exceptions including retroactive premium pay and assistance to households).

Funds must be obligated by December 31, 2024, and expended by December 31, 2026. This time period, during which recipients can expend SLFRF funds, is the “period of performance.” Funds are not subject to the Cash Management Rule (i.e., recipients may keep interest earned on funds and the interest does not need to be used for an “eligible use”).

Interim Final Rule

In May 2021, Treasury published the Interim Final Rule (IFR), effective upon publication, describing eligible and ineligible uses of funds (as well as other program provisions), sought feedback from the public on these program rules, and began to distribute funds. Treasury also issued FAQs for the IFR, which were updated several times.

Final Rule

On January 6, 2022, Treasury published the Final Rule, with an effective date of April 1, 2022. Until that time, the IFR remained in effect. However, recipients were allowed to choose to take advantage of the Final Rule’s flexibilities and simplifications ahead of the effective date. Treasury stated it will not take action to enforce the IFR to the extent that a use of funds is consistent with the terms of the Final Rule, regardless of when the SLFRF funds were used.

On April 27, 2022, Treasury issued FAQs for the Final Rule, updating several questions and adding new ones to correspond with the Final Rule.

The Final Rule made several key changes and clarifications from the IFR as follows:

1. Replacing Lost Public Sector Revenue

- Recipients may now determine their revenue loss by choosing between two options:
 - A standard allowance of up to \$10 million in aggregate, not to exceed their award amount, during the program;
 - This option cannot exceed their total award but may be their full award;
 - This option allows for streamlined reporting.

- Calculating their jurisdiction's specific revenue loss each year using Treasury's formula, which compares actual revenue to a counterfactual trend.
 - Recipients may now choose to perform a calculation at the end of the calendar or fiscal year.
- Once choice is made, recipients cannot switch to the other option.
- Regardless of which option is chosen, recipients may use funds up to the amount of revenue loss for government services. Generally, services traditionally provided by recipient governments are considered government services, unless Treasury has stated otherwise.

2. Premium Pay

The Final Rule delivers more streamlined options to provide premium pay, by broadening the share of eligible workers who can receive premium pay without a written justification. Focus on lower-income and frontline workers performing essential work is maintained.

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.

Eligible worker is:

- Needed to maintain continuity of operations of essential critical infrastructure sectors;
- Performs essential work involving regular in-person interactions with patients, public, or coworkers *or* regularly physically handles items handled by patients, public or coworkers.
 - Teleworking does not count.
- Below a wage threshold (wages with premium pay is at or below 150% of the greater of the state or parish average annual wage for all occupations) *or* is non-exempt from the Fair Labor Standards Act overtime provisions,
 - If neither of the above two apply, the recipient must submit written justification to Treasury that the premium pay is responsive to workers performing essential work.

Treasury encourages premium pay be given to essential workers retroactive to the beginning of the pandemic (March 1, 2020).

- [AG Op No. 21-0107](#): public entity may grant retroactive premium pay to its essential critical infrastructure employees for past performance of a quantifiable amount of essential work provided the entity determines the pay meets the Cabela's test and adheres to Treasury Rule.

- [AG Op No. 21-0101](#): it is the Attorney General’s opinion that elected officials, such as a mayor or council member, would not be considered essential workers under Treasury Rule, and therefore not eligible for retroactive premium pay. The Attorney General notes, however, that the US Department of Treasury is the ultimate arbiter of whether a local government has used ARPA Fiscal Recovery Funds properly.
- The Attorney General distinguishes [AG Op. No. 21-0101](#) concerning the eligibility of mayors and council members to receive retroactive premium pay from an elected police chief or city marshal due to the first responder nature of their job duties. Unlike the case with mayors and council members, the Attorney General opines that the question of whether 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.

3. Response to Public Health and Negative Economic Impacts

Final Rule clarifies that, in addition to programs and services, recipients can use funds for capital expenditures that support an eligible COVID-19 public health or economic response. For example, recipients may build certain affordable housing, childcare facilities, schools, hospitals, and other projects consistent with Final Rule requirements.

In order to provide simple and clear eligible uses of funds, the Final Rule provides a list of enumerated uses that recipients can provide to households, populations, or classes (i.e., groups) that experienced pandemic impacts.

- Public health eligible uses include COVID-19 mitigation and prevention, medical expenses, behavioral healthcare, and preventing and responding to violence.
- Eligible uses to respond to negative economic impacts are organized by the type of beneficiary: assistance to households, small businesses, and nonprofits.
 - Each category includes assistance for “impacted” and “disproportionately impacted” classes: impacted classes experienced the general, broad-based impacts of the pandemic, while disproportionately impacted classes faced meaningfully more severe impacts, often due to preexisting disparities.
 - To simplify administration, the Final Rule presumes that some populations and groups were impacted or disproportionately impacted and are eligible for responsive services.
 - Allows recipients to provide responses to a broad set of households and entities without requiring additional analysis.

- Final Rule provides a broader set of uses available for these communities as part of COVID- 19 public health and economic response, including making affordable housing, childcare, early learning, and services to address learning loss during the pandemic eligible in all impacted communities and making certain community development and neighborhood revitalization activities eligible for disproportionately impacted communities.
- Recipients can also identify (1) other populations or groups, beyond those presumed eligible, that experienced pandemic impacts or disproportionate impacts and (2) other programs, services, or capital expenditures, beyond those enumerated, to respond to those impacts.
- Final Rule allows for a broader set of uses to restore and support government employment, including hiring above a recipient’s pre-pandemic baseline, providing funds to employees that experienced pay cuts or furloughs, avoiding layoffs, and providing retention incentives.
 - FAQs to Final Rule clarify that this includes transfers to special-purpose entities/districts for the purpose of directly benefitting the entity as a result of the entity experiencing a public health impact or negative economic impact of the pandemic.
- Recipients can also provide assistance to impacted industries like travel, tourism, and hospitality that faced substantial pandemic impacts.
- Final Rule allows funds to be used to make loans to support an “eligible use” as long as the loan is obligated by December 31, 2024 and expended by December 31, 2026. Repayment on such loans are subject to program income rules.
 - If funds used for the loan represent “lost revenue,” the loaned funds are considered to be expended at the point of disbursement, whether or not the maturity of the loan is after December 31, 2026, and repayment of such loans are not subject to program income rules.

4. Water, Sewer & Broadband Infrastructure

The Final Rule significantly broadens eligible broadband infrastructure investments to address challenges with broadband access, affordability, and reliability, and adds additional eligible water and sewer infrastructure investments, including a broader range of lead remediation and stormwater management projects.

- Recipients may fund a broad range of water and sewer projects, including those eligible under the EPA’s Clean Water State Revolving Fund, EPA’s Drinking Water State Revolving Fund, and certain additional projects, including a wide set of lead remediation, stormwater infrastructure, and aid for private wells and septic units.

- Recipients may fund high-speed broadband infrastructure in areas of need that the recipient identifies, such as areas without access to adequate speeds, affordable options, or where connections are inconsistent or unreliable; completed projects must participate in a low-income subsidy program.

Ineligible Uses

For states and territories: No offsets of a reduction in net tax revenue resulting from a change in state or territory law.

For all recipients except for Tribal governments: No extraordinary contributions to a pension fund for the purpose of reducing an accrued, unfunded liability.

For all recipients: No payments for debt service and replenishments of rainy day funds; no satisfaction of settlements and judgments; no uses that contravene or violate the American Rescue Plan Act, Uniform Guidance conflicts of interest requirements, and other federal, state, and local laws and regulations.

Non-Federal Matching Funds: Final Rule made a significant change regarding use of funds for non-federal match for Federal grant programs. Now, to the extent the funds represent “lost revenue” they can be used as the recipient’s non-federal match for other Federal programs as long as the funding agency has not received a waiver. For example, funds may not be used for Medicaid non-federal match, but may be used for FEMA non-federal match. Recipients should confirm with the funding agency when seeking to use SLFRF funds as non-federal match for other programs.

ARPA Flex

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 Recover 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.

Links:

Final Rule: <https://www.govinfo.gov/content/pkg/FR-2022-01-27/pdf/2022-00292.pdf>

Final Rule FAQs <https://home.treasury.gov/system/files/136/SLFRF-Final-Rule-FAQ.pdf>