

# US Department of Treasury

## American Rescue Plan

### Coronavirus State and Local Fiscal Recovery Funds

#### Final Rule Frequently Asked Questions as of 7/27/22

The US Department of Treasury (Treasury) released additional and updated answers to frequently asked questions (FAQ) relating to the Final Rule (effective April 1, 2022) implementing the Coronavirus State and Local Fiscal Recovery Fund (SLFRF or FRF) on July 27, 2022. Highlights from the most recent FAQ document are summarized below.

#### Standard Allowance

- Recipients may update their revenue loss election, as appropriate, in future reporting cycles through the April 2023 reporting period. Upon update, any prior revenue loss election will be superseded.
  - For example, if a recipient previously elected to calculate revenue loss in their P&E Report due April 30, 2022, and would like to update their election, Treasury's reporting portal will allow the recipient to supersede their prior election in future reporting cycles and instead take the standard allowance.
  - Recipients who previously elected the standard allowance and would like to supersede their prior election and instead calculate revenue loss may also update their election in future reporting cycles.
  - Recipients are still required to employ a consistent methodology across the period of performance (i.e., choose either the standard allowance or the full formula). They may not elect one approach for certain reporting years and the other approach for different reporting years.
  - Recipients will not be able to change their revenue loss election after April 30, 2023.

#### Uniform Guidance

- Compliance and reporting requirements which apply to subrecipients and beneficiaries can be found in the Guidance on page 11. Subrecipients are required to comply with all of the restrictions applicable to recipients, including audit requirements under the Single Audit Act. Beneficiaries are not subject to these requirements.
- Payments to individuals who are beneficiaries should not be identified in the P&E Report. Those funds must be reported in the aggregate in the "Payments to Individuals" section.
- Information on both beneficiaries and subrecipients will be collected in a single form in the P&E Report.
- In all cases, NEUs must follow state and local laws as well as the recipient's own established practices and policies for incurring costs, and SLFRF should be expended and accounted for in accordance with State and local laws and procedures which they utilize for their own funds.

*Uniform Guidance and Revenue Replacement*

- Recipients are required to follow Subparts A (Acronyms and Definitions), B (General Provisions), C (Pre-Award Federal Requirements and Contents of Federal Awards), and F (Audit Requirements) of the Uniform Guidance for expenses categorized under Expenditure Category 6 “Revenue Replacement.”
  - Treasury reminds recipients that they must follow state and local laws as well as the recipient’s own established practices and policies for incurring costs, and SLFRF should be expended and accounted for in accordance with State and local laws and procedures which they utilize for their own funds.
- Treasury has determined that there are no subawards under the Expenditure Category 6.1 “Revenue Replacement.” As such, recipients’ use of revenue replacement funds does not give rise to any subrecipient relationships.
- While Recipients will enter general information, in narrative form, about how Revenue Loss funds will be used for government services, Treasury does not require project-level details.
- Only portions of Subparts D and E apply to Revenue Loss funds.
- The following Uniform Guidance provision sections DO NOT apply to Revenue Loss funds (although all relevant state and local laws apply, and any municipal standard policies and procedures should still be followed):
  - Procurement
  - Program Income
  - Equipment - Use and Disposition
  - Property Standards
  - Subrecipient Monitoring
- Recipients’ use of revenue replacement funds remains subject to the other applicable requirements of the SLFRF program, including the deadlines for obligations and expenditures.
- The program income requirements of 2 CFR 200.307 do not apply to projects funded under revenue loss category. As such, recipients may retain program income, which will not be considered an addition to the federal award.

*Use and Disposition Requirements*

- Use and Disposition Requirements DO NOT apply to Revenue Loss funds.
- SLFRF funds may be used to acquire real and personal property, supplies, and equipment.
- Except for property, supplies, or equipment acquired using revenue loss funds, recipients must follow the applicable provisions of the Uniform Guidance regarding property standards (2 CFR 200.310-316).
- During the period of performance, a recipient may use property, supplies, or equipment purchased or improved with SLFRF funds for a purpose other than the purpose for which it was purchased or improved if such other purpose is also consistent with the eligible use requirements.
- If a recipient changes the use of an asset to an ineligible use or sells the asset prior to the end of the period of performance, then the recipient must follow the disposition procedures in the Uniform Guidance. See 2 CFR 200.311, 200.313, 200.314, and 200.315.

- After the period of performance, the property, supplies, or equipment must be used consistent with the purpose for which it was purchased or improved or for any other eligible purpose in the same category as the purpose reported to Treasury as of the final reporting period.<sup>1</sup>

#### **Definition of ‘Obligation’**

- Treasury has further refined its definition of obligation under SLFRF. An obligation means “an order placed for property and services and entering into contracts, subawards, and similar transactions that require payment.” Treasury recognizes that recipients may obligate funds through means other than contracts or subawards, for example in the case of payroll costs. In these circumstances, recipients must follow state or local law and their own established practices and policies regarding when they are considered to have incurred an obligation and how those obligations are documented.
  - For example, a recipient may have incurred an obligation even though the recipient and its employee may not have entered into an employment contract.

#### **Water, Sewer, and Broadband Infrastructure**

- Awards made under the SLFRF program are not subject to the Buy America Preference requirements set forth in section 70914 of the Build America, Buy America Act of the Infrastructure Investment and Jobs Act.
  - If an eligible SLFRF infrastructure project is funded in conjunction with another federal funding source that is subject to the Buy American Preference requirements, then the project is subject to these requirements.
- Awards made under the SLFRF program are not subject to Section 106 of the National Historic Preservation Act (NHPA) including funds expended under the revenue loss, public health and negative economic impacts, and water, sewer, and broadband infrastructure eligible use categories.
  - SLFRF projects may still be subject to Section 106 of the NHPA if they involve participation or funding from other federal agencies or financial assistance programs, or are subject to receipt of approvals from other federal agencies.
- The replacement or placement of utility poles is eligible when it is directly related to or part of an eligible SLFRF infrastructure project. If the only purpose of the project is to pay for the replacement or placement of utility poles, it is not eligible under the water, sewer, broadband infrastructure category.

#### **Affordable Housing**

- Treasury continues to strongly encourage the use of SLFRF for affordable housing.
- Recipients’ affordable housing projects may use either of the following two presumptions to determine if a project is eligible.
  - Any project that is eligible under any of the following federal programs is an eligible use of SLFRF:
    - The National Housing Trust Fund (HTF, administered by HUD)
    - The Home Investment Partnerships Program (HOME, administered by HUD)

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<sup>1</sup> For a full list of Categories and Use Requirements, see pages 56 of the [SLFRF FAQ](#).

- o The Low-Income Housing Tax Credit (administered by Treasury)
- o The Public Housing Capital Fund (administered by HUD)
- o Section 202 Supportive Housing for the Elderly Program and Section 811 Supportive Housing for Persons with Disabilities Program (administered by HUD)
- o Project-Based Rental Assistance (PBRA) (administered by HUD)
- o Multifamily Preservation & Revitalization program (administered by USDA)
  - These programs use different income limits than the definitions of low- and moderate-income adopted by the final rule, but Treasury has determined that development of affordable housing consistent with these programs is a related and reasonably proportional response to negative economic impacts of the pandemic.
  - Investment agreements must require the covered project or units to adhere to all applicable local codes, and comply, at a minimum, with the applicable federal housing program's requirements related to resident income restrictions; the period of affordability and related covenant requirements for assisted units; tenant protections; and housing quality standards.
- o Treasury will presume that an investment in the development, repair, or operation of any affordable rental housing unit is an eligible use of funds if the unit has a limited maximum income of 65% area median income (AMI), as imposed through a covenant, land use restriction agreement, or other enforceable legal requirement for a period of at least 20 years. A jurisdiction may choose to establish a longer period of affordability.
  - o This presumption is available even if the project does not align with the federal housing programs specified in Presumption 1.
  - o Under this presumption, recipients may use SLFRF funds as part of the financing for a mixed-income housing project if the total financing made up of SLFRF funds does not exceed the total development costs attributable to affordable housing units limited to households at or below 65% AMI for the affordability period.
    - Because of the highly localized nature of housing costs and the broad use of AMI in affordable housing development, repair, and operation, Presumption 2 requires funded units to be at or below 65% AMI but does not incorporate the 300% FPL level that is also used to define moderate-income households under the final rule.
- Other affordable housing projects may also be eligible if they are related and are reasonably proportional to addressing the negative economic impacts of the pandemic and otherwise meet the final rule's requirements.
- To further support sustainable and durable homeownership, recipients may consider offering down payment assistance, such as through contributions to a homeowner's equity at origination or that establish a post-closing mortgage reserve account on behalf of the borrower that may be utilized to make a missed or partial mortgage payment at any point during the life of the loan.

### *Loans to Fund Affordable Housing*

- Funds may be used to finance certain loans for affordable housing investments, as it is typical for state and local governments to do so and because the features of these loans significantly mitigate concerns about funds being deployed for purposes of recycling funds, potentially for ineligible uses, following the SLFRF program's expenditure deadline.
- Under the "public health and negative economic impacts" eligible use category, recipients may use funds to make loans to finance affordable housing projects, funding the full principal amount of the loan, if the loan and project meet the following requirements:
  - The loan has a term of not less than 20 years;
  - The affordable housing project being financed has an affordability period of not less than 20 years after the project or assisted units are available for occupancy after having received the SLFRF investment; and
  - For loans to finance projects expected to be eligible for a low-income housing credit (LIHTC) under the Internal Revenue Code (the Code),
    - the project owner must agree, as a condition for accepting such a loan, to waive any right to request a qualified contract; and
    - the project owner must agree to repay any loaned funds to the entity that originated the loan at the time the project becomes non-compliant, including if such project ceases to satisfy the requirements to be a qualified low-income housing project (as defined in section 42(g) of the Code) or a qualified residential rental project (as defined in section 142(d) of the Code), or if such project fails to comply with any of the requirements of the extended low-income housing commitment that are described in section 42(h)(6)(B)(i)-(iv) of the Code.
- Loans that fund investments in affordable housing projects may be considered to be expended at the point of disbursement to the borrower, and repayments on such loans are not subject to program income rules.
- Loan modifications are permitted if they do not result in repayment of all or substantially all funds to the lender prior to the end of the affordability period. The start date of the 20-year affordability covenant may conform to the start date of other covenants on the same project or units that are required by another federal or state funding source associated with the project or units.