

FINAL RULE SUMMARY

ARRPA

american rescue plan act





Public Health

In addition to programs and services, the final rule clarifies that recipients may 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 the requirements in this final rule and the Supplementary Information.

In addition, the final rule presumes that an expanded set of households and communities are “impacted” or “disproportionately impacted” by the pandemic, thereby allowing recipients to provide responses to a broad set of households and entities without requiring additional analysis.

Further, the final rule provides a broader set of enumerated eligible uses available for these communities as part of COVID-19 public health and economic response, including making affordable housing, childcare, and early learning 7 services eligible in all impacted communities and making certain community development and neighborhood revitalization activities eligible for disproportionately impacted communities. The final rule also allows for a broader set of uses to restore and support government employment, including hiring above a recipient’s pre-pandemic baseline, providing funds to employees that experienced pay cuts or furloughs, avoiding layoffs, and providing retention incentives.

Eligible Uses

Eligible uses to respond to the public health emergency are organized based on the type of public health problem:

- COVID-19 mitigation and prevention
- Medical expenses
- Behavioral health care
- Preventing and responding to violence

Under this approach, eligible uses to respond to the negative economic impacts of the public health emergency are organized based on the type of beneficiary:

- Assistance to households
- Assistance to small businesses
- Assistance to non-profits, alongside a fourth standalone eligibility category for aid to travel, tourism, hospitality, and other impacted industries

Enumerated Eligible Uses Which Explicitly List Eligible Projects

1. COVID-19 mitigation and prevention
2. Medical expenses
3. Behavioral health care
4. Public health and safety staff
5. Expenses to improve the design and execution of health and public health programs
6. Eligible uses to address disparities in public health outcomes
7. Preventing and responding to violence
 - a. Referrals of trauma recovery services for victims of crime
 - b. Community violence intervention programs
 - i. Evidence-based practices like focused deterrence, with wraparound services such as behavioral therapy, trauma recovery, job training, education, housing and relocation services, and financial assistance
 - c. Communities experiencing increased gun violence due to the pandemic:

- i. Law enforcement officers focused on advancing community policing
- ii. Enforcement efforts to reduce gun violence, including prosecution
- iii. Technology & equipment to support law enforcement response

Capital Expenditures - Justification and Reporting Guidelines

If a project has total capital expenditures of	And the use is enumerated by Treasury as eligible, then	And the use is beyond those enumerated by Treasury as eligible, then
Less than \$1 million	No Written Justification required	No Written Justification required
Greater than or equal to \$1 million, but less than \$10 million	Written Justification required but recipients are not required to submit as part of regular reporting to Treasury	Written Justification required and recipients must submit as part of regular reporting to Treasury
\$10 million or more	Written Justification required and recipients must submit as part of regular reporting to Treasury	

Modifications/Clarifications to Capital Expenditures in the Final Rule

“Reasonably proportional” refers to the scale of the response compared to the scale of the harm, as well as the targeting of the response to beneficiaries compared to the amount of harm they experienced. See examples below:

- It may not be reasonably proportional for a cash assistance program to provide a very small amount of aid to a group that experienced severe harm and a much larger amount to a group that experienced relatively little harm. Recipients should consider relevant factors about the harm identified and the response to evaluate whether the response is reasonably proportional.
- Recipients may consider the size of the population impacted and the severity, type, and duration of the impact. Recipients may also consider the efficacy, cost, cost-effectiveness, and time to delivery response.

Additional Restrictions and Requirements

These additional restrictions and requirements that apply across all eligible use categories include:

- No debt service or replenishing financial reserves
 - Since SLFRF funds are intended to be used prospectively, recipients may not use SLFRF funds for debt service or replenishing financial reserves (e.g., rainy day funds)
- No satisfaction of settlements and judgments
 - Satisfaction of any obligation arising under or pursuant to a settlement agreement, judgment, consent decree, or judicially confirmed debt restructuring in a judicial, administrative, or regulatory proceeding is itself not an eligible use. However, if a settlement requires the recipient to provide services or incur other costs that are an eligible use of SLFRF funds, SLFRF may be used for those costs.
- SLFRF funds may not be used for a project that conflicts with or contravenes the purpose of the American Rescue Plan Act statute (e.g., uses of funds that undermine COVID-19 mitigation practices in line with CDC guidance and recommendations) and may not be used in violation of the Award Terms and Conditions or conflict of interest requirements under the Uniform Guidance.
- Other applicable laws and regulations, outside of SLFRF program requirements, may also apply (e.g., laws around procurement, contracting, conflicts-of-interest, environmental standards, or civil rights).



Negative Economic Impacts

Assistance to Households

Modifications/Clarifications in Assistance to Households

Enumerated usage change from “disproportionately impacted” to “impacted”.

Treasury has determined that several enumerated uses included in the interim final rule for disproportionately impacted communities are directly responsive to negative economic impacts experienced by impacted households. In the final rule, these uses have been moved from “disproportionately impacted” to “impacted” households, accordingly, **making these services available to both disproportionately impacted and impacted households.** These uses include:

- Assistance applying for public benefits or services
- Programs or services that address or mitigate the impacts of the COVID-19 public health emergency on childhood health or welfare including
 - childcare
 - early learning services
 - programs to provide home visits, and
 - services for families involved in the child welfare system and foster youth.
- Programs to address the impacts of lost instructional time for students
- 112 and programs or services that address housing insecurity, lack of affordable housing, or homelessness

Services Remaining Eligible for Only Disproportionately Impacted Households

- Remediation of lead paint or other lead hazards
- Housing vouchers and assistance relocating to neighborhoods with higher levels of economic opportunity
- Programs or services that address educational disparities
 - Including assistance to high-poverty school districts to advance equitable funding across districts and geographies and evidence-based services to address the academic, social, emotional, and mental health needs of students

Definition of Low- and Moderate-Income

- **Low Income**
 - Income at or below 185 percent of the Federal Poverty Guidelines (FPG) for the size of its household based on the most recently published poverty guidelines by the Department of Health and Human Services (HHS), OR
 - Income at or below 40 percent of the Area Median Income (AMI) for its county and size of household based on the most recently published data by the Department of Housing and Urban Development (HUD).
- **Moderate Income**
 - Income at or below 300 percent of the FPG for the size of its household based on the most recently published poverty guidelines by HHS
 - Income at or below 65 percent of the AMI for its county and size of household based on the most recently published data by HUD

Recipients may determine whether to measure income levels for specific households or for a geographic area based on the type of service to be provided. Recipients may use the income threshold for a default household size of three if providing services that reach a general geographic area or if doing so would simplify administration of the program to be provided. **A recipient may identify that households in their community with incomes above the final rule threshold for low-income nevertheless experienced disproportionate impacts from the pandemic and provide responsive services.**



Criteria for “Impacted vs. Disproportionately Impacted”

Impacted Households

Treasury will recognize a household as impacted if it otherwise qualifies for any of the following programs:

- Children’s Health Insurance Program (CHIP)
- Childcare Subsidies through the Child Care and Development Fund (CCDF) Program
- Medicaid
- National Housing Trust Fund (HTF), for affordable housing programs only
- Home Investment Partnerships Program (HOME), for affordable housing programs only

Disproportionately Impacted Households

Treasury will recognize a household as disproportionately impacted if it otherwise qualifies for any of the following programs:

- Temporary Assistance for Needy Families (TANF)
- Supplemental Nutrition Assistance Program (SNAP)
- Free and Reduced-Price Lunch (NSLP) and/or School Breakfast (SBP) programs
- Medicare Part D Low-income Subsidies
- Supplemental Security Income (SSI)
- Head Start and/or Early Head Start
- Special Supplemental Nutrition Program for Women, Infants, and Children (WIC)
- Section 8 Vouchers
- Low-Income Home Energy Assistance Program (LIHEAP)
- Pell Grants
- For services to address educational disparities → Treasury will recognize Title I eligible schools as disproportionately impacted and responsive services that support the school generally or support the whole school as eligible

1. Food Assistance

Modifications/Clarifications

- Capital expenditures related to food banks and other facilities primarily dedicate to addressing food insecurity are eligible

2. Emergency Housing Assistance

Modifications/Clarifications

- Services include:
 - Housing stability services that enable eligible households to maintain or obtain housing such as:
 - housing counseling
 - fair housing counseling
 - case management related to housing stability
 - outreach to households at risk of eviction or promotion of housing support programs
 - housing related services for survivors of domestic abuse or human trafficking
 - specialized services for individuals with disabilities or seniors that support their ability to access or maintain housing
 - Legal aid such as:
 - legal services or attorney’s fees related to eviction proceedings and maintaining housing stability
 - court-based eviction prevention or eviction diversion programs
 - and other legal services that help households maintain or obtain housing

113 Treasury also emphasized that recipients may work with court systems, nonprofits, and a wide range of other organizations to implement strategies to support housing stability and prevent evictions.



- Eligible services under this use category include:
 - rent
 - rental arrears
 - utility costs or arrears
 - (e.g., electricity, gas, water and sewer, trash removal, and energy costs, such as fuel oil)
 - reasonable accrued late fees (if not included in rental or utility arrears)
 - mortgage payment assistance
 - financial assistance to allow a homeowner to reinstate a mortgage or to pay other housing-related costs related to a period of forbearance, delinquency, or default, mortgage principal reduction
 - facilitating mortgage interest rate reductions
 - counseling to prevent foreclosure or displacement
 - relocation expenses following eviction or foreclosure
 - (e.g., rental security deposits, application, or screening fees)
- Assistance to households for delinquent property taxes
 - for example, to prevent tax foreclosures on homes
- Recipients may administer utility assistance or address arrears on behalf of households through direct or bulk payments to utility providers to facilitate utility assistance to multiple consumers at once, so long as the payments offset customer balances and therefore aid households.
- Individual-level assistance (e.g., rapid rehousing services) or assistance for groups of individuals (e.g., master leases of hotels, motels, or similar facilities to expand available shelter)
- Transitional shelters (e.g., temporary residences for people experiencing homelessness) are eligible capital expenditures

3. Emergency Assistance for Pressing Needs: Burials, Home Repairs, Weatherization, Or Other Needs

Treasury remained this section of the Interim Final Rule unchanged.

4. Internet Access or Digital Literacy Assistance

Modifications/Clarifications

- Services, which expand internet access without constructing new networks, are an appropriate enumerated eligible use as assistance to households to respond to a negative economic impact, and they are permitted under the final rule.
- Treasury is clarifying that eligible uses under this category can also include a wide range of programs and services to expand internet access and digital literacy, such as subsidies for the cost of internet service, other programs that support adoption of internet service where available, digital literacy programs, or programs that provide devices and equipment to access the internet (e.g., programs that provide equipment like tablets, computers, or routers) to households.
- Subsidies for the cost of internet service, other programs that support adoption of internet service where available, digital literacy programs, or programs that provide devices and equipment to access the internet (e.g., programs that provide equipment like tablets, computers, or routers) to households.

5. Cash Assistance

Treasury remained this section of the Interim Final Rule unchanged.

6. Survivor's Benefits

Treasury remained this section of the Interim Final Rule unchanged.

7. Assistance Accessing or Applying for Public Benefits or Services

Modifications/Clarifications

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- This use is eligible for any impacted household or class of households, not only in disproportionately impacted communities.

8. Promoting Healthy Childhood Environments

Modifications/Clarifications

- These enumerated eligible uses are generally responsive to the negative economic impacts of the pandemic in all communities, not just in disproportionately impacted communities.
- Improvements to or new construction of childcare, daycare, and early learning facilities are eligible capital expenditures.
- Home visiting services as an eligible use for impacted communities, not just disproportionately impacted communities.
- Services to foster youth, including those aging out of the system, and child welfare-involved families may encompass a wide array of financial, educational, child development, or health supports, or other supports necessary, including supports for kinship care.

9. Addressing the Impacts of Lost Instructional Time

Modifications/Clarifications

- Any K-12 student who lost access to in-person instruction for a significant period of time has been impacted by the pandemic and is thus eligible for responsive services.
- In designing services under this eligible use, recipients may wish to reference guidance from the Department of Education on strategies for addressing lost instructional time.
- When providing behavioral health services, recipients may presume that the general public was impacted by the pandemic and provide behavioral health services to members of the general public.

10. Promoting Long-Term Housing Security: Affordable Housing and Homelessness

Modifications/Clarifications

- Affordable housing is not confined to low-income geographies under the interim final rule. **Recipients may identify other populations, households, or geographic areas with disparate impacts of COVID-19 and provide affordable housing services to them.**
- Any projects that would be eligible for funding under either the National Housing Trust Fund (HTF) or the Home Investment Partnerships Program (HOME) are eligible uses of SLFRF funds.
- Homeownership assistance that would be eligible under the Community Development Block Grant (at 24 CFR 507.201(n)) is also an eligible use of SLFRF funds.
- Operating expenses for eligible affordable housing were an eligible use of funds under the interim final rule and the final rule maintains this treatment. This may include capitalized operating reserves.

11. Paid Sick, Medical, or Family Leave

Modifications/Clarifications

- Creating, expanding, or financially supporting paid sick, medical, or family leave programs is an enumerated eligible use of funds.

12. Health Insurance

Modifications/Clarifications

- Programs or services to expand access to health insurance coverage are an enumerated eligible use as assistance to households.



13. Services for the Unbanked and Underbanked

Modifications/Clarifications

- Financial services that facilitate the delivery of federal, state, or local benefits (e.g., Child Tax Credit, Earned Income Tax Credit, tax refunds, or emergency housing or food assistance funds).

Enumerated Eligible Uses for Disproportionately Impacted Households

1. Addressing Health Disparities

Modifications/Clarifications

- Medical equipment and facilities designed to address disparities in public health outcomes are eligible capital expenditures.

2. Housing Vouchers and Assistance Relocating

Treasury remained this section of the Interim Final Rule unchanged

3. Building Strong, Healthy Communities Through Investments in Neighborhoods

Modifications/Clarifications

- Enumerated eligible uses in disproportionately impacted communities for developing neighborhood features that promote improved health and safety outcomes, such as:
 - parks
 - green spaces
 - recreational facilities
 - sidewalks
 - pedestrian safety features like crosswalks
 - projects that increase access to healthy foods
 - streetlights
 - neighborhood cleanup
 - and other projects to revitalize public spaces
- Rehabilitation, renovation, maintenance, or costs to secure vacant or abandoned properties to reduce their negative impact
- Costs associated with acquiring and securing legal title of vacant or abandoned properties and other costs to position the property for current or future productive use
- Removal and remediation of environmental contaminants or hazards from vacant or abandoned properties, when conducted in compliance with applicable environmental laws or regulations
- Demolition or deconstruction of vacant or abandoned buildings (including residential, commercial, or industrial buildings) paired with greening or other lot improvement as part of a strategy for neighborhood revitalization
- Greening or cleanup of vacant lots, as well as other efforts to make vacant lots safer for the surrounding community
- Conversion of vacant or abandoned properties to affordable housing
- Inspection fees and other administrative costs incurred to ensure compliance with applicable environmental laws and regulations for demolition, greening, or other remediation activities

4. Addressing Educational Disparities

Modifications/Clarifications

- Improvements or new construction of schools and other educational facilities or equipment are eligible capital expenditures for disproportionately impacted communities.

Impact to Small Businesses and Non-Profits

Small Businesses Eligible for Assistance

Modifications/Clarifications

- Recipients must identify an economic harm caused or exacerbated by the pandemic on a small business or class of small businesses to provide services that respond. Factors could include:
 - lost revenue or increased costs
 - challenges covering payroll
 - rent or mortgage
 - or other operating costs
 - the capacity of a small business to weather financial hardships
 - and general financial insecurity resulting from the public health emergency.
- Small businesses operating in a QCT can be assumed to have been disproportionately impacted.
- SLFRF funds may be used to make loans, including to small businesses, provided that the loan is an eligible use, and the cost of the loan is tracked and reported in accordance with Treasury’s Compliance and Reporting Guidance. Funds that are unobligated after December 31, 2024, must be returned to Treasury.

Aid to Non-Profits

Modifications/Clarifications

- Recipients may provide direct assistance to nonprofits if the nonprofit has experienced a public health or negative economic impact as a result of the pandemic.
- Direct assistance may take the form of loans, grants, in-kind assistance, technical assistance, or other services.
- Recipient may also identify a class of nonprofits that have been disproportionately impacted by the public health emergency and design and implement a program that responds to the source of that disproportionate impact.
- Nonprofits of all types may be subrecipients.
- Nonprofits that receive direct assistance as beneficiaries are not subrecipients under SLFRF and are therefore not required to comply with SLFRF reporting requirements

Aid to Impacted Industries

Modifications/Clarifications

1. Aid should include assistance to implement COVID-19 mitigation and infection prevention measures, aid to support safe reopening of businesses in these industries, as well as aid for a planned expansion or upgrade of tourism, travel, and hospitality facilities delayed due to the pandemic.
2. To identify other industries comparably impacted to the tourism, travel, and hospitality industries, recipients should undertake a two-step process: identifying an industry and determining whether that industry is comparably impacted:
3. Industries can be identified by broad sectors or sub-industries. Recipients may use NAICS codes if desired. Recipients may also define a constituent industry with greater geographic precision than state or territory wide.
4. Simplified test: An industry is presumed to be impacted if the industry experienced employment loss of at least 8 percent.
5. If simplified test is not met, the recipient can show that the totality of relevant major economic indicators demonstrate that the industry is experiencing comparable or worse economic impacts as the national tourism, travel, and hospitality industries at the time of the publication of the final rule, and that the impacts were generally due to the COVID-19 public health emergency

Emergency Responses Include:

- Aid to mitigate financial hardship due to declines in revenue or profits by supporting payroll costs and compensation of returning employees for lost pay and benefits during the COVID-19 pandemic, as well as support of operations and maintenance of existing equipment and facilities, such as rent, leases, and utilities
- Aid for technical assistance, counseling, and other services to assist with business planning needs
- Aid to implement COVID-19 mitigation and infection prevention measures, such as vaccination or testing programs, is broadly eligible for many types of entities, including travel, tourism, hospitality, and other impacted industries.

Recipients providing aid to impacted industries for COVID-19 public health measures should review the section Assistance to Businesses to Implement COVID-19 Strategies in Public Health, which describes types of eligible uses of funds in this category.



Premium Pay

“Premium pay is designed to compensate workers that, by virtue of their employment, were forced to take on additional burdens and make great personal sacrifices as a result of the COVID-19 pandemic. Premium pay can be thought of as hazard pay by another name...designed to address the disparity between the critical services provided by and the risks taken by essential workers and the relatively low compensation they tend to receive.”

The final rule broadens the share of essential workers who can receive premium pay without a written justification while still maintaining a focus on lower-income and frontline essential workers. This final rule also established minor changes to important definitions that allow recipients to tailor their premium pay programs to meet their needs while also ensuring that the programs focus on sectors where workers were forced to take substantial risk as a result of the COVID-19 pandemic.

Interim Final Rule vs Final Rule

Interim Final Rule

- Established a three-part framework for recipients interested in using SLFRF funds for premium pay
- To receive premium pay:
 - One must be an eligible worker
 - Eligible worker must also perform essential work
 - Premium pay must respond to workers performing essential work during the COVID-19 public health emergency
- **Eligible worker** is defined as “those workers needed to maintain continuity of operations of essential critical infrastructure sectors and additional sectors as each Governor of a State or territory, or each Tribal government, may designate as critical to protect the health and well-being of the residents of their State, territory, or Tribal government...the chief executive of each recipient has discretion to add additional sectors to this list, so long as additional sectors are deemed critical to protect the health and well-being of residents of such jurisdiction”
 - List of industries recognized as **essential critical infrastructure sectors**
 - Healthcare (staff at nursing homes, hospitals, and home care settings)
 - Public health and safety
 - Childcare
 - Education
 - Sanitation (janitors and sanitation workers)
 - Transportation (truck drivers, transit staff, and warehouse workers)
 - Food production and services (workers at farms, food production facilities, grocery stores, and restaurants)

- Social Service and human services staff
- **Essential work** as defined in the interim final rule:
 - Work is not performed while teleworking from a residence
 - Involves either (a) regular, in-person interactions with patients, the public, or co-workers of the individual that is performing the work or (b) regular physical handling of items that were handled by, or are to be handled by, patients, the public, or co-workers of the individual that is performing the work
- **Establishing Premium Pay (“Responds To”)**
 - The interim final rule required that premium pay programs “respond to” eligible workers performing essential work during the COVID-19 public health emergency if it prioritizes low- and moderate- income individuals. The level of the award limit in the ARPA– up to \$13 per hour not to exceed \$25,000 in aggregate– supports this reasoning.
 - Written justification was required for how premium pay to certain higher-income workers responds to eligible workers performing essential work
 - If a recipient (or grantee) used SLFRF funds to provide premium pay to an employee and the pay or grant would increase a worker’s total pay above 150% of their residing state or county’s average annual wage for all occupations on an annual basis, then the recipient must provide, whether for themselves or on behalf of a grantee, written justification to Treasury detailing how the award responds to eligible workers performing essential work.
- **Defining Premium Pay**
 - The interim final rule incorporated the statute definition of premium pay, “an amount of up to \$13 per hour..., in addition to wages or remuneration the eligible worker otherwise receives, for all work performed by the eligible worker during the COVID-19 public health emergency. Such amount may not exceed \$25,000 with respect to any single eligible worker” and also emphasized that premium pay should be in addition to compensation typically received.

Final Rule

Eligible Worker

Treasury will preserve the definition of “eligible worker” that was defined in the interim final rule with minor modifications to clarify that all public employees of recipient governments are already included in that original definition of “eligible worker.”

- Modifications/Clarifications to the definition of “eligible worker”
 - The chief executive’s discretion to designate additional sectors as critical relates only to “non-public” sectors, since all public employees of recipient governments are already included in the definition of “eligible worker”

Essential Work

- Treasury is maintaining the definition of “essential work” without modifications.
- Treasury will also not define “regular” with regard to in-person interactions, which will allow recipients to develop programs based on the specific workforce to be served and local circumstances.

Essential Critical Infrastructure Sectors

Treasury is aware that the list of critical infrastructure sectors includes both occupations and sectors. If recipients are uncertain of which occupations are included in a critical infrastructure sector, may consult government occupational classifications if helpful but are not required to do so. Recipient governments do not need to submit to Treasury for approval its designation of a sector as essential critical infrastructure.



When a recipient is unsure if a non-public sector is covered by the definition in the final rule, it is the chief executive (or equivalent) of a recipient government that may identify the non-public sector as critical as long as the chief executive deems the non-public sector necessary to protecting the health and wellbeing of residents.

- Modifications/Clarifications to the definition of “essential critical infrastructure sectors”
 - Work performed by an employee of a Tribal government includes an employee of a Tribal enterprise
 - A recipient may qualify other non-public sectors as essential critical infrastructure

Establishing Premium Pay (“Responds To”)

The final rule makes some modifications to the determination of when premium pay “responds to” eligible workers performing essential work during the public health emergency.

The two means of establishing premium pay in response to workers performing essential work (if either the workers’ pay was below a wage threshold or, if the pay was above a wage threshold, the recipient submitted written justification to Treasury explaining how the premium pay was responsive) will be kept but an additional means of demonstrating that premium pay is responsive has also been added.

- Modifications/Clarifications to establishing premium pay (“responds to”)
 - Now a recipient may also show that premium pay is responsive by demonstrating that the eligible worker receiving premium pay is not exempt from the Fair Labor Standards Act (FLSA) overtime provisions.

This change expands the number of workers that are eligible to receive premium pay and does not require recipients to provide written justification to Treasury regarding the workers who are not exempt from the FLSA overtime provisions, making the program easier to administer for recipients.

To simplify this information → premium pay is responsive to eligible workers performing essential work during the public health emergency if each eligible worker who receives premium pay falls into one of three categories:

1. The worker’s pay is below the wage threshold,
2. The worker is not exempt from the FLSA overtime provisions,
3. The recipient has submitted a written justification* to Treasury (only necessary if the worker’s pay (with or without the premium) exceeds the threshold, and the worker is exempt from the FLSA overtime provisions)

A worker’s pay exceeds the threshold if → either the premium pay increases the worker’s total pay above the wage threshold or the worker’s total pay was already above the threshold before receiving premium pay.

*Written justification – a brief, written narrative justification of how the premium pay or grant is responsive to workers performing essential work during the public health emergency

- For example, this could include a description of the essential workers’ duties, health or financial risks faced due to COVID-19, and why the recipient determined that the premium pay was responsive despite the workers’ higher income
- Treasury anticipates that recipients will easily be able to satisfy the justification requirement for front-line workers, like nurses and hospital staff

Defining Premium Pay

The definition of premium pay will stay the same for “premium pay” in the final rule, but clarifications are provided by Treasury.

- Modifications/Clarifications to defining premium pay
 - \$25,000 per employee limit is for the entire period of performance, not an annual cap

- Recipients have discretion with respect to the way in which premium pay is awarded to eligible workers (e.g., monthly, quarterly, lump sum), provided that the total premium pay awarded to any eligible worker does not exceed \$13/hour or \$25,000 over the period of performance
- A recipient may award premium pay to an eligible worker in addition to the overtime pay already earned by the eligible worker but in no instance may the portion of the compensation funded with SLFRF funds exceed \$13/hour, even if strict time-and-a-half calculation requires more.
 - To the extent that an employer is required under the FLSA to make payments to an eligible worker in excess of \$13/hour or \$25,000 in the aggregate over the period of performance, the employer must use a source of funding other than the SLFRF funds to satisfy these obligations.

Program Structure and Eligible Workers

The final rule states that recipients may award premium pay to:

- Non-hourly employees
- Salaried employees
- Part-time workers

Premium pay may NOT be awarded to:

- Volunteers

Premium pay may be awarded retroactively; however, SLFRF funds may not be used to reimburse a recipient or eligible employer grantee for premium pay or hazard pay already received by the employee. To make retroactive premium payments funded with SLFRF funds, a recipient or eligible employer grantee must make a new cash outlay for the premium payments and the payments must be in addition to any wages or remuneration the eligible worker already received, subject to other requirements and limitations.

“Eligible workers” is defined by ARPA as “workers needed to maintain continuity of operations of essential critical infrastructure sectors and additional sectors as each...[government] may designate as critical to protect the health and wellbeing of [its] residents”

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| <ul style="list-style-type: none"> • Health care • Emergency response <ul style="list-style-type: none"> ○ Sanitation ○ Disinfection ○ Cleaning • Maintenance Work <ul style="list-style-type: none"> ○ Grocery stores ○ Restaurants ○ Food production ○ Food delivery • Education <ul style="list-style-type: none"> ○ Educational work ○ School nutrition work | <ul style="list-style-type: none"> ○ Other work required to operate a school facility • Pharmacy • Biomedical research • Behavioral health work • Medical Testing and Diagnostics • Family of childcare • Social services work • Public health work • Vital services to Tribes • Laundry work • Elections work |
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- Home- and Community-based health care or assistance with activities of daily living
- Any work performed by an employee of a State, local, or Tribal government
- Solid waste or hazardous materials management, response, and cleanup
- Work requiring physical interaction with patients
- Dental care work
- Transportation and warehousing
- Work at hotel and commercial lodging facilities that are used for COVID-19 mitigation and containment
- Work in a mortuary
- Work in critical clinical research, development, and testing necessary for COVID-19 response

Important Definitions for Premium Pay

1. **Eligible Employer** – an employer of an eligible worker who performs essential work
2. **Eligible Workers** – workers needed to maintain continuity of operations of essential critical infrastructure sectors and additional sectors as each...[government] may designate as critical to protect the health and wellbeing of [its] residents
3. **Essential work**
 - Is not performed while teleworking from a residence; and
 - Involves
 1. Regular in-person interactions with patients, the public, or coworkers of the individual that is performing the work; or
 2. Regular physical handling of items that were handled by, or are to be handled by patients, the public, or coworkers of the individual that is performing the work
4. **Premium Pay** – an amount of up to \$13/hour that is paid to an eligible worker, in addition to wages or remuneration the eligible worker otherwise receives, for all work performed by the eligible worker during the COVID-19 public health emergency.

Summary of Premium Pay per the Final Rule

“Per the ARPA statute, recipients have broad latitude to designate critical infrastructure sectors and make grants to third-party employers for the purpose of providing premium pay. While the final rule provides significant flexibility to implement the statutory requirement that premium pay respond to essential workers, it requires recipients give written justification in the case that premium pay would increase a worker’s annual pay above a certain threshold or is awarded to an individual whose annual pay is already above that threshold. To set this threshold, Treasury analyzed data from the Bureau of Labor Statistics to determine a level that would not require further justification for premium pay to the vast majority of essential workers, while requiring higher scrutiny for provision of premium pay to higher earners who, even without premium pay, would likely have greater personal financial resources to cope with the effects of the pandemic. Alternatively, a recipient need not submit written justification to Treasury if the worker receiving premium pay is eligible for overtime under the FLSA. Treasury believes this alternative, which is an addition to the final rule, will give recipients more flexibility and will simplify application of the final rule as employers, public and private, are already legally required to determine whether an employee is eligible for overtime pay under the FLSA. Treasury believes the threshold and overtime eligibility provision in the final rule strike the appropriate balance between preserving flexibility and helping encourage use of these resources to help those in greatest need. The final rule also requires that workers eligible for premium pay have regular in-person interactions or regular physical handling of items that were also handled by others. This requirement will help encourage use of financial resources for those who have endured the heightened risk of performing essential work.”



Infrastructure

The final rule broadens infrastructure investments to address challenges with broadband access, affordability, and reliability.

Interim Final Rule vs Final Rule

Interim Final Rule

The Interim Final Rule specified eligibility of projects aligning with the Clean Water State Revolving Fund and Drinking Water State Revolving Fund eligibility criteria, as well as broadband projects exclusively providing middle/last mile connectivity.

Final Rule

In the final rule, funding may be used for 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.

Important to Note

- SLFRF may be used to meet the non-federal match requirements of any authorized Bureau of Reclamation projects.
- SLFRF may be used to meet the non-federal match requirements of the broadband infrastructure program
- Revenue reduction amount can be used to meet the non-federal cost-share or matching requirements of other federal programs
- City/Counties may also request a waiver of cost-share requirements from the Office of Management and Budget
 - Recipient should first confirm with the relevant awarding agency that no waiver has been granted for that program, that no other circumstances enumerated under 2CFR20.306b would limit the use of SLFRF funds to meet the match or cost share req, no other statutory or regulatory impediments.

Requirements when Designing a Broadband Infrastructure Project

1. Prioritize projects that are designed to serve locations without access to reliable wireline 100/20Mbps broadband service (meaning service that reliably provides 100Mbps download speed and 20Mbps upload speed through a wireline connection) but are broadly able to invest in projects designed to provide service to locations with an identified need for additional broadband investment. Recipients have broad flexibility to define need in their community. Examples include:
 - a. Lack of access to a reliable high-speed broadband connection
 - b. Lack of affordable broadband
 - c. Lack of reliable service
 - d. Recipients must ensure that SLFRF funds will not be used for costs that will be reimbursed by other federal or state funding streams
2. Recipients are required to design projects to exceed symmetrical 100 Mbps download and upload speeds. Where these projects are unreasonable, 100/20 Mbps may be acceptable
 - a. Treasury encourages recipients to prioritize investments in fiber-optic infrastructure wherever feasible and to focus on projects that will achieve last-mile connections.
 - b. Treasury encourages recipients to prioritize support for broadband networks owned, operated by, or affiliated with local governments, nonprofits, and co-operatives.
3. Recipients must require the service provider for a broadband project that provides service to households to either:
 - 1) Participate in the FCC's Affordable Connectivity Program (ACP)
 - 2) Provide access to a broad-based affordability program to low-income consumers that provides benefits commensurate to ACP



Treasury encourages broadband services to also include at least one low-cost option offered without data usage caps at speeds sufficient for a household with multiple users to simultaneously telework and engage in remote learning.

SLFRF may be used for modernization of cybersecurity for existing and new broadband infrastructure, regardless of their speed delivery standards. This includes modernization of hardware and software.

Treasure Recommendations

- Treasury encourages recipients to adhere to strong labor standards, including project labor agreements and community benefits agreements that offer wages at or above the prevailing rate and include local hire provisions.
- Treasury encourages recipients to prioritize in their procurements, employers with high labor standards and to prioritize employers without recent violations of federal and state labor and employment laws.

Water and Sewer Infrastructure

The final rule adds additional eligible water and sewer infrastructure investments, including a broader range of lead remediation and stormwater management projects.

Further defined what projects are eligible to be included:

- Those eligible under the EPA’s Clean Water State Revolving Fund
- EPA’s Drinking Water State Revolving Fund
- Lead remediation projects
- Stormwater infrastructure (previously allowed per IFR)
- Aid for private wells and septic units

Identified Specific Projects that are Eligible

- **Clean Water State Revolving Fund**
 - Construction of publicly owned treatment works
 - Projects pursuant to implementation of a nonpoint source pollution management program established under the Clean Water Act (CWA)
 - Decentralized wastewater treatment systems that treat municipal wastewater or domestic sewage
 - Management and treatment of stormwater or subsurface drainage water
 - Water conservation, efficiency, or reuse measures
 - Development and implementation of a conservation and management plan under the CWA
 - Watershed projects meeting the criteria set forth in the CWA
 - Energy consumption reduction for publicly owned treatment works
 - Reuse or recycling of wastewater, stormwater, or subsurface drainage water
 - Security of publicly owned treatment works
- **Drinking Water State Revolving Fund**
 - Facilities to improve drinking water quality
 - Transmission and distribution
 - including improvements of water pressure or prevention of contamination in infrastructure and lead service line replacements
 - New sources to replace contaminated drinking water or increase drought resilience
 - including aquifer storage and recovery system for water storage
 - Green infrastructure, including:
 - green roofs
 - rainwater harvesting collection

- permeable pavement
 - Storage of drinking water, such as to prevent contaminants or equalize water demands
 - Purchase of water systems and interconnection of systems
 - New community water systems
- **Additional Eligible Projects**
 - Culvert repair, resizing, and removal, replacement of storm sewers, and additional types of stormwater infrastructure
 - Infrastructure to improve access to safe drinking water for individual served by residential wells, including:
 - testing initiatives
 - treatment/remediation strategies that address contamination
 - Dam and reservoir rehabilitation if primary purpose of dam or reservoir is for drinking water supply and project is necessary for provision of drinking water
 - Broad set of lead remediation projects eligible under EPA grant programs authorized by the Water Infrastructure Improvements for the Nation (WIIN) Act, such as:
 - lead testing
 - installation of corrosion control treatment
 - lead service line replacement
 - water quality testing
 - compliance monitoring, and remediation activities, including:
 - replacement of internal plumbing and faucets
 - fixtures in schools and childcare facilities

“Necessary” Investment in Infrastructure Defined

The final rule defined “necessary” investment in infrastructure

- Responsive to an identified need to achieve or maintain an adequate minimum level of service, which may include a reasonable projection of increased need, whether due to population growth or otherwise,
- A cost-effective means for meeting that need, taking into account available alternatives and for investments in infrastructure that supply drinking water, in order to meet projected population growth, projected to be sustainable over its estimated useful life



Revenue Loss

Sections 602c1c and 603c1c of the Social Security Act provide that SLFRF funds may be used “for the provision of government services to the extent of the reduction in revenue of such... government due to the COVID-19 public health emergency relative to revenues collected in the most recent full fiscal year of the... government prior to the emergency.”

Interim Final Rule vs Final Rule

Revenue Loss Formula

In the IFR, Treasury provided a 4-step process in calculating revenue loss. In the final rule they provide a 4-step process that has a minor change bolded below.

- **Step 2:** Estimate counterfactual revenue, which is the amount of revenue the recipient would have expected in the absence of the downturn caused by the pandemic.
 - The counterfactual revenue is equal to the base year revenue* $[(1 + \text{growth adjustment})^{(n/12)}]$, where n is the number of months elapsed since the end of the base year to the calculation date, and growth adjustment is the greater of the average annual growth rate across all State and Local Government “General Revenue from Own Sources in the most recent three years prior to the emergency, **5.2 percent**, or the recipient’s average annual revenue growth in the three full fiscal years prior to all the COVID-19 public health emergency.

The percentage change from 4.1% needs to be adjusted in the GFOA calculator to the updated 5.2%.

Standard Allowance

Treasury has now included an option for recipients to use a standard allowance for revenue loss. In the final rule recipients can elect a fixed amount of loss that can be used to fund government services and is set at \$10 million total for the period of performance.

Clients can now opt to participate in this option of taking a set amount of money to use for government services instead of calculating revenue loss with the 4-step model, as long as they employ consistent methodology across the period of performance and choose either the standard allowance or regular formula.

General Revenue

General revenue, defined in the IFR, included revenue collected by a recipient and generated from its underlying economy, and it captured a range of different types of tax revenues, as well as other types of revenue that are available to support government services.

a) Utilities

Treasury is now allowing recipients that operate utilities that are part of their own government can choose whether to include revenue from these utilities in their revenue loss calculations. This is due to the presumption that revenue from utilities can be used to fund other government services and there was a decrease in the number of households able to make utility payments during the pandemic.

Also, for utilities or other entities not part of the recipient government, a transfer from the utility to the recipient constitutes an intergovernmental transfer and is allowed to be included in the revenue loss calculations.

b) Liquor Store Revenue

Treasury is now allowing for liquor store revenue to be included in general revenue. Government owned liquor store revenue is to be classified as general revenue rather than tax revenue.

Aggregate Revenue Loss

Treasury has turned down the source-by-source or fund-by-fund calculation for revenue loss and has decided to maintain the calculation of revenue loss in aggregate. The provision is designed to address declines in the recipients' overall ability to pay for governmental services and calculating revenue loss on an aggregate basis provides a more accurate representation of the effect of the pandemic on overall revenues and the fiscal health of the recipient.

Time Periods for Reporting

Recipients are now allowed to decide whether they would like to calculate revenue loss on a fiscal year or calendar year basis, though they must choose a consistent basis for loss calculations throughout the period of performance. Revenue loss should be calculated separately for each year so that the revenue loss from one year is not affected by prior or future years.

Presumption of Revenue Loss "Due To" the Pandemic

Treasury has now adjusted the presumption that any loss in revenue is due to the public health emergency to consider government actions to changing tax policies. Increases or decreases in taxes after the issuance of the final rule will not be treated as due to the public health emergency.

The final rule requires recipients to exclude the value of tax policy changes adopted after January 6th, 2022.

Revisions to Tax Decreases

Treasury has decided that changes in general revenue that are caused by tax cuts adopted after the date of adoption of the final rule will not be treated as due to the public health emergency, and the estimated fiscal impact of tax cuts must be added to the calculation of "actual revenue" for the purposes of calculation dates that occur on or after April 1st, 2022.

Recipients may either calculate the actual effect on revenue or rely on estimates prepared at the time the tax change was adopted. Recipients may rely on information typically prepared while developing the budget and/or considering tax changes to determine the amount of revenue that would have been collected in absence of the tax cut, as long as those estimates are based on reasonable assumptions and do not use dynamic methodologies that incorporate the projected effects of macroeconomic growth, given that macroeconomic growth is accounted for in the counterfactual growth assumptions. This adjustment should be applied in the actual revenue totals step 3.

In the case of reduction in revenue resulting from a tax cut, a recipient must add the amount of the reduction to its calculation of actual revenue.

Revisions to Tax Increases

Treasury recognizes that some recipients may have experienced a reduction in revenue due to the public health emergency that was offset by increases in tax revenue. The counterfactual growth rate will effectively permit recipients to count revenue losses due to the public health emergency that are offset by increased tax revenue resulting from organic growth. Recipients can deduct the increases due to tax revenue from the revenue.

This can be applied to clients that have seen their revenue loss offset by increases in taxes. Recipients must subtract from their calculation of actual revenue the effect of tax increase adopted after the date of adoption of this final rule (Jan. 6th, 2022) for purposes of calculation dates that occur on or after April 1st, 2022.

Previously Adopted Tax Changes

- Recipients will not have to reflect the revenue effects of tax increase or decreases adopted prior to the adoption of the final rule.
- The final rule will permit recipients to reflect revenue effects between the beginning of the public health emergency and adoption of the final rule.

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- If a recipient goes forward with this → they must do so with respect to all of its tax changes adopted between those periods in time.

Determining Base Year

ARPA provides that revenue loss is to be determined with respect to revenue in the most recent full fiscal year prior to the pandemic.

Government Services

Treasury continues to believe that the lists of activities that either are or are not providing government services are accurate but is clarifying that services provided by the recipient governments are “government services” under the interim final rule and final rule. Government services include, but are not limited to,

- maintenance or pay-go funded building of infrastructure, including roads
- modernization of cybersecurity, including hardware, software, and protection of critical infrastructure
- health services
- environmental remediation
- school or educational services
- the provision of police, fire, and other public safety services



Matching Federal Funds

- SLFRF funds available for the provision of government services, up to the amount of the recipient’s reduction in revenue due to the public health emergency, **generally may be used** to meet the non-federal cost-share or matching requirements of other federal programs.
- SLFRF funds available for the provision of government services, up to the amount of the recipient’s reduction in revenue due to the public health emergency, should generally be permitted to be used to meet the non-federal match and cost-share requirements of other federal programs. Thus, they may be used to meet the non-federal match requirements of the Drinking Water State Revolving Fund and Clean Water State Revolving Fund programs administered by the EPA, for example.
- Note that SLFRF funds may not be used as the non-federal share for purposes of a state’s Medicaid and CHIP programs because the Office of Management and Budget has approved a waiver as requested by the Centers for Medicare & Medicaid Services pursuant to 2 CFR 200.102 of the Uniform Guidance and related regulations.
- SLFRF **funds beyond those** that are available under sections 602(c)(1)(C) or 603(c)(1)(C) of the Social Security Act **for the provision of government services may not** be used to meet the non-federal match or cost-share requirements of other federal programs other than as specifically provided for by statute.



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