# Coronavirus State and Local Fiscal Recovery Funds

## Frequently Asked Questions

This document contains answers to Frequently Asked Questions (FAQs) regarding the Coronavirus State and Local Fiscal Recovery Funds (SLFRF, or Fiscal Recovery Funds) program. The 2022 final rule became effective April 1, 2022. On December 29, 2022, Congress amended the SLFRF program in the Consolidated Appropriations Act, 2023 (2023 CAA) to provide state, local, territorial and Tribal governments more flexibility to use SLFRF funds to provide emergency relief from natural disasters, build critical transportation infrastructure, and support community development. On August 10, 2023, Treasury released an interim final rule implementing these new eligible uses; this interim final rule was published in the *Federal Register* on September 20, 2023.

Generally, the 2023 CAA did not alter the existing eligible uses, and recipients may continue to use SLFRF funds in accordance with the 2022 final rule.

In November 2023, Treasury issued the Obligation interim final rule (Obligation IFR) to address recipients' questions and comments regarding the definition of obligation. The Obligation IFR clarifies the definition of "obligation" in Treasury's implementing regulations for the SLFRF program and provides related guidance to give additional flexibility and clarity to recipients to support their use of SLFRF funds.

The following FAQs include existing FAQs that address questions regarding the 2022 final rule, existing FAQs that have been updated to address the new eligible uses discussed in the 2023 interim final rule and the guidance in the Obligation IFR, and FAQs that address the new eligible uses discussed in the 2023 interim final rule.

Treasury intends to update this document periodically in response to questions received from stakeholders. Previously, this document was named "2022 Final Rule Frequently Asked Questions." The title has been updated to "State and Local Fiscal Recovery Funds Frequently Asked Questions."

Two tables are provided below: (1) a revision table to assist in identifying the FAQs that are new or have been updated; and (2) a table of key links to assist in accessing other program information. For general questions about the SLFRF program, please email SLFRF@treasury.gov.

Answers to frequently asked questions on distribution of SLFRF funds to non-entitlement units of local government (NEUs) can be found in this FAQ supplement.

Answers to frequently asked questions on the taxability and reporting of payments from SLFRF can be found in this FAQ issued by the IRS.

Answers to frequently asked questions that are unique to the 2021 interim final rule remain available at 2021 Interim Final Rule: Frequently Asked Questions.

Throughout these FAQs, Treasury may refer readers to relevant sections of the Overview of the 2022 Final Rule and the Overview of the 2023 Interim Final Rule. The overviews provide a summary of major provisions of the 2023 interim final rule and 2022 final rule, respectively, for informational purposes and are intended as brief, simplified user guides to the 2022 final rule and 2023 interim final rule provisions. The descriptions provided in the overviews summarize key provisions of the 2022 final rule and 2023 interim final rule but are non-exhaustive, do not describe all of the terms and conditions associated with the use of SLFRF funds, and do not describe all requirements that may apply to these award funds. Any SLFRF funds received are subject to the terms and conditions of the agreement entered into by Treasury and the respective jurisdiction, which incorporate the provisions of the 2022 final rule, the 2023 interim final rule, and the guidance that implements this program.

**FAQ Categorization**

| Version | Date | Category | FAQ # |
|---|---|---|---|
| 1.0 | April 27, 2022 | FAQs retained with slight modifications from the 2021 Interim Final Rule: Frequently Asked Questions document (please note that FAQ numbering has changed between the two documents) | #1.1 – #1.2, #1.4 – 1.7, #2.10, #2.12 – #2.13, #3.8 – #3.13, #4.3, #4.5, #6.10 – #6.11, #6.14, #8.1, #8.3, #10.1 – #10.2, #11.1 – 11.3, #11.6 – 11.12, #12.1 – 12.2 |
| 1.0 | April 27, 2022 | New or Substantially Updated FAQs | #1.3, #1.8, #2.1 – #2.9, #2.11, #2.14 – #2.24, #3.1 – 3.7, #3.14, #4.1 – #4.2, #4.4, #4.6, #4.7 – #4.10, #5.1 – #5.4, #6.1 – #6.9, #6.12 – #6.13, #6.15 – #6.16, #8.2, #11.4 – #11.5, Section 13 |
| 2.0 | July 27, 2022 | Updated FAQs | #2.14, #3.1, #4.9 |
| 2.0 | July 27, 2022 | New FAQs | #6.17 - #6.20, #13.13 - #13.17 |
| 2.1 | April 10, 2023 | New FAQ | #4.11 |
| 3.0 | February 1, 2024 | FAQs updated to address the 2023 Interim Final Rule | #2.6, #3.1, #3.3, #4.1, #4.2, #4.3, #4.4, #4.5, #4.6, #4.9, #4.11, #6.3, #6.12, #6.13, #6.15, #6.18, #6.20, #13.16 |
| 3.0 | February 1, 2024 | FAQ updated to address the Obligation Interim Final Rule | #13.17 |
| 3.0 | February 1, 2024 | New FAQs | Section 14, Section 15, Section 16 |

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| 3.0 | March 5, 2024 | Updated FAQ | #2.14 |
| 4.0 | March 29, 2024 | New FAQs | Section 17 |
| 4.0 | March 29, 2024 | FAQs updated to address the obligation Interim Final Rule | #13.14, 13.17, 16.10 |
| 5.0 | April 29, 2025 | Updated FAQ | #14.6 |
| 5.1 | August 7, 2026 | New FAQs | #17.24 - #17.28 |

**SLFRF Resources**

| Item | Description |
|---|---|
| SLFRF Homepage | SLFRF program website |
| 2021 Interim Final Rule | Text of the 2021 interim final rule |
| 2022 Final Rule | Text of the 2022 final rule |
| Overview of the 2022 Final Rule | Summary overview of 2022 final rule |
| 2022 Final Rule Webinar | Recording of a webinar describing the 2022 final rule |
| 2022 Final Rule Webinar Slides | Slide deck associated with the 2022 Final Rule Webinar |
| 2023 Interim Final Rule | Text of the 2023 interim final rule |
| Overview of the 2023 Interim Final Rule | Summary overview of the 2023 interim final rule |
| Obligation Interim Final Rule | Text of the obligation interim final rule |
| Obligation Interim Final Rule Quick Reference Guide | Summary overview of the obligation interim final rule |
| Non-Entitlement Units (NEUs) FAQs | FAQs associated with the distribution of SLFRF funds to NEUs |
| Tribal Government Fact Sheet | Summary of the 2022 final rule for Tribal Governments |
| Affordable Housing How-To Guide | Provides guidance on how to use SLFRF funds for affordable housing production and preservation |
| Statement Regarding Compliance with the Coronavirus State and Local Fiscal Recovery Funds Interim Final Rule and Final Rule | Provides guidance on compliance with the 2022 final rule and 2021 interim final rule |
| Tool for Determining Low and Moderate Income (LMI) Households | Microsoft Excel file containing data and guidance on determining low-and-moderate income thresholds |
| Compliance and Reporting Guidance | Describes compliance and reporting responsibilities under the SLFRF program |

## 1. Eligibility and Allocations

### 1.1. Which governments are eligible for funds?

The following governments are eligible:

- States and the District of Columbia
- Territories
- Tribal governments
- Counties
- Metropolitan cities
- Non-entitlement units, or smaller local governments

### 1.2. Which governments receive funds directly from Treasury?

Treasury distributes funds directly to each eligible state, territory, metropolitan city, county, or Tribal government. Smaller local governments that are classified as non-entitlement units receive funds through their applicable state government.

### 1.3. Are special-purpose units of government eligible to receive funds?

Special-purpose units of local government are not eligible to receive an award as a recipient under the SLFRF program; however, a state, territory, local, or Tribal government may transfer funds to a special-purpose unit of government to carry out a program or project on its behalf as a subrecipient. Special-purpose districts perform specific functions in the community, such as fire, water, sewer or mosquito abatement districts. A recipient can also provide funds to an entity that is special-purpose government 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.

### 1.4. How are funds being allocated to Tribal governments, and how will Tribal governments find out their allocation amounts?

$20 billion of Fiscal Recovery Funds was reserved for Tribal governments. The American Rescue Plan Act specified that $1 billion would be allocated evenly to all eligible Tribal governments. The remaining $19 billion was to be distributed using an allocation methodology determined by Treasury, which was based on enrollment and employment.

There were two payments to Tribal governments. Each Tribal government's first payment included (i) an amount in respect of the $1 billion allocation that was to be divided equally among eligible Tribal governments and (ii) each Tribal government's pro rata share of the Enrollment Allocation. Tribal governments were notified of their allocation amount and delivery of payment 4-5 days after completing request for funds in the Treasury Submission Portal. The deadline to make the initial request for funds was June 21, 2021.

The second payment included a Tribal government's pro rata share of the Employment Allocation. There was a $1,000,000 minimum employment allocation for Tribal governments. In late June 2021, Tribal governments received an email notification to re-enter the Treasury Submission Portal to confirm or amend their 2019 employment numbers that were submitted to Treasury for the CARES Act's Coronavirus Relief Fund. To receive an Employment Allocation, including the minimum employment allocation, Tribal governments must have confirmed employment numbers by July 23, 2021. Treasury calculated employment allocations for those Tribal governments that confirmed or submitted amended employment numbers by the deadline. In August, Treasury communicated to Tribal governments the amount of their portion of the Employment Allocation and the anticipated date for the second payment.

**1.5. My county is a unit of general local government with population under 50,000. Will my county receive funds directly from Treasury?**

Yes. All counties that are units of general local government receive funds directly from Treasury and should apply via the online portal. The list of county allocations is available here.

**1.6. My local government expected to be classified as a non-entitlement unit. Instead, it was classified as a metropolitan city. Why?**

The American Rescue Plan Act (ARPA) defines, for purposes of the Coronavirus Local Fiscal Recovery Fund (CLFRF), metropolitan cities to include those that are currently metropolitan cities under the Community Development Block Grant (CDBG) program but also those cities that relinquish or defer their status as a metropolitan city for purposes of the CDBG program. This would include, by way of example, cities that are principal cities of their metropolitan statistical area, even if their population is less than 50,000. In other words, a city that is eligible to be a metropolitan city under the CDBG program is eligible as a metropolitan city under the CLFRF, regardless of how that city has elected to participate in the CDBG program.

Unofficial allocation estimates produced by other organizations may have classified certain local governments as non-entitlement units of local government. However, based on the statutory definitions, some of these local governments should have been classified as metropolitan cities.

**1.7. In order to receive and use funds, must a recipient government maintain a declaration of emergency relating to COVID-19?**

No. Neither the statute establishing the SLFRF nor the 2022 final rule requires recipients to maintain a local declaration of emergency relating to COVID-19.

**1.8. Can nonprofit or private organizations receive funds? If so, how?**

Yes. Under section 602(c)(3) of the Social Security Act, a State, territory, or Tribal government may transfer funds to a "private nonprofit organization . . . , a Tribal organization . . . , a public benefit corporation involved in the transportation of passengers or cargo, or a special-purpose unit of State or local government." Similarly, section 603(c)(3) authorizes a local government to transfer funds to the same entities (other than Tribal organizations). The 2021 interim final rule clarified that the lists of transferees in sections 602(c)(3) and 603(c)(3) are not exclusive, and the 2022 final rule clarified that recipients may transfer funds to any entity to carry out, as a subrecipient, an eligible activity on behalf of the SLFRF recipient (transferor), as long as they comply with the SLFRF Award Terms and Conditions and other applicable requirements. A transferee receiving a transfer from a recipient under sections 602(c)(3) and 603(c)(3) will be considered a subrecipient and will be expected to comply with all subrecipient reporting requirements.

Additionally, a recipient can provide funds to an entity, including a nonprofit organization, 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. In this instance, these entities will be considered beneficiaries, not subrecipients, and will not be expected to comply with subrecipient reporting requirements. Beneficiary reporting requirements will apply.

The ARPA does not authorize Treasury to provide SLFRF funds directly to nonprofit or private organizations. Thus, a nonprofit or private organization should seek funds from the SLFRF recipient(s) (in their jurisdiction (e.g., a State, local, territorial, or Tribal government).

## 2. Eligible Uses – Responding to the Public Health Emergency / Negative Economic Impacts

### 2.1. If a use of funds is not explicitly permitted in the 2022 final rule as a response to the public health emergency and its negative economic impacts, does that mean it is prohibited?

No. The 2022 final rule provides a non-exhaustive list of enumerated uses that respond to pandemic impacts. The 2022 final rule also presumes that some populations experienced pandemic impacts and are eligible for responsive services. Recipients also have broad flexibility to (1) identify and respond to other pandemic impacts and (2) serve other populations that experienced pandemic impacts, beyond the enumerated uses and presumed eligible populations. Recipients also may identify groups or "classes" of beneficiaries that experienced pandemic impacts and provide services to those groups.

### 2.2. What types of services are eligible as responses to the negative economic impacts of the pandemic?

Eligible uses to respond to the negative economic impacts of the pandemic include assistance to households and communities; assistance to small businesses and nonprofits; aid to impacted industries; and uses to support public sector capacity and workforce. For an overview of the eligible uses within each of these subcategories, please see pages 12-13 and 16-34 of the Overview of the 2022 Final Rule. The eligible uses within this category include programs and services to respond to impacts of the pandemic on households and communities, such as:

- Cash assistance
- Food assistance (e.g., child nutrition programs, including school meals) & food banks
- Childcare and early learning services, home visiting programs, services for child welfare-involved families and foster youth & childcare facilities
- Programs or services to support long-term housing security, including development of affordable housing and permanent supportive housing

They also include uses to bolster public sector capacity and workforce, such as:

- Payroll and covered benefits for public safety, public health, health care, human services and similar employees of a recipient government, for the portion of the employee's time spent responding to COVID-19.
- Payroll and covered benefits for additional public sector workers up to a pre-pandemic baseline that is adjusted for historic underinvestment in the public sector, providing additional funds for employees who experienced pay cuts or were furloughed, avoiding layoffs, providing worker retention incentives, and paying for ancillary administrative costs related to hiring, support, and retention.

These tools can allow recipients not only to bring back laid-off workers, but to address critical shortages of teachers, instructional aides, transportation workers, behavioral health workers, and other key government personnel, by funding positions at competitive wages and improving job quality in these sectors (see FAQs #2.15, #2.16, #2.17).

Recipients also have broad flexibility to identify and respond to other pandemic impacts and serve other populations that experienced pandemic impacts, beyond the enumerated uses. For more information on identifying eligible uses beyond those enumerated, please see pages 32-34 of the Overview of the 2022 Final Rule.

### 2.3. What types of COVID-19 response, mitigation, and prevention activities are eligible?

Please see pages 12-14 of the Overview of the Final 2022 Rule for a non-exhaustive list of enumerated eligible uses relating to COVID-19 mitigation and prevention, as well as information about how to design other responses that are not included in the list.

**2.4. May recipients use funds to respond to the public health emergency and its negative economic impacts by providing direct cash transfers to households?**

Yes. Cash transfers, like all eligible uses in the public health and negative economic impacts category, must respond to the negative economic impacts of the pandemic on a household or class of households. Recipients may presume that low- and moderate-income households (as defined in the 2022 final rule), as well as households that experienced unemployment, food insecurity, or housing insecurity, experienced a negative economic impact due to the pandemic. Recipients may also identify other households or classes of households that experienced a negative economic impact of the pandemic and provide cash assistance that is reasonably proportional to, and not grossly in excess of, the amount needed to address the negative economic impact. For example, in the ARPA, Congress authorized Economic Impact Payments to households at certain income levels, identifying and responding to a negative economic impact of the pandemic on these households.

Treasury has reiterated in the 2022 final rule that responses to negative economic impacts should be reasonably proportional to the impact that they are intended to address. Uses that bear no relation or are grossly disproportionate to the type or extent of harm experienced would not be eligible uses. Reasonably proportional refers to the scale of the response compared to the scale of the harm. It also refers to the targeting of the response to beneficiaries compared to the amount of harm they experienced; for example, it may not be reasonably proportional for a cash assistance program to provide assistance in a very small amount to a group that experienced severe harm and in a much larger amount to a group that experienced relatively little harm. Please also see questions 7-10 from the IRS-issued FAQ on SLFRF relating to the taxability of cash transfers.

**2.5. May recipients use funds to respond to the public health emergency and its negative economic impacts by replenishing unemployment funds?**

Recipients may only use SLFRF funds for contributions to unemployment insurance trust funds and repayment of the principal amount due on advances received under Title XII of the Social Security Act up to an amount equal to (i) the difference between the balance in the recipient's unemployment insurance trust fund as of January 27, 2020 and the balance of such account as of May 17, 2021, plus (ii) the principal amount outstanding as of May 17, 2021 on any advances received under Title XII of the Social Security Act between January 27, 2020 and May 17, 2021. Further, recipients may use SLFRF funds for the payment of any interest due on such Title XII advances. Additionally, a recipient that deposits SLFRF funds into its unemployment insurance trust fund to fully restore the pre-pandemic balance may not draw down that balance and deposit more SLFRF funds, back up to the pre-pandemic balance. Through December 31, 2024, recipients that deposit SLFRF funds into an unemployment insurance trust fund, or use SLFRF funds to repay principal on Title XII advances, may not take action to reduce benefits available to unemployed workers by changing the computation method governing regular unemployment compensation in a way that results in a

reduction of average weekly benefit amounts or the number of weeks of benefits payable (i.e., maximum benefit entitlement).

**2.6. May funds be used to reimburse recipients for costs incurred by state, local and Tribal governments in responding to the public health emergency and its negative economic impacts prior to passage of the American Rescue Plan?**

Use of SLFRF is generally forward looking. The 2022 final rule permits funds to be used to cover costs incurred beginning on March 3, 2021, for the eligible use categories described in the 2022 final rule. For the three eligible use categories of emergency relief from natural disasters, Surface Transportation projects, and Title I projects, recipients may use SLFRF funds for costs incurred beginning on December 29, 2022, as provided in the 2023 interim final rule.

**2.7. May recipients use funds for general economic development?**

Generally, no. General economic development – activities that do not respond to negative economic impacts of the pandemic but rather seek to more generally enhance the jurisdiction's business climate – would generally not be eligible under this eligible use category.

To identify an eligible use of funds under the public health and negative economic impacts category, a recipient must identify a beneficiary or class of beneficiaries that experienced a harm or impact due to the pandemic, and eligible uses of funds must be reasonably designed to respond to the harm, benefit the beneficiaries that experienced it, and be related and reasonably proportional to that harm or impact. For example, job training and other supports – like childcare, transportation, and subsidized employment – for unemployed workers may be used to address negative economic impacts of the public health emergency and be eligible.

**2.8. How can recipients use funds to assist the travel, tourism, and hospitalityindustries? May recipients use funds to assist impacted industries other than travel, tourism, and hospitality?**

Please see pages 24-25 of the Overview of the 2022 Final Rule.

**2.9. How does the 2022 final rule help address the disparate impacts of COVID-19 on certain populations and geographies?**

In recognition of the long-standing disparities in health and economic outcomes in underserved communities that have amplified and exacerbated the impacts of the COVID-19 pandemic, the 2022 final rule identifies certain populations as "disproportionately impacted" by the pandemic and enumerates a broad range of services and programs to help address health disparities, to build stronger communities through investments in neighborhoods, to address educational disparities, to provide rental assistance vouchers or

assistance relocating to areas of greater economic opportunity, and other eligible uses to respond to negative economic impacts in disproportionately impacted communities.

Specifically, Treasury will presume that certain populations were disproportionately impacted by the pandemic and therefore automatically eligible to receive responsive services. See page 19 of the Overview of the 2022 Final Rule for a full list of the populations presumed disproportionately impacted by the pandemic.

Recipients may also provide responsive services to other populations, households, or geographic areas disproportionately impacted by the pandemic. In identifying these disproportionately impacted communities, recipients should be able to support their determination for how the pandemic disproportionately impacted the populations, households, or geographic areas to be served.

Treasury has provided a non-exhaustive list of eligible responses to serve disproportionately impacted communities on page 20 of the Overview of the Final Rule. Note that these are an enhanced set of responses available in addition to responses available to respond to impacts of the pandemic on households and communities (including those listed on page 18 of the Overview).

**2.10. May recipients use funds to pay for vaccine incentive programs (e.g., cash or in-kind transfers, lottery programs, or other incentives for individuals who get vaccinated)?**

Yes. Under the 2022 final rule, recipients may use SLFRF funds to respond to the COVID-19 public health emergency, including expenses related to COVID-19 vaccination programs.

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.

**2.11. How can recipients use funds to support workers returning to work?**

Under the 2022 final rule, recipients may use SLFRF funds under the public health and negative economic impacts eligible use category to provide assistance to individuals who want and are available for work, including job training, public jobs programs and fairs, support for childcare and transportation to and from a jobsite or interview, cash and other incentives for newly employed workers, subsidized employment, grants to hire underserved workers, assistance to unemployed individuals to start small businesses, and development of job and workforce training centers.

**2.12. What staff are included in "public safety, public health, health care, human services, and similar employees"? Would this include, for example, 911 operators,morgue staff, medical examiner staff, or EMS staff?**

As discussed in the 2022 final rule, funds may be used for payroll and covered benefits expenses 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.

Public safety employees would include police officers (including state police officers), sheriffs and deputy sheriffs, firefighters, emergency medical responders, correctional and detention officers, and those who directly support such employees such as dispatchers and supervisory personnel. Public health employees would include employees involved in providing medical and other health services to patients and supervisory personnel, including medical staff assigned to schools, prisons, and other such institutions, and other support services essential for patient care (e.g., laboratory technicians, medical examiner or morgue staff) as well as employees of public health departments directly engaged in matters related to public health and related supervisory personnel. Note that this category encompasses both public health and health care employees; both are treated as public health employees for the purposes of this eligible use category. Human services staff include employees providing or administering social services; public benefits; child welfare services; and child, elder, or family care, as well as others.

### 2.13. May recipients use funds to establish a public jobs program?

Yes. Under the public health and negative economic impacts eligible use category, the 2022 final rule permits a broad range of services to unemployed or underemployed workers and other individuals that suffered negative economic impacts from the pandemic. That can include public jobs programs, subsidized employment, combined education and on-the-job training programs, or job training to accelerate rehiring or address negative economic or public health impacts experienced due to a worker's occupation or level of training. The broad range of permitted services can also include other employment supports, such as childcare assistance or assistance with transportation to and from a jobsite or interview.

### 2.14. Can funds be used for investments in affordable housing?

Yes. Under the final rule, "Development, repair, and operation of affordable housing and services or programs to increase long-term housing security" is an enumerated eligible use to respond to impacts of the pandemic on households and communities. Treasury continues to strongly encourage the use of SLFRF for affordable housing and has updated this FAQ to promote clarity and administrability in the use of these funds.

Affordable housing projects must be responsive and proportional to the harm identified. This standard may be met by affordable housing projects—which may involve large expenditures and capital investments—if the developments increase the supply of long-term affordable housing for households that experienced associated pandemic impacts under the final rule.

**Presumptively Eligible Uses**

For purposes of this standard, if a project fits within either of the below presumptions, Treasury will presume that a project is eligible. As discussed more below, Treasury will presume that the following affordable housing investments are eligible uses of SLFRF funds as responses to the negative economic impacts of the pandemic: (1) projects that would be eligible for funding under (or, in certain cases, that are funded under) an expanded list of federal housing programs and (2) projects for the development, repair, or operation of affordable rental housing with certain income and affordability requirements. Recipients' affordable housing projects may use either of these presumptions to qualify as a presumptively eligible use. If a recipient uses one presumption for an affordable housing project, the recipient may still use a different presumption for another affordable housing project.

**Presumption 1:** Treasury will presume that any project that is eligible to be funded under any of the following federal housing programs is an eligible use of SLFRF funds as a response to the negative economic impacts of the pandemic:

- The Housing Trust Fund (HTF, administered by HUD);
- The HOME Investment Partnerships Program (HOME, administered by HUD);
- The Low-Income Housing Tax Credit (administered by Treasury);
- The Public Housing Capital Fund (administered by HUD);
- Section 202 Supportive Housing for the Elderly Program and Section 811 Supportive Housing for Persons with Disabilities Program (administered by HUD);
- Project-Based Rental Assistance (PBRA, administered by HUD);
- Multifamily Preservation & Revitalization program (administered by USDA);
- Project Based Vouchers (PBVs, administrated by HUD);
- Choice Neighborhoods[1] (administered by HUD);
- Section 514/516 Farm Labor Housing Direct Loans and Grants (administered by USDA);
- Section 515 Multifamily Housing Direct Loans (administered by USDA); and
- Section 538 Multifamily Housing Loan Guarantees (administered by USDA).

Second, Treasury will presume that financial assistance to a household benefiting from a loan guarantee under the following federal housing program, that is intended to supplement that federal housing program, is an eligible use of SLFRF funds as a response to the negative economic impacts of the pandemic:

- Section 502 Single Family Housing Guaranteed Loans (administered by USDA).

Third, Treasury will presume that any affordable housing project that is participating or approved to participate in the following federal housing programs is an eligible use of SLFRF funds as a response to the negative economic impacts of the pandemic:

- Projects financed under the Section 108 Loan Guarantee Program (administered by HUD).

[1] Recipients may use this presumption only if the funds are used for the development of affordable housing as defined for purposes of the Choice Neighborhoods program.

Fourth, Treasury will presume that financial support for an affordable housing project that is or will be financed with a loan that is purchased by Fannie Mae or Freddie Mac (each, a GSE) is an eligible use of SLFRF funds as a response to the negative economic impacts of the pandemic to the extent that the loan purchased by Fannie Mae or Freddie Mac is:

- considered by the GSE to be fully or partially "mission driven" under FHFA's definition of "Loans on targeted affordable housing properties," in Appendix A: Multifamily Definitions of the 2024 Scorecard for Fannie Mae and Freddie Mac; or
- purchased under Fannie Mae's Sponsor-Dedicated Workforce Housing Program, Fannie Mae's Sponsor-Initiated Affordability Program, Freddie Mac's Workforce Housing Preservation, or otherwise considered by the GSE to be fully or partially "mission driven" under FHFA's definition of "Loans to preserve affordability at workforce housing properties," in Appendix A: Multifamily Definitions of the 2024 Scorecard for Fannie Mae and Freddie Mac.

In previous guidance, presumptive eligibility for affordable housing projects was limited to HOME and HTF. Treasury has updated this list by adding additional programs in an effort to increase administrability and clarity in the use of SLFRF funds for affordable housing purposes. This update is also expected to decrease the transaction costs associated with layering SLFRF funds with existing projects. Note that these programs use different income limits than the definitions of low- and moderate-income adopted by Treasury. Given the severity of the affordable housing shortage, and the ways in which the pandemic has exacerbated the need for affordable, high-quality dwelling units, Treasury has determined that the households served by these federal housing programs have been impacted by the pandemic and its negative economic impacts and that development of affordable housing consistent with these programs is a related and reasonably proportional response to those impacts. Additionally, affordable housing projects provided by a Tribal government are eligible uses of SLFRF funds if they would be eligible for funding under the Indian Housing Block Grant program, the Indian Community Development Block Grant program, or the Bureau of Indian Affairs Housing Improvement Program.

To the extent that a recipient chooses to use SLFRF funds to invest in affordable housing projects in alignment with these federal housing programs, the investment agreement 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 the following (to the extent the applicable federal housing program has such requirements):

- Resident income restrictions;
- The period of affordability and related covenant requirements for assisted units;
- Tenant protections; and
- Housing quality standards.

**Presumption 2:** Treasury will presume that an investment in the development, repair, or operation of any affordable rental housing unit is an eligible use of SLFRF funds to respond to the negative economic impacts of the pandemic if the unit has a limited maximum income of 120% 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 establish a longer period of affordability at its discretion. This presumption is available even if the project does not align with the federal housing programs specified in Presumption 1.

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 120% AMI for the affordability period. For example, if 25% of a project's units are reserved for families at or below 120% AMI for the affordability period, and 20% of the total development costs of the project are attributable to such reserved units, then SLFRF funds may be used to pay for up to 20% of the total development costs.

The income limit and 20-year affordability covenant does not need to apply to specific units, but rather it may specify a number of units within the development, in which case the covenant should also specify the bedroom size mix.

Recipients are strongly encouraged to prioritize SLFRF investments for affordable housing in close proximity to, or with strong transit linkages to, centers of employment and/or institutions that provide high quality education or childcare, health care, services and healthy foods.

**Additional Eligible Uses:**
Note that other affordable housing projects, beyond those eligible under the presumptions described above, may also be eligible uses of SLFRF funds under the final rule 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. As an example, in certain rental markets, data indicates that there are gaps in financing for units serving households even above 120% AMI and/or significantly higher than average housing costs relative to AMI that have led communities in this income threshold to be impacted by the pandemic. In such cases, it may be reasonably proportional to address the negative economic impacts of the pandemic by funding units (e.g., above 120% AMI) that do not fall into the presumptively eligible categories listed above. 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 (e.g., if the borrower faces financial stress). Homeownership assistance, as well as rental activities, that would be eligible under the Community Development Block Grant program are also an eligible use of SLFRF funds.

### 2.15. Can I use funds to raise public sector wages and hire public sector workers?

Yes. Under the increased flexibility of the 2022 final rule, SLFRF funding may be used to

support a broader set of uses to restore and support public sector employment. Eligible uses include hiring up to a pre-pandemic baseline that is adjusted for historic underinvestment in the public sector, providing additional funds for employees who experienced pay cuts or were furloughed, avoiding layoffs, providing worker retention incentives, including reasonable increases in compensation, and paying for ancillary administrative costs related to hiring, support, and retention.

Under the set of eligible uses for public-sector rehiring, recipients may fill vacancies and add additional employees using SLFRF funds (see pages 4385-4387 of the 2022 final rule and pages 27-28 of the Overview of the 2022 Final Rule). Recipients have two options to restore pre-pandemic employment, depending on the recipient's needs. First, if the recipient simply wants to hire back employees for pre-pandemic positions, recipients may use SLFRF funds to hire employees for the same positions that existed on January 27, 2020, but that were unfilled or eliminated as of March 3, 2021. Recipients may use SLFRF funds to cover payroll and covered benefits for such positions through the period of performance.

Second, if the recipient wants to hire above the pre-pandemic baseline and/or would like to have flexibility in positions, recipients may use SLFRF funds to pay for payroll and covered benefits associated with the recipient increasing its number of budgeted FTEs up to 7.5 percent above its pre-pandemic baseline. Filling these roles may require recipients to increase wages and improve benefits above and beyond what they currently offer, especially in roles with historically low wages and acute staffing needs. This compensation would be an eligible use of SLFRF funds.

SLFRF funds also may be used to provide worker retention incentives, including reasonable increases in compensation to persuade employees to remain with the employer as compared to other employment options. Retention incentives must be entirely additive to an employee's regular compensation, narrowly tailored to need, and should not exceed incentives traditionally offered by the recipient or compensation that alternative employers may offer to compete for the employees. Treasury presumes that retention incentives that are less than 25 percent of the rate of base pay for an individual employee or 10 percent for a group or category of employees are reasonably proportional to the need to retain employees, as long as other requirements are met.

### 2.16. How can funds be used to improve job quality and address labor supply challenges in the education and childcare sectors?

SLFRF funds can pay for the full salary and benefits of many school and childcare staff, including increased wages needed to recruit and retain excellent staff, and to fund premium pay, bonuses, training, and other worker supports. Some examples of potential uses of funds related to supporting the education and childcare sectors are provided below:

- Under the public health and negative economic impacts eligible use category, SLFRF funds can be used broadly for re-hiring public sector staff, such as school staff, to restore the public sector, including payroll and covered benefits for new

or re-hired public employees (see FAQ #2.15).

  - Even where the recipient, such as the municipality, does not have budgetary authority over a school district, it may choose to sub-award SLFRF funds to districts and other government entities for these purposes (see FAQ #2.17).

- SLFRF can fund premium pay for essential workers, including school personnel and childcare providers working in person in both the public and private sector, to compensate them for their service during the pandemic (see pages 35-36 of the Overview of the 2022 Final Rule and section 5 of the FAQs).

- Under the public health and negative economic impacts eligible use category, SLFRF can fund supports for unemployed and underemployed workers, including hiring bonuses, training, and other labor supports, regardless of sector (see FAQ #2.11).

  - Under this provision, recipients can help childcare providers and school districts by strengthening pipelines into these sectors, including by using SLFRF funds to train potential workers to fill in-demand roles in childcare and education, including as school bus drivers, school nutrition staff, paraprofessionals, and other staff.

- Childcare subsidies and other supports for childcare programs – public or private – that serve low- and moderate-income families, are broadly eligible uses of SLFRF funding under the public health and negative economic impacts eligible use category (see FAQ #2.25). These subsidies can support improvements to wages and job quality that make childcare employment an attractive career.

- Recipients can also provide assistance to small businesses under the public health and negative economic impacts eligible use category – which many state and local governments can use to help childcare small businesses expand their business, raise wages for workers, and complete training and other technical assistance to support high-quality care, given the impacts these businesses have faced over the course of the pandemic (see pages 21-22 of the Overview of the 2022 Final Rule).

**2.17. How can recipients use funds to invest in their public sector workforce when the recipient government is not the direct employer, as is the case with some transit agencies and local educational agencies?**

Under the increased flexibility of the 2022 final rule, SLFRF funds may be used to support a broader set of uses to restore and support public sector employment as a response to the pandemic and its negative economic impacts (see FAQ #2.15).

Treasury acknowledges that funding models for public sector workers vary drastically

across jurisdictions, and the direct employer of a public sector worker may be an entity separate from the SLFRF recipient government, like an independent transit agency or local educational agency (LEA), rather than the recipient government itself. Recipients may still use SLFRF funds to hire workers in these sectors under such circumstances.

Using the calculation detailed on page 4386 of the 2022 final rule and pages 27-28 of the Overview of the 2022 Final Rule, a recipient may calculate at an entity level the actual number of FTEs for the entity and the adjusted pre-pandemic baseline for the entity. The difference between the actual number of FTEs and the adjusted pre-pandemic baseline represents the number of FTEs that can be hired using SLFRF funds.

A recipient may then transfer funds to the entity, which would act as a subrecipient and cover payroll, covered benefits, and other costs associated with hiring up to this number of FTEs. A recipient may, in addition, "transfer" the FTEs it may hire based on its own calculation to the entity. A recipient may not, however, perform the calculation on the behalf of an entity, and then "transfer" to itself, or to any other entity, any of the FTEs able to be hired by the entity.

As an illustrative example, consider a recipient county government that would like to fund the salary and benefits costs for hiring teachers in a school district.

The school district has 2000 budgeted FTEs on January 27, 2020. The school district's pre-pandemic baseline is 2000 FTEs; its adjusted pre-pandemic baseline is 2000 * 1.075 = 2150 FTEs. The county's pre-pandemic baseline is 1000 FTEs; its adjusted pre-pandemic baseline is 1000 * 1.075 = 1075 FTEs. Now, assume that on March 3, 2021, the school district had 1800 budgeted FTEs in total, and the county had 1000 budgeted FTEs.

The county would be able to transfer funds to the school district to hire up to 350 FTEs with SLFRF funds (that is, 2150 - 1800 = 350 FTEs), and additionally, "transfer" up to 75 FTEs to the school district (that is, 1075 - 1000 = 75 FTEs). If the county decided to "transfer" all of its 75 FTEs to the school district, then the school district could hire up to 350 + 75 = 425 FTEs using funds from the county. However, the county may not directly hire any more than 75 FTEs under this public sector hiring provision, and may not use any of the funds for the 350 FTEs able to be hired by the school district to fund any of the county's FTE positions.

This public sector rehiring provision is a powerful tool for addressing staffing needs and shortages across government.

### 2.18. Can I use SLFRF funds to provide childcare to households?

Yes. Childcare and early learning services, home visiting programs, services for child welfare involved families and foster youth are an enumerated use eligible to respond to impacts of the pandemic on households and communities. These eligible uses can include new or expanded services, increasing access to services, efforts to bolster, support, or preserve existing providers and services, and similar activities. Further, improvements to

or new construction of childcare, daycare, and early learning facilities are eligible capital expenditures, subject to the other eligibility standards for capital expenditures.

**2.19. How can funds be used for "installation and improvement of ventilation systems in congregate settings, health care settings, or other public facilities" like commercial buildings, office buildings, schools, nursing homes, multi-family residential buildings, and restaurants?**

As a general matter, ventilation improvements, including updates to HVAC systems, improved air filtration, and increased outdoor air flow, can help reduce the concentration and risk of exposure to aerosols, and thus infection with COVID-19.[2] The National COVID-19 Preparedness Plan specifies that improving ventilation and air filtration is a key component of keeping schools and businesses safely open. Although improvements to ventilation and air cleaning cannot on their own eliminate the risk of airborne transmission of the SARS-CoV-2 virus, the Environmental Protection Agency (EPA) has recommended taking steps to improve indoor air quality (IAQ ) including optimizing fresh air ventilation, enhancing air filtration and cleaning, and managing the way air flows as components of a larger approach that may include individual actions and layered prevention strategies.

Under the SLFRF program, funds for installation and improvement of ventilation systems can be used for projects that respond to the pandemic's public health impacts and provide longer-term benefits, including the inspection, testing, commissioning, maintenance, repair, replacement, and upgrading of HVAC systems to improve indoor air quality in facilities. Projects can include assessing current HVAC systems, updating HVAC systems, updating air filters, installing functional windows for improved ventilation, repairing windows and doors, installing in-room air cleaning devices, and other projects for improving indoor air quality. For a more extensive guide of how to effectively use funds for ventilation improvements, Treasury recommends reviewing EPA's Clean Air in Buildings Challenge, a call to action and a set of guiding principles and best practices to assist building owners and operators with improving IAQ in buildings, as well as EPA's resource page on "Ventilation and Coronavirus (COVID-19)." For a guide on federal programs and resources to support school infrastructure, including ventilation improvements, Treasury recommends consulting the "White House Toolkit: Federal Resources for Addressing School Infrastructure Needs." Further, Treasury recommends that recipients engage with public health and infection prevention professionals to develop and support an effective COVID-19 mitigation strategy. Finally, Treasury recommends that recipients ensure that the inspection, testing, commissioning, maintenance, repair, replacement, and upgrading of ventilation systems is performed by a skilled, trained, and certified workforce.

Recipients that undertake ventilation system investments under the public health and negative economic impacts eligible use category should review capital expenditure requirements in the 2022 final rule and note that capital expenditures must be related and

[2] https://www.cdc.gov/coronavirus/2019-ncov/community/ventilation.html; https://www.epa.gov/coronavirus/indoor-air-and-coronavirus-covid-19.

reasonably proportional to the pandemic impact identified.

**2.20. In what types of buildings can recipients use funds to install and improve of ventilation systems?**

In addition to directly installing and improving ventilation systems in congregate settings, health care settings, or other public facilities, recipients may grant or loan funds to businesses, non-profits, and other entities that may benefit from COVID-19 mitigation measures.

In making these investments, Treasury recommends that recipients consult with public health and infection prevention professionals and that recipients ensure work is performed by a workforce that is skilled, trained, and certified in ventilation systems work. Many buildings would benefit from ventilation improvements, including settings where risk of infection is higher, such as when people are indoors for prolonged periods of time, are in crowded environments, or are performing activities that increase emission of respiratory fluids (such as speaking loudly, singing, or exercising).[3] This includes commercial buildings, office buildings, dense worksites, schools, nursing homes and other long-term care facilities, multi-family residential buildings, restaurants, correctional facilities, transportation hubs, and public transit vehicles, among other locations. Recipients are encouraged to consider congregate settings and other key locations as priorities for installation and improvement of ventilation systems. Please note that use of funds is not limited to government-owned public facilities and funds may be distributed by recipients to private businesses, non-profits, and others for COVID-19 mitigation and prevention, as the 2022 final rule clarifies that recipients may identify the general public as the impacted population for COVID-19 prevention and mitigation services. Recipients should review capital expenditure requirements for the public health and negative economic impacts eligible use category in the 2022 final rule before undertaking investments in ventilation systems.

For more information on ventilation system upgrades for school settings, Treasury recommends consulting:

- Creating Healthy Indoor Air Quality in Schools: https://www.epa.gov/iaq-schools
- Efficient and Healthy Schools campaign: https://efficienthealthyschools.lbl.gov/
- Efficient and Healthy Schools website: https://www.energy.gov/eere/buildings/efficient-and-healthy-schools

For more information on ventilation system upgrades for office and other commercial building settings, Treasury recommends consulting:

- Enhancing Health with Indoor Air: https://sftool.gov/learn/about/626/enhancing-health-indoor-air
- Sustainable Response to COVID-19: https://sftool.gov/learn/about/625/sustainable-response-covid-19
- Better Buildings Resource Center: Building Operations during COVID-19

[3] https://www.epa.gov/coronavirus/indoor-air-and-coronavirus-covid-19.

https://betterbuildingssolutioncenter.energy.gov/covid19

For more information on ventilation system upgrades for residential settings, Treasury recommends consulting:

- Improving Ventilation in Your Home: https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/Improving-Ventilation-Home.html
- Ventilation in Buildings: https://www.cdc.gov/coronavirus/2019-ncov/community/ventilation.html

**2.21. Can SLFRF funds be used to support public school facility improvements, upgrades, and new construction – such as those that make buildings more energy efficient, increase their use of renewable energy, address capacity constraints, and respond to health and safety concerns?**

Yes. There are numerous ways in which SLFRF funds may be used to support public school facility improvements and upgrades.

First, as part of the public health and negative economic impacts (PH-NEI) eligible use category, SLFRF funds may be used address educational disparities in disproportionately impacted communities,[4] which may include funding improvements or new construction of schools and other educational facilities or equipment. Recipients may consider energy efficiency improvements as part of their facility investments, and may also use funds for pre-project development costs, such as assessment of building conditions, energy audits, feasibility studies, HVAC commissioning and testing, and lead testing, that are tied to or reasonably expected to lead to an eligible investment in school facilities to address educational disparities in disproportionately impacted communities. Recipients should review and comply with the requirements applicable to capital expenditures under the PH-NEI eligible use category as outlined in the 2022 final rule.[5]

Second, as part of the PH-NEI eligible use category, recipients may use funds for adaptations to schools for the purpose of mitigating the spread of COVID-19, including for ventilation improvements. Similar to the above, recipients should ensure compliance with the capital expenditure requirements for the eligible use category.

Third, as part of the water and sewer infrastructure eligible use category, recipients may invest in certain projects to support lead remediation, including replacement of internal plumbing and faucets and fixtures in schools and childcare facilities. Recipients can also invest in certain green water infrastructure projects. Eligible water and sewer projects are generally aligned with those allowable under the EPA's Drinking Water and Clean Water State Revolving Funds, and Treasury has added additional eligible projects as part of the

[4] Please see FAQ 2.9 for more on disproportionately impacted communities, and the Overview of the 2022 Final Rule (p. 19) for a list of presumed disproportionately impacted communities. 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.

[5] Please see the Overview of the 2022 Final Rule (p. 30-31) for a summary of capital expenditure requirements for the public health and negative economic impacts eligible use category.

2022 final rule. Recipients should review and comply with the specific requirements provided for in the water and sewer infrastructure eligible use category as outlined in the 2022 final rule.

Fourth, as part of the revenue loss eligible use category, which is the broadest eligible use category that is capped by either the $10 million standard allowance (up to a recipient's award size) or a recipient's calculated revenue loss, recipients may use SLFRF funds on government services. These government services include any service traditionally provided by a government unless Treasury has stated otherwise. Eligible government services that may be covered under the revenue loss eligible use category include maintenance, improvement, or new construction of public school facilities, including those that address over-crowding and capacity constraints, support energy efficiency, and respond to health and safety concerns, among other purposes.

Under the SLFRF program, recipients must obligate all award funds by December 31, 2024, and expend funds by December 31, 2026, with the exception of projects within the Surface Transportation projects and Title I projects eligible use categories for which recipients must expend funds by September 30, 2026. Recipients may transfer funds to other entities, including local educational agencies, to carry out as subrecipients an eligible use of funds as long as the subrecipients comply with SLFRF program requirements. Recipients should note that the Davis-Bacon Act requirements (prevailing wage rates) do not apply to projects funded solely with award funds from the SLFRF program, except for recipients using funds for Surface Transportation projects and non-Tribal recipients using funds for Title I projects and certain SLFRF-funded construction projects undertaken by the District of Columbia. Requirements under the National Environmental Policy Act, as amended (NEPA), do not apply to Treasury's administration of the SLFRF program, with the exception of Surface Transportation projects and Title I projects as described in FAQ #16.16. However, projects supported with SLFRF funds may still be subject to NEPA requirements if they are also funded by other federal financial assistance programs.

**2.22. Would investments in improving outdoor spaces (e.g., parks) be an eligible use of funds as a response to the public health emergency and/or its negative economic impacts?**

There are multiple ways that investments in improving outdoor spaces could qualify as eligible uses; several are highlighted below, though there may be other ways that a specific investment in outdoor spaces would meet eligible use criteria.

First, in recognition of the disproportionate negative economic impacts on certain communities and populations, the 2022 final rule includes 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.

Second, recipients may provide assistance to disproportionately impacted small businesses. The 2022 final rule included rehabilitation of commercial properties, storefront improvements, and façade improvements as enumerated eligible assistance to these small businesses.

Third, recipients can assist small businesses, nonprofits, or other entities to create or enhance outdoor spaces to mitigate the spread of COVID-19 (e.g., restaurant patios).

Recipients pursuing many of these uses should also note the eligibility standards for capital expenditures in the 2022 final rule, which are summarized on pages 30-31 of the Overview of the 2022 Final Rule.

**2.23. Would expenses to address a COVID-related backlog in court cases be an eligibleuse of funds as a response to the public health emergency?**

Yes. The 2022 final rule maintains that SLFRF funds may be used to address administrative needs of recipient governments that were caused or exacerbated by the pandemic. Please see pages 4388-4389 of the 2022 final rule. During the COVID-19 public health emergency, many courts were unable to operate safely during the pandemic and, as a result, now face significant backlogs. Court backlogs resulting from the inability of courts to safely operate during the COVID-19 pandemic decreased the government's ability to administer services. Therefore, steps to reduce these backlogs, such as implementing COVID-19 safety measures to facilitate court operations, hiring additional court staff or attorneys to increase speed of case resolution, and other expenses to expedite case resolution are eligible uses.

**2.24. Can funds be used for eviction prevention efforts or housing stability services?**

Yes. Treasury provided a non-exhaustive list of eligible services in the 2022 final rule: 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).

Treasury also clarified that assistance to households for delinquent property taxes, for example to prevent tax foreclosures on homes, was permissible under the 2021 interim final rule and continues to be so under the 2022 final rule. In addition, Treasury also clarified that 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 provide assistance to households. The public health and negative economic impacts eligible use category also includes emergency assistance for

individuals experiencing homelessness, either 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). Please see page 4360 of the 2022 final rule for further relevant clarifications.

## 3. Eligible Uses – Revenue Loss

### 3.1. Does a recipient need to calculate or provide proof of its revenue loss to use SLFRF funds for government services?

The 2022 final rule allowed recipients the option to claim up to $10 million of their SLFRF allocation, which Treasury termed the "standard allowance," to replace lost revenue and use that funding to provide government services in lieu of calculating revenue loss. The formula for calculating revenue loss is set out in the 2022 final rule. Recipients may elect a "standard allowance" of up to $10 million to spend on government services through the period of performance. The standard allowance is available to all recipients and offers a simple, convenient way to determine revenue loss, instead of using the full formula specified in the 2022 final rule. The 2023 CAA codified the option for recipients to claim up to $10 million in revenue loss funds.

Treasury had previously provided that recipients must make a one-time, irrevocable election to either take the standard allowance or calculate revenue loss. Recipients were able to indicate this choice in their Project and Expenditure Reports due April 30, 2022, and 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.

In response to the codification of the standard allowance in the 2023 CAA, recipients need not make any changes to their current revenue loss determination and may continue with their previous determination if they so choose. Recipients that would like to update their revenue loss determination will be able to update their revenue loss determination, as appropriate, through the April 2025 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 Project and Expenditure 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. Similarly, recipients that previously elected the standard allowance and would like to supersede their prior election and instead calculate revenue loss may update their revenue loss election in future reporting cycles.

Recipients continue to be required to employ a consistent methodology across the period of performance (i.e., choose to use either the standard allowance or the full formula) and may not elect one approach for certain reporting years and the other approach for different reporting years. Recipients that elect the standard allowance do not have to produce any further demonstration or calculation of revenue loss.

Electing the standard allowance does not increase or decrease a recipient's total allocation. For example, a recipient with a SLFRF allocation of $6 million would be allowed to claim no more than $6 million as revenue loss to use for government services, and a recipient with an allocation of $12 million would be allowed to claim up to $10 million as the standard allowance and use the remaining $2 million toward other eligible use categories in the SLFRF program. Recipients that elect to calculate revenue loss by formula must do so as articulated in the 2022 final rule and described in the Overview of the 2022 Final Rule and FAQ #3.6.

**3.2. Can revenue loss funds be used for a purpose that is not explicitly listed as an example of a government service in the Overview of the 2022 Final Rule or 2022 Final Rule?**

Yes. Government services generally include any service traditionally provided by a government, unless Treasury has stated otherwise. Common examples are listed on page 11 of the Overview of the 2022 Final Rule and page 4408 of the 2022 final rule, but these lists are not exhaustive. In addition to the common examples described in the 2022 final rule, many recipients and stakeholders have asked if using funds for activities like payroll for specific public sector staff, renovations to particular government facilities, and equipment to facilitate and improve government services such as health services, waste disposal, road building and maintenance, and water and sewer services would be eligible as government services. Treasury is clarifying here that under the 2022 final rule, payroll for government employees, contracts, grants, supplies and equipment, rent, and the many other costs that governments typically bear to provide services are costs that could comprise the costs of government services, and are eligible uses of funds.

Revenue loss is the most flexible eligible use category under the SLFRF program, and funds are subject to streamlined reporting and compliance requirements. Recipients should be mindful that certain restrictions, which are detailed in the Restrictions on Use section in the Overview of the 2022 Final Rule and 2022 final rule and apply to all eligible use categories, apply to government services as well. Note also that every use that is eligible under other eligible use categories is also eligible under revenue loss, because those eligible uses are also services provided by recipient governments, and Treasury encourages recipients to use their funds for investments that serve the needs of their communities and build a stronger and more equitable recovery.

**3.3. Can revenue loss funds be used for a project eligible under other eligible use categories, such as addressing the public health and negative economic impacts of the pandemic, providing premium pay, investing in water, sewer, or broadband infrastructure, providing emergency relief for natural disasters, funding projects eligible under certain Department of Transportation programs (Surface Transportation projects), or funding projects eligible under Title I of the Housing and Community Development Act of 1974 (Title I projects)?**

Yes. The revenue loss eligible use category allows recipients to expend funds with flexibility and streamlined reporting requirements**,** including on expenditures that would not be eligible under other eligible use categories. In addition, recipients may use revenue

loss funds to carry out investments that would be eligible under other eligible use categories, because those eligible uses are also services provided by recipient governments. Treasury encourages the use of government services funds on uses enumerated in these categories, including but not limited to affordable housing, childcare investments, supporting public sector workers, job training and workforce development, and investments in public health.

**3.4. How is revenue defined for the purpose of the revenue loss calculation formula?**

The 2022 final rule adopts a definition of "General Revenue" that is based on, but not identical, to the Census Bureau's concept of "General Revenue from Own Sources" in the Annual Survey of State and Local Government Finances.

General Revenue means money that is received from tax revenue, current charges, and miscellaneous general revenue, excluding refunds and other correcting transactions and proceeds from issuance of debt or the sale of investments, agency or private trust transactions, and intergovernmental transfers from the Federal Government, including transfers made pursuant to section 9901 of the American Rescue Plan Act. General Revenue also includes revenue from liquor stores that are owned and operated by state and local governments. General Revenue does not include revenues from utilities, except recipients may choose to include revenue from utilities that are part of their own government as General Revenue provided the recipient does so consistently over the remainder of the period of performance. Revenue from Tribal business enterprises must be included in General Revenue.

Please see the appendix for a diagram of the 2022 final rule's definition of General Revenue within the Census Bureau's revenue classification structure.

**3.5. Will revenue be calculated on an entity-wide basis or on a source-by-source basis (e.g., property tax, income tax, sales tax, etc.)?**

Recipients should calculate revenue on an entity-wide basis. This approach minimizes the administrative burden for recipients, provides for greater consistency across recipients, and presents a more accurate representation of the net impact of the COVID-19 public health emergency on a recipient's revenue, rather than relying on financial reporting prepared by each recipient, which vary in methodology used and which generally aggregate revenue by purpose rather than by source.

Recipients should classify revenue sources as they would if responding to the U.S. Census Bureau's Annual Survey of State and Local Government Finances. According to the Census Bureau's Government Finance and Employment Classification manual, the following is an example of current charges that would be included in a state or local government's General Revenue from own sources: "Gross revenue of facilities operated by a government (swimming pools, recreational marinas and piers, golf courses, skating rinks, museums, zoos, etc.); auxiliary facilities in public recreation areas (camping areas,

refreshment stands, gift shops, etc.); lease or use fees from stadiums, auditoriums, and community and convention centers; and rentals from concessions at such facilities."

Please refer to the appendix for further details on the definition of General Revenue.

**3.6. For recipients not electing the $10 million standard allowance, what is the formula for calculating the reduction in revenue?**

Recipients calculate revenue loss at four distinct points in time, either at the end of each calendar year (e.g., December 31 for years 2020, 2021, 2022, and 2023) or the end of each fiscal year of the recipient. Under the flexibility provided in the 2022 final rule, recipients can choose whether to use calendar or fiscal year dates but must be consistent throughout the period of performance. To calculate revenue loss at each of these dates, recipients must follow a four-step process:

a. Calculate revenues collected in the most recent full fiscal year prior to the public health emergency (i.e., last full fiscal year before January 27, 2020), called the base year revenue.

b. Estimate counterfactual revenue, which is equal to the following formula, where n is the number of months elapsed since the end of the base year to the calculation date:

$$base\ year\ revenue \times (1 + growth\ adjustment)^{n/12}$$

The *growth adjustment* is the greater of either a standard growth rate—5.2 percent—or the recipient's average annual revenue growth in the last full three fiscal years prior to the COVID-19 public health emergency.

c. Identify actual general revenue, which equals revenues collected over the twelve months immediately preceding the calculation date. Under the 2022 final rule, recipients must adjust actual revenue totals for the effect of tax cuts and tax increases that are adopted after the date of adoption of the 2022 final rule (January 6, 2022). Specifically, the estimated fiscal impact of tax cuts and tax increases adopted after January 6, 2022, must be added to or subtracted from the calculation of actual revenue for purposes of calculation dates that occur on or after April 1, 2022. Recipients may subtract from their calculation of actual revenue the effect of tax increases enacted prior to the adoption of the 2022 final rule. Note that recipients that elect to remove the effect of tax increases enacted before the adoption of the 2022 final rule must also remove the effect of tax decreases enacted before the adoption of the 2022 final rule, such that they are accurately removing the effect of tax policy changes on revenue.

d. Revenue loss for the calculation date is equal to counterfactual revenue minus actual revenue (adjusted for tax changes) for the twelve-month period. If actual revenue exceeds counterfactual revenue, the loss is set to zero for that twelve-month period. Revenue loss for the period of performance is the sum of the revenue loss for each calculation date.

The supplementary information in the 2022 final rule provides an example of this

calculation, which recipients may find helpful, in the Revenue Loss section. Recipients should see the 2022 final rule for the full description of the requirements to reflect the effect of tax cuts and tax increases on actual revenue.

**3.7. Are recipients expected to demonstrate that reduction in revenue is due to the COVID-19 public health emergency?**

Under the 2022 final rule, any diminution in actual revenue calculated using the formula above would be presumed to have been "due to" the COVID-19 public health emergency, in the case of both the standard allowance and the formula, which, as discussed above adjusts for certain tax policy changes.

**3.8. May recipients use pre-pandemic projections as a basis to estimate the reduction in revenue?**

No. Treasury is disallowing the use of projections to ensure consistency and comparability across recipients and to streamline verification. However, in estimating the revenue shortfall using the formula above, recipients may incorporate their average annual revenue growth rate in the three full fiscal years prior to the public health emergency.

**3.9. In calculating revenue loss, are recipients required to use audited financials?**

Where audited data are not available, recipients are not required to obtain audited data. Treasury expects all information submitted to be complete and accurate.

**3.10. In calculating revenue loss, should recipients use their own data, or Census data?**

Recipients should use their own data sources to calculate General Revenue, and do not need to rely on published revenue data from the Census Bureau. Treasury acknowledges that due to differences in timing, data sources, and definitions, recipients' self-reported General Revenue figures may differ somewhat from those published by the Census Bureau.

**3.11. Should recipients calculate revenue loss on a cash basis or an accrual basis?**

Recipients may calculate revenue loss on a cash, accrual, or modified accrual basis, provided that recipients are consistent in their choice of methodology for all inputs of the revenue loss calculation throughout the period of performance and until reporting is no longer required.

**3.12. In identifying intergovernmental revenue for the purpose of calculating General Revenue, should recipients exclude all federal funding, or just federal funding related to the COVID-19 response? How should local governments treat federal funds that**

**are passed through states or other entities, or federal funds that are intermingled with other funds?**

In calculating General Revenue, recipients should exclude all intergovernmental transfers from the federal government. This includes, but is not limited to, federal transfers made via a state to a locality pursuant to the Coronavirus Relief Fund or Fiscal Recovery Funds. To the extent federal funds are passed through states or other entities or intermingled with other funds, recipients should attempt to identify and exclude the federal portion of those funds from the calculation of General Revenue on a best-efforts basis.

### 3.13. What entities constitute a government for the purpose of calculating revenue loss?

In determining whether a particular entity is part of a recipient's government for purposes of measuring a recipient's General Revenue, recipients should identify all the entities included in their government and the General Revenue attributable to these entities on a best-efforts basis. Recipients are encouraged to consider how their administrative structure is organized under state and local statutes. In cases in which the autonomy of certain authorities, commissions, boards, districts, or other entities is not readily distinguishable from the recipient's government, recipients may adopt the Census Bureau's criteria for judging whether an entity is independent from, or a constituent of, a given government. Recipients may not include independent entities in calculating General Revenue. For an entity to be independent, it generally meets all four of the following conditions:

- The entity is an organized entity and possesses corporate powers, such as perpetual succession, the right to sue and be sued, having a name, the ability to make contracts, and the ability to acquire and dispose of property.

- The entity has governmental character, meaning that it provides public services,or wields authority through a popularly elected governing body or officers appointed by public officials. A high degree of responsibility to the public, demonstrated by public reporting requirements or by accessibility of records forpublic inspection, also evidences governmental character.

- The entity has substantial fiscal independence, meaning it can determine its budget without review and modification by other governments. For instance, the entity can determine its own taxes, charges, and debt issuance without another government's supervision.

- The entity has substantial administrative independence, meaning it has a popularly elected governing body, or has a governing body representing two or more governments, or, in the event its governing body is appointed by another government, the entity performs functions that are essentially different from those of, and are not subject to specification by, its creating government.

If an entity does not meet all four of these conditions, a recipient may classify the entity as part of the recipient's government and include the portion of General Revenue that corresponds to the entity.

To further assist recipients in applying the foregoing criteria, recipients may refer to the Census Bureau's *Individual State Descriptions: 2017 Census of Governments* publication, which lists specific entities and classes of entities classified as either independent (defined by Census as "special purpose governments") or constituent (defined by Census as "dependent agencies") on a state-by-state basis. Recipients should note that the Census Bureau's lists are not exhaustive and that Census classifications are based on an analysis of state and local statutes as of 2017 and subject to the Census Bureau's judgment. Though not included in the Census Bureau's publication, state colleges and universities are generally classified as dependent agencies of state governments by the Census Bureau.

If an entity is determined to be part of the recipient's government, the recipient must also determine whether the entity's revenue is covered by the 2022 final rule's definition of General Revenue. For example, some cash flows may be outside the definition of General Revenue. In addition, note that the definition of general revenue includes Tribal enterprises in the case of Tribal governments. Refer to FAQ #3.4 and the Appendix for the components included in General Revenue.

**3.14. How should recipients that receive multiple allocations (e.g., a city and a county consolidated government) calculate their revenue loss?**

If a government entity receives a combined award (e.g., in its capacity both as an NEU and as a Unit of General Local Government (UGLG) within a non-UGLG county), it must determine its revenue loss only once as the combined entity. The government entity may not, for example, elect the standard allowance once as an NEU and once as an UGLG (i.e., it would only be able to claim up to a total of $10 million standard allowance against all of its awards). Similarly, if the government entity elects to calculate its revenue according to the formula set out in the 2022 final rule, it must do so on a combined basis.

In the case of an award to an UGLG within a non-UGLG county under section 603(b)(3)(B)(ii) of the Social Security Act, the UGLG is considered the prime recipient of this award. Therefore, the prime recipient in this circumstance may treat these transferred funds as its own award for purposes of the revenue loss determination.

For example, if an NEU receives $2 million in its NEU distribution, and then receives an additional $13 million as an UGLG within a non-UGLG county, and the NEU elects the standard allowance of $10 million in revenue loss, the NEU would be able to spend up to a total of $10 million on government services under revenue loss against its awards, and would be able to spend the remaining $5 million in other expenditure categories.

## 4. Eligible Uses – General

### 4.1. How do I know if a specific use is eligible?

The best way to begin evaluation of whether a specific use is an eligible use of SLFRF funds is to consider which of the seven eligible use categories the use may fall into.

As a reminder, there are seven eligible use categories, listed below from the broadest and most flexible to the most specific. The Overview of the 2022 Final Rule serves as a summary of the major provisions of the four categories authorized in the American Rescue Plan. The Overview of the 2023 Interim Final Rule summarizes the major provisions of the three new categories of eligible uses authorized by the 2023 CAA.

- Replace lost public sector revenue, using SLFRF funds to provide government services up to the amount of revenue loss due to the pandemic. (pages 9-11 of the Overview of the 2022 Final Rule)

- Support the COVID-19 public health and economic response by addressing COVID-19 and its impact on public health as well as addressing economic harms to households, small businesses, nonprofits, impacted industries, and the public sector. (pages 12-34 of the Overview of the 2022 Final Rule)

- Provide premium pay for eligible workers performing essential work, offering additional support to those who have and will bear the greatest health risks because of their service in critical sectors. (pages 35-36 of the Overview of the 2022 Final Rule)

- Invest in water, sewer, and broadband infrastructure, making necessary investments to improve access to clean drinking water, support vital wastewater and stormwater infrastructure, and expand affordable access to broadband internet. (pages 37-40 of the Overview of the 2022 Final Rule)

- Provide emergency relief from natural disasters or their negative economic impacts. (pages 4-8 of the Overview of the 2023 Interim Final Rule)

- Fund eligible Surface Transportation projects. (pages 9-15 of the Overview of the 2023 Interim Final Rule)

- Fund Title I projects that are eligible activities under the Community Development Block Grant and Indian Community Development Block Grant programs. (pages 9, 16-19 of the Overview of the 2023 Interim Final Rule).

The SLFRF program provides substantial flexibility for each jurisdiction to meet local needs within these eligible use categories. In general, recipients should think about what services they aim to provide, and for which groups or populations, and assess whether this use of SLFRF funds would fit within the parameters of the eligible use category as described in the 2022 final rule, the 2023 interim final rule, and their respective overviews. Recipients also should be mindful that various forms of assistance have been made

available during the pandemic (e.g., Economic Injury Disaster Loans through the U.S. Small Business Administration), and certain restrictions on duplications of benefits may apply.

*Revenue loss eligible use category*

If a use does not appear to be eligible under the water, sewer, and broadband infrastructure, premium pay, public health emergency or its, negative economic impacts, emergency relief from natural disasters, Surface Transportation projects, and Title I projects eligible use categories, recipients should consider using funds under the revenue loss eligible use category. This category provides recipients broad latitude to use funds for the provision of government services to the extent of a reduction in revenue due to the pandemic.

All recipients may (1) elect a "standard allowance" of up to $10 million to spend on government services through the period of performance (see FAQ #3.1), or (2) elect to calculate their revenue loss using the formula provided in the 2022 final rule. Under the revenue loss eligible use category, government services generally include any service traditionally provided by a government, unless Treasury has stated otherwise (see FAQ #3.2). For additional information and a list of examples of common government services, recipients can refer to page 11 of the Overview of the 2022 Final Rule and page 4408 of the 2022 final rule. The lists in these materials are not exhaustive and every use that is eligible under other eligible use categories is also eligible under the revenue loss category.

*Public health and negative economic impacts eligible use category*

To assess the eligibility of a use under the public health and negative economic impacts eligible use category, recipients may refer initially to the non-exhaustive lists of enumerated uses that respond to pandemic impacts, and the lists of populations presumed to have experienced pandemic impacts and be eligible for responsive services. These lists appear in the Overview of the 2022 Final Rule and the 2022 final rule organized by sub-categories around the types of assistance a recipient may provide. Recipients should first determine the sub-category where their use of funds may fit (e.g., public health, assistance to households, assistance to small businesses), based on the entity that experienced the health or economic impact. Recipients then should refer to the relevant section for more details on each sub-category of eligible responses.

If a recipient intends to provide enumerated uses of funds to populations presumed eligible, then the use of funds is clearly consistent with the 2022 final rule. However, if the intended expenditure does not match an enumerated use serving a presumed eligible population, that does not necessarily mean it is ineligible. Recipients may consider using the broad flexibility available in this eligible use category, beyond the enumerated uses and presumed eligible populations, to (1) identify and respond to other pandemic impacts and (2) serve other populations that experienced pandemic impacts. Recipients may also identify groups or "classes" of beneficiaries that experienced pandemic impacts and provide services to those groups.

*Premium pay eligible use category*

To assess whether a use falls under the premium pay eligible use category, recipients can follow the steps outlined on pp. 35-36 of the Overview of the 2022 Final Rule and refer to the FAQs in section 5.

*Water, sewer, and broadband infrastructure eligible use category*

To assess whether a use falls under the water, sewer, and broadband infrastructure category, recipients can consult pp. 37-40 of the Overview of the 2022 Final Rule and refer to the FAQs in section 6.

*Emergency Relief from Natural Disasters*

To assess whether a use falls under the emergency relief from natural disasters category, recipients should first identify a natural disaster that has occurred or is expected to occur imminently, or a natural disaster that is anticipated to occur in the future.

Second, recipients should identify emergency relief that responds to the physical or negative economic impacts, or potential physical or negative economic impacts, of the natural disaster. The emergency relief must be related and reasonably proportional to the impact identified. A non-exhaustive list of eligible emergency relief can be found on pages 5-6 in the Overview of the 2023 Interim Final Rule. For more information, recipients can consult pages 4-8 of the Overview of the 2023 Interim Final Rule and refer to the FAQs in section 15.

*Surface Transportation projects*

To assess whether a use falls under the Surface Transportation projects eligible use category, recipients should examine the project to determine whether it falls under Pathway One, Pathway, Two, or Pathway Three, and whether the project meets the statutory requirements that apply to this eligible use category.

For more information, see pages 9-15 of the Overview of the 2023 Interim Final Rule and the FAQs in section 16.

*Title I projects*

To assess whether a use falls under the Title I projects eligible use category, recipients should assess whether the project is aligned with the eligible activities permitted under the CDBG and ICDBG programs, activities listed under section 105(a) of the Housing and Development Act of 1974 (HCDA) (42 U.S.C. 5305(a)), and whether the project meets the additional statutory requirements that apply to this eligible use category.

For more information, recipients may refer to pages 9, 16-19 of the Overview of the 2023 Interim Final Rule and to the FAQs in section 16.

Additionally, recipients should note the restrictions on use that are applicable across all of the eligible use categories. For restrictions on use regarding the categories of replacement of lost public sector revenue, public health and negative economic impacts, premium pay, and water, sewer, and broadband infrastructure, please see the summary on pages 41-42 of the Overview of the 2022 Final Rule. These same restrictions apply to the new eligible use categories, described in the 2023 interim final rule, of emergency relief from natural disaster, Surface Transportation Projects, and Title I projects. Summary information regarding additional statutory requirements that apply to Surface Transportation projects and Title I projects, including that the total amount of SLFRF funds that a recipient may use for Surface Transportation projects and Title I projects, taken together, cannot exceed the greater of $10 million and 30% of a recipient's SLFRF allocation, can be found on page 9 of the Overview of the 2023 Interim Final Rule.

When assessing whether a specific activity may be eligible, recipients are not required to submit planned expenditures for prior approval by Treasury, except for certain projects in the Surface Transportation projects and Title I projects eligible use categories. Further, Treasury is not pre-approving proposed expenditures, except for certain projects in the Surface Transportation projects and Title I projects eligible use categories, or calculations of revenue loss. Recipients should review the 2022 final rule, Overview of the 2022 Final Rule, and Overview of the 2023 Interim Final Rule and consult with counsel as needed, to evaluate whether a particular expenditure is an eligible use of SLFRF funds.

**4.2. May recipients use funds to invest in traditional infrastructure projects other than water, sewer, and broadband projects (e.g., roads, bridges)?**

First, recipients may utilize SLFRF funds for Surface Transportation projects in the following ways:

- Pathway One: Supplementing Surface Transportation projects receiving funding from DOT
- Pathway Two: Funding Surface Transportation projects not receiving funding from DOT
- Pathway Three: Satisfying non-federal share requirements for certain Surface Transportation projects or repaying a loan provided under the TIFIA program. Please see section 16 of the FAQs for more information.

Second, recipients may use SLFRF funds to provide emergency relief from natural disasters for public infrastructure damaged by a natural disaster or for mitigation activities to avert the threat of a future natural disaster. See section 15 of the FAQs for more information.

Third, as discussed in FAQ #3.2, recipients have broad flexibility under the revenue loss eligible use category to provide government services, which generally include any service traditionally provided by a government. These services may include but are not limited to maintenance of infrastructure or pay-go spending for building of new

infrastructure, including roads.

Fourth, recipients should note that under the public health and negative economic impacts eligible use category, a general infrastructure project typically would not be considered an eligible response 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).

### 4.3. May recipients use funds to pay interest or principal on outstanding debt?

Under the Surface Transportation projects eligible use category, recipients may use SLFRF funds under Pathway Three to repay a TIFIA loan.

Otherwise, generally, no. The 2022 final rule maintains the restriction on the use of funds for debt service for the reasons described on page 4430 of the 2022 final rule and clarifies that this restriction applies to all eligible use categories.

This applies to paying interest or principal on any outstanding debt instrument, including, for example, short-term revenue or tax anticipation notes, or paying fees or issuance costs associated with the issuance of new debt.

### 4.4. Are governments required to submit proposed expenditures to Treasury for approval?

Under the public health and negative economic impacts, premium pay, revenue loss, water, sewer, broadband infrastructure, and emergency relief from natural disasters eligible use categories, recipients are not required to submit planned expenditures for prior approval by Treasury.

For Surface Transportation projects undertaken via Pathway One or Pathway Three, recipients must consult with the DOT. Surface Transportation projects undertaken via the streamlined framework described under Pathway Two do not require pre-approval by Treasury or the DOT. Recipients that would like to use SLFRF funds for a Surface Transportation project under Pathway Two outside the parameters of the streamlined framework must email a Notice of Intent to Treasury at NOI-SLFRF@treasury.gov by December 20, 2023, as stated in the 2023 interim final rule. Treasury will evaluate the projects included in these Notices of Intent, along with comments to the 2023 interim final rule, to design and implement the framework for approving these types of projects. More information about the notice of intent process can be found in the 2023 interim final rule.

For Title I projects, recipients must submit a project-level environmental review certification to Treasury and receive Treasury's approval prior to using SLFRF funds for projects under this eligible use category, unless the project meets at least one of the criteria listed below. Projects under the Title I eligible use category do not require approval from HUD.

Recipients are not required to submit certifications or receive Treasury's approval and may begin using their SLFRF funds right away for Title I projects that are either:

- Exempt activities as described under 24 CFR 58.34(a); or
- Categorically excluded activities not subject to 24 CFR 58.5 as contemplated by 24 CFR 58.35(b), provided that the circumstances described in 24 CFR 58.35(c) are not present.

Recipients are subject to the requirements and guidelines for all eligible use categories described in the 2022 final rule and 2023 interim final rule. For more information on compliance and reporting, please see the SLFRF Compliance and Reporting Guidance.

**4.5. Do restrictions on using funds to cover costs incurred beginning on March 3, 2021, apply to costs incurred by the recipient (e.g., a State, local, territorial, or Tribal government) or to costs incurred by households, businesses, and individuals benefiting from assistance provided using funds?**

The 2022 final rule permits funds to be used to cover costs incurred beginning on March 3, 2021. This limitation applies to costs incurred by the recipient of SLFRF funds (i.e., the state, local, territorial, or Tribal government). Recipients may use SLFRF funds to provide assistance to households, businesses, and individuals within the eligible use categories described in the 2022 final rule for economic harms experienced by those households, businesses, and individuals prior to March 3, 2021. The 2023 interim final rule permits recipients to use SLFRF funds for the new eligible uses for costs incurred beginning on December 29, 2022, which is the date the 2023 CAA was enacted. Please see the examples set out below.

- Public Health/Negative Economic Impacts – Recipients may use SLFRF funds to provide assistance to households – such as rent, mortgage, or utility assistance – for economic harms experienced or costs incurred by the household prior to March 3, 2021 (e.g., rental arrears from preceding months), provided that the cost of providing assistance to the household was not incurred by the recipient prior to March 3, 2021.

- Premium Pay – As discussed further in FAQ #5.2, recipients may provide premium pay retrospectively for work performed at any time since the start of the COVID-19 public health emergency. Such premium pay must be "in addition to" wages and remuneration already received and the obligation to provide such pay must not have been incurred by the recipient prior to March 3, 2021. Employers may not simply reimburse themselves for pay already received by the employee.

- Revenue Loss – The 2022 final rule gives recipients broad latitude to use funds for the provision of government services to the extent of reduction in revenue due to the pandemic. If the recipient has elected to calculate lost revenue, the calculation begins with the recipient's revenue in the last full fiscal year prior to the COVID-19 public health emergency. However, use of funds for government

services must be forward looking for costs incurred by the recipient after March 3, 2021.

- Investments in Water, Sewer, and Broadband Infrastructure – Recipients may use SLFRF funds to make necessary investments in water, sewer, and broadband. See FAQ Section 6. Recipients may use funds to cover costs incurred for eligible projects planned or started prior to March 3, 2021, provided that the project costs covered by the funds were incurred after March 3, 2021.

- Emergency Relief from Natural Disasters – Recipients may use SLFRF funds for emergency relief from natural disasters. See FAQ Section 15. Funds may be used to cover costs incurred beginning on December 29, 2022, regardless of the date of the declared natural disaster. Recipients must obligate SLFRF funds for this purpose by December 31, 2024, and expend SLFRF funds by December 31, 2026.

- Surface Transportation – Recipients may use SLFRF funds for certain surface transportation projects. Funds may be used to cover costs incurred beginning on December 29, 2022. See FAQ Section 16. Recipients must obligate SLFRF funds by December 31, 2024, and expend SLFRF funds by September 30, 2026.

- Title I – Recipients may use SLFRF funds for eligible Title I projects. Funds may be used to cover costs incurred beginning on December 29, 2022. See FAQ Section 16. Recipients must obligate SLFRF funds by December 31, 2024, and expend SLFRF funds by September 30, 2026.

### 4.6. May recipients use funds to satisfy non-federal matching requirements?

Under the specific circumstances described below, recipients may use SLFRF funds to satisfy non-federal matching requirements. Otherwise, recipients may not use SLFRF funds to meet the non-federal match or cost-share requirement of other federal financial assistance programs.

- **Revenue Loss:** Funds under the revenue loss eligible use category (sections 602(c)(1)(C) and 603(c)(1)(C) of the Social Security Act) generally may be used to meet the non-federal cost-share or matching requirements of other federal programs. However, note that SLFRF funds may not be used as the non-federal share for purposes of a state's Medicaid and Children's Health Insurance Programs (CHIP) 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.

  If a recipient seeks to use SLFRF funds to satisfy match or cost-share requirements for a federal grant program, it should first confirm with the relevant awarding agency that no waiver has been granted for that program, that no other circumstances enumerated under 2 CFR 200.306(b) would limit the use of SLFRF funds to meet the match or cost-share requirement, and that there is no

other statutory or regulatory impediment to using the SLFRF funds for the match or cost-share requirement.

- **Certain projects described in IIJA:** The Infrastructure Investment and Jobs Act (IIJA) provides that SLFRF funds may be used to meet the non-federal match requirements of authorized Bureau of Reclamation projects and certain broadband deployment projects. Recipients should consult the 2022 final rule for further details if they seek to utilize SLFRF funds as matching funds for these projects.

- **Surface Transportation projects under Pathway Three:** Recipients may use SLFRF funds under Pathway Three of the Surface Transportation projects eligible use category to repay a TIFIA loan or satisfy the non-federal share requirements of projects eligible under the following programs: INFRA Grants, Fixed Guideway Capital Investment Grants, Mega Grants, and projects eligible for credit assistance under the TIFIA program, such as to repay a TIFIA loan.

- **Title I projects:** Recipients may use SLFRF funds to satisfy the non-federal share requirement of a federal financial assistance program in connection with eligible activities under the CDBG and ICDBG programs.

### 4.7. May recipients pool funds for regional projects?

Yes, provided that the project is itself an eligible use of SLFRF funds for each recipient that is contributing to the pool of funds and that recipients are able to track the use of funds in line with the reporting and compliance requirements of the SLFRF. In general, when pooling funds for regional projects, recipients may expend funds directly on the project or transfer funds to another government or other entity that is undertaking the project on behalf of multiple recipients. To the extent recipients undertake regional projects via transfer to another organization or government, recipients would need to comply with the rules on transfers specified in the 2022 final rule supplementary information. A recipient may transfer funds to a government outside its boundaries (e.g., county transfers to a neighboring county, or an NEU transferring its funds to a County), provided that the transferor can document that the transfer constitutes an eligible expense of the transferor government and that its jurisdiction receives a benefit proportionate to the amount transferred.

### 4.8. May recipients fund a project with both ARPA funds and other sources of funding (e.g., blending, braiding, or other pairing funding sources), including in conjunction with financing provided through a debt issuance?

Generally, yes, provided that the costs are eligible costs under each source program and are compliant with all related statutory and regulatory requirements and policies, as applicable, including restrictions on use of funds (e.g., Buy America Preference (see FAQs #6.18, #6.19), National Environmental Policy Act (see FAQ #6.3)).

The recipient must comply with applicable reporting requirements for all sources of funds supporting the SLFRF project.

The recipient may source funding for a project in multiple ways, including but not limited to the following:

- Using funds available under the revenue loss eligible use category for non-federal match (see FAQ #4.6)
- Pooling funds for a joint project with another SLFRF recipient (see FAQ #4.7)
- Transferring funds to a subrecipient to finance a project that also uses other sources of funding
- Blending or braiding SLFRF funds with other sources of government funding, including debt issuance, to pursue a project

Localities may also transfer their funds to the state through section 603(c)(4) of the Social Security Act, which would decrease the locality's award and increase the state award amounts.

Note that using a recipient blending and braiding funds in conjunction with other sources of funding is distinct from using funds for non-federal match. In the case of non-federal match, the recipient would be using SLFRF funds to satisfy cost-sharing or matching requirements in order to qualify for another source of federal funding, while blending and braiding refers to using multiple sources of funding for complementary purposes.

If the entirety of a project is funded with SLFRF funds, then the entire project must be an eligible use. The use of funds is subject to the deadline of obligating funds no later than December 31, 2024, and expending funds no later than December 31, 2026, except for Surface Transportation projects and Title I projects that have an expenditure deadline of September 30, 2026. If a project is partially funded with SLFRF funds, then the relevant portion must be an eligible use of SLFRF funds and the SLFRF funds must be obligated by December 31, 2024, and expended by December 31, 2026, except for Surface Transportation projects and Title I projects that have an expenditure deadline of September 30, 2026. In either case, recipients must be able to, at a minimum, determine and report to Treasury on the amount of SLFRF funds obligated and expended and when such funds were obligated and expended.

SLFRF funds may not be used to fund the entirety of a project that is partially, although not entirely, an eligible use under the 2022 final rule. However, SLFRF funds may be used for a smaller component project that does constitute an eligible use, while other funds are used for the remaining portions of the larger planned project that do not constitute an eligible use. In this case, the ''project'' for SLFRF purposes under this program would be only the eligible use component of the larger project. For example, a recipient government may use SLFRF funds to subsidize the production of affordable housing units as a

response to the pandemic and its negative economic impacts and use other funds to build other parts of a larger development that contains these affordable units.

**4.9. May funds be used to make loans or other extensions of credit ("loans") to support an eligible use?**

Yes. SLFRF funds may be used to make loans, provided that the loan supports an activity that is an eligible use of funds.

The cost of the loan must be tracked and reported in accordance with the points set out below. For example, a recipient may, consistent with the requirements of the 2021 interim final rule and 2022 final rule, use funds to finance the construction of affordable housing or a necessary investment in water, sewer, or broadband infrastructure. For the eligible use categories outlined in the 2022 final rule, funds may be used to cover "costs incurred" beginning on March 3, 2021, and such funds must be obligated by December 31, 2024. For the eligible use categories outlined in the 2023 interim final rule, funds may be used to cover "costs incurred" beginning on December 29, 2022, and must be obligated by December 31, 2024.

Accordingly, recipients must be able to determine the amount of funds used to make a loan.

- For loans that mature or are forgiven on or before December 31, 2026 (or September 30, 2026, for Title I projects), the recipient must account for the use of funds on a cash flow basis, consistent with the approach to loans taken in the Coronavirus Relief Fund.
    - Recipients may use SLFRF funds to fund the principal of the loan and in that case must track repayment of outstanding principal and interest amounts (i.e., "program income" as defined in 2 CFR 200.1).
    - When the loan is made, recipients must report the principal of the loan as an expense.
    - Repayment of principal may be re-used only for eligible uses and subject to restrictions on timing of use of funds. Interest payments received prior to the end of the period of performance will be considered an addition to the total SLFRF award and may be used for any purpose that is an eligible use of SLFRF funds. Recipients are not subject to restrictions under 2 CFR 200.307(e)(1) with respect to such payments.

- For loans with maturities longer than December 31, 2026 (or September 30, 2026, for Title I projects), the recipient may use funds for only the projected cost of the loan.

- Recipients can project the cost of the loan by estimating the subsidy cost. The subsidy cost is the estimated present value of the cash flows from the recipient (excluding administrative expenses) less the estimated present value of the cash flows to the recipient resulting from a loan, discounted at the recipient's cost of funding and discounted to the time when the loan is disbursed. The cash flows are the contractual cash flows adjusted for expected deviations from the contract terms (delinquencies, defaults, prepayments, and other factors). A recipient's cost of funding can be determined based on the interest rates of securities with a similar maturity to the cash flow being discounted that were either (i) recently issued by the recipient or (ii) recently issued by a unit of state, local, or Tribal government similar to the recipient.

- Alternatively, recipients may treat the cost of the loan as equal to the expected credit losses over the life of the loan based on the Current Expected Credit Loss (CECL) standard. Recipients may measure projected losses either once, at the time the loan is extended, or annually over the period of performance.

- Under either approach for measuring the amount of funds used to make loans with maturities longer than December 31, 2026 (or September 30, 2026, for Title I projects), recipients would not be subject to restrictions under 2 CFR 200.307(e)(1) and need not separately track repayment of principal or interest amounts.

- Additionally, recipients may use funds for eligible administrative expenses incurred in the period of performance, which include the reasonable administrative expenses associated with a loan made in whole, or in part, with SLFRF funds. See section IV.E of the 2022 final rule.

- Contributions to Revolving Loan Funds. A recipient may contribute SLFRF funds to a revolving loan fund if the loaned SLFRF funds are restricted to financing eligible uses under the public health emergency/negative economic impacts, premium pay, necessary water, sewer and broadband infrastructure categories (or under the government services category if the contribution to the revolving loan fund is made using SLFRF funds), and Title I projects eligible use categories. The amount contributed using SLFRF funds must be limited to the projected cost of loans made over the life of the revolving loan fund, following the approach described above for loans with maturities longer than December 31, 2026 (or September 30, 2026, for Title I projects).

- Loans funded with SLFRF funds under the revenue loss eligible use category. Notwithstanding the above, if a recipient uses SLFRF funds under the revenue loss eligible use category to fund a loan, whether or not the maturity of the loan is after December 31, 2026, the loaned funds 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. Similarly, any contribution of revenue loss funds

to a revolving loan fund may also follow the approach of loans funded under the revenue loss eligible use category.

- Loans to fund investments in affordable housing projects. Notwithstanding the above requirements for loans with maturities beyond December 31, 2026, Treasury has determined that SLFRF funds may be used to finance certain loans that finance affordable housing investments, as it is typical for state and local governments to finance such investments through loans 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. Specifically, under the "public health and negative economic impacts" eligible use category, recipients may use SLFRF 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 the low-income housing credit (LIHTC) under section 42 of the Internal Revenue Code of 1986 (the Code),
    - the project owner must agree, as a condition for accepting such a loan, to waive any right to request a qualified contract (as defined in section 42(h)(6)(F) of the Code); 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 under the public health and negative economic impacts eligible use category and meet the above criteria 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 the modifications do not result in repayment of all or substantially all funds to the lender prior to the end of the affordability period. To reduce administrative complexity, 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 source of federal or state funding associated with the project or units.

**4.10. May funds be used for outreach to increase uptake of federal assistance like the Child Tax Credit or federal programs like SNAP?**

Yes. Eligible uses to address negative economic impacts include "assistance accessing or applying for public benefits or services." This can include benefits navigators or marketing efforts to increase consumer uptake of federal tax credits, benefits, or assistance programs that respond to negative economic impacts of the pandemic." Of note, per the 2022 final rule, allowable uses of funds for evaluations may also include other types of program evaluations focused on program improvement and evidence building.

**4.11. How does the end of the COVID-19 National Emergency, declared by the President in 2020, have an impact on the SLFRF program?**

The end of the COVID-19 National Emergency has an impact on one of the eligible use categories of SLFRF funds, Premium Pay. There are no impacts on the other eligible use categories.

On March 29, 2023, Congress voted to terminate the National Emergency concerning COVID-19 that President Trump had declared in 2020 pursuant to the National Emergencies Act. This termination is effective as of April 10, 2023. The 2022 final rule defines "COVID-19 public health emergency" by including reference to this National Emergency declaration, providing that the COVID-19 public health emergency is the "period beginning on January 27, 2020 and lasting until the termination of the national emergency concerning the COVID-19 outbreak declared pursuant to the National Emergencies Act (50 U.S.C. 1601 et seq.)."[6]

Following the termination of the National Emergency, recipients generally will be able to continue to make investments using their SLFRF funds without changes, with the exception of projects in the premium pay eligible use category, as discussed below. Specifically:

- *Premium Pay*: The SLFRF statute and the 2022 final rule provide that recipients can use SLFRF funds to provide premium pay to eligible workers performing essential work during the COVID-19 public health emergency, as defined in the 2022 final rule as the period ending when the COVID-19 National Emergency ends (i.e., until termination of the National Emergency described above). Accordingly, recipients may not use SLFRF funds to provide premium pay to essential workers for work performed after the end of the National Emergency on April 10, 2023. Recipients may continue to make payments retroactively for premium pay for work performed between the start of the pandemic and April 10, 2023. The obligation to provide such premium pay must not have been incurred by the recipient prior to March 3, 2021.
- *Public Health and Negative Economic Impacts*: SLFRF recipients may continue to use funds to respond to the public health impacts or negative economic impacts of the COVID-19 pandemic. This eligible use does not require recipients'

[6] 31 CFR 35.3.

responses to be provided during the National Emergency. Under this eligible use category, recipients may continue to use SLFRF funds to support and expand the workforce, including by helping impacted workers enter in-demand careers, such as in health care and child care. Recipients may also use SLFRF funds to build public sector capacity, including hiring public sector workers and providing retention incentives. In addition, using funds for payroll under this eligible use is distinct from the premium pay eligible use category and is not affected by the end of the National Emergency. Payroll remains an eligible use of SLFRF funds.

- *Revenue Loss*: The end of the National Emergency does not impact how recipients calculate revenue loss according to the formula articulated in the 2022 final rule. The end of the National Emergency also does not have an impact on how recipients claim up to $10 million in revenue loss under the standard allowance. In addition, the end of the National Emergency does not have an impact on how recipients may use their revenue loss funds, including for payroll or premium pay.
- *Water/Sewer/Broadband*: The end of the National Emergency does not have an impact on how recipients may use SLFRF funds under the water, sewer, and broadband infrastructure eligible use category.
- *Emergency Relief from Natural Disasters, Surface Transportation projects, and Title I projects:* These eligible use categories are not impacted by the termination of the National Emergency.

In addition, on May 11, 2023, the Biden-Harris Administration ended the COVID-19 Public Health Emergency declared by the Secretary of the U.S. Department of Health and Human Services (HHS) pursuant to the Public Health Service Act (42 U.S.C. 247d). The end of the COVID-19 Public Health Emergency does not have an impact on recipients' ability to spend funds under the SLFRF program.

## 5. Eligible Uses – Premium Pay

### 5.1. What criteria should recipients use in identifying workers to receive premium pay?

SLFRF may be used to provide premium pay to eligible workers performing essential work during the pandemic or to provide grants to eligible employers that have eligible workers who perform essential work. Premium pay may be awarded to eligible workers up to $13 per hour. Premium pay must be in addition to wages or remuneration (i.e., compensation) the eligible worker otherwise receives. Premium pay may not exceed $25,000 for any single worker during the program.

Premium pay must be responsive to eligible workers performing essential work during the pandemic, and like the 2021 interim final rule, the 2022 final rule emphasizes the need for recipients to prioritize premium pay for lower-income workers. Premium pay that would go to a worker whose total pay is above 150% of the greater of the state or county average annual wage for all occupations (with or without the premium) requires specific justification for how it responds to the needs of these workers unless that worker is not exempt from the Fair Labor Standards Act overtime provisions.

For a detailed description of what constitutes an eligible worker and essential work, as well other premium pay requirements, please see pages 35-36 of the Overview of the 2022 Final Rule. Recipients should also review FAQ #4.11 which describes that following the end of the public health emergency on April 10, 2023, recipients may not provide premium pay for work performed after that date. Recipients may continue to provide premium pay for work performed prior to that date.

### 5.2. May recipients provide premium pay retroactively for work already performed?

Yes. Treasury encourages recipients to consider providing premium pay retroactively for work performed during the pandemic, recognizing that many essential workers have not yet received additional compensation for their service during the pandemic. 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.

### 5.3. Can SLFRF be used to pay for benefits and taxes associated with premium pay wages?

Premium pay is taxable as wage income, and therefore, employers are encouraged to treat the premium pay earned by the employee just as they would other wage income and withhold from the additional pay any required taxes. For further guidance, please see the FAQ published by the IRS on SLFRF.

### 5.4. Does non-base compensation, such as overtime, count toward the 150% pay threshold? Is the 150% threshold calculated based off of income only from the awarding employer or from an employee's total yearly compensation?

Yes, non-base compensation, including overtime and bonuses, counts toward the 150% pay threshold; however, the 150% pay threshold does *not* take into account other sources of income earned by an employee (e.g., income from a second job). For an hourly employee, or an employee that does not have a year's worth of earnings, an employer should extrapolate the hourly wage at an annual rate by multiplying the hourly rate by forty hours per week and then by fifty-two weeks per year.

## 6. Eligible Uses – Water, Sewer, and Broadband Infrastructure

### 6.1. What types of water and sewer projects are eligible uses of funds?

Eligible water and sewer projects are outlined on pages 37-38 of the Overview of the 2022 Final Rule. Under the 2021 interim final rule, SLFRF funds could be used to fund projects that would be eligible under EPA's Clean Water State Revolving Fund or Drinking Water State Revolving Fund. With broadened eligibility under the 2022 final rule, SLFRF funds

may also be used to fund additional types of projects — such as additional stormwater infrastructure, residential wells, lead remediation, and certain rehabilitations of dams and reservoirs — beyond the CWSRF and DWSRF, if they are found to be "necessary" according to the definition provided in the 2022 final rule and outlined on page 38 of the Overview of the 2022 Final Rule.

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

Per FAQ #4.6, 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 (the revenue loss eligible use category), may be used to meet the non-federal cost-share or matching requirements of other federal programs, including the CWSRF and DWSRF programs administered by the EPA. Per FAQ #4.9, loans funded under the revenue loss eligible use category may be deemed expended at the point of disbursement. Thus, recipients using SLFRF funds available under revenue loss for non-federal matching requirements for the DWSRF or CWSRF may consider funds expended at the point the recipient makes the deposit into the State Revolving Funds. Recipients using SLFRF funds available under revenue loss should log projects under expenditure category 6.2.

As further noted in FAQ #4.6, SLFRF funds beyond those that are available under the revenue loss eligible use category 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. Recipients using funds under the eligible use category for water and sewer infrastructure may not use funds as a state match for the CWSRF and DWSRF.

**6.3. Does the National Environmental Policy Act (NEPA) apply to projects funded with SLFRF funds?**

NEPA requirements do not apply to Treasury's administration of SLFRF funds, under the following eligible use categories: revenue loss; public health and negative economic impacts; water, sewer, and broadband infrastructure; and emergency relief from natural disasters. Projects supported with payments from the funds may still be subject to NEPA review if they are also funded by other federal financial assistance programs or have certain federal licensing or registration requirements.

However, NEPA requirements apply to Surface Transportation projects and Title I projects. Please see FAQ #16.16 for additional information about these eligible use categories.

**6.4. What types of broadband projects are eligible uses of funds?**

Recipients are required to design projects that, upon completion, reliably meet or exceed symmetrical 100 Mbps download and upload speeds where practicable. More details on eligible broadband projects, including eligible areas for investment and the affordability

requirement, are outlined on pages 39-40 of the Overview of the 2022 Final Rule.

**6.5. For broadband investments, may recipients use funds for related programs such as cybersecurity or digital literacy training?**

Yes. In the 2022 final rule, Treasury maintained the enumerated eligible use for assistance to households for internet access and digital literacy programs. Recipients may use funds to provide assistance to households facing negative economic impacts due to the pandemic, including digital literacy training and other programs that promote access to the Internet.

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. Under the 2022 final rule, recipients may also invest in general cybersecurity upgrades, unrelated to broadband infrastructure, under the revenue loss eligible use category.

**6.6. Do I need pre-approval for my water, sewer, or broadband project?**

See FAQ #4.4. Generally, recipients are not required to submit planned expenditures for prior approval by Treasury and recipients are subject to the requirements and guidelines for eligible uses contained in the 2022 final rule.

While recipients must ensure that water and sewer infrastructure projects are eligible under the 2022 final rule, recipients are not required to obtain project pre-approval from Treasury or any other federal agency when using SLFRF funds for necessary water and sewer infrastructure projects unless otherwise required by federal law. For projects that are pursued under the eligibility categories provided through the DWSRF or CWSRF programs, project eligibilities are based on federal project categories and definitions for the programs and not on each state's eligibility or definitions. While reference in the 2022 final rule to the DWSRF, CWSRF, or other federal water programs is provided to assist recipients in understanding the types of water and sewer infrastructure projects eligible to be funded with SLFRF, recipients do not need to apply for funding from the applicable state programs or through any federal water program. Similarly, besides eligible project categories, the 2022 final rule does not incorporate other program requirements or guidance that attach to the DWSRF, CWSRF, or other federal water programs. However, as noted above, recipients should be aware of other federal or state laws or regulations that may apply to construction projects or water and sewer projects, independent of SLFRF funding conditions, and that may require preapproval from another federal or state agency.

**6.7. For broadband infrastructure investments, what are eligible areas of investment?**

Recipients are encouraged to prioritize projects that are designed to serve locations without access to reliable wireline 100/20 Mbps broadband service, but are broadly able to invest in projects designed to provide service to locations with an identified need for additional broadband investment. For more details, see page 39 of the Overview of the 2022 Final

Rule.

### 6.8. May recipients use payments from the SLFRF for "middle mile" broadbandprojects?

Yes. Under the 2022 final rule, recipients may use payments from the SLFRF for "middle-mile projects," but Treasury encourages recipients to focus on projects that will achieve last-mile connections—whether by focusing on funding last-mile projects or by ensuring that funded middle-mile projects have potential or partnered last-mile networks that could or would leverage the middle-mile network.

### 6.9. For broadband infrastructure investments, what does the requirement to "reliably" meet or exceed a broadband speed threshold mean?

See page 39 of the Overview of the 2022 Final Rule, as well as pages 4419-4420 of the 2022 final rule.

### 6.10. May recipients use funds for pre-project development for eligible water, sewer, and broadband projects?

Yes. To determine whether funds can be used on pre-project development for an eligible water or sewer project, recipients should consult whether the pre-project development use or cost is eligible under the Drinking Water and Clean Water State Revolving Funds (DWSRF and CWSRF, respectively). Generally, the CWSRF and DWSRF often allow for pre-project development costs that are tied to an eligible project, as well as those that are reasonably expected to lead to a project. For example, the DWSRF allows for planning and evaluations uses, as well as numerous pre-project development costs, including costs associated with obtaining project authorization, planning and design, and project start-up like training and warranty for equipment. Likewise, the CWSRF allows for broad pre-project development, including planning and assessment activities, such as cost and effectiveness analyses, water/energy audits and conservation plans, and capital improvement plans.

Similarly, pre-project development uses and costs for broadband projects should be tied to an eligible broadband project or reasonably expected to lead to such a project. For example, pre-project costs associated with planning and engineering for an eligible broadband infrastructure build-out is considered an eligible use of funds, as well as technical assistance and evaluations that would reasonably be expected to lead to commencement of an eligible project (e.g., broadband mapping for the purposes of finding an eligible area for investment).

All funds must be obligated by recipients within the statutory period between March 3, 2021, and December 31, 2024, and expended to cover such obligations by December 31, 2026.

**6.11. May funds be used to support energy or electrification infrastructure that would be used to power new water treatmentplants and wastewater systems?**

The EPA's Overview of Clean Water State Revolving Fund Eligibilities describes eligible energy-related projects. This includes a "[p]ro rata share of capital costs of offsite clean energy facilities that provide power to a treatment works." Thus, SLFRF funds may be used to finance the generation and delivery of clean power to a wastewater system or a water treatment plant on a pro-rata basis. If the wastewater system or water treatment plant is the sole user of the clean energy, the full cost would be considered an eligible use of funds. If the clean energy provider provides power to other entities, only the proportionate share used by the water treatment plant or wastewater system would be an eligible use of funds.

**6.12. How should states and local governments assess whether a stormwater management project, such as a culvert replacement, is an eligible project under the water and sewer eligible use category?**

Pages 37-38 of the Overview of the 2022 Final Rule describe the overall approach that recipients must take to evaluate the eligibility of water or sewer projects. With broadened eligibility under the 2022 final rule, a wide range of culvert repair, resizing, and removal, replacement of storm sewers, and additional types of stormwater infrastructure are eligible projects, as outlined further in the 2022 final rule.

**6.13. May recipients use funds for road repairs and upgrades that occur in connectionwith an eligible water or sewer project?**

Under the water and sewer infrastructure eligible use category, recipients may use SLFRF funds for road repairs and upgrades directly related to an eligible water or sewer project. For example, a recipient could use funds to repair or re-pave a road following eligible sewer repair work beneath it. Water and sewer infrastructure projects are often a single component of a broader transportation infrastructure project, such as, for example, the implementation of stormwater infrastructure needed to meet water quality standards established under the Clean Water Act. In this example, the components of the infrastructure project that interact directly with the stormwater infrastructure may be funded by SLFRF funds under the water and sewer infrastructure eligible use category. Recipients seeking to use SLFRF funds for road repairs and upgrades can find additional information about the Surface Transportation projects eligible use category in section 16 of the FAQs.

**6.14. May funds be used to build or upgrade broadband connections to schools or libraries?**

As outlined in the 2022 final rule, recipients may use SLFRF funds to invest in broadband infrastructure that, where practicable, is designed to deliver service that reliably meets or exceeds symmetrical upload and download speeds of 100 Mbps to households or

businesses with an identified need for additional broadband investment. "Businesses" in this context refers broadly to include non-residential users of broadband, including private businesses and institutions that serve the public, such as schools, libraries, healthcare facilities, and public safety organizations.

**6.15. Are eligible water, sewer, and broadband infrastructure projects, eligible capital expenditures under the public health and negative economic impacts eligible use category, eligible projects under the revenue loss eligible use category, eligible emergency relief from natural disasters, eligible Surface Transportation projects, and eligible Title I projects subject to the Davis-Bacon Act?**

The Davis-Bacon Act requirements (prevailing wage rates) do not apply to projects funded solely with award funds from the SLFRF program, under the public health and negative economic impacts, revenue loss, water, sewer, and broadband infrastructure, emergency relief from natural disasters eligible use categories, and for Tribal governments, the Title I projects eligible use categories, except for SLFRF-funded construction projects undertaken by the District of Columbia. The Davis-Bacon Act specifically applies to the District of Columbia when it uses federal funds (SLFRF funds or otherwise) to enter into contracts over $2,000 for the construction, alteration, or repair (including painting and decorating) of public buildings or public works. Recipients may be otherwise subject to the requirements of the Davis-Bacon Act when SLFRF award funds are used on a construction project in conjunction with funds from another federal program that requires enforcement of the Davis-Bacon Act. Additionally, corollary state prevailing-wage-in-construction laws (commonly known as "baby Davis-Bacon Acts") may apply to projects. Please refer to FAQ #4.8 concerning projects funded with both SLFRF funds and other sources of funding.

In the 2022 final rule, Treasury indicated the importance of capital expenditure projects and necessary investments in water, sewer, or broadband infrastructure be carried out in ways that produce high-quality results, avert disruptive and costly delays, and promote efficiency. Additionally, Treasury indicated in the 2023 interim final rule that it is important that emergency relief from natural disasters projects that involve construction, such as public infrastructure and mitigation activities, be carried out similarly. Treasury encourages recipients to ensure that capital expenditure projects, water, sewer, and broadband projects, and emergency relief from natural disasters construction projects use 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, not only to promote effective and efficient delivery of high-quality projects, but also to support the economic recovery through strong employment opportunities for workers. Using these practices in projects may help to ensure a reliable supply of skilled labor that would minimize disruptions, such as those associated with labor disputes or workplace injuries.

In addition, Treasury has stated in its reporting guidance that recipients will need to provide documentation of wages and labor standards for capital expenditure projects, water, sewer, and broadband infrastructure, and emergency relief from natural disasters

construction projects over $10 million, and that that these requirements can be met with certifications that the project is in compliance with the federal Davis-Bacon Act (or related state laws, commonly known as "baby Davis-Bacon Acts") and subject to a project labor agreement. Please refer to the Reporting and Compliance Guidance for more detailed information on the reporting requirement.

For the Surface Transportation projects and Title I projects eligible use categories provided under the 2023 CAA, the Davis-Bacon Act applies, except for Title I projects undertaken by Tribal governments, as stated above. See also FAQ #16.2.

**6.16. What is the difference between using funds for eligible water and sewer projects and using funds under revenue loss for non-federal match for the Clean Water State Revolving Fund (CWSRF) or Drinking Water State Revolving Fund (DWSRF)?**

As noted in FAQ #6.1 and the Overview of the 2022 Final Rule, eligible projects that a recipient may fund under the water and sewer infrastructure eligible use category of SLFRF include eligible projects under EPA's CWSRF and EPA's DWSRF. Recipients may also fund certain additional projects, including a wide set of lead remediation, stormwater infrastructure, and aid for private wells and septic units. Per FAQ #6.6, recipients spending SLFRF funds under the water and sewer eligible use category are not required to obtain project pre-approval from Treasury or any other federal agency unless otherwise required by federal law.

Projects that recipients undertake with SLFRF funds under the water and sewer eligible use category are separate and distinct from projects that a recipient manages through their CWSRF and DWSRF. As noted in FAQ #4.6 and FAQ #6.2, recipients may use funds under the revenue loss eligible use category for non-federal matching requirements, including for EPA's Clean Water State Revolving Fund and EPA's Drinking Water State Revolving Fund. By contrast, funds spent under the water and sewer infrastructure eligible use category may not be used to meet non-federal matching requirements.

**6.17. Can SLFRF funds be used to pay for the replacement or placement of utility poles under the water, sewer, and broadband infrastructure eligible use category?**

Under the water, sewer, and broadband infrastructure eligible use category, the replacement or placement of utility poles is eligible when it is directly related to or part of an eligible SLFRF infrastructure project, such as an eligible SLFRF broadband infrastructure project that is consistent with Treasury's 2022 final rule. The use of SLFRF funds to fund a project for which the only purpose is to pay for the replacement or placement of utility poles is not an eligible use under the water, sewer, broadband infrastructure eligible use category.

**6.18. Do the Buy America Preference requirements for infrastructure projects apply to awards made under the SLFRF program?**

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 included in the Infrastructure Investment and Jobs Act, Pub. L. 117-58.

As such, infrastructure projects undertaken solely using SLFRF award funds are not subject to the Buy America Preference requirements set forth in section 70914 of the Build America, Buy America Act included in the Infrastructure Investment and Jobs Act, Pub. L. 117-58. However, as described below, certain Surface Transportation projects are subject to domestic procurement preference requirements.

In the case of Pathway One and Pathway Three under the Surface Transportation projects eligible use category, under which recipients use SLFRF funds along with funding provided by the Department of Transportation (DOT), the Buy America preference requirements of titles 23, 40, or 49 of the U.S. Code apply to the use of SLFRF funds, as part of the DOT's regular administration of its federal financial assistance programs. Furthermore, as described in FAQ #6.19, recipients may be subject to the Buy America Preference requirements set forth in the Build America, Buy America Act included in the Infrastructure Investment and Jobs Act, Pub. L. 117-58 when SLFRF funds are used on an infrastructure project in conjunction with funds from DOT.

Recipients generally must satisfy the Buy America requirements of titles 23, 40, or 49 of the U.S. Code when SLFRF funds are used on Surface Transportation projects under Pathway Two. For instance, under titles 23 and 49 of the U.S. Code, certain DOT programs are subject to the Buy America domestic content procurement preference related to steel, iron, and manufactured goods. However, under the streamlined framework under Pathway Two, recipients are not required to satisfy the Buy America requirements. As stated in the 2023 interim final rule, the Buy America requirements apply to Surface Transportation projects that do not meet the criteria for the streamlined framework, and Treasury will work with recipients to comply with Buy America requirements for SLFRF-funded projects outside of the streamlined framework.

**6.19. Do the Buy America Preference requirements for infrastructure projects apply to SLFRF-funded projects if they are supplemented with funding from other federal financial assistance programs?**

As stated in FAQ #6.18, infrastructure projects funded solely with SLFRF award funds are not subject to the Buy America Preference requirements set forth in section 70914 of the Build America, Buy America Act included in the Infrastructure Investment and Jobs Act, Pub. L. 117-58. However, SLFRF recipients may be otherwise subject to the Buy America Preference requirements if SLFRF funds are used on an infrastructure project in conjunction with funds from other federal programs that require compliance with the Buy America requirements. Recipients are advised to consult with the other federal agency(ies) administering federal financial assistance that is being blended or braided with SLFRF funds regarding the applicability of the Buy America Preference requirements (see FAQ #4.8).

### 6.20. Does Section 106 of the National Historic Preservation Act (NHPA) apply to projects funded with SLFRF funds?

For the eligible use categories described in the 2022 final rule and the emergency relief from natural disasters eligible use category described in the 2023 interim final rule, Section 106 of the NHPA does not apply to Treasury's administration of SLFRF funds. Under these eligible use categories, projects supported with payments from SLFRF funds may be subject to Section 106 of the NHPA if they involve other federal agencies' participation, including funding from other federal financial assistance programs, or are subject to receipt of approvals from other federal agencies.

In the case of Surface Transportation projects under Pathway One and Pathway Three, Section 106 of the NHPA applies consistent with how it would otherwise apply as part of DOT's administration of the project.

To qualify for the streamlined framework under Pathway Two, recipients must design projects that meet three criteria specified in the 2023 interim final rule, including limiting the project scope to a set of actions or activities deemed by DOT as meeting the criteria for a categorical exclusion as listed under 23 C.F.R. 771.116(c)(1)-(22), 771.117(c)(1)-(30), and 771.118(c)(1)-(16). In addition, as part of determining that a project meets a categorical exclusion, recipients must demonstrate that their actions do not involve unusual circumstances, as described in 23 CFR 771.116(b), 771.117(b), and 771.118(b). Such unusual circumstances include significant environmental impacts; substantial controversy on environmental grounds; significant impact on properties protected by Section 4(f) of the Department of Transportation Act of 1966 or Section 106 of the NHPA; or inconsistencies with any federal, state, or local law, requirement, or administrative determination relating to the environmental aspects of the action.

Eligible Surface Transportation projects under the streamlined framework in Pathway Two may still be subject to NEPA review and other environmental statutes, such as Section 106 of the NHPA, if they are also funded by other federal financial assistance programs or have certain federal licensing or registration requirements.

In the case of Title I projects, Section 106 of the NHPA does not apply to a project that either is:

- An ''exempt activity'' as contemplated by 24 CFR 58.34(a), or
- ''Categorically excluded'' and not subject to 24 CFR 58.5, as contemplated by 24 CFR 58.35(b), provided that the extraordinary circumstances described in 24 CFR 58.35(c) are not present.

For Title I projects that do not satisfy either of the above criteria, the requirements of Section 106 of the NHPA apply, and recipients must assume responsibilities, as the responsible entity, for environmental review, decision-making and action that would generally apply to federal agencies under Section 106 of the NHPA. Treasury will provide additional information on NHPA-related compliance as part of forthcoming information on environmental review requirements.

## 7. Non-Entitlement Units (NEUs)

Answers to frequently asked questions on distribution of SLFRF funds to NEUs can be found in this FAQ supplement.

## 8. Ineligible Uses

### 8.1. May recipients use funds to replenish a budget stabilization fund, rainy day fund, or similar reserve account?

No. Funds made available to respond to the public health emergency and its negative economic impacts are intended to help meet pandemic response needs and provide immediate stabilization for households and businesses. Contributions to rainy day funds and similar reserve funds would not address these needs or respond to the COVID-19 public health emergency, but would rather be savings for future spending needs. Similarly, funds made available for the provision of governmental services (to the extent of reduction in revenue) are intended to support direct provision of services to citizens. Contributions to rainy day funds are not considered provision of government services, since such expenses do not directly relate to the provision of government services.

### 8.2. What is meant by a pension "deposit"? Can governments use funds for routine pension contributions for employees whose payroll and covered benefits are eligibleexpenses?

In the context of the restriction on deposits into pension funds, "deposit" means an extraordinary payment of an accrued, unfunded liability. The term deposit does not refer to routine contributions made by an employer to pension funds as part of the employer's obligations related to payroll, such as either a pension contribution consisting of a normal cost component related to current employees or a component addressing the amortization of unfunded liabilities calculated by reference to the employer's payroll costs.

In general, if an employee's wages and salaries are an eligible use of SLFRF funds, recipients may treat the employee's covered benefits as an eligible use of funds.

### 8.3. May recipients use Fiscal Recovery Funds to fund Other Post-Employment Benefits (OPEB)?

OPEB refers to benefits other than pensions (see, e.g., Governmental Accounting Standards Board, "Other Post-Employment Benefits"). Treasury has determined that Sections 602(c)(2)(B) and 603(c)(2) of the Social Security Act, which refer only to deposits to pensions funds, do not prohibit SLFRF recipients from funding OPEB. Recipients may use funds for eligible uses, and a recipient seeking to use SLFRF funds for OPEB contributions would need to justify those contributions under one of the seven eligible use categories.

## 9. Reporting

Recipients should consult the Recipient Compliance and Reporting Responsibilities page on Treasury's website to access the latest Compliance and Reporting Guidance. Recipients should consult this guidance for additional detail and clarification on recipients' compliance and reporting responsibilities. User guides, which also contain FAQs pertaining to reporting, are provided for additional information.

## 10. Miscellaneous

### 10.1. Are recipients required to remit interest earned on SLFRF payments made by Treasury?

No. SLFRF payments made by Treasury to states, territories, and the District of Columbia are not subject to the requirement of the Cash Management Improvement Act and Treasury's implementing regulations at 31 CFR Part 205 to remit interest to Treasury. SLFRF payments made by Treasury to local governments and Tribes are not subject to the requirements of 2 CFR 200.305(b)(8) and (9) to maintain SLFRF award funds in an interest-bearing account and remit interest earned above $500 on such payments to Treasury. Moreover, interest earned on SLFRF award funds is not subject to program restrictions. Finally, states may retain interest on payments made by Treasury to the state for distribution to NEUs that is earned before funds are distributed to NEUs, provided that the state adheres to the statutory requirements and Treasury's guidance regarding the distribution of funds to NEUs. Such interest is also not subject to program restrictions.

Among other things, states and other recipients may use earned income to defray the administrative expenses of the program, including with respect to NEUs.

### 10.2. May recipients use funds to cover the costs of consultants to assist with managing and administering the funds?

Yes. Recipients may use funds for administering the SLFRF program, including costs of consultants to support effective management and oversight, including consultation for ensuring compliance with legal, regulatory, and other requirements.

## 11. Operations

### 11.1. How do I know if my entity is eligible?

The American Rescue Plan Act of 2021 set forth the jurisdictions eligible to receive funds under the SLFRF program, which are:

- States and the District of Columbia

- Territories
- Tribal governments
- Counties
- Metropolitan cities (typically, but not always, those with populations over 50,000)
- Non-entitlement units of local government, or smaller local governments (typically, but not always, those with populations under 50,000)

**11.2. How does an eligible entity request payment?**

Eligible entities (other than non-entitlement units) must submit their information to the Treasury Submission Portal. Please visit the Coronavirus State and Local Fiscal Recovery Fund website for more information on the submission process.

**11.3. I cannot log into the Treasury Submission Portal or am having trouble navigating it. Who can help me?**

If you have questions about the Treasury Submission Portal or for technical support, please email covidreliefitsupport@treasury.gov.

**11.4. What do I need to do to receive my payment?**

All eligible payees are required to have a Unique Entity ID (UEI) as part of registration in addition to maintaining an active registration in the System for Award Management (SAM) (https://www.sam.gov).

Eligible payees must have a bank account enabled for Automated Clearing House (ACH) direct deposit. Payees with a Wire account are encouraged to provide that information as well.

More information on these and all program pre-submission requirements can be found on the SLFRF website.

**11.5. Why is Treasury employing ID.me for the Treasury Submission Portal?**

ID.me is only required for submitting applications for funding in the Treasury Portal. ID.me is not required for users accessing the Treasury portal to complete reporting.

ID.me provides secure digital identity verification to those government agencies and healthcare providers to validate the individual entity – and block fraudulent attempts to access online services. All personally identifiable information provided to ID.me is encrypted and disclosed only with the express consent of the user. Please refer to ID.me Contact Support for assistance with your ID.me account. Their support website is https://help.id.me.

**11.6. Why is an entity not on the list of eligible entities in the Treasury Submission Portal?**

The ARPA lays out which governments are eligible for payments. The list of entities within the Treasury Submission Portal includes entities eligible to receive a direct payment of funds from Treasury, which include states (defined to include the District of Columbia), territories, Tribal governments, counties, and metropolitan cities.

Eligible non-entitlement units of local government will receive a distribution of funds from their respective state government and should not submit information to the Treasury Submission Portal.

If you believe an entity has been mistakenly left off the eligible entity list, please email SLFRF@treasury.gov.

**11.7. What is an Authorized Representative?**

An Authorized Representative is an individual with legal authority to bind the government entity (e.g., the Chief Executive Officer of the government entity). An Authorized Representative must sign the Acceptance of Award terms for it to be valid.

**11.8. How do I know the status of my request for funds (submission)?**

Entities can check the status of their submission at any time by logging into the Treasury Submission Portal.

**11.9. My Treasury Submission Portal submission requires additional information/correction. What is the process for that?**

If your Authorized Representative has not yet signed the award terms, you can edit your submission within the Treasury Submission Portal. If your Authorized Representative has signed the award terms, please email SLFRF@treasury.gov to request assistance with updating your information.

**11.10. My request for funds was denied. How do I find out why it was denied or appeal the decision?**

Please check to ensure that no one else from your entity has applied, causing a duplicate submission. Please also review the list of all eligible entities on the Coronavirus State and Local Fiscal Recovery Fund website.

If you still have questions regarding your submission, please email SLFRF@treasury.gov.

**11.11. When will entities get their money?**

Before Treasury is able to execute a payment, a representative of an eligible government must submit the government's information for verification through the Treasury Submission Portal. The verification process takes approximately four business days. If any errors are identified, the designated point of contact for the government will be contacted via email to correct the information before the payment can proceed. Once verification is complete, the designated point of contact of the eligible government will receive an email notifying them that their submission has been verified. Payments are generally scheduled for the next business day after this verification email, though funds may not be available immediately due to processing time of their financial institution.

**11.12. How does a local government entity provide Treasury with a notice of transfer of funds to its State?**

For more information on how to provide Treasury with notice of transfer to a state, please email SLRedirectFunds@treasury.gov.

## 12. Tribal Governments

**12.1. Do Treasury's pandemic recovery program awards terms and conditions impose civil rights laws on Tribes?**

The award terms and conditions for Treasury's pandemic recovery programs, including SLFRF, do not impose antidiscrimination requirements on Tribal governments beyond what would otherwise apply under federal law. Treasury has amended its reporting requirements with respect to the SLFRF, Treasury's Emergency Rental Assistance Program, and Homeowner Assistance Fund to reflect this clarification.

**12.2. How does a Tribal government determine its allocation?**

Tribal governments received information about their allocation when their submission to the Treasury Submission Portal was confirmed to be complete and accurate.

## 13. Uniform Guidance

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

Most of the provisions of the Uniform Guidance (2 CFR Part 200) apply to this program, including the Cost Principles and Single Audit Act requirements. Recipients should refer to the Assistance Listing for detail on the specific provisions of the Uniform Guidance that do not apply to this program. The Assistance Listing will be available at https://sam.gov/fal/7cecfdef62dc42729a3fdcd449bd62b8/view.

For information related to Single Audit requirements specifically, please refer to the Compliance Supplement materials released by the Office of Management and Budget.

### 13.2. Do federal procurement requirements apply to SLFRF?

Yes. The procurement standards for federal financial assistance are located in the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards at 2 CFR 200.317 through 2 CFR 200.327 and apply to procurements using SLFRF funds. Pursuant to 2 CFR 200.317, recipients that are non-state entities, such as, metropolitan cities, counties, non-entitlement units of local government, and Tribes must comply with the procurement standards set forth in 2 CFR 200.318, through 2 CFR 200.327, when using their SLFRF award funds to procure goods and services to carry out the objectives of their SLFRF award. States, the District of Columbia, and U.S. Territories must follow their own procurement policies pursuant to 2 CFR 200.317, as well as comply with the procurement standards set forth at 2 CFR 200.321 through 2 CFR 200.323, and 2 CFR 200.327 when using their SLFRF award funds to procure goods and services to carry out the objectives of their SLFRF award. *See also* SLFRF Award Terms and Conditions.

Recipients are prohibited from using SLFRF funds to enter into subawards and contracts with parties that are debarred, suspended, or otherwise excluded from or ineligible for participation in Federal assistance programs. *See* 2 CFR 200.214.

Moreover, a contract made under emergency circumstances under the Coronavirus Relief Fund (CRF) cannot automatically be transferred over to SLFRF. These programs are subject to different treatment under the Uniform Guidance. Under the CRF program, recipients are permitted to use their own procurement policies to acquire goods and services to implement the objectives of the CRF award. Under the SLFRF program, recipients are required to follow the procurement standards set out in 2 CFR Part 200 (Uniform Guidance) pursuant to the SLFRF Award Terms and Conditions executed by the recipients in connection with their SLFRF awards.

### 13.3. What is the threshold for competitive bidding for my government?

As stated above, recipients are required to comply with the procurement standards set forth in 2 CFR 200.317 through 2 CFR 200.327 of the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (Uniform Guidance). Pursuant to 2 CFR 200.317, States, the District of Columbia, and U.S. Territories should refer to the competitive bidding thresholds described in their own procurement policies and procedures. Other non-federal entities, such as metropolitan cities, counties, non-entitlement units of local government, and Tribes must adhere to the competitive bidding thresholds set forth in 2 CFR 200.320 for the relevant procurement methods.

2 CFR 200.320 describes methods of procurement based on two procurement thresholds. There are two thresholds that recipients should keep in mind related to procurement requirements: the Micro purchase threshold (MPT) and the Simplified Acquisition Threshold (SAT).

Micro-purchase threshold (MPT) - 2 CFR 200.320(a)(1): Purchase of supplies and services for a price below the MPT, currently set at $10,000, are not required to be solicited competitively. However, there are circumstances when a recipient may have a MPT that is greater than $10,000. For example, all non-Federal entities may increase their MPT up to $50,000 if they follow the protocols described in 200.320(a)(1)(iv). Additionally, non-federal entities such as metropolitan cities, counties, non-entitlement units of local government, and Tribes may use their own MPT if they follow the protocols described in 200.320(a)(1)(iv).

Simplified Acquisition Threshold (SAT) - 2 CFR 200.320(a)(2): Purchases of property and services at a price above the recipient's MPT and below the SAT, currently set at $250,000, may be made following the small purchase procedures described in the definition of SAT in 2 CFR 200.1 and 2 CFR 200.320(a)(2). Procurement of property and services at a price above the SAT must follow the formal procurement methods outlined in 2 CFR 200.320(b).

### 13.4. Can a recipient prequalify firms for projects funded with SLFRF?

The Uniform Guidance permits recipients to use prequalified lists of persons, firms, or products so long as a list is current and includes enough qualified sources to ensure maximum open and free competition. The Uniform Guidance does not specifically define the term "current" for purposes of 2 CFR 200.319(e), and Treasury has not adopted additional guidance regarding this requirement as it applies to the SLFRF. As such, recipients must determine when a prequalified list would be sufficiently current, and a recipient must not preclude potential bidders from qualifying during the solicitation period. See 2 CFR 200.319(e). Furthermore, recipients may not utilize this provision to evade conducting their procurement transactions in a manner that provides for full and open competition.

Recipients should be mindful that other provisions of the Uniform Guidance inform the procurement requirements. For example, metropolitan cities, counties, non-entitlement units of local government, and Tribes must have and use documented procurement procedures, consistent with binding State, local, and Tribal laws and regulations. See 2 CFR 200.318(a).

### 13.5. Where can one find the most current information on assuring minority-owned businesses are included in the awards process?

The most up-to-date information on assuring that minority-owned businesses are included in the procurement process is located in 2 CFR 200.321, *Contracting with small and minority businesses, women's business enterprises, and labor surplus area firms*.

### 13.6. Is there certain language that needs to be included in a bidding package?

Treasury does not require that there be specific language included in bidding packages, but

SLFRF recipients must ensure all contracts made with SLFRF award funds contain the applicable contract provisions listed in 2 CFR Part 200, Appendix II.

**13.7. Are recipients allowed to leverage existing contracts?**

Recipients may leverage existing contracts for SLFRF activities if the existing contracts conform to the procurement standards in the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards in 2 CFR Part 200 (Uniform Guidance). States, the District of Columbia, and U.S. Territories must follow their own procurement policies pursuant to 2 CFR 200.317 as well as comply with the procurement standards set forth at 2 CFR 200.321 – 200.323, and 2 CFR 200.327. All other recipients must follow 2 CFR 200.318, *General procurement standards*, through 200.327, *Contract provisions.*

**13.8. Would an interlocal agreement—an agreement entered into between governments to effectuate an eligible use of the funds—or a cooperative purchase agreement need to be bid out?**

States, the District of Columbia, and U.S. Territories must follow their own procurement policies pursuant to 2 CFR 200.317 as well as comply with the procurement standards set forth at 2 CFR 200.321 through 2 CFR 200.323, and 2 CFR 200.327. All other recipients must follow 2 CFR 200.318, *General procurement standards*, through 200.327, *Contract provisions.*

Recipients should consult the applicable procurement standards or policies to determine whether a cooperative purchase agreement must be bid out. Information on when competition is required and when exceptions to competition are permitted are located in 2 CFR 200.319, *Competition*, and 2 CFR 200.320, *Methods of procurement to be followed*.

It is permissible for recipients to use interlocal agreements but procurement standards set forth in the Uniform Guidance may still apply.

**13.9. How is a "contract" different than a "subaward?**

The Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards in 2 CFR Part 200 (Uniform Guidance) provides definitions for "contract" and "subaward." A *contract* is a legal instrument by which a recipient or subrecipient purchases property or services needed to carry out the project or program under a federal award. A *subaward* is distinct from a contract in that a subaward is an award provided by a recipient of a federal award to a subrecipient to carry out part of a federal award on behalf of the recipient. Recipients may make subawards through any form of legal agreement, including an agreement that the recipient considers a contract. See 2 CFR 200.331 for more information on the differences between contracts and subawards.

**13.10. What other background laws must recipients comply with?**

SLFRF recipients must comply with all laws outlined in the SLFRF Award Terms and Conditions that the recipients accepted in connection with their SLFRF award and all other applicable executive orders, federal statutes, and regulations in carrying out their SLFRF award. Recipients must also provide for such compliance by other parties in any agreements it enters into with other parties relating to the award. The award terms listed specific statutes and regulations that apply to the award, but the award terms made clear that these lists were not exclusive. Particularly in the case of the SLFRF, it's not possible to enumerate the full list of federal statutes, regulations and executive orders that may be applicable to the award given that the range of eligible uses of funds is so broad, including the provision of government services.

**13.11. How does Treasury treat program income?**

Per 2 CFR 200.307, Treasury is specifying here that recipients may add program income to the Federal award. Any program income generated from SLFRF funds must be used for the purposes and under the conditions of the Federal award.

Program income includes but is not limited to income from fees for services performed, the use or rental of real or personal property acquired under federal awards, the sale of commodities or items fabricated under a federal award, license fees and royalties on patents and copyrights, and principal and interest on loans made with federal award funds. Interest earned on advances of federal funds **is not** program income. For more information on what constitutes "Program Income" please see 2 CFR 200.1.

**13.12. Does COVID-19 and the national emergency qualify as "exigency" as a special circumstance under 2 CRF 200.320 (c) in which a noncompetitive procurement can be used? If so, may a contract utilizing this special circumstance have a term that extends beyond the national emergency? For example, may the County execute a contract (without going through a competitive solicitation) immediately with a contractor to provide services with a term through the end of 2024, relying upon this special circumstance?**

The COVID-19 public health emergency does not itself qualify as a "public exigency or emergency" under 2 CFR 200.320(c). In other words, a recipient may not justify a noncompetitive procurement simply on the basis that the procurement is conducted during the public health emergency or that the project is in response to the public health emergency.

Instead, the recipient must make its own assessment as to whether in the case of a particular project there is a public exigency or emergency that "will not permit a delay resulting from publicizing a competitive solicitation."

**13.13. What compliance and reporting requirements apply to subrecipients and beneficiaries?**

As detailed in Treasury's Compliance and Reporting Guidance (pg. 11), subrecipients are required to comply with all of the restrictions applicable to recipients, including audit requirements under the Single Audit Act, whereas beneficiaries are not subject to these requirements. The distinction between subrecipients and beneficiaries is addressed in the supplemental information to Treasury's 2022 final rule.[7] For example, when recipients of SLFRF funds provide award funds to individuals or entities as a result of experiencing a public health or negative economic impact of the pandemic, those receiving such funding are beneficiaries of the funds. In contrast, when recipients provide award funds to an entity to carry out a program in response to the public health emergency or its negative economic impacts, the entities receiving such funding are subrecipients.

Treasury requires recipients to report detailed information in the Treasury reporting portal as part of the Project and Expenditure Report regarding subrecipients that receive subawards of $50,000 or more and certain beneficiaries that receive direct payments of $50,000 or more in SLFRF funds. Requirements for this reporting can be found in the Compliance and Reporting Guidance (pg. 21).

Recipients are not required to separately identify payments to specific individuals receiving funds as beneficiaries in the Project and Expenditure Report. Those funds must be reported in the aggregate as part of the "Payments to Individuals" section.

As in the case of reporting under the Coronavirus Relief Fund, information on both beneficiaries and subrecipients will be collected in a single form in the Project and Expenditure Report.

**13.14. Do recipients need to report subrecipient information for the revenue loss eligible use category?**

No. Treasury is not collecting subaward data for projects categorized under Expenditure Category Group 6 "Revenue Replacement." Treasury has determined that there are no subawards under this eligible use category. The definition of subrecipient in the Uniform Guidance provides that a subaward is provided for the purpose of "carrying out" a portion of a federal award. Recipients' use of revenue loss funds does not give rise to subrecipient relationships given that there is no federal program or purpose to carry out in the case of the revenue loss portion of the award. While there is no federal program or purpose to carry out in the same way that there is for the other SLFRF expenditure categories, these funds retain their federal character and recipients remain subject to laws and regulations applicable to Federal financial assistance programs.

**13.15. Which requirements of the Uniform Guidance apply to revenue loss funds?**

Under the statute and the 2022 final rule, recipients may use SLFRF funds for the provision of government services up to the amount of their revenue loss due to the pandemic. Under the 2022 final rule, recipients may either calculate their revenue loss

[7] Coronavirus State and Local Fiscal Recovery Funds, 87 FR 4338, 4394.

amount using a formula provided in the 2022 rule or elect up to a $10 million "standard allowance" of revenue loss over the life of the program. Recipients have considerable flexibility to use SLFRF revenue loss funds on activities to address the diverse needs of their communities, as discussed in #FAQ 3.2, but may not use the funds for the following ineligible uses:

- Offset a reduction in net tax revenue (applicable to states and territories)
- Make a deposit into a pension fund (applicable to all recipients except Tribes)
- Service debt or replenish financial reserves (e.g., "rainy day funds") (applicable to all recipients)
- Satisfy settlements and judgments (applicable to all recipients)
- Fund programs, services, or capital expenditures that include a term or condition that undermines efforts to stop the spread of COVID-19 (applicable to all recipients)

In-depth descriptions of the ineligible uses can be found in the "Restrictions on Use" section of the Coronavirus State and Local Fiscal Recovery Funds: Overview of the 2022 Final Rule.

The SLFRF award terms and conditions provide that the requirements of the Uniform Guidance, 2 C.F.R. Part 200, apply to SLFRF awards other than such provisions as Treasury may determine are inapplicable to the award and subject to such exceptions as may be otherwise provided. The 2022 Compliance Supplement also provided that the requirements of 2 C.F.R. Part 200 are applicable unless stated otherwise. As such, recipients are required to follow Subparts A, B, C, and F of the Uniform Guidance for expenses categorized under Expenditure Category 6 "Revenue Replacement." However, given the purpose and very broad scope of eligible uses of the revenue replacement funds, only a subset of the requirements in Subparts D and E of the Uniform Guidance apply to recipients' use of such funds. The applicable requirements are listed below. In general, these requirements provide that recipients should not deviate from their established practices and policies regarding the incurrence of costs, and that they should expend and account for the funds in accordance with laws and procedures for expending and accounting for the recipient's own funds.[8] Recipients' use of revenue replacement funds remains subject to the other applicable requirements of the SLFRF program, including among other things the deadlines for obligations and expenditures and the application of federal antidiscrimination requirements.

Uniform Guidance Subpart D and E Requirements Applicable to Revenue Loss Funds Used for the Provision of Government Services

Subpart D Post Federal Award Requirements

- 200.300 Statutory and national policy requirements.
- 200.302 Financial management.
- 200.303 Internal controls.

[8] *Cf.* 2 CFR 200.302(a), 2 CFR 200.404(e).

- 200.328 Financial reporting.
- 200.329 Monitoring and reporting program performance.
- Record Retention and Access (2 C.F.R. 200.334 – 200.338)
  - 200.334 Retention requirements for records.
  - 200.335 Requests for transfer of records.
  - 200.336 Methods for collection, transmission, and storage of information.
  - 200.337 Access to records.
  - 200.338 Restrictions on public access to records.
- Remedies for Noncompliance (2 C.F.R. 200.339 – 200.343)
  *Note: These sections will apply to Treasury's administration of the funds. Because the revenue loss eligible use category does not give rise to subawards, as discussed in FAQ 13.14, recipients will not be in a position to apply these provisions with respect to subrecipient relationships.*
  - 200.339 Remedies for noncompliance.
  - 200.340 Termination.
  - 200.341 Notification of termination requirement.
  - 200.342 Opportunities to object, hearings, and appeals.
  - 200.343 Effects of suspension and termination.
- 200.344 Closeout.
  *Note: This section will apply to Treasury's administration of the funds. Because the revenue loss eligible use category does not give rise to subawards, as discussed in FAQ 13.14, recipients will not be in a position to apply this provision with respect to subrecipient relationships.*
- 200.345 Post-closeout adjustments and continuing responsibilities.
  *Note: This section will apply to Treasury's administration of the funds. Because the revenue loss eligible use category does not give rise to subawards, as discussed in FAQ 13.14, recipients will not be in a position to apply this provision with respect to subrecipient relationships.*
- 200.346 Collection of amounts due.

The program income requirements of 2 CFR 200.307 do not apply under revenue loss eligible use category. As such, recipients may maintain program income, which will not be considered an addition to the federal award.

Consistent with the Uniform Guidance, if SLFRF is to be used to cover a cost incurred by a recipient, the cost must be one that is allowable. In determining whether a cost is allowable for purposes of funds used under the revenue loss eligible use category, only the following factors and requirements apply:

<u>Subpart E – Cost Principles</u>

- 200.400(a) - (c), and (e) Policy guide.
- 200.403(a), (c), (d), (g), and (h) Factors affecting allowability of costs.
- 200.404(e) Reasonable costs.

**13.16. What are the use and disposition requirements for assets purchased with SLFRF funds?**

SLFRF funds may be used to acquire real and personal property, supplies, and equipment. For example, a recipient may use SLFRF funds to, among other things, construct or renovate affordable housing, childcare facilities, schools, and hospitals under the eligible use category for responding to the public health emergency or its negative economic impacts pursuant to Treasury's 2022 final rule, 31 CFR 35.6(b), and to make investments in water, sewer, and broadband infrastructure pursuant to the 2022 final rule, 31 CFR 35.6(e).

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 – 200.316), subject to the requirements set out in this FAQ.

For the following eligible use categories – public health and negative economic impacts, water, sewer, and broadband infrastructure, emergency relief from natural disasters, and Title I projects – a recipient may, during the period of performance, 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, the recipient must follow the disposition procedures set out in the Uniform Guidance. *See* 2 CFR 200.311, 200.313, 200.314, and 200.315. In addition, in the case of changes during the period of performance to the use of property, supplies or equipment acquired as part of a Title I project, the recipient would also have to ensure that the new use of the property, supplies or equipment complies with Treasury's guidance regarding NEPA, NHPA and other environmental requirements.

For the Surface Transportation projects eligible use category, recipients using SLFRF funds for a Pathway One or Pathway Three project must follow the use and disposition requirements provided by the U.S. Department of Transportation pursuant to its administration of the project. For example, for rights-of-way involving title 23 assistance, the requirements of 23 CFR part 710 apply.

For projects under the streamlined framework under Pathway Two, recipients 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 consistent with the parameters of the streamlined framework under Pathway Two, as provided in the 2023 interim final rule. 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, the recipient must follow the disposition procedures set out in the Uniform Guidance.

After the end of the period of performance, the property, supplies, or equipment purchased or improved with SLFRF funds must be used consistent with the purpose for which it was purchased or improved or for any other eligible purpose in the same eligible use category as reported to Treasury as of the final reporting period, as set forth in the table below.

| Category | Use Requirements |
|---|---|
| Public Health and Assistance to Households and Individuals | Property, supplies, or equipment last reported as being used to respond to the public health impacts of the public health emergency, as outlined in 31 CFR 35.6(b)(3)(i), or being used for the provision of services to households provided in 31 CFR 35.6(b)(3)(ii)(A), are authorized to fulfill any eligible use of funds provided in these subparagraphs of the 2022 final rule. |
| Assistance to Small Businesses, Nonprofits, and Impacted Industries | Property, supplies, or equipment last reported as being used for the provision of services to small businesses, nonprofits, and impacted industries outlined in 31 CFR 35.6(b)(3)(ii)(B)-(D) are authorized to fulfill any eligible use of funds outlined in the public health and negative economic impacts eligible use category. |
| Water, Sewer, or Broadband Infrastructure | Property, supplies, or equipment last reported as being used to make investments in water, sewer, or broadband infrastructure pursuant to 31 CFR 35.6(e) are authorized to fulfill any eligible use of funds outlined in the water, sewer, and broadband infrastructure eligible use category. |
| Government Services/Revenue Loss | Property, supplies, or equipment acquired with revenue loss funds are exempt from the use and disposition requirements of the Uniform Guidance, regardless of award size. |
| Premium Pay | N/A |
| Emergency Relief from Natural Disasters | Property, supplies, or equipment last reported as being used to provide emergency relief from natural disasters, as outlined in 31 CRF 35.6(g), are authorized to fulfill any eligible use of funds outlined in the emergency relief from natural disasters eligible use category. |
| Surface Transportation projects | For Pathway One and Pathway Three, recipients should follow the use and disposition guidance provided by the Department of Transportation for the project. For projects within the streamlined framework of Pathway Two, property, supplies, or equipment last reported as being used to make investments in surface transportation projects that meet the parameters pursuant to 31 CFR 35.6(h)(1)(ii)(B)(2) are authorized to fulfill any project that meets the parameters of the streamlined framework under Pathway Two. |
| Title I projects | Property, supplies, or equipment last reported as being used to provide assistance under activities eligible under the Community Development Block Grant (CDBG) and Indian Community Development Block Grant (ICDBG) programs, as outlined in 31 CFR 35.6(h)(2), are authorized to fulfill any eligible use of funds outlined in the Title I projects eligible use category that continues to satisfy the CDBG National Objectives requirement for non-Tribal recipients, and the requirements of the Primary Objective for Tribal recipients. |

If the use of an asset shifts within the parameters of the eligible purpose according to this table after the period of performance, no repayment would be required. For example,

converting a hospital to a behavioral health facility would qualify as being used for the eligible purpose because both expenditures respond to the public health impacts of the public health emergency, as outlined in 31 CFR 35.6(b)(3)(i), so reimbursement to Treasury would be unnecessary.

If the use of an asset shifts outside the parameters of the eligible purpose according to this table after the period of performance, the recipient or subrecipient must follow the disposition procedures in the Uniform Guidance and SLFRF program policies. *See* 2 CFR 200.311, 200.313, 200.314, and 200.315. Note that the applicability of these sections of the Uniform Guidance does not govern use and disposition requirements under the CDBG and ICDBG programs, but does apply to the use of SLFRF funds under the Title I projects eligible use category.

Recipients are responsible for being able to substantiate their determinations on whether the use of an asset is authorized and maintain a record of that determination in accordance with the requirements set forth in the financial assistance agreement accepted in connection with their award. Recipients are not required to seek or obtain the approval of Treasury prior to changing the use within the parameters of the authorized purpose.

### 13.17. In the definition of "obligation" in the 2022 final rule, what does Treasury mean by "similar transactions that require payment?"

As stated in the 2022 final rule, obligation means "an order placed for property and services and entering into contracts, subawards, and similar transactions that require payment."[9] On November 20, 2023, Treasury published an interim final rule to clarify the definition of "obligation" ((88 Fed. Reg. 80584 (Nov. 20, 2023)) (Obligation IFR). The term "obligation" continues to mean an order placed for property and services and entry into contracts, subawards, and similar transactions that require payment. As discussed in the Obligation IFR, a recipient is also considered to have incurred an obligation by December 31, 2024, with respect to satisfying 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. See FAQs 17.6, 17.7, and 17.10 for additional information about this amendment.

As contemplated by the definition of obligation, both in the 2022 final rule and the following publication of the Obligation IFR, 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 (when obligating funds through "similar transactions that require payment"), 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.

[9] *See* 31 CFR 35.3.

In the Obligation IFR and in the updated FAQs published in March 2024, Treasury provided further guidance on several ways that recipients may consider payroll costs to be obligated, including for purposes of using SLFRF funds to cover personnel costs between January 1, 2025, and December 31, 2026. One FAQ provides an example of "similar transactions that require payment," which included interagency agreements meeting certain conditions, as discussed in FAQ 17.6. Another FAQ describes when recipients may consider personnel costs to be obligated by the December 31, 2024, deadline. See FAQ 17.7.

Recipients should reference the Obligation IFR and the Obligation Interim Final Rule Quick Reference Guide for more information.

## 14. Consolidated Appropriations Act, 2023 New Eligible Uses – General Questions

### 14.1. Did Treasury's 2023 interim final rule impact the four existing eligible uses provided in the American Rescue Plan?

The 2023 interim final rule implements how recipients may use SLFRF funds for the three new eligible uses authorized by the 2023 CAA. The four eligible uses provided in the American Rescue Plan and implemented in the 2022 final rule remain available to recipients and generally are unchanged. Accordingly, recipients may continue to use SLFRF funds for eligible projects and activities in accordance with the 2022 final rule.

### 14.2. Did Treasury's 2023 interim final rule impact how recipients may use SLFRF funds for the provision of government services, whether a recipient is claiming up to $10 million under the standard allowance or calculating revenue loss according to the formula?

Recipients can continue to use SLFRF funds for the provision of government services under the revenue loss eligible use category in accordance with the 2022 final rule which provides two options for determining revenue loss. Recipients may calculate revenue loss according to the formula described in the 2022 final rule or claim up to $10 million in revenue loss, not to exceed a recipient's total SLFRF allocation, under the standard allowance. The 2023 CAA amendments to the SLFRF program codified these options into law. Recipients may update their revenue loss determinations through the April 2025 reporting period, as described in FAQ #3.1, so long as they use a consistent methodology throughout the period of performance.

### 14.3. Can a recipient that used funds under the revenue loss eligible use category for a project that would otherwise be eligible under the new eligible use categories shift these costs to one of the new eligible use categories?

Treasury's 2023 interim final rule discusses three new eligible use categories of emergency relief from natural disasters, Surface Transportation projects, and Title I projects. For all three new eligible use categories, recipients may use SLFRF funds for costs incurred beginning December 29, 2022.

Recipients that had previously used SLFRF funds under the revenue loss eligible use category for costs that would otherwise be eligible under the new eligible uses articulated in the 2023 interim final rule may choose to use their SLFRF funds under the new eligible use categories, as long as these costs meet the requirements of the 2023 interim final rule and were not incurred prior to December 29, 2022, and for Surface Transportation projects and Title I projects, the revenue loss funds did not supplant other Federal, State, territorial, Tribal, and local government funds, as provided in the statute and Treasury's 2023 interim final rule. Recipients choosing to use their SLFRF funds under a new eligible use category must reflect the change in their Project and Expenditure reports to be submitted to Treasury.

**14.4. Can a recipient that is using funds under the revenue loss eligible use category for a project that would otherwise be eligible under the new eligible use categories continue to fund that project under the revenue loss eligible use category?**

As described in FAQ #3.2, every use that is eligible under the other eligible use categories is also eligible under revenue loss, because those eligible uses are also services provided by recipient governments. This continues to apply to the new eligible uses described in the 2023 interim final rule. Recipients that have been using SLFRF funds under the revenue loss eligible use category for a project that would otherwise be eligible under one of the new eligible use categories, as detailed in the 2023 interim final rule, may continue to fund that project under the revenue loss eligible use category in accordance with the 2022 final rule.

**14.5. Does the supplement, not supplant provision that applies to the Surface Transportation projects and Title I projects eligible use categories apply to the other eligible use categories?**

As summarized on page 9 of the Overview of the 2023 Interim Final Rule, recipients using SLFRF funds under the Surface Transportation projects and Title I projects eligible use categories must supplement, not supplant other federal, state, territorial, Tribal, and local funds (as applicable) otherwise available. The "supplement, not supplant" requirement does not apply to the emergency relief from natural disasters, public health and negative economic impacts, premium pay, revenue loss, and water, sewer, and broadband infrastructure eligible use categories.

**14.6. What are the expenditure deadlines for the SLFRF program?**

Across all seven eligible use categories, recipients must obligate SLFRF funds by December 31, 2024. In the case of the four eligible use categories described in the 2022 final rule (public health and negative economic impacts; premium pay; revenue loss; and water, sewer, and broadband infrastructure), and the new emergency relief from natural disasters eligible use category described in the 2023 interim final rule, recipients must expend funds by December 31, 2026. SLFRF funds used for a Surface Transportation project or a Title I project must be expended by September 30, 2026. See pages 3, 9, and 19 of the Overview of the 2023 Interim Final Rule.

As previously provided in 31 CFR 35.5(c) and FAQ 17.5, recipients may expend funds to cover administrative closeout costs until the final Project and Expenditure Report is due on April 30, 2027 (120 calendar days after the end of the period of performance). Other than such administrative closeout costs, recipients may not continue to expend funds beyond the period of performance. Funds not expended by the applicable deadline must be returned to Treasury.

**14.7. How does Treasury's 2023 interim final rule impact how SLFRF funds can be used for non-federal match requirements?**

Recipients may use SLFRF funds for non-federal match or cost share requirements as follows:

As described in the 2022 final rule and in FAQ #4.6, recipients may use SLFRF funds under the revenue loss eligible use category to satisfy non-federal match or cost share requirements.

The 2023 interim final rule describes three pathways under which recipients may direct SLFRF funds toward the new eligible use category of Surface Transportation projects. Specifically, recipients may use SLFRF funds under Pathway Three to repay a TIFIA loan or for the non-Federal cost share requirements of certain DOT programs: INFRA Grants, Fixed Guidance Capital Investment Grants, Mega Grants, and projects eligible for credit assistance under the TIFIA program. See also page 15 of the Overview of the 2023 Interim Final Rule.

Also as described in the 2023 interim final rule, recipients may use SLFRF funds to satisfy the non-federal share requirement of a federal financial assistance program in support of a project or activity that is eligible under the CDBG or ICDBG programs. See page 16 of the Overview of the 2023 Interim Final Rule.

Otherwise, recipients may not use SLFRF funds for the non-federal match requirements of other federal programs, other than as specifically provided for by statute. For example, the emergency relief from natural disasters eligible use category does not add any new

authority for recipients to use SLFRF funds to satisfy non-federal match requirements of other federal programs.

**14.8. Did Congress appropriate additional funds when it amended the SLFRF program and added the three new eligible uses described in the 2023 interim final rule?**

No. Congress did not appropriate additional funds in amending the SLFRF program in the 2023 CAA. The 2023 interim final rule implements the three new eligible uses provided in the 2023 CAA for how recipients may use SLFRF funds to provide emergency relief from natural disasters, build surface transportation infrastructure, and support community development.

**14.9. Can a recipient amend how it previously indicated it was spending SLFRF funds in order to direct funds to the new eligible uses?**

Recipients may use their SLFRF award funds to meet the unique needs of their communities, including reconsideration of existing plans and changing how they plan to spend SLFRF funds in accordance with the eligible use categories discussed in the 2022 final rule and the new eligible use categories described in the 2023 interim final rule. The obligation deadline for all seven eligible uses is December 31, 2024. Recipients should reference the guidance in FAQ #16.10 and be mindful that they may use SLFRF funds for projects under the new eligible use categories for costs incurred beginning on December 29, 2022.

**14.10. When recipients use SLFRF funds under the public health and negative economic impacts eligible use category, recipients must serve populations impacted or disproportionately impacted by the pandemic and must respond to a public health or negative economic impact of the pandemic. Does this standard also apply to the new eligible uses?**

The American Rescue Plan Act provided that among other eligible uses, recipients could use SLFRF funds "to respond to the public health emergency with respect to the Coronavirus Disease 2019 (COVID-19) or its negative economic impacts, including assistance to households, small businesses, and nonprofits, or aid to impacted industries such as tourism, travel, and hospitality." Treasury's 2022 final rule provides a framework for identifying responses to the public health and negative economic impacts of the pandemic, including identifying populations impacted or disproportionality impacted by the pandemic. In contrast, the 2023 CAA does not require that recipients respond to a public health or negative economic impact of the pandemic when using SLFRF funds for emergency relief from natural disasters, Surface Transportation projects, or Title I projects.

As provided in both the 2022 final rule and the 2023 interim final rule, each eligible use category has separate and distinct standards for assessing whether a use of funds may be eligible. Standards or restrictions pertaining to one eligible use category do not necessarily

apply to other categories. Therefore, recipients should first determine which eligible use category a potential project or activity fits within, and then assess whether that potential use meets the eligibility standards or criteria for that category.

### 14.11. When will compliance and reporting guidance be updated to address the new eligible uses?

Treasury released updated Compliance and Reporting Guidance that addresses the new eligible use categories on September 27, 2023. Recipients will be able to report on how they are using SLFRF funds for the new eligible uses beginning with the October reporting period.

## 15. Emergency Relief from Natural Disasters

### 15.1. How can recipients use SLFRF funds to provide emergency relief from a disaster that has occurred or is expected to occur imminently?

Recipients seeking to use SLFRF funds for projects under the emergency relief from natural disasters eligible use category must undertake the following two-step process:

1. Identify a natural disaster that has occurred or is expected to occur imminently, or a natural disaster that is threatened to occur in the future; and
2. Identify emergency relief that responds to the physical or negative economic impacts, or potential physical or negative economic impacts, of the identified natural disaster.

The emergency relief must be related and reasonably proportional to the impact identified. If responding to a natural disaster that has occurred or is expected to occur imminently, recipients must identify a natural disaster that meets Treasury's definition of natural disaster (see page 4 of the Overview of the 2023 Interim Final Rule) and an emergency declaration or designation for the recipient's geography and jurisdiction in the form of:

1. An emergency declaration pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq*.) (Stafford Act);
2. An emergency declaration by the Governor of a state pursuant to respective state law;
3. An emergency declaration by a Tribal government; or
4. A designation of an event of a natural disaster by the chief executive (or equivalent) of a recipient government, as long as the chief executive documents that the event satisfies the definition of natural disaster provided in the 2023 interim final rule.

A recipient may work to identify eligible emergency relief that may be referenced in the non-exhaustive list of eligible emergency relief set forth in the 2023 interim final rule, such as temporary housing, food assistance, and emergency protective measures (see pages 5-6 of the Overview of the 2023 Interim Final Rule). Recipients may also identify other

eligible emergency relief needed to save lives and protect property and public health and safety that is related and reasonably proportional to the physical or negative economic impacts of a natural disaster that has occurred or is expected to occur imminently.

### 15.2. How can recipients use SLFRF funds for preventative measures to lessen or avert the threat of catastrophe?

As discussed in FAQ #15.1, recipients seeking to use SLFRF funds for projects under the emergency relief from natural disasters eligible use category must undertake the following two-step process:

1. Identify a natural disaster that has occurred or is expected to occur imminently, or a natural disaster that is threatened to occur in the future; and
2. Identify emergency relief that responds to the physical or negative economic impacts, or potential physical or negative economic impacts, of the natural disaster. The emergency relief must be related and reasonably proportional to the impact identified.

If providing assistance to lessen or avert the threat of a future natural disaster, recipients must document evidence of historical patterns or predictions of natural disasters that would reasonably demonstrate the likelihood of future occurrence of a natural disaster in its community that also meet the definition of natural disaster provided in the 2023 interim final rule (see page 4 of Overview of the 2023 Interim Final Rule and FAQ #15.7 for the definition of a natural disaster). For example, a recipient could utilize FEMA's National Risk Index to establish the likelihood of a future hurricane, or a Tribal government could cite Indigenous Traditional Ecological Knowledge to determine future risks. A recipient must use this evidence to support its determination that mitigation activities would be related and reasonably proportional to the threat of a natural disaster.

As summarized on page 6 of the Overview of the 2023 Interim Final Rule, mitigation activities may be stand-alone projects that reduce or eliminate the potential impacts of the threat of natural disaster and may also be incorporated into repair or reconstruction projects that address the impacts of a natural disaster.

As summarized on page 7 of the Overview of the 2023 Interim Final Rule, recipients, except for Tribal governments, pursuing mitigation activities with total expected capital expenditures of $1 million or greater must complete and meet the substantive requirements of a written justification for the capital expenditures in their project. The written justification must include a description of emergency relief to be provided and potential impact to be addressed, an explanation of why a capital expenditure is appropriate, and a comparison of the proposed capital expenditure against alternative capital expenditures. More information on the requirements of the written justification can be found in the 2023 interim final rule.

**15.3. If a use of funds is not explicitly included in the non-exhaustive list of emergency relief from natural disasters in the 2023 interim final rule, does that mean it is prohibited?**

No. The 2023 interim final rule provides a non-exhaustive list of emergency relief from natural disasters. In this list, Treasury references other federal programs as examples, such as Category B of FEMA's Public Assistance program for recipients seeking to use SLFRF funds to provide emergency protective measures and FEMA's Hazard Mitigation Assistance Guidance for recipients seeking to use SLFRF funds for eligible mitigation activities. Recipients also have broad flexibility to first identify a natural disaster and then identify emergency relief that responds to the natural disaster's physical or negative economic impacts, as described in the 2023 interim final rule. All emergency relief must be related and reasonably proportional to the physical or negative economic impacts of a natural disaster that has occurred or is expected to occur imminently, or to the potential physical or negative economic impacts of a natural disaster that is threatened to occur in the future.

As an example, in the 2023 interim final rule, Treasury did not specifically mention the repair or installation of tornado sirens in the non-exhaustive list of emergency relief. However, a recipient could identify the repair or installation of tornado sirens as eligible emergency relief using the framework described on pages 64990-64991 of the 2023 interim final rule, the Overview of the 2023 Interim Final Rule, and in FAQs 15.1 and 15.2. If the recipient experienced a declared or designated natural disaster that damaged a tornado siren, the recipient could use its SLFRF award funds to make repairs to the tornado siren. Further, if the recipient had documented evidence of historical patterns or predictions of tornadoes that would reasonably demonstrate the likelihood of future occurrence of a tornado in its community, it could determine that using SLFRF funds to install a tornado siren was a related and reasonably proportional mitigation activity.

**15.4. How can a recipient provide cash assistance to households as emergency relief from natural disasters?**

The 2023 interim final rule provides a non-exhaustive list of emergency relief from natural disasters that includes financial assistance for lost wages, cash assistance for uninsured or underinsured disaster-caused expenses, and cash assistance for low-income households. Recipients also have broad flexibility to identify a natural disaster that has a declaration or designation as described in the 2023 interim final rule and then identify emergency relief that responds to the natural disaster's physical or negative economic impacts, which could include identifying other forms of cash assistance. All emergency relief must be related and reasonably proportional to the physical or negative economic impacts of a natural disaster that has occurred or is expected to occur imminently, or to the potential physical or negative economic impacts of a natural disaster that is threatened to occur in the future.

### 15.5. What is the prohibition on duplication of benefits?

In addition to adherence to relevant Uniform Guidance cost principles provisions, specific requirements regarding duplication of benefits apply if a recipient uses federal funds to provide assistance with respect to losses suffered as a result of a major disaster or emergency declared under the Stafford Act (referred to as "disaster losses" in the Overview to the 2023 Interim Final Rule). Accordingly, if a recipient uses SLFRF funds under the emergency relief from natural disasters eligible use category to cover a disaster loss, the Stafford Act's prohibition on duplication of benefits applies, that is, the recipient may not provide financial assistance to a person, business concern, or other entity with respect to disaster losses for which the beneficiary will receive financial assistance under any other program or from insurance or any other source. The recipient may provide assistance with respect to disaster losses to a person, business concern, or other entity that is or may be entitled to receive assistance for those losses from another source, if such person, business concern, or other entity has not received the other benefits by the time of application for SLFRF funds and the person, business concern, or other entity agrees to repay any duplicative assistance to the SLFRF recipient. Additionally, the recipient may use SLFRF funds to provide assistance for any portion of the disaster losses not covered by other benefits.

Treasury recommends that recipients review FEMA's guidance located at 44 CFR 206.191, which describes a "delivery sequence," or order in which disaster relief agencies and organizations provide assistance for disaster losses. As discussed on page 64992 of the 2023 interim final rule, recipients must treat SLFRF funds as last in the delivery sequence, unless the recipient, in consultation with the appropriate FEMA Regional Administrator or state disaster-assistance administrator, determines that another sequence is appropriate. Recipients also must notify subrecipients and contractors that, when providing assistance in response to a Stafford Act declaration, they are responsible for ensuring that beneficiaries disclose any other assistance received for the same disaster losses prior to receiving assistance with SLFRF funds.

### 15.6. Does the prohibition on duplication of benefits that applies to the emergency relief from natural disasters eligible use category apply to other SLFRF eligible use categories?

As provided on page 64991 of the 2023 interim final rule, recipients generally may not use federal financial assistance to cover a cost that the recipient is covering with another federal award, by insurance, or from another source, and subrecipients are bound by this same prohibition as recipients. See e.g., the definition of "improper payment" in the Uniform Guidance at 2 CFR 200.1 and factor affecting allowability of costs at 2 CFR 200.403.

However, specific requirements apply if a recipient uses federal funds to provide assistance with respect to losses suffered as a result of a major disaster or emergency declared under the Stafford Act (referred to as "disaster losses" in the Overview to the 2023 Interim Final Rule), in addition to relevant Uniform Guidance cost principles requirements.

Accordingly, the Stafford Act's duplication of benefits requirements applies to recipients using SLFRF funds to provide emergency relief from a natural disaster with a Stafford Act declaration. That is, recipients may not provide financial assistance to a person, business concern, or other entity with respect to disaster losses for which such beneficiary will receive financial assistance under any other program or from insurance or any other source. A recipient may provide assistance with respect to disaster losses to a person, business concern, or other entity that is or may be entitled to receive assistance for those losses from another source, if such person, business concern, or other entity has not received the other benefits by the time of application for SLFRF funds and the person, business concern, or other entity agrees to repay any duplicative assistance to the SLFRF recipient. Recipients may also use SLFRF funds to provide assistance for any portion of disaster losses not covered by other benefits. To ensure compliance with the Stafford Act's requirements, SLFRF recipients are advised to review the Federal Emergency Management Agency's (FEMA) guidance located at 44 CFR 206.191. See also pages 64991-64992 of the 2023 interim final rule.

**15.7. Are all disasters declared as a state of emergency or that receive a Stafford Act declaration, such as the COVID-19 pandemic, considered a natural disaster under the 2023 interim final rule?**

For purposes of the SLFRF program, the 2023 interim final rule defines a natural disaster as a hurricane, tornado, storm, flood, high water, wind-driven water, tidal wave, tsunami, earthquake, volcanic eruption, landslide, mudslide, snowstorm, drought, or fire, in each case attributable to natural causes, that causes or may cause substantial damage, injury, or imminent threat to civilian property or persons. A natural disaster may also include another type of natural catastrophe, attributable to natural causes, that causes or may cause substantial damage, injury, or imminent threat to civilian property or persons. See page 64990 of the 2023 interim final rule.

After the recipient has identified a natural disaster that meets the definition set out above, the natural disaster, having occurred or imminent, must be the subject of an emergency declaration or designation relevant to the recipient's geography and jurisdiction in the form of one of the following:

1. An emergency declaration pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act;
2. An emergency declaration by the Governor of a state pursuant to respective state law;

3. An emergency declaration by a Tribal government; or
4. A designation of an event of a natural disaster by the chief executive (or equivalent) of a recipient government that documents that the event satisfies the definition of natural disaster provided on page 64990 of the 2023 interim final rule.

Recipients only need one type of declaration or designation from the list above, and not all disasters with an emergency declaration will meet the definition of a natural disaster above. For more information, please see pages 64990-64991 of the interim final rule.

**15.8. Can recipients use SLFRF funds for the non-federal match or cost share requirements associated with other federal financial assistance, such as FEMA grants?**

With respect to the emergency relief from natural disasters eligible use category, the 2023 CAA does not add new authority for recipients to use SLFRF funds to satisfy non-federal match requirements of other federal programs. However, as described in the 2022 final rule, recipients may use SLFRF funds for a project under the revenue loss eligible use category to satisfy non-federal match requirements. In addition, the new Surface Transportation projects and Title I projects eligible use categories, discussed in FAQ #14.7, provide recipients the ability to use funds to satisfy non-federal cost share requirements in certain instances. Please refer to the 2022 final rule and 2023 interim final rule for more information.

**15.9. If a recipient uses SLFRF funds to provide emergency relief from a natural disaster, how will this impact other federal funding, such as funds received from FEMA?**

Subject to the prohibition on duplication of benefits explained in the 2023 interim final rule and in FAQ #15.5, a recipient's use of SLFRF funds to provide emergency relief from a natural disaster will not impact other sources of federal funding. The 2023 interim final rule provides significant flexibility for recipients to use SLFRF funds to provide emergency relief from the widespread physical and negative economic impacts of natural disasters. See pages 5-6 of the Overview of the 2023 Interim Final Rule for a non-exhaustive list of eligible emergency relief.

Explained in FAQ #15.5, in addition to adherence to relevant Uniform Guidance cost principles provisions, recipients are required to follow the "delivery sequence," or order in which disaster relief agencies and organizations provide assistance pursuant to FEMA's guidance located at 44 CFR 206.191. Detailed in the 2023 interim final rule, SLFRF funds must be used last in the delivery sequence unless the recipient, in consultation with the appropriate Regional Administrator of FEMA or state disaster-assistance administrator, determines that another sequence is appropriate.

**15.10. If a recipient experiences a natural disaster, could the recipient use SLFRF funds to repair damage to public infrastructure caused by the natural disaster?**

As discussed in FAQ #15.1, recipients seeking to use SLFRF funds to provide the emergency relief from the physical or economic impacts of a natural disaster must undertake the following two-step process:

1. Identify a natural disaster that has occurred or is expected to occur imminently, or a natural disaster that is threatened to occur in the future.
2. Identify emergency relief that responds to the physical or negative economic impacts, or potential physical or negative economic impacts, of the natural disaster. The emergency relief must be related and reasonably proportional to the impact identified.

On pages 5-6 of the Overview of the 2023 Interim Final Rule, Treasury provided a non-exhaustive list of eligible uses to address immediate needs in connection with a declared or designated natural disaster, , including public infrastructure repairs to roads, bridges, and utilities damaged by a natural disaster. In addition, recipients may incorporate mitigation activities into the project as part of restoring the public infrastructure damaged by the natural disaster, and making it more resilient to future natural disasters. See page 64993 of the 2023 interim final rule.

**15.11. If a disaster is expected to occur imminently (i.e., the hurricane is expected to land in a few days), but is not declared by the Governor or President, are the expenses that are incurred eligible under the emergency relief from natural disasters eligible use category?**

To provide emergency relief before, during, or after a natural disaster that has already occurred or is expected to occur imminently, the recipient should first identify how the disaster meets the definition of a natural disaster described in the 2023 interim final rule and in FAQ #15.7. The natural disaster that has occurred or is expected to occur imminently must be, or have been, the subject of an emergency declaration or designation applicable to the recipient's geography and jurisdiction. If an emergency declaration pursuant to the Stafford Act, or an emergency declaration by the Governor of a state or a Tribal government is not available, the 2023 interim final rule provides a path for recipients to satisfy this requirement through the designation of an event as a natural disaster by the chief executive (or equivalent) of the recipient government, provided that the chief executive documents that the event meets the definition of natural disaster provided above. Recipients should maintain documentation consistent with the terms and conditions of the award agreement. An emergency designation by the chief executive (or equivalent) of the recipient government is required only in the absence of an emergency declaration made pursuant to the Stafford Act or made by a state or Tribal government.

**15.12. To qualify as a natural disaster under the interim final rule, does the event have to be the subject of all four types of declarations, including a declaration pursuant to the Robert T. Stafford Act?**

To provide emergency relief before, during, or after a natural disaster that has already occurred or is expected to occur imminently, the recipient should first identify how the disaster meets the definition of a natural disaster. Please see page 64990 of the 2023 interim final rule and FAQ #15.7 for the definition of a natural disaster for the purposes of the SLFRF program.

The natural disaster that has occurred or is expected to occur imminently must be, or have been, the subject of an emergency declaration or designation applicable to the recipient's geography and jurisdiction in the form of one of the following:

1. An emergency declaration pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act;
2. An emergency declaration by the Governor of a state pursuant to respective state law; or
3. An emergency declaration by a Tribal government.

If one of the declarations listed in (1)-(3) above is not available, recipients may satisfy this requirement through the designation of an event as a natural disaster by the chief executive (or equivalent) of the recipient government, provided that the chief executive documents that the event meets the definition of a natural disaster provided in the 2023 interim final rule. Recipients only need one declaration or designation for the relevant natural disaster.

**15.13. If a recipient has both a declaration by the State and a Stafford Act declaration for the natural disaster, should the recipient report both declarations?**

If the event has a Stafford Act declaration, this declaration supersedes an emergency declaration made by the state or Tribal government, and an emergency designation made by the chief executive (or equivalent) of a recipient government. An emergency designation by the chief executive (or equivalent) of the recipient government is required only in absence of an emergency declaration made pursuant to the Stafford Act or made by a state or Tribal government.

**15.14. Under the definition of natural disasters, does civilian property or persons include government property?**

Yes. The 2023 interim final rule defines natural disaster as: "a hurricane, tornado, storm, flood, high water, wind-driven water, tidal wave, tsunami, earthquake, volcanic eruption, landslide, mudslide, snowstorm, drought, or fire, in each case attributable to natural causes, that causes or may cause substantial damage, injury, or imminent threat to civilian property or persons. A natural disaster may also include another type of natural catastrophe,

attributable to natural causes, that causes, or may cause substantial damage, injury, or imminent threat to civilian property or persons." The definition of natural disaster in the 2023 interim final rule is based on the definition of natural disaster under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, which provides the statutory authority for most Federal disaster response activities, including as they pertain to Federal Emergency Management Agency (FEMA) assistance and programs. In this definition, property of a state, local or Tribal government is considered civilian property.

## 16. Surface Transportation and Title I Projects

### 16.1. How do recipients calculate the maximum amount of SLFRF funds they may spend on Surface Transportation and Title I projects, taken together?

Pursuant to the 2023 CAA, the maximum amount of SLFRF funds that a recipient may use for Surface Transportation projects and Title I projects, taken together, cannot exceed the greater of $10 million and 30% of a recipient's SLFRF allocation. As stated on page 64997 of the 2023 interim final rule, this limitation does not apply to SLFRF funds used for the other eligible uses in the SLFRF program, including funds used for the provision of government services under the revenue loss eligible use category. Accordingly, if a recipient chooses to use SLFRF funds under the revenue loss eligible use category for projects that would also be eligible under the Surface Transportation projects or Title I projects eligible use categories, that spending would not be included in the statutory cap on funds used for Surface Transportation projects and Title I projects described above. Recipients may choose to spend additional funding beyond what is available under the cap on funds on projects that might otherwise be eligible as Surface Transportation projects or Title I projects under the revenue loss eligible use category.

The following three examples are illustrative of calculations regarding the statutory limitation applicable to the total amount of SLFRF funds that a recipient may use for Surface Transportation projects and Title I projects taken together:

1. For a recipient that received $500 million in SLFRF funds, it may spend a maximum of $150 million, which is 30% of $500 million, on any combination of eligible Surface Transportation projects and Title I projects.
2. For a recipient that received $15 million in SLFRF funds, it may spend a maximum of $10 million (as $10 million is greater than 30% of the recipient's $15 million allocation, which is $4.5 million) on any combination of eligible Surface Transportation projects and Title I projects.
3. For a recipient that received $6 million in SLFRF funds, it may spend a maximum of $6 million on any combination of eligible Surface Transportation projects and Title I projects. This recipient has its total SLFRF allocation available for Surface Transportation projects and Title I projects because its allocation is less than $10 million. Note that if this recipient chose to claim $6 million in revenue loss (by

claiming up to $10 million in revenue loss, not to exceed its allocation), it may spend its total allocation of $6 million under the revenue loss eligible use category toward the provision of government services, which may include projects that would otherwise be eligible under the Surface Transportation projects and Title I projects eligible use categories.

**16.2. Are Surface Transportation projects and Title I projects subject to the Davis-Bacon Act requirements?**

The 2023 interim final rule provides that for recipients using SLFRF funds for Surface Transportation projects under Pathways One, Two, and Three, the requirements of titles 23, 40, and 49 of the U.S. Code generally apply, which include the requirements of, for example, 23 U.S.C. 113 and 49 U.S.C. 5333(a) and (b), that apply the Davis-Bacon prevailing wage protections for highway and transit projects, respectively, receiving federal financial assistance.

In addition, non-Tribal recipients using SLFRF funds for Title I projects must comply with the prevailing wage rate requirements under the Davis-Bacon Act and other labor standards applied by HUD to construction work under Title I of the Housing and Community Development Act of 1974, in accordance with HUD regulations for Title I labor standards requirements set forth at 24 CFR 570.603. Such requirements do not apply to Tribal government recipients of SLFRF funds.

Please see FAQ #6.15 for information regarding how the Davis-Bacon Act applies to other eligible use categories in the SLFRF program.

**16.3. What are the obligation and expenditure deadlines for SLFRF funds under the Surface Transportation projects and Title I projects eligible use categories?**

Across all seven eligible use categories in the SLFRF program, funds must be obligated by December 31, 2024. For Surface Transportation projects and Title I projects, recipients must expend SLFRF funds by September 30, 2026. For the other five eligible use categories, SLFRF funds must be expended by December 31, 2026.

**16.4. What are the 26 programs administered by the Department of Transportation under which recipients can use SLFRF funds for Pathway One projects under the Surface Transportation eligible use category?**

Under Pathway One, recipients may use SLFRF funds for projects under the following programs:

- INFRA Grants
- National Highway Performance Program
- Bridge Investment Program
- Surface Transportation Block Grant Program
- Highway Safety Improvement Program
- Congestion Mitigation and Air Quality Improvement Program
- Charging and Fueling Infrastructure Discretionary Grant Program
- Territorial and Puerto Rico Highway Program
- National Highway Freight Program
- Rural Surface Transportation Grant Program
- Carbon Reduction Program
- Promoting Resilient Operations for Transformative, Efficient, and Cost-Saving Transportation Program
- Tribal Transportation Program
- Federal Lands Transportation Program
- Federal Lands Access Program
- Rebuilding American Infrastructure with Sustainability and Equity Grant Program
- Transportation Infrastructure Finance and Innovation Act Program
- Urbanized Formula Grants
- Fixed Guideway Capital Investment Grant
- Formula Grants for Rural Areas
- State of Good Repair Grants
- Grants for Buses and Bus Facilities
- National Culvert Removal, Replacement, and Restoration Grant Program
- Bridge Replacement, Rehabilitation, Preservation, Protection, and Construction Program
- Activities to carry out metropolitan transportation planning
- Projects that further the completion of a designated route of the Appalachian Development Highway System

**16.5. The 2023 interim final rule indicated that recipients may use SLFRF funds for Pathway One projects that are receiving funding from the Department of Transportation. Does this include funds awarded by a State's Department of Transportation?**

Under Pathway One, recipients may use SLFRF award funds to supplement surface transportation projects receiving funding from the U.S. Department of Transportation or for projects that will receive funding from the U.S. Department of Transportation prior to December 31, 2024, the obligation deadline for the SLFRF program. These projects could include projects receiving funding from a State Department of Transportation acting as a pass through of funding from the U.S. Department of Transportation.

If a recipient is seeking to use SLFRF funds for a project that is receiving funds from a State Department of Transportation, but the State is not acting as a pass through and no funds for the project are provided by the U.S. Department of Transportation, the recipient should review the parameters of Pathway Two's streamlined framework, which is summarized on pages 12-14 of the Overview of the 2023 Interim Final Rule, to determine project eligibility.

**16.6. What are the parameters of the streamlined framework under Pathway Two?**

For a Surface Transportation project that is eligible under the RAISE Grant Program pursuant to the 2023 Notice of Funding Opportunity for RAISE, under Pathway Two, a recipient may use SLFRF funds for a project that does not receive DOT funds and that meets the parameters of the streamlined framework summarized on page 12 of the Overview of the 2023 Interim Final Rule and set out below:

1. The recipient's contribution of SLFRF funds to the project must not exceed $10 million; and
2. The entire project scope must be limited to the set of actions or activities deemed by DOT as meeting the criteria for categorical exclusion as listed under 23 CFR 771.116(c)(1)-(22), 771.117(c)(1)-(30), and 771.118(c)(1)-(16). The recipient also must determine that those actions do not involve unusual circumstances, as described in 23 CFR 771.116(b), 771.117(b), and 771.118(b).

For these projects, recipients are not required to submit an application to, or receive approval from, Treasury to conduct the project. However, the requirements of titles 23, 40, and 49, such as design, planning, construction, operation, and maintenance requirements, apply to projects under the Pathway Two streamlined framework (and projects outside the streamlined framework). For more information, see pages 12 – 13 of the Overview of the 2023 Interim Final Rule.

**16.7. Where can recipients find the 2023 RAISE grant Notice of Funding Opportunity?**

Recipients can find the 2023 Notice of Funding Opportunity for the RAISE Grant Program on the Department of Transportation's website at: https://www.transportation.gov/RAISEgrants/raise-nofo.

**16.8. What requirements of titles 23, 40, and 49 apply to projects under the streamlined framework under Pathway Two?**

On pages 65008-65011 of the 2023 interim final rule, Treasury discusses the application of the requirements of titles 23, 40, and 49 to surface transportation projects under Pathway Two's streamlined framework. The application of these requirements to projects under Pathway Two's streamlined framework is also summarized on pages 12-14 in the Overview of the 2023 Interim Final Rule. Recipients using SLFRF funds for a surface

transportation project that meets the parameters of the streamlined framework (summarized on page 12 of the Overview of the 2023 Interim Final Rule) are not required to submit an application to, or receive approval from, Treasury to conduct the project.

**16.9. For which programs can recipients use SLFRF funds for non-federal cost share requirements under Pathway Three of the Surface Transportation eligible use category?**

As summarized on page 15 of the Overview of the 2023 Interim Final Rule, under Pathway Three, recipients may use SLFRF funds to repay a TIFIA loan or to satisfy non-federal cost share requirements for projects eligible under the following programs:

- INFRA Grant Program;
- Fixed Guideway Capital Investments;
- Mega Grants; and
- Projects eligible for credit assistance under the TIFIA program.

For additional information, see page 65011 in the 2023 interim final rule and the TIFIA program overview on DOT's website at: https://www.transportation.gov/buildamerica/financing/tifia.

**16.10. How does the "supplement, not supplant" provision for Surface Transportation and Title I projects apply to projects that are in the process of being awarded federal funds from DOT or HUD? How does it apply to existing CDBG recipients?**

Summarized on page 9 of the Overview for the 2023 Interim Final Rule, recipients using SLFRF funds for Surface Transportation projects and Title I projects must supplement, and not supplant, other federal, state, territorial, Tribal, and local government funds (as applicable) otherwise available for such uses. The phrase "available for such uses" means:

1. Non-federal funds are considered "otherwise available for such uses" if they have been obligated for activities or projects that are eligible as part of any Surface Transportation project or Title I project. Identifying non-federal funds that have been obligated for specific uses follows the definition of "obligation" in the 2022 final rule and as amended by the Obligation IFR (see also FAQ #13.17 and Section 17 of the FAQs on obligation); and
2. Federal funds are considered "otherwise available for such uses" if a federal agency has committed to a particular project pursuant to an award agreement or otherwise.

In practice, this places the following two restrictions on SLFRF recipients:

1. Recipients may not de-obligate, meaning cancel, amend, renegotiate, or otherwise revise or abrogate a contract, subaward, or similar transaction that requires payment, and replace any previously obligated funds with SLFRF funds in a Surface Transportation or Title I project.

2. Recipients may not use SLFRF funds to replace federal or non-federal funds identified in a federal commitment to a particular project, such as an award agreement.

If a recipient undertaking a Surface Transportation project is in the process of being awarded federal funds from DOT but has not yet entered into a formal award agreement, the recipient may, in consultation with DOT, adjust the funding mix for the project to include SLFRF funds. If a formal award agreement has been entered into with DOT, then SLFRF funds may be added to the project only to expand the scope of the project or to cover unexpected costs. Under Pathway One and Pathway Three, recipients must consult with DOT prior to adding SLFRF funds to the project.

For a recipient undertaking a Title I project, the first restriction (above) on de-obligating funds and replacing those previously obligated funds with SLFRF funds applies. However, the second restriction to not use SLFRF funds to replace federal or non-federal funds identified in a federal commitment to a project does not apply to HUD funds provided to a Community Development Block Grant (CDBG) grantee for activities included in its annual plan, as HUD provides CDBG recipients flexibility to adjust those plans throughout the year to reflect modifications in planned spending. To clarify, the second restriction does apply to Tribal government recipients of Indian Community Development Block Grant (ICDBG) grants, as grants under the ICDBG program are commitments to particular projects approved by HUD.

**16.11. If a recipient wants to use funds for housing and community development, how should it consider whether to pursue a project under the Title I projects eligible use category or the public health and negative economic impacts (PH-NEI) eligible use category?**

As stated on page 64013 of the 2023 interim final rule, in the Title I projects eligible use category, recipients may use SLFRF funds for any of the activities listed in section 105(a) of the Housing and Community Development Act of 1974 (HCDA). Many eligible Title I projects may also be eligible in the PH-NEI eligible use category, which is discussed in the 2022 final rule. Recipients should consider the following when evaluating whether to pursue a project under the PH-NEI or Title I projects eligible use categories:

1. Under the PH-NEI eligible use category, recipients have the flexibility to use SLFRF funds for a range of capital expenditure projects that may include investments in property and facilities, such as those described in FAQs #2.14 and #4.9. The PH-NEI eligible use category also offers a framework for determining if other uses of funds, beyond those listed in the 2022 final rule, are eligible. See page 32 in the Overview to the 2022 Final Rule. In general, to decide whether a project may be eligible under the PH-NEI eligible use category, recipients should (a) identify a COVID-19 public health or economic impact on an individual or class (i.e., a group); and (b) design a program

that responds to that impact. Responses should be related and reasonably proportional to the harm identified and reasonably designed to benefit those impacted.

2. Under the Title I projects eligible use category, recipients may pursue activities listed under section 105(a) of the Housing and Community Development Act of 1974 (see FAQ #16.13), which are the eligible activities under the Community Development Block Grant (CDBG) and Indian Community Development Block Grant (ICDBG) programs, subject to certain requirements and limitations. Recipients should comply with the related eligibility requirements and other criteria set forth at 24 CFR 570.201 – 570.209 with respect to recipients that are not Tribal governments and 24 CFR 1003.201 – 1003.209 with respect to Tribal governments.
3. There are certain projects that are uniquely eligible under the Title I projects eligible use category, such as, for example, the ability to use SLFRF funds for the non-federal cost share or match requirements of a federal financial assistance program in support of eligible activities under the CDBG and ICDBG programs.
4. Under the PH-NEI eligible use category, there is no cap on the amount of SLFRF funds that may be directed toward an activity in this category. Under the Title I projects eligible use category, recipients are limited to using the greater of $10 million or 30% of their total allocation towards Surface Transportation projects and Title I projects, taken together.
5. The requirements of the National Environmental Policy Act (NEPA) apply to all projects under the Title I projects eligible use category. Please see FAQ #16.16 for more information. NEPA requirements do not apply to projects under the PH-NEI eligible use category.
6. As stated above, applicable requirements of Title I of the HCDA apply to Title I projects, which include the CDBG Primary Objective requirement, the Planning and Administrative Costs cap requirement, and the Public Services Cap requirement, and the Broadband Equity Access and Deployment program. The requirements of the CDBG National Objectives and Labor Standards apply to non-Tribal recipients. See pages 65015-65019 of the 2023 interim final rule. In contrast, these requirements do not apply to projects under the PH-NEI eligible use category, under which projects must serve impacted or disproportionately impacted communities. The 2022 final rule provides a non-exhaustive list of enumerated eligible uses to respond to pandemic impacts and presumes that some populations experienced pandemic impacts and are eligible for responsive services. The 2022 final rule also provides a framework for determining if non-enumerated uses or populations may be eligible under the PH-NEI eligible use category.

**16.12. If a recipient is using its SLFRF funds for the non-federal match requirement associated with a CDBG grant award under the revenue loss eligible use category, does the guidance provided in the 2023 interim final rule relating to the Title I projects eligible use category apply, such as the Public Services and Administrative Caps and the obligation and expenditure deadlines?**

As described in FAQ #14.2 and page 65020 of the 2023 interim final rule, the 2023 CAA codified the standard allowance discussed in the 2022 final rule under the revenue loss eligible use category. Under this category, recipients generally may use SLFRF funds to meet the non-federal match requirements of other federal programs, subject to the limitations explained in the 2022 final rule and described in FAQ #4.6. The additional requirements that apply to the Title I projects eligible use category do not apply to SLFRF funds used under the revenue loss eligible use category. As described in the 2023 interim final rule and the 2022 final rule, each eligible use category has separate and distinct standards for assessing whether a use of funds is eligible. Standards and restrictions applicable to one eligible use category may not apply to other categories. Therefore, recipients should first determine which eligible use category a potential use of funds may fit within, and then assess whether the potential use of funds meets the eligibility standard or criteria for that category.

If a recipient seeks to use SLFRF funds under the revenue loss eligible use category to satisfy the match or cost-share requirements for a federal grant program, it should first confirm with the relevant awarding agency that (1) no waiver has been granted for that program, (2) that no other circumstances enumerated under 2 CFR 200.306(b) of the Uniform Guidance would limit the use of SLFRF funds to meet the match or cost share requirement, and (3) that there is no other statutory or regulatory impediment to using the SLFRF funds for the match or cost share requirement. Please refer to the 2022 final rule and FAQ #4.6 for more information regarding the use of SLFRF funds under the revenue loss eligible use category to satisfy non-federal match requirements.

### 16.13. What are the eligible activities under the Title I projects eligible use category?

In the Title I projects eligible use category, recipients may use SLFRF funds for any of the activities listed under section 105(a) of the Housing and Community Development Act of 1974 (42 U.S.C. 5305(a)). These activities include:

- Acquisition of real property
- Acquisition, construction, reconstruction, or installation of public works, sites, or other public purposes
- Code enforcement in deteriorated or deteriorating areas
- Clearance, demolition, removal, reconstruction, and rehabilitation
- Removal of barriers restricting mobility and accessibility of elderly and handicapped persons
- Payments to housing owners for losses of rental income for holding units for relocation of displaced persons
- Disposition or retention of real property
- Provision of public services

- Payment of non-federal match or cost-share requirements of a federal financial assistance program in support of activities that would be eligible under the CDBG and ICDBG programs
- Payment of the cost of completing a project funded under title I of the Housing Act of 1949
- Relocation payments and assistance for displaced individuals, families, businesses, organizations, and farm operations
- Community development plan or policy-planning-management capacity development
- Payment of reasonable administrative costs related to establishing and administering federally approved enterprise zones, administering the HOME program, or planning and executing community development and housing activities.
- Provision of assistance for activities carried out by public or private nonprofit entities
- Assistance to carry out a neighborhood revitalization or community economic development or energy conservation project, or for development of shared housing opportunities
- Development of energy use strategies
- Assistance to private, for-profit entities to carry out economic development projects
- Rehabilitation or development of housing assisted under 42 U.S.C. 1437
- Technical assistance to public or nonprofit entities to increase their capacity to carry out neighborhood revitalization or economic development activities
- Housing services
- Assistance to institutions of higher education
- Assistance to public and private organizations, agencies, and other entities to facilitate economic development
- Activities necessary to make essential repairs and to pay operating expenses to maintain habitability of housing units acquired through tax foreclosure proceedings
- Direct assistance to facilitate and expand homeownership
- Construction or improvement of tornado-safe-shelters and assistance to nonprofit and for-profit entities for such construction or improvement
- Lead-based paint hazard evaluation and reduction

When carrying out these activities, recipients should comply with the related eligibility requirements set forth at 24 CFR 570.201 – 570.209 with respect to recipients that are not Tribal governments and 24 CFR 1003.201 – 1003.209 with respect to Tribal governments. Recipients may refer to additional HUD guidance for further information about the projects eligible under the CDBG program, including guidance about complying with the national objectives and other program requirements.

**16.14. If a recipient is using SLFRF funds under the Title I projects eligible use category for dan activity that is a NEPA exempt or categorically excluded, not subject to 24 CFR 58.5 activity, does the recipient need to document that determination?**

Yes. To claim an activity or project as exempt pursuant to 24 CFR 58.34(a), recipients must document in writing their determination that the activity or project is exempt and meets the conditions specified for such exemption. For categorically excluded projects, recipients are required to maintain a well-organized written record of the process and determinations, including those related to the evaluation of whether the project presents extraordinary circumstances, made with respect to the categorical exclusion, which HUD refers to as an Environmental Review Record. Treasury will provide additional information on the Environmental Review Record requirements. For more information, see pages 65019-65020 of the 2023 interim final rule.

### 16.15. How do I know if a project funded with SLFRF funds requires pre-approval?

Treasury is not pre-approving uses of SLFRF funds under the eligible use categories set out in the 2022 final rule and the emergency relief from natural disasters eligible use category described in the 2023 interim final rule. Under the Surface Transportation projects and Title I projects eligible use categories, federal agency approval is required before recipients may use SLFRF funds for certain projects.

For Surface Transportation projects:

- If a recipient is using SLFRF funds for a Surface Transportation project under Pathway One or Pathway Three described in the 2023 interim final rule, the recipient must consult with DOT, but not Treasury, prior to using SLFRF funds for the project.
- If a recipient is using SLFRF funds for a Surface Transportation project that meets the criteria for the streamlined framework under Pathway Two described in the 2023 interim final rule, the project does not require Treasury's pre-approval. Additionally, Pathway Two projects do not include funding from DOT, and therefore, do not require pre-approval from DOT.
- Recipients that would like to use SLFRF funds for a Surface Transportation project under Pathway Two outside the parameters of the streamlined framework must submit a notice of intent to Treasury at NOI-SLFRF@treasury.gov. The notice of intent was due 30 calendar days after the end of the IFR comment period, by December 20, 2023. Treasury will evaluate the projects included in these notices of intent, along with comments received on the 2023 interim final rule, to design and implement the framework for approving these types of projects. See page 65008 of the 2023 interim final rule for information about the content to include in the notice of intent.

For Title I projects:

- Recipients must submit a project-level environmental review certification to Treasury and receive Treasury's approval prior to using SLFRF funds for projects

under the Title I projects eligible use category, unless the project meets at least one of the criteria set out below. Recipients are not required to submit certifications or receive Treasury's approval and may begin using their SLFRF funds right away for Title I projects that are:

  - Exempt activities as contemplated by 24 CFR 58.34(a); or
  - Categorically excluded activities not subject to 24 CFR 58.5 as contemplated by 24 CFR 58.35(b), provided that the circumstances described in 24 CFR 58.35(c) are not present.

- Projects under the Title I eligible use category do not require approval from HUD.

### 16.16. How does NEPA apply to Surface Transportation projects and Title I projects?

Surface Transportation projects:

- Regarding use of SLFRF funds for a Surface Transportation project under Pathway One or Pathway Three, as described in the 2023 interim final rule, recipients must consult with DOT regarding NEPA requirements for their project. Generally, the statutory requirements that normally apply when carrying out a Surface Transportation project funded by DOT will continue to apply to one that includes SLFRF funds.
- Please note that even where NEPA has been determined to not be applicable, the recipient may still need to comply with other environmental requirements, such as the Endangered Species Act and Clean Water Act.
- Regarding use of SLFRF funds for a Surface Transportation project under the streamlined framework of Pathway Two, recipients are not required to conduct NEPA environmental reviews. However, for a Surface Transportation project to be eligible under the streamlined framework of Pathway Two, the entire project scope must be limited to the set of actions or activities identified by DOT as meeting the criteria for categorical exclusion listed under 23 CFR 771.116(c)(1)-(22), 771.117(c)(1)-(30), and 771.118(c)(1)-(16). The recipient also must determine that those actions do not involve unusual circumstances, as described in 23 CFR 771.116(b), 771.117(b), and 771.118(b).

  Projects supported with SLFRF funds may still be subject to NEPA review and other environmental statutes if they are also funded by other federal financial assistance programs or have certain federal licensing or registration requirements. In addition, a project that qualifies for the streamlined framework under Pathway Two may still be subject to certain limitations or prohibitions as a result of the application of other environmental statutes.

  For Surface Transportation projects outside of the streamlined framework under Pathway Two, recipients must submit a notice of intent to Treasury, as described in FAQ #16.15, and the requirements of NEPA and other environmental laws apply.

The notice of intent would ideally include the status of the NEPA review, among other information, as listed on page 65008 of the 2023 interim final rule.

Title I projects:

- The requirements of NEPA apply to all projects and activities under the Title I projects eligible use category. As described below, recipients must satisfy environmental review requirements differently based on the type of project they are pursuing. See also FAQ #16.15.
    - For projects that are exempt activities or categorically excluded activities as described in the 2023 interim final rule, recipients must satisfy environmental review requirements by maintaining a well-organized written record of the recipients' determinations that a project is an exempt or categorically excluded activity. For these projects, recipients do not need to submit any certifications or receive approval from Treasury and may begin using SLFRF funds for these projects right away.
    - For projects that are not exempt activities or categorically excluded activities as described in the 2023 interim final rule, recipients are required to satisfy NEPA environmental review requirements, including submitting a project-level environmental review certification to Treasury and receiving Treasury's approval prior to using SLFRF funds for these projects.
- Treasury will provide additional information on the required written record and certification requirements.

### 16.17. What requirements of Title I of the Housing and Community Development Act of 1974 (Title I) apply to SLFRF-funded projects under the Title I projects eligible use category? Do HUD regulations apply to the Title I projects eligible use category?

In accordance with the 2023 CAA, the requirements of Title I and associated regulations generally apply to SLFRF-funded projects under the Title I projects eligible use category. For each of the applicable requirements, the associated HUD regulations generally apply as well, including where they:

- Enumerate and clarify eligible activities under the CDBG program;
- Specify cost caps or the method to calculate costs caps; and
- Direct recipients to the applicability of other federal laws and regulations.

On pages 65015-65020 of the 2023 interim final rule, Treasury discusses the requirements of Title I that apply to recipients using SLFRF funds under the Title I projects eligible use category and the requirements of Title I that do not apply under this eligible use category. The following requirements apply to all SLFRF recipients:

- The Primary Objective: Direct at least 70% of SLFRF funds used for Title I projects, over the course of the SLFRF program, to projects that principally benefit

low- and moderate-income persons in accordance with the HUD regulations set forth at 24 CFR 570.3 and 24 CFR 570.200(a)(3). Tribal government recipients must refer to the low- and moderate-income thresholds as defined by HUD at 24 CFR. 1003.4 (or attest that project beneficiaries are receiving or are eligible to receive needs-based services provided by the Tribal government) and the requirements of 24 CFR 1003.208.

- Public Services Cap: Not more than 15% of SLFRF funds used for Title I projects may be spent under the "public services" category of eligible activities. The determination of which projects are considered "public services" shall be made in accordance with HUD regulations set forth at 24 CFR 570.201(e) for non-Tribal recipients and 24 CFR 1003.201(e) for Tribal recipients, but notwithstanding those provisions, the cap appliable to use of SLFRF funds for public services shall be 15% of the total amount of SLFRF used by a recipient for Title I projects. SLFRF recipients, for purposes of the application of these regulations to use of SLFRF for Title I projects, should disregard the references in those sections to percentages of a grant or percentages of program income.
- Planning and Administrative Costs Cap: Not more than 20% of SLFRF funds used for Title I projects may be spent on planning and administrative costs. The determination of which costs are considered planning and administrative costs shall be made in accordance with HUD regulations set forth 24 CFR 570.205 and 570.206 for non-Tribal recipients and 24 CFR 1003.205 and 24 CFR 1003.206 for Tribal recipients.
- Environmental Review Requirements: Satisfy NEPA environmental review requirements based on the procedures set forth in section 104(g) of the HCDA, as implemented by 24 CFR part 58, and as adapted to the SLFRF program, including submitting a project-level environmental review certification to Treasury and receiving Treasury's approval prior to using SLFRF funds for projects that are not exempt activities or categorically excluded activities as described in the 2023 interim final rule, and maintaining a well-organized written record of the process and determinations that a project is an exempt or categorically excluded activity. Treasury will provide additional information on the Environmental Review Record and certification requirements.

For non-Tribal recipients of SLFRF funds, the following additional requirements apply:

- CDBG National Objectives: Each project undertaken under the Title I eligible use category must satisfy a CDBG National Objective, in accordance with HUD regulations set forth at 24 CFR 570.208.
- Labor Standards: Prevailing wage rate requirements of the Davis-Bacon Act and other labor standards, applied by HUD to construction work under Title I, apply to Title I projects in accordance with HUD regulations for Title I labor standards requirements set forth at 24 CFR 570.603 for non-Tribal recipients.

For a summary of Title I projects program requirements, see pages 17-18 of the Overview of the 2023 Interim Final Rule.

## 17. Obligation and Expenditure

### 17.1. How does a recipient incur an obligation?

The statute requires that SLFRF funds may only be used to cover costs incurred by December 31, 2024. Treasury implemented this requirement by providing that a cost is considered incurred by December 31, 2024, if a recipient has incurred an obligation with respect to the cost by December 31, 2024. Under the rule adopted in 2021, an "obligation" means an order placed for property and services and entering into contracts, subawards, and similar transactions that require payment. Under the amendment to the rule adopted in 2023, an obligation also includes a requirement under federal law or regulation or provision of the SLFRF award terms and conditions to which a recipient becomes subject as a result of receiving or expending SLFRF funds.

As clarified in FAQ 17.6, Treasury considers an interagency agreement meeting certain conditions to constitute a transaction requiring payment similar to a contract or subaward and therefore an obligation. As clarified in FAQ 17.7, recipients may consider themselves to have obligated funds to maintain certain personnel costs for personnel whose salary may be paid under an eligible use of SLFRF funds through December 31, 2026, for any position that existed and was filled by December 31, 2024.[10]

### 17.2. What happens to funds not obligated by December 31, 2024?

Recipients are required to return to Treasury any SLFRF funds that have not been obligated by the obligation deadline of December 31, 2024. Recipients will report funds that were obligated by December 31, 2024, in the Project and Expenditure Report that, in the case of annual reporters, is due by April 30, 2025, and, in the case of quarterly reporters, is due by January 31, 2025. However, recipients are not required to return to Treasury SLFRF funds that recipients have estimated will cover costs in 2025 and 2026 for certain legal and administrative expenses (as discussed in FAQs 17.10-13), certain personnel expenses (as discussed in FAQs 17.7 and 17.8), or certain contract changes or contingencies (as discussed in FAQ 17.17). As noted in the obligation IFR, Treasury will provide a deadline by which recipients must return funds not obligated by December 31, 2024.

[10] To the extent a recipient is using SLFRF funds for payroll costs eligible as Title I projects or Surface Transportation projects, other than payroll associated with personnel needed to comply with administrative and other legal requirements, recipients may consider themselves to have obligated funds to maintain paying such costs through September 30, 2026.

**17.3. How does the Obligation IFR impact recipients that have already obligated all of their SLFRF funds?**

The Obligation IFR and subsequently issued FAQs provide additional clarity and flexibility regarding how recipients can meet the obligation deadline of December 31, 2024. If a recipient has already obligated all of its funds in compliance with Treasury's rule and guidance, the recipient does not need to make any changes or take any additional steps to comply with the obligation deadline. Recipients are required to continue to submit reports to Treasury as outlined in the SLFRF Compliance and Reporting Guidance. Treasury will provide closeout instructions that will provide information to recipients on how to complete and provide final reports.

**17.4. How is the obligation requirement applied to non-entitlement units of local government (NEUs)?**

NEUs are recipients of SLFRF funds. All recipients of SLFRF funds, including NEUs, must comply with the obligation requirement.

**17.5. What types of closeout costs are allowable after December 31, 2026, and how will recipients report these obligations and expenditures to Treasury?**

Consistent with the revision to the definition of obligation in the Obligation IFR, recipients are considered to have incurred an obligation by December 31, 2024, with respect to costs to close out their SLFRF award pursuant to 2 CFR 200.344, the provision of the Uniform Guidance addressing closeout. Eligible costs may include the costs of administrative support, data security measures, review and reconciliation of the general ledger and other accounting matters, compliance with reporting requirements, bank reconciliation matters, preparation of and compliance with program policies and procedures, compliance with internal controls, single audit and program-specific audit matters, and closeout processes associated with subrecipient, contractor, and beneficiary relationships, among other costs.

Recipients that provide an estimate of certain legal and administrative costs as discussed in FAQs 17.10-17.13 should include their estimate of closeout costs in such estimate.

**17.6. Does an interagency agreement between departments and agencies within a recipient's government constitute an obligation?**

Treasury considers an interagency agreement, including an agreement in the form of a memorandum of understanding (MOU), to constitute a "transaction requiring payment" similar to a contract or subaward and therefore an obligation for purposes of the SLFRF rule, if the agreement satisfies one of the following conditions:

- it imposes conditions on the use of funds by the agency, department, or part of government receiving funds to carry out the program;
- it governs the provision of funds from one agency, department, or part of government to another to carry out an eligible use of SLFRF funds; or

- it governs the procurement of goods or services by one agency, department, or part of government from another

and the agreement also satisfies each of the following conditions:

- it sets forth specific requirements, such as a scope of work and project deliverables;
- it is signed by the parties to the agreement, or otherwise evidences that each party has assented to the agreement; and
- it does not disclaim any binding effect or state that it does not create rights or obligations.

Examples of interagency agreements Treasury would consider obligations include the following:

- If the Office of the Governor of a state has authority over the disposition of federal financial assistance available to the state, an MOU between the Office of the Governor and the state department of education pursuant to which the Governor agrees to fund the department to carry out a summer program to address learning loss related to the pandemic through 2026, including the coverage of payroll for time spent on the program.

- If a city council has appropriated a certain amount of funds for a public safety initiative to be administered by the city's executive branch through fiscal year 2025, an agreement between the city's Chief Executive and the city's public safety department under which the department agrees to comply with reporting and recordkeeping requirements that facilitate the city's compliance with SLFRF program requirements.

- If a county's legislative body has made SLFRF revenue loss funds available to their housing agency for coverage of its operating costs through fiscal year 2026, an agreement with the county's department of technology under which the housing agency procures IT services from the county's department of technology.

- If a Tribal council has made SLFRF funds available to the social services department to cover the operational costs of an elder care program through December 31, 2026, an agreement with the department under which the social services department agrees to perform and complete in a satisfactory and proper manner the scope of work specified in accordance with the SLFRF award terms and conditions.

### 17.7. May a recipient use SLFRF funds to cover personnel costs between January 1, 2025, and December 31, 2026?

Treasury will consider a recipient to have incurred an obligation with respect to personnel costs for an employee through December 31, 2026, to the extent the employee is serving in a position that was established and filled prior to December 31, 2024.

Accordingly, funds may be used to cover such personnel costs if doing so would fall within

the scope of an eligible use of SLFRF, such as payroll costs for state employees overseeing contracts for broadband projects or county employees overseeing affordable housing projects.

Personnel costs for this purpose include all salary and wages, covered benefits, [11] and payroll taxes for such positions, as in effect at the time of payment.

In the event of turnover of personnel, recipients may continue to pay different personnel in the same job position to the extent that the position in question was established and filled prior to December 31, 2024. Recipients may also reorganize positions within the scope of an eligible use of SLFRF after December 31, 2024, but may not use funds to cover any new positions after that date. For example, if an eligible project has filled ten job training specialist positions by December 31, 2024, the recipient may use funds to cover payroll for one of those training specialists who is promoted to supervise the other specialists after December 31, 2024, so long as there are no more than ten positions covered through SLFRF funds in total.

Recipients may estimate the amount that may be necessary to cover personnel costs through the expenditure period, report that estimate to Treasury, and retain those funds to pay personnel costs covered by the estimate, as discussed further in FAQ 17.8.

**17.8. How and when should recipients report to Treasury their estimate of the amount of SLFRF funds they will use to cover personnel costs between January 1, 2025, and December 31, 2026?**

As described in FAQ 17.7, Treasury will consider a recipient to have incurred an obligation with respect to personnel costs for an employee through December 31, 2026, to the extent the employee is serving in a position that was established and filled prior to December 31, 2024.

If a recipient elects to provide an estimate for such personnel costs, recipients must (1) determine the amount of SLFRF funds the recipient estimates it will use to cover such costs, (2) document a reasonable justification for this estimate, (3) report that amount to Treasury by January 31, 2025, for quarterly reporters, and April 30, 2025, for annual reporters, with an explanation of how the amount was determined, and (4) report at award closeout the final amount expended for these costs. Treasury recognizes that this estimate of anticipated personnel costs may not equal the final amount of funds used to cover personnel costs. For example, a recipient may have a vacancy for a period of time after an employee resigns but before the recipient hires a replacement, or a change in the recipient's laws and regulations may require an unanticipated salary increase for personnel. Recipients

[11] As described in the 2022 final rule, generally if an employee's wages and salaries are an eligible use of SLFRF funds, recipients may treat the employee's covered benefits as an eligible use of SLFRF funds. For purposes of SLFRF funds, covered benefits include costs of all types of leave (vacation, family-related, sick, military, bereavement, sabbatical, jury duty), employee insurance (health, life, dental, vision), retirement (pensions, 401(k)), unemployment benefit plans (federal and state), workers compensation insurance, and Federal Insurance Contributions Act (FICA) taxes (which includes Social Security and Medicare taxes).

providing such an estimate will not be required to return such funds to Treasury after 2024 assuming that they are ultimately expended for an eligible purpose.

Recipients may also cover personnel costs for which the recipient is considered to have incurred an obligation by December 31, 2024, as described above, using (1) SLFRF funds that the recipient does not use as initially reported to cover particular projects, for example if a reported project is performed under budget or is determined to be an ineligible activity (as discussed further in FAQ 17.19), or (2) program income (as discussed further in FAQ 17.21).

To the extent a recipient expends funds for personnel costs in an amount less than the estimate it submitted to Treasury, the recipient must expend the funds for another eligible use of SLFRF funds for which a cost was incurred by December 31, 2024, as described in FAQ 17.19, or must return the funds to Treasury.

Treasury will provide additional guidance in the SLFRF Compliance and Reporting Guidance about how the estimate of personnel costs should be reported in the Project and Expenditure Report due by January 31, 2025 (for quarterly reporters) or April 30, 2025 (for annual reporters) and how the final amount expended should be reported in subsequent reports.

**17.9. Are there any other circumstances besides those listed in FAQ 17.7 under which a recipient may cover personnel costs between January 1, 2025, and December 31, 2026?**

Recipients may use SLFRF funds to pay personnel costs between January 1, 2025 and December 31, 2026 pursuant to an interagency agreement meeting certain conditions, as discussed in FAQ 17.6.

In addition, under the Obligation IFR, a recipient is considered to have incurred an obligation by December 31, 2024, with respect to 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. A recipient may use SLFRF funds to pay personnel costs associated with satisfying the legal and administrative requirements noted above between January 1, 2025, and December 31, 2026, as discussed further in FAQ 17.10.

**17.10. What sort of costs are considered legal and administrative costs for which funds may be used after 2024?**

Under the Obligation IFR, a recipient is considered to have incurred an obligation by December 31, 2024, with respect to 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. Under this provision, a recipient may use SLFRF funds to cover costs, including personnel costs, related to:

1. Reporting and compliance requirements, including subrecipient monitoring (as discussed further below);
2. Single Audit costs;
3. Record retention and internal control requirements;
4. Property standards;
5. Environmental requirements, including applicable requirements of the National Environmental Policy Act, section 106 of the National Historic Preservation Act, the Archaeological Resources Protection Act of 1979, and the Native American Graves Protection and Repatriation Act; and
6. Civil rights and nondiscrimination requirements.

This is not an exhaustive list of requirements under federal laws or regulations or the SLFRF award terms and conditions to which recipients may be subject as a result of receiving or expending SLFRF funds.

Eligible costs related to reporting and compliance requirements under this provision, including personnel costs, include monitoring the activities of a subrecipient to ensure that the subaward is used for authorized purposes, in compliance with Federal statutes, regulations, and the terms and conditions of the subaward, and that subaward performance goals are achieved. Among other activities, Treasury considers the following activities to be part of subrecipient monitoring:

- Ensuring that the subrecipient has access to information about public programs relevant to the subrecipient's duties necessary to ensure that subaward performance goals are achieved;
    - For example, a subrecipient carrying out a career coaching program for local residents may need information about eligibility criteria for public benefits programs to achieve its performance goals, while a subrecipient carrying out an affordable housing project may need information about urban planning for sewer, water, and electricity to achieve its performance goals.
- Ensuring that the subrecipient has access to information about projects operated by other subrecipients, necessary to ensure that subaward performance goals are achieved;
- Ensuring deliverables and payment are within the approved scope of the subaward;
- Responding to inquiries about the interpretation of subrecipient responsibilities under the subaward;
- Processing and correcting invoices; and
- Taking remedial action necessary to prevent the subrecipient from failing to perform its responsibilities under the subaward.

The Obligation IFR also clarifies that recipients may continue to charge their current negotiated indirect cost rate agreement established with their federal cognizant agency or the de minimis rate of 10 percent of modified total direct costs pursuant to 2 CFR 200.414(f), after December 31, 2024, through December 31, 2026.

### 17.11. How should recipients report to Treasury their estimate of the amount of SLFRF funds required to cover the costs of satisfying certain legal and administrative requirements?

A recipient may submit to Treasury an estimate of SLFRF funds that it will use to cover such expenditures, as described further in FAQ 17.10. Recipients are not required to submit estimates for all administrative costs associated with their projects; rather, they must submit such estimates if they want to use, to cover such legal and administrative costs, any funds that they would otherwise have to return to Treasury after 2024 as unobligated.

In order for a recipient to expend funds after 2024 in the amount of its estimate, the recipient must (1) determine the amount of SLFRF funds the recipient estimates it will use to cover such expenditures, (2) document a reasonable justification for this estimate, (3) report that amount to Treasury with an explanation of how the amount was determined, and (4) report at award closeout the final amount expended for these costs. The Obligation IFR provided that this estimate would be due to Treasury in the Project and Expenditure Report due by April 30, 2024. Treasury is extending this deadline, as discussed in FAQ 17.12. Recipients providing such an estimate will not be required to return such funds to Treasury after 2024 assuming that they are ultimately expended for an eligible purpose.

In addition or as an alternative to using funds in the amount of a recipient's estimate, recipients may cover the costs of meeting the legal and administrative requirements discussed above after December 31, 2024, using (1) SLFRF funds that the recipient does not use as initially reported to cover particular projects, for example if a reported project is performed under budget or is determined to be an ineligible activity (as discussed further in FAQ 17.19), or (2) program income (as discussed further in FAQ 17.21).

For further explanation of eligible costs associated with these requirements, see FAQs 17.9 and 17.10.

### 17.12. When must recipients report the estimate for legal and administrative expenses discussed in FAQ 17.10 to Treasury?

Recipients that report to Treasury quarterly should report their expenditure estimate to Treasury by July 31, 2024, in their second quarter Project and Expenditure Report. Recipients that report to Treasury annually should report their expenditure estimate by April 30, 2025, in their Project and Expenditure Report covering the 2024 calendar year.

The Obligation IFR provided that this estimate would be due to Treasury in the Project and Expenditure Report due by April 30, 2024. However, in light of clarifications Treasury is making concurrently that may impact recipients' estimates of funds needed to satisfy relevant legal and administrative requirements of SLFRF, Treasury believes it is appropriate to allow recipients additional time to calculate their estimated expenditures.

**17.13. What should a recipient do if its initial estimate to Treasury of expenses to meet legal and administrative requirements is greater or less than the ultimate amount of such expenses?**

If a recipient's costs to cover legal and administrative requirements, as provided for in the Obligation IFR and as discussed in FAQ 17.10, are greater than the original estimate provided to Treasury, the recipient may still use SLFRF funds to pay for such expenses under some circumstances. The recipient may use other, previously obligated funds to meet those expenses to the extent the recipient does not use those funds as reported to cover particular projects, as discussed in FAQ 17.19. For example, if a recipient intended to fund a contract using SLFRF funds but the contract is terminated and not replaced, the amount previously obligated for that contract may be used to cover legal and administrative costs that exceed the final estimate. The recipient may also use program income to meet those expenses, as discussed in FAQ 17.21.

If a recipient's costs to cover legal and administrative requirements are lower than the original estimate provided to Treasury, the recipient may use any unexpended funds attributable to the original estimate for other eligible uses of SLFRF funds obligated before December 31, 2024. Treasury is clarifying language in the Obligation IFR which stated, "If a recipient's estimate exceeds what is ultimately expended, the recipient must return the excess funds to Treasury." A recipient must return those excess funds not expended by December 31, 2026, to Treasury only if they are not expended for another eligible use of SLFRF funds for which the recipient had an obligation by December 31, 2024.

Additionally, recipients that report on a quarterly basis can update their cost estimates of such expenditures to Treasury through the Project and Expenditure Report due on January 31, 2025. This includes estimated expenses for personnel employed to meet those requirements. Recipients that report on an annual basis will report estimates in the Project and Expenditure Report due April 30, 2025. Recipients that report annually will not have an opportunity to update their estimate to Treasury, but they also may use excess funds to cover such expenses as described above.

**17.14. If a recipient's award was $10 million or less, the recipient took the standard allowance for revenue loss, and all funds have been obligated and expended, how does the Obligation IFR impact the recipient? And does the recipient need to continue submitting Project and Expenditure Reports?**

If SLFRF funds have already been obligated and expended in compliance with Treasury's rule and guidance, the recipient does not need to make any changes or take any additional steps to comply with the obligation and expenditure deadlines. Recipients are required to continue to submit reports to Treasury as outlined in the SLFRF Compliance and Reporting Guidance. Treasury will provide closeout instructions that will provide information to recipients on how to complete and provide final reports.

**17.15. Does the same definition of "obligation" apply to funds used under the revenue loss category?**

Yes. All SLFRF funds under any eligible use category are subject to the obligation requirements.

Recipients satisfy the obligation requirement by using revenue loss funds to cover purchase orders, contracts, and similar transactions requiring payment entered into by December 31, 2024, including interagency agreements meeting certain conditions entered into by December 31, 2024, as discussed in FAQ 17.6, and personnel costs for positions established and filled by December 31, 2024 as discussed in FAQ 17.7. Recipients also satisfy the obligation requirement by using revenue loss funds to satisfy a requirement under federal law or regulation or provision of the award terms and conditions to which a recipient becomes subject as a result of receiving or expending funds. Treasury previously determined that subrecipient relationships do not arise under the revenue loss eligible use category (see FAQ 13.14), but recipients nevertheless may use funds to cover the costs of agreements entered into with nonprofits and other counterparties.

**17.16. Under what circumstances may a recipient use SLFRF to cover cost increases attributable to a contract that is entered into by December 31, 2024?**

In general, recipients cannot re-obligate funds or obligate additional SLFRF funds after the obligation deadline of December 31, 2024. However, if a contract entered into by December 31, 2024, expressly provides for change orders or contract contingencies, the recipient may use SLFRF funds to cover increased costs attributable to such change orders or contract contingencies. Such increased costs are not considered new obligations but are instead attributable to a preexisting obligation to accommodate the change or contingency.

Additionally, recipients may cover the cost of amendments to contracts if the amended contract is within substantially the same scope and for substantially the same purpose as the contract that was incurred by December 31, 2024. This flexibility is consistent with recipients' ability to terminate a contract for convenience and to use SLFRF funds for costs associated with change orders and contingencies that are contemplated by their contracts and subawards.

Based on comments received from recipients, and for the reasons discussed above, Treasury is providing this guidance as an update to the prior statement in the Obligation IFR that recipients could not use SLFRF funds after the obligation deadline to cover a cost increase associated with a contract amendment.

Recipients may estimate the amount that may be necessary to cover changes or contingencies through the expenditure period, include that amount in the amount of the final obligation for the project that is reported to Treasury as of December 31, 2024, and retain those funds to pay costs covered by the estimate. Recipients providing such an estimate will not be required to return such funds to Treasury after 2024 assuming that they are ultimately expended for an eligible purpose. The SLFRF Compliance and Reporting

Guidance will be updated to provide additional information on reporting requirements associated with this option.

Recipients may also cover contract cost increases after December 31, 2024, in the scenarios outlined above using (1) SLFRF funds that the recipient does not use as initially reported to cover particular projects, for example if a reported project is performed under budget or is determined to be an ineligible activity (as discussed further in FAQ 17.19), or (2) program income (as discussed in FAQ 17.21).

**17.17. The Obligation IFR states that recipients may enter into replacement contracts and subawards after the obligation deadline in certain circumstances. May the recipient commit additional funds to the replacement contract or subaward to account for price increases from the time the original contract or subaward was awarded?**

After the obligation deadline, recipients are permitted to replace a contract or subaward that was entered into prior to December 31, 2024, under the three circumstances outlined in the Obligation IFR, which includes a contractor or subrecipient going out of business. The replacement contract or subaward must be within substantially the same scope and for substantially the same purpose as the contract that was entered into by December 31, 2024. In such cases, recipients may use SLFRF funds to cover increased costs of the replacement contract or subaward.

For example, in replacing a contractor, it may be necessary to execute a contract for a greater amount than the original contract, or with adjustments to the scope of the project, due to changed circumstances such as: the need to rebid the contract, increased costs, the unavailability of materials, and developments such as the discovery of adverse environmental impacts. However, a contract with a substantially different scope or purpose would not be considered a replacement contract, and SLFRF funds could not be used to cover the costs of such a contract after December 31, 2024.

Recipients may pay for the increased costs of the replacement contract after December 31, 2024, (1) by applying funds from the amount estimated to be necessary to cover changes or contingencies to the original contract through the expenditure period, which was included in the final obligation reported for the project as of December 31, 2024 (as discussed in FAQ 17.16), (2) using SLFRF funds that the recipient does not use as initially reported to cover particular projects (as discussed in FAQ 17.19), or (3) using program income (as discussed in FAQ 17.21). The SLFRF Compliance and Reporting Guidance will be updated to provide additional information on reporting requirements associated with this option.

**17.18. Does the obligation deadline apply to subrecipients?**

Subrecipients are not subject to the December 31, 2024, obligation deadline. The obligation deadline applies to the recipient of SLFRF funds. Neither subrecipients nor contractors need to take additional steps to obligate SLFRF funds after entering into a subaward or contract with the recipient.

**17.19. After December 31, 2024, may a recipient use SLFRF funds that were initially obligated but ultimately not expended for an eligible activity?**

After the December 31, 2024, obligation deadline, recipients may have excess funds that were obligated as of the deadline but ultimately not expended on an eligible activity. For example, a subrecipient or contractor may perform work under-budget, thereby freeing up previously obligated funds. As another example, the recipient, an auditor, or Treasury may determine that a recipient's planned project is not an eligible activity. In such cases, the recipient may reclassify the SLFRF funds from the original activity to another project that would be eligible under the SLFRF program rules, including the requirement that the recipient incurred an obligation by December 31, 2024, to expend funds on the activity.

As a further example, in a recipient's Single Audit covering fiscal year 2024, the auditor identifies that a project classified as responding to the public health and negative economic impacts of the pandemic is grossly disproportionate to the type or extent of harm experienced, and thus not in compliance with the 2022 SLFRF Final Rule. The recipient may withdraw SLFRF funds from the project and reclassify the funds to a workforce training program that the recipient initially had been financing with local funds but which is an eligible use under the SLFRF program as well. In this case, the recipient must have incurred an obligation (e.g., by entering into a contract) to fund the program by December 31, 2024, in accordance with SLFRF program rules.

The recipient may also use such funds to pay for any permissible upward cost adjustments in other contracts or subawards, as described in FAQs 17.16 and 17.17, including for indirect cost rate increases in a replacement subaward, as described in FAQ 17.20; to cover expenses that are necessary to meet certain legal and administrative requirements of SLFRF, as described in FAQ 17.10; and to cover personnel expenses obligated by December 31, 2024, as described in FAQ 17.7, including personnel expenses in excess of the initial estimate.

**17.20. If a recipient replaces a subaward after the obligation deadline in accordance with the Obligation IFR and these FAQs, can the recipient accept the new subrecipient's indirect cost rate if it differs from the previous subrecipient's, resulting in a change in costs?**

Yes, if the recipient is using funds to cover the cost of a subaward that was entered into as a replacement for a previous subaward in compliance with Treasury's guidance, the recipient can include the new indirect cost rate in the replacement subaward. See FAQ 17.19 for a discussion of SLFRF funds that may be available for this purpose.

### 17.21. Are recipients required to obligate program income for eligible uses by December 31, 2024?

As discussed in FAQ 13.11, recipients may add program income[12] earned from SLFRF funds to their award. Such program income includes that which is earned between the December 31, 2024, obligation deadline and the end of the period of performance on December 31, 2026. As with all award funds, such program income may only be used to cover an obligation that was incurred by December 31, 2024. As such, recipients may use program income earned after December 31, 2024, in one of four ways.

First, the recipient may use program income to cover the cost of eligible uses of SLFRF funds for which the recipient incurred an obligation by December 31, 2024, such as a workforce training program that the recipient had been funding with local funds.

Second, the recipient may use program income to pay for permissible upward cost adjustments in contracts or subawards, including replacement contracts and subawards, as described in FAQs 17.16 and 17.17.

Third, the recipient may use program income to cover expenses that are necessary to meet certain legal and administrative requirements, as described in the Obligation IFR and FAQ 17.10. The recipient may use funds for these purposes regardless of the amount of the estimate of such expenses the recipient reported to Treasury, if such estimate was provided.

Fourth, the recipient may use program income to cover personnel costs obligated by December 31, 2024, as described in FAQ 17.7. The recipient may use funds for these purposes regardless of the amount of the estimate of such expenses the recipient reported to Treasury, if such estimate was provided.

### 17.22. Can recipients use SLFRF funds as match for BEAD projects which may not be announced until 2025?

As provided by the Infrastructure Investment and Jobs Act, recipients may use SLFRF funds to satisfy match requirements under the Broadband, Equity, Access, and Deployment (BEAD) program.[13] However, the requirements of the SLFRF program still apply, including the requirement that SLFRF funds must be obligated by December 31, 2024.

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[12] Program income is defined as "gross income earned by the non-Federal entity that is directly generated by a supported activity or earned as a result of the Federal award during the period of performance except as provided in § 200.307(f). (See the definition of *period of performance* in this section.) Program income includes but is not limited to income from fees for services performed, the use or rental or real or personal property acquired under Federal awards, the sale of commodities or items fabricated under a Federal award, license fees and royalties on patents and copyrights, and principal and interest on loans made with Federal award funds. Interest earned on advances of Federal funds is not program income. Except as otherwise provided in Federal statutes, regulations, or the terms and conditions of the Federal award, program income does not include rebates, credits, discounts, and interest earned on any of them. See also § 200.407. See also 35 U.S.C. 200–212 'Disposition of Rights in Educational Awards' applies to inventions made under Federal awards." See 2 CFR 200.1.

[13] *See* section 60102(h)(3) of the Infrastructure Investment and Jobs Act, P.L. 117-58, 135. Stat. 429, 1198 (Nov. 15, 2021).

Accordingly, recipients using SLFRF funds for a BEAD match must meet this obligation deadline. This poses a challenge to using SLFRF funds for a BEAD match because BEAD projects may not be announced until after the SLFRF obligation deadline has passed. Treasury strongly advises SLFRF recipients to be prepared to use other, non-SLFRF funds to satisfy the match requirements of the BEAD program. Any SLFRF funding that is not obligated by the obligation deadline must be returned to Treasury. For more information on the obligation deadline please see FAQs 17.1-17.21.

**17.23. Are agreements entered into between units of a Tribal government considered obligations for purposes of the SLFRF rule at 31 CFR 35.5 and are they subject to procurement standards of the Uniform Guidance?**

Treasury considers an interagency agreement between a particular Tribal government's units (including the Tribal Council), departments, agencies, or other instrumentalities of a Tribe to constitute an obligation for purposes of the SLFRF rule if the agreement satisfies the conditions set forth in FAQ 17.6.

For purposes of this FAQ, a unit of a Tribal government includes an enterprise organized under Tribal law if the Tribe treats that enterprise as a unit, department, agency, or other instrumentality of the Tribe. In addition, a corporation formed under section 17 of the Indian Reorganization Act or section 3 of the Oklahoma Indian Welfare Act would be considered a unit, department, agency, or other instrumentality of the Tribe for purposes of this FAQ.

For purposes of the SLFRF program, the procurement standards of 2 CFR Part 200 (the Uniform Guidance) do not apply to an agreement between units, departments, agencies, or other instrumentalities of a Tribe discussed above. The procurement requirements of the Uniform Guidance would need to be followed by the Tribal unit, department, agency, or other instrumentality of a Tribe with respect to the procurement of material, equipment, and supplies from outside vendors.

Note that the procurement standards in the Uniform Guidance do not apply to funds spent under the revenue loss eligible use category. *See* FAQ 13.15. In cases in which the procurement standards apply to a Tribal government's entry into a contract, note that noncompetitive procurement is permissible under the Uniform Guidance in certain circumstances, including if an item is only available from a single source, or if after solicitation of a number of sources, competition is determined inadequate. *See* 2 CFR 200.320(c).

**17.24. Is there a liquidation period after the December 31, 2026 expenditure deadline?**

The two years following the December 31, 2024 obligation deadline represent the "liquidation period" for recipients to liquidate SLFRF obligations. Recipients must expend SLFRF funds by December 31, 2026, except for Surface Transportation projects and Title I projects, for which recipients must expend SLFRF funds by September 30, 2026. The

period of performance for the SLFRF program ends on December 31, 2026.

As noted in FAQ 14.6, and as previously provided in 31 CFR 35.5(c) and FAQ 17.5, recipients may expend funds to cover closeout costs until the final Project and Expenditure Report is due on April 30, 2027 (120 calendar days after the period of performance ends on December 31, 2026). Funds not expended by the applicable deadline must be returned to Treasury.

For additional information about the expenditure deadline, refer to FAQs 14.6, 16.3, and 17.5. Relatedly, for information about the obligation deadline, refer to section 17 of these FAQs. As a reminder, recipients also must return to Treasury any SLFRF funds that were not obligated by the December 31, 2024 obligation deadline.

**17.25. Are recipients permitted to prepay expenditures or make prospective payments in anticipation of receiving goods and services after the applicable expenditure deadline?**

Recipients generally must follow the cost principles described in 2 CFR Part 200, Subpart E, including the requirements that costs must be (1) consistent with policies and procedures that apply uniformly to both federally financed and other activities of the recipient and (2) reasonable. In assessing reasonableness, a recipient must consider whether it significantly deviates from its established practices and policies regarding the incurrence of costs. Based on these requirements, along with the definition of expenditure provided at 2 CFR 200.1, recipients are responsible for determining whether SLFRF funds have been expended by the applicable expenditure deadline.

Relatedly, and as noted in the Compliance and Reporting Guidance, if the term of a multi-year contract extends beyond the end of the SLFRF period of performance, the recipient may not use SLFRF funds to cover costs after the applicable expenditure deadline and should be prepared to use other financing sources.

**17.26. Do the expenditure deadlines apply to subrecipients? Can recipients use SLFRF funds for closeout costs associated with subrecipients after the expenditure deadline?**

Yes, subrecipients are subject to the expenditure deadlines.

As noted in FAQ 17.5, in expending funds to cover closeout costs after December 31, 2026, recipients may use SLFRF funds for closeout processes associated with subrecipient, contractor, and beneficiary relationships, among other costs. This may include processing and correcting final subrecipient invoices, in accordance with a recipient's established policies and procedures. FAQ 17.5 provides additional examples of closeout costs that recipients may cover with SLFRF funds through April 30, 2027.

**17.27. Can I reissue uncashed checks after the applicable expenditure deadline?**

As noted in FAQ 17.5, recipients may use SLFRF funds for closeout costs after December

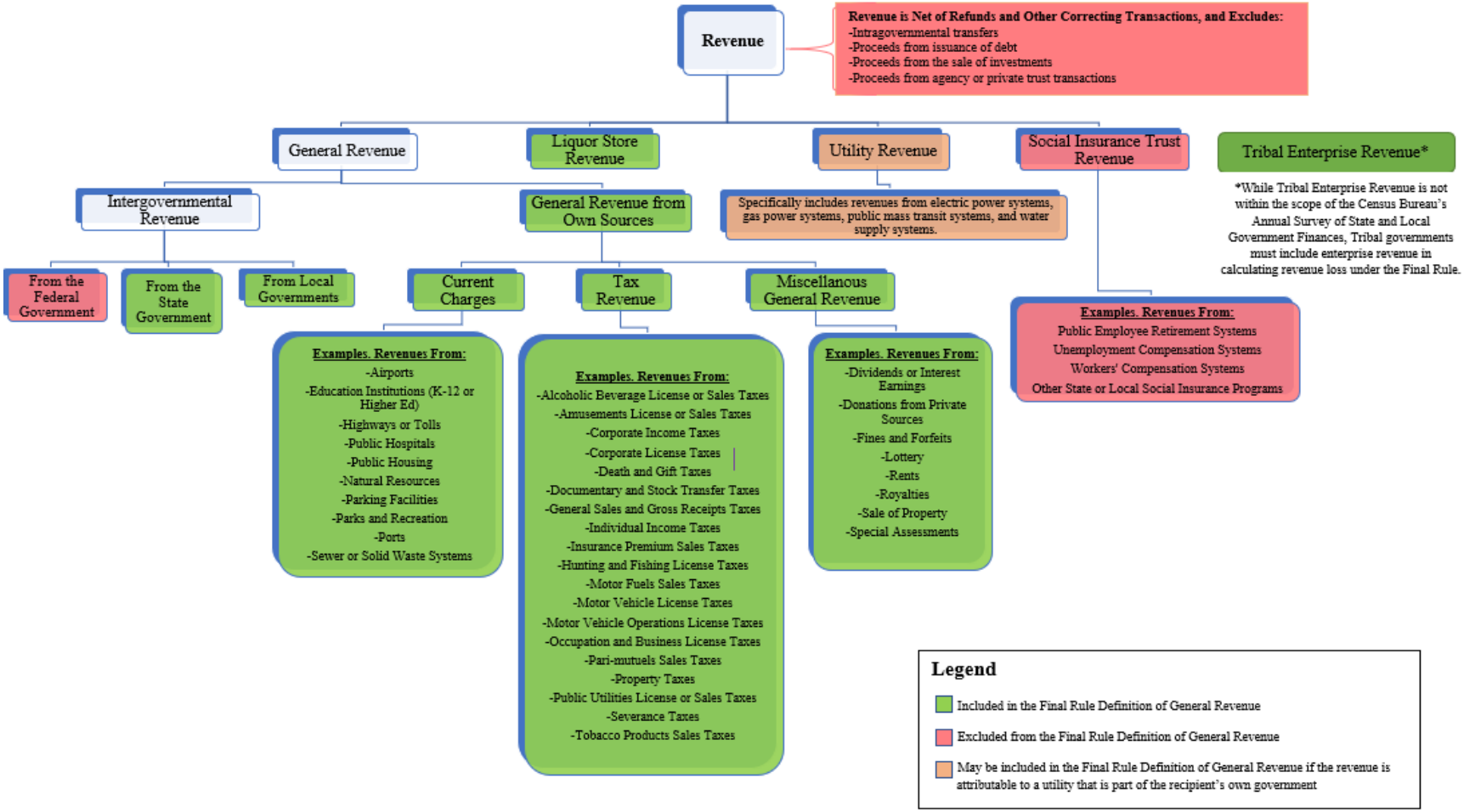
31, 2026 that include review and reconciliation of the general ledger and other accounting matters, bank reconciliation matters, and closeout processes associated with subrecipient, contractor, and beneficiary relationships, among other costs. These processes may include reissuing uncashed checks, in accordance with a recipient's policies and procedures. FAQ 17.5 provides additional examples of closeout costs that recipients may cover with SLFRF funds through April 30, 2027.

**17.28. How are uncashed or cancelled (voided) checks treated after April 30, 2027?**

If a check remains uncashed beyond April 30, 2027 or is cancelled after April 30, 2027, it will no longer be regarded as an expenditure for an eligible use of SLFRF funds. Recipients must return any unexpended funds to Treasury.

## Appendix

**Final Rule Definition of General Revenue Within the Census Bureau Classification Structure of Revenue**




Source: U.S. Bureau of the Census Government Finance and Employment Classification Manual, 2006; Annual Survey of State and Local Government Finances