

**SENATE FISCAL AGENCY  
MEMORANDUM**



**DATE:** February 7, 2022  
**TO:** Members of the Michigan Senate  
**FROM:** Ryan M. Bergan, Fiscal Analyst  
**RE:** State and Local Fiscal Recovery Fund (SLFRF) Program Final Rule Summary

On January 6, 2022, the United States Department of Treasury issued the final rule for the SLFRF Program. (As a note, previous guidance referred to this program as the State and Local Fiscal Recovery Program (SLFRP). Any reference in documents from the Senate Fiscal Agency to the SLFRP refers to the SLFRF program.)

The final rule will go into effect April 1, 2022, amending the interim final rule (IFR), published May 17, 2021, but recipients may choose to take advantage of the final rule's simplifications and flexibilities immediately. The Senate Fiscal Agency previously released a summary of the IFR.<sup>1</sup> As the final rule adopts that IFR with amendments, this memo will serve as a supplement to the previous summary, showing the major areas where the guidance has changed or evolved. Generally, any guidance from the IFR that was not addressed in this memo remains unchanged in the final rule.

As a review, the SLFRF program included grants to every State, county, and municipality in the country, as well as tribal governments, territories, and Washington, D.C. The purpose of the funds falls into four broad categories:

- Replacing lost public sector revenue
- Responding to public health and economic impacts of COVID-19
- Premium pay
- Water, sewer, and broadband infrastructure

Funds must be used for costs incurred on or after March 3, 2021. Funds must be obligated by December 31, 2024, and spent by December 31, 2026. This time period during which recipients can spend SLFRF funds is the "period of performance".

The final rule allows greater flexibility for spending in some areas and gives clearer or simplified guidance in other areas. This memo will discuss the changes in each area below.

### **REPLACING LOST PUBLIC SECTOR REVENUE**

Recipients may use SLFRF funds to provide government services up to the amount of revenue loss due to the pandemic. "Government services" generally include any service traditionally provided by a government, unless Treasury has stated otherwise. This category of spending is the most flexible eligible use category under the SLFRF program. The final rule gives some common examples, although the list is not exhaustive:

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<sup>1</sup> State and Local Fiscal Recovery Program (SLFRP) Interim Final Rule Summary - Updated December 3, 2021 (<https://www.senate.michigan.gov/sfa/Publications/Memos/mem052721.pdf>).



- Construction of schools and hospitals
- Road building and maintenance, and other infrastructure
- Health services
- General government administration, staff, and administrative facilities
- Environmental remediation
- Provision of police, fire, and other public safety services (including the purchase of fire trucks and police vehicles)

The IFR provided a method for recipient governments to calculate revenue loss by comparing actual revenue to their pre-pandemic trend. Under the final rule, recipients may either calculate actual revenue loss according to the guidance or instead may assume a total loss of \$10.0 million over the period of performance (not to exceed their award amount). The \$10.0 million limit is the same regardless of the size of the award, so the standard allowance would allow many local units of government to use their entire award to replace lost revenue.

For recipient governments that do not elect the standard allowance, the final rule specifies a four-step process to determine revenue loss, like the process in the IFR. The rule requires recipients to calculate revenue loss at four points in time. The IFR required the calculation at the end of each calendar year (December 31 for years 2020, 2021, 2022, and 2023). The final rule allows a recipient to calculate revenue loss at the end of each calendar year or fiscal year, but the same method must be used throughout the period of performance.

1. Calculate revenues collected in the most recent fiscal year ending prior to January 27, 2020. For the State of Michigan, this would be fiscal year (FY) 2018-19.
2. Estimate counterfactual revenue, which is the base year revenue adjusted by a growth rate of either 5.2% per year (increased from 4.1% in the IFR) or the recipient's average annual revenue growth in the last three full fiscal years prior to the pandemic.
3. Identify actual revenue, which is revenue collected in the twelve months immediately preceding the calculation date. The final rule requires recipients to adjust actual revenue totals for the effect of tax cuts and tax increases adopted after the date of adoption of the final rule (January 6, 2022). That means the estimated fiscal impact of tax cuts or tax increases adopted after January 6, 2022, must be added or subtracted from the calculation of actual revenue for calculation dates that occur after April 1, 2022. Recipients may subtract from actual revenue the effect of tax increases enacted prior to January 6, but if they choose to do that, they must also remove the effect of tax decreases adopted before that date.
4. The revenue loss for each calculation date is equal to the counterfactual revenue minus actual revenue for the twelve-month period. If actual revenue is greater than counterfactual revenue, the loss is zero for that period. Total revenue loss is the sum of the revenue loss for each calculation date.

## **RESPONDING TO THE PUBLIC HEALTH AND ECONOMIC IMPACTS OF COVID-19**

Responding to the public health and economic impacts of COVID-19 includes several subcategories:

- Responding to the public health emergency
- Responding to negative economic impacts
- Public sector capacity

Treasury has identified enumerated uses under each category, which are assumed to be legitimate uses, although the enumerated uses are not exhaustive. Treasury also assumes that certain populations experienced pandemic impacts and are eligible for services, but that list also is not exhaustive. Recipients that provide enumerated uses of funds to presumed eligible populations are clearly operating consistently with the final rule, but those are not the only eligible uses.

Generally, recipients should follow a two-step method to determine if a proposal would be an eligible use of funds.

1. Identify a COVID-19 public health or negative economic impact on an individual or a class. Recipients should identify whether an individual or class is "impacted" or "disproportionately impacted".
  - a. "Impacted" entities are affected by the disease itself or harmful consequences of economic disruptions resulting from or exacerbated by the public health emergency. For example, an individual who lost their job or a small business who saw decreased revenue during a period of closure would both have experienced impacts of the pandemic.
  - b. "Disproportionately impacted" entities experienced disproportionate public health or economic outcomes from the pandemic. For example, a household living in a neighborhood with limited access to medical care and healthy foods may have faced health disparities before the pandemic, like a higher rate of chronic health conditions, that contributed to more severe health outcomes during the COVID-19 pandemic.
  - c. Recipients have broad flexibility to identify a class that experienced an impact. The recipient should first identify the class and the impact that it faced. Then, it need only document that individuals served fall within the class, rather than needing to document a specific impact for each individual served. The following considerations should be taken when designating a class:
    - i. There should be a relationship between the definition of the class and the proposed response.
    - ii. Classes may be determined on a population basis or geographical basis, and the responses should be appropriately matched.
    - iii. Recipients may designate classes that experienced disproportionate impact based on academic research or government research publications, through the analysis of their own data, or through analysis of other existing data sources. They may also consider qualitative research and sources to augment their analysis, or when quantitative data is unavailable.
    - iv. Some of the enumerated uses may also be appropriate responses to the impacts experienced by other classes.
    - v. Recipients may designate a class based on income level, including at levels higher than the final rule definition of "low- and moderate-income.)
2. Design a response that addresses or responds to the impact. The response could be a program, service, or capital expenditure. It should be related to and reasonably proportional to the harm and should be designed to benefit the affected individual or class.
  - a. Capital expenditures greater than \$1.0 million will require additional reporting, including a written justification that explains a description of the harm or need to be addressed, an explanation of why a capital expenditure is appropriate, and a comparison of the proposed capital project against at least two alternative capital

expenditures. Where relevant, recipients should consider the alternatives of improving existing capital assets already owned or leasing other capital assets.

- b. Treasury considers the following capital projects as generally ineligible:
  - i. Construction of new correctional facilities at a response to increased crime
  - ii. Construction of new congregate facilities to decrease spread of COVID-19 in the facility
  - iii. Construction of convention centers, stadiums, or other large capital projects intended for general economic development or aid to impacted industries

As stated above, Treasury also has identified enumerated eligible uses and populations for these funds, listed below. Recipients that provide enumerated uses of funds to presumed eligible populations are clearly operating consistently with the final rule.

## **RESPONDING TO THE PUBLIC HEALTH EMERGENCY**

Listed below are enumerated allowable uses of SFRF funds to respond to the COVID-19 public health emergency.

### *COVID-19 Mitigation and Prevention*

- Vaccination programs, including vaccine incentives and vaccine sites
- Testing programs, equipment and sites
- Monitoring, contact tracing and public health surveillance (e.g., monitoring for variants)
- Public communication efforts
- Public health data systems
- COVID-19 prevention and treatment equipment, such as ventilators and ambulances
- Medical and PPE/protective supplies
- Support for isolation or quarantine
- Ventilation system installation and improvement
- Technical assistance on mitigation of COVID-19 threats to public health and safety
- Transportation to reach vaccination or testing sites, or other prevention and mitigation services for vulnerable populations
- Support for prevention, mitigation, or other services in congregate living facilities, public facilities, and schools
- Support for prevention and mitigation strategies in small businesses, nonprofits, and impacted industries
- Medical facilities generally dedicated to COVID-19 treatment and mitigation (e.g., ICUs, emergency rooms)
- Temporary medical facilities and other measures to increase COVID-19 treatment capacity
- Emergency operations centers and emergency response equipment (e.g., emergency response radio systems)
- Public telemedicine capabilities for COVID-19 related treatment

### *Medical Expenses*

- Unreimbursed expenses for medical care for COVID-19 testing or treatment, such as uncompensated care costs for medical providers or out-of-pocket costs for individuals

- Paid family and medical leave for public employees to enable compliance with COVID-19 public health precautions
- Emergency medical response expenses
- Treatment of long-term symptoms or effects of COVID-19

*Behavioral health care, such as mental health treatment, substance abuse treatment, and other behavioral services*

- Prevention, outpatient treatment, inpatient treatment, crisis care, diversion programs, outreach to individuals not yet engaged in treatment, harm reduction and long-term recovery support
- Enhanced behavioral health services in schools
- Services for pregnant women or infants born with neonatal abstinence syndrome
- Support for equitable access to reduce disparities in access to high-quality treatment
- Peer support groups, costs for residence in supportive housing or recovery housing, and the 988 National Suicide Prevention Lifeline or other hotline services
- Expansion of access to evidence-based services for opioid use disorder prevention, treatment, harm reduction, and recovery
- Behavioral health facilities and equipment

*Preventing and Responding to Violence*

- Referrals to trauma recovery services for victims of crime
  - a. Community violence intervention programs, including evidence-based practices like focused deterrence, with wraparound services such as behavioral therapy, trauma recovery, job training, education, housing and relocation services, and financial assistance
- In communities experiencing increased gun violence due to the pandemic:
  - a. Law enforcement officers focused on advancing community policing
  - b. Enforcement efforts to reduce gun violence, including prosecution
  - c. Technology and equipment to support law enforcement response

**RESPONDING TO NEGATIVE ECONOMIC IMPACTS**

*Assistance to Households*

Treasury presumes the following households and communities are *impacted* by the pandemic:

- Low- or-moderate income households or communities<sup>2</sup>
- Households that experienced unemployment
- Households that experienced increased food or housing insecurity
- Households that qualify for the Children's Health Insurance Program, Childcare Subsidies through the Child Care Development Fund (CCDF) Program, or Medicaid
- When providing affordable housing programs: households that qualify for the National Housing Trust Fund and Home Investment Partnerships Program

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<sup>2</sup> Low- or moderate-income households and communities are those with income at or below 300 percent of the Federal Poverty Guidelines for the size of the household based on the most recently published poverty guidelines or income at or below 65 percent of the area median income for the county and size of household based on the most recently published data.

- When providing services to address lost instructional time in K-12 schools: any student that lost access to in-person instruction for a significant period of time

Treasury recognizes the enumerated projects below as eligible to be provided to *impacted* households and communities:

- Food assistance and food banks
- Emergency housing assistance: rental assistance, mortgage assistance, utility assistance, assistance paying delinquent property taxes, counseling and legal aid to prevent eviction and homelessness and emergency programs or services for homeless individuals, including temporary residences for people experiencing homelessness
- Health insurance coverage expansion
- Benefits for surviving family members of individuals who have died from COVID-19
- 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, 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
- Financial services for the unbanked and underbanked
- Burials, home repair and home weatherization
- Programs, devices and equipment for internet access and digital literacy, including subsidies for costs of access
- Cash assistance
- Paid sick, medical, and family leave programs
- Assistance in accessing and applying for public benefits or services
- Childcare and early learning services, home visiting programs, services for child welfare-involved families and foster youth and childcare facilities
- Assistance to address the impact of learning loss for K-12 students (e.g., high-quality tutoring, differentiated instruction)
- Programs or services to support long-term housing security: including development of affordable housing and permanent supportive housing
- Certain contributions to an Unemployment Insurance Trust Fund<sup>3</sup>

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<sup>3</sup> Recipients may use SLFRF funds only 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 the difference between the balance in the recipient's unemployment insurance trust fund as of January 27, 2020, and the balance of those account as of May 17, 2021 (plus 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 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. 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).

Treasury presumes the following households and communities are *disproportionately impacted* by the pandemic:

- Low income households and communities<sup>4</sup>
- Households residing in Qualified Census Tracts
- Households that qualify for certain federal benefits<sup>5</sup>
- Households receiving services provided by Tribal governments
- Households residing in the U.S. territories or receiving services from these governments

Treasury recognizes the enumerated projects below as eligible to be provided to *disproportionately impacted* households and communities:

- Pay for community health workers to help households access health and social services
- Remediation of lead paint or other lead hazards
- Primary care clinics, hospitals, integration of health services into other settings, and other investments in medical equipment and facilities designed to address health disparities
- Housing vouchers and assistance relocating to neighborhoods with higher economic opportunity
- Investments in neighborhoods to promote improved health outcomes
- Improvements to vacant and abandoned properties, including rehabilitation or maintenance, renovation, removal and remediation of environmental contaminants, demolition or deconstruction, greening/vacant lot cleanup and conversion to affordable housing
- Services to address educational disparities, including assistance to high-poverty school districts and educational and evidence-based services to address student academic, social, emotional, and mental health needs
- Schools and other educational equipment and facilities

#### *Assistance to Small Businesses*

The following factors should be considered when determining if a small business is *impacted* by the pandemic:

- Decreased revenue or gross receipts
- Financial insecurity
- Increased costs
- Capacity to weather financial hardship
- Challenges covering payroll, rent or mortgage, and other operating costs

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<sup>4</sup> Low-income households and communities are those with income at or below 185% of the Federal Poverty Guidelines for the size of its household based on the most recently published poverty guidelines or income at or below 40% of area median income for its county and size of household based on the most recently published data.

<sup>5</sup> These programs are Temporary Assistance for Needy Families (TANF), Supplemental Nutrition Assistance Program (SNAP), Free- and Reduced-Price Lunch (NSLP) and/or School Breakfast (SBP) programs, Medicare Part D Low-Income Subsidies, Supplemental Security Income (SSI), Head Start and/or Early Head Start, Special Supplemental Nutrition Program for Women, Infants, and Children (WIC), Section 8 Vouchers, Low-Income Home Energy Assistance Program (LIHEAP), and Pell Grants. For services to address educational disparities, Treasury will recognize Title I eligible schools as disproportionately impacted and responsive services that support the school generally or support the whole school as eligible.

Assistance to *impacted* small businesses includes the following:

- Loans or grants to mitigate financial hardship, such as by supporting payroll and benefits, costs to retain employees, and mortgage, rent, utility, and other operating costs
- Technical assistance, counseling, or other services to support business planning

Treasury presumes that the following small businesses are *disproportionately impacted* by the pandemic:

- Small businesses operating in Qualified Census Tracts
- Small businesses operated by Tribal governments or on Tribal lands
- Small businesses operating in the U.S. territories

Assistance to *disproportionately impacted* small businesses includes the following enumerated uses:

- Rehabilitation of commercial properties, storefront improvements and facade improvements
- Technical assistance, business incubators grants for start-up or expansion costs for small businesses
- Support for microbusinesses, including financial, childcare, and transportation costs

#### *Assistance to Nonprofits*

The following factors could be considered when determining if a nonprofit is *impacted* by the pandemic:

- Decreased revenue (e.g., from donations and fees)
- Financial insecurity
- Increased costs (e.g., uncompensated increases in service need)
- Capacity to weather financial hardship
- Challenges covering payroll, rent or mortgage, and other operating costs

Assistance to *impacted* nonprofits includes the following:

- Loans or grants to mitigate financial hardship
- Technical or in-kind assistance or other services that mitigate negative economic impacts of the pandemic

Treasury presumes that the following nonprofits are *disproportionately impacted* by the pandemic:

- Nonprofits operating in Qualified Census Tracts
- Nonprofits operated by Tribal governments or on Tribal lands
- Nonprofits operating in the U.S. territories

Assistance to *disproportionately impacted* nonprofits should be related to and reasonably proportional to the harm experienced.

#### *Aid to Impacted Industries*

There are two main ways an industry can be designated as *impacted*:

1. The industry is in the travel, tourism, or hospitality sectors.
2. If the industry is outside of those sectors, 1) it has experienced at least eight percent employment loss from pre-pandemic levels or 2) it is experiencing comparable or worse economic impacts as the national tourism, travel, and hospitality industries, and the impacts were generally due to the COVID-19 public health emergency.

Treasury recognizes the enumerated projects below as eligible responses to *impacted* industries:

- Aid to mitigate financial hardship, such as supporting payroll costs, lost pay and benefits for returning employees, support of operations and maintenance of existing equipment and facilities
- Technical assistance, counseling, or other services to support business planning
- COVID-19 mitigation and infection prevention measures

Aid may be provided only to businesses, attractions, and Tribal development districts operating prior to the pandemic and affected by required closures and other efforts to contain the pandemic, and it should be broadly available to all businesses within the impacted industry to avoid potential conflicts of interest.

### **PUBLIC SECTOR CAPACITY**

#### *Public Safety, Public Health, and Human Services Staff*

Funding may be used for payroll and covered benefits for public safety, public health, and human services and similar employees for the portion of the employee's time spent responding to COVID-19. Recipients must assess the portion of time spent on COVID-19 response for eligible staff and may use SLFRF funding for payroll and covered benefits for that time.

Public safety staff include:

- Police officers (including state police officers)
- Sheriffs and deputy sheriffs
- Firefighters
- Emergency medical responders
- Correctional and detention officers
- Dispatchers and supervisor personnel that directly support public safety staff

Public health staff include:

- Employees involved in providing medical and other physical or mental health services to patients and supervisory personnel, including medical staff assigned to schools, prisons, and other such institutions

- Laboratory technicians, medical examiners, morgue staff, and other support services essential for patient care
- Employees of public health departments directly engaged in public health matters and related supervisory personnel

Human services staff include:

- Employees providing or administering social services and public benefits
- Child welfare services employees
- Child, elder, or family care employees

*Government Employment and Rehiring Public Sector Staff*

Recipients have two options to restore pre-pandemic employment:

1. Recipients may hire employees for the same positions that existed on January 27, 2020, but that were unfilled or eliminated as of March 3, 2021. State and Local Fiscal Recovery Funds dollars may be used to cover payroll and covered benefits for such positions through the period of performance.
2. Alternatively, a recipient may hire up to 7.5 percent above its pre-pandemic baseline using the following steps:
  - a. Identify the budgeted FTE level on January 27, 2020, including all budgeted positions, filled and unfilled. This is the pre-pandemic baseline.
  - b. Multiply the pre-pandemic baseline by 1.075. This is the adjusted pre-pandemic baseline.
  - c. Identify the budgeted FTE level on March 3, 2021. This is the actual number of FTEs. (Recipients may exclude the number of FTEs dedicated to responding to the COVID-19 public health emergency.)
  - d. Subtract the actual number of FTEs from the adjusted pre-pandemic baseline to calculate the number of FTEs that can be paid for with SLFRF funds. Funds can be used to cover payroll and covered benefits through the period of performance. Recipients do not need to hire for the same roles that existed pre-pandemic, however, these employees must have begun their employment on or after March 3, 2021. Recipients may only use SLFRF funds for additional FTEs hired over the March 3, 2021 level.

Recipients can use funds in other ways that support the public sector workforce. They should be able to substantiate that the uses of funds are substantially because of the public health emergency or its negative economic impacts. The following are some of these uses:

- Providing additional funding for employees who experienced pay reductions or were furloughed since the onset of the pandemic, up to the difference in the employee's pay, considering unemployment benefits received.
- Maintaining current compensation levels to prevent layoffs. SLFRF funds may be used to maintain current compensation levels, with adjustments for inflation, in order to prevent layoffs that would otherwise be necessary.
- Providing 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, if other requirements are met.

Recipients also may use SLFRF funds for administrative costs associated with administering the hiring, support, and retentions programs above.

#### *Effective Service Delivery*

Recipients may use SLFRF funds to support program evaluation, data, and outreach through:

- Program evaluation and evidence resources
- Data analysis resources to gather, assess, share, and use data
- Technology infrastructure to improve access to and the user experience of government IT systems, as well as technology improvements to increase public access and delivery of government programs and services
- Community outreach and engagement activities
- Capacity building resources to support using data and evidence, including hiring staff, consultants, or technical assistance support

Funds may be used to address administrative needs, including:

- Administrative costs for programs responding to the public health emergency and its economic impacts, including non-SLFRF and non-federally funded programs
- Address administrative needs caused or exacerbated by the pandemic, including addressing backlogs caused by shutdowns, increased repair or maintenance needs, and technology infrastructure to adapt government operations to the pandemic (e.g., video-conferencing software, data and case management systems)

#### **PREMIUM PAY**

State and Local Fiscal Recovery Funds money may be used to provide premium pay to eligible workers performing essential work during the pandemic. Premium pay may be in an amount up to \$13 per hour, must be in addition to remuneration the eligible worker otherwise receives, and may not exceed \$25,000 for any single worker during the program. Premium pay may be awarded in installments or lump sums. It may be awarded to hourly, part-time, or salaried or nonhourly workers, but it may not be paid to volunteers. It must be in addition to wages already received and may be paid retrospectively (e.g. as a bonus for work done in the past). A recipient may not use SLFRF funds to reimburse itself for premium pay or hazard pay already received by the worker.

Recipients should follow the steps below to provide premium pay to eligible workers:

1. Identify an "eligible" worker. This includes workers "needed to maintain continuity of operations of essential critical infrastructure sectors." The following sectors and occupations are eligible:

- a. Health care
  - b. Emergency response
  - c. Sanitation, disinfection and cleaning
  - d. Maintenance
  - e. Grocery stores, restaurants, food production, and food delivery
  - f. Pharmacy
  - g. Biomedical research
  - h. Behavioral health
  - i. Medical testing and diagnostics
  - j. Home and community-based health care or assistance with activities of daily living
  - k. Family or child care
  - l. Social services
  - m. Public health
  - n. Mortuary
  - o. Critical clinical research, development, and testing necessary for COVID-19 response
  - p. State, local, or Tribal government workforce
  - q. Workers providing vital services to Tribes
  - r. Educational, school nutrition, and other work required to operate a school facility
  - s. Laundry
  - t. Elections
  - u. Solid waste or hazardous materials management, response, and cleanup
  - v. Work requiring physical interaction with patients
  - w. Dental care
  - x. Transportation and warehousing
  - y. Hotel and commercial lodging facilities that are used for COVID-19 mitigation and containment
  - z. The chief executive of a recipient government (e.g. the Governor) may designate additional non-public sectors as critical if doing so is necessary to protect the health and wellbeing of residents
2. Verify that the eligible worker performs "essential work", meaning work that is not performed while teleworking from a residence and involves either:
    - a. regular, in-person interactions with patients, the public, or coworkers of the individual that is performing the work, or
    - b. regular physical handling of items that were handled by, or are to be handled by, patients, the public, or coworkers of the individual performing the work
  3. Confirm that the premium pay "responds to" workers performing essential work during the COVID-19 public health emergency. Recipients may meet this requirement in one of the following ways:
    - a. The eligible worker receiving premium pay is earning (with the premium included) at or below 150 percent of their residing state or county's average annual wage for all occupations, whichever is higher, on an annual basis.
    - b. The eligible worker receiving premium pay is not exempt from the Fair Labor Standards Act overtime provisions.
    - c. If a worker does not meet either of the above requirements, the recipient must submit written justification to Treasury detailing how the premium pay is otherwise responsive to workers performing essential work during the public health emergency. This may include a description of the essential worker's duties, health,

or financial risks faced due to COVID-19, and why the recipient determined that the premium pay was responsive. This written justification may apply to proposals to provide premium pay to doctors or nurses.

## **WATER, SEWER, AND BROADBAND INFRASTRUCTURE**

### *Water and Sewer Infrastructure*

Projects eligible under EPA's Clean Water State Revolving Fund (CWSRF):

- Construction of publicly owned treatment works
- Projects pursuant to implementation of a nonpoint source pollution management program established under the Clean Water Act (CWA)
- Decentralized wastewater treatment systems that treat municipal wastewater or domestic sewage
- Management and treatment of stormwater or subsurface drainage water
- Water conservation, efficiency, or reuse measures
- Development and implementation of a conservation and management plan under the CWA
- Watershed projects meeting the criteria set forth in the CWA
- Energy consumption reduction for publicly owned treatment works
- Reuse or recycling of wastewater, stormwater, or subsurface drainage water
- Security of publicly owned treatment works

Projects eligible under EPA's Drinking Water State Revolving Fund (DWSRF):

- Facilities to improve drinking water quality
- Transmission and distribution, including improvements of water pressure or prevention of contamination in infrastructure and lead service line replacements
- New sources to replace contaminated drinking water or increase drought resilience, including aquifer storage and recovery system for water storage
- Green infrastructure, including green roofs, rainwater harvesting collection, permeable pavement
- Storage of drinking water, such as to prevent contaminants or equalize water demands
- Purchase of water systems and interconnection of systems
- New community water systems

Additional types of projects (beyond the CWSRF and DWSRF) may be funded if they are found to be "necessary" according to the definition provided in the final rule. These projects include:

- Culvert repair, resizing, and removal, replacement of storm sewers, and additional types of stormwater infrastructure
- Infrastructure to improve access to safe drinking water for individuals served by residential wells, including testing initiatives, and treatment/remediation strategies that address contamination
- Dam and reservoir rehabilitation if the primary purpose of the dam or reservoir is for drinking water supply and the project is necessary for the provision of drinking water
- A broad set of lead remediation projects eligible under EPA grant programs authorized by the Water Infrastructure Improvements for the Nation (WIIN) Act, such as lead testing, installation of corrosion control treatment, lead service line replacement, as well as water

quality testing, compliance monitoring, and remediation activities, including replacement of internal plumbing and faucets and fixtures in schools and childcare facilities

A "necessary" investment in infrastructure must be:

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

Drinking Water State Revolving Fund- and CWSRF-eligible projects generally are presumed to be necessary investments. Additional eligible projects must be responsive to an identified need to achieve or maintain an adequate minimum level of service. Cost-effectiveness assessment is required only for the creation of new drinking water systems, dam and reservoir rehabilitation projects, or projects for the extension of drinking water service to meet population growth needs.

#### *Broadband Infrastructure*

Broadband infrastructure investments must meet the following requirements:

- When identifying an eligible area for investment, recipients should prioritize areas without access to reliable wireline 100/20 Mbps broadband service (meaning service that reliably provides 100 Mbps download speed and 20 Mbps upload speed through a wireline connection). Additional projects may be provided if the recipient can identify need for additional broadband investment. Examples could include a lack of access to reliable high-speed broadband connections, lack of affordable broadband, or a lack of reliable service. If deploying broadband to locations where there is existing 100/20 Mbps service, or where there are existing and enforceable Federal or State funding commitments for reliable service of at least 100/20 Mbps, recipients must ensure that SLFRF funds are addressing an identified need that is not met by existing Federal or State funding commitments.
- Projects must, upon completion, reliably meet or exceed 100/100 Mbps download/upload speeds. If that standard is not practicable for a particular area, projects must meet or exceed 100/20 Mbps and be scalable to 100/100 Mbps.
- Recipients must require the service provider for a broadband project to either participate in the FCC's Affordable Connectivity Program (ACP) or provide access to a broad-based affordability program to low-income consumers that provides benefits commensurate to ACP.

Funds also may be used for modernization of cybersecurity for existing and new broadband infrastructure, regardless of their speed delivery standards, including modernization of hardware and software.

## RESTRICTIONS ON USE

The restrictions on use of funds are unchanged from the IFR and are explained in more detail in the Senate Fiscal Agency's IFR memo. Briefly, SLFRF funds may not be used:

- by states and territories to directly or indirectly offset a reduction in net tax revenue resulting from a change in law, regulation, or administrative interpretation beginning on March 3, 2021, through the last day of the fiscal year in which the funds provided have been spent
- to make a deposit to a pension fund (except Tribal governments)
- for debt service or replenishing financial reserves
- to satisfy a judgement or settlement
- for a project that conflicts with or contravenes the purpose of the American Rescue Plan Act (e.g. uses of funds that undermine COVID-19 mitigation practices in line with CDC guidance and recommendations)

Please email me at [rbergan@senate.michigan.gov](mailto:rbergan@senate.michigan.gov) with any questions.

c: Kathryn Summers, Director  
Josh Sefton, Associate Director