

American Rescue Plan Act
Treasury Final Rule Summary
(January - 2022)

The Department of Treasury released the [Final Rule for the Coronavirus State and Local Fiscal Recovery Funds \(SLFRF\)](#) of the American Rescue Plan Act. The Final Rule (FR) provides clarity and broadens in select categories, eligible uses. The FR takes effect April 1, 2022, however does afford recipients to take advantage of any new provision prior to the effective date. In general, the FR is separated into five broad categories; (1) responding to the public health emergency and the negative economic impacts of COVID-19; (2) replacement of loss revenue; (3) premium pay; (4) water and sewer infrastructure; and (5) broadband infrastructure.

This document is intended to provide an initial summary of the FR. Specific details should be referenced in Treasury documents.

Responding to the Public Health and Negative Economic Impacts of COVID-19

The Final Rule provides clarity and additional examples of projects eligible under this category. It includes a non-exhaustive list of eligible projects, which are referred to as “enumerated” projects and services. In addition, the FR provides a two-step framework to determine how unenumerated projects could be eligible. Those projects that are unenumerated may generally be eligible if a (1) COVID-19 public health or economic impact can be identified, and (2) the ARP funds will respond to that impact. Responses need to be related and reasonable proportional to the harm (i.e. the scale of the response needs to be compared to the scale of the harm experienced).

This category is also organized in the FR by distinguishing several sub-categories, each with their own nuances in determining the populations that are eligible and types of impacts caused by COVID-19. In addition, the FR distinguishes how capital expenditures may be eligible under this category (which is referenced in the final sub-category).

➤ **Public health**

In general, eligibility and provisions were consistent with the Interim Final Rule (IFR). However, there are some nuances and provisions that have been clarified.

- *COVID-19 mitigation and prevention* – In general, funding can be provided towards any COVID-19 prevention or mitigation service. Enumerated eligible uses include, among others:
 - a) Vaccination programs, including vaccine incentives and vaccine sites;
 - b) Testing programs, equipment and sites;
 - c) Monitoring, contact tracing & public health surveillance (e.g., monitoring for variants);

- d) Public communication efforts;
 - e) COVID-19 prevention and treatment equipment, such as ambulances;
 - f) Medical and PPE/protective supplies;
 - g) Support for isolation or quarantine;
 - h) Ventilation/HVAC system installation and improvement (improve air quality);
 - i) Support for prevention, mitigation, or other services in congregate living facilities, public facilities, and schools; and
 - j) Support for prevention and mitigation strategies in small businesses, nonprofits, and impacted industries.
- *Behavioral health* – Funding can be provided towards mental health treatment, substance abuse treatment and other health services that have been impacted because of COVID-19. Enumerated eligible uses include, among others:
 - a) Prevention, outpatient treatment, inpatient treatment, crisis care, diversion programs, outreach to individuals not yet engaged in treatment, harm reduction and long-term recovery support;
 - b) Enhanced behavioral health services in schools;
 - c) Support for equitable access to reduce disparities in access to high-quality treatment;
 - d) Peer support groups, costs for residence in supportive housing or recovery housing; and
 - e) Expansion of access to evidence-based services for opioid use disorder prevention, treatment, harm reduction, and recovery.
 - *Preventing and responding to violence* – Funding in this sub-category can be allocated towards (a) *evidence-based practices* focused on deterrence, intervention models, trauma recovery, job training, housing, etc. (b) *capacity-building efforts at community violence intervention programs*, such as funding intervention programs and workers, and (c) *responding to an increase in gun violence* such as hiring additional law enforcement, enforcement efforts focused on community policing, technology and equipment to allow law enforcement to more effectively to address gun violence.

➤ **Assistance to households**

The FR recognizes that the pandemic caused broad impacts to a variety of individuals and groups. In doing so, it distinguishes between those “impacted” and those “disproportionately impacted.” The FR lists households and communities that are presumed to be impacted or disproportionality impacted by the pandemic and therefore eligible for assistance. In addition, there are listed enumerated uses to those populations that are presumed to be eligible. Those unenumerated are considered eligible if the two-part test can be rationalized.

Examples of assistance to impacted households and communities include:

- Food assistance and food banks;
- Emergency housing assistance, including rental assistance, mortgage assistance, utility assistance, assistance paying delinquent property taxes, counseling and legal aid to prevent eviction and temporary residences for people experiencing homelessness;

- 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, and development of job and workforce training centers;
- Childcare and early learning services, home visiting programs, services for child welfare involved families and foster youth & childcare facilities;
- Assistance to address the impact of learning loss for K-12 students (e.g., high-quality tutoring, differentiated instruction); and
- Programs or services to support long-term housing security: including development of affordable housing and permanent supportive housing. [Note: The FR refers to a test to determine if a development increase the supply of affordable housing. In general, most would be presumed eligible if the development would qualify under the National housing Trust Fund (NHTF) or Home Investment Partnership Program (HOME)].

Examples of assistance that can be provided to households and communities “disproportionately impacted” include:

- Pay for community health workers to help households access health and social services;
- Investments in neighborhoods to promote improved health outcomes including improvements in open and public spaces;
- 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; and
- Schools and other educational equipment & facilities.

➤ **Assistance to small businesses**

Those eligible include small businesses with less than 500 employees that experienced a negative economic impact or disproportionate impact caused by the pandemic. Similar to the provision in assisting households, the FR distinguishes between those “impacted” and “disproportionately impacted.” The FR helps to define and enumerate some of these businesses.

In general, eligibility and provisions were consistent with the Interim Final Rule (IFR) where the business would have had to have experienced decreased revenue or gross receipts, increased costs, difficulty capacity to weather financial hardship, challenges covering payroll, rent or mortgage, and other operating costs as a result of COVID-19.

Some of the enumerated eligible uses include loans or grants to mitigate financial hardship. These efforts can be used to support payroll and benefits, costs to retain employees, mortgage, rent, utility, and other operating costs. Those unenumerated are considered eligible if the two-part test can be rationalized.

➤ **Assistance to nonprofits**

Similar provisions for small businesses are considered for nonprofits. Funds can be provided to nonprofits that were directly impacted (ex. decrease revenue, donation, fees, increased

costs, etc.) or disproportionately impacted (i.e. those that exist within a Qualified Census Tract). In addition, funds can be provided to nonprofits that will assist those that have been directly impacted by the pandemic (i.e. carrying out services or programs to assist individuals or groups that are eligible for ARP assistance).

➤ **Aid to impacted industries**

These include either (1) an industry related to travel, tourism or hospitality, or (2) an industry -outside of travel, tourism and hospitality – that experienced at least 8% employment loss from pre-pandemic levels or experiencing comparable or worse economic conditions as the national average for the travel, tourism and hospitality industries (which would need to be substantiated through data). In addition, the assistance can only be provided to those businesses in these industries that existed prior to the pandemic (i.e. funds cannot be used for new business development in this industry).

Examples of enumerated responses for these industries include supporting payroll costs, provide pay and benefits for returning employees, support of operations and maintenance of existing equipment and facilities, along with COVID-19 mitigation and infection prevention measures.

➤ **Public Employee Assistance**

Funds can be used for (a) payroll and benefits of essential workers for their time responding to COVID-19, (b) to increase capacity in public employee staff by rehiring effort, and (c) to invest in effective service delivery options.

- Work related to COVID-19 response - The FR designates several public employee staff as “essential.” These include, police officer, firefighters, EMS personnel, dispatchers, and others. Funds need to be allocated under this sub-category only for the work associated with those staff and their work in “responding to COVID-19.” The FR does contain rationale for determining time spent responding to the pandemic, including if they were “primarily dedicated” to the response.
- Rehiring public sector staff – The FR allows using the funds to restore public sector staff to pre-pandemic levels by distinguishing between two options summarized below (details articulated in the FR):
 - a) Rehire staff for pre-pandemic positions that were unfilled or eliminated due to the pandemic, or
 - b) Undergo a four-step analysis to allow hiring staff above a pre-pandemic baseline by adjusting based on historical growth rates.
- Using funds to add data/evidence/program administrative needs – These include (a) 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, (b) community outreach and engagement activities (c) capacity building resources to support using data and evidence, (d) 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, increase access and improve delivery of services and programs).

➤ **Capital expenditures**

The FR clarifies that funds can be used for capital expenditures that respond to public health needs or address a negative economic impact caused by COVID-19. Specifically, the project must be related and reasonably proportional to the impact identified and reasonably designed to benefit the impacted group. The FR details a list of enumerated capital projects within each sub-category that are eligible uses.

In general, if the capital expenditure is less than \$1 million, it is presumed proportional, provided that it is responding to a harm caused or exacerbated by COVID-19. Further details can be found in the table below and specified in the FR:

Total capital expenditure	Expenditure <u>enumerated</u> in FR	Expenditure <u>unenumerated</u> in the FR
Less than \$1 million	No written justification required	No written justification required
Greater than \$1 million but less than \$10 million	Written justification required, but <i>not required</i> as part of regular reporting	Written justification required and <i>must be</i> submitted as part of regular reporting
Greater than \$10 million	Written justification required and <i>must be</i> submitted as part of regular reporting	

The FR articulates the type of written justification that may be required. In particular, the justification will need to include (1) the harm that will be addressed through the capital expenditure, (2) why the capital expenditure is the most appropriate, and (3) compare proposed capital project against *two alternative* capital expenditures, and distinguish how the proposed project is superior.

In addition, the FR encourages adherence to “strong labor standards” if engaging in capital expenditures.

NOTE: Again, FR provides a two-step framework to determine how unenumerated projects could be eligible. Those projects that are unenumerated may generally be eligible if a (1) COVID-19 public health or economic impact can be identified, and (2) the ARP funds will respond that impact. Responses need to be related and reasonable proportional to the harm (i.e. the scale of the response needs to be compared to the scale of the harm experienced).

Replacement of Loss Revenue

The FR provides greater clarity and eligibility to identify revenue loss. In particular, the FR distinguishes that either (not both) of the two options are available to determine amount of revenue loss:

- 1) Select a “standard allowance” of \$10 million to spend on government services, or
- 2) Calculate actual revenue loss according to the formula detailed in the IFR and FR.

These options provide greater flexibility in determining revenue loss, and theoretically may allow for some municipalities to designate all of their ARP funds in the “revenue loss” category.

Any funds designated as revenue loss can be used towards “government service,” which generally include any service that is traditionally provided by government (unless specifically prohibited by Treasury). In this category, funds are streamlined and the reporting and compliance requirements for this category are detailed in the “[Compliance and Reporting](#)” document.

Water and Sewer Infrastructure

The FR maintains that eligible water and sewer projects are those that would be eligible under EPA’s Clean Water State Revolving Fund (CWSRF) and the Drinking Water State Revolving Fund (DWSRF). These eligible uses have been consistent since the IFR and a full list of eligible projects can be found in the EPA’s handbook for these projects under the [CWSRF](#) or [DWSRF](#).

In addition, the FR broadens eligibility to other projects, including additional stormwater infrastructure (such as culvert repair, resizing, and removal, replacement of storm sewers, and additional types of stormwater infrastructure), residential wells, lead remediation efforts, and certain rehabilitations to dams and reservoirs.

Those unenumerated in the CWSRF or DWSRF may be eligible if they are determined to be a “necessary” investment in infrastructure by being:

- 1) 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;
- 2) A cost-effective means for meeting that need, considering available alternatives; and
- 3) For investments in infrastructure that supply drinking water in order to meet projected population growth, projected to be sustainable over its estimated useful life.

In general, the projects must be responsive to an identified need to achieve or maintain an adequate minimum level of service. The FR contains detailed compliance information.

Broadband Infrastructure

The FR broadens the eligible broadband investments. While the IFR designated that investments in this category must be made to serve those lacking reliable 100/20 mbps broadband service, the FR articulates that investments to address these thresholds should be “encouraged.” In addition, funds can be broadly used to invest in other projects that are designed to provide services to locations that have an identified need for additional broadband investment. This would include to address a lack of (a) access to reliable broadband connection, (b) affordable broadband, or (c) reliable service.

Other eligible projects may include:

- Subsidies to households impacted by the pandemic to assist them in connecting to the internet. In order to be eligible, the household must either (a) participate in the FCC’s Affordable Connectivity Program (ACP), or (b) be provided access broad-based

affordability program to low-income consumers that provides benefits similar to the ACP.

- Digital literacy programs and device purchase programs.
- Investments in the “middle mile.”
- Provide necessary investments in cybersecurity, including modernization of hardware and software, for existing and new broadband projects – regardless of the speed delivered. (Broader cybersecurity can also be eligible under “government service” through the revenue loss category).

Broadband investments should meet high-speed standards of symmetrical speeds of 100 mbps. The FR does allow exceptions to this standard if it is impractical due to excessive costs or geography. However, they need to be scalable for future investments. In addition, the FR encourages broadband networks that are owned/operated or affiliated with government, nonprofits and co-ops, to be prioritized.

Premium Pay

The FR details regarding this category remain consistent with the IFR. Premium pay can be awarded to eligible workers up to \$13 per hour, but may not exceed \$25,000 in the aggregate (in addition to the wages the workers already receives).

In order for premium pay to be awarded, the following steps need to occur:

- 1) Identify the eligible worker - The FR enumerates a list of “eligible” workers that are “needed to maintain continuity of operations of essential critical infrastructure sectors.” Beyond the list, the local CEO does have the ability to designate additional workers by verifying that the worker performs “essential work.”
- 2) Verify they are performing essential work - The work was (1) not performed while teleworking from their residence, and (2) they either (a) had regular interaction with the public or coworkers or (b) handled physical items that were handled by the public or coworkers.
- 3) The premium pay “responds to” the workers performing the essential work during the pandemic. The FR articulates the ways in which this standard can be met.

Premium pay can be awarded in installments or lump sums and can be paid to salary, hourly or part-time workers. It cannot be used to pay for hazard or premium pay that was already provided, as well, cannot be paid to volunteers.

Administration, Compliance and Reporting

The FR maintains most of the administration, compliance and reporting requirements that have been articulated in the IFR or [Treasury’s Compliance and Reporting](#) document. In general, the following needs to be considered:

- The funds are to be used for costs incurred on or after March 3, 2021. They must be “obligated” by December 31, 2024 and “liquidated or expended” by December 31, 2026.
- Funds can be transferred to subrecipients to carry out eligible uses on behalf of a recipient (the municipality is still responsible for monitoring and overseeing use of funds to ensure compliance).

- The enumerated prohibited uses in the IFR are maintained. Specifically, these funds can not be (a) deposited into pension funds, (b) used to replenish financial reserves or rainy-day funds, or (c) used for legal settlements or judgements.
- Pooling funds for particular projects are allowed, but need to be done in a manner to ensure recipients actually receive a benefit from the project (i.e. can't fund an entire project where the municipality doesn't receive at least partial benefit).
- Funds can be used for the direct or indirect costs associated with administering the ARP funds or programs.
- Failure to adhere to the FR provisions may result in the recuperation of funds. The recuperation may include Treasury asking for additional information to substantiate an eligible use. The formal process for recuperation would include written notice explaining the potential violation and allow for the ability to articulate or remedy the malfeasance. However, Treasury does not need to adhere to this process in egregious situations.