Regular Governing Body Meeting
City of Rio Rancho
AGENDA
September 28, 2023
6:00 PM
Council Chambers

Governing Body Members

Greggory D. Hull, Mayor	Paul Wymer, Councilor District 4
Jim Owen, Councilor District 1	Karissa Culbreath, Councilor District 5
Jeremy Lenentine, Councilor District 2	Nicole List, Councilor District 6
Bob Tyler, Councilor District 3	

Meeting Information
This meeting will be conducted in-person and virtually, as well as, streamed live on the City of Rio Rancho website at https://rrnm.gov/2303/Watch-and-Download-City-Meetings

Public comment on agenda items can be taken in-person or remotely via Zoom meeting software with the access information below.

Join by Computer:https://us06web.zoom.us/j/85302353741?pwd=bWp1QXliSGJoeHhJaGVOczF4MDN0UT09
Meeting ID: 853 0235 3741
Passcode: 789419

Join by Phone:
Dial +1 253 215 8782 US then enter Meeting ID and Passcode

Call to Order and Pledge of Allegiance

Proclamations and Awards of Merit

Public Forum
Pursuant to Section 30.06 Rio Rancho Municipal Code, this section of the agenda is conducted as follows:

(A) Public forum. Any person wishing to address the governing body on any item which is not on the agenda, shall register with the City Clerk within 15 minutes before the beginning of the meeting. Speakers shall be recognized in the order of registration with the City Clerk.
(B) Manner of address. Each person shall seek the recognition of the presiding officer. Each person shall give his name and address. Comments or questions shall be addressed to the governing body as a whole through the presiding officer and not to any members thereof. No person shall enter into any discussion without the permission of the presiding officer.
(C) Time limit. The presiding officer may place a limit on the amount of time any person may speak after being recognized.

*Must be in-person to participate under Public forum. Remote access is not available.

Comments by Councilors

Consent Calendar
There will be no discussion of these items unless a Governing Body Member so requests, in which event the item will be moved to a discussion item on the regular agenda.

1. Minutes of September 14, 2023 Work Session Meeting
Minutes of September 14, 2023 Work Session Meeting

2. Minutes of September 14, 2023 Regular Meeting
Minutes of September 14, 2023 Regular Meeting

3. R111, Resolution Authorizing a Budget Adjustment to the Traffic Safety and Education Fund (243) for the Education and Enforcement Project
Resolution
RR SFY24 Agreement.pdf

4. R112, Resolution Authorizing a Budget Adjustment to the Infrastructure Fund (305) for the Design of a Pedestrian Crossing
Resolution

5. R113, Resolution Authorizing a Budget Adjustment to the Infrastructure Fund (305) for the Construction of Intersection Improvements at Paseo del Volcan (NM347) and Broadmoor Blvd.
Resolution

6. R114, Resolution Authorizing Disposal of Equipment No Longer Needed by a Community Development Block Grant (CDBG) Subrecipient
Resolution
EXHIBIT A.docx

7. D37, Appointment of Darryl Manning to the Keep Rio Rancho Beautiful Committee
Manning Resume Redacted

Boards and Commissions

Public Hearings

8. R115, Resolution Adopting an Affordable Housing Plan
Resolution
Rio_Rancho_Affordable_Housing_Plan_09152023.pdf
AHA_Rules_Amended_Dec2015.pdf
Public Forum Meeting Attendance.pdf
Legal Ad.pdf
AHA_Plan_Approval_Letter.pdf

Second Reading of Ordinances

First Reading of Ordinances

9. O16, Ordinance Amending Ordinance No. 28, Enactment No. 22-29 Relating to the Issuance and Sale of City of Rio Rancho, New Mexico Taxable Industrial Revenue Bonds (Atrisco Energy Storage LLC Project), In a Maximum Principal Amount of up to $420,000,000, for the Purpose of Approving Allocation of the Annual Payments In Lieu Of Taxes (PILOT) to Rio Rancho Public Schools (RRPS) and Albuquerque Public Schools (APS) in Conformity with the Requirements of Section 3-32-6 NMSA 1978; Authorizing Execution and Delivery of the Bonds with Updated Series Designation to Reflect the Date of Issuance and Delivery; Ratifying Certain Actions Taken

Previously; and Repealing All Actions Inconsistent with this Ordinance
Ordinance
Exhibit_I_-_Atrisco_Solar_PILOT_Distribution_Calculation.pdf
Exhibit_II_-_RRPS_APS_and_Solar_Location.pdf
Exhibit_III_-_RRPS_and_APS_Boundary_Percentages.pdf
Exhibit_IV_-_APS-RRPS_Enrollment_Reports.pdf

10. O17, Ordinance Amending Ordinance No. 29, Enactment No. 22-230 Relating to the Issuance and Sale of City of Rio Rancho, New Mexico Taxable Industrial Revenue Bonds (Atrisco Energy Solar LLC Project), In a Maximum Principal Amount of up to $430,000,000, for the Purpose of Approving Allocation of the Annual Payments In Lieu Of Taxes (PILOT) to Rio Rancho Public Schools (RRPS) and Albuquerque Public Schools (APS) in Conformity with the Requirements of Section 3-32-6 NMSA 1978; Authorizing Execution and Delivery of the Bonds with Updated Series Designation to Reflect the Date of Issuance and Delivery; Ratifying Certain Actions Taken Previously; and Repealing All Actions Inconsistent with this Ordinance
Ordinance
Exhibit I - Atrisco Solar PILOT Distribution Calculation.pdf
Exhibit II - RRPS APS and Solar Location.pdf
Exhibit III - RRPS and APS Boundary Percentages.pdf
Exhibit IV - APS-RRPS Enrollment Reports.pdf

Discussion and Deliberation

11. R116, Resolution Adopting the City of Rio Rancho Strategic Plan 2023-2028
Resolution
2023-2028 Strategic Plan FINAL September 14 2023.pdf

12. D38, Advice and Consent of the Governing Body for American Rescue Plan Act Subrecipient Agreement Between the City of Rio Rancho and Homewise, Inc., for a Home Repair Program
FY 2023 Income Limits Documentation Sys...pdf
Draft_Agreement_RR_and_Homewise_September_2023_with_Attachments Updated.pdf

City Manager

13. Central New Mexico Community College G.O. Bond 2023 Presentation

Comments by Councilors

Adjournment

CITY OF RIO RANCHO
COVER PAGE

Legislation Item:

AGENDA DATE:
September 28, 2023

DEPARTMENT:
City Clerk

SUBJECT:
Minutes of September 14, 2023 Work Session Meeting

BACKGROUND AND ANALYSIS:

IMPACT:

ALTERNATIVES:

DEPARTMENT RECOMMENDATION:

ATTACHMENT: Minutes of September 14, 2023 Work Session Meeting

Governing Body
of the
City of
Rio Rancho
Special
Work Session
MINUTES

SEPTEMBER 14, 2023
3:00 p.m.
Council Chambers

MEMBERS PRESENT:	**STAFF & SPECIAL GUEST PRESENT:**
Greggory D. Hull, Mayor	Matt Geisel, City Manager
Jim Owen, Councilor Dist. 1 (virtual)	Peter Wells, Deputy City Manager
Bob Tyler, Councilor Dist. 3	Josh Rubin, City Attorney
Paul Wymer, Councilor Dist. 4	Rebecca Martinez, City Clerk
Karissa Culbreath, Councilor Dist. 5	Ryan Chavez, Asst. to the City Mgr. for Policy & Planning
Nicole List, Councilor Dist. 6	Connie Peterson, Dir. Parks, Rec. & Comm Svcs.
	Noah Trujillo, Deputy Director Parks, Rec. & Comm Svcs/Tourism Manager
MEMBERS ABSENT:	Yolanda Lucero, Deputy City Clerk
Jeremy Lenentine, Dist. 2	

CALL TO ORDER AND PLEDGE OF ALLEGIANCE

Mayor Hull called the meeting to order at 3:00 p.m.

Discussion

1. Overview of Draft 2023-2028 Strategic Plan

Rebecca Martinez, City Clerk presented this item. In June of 2023 staff presented the proposed Strategic Plan to the Governing Body. The accomplishments were highlighted and the need for the Strategic Plan was emphasized, as it is the basis by which the Governing Body sets the vision and mission of the City of Rio Rancho, and how the organization as a whole should operate along with the goals and objectives. Feedback was provided from the Governing Body and staff is seeking any additional feedback and plan to present the item for consideration at the second meeting in September. She went over the development process which includes input for the Governing Body, community, stakeholders, and staff. The input was analyzed in conjunction with the citizen surveys that stems back to 2015. A committee was formed with department directors and subject matter experts from each department and service.

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Ryan Chavez, Assistant to the City Manager for Policy & Planning went over the vision, mission and core values. Five key service areas have been identified as the most reflective and essential to the citizens based on survey data and stakeholder input.

Mr. Geisel reiterated the item will come back for Governing Body approval at the second meeting in September. It has been a good robust process over the last year.

2. Planning Calendar Update

Peter Wells, Deputy City Manager gave a review of the planning calendar. The purpose is to provide a high-level overview of upcoming key projects, initiatives, meetings, and dates for the Governing Body members and staff for coordination and planning purposes. The document will continue to evolve over time. He went over key dates and items that are required by Charter/Ordinance, State/Federal Law necessitated, Good Governance/Operational.

3. City Manager Goals and Priorities

Mayor Hull stated as part of the City Manager's employment contract it states annually, employer and employee shall define such goals and performance objectives that they determine necessary for the proper operation of the City, and the attainment of employer's policy objectives, and shall further establish a relative priority among those various goals and objectives, said goals and objectives to be conveyed in writing. They shall generally be attainable with the time limitations as specified and the annual operating and capital budgets and appropriations.

Matt Geisel, City Manager gave an overview of each of the goals and priorities for 2021-2022 and provided a status update on each item.

1. Initiate and complete strategic plan update for Governing Body consideration.
2. Initiate facilities master plan process.
3. Present updated impact fee schedule foe Governing Body consideration.
4. Initiate pilot projects for residential streets mill and inlay program.
5. Finalize and implement updated approach for economic development efforts.

Mr. Geisel stated based on the City Manager's 2022-2023 annual performance evaluation and input from the Governing Body the following goals and objectives have been identified.

1. Utilities Department customer service assessment
2. Governing Body community engagement options development and implementation assistance
3. Evaluation of economic development staffing/resources
4. Complete the planning of at least tow of the five proposed buildings/projects identified in the Facilities Master Plan
5. Develop five-year staffing plan with identified funding sources to address growth

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and service delivery

The meeting adjourned at 3:58 p.m.

APPROVED THIS SEPTEMBER 28, 2023

_____
Greggory D. Hull, Mayor

ATTEST:

_____
Rebecca A. Martinez, City Clerk
(SEAL)

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CITY OF RIO RANCHO
COVER PAGE

Legislation Item:

AGENDA DATE:
September 28, 2023

DEPARTMENT:
City Clerk

SUBJECT:
Minutes of September 14, 2023 Regular Meeting

BACKGROUND AND ANALYSIS:

IMPACT:

ALTERNATIVES:

DEPARTMENT RECOMMENDATION:

ATTACHMENT: Minutes of September 14, 2023 Regular Meeting

Governing Body
of the
City of Rio Rancho

MINUTES
SEPTEMBER 14, 2023
6:00 PM
Council Chambers, City Hall

MEMBERS PRESENT:	STAFF PRESENT:
Greggory D. Hull, Mayor	Matt Geisel, City Manager
Jim Owen, Councilor Dist. 1(virtual)	Peter Wells, Deputy City Manager
Jeremy Lenentine, Councilor Dist. 2	Josh Rubin, City Attorney
Bob Tyler, Councilor Dist. 3	Rebecca Martinez, City Clerk
Paul Wymer, Councilor Dist. 4	Carol Jaramillo Dir. of Financial Scvs. (virtual)
Karissa Culbreath, Councilor Dist. 5	Jason Shoup, Library Director
Nicole List, Councilor Dist. 6	James DeFillippo, Fire Chief
	Connie Peterson, Dir. of Parks, Rec & Comm Svcs.
	Stewart Steele, Police Chief
	Yolanda Lucero, Deputy City Clerk

Call to Order and Pledge of Allegiance

Mayor Hull called the meeting to order at 6:00 p.m.

Proclamations and Awards of Merit

Mayor Hull read a proclamation for National Service Dog Month 2023.

Public Forum

The following individual spoke under public forum:

Casey Robinson

Comments by Councilors

Consent Calendar

1.) Minutes of August 15, 2023 Joint Work Session with Governing Body and Planning and Zoning Board
2.) Minutes of August 24, 2023 Regular Meeting
3.) R100, Resolution Authorizing a Budget Adjustment to the Police Department Fleet Maintenance Budget for Insured Repair of a Police Patrol Vehicle (Unit 1937)
4.) R101, Resolution Authorizing the Disposal of City Property from the Development Services Department

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5.) R102, Resolution Authorizing a Budget Adjustment to the Keep Rio Rancho Beautiful Grant Fund (207) for Operational, Staffing, Travel & Training, Contract Services, Affiliate Fees and Advertising Costs
6.) R103, Resolution Authorizing a Budget Adjustment to the Fire Protection Fund (250) to Classify Renovation Properly
7.) R104, Resolution Authorizing the Disposal of Parks, Recreation and Community Services Department Property
8.) R105, Resolution to Authorize a Budget Adjustment to the Infrastructure Fund (305) for the 2023/2024 New Mexico Department of Transportation (NMDOT) Local Government Road Fund (LGRF) Cooperative Project Grant
9.) R106, Resolution Decommissioning and Allowing for Disposal of a Vehicle
10) R107, Resolution Authorizing a Budget Adjustment to the E-911 Grant Fund (255) to Accept the FY2024 Enhanced 911 Grant
11.) R108, Resolution Authorizing the Disposal of Library and Information Services Department Property
12.) R109, Resolution Authorizing a Budget Adjustment to the Federal Grants Fund (259) for the Event Center Security Camera Project
13.) D35, Appointment of Lisa Hardisty to the Planning and Zoning Board

Jeremy Lenentine moved to approve Consent Calendar. Seconded by Bob Tyler

The motion carried by a vote of 6 FOR and 0 AGAINST.
YES: Jim Owen, Jeremy Lenentine, Bob Tyler, Paul Wymer, Karissa Culbreath, and Nicole List
No: None

Boards and Commissions

Public Hearings

Second Reading of Ordinances

First Reading of Ordinances

Discussion and Deliberation

14.) D36, Advice and Consent of the Governing Body for Rio Rancho Firefighter's Association Collective Bargaining Agreement

Councilor List recused herself from D36 and R110 as her brother is a Rio Rancho Firefighter.

Loyola Martinez, Director of Human Services presented D36 and R110 together. Councilor List recused herself for D36 and R110 due to brother being employed with Rio Rancho Fire Department. The term of the previous Rio Rancho Firefighter's Association agreement ended on July 1, 2023. The terms and conditions of this

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agreement automatically roll over beyond the expiration term until a new agreement is reached. A five-member team from City administration entered into negotiations with a five-member team from Rio Rancho Firefighter's Association regarding a new collective bargaining agreement in February 2023 and concluded July 2023. She went over the proposed changes and explained The new Collective Bargaining Agreement attempts to address applicable market forces and competition, assist with recruitment and retention efforts of employees with advanced EMT licensure, adds clarification language, enhances physical fitness standards, and ensures more technically trained staff are assigned to and available at all stations across the City in an effort to provide improved safety response and increased maintenance standards for department assets. Implementation of the new Collective Bargaining Agreement is estimated to add approximately $600,277.74 of additional payroll costs in Fiscal Year 2024. R110, is contingent upon approval of D36 and will allow for a budget adjustment to fund the costs associated with the new agreement, approximately $600,277.74, in the current fiscal year.

Bob Tyler moved to approve D36. Seconded by Karissa Culbreath

The motion carried by a vote of 6 FOR and 0 AGAINST.
YES: Greggory Hull, Jim Owen, Jeremy Lenentine, Bob Tyler, Paul Wymer, and Karissa Culbreath
NO: None
RECUSED: Nicole List

15.) R110, Resolution Authorizing a Budget Adjustment to Fund Rio Rancho Firefighter's Association Collective Bargaining Agreement

Bob Tyler moved to approve R110. Seconded by Karissa Culbreath

The motion carried by a vote of 6 FOR and 0 AGAINST.
YES: Greggory Hull, Jim Owen, Jeremy Lenentine, Bob Tyler, Paul Wymer, and Karissa Culbreath
No: None
RECUSED: Nicole List

City Manager

Comments by Councilors

Adjournment

6:26 p.m.

APPROVED THIS SEPTEMBER 28, 2023

_____
Greggory D. Hull, Mayor

ATTEST:

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Rebecca A. Martinez, City Clerk

SEAL

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CITY OF RIO RANCHO
COVER PAGE

Legislation Item: R111

AGENDA DATE:
September 28, 2023

DEPARTMENT:
Police Department

SUBJECT:
R111, Resolution Authorizing a Budget Adjustment to the Traffic Safety and Education Fund (243) for the Education and Enforcement Project

BACKGROUND AND ANALYSIS:
The Traffic Safety Bureau of the New Mexico Department of Transportation has funded the State Education and Enforcement Project for Fiscal Year 2024.

The grant ($1,000) provides resources to the Rio Rancho Police Department to fund law enforcement overtime, commodities, education, training, and program administration. The City plans on using grant funds for traffic enforcement equipment.

The City of Rio Rancho has accepted these grant funds for several consecutive years. The grants provide funding to further traffic enforcement operations at no cost to the City of Rio Rancho.

IMPACT:
Approval of the Resolution will provide additional funding from the State to provide safety and enforcement programs.

ALTERNATIVES:
Approve the Resolution.

Do not approve the Resolution.

DEPARTMENT RECOMMENDATION:
Staff recommends the adoption of the Resolution.

ATTACHMENT: Resolution
ATTACHMENT: RR SFY24 Agreement.pdf

CITY OF RIO RANCHO
RESOLUTION

RESOLUTION NO. **ENACTMENT NO.**

RESOLUTION AUTHORIZING A BUDGET ADJUSTMENT TO THE TRAFFIC SAFETY AND EDUCATION FUND (243) FOR THE EDUCATION AND ENFORCEMENT PROJECT

WHEREAS: the Rio Rancho Police Department was awarded State Education and Enforcement Project funds by the New Mexico Department of Transportation; and

WHEREAS: a budget adjustment is necessary to expend the grant funds for traffic enforcement equipment.

NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF RIO RANCHO:

That authorization is given for the following budget adjustment:

Traffic Education and Enforcement Fund (243)

Account	Project No.	Revised Budget	Increase	Decrease	Adjusted Budget
243-0000-335.20-00 Traffic Safety Funds	PS2442	$0	$1,000		$1,000
Total Sources		$0	$1,000		$1,000

Account	Project No.	Revised Budget	Increase	Decrease	Adjusted Budget
243-0000-424.60-70 Minor Furniture & Equipment	PS2442	$14,900	$1,000		$15,900
Total Uses		$14,900	$1,000		$15,900

ADOPTED THIS _____DAY OF _____, 2023.

_____
Greggory D. Hull, Mayor

ATTEST:

_____
Rebecca A. Martinez, City Clerk
(SEAL)

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New Mexico DEPARTMENT OF TRANSPORTATION
MOBILITY FOR EVERYONE

MEMORANDUM

Date: July 18, 2023

To: Ricky Serna, Cabinet Secretary

Through: Jeff Barela, Traffic Safety Division Director

DocuSigned by: Barela
E291EAE03FAF441...

From: Cora Lee Anaya, Program Manager, TSD

DocuSigned by: Cora Anaya
A8E5C8BC04F640A...

Subject: Justification for Education and Enforcement (E&E) Project Agreement between the New Mexico Department of Transportation Traffic Safety Division and Rio Rancho Police Department.

Cora Lee Anaya, TSD Program Manager, Phone # 505-490-1183, will oversee this project. The agreement provides State Education & Enforcement (E&E) Funds to Rio Rancho Police Department as shown below.

AGENCY	E&E PN	FY 24 E&E $
Rio Rancho Police Department	04-EE-05-081	$1,000.00

Funding for the EE project comes from a $3.00 fee imposed on traffic citations as allowed by NMSA 1978, Section 66-7-512, and NMAC 18.20.2.6. Fifty percent of the money deposited in the traffic safety education and enforcement fund and the remaining fifty percent is allocated to the law enforcement agency that issued the citation.

Agencies submit applications detailing their agency's plan to expend funding to TSD on an annual basis upon notification of funding available. The agencies use the funding to institute and promote statewide traffic safety programs. Funds are used for law enforcement overtime, commodities, education, training, and program administration.

The term of all these agreements is from date of execution to June 30, 2024.

Michelle Lujan Grisham
Governor

Ricky Serna
Cabinet Secretary

Commissioners

Jennifer Sandoval
Commissioner, Vice-Chairman
District 1

Vacant
Commissioner
District 2

Hilma E. Chynoweth
Commissioner
District 3

Walter G. Adams
Commissioner, Chairman
District 4

Thomas C. Taylor
Commissioner
District 5

Charles Lundstrom
Commissioner, Secretary
District 6

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Office of General Counsel Contract Brief Form

Date: July 18, 2023 From: Cora Lee Anaya Location: Traffic Safety Division

Phone: 505-490-1183 Agency: NMDOT

Contractor: City of Rio Rancho

Project No.: 04-EE-05-081

NEW CONTRACT
__ Copy of RFP, if applicable
__ Copy of approved sole source justification
__ Copy of approved small purchase justification
__ Copy of Contract Brief signed by Contract Administration

AMENDMENT TO EXISTING CONTRACT
__ Scope of Work
__ Additional Compensation
__ Time extension
Note: For amendments, please attach a copy of the original agreement, any previous amendments, and a copy of the RFP. (If applicable)

X EXEMPT FROM PROCUREMENT PROCESS (university: other educational institutions; other state agency, bureau; local public bodies).

The Office of General Counsel's policy for turnaround time is ten (10) working days. Please indicate below if there are extenuating circumstances which require immediate review of this agreement.

Attorney Review Comments

The attached agreement is being returned for revisions or corrections. Please call (505) 469-6411 if you have any questions.
____Please make corrections on pages _
____I have signed the agreement with the understanding that you will make the corrections indicated on the agreement submitted for review or discussed with you.
____Please make corrections on pages and return the marked copy to the receptionist for further review and approval.

Other Comments

DocuSign Envelope ID: 4B3B64E1-249E-442B-A102-389E3A5A60F6

CONTRACT NUMBER: TS05127

VENDOR NUMBER: 0000047808

GRANT AGREEMENT

This grant Agreement ("Agreement") is between the New Mexico Department of Transportation (the "**Department**") and the City of Rio Rancho (the "**Grantee**"), collectively referred to as "the Parties." The Department and the Grantee agree as follows:

1. **Award.** The Department hereby awards the Grantee funding for the following project: Education and Enforcement (E&E), Project No. 04-EE-05-081, $1,000.00.

2. **Scope of Work.** The Grantee shall perform the professional services stated in Exhibit A.

3. **Payment.** To be paid for eligible expenses, the Grantee must submit properly prepared claims for reimbursement. Reimbursement claims must (1) be filed on the correct form (which must be completed fully and accurately), (2) include the required supporting documents, (3) certify that invoices accurately reflect work completed, amount due, remaining balance and project number, and (4) be signed by the Grantee's designated representative. To be paid for its final reimbursement claim, the Grantee must submit the claim no later than thirty days after termination of this Agreement. The Grantee acknowledges that the Department will not pay for any expenses incurred prior to both Parties signing the agreement, after termination of the agreement, or in excess of the amount of the award noted in Sections 1.

4. **Records and Audit.** The Grantee shall strictly account for all receipts and disbursements related to this Agreement. The Grantee shall record costs incurred, services rendered, and payment received, and shall maintain these financial records during the Agreement and for three (3) years after termination. On request, the Grantee shall provide the financial records to the Department and the state auditor and shall allow the Department and the state auditor to inspect or audit these financial records during business hours at the Grantee's principal office during the Agreement and for three (3) years after termination. If the financial records provided by the Grantee are insufficient to support an audit by customary accounting practices, the Grantee shall reimburse the Department for any expense incurred related to the insufficient documentation within thirty (30) days of written notice from the Department. If an audit or inspection reveals that funds were used for expenses not directly related to the project, or otherwise used inappropriately, or that payments were excessive or otherwise erroneous, the Grantee shall reimburse the Department for those funds or payments within thirty (30) days of written notice.

5. **Officials Not to Benefit.** The Parties intend that no member of the New Mexico legislature or the United States Congress, or any public official, public employee, or tribal council member, in that person's individual capacity, will benefit from this Agreement.

6. **Termination.** The Department may terminate this Agreement for any reason, by giving

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the Grantee thirty (30) days written notice. On receipt of notice of termination, the Grantee shall suspend work unless the notice directs otherwise. The Grantee may only terminate this Agreement based on the Department's uncured, material breach of the Agreement, and by giving the Department thirty (30) days written notice. The Parties acknowledge that termination will not nullify obligations incurred prior to termination.

7. **Appropriations.** The Grantee acknowledges that:

   a. this Agreement is contingent upon sufficient appropriations and authorizations being made by the Congress of the United States or the New Mexico state legislature;

   b. if sufficient appropriations and authorizations are not made, this Agreement will terminate upon written notice by the Department to the Grantee; and

   c. the Department will not expend any funds until they are approved for expenditure, and the Department's determination as to whether approval has been granted will be final.

8. **Compliance with Law.** The Grantee, its employees, agents, and contractors, shall comply with the following:

   a. Title VI and Title VII of the Civil Rights Act of 1964, the Age Discrimination in Employment Act of 1967, the Americans with Disabilities Act of 1990, the ADA Amendments Act of 2008, the Environmental Justice Act of 1994, the Civil Rights Restoration Act of 1987, and 49 C.F.R. Sections 21.

   b. All federal and state laws, rules, and regulations, and executive orders of the Governor of the state of New Mexico pertaining to equal employment opportunity, including the Human Rights Act, NMSA 1978, Sections 28-1-1 through 28-1-15. In accordance with such, the Grantee states that no person, on the grounds of race, religion, national origin, sex, sexual orientation, gender identity, spousal affiliation, serious medical condition, age, or disability, will be excluded from employment with or participation in, denied the benefits of, or otherwise subjected to, discrimination in any activity performed under this Agreement. If the Grantee is found to be in violation of any of these requirements, the Grantee shall take prompt and appropriate steps to correct such violation.

   c. All state laws applicable to workers compensation benefits for the Grantee's employees, including the Workers' Compensation Act, NMSA 1978, Sections 52-1-1 through 52-1-70, and related regulations.

9. **Notices.** For a notice under this Agreement to be valid, it must be in writing; be delivered by hand, registered, or certified mail return receipt requested and postage prepaid, fax or e-mail; and be addressed as follows:

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to the Department at:	to the Grantee at:
New Mexico Dept. of Transportation	City of Rio Rancho
Attn: Traffic Safety Division	Attn:
P.O. Box 1149	500 Quantum Drive, SE
Santa Fe, NM 87504	Rio Rancho, New Mexico 87124.

10. **Severability**. The Parties intend that if any provision of this Agreement is held to be unenforceable, the rest of the Agreement will remain in effect as written.

11. **Tort Claims.** Neither party shall be responsible for liability incurred as a result of the other party's acts or omissions in connection with this Agreement. Any liability incurred in connection with the Agreement is subject to the immunities and limitations of the New Mexico Tort Claims Act, NMSA 1978, Sections 41-4-1, *et seq.,* as amended. This paragraph is intended only to define the liabilities between the Parties, and it is not intended to modify in any way, the Parties' liabilities as governed by common law or the New Mexico Tort Claims Act.

12. **Jurisdiction and Venue.** The Grantee acknowledges the jurisdiction of the courts of the state of New Mexico for any adversarial proceeding arising out of this Agreement, and that venue for any such proceeding will be in the First Judicial District Court for the county of Santa Fe, New Mexico.

13. **Project Responsibility.** The Grantee acknowledges that it bears sole responsibility for performing the services referred to in Section 2, Exhibit A, and that the Department is not responsible for any services except as expressly stated in this Agreement.

14. **Term.** This Agreement takes effect upon signature of all Parties, with the date of execution being that of the latest of executed signatures. The Agreement terminates at midnight on June 30, 2024, unless terminated earlier as provided in Section 6 or Section 7 or modified by amendment as set forth in Section 16.

15. **Applicable Law.** The laws of the state of New Mexico, without giving effect to its choice of law principles, govern all adversarial proceedings arising out of this Agreement.

16. **Amendment.** No amendment of this Agreement will be effective unless it is in writing and signed by the Parties.

17. **No Third-party Beneficiary**. This Agreement does not confer any rights or remedies on anyone other than the Department and the Grantee.

18. **Merger.** This Agreement constitutes the entire understanding between the Parties with respect to the subject matter of the Agreement and supersedes all other agreements, whether written or oral, between the Parties, provided that this Agreement does not supersede the Grantee’s rights under any other grant agreement.

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Each party is signing this agreement on the date stated opposite that party's signature. This Agreement will be fully executed once signed by all parties, with the date of execution being that of the latest of executed signatures.

DEPARTMENT OF TRANSPORTATION

By: DocuSigned by: Ricky Serna 591DE8A6255842F... _____ Date: 7/24/2023

Cabinet Secretary or Designee

CITY OF RIO RANCHO

By: DocuSigned by: 2F13875F2A7B48B... _____ Date: 7/21/2023

Title: City Manager

Approved as to form and legal sufficiency.

By: DocuSigned by: John Newell C750CEC1625D488... _____ Date: 7/19/2023

Assistant General Counsel
Department of Transportation

Approved as to form and legal sufficiency.

By: DocuSigned by: Josh Rubin 7FD9F7068AE1476... _____

Counsel for City of Rio Rancho

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EXHIBIT A – SCOPE OF WORK, TRAINING, REIMBURSEMENT AND REPORTING

EDUCATION AND ENFORCEMENT PROGRAMS (E&E) Project Number: 04-EE-05-081

1. **Scope of Work**. The Grantee shall utilize funding to purchase lidars or radars.

2. **Definitions.** For purposes of this exhibit, the following definitions apply:

   a. "**Program Manager**" means the staff person at the Department assigned to monitor, coordinate and oversee program areas and project activities.

   b. "**Agency Coordinator**" means the person assigned by the Grantee to assume direct responsibility for administering all phases of the project agreement.

3. **Training and qualifications.** The Grantee shall notify the Department of any changes in the Agency Coordinator designation. If the Grantee utilized the funding to conduct E&E enforcement, the Grantee's participating officers must have law enforcement certifications in all areas necessary to conduct the activities.

4. **Reimbursement.** The Department will reimburse the Grantee for the actual cost of activities and items listed in the Scope of Work. Reimbursement requests must include supporting documentation.

5. **Reporting.** The Grantee must submit activity reports as funding is expended using the activity report form provided unless otherwise directed by the Department. If the funding is utilized for enforcement the Grantee must report all citations to the Motor Vehicle Division of the New Mexico Taxation and Revenue Department within 10 days of the issuance of the citation or citations. If the Grantee is responsible for submission of timely crash reports, submission to the Department shall be according to NMSA 1978, Sections 66-7-207.

6. **Equipment.** The Grantee may not purchase equipment under this Agreement unless the purchase is provided for in the commodities line item of Sections 7 of this Scope of Work.

7. **Funding.** Funding for this Education and Enforcement ("E&E") project comes from a $3.00 dollar fee imposed on traffic citations as allowed by NMSA 1978, Sections 66-7-512, and NMAC 18.20.2.6. Fifty (50%) percent of the money deposited in the traffic safety education and enforcement fund is allocated to the law enforcement agency that issued the citation. The Grantee may transfer funds between budget categories only with prior written approval from the Department. The project's itemized budget is as

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follows:

Personal Services	$0.00
Contractual Services	$0.00
Commodities	$1,000.00
Indirect	$0.00
Other	$0.00
TOTAL	**$1,000.00**

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New Mexico Traffic Safety Division Project Information Sheet

Contract Number:	TS05127		
Government Unit:	Rio Rancho Police Department		
Contract term:	(07/24/2023 – 06/30/2024)		
Vendor Number:	0000047808	Address ID:	

Grantee Contact Info

Project Director and Title:	Lt. Scott K. Pope		
Phone:	505-891-5971	E-mail:	Spope@rrnm.gov
Agency Name:	City of Rio Rancho		
Address:	500 Quantum Drive, SE		
City, State ZIP:	Rio Rancho, New Mexico 87124		

TSD Contact Info

Program Manager:	Cora Lee Anaya	Phone:	505-490-1183
TSD Finance:	Clarice Marien	Phone:	505-699-1094

Budget Breakdown

Funding	Project Number	Amount	Fund	Source
E&E	04-EE-05-081	$1,000.00	20800	State E&E
	Total	$1,000.00		

Purchase Order Number:	383191		
PO Entered by TSD Finance:	DocuSigned by: Clarice Marien 8BC4C2B98292 4B0...	Date:	7/28/2023
PO Approved by Contracts:	DocuSigned by: Jose Dominguez 320A653A9C19432...	Date:	7/28/2023

CITY OF RIO RANCHO
COVER PAGE

Legislation Item: R112

AGENDA DATE:
September 28, 2023

DEPARTMENT:
Public Works

SUBJECT:
R112, Resolution Authorizing a Budget Adjustment to the Infrastructure Fund (305) for the Design of a Pedestrian Crossing

BACKGROUND AND ANALYSIS:
The installation of a pedestrian crossing was recommended based on a study completed in July 2023 at Rockaway Blvd. near Saratoga Drive. The crossing will provide access across Rockaway Blvd. to Vista Hills Park.

This budget adjustment will adequately account for project expenditures so the City can proceed with the pedestrian crossing design.

IMPACT:
Approval of the Resolution will adequately account for project expenditures and allow the project work to be completed.

ALTERNATIVES:
Approve the Resolution.

Do not approve the Resolution.

DEPARTMENT RECOMMENDATION:
Staff recommends approval of the Resolution.

ATTACHMENT: Resolution

CITY OF RIO RANCHO
RESOLUTION

RESOLUTION NO. **ENACTMENT NO.**

RESOLUTION AUTHORIZING A BUDGET ADJUSTMENT TO THE INFRASTRUCTURE FUND (305) FOR THE DESIGN OF A PEDESTRIAN CROSSING

WHEREAS: the installation of a pedestrian crossing was recommended based on a study completed in July 2023 at Rockaway Blvd. near Saratoga Drive; and

WHEREAS: the crossing will provide access across Rockaway Blvd. to Vista Hills Park; and

WHEREAS: a budget adjustment is necessary to adequately account for project expenditures so the City can proceed with the pedestrian crossing design.

NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF RIO RANCHO:

That authorization is given for the following budget adjustment:

General Fund (101)

Account	Project No.	Revised Budget	Increase	Decrease	Adjusted Budget
101-5520-441.32-01 Professional Services	N/A	$679,983		$42,182	$637,801
101-0515-410.80-06 Transfer to Infrastructure	N/A	$13,045,825	$42,182		$13,088,007
Total Uses		$13,725,808	$42,182	$42,182	$13,725,808

Infrastructure Fund (305)

Account	Project No.	Revised Budget	Increase	Decrease	Adjusted Budget
305-0000-392.30-00 Transfer from General Fund	N/A	$13,045,825	$42,182		$13,088,007
Total Sources		$13,045,825	$42,182		$13,088,007

Account	Project No.	Revised Budget	Increase	Decrease	Adjusted Budget
305-0000-442.70-10 Capital Expenditures	TBA	$23,994,222	$42,182		$24,036,404
Total Uses		$23,994,222	$42,182		$24,036,404

ADOPTED THIS _____DAY OF _____, 2023.

Greggory D. Hull, Mayor

ATTEST:

Rebecca A. Martinez, City Clerk
(SEAL)

CITY OF RIO RANCHO
COVER PAGE

Legislation Item: R113

AGENDA DATE:
September 28, 2023

DEPARTMENT:
Public Works

SUBJECT:
R113, Resolution Authorizing a Budget Adjustment to the Infrastructure Fund (305) for the Construction of Intersection Improvements at Paseo del Volcan (NM347) and Broadmoor Blvd.

BACKGROUND AND ANALYSIS:

The design of a northbound Broadmoor Blvd. to eastbound Paseo del Volcan (NM 347) right-turn lane has been completed.

Based on the Engineer's Estimate during the design phase, it was determined that the construction of this project would have a shortfall. Through the Mid-Region Council of Government (MRCOG), the City was able to secure an additional $213,600 in Surface Transportation Urban Program funds (STP-U).

This budget adjustment is necessary to expend the grant funds as intended and allow the City to proceed with the construction of this project.

The anticipated construction cost is approximately $609,071, including contingency. The funding sources include City match funds that have already been budgeted ($66,841) and MRCOG grant funds totaling (assuming approval of this Resolution) $542,230.

IMPACT:
Approval of the Resolution will adequately account for project expenditures and allow the project to be completed.

ALTERNATIVES:
Approve the Resolution.

Do not approve Resolution.

DEPARTMENT RECOMMENDATION:
Staff recommends approval of the Resolution.

ATTACHMENT: Resolution

CITY OF RIO RANCHO
RESOLUTION

RESOLUTION NO. **ENACTMENT NO.**

RESOLUTION AUTHORIZING A BUDGET ADJUSTMENT TO THE INFRASTRUCTURE FUND (305) FOR THE CONSTRUCTION OF INTERSECTION IMPROVEMENTS AT PASEO DEL VOLCAN (NM347) AND BROADMOOR BLVD.

WHEREAS: the design of a northbound Broadmoor Blvd. to eastbound Paseo del Volcan (NM 347) right-turn lane has been completed, and additional funding to complete construction is necessary; and

WHEREAS: the City of Rio Rancho was awarded additional STP-U funds through the Mid-Region Council of Governments (MRCOG) in the amount of $213,600 to address the budget shortfall; and

WHEREAS: a budget adjustment is necessary to expend the grant funds as proposed.

NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF RIO RANCHO:

That authorization is given for the following budget adjustment:

Infrastructure Fund (305)

Account	Project No.	Revised Budget	Increase	Decrease	Adjusted Budget
305-0000-331.60-01 Federal Grant / STP-U	PW2258	$6,991,290	$213,600		$7,204,890
Total Sources		$6,991,290	$213,600		$7,204,890

Account	Project No.	Revised Budget	Increase	Decrease	Adjusted Budget
305-0000-442.74-01 Street Construction STP-U	PW2258	$7,055,034	$213,600		$7,268,634
Total Uses		$7,055,034	$213,600		$7,268,634

ADOPTED THIS _____DAY OF _____, 2023.

_____
Greggory D. Hull, Mayor

ATTEST:

Rebecca A. Martinez, City Clerk
(SEAL)

CITY OF RIO RANCHO
COVER PAGE

Legislation Item: R114

AGENDA DATE:
September 28, 2023

DEPARTMENT:
Financial Services

SUBJECT:
R114, Resolution Authorizing Disposal of Equipment No Longer Needed by a Community Development Block Grant (CDBG) Subrecipient

BACKGROUND AND ANALYSIS:
The City entered into a subrecipient agreement with LifeROOTS, Inc., on November 15, 2018 for the acquisition of an adult changing table to serve severely disabled individuals. LifeROOTS, Inc, has since ceased operations in Rio Rancho and the equipment is no longer needed for activities under the agreement.

Per applicable Federal code of regulations and State of New Mexico disposition of property requirements (Section 3-54-2, NMSA 1978), Governing Body approval to dispose of the equipment is being requested by staff.

IMPACT:
Proceeds from the public sale will be accounted and reported as CDBG program income and spent on CDBG eligible activities. If a public sale or donation does not occur, the equipment will be disposed of via a local landfill.

ALTERNATIVES:
Approve the Resolution.

Do not approve the Resolution. If the Resolution is not approved, the City will retain the equipment in a non-operational storage capacity.

DEPARTMENT RECOMMENDATION:
Staff recommends approval of the Resolution.

ATTACHMENT: Resolution
ATTACHMENT: EXHIBIT A.docx

CITY OF RIO RANCHO
RESOLUTION

RESOLUTION NO. **ENACTMENT NO.**

RESOLUTION AUTHORIZING DISPOSAL OF EQUIPMENT NO LONGER NEEDED BY A COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG) SUBRECIPIENT

WHEREAS: the City entered into a subrecipient agreement with LifeROOTS, INC., dated November 15, 2018 for the acquisition of an adult changing table to serve severely disabled individuals; and

WHEREAS: LifeROOTS, INC., has ceased operations in Rio Rancho and the equipment is no longer needed by the subrecipient for activities under the agreement; and

WHEREAS: applicable Federal Code of regulations and the subrecipient agreement require the adult change table be transferred to the City for disposal; and

WHEREAS: the City intends to dispose of the adult change table either by sale, donation, or abandonment; and

WHEREAS: the disposal of personal property is governed by Section 3-54-2, NMSA 1978 requiring notice of public sale.

NOW THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF RIO RANCHO:

That formal and required authorization is hereby given to properly dispose of the adult changing table depicted in Exhibit A attached hereto

ADOPTED THIS _____DAY OF _____, 2023.

_____
Greggory D. Hull, Mayor

ATTEST:

_____
Rebecca A. Martinez, City Clerk
(SEAL)

EXHIBIT A

PRESSALIT
27-08-2018
120 V
IPX6
R8539021
50-60 Hz
70 W
441 Lbs
441 Lbs
181 Lbs
RoHS
CE

CITY OF RIO RANCHO
COVER PAGE

Legislation Item: D37

AGENDA DATE:
September 28, 2023

DEPARTMENT:
Administration

SUBJECT:
D37, Appointment of Darryl Manning to the Keep Rio Rancho Beautiful Committee

BACKGROUND AND ANALYSIS:
The committee works to improve the quality of life in the community with specific focus in the areas of recycling, litter prevention, beautification, environmental education, and solid waste handling practices.

Manning resides in City Council District 3. If appointed, Manning will serve a term that expires on September 28, 2026.

IMPACT:
The appointment will fill a vacancy on the Keep Rio Rancho Beautiful Committee caused by term expiration.

ALTERNATIVES:
Approve the appointment.

Do not approve the appointment.

DEPARTMENT RECOMMENDATION:
Mayor Hull recommends the appointment of Darryl Manning to the Keep Rio Rancho Beautiful Committee.

ATTACHMENT: Manning Resume Redacted

Darryl Manning
3504 Deledda Rd NE
Rio Rancho, NM 87144
[redacted]

Operations Specialist/Learning & Development Professional

Summary of Qualifications

Workforce Development Professional with 8 years' experience as Learning & Development coordinator and manager, 24 years of management experience in both operations and workforce development and 37 years in the oil industry. Experienced in refinery and oil field operations with a successful record in project management, personnel development, and training program creation and management. Strong in leadership, networking, and coaching skills.

Work Experience

6/2020 – 09/2022
Madagascar Oil Ltd.
As a consultant to Madagascar Oil, reviewed and provided operations input to FEED deliverables such as P&IDs, equipment data sheets, plot plans and design basis. Participated and provided operations input to design review meetings and provided key input to hazard and operability analysis (HAZOP) reviews. Developed operator orientation training modules for new operations personnel and overall operations training plan.

8/2016 – 12/2016
Rio Rancho Public Schools – Rio Rancho High School
General Education Mathematics Teacher

6/2015 – 5/2016
Chevron North America Exploration and Production
Mid-Continent Business Unit – Midland, Texas
Surface Equipment Operations Advisor
SERIP (Surface Equipment Reliability and Integrity Process) Advisor
Responsible to provide direction and policy information for operations and maintenance teams regarding established Company equipment reliability processes. Supervised the Business Unit computerized maintenance management system (CMMS) administrators and Reliability Engineer. After a corporate audit of surface equipment reliability processes which occurred in April 2015, was able to resolve performance gaps identified and improve implementation and adherence to reliability processes leading to advancement for the Business Unit from Stage 1 in the SERIP process to Stage 2 (Dec. 2015)

4/2011 – 6/2015
Saudi Arabian Chevron/Joint Operations
Wafra, Kuwait
Large Scale Pilot Project Operations Supervisor/Specialist
Coordinate and manage day to day operations for the steamflood pilot facilities in Wafra, Kuwait. Provide work direction, mentoring, and consultation to National, Expatriate, and contractor personnel for operations and maintenance. Manage operations budget, and business partner contract. Develop metrics for operations team.
Perform duties as operations representative for 2nd Eocene Pilot during design and planning stages. Provide advisory operations input to development and review of P&ID's and support documents, and also provide advisory input to design reviews and hazard and operability analyses.

1/2003 – 4/2011
Chevron North America Exploration and Production
San Joaquin Valley Business Unit
Learning & Development Manager (1/2006 – 4/2011)
Determine training goals and objectives for business unit personnel based on required position competencies. Manage team of trainers/coordinators to meet the training and developmental needs of the organization. Participate with business unit managers as part of the operations planning team and decision review board to help in making large impact decisions. Responsible for the training budget and training facilities management as well as use of internal and external training resources; was also responsible to lead the effort for operations and maintenance recruitment, selection, and placement.
Automatic Well Test Supervisor (1/2003 – 12/2005)
Managed a group of operators and maintenance personnel to ensure the accurate and consistent performance of 307 production well test devices used to measure the production from nearly 9000 wells in the Kern River field. Responsible for day to day operations, as well as development of strategies and business plans to optimize and improve the effectiveness of well tests.

1/1980 – 12/2002
Chevron Products Company
El Segundo Refinery
Supervisor Training Coordinator (4/2001 – 12/2002)
Developed, coordinated, and helped to facilitate orientations for new supervisors. Developed training courses for supervisors and other personnel. Facilitated learning events for various groups and disciplines. Participated as part of Global Workforce Development (GWD) and facilitated GWD courses at various locations.
Operations Supervisor (6/1992 – 2/2000)
Led a crew in the safe and efficient operation of several plants within the refinery. Responsible for the day-to-day operations, as well as the development and competency of those reporting to me. Provided performance reviews, career guidance, and disciplinary action when necessary. Responsible to provide direction, opportunity, and motivation to ensure company objectives, goals, and policies were understood and realized.
Operator (1/1980 – 6/1992)
Responsible for the day-to-day operation of various plants in the refinery. Duties included maintaining on-test products, adjusting plant variables as needed, plant start-up and shutdown, environmental surveillance, and product testing. Spent 3 ½ years as Division Trainer, providing

plant training for new operators and peers; was also responsible for development of plant procedures and training materials.

Education

A.A./Business Administration
Bakersfield College. Bakersfield, CA

B.S./Business Administration – Management (Concentration in Human Resources)
California State University, Bakersfield. Bakersfield, CA

MBA (Concentration in Human Resources)
California State University, Fresno. Fresno, CA

A.A./History
Central New Mexico College, Albuquerque, NM

CITY OF RIO RANCHO
COVER PAGE

Legislation Item: R115

AGENDA DATE:
September 28, 2023

DEPARTMENT:
Development Services

SUBJECT:
R115, Resolution Adopting an Affordable Housing Plan

BACKGROUND AND ANALYSIS:
Funding was allocated in 2021 to develop an Affordable Housing Study in response to growing concerns surrounding rising home sales prices and rents and lack of options. The National Development Council (NDC) was chosen as the consultant to help identify local housing needs as well as the tools and strategies that may be used to meet those needs.

A steering committee was created with members from the local business-owner community, realtors, developers, and non-profit affordable housing entities. A full list of the members is below. Rada Moss, from the Capital Improvements Plan Citizen's Advisory Committee (CIPCAC), served as the committee Chair, and Gordon Moore, of Lectrosonics, served as the committee Vice-Chair. Four steering committee meetings were held in June, July, August, and November of 2022. The committee guided the development and deployment of the Affordable Housing Survey.

Name:	Organization:
Gordon Moore (Vice-Chair)	Lectrosonics
Rada Moss (Chair)	CIPCAC
Josh Rogers	Titan Development
Julian Garza	McDonald's franchise owner
Crystal Sanchez	City of Rio Rancho - Senior Services Division Manager
Estella Weitz	Haven House
Fred Shepherd	Sandoval Economic Alliance
Sal Maniaci	Rio Rancho Public Schools
Cynthia Meister	North Marq (Realty)
Nina Cooper	Homewise
Crystal Conine	WaFd
Miriam Hicks	Greater Albuquerque Housing Partnership (GAHP)
Tony Sylvester	Mid-Region Council of Governments (Dial a Ride)

NDC conducted a survey of Rio Rancho residents in June 2022 to gather information on the public's perception on housing needs within the City. The survey was posted on the City website and paper copies were made available at the Broadmoor and Meadowlark Senior Centers and the Esther

Bone and Loma Colorado Libraries. The survey was also available in Spanish. In total, the survey garnered 674 responses. The overwhelming response from the survey data was that residents felt that access to affordable housing is a problem in Rio Rancho (75% of survey respondents agreed or strongly agreed).

Four public forum meetings were held in late September and early October 2022 to further gather citizen input. Three meetings were held in-person at the Broadmoor Senior Center, Meadowlark Senior Center, and Star Heights Recreation Center; while the fourth meeting was held online via Zoom. Gordon Moore and Rada Moss lead the conversations at these public forums along with other steering committee members. The four meetings garnered 64 attendants in total; sign-in sheets for the meetings, including dates, are included as an attachment. Sentiments expressed at the public forum meetings echoed the survey data, with citizens explaining their personal difficulties finding affordable housing in Rio Rancho. In particular, housing for seniors, those on fixed-incomes, young families, and single-income professionals just getting into the workforce was described as limited.

The needs assessment was collated into the Affordable Housing Study, which was introduced at the Governing Body work session on August 15, 2023. From the study, the Affordable Housing Plan was drafted.

This Plan has gone through a review by the New Mexico Mortgage Finance Authority (MFA) ensuring that it meets the requirements of the Affordable Housing Act. The requirements (New Mexico Mortgage Finance Authority Affordable Housing Act Rules) are included as an attachment. Section 4.1 of the rules speaks to specific requirements for the Affordable Housing plan component:

4.1 An Affordable Housing Plan.
An affordable housing plan or housing elements in a general plan of a county or municipality shall contain the following elements when feasible and data is readily available.

A. Community and housing profile, which shall include:
1) demographic characteristics, such as race and ethnicity, income, age, employment and population trends;
2) household characteristics including the number of existing households and housing units by tenure; and
3) housing market analysis including housing costs, rents, vacancy rates, and sales prices.

The Plan describes the demographics, economic characteristics, and housing costs of the City of Rio Rancho. The majority of homes in Rio Rancho are detached single-family and occupied by the owner. The average household median income for the City is $76,096 and the population is aging.

B. Housing needs assessment that:
1) describes existing needs, such as the number of households with a cost burden for housing, living in overcrowded situations, or with special needs,
including disabilities, elderly, headed by a female, homeless, and other identified needs;
2) identifies the gap between market rate housing costs and incomes, by area median income (AMI); and
3) identifies the projected needs which shall include the number of new units needed by tenure, type, and cost to meet current needs and to accommodate expected population growth and job generation and a determination of the number of homes to be created through new construction, rehabilitation and preservation.

The Plan offers a housing needs assessment that considers renters, owners, disabled persons, homeless persons, as well as the gap between market rate housing costs and incomes, and identifies future housing needs. The average cost of homes and rent in Rio Rancho has increased.

C. Land use and policy review that includes:
1) a general analysis of land use parcels including zoning, size and existing use, environmental constraints, availability of infrastructure;
2) an evaluation of suitability, availability and realistic development capacity of developable sites, including appropriate zoning for special needs
housing, such as multi-family rental, mobile homes, transitional and homeless shelters;
3) identification of constraints, such as land use controls, codes and enforcement, fees and exactions, processing and permit procedures, on/off site improvements, reasonable accommodation, availability of financing, land availability and prices, construction costs, local capacity to assist, finance and manage construction, provide housing support services and administer housing funds and programs; and
4) minimum density calculations targeted to affordable housing populations.

The Plan offers a land use policy review and considers restraints of current regulations. Specifically there is a need to increase the land that is zoned for multi-family development.

D. Goals, policies and quantifiable objectives that include:
1) an estimate of the number and percentage of unit increases, by income levels, to be constructed, rehabilitated or conserved over a set period of
time;
2) identification of needed programs and agencies responsible for constructing new housing stock, improving existing housing stock, promoting access and equal opportunity to affordable housing, and increasing the capacity of residents to lower their housing cost burden, build long term equity, stabilize their housing situations through homebuyer training, rental vouchers, assistance to persons with disabilities, and other capacity assistance as deemed appropriate and necessary;
3) plan to promote potential regulatory concessions and incentives for removing or mitigating governmental and non-governmental constraints to
development, rehabilitation or conservation of affordable housing;
4) identification of potential sources of federal, state and local financing and subsidies to support affordable housing; and
5) a thorough consideration of related issues, such as public participation, job/housing mix, consistency with existing planning and land use policy,
protection of ecological resources, promotion of efficient development patterns and green building.

The Plan identifies key opportunities for Rio Rancho to implement strategies that address the conditions that impact the availability and affordability of housing in the City, including:

- Preserve existing single-family housing that is occupied by current City residents by coupling code enforcement activity with resources that help homeowners repair and maintain their homes. For example, cities across the nation offer 0%, 5-year forgivable loans to qualifying (low- to moderate- income) homeowners to make necessary repairs. The loan agreement comes with covenants restricting the timeliness of sale of the home and sharing of equity proceeds from a sale of the home.

- Preserve existing renter-occupied single-family housing by developing a single-family rental registration and inspection ordinance. For example, a rental registration and inspection ordinance could help the City identify the location and condition of single-family rental properties. Thereafter, the City could design an incentive program to encourage landlords to repair and maintain their properties. For example, cities across the nation offer 0%, 5-year forgivable loans to qualifying landlords to make necessary repairs. The loan agreement comes with covenants restricting the rent charged (keeping it affordable), timeliness of sale of the home and sharing of equity proceeds from a sale of the home. A program like this may preserve existing affordable renter occupied single-family housing and reduce naturally occurring affordable housing.

- Spur development of housing on vacant or underutilized parcels by creating a land swap/land banking program that allows the City to sell City-owned land to developers who agree to build housing that is affordable to families earning a range of incomes.

- Encourage development of “starter homes” and other forms of affordable housing by providing public financing to support housing development.

- Add additional housing units to existing neighborhoods by helping homeowners navigate the process of building a backyard casita or a garage conversion.

- Speed up housing development by removing unnecessary regulatory barriers to developing a range of housing types and encourage more new housing development by modifying land use regulations so that more dense forms of housing can be developed throughout the City.

Criteria is satisfied.

Once the Plan is adopted by Resolution, an Ordinance will be brought forward in November, for the first reading, to create the ability for the City to consider public-private partnerships for affordable housing activities by creating an exception to the anti-donation clause in the New Mexico Constitution. The Adopted Plan and Ordinance will be taken back to the NM MFA for final acceptance at the beginning of 2024.

IMPACT:

Staff recommend the Governing Body adopt the Affordable Housing Plan via Resolution, subject to the following findings of fact and conditions of approval:

GENERAL FINDINGS OF FACT

1. The applicant has the authority to create and adopt an Affordable Housing Plan.

ALTERNATIVES:

1. The Governing Body may approve the request.
2. The Governing Body may deny the request.
3. The Governing Body may modify the request and approve such modifications.
4. The Governing Body may continue the public hearing to request additional information or to consider testimony provided at the public hearing.

DEPARTMENT RECOMMENDATION:

Staff recommends the Governing Body adopt the Affordable Housing Plan.

ATTACHMENT: Resolution
ATTACHMENT: Rio_Rancho_Affordable_Housing_Plan_09152023.pdf
ATTACHMENT: AHA_Rules_Amended_Dec2015.pdf
ATTACHMENT: Public Forum Meeting Attendance.pdf
ATTACHMENT: Legal Ad.pdf
ATTACHMENT: AHA_Plan_Approval_Letter.pdf

CITY OF RIO RANCHO
RESOLUTION

RESOLUTION NO. **ENACTMENT NO.**

RESOLUTION ADOPTING AN AFFORDABLE HOUSING PLAN

WHEREAS: the City of Rio Rancho ("City') is subject to the New Mexico Affordable Housing Act (NMSA 1978, §.6–27-1 et seq.) and New Mexico Mortgage Finance Authority Act (NMSA 1978 § 58-18-1 et seq.); and

WHEREAS: the Affordable Housing Act identifies specific requirements including the adoption of an Affordable Housing Plan and implements the provisions of Subsections E and F of §14 of Article 9 of the New Mexico Constitution; and

WHEREAS: the City, in conjunction with the New Mexico Mortgage Finance Authority, has developed a plan for adoption; and

WHEREAS: the New Mexico Mortgage Finance Authority has reviewed and approved of the form and terms of the City's plan prior to final adoption hereof.

NOW THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF RIO RANCHO:

Section 1. The Governing Body hereby approves and adopts the Affordable Housing Plan, attached hereto.

Section 2. This Resolution shall take effect immediately upon adoption.

ADOPTED THIS _____DAY OF _____, 2023.

_____
Greggory D. Hull, Mayor

ATTEST:

_____
Rebecca A. Martinez, City Clerk
(SEAL)

City of Rio Rancho

2023 Affordable Housing Plan

Prepared by the City of Rio Rancho
with the assistance of
the National Development Council

Table of Contents

Executive Summary 2

Overview of the New Mexico Affordable Housing Act's Requirements 4

Community, Economic, and Housing Profile 5

- Demographic Characteristics 5
- Economic Characteristics 9
- Housing Characteristics 15

LAND USE POLICY REVIEW 22

Housing Needs Assessment 31

- Cost Burdens – Renters 31
- Cost Burdens – Owners 34
- Disabled Persons 36
- Homeless Persons 36

Gap Between Market Rate Housing Costs and Incomes 39

- Multifamily Rental Units 41
- For-Sale Housing 41

Future Housing Needs 44

Development Costs 30

Home Rehabilitation and Preservation Needs 53

Goals, Policies and Quantifiable Objectives 55

- Couple Code Enforcement with Assistance to Homeowners and Landlords 57
- Develop Land Swap/Land Banking Programs and Encourage Charitable Donations to Qualified Housing Developments 60
- Support the Development of New Affordable Housing Units and the Rehabilitation of Existing Units. 61
- Remove Regulatory Barriers to the Development of Affordable Housing 62
- Modify Land Use Regulations to Allow for the Development of More Affordable Housing Units 62
- Improve Neighborhood Conditions in Order to Spur Private Investment in Housing 63

Executive Summary

The City of Rio Rancho ("Rio Rancho") is a vibrant and growing community situated northwest of the City of Albuquerque in New Mexico. Over the past 10 years, the city's population has grown 19 percent from 87,521 residents in 2010 to 104,046 residents in 2020. Many residents work in high-paying industries, including health care, finance and insurance, and other professional services. Rio Rancho residents bring home paychecks that are much higher than the statewide average - the city's median household income is $76,096 compared to the statewide median household income of $53,992.

Rio Rancho's rapid growth in population has not come without consequences. While Rio Rancho was once known as a community where a young family could purchase a "starter home" or a retiree could purchase a modest home in a warm climate, the city's housing market no longer offers ample affordable housing options. Over the past five years, homes sales prices have risen dramatically from a median sales price of $192,000 in 2018 to $330,000 in early 2023. Average asking rents have also risen at a steady pace from $992 in 2018 to $1,404 in early 2023.

Due to the rapid increase in home sales prices and rents, city residents have begun to voice concerns about housing affordability. In a citywide survey conducted in 2022, 74% of respondents agreed or strongly agreed with the statement that "finding housing that is affordable is a problem in the City of Rio Rancho." Survey respondents recognized that the city's economy benefits when housing is affordable for both low-income and higher-income earners. Respondents indicated that schools benefit when students have stable housing and families benefit when they can spend more of their income on education, health care, and childcare. Respondents also agreed that the local tax base improves when corporations choose to relocate or expand in Rio Rancho because they know that their employees will be able to find housing that is affordable.

Therefore, in late 2021, Rio Rancho's city leaders initiated the process to develop an Affordable Housing Study ("Study") in order to identify local housing needs and the tools and strategies that may be used to meet those needs. City leaders decided to develop the Study prior to developing an Affordable Housing Plan ("Plan") in accordance with the State of New Mexico's Affordable Housing Act. A Plan, approved by the New Mexico Mortgage Finance Authority (MFA) and the Affordable Housing Act, permits public-private partnerships for affordable housing activities by creating an exception to the anti-donation clause in the New Mexico constitution. Once this Plan is accepted by the State, Rio Rancho will have the ability to use a combination of public and private resources for affordable housing acquisition, development, financing, maintenance, and operations. Adopting an Affordable Housing Plan is a strategy for incentivizing the production and preservation of affordable housing in the City of Rio Rancho

<u>Benefits of Complying with the New Mexico Affordable Housing Act's Requirements</u>

Under the Act, entities that are authorized to make donations to affordable housing include: the State of NM, counties, municipalities, and school districts. Allowable donations include land for affordable housing construction, an existing building for conversion or renovation into affordable housing, cost of infrastructure necessary to support affordable housing projects, waiving of application costs, fees, and permits related to the acquisition or installation of infrastructure, the cost of acquisition, development, construction, financing, operating or owning affordable housing. The donations reduce the cost of developing - they incentivize the production and preservation of affordable housing. With reduced costs, multi-family housing becomes more affordable (rents are lower) to low- and moderate-income households.

Entities eligible to receive donations (qualified grantees) include public entities, non-profit organizations, and private enterprises. Qualified grantees must be entities whose mission is to provide affordable housing.

The Study set the table for a Plan that complies with the requirements of the New Mexico Affordable Housing Act. In other words, the Study is a draft affordable housing plan. The Governing Body of the City of Rio Rancho reviewed and commented on the study on 8/15/23. The Study was submitted to the MFA for review. MFA approved the Study as an Affordable Housing Plan ("Plan") on 8/23/23. The Affordable Housing Plan guides the development, by the City, of a draft affordable housing ordinance. Only after the draft ordinance is approved by MFA the City pass an Affordable Housing Ordinance.

The Plan identifies several conditions that impact the availability and affordability of housing in the city, including:

- **The majority of Rio Rancho's existing housing inventory consists of single-family detached homes** and over 75% of all homes have three or more bedrooms. The lack of housing types that offer smaller square footage on smaller parcels of land – duplexes, townhomes, and triplexes or even larger apartment buildings – means that many potential renters and homebuyers are unable to afford to move into the city.
- **The nature of Rio Rancho's early (pre-incorporation) development is negatively impacting its potential to develop new housing units in a cost-effective manner.** Specifically, it can be prohibitively expensive for developers to construct infill housing in Rio Rancho since many subdivisions are not supported by adequate infrastructure. Additionally, in can be difficult for subdivision developers to acquire a sufficient amount of land, since fewer than 100 parcels of consolidated undeveloped land consisting of more than 10 acres are available in the city.
- **Rio Rancho's original inventory of housing stock is beginning to show its age.** Over half of the city's housing inventory was constructed before the year 2000. Many of these original "starter homes" were constructed poorly and are beginning to experience significant repair needs.

The Plan also identifies numerous opportunities for Rio Rancho to implement strategies that address the conditions that impact the availability and affordability of housing in the city, including:

- **Preserve existing single-family housing that is occupied by current city residents** by coupling code enforcement activity with resources that help homeowners repair and maintain their homes.
- **Preserve existing renter-occupied single-family housing** by developing a single-family rental registration and inspection ordinance. A rental registration and inspection ordinance will help the city identify the location and condition of single-family rental properties. Thereafter, the city can design an incentive program to encourage landlords to repair and maintain their properties.
- **Spur development of housing on vacant or underutilized parcels** by creating a land swap /land banking program that allows the city to sell city-owned land to developers who agree to build housing that is affordable to families earning a range of incomes.
- **Encourage development of "starter homes"** and other forms of affordable housing by providing public financing to support housing development.
- **Add additional housing units to existing neighborhoods** by helping homeowners navigate the process of building a backyard casita or a garage conversion.

- **Speed up housing development by removing unnecessary regulatory barriers** to developing a range of housing types and encourage more new housing development by modifying land use regulations so that more dense forms of housing can be developed throughout the city.

Overview of the New Mexico Affordable Housing Act's Requirements

The New Mexico Housing Finance Authority (MFA) is the statewide entity responsible for accepting, reviewing, and approving Affordable Housing Plans developed by local communities. In order for a community's plan to be accepted, it must meet certain requirements. The following are the minimum elements required for a local housing plan to be compliant the with Affordable Housing Act:

1. **Community and Housing Profile** – Include demographic characteristics, race/ethnicity, income, age, employment, population trends, number of existing households, housing units by tenure, housing costs, rents, vacancy rates, and sales prices.
2. **Housing Needs Assessment** – Include a description of needs such as: number of households that are housing cost-burdened, overcrowded households, persons with special needs, housing for the elderly, female-headed households, and homelessness. Identify the gap between market rate housing costs and incomes, by area median income (AMI). Project needs, including: number of new units needed by tenure, type and cost to meet current needs and to accommodate expected population growth and job generation, determination of number of homes to be created through new construction, and number of homes in need of rehabilitation and preservation.
3. **Land Use and Policy Review** – Include a general analysis of land use parcels including zoning, size and existing use, environmental constraints, availability of infrastructure. Evaluate the suitability, availability, and realistic development capacity of developable sites, including appropriate zoning for special needs housing, such as multi-family rental, mobile homes, transitional and homeless shelters. Identify constraints, such as land use controls; codes and enforcement; fees and exactions; processing and permit procedures; on/off site improvements; reasonable accommodation; availability of financing; land availability and prices; construction costs; and local capacity to assist, finance, and manage construction; provide housing support services; and administer housing funds and programs. Include minimum density calculations targeted to affordable housing populations.
4. **Goals, Policies, and Quantifiable Objectives** – Include an estimate of the number and percentage of unit increases, by income levels, to be constructed, rehabilitated or conserved over a set period of time. Identify needed programs and agencies responsible for constructing new housing stock; improving existing housing stock; promoting access and equal opportunity to affordable housing; and increasing capacity of residents to lower their housing cost burden; build long term equity; and stabilize their housing situations through home-buyer training, rental vouchers, assistance to persons with disabilities, and other capacity assistance. Include a plan to promote potential regulatory concessions and incentives for removing or mitigating government and non-government constraints to development, rehabilitation or conservation of affordable housing. Identify potential sources of federal, state, and local financing and subsidies to support affordable housing. Include a discussion of related issues, such as public participation, job/housing mix, consistency with existing planning and land use policy, protection of ecological resources, and promotion of efficient development patterns and green building.

Community, Economic, and Housing Profile

Brief History of Development of Rio Rancho

In the early 1960s, Rio Rancho Estates, Inc. (hereinafter, "AMREP") purchased 55,000 acres of land on the outskirts of Albuquerque, originally called Rio Rancho Estates. AMREP subdivided the property into tens of thousands of lots and marketed the area to residents in the Midwest and eastern states using mass marketing and mail order techniques. In total, AMREP sold 77,000 lots to 40,000 buyers at $795 for one half acre and $1,495 for one acre, while retaining over 25 percent of the acreage for future development.

When home building began in 1962, many of the first residents were middle-income retirees. In 1971, AMREP purchased and platted an additional 35,000 acres. Rio Rancho Estates was now 92,000 acres and larger, geographically, than the city of Albuquerque. By 1977, the population had grown to 5,000.

In 1981, Rio Rancho was incorporated, and its population had reached 10,000. Several years later, a new financing program offering low interest home loans changed Rio Rancho from a retirement community to a community attracting young families in the form of first-time homebuyers.

Today, Rio Rancho is the most populous and only city in Sandoval County, which is part of the expansive Albuquerque metropolitan area of New Mexico. A small portion of the city extends into northern Bernalillo County. It is the third-largest city in New Mexico, and one of the most rapidly growing.

Demographic Characteristics[1]

Rio Rancho has an estimated total population of 105,839 as of 2021. The total population within Rio Rancho increased 20.8% (16,920 residents) from the 2010 Census. Rio Rancho grew faster than both Sandoval County (13.13%) and the State of New Mexico (2.83%) between 2010 and 2020.

Rio Rancho's population is evenly divided by gender, with 50.1% of the population identifying as female and 49.9% identifying as male. Rio Rancho has a higher portion of residents who are military veterans (11.1%) than the State (8.8%). Disabled residents comprise 14% of the city's population whereas 16% of the State's population has one or more disabilities.

Rio Rancho is a stable community with most residents remaining is the same home year over year. In the 2020 Census, 88% of Rio Rancho residents reported that they lived in the same house in the past year whereas only 12% of residents lived in a different house 1 year ago. Of the latter, an estimated 5.4% came from Sandoval County and 6.3% from a different county. Of these different county migrants, 3.6% moved from a different county within New Mexico, 2.7% moved from a different State, and less than 1% moved from a foreign country.

[1] This Studyuses 2010 and 2020 U.S. Census data as well as 1-year and 5-year American Community Survey data to review changes to the population, race, ethnicity, age, and educational attainment of the residents of Rio Rancho.

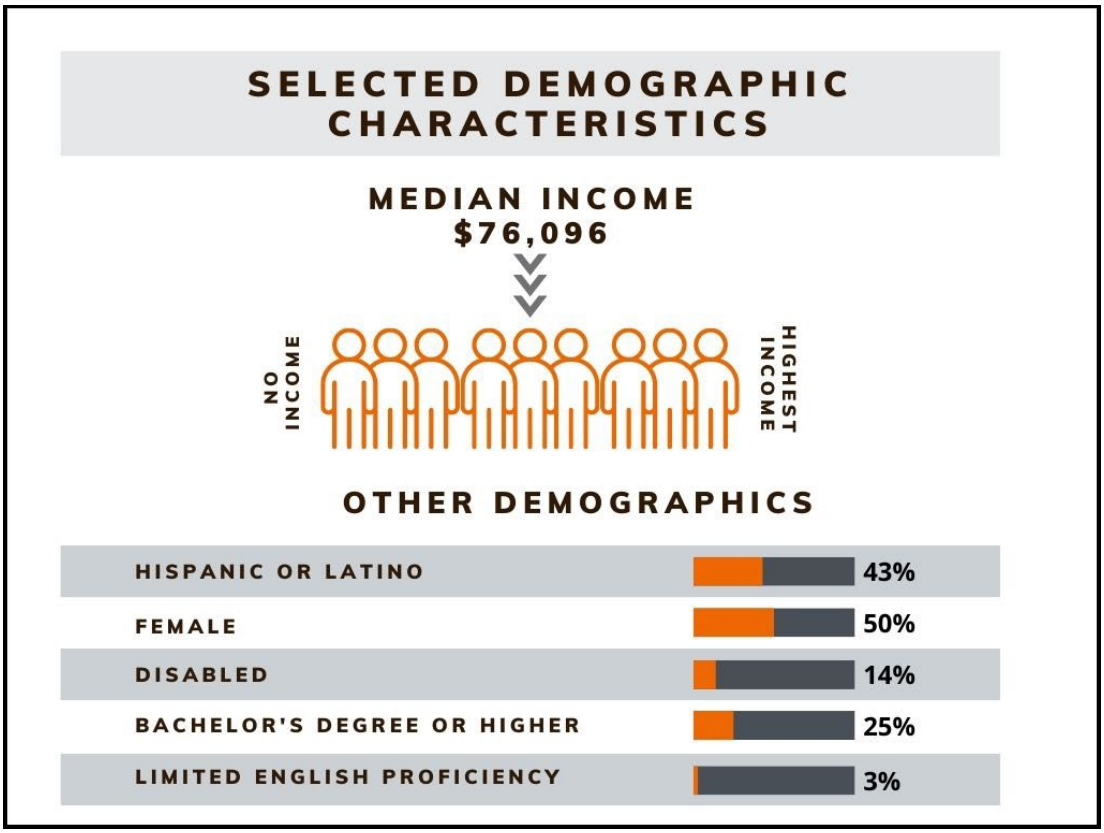


Figure 1: Selected Demographic Characteristics of Residents

Additional demographic information is as follows:

Race/ethnicity

In 2021, 42.5% of the city's population identified as Hispanic or Latino and 57.5% identified as Not Hispanic or Latino.

Age

The following table shows the age breakdown of the Rio Rancho population for 2010 and 2021:

Age Cohort	2010	% of Total	2021	% of Total	% Change
Under Age 5	6,157	7%	5,262	5%	-15%
5 to 19	21,637	25%	22,617	21%	5%
20 to 49	34,742	39%	40,854	39%	18%
50 to 64	15,392	17%	19,336	18%	26%
65 and over	10,027	11%	17,770	17%	77%
Total	87,955	100%	105839	100%	20%
Median Age	36		39		

Figure 2: Trends in City Population by Age Cohorts

The data shows Rio Rancho experienced population growth in each age cohort except for the youngest residents (*Under Age 5*). A 15% decrease in this cohort has been more than replaced by population increases in all other age cohorts.

Rio Rancho's older population has grown at a higher rate than its younger population. For example, the population of residents aged *65 and over* grew by 77% over the past decade, while the population aged *5 to 19* only grew at 5%.

Older residents now make up a larger percentage of the overall population. Whereas residents aged *65 and over* comprised 11% of the city's population in 2010, they now comprise 17% of the city's population. Age cohorts *20 to 49* and *50 to 64* remained stable as percentages of the total Rio Rancho population. If these population growth trends hold, Rio Rancho's population is likely to resemble what it was in the 1960s and 1970s – a retirement community. The following graphic depicts the population trends for all age cohorts from 2010 to 2020.

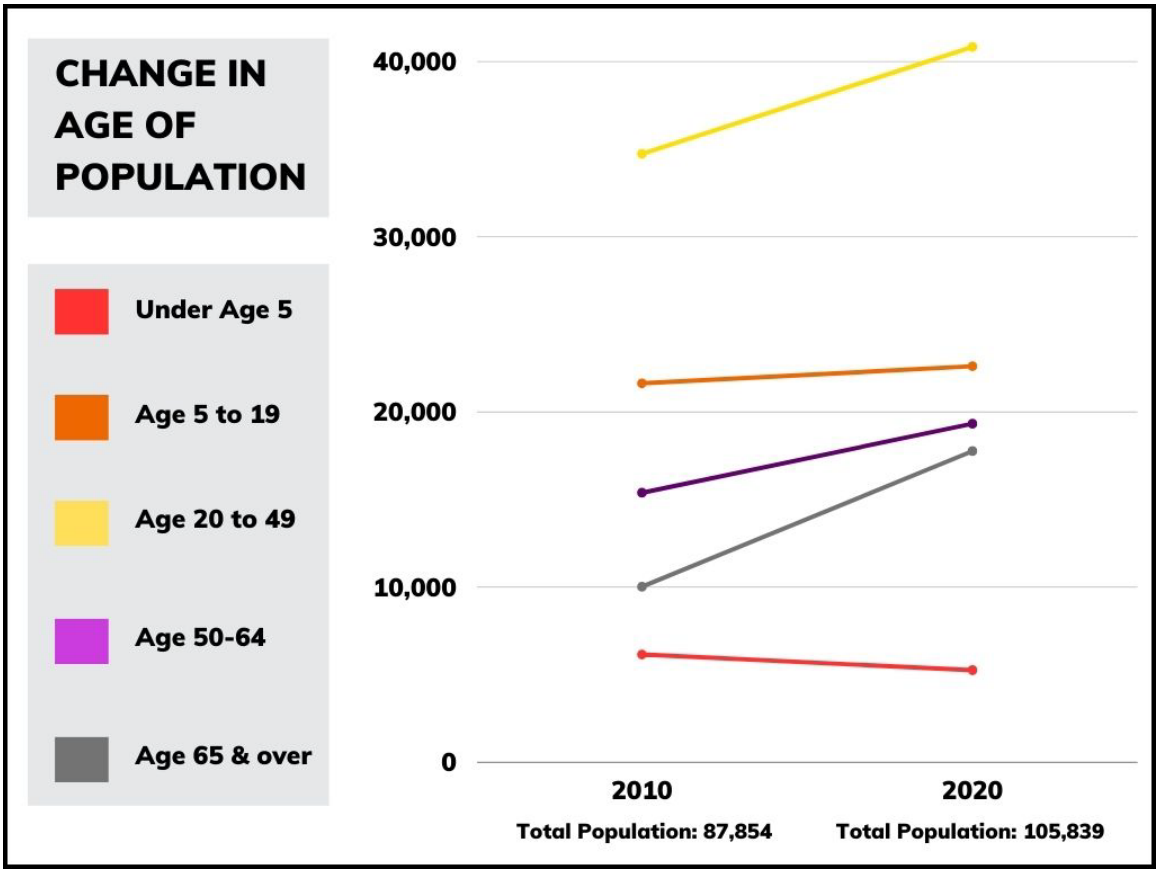


Figure 3: Trends in City Population by Age Cohorts (Visualization)

A future where a significant proportion of City residents are on fixed incomes and empty nesters will impact service needs, housing needs and the tax base. For example, older residents may need accessibility improvements to remain in their homes. Additionally, the city's property tax base will be impacted if more homeowners qualify for the state's property tax freeze that is offered to low-income, elderly homeowners.

School Enrollment

School enrollment in Rio Rancho is shown in the following table:

While total school enrollment has increased 17% between 2010 and 2020, enrollment at nursery/preschool and kindergarten has dropped significantly (-12%). This enrollment decline for the youngest children aligns with the decline in total population under age 5. This very young population has been replaced by higher enrollment in grades 1-12 and college or graduate school.

School Enrollment	2010	2020	Change from 2010 to 2020 (%)
Population 3 years or older enrolled in school	23,667	27,751	17%
Nursery/Pre-school	1,583	1,387	-12%
Kindergarten	1,415	1,236	-12%
Grades 1 – 8	9,967	10,982	10%
Grades 9 – 12	5,404	6,202	15%
College or Grad School	5,298	7,944	50%

Figure 4: Trends in School Enrollment

Looking deeper into the numbers in school enrollment, the estimated decline of 375 students in Pre-school and Kindergarten has been replaced by an estimated increase in enrollment in Grades 1-12 of 1,813 students over the past decade. This is likely correlated to an aging of the population in Rio Rancho over the past decade. An older, in-place population has older children in higher grades and in post- secondary education.

An alternative (or additional factor) impacting school enrollment may be that Rio Rancho is attractive to households with children in Grades 1-12. Young families may rent or own a home in Albuquerque when their first child is young and then move into Rio Rancho when their child reaches school age. Families with older children may desire to live in neighborhoods that have ample parking for teenaged drivers and that offer public or private amenities such as basketball courts, skate parks, and libraries with maker spaces and study rooms. In comparison, families with younger children may seek out neighborhoods close to public playgrounds and aquatic centers.

Households and Families

Difference between definition of "household" and "family" – Whereas households refer to one person or group of people living in a housing unit, families are groups of two or more related people who live together. Generally, households that do not contain a family are made up of unrelated people living together (e.g., roommates) or people living alone. While it is possible for two families to share a household, the difference between the number of households and the number of families in an area shows, approximately, the number of non-family households in community.

The table below shows the breakdown of households, families, and non-family households in Rio Rancho in 2010 and 2021.

	2010	2021	% Change
Households	32,232	40,013	24%
Non-Family Households	8,964	10,946	6%
Families	23,270	29,067	18%

Figure 5: Trends in Household Composition

The composition of households in Rio Rancho is as follows:

- 1-person household 8,671 (22% of total population)
- 2-person household 12,721 (31% of total population)
- 3-person household 5,822 (15% of total population)
- 4 or more-person household 12,799 (32% of total population)

As will be discussed in the Housing Needs Assessment, there is a large mismatch between the types of households that live in Rio Rancho and the existing housing inventory.

Economic Characteristics

Household Income

Households in Rio Rancho have significantly higher incomes when compared to incomes throughout the State of New Mexico. According to the most recent census data, the median household income for Rio Rancho rose from $53,998 in 2010 to $76,096 in 2021. For comparative purposes, the statewide median household income rose from $42,090 in 2010 to $53,992 in 2021. Thus, the median household income has grown 40% in Rio Rancho over the past decade whereas it has only grown 28% at the statewide level.

Approximately 49% of all households in Rio Rancho had an annual income of less than $75,000 per year. This is improved from 67% of all Rio Rancho households having less than $75,000 annual income per year in 2010. The number of households in Rio Rancho with annual incomes of less than $75,000 per year in 2021 (49%) is considerably less than the same statistic of 63% all households in the state. Rio Rancho also has a significant share of higher-income households; specifically, 36% of all households in Rio Rancho had annual incomes of $100,000 or more in 2021. In 2010, only 20% of all households had annual incomes of $100,000 or more.

Family Income

The median family income for the City of Rio Rancho rose from $60,123 in 2010 to $83,767 in 2021. For comparative purposes, the statewide median family income was $62,611 per the 2020 Census. Families tend to have higher incomes than households because households may be composed of a single person earning one wage (or receiving public benefits), whereas a family necessarily includes at least two people, both of whom may be wage earners.

The Census also disaggregates Rio Rancho median incomes by the following household and family types:

- Households = $76,096
- Families = $83,767

- Married couple families = $97,280
- Nonfamily households - $50,612

Source of Income

Households have incomes of varying amounts and from different sources. Sources of income include earnings (defined as wages from employment or self-employment), retirement and investments, and social security benefits. The table below shows estimated sources of income for Rio Rancho residents.

Source of Income	2010	% of HHs	2021	% of HHs	Change from 2010 to 2020	
					$	%
Households	32,234		40,013		7,779	24%
Median HH Income	$53,998		$76,096		$22,098	40%
Avg HH Income	$74,393		$92,818		$18,425	24%
HH with Wages/Salaries	25,046	78%	30,426	76%	5,380	21%
Avg Wage/Salary Earnings	$68,345		$86,000		$17,654	26%
HH with Retirement Income	5,963	19%	12,067	30%	7,104	119%
Avg Retirement Income	$24,972		$27,171		$2,198	8%
HH with Interest, Dividends & Rental Income (IDR)	6,769	21%	8,021	20%	1,252	18%
Avg IDR Income	$32,626		$31,057		($1,569)	-5%
HH with Social Security Income	8,059	25%	13,708	34%	5,649	70%
Avg Social Security Income	$17,367		$22,135		$4,768	27%
HH with Supplemental Security Income (SSI)	1,289	4%	1,285	3%	-4	0%
Avg SSI Income	$9,170		$8,523		($647)	-7%
HH with Cash Public Assistance (CPA)	516	2%	3,801	10%	3,285	636%
Avg CPA Income	$1,602		$6,507		$4,905	306%

Figure 6: Trends in Sources of Income

***Note** - Many households may receive income from more than a single source.*

A review of the changes in sources of income for residents of Rio Rancho over the past decade provides several interesting findings. From 2010 to 2021:

- The number of households with income from *Earnings* (wages from employment) increased, but slightly decreased as a percentage of total households in Rio Rancho from 78% to 76%.
- The number of households with income from *Retirement* more than doubled and increased as a percentage of total households in Rio Rancho from 19% to 30%.
- Similarly, the number of households with income from *Social Security* increased in total numbers and as a percentage of total households in Rio Rancho from 25% to 34%.
- The number of households with income from *Interest, Dividends and Rental Income* (IDR) grew at a lower rate than other forms of income and remained stable as a percentage of total households.
- The number of households with income from *Cash Public Assistance* increased dramatically from 516 to 3,801 and increased as a percentage of total households from 2% to 9.5%.

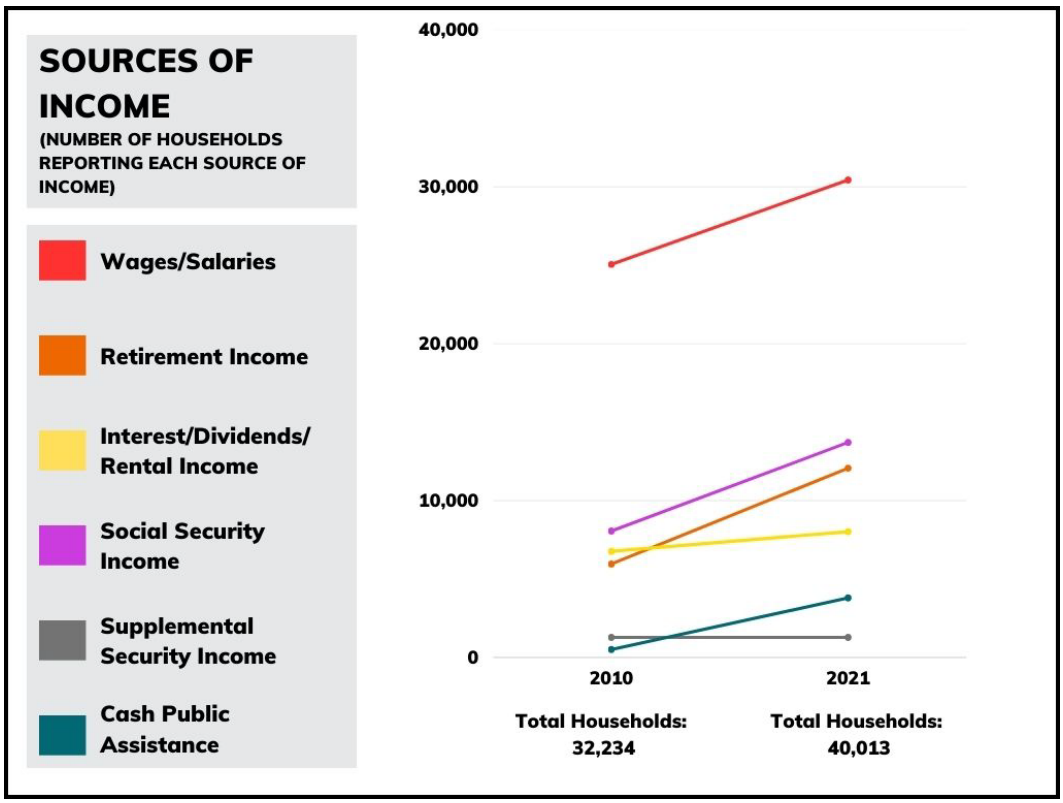


Figure 7: Trends in Sources of Income by Number of Households

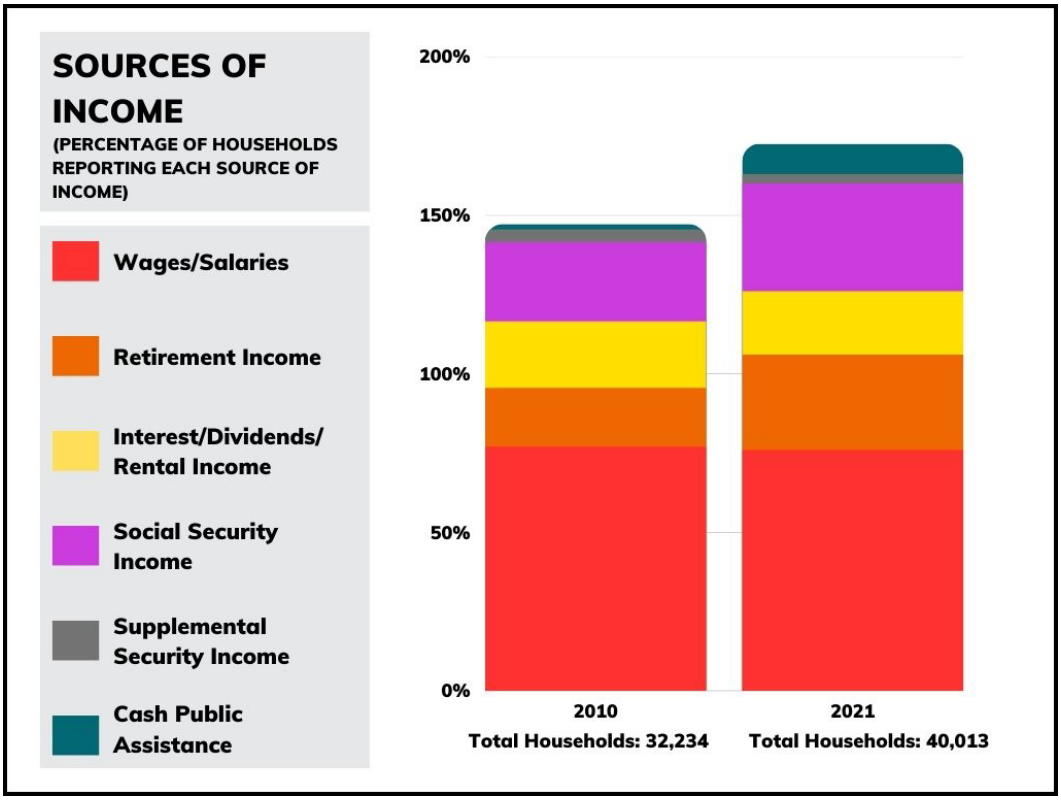


Figure 8: Trends in Sources of Income by Percentage of Households

This income trend analysis reveals that sources of household income are changing as the age demographic in Rio Rancho trends older. Thus, income from work-related activities such as *Earnings* (wages and salaries) is declining because a smaller percentage of the population is of working age. It follows that income from non-employment sources (e.g., *Retirement, Social Security, IDR* and *SSI*) are becoming increasingly influential in household budgets.

It is also important to note that non-employment sources of income such as *Retirement, Social Security* and *SSI*, are usually fixed sources of income. Households reliant on fixed incomes are more likely to be negatively impacted by rising home prices and rents (especially when these housing costs escalate rapidly). Even in instances where a homeowner on a fixed income is not impacted by rising housing prices because they have a fixed mortgage payment or no mortgage payment, they can still be negatively impacted by rising property tax bills and home maintenance expenses.

Another method of understanding income and earnings is to review tax returns for specific zip codes. An analysis of 2019 tax returns filed in the City of Rio Rancho finds:

- 30% of filers had adjusted gross income of less $25,000 per year ($12,465 average)
- 25% of filers had adjusted gross income between $25,001 and $50,000 per year ($36,549 average)
- 16% of filers had adjusted gross income between $50,001 and $75,000 per year ($61,762 average)

In summary, 71% of tax returns filed in Rio Rancho from 2019 had adjusted gross income (AGI) of less than $75,000. For this cohort, average AGI per return was $37,000. The remaining 29% of tax returns from Rio Rancho had average AGI of $184,000.

The average household size of those reporting AGI less than $75,000 was 1.7 people and for those reporting AGI of more than $75,000 was 2.70. Ninety percent of single filers and 86% of those filing as head of household reported AGI of less than $75,000. Sixty five percent of tax returns filed by those over age 60 had AGI of less than $75,000 ($37,000 average).

In summary, Rio Rancho has an increasing number of residents over age 65. They report less AGI and are more likely to be rely on unearned, fixed income (e.g. retirement, interest/dividends/rents, and social security income). Those with lower incomes are less likely to be able afford maintenance/upkeep on their homes without facing significant financial hardships.

Poverty

The federal government sets "poverty guidelines" to determine eligibility for various benefits available to low-income U.S. citizens and qualified immigrants. The poverty guidelines are based upon the number of **For families/households with more than 8 persons, add $5,140 for each additional person.* people included in a "household" and the annual income earned by all the household members. The guidelines are recalculated yearly. The following chart shows the 2023 Federal Poverty Guidelines (U.S. Dept of Health & Human Services) for the 48 contiguous states.

Household/ Family Size	Poverty Guideline
1	$14,580
2	$19,720
3	$24,860
4	$30,000
5	$35,140
6	$40,280
7	$45,240
8	$50,560

Figure 9: Poverty Guidelines by Household Size

Approximately 6% of individuals residing in Rio Rancho (6,425 residents) and 9% of households (3,801 households) live at or below the U.S. poverty level. Local poverty rates are well below statewide poverty rates where 18.4% of individuals live below the poverty level.

Notably, the *Source of Income* table on the prior page demonstrates a significant increase in population and households that receive Social Security, SSI, and/or Cash Public Assistance and are living at or below the Federal Poverty Guidelines.

Employment

Roughly 47,272 Rio Rancho residents aged 16 and over are employed. 67% of these individuals are employees of private sector businesses; 19.7% work in local, state and federal government; 7.6% work in the private not-for-profit sector; and 2.3% are self-employed in an incorporated business. Data from the Bureau of Labor Statistics shows the March 2023 unemployment rate in Rio Rancho was 3.4%, which was not significantly different than the national and statewide unemployment rate of 3.5%.

The table on the next page shows the top 10 employment industries for residents of Rio Rancho and the State. Data is shown as percent of total labor force employed in the industry as a percentage of the total available labor force.

Industry	Rio Rancho	New Mexico
Educational services, and health care and social assistance	23.3%	25.8%
Professional, scientific, and management, and administrative and waste management services	12.1%	13.5%
Finance and insurance, and real estate and rental and leasing	9.8%	4.7%
Public administration	9.4%	8.4%
Arts, entertainment, and recreation, and accommodation and food services	9.0%	9.2%
Retail trade	7.8%	10.4%
Construction	7.6%	7.2%
Manufacturing	6.4%	4.0%
Transportation and warehousing, and utilities	5.5%	5.2%
Other services, except public administration	3.3%	4.5%
Wholesale trade	3.0%	1.8%

Figure 10: Employment of Residents by Industry

The table above shows over 40% of people employed in Rio Rancho work in industries that traditionally pay low wages and/or require low skills such as: *healthcare, education and social assistance*; *retail*, and *arts, entertainment, recreation, and accommodation and food services*. It must also be noted that many employers in all industries hire at entry level positions which pay lower wages. Detailed employment and wage information can be found at the Bureau of Labor Statistics but only for the Albuquerque MSA.

Housing Characteristics

Housing Units and Vacancy

In 2010, there were 34,156 housing units located within Rio Rancho and 95% of the units were occupied. By 2021, that number had risen to 40,978 housing units and nearly 98% of the units were occupied.

The vast majority of the city's housing units are *1-unit detached units*, which are traditional, single-family homes. Only 5% of Rio Rancho's housing inventory consists of housing units located within larger apartment complexes with 10 or more units. Likewise, Rio Rancho has very few housing units located within "missing middle" housing types - such as townhomes, duplexes, and triplexes - that bridge the gap between detached single-family homes and apartment complexes.

A lack of diversity of housing types can negatively impact housing affordability. Detached single-family housing is often built on large lots, which raises the purchase price for the home since the purchase price includes both the value of the structure and the value of the land upon which the structure sits.

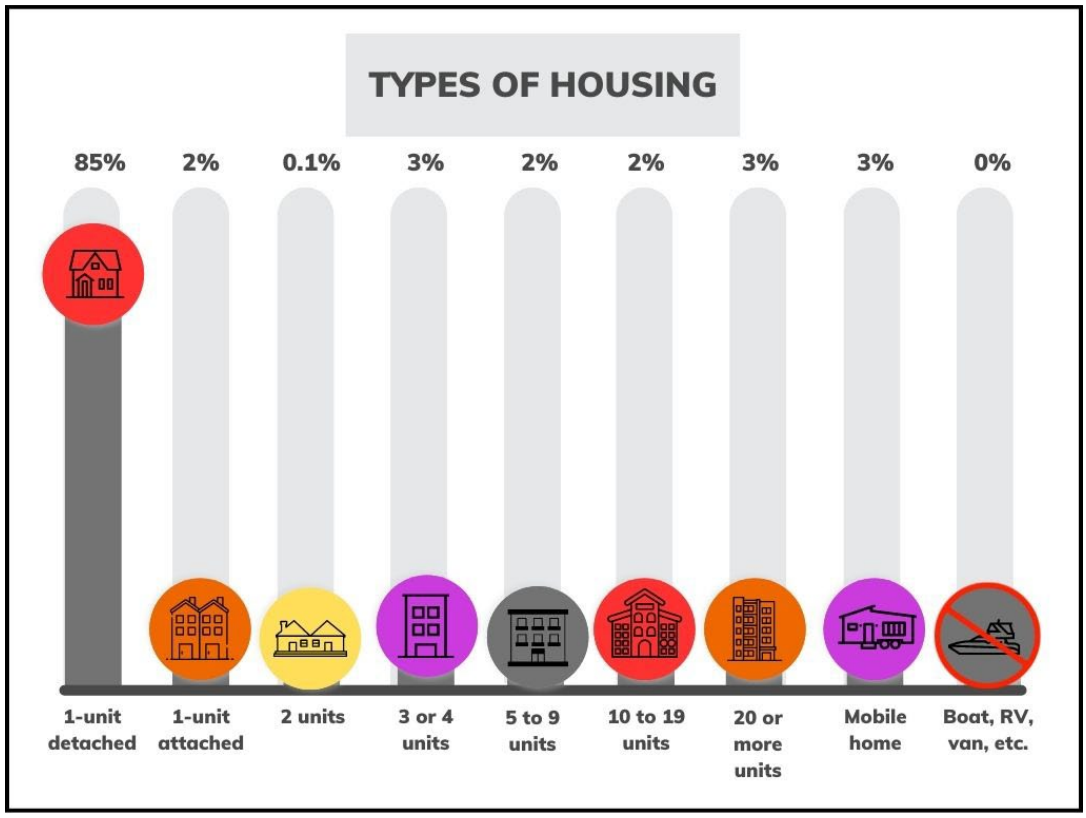


Figure 11: Types of Housing in the City

Another manner of slicing the data related to the city's housing inventory is to examine the number of bedrooms per housing unit. Because the majority of the city's housing stock consists of detached, single-family homes, it is unsurprising that housing units in Rio Rancho tend to have multiple bedrooms. In fact, over 75% of the city's housing units have three or more bedrooms.

Just as the lack of diversity of housing types negatively impacts housing affordability, so does the lack of smaller housing units. Smaller housing units – such as studio apartments and one-bedroom apartments or condominiums – often rent or sell at lower price points as compared to larger units.
Likewise, the lack of smaller units within the city may impact available housing supply (and therefore, housing affordability) by deterring aging homeowners from downsizing from their large single-family homes into a smaller apartment or condominium units.

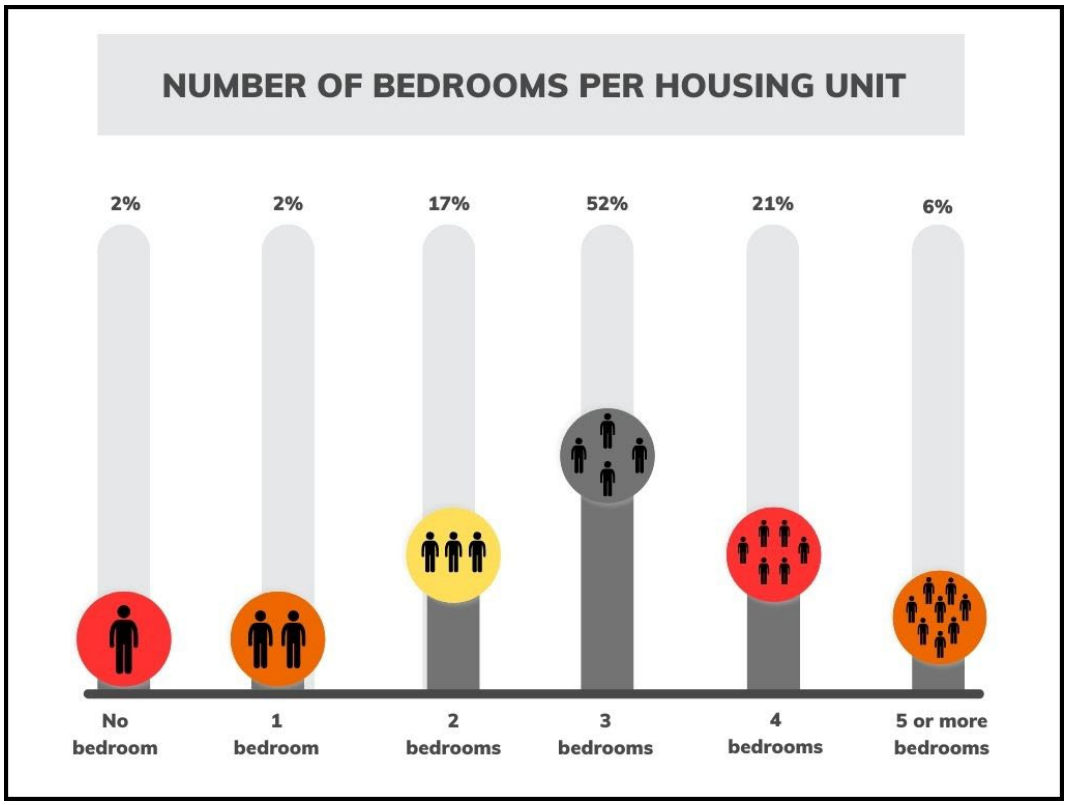


Figure 12: Number of Bedrooms Per Housing Unit

Residential Construction

According to city permit data, there have been 30,870 single family residential housing starts since 1985. Housing construction has ebbed and flowed with economic conditions. For example, Rio Rancho saw a 5-year burst of single-family construction from 2003 to 2007. During this construction period more than 1,000 homes per year were built, with a peak of 3,084 single family home permits being issued in 2005.

The 2008 Recession negatively impacted the pace of single-family home construction in Rio Rancho. By 2011, single-family housing starts had dropped to a low of 301. As the country entered a period of economic recovery beginning in 2012, housing starts in Rio Rancho steadily increased to 400-500 per year. Then, in 2020, single-family home construction began to heat up again. There were 901 single-family housing starts in 2020 and 1,054 single family housing starts in 2021.

The graphic on the next page depicts the age of the City's entire housing stock. The data correlates with the city's historical single family new construction permit data; specifically, over one quarter of the City's housing units were constructed during the building boom between 2000-2009.

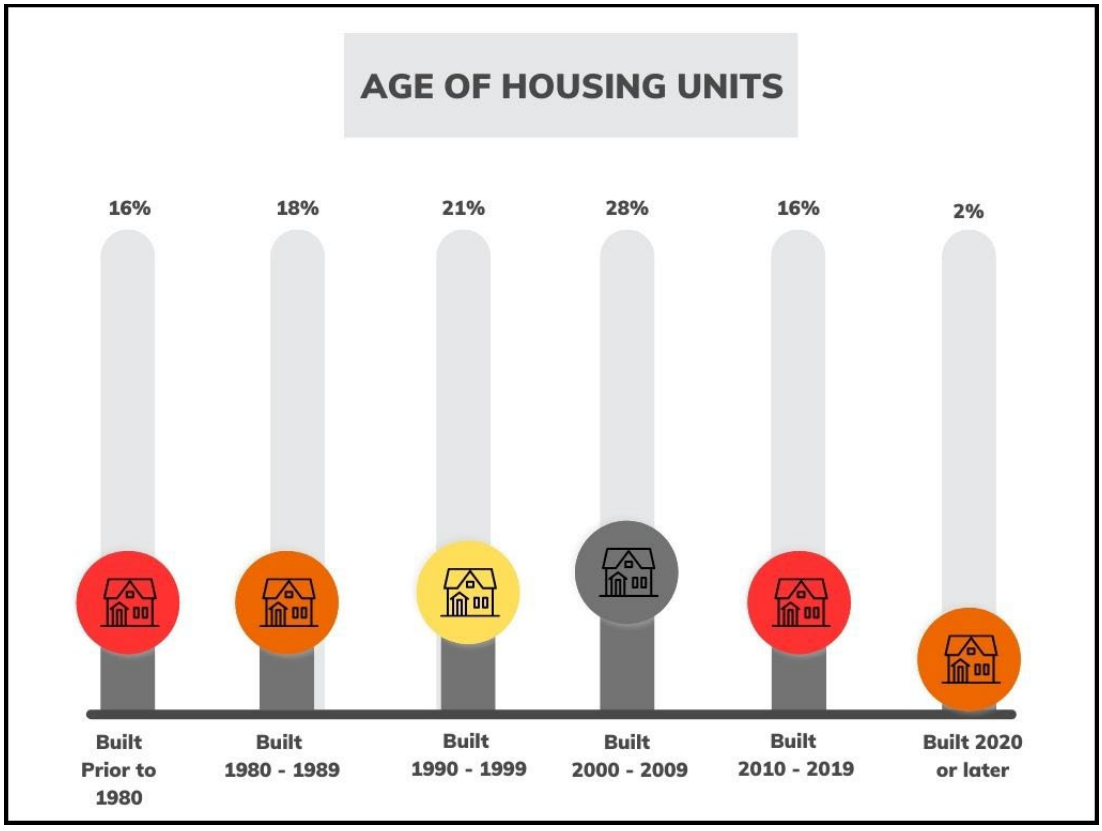


Figure 13: Age of Housing Units

Tenure, Household Size and Mobility of Residents

Rio Rancho is primarily occupied by residents who own their homes. In 2021, 81% of Rio Rancho households owned their home. The remaining 19% of housing units were occupied by renters. The percentage of owners has not changed significantly from 2010 when 79.2% of housing units were occupied by owners.

Owner-households tend to be slightly smaller than renter-households. In 2021, the average household size of owner-occupied housing units was 2.52 versus 3.14 for renter-occupied housing units. In 2010, the average household size of owner-occupied units was 2.65 versus 3.02 for renter occupied housing units.

Year Moved into Unit		
Total Occupied Housing Units	**40,013**	
	#	**%**
2020 or later	10,163	25%
2015 to 2019	12,684	32%
2010 to 2014	5,801	15%
2000 to 2009	5,361	13%
1990 to 1999	3,921	10%
1989 and earlier	2,121	5%

Figure 14: Year Resident Moved into Housing Unit

The table below displays data related to the year city residents moved into their housing unit. Nearly 75% of city residents moved into their unit since 2010, which aligns with population trend data showing that the city's population has grown by nearly 21% since 2010.

Housing Cost - Residential Housing Market Sales

An analysis from the real estate firm Redfin[2] notes that the median home price in Rio Rancho in April 2023 was $350,000 (an increase of 5.7% over April 2022). Despite its steady increase, the city's median home sale price is still 13% lower than the national average, according to Redfin. Redfins reports, "*The Rio Rancho housing market is somewhat competitive. Homes in Rio Rancho receive 2 offers on average and sell in around 35.5 days…The median sale price per square foot in Rio Rancho is $199, up 8.2% since last year.*"

Rio Rancho Housing Market Analysis											
	2018	2019	% Change	2020	% Change	2021	% Change	2022	% Change	2023 (through 4/11)	% Change
Sales Per Year	1,209	2,395	98%	2,543	6%	2,714	7%	1,940	-29%	405	
Average Days on Market	80	77		75		67		55		38	
Average List Price	$219,757	$235,693	7%	$256,467	9%	$305,582	19%	$356,737	17%	$372,331	4%
Average Closing Price	$216,125	$232,766	8%	$255,213	10%	$308,248	21%	$358,705	16%	$369,479	3%
Avg Close Price/List Price	98.3%	98.8%		99.5%		100.9%		100.6%		99.2%	
Median List Price	$195,000	$215,000	10%	$239,900	12%	$280,000	17%	$329,700	18%	$340,000	3%
Median Closing Price	$192,000	$212,500	11%	$238,000	12%	$285,000	20%	$330,000	16%	$338,330	3%
Median Close Price/List Price	98.5%	98.8%		99.2%		101.8%		100.1%		99.5%	

Figure 15: Housing Market Analysis Through April 11, 2023

The data is included in ***Figure 15***[3] provided by the local chapter of Homewise, Inc. shows similar statistics to the Redfin analysis. The *median closing price* has risen from $192,000 in 2018 to a high of $338,330 in the second quarter of 2023. Additionally, in Rio Rancho the *average days on market* has steadily declined year over year. Both data points – rising *median closing price* and decreasing *average days on market* - indicate a strong demand for housing in Rio Rancho.

Annual home sales in 2019, 2020, and 2021 were more than two times that of 2018. Likewise, the *average and median closing price* exceeded the *average and median list price* in 2021 and 2022. Buyers paid a premium to acquire a home in these years as demand exceeded supply of homes for sale. In 2021 and 2022 cash sales were 13% and 18% of all homes sales.

However, annual home sales fell 29% (774 units) between 2021 and 2022. This recent decline in home sales is likely related to rising interest rates, which has locked many existing homeowners into their

[2] https://www.redfin.com/city/16268/NM/Rio-Rancho/housing-market

[3] Data provided by Homewise,. https://homewise.org.

current home because they are unwilling to trade a 2-4% mortgage interest rate for a 6-7% interest rate. Homeowners' unwillingness to sell led to less for-sale inventory in the market. Likewise, the decline in annual sales may also indicate that homebuyers are unable to afford to purchase a home in Rio Rancho due to high mortgage interest rates and rising household expenses such as groceries and childcare.

Residents of Rio Rancho who owned their home prior to 2018 are considerably wealthier due to rising home values. Homeowner's home equity position increased $142,580 (65%) based on average closing price statistics and $141,000 (73%) based on median closing price from 2018 to 2022. Nevertheless, existing Rio Rancho homeowners' ability to move up in the housing market is constrained by high prices and high interest rates. It follows that potential Rio Rancho first-time homebuyers are still struggling to enter the home ownership market.

Housing Cost - Rents

As discussed earlier, approximately 19% of households in Rio Rancho are renters. This percentage is significantly lower than the statewide share of population that are renters, which is 32%. The share of Rio Rancho households who rent has remained fairly stable over the past decade –decreasing slightly from 19.8% in 2010 to 19% in 2021.

The share of households who rent varies substantially by age. In Rio Rancho, as of 2021, households headed by an individual aged 15-24 were the most likely to rent (51.6%) while households headed by an individual aged 65-74 were the least likely to rent (13.7%).

Moody's Analytics, a national economics research firm, tracks numerous data points related to commercial real estate, including multifamily residential real estate. According to Moody's Analytics, the City of Rio Rancho is located in the Northwest Albuquerque apartment submarket. A submarket is a distinct part of a larger market (Albuquerque) with similar properties that tend to compete against one another for tenants.

According to Moody's data as of March 31, 2023, this submarket contained 8,566 units or 21% of the metro Albuquerque's total inventory of market rate rental apartments. Moody's estimates that in the decade since Q1 2013, 1,158 units have been added to the submarket inventory. This equates to annualized growth of 1.5% compared to 0.8% growth for the entire metro Albuquerque. The average vacancy in the submarket was reported at 1.6% (137 units). Over the past 3 months, submarket absorption totaled 55 units, less than half of the average annual absorption rate of 134 units recorded since the beginning of Q2 2013.

Asking rents in the Northwest submarket have risen significantly since 2018, when the average asking rent was $922. The average asking rent in the submarket is currently $1,359, which is higher than the Albuquerque metro's average of $1,270. Between now and year-end 2023 asking rents are expected to climb 3.3% to a level of $1,404. On an annualized basis asking and effective rents are expected to increase by 4% through 2025 reaching average rates of $1,487 and $1,518.

Moody's forecasts average asking rent per unit to be higher ($100-$150 month) than that of the Albuquerque MSA through 2028.

The following table displays historical asking rent data along with forecasted asking rent data from both the Northwest submarket and the broader Albuquerque submarket.

Year	Asking Rent per Unit	Vacancy %	Asking Rent per Unit	Vacancy %
	Northwest		Albuquerque	
2008	$758.00	7.00%	$709.16	5.90%
2009	$736.06	7.00%	$706.06	6.90%
2010	$751.70	6.20%	$715.96	4.70%
2011	$758.43	5.10%	$725.11	4.30%
2012	$762.93	4.70%	$738.31	4.20%
2013	$785.09	5.60%	$754.12	4.30%
2014	$799.15	3.60%	$766.96	3.50%
2015	$825.20	6.60%	$784.45	4.20%
2016	$843.42	5.40%	$813.59	3.80%
2017	$858.36	4.70%	$826.12	4.30%
2018	$921.82	6.10%	$869.71	5.00%
2019	$984.61	4.00%	$903.50	4.50%
2020	$1,019.61	3.40%	$918.27	3.30%
2021	$1,303.76	2.10%	$1,145.24	3.00%
2022	$1,402.24	1.80%	$1,282.75	1.90%
2023	$1,403.59	2.20%	$1,305.00	2.50%
2024	$1,448.85	2.60%	$1,343.00	2.70%
2025	$1,518.40	3.10%	$1,381.00	3.00%
2026	$1,583.69	3.50%	$1,425.00	3.20%
2027	$1,635.79	3.70%	$1,462.00	3.40%
2028	$1,678.32	4.90%	$1,501.00	3.30%

Figure 15: Asking Rent Trends for Northwest Submarket and Albuquerque Market

Recently, rents increased have started to cool. Asking rents actually fell every month (totaling about 3.1% decrease) in the first quarter of 2023. The submarket's mean unit prices are as follows:

- Studio $980mo/$11,760 year
- 1-bedroom $1,225/$14,700 year
- 2-bedroom $1,432/$17,184 year
- 3-bedroom $1,645/$19,740 year

Moody's also tracks apartment construction activity. It forecasts that builders will deliver 158 units to the Northwest submarket by the end of 2023, and net total absorption will be a positive 106 units. As a result of the delivery of new rental units, the vacancy rate is projected to drift slightly upward from 1.6% to 2.2%. During 2024 and 2025, developers are expected to deliver a total of 176 additional units of market rate rental apartments to the submarket. The submarket vacancy rate is forecasted to rise to 3.1% in 2025. From a practical standpoint, a 2.2% or even a 3.1% vacancy rate means that prospective renters will have difficulty finding available multifamily rental units in the city.

The table below shows the Northwest submarket inventory since 2019.

Year	Inventory	Inventory Growth	Vacant Stock	Occupied Stock	Net Absorption
2019	8,514	0	343	8,171	180
2020	8,566	52	287	8,279	108
2021	8,566	0	182	8,384	105
2022	8,566	0	155	8,411	27

Figure 16: Northwest Submarket Inventory

Summary

Seventy four percent of respondents of a survey Rio Rancho residents (conducted by NDC, June 2022) agreed or strongly agree that finding affordable housing is a problem in the City of Rio Rancho. This is reflective of the socio-economic and housing cost trends presented in the preceding sections. At the time of this Plan, demand for affordable for sale and rental housing exceeds the supply of affordable housing. Therefore, the cost of for sale homes and rental units have escalated, pricing individuals, households, and families out of the market. This is a problem for Rio Rancho residents and businesses.

Housing that is affordable provides many community benefits. When asked about these benefits in a survey of Rio Rancho residents conducted by NDC in June 2022, respondents listed in rank order:

- 89% - Our schools benefit when students have stable housing.
- 83% - Our local tax base improves when corporations relocate or expand here because they know that their employees will be able to find housing that is affordable.
- 82% - Families benefit because they can spend more of their income on education, health care and child-care.
- 81% - Our community benefits when entrepreneurs move here because they can afford a starter home.

The following sections of this Plan seek to address the constraints to development of affordable housing in Rio Rancho.

Land Use Policy Review & Development Cost Review

This section contains an analysis of the land use policies and development costs within the City of Rio Rancho to identify practices that may be creating impediments to the production of affordable housing and make recommendations for policies the City can adopt to encourage and incentivize private-sector developers to build a range of housing types within the City of Rio Rancho. Changes to development standards and codes may encourage developers to deviate from the proven model of market-rate single-family home development, which currently predominates in Rio Rancho, and increase their production of higher-density housing – such as townhomes, duplexes and multifamily complexes. However, due to Rio Rancho's strong real estate market, it is unlikely that such townhomes, duplexes and multifamily complexes would be offered for sale or lease at rates that are affordable for a low- or moderate-income household.

Therefore, in order to encourage private developers to offer their housing product for sale or lease at rates that are affordable for low- or moderate-income households, the City will likely need to couple changes to development standards and codes with additional targeted policies and financial incentives.

Land Use Policy Review

Present State of Parcels, Infrastructure, and Use

Prior to the state of New Mexico's adoption of the State Subdivision Act in 1973, which requires that subdivisions and development be supported by adequate infrastructure, a New York-based firm purchased thousands of acres in what would later be incorporated as Rio Rancho. One-half and full acre lots were sold to absentee investors through a mail order business in the 1960s and early 1970s. These lots were exempt from the 1973 Act, and as a result, many of the privately-developed homes built in the original geographic boundaries of Rio Rancho lack public infrastructure meeting today's development standards, including paved roads, stormwater management, water/sewer connections, and designated recreational space. Referred to as "antiquated platting" in Rio Rancho's 2011 Comprehensive Plan, this land development process created challenges that include vacant land with difficult-to-locate owners interspersed throughout established neighborhoods, inadequate infrastructure within neighborhoods, and very low population density per square mile.

Thus, approximately 20% of the City's total acreage is currently developed, but fewer than 100 parcels of consolidated undeveloped land consisting of more than 10 acres are available; more than 20,000 one-acre or smaller lots have no infrastructure and owners scattered around the world. With limited municipal eminent domain powers granted by New Mexico's state legislature, Rio Rancho's ability to pursue strategic infill development and provide a mix of uses on the land sold as single family lots prior to incorporation is very constrained. Therefore, new Planned Unit Developments (PUDs) on available consolidated parcels of land along with City services leading to them, have promoted sprawling land use patterns and an inefficient provision of services.

Special Assessment Districts (SADs) are one means of addressing inadequate infrastructure in otherwise established neighborhoods. SADs have been designated in several Rio Rancho neighborhoods, allowing the city to issue bonds for infrastructure improvements. The debt is serviced through assessments on land included in the District that are paid by homeowners. However, SADs potentially present an affordability concern for existing homeowners who may be financially unprepared for the monthly assessments. Additionally, public infrastructure improvements within SADs increase the value of housing that may have

been relatively affordable for Rio Rancho residents. When properties within SADs become delinquent on their assessments, the City has the ability to acquire these properties through foreclosure.

Constraints to Affordable Development

Most of the land in Rio Rancho is zoned for single-family use with a maximum of one principal dwelling unit per lot plus one accessory dwelling unit (ADU) if certain conditions are met. The City of Rio Rancho's Multifamily Zoning map, prepared and accessed in May 2022, indicates areas of the City where the zoning allows multifamily construction. Note that the R-3: Mixed Residential Development designation (red) only allows multifamily development (up to 26 dwelling units per acre) as a conditional use, meaning that approval from the Governing Body is required.R-6 is the only zoning designation that allows multi-family development by right, but R-6 zoning also allows detached single-family homes. R-6 zoning permits multifamily dwelling units for sale or rent limited to 50 units per acre.

<u>Zoning Change Processes</u>

- Applications for a *conditional use permit* in R-3: Mixed Residential Development zoned areas are initially evaluated by staff who recommend approval or denial of development plans. The application is then forwarded to the Planning and Zoning Board, with staff's recommendation, which usually occurs about one month after the receipt of the application. After receiving a Planning and Zoning recommendation, conditional use cases advance to the Governing Body. After approval of the Governing Body, applicants may apply for a building permit.
    - Other conditional use permits do not require this same process
- Applications for a *variance* are initially evaluated by staff who recommend approval or denial of development plans. The application is then forwarded to the Planning and Zoning Board, with staff's recommendation, but the application does not have to be approved by the Governing Body. According to the Rio Rancho Municipal Code, variances from standards may be granted in the case of "exceptional physical condition[s] where the strict application of the requirements of this title would result in a practical difficulty or unnecessary hardship that would deprive the owner of the reasonable use of his land or building." Financial gain, loss, or savings; inconvenience upon the property owner; or impacts on personal comfort do not constitute practical difficulty or unnecessary hardship. Therefore, this process would not be beneficial to facilitating density that supports multifamily units.
- Applications for a *special use* are typically tied to an ordinance and a site plan must be approved by the Governing Body at a public hearing.
- **Public Role in the above processes** – Development Services staff notify surrounding property owners (typically those within 100 feet of the property in question) of any impending hearings via certified mail, priority mail, or informational postcards, depending on the request. Property owners are provided information 15 days before the public hearing, including a description of the request, a map of the property, and a map showing the nearby zoning. Owners can then submit written comments, which are forwarded to the applicant and board members as well as made available as a part of the hearing's online agenda packet. Members of the public are also encouraged to attend the hearings (in-person or virtually) so they can offer further public comments/directly ask any questions they have.

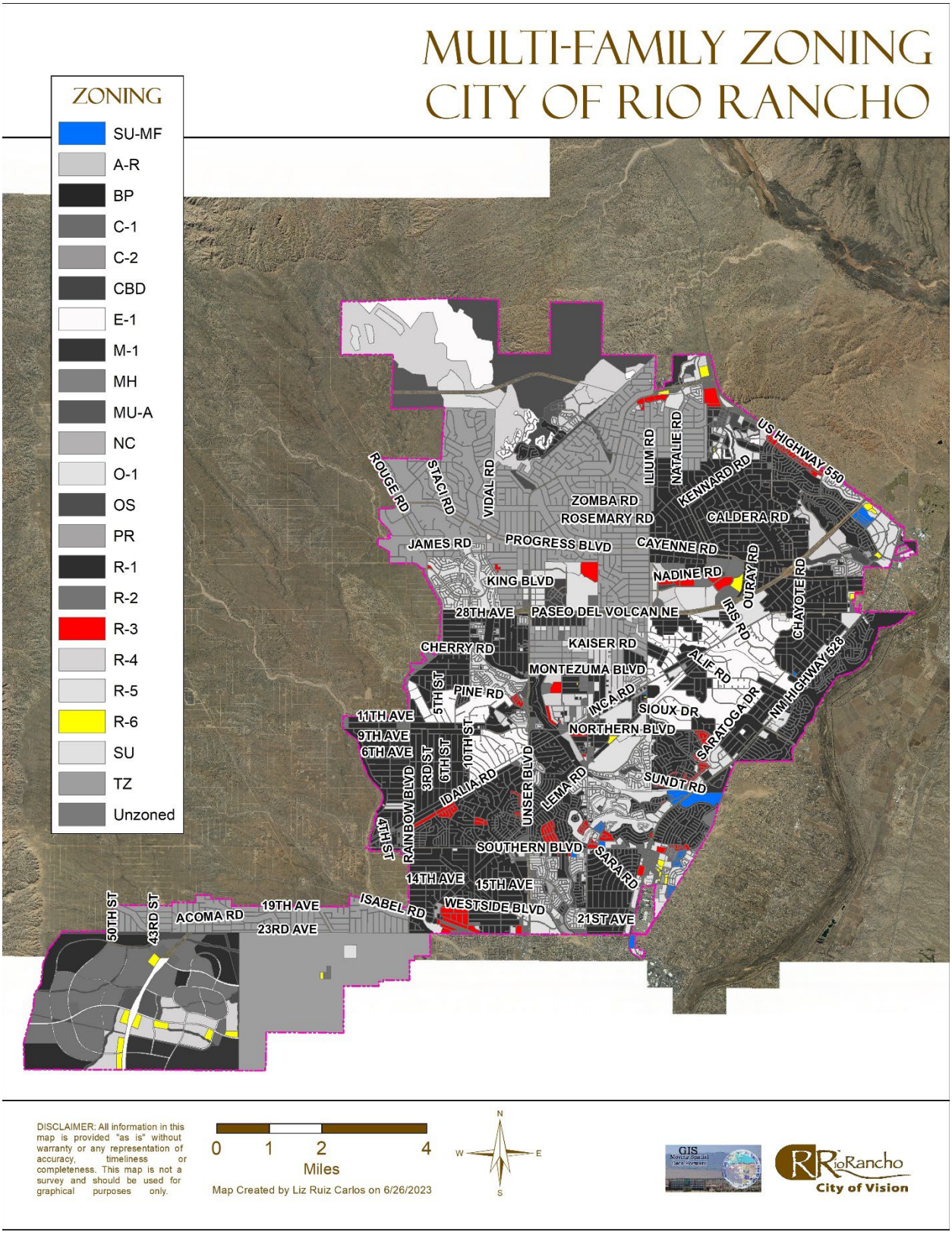


Figure 17: City of Rio Rancho Zoning Map (Multifamily Zoning)

A significant portion of the City is designated as a Transitional Zoning District (T-Z), which permits only low-density residential use (a single dwelling unit per parcel) on an interim basis. Conditional use or subdivision of property is not allowed in T-Z (consolidation is permitted). These areas may be prioritized for land use planning to enable realization of Comprehensive Plan growth projections. While there has been developer interest in building subdivisions in Transitional Zones, the City has held off on further development of T-Z land until it can be addressed and guided by the Comprehensive Plan.

The following maps (from the Mid Region Metropolitan Planning Organization) show the forecasted distribution of household and job growth throughout the region to 2040. Mid Region Metropolitan Planning forecasts that Sandoval County, led by the City of Rio Rancho, will hold onto its position as the fastest growing county in the region and state. Sandoval County/City of Rio Rancho are projected to experience 32% growth in new household formations and 20% job growth over a base year of 2016.

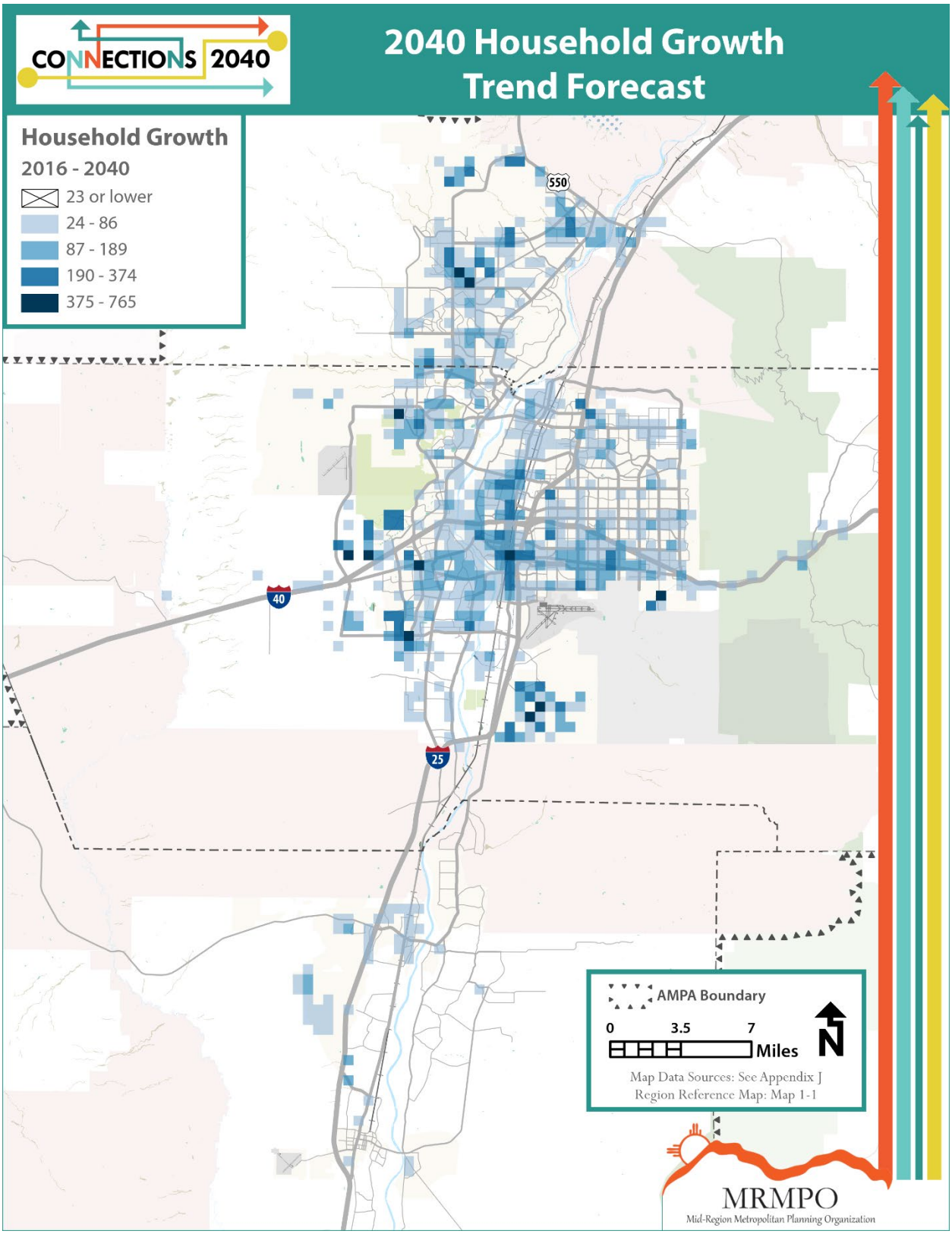


Figure 18: Mid-Region Metropolitan Planning Organization 2040 Household Growth Trend Forecast

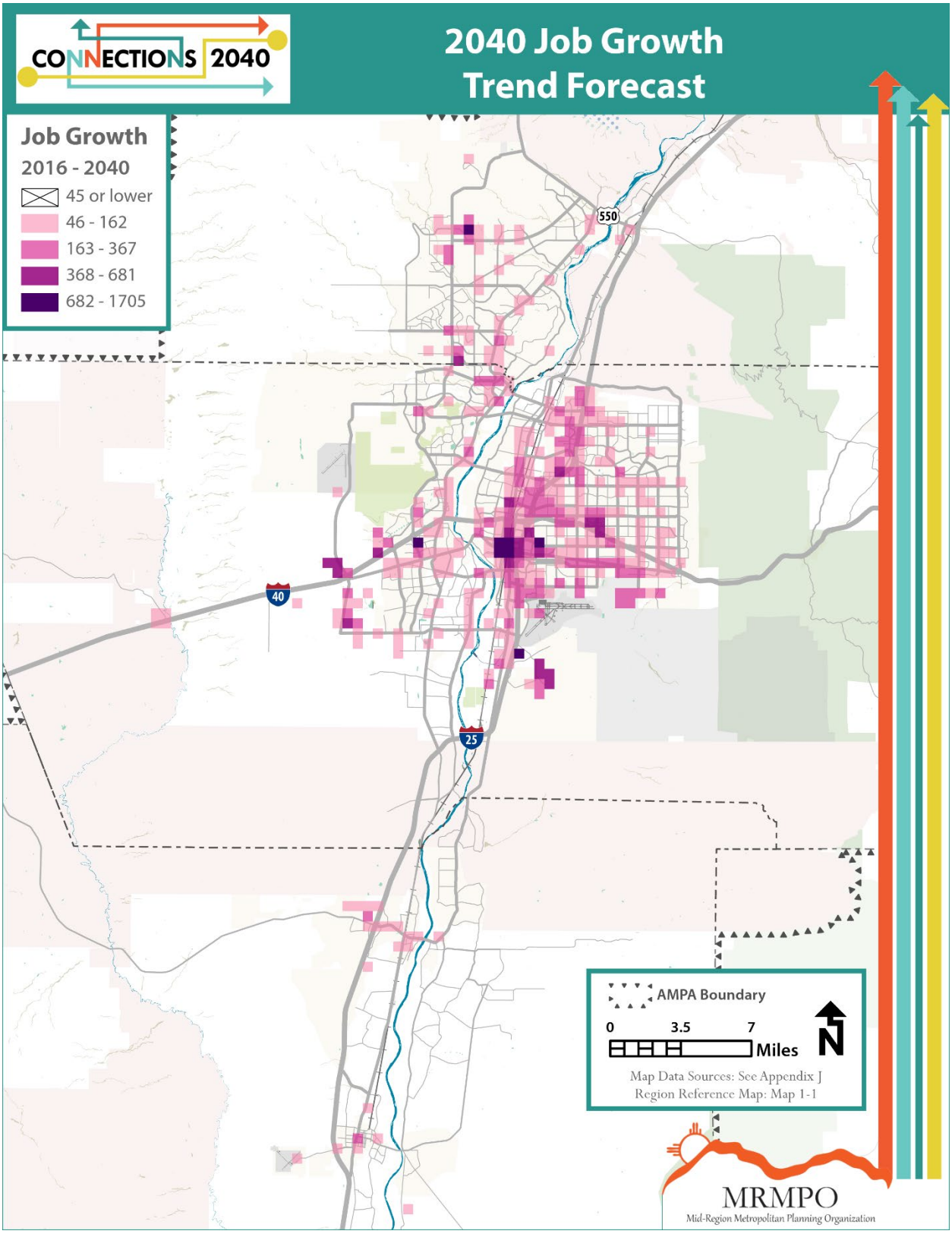


Figure 19: Mid-Region Metropolitan Planning Organization 2040 Job Growth Trend Forecast

In addition to any neighborhood or association covenants which are enforced privately, below are elements from the City's residential design criteria mentioned in the Rio Rancho Municipal Code that may impact the potential affordability of housing in Rio Rancho:

- Each dwelling unit must have either an attached or detached private garage structurally affixed to a permanent foundation of sufficient size park vehicles. The number of parking spaces shall be in accordance with off-street parking requirements...The garage shall have an external appearance and finish treatment similar to and consistent with the dwelling unit.
- Each single-family dwelling unit shall have exterior siding and roofing which, in color, materials and appearance, are comparable to the predominant materials in use on surrounding dwelling units, or if there is no predominance, are similar to the exterior siding and roofing material commonly in use on residential dwelling units in the community as a whole.
- All utility services and distribution lines shall be placed underground.
- Design criteria for landscaping include (per dwelling unit) a minimum of two trees, each of a minimum one and one-half inches in caliper (deciduous trees) or eight-foot-high conifers (evergreen trees), and three five-gallon shrubs.

Community Opposition

Like many communities in the United States where extensive single-family zoning is the status quo, a vocal contingency of Rio Rancho residents has publicly expressed “Not in My Backyard” (NIMBY) attitudes about affordable housing, or multifamily housing more generally. To the extent that residents with this mindset have sway over public officials who are responsible for approving conditional or special uses to allow the development of multifamily housing, NIMBY attitudes are a significant constraint on the production of housing typologies conducive to affordability in Rio Rancho. Local developers are most likely to stick with single-family developments, while multifamily developments are pursued largely by nonlocal or national developers. Staff consult comprehensive, master, and area plans when making recommendations, but ultimately the typologies built are largely at the discretion of the developers.

Limited Staff Capacity

There is currently limited capacity to implement and operate complex affordable housing programs as the City’s only housing programs use Community Development Block Grant (CDBG) funds. Rio Rancho has one full-time CDBG employee. The City does not operate or coordinate services for Housing Choice Vouchers holders. Funding for affordable housing programs is limited to CDBG funds, which have primarily been used to support the following housing activities:

- Provide support for individuals transitioning from homelessness to shelter through a partnership with the Sandoval County Permanent Supportive Housing program;
- Operate a Down Payment Assistance program that helps low-to-moderate-income Rio Rancho residents purchase their first homes;
- Conduct home repairs that are meant to alleviate financial burdens for Rio Rancho residents as they age in place.

The City does not operate any affordable housing development programs or provide direct assistance for low- or moderate-income renters who fall outside of the category of special needs individuals or families.

Opportunities to Incentivize Additional Density and Different Housing Typologies

"Missing Middle Housing" - The City's regulatory framework could proactively encourage and incentivize different housing typologies that may be offered for sale or lease at lower price points, including various degrees of multifamily and small-lot single family development. This "missing middle" housing includes typologies between single-family units and multifamily units that may be renter- or owner-occupied. This more efficient use of land and infrastructure (i.e. added density) decreases the cost of development, thus allowing the developer to charge lower rents or sale prices while still making a reasonable profit. In areas of the county such as Rio Rancho that have rapidly rising home prices, these structures – duplexes, townhomes, triplexes and fourplexes – represent some of the last opportunities for first-time homebuyers to access the home market at a price point that is affordable. It must be noted, however, that increasing the supply of "missing middle housing" does not solve housing affordability issues. Even if developers become interested in building more multifamily and "missing middle" housing, these units will likely be offered at market rates that are still not affordable for renters and buyers of lower incomes. Therefore, it is crucial that the City leverage financial resources and land use tools to prioritize, incentivize, and facilitate easier development of affordable housing options for residents.

The following residential zoning designations allow for multifamily construction at the indicated densities:

- R-3 (mixed residential district) – allows multifamily dwellings with a conditional use designation, provided there are not more than 26 units per acre, with a site plan reviewed by the Planning and Zoning Commission and approved by the Governing Body.
- R-6 (multi-family residential district) - permissive uses include multiple-family dwelling units for sale or rent that are attached, up to a density of 50 dwelling units/acre.

The multifamily densities allowed conditionally in R-3 and by right in R-6 are conducive to affordable housing development of a variety of typologies.

Tiny Homes and ADUs - An Accessory Dwelling Unit (ADU) is a secondary house located on the same lot as a larger, primary home. ADUs differ from other accessory structures such as sheds, pool houses, and workshops insofar as they contain all of the necessary facilities for a separate dwelling unit, including separate sleeping, eating and bathing facilities. Homeowners may be motivated to build an ADU in order to create separate living space for an aging parent or a college student who has returned home. Alternatively, they may want to tap into an additional source of income by renting out the ADU to a tenant.

In Rio Rancho, residents often refer to ADUs as "casitas." The city code defines an ADU as "a separate, complete housekeeping unit, attached or detached, which does not exceed 900 square feet or 50% of the primary structure, whichever is greater, and is on a lot 7,000 square feet or greater in area, but not a mobile home, with a separate entrance, kitchen, sleeping area and full bathroom facilities." The city code imposes several design and parking requirements on ADUs, including requiring an additional parking space that does not block a two-car garage and mandating that the ADU be constructed of materials similar (or same, depending on size of the ADU) in color and appearance to those used in the primary structure. Finally, the city also imposes impact fees on newly-constructed ADUs; these impact fees average $3-4,000 per structure (not including any applicable water and wastewater meters).

Until 2013, the Rio Rancho city code did not allow property owners to construct and occupy an accessory structure that contained a kitchen. Instead, the municipal code contained a definition for "Accessory Living Quarters" that specifically defined this type of use as "[l]iving quarters that do not contain a kitchen

located within an accessory building" (emphasis added). Furthermore, the former city code limited the use of accessory buildings in R-1 districts by stating that, "[t]here shall not be two separate and distinct dwelling units, each exclusively occupied by some family members." Since 2019 the City has issued 25 permits for accessory dwelling units.

The assessment of impact fees, cost of utility connections (particularly water and wastewater) as well as parking and foundation requirements all impact the const of constructing an ADU on a lot. Though property owners may be interested in leasing such a structure to recapture the costs of the investment, those costs might necessitate a higher monthly rent, minimizing the impact of ADUs as a strategy to boost affordable housing. The City should consider waiving the impact fee and rebating the cost of utility connections when an ADU will be offered for an affordable rent.

Infrastructure - As discussed in the prior section, antiquated platting has the tendency to create sprawling development patterns because new planned subdivisions must move outward to access consolidated areas of developable land. Sprawling development requires greater investment in building and maintaining the infrastructure to reach those areas. Homeowners may be faced with unexpected assessments to pay for infrastructure if their property is included in a Special Assessment District. Inadequate investment in publicly-shared infrastructure may also increase individual homeowner costs for services such as water access via private wells, or wastewater disposal via private septic systems. As Rio Rancho has a higher-than-average portion of unpaved roads, the cost of right-of-way construction further burdens multifamily developers. Therefore, the City should identify opportunities to encourage consolidation of parcel, which may include using redevelopment authority pursuant to state statute.

Development Costs

Multiple developers noted that land acquisition costs are reasonable – averaging around $10 per square foot for land that is zoned for single-family use and $10-$30 per square foot for land that is zoned for multifamily use.

While developers reported that there are no unusual soil or environmental constraints that adversely affect the feasibility of residential development, developers uniformly reported that site work – i.e. the work that must be done to prepare a site for building - is a significant driver of total development costs. Specifically, costs associated with installation of on-site and off-site infrastructure can be quite high. This problem appears to be especially acute in Rio Rancho where sprawling development patterns mean that many subdivisions and infill lots are located significant distances away from city infrastructure. , City staff informs that the City charges impact fees of approximately $10,717.50 per single-family home. According to the City of Rio Rancho Impact Fee Schedule, the City has 7 types of impact fees: roadways, bikeways and trails, parks, public safety, water, sewer, and drainage. The latter is only when necessary. For a 50-unit multifamily development impact fees can total $208,000 or $4,174 per unit.

Additionally, supply chain issues, the price of lumber, and a "tremendous" shortage of labor are also contributing to rising development costs. The time it takes to construct a single-family home has also risen sharply. One developer stated that it used to take approximately four months to construct a single-family home, while it now takes closer to 9 months.

The impact of these rising costs is seen in the sales prices of newly constructed homes. Whereas a single-family developer could previously sell subdivision homes under $200,000 per home and make a

reasonable profit, now many developers price entry-level single-family homes starting at $350,000 and receive multiple bids.

Housing Needs Assessment

Definitions

Housing is Affordable – when a households' housing expenses (rent/mortgage and utility costs) are **no more than 30% of their monthly income.**

Cost burdened households – have monthly housing costs (rent/mortgage and utility costs) exceeding 30% of monthly income.

Family – includes related individuals living in the same household.

Household – includes all people living in a housing unit. Members of a household can be related (see family) or unrelated.

Severely cost-burdened households – have monthly housing costs (rent/mortgage and utility costs) exceeding 50% of monthly income.

Housing Affordability Analysis

Summary of Data Impacting Housing Affordability

Rio Rancho is a vibrant and growing community. Over the past 10 years, the city's population has grown 19 percent from 87,521 residents in 2010 to 104,046 residents in 2020. Many residents work in high-paying industries, including health care, finance and insurance, and other professional services. Rio Rancho residents bring home paychecks that are much higher than the statewide average - the city's median household income is $76,096 compared to the statewide median household income of $53,992.

Rio Rancho's rapid growth in population has not come without consequences. While Rio Rancho was once known as a community where a young family could purchase a "starter home" or a retiree could purchase a modest home in a warm climate, the city's housing market no longer offers ample affordable housing options. Over the past five years, homes sales prices have risen dramatically from a median sales price of $192,000 in 2018 to $330,000 in early 2023. Average asking rents have also risen at a steady pace from $992 in 2018 to $1,404 in early 2023.

Due to the rapid increase in home sales prices and rents, city residents have begun to voice concerns about housing affordability. In a citywide survey conducted in 2022, 74% of respondents agreed or strongly agreed with the statement that "finding housing that is affordable is a problem in the City of Rio Rancho." Survey respondents recognized that the city's economy benefits when housing is affordable for both low-income and higher-income earners. Respondents indicated that schools benefit when students have stable housing and families benefit when they can spend more of their income on education, health care, and childcare. Respondents also agreed that the local tax base improves when corporations choose to relocate or expand in Rio Rancho because they know that their employees will be able to find housing that is affordable.

Earlier in this Plan, household income trends, rental trends, and home sales trends were discussed in separate sections. Now, in the following sections, the relationship between incomes and housing costs will be explored in order to identify the extent to which rising housing costs are impacting Rio Rancho residents' ability to pay for other expenses, such as health care, childcare and groceries.

A homeowner's housing expenses are typically defined as mortgage payments (principal and interest), property taxes, and property insurance. A renter's housing expenses are typically defined as rent and utilities. When a homeowner or renter spends more than 30% of their monthly income on housing expenses, they are considered "housing cost-burdened." While both high-income households and lower-income households can become housing-cost burdened, lower-income households are impacted more severely because their total income is lower. For example, an individual with an annual income of $100,000 that is spending 40% of their income on housing costs ($40,000), still has $60,000 in remaining income that can be used to pay for other expenses. However, an individual earning a $30,000 annual income who spends 40% of their income on housing costs ($12,000), only has $18,000 in remaining income that can be used to pay for other expenses.

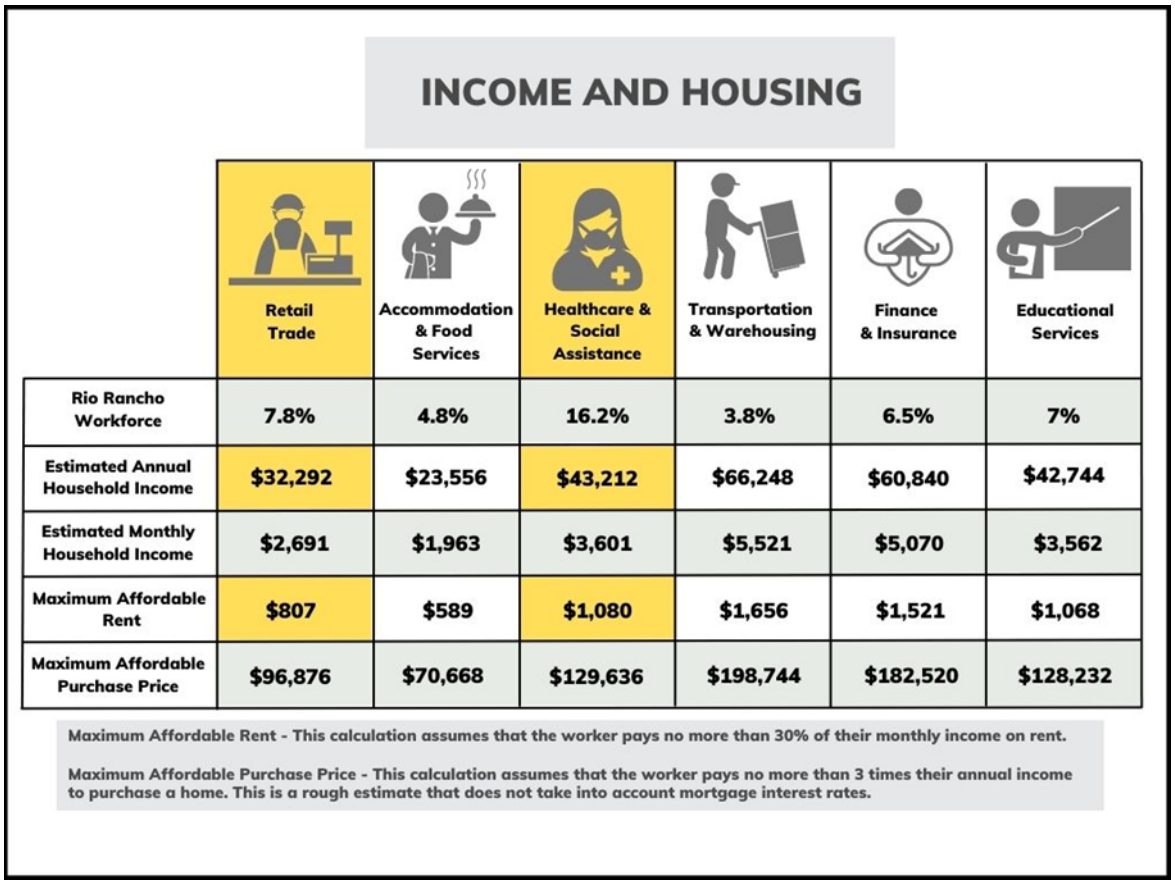


Figure 20, below, provides real-world examples of how much Rio Rancho residents can afford to pay for housing. If their housing payment exceeds the "maximum affordable rent" or if they purchase a home that is priced higher than the "maximum affordable purchase price," they will be housing cost-burdened.

Figure 20: Analysis of Local Incomes and Affordable Housing Costs

Housing Cost Burden - Renters

In Rio Rancho, the total share of renter households that are cost-burdened or severely cost-burdened increased from 47.6% in 2015 to 49.8% in 2020. The share of renter households in Rio Rancho that were cost-burdened or severely cost-burdened in 2020 (49.8%) was higher than the share in the Albuquerque, NM Metro Area, (46.8%), and higher than the share in the United States (45.7%).

In Rio Rancho, renter households with an annual income less than $20,000 had the highest incidence of cost burden in 2020 (96%), which is not surprising because the income of these households approximates the poverty threshold. However, over three-fourths (76%) of renter households earning a higher income between $35,000-$50,000 were also cost-burdened in 2020. Ten years ago, only one-third (33%) of this cohort of renter households reported being cost-burdened. ***Figure 21***, below, displays cost-burden trends for renter households with annual incomes ranging from $0 to more than $75,000.

Housing Cost Burden - Renters				
	# of Housing Units	% of Housing Units	# of Housing Units	% of Housing Units
	2010		2020	
Total Housing Units	29,726		35,476	
Renter-occupied housing units:	**5,952**		**7,323**	
Less than $20,000:	1,366		1,044	
Less than 20 percent	26	1.90%	0	0.00%
20 to 29 percent	7	0.51%	43	4.12%
30 percent or more	1,333	97.58%	1,001	95.88%
$20,000 to $34,999:	1,110		1,319	
Less than 20 percent	32	2.88%	34	2.58%
20 to 29 percent	160	14.41%	62	4.70%
30 percent or more	918	82.70%	1,223	92.72%
$35,000 to $49,999:	994		1,330	
Less than 20 percent	51	5.13%	0	0.00%
20 to 29 percent	611	61.47%	319	23.98%
30 percent or more	332	33.40%	1,011	76.02%
$50,000 to $74,999:	1,173		1,649	
Less than 20 percent	334	28.47%	370	22.44%
20 to 29 percent	539	45.95%	935	56.70%
30 percent or more	300	25.58%	344	20.86%
$75,000 or more:	1,035		1,580	
Less than 20 percent	939	90.72%	1,259	79.68%
20 to 29 percent	96	9.28%	257	16.27%
30 percent or more	0	0.00%	64	4.05%
Zero or negative income	52		75	
No cash rent	222		326	

Figure 21: Trends in Housing Cost .

Within the city limits of Rio Rancho, there are only three multifamily housing complexes that offer subsidies to make rent affordable for lower-income households pursuant to their participation in the Low Income Housing Tax Credit Program. Combined, these three multifamily complexes offer 546 affordable rental units. If a lower-income individual or family cannot secure one of these apartments, they will likely end up paying more than 30% of their annual income on the rent for a market-rate (unsubsidized) apartment. The table below lists an additional 587 affordable rental units under construction or in permitting.

Project Name:	Project Address:	Project City:	Project State:	Total No. of Units:	Total Low-Income Units:
Enchanted Vista Apts.	4501 Sprint Bvld. NE	Rio Rancho	NM	174	174
Arrowhead Ridge Apts.	4515 Arrowhead Ridge Dr. NE	Rio Rancho	NM	179	179
Buena Vista Active Adult Community	1355 Meadowlark Ln. SE	Rio Rancho	NM	258	193
550 Paseo Apts.	7810 Paseo 550 Drive NE	Rio Rancho	NM	240	240
Sandoval Flats*	3200 Camino Encantadas NE	Rio Rancho	NM	216	216
Felician Villa Apts.*	4209 Meadowlark Ln. SE	Rio Rancho	NM	66	65
Felician Villa II Apts.**	4210 Meadowlark Ln. SE	Rio Rancho	NM	66	66
* Project awarded Housing Tax Credits in 2022; ** Project awarded Housing Tax Credits in 2023					

Figure 22: Housing Tax Credit Units in Rio Rancho

Housing Cost Burden – Owners

Unlike the cost-burdened status of Rio Rancho renters, the share of owner-occupied households (with a mortgage) who are moderately or severely cost-burdened decreased from 34.7% in 2015 to 27.9% in 2020. Households without a mortgage saw no notable change in cost-burden (8.6% of homeowners to 8.5% in the same years). The share of owner households in Rio Rancho that were moderately or severely cost-burdened in 2020 (27.9%) was lower than the share in the Albuquerque, NM Metro Area, (29.1%) and around the same as the share in the United States (27.4%). These figures present a stark contrast to the increasing cost burdens experienced by renter households.

Housing Cost Burden - Owners				
	# of Housing Units	% of Housing Units	# of Housing Units	% of Housing Units
	2010		2020	
Total Housing Units	29,726		35,476	
Owner-occupied housing units:	**23,774**		**28,153**	
Less than $20,000:	1,637		1,885	
Less than 20 percent	144	8.80%	157	8.33%
20 to 29 percent	239	14.60%	163	8.65%
30 percent or more	1,254	76.60%	1,565	83.02%
$20,000 to $34,999:	2,868		2,355	
Less than 20 percent	515	17.96%	603	25.61%
20 to 29 percent	235	8.19%	292	12.40%
30 percent or more	2,118	73.85%	1,460	62.00%
$35,000 to $49,999:	3,973		3,699	
Less than 20 percent	953	23.99%	989	26.74%
20 to 29 percent	1,120	28.19%	902	24.38%
30 percent or more	1,900	47.82%	1,808	48.88%
$50,000 to $74,999:	5,480		6,189	
Less than 20 percent	1,952	35.62%	2,435	39.34%
20 to 29 percent	2,065	37.68%	2,503	40.44%
30 percent or more	1,463	26.70%	1,251	20.21%
$75,000 or more:	9,686		13,892	
Less than 20 percent	6,145	63.44%	10,954	78.85%
20 to 29 percent	2,847	29.39%	2,565	18.46%
30 percent or more	694	7.16%	373	2.68%
Zero or negative income	130		133	

Figure 23: Trends in Housing Cost Burden for Owners

Unsurprisingly, nearly all homeowners earning the lowest annual income - those earning below $20,000 - were housing cost-burned. However, nearly 50% of homeowners with a mortgage earning between $35,000-$49,999 annually, reported being housing-cost burdened.

Special Needs Analysis

Disabled Persons

The U.S. Census Bureau estimates that 13,680 disabled persons live in the Rio Rancho, which constitutes 14% percent the City's total population. The majority of disabled persons are aged of 65 and older; 27.1% of persons between the age of 65-74 are disabled (2693 persons) and 52.3% of persons 75 years and older are disabled (2,856 persons).

The most prevalent disability is ambulatory difficulty, which is defined as "serious difficulty walking or climbing stairs." Approximately 8% of the City's total population experiences ambulatory difficulty, and approximately 22% of the population 65 years and older experiences ambulatory difficulty (3,413 persons). The second most prevalent disability is independent living difficulty, which is defined as "difficulty doing errands alone such as visiting a doctor's office or shopping due to a physical, mental, or emotional condition." Approximately 7% of the City's total population experiences independent living difficulty, and approximately 15% of the population 65 years and older experiences independent difficulty (2,365 persons).

The U.S. Census Bureau also collects data on employment, income, and poverty levels of disabled persons. In Rio Rancho, much like in the rest of the United States, higher percentages of disabled persons experience poverty and are not in the labor force (i.e. not actively working or searching for work) compared to their non-disabled peers. These factors create a heightened need for accessible housing units that are affordable for low-income disabled persons. Specifically, U.S. Census data reveals that approximately 71% of disabled Rio Rancho residents are not in the labor force, compared to 30% of non-disabled residents. Likewise, the median annual earnings of a disabled Rio Rancho resident is $30,387 while the median annual earnings of a non-disabled Rio Rancho resident is $36,417. Higher percentages of disabled residents are living in poverty – 11.5% of disabled Rio Rancho residents over the age of 16 are living in poverty, compared to 7% of non-disabled Rio Rancho residents.

Homeless Persons

Background

Currently, there are no homeless shelters in Rio Rancho or in Sandoval County. Nor is the City a recipient of Emergency Solutions Grant (ESG) funding from the federal government, which provides funding for homelessness-related services, including street outreach, emergency shelter, homelessness prevention, rapid re-housing assistance, and data collection. The City does not belong to either of the State of New Mexico's two Continuum of Care Programs (CoC). According to the New Mexico Coalition to End Homelessness, CoCs "foster communitywide collaboration and effective communication throughout the state by coordinating federal funding, fostering state-wide connections and aligning quality data with the goal of providing housing and supportive services for individuals and families facing homelessness."

Emergency Solutions Grant (ESG) Background

The U.S. Dept. of Housing and Urban Development ESG program provides funding to: (1) engage homeless individuals and families living on the street; (2) improve the number and quality of emergency shelters for homeless individuals and families; (3) help operate these shelters; (4) provide essential services to shelter residents, (5) rapidly rehouse homeless individuals and families, and (6) prevent families/individuals from becoming homeless. Eligible recipients generally consist of states, metropolitan cities, urban counties, and territories, as defined in 24 CFR 576.2. U.S. Department of Housing and Urban Development sets aside for allocation to the territories up to 0.2%, but not less than 0.1%, of the total fiscal year appropriation. The

remainder is allocated to States, metropolitan cities, and urban counties. The percentage allocated to each State, metropolitan city, and urban county equals the percentage of the total amount available under section 106 of the Housing and Community Development Act of 1974 for the prior fiscal year that was allocated to the State, metropolitan city or urban county. If an allocation to a metropolitan city or urban county would be less than 0.05% of the total fiscal year appropriation for ESG, the amount is added to the allocation of the State in which the city or county is located. HUD notifies each State, metropolitan city, urban county, and territory that is eligible to receive an allocation under this section of the amount of its allocation. In New Mexico, the New Mexico Mortgage Finance Authority (MFA) receives ESG funds for Statewide use. MFA then distributes funds to service providers in the State.

Continuum of Care Programs

The Continuum of Care (CoC) Program is designed to promote communitywide commitment to the goal of ending homelessness; provide funding for efforts by nonprofit providers, and State and local governments to quickly rehouse homeless individuals and families while minimizing the trauma and dislocation caused to homeless individuals, families, and communities by homelessness; promote access to and effect utilization of mainstream programs by homeless individuals and families; and optimize self-sufficiency among individuals and families experiencing homelessness.

On March 28, 2023, HUD announced $2.76 billion in FY 2022 Continuum of Care (CoC) Competition Awards in approximately 7,000 local homeless housing and service programs across the U.S. and its territories. These CoC grants provide funding for efforts by nonprofit providers, states, and local governments to quickly rehouse individuals and families experiencing homelessness and provide support while minimizing the trauma and dislocation caused by homelessness. The New Mexico Coalition to End Homeless Reports the Albuquerque (NM-500) CoC was awarded a total of **$6,054,608** and New Mexico Balance of State CoC (NM-501) was awarded a total of **$8,479,033** in funding. Recipients of these funds can be found here https://www.nmceh.org/cocfederalfunding.

A second Continuum of Care program is managed by the New Mexico Mortgage Finance Authority (MFA). The CoC Performance program supports nonprofit agencies that provide homeless prevention and assistance services. The program is funded through NM State Homeless Funds. MFA partners with the New Mexico Coalition to End Homelessness to provide funding through this program to agencies across the state.

Data

While the City does not specifically receive funding for homeless services through the ESG grant, the City of Rio Rancho regularly uses federal Community Development Block Grant (CDBG) funding to support several local agencies that service persons who are homeless or at risk of homelessness, including those who are fleeing domestic violence. The City currently provides funding to: (1) Sandoval County Permanent Supportive Housing Program to fund staff who provide outreach assessment, community service linkages, home visits, housing assessments, intakes, leasing coordination, move-in inspections and client advocacy for chronically homeless persons with chronic disabling conditions; (2) St. Felix Food Pantry Homelessness Prevention Project, which provides short-term utility, rent, and mortgage assistance to extremely low-income and low-income families to enable families to stay in their home with necessary resources in order to avoid shutoff, eviction, or foreclosure, and (3) Haven House, which provides emergency shelter and assistance to victims of domestic violence and their families.

Housing Need

Because the City of Rio Rancho is not a member of a Continuum of Care, it does not participate in the annual Point-in-Time Count, which is a count of sheltered and unsheltered people experiencing homelessness in a city on a single night. However, data collected by local service agencies indicates that Rio Rancho has a need for housing units that are affordable for persons with extremely low incomes – such as persons who are homeless or at risk of homelessness. For example, in recent CDBG planning and performance reports, the City has reported that the Sandoval County Permanent Supportive Housing Program provided housing and supportive services to approximately 60 chronically homeless persons residing in Rio Rancho. Additionally, Haven House reporting providing temporary housing to approximately 300 persons fleeing domestic violence and St. Felix Pantry reported providing short-term utility, rent, and mortgage assistance to approximately 300 individuals.

Gap Between Market Rate Housing Costs and Incomes

Definitions

Median and Average Income - The U.S. Census Bureau collects and publishes data related to median and average income for families and households. This data is published for various geographies including census tracts, census block groups, cities, and zip code tabulation areas. Median/Average Household Income is often less than Median/Average Family Income because households can be as small as one person living alone, whereas the minimum family size is at least two related persons living together. Additionally, families tend to have more people who are earning an income, as compared to households, which may have only one person (who may be elderly and on a fixed-income).

Income limits – also known as Area Median Income – set forth the maximum income a household can earn and still be eligible for specific affordable housing programs. These income limits are adjusted upwards and downwards depending on a household's size; larger households may earn higher incomes and still be eligible for various affordable housing programs.

The Department of Housing & Urban Development (HUD) uses income data collected by the U.S. Census Bureau to estimate Median Family Income (MFI) for states, non-metropolitan counties and metropolitan statistical areas (a combination of counties). HUD then uses the MFI to calculate income limits for its programs, such as the Community Development Block Grant Program. The adjusted income limits are commonly referred to as Area Median Income (AMI).

Rent limits – set forth the maximum monthly rent that can be charged by a landlord who is participating in an affordable housing program. The rent limits are calculated based on a presumed household size of 1.5 occupants per bedroom, or one occupant for studio/efficiency units.

HUD does not set individual income and rent limits for every city in the nation; instead, HUD sets its income and rent limits based on broader geographic areas that often include multiple counties. The City of Rio Rancho is part of the Albuquerque, NM Metropolitan Statistical Area (MSA). HUD uses income data from the following counties to calculate the AMIs for the Albuquerque, NM MSA: Bernalillo County, NM; Sandoval County, NM; Torrance County, NM; and Valencia County, NM.

*The New Mexico Mortgage Finance Authority publishes the income and rents limits on its website on an annual basis. HUD calculates income limits only up to 80% of the median family income for the MSA. For purposes of this housing Plan, additional income and rent limits were calculated to include 80-120% AMIs.

Overview of Gap Analysis

In the ***Housing Affordability Analysis***, this Plan began examining the relationship between incomes and housing costs and introduced the term *housing cost-burden.* In this section, the Plan further explores actual market data to provide examples of the gap between rents and mortgage payments that are considered affordable (i.e. household is not spending more than 30% of their annual income on housing costs) and actual market-rate housing costs.

Figures 24 and 25 display the income limits calculated by the New Mexico Mortgage Finance Authority (NMMFA) along with their calculation of affordable rents. As discussed further below, market rents are considerably higher than the affordable rents calculated by NMMFA.

	New Mexico Mortgage Finance Authority							
	2022 Housing Tax Credit Income and Rent Limits							
	AMFI %	Number of Household Members						
		1	2	3	4	5	6	7	8
Income Limits	20%	$10,580	$12,080	$13,600	$15,100	$16,320	$17,520	$18,740	$19,940
	30%	$15,870	$18,120	$20,400	$22,650	$24,480	$26,280	$28,110	$29,910
	40%	$21,160	$24,160	$27,200	$30,200	$32,640	$35,040	$37,480	$39,880
	50%	$26,450	$30,200	$34,000	$37,750	$40,800	$43,800	$46,850	$49,850
	60%	$31,740	$36,240	$40,800	$45,300	$48,960	$52,560	$56,220	$59,820
	70%	$37,030	$42,280	$47,600	$52,850	$57,120	$61,320	$65,590	$69,790
	80%	$42,320	$48,320	$54,400	$60,400	$65,280	$70,080	$74,960	$79,760
	90%	$47,610	$54,360	$61,200	$67,950	$73,440	$78,840	$84,330	$89,730
	100%	$52,900	$60,400	$68,000	$75,500	$81,600	$87,600	$93,700	$99,700
	110%	$58,190	$66,440	$74,800	$83,050	$89,760	$96,360	$103,070	$109,670
	120%	$63,480	$72,480	$81,600	$90,600	$97,920	$105,120	$112,440	$119,640

Figure 24: New Mexico Mortgage Finance Authority Income Limits

	AMFI%	Number of Bedrooms					
		0	1	2	3	4	5
Rent Limits	20%	$264	$283	$340	$392	$438	$483
	30%	$396	$424	$510	$589	$657	$725
	40%	$529	$566	$680	$785	$876	$967
	50%	$661	$708	$850	$981	$1,095	$1,208
	60%	$793	$849	$1,020	$1,178	$1,314	$818
	70%	$925	$991	$1,190	$1,374	$1,533	$1,692
	80%	$1,058	$1,133	$1,360	$1,571	$1,752	$1,934
	90%	$1,190	$1,274	$1,530	$1,767	$1,971	$2,175
	100%	$1,322	$1,416	$1,700	$1,963	$2,190	$2,417
	110%	$1,454	$1,557	$1,870	$2,160	$2,409	$2,659
	120%	$1,587	$1,699	$2,040	$2,356	$2,628	$2,901

Figure 25: New Mexico Mortgage Finance Authority Rent Limits

Multifamily Rental Units

NW ABQ Submarket	Number of Bedrooms						
		0	1	2	3	4	5
	Asking Rent	$1,003	$1,254	$1,407	$1,681		
	Inventory	1.2%	43.2%	45.2%	10.3%		

Figure 26: Asking Rent in the Northwest Submarket

Market rate rental data from Moody's Analytics was examined in order to identify the gap between market rate apartment rental housing costs and the area median income for various household sizes. The table below displays the average asking rent for 0-3 bedroom units in the submarket. When compared against NMMFA's rents limits, it is apparent that a single person earning less than 80% of the area median income ($42,320) would not be able to afford the average rent charged for an efficiency apartment. Likewise, a single person or a 2-person household earning less than 90% of the area median income ($47,610 or $54,360) would not be able to afford the average rent charged for a one-bedroom apartment. The same trend holds true for apartments with additional bedrooms – a household would need to earn at least 80% of the area median income in order to be able to afford to pay the average rent charged in Rio Rancho.

For-Sale Housing

Recent home sales data, along with home sales trend data, both of which were discussed earlier in this Plan and displayed in ***Figure 15***, demonstrate that it has become nearly impossible for low- and moderate-income individuals to purchase a home in the City of Rio Rancho. The median closing price has increased from $192,000 in 2018, to $330,000 in September 2022.

In order to visualize how out-of-reach Rio Rancho home sales prices have become for low- and moderate-income households, we created ***Figure 27***, which is displayed on the next page. In this example, we assumed that a family attempting to purchase a home in Rio Rancho earned the median household income for the City of Rio Rancho ($66,733), which roughly equates to the 90% AMI income limit for a household of four. We also assumed that the family would attempt to purchase a modest home for $295,000, rather than a home selling for the September 2022 median closing price of $330,000.

We then used the two most common lender underwriting ratios to calculate the maximum mortgage loan for which the household would qualify. The first lender underwriting ratio that we used was the front-end/back-end ratio, which accounts for a household's ability to pay their total monthly housing costs (i.e. mortgage principal, mortgage interest, property taxes and home insurance (PITI)). The front-end ratio compares the household's monthly housing costs, *exclusive* of any other monthly consumer debt payments (such as student loan or car payments) to the household's total annual income. The back-end ratio compares the household's total consumer debt payments to the household's total annual income. The second lender underwriting ratio that we used was the loan-to-value ratio, which compares the assessed value of a property to the mortgage loan.

In this example, the lender used a front-end ratio of 28% and a back-end ratio of 36%. Since our sample household had annual income of $66,733, if the front-end ratio was 28%, they would have $18,685 available annually to pay PITI. We assumed that the household would pay annual property taxes of $2,124 and annual home insurance of $2,567, leaving $13,994 annually and $1,166 monthly available for mortgage payments. Taking into account the household's other consumer debt ($300 car payment and $200 student loan payment), we calculated that the household would have $13,332 annually and $1,111 monthly available for all consumer debt payments. Since the lender will always take into account a household's ability to pay all consumer debt, we used $1,111 to calculate the maximum mortgage amount assuming that the household qualified for a mortgage interest rate of 6.5% and a loan term of 30 years. Thus, according to this calculation, the household would qualify for a maximum mortgage loan of $175,790.

Using the much simpler loan-to-value ratio, we assumed that the lender would loan a maximum of 80% of the home's assessed value. Therefore, according to this calculation, the household would qualify for a maximum mortgage loan of $236,000. Since a lender will almost always use the lower of the two ratios, we concluded that the household would qualify for a maximum mortgage loan of $175,790.

With a maximum mortgage loan of $175,790, this household would have to bring $119,210 in cash to the table in order to purchase a home selling for $295,000, which equates to a 40% down payment. However, if the household was able to secure a much lower interest rate of 3%, they would qualify for a significantly higher mortgage loan of $263,545, which would only require an approximately 10% down payment.

This example demonstrates that, even in a low interest rate environment (3% or less), a household earning less than the City's median income would find it nearly impossible to afford to purchase a home in Rio Rancho. And, in this increasingly high interest rate environment, homeownership is also out of reach for households earning incomes slightly above the city's median household income.

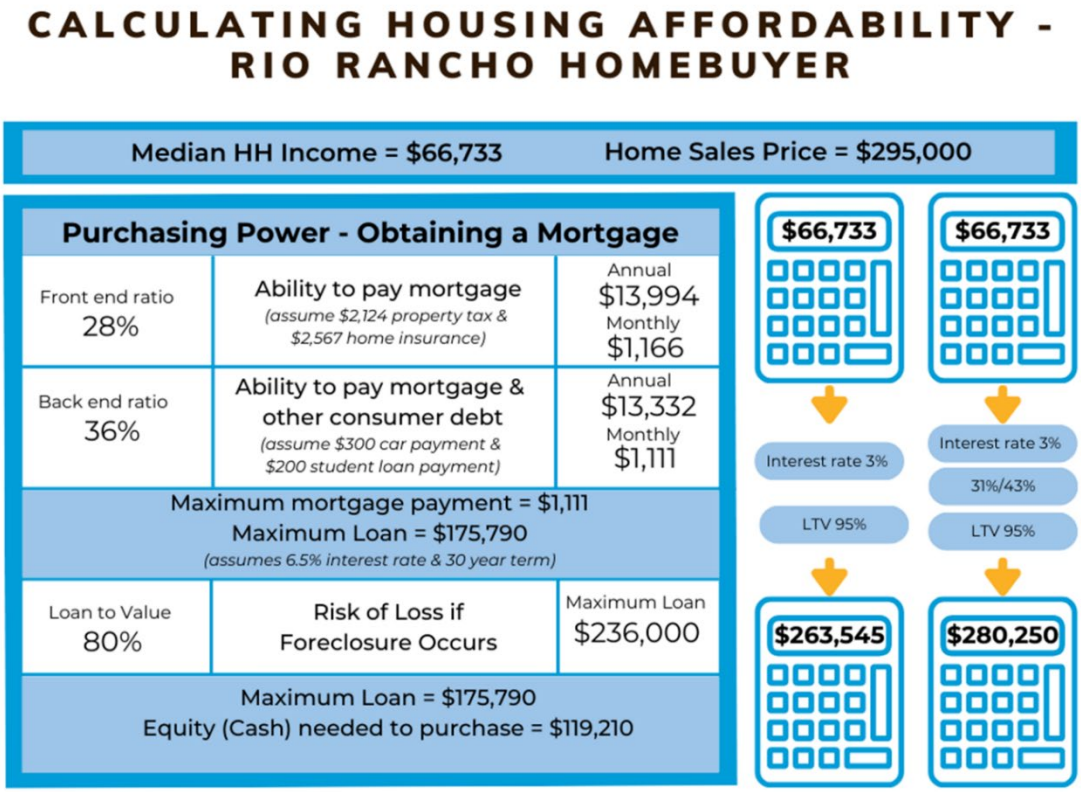


Figure 27: Homebuyer Affordability Analysis

Current and Future Housing Needs

Overview of Current and Future Housing Needs Analysis

In the ***Housing Affordability Analysis***, this Study examined the relationship between incomes and housing costs and introduced the term *housing cost-burden.* In the ***Gap Analysis***, the Plan further explored the gap between rents and mortgage payments that are considered affordable and the rents and sales prices that are currently offered in the Rio Rancho market. In this section, the Plan reviews population growth trend data, household formation data, and existing housing cost-burden data to estimate Rio Rancho's current and future need for affordable for-sale and rental housing units.

Unlike some analyses that examine current and future affordable housing needs only by income and tenure (renter/owner), this Plan analyzes affordable housing needs based on household income, tenure as well as the **household's size and the type of housing unit in which the household resides (multifamily/single family)**. This more-detailed analysis will allow Rio Rancho to develop incentives that are tailored to the needs in the community and to support projects that propose to build the types of units that are needed in the community.

Analysis of Current and Future Housing Need

Population Growth - In 2010, the population of Rio Rancho was 87,521. By 2020, the City's population had grown to 104,046, which was a 19% increase in population during the 10-year period. Per the most recent U.S. Census American Community Survey 1-Year Estimates (2021), the City has added an additional 1,793 new residents for a total population of 105,839.

The City's actual population growth from 2010-2020 is aligned with the population growth that was anticipated in the City's Comprehensive Plan, which was adopted in 2011 and amended in 2015. The Comprehensive Plan states, "Rio Rancho has been characterized as a growing community since its incorporation in 1981. A number of population projections indicate that Rio Rancho will continue to increase in population over the next several decades." While the City's population continues on an upward growth trend, over the past decade, the New Mexico Mid-Region Council of Government (MRCOG) has revised its projections regarding the rate at which Rio Rancho will continue to grow. Specifically, MRCOG previously estimated that Rio Rancho's population would grow to over 210,000 by 2035. However, in its most recently-published projections, the MRCOG projects that Rio Rancho will have a population of approximately 118,233 by 2040, which would be a rate of population growth of approximately 14% over the time period from 2020 to 2040.

Household Formation - In order to assess future housing needs, it is important to examine household formation trends alongside total population growth. Population increases that result from births, for example, do not necessarily create a need for new housing units, since newborn children will join *already existing households*. However, where population growth is driven by the migration of people into a City, these newly-arrived residents often desire to rent or own their own home rather than move in with family or friends. Therefore, these new residents form *new households*.

A "household" is defined by the U.S. Census Bureau as "all people living in a housing unit. Members of a household can be related or unrelated."

Rio Rancho has a total of 35,476 households, which is an increase of 5,550 households from a total of 29,726 in 2010. This is an increase of 19% in 10 years, which closely aligns with the City's 19% total population growth. Of these households, nearly 74% are "family households," meaning that the household includes related individuals living in the same household, and 26% are "non-family households," meaning that the householder is living alone (a one-person household) or the householder shares the home *exclusively* with people to whom he/she is not related. This ratio of family to non-family households has remained virtually unchanged over the past 10 years. The percentage of persons living alone has dipped slightly over the past decade, from 22.7% of all households in 2010 to 19.6% of all households in 2020.

Based on the fact that the population of Rio Rancho and the number of households have grown at similar rates, MRCOG's population growth estimates can be used as a basis for estimating future housing needs. Although MRCOG projected a 14% increase in population by 2040, this analysis uses a slightly more conservative projection of 10% population and household growth over the next 5 years.

Housing Unit Production – After examining total population growth and household formation, the next step in assessing future housing needs is to study how trends in household formation align with the production of housing units and the tenure of people occupying the housing units (owner vs. renter).

A "housing unit" is defined by the U.S. Census Bureau as, "a house, an apartment, a mobile home, a group of rooms, or a single room that is occupied (or if vacant, is intended for occupancy) as separate living quarters."

In Rio Rancho, the number of housing units has grown from 34,156 to 40,978 from 2010 to 2021, which is an increase of 17%. The vast majority of housing units in the city are 1-unit detached homes, which are more commonly known as single-family homes. In 2010, approximately 86% of the total housing units were single-family homes; this percentages was unchanged when measured again in 2020.

Housing Units	2010		2021		Change from 2010 to 2021	
	#	%	#	%	#	&
Total Housing Units	34,156		40,978		6,822	20%
1-unit detached	29,955	87.70%	34,667	85%	4,712	16%
1-unit, attached	853	2.50%	820	2%	-33	0%
2 units	34	0.10%	41	0%	7	30%
3 or 4 units	1,332	3.90%	1,229	3%	-103	0%
5 to 9 units	342	1.00%	615	2%	273	80%
10 to 19 units	307	0.90%	942	2%	635	206%
20 or more units	546	1.60%	1,352	3%	806	147%

Figure 28: Trends in Housing Type

However, over this same period of time, there have been noticeable increases and decreases in certain other types of housing units. Specifically, as shown in ***Figure 28***, the City experienced a loss of 116 housing units located in triplexes and quadplexes as well as a loss of 63 units in mid-sized apartment complexes (10-19 units). Noticeably, the number of mobile or manufactured homes has increased by 448 units, which is an 89% increase in units over the past 10 years.

According to stakeholder feedback, there are very few abandoned homes in Rio Rancho. While census data indicated that there are 1,935 vacant homes in the city, it is likely that these homes are seasonal or "second-home" properties that happened to be vacant during the survey period. Likewise, local realtors stated that there are very few properties that are subject to foreclosure or a short sale – which is another indication that there is strong demand for housing in Rio Rancho. The City reported 63 registered foreclosed homes on 6/16/23.

The fact that the growth in housing units has not kept pace with overall population growth means that current and future Rio Rancho residents are likely to continue to experience rising housing costs, since the demand for housing exceeds supply.

Housing Tenure - There are 28,153 owner-occupied housing units in Rio Rancho, 7,323 renter-occupied housing units, and 1,935 vacant housing units. Rio Rancho is primarily occupied by residents who own their homes. In 2021, 81% of Rio Rancho households owned their home. The remaining 19% of housing units were occupied by renters.

When examining the range of housing types that exist in a city along with breakdowns in owner versus renter status (i.e. housing tenure), it is important to recognize that owners and renters live in a range of housing types, including single-family homes, duplexes, and condominium units in small and large complexes. Unsurprisingly, in Rio Rancho over 97% of persons who own their housing unit live in a one-unit single-family home. But, notably, 60% of renters living in Rio Rancho *also reside in a one-unit single-family home*. Only 10% of renters live in large apartment complexes (50+ units); another 15% live in duplexes, triplexes, or quadplexes.

Housing Needs Calculation

In order to dig deeper into current and future housing needs, the following approach was taken:

- Reviewed U.S. Census American Community Survey 5-year estimates (2016-2020) to determine the number of owner- and renter occupied housing units in the City.
- Reviewed U.S. Census American Community Survey 5-year estimates (2016-2020) to determine the type of housing units that were occupied by owner and renter households and calculated the percentage of each housing unit type that was occupied by owner and renter households of varying sizes.
- Reviewed U.S. Census American Community Survey 5-year estimates (2016-2020) to determine the number of owner- and renter-occupied housing units where the owner or renter reported spending 30% or more of their income on housing costs. These owners and renters were considered “housing cost burdened.”
- Aligned the incomes reported by housing cost-burdened owners and renters with HUD’s area median incomes. The income ranges reported by the U.S. Census do not align exactly with HUD’s area median income. Therefore, owners or renters who reported less than $20,000 in annual income per the U.S. Census were categorized as 30% AMI households. Owners or renters who reported more than $20,000 and less than $35,000 in annual income per the U.S. Census were categorized as 50% AMI households. Owners or renters who reported more than $35,000 and less than $75,000 in annual income per the U.S. Census were categorized as 80% AMI households. Owners or renters who reported more than $75,000 in annual income per the U.S. Census were categorized as 100% AMI (or greater) households.
- Allocated the share of cost-burdened renter- and owner-occupied housing units across various household sizes based on the percentage of each housing unit type that was occupied by owner and renter households of varying sizes.

Using this analysis, this Plan calculates that Rio Rancho has **3,643 housing units that are currently occupied by housing cost-burdened renters** and **6,457 housing units that are currently occupied by housing cost-burdened homeowners**.

Current Needs

Future Needs

Current and Future Affordable Housing Needs – Renter-Occupied Housing Units

Current Housing Need Cost-Burdened Renters	
AMFI %	**Units**
30%	1001
50%	1223
80%	1355
100%	64
Total	3643

Figure 29: Housing Units Currently Occupied by Housing Cost-Burdened Renters

Future Housing Need Cost-Burdened Renters	
AMFI %	**Units**
30%	1101
50%	1345
80%	1491
100%	70
Total	4007

Figure 30: Housing Units Projected to be Occupied by Housing Cost-Burdened Renters

The following four tables estimate the number of housing units in Rio Rancho that are currently occupied

Current Housing Need Cost-Burdened Owners	
AMFI %	**Units**
30%	1565
50%	1460
80%	3059
100%	373
Total	6457

Figure 31: Housing Units Currently Occupied by Housing Cost-Burdened Owners

Future Housing Need Cost-Burdened Owners	
AMFI %	**Units**
30%	1722
50%	1606
80%	3365
100%	410
Total	7103

Figure 32: Housing Units Projected to be Occupied by Housing Cost-Burdened Owners

by cost-burdened renter households and that will likely be occupied by cost-burdened renters in the next

5 years. The tables are categorized by the type of housing unit where the renter resides – either multifamily (i.e. an apartment unit) or a single-family rental unit.

It is also important to note that cost-burdened renter households are particularly at risk of displacement due to rising housing prices. Since most residential leases are for a term of 1-2 years, renters are exposed to rent increases at each lease renewal. If households with higher incomes who are able to *afford* higher rents begin moving into a neighborhood and seeking housing units to rent, landlords are likely to begin *charging* higher rents. Rents may increase to the point that existing low- and moderate-income renters are forced to move because they cannot afford the higher rents that are charged for their homes.

A similar analysis was conducted to estimate the number of housing units in Rio Rancho that are likely to be occupied by cost-burdened rental households. This analysis assumes 10% population growth equally in all income levels and households sizes over the next 5 years.

Estimated Current Housing Need						
Rental Units - Multifamily						
AMFI %	Number of Household Members					Total
	1	2	3	4	5	
30%	175	124	68	27	6	399
50%	213	151	83	33	7	487
80%	236	167	92	36	8	540
100%	11	8	4	2	0	25
Total	636	450	247	98	22	1451
	Percent Renter Occupied Units - Multifamily					
	17.45%	12.34%	6.77%	2.68%	0.60%	

Figure 33: Estimated Current Affordable Housing Need for Renters Residing in Multifamily Housing Units

Estimated Current Housing Need						
Rental Units - Single Family (detached or attached)						
AMFI %	Number of Household Members					Total
	1	2	3	4	5	
30%	99	222	116	87	78	602
50%	121	271	142	106	96	736
80%	134	301	157	118	106	815
100%	6	14	7	6	5	38
Total	359	808	422	317	285	2191
	Percent Renter Occupied Units - Single Family					
	9.86%	22.18%	11.59%	8.70%	7.82%	

Figure 34: Estimated Current Affordable Housing Need for Renters Residing in Single Family Housing Units

Estimated Future Housing Need						
Rental Units - Multifamily						
AMFI %	Number of Household Members					Total
	1	2	3	4	5	
30%	192	136	75	30	7	439
50%	235	166	91	36	8	536
80%	260	184	101	40	9	594
100%	12	9	5	2	0	28
Total	699	495	271	107	24	1597
	Percent Renter Occupied Units - Multifamily					
	17.45%	12.34%	6.77%	2.68%	0.60%	

Figure 35: Projected Affordable Housing Need for Renters Residing in Multifamily Housing Units

Estimated Future Housing Need						
Rental Units - Single Family (detached or attached)						
AMFI %	Number of Household Members					Total
	1	2	3	4	5	
30%	109	244	128	96	86	662
50%	133	298	156	117	105	809
80%	147	331	173	130	117	897
100%	7	16	8	6	6	42
Total	395	889	464	349	313	2410
	Percent Renter Occupied Units - Single Family					
	9.86%	22.18%	11.59%	8.70%	7.82%	

Figure 36: Projected Affordable Housing Need for Renters Residing in Single Family Housing Units

Current and Future Affordable Housing Needs – Renter-Occupied Housing Units

An analysis was conducted to estimate the number of housing units in Rio Rancho that are currently occupied by cost-burdened owner households. Unlike renters, existing homeowners are less exposed to rising housing prices because their mortgage amount does not adjust based on neighborhood sales prices and the term of their mortgage is usually for at least a decade. Instead, when homeowners become cost-burdened, it is usually because they have experienced a drop in income – for example, due to job loss or retirement – or their housing costs have increased, which could include rising property taxes or insurance. Cost-burdened homeowners are at risk of displacement due to foreclosure and are vulnerable to below-market purchase offers from investors. Likewise, cost-burdened homeowners may struggle to afford to make minor or major repairs to their homes, or even to afford basic landscaping.

Estimated Current Housing Need						
Owner Units - Multifamily						
AMFI %	Number of Household Members					Total
	1	2	3	4	5	
30%	15	17	9	2	1	43
50%	14	16	9	2	1	40
80%	28	33	18	3	1	84
100%	3	4	2	0	0	10
Total	60	69	39	7	3	178
	Percent Owner Occupied Units - Multifamily					
	0.93%	1.07%	0.60%	0.11%	0.04%	

Figure 37: Current Affordable Housing Need for Owners Residing in Multifamily Housing Units

Estimated Current Housing Need						
Owner Units - Single Family (detached or attached)						
AMFI %	Number of Household Members					Total
	1	2	3	4	5	
30%	261	648	237	202	174	1522
50%	244	605	221	188	162	1420
80%	511	1,267	463	394	340	2975
100%	62	154	56	48	41	363
Total	1,078	2,674	976	832	717	6279
	Percent Owner Occupied Units - Single Family					
	16.70%	41.42%	15.12%	12.89%	11.11%	

Figure 38: Current Affordable Housing Need for Owners Residing in Single Family Housing Units

A similar analysis was conducted to estimate the number of housing units in Rio Rancho that are likely to be occupied by cost-burdened owner households. This analysis assumes 10% population growth equally in all income levels and households sizes over the next 5 years.

Estimated Future Housing Need						
Owner Units - Multifamily						
AMFI %	Number of Household Members					Total
	1	2	3	4	5	
30%	16	18	10	2	1	47
50%	15	17	10	2	1	44
80%	31	36	20	4	1	93
100%	4	4	2	0	0	11
Total	66	76	43	8	3	195
	Percent Owner Occupied Units - Multifamily					
	0.93%	1.07%	0.60%	0.11%	0.04%	

Figure 39: Projected Affordable Housing Need for Owners Residing in Multifamily Housing Units

Estimated Current Housing Need						
Owner Units - Single Family (detached or attached)						
AMFI %	Number of Household Members					Total
	1	2	3	4	5	
30%	287	713	260	222	191	1674
50%	268	665	243	207	178	1562
80%	562	1,394	509	434	374	3272
100%	69	170	62	53	46	399
Total	1,186	2,942	1,074	916	789	6907
	Percent Owner Occupied Units - Single Family					
	16.70%	41.42%	15.12%	12.89%	11.11%	

Figure 40: Projected Affordable Housing Need for Owners Residing in Multifamily Housing Units

Home Rehabilitation and Preservation Needs

In the ***Current and Future Housing Needs Analysis*** this Plan estimated the number of homeowners who are currently housing-cost burdened and who are projected to become housing-cost burdened in the next five years. As stated earlier, cost-burdened homeowners may struggle to afford to make minor or major repairs to their homes. Therefore, it is important for the City of Rio Rancho to understand the rehabilitation needs of existing housing units. This will allow the City of Rio Rancho to develop strategies to preserve existing housing units that are occupied by low- and moderate-income owners who do not have the disposable income needed to adequately maintain and repair their homes. The City may also consider developing strategies to encourage landlords to repair and upgrade their existing rental units.

In order to gauge the home rehabilitation and affordable housing preservation needs in the City, this report used information from the City's Comprehensive plan, application data from the City's home repair programs, along with input received via the Affordable Housing Plan survey.

Single-Family Homeowner Repair Needs

Rio Rancho is a relatively "young" city as it wasn't officially incorporated until 1981, although homes were being built decades before the city was incorporated. The city experienced its first building boom in the 1990's with a second, larger building boom between 2000 and 2009. In general, homes that were built prior to 2000 are more likely to be in need of repairs, since many of the components that comprise major systems (roofing, HVAC, plumbing and electrical) tend to have a useful life of between 15-25 years. In Rio Rancho, approximately 21,865 of existing homes were built prior to 2000, which is 58.4% of the City's total housing stock.

Additionally, a unique element of Rio Rancho's history impacts the home repair needs of residents. Many of the homes that were built in Rio Rancho during the 1960's and 1970's were constructed by one builder, Rio Rancho Estates, Inc. (commonly known an "AMREP"), which was also major landowner at the time. According to the City's Comprehensive Plan, these homes were marketed primarily to retirees and young families who were looking for a "starter home." Unfortunately, local residents and construction contractors report that AMREP's quality of construction was poor, which has created repair needs that are more substantial than would be expected for the age of the homes.

While Rio Rancho is a "young" city, a large share of residents are over the age of 65. These residents are both more likely to be on a fixed income (and thus repair and maintenance costs may be more financially burdensome) and more likely to be disabled or have limited mobility (in which case, the physical act of maintaining the property and lot may pose a challenge).

Over the years, Rio Rancho has sought to address the home repair needs of low-income households by investing Community Development Block Grant (CDBG) funding in programs that provide home repair assistance to low-income Rio Rancho homeowners. On average, these programs would assist less than 20 homeowners per year. However, in 2021, the City of Rio Rancho allocated an unprecedented amount of funding – approximately $360,000 from American Rescue Plan Act – to a Home Repair Pilot Program that was managed by a local non-profit, Homewise, Inc.

The Home Repair Pilot Program allowed qualifying low-income residents to receive up to $25,000 in a deferred, forgivable, 0% loan to address heating/cooling systems, plumbing systems, roofs, doors, windows, stucco/siding, electrical systems, and other principal components. The deferred, forgivable

loans were structured to be forgiven over a five (5) year period at a rate of 20% per year as long as the homeowner/legal property title holder continues to reside at the property.

To qualify for the Home Repair Pilot Program the home must be in City of Rio Rancho, homeowner income was or at 80% of the Area Median Income for Sandoval County, and all work had to be completed by a licensed, insured and bonded contractor.

The City and Homewise, Inc. marketed the Home Repair Pilot Program between March 3 and March 31, 2022. Homewise, Inc. received 463 inquiries. Once the program opened, Homewise Inc. received over 250 applications for assistance. The number of applications demonstrates an existing level of need that is above the resources that were typically dedicated to the City's home repair program. Additionally, the map included on the next page displays the approximate locations where home repairs where actually completed via the Home Repair Pilot Program. It shows that many of the home repairs were concentrated in older neighborhoods in the southern portion of the City. Given the success of the Home Repair Pilot Program, the FY 24 City budget allocates an additional $580,000 ARPA funds for Homewise, Inc., to deploy.

Single-Family and Multi-Family Rental Repair Needs

The City of Rio Rancho does not administer either a single family or a multifamily registration and inspection program. However, community perception (as expressed in the Affordable Housing Plan survey) is that many of the City's single-family rental and multifamily rental housing units are not properly maintained or managed.

Census data points to a potential lack of ongoing investment in smaller multifamily complexes, such as triplexes, quadplexes and mid-sized apartment complexes (10-19 units). Specifically, the City has experienced a loss of 116 housing units located in triplexes and quadplexes as well as a loss of 63 units in mid-sized apartment complexes (10-19 units). The fact that these units have been lost from the market suggests that it was more economically viable to demolish the units or convert them to another use rather than repair them.

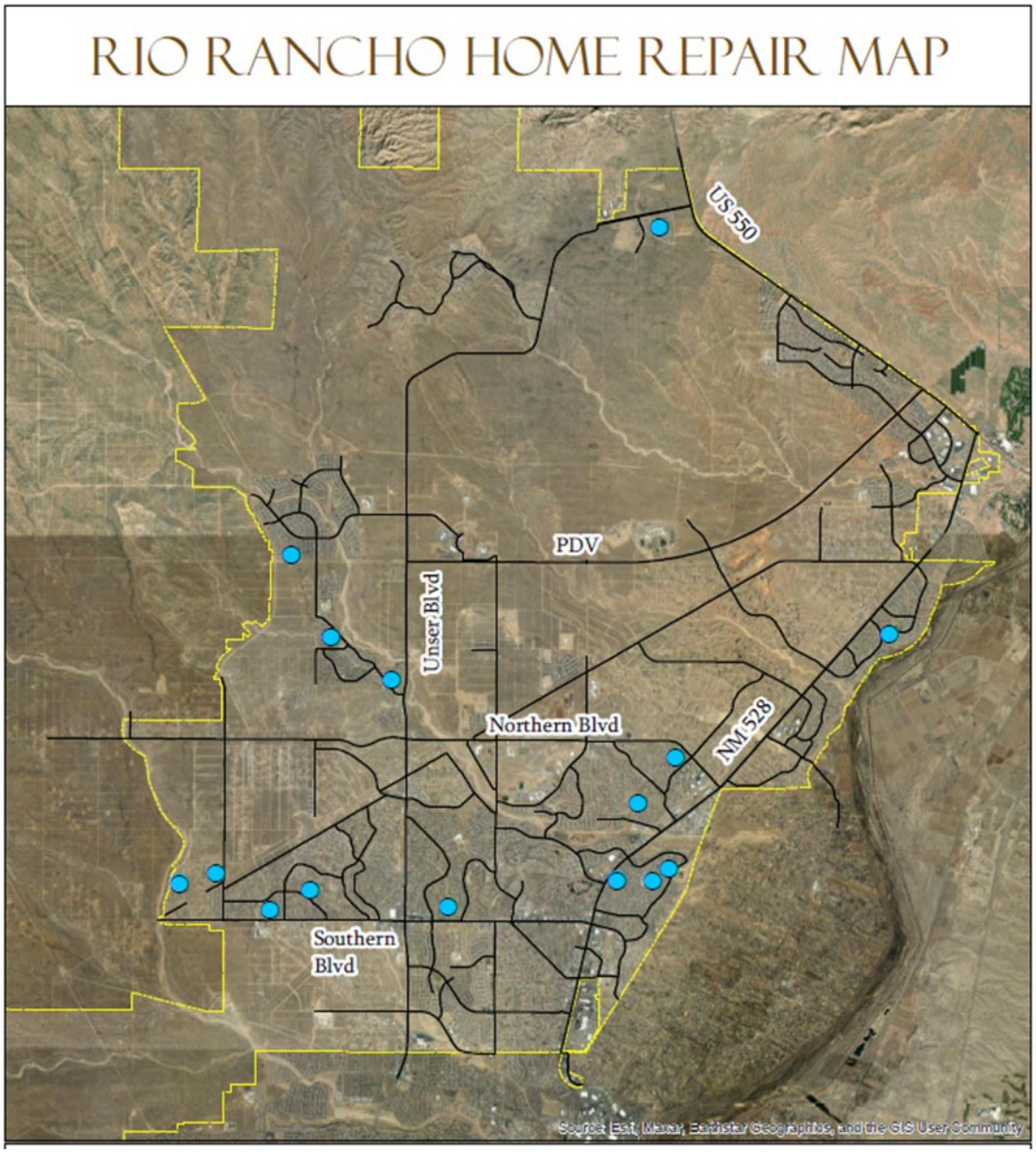


Figure 41: City of Rio Rancho and Homewise, Inc. 2022 Home Repair Program Locations

Goals, Policies and Quantifiable Objectives

Overview of Goal, Policies and Quantifiable Objectives

In the ***Housing Affordability Analysis***, this Plan examined the relationship between incomes and housing costs and introduced the term *housing cost-burden.* Next, in the ***Gap Analysis***, this Plan further explored the gap between rents and mortgage payments that are considered affordable and the rents and sales prices that are currently offered in the Rio Rancho market. In the ***Current and Future Housing Analysis***, this Plan reviewed population growth trend data, household formation data, and existing housing cost-burden data to estimate Rio Rancho's current and future need for affordable for-sale and rental housing units.

In this final section, the Plan uses the data and analysis from the ***Housing Affordability Analysis***, ***Gap Analysis***, and ***Current and Future Housing Analysis***, to identify numerous opportunities for Rio Rancho to implement strategies that address the conditions that impact the availability and affordability of housing in the city, including:

- **Preserve existing single-family housing that is occupied by current city residents** by coupling code enforcement activity with resources that help homeowners repair and maintain their homes. For example, Cities across the nation offer 0%, 5-year forgivable loans to qualifying (low to moderate income) homeowners to make necessary repairs. The loan agreement comes with covenants restricting the timeliness of sale of the home and sharing of equity proceeds from a sale of the home.
- **Preserve existing renter-occupied single-family housing** by developing a single-family rental registration and inspection ordinance. A rental registration and inspection ordinance will help the city identify the location and condition of single-family rental properties. Thereafter, the city can design an incentive program to encourage landlords to repair and maintain their properties. For example, Cities across the nation offer 0%, 5-year forgivable loans to qualifying landlords to make necessary repairs. The loan agreement comes with covenants restricting the rent charged (keeping it affordable), timeliness of sale of the home and sharing of equity proceeds from a sale of the home. A program like this may preserves existing affordable renter occupied single family housing and reduce naturally occurring affordable housing
- **Spur development of housing on vacant or underutilized parcels** by creating a land swap /land banking program that allows the city to sell city-owned land to developers who agree to build housing that is affordable to families earning a range of incomes.
- **Encourage development of "starter homes"** and other forms of affordable housing by providing public financing to support housing development.
- **Add additional housing units to existing neighborhoods** by helping homeowners navigate the process of building a backyard casita or a garage conversion.
- **Speed up housing development by removing unnecessary regulatory barriers** to developing a range of housing types and encourage more new housing development by modifying land use regulations so that more dense forms of housing can be developed throughout the city.

Additionally, this Plan proposes quantifiable objectives that that seek to meets the affordable housing needs of 20% of homeowner and renter households who are projected to be cost-burdened within the next 5 years.

Preservation Strategies

Couple Code Enforcement with Assistance to Homeowners and Landlords

Context – Owner-Occupied Homes

While it is important and necessary for the City to set and enforce property maintenance standards to protect the health and welfare of residents, it is equally important for the City to recognize that the enforcement of these standards can disproportionately impact low- and moderate-income homeowners who are unable to pay for expensive repairs to their aging homes. Engaging with residents to proactively identify their repair needs can help preserve code enforcement resources and prevent homeowners from facing escalating code enforcement.

The inability to maintain and repair an aging home can cause a cascade of problems for a homeowner. Deferred maintenance, such as an inability to fix broken windowpanes or rotten window casings, can lead to high heating and cooling costs. Similarly, leaking faucets and toilets can lead to higher water bills as well as more extensive water damage, which carries with it high repair costs. And when regular maintenance is deferred for longer periods of time, it can lead to more extensive repair issues that are noticeable from the street – such as sagging roofs, crumbling foundations, and rotten wood siding. This can put the home on the radar of code enforcement officials who may fine the owner for violations of local codes and, in extreme circumstances where the home has become uninhabitable, may order the owner to vacate the property.

Additionally, when owners of aging properties are elderly or disabled, deferred maintenance can prevent the homeowner from safely living in their home. Issues such as holes or cracks in the floor can create trip hazards that lead to falls, especially for homeowners with limited vision. Similarly, without accessibility modifications such as widened doorways, walk-in tubs, or lowered countertops and cabinets, a homeowner with a mobility-related disability may become unable to use rooms in their home, including the kitchen and bathroom. The isolation of the homeowner within their own home can impact their ability to maintain a healthy lifestyle by cooking their own meals and bathing regularly.

Context – Single-Family and Multifamily Rental Properties

Landlords who own single-family or multifamily rental properties can also fall behind on maintenance responsibilities. While some landlords may deliberately choose to ignore repair needs at their properties, other landlords may struggle to obtain loans that allow them to invest significantly in their properties. Regardless of the intention of the landlord, poorly maintained rental properties have a negative impact on the health and well-being of tenants who live in the rental units as well as the vitality of the surrounding neighborhood. Poor maintenance of both single- and multifamily rental properties also creates negative associations within the community regarding density.

There is a strong need for the City of Rio Rancho and the private sector (for-profit and non-profit) to invest in single-family and multi-family rehabilitation programs. Community members expressed a strong preference for investments in rehabilitation programs. Specifically, they expressed concerns about: (1) poorly maintained multifamily properties that become a magnet for crime and (2) aging or disabled homeowners who are both physically and financially unable to make repairs to their home or even maintain the exterior landscaping of their homes.

Continue to Devote Resources to Single-Family Home Repair Programs

The City's most recent Home Repair Pilot Program validated the need to provide home repair assistance to low-income households who struggle to pay for repairs to their aging homes. Through this pilot program, the City was able to identify and partner with a non-profit that had the expertise and staff capacity to administer the program, including evaluating the income of applicants, verifying completion of repairs made by contractors, and offering technical assistance and education to homeowners. The City should consider several options to fund a continuation and expansion of the program:

1. **CDBG Funding** - consider expanding the share of CBDG dollars that are devoted to home repair,
2. **Philanthropic Funding** - conduct outreach with major employers and non-profit organizations such as Homewise Inc. and Habitat for Humanity to identify philanthropic resources that could be devoted to home repair programs,
3. **State-Administered Funding** - Strengthen relationships with the New Mexico Housing Finance Authority and its service-providers in order to market the MFA's home repair and NM EnergySmart Weatherization Programs.

Additionally, if multiple funding sources are secured to continue and expand the City's home repair efforts, the City should consider putting together a working group of staff, home repair service providers, and neighborhood leaders who can work to market and coordinate home repair efforts.

Develop a Single-Family Rental Registration and Inspection Ordinance Coupled with Funding for Repairs

As discussed in the Housing Needs Assessment, 60% of renter households living in Rio Rancho reside in a one-unit single-family home, which equates to 4,405 single-family rental housing units. However, the City of Rio Rancho does not require landlords who own single-family rental properties to register their properties with the City and the City does not regularly inspect these properties. Therefore, the City has very little data about these rental units. For example, the City does not know how many of these units are owned by the same landlord, whether the landlord self-manages the property or uses a third-party property manager, and the physical condition of each unit.

In the Rio Rancho Affordable Housing Plan Survey, nearly 90% of respondents indicated that they strongly agreed or agreed with the statement that the "City should preserve affordable homes by providing financial assistance to encourage single-family landlords to make repairs to their rental properties to address code compliance and/or weatherization issues." However, due to the City's lack of data related to single-family rental properties, it would be difficult for the City to design and market such a program.

If the City adopted a single-family rental registration and inspection program coupled with repair incentives for landlords, the program could assist the City in achieving two goals:

1. To protect the health, safety and welfare of its citizens by identifying the location and condition of all single-family rental properties; and
2. To preserve and create affordable rental housing units by providing a suite of incentives to single-family landlords who repair their properties and agree to charge affordable rents for an agreed-upon period of time.

There is a basis in the current municipal code for a single-family rental registration and inspection program. Currently, the City requires the registration and regular maintenance of properties pursuant to the following ordinances:

- **Chapter 91, Nuisances; Health and Sanitation** – In this chapter, the City of Rio Rancho establishes minimum standards governing the maintenance, appearance, and conditions of all residential and non-residential premises. A primary purpose of the chapter is to promote the health, safety and welfare of the citizens of the city by protecting property from blighting and deteriorating conditions such as leaning fences, graffiti, peeling paint, rotting or damaged materials, inoperable or disabled vehicles, and piles of refuse. The City's Code Enforcement Division is responsible for enforcement of the chapter.
- **Chapter 99, Abandoned Residential Property Registration**– In this chapter, the City of Rio Rancho established an abandoned residential property registration program that applies to residential properties that are vacant or illegally occupied and are either pending foreclosure or were subject to a foreclosure sale and are owned by the mortgage lender/bank, i.e. Real Estate Owned (REO) properties. The ordinance requires the mortgage lender/bank to regularly inspect any properties subject to a notice of default or where ownership of the property has been transferred to the mortgage lender/bank via a foreclosure sale or deed-in-lieu of foreclosure. The mortgage lender/bank is required to register any properties that are found to be vacant.

Therefore, it is recommended that the City of Rio Rancho consider adopting a single-family rental registration and inspection ordinance. This ordinance could be implemented in two phases. Initially, the City could educate landlords and tenants about the program, market it broadly via community partners such as Realtors and lenders, and open the registration process. After successful implementation of the registration process, the City could being its inspection process.

The ordinance should require owners of single-family rental properties to register with the City and provide, at a minimum:

- Property address,
- Owner/landlord's mailing address, email address, and telephone number,
- Property manager's mailing address, email address, and telephone number (if applicable),
- Name and telephone number of a local representative who is designated as an emergency contact and can arrive at the property within 12-24 hours to respond to a public health or safety emergency at the property,
- A signed verification that the single-family rental property is compliant with Chapter 91's minimum health and safety standards. *(This could also take the form of a checklist of items that the landlord verifies are in good repair, such as windows and doors, roof, and major systems as well as exterior items such as fences and yards.)*

In addition to the signed verification of property conditions, the City could choose to implement an inspection program. Inspections could occur based only upon complaint by a tenant (or other concerned person) or could occur upon the property's registration in the program and every 5-7 years thereafter. Where a landlord's property is found to be in need of repairs, the landlord could be offered financial and non-financial incentives to repair the property and lease it for an affordable rent.

Short-Term Rentals

The City of Rio Rancho requires operators of hotels and other short-term rental properties to register as a vendor and to collect and remit to the city a 5% occupancy tax on all rents collected. Additionally, all New Mexico short-term rental properties are required to collect and pay the state's gross receipts tax.
The City of Rio Rancho does not officially license short term rentals such as those found via sites like Airbnb or VRBO and, therefore, it is difficult to determine whether the existence of possible short-term rentals within the City represents as a barrier to affordable housing. However, if the City were to create a licensing program for short-term rentals, this would allow the City to track the number and location of all rentals, the code compliance issues associated with such units, as well as collect a licensing fee for the operation of the rental.

Production Strategies

Develop Land Swap/Land Banking Programs and Encourage Charitable Donations to Qualified Housing Developments

Another way for the City to facilitate the development of new affordable housing is to acquire abandoned and blighted (often tax-delinquent) parcels of land and resell the parcels to builders who agree to construct high-quality affordable housing units on the land. This process is often known as "land banking." Land banking is most easily accomplished when state law creates a process by which municipalities or non-profit agencies can fast-track the foreclosure of tax-delinquent parcels and acquire them *before* they are offered for sale at public auction. However, the State of New Mexico does not currently enable such a process.

However, the City of Rio Rancho has several alternative options to acquire and dispose of land for affordable housing purposes:

Acquisition of Land for Affordable Housing Development

1. **New Mexico Statutes, Chapter 3, Article 43, Section 3-54-2** allows a City to "sell, at a private or public sale, exchange or donate real or personal property to the state, to any of its political subdivisions or to the federal government if such sale, exchange or gift is in the best interests of the public and is approved by the local government division of the department of finance and administration." The City should explore whether any state-owned land would be suitable for residential development and identify city-owned parcels of land that could be exchanged in order to acquire the state-owned property.
2. **New Mexico Statutes, Chapter 3, Article 60A** allows a municipality to engage in redevelopment activities – including land acquisition and disposition - in areas of the city that have been determined to be "a slum area or a blighted area or a combination thereof." A city must comply with all the planning and approval processes outlined in state law prior to engaging in redevelopment activities pursuant to the statute. The City should examine whether any areas in the City meet the state definition of slum or blight areas and explore whether it would be advisable and feasible to engage in redevelopment activities.

Sale of City-Owned Land for Affordable Housing Development – Upon approval of a City of Rio Rancho Affordable Housing Plan by the MFA and adoption of an Affordable Housing Ordinance by the Rio Rancho

City Council, the City will be able to donate city-owned land to for-profit or non-profit organizations who agree to build affordable housing units on the land.

Incentivize Donation via the New Mexico Affordable Housing Tax Credit Program - In addition to developing affordable housing programs that are administered by the City, the City should also develop a strategy for encouraging private parties to support affordable housing development in Rio Rancho via the New Mexico Affordable Housing Tax Credit program.

According to the New Mexico Mortgage Finance Authority, "the New Mexico Affordable Housing Tax Credit program encourages private investment in affordable housing by providing donors to qualified housing developments with a credit on their state taxes. State tax credits provide a direct savings on income taxes, gross receipts taxes and compensating taxes (excluding local option gross receipts tax imposed by a municipality or county or the government gross receipts tax) to any eligible individual, business, and local or tribal government that makes a donation to an affordable housing development."

Support the Development of New Affordable Housing Units and the Rehabilitation of Existing Units

Developing housing can be a complex and multi-year process that involves identifying a suitable development site, securing financing, obtaining city approvals, constructing the housing, and finding acceptable tenants or purchasers. Developing *affordable housing* involves added complexities because a project that charges below-market rents or sales prices cannot attract sufficient conventional debt and equity to finance the construction and operation of the project; therefore, affordable housing developers must secure additional financing including Low Income Housing Tax Credits, public loans or grants, and fee waivers. Developing *affordable housing in communities that lack affordable units* can be the most complex and difficult type of endeavor because affordable housing developers must compete with market-rate developers for key building sites and often must respond to strong neighborhood opposition regarding the addition of affordable housing in the community.

Therefore, in order to develop a significant amount of new affordable housing units, especially units that are affordable for extremely low-income families, it is necessary to adopt a multi-pronged approach that focuses on the factors that make it financially or politically difficult to develop, including regulatory barriers, lack of infrastructure, and community opposition.

Private Activity Bonds and Gap Financing - Providing low-cost, long-term gap financing to experienced developers and rehabbers of affordable apartment communities and single-family homes is a common strategy that cities use to incentivize the construction or substantial rehabilitation of affordable housing units. The City of Rio Rancho has access to two potential sources of revenue to support the development of affordable housing: (1) the City could issue general obligation bonds for the purpose of providing gap financing to affordable housing developers; this strategy would need to be approved during a general election; or (2) the City could apply to the New Mexico State Board of Finance (SBOF) for an allocation of Private Activity Bonds (PABs), which are a form of tax-exempt financing that may be used to support privately-owned public purpose projects such as affordable single-family mortgage programs or construction of multifamily rental housing. The federal government imposes an annual cap on the principal amount of tax-exempt PABs that may be issued within each state; therefore the allocation process is highly competitive.

Incentivize Accessory Dwelling Units/Casitas and Garage Conversions - In recent years, many cities have recognized that developable land is actually plentiful in many neighborhoods – if you take into account the backyard and side yard space that is available on large single-family lots. The City of Rio Rancho has already authorized the development of accessory dwelling units (ADUs); however less than 20 have been permitted. The City should explore public or private financing options for the construction units that will be tenant occupied and where the owner agrees to charge an affordable rent. Additionally, in such instances, the City should waive the impact fees charged for the construction of an ADU.

Garage Conversions are another tool for residents to leverage their assets as a homeowner. Converting garages into living space adds to homeowners' capacities to accommodate more people or a growing family. In recent years, the City of Rio Rancho discovered that a numerous residents residing in some of Rio Rancho's older communities had completed garage conversions without obtaining building permits. This discovery occurred when property inspections were triggered by property sales or solar panel installation. To expedite and streamline the process for these conversions, the City updated the city code in October 2018 to reflect its adoption of the Retroactive Garage Administrative Conversion Variance Process, which is a streamlined administrative process by which property-owners can apply for an administrative variance. Since 2019, the City has approved 32 such requests – 6 in 2019, 4 in 2020, 13 in 2021, and 9 in 2022. Rising numbers of approvals may simply indicate an increase of awareness of the process but it may also indicate more homeowners making such changes in order to ease cost burden while accommodating larger households.

For both ADUs and garage conversions, the City could provide education or technical assistance to help homeowners successfully complete their projects. For example, the City could release info sheets, FAQs, or even help match ADU owners with renters.

Remove Regulatory Barriers to the Development of Affordable Housing

According to recent research conducted by the National Association of Homebuilders and the National Multifamily Housing Council, regulations imposed by all levels of government account for an average of 40.6% of apartment development costs. At the local level, these regulations can include lengthy and unpredictable zoning approval processes and permit and impact fees. Therefore, since regulations account for a significant share of development costs, Rio Rancho should identify opportunities to waive or modify local regulations in order to incentivize the development of high-quality affordable housing units. This process will involve a balancing of public interests, between the need for affordable housing and financially sustainable city operations. Stakeholders who were consulted during the development of this Plan cited occasional lack of transparency regarding applicable regulations and lack of consistent application of such regulations.

Modify Land Use Regulations to Allow for the Development of More Affordable Housing Units

Nearly every real estate professional who was consulted during the development of this Plan cited zoning as the leading factor that limits construction of "missing middle" housing along with more dense apartment communities. A review of Rio Rancho zoning maps and ordinances shows that existing land zoned for R-6 multi-family residential use is limited and concentrated to particular geographies in the City. The same can be said for R-3 Mixed-residential uses. Results from the Rio Rancho Affordable Housing Survey demonstrate strong support for neighborhoods to be developed with multiple types of housing

rather than a single type of housing. The City of Rio Rancho may choose to expand (and reduce concentrations) of the amount of land designated under the R-6 and R-3 uses or combine the designations to allow for the development of multiple types of housing in new neighborhoods. Multiple types of housing translate into higher density of dwellings and more efficient use of public infrastructure.

Improve Neighborhood Conditions in Order to Spur Private Investment in Housing

Many neighborhoods in the City lack adequate infrastructure that would serve a newly-constructed home, including water and sewer lines, gas pipes, and broadband transmission technology. Private real estate developers and their financing partners will shy away from developing housing in such neighborhoods due to added development costs and the perception that the neighborhood is not adequately prioritized for city investment and services. The City should continue to explore all available opportunities to install infrastructure in neighborhoods as a means of spurring private investment.

Quantifiable Objectives

This Plan proposes the following quantifiable objectives that that seek to meet the affordable housing needs of 20% of homeowner and renter households who are projected to be cost-burdened within the next 5 years.

Housing Production

- **Produce 220 new rental housing units that are affordable for households earning 30% of AMI or lower.** This goal will allow the City of Rio Rancho to meet 20% of the projected affordable housing need for renters in this income range. **Focus on production of multifamily units with 0-1-2 bedrooms.** This will add to the very limited supply of smaller-size rental units and will provide opportunities for seniors on fixed-incomes who may need assisted services to downsize from their larger homes into a rental product.
- **Produce 269 rental housing units that are affordable for households earning 50% of AMI or lower.** This goal will allow the City of Rio Rancho to meet 20% of the projected affordable housing need for renters in this income range. **Focus on production of multifamily units with 0-1-2 bedrooms.** This will add to the very limited supply of smaller-size rental units and will offer opportunities for entry-level workers to move into Rio Rancho.
- **Produce 344 owner housing units that are affordable for households earning 30% of AMI or lower.** This goal will allow the City of Rio Rancho to meet 20% of the projected affordable housing need for owners in this income range. **Focus on production of condominium and townhouse units with 1-2 bedrooms.** This will add to the very limited supply of smaller-size owner units and will provide opportunities for seniors on fixed-incomes to downsize from their larger homes while still remaining homeowners.

Housing Preservation

- **In the next five years, provide home repair assistance to 100 single-family homeowner households earning 80% AMI or lower.** This goal will allow the City of Rio Rancho to provide assistance to 20% of the homeowners who applied for the 2021 Homewise-administered Home Repair Program.
- **In the next five years, develop and implement single-family and multifamily rental registration programs.** This will allow the City of Rio Rancho to identify the location and condition of its single-family and multifamily rental housing units. The City of Rio Rancho can use the data to develop strategies to incentivize landlords to repair their properties.

NEW MEXICO MORTGAGE FINANCE AUTHORITY
AFFORDABLE HOUSING ACT RULES

SECTION 1. **AUTHORITY**. These Rules are issued under and pursuant to the Mortgage Finance Authority Act, NMSA 1978, § 58-18-1 et seq. (the "MFA Act") and pursuant to the Affordable Housing Act, NMSA 1978, §6-27-1 et seq. (the "Act"). Following review and comment by the Legislative Oversight Committee ("Oversight Committee"), these Rules will become effective upon the approval of the New Mexico Mortgage Finance Authority's ("MFA") Board of Directors.

SECTION 2. **PURPOSE AND OBJECTIVES**. These Rules are established to effectuate, and shall be applied so as to accomplish, the general purposes of the Act and the following specific objectives:

2.1 Procedures to ensure that both state and local housing assistance grantees are Qualifying Grantees (defined below) who meet the requirements of the Act and rules promulgated pursuant to the Act both at the time of the award and throughout the term of the grant;

2.2 The establishment of an application and award timetable for state housing assistance grants to permit the selection of the Qualifying Grantee(s) by the Governmental Entity (defined herein) and/or MFA;

2.3 The evaluation by the Governmental Entity and/or MFA of: the financial and management stability of the applicant, the demonstrated commitment of the applicant to the community, a cost-benefit analysis of the project proposed by the applicant, the benefits to the community of a proposed project, the type or amount of assistance to be provided, the scope of the affordable housing project, any substantive or matching contribution by the applicant to the proposed project, a performance schedule for the Qualifying Grantee with performance criteria, and any other rules or procedures which the Governmental Entity and/or MFA believes is necessary for a full review and evaluation of the applicant, the application, and any Qualifying Grantee or which MFA believes is necessary for a full review of the Governmental Entity's evaluation of the applicant;

2.4 A requirement for long-term affordability of a state, county, or municipal project so that a project cannot be sold shortly after completion and taken out of the affordable housing market to ensure a quick profit for the Qualifying Grantee;

2.5 A requirement that the Governmental Entity and/or MFA enter into a contract with the Qualifying Grantee consistent with the Act, which contract shall include remedies and default provisions in the event of the unsatisfactory performance by the

Qualifying Grantee and which contract shall be subject to the review of MFA in its discretion;

2.6 A requirement that a grant for a state or local project must impose a contractual obligation on the Qualifying Grantee that the housing units in any Affordable Housing Project be occupied by low- or moderate-income households;

2.7 Provisions for adequate security against the loss of public funds or property in the event that the Qualifying Grantee abandons or otherwise fails to complete the project;

2.8 A requirement for review and approval of a housing grant project budget by the Governmental Entity and/or MFA before any expenditure of grant funds or transfer of granted property;

2.9 A requirement that, unless the period is extended for good cause shown, MFA shall act on an application within forty-five (45) days of the date of receipt of that application and, if not acted upon, the application shall be deemed approved;

2.10 A requirement that a condition of grant approval be proof of compliance with all applicable state and local laws, rules and ordinances;

2.11 Provisions defining "low-income and moderate-income" and setting out requirements for verification of income levels; and

2.12 A requirement that a county or municipality that makes a housing assistance grant shall have an existing valid affordable housing plan or housing elements contained in its general plan.

In carrying out its objectives and purposes, MFA, pursuant to MFA Act has the power to raise funds from private and public investors to make funds available for such purposes; to create and implement programs from time to time as may be necessary or appropriate to accomplish its purposes; and to assist, administer, finance or service housing programs and to contract for such services for or through private and nonprofit organizations and local, state, federal and tribal agencies or their instrumentalities.

SECTION 3. **GENERAL DEFINITIONS**. The following words and terms shall have the following meanings.[1]

3.1 "Act" shall mean the Affordable Housing Act, Section 6-27-1 et seq. NMSA 1978.

[1] The following definitions in these Rules were either modeled on MFA's internal Rules and Regulations, which were revised by t MFA in October of 2006, approved by the Oversight Committee on November 14, 2006, and adopted by the Board on January 24, 2007; or they were modeled on or taken directly from the Act, as revised in the 2006 Legislative Session. All definitions given were created to support the goals of the Act and the Rules.

3.2 "Affordable" shall mean consistent with minimum rent and/or income limitations set forth in MFA Act, and in guidelines established by MFA.

3.3 "Affordable Housing" means residential housing primarily for Persons or households of Low- or Moderate-Income.

3.4 "Affordable Housing Funds" shall mean any or all funds awarded or to be awarded, loaned or otherwise distributed under the Act, which includes any reduction or abatement of taxes or fees that would otherwise be imposed in full on a market-rate project.

3.5 "Affordable Housing Program" shall mean any programs that a Governmental Entity and/or MFA establish pursuant to the Act.

3.6 "Affordable Housing Projects" shall mean any work or undertaking, whether new construction, acquisition of existing residential housing, remodeling, improvement, Rehabilitation or conversion approved by the Governmental Entity and/or MFA for the primary purposes as allowed by the Act.

3.7 "Applicant" shall mean an individual, or a non-individual applicant such as a governmental housing agency, regional housing authority, tribal housing agency, for-profit organization, including a corporation, limited liability company, partnership, joint venture, syndicate, association or a nonprofit organization meeting the appropriate criteria of the Governmental Entity and/or MFA.

3.8 "Application" shall mean an application to participate in one or more Affordable Housing Projects or programs under the Act submitted by an Applicant to the Governmental Entity and/or MFA.

3.9 "Authority" shall mean the New Mexico Mortgage Finance Authority.

3.10 "Builder" shall mean a person or entity licensed as a general contractor to construct Residential Housing in the state which has been approved by the Governmental Entity and/or MFA to participate in an MFA program and/or a program under the Act.

3.11 "Building" shall mean a structure capable of being renovated or converted into affordable housing or a structure that is to be demolished and is located on land that is donated and upon which Affordable Housing will be constructed.

3.12 "Congregate Housing Facility" shall mean Residential Housing designed for occupancy by more than four Persons of Low or Moderate Income living independently of each other. The facility may contain group dining, recreational, health care or other communal living facilities and each unit in a Congregate Housing Facility shall contain at least its own living, sleeping, and bathing facilities.

3.13 "Contribution" shall mean any provision of assistance for affordable housing, including a Housing Assistance Grant or Affordable Housing Funds, made by a state, any instrumentality of the state, county, municipality, or the Authority.

3.14 "Federal Government" shall mean the United States of America and any agency or instrumentality, corporate or otherwise, of the United States of America.

3.15 "Governmental Entity" shall mean a state, county, or municipality.[2]

3.16 "Household" shall mean one or more persons occupying a housing unit.

3.17 "Housing Assistance Grant" means the donation, provision, or payment by a Governmental Entity or MFA of:

A. Land upon which affordable housing will be constructed;

B. An existing building that will be renovated, converted, or demolished and reconstructed as Affordable Housing;

C. The costs of acquisition, development, construction, financing, and operating or owning affordable housing; or

D. The costs of financing or infrastructure necessary to support Affordable Housing.

3.18 "HUD" shall mean the United States Department of Housing and Urban Development.

3.19 "Infrastructure" shall mean Infrastructure Improvements and Infrastructure Purposes.

3.20 "Infrastructure Improvement" includes, but is not limited to:

A. sanitary sewage systems, including collection, transport, storage, treatment, dispersal, effluent use and discharge;

B. drainage and flood control systems, including collection, transport, diversion, storage, detention, retention, dispersal, use and discharge;

C. water systems for domestic purposes, including production, collection, storage, treatment, transport, delivery, connection and dispersal;

D. areas for motor vehicle use for road access, ingress, egress and parking;

[2] Solely for the purposes of the Affordable Housing Act to distinguish the Authority from any other Governmental Entity, the term "MFA" will always be used when a rule or provision applies to the Authority.

E. trails and areas for pedestrian, equestrian, bicycle or other non-motor vehicle use for road access, ingress, egress and parking;

F. parks, recreational facilities and open space areas for the use of residents for entertainment, assembly and recreation;

G. landscaping, including earthworks, structures, plants, trees and related water delivery systems;

H. electrical transmission and distribution facilities;

I. natural gas distribution facilities;

J. lighting systems;

K. cable or other telecommunications lines and related equipment;

L. traffic control systems and devices, including signals, controls, markings and signs;

M. inspection, construction management and related costs in connection with the furnishing of the items listed in this subsection; and

N. heating, air conditioning and weatherization facilities, systems or services, and energy efficiency improvements that are affixed to real property.

3.21 "Infrastructure Purpose" shall mean:

A. planning, design, engineering, construction, acquisition or installation of Infrastructure, including the costs of applications, impact fees and other fees, permits and approvals related to the construction, acquisition or installation of the Infrastructure;

B. acquiring, converting, renovating or improving existing facilities for Infrastructure, including facilities owned, leased or installed by the owner;

C. acquiring interests in real property or water rights for Infrastructure, including interests of the owner; and

D. incurring expenses incident to and reasonably necessary to carry out the purposes specified in this subsection.

3.22 "Market Value" shall mean the price at which buyers and sellers trade similar items in an open marketplace. In the absence of a marketplace, it is the estimated highest price a buyer would be warranted in paying and a seller justified in

accepting, provided both parties were fully informed and acted intelligently and voluntarily.

3.23 "MFA" shall mean the New Mexico Mortgage Finance Authority.

3.24 "MFA Act" shall mean the Mortgage Finance Authority Act, enacted as Chapter 303 of the Laws of 1975 of the State of New Mexico, as amended (being Sections 58-18-1 through 58-18-27, inclusive, N.M.S.A. (1978), as amended).

3.25 "Mortgage" shall mean a mortgage, mortgage deed, deed of trust or other instrument creating a lien, subject only to title exceptions as may be acceptable to the Governmental Entity and/or MFA, on a fee interest in real property located within the state or on a leasehold interest that has a remaining term at the time of computation that exceeds or is renewable at the option of the lessee until after the maturity day of the Mortgage Loan or an instrument creating a lien on a mobile home.

3.26 "Mortgage Lender" shall mean any bank or trust company, mortgage company, mortgage banker, national banking association, savings bank, savings and loan association, credit union, building and loan association and any other lending institution, and which must be authorized to make mortgage loans in New Mexico.

3.27 "Mortgage Loan" shall mean a financial obligation secured by a Mortgage, including a project Mortgage Loan.

3.28 "Multiple Family Housing Project" shall mean Residential Housing that is designed for occupancy by more than four persons or families living independently of each other or living in a Congregate Housing Facility, of which the percentage of units set aside for Persons of Low or Moderate Income, as defined in the applicable Affordable Housing Plan and Ordinance, shall be in direct proportion to the amount of subsidy provided as a percentage of total cost. Set asides for Persons of Low or Moderate Income shall include, without limitation Persons of Low or Moderate Income who are elderly and handicapped as determined by the Governmental Entity and/or MFA, provided that the percentage of Persons of Low or Moderate Income shall be at least the minimum, if any, required by federal tax law, if applicable.

3.29 "Multi-Family Housing Program" shall mean a program involving a Congregate Housing Facility, a Multiple Family Housing Project or a Transitional Housing Facility.

3.30 "Municipality" shall mean an incorporated city, town or village, whether incorporated under general act, special act or special charter, incorporated counties and H class counties all as set forth in the Act.

3.31 "Oversight Committee" shall mean MFA's Legislative Oversight Committee created by, and appointed in accordance with, MFA Act.

3.32 "Persons of Low or Moderate Income" low income shall mean persons and families who earn up to 80% of local Area Median Income (AMI). Persons of moderate income shall mean persons and families who earn up to 120% of local AMI. . For purposes of this definition, the word "families" shall mean a group of persons consisting of, but not limited to, the head of a household; his or her spouse, if any; and children, if any, who are allowable as personal exemptions for Federal income tax purposes.

3.33 "Policies and Procedures" shall mean Policies and Procedures of MFA, including but not limited to, Mortgage Loan purchasing, selling, servicing and reservation procedures, which MFA may update and revise from time to time as MFA deems appropriate.

3.34 "Qualifying Grantee" means:

A. An individual who is qualified to receive assistance pursuant to the Act and is approved by the Governmental Entity and/or MFA; and

B. A governmental housing agency, regional housing authority, tribal housing agency, corporation, limited liability company, partnership, joint venture, syndicate, association or a nonprofit organization that:

1) Is organized under State, local, or tribal laws and can provide proof of such organization;

2) If a non-profit organization, has no part of its net earnings inuring to the benefit of any member, founder, contributor, or individual; and

3) Is approved by the Governmental Entity and/or MFA.

3.35 "Recertification" shall mean the recertification of Applicants and/or Qualifying Grantees participating in any Affordable Housing Programs or in any programs under the Act as determined necessary from time to time by the Governmental Entity and/or MFA.

3.36 "Rehabilitation" shall mean the substantial renovation or reconstruction of an existing single-family residence or a Multi-Family Housing Project, which complies with requirements established by MFA. Rehabilitation shall not include routine or ordinary repairs, improvements or maintenance, such as interior decorating, remodeling or exterior painting, except in conjunction with other substantial renovation or reconstruction.

3.37 "Residential Housing" shall mean any Building, structure or portion thereof that is primarily occupied, or designed or intended primarily for occupancy, as a residence by one or more Households and any real property that is offered for sale or lease for the construction or location thereon of such a building, structure or portion thereof. "Residential Housing" includes congregate housing, manufactured homes,

housing intended to provide or providing transitional or temporary housing for homeless persons and common health care for supportive housing, kitchen, dining, recreational and other facilities primarily for use by residents of a residential housing project or a single room occupancy facility.

3.38 "Residential Use" shall mean that the structure or the portion of the structure to benefit from the Affordable Housing Funds or Housing Assistance Grant, is designed primarily for use as the principal residence of the occupant or occupants and shall exclude vacation or recreational homes.

3.39 "State" shall mean the State of New Mexico.

3.40 "Transitional Housing Facility" shall mean residential housing that is designed for temporary or transitional occupancy by Persons of Low or Moderate Income or special needs.

SECTION 4. **REQUIREMENTS FOR GOVERNMENTAL ENTITIES**. If a county or a municipality proposes to make a Housing Assistance Grant or provide Housing Assistance Funds under the Act, it shall first provide MFA with a copy of the proposed ordinance and written certification that the proposed recipient is in compliance with the Act and these Rules. The county or municipality must also provide MFA with documentation confirming that it has an existing valid affordable housing plan or housing elements contained in its general plan, so that MFA may confirm that the ordinance is in compliance with the Act, that the Application is complete, and that the proposed recipient is a Qualifying Grantee under the Act and these Rules. For an ongoing housing assistance program, the county or municipality must provide MFA with a detailed written description of the program, in addition to other required documentation as specified in these Rules. Once the program receives MFA approval, it is not necessary to draft additional ordinances for subsequent transactions conducted under the approved program. MFA reserves the right to investigate each transaction conducted under the program.

4.1 An Affordable Housing Plan.

An affordable housing plan or housing elements in a general plan of a county or municipality shall contain the following elements when feasible and data is readily available. Detailed guidance which can be used at the discretion of the county or municipality is provided in the MFA Affordable Housing Act & Plans Technical Manual and by MFA staff. The Manual can be found on MFA's website: http://www.housingnm.org/resources/affordable-housing-act-and-plans.

A. Community and housing profile, which shall include;

1) demographic characteristics, such as race and ethnicity, income, age, employment and population trends;

2) household characteristics including the number of existing households and housing units by tenure; and,

3) housing market analysis including housing costs, rents, vacancy rates, and sales prices;

B. Housing needs assessment that;

1) describes existing needs, such as the number of households with a cost burden for housing, living in overcrowded situations, or with special needs, including disabilities, elderly, headed by a female, homeless, and other identified needs, and;

2) identifies the gap between market rate housing costs and incomes, by area median income (AMI).

3) identifies the projected needs which shall include the number of new units needed by tenure, type, and cost to meet current needs and to accommodate expected population growth and job generation and a determination of the number of homes to be created through new construction, rehabilitation and preservation;

C. Land use and policy review that includes;

1) a general analysis of land use parcels including zoning, size and existing use, environmental constraints, availability of infrastructure;

2) an evaluation of suitability, availability and realistic development capacity of developable sites, including appropriate zoning for special needs housing, such as multi-family rental, mobile homes, transitional and homeless shelters;

3) identification of constraints, such as land use controls, codes and enforcement, fees and exactions, processing and permit procedures, on/off site improvements, reasonable accommodation, availability of financing, land availability and prices, construction costs, local capacity to assist, finance and manage construction, provide housing support services and administer housing funds and programs;

4) minimum density calculations targeted to affordable housing populations.

D. Goals, policies and quantifiable objectives that include;

1) an estimate of the number and percentage of unit increases, by income levels, to be constructed, rehabilitated or conserved over a set period of time;

2) identification of needed programs and agencies responsible for constructing new housing stock, improving existing housing stock, promoting access and equal opportunity to affordable housing, and increasing the capacity of residents to lower their housing cost burden, build long term equity, stabilize their housing situations through homebuyer training, rental vouchers, assistance to persons with disabilities, and other capacity assistance as deemed appropriate and necessary;

3) plan to promote potential regulatory concessions and incentives for removing or mitigating governmental and non-governmental constraints to development, rehabilitation or conservation of affordable housing;

4) identification of potential sources of federal, state and local financing and subsidies to support affordable housing;

5) a thorough consideration of related issues, such as public participation, job/housing mix, consistency with existing planning and land use policy, protection of ecological resources, promotion of efficient development patterns and green building.

4.2 <u>The Proposed Ordinance:</u>

A. Must be provided to MFA, with other required, documentation, within the period prescribed by the Rules in Section 5.3(B)(1)(a) for submission to MFA prior to the county's or municipality's provision of a Housing Assistance Grant or Affordable Housing Funds. Failure to provide said ordinance and documentation to MFA, or to provide it in a timely fashion, or to act in accordance with MFA's determination that an ordinance is invalid under the Act, the State Constitution, and/or any other applicable law, shall automatically invalidate the ordinance and shall render invalid any act taken pursuant to the ordinance.

B. Must authorize the type of contribution, state that the contribution complies with the affordable housing plan or housing elements in the general plan, state the requirements and purpose, and authorize the transfer or disbursement to the Qualifying Grantee only after a budget is submitted to and approved by the governing body of the county or municipality.

C. Household AMI percentages designated by ordinance provisions as qualifying for subsidy may remain the same despite annual changes to the numeric amounts of income attributed to each AMI percentage.

D. May provide for matching or using local, private or federal funds either through direct participation with a federal agency pursuant to federal law or through indirect participation through MFA.

E. Shall comply with these Rules, as amended.

F. Shall be effective subject to local ordinance requirements for publication and filing.

G. Upon amendment, must be submitted to MFA for review of any and all changes for determination that the amended ordinance remains in compliance with the Act, these Rules, and other applicable law.

H. A county or municipality shall amend its affordable housing ordinance upon and in accordance with a request by MFA for amendment to the ordinance to comply with the requirements of the Act and the Rules, Governmental entities may continue to make lawful donations pending approval of a new ordinance.

I. All donations made pursuant to an affordable housing ordinance must be reported to MFA on an annual basis or pursuant to the requirements of the ordinance for reporting donations to MFA, whichever is the lesser period, in addition to the requirement to report such donations upon MFA's request.

4.3 A county or municipality must base any transaction conducted under an approved program on a market valuation current at the time of the transaction. MFA may require proof from the county or municipality that the transaction was based on a current market value assessment.

4.4 Any contribution otherwise made in violation of the Act, the Rules, the Constitution, or other applicable law, shall be deemed invalid under the Act.

SECTION 5. **GENERAL REQUIREMENTS**. With the exception of Housing Assistance Grants of funding from the State, which shall be governed by Section 5.13 below, the following requirements shall apply to all Housing Assistance Grants and Affordable Housing Funds provided by a Governmental Entity and/or MFA under the Act to a Qualifying Grantee.

5.1 Requests for Proposals. The Governmental Entity and/or MFA, in its discretion, may issue one or more requests for proposals ("RFP's") to solicit applications ("Applications") or shall otherwise identify a Qualifying Grantee for the use of any Affordable Housing Funds or Housing Assistance Grants to be awarded, loaned, or otherwise distributed under the Act.

5.2 Applicant Eligibility. The following individuals, and for profit or nonprofit entities ("Applicants") are eligible under the Act to apply for Affordable Housing Funds or a Housing Assistance Grant to provide housing or related services to Persons of Low or Moderate Income in their community:

A. All individuals who are qualified to receive assistance pursuant to the Act, these Rules, and the requirements of any applicable affordable housing ordinance.

B. All regional housing authorities, tribal governments, tribal housing agencies, and any governmental housing agencies.

C. All for-profit organizations, including any corporation, limited liability company, partnership, joint venture, syndicate, or association or a nonprofit organization is eligible to apply if it is:

1) Organized under state, local, or tribal laws and can provide proof of such organization;

2) Have among its purposes significant activities related to providing housing or services to Persons or Households of Low or Moderate Income;

3) Have a functioning accounting system that is operated in accordance with generally accepted accounting principles or has designated an entity that will maintain such an accounting system consistent with generally accepted accounting principles;

4) Evidence or certification that it has no significant outstanding or unresolved monitoring findings from the Governmental Entity, MFA, or its most recent independent financial audit; and has not been suspended or debarred by any federal agency or MFA. If the applicant has any outstanding or unresolved monitoring findings, it must have a certified letter from the Governmental Entity, MFA, or auditor stating that the findings are in the process of being resolved.

D. Nonprofit organizations are eligible to apply if the following requirements are met:

1) A primary mission of the nonprofit organization must be to provide housing or housing-related services to Persons of Low or Moderate Income; and

2) The non-profit organization must have received its 501(c)(3) designation prior to submitting an Application.

3) The non-profit organization must have no part of its net earnings inuring to the benefit of any member, founder, contributor, or individual.

Any eligible Applicant may, at any time, submit to the Governmental Entity and/or MFA the information required by Section 5.3(A) sub-paragraphs (4), (5), (6), (8), (9), (10), (11), (12), (13), (14), (15), (16), (17), (20), (21), and (22) of these Rules, as applicable, in order to pre-qualify as a potential Qualifying Grantee. The Governmental Entity and/or MFA will review the information provided by any eligible Applicant and in its discretion, may certify in writing that the Applicant is a "Potential Qualifying Grantee." The Governmental Entity shall provide a copy of the certification to MFA upon its request. The Governmental Entity's and/or MFA's certification shall be valid for up to one (1) year, subject to the ability of the Potential Qualifying Grantee to certify in writing, at the time of any Application or response to any RFP, that there have been no material changes in any of the information or documentation provided by, or representations made by the Potential Qualifying Grantee to the Governmental Entity and/or MFA and upon which information, documentation, and/or representations the Governmental Entity and/or MFA has based its decision to certify the Applicant as a Potential Qualifying Grantee. Notwithstanding the foregoing, simply because an Applicant is certified by the Governmental Entity and/or MFA as a Potential Qualifying Grantee does not mean that the Potential Qualifying Grantee will be chosen by the Governmental Entity or MFA as a Qualifying Grantee, or that MFA will determine that the Potential Qualifying Grantee is a Qualifying Grantee, or that any Application submitted by the Potential Qualifying Grantee is complete or otherwise in compliance with the Act and these Rules or that the Potential Qualifying Grantee will be awarded any Affordable Housing Funds or any Housing Assistance Grants.

5.3 Applications.

A. Application Process for Non- Individual Applicants. Non-individual entities wishing to apply for Affordable Housing Funds to participate in any Affordable Housing Program are also required to submit to the Governmental Entity and/or MFA the following, as applicable:

1) One original Application, together with all required schedules, documents, or such other information which may be required by the Governmental Entity and/or MFA or in any RFP which may have been issued by the Governmental Entity or MFA, must be included in the completed Application;

2) A proposal describing the nature and scope of the Affordable Housing Project proposed by the Applicant and for which the Applicant is applying for funds or a grant under the Act, and which describes the type and/or amount of assistance which the Applicant proposes to provide to Persons of Low or Moderate Income;

3) Executive Summary & Project Narrative(s) that address the evaluation criteria set forth in any RFP issued by the Governmental Entity or MFA for the Affordable Housing Funds or the Housing Assistance Grant for which the Applicant is applying;

4) For non-profit organizations, proof of 501(c)(3) tax status;

5) For non-profit organizations, documentation which confirms that no part of its net earnings inures to the benefit of any member, founder, contributor or individual;

6) Current Annual Budget for the Applicant, including all sources and uses of funds not just those related to relevant programs and/or a Current Annual Budget only for the program for which the Applicant is applying for a Housing Assistance Grant, or as otherwise may be required by the Governmental Entity and/or MFA in its discretion;

7) A proposed budget for the Affordable Housing Project for which the Applicant is applying for Affordable Housing Funds or for a Housing Assistance Grant;

8) For a "for profit" entity, an approved mission statement that has among its purposes significant activities related to providing housing or housing-related services to Persons or Households of Low or Moderate Income;

9) List of current board members, including designated homeless participation, where required by the Governmental Entity and/or MFA;

10) Current independent financial audit;

11) Evidence (or a certification as may be allowed by the Governmental Entity and/or MFA) that the Applicant has a functioning accounting system that is operated in accordance with generally accepted accounting principles, or has a designated entity that will maintain such an accounting system consistent with generally accepted accounting principles;

12) Evidence or certification that the Applicant has no significant outstanding or unresolved monitoring findings from the Governmental Entity, MFA, or its most recent independent financial audit; or if it has any significant outstanding or unresolved monitoring findings from the Governmental Entity, MFA, or its most recent independent financial audit, it has a certified letter from the Governmental Entity, MFA, or the auditor stating that the findings are in the process of being resolved;

13) Organizational chart, including job titles and qualifications for the Applicant's employees or as otherwise may be required by the Governmental Entity and/or MFA in its discretion. Job descriptions may be submitted as appropriate;

14) Documentation that the Applicant is duly organized in accordance with State or local law and is in good standing with any state authorities such as the Public Regulation Commission (e.g. Articles, Bylaws, and Certificate of Good Standing for a Corporation; Articles, Operating Agreement, and Certificate of Good Standing for a Limited Liability Company; partnership agreement and certificate of limited partnership for a partnership);

15) Certifications as may be required by the Governmental Entity and/or MFA signed by Chief Executive Officer, Board President or other authorized official of the Applicant;

16) Information as may be required by the Governmental Entity and/or MFA in order for it to determine the financial and management stability of the Applicant;

17) Information as may be required by the Governmental Entity and/or MFA in order for it to determine the demonstrated commitment of the Applicant to the community;

18) Applicant shall submit adequate information, as required by the Governmental Entity and/or MFA, of the Affordable Housing Project proposed by the Applicant. The information provided must clearly evidence that the value of the housing assistance grant reduces the housing costs to persons of low or moderate income;

19) Applicant shall submit information to the Governmental Entity and/or MFA supporting the benefits to the community of the Affordable Housing Project proposed by the Applicant;

20) The Governmental Entity and/or MFA may require that the applicant provide proof of substantive or matching funds or contributions and/or in-kind donations to the proposed Affordable Housing Project in connection with the Application for funds under the Act. Nothing contained herein shall prevent or preclude an Applicant from matching or using local, private, or federal funds in connection with a specific Housing Assistance Grant or a grant of Affordable Housing Funds under the Act;

21) Applicant shall provide the Governmental Entity and/or MFA with any certifications or other proof which it may require in order for the Governmental Entity and/or MFA to confirm that the Applicant is in compliance with all applicable federal, state and local laws, rules and ordinances;

22) For Applicants who are submitting Applications in connection with a Multi-Family Housing Project, the following additional information shall also be required to be submitted by the Applicant to the Governmental Entity and/or MFA:

a) A verified certificate that, among other things:

i. identifies every Multi-Family Housing Program, including every assisted or insured project of HUD, RHS, FHA and any other state or local government housing finance agency in which such Applicant has been or is a principal;

ii. except as shown on such certificate, states that:

I. no mortgage on a project listed on such certificate has ever been in default, assigned to the United States government or foreclosed, nor has any mortgage relief by the mortgagee been given;

II. there has not been a suspension or termination of payments under any HUD assistance contract in which the Applicant has had a legal or beneficial interest;

III. such Applicant has not been suspended, debarred or otherwise restricted by any department or agency of the federal government or any state government from doing business with such department or agency because of misconduct or alleged misconduct; and

IV. the Applicant has not defaulted on an obligation covered by a surety or performance bond.

If such Applicant cannot certify to each of the above, such Applicant shall submit a signed statement to explain the facts and circumstances which such Applicant believes will explain the lack of certification. The Governmental Entity and/or MFA may then determine if such Applicant is or is not qualified.

b) The experience of the Applicant in developing, financing and managing Multiple-Family Housing Projects.

c) Whether the Applicant has been found by the United States Equal Employment Opportunity Commission or the New Mexico Human Rights Commission to be in noncompliance with any applicable civil rights laws.

23) If the Applicant is a Mortgage Lender, the Governmental Entity and/or MFA shall consider, among other things:

a. The financial condition of the Applicant;
b. The terms and conditions of any loans to be made;

c. The aggregate principal balances of any loans to be made to each Applicant compared with the aggregate principal balances of the loans to be made to all other Applicants;

d. The Governmental Entity and/or MFA's assessment of the ability of the Applicant or its designated servicer to act as originator and servicer of Mortgage Loans for any Multi-Family Housing Programs or other programs to be financed; and

e. Previous participation by the Applicant in MFA's programs and HUD, FHA, or RHS programs.

B. Application Process For Individual Applicants: One original Application together with all required schedules, documents, or such other information which may be required by the Governmental Entity and/or MFA must be included in the completed Application;

All Applications, from individual and non-individual Applicants, shall contain a verification signed by the Applicant before a notary public that the information provided, upon penalty of perjury, is true and correct to the best of the Applicant's information, knowledge, and belief.

C. Submission Procedure:

1) Time, Place and Method of Submission Delivery.
a) If the Governmental Entity has issued an RFP, all Applications must be received by the Governmental Entity no later than whatever deadline has been set forth in the RFP; otherwise, all Applications must be received by the Governmental Entity by whatever deadline the Governmental Entity has established in connection with the respective award or grant. So that any Qualifying Grantees may be selected prior to January of the year in which any Housing Assistance Grant would be made, the Governmental Entity shall issue any RFP's, solicit any Applications, or otherwise identify any

Qualifying Grantees no later than October 15 of any year in order to allow sufficient time for prospective applicants to respond to any such RFP, solicitation, or otherwise, and further to allow MFA not less than forty-five (45) days in which to review any such Applications or otherwise determine or confirm that an Applicant is a Qualifying Grantee under the Act and consistent with these Rules.

b) Applications shall be submitted by Applicants to the Governmental Entity or MFA in the form and by the time as required by the Governmental Entity or MFA and shall contain all information which is required by the Act, these Rules, any RFP which may have been issued, and by the Governmental Entity or MFA.

2) Additional Factors. The Application procedures shall take into consideration:

a. Timely completion and submission to the Governmental Entity or MFA of an Affordable Housing Program Application or other appropriate response to any solicitation by the Governmental Entity or MFA;

b. Timely submission of all other information and documentation related to the program as required by the Governmental Entity and/or MFA, or as set forth in these Rules;

c. Timely payment of any fees required to be paid to the Governmental Entity or MFA at the time of submission of the Application; and

d. Compliance with program eligibility requirements as set forth in the Act and these Rules.

3) Submission Format:

a. Governmental Entity or MFA forms must be used when provided and no substitutions will be accepted; however attachments may be provided as necessary.

b. An Applicant's failure to provide or complete any element of an Application, including all requirements of the Governmental Entity or MFA, or as may be listed on any RFP, may result in the rejection of the Application prior to review.

c. Illegible information, information inconsistent with other information provided in the application, and/or incomplete forms

will be treated as missing information and evaluated accordingly.

d. The Governmental Entity and/or MFA reserve the right to request further information from any Applicant so long as the request is done fairly and does not provide any Applicant an undue advantage over another.

e. The Governmental Entity or MFA in its discretion may cancel any RFP or reject any or all proposals in whole or part submitted by any Applicant.

f. Neither the Governmental Entity nor MFA shall be responsible for any expenses incurred by an Applicant in preparing and submitting an Application. However, the Governmental Entity or MFA, as applicable, may establish and collect fees from Applicants who file Applications. Notice that fees will be charged and the amount of any such fees shall be included by the Governmental Entity or MFA, as applicable, in any RFP, or otherwise shall be advertised as part of the Application solicitation process.

D. Review by the Governmental Entity and/or MFA. On receipt of an Application, the Governmental Entity and/or MFA shall:

1) Determine whether the Application submitted by the Applicant is complete and responsive;

2) Determine whether the Applicant is a Qualifying Grantee as defined herein and in the Act;

3) Review and analyze whether the Applicant has shown a demonstrated need for activities to promote and provide affordable housing and related services to Persons of Low or Moderate Income;

4) Determine whether the Applicant has demonstrated experience related to providing housing or services to Persons of Low or Moderate Income, as well as experience and/or the capacity to administer the Affordable Housing Program or Project for which the Applicant has applied;

5) Determine whether the Applicant's proposal provides a plan for coordinating with other service providers in the community; whether the Applicant's plan addresses how Low Income or Moderate Income individuals or families in need of housing and/or housing related supportive services can receive supportive services and referrals to

federal, state and local resources; and, whether the Applicant's plan addresses outreach efforts to reach the population to be served as identified by the Governmental Entity and/or MFA in any RFP or otherwise;

6) Determine whether the Applicant has support from "public service agencies," or such other support as may be required by the Governmental Entity and/or MFA in its discretion, for its proposed services in the community. "Public Service Agencies" shall include, but are not limited to, any entities that support Affordable Housing and which believe that the program or project proposed by the Applicant is worthy and advisable, but which are not involved, either directly or indirectly, in the Affordable Housing Program or Project for which the Applicant is applying;

7) Ascertain the amount of any matching funds or in-kind services specific to the program which may be utilized by the Applicant in connection with the program;

8) Ascertain whether any local, private, or federal funds will be used by the Applicant in connection with the specific grant for which the Applicant is applying;

9) Ascertain whether the Applicant has and can demonstrate the capability to manage the implementation of the program for which the Applicant is applying;

10) If Applicant is a prior recipient of either a Housing Assistance Grant, Affordable Housing Funds and/or other program funds, confirm that the Applicant had no outstanding findings or matters of non-compliance with program requirements from the Governmental Entity or MFA, as applicable, or if it has any such findings, it has a certified letter from the Governmental Entity, MFA, or auditor stating that the findings are in the process of being resolved;

11) If Applicant is a prior recipient of either a Housing Assistance Grant, Affordable Housing Funds and/or other program funds, confirm that the Applicant reasonably committed and expended the funds under the prior program and/or met anticipated production levels as set forth in any contract with the Governmental Entity or MFA, as applicable, for those prior program funds;

12) Evaluate the Applicant's proposal in part based upon the Applicant's current financial audit;

13) Evaluate the Applicant's proposed budget for the project for which the Applicant is applying for Affordable Housing Funds or a Housing Assistance Grant, which proposed budget must be approved by the Governmental Entity and /or MFA before Applicant can be approved as a Qualifying Grantee and any expenditure of grant funds under the Act or granted property is transferred to the Applicant;

14) On receipt of an Application from a Builder, the Governmental Entity and/or MFA will analyze the Builder's ability to construct and sell sufficient Residential Housing units to Persons of Low or Moderate Income within the time or times as may be required by the Governmental Entity.

15) The Governmental Entity and/or MFA may consider whatever factors it deems appropriate to ensure a reasonable geographic allocation for all Affordable Housing Programs.

5.4 Certification by the Governmental Entity to MFA.

A. The Governmental Entity upon:

1) Completion of its review of the Application;

2) Determination that the Application is complete;

3) Determination that the requirements of these Rules and the Act have been satisfied; and

4) Determination that the Applicant is a Qualifying Grantee shall so certify in writing to MFA.

B. Review by MFA. MFA upon its receipt of the certification from the Governmental Entity may, in its discretion, review the Application and any of the materials submitted by the Applicant to the Governmental Entity. MFA may also request any additional information from the Applicant, which it may require in order to determine whether the Applicant is a Qualifying Grantee under the Act and the Application is complete. MFA will then notify the Governmental Entity of its determination of whether or not the Application is complete and that the requirements of the Act and these Rules have been satisfied and the Applicant is a Qualifying Grantee. Unless the period is extended for good cause shown, MFA shall act on an Application within forty- five (45) days of its receipt of any Application, which MFA deems to be complete, and, if not acted upon, the Application shall be deemed to be approved.

5.5 Notification to Applicant. The Governmental Entity and/or MFA, upon completion of its review of the Application and an evaluation of the criteria for approval of the Application as set forth in the Act, in any applicable ordinance, these Rules and in any RFP issued by the Governmental Entity and/or MFA and upon its determination that the Applicant is a Qualifying Grantee, and upon its receipt of notification from MFA that it agrees that the Application is complete and that the Act and these Rules have been satisfied and the Applicant is a Qualifying Grantee, by written notice shall notify each Applicant which has submitted an Application of the approval or disapproval of its Application. Upon approval of its Application, the Applicant shall be considered approved to participate in the Affordable Housing Program. The Governmental Entity's and/or MFA's determination of any Application shall be conclusive.

5.6 Additional Requirements. Upon acceptance, the following additional requirements shall apply to any Applicant, who is a Qualifying Grantee:

A. Contractual Requirements. The Qualifying Grantee shall enter into one or more contracts with the Governmental Entity and/or MFA, which contract(s) shall be consistent with the Act and subject to the review of MFA, in its discretion, and which contract(s) shall include remedies and default provisions in the event of the unsatisfactory performance by the Qualifying Grantee;

B. Security Provisions; Collateral Requirements. In accordance with the Act and these Rules, the Governmental Entity and/or MFA shall require the Qualifying Grantee to execute documents, which will provide adequate security against the loss of public funds or property in the event the Qualifying Grantee abandons or fails to complete the Affordable Housing Project, and which shall further provide, as may be permitted by law, for the recovery of any attorneys' fees and costs which the Governmental Entity and/or MFA may incur in enforcing the provisions of these Rules, the Act and/or any agreement entered into by the Governmental Entity and/or MFA and the Qualifying Grantee, and which documents may include, but are not limited to the following: note, Mortgage, loan agreement, land use restriction agreement, restrictive covenant agreements and/or any other agreement which the Governmental Entity and/or MFA may require in order to allow for any funds which the Qualifying Grantee may receive under a Housing Assistance Grant to be adequately secured and to allow the Governmental Entity and/or MFA to ensure that such funds shall be utilized by the Qualifying Grantee in accordance with the Act and these Rules;

C. Performance Schedule and Criteria. The Qualifying Grantee shall be required to abide by a reasonable performance schedule and performance criteria which the Governmental Entity and/or MFA, in its discretion, may establish; and

D. Examination of Books and Records. The Qualifying Grantee shall

submit to and the Governmental Entity and/or MFA shall cause to be made such examinations of the books and records of each Qualifying Grantee as the Governmental Entity and/or MFA deems necessary or appropriate to determine the Qualifying Grantee's compliance with the terms of the Act, these Rules and any contracts between the Qualifying Grantee and the Governmental Entity and/or MFA. The Governmental Entity and/or MFA may require each Qualifying Grantee to pay the costs of any such examination.

E. Cost Reimbursement Contracts:

1) Cost Reimbursements. Payment to a Qualifying Grantee under cost reimbursable contract provisions shall be made upon the Governmental Entity's and/or MFA's receipt from the Qualifying Grantee of certified and documented invoices for actual expenditures allowable under the terms of any agreement between the Qualifying Grantee and the Governmental Entity and/or MFA.

2) Cost Reimbursements For Units of Service. Payment under any unit cost contract provisions shall be made upon the Governmental Entity's and or MFA's receipt from the Qualifying Grantee of a certified and documented invoice showing the number of units of service provided during the billing period.

3) Rate at which Costs Incurred. Under unit cost or cost reimbursable contracts, it is anticipated that costs will be incurred by the Qualifying Grantee at an approximate level rate during the term of any agreement between the Qualifying Grantee and the Governmental Entity and/or MFA. If the Governmental Entity and/or MFA determine that the Qualifying Grantee is underspending or overspending, then the Governmental Entity and/or MFA may reduce the budget and/or exercise such other budgetary fiscal controls it deems appropriate.

4) Invoices. Qualifying Grantees shall not submit invoices more than once a month, unless written approval is obtained in advance from the Governmental Entity and/or MFA. Failure to submit invoices within twenty (20) days of the close of the month for which payment is sought may result in the non-availability of funds for reimbursement.

5) No Dual Application of Costs. The Qualifying Grantee shall certify that any direct or indirect costs claimed by the Qualifying Grantee will not be allocable to or included as a cost of any other program, project, contract, or activity operated by the Qualifying Grantee and which has not been approved by the Governmental Entity and/or MFA in advance in writing.

6) Prohibition of Substitution of Funds. Any Affordable Housing Funds or other amounts received by Qualifying Grantee may not be used by

Qualifying Grantee to replace other amounts made available or designated by State or local governments through appropriations for use for the purposes of the Act.

7) Cost Allocation. If required by the Governmental Entity and/or MFA, the Qualifying Grantee shall clearly identify and distribute all costs incurred pertaining to the Affordable Housing Project by a methodology and cost allocation plan at times and in a manner prescribed by, or acceptable to the Governmental Entity and/or MFA.

F. Additional Information. Qualifying Grantees shall provide the Governmental Entity and/or MFA with any and all information which the Governmental Entity and/or MFA reasonably may require in order for it to confirm that the Qualifying Grantees continue to satisfy the requirements of the Act and these Rules throughout the term of any contract and/or any Affordability Period (defined below) or otherwise as may be required by the Governmental Entity and/'or MFA in its discretion. At a minimum, on an annual basis, the Governmental Entity shall certify to MFA in writing that the Qualifying Grantee is still in compliance with the Act and these Rules.

5.7 Affordable Housing Requirements. All Affordable Housing Funds or Housing Assistance Grants awarded under the Act are to be used by Qualifying Grantees for the benefit of Persons of Low or Moderate Income subject to the provisions of the Act and with particular regard to their to their housing related needs.

A. Single Family Property. Qualifying Grantees shall agree that they shall maintain any single-family property which has been acquired, rehabilitated, weatherized, converted, leased, repaired, constructed, or which property has otherwise benefited from Affordable Housing Funds, including but not limited to any loans which have been repaid with Affordable Housing Funds and which loans previously were secured by such properties, as Affordable Housing for so long as any or all of the Affordable Housing Funds which have been awarded, loaned, or otherwise conveyed to the Qualifying Grantee are unpaid and outstanding or the Affordability Period (defined below), whichever is longer.

B. Multi-Family Property.

1) Single Apartment within a Multi-Family Property. Qualifying Grantees shall agree that, if any single apartments are to be rehabilitated, weatherized, converted, leased, repaired, constructed, or otherwise are to benefit from Affordable Housing Funds, those apartments shall be leased to Persons of Low or Moderate Income at the time of any such award. Qualifying Grantees, who are the landlords and/or owners of such properties, shall further agree to contribute a percentage of the total cost of the rehabilitation, weatherization, conversion, lease, repair, and/or

construction, as required by the local government or MFA. Qualifying Grantees also shall agree that the Persons of Low or Moderate Income, who are tenants of those apartments, shall be allowed to remain tenants for so long as there are no uncured defaults by those tenants under their respective leases and provided that there is no just cause for the landlord to terminate any lease agreement with those tenants.

2) Multiple Apartments. Qualifying Grantees shall agree that, if multiple apartments or an entire multi-family property are to be acquired, rehabilitated, weatherized, converted, leased, repaired, constructed, or otherwise are to benefit from Affordable Housing Funds, including but not limited to any loans which have been repaid with Affordable Housing Funds and which loans previously were secured by such properties, they shall maintain as Affordable Housing a percentage of units set aside for Persons of Low or Moderate Income, that is in direct proportion to the amount of subsidy provided as a percentage of total cost. These set aside units shall be maintained as Affordable Housing for so long as any or all of the Affordable Housing Funds which have been awarded, loaned, or otherwise conveyed to the Qualifying Grantee are unpaid and outstanding or the Affordability Period, whichever is longer.

C. Non-Residential Property. Qualifying Grantees shall agree that they shall maintain any non-residential property which has been acquired, rehabilitated, weatherized, converted, leased, repaired, constructed, or which property has otherwise benefited from Affordable Housing Funds, including but not limited to any loans which have been repaid with Affordable Housing Funds and which loans previously were secured by such properties, as a facility which provides housing related-services to Persons of Low or Moderate Income for so long as any or all of the Affordable Housing Funds which have been awarded, loaned, or otherwise conveyed to the Qualifying Grantee are unpaid and outstanding or the Affordability Period, whichever is longer.

D. Housing Assistance Grant Affordability Requirements. Qualifying Grantees shall agree that they shall maintain any land or buildings received as a Housing Assistance Grant either as either single-family or multi-family Affordable Housing in accordance with paragraphs A and B of this Section 45.6 or as a facility which provides housing related-services to Persons of Low or Moderate Income in accordance with paragraph C of this Section 45.6 (as applicable) for the duration of the Affordability Period. Qualifying Grantees shall agree that they shall maintain any land or buildings for which they have received the costs of acquisition, development, construction, financing, operating, or owning as a Housing Assistance Grant either as either single-family or multi-family Affordable Housing or as a facility which provides housing related-services to Persons of Low or Moderate Income (as applicable) for the duration of the Affordability Period. In calculating the Affordability Period for Housing Assistance Grants of either land or buildings,

or the costs of acquisition, development, construction, financing, operating or owning land or buildings, or the costs of Infrastructure at the time of the donation by the state, county or municipality shall apply.

E. Affordability Period Defined. If the fair market value of any Housing Assistance Grant or the total amount of Affordable Housing Funds which have been awarded, loaned, donated, or otherwise conveyed to the Qualifying Grantee is from $1 to $14,999, then the Affordability Period shall be not less than five (5) years. If the fair market value of any Housing Assistance Grant or the total amount of Affordable Housing Funds is from $15,000 up to and including $40,000, then the Affordability Period shall be not less than ten (10) years. If the fair market value of any Housing Assistance Grant or the total amount of Affordable Housing Funds is from $40,000 up to and including $100,000, then the Affordability Period shall be not less than fifteen (15) years. If the fair market value of any Housing Assistance Grant or the total amount of Affordable Housing Funds is greater than $100,000, then the Affordability Period shall be not less than twenty (20) years. The Governmental Entity and/or MFA, in its discretion, may increase the Affordability Period in any contract, note, mortgage, loan agreement, land use restriction agreement, restrictive covenant agreements and/or any other agreement which the Governmental Entity and/or MFA may enter into with any Qualifying Grantee or beneficiary of the Affordable Housing Funds or of the Housing Assistance Grant. Notwithstanding the foregoing, in the discretion of MFA, Weatherization Funds conveyed from the State to MFA and/or any other similar conveyances where an Affordability Period is not practical, shall not be subject to the Affordability Period requirements of this Section; but nevertheless, any such conveyances may be subject to recapture on some pro-rated basis as determined by the Governmental Entity and/or MFA.

5.8 Consent to Jurisdiction. Each Qualifying Grantee shall consent to the jurisdiction of the courts of the State of New Mexico over any proceeding to enforce compliance with the terms of the Act, these Rules and any agreement between the Qualifying Grantee and the Governmental Entity and/or MFA.

5.9 Recertification. The Qualifying Grantee must meet the requirements of the Act and these Rules and any applicable ordinance both at the time of any award and throughout the term of any grant and contract related thereto. The Governmental Entity and/or MFA may establish procedures for recertifying Qualifying Grantees from time to time. Qualifying Grantees which fail to satisfy the requirements for recertification shall cease to be eligible and shall be denied further participation in Affordable Housing programs until the requirements of the Governmental Entity and/or MFA are satisfied.

5.10 Compliance with the Law. Qualifying Grantee shall provide the Governmental Entity and/or MFA with any certifications or other proof which it may require in order for the Governmental Entity and/or MFA to confirm that the Qualifying

Grantee and the Qualifying Grantee's proposed project are in compliance with all applicable federal, state and local laws, rules and ordinances.

5.11 Extension of Affordable Housing Programs. MFA shall have the power to create variations or extensions of such Affordable Housing programs, or additional programs which comply with the Act and these Rules.

5.12 The Governmental Entity and/or MFA:

A. May hold any award of Affordable Housing Funds or any Housing Assistance Grant made by any county or municipality in suspense pending the issuance by the Governmental Entity and/or MFA of any RFP, or pending the award of the Affordable Housing Funds or of the Housing Assistance Grant by the Governmental Entity and/or MFA to the Qualifying Grantee without the issuance of an RFP by the Governmental Entity and/or MFA.

B. Shall have oversight over the Qualifying Grantee under these Rules, upon the Qualifying Grantee's receipt of Affordable Housing Funds or a Housing Assistance Grant.

5.13 School District and Post-Secondary Educational Institution Grant Requirements. If a school district or a post-secondary educational institution intends to make a Housing Assistance Grant, then it shall provide MFA with a written certification that the proposed grantee is in compliance with the Act and these Rules so that MFA may confirm that the Application is complete and the proposed grantee is a Qualifying Grantee under the Act and these Rules. Any transfer of land by a school district to a county or municipality to be further granted as part or all of an Affordable Housing grant shall be subject to the additional limitations contained in the Act that the school district and the governing body of the county or municipality enter into a contract that provides the school district with a negotiated number of affordable housing units that will be reserved for employees of the school district. Any transfer of land by a post- secondary educational institution shall be subject to the additional limitations contained in the Act that (1) the property transferred shall be granted by the county, municipality or tribal government as part or all of an Affordable Housing grant; and (2) the governing board of the post-secondary educational institution and the governing body of the county, municipality or tribal government enter into a contract that provides the post- secondary educational institution with Affordable Housing units. As used in this Section, "post-secondary educational institution" means a state university or a public community college. The Governmental Entity and/or MFA, in their discretion, may also hold any Housing Assistance Grant made by any school district or post-secondary educational institution in suspense pending the issuance by the Governmental Entity and/or MFA of any RFP or pending the award of the Housing Assistance Grant by the Governmental Entity and/or the MFA to the Qualifying Grantee without the issuance of an RFP by the Governmental Entity and/or MFA. Any award of a Housing Assistance Grant by a school

district or a post-secondary educational institution shall subject the Qualifying Grantee of the grant to the oversight of the Governmental Entity and/or MFA under these Rules.

5.14 Housing Assistance Grants From the State. All Housing Assistance Grants from the State pursuant to the Act shall be appropriated to the Department of Finance and Administration for disbursement by MFA to a Qualifying Grantee through use of a contract consistent with the provisos in the State appropriation and these Rules.

SECTION 6. **DISCRIMINATION PROHIBITED**. The development, construction, occupancy and operation of an Affordable Housing Program or an Affordable Housing Project financed or assisted under the Act shall be undertaken in a manner consistent with principles of non-discrimination and equal opportunity, and the Governmental Entity and/or MFA shall require compliance by all Qualifying Grantees with all applicable federal and State laws and regulations relating to affirmative action, non-discrimination and equal opportunity.

SECTION 7. **ADMINISTRATION**. The Governmental Entity and/or MFA shall administer any Affordable Housing programs in accordance with provisions of the Act, these Rules, any applicable state and federal laws and regulations as each of which may be amended or supplemented from time to time. The Governmental Entity and/or MFA, in establishing, funding and administering the Affordable Housing Programs and by making, executing, delivering and performing any award, contract, grant or any other activity or transaction contemplated by the Act, shall not violate any provision of law, rule or regulation or any decree, writ, order, injunction, judgment, determination or award and will not contravene the provisions of or otherwise cause a default under any of its agreements, indentures, or other instruments to which it may be bound.

SECTION 8. **IN THE EVENT OF DEFAULT**. In the event that a Qualifying Grantee defaults on a contractual obligation for a subsidized affordable housing project, or abandons or otherwise fails to complete an affordable housing project, for which the Governmental Entity has donated land or funds to purchase the land, a Governmental Entity shall act in the manner set forth below to ensure the property's timely sale and recovery of the public funds invested in the project.

A. The Governmental Entity must ascertain that the title to the property has been transferred to the Governmental Entity through a foreclosure sale, a transfer of title by deed in lieu of foreclosure or any other manner.

B. If the Governmental Entity has or will acquire title, then it must determine if, under the contractually imposed affordability restrictions requiring long-term occupancy by Persons of Low or Moderate Income, the property is or is not marketable for a price that would sufficiently recover the investment of public funds.

C. If the determination is that the property cannot be sold under the affordability restrictions for a price that would recover the investment of public funds in the

property, then the Governmental Entity shall obtain a written appraisal of the fair market value of the project, without the affordability restrictions, that is current to the time the project is put up for sale.

D. The Governmental Entity shall thereafter, prior to the sale of the project, request MFA review and approval of the determination to release the affordability restrictions on the property to effect a sale. The Governmental Entity must provide MFA with a certification that its determination to sell the affordable housing project without the affordability restrictions was made pursuant to the requirements of this Section of these Rules. Following receipt of MFA approval of the determination to release the affordability restrictions to effect a sale, the Governmental Entity may release the affordability restrictions upon sale of the project at a fair market value current to the time of the sale.

E. Exercise reasonable efforts to ensure that all proceeds from the sale of a property pursuant to this section are used solely for purposes pursuant to the Affordable Housing Act and that the Qualifying Grantee that held title to the property shall not benefit from the sale of the property or from the transfer of the affordable housing project.

SECTION 9. **ENFORCEMENT**. The New Mexico Attorney General's Office is the State agency responsible for enforcing compliance with the requirements of the Act and these Rules. Noncompliance by any entity whose actions fall within the jurisdiction of the Act and these Rules will be reported by MFA to the Attorney General's Office for investigation. The Attorney General's Office will investigate an alleged violation of the Act reported by the Authority, and based on a reasonable belief that a violation of the Act has occurred, may bring a civil action and/or pursue criminal charges against the alleged violator. Civil penalties for a judicial finding of a violation of the Act shall not exceed the amount of five thousand dollars ($5,000) per violation, in addition to any equitable relief imposed by the court.

SECTION 10. **MISCELLANEOUS**. Capitalized terms not otherwise defined in these Rules and Regulations have the same meaning as defined in the Act.

SECTION 11. **AMENDMENT TO RULES AND REGULATIONS**. These Rules may be amended or supplemented by MFA at any time. With regard to any amended or supplemental rules under this Section, MFA shall seek comment from the Oversight Committee, provide a public hearing in accordance with the State Administrative Procedures Act, and require concurrence in any rule having application to local government by both the New Mexico municipal league and the New Mexico Association of Counties, all as required by the Act.

Adopted by the MFA's Board: October 17, 2007 and, as amended, on December 16, 2015.

RioRancho
City of Vision

Affordable Housing Plan Public Forum
(Meeting #1. September 28, 2022)

Name:	Email:	Live or work in Rio Rancho (Y/N)?
ANA Moss	radaireneS@gmail.com	Y
Cynthia Nester	CNESTER@NORTHMARQ.com	YES
RUTH BLEICH	rvb2700@yahoo.com	YES
Lindsay Lannholm	lindsayanne99@gmail.com	Yes
DAVID E. KREISEL	deirdkreisel@yahoo.com	YES
Cathy Donovan	lizards x 3 @ yahoo.com	Y
Sandie Hines	shines5555@aol.com	Y
Mike Jackovich	mikejack@att.net	X
Karissa Culbreath	Kculbreath@rrnm.gov	Y
Crystal Sanchez	crsanchez@rrnm.gov	Y
Liz Ruiz Carlos	lruizcarlos@rrnm.gov (CORR)	Y
Chris Benson	CORR	Y
Tim Dvorak	CORR	Y
David Serrano	CORR	Y
Tara Pawley	CORR	Y

RioRancho
City of Vision

Affordable Housing Plan Public Forum
(Meeting #1. September 28, 2022)

Name:	Email:	Live or work in Rio Rancho (Y/N)?
Georganne Mellen		Retired/Y
GORDON MOORE	gordon.moore@lectronsonics.com	LIVE & WORK
Fred Shepherd	fred@sea-nm.com	Live & work

RioRancho
City of Vision

Affordable Housing Plan Public Forum
(Meeting #2. September 29, 2022)

Name:	Email:	Live or work in Rio Rancho (Y/N)?
Lewis Creekmore	lewiscreekmore@gmail.com	No
Jeannie Kitover	kooclooc@gmail.com	Y
Estella Welk	estella@hawnhouseinc.org	yes
Sal Maniaci	sal.maniaci@rrps.net	yes.
Crystal L. Sanchez	clsanchez@rrnm.gov	Yes
Wendy Frohlichstein	wfrohlichstein@yahoo	yes
Fred Shepherd	fred@jea-nm.com	Live & work
Josh Rogers	jrogers@titan-development.com	No
Matt Geisel	mgeisel@rrnm.gov	Yes
Sandy Diaz	sdiaz@stfelixpantry.org	yes
Crystal Conine	crystal.conine@NAFD.com	No
David Serrano	CORR	Y
Liz Ruiz Carlos	CORR (lruizcarlos@rrnm.gov)	Y
Tim Dvorak	CORR	
Chris Benson	CORR	

Rio Rancho
City of Vision

Affordable Housing Plan Public Forum
(Meeting #2. September 29, 2022)

Name:	Email:	Live or work in Rio Rancho (Y/N)?
Tara Bawley	CURR	Y
Gordon Moore	gordon.moore@ lectrosonics.com	Y
Maureen Milligan	NDC	N
Sheldon Bartel	NDC	N
Mike Jackovich	mike.juck@ att .net	X
Paul Wymer	pwymer@ rrnm.gov	

RioRancho
City of Vision

Affordable Housing Plan Public Forum
(Meeting #3. September 29, 2022)

Name:	Email:	Live or work in Rio Rancho (Y/N)?
Nia Cooper	ncooper@lonewise.org	
Liz Ruiz Carlos	CORR	Y
Gordon Moore	gordon.moore@lectrosonics.com	y
Rada Moss	radairene5@gmail.com	Y
Sheldon Bartel	NDC	N/
Maureen Milligan	NDC	N
Jim Dvorak	CORR	y
Tara Pawley	CORR	y

RioRancho
City of Vision

Affordable Housing Plan Public Forum
(Meeting #3. September 29, 2022)

Name:	Email:	Live or work in Rio Rancho (Y/N)?
Elice Maine	emainepurple@gmail.com	yes

10/4 Zoom Meeting Attendance (21 Total):

Sheldon Bartel, NDC

Maureen Milligan, NDC

Gordon Moore

Liz Ruiz Carlos

Tara Pawley

Amy Rincon

Samantha Simmons

Ruth

Lee-Ann Foster

KOAT Desk

Joyce Garnes

Joey

Hobbit Merritt

Celine Lucero

Catherine Cullen

Cabrini

Bill Bidal – Habitat for Humanity

Rosella Gonzales

John, Albuquerque

Penny Becknell

Lewis Creekmore

CITY OF RIO RANCHO
PUBLIC HEARING NOTICE

The GOVERNING BODY of the CITY OF RIO RANCHO, NM, will consider the following matter at its regularly scheduled meeting on Thursday, September 28, 2023 at 6:00 pm:

Master Plan
Case #23-400-00002
The applicant, City of Rio Rancho, is requesting approval of the Affordable Housing Plan.

The meeting is scheduled in the Council Chambers at City Hall, 3200 Civic Center Cir NE, Rio Rancho, NM. The public is invited to attend in person or virtually at www.rrnm.gov. Materials related to this item are available for viewing in the Development Services Department at City Hall.

If you would like to comment on this application, you are encouraged to submit a written comment to planning@rrnm.gov Written comments will be inserted into the public record.

Journal: September 13, 2023

MFA
Housing New Mexico

August 23, 2023

Sheldon Bartel, CEcD, EDFP, HDFP
Field Director- Central Team

Re: City of Rio Rancho Affordable Housing Plan - Approval

Dear Mr. Bartel,

The New Mexico Mortgage Finance Authority ("MFA"), in accordance with the Affordable Housing Act (Section 62-7-1 et. seq. NMSA 1978) (the "Act") and the Affordable Housing Act Rules (the "Rules") adopted thereto, has reviewed the City of Rio Rancho's Affordable Housing Plan (the "Plan") as submitted by the City of Rio Ranch (the "City") on August 18, 2023. MFA has determined that the Plan addresses the minimum required elements set out in the Act and the Rules and is approved by MFA.

Under the Rules, the City must provide MFA with a certification once the Plan has been adopted by the Rio Rancho City Council. Any contributions to affordable housing made by the City must be submitted to MFA for approval, as they occur. Full application packages do not need to be sent; instead, a listing of applicants and recommended awards is acceptable.

Thank you for the City's commitment and efforts in providing affordable housing to its residents. If you have any questions, please contact me at (505)308-4216 or jhalbig@housingnm.org.

Sincerely,

Julie Halbig

Julie Halbig
Director of Compliance and Initiatives

CITY OF RIO RANCHO
COVER PAGE

Legislation Item: O16

AGENDA DATE:
September 28, 2023

DEPARTMENT:
Administration

SUBJECT:
O16, Ordinance Amending Ordinance No. 28, Enactment No. 22-29 Relating to the Issuance and Sale of City of Rio Rancho, New Mexico Taxable Industrial Revenue Bonds (Atrisco Energy Storage LLC Project), In a Maximum Principal Amount of up to $420,000,000, for the Purpose of Approving Allocation of the Annual Payments In Lieu Of Taxes (PILOT) to Rio Rancho Public Schools (RRPS) and Albuquerque Public Schools (APS) in Conformity with the Requirements of Section 3-32-6 NMSA 1978; Authorizing Execution and Delivery of the Bonds with Updated Series Designation to Reflect the Date of Issuance and Delivery; Ratifying Certain Actions Taken Previously; and Repealing All Actions Inconsistent with this Ordinance

BACKGROUND AND ANALYSIS:
During the 2023 New Mexico Legislative Session, Section 3-32-6 of the IRB Act was amended to modify the formula for distributions of PILOT to school districts. Previously, this section stated that the annual PILOT required for electricity generation or transmission facilities "shall be shared among the school districts located within the municipality, equally if there is more than one school district in such municipality."

The 2023 amendment to Subsection A, Subparagraph A(2)(c) reads:

"the in-lieu payment shall be allocated as follows: 1) fifty percent allocated equally among all school districts in which the project is located; 2) forty percent allocated to the school districts within the municipality in proportion to the area of each school district within the municipality; and 3) ten percent allocated to the school districts in proportion to the average of each school district's student membership pursuant to the Public School Code reported on the second and third reporting dates for the most recent school year for which data is available as of the date of issuance of the bonds"

The Governing Body approved R-104 22-101, an IRB Inducement Resolution for Atrisco Solar LLC Project and Atrisco Energy Storage LLC Project on October 27, 2022, and adopted the original IRB ordinances (O-28 22-29 and O-29 22-30) on December 15, 2022. Because the issued bonds have not closed, the PILOT distributions for Rio Rancho Public Schools and Albuquerque Public schools must be consistent with the modified formula in Section 3-32-6 NMSA 1978, as amended.

The attached exhibits detail the calculations of the modified formula (Exhibit I) based on GIS data with RRPS boundary information via the RRPS web map (August 2023) and APS boundary information via cabq.gov (August 2023) (Exhibit II and III), and enrollment data from the New Mexico Public Education Department (Exhibit IV). Under the modified formula, APS will receive 64.24% and RRPS will receive 35.76% of the annual PILOT, compared to the previous 50%/50% distribution formula.

IMPACT:

Approval of this amendatory ordinance will bring the PILOT distribution formula into compliance with Section 3-32-6 NMSA 1978.

ALTERNATIVES:

Approve the Ordinance.

Do not approve the Ordinance.

DEPARTMENT RECOMMENDATION:

City Administration recommends approval of the Ordinance.

ATTACHMENT: Ordinance
ATTACHMENT: Exhibit_I_-_Atrisco_Solar_PILOT_Distribution_Calculation.pdf
ATTACHMENT: Exhibit_II_-_RRPS_APS_and_Solar_Location.pdf
ATTACHMENT: Exhibit_III_-_RRPS_and_APS_Boundary_Percentages.pdf
ATTACHMENT: Exhibit_IV_-_APS-RRPS_Enrollment_Reports.pdf

CITY OF RIO RANCHO
ORDINANCE

ORDINANCE NO. **ENACTMENT NO.**

ORDINANCE AMENDING ORDINANCE NO. 28, ENACTMENT NO. 22-29 RELATING TO THE ISSUANCE AND SALE OF CITY OF RIO RANCHO, NEW MEXICO TAXABLE INDUSTRIAL REVENUE BONDS (ATRISCO ENERGY STORAGE LLC PROJECT), IN A MAXIMUM PRINCIPAL AMOUNT OF UP TO $420,000,000, FOR THE PURPOSE OF APPROVING ALLOCATION OF THE ANNUAL PAYMENTS IN LIEU OF TAXES TO RIO RANCHO PUBLIC SCHOOLS AND ALBUQUERQUE PUBLIC SCHOOLS IN CONFORMITY WITH THE REQUIREMENTS OF SECTION 3-32-6 NMSA 1978; AUTHORIZING EXECUTION AND DELIVERY OF THE BONDS WITH UPDATED SERIES DESIGNATION TO REFLECT THE DATE OF ISSUANCE AND DELIVERY; RATIFYING CERTAIN ACTIONS TAKEN PREVIOUSLY; AND REPEALING ALL ACTIONS INCONSISTENT WITH THIS ORDINANCE

WHEREAS: the City of Rio Rancho (the "City") is a legally and regularly created, established, organized and existing municipality under the general laws of the State of New Mexico (the "State"); and

WHEREAS: pursuant to the proposal of Atrisco Storage LLC (the "Company"), on December 15, 2022, the Governing Body of the City (the "Governing Body") adopted Ordinance No. O28, Enactment No. 22-29 ("Ordinance No. O28"), authorizing the issuance of Taxable Industrial Revenue Bonds (Atrisco Energy Storage LLC Project), Series 2022 (the "Bonds") for the purpose of acquiring solar energy storage equipment and facilities to be located within the corporate boundaries of the City, to be used by the Company for the storage of electrical energy (the "Project"); and

WHEREAS: the form of lease agreement presented to the Governing Body in connection with its consideration and adoption of Ordinance No. O28 included payments in lieu of taxes ("PILOT") to each of the City, Rio Rancho Public Schools ("RRPS") and Albuquerque Public Schools ("APS") allocated according to the requirements of Section 3-32-6 NMSA 1978 in effect at that time, which provided for allocation of equal shares of the portion of the PILOT payable to school districts to RRPS and APS; and

WHEREAS: Section 3-32-6 NMSA 1978 was amended by the Legislature of the State, effective on April 5, 2023, to provide for that the PILOT payable to the school districts within the boundaries of the municipality is to be allocated as follows: fifty percent (50%) is to be allocated equally among all school districts in which the project is to be located; forty percent (40%) is to be allocated to each school district in proportion to the area of each school district within the municipality; and ten percent (10%) allocated to the school districts in proportion to each school district's student membership pursuant to the Public School Code reported on the second and third reporting dates for the most recent school year for which data is available as of the date of

issuance of the bonds; and

WHEREAS: the Governing Body has determined that it is necessary to approve PILOT allocations to RRPS and APS which are consistent with Section 3-32-6 NMSA 1978, as amended; and

WHEREAS: the Governing Body has determined that it is appropriate and advisable to authorize the Mayor of the City to execute and deliver the Bonds with a series designation that corresponds to the year in which the Bonds are executed and delivered; and

WHEREAS: the Governing Body intends that, except as expressly provided in this Amendatory Ordinance, all provisions of Ordinance O28 shall remain effective; and

WHEREAS: there has been published in Rio Rancho Observer, a newspaper of general circulation in the City, public notice of the City Council's intention to adopt this Amendatory Ordinance, which notice was published at least fourteen (14) days prior to final action upon this Bond Ordinance.

NOW THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF RIO RANCHO:

Section 1. Ratification. All actions not inconsistent with the provisions of this Amendatory Ordinance previously taken by the City Council and the officials of the City directed toward approval of the issuance and sale of the Bonds be approved and the same hereby are ratified, approved and confirmed.

Section 2. Amendment of Approval of Form of Lease Agreement. The form of Lease Agreement approved in Ordinance O28 is hereby amended to delete the PILOT payment schedule attached as Exhibit D thereto, and to substitute in its place the PILOT payment schedule (Storage PILOT Payments Schedule) presented to the Governing Body in connection with its consideration of this Amendatory Ordinance.

Section 3. Delegation of Authority to Execute and Deliver Bonds with Updated Series Designation. The Mayor is hereby authorized to execute and deliver the Bonds with a series designation that corresponds to the year in which execution and delivery of the Bonds occurs.

Section 4. Ordinance No. O28 Otherwise not Amended. Except as expressly provided herein, all other provisions of Ordinance No. O28 shall remain effective.

Section 5. Recording; Authentication; Publication; Effective Date. This Ordinance, immediately upon its final passage and approval, shall be authenticated by the signature of the Mayor, and by the signature of the City Clerk or any Deputy City Clerk, and shall be recorded in the Ordinance book of the City, kept for that purpose, and shall be in full force and in effect ten days after adoption, and notice of adoption thereof shall be published once in a newspaper which maintains an office in, and is of general circulation in the City.

ADOPTED THIS _____DAY OF _____, 2023.

_____
Greggory D. Hull, Mayor

ATTEST:

_____
Rebecca A. Martinez, City Clerk
(SEAL)

EXHIBIT D

PILOT PAYMENTS

STORAGE PILOT PAYMENTS

Year	Total PILOT	City Portion	Percent Payable to School Districts	APS	RRPS
1	$49,411.76	$34,742.50	$14,669.26	$ 9,423.79	$ 5,245.47
2	$469,411.76	$330,053.79	$139,357.97	$ 89,526.04	$ 49,831.93
3	$518,823.53	364,796.30	$154,027.23	$ 98,949.83	$ 55,077.40
4	$518,823.53	364,796.30	$154,027.23	$ 98,949.83	$ 55,077.40
5	$518,823.53	364,796.30	$154,027.23	$ 98,949.83	$ 55,077.40
6	$518,823.53	364,796.30	$154,027.23	$ 98,949.83	$ 55,077.40
7	$518,823.53	364,796.30	$154,027.23	$ 98,949.83	$ 55,077.40
8	$518,823.53	364,796.30	$154,027.23	$ 98,949.83	$ 55,077.40
9	$518,823.53	364,796.30	$154,027.23	$ 98,949.83	$ 55,077.40
10	$518,823.53	364,796.30	$154,027.23	$ 98,949.83	$ 55,077.40
11	$518,823.53	364,796.30	$154,027.23	$ 98,949.83	$ 55,077.40
12	$518,823.53	364,796.30	$154,027.23	$ 98,949.83	$ 55,077.40
13	$518,823.53	364,796.30	$154,027.23	$ 98,949.83	$ 55,077.40
14	$518,823.53	364,796.30	$154,027.23	$ 98,949.83	$ 55,077.40
15	$518,823.53	364,796.30	$154,027.23	$ 98,949.83	$ 55,077.40
16	$518,823.53	364,796.30	$154,027.23	$ 98,949.83	$ 55,077.40
17	$518,823.53	364,796.30	$154,027.23	$ 98,949.83	$ 55,077.40
18	$518,823.53	364,796.30	$154,027.23	$ 98,949.83	$ 55,077.40
19	$518,823.53	364,796.30	$154,027.23	$ 98,949.83	$ 55,077.40

20	$518,823.53	364,796.30	$154,027.23	$ 98,949.83	$ 55,077.40
21	$518,823.53	364,796.30	$154,027.23	$ 98,949.83	$ 55,077.40
22	$518,823.53	364,796.30	$154,027.23	$ 98,949.83	$ 55,077.40
23	$518,823.53	364,796.30	$154,027.23	$ 98,949.83	$ 55,077.40
24	$518,823.53	364,796.30	$154,027.23	$ 98,949.83	$ 55,077.40
25	$518,823.53	364,796.30	$154,027.23	$ 98,949.83	$ 55,077.40
26	$518,823.53	364,796.30	$154,027.23	$ 98,949.83	$ 55,077.40
27	$518,823.53	364,796.30	$154,027.23	$ 98,949.83	$ 55,077.40
28	$518,823.53	364,796.30	$154,027.23	$ 98,949.83	$ 55,077.40
29	$518,823.53	364,796.30	$154,027.23	$ 98,949.83	$ 55,077.40
30	$518,823.53	364,796.30	$154,027.23	$ 98,949.83	$ 55,077.40

1

Atrisco Solar Proposed PILOT Schedule - Combined

Assessed Value: $ 850,000,000.00
MW: 300

		PILOT-% Payable to Schools	*PILOT-% Split between School Districts*	
Average/MW	$ 3,383.33	29.6878%	64.24%	35.76%

Year	PILOT	$ Payable to Schools	APS	RRPS	Net to City of Rio Rancho
1	$ 100,000.00	$ 29,687.79	$ 19,071.96	$ 10,615.83	$ 70,312.21
2	$ 950,000.00	$ 282,033.99	$ 181,183.64	$ 100,850.34	$ 667,966.01
3	$ 1,050,000.00	$ 311,721.77	$ 200,255.61	$ 111,466.17	$ 738,278.23
4	$ 1,050,000.00	$ 311,721.77	$ 200,255.61	$ 111,466.17	$ 738,278.23
5	$ 1,050,000.00	$ 311,721.77	$ 200,255.61	$ 111,466.17	$ 738,278.23
6	$ 1,050,000.00	$ 311,721.77	$ 200,255.61	$ 111,466.17	$ 738,278.23
7	$ 1,050,000.00	$ 311,721.77	$ 200,255.61	$ 111,466.17	$ 738,278.23
8	$ 1,050,000.00	$ 311,721.77	$ 200,255.61	$ 111,466.17	$ 738,278.23
9	$ 1,050,000.00	$ 311,721.77	$ 200,255.61	$ 111,466.17	$ 738,278.23
10	$ 1,050,000.00	$ 311,721.77	$ 200,255.61	$ 111,466.17	$ 738,278.23
11	$ 1,050,000.00	$ 311,721.77	$ 200,255.61	$ 111,466.17	$ 738,278.23
12	$ 1,050,000.00	$ 311,721.77	$ 200,255.61	$ 111,466.17	$ 738,278.23
13	$ 1,050,000.00	$ 311,721.77	$ 200,255.61	$ 111,466.17	$ 738,278.23
14	$ 1,050,000.00	$ 311,721.77	$ 200,255.61	$ 111,466.17	$ 738,278.23
15	$ 1,050,000.00	$ 311,721.77	$ 200,255.61	$ 111,466.17	$ 738,278.23
16	$ 1,050,000.00	$ 311,721.77	$ 200,255.61	$ 111,466.17	$ 738,278.23
17	$ 1,050,000.00	$ 311,721.77	$ 200,255.61	$ 111,466.17	$ 738,278.23
18	$ 1,050,000.00	$ 311,721.77	$ 200,255.61	$ 111,466.17	$ 738,278.23
19	$ 1,050,000.00	$ 311,721.77	$ 200,255.61	$ 111,466.17	$ 738,278.23
20	$ 1,050,000.00	$ 311,721.77	$ 200,255.61	$ 111,466.17	$ 738,278.23
21	$ 1,050,000.00	$ 311,721.77	$ 200,255.61	$ 111,466.17	$ 738,278.23
22	$ 1,050,000.00	$ 311,721.77	$ 200,255.61	$ 111,466.17	$ 738,278.23
23	$ 1,050,000.00	$ 311,721.77	$ 200,255.61	$ 111,466.17	$ 738,278.23
24	$ 1,050,000.00	$ 311,721.77	$ 200,255.61	$ 111,466.17	$ 738,278.23
25	$ 1,050,000.00	$ 311,721.77	$ 200,255.61	$ 111,466.17	$ 738,278.23
26	$ 1,050,000.00	$ 311,721.77	$ 200,255.61	$ 111,466.17	$ 738,278.23
27	$ 1,050,000.00	$ 311,721.77	$ 200,255.61	$ 111,466.17	$ 738,278.23
28	$ 1,050,000.00	$ 311,721.77	$ 200,255.61	$ 111,466.17	$ 738,278.23
29	$ 1,050,000.00	$ 311,721.77	$ 200,255.61	$ 111,466.17	$ 738,278.23
30	$ 1,050,000.00	$ 311,721.77	$ 200,255.61	$ 111,466.17	$ 738,278.23
Sum	$ 30,450,000.00	$ 9,039,931.47	$ 5,807,412.57	$ 3,232,518.90	$ 21,410,068.53
Validate	$ 30,450,000.00	$ 9,039,931.47	$ 5,807,412.57	$ 3,232,518.90	$ 21,410,068.53

Atrisco Solar Proposed PILOT Schedule - Storage

Assessed Value: $ 420,000,000.00

		PILOT-% Split between School Districts	
	49.41%	64.24%	35.76%

Storage

Yr.	PILOT	$ Payable to Schools	APS	RRPS	Net to City of Rio Rancho
1	$ 49,411.76	$ 14,669.26	$ 9,423.79	$ 5,245.47	$ 34,742.50
2	$ 469,411.76	$ 139,357.97	$ 89,526.04	$ 49,831.93	$ 330,053.79
3	$ 518,823.53	$ 154,027.23	$ 98,949.83	$ 55,077.40	$ 364,796.30
4	$ 518,823.53	$ 154,027.23	$ 98,949.83	$ 55,077.40	$ 364,796.30
5	$ 518,823.53	$ 154,027.23	$ 98,949.83	$ 55,077.40	$ 364,796.30
6	$ 518,823.53	$ 154,027.23	$ 98,949.83	$ 55,077.40	$ 364,796.30
7	$ 518,823.53	$ 154,027.23	$ 98,949.83	$ 55,077.40	$ 364,796.30
8	$ 518,823.53	$ 154,027.23	$ 98,949.83	$ 55,077.40	$ 364,796.30
9	$ 518,823.53	$ 154,027.23	$ 98,949.83	$ 55,077.40	$ 364,796.30
10	$ 518,823.53	$ 154,027.23	$ 98,949.83	$ 55,077.40	$ 364,796.30
11	$ 518,823.53	$ 154,027.23	$ 98,949.83	$ 55,077.40	$ 364,796.30
12	$ 518,823.53	$ 154,027.23	$ 98,949.83	$ 55,077.40	$ 364,796.30
13	$ 518,823.53	$ 154,027.23	$ 98,949.83	$ 55,077.40	$ 364,796.30
14	$ 518,823.53	$ 154,027.23	$ 98,949.83	$ 55,077.40	$ 364,796.30
15	$ 518,823.53	$ 154,027.23	$ 98,949.83	$ 55,077.40	$ 364,796.30
16	$ 518,823.53	$ 154,027.23	$ 98,949.83	$ 55,077.40	$ 364,796.30
17	$ 518,823.53	$ 154,027.23	$ 98,949.83	$ 55,077.40	$ 364,796.30
18	$ 518,823.53	$ 154,027.23	$ 98,949.83	$ 55,077.40	$ 364,796.30
19	$ 518,823.53	$ 154,027.23	$ 98,949.83	$ 55,077.40	$ 364,796.30
20	$ 518,823.53	$ 154,027.23	$ 98,949.83	$ 55,077.40	$ 364,796.30
21	$ 518,823.53	$ 154,027.23	$ 98,949.83	$ 55,077.40	$ 364,796.30
22	$ 518,823.53	$ 154,027.23	$ 98,949.83	$ 55,077.40	$ 364,796.30
23	$ 518,823.53	$ 154,027.23	$ 98,949.83	$ 55,077.40	$ 364,796.30
24	$ 518,823.53	$ 154,027.23	$ 98,949.83	$ 55,077.40	$ 364,796.30
25	$ 518,823.53	$ 154,027.23	$ 98,949.83	$ 55,077.40	$ 364,796.30
26	$ 518,823.53	$ 154,027.23	$ 98,949.83	$ 55,077.40	$ 364,796.30
27	$ 518,823.53	$ 154,027.23	$ 98,949.83	$ 55,077.40	$ 364,796.30
28	$ 518,823.53	$ 154,027.23	$ 98,949.83	$ 55,077.40	$ 364,796.30
29	$ 518,823.53	$ 154,027.23	$ 98,949.83	$ 55,077.40	$ 364,796.30
30	$ 518,823.53	$ 154,027.23	$ 98,949.83	$ 55,077.40	$ 364,796.30
	$ 15,045,882.35	$ 4,466,789.67	$ 2,869,545.03	$ 1,597,244.63	$ 10,579,092.69
	$ 15,045,882.35	$ 4,466,789.67	$ 2,869,545.03	$ 1,597,244.63	$ 10,579,092.69

Atrisco Solar Proposed PILOT Schedule - Solar

Assessed Value: $ 430,000,000.00

		PILOT-% Split between School Districts	
	50.59%	64.24%	35.76%

Solar

Yr.	PILOT	$ Payable to Schools	APS	RRPS	Net to City of Rio Rancho
1	$ 50,588.24	$ 15,018.53	$ 9,648.17	$ 5,370.36	$ 35,569.71
2	$ 480,588.24	$ 142,676.02	$ 91,657.61	$ 51,018.41	$ 337,912.22
3	$ 531,176.47	$ 157,694.54	$ 101,305.78	$ 56,388.77	$ 373,481.93
4	$ 531,176.47	$ 157,694.54	$ 101,305.78	$ 56,388.77	$ 373,481.93
5	$ 531,176.47	$ 157,694.54	$ 101,305.78	$ 56,388.77	$ 373,481.93
6	$ 531,176.47	$ 157,694.54	$ 101,305.78	$ 56,388.77	$ 373,481.93
7	$ 531,176.47	$ 157,694.54	$ 101,305.78	$ 56,388.77	$ 373,481.93
8	$ 531,176.47	$ 157,694.54	$ 101,305.78	$ 56,388.77	$ 373,481.93
9	$ 531,176.47	$ 157,694.54	$ 101,305.78	$ 56,388.77	$ 373,481.93
10	$ 531,176.47	$ 157,694.54	$ 101,305.78	$ 56,388.77	$ 373,481.93
11	$ 531,176.47	$ 157,694.54	$ 101,305.78	$ 56,388.77	$ 373,481.93
12	$ 531,176.47	$ 157,694.54	$ 101,305.78	$ 56,388.77	$ 373,481.93
13	$ 531,176.47	$ 157,694.54	$ 101,305.78	$ 56,388.77	$ 373,481.93
14	$ 531,176.47	$ 157,694.54	$ 101,305.78	$ 56,388.77	$ 373,481.93
15	$ 531,176.47	$ 157,694.54	$ 101,305.78	$ 56,388.77	$ 373,481.93
16	$ 531,176.47	$ 157,694.54	$ 101,305.78	$ 56,388.77	$ 373,481.93
17	$ 531,176.47	$ 157,694.54	$ 101,305.78	$ 56,388.77	$ 373,481.93
18	$ 531,176.47	$ 157,694.54	$ 101,305.78	$ 56,388.77	$ 373,481.93
19	$ 531,176.47	$ 157,694.54	$ 101,305.78	$ 56,388.77	$ 373,481.93
20	$ 531,176.47	$ 157,694.54	$ 101,305.78	$ 56,388.77	$ 373,481.93
21	$ 531,176.47	$ 157,694.54	$ 101,305.78	$ 56,388.77	$ 373,481.93
22	$ 531,176.47	$ 157,694.54	$ 101,305.78	$ 56,388.77	$ 373,481.93
23	$ 531,176.47	$ 157,694.54	$ 101,305.78	$ 56,388.77	$ 373,481.93
24	$ 531,176.47	$ 157,694.54	$ 101,305.78	$ 56,388.77	$ 373,481.93
25	$ 531,176.47	$ 157,694.54	$ 101,305.78	$ 56,388.77	$ 373,481.93
26	$ 531,176.47	$ 157,694.54	$ 101,305.78	$ 56,388.77	$ 373,481.93
27	$ 531,176.47	$ 157,694.54	$ 101,305.78	$ 56,388.77	$ 373,481.93
28	$ 531,176.47	$ 157,694.54	$ 101,305.78	$ 56,388.77	$ 373,481.93
29	$ 531,176.47	$ 157,694.54	$ 101,305.78	$ 56,388.77	$ 373,481.93
30	$ 531,176.47	$ 157,694.54	$ 101,305.78	$ 56,388.77	$ 373,481.93
	$ 15,404,117.65	$ 4,573,141.80	$ 2,286,570.90	$ 2,286,570.90	$ 10,830,975.85
	$ 15,404,117.65	$ 4,573,141.80	$ 2,937,867.53	$ 1,635,274.27	$ 10,830,975.85

PILOT Allocation as defined in Section 3-32-6 NMSA 1978

Criteria

(c) 1) "1) *fifty percent allocated equally among all school districts in which the project is located;* "

See Exhibit II - RRPS APS and Solar Location

That overlays the City's boundaries to the respective school districts service area

APS	50%
RRPS	0%

(c) 2) *"2) forty percent allocated to the school districts within the municipality in proportion to the area of each school district within the municipality ;"*

See Exhibit III - RRPS and APS Boundary Percentages

Shows the service areas with respect to the City's limits.

	Acres	*% of Area*		
RRPS	56,362.10	84.95%	34.0%	of the PILOT for Schools Districts
APS	9,984.76	15.05%	6.0%	of the PILOT for Schools Districts
CoRR	66,346.87			

(c) 3) *"and 3) ten percent allocated to the school districts in proportion to the average of each school district's student membership pursuant to the Public School Code [Chapter 22 NMSA 1978, except Article 5A] reported on the second and third reporting dates for the most recent school year for which data is available as of the date of*

10%

District	Date	Total	Average	RRPS Proportion	APS Proportion
RRPS	22-Dec	17,276			
RRPS	23-Mar	17,314	17,295	17.78%	
APS	22-Dec	80,157			
APS	23-Mar	79,802	79,980		82.22%
			97,275	1.78%	8.22%

* See Exhbits IV and V (Enrollmend data provided by NM Public Education Department on Aug 4, 2023).

Total Allocation:

APS	64.24%
RRPS	35.76%

PILOT % Attributable to School Districts

TY2022	Sandoval County	Sandoval County	Bernalillo County
MUNICIPALITY:	**Rio Rancho**	**Rio Rancho**	**Rio Rancho**
TAXABLE VALUE:	2,153,487,919	388,524,962	9,051,534
CATEGORY:	94 IN R	94 IN NR	R1-A NR
State Debt Service	1.360	1.360	1.360
Total State	1.360	1.360	1.360
County Operational	6.089	10.350	10.750
County Debt Service	0.606	0.606	1.264
			0.200
Bern. County Judgement (A) (4)			0.006
Bern. County Debt Service (4)			
Total County	6.695	10.956	12.220
Municipal Operational	7.004	7.650	7.650
Municipal Debt Service	2.772	2.772	2.772
Total Municipal	9.776	10.422	10.422
School District Operational	0.254	0.477	0.500
School District Debt Service	8.543	8.543	4.480
School Dist. Cap. Improvement	1.908	1.908	2.000
HB 33 School Building	0.000	0.000	4.344
School Dist. Educ. Tech. Debt Service	0.000	0.000	0.000
Total School District	10.705	10.928	11.324
Total State, County, Municipal, & School District	28.536	33.666	35.326
Other:			
Contracting Hospitals	1.893	1.893	6.400
Central NM Comm College (1)	2.790	3.000	3.000
Central NM Comm. College Debt	1.000	1.000	1.000
Total Other	5.683	5.893	10.400
SUB-TOTAL	**34.219**	**39.559**	**45.726**
SSCAFCA/AMAFCA	2.025	2.074	1.152
AMAFCA			
Grand Total - with Flood Control	**36.244**	**41.633**	**46.878**

The relevant portion of the IRB statute setting out the requirements for School District PILOT, Section 3-32-6(A)(2) is as follows:

A municipality shall not acquire any electricity generation or transmission facility project unless the school districts within the municipality in which the project is located receive annual in-lieu tax payments; provided that the annual in-lieu tax payments required by this paragraph shall be:

(a) payable to the school districts for the period the municipality owns and leases the project;

(b) in an aggregate amount equal to the amount received by the municipality multiplied by the percentage [School District PILOT Percentage] determined by dividing the average of the operating, capital improvement and bond mills imposed by the school districts in the municipality [Average School District Mill Levy] and state debt service mills [State Debt Service Mill Levy] as of the date of issuance of the bonds [together, the Numerator] by the average of the mills imposed by all entities levying taxes on property in the municipality [Average Total Mill Levy as the Denominator] as of such date;

(c) shared among the school districts located within the municipality equally; and

(d) not be less than the amount due to the school districts in the tax year immediately preceding the issuance of the bonds from the property included in a project, had such project not been created;

Average School District Mill Levies	State Debt Sevice Mill Levy	Numerator
10.986	1.36	12.346

Average Total Mill Levy in Municipality as the Denominator
39.835

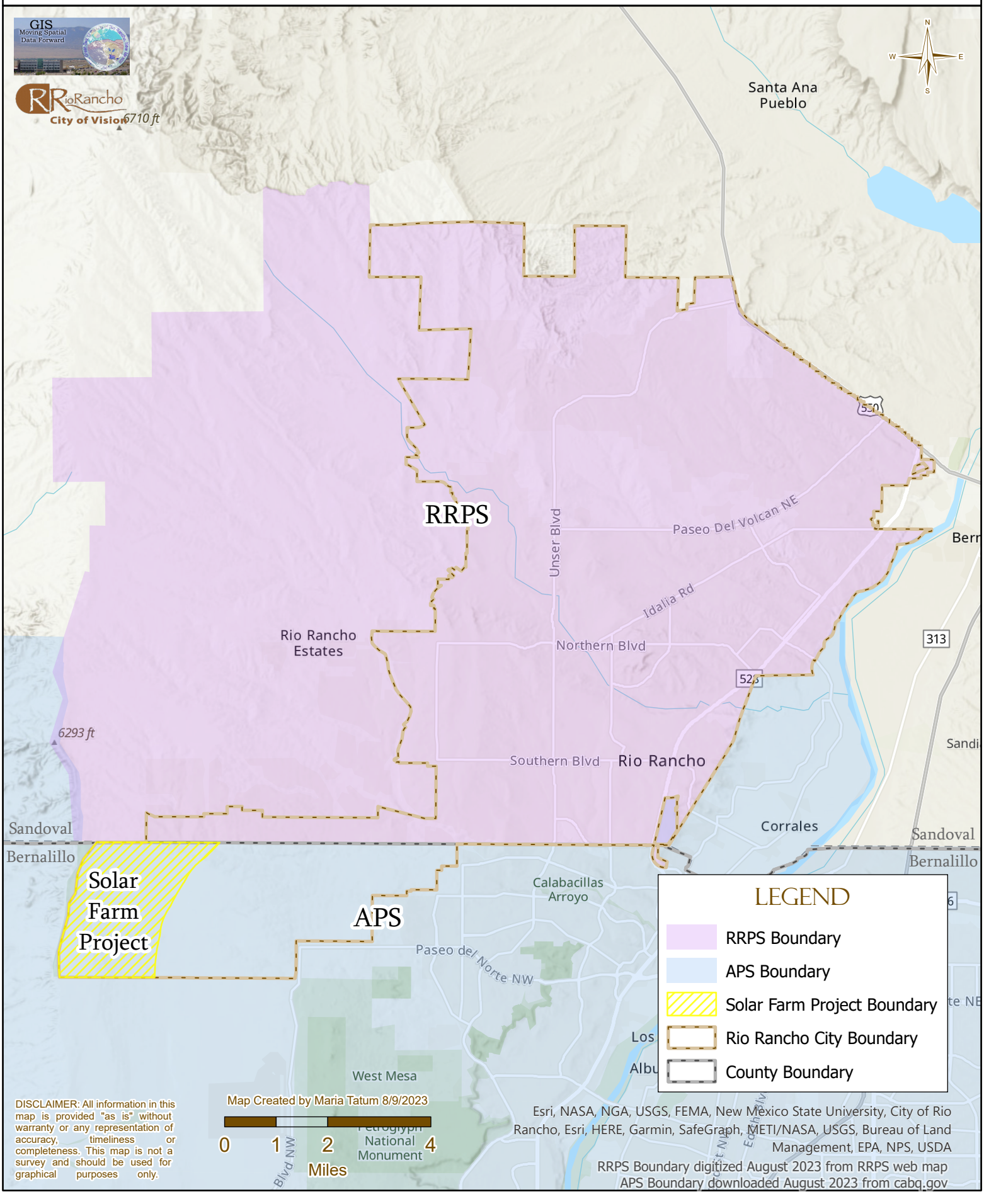
School District PILOT Percentage (Total Numerator/Total Denominator)
30.9923%

Average Total Mill Levy in Municipality as the Denominator
41.585

School District PILOT Percentage (Total Numerator/Total Denominator)
29.6878%

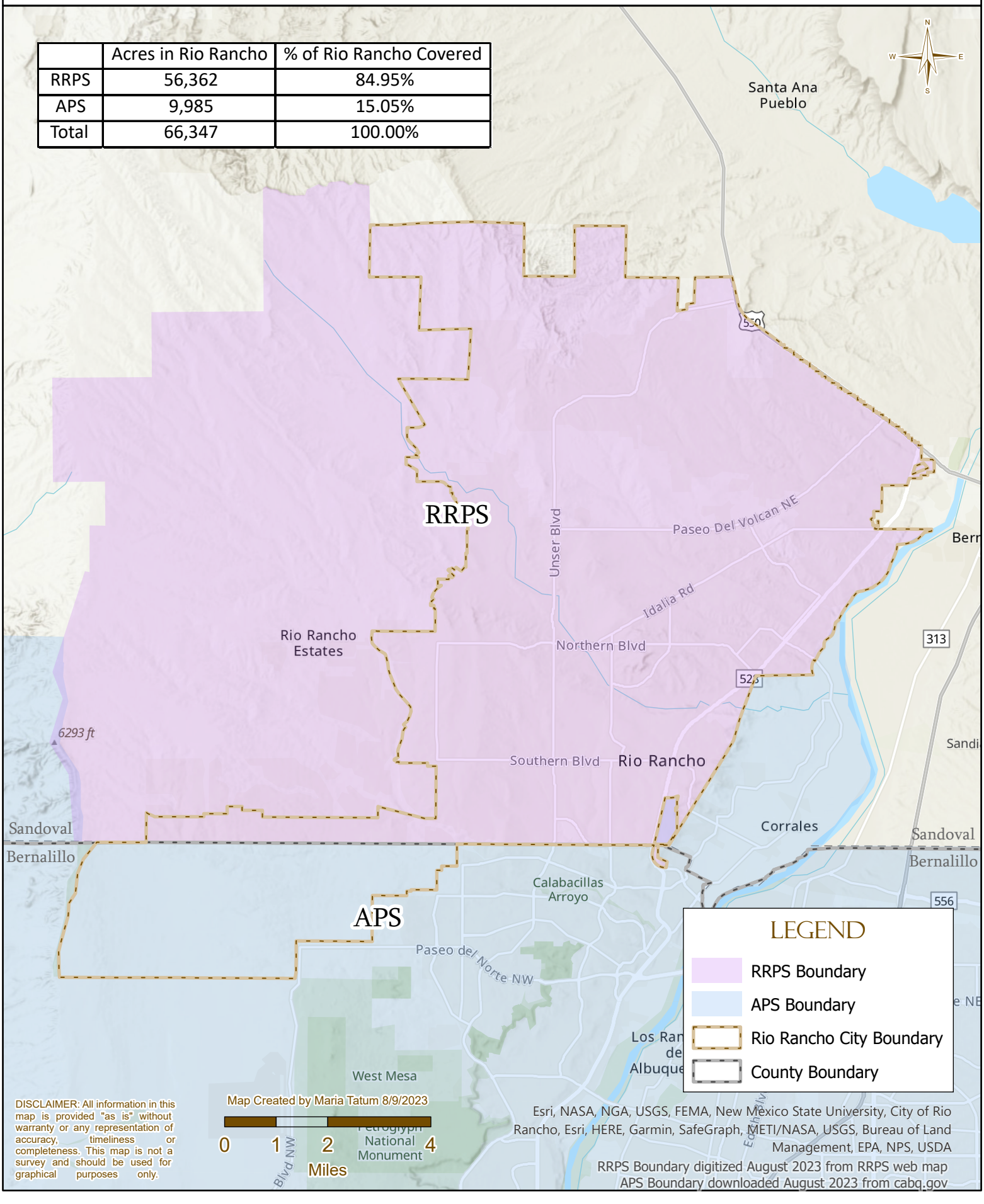
Average School District Mill Levies	10.986	
(+) State Debt Service Levy (1.360)	12.346	(a) = numerator
Average Total Mill Levies	41.585	(b) = denominator
School District PILOT Percentage (a / b)	29.6878%	
Number of School Districts In City	2	

RRPS, APS, AND SOLAR FARM BOUNDARIES



RRPS AND APS BOUNDARIES

	Acres in Rio Rancho	% of Rio Rancho Covered
RRPS	56,362	84.95%
APS	9,985	15.05%
Total	66,347	100.00%



Enrollment by District by School

School Year: 2022-2023

Snapshot Date: 2022-12-15 - 80D

DISTRICT NAME	DISTRICT CODE	LOCATION NAME	LOCATION ID	ORG TYPE	SCHOOL TYPE DESC	GRADE PK	GRADE KF	GRADE KN	GRADE 01	GRADE 02	GRADE 03	GRADE 04	GRADE 05	GRADE 06	GRADE 07	GRADE 08	GRADE 09	GRADE 10	GRADE 11	GRADE 12	TOTAL ENROLLMENT
ALBUQUERQUE	001	A. MONTOYA ELEMENTARY	321	Public	Elementary School	30	51	0	64	52	72	70	74	0	0	0	0	0	0	0	413
	001	ABQ CHARTER ACADEMY	090	Charter	High School	0	0	0	0	0	0	0	0	0	0	0	54	102	123	78	357
	001	ACE LEADERSHIP HIGH SCHOOL	749	Charter	High School	0	0	0	0	0	0	0	0	0	0	0	77	69	63	26	235
	001	ADOBE ACRES ELEMENTARY	206	Public	Elementary School	15	55	0	47	49	52	41	50	0	0	0	0	0	0	0	309
	001	ALAMEDA ELEMENTARY	207	Public	Elementary School	39	36	0	34	24	38	32	34	0	0	0	0	0	0	0	237
	001	ALAMOSA ELEMENTARY	210	Public	Elementary School	15	46	0	57	56	65	58	77	0	0	0	0	0	0	0	374
	001	ALBUQUERQUE HIGH	590	Public	High School	0	0	0	0	0	0	0	0	0	0	0	611	442	327	324	1704
	001	ALBUQUERQUE TALENT DEVELOPMENT CHARTER	016	Charter	High School	0	0	0	0	0	0	0	0	0	0	0	43	49	30	19	141
	001	ALICE KING COMMUNITY SCHOOL	116	Charter	Elementary School	0	51	0	50	53	52	62	48	52	37	45	0	0	0	0	450
	001	ALVARADO ELEMENTARY	213	Public	Elementary School	19	44	0	51	33	49	52	37	0	0	0	0	0	0	0	285
	001	APACHE ELEMENTARY	214	Public	Elementary School	13	41	0	43	57	48	47	39	0	0	0	0	0	0	0	288
	001	ARMIJO ELEMENTARY	215	Public	Elementary School	15	48	0	33	39	39	41	36	0	0	0	0	0	0	0	251
	001	ARROYO DEL OSO ELEMENTARY	329	Public	Elementary School	0	49	0	49	48	53	50	49	0	0	0	0	0	0	0	298
	001	ATRISCO ELEMENTARY	216	Public	Elementary School	15	32	0	34	35	36	49	46	0	0	0	0	0	0	0	247
	001	ATRISCO HERITAGE ACADEMY HS	576	Public	High School	0	0	0	0	0	0	0	0	0	0	0	705	606	375	401	2087
	001	BANDELIER ELEMENTARY	222	Public	Elementary School	0	65	0	70	74	66	81	93	0	0	0	0	0	0	0	449
	001	BARCELONA ELEMENTARY	225	Public	Elementary School	15	40	0	41	38	39	41	37	0	0	0	0	0	0	0	251
	001	BEL-AIR ELEMENTARY	228	Public	Elementary School	15	35	0	41	37	39	37	48	0	0	0	0	0	0	0	252
	001	BELLEHAVEN ELEMENTARY	229	Public	Elementary School	20	30	0	32	35	35	41	41	0	0	0	0	0	0	0	234
	001	BERNALILLO COUNTY JUVENILE DETENTION	048	Off-Site	High School	0	0	0	0	0	0	0	0	0	1	1	17	4	2	2	27
	001	CARLOS REY ELEMENTARY	339	Public	Elementary School	35	75	0	79	81	75	82	95	0	0	0	0	0	0	0	522
	001	CHAMIZA ELEMENTARY	295	Public	Elementary School	0	42	0	56	42	52	54	50	0	0	0	0	0	0	0	296
	001	CHAPARRAL ELEMENTARY	234	Public	Elementary School	70	75	0	70	68	77	81	91	0	0	0	0	0	0	0	532
	001	CHELWOOD ELEMENTARY	236	Public	Elementary School	0	53	0	61	43	82	60	63	0	0	0	0	0	0	0	362
	001	CHILDRENS TREATMENT CENTER	971	Off-Site	Special Education	0	0	0	0	0	0	0	1	0	0	0	0	0	0	0	1
	001	CHRISTINE DUNCAN HERITAGE ACADEMY	118	Charter	Elementary School	37	44	0	46	49	31	38	42	39	43	40	0	0	0	0	409
	001	CIBOLA HIGH	580	Public	High School	0	0	0	0	0	0	0	0	0	0	0	543	515	338	351	1747
	001	CIEN AGUAS INTERNATIONAL	780	Charter	Elementary School	0	40	0	45	45	48	47	49	47	49	50	0	0	0	0	420
	001	CLEVELAND MIDDLE	407	Public	Middle School	0	0	0	0	0	0	0	0	196	179	173	0	0	0	0	548
	001	COCHITI ELEMENTARY	237	Public	Elementary School	17	35	0	23	37	36	29	31	0	0	0	0	0	0	0	208
	001	COLLEGE AND CAREER HIGH SCHOOL	591	Public	High School	0	0	0	0	0	0	0	0	0	0	0	67	73	60	60	260
	001	COLLET PARK ELEMENTARY	240	Public	Elementary School	54	45	0	36	52	51	43	45	0	0	0	0	0	0	0	326
	001	COMANCHE ELEMENTARY	241	Public	Elementary School	18	43	0	54	49	54	45	53	0	0	0	0	0	0	0	316
	001	CONTINUATION SCHOOL	035	Public	Special Education	0	0	0	0	0	0	0	0	0	1	3	9	4	0	0	17
	001	CORAL COMMUNITY CHARTER	706	Charter	Elementary School	37	41	0	39	39	34	27	22	0	0	0	0	0	0	0	239
	001	CORONADO ELEMENTARY	243	Public	Elementary School	0	41	0	60	43	65	43	57	0	0	0	0	0	0	0	309
	001	CORRALES ELEMENTARY	351	Public	Elementary School	0	62	0	55	52	67	53	48	0	0	0	0	0	0	0	337
	001	CORRALES INTERNATIONAL	028	Charter	High School	0	19	0	19	25	25	18	20	21	21	29	10	12	10	15	244
	001	COTTONWOOD CLASSICAL PREP	769	Charter	High School	0	0	0	0	0	0	0	0	131	130	128	111	113	77	66	756
	001	COYOTE WILLOW FAMILY SCHOOL	952	Public	Elementary School	0	34	0	42	43	39	38	32	26	18	6	0	0	0	0	278
	001	DEL NORTE HIGH	514	Public	High School	0	0	0	0	0	0	0	0	0	0	0	406	309	180	152	1047
	001	DENNIS CHAVEZ ELEMENTARY	203	Public	Elementary School	65	84	0	80	88	91	89	88	0	0	0	0	0	0	0	585
	001	DESERT RIDGE MIDDLE	430	Public	Middle School	0	0	0	0	0	0	0	0	233	285	299	0	0	0	0	817
	001	DESERT WILLOW FAMILY SCHOOL	900	Public	Elementary School	0	21	0	45	41	43	32	30	28	27	21	0	0	0	0	288
	001	DIGITAL ARTS AND TECHNOLOGY ACADEMY	063	Charter	High School	0	0	0	0	0	0	0	0	0	30	40	69	86	64	57	346
	001	DOLORES GONZALES ELEMENTARY	244	Public	Elementary School	18	51	0	51	45	53	57	38	0	0	0	0	0	0	0	313

DISTRICT NAME	DISTRICT CODE	LOCATION NAME	LOCATION ID	ORG TYPE	SCHOOL TYPE DESC	GRADE PK	GRADE KF	GRADE KN	GRADE 01	GRADE 02	GRADE 03	GRADE 04	GRADE 05	GRADE 06	GRADE 07	GRADE 08	GRADE 09	GRADE 10	GRADE 11	GRADE 12	TOTAL ENROLLMENT
	001	DOUBLE EAGLE ELEMENTARY	350	Public	Elementary School	0	90	0	79	100	92	102	100	0	0	0	0	0	0	0	563
	001	DURANES ELEMENTARY	249	Public	Elementary School	36	20	0	18	14	10	17	21	0	0	0	0	0	0	0	136
	001	EARLY COLLEGE ACADEMY	593	Public	High School	0	0	0	0	0	0	0	0	0	0	0	53	61	51	51	216
	001	EAST MOUNTAIN HIGH SCHOOL	024	Charter	High School	0	0	0	0	0	0	0	0	0	0	0	120	93	80	80	373
	001	EAST SAN JOSE ELEMENTARY	252	Public	Elementary School	20	49	0	46	47	52	65	54	0	0	0	0	0	0	0	333
	001	ECADEMY	517	Public	High School	0	0	0	0	0	0	0	0	0	0	0	215	222	234	226	897
	001	ECADEMY K-8	498	Public	Elementary School	0	27	0	60	53	66	74	96	98	144	169	0	0	0	0	787
	001	EDMUND G ROSS ELEMENTARY	219	Public	Elementary School	14	51	0	68	58	82	65	67	0	0	0	0	0	0	0	405
	001	EDWARD GONZALES ELEMENTARY	262	Public	Elementary School	0	0	0	0	0	117	111	149	0	0	0	0	0	0	0	377
	001	EISENHOWER MIDDLE	480	Public	Middle School	0	0	0	0	0	0	0	0	269	272	283	0	0	0	0	824
	001	EL CAMINO REAL ACADEMY	069	Charter	High School	0	18	0	27	22	18	25	32	35	40	40	28	26	15	18	344
	001	ELDORADO HIGH	515	Public	High School	20	0	0	0	0	0	0	0	0	0	0	507	449	335	307	1618
	001	EMERSON ELEMENTARY	255	Public	Elementary School	20	61	0	58	50	62	60	48	0	0	0	0	0	0	0	359
	001	ERNIE PYLE MIDDLE	450	Public	Middle School	0	0	0	0	0	0	0	0	131	158	158	0	0	0	0	447
	001	EUGENE FIELD ELEMENTARY	261	Public	Elementary School	14	19	0	15	26	24	15	22	0	0	0	0	0	0	0	135
	001	FREEDOM HIGH	596	Public	High School	0	0	0	0	0	0	0	0	0	0	0	32	32	21	19	104
	001	GARFIELD MIDDLE	410	Public	Middle School	0	0	0	0	0	0	0	0	96	102	110	0	0	0	0	308
	001	GEORGE I SANCHEZ	496	Public	Elementary School	0	76	0	82	72	64	83	103	242	225	263	0	0	0	0	1210
	001	GEORGIA O'KEEFFE ELEMENTARY	328	Public	Elementary School	0	76	0	71	77	98	78	84	0	0	0	0	0	0	0	484
	001	GILBERT L SENA CHARTER HS	707	Charter	High School	0	0	0	0	0	0	0	0	0	0	0	59	43	26	17	145
	001	GORDON BERNELL CHARTER	030	Charter	High School	0	0	0	0	0	0	0	0	0	0	0	61	44	24	29	158
	001	GOV BENT ELEMENTARY	230	Public	Elementary School	17	43	0	62	49	58	42	54	0	0	0	0	0	0	0	325
	001	GRANT MIDDLE	413	Public	Middle School	0	0	0	0	0	0	0	0	101	115	129	0	0	0	0	345
	001	GRIEGOS ELEMENTARY	267	Public	Elementary School	0	30	0	35	45	46	45	39	0	0	0	0	0	0	0	240
	001	HARRISON MIDDLE	415	Public	Middle School	0	0	0	0	0	0	0	0	107	117	113	0	0	0	0	337
	001	HAWTHORNE ELEMENTARY	270	Public	Elementary School	18	42	0	48	53	52	59	58	0	0	0	0	0	0	0	330
	001	HAYES MIDDLE	416	Public	Middle School	0	0	0	0	0	0	0	0	151	117	112	0	0	0	0	380
	001	HEALTH LEADERSHIP HIGH SCHOOL	752	Charter	High School	0	0	0	0	0	0	0	0	0	0	0	40	62	71	41	214
	001	HELEN CORDERO PRIMARY	395	Public	Elementary School	91	125	0	126	130	0	0	0	0	0	0	0	0	0	0	472
	001	HIGHLAND AUTISM CENTER	611	Public	Special Education	12	0	0	3	1	0	1	1	3	5	1	4	3	1	8	43
	001	HIGHLAND HIGH	520	Public	High School	0	0	0	0	0	0	0	0	0	0	0	419	370	192	149	1130
	001	HODGIN ELEMENTARY	273	Public	Elementary School	70	56	0	57	58	61	66	59	0	0	0	0	0	0	0	427
	001	HOMEBOUND	998	Off-Site	Central Office	4	2	0	5	2	2	5	3	3	4	6	9	6	5	7	63
	001	HOOVER MIDDLE	418	Public	Middle School	0	0	0	0	0	0	0	0	121	111	157	0	0	0	0	389
	001	HUBERT H HUMPHREY ELEMENTARY	221	Public	Elementary School	0	67	0	89	73	90	79	85	0	0	0	0	0	0	0	483
	001	INEZ ELEMENTARY	276	Public	Elementary School	0	45	0	42	58	46	71	46	0	0	0	0	0	0	0	308
	001	JACKSON MIDDLE	420	Public	Middle School	0	0	0	0	0	0	0	0	129	124	153	0	0	0	0	406
	001	JAMES MONROE MIDDLE	490	Public	Middle School	0	0	0	0	0	0	0	0	251	192	252	0	0	0	0	695
	001	JANET KAHN FINE ARTS ACADEMY	258	Public	Elementary School	16	45	0	59	42	43	53	59	0	0	0	0	0	0	0	317
	001	JEFFERSON MIDDLE	425	Public	Middle School	0	0	0	0	0	0	0	0	211	203	224	0	0	0	0	638
	001	JIMMY CARTER MIDDLE	445	Public	Middle School	0	0	0	0	0	0	0	0	155	174	191	0	0	0	0	520
	001	JOHN ADAMS MIDDLE	405	Public	Middle School	0	0	0	0	0	0	0	0	140	155	162	0	0	0	0	457
	001	JOHN BAKER ELEMENTARY	217	Public	Elementary School	0	74	0	72	63	68	75	84	0	0	0	0	0	0	0	436
	001	KENNEDY MIDDLE	427	Public	Middle School	0	0	0	0	0	0	0	0	102	112	108	0	0	0	0	322
	001	KIRTLAND ELEMENTARY	279	Public	Elementary School	65	23	0	21	17	17	16	18	0	0	0	0	0	0	0	177
	001	KIT CARSON ELEMENTARY	231	Public	Elementary School	26	61	0	57	61	50	51	53	0	0	0	0	0	0	0	359
	001	L.B. JOHNSON MIDDLE	485	Public	Middle School	0	0	0	0	0	0	0	0	185	195	204	0	0	0	0	584
	001	LA ACADEMIA DE ESPERANZA	061	Charter	High School	0	0	0	0	0	0	0	0	0	0	0	80	69	59	40	248
	001	LA CUEVA HIGH	525	Public	High School	0	0	0	0	0	0	0	0	0	0	0	508	473	429	398	1808
	001	LA LUZ ELEMENTARY	282	Public	Elementary School	19	19	0	25	22	15	12	22	0	0	0	0	0	0	0	134
	001	LA MESA ELEMENTARY	285	Public	Elementary School	18	64	0	64	77	62	56	74	0	0	0	0	0	0	0	415
	001	LAVALAND ELEMENTARY	288	Public	Elementary School	37	55	0	61	59	74	69	58	0	0	0	0	0	0	0	413
	001	LEW WALLACE ELEMENTARY	373	Public	Elementary School	0	31	0	22	28	27	34	40	0	0	0	0	0	0	0	182
	001	LONGFELLOW ELEMENTARY	291	Public	Elementary School	0	18	0	27	25	33	35	29	0	0	0	0	0	0	0	167
	001	LOS PADILLAS ELEMENTARY	297	Public	Elementary School	15	43	0	28	31	39	38	36	0	0	0	0	0	0	0	230
	001	LOS PUENTES CHARTER	017	Charter	High School	0	0	0	0	0	0	0	0	0	1	12	36	30	24	12	115
	001	LOS RANCHOS ELEMENTARY	336	Public	Elementary School	17	27	0	42	34	24	42	41	0	0	0	0	0	0	0	227
	001	LOWELL ELEMENTARY	300	Public	Elementary School	1	44	0	31	45	34	41	43	0	0	0	0	0	0	0	239
	001	MACARTHUR ELEMENTARY	303	Public	Elementary School	17	32	0	26	25	31	18	30	0	0	0	0	0	0	0	179

DISTRICT NAME	DISTRICT CODE	LOCATION NAME	LOCATION ID	ORG TYPE	SCHOOL TYPE DESC	GRADE PK	GRADE KF	GRADE KN	GRADE 01	GRADE 02	GRADE 03	GRADE 04	GRADE 05	GRADE 06	GRADE 07	GRADE 08	GRADE 09	GRADE 10	GRADE 11	GRADE 12	TOTAL ENROLLMENT
	001	MADISON MIDDLE	435	Public	Middle School	0	0	0	0	0	0	0	0	208	183	202	0	0	0	0	593
	001	MANZANO HIGH	530	Public	High School	16	0	0	0	0	0	0	0	0	0	0	523	354	243	207	1343
	001	MANZANO MESA ELEMENTARY	260	Public	Elementary School	45	67	0	86	95	90	72	81	0	0	0	0	0	0	0	536
	001	MARIE M HUGHES ELEMENTARY	365	Public	Elementary School	0	68	0	52	65	70	69	83	0	0	0	0	0	0	0	407
	001	MARK ARMIJO ACADEMY	039	Charter	High School	0	0	0	0	0	0	0	0	0	0	0	57	63	50	29	199
	001	MARK TWAIN ELEMENTARY	364	Public	Elementary School	65	39	0	29	47	38	40	32	0	0	0	0	0	0	0	290
	001	MARYANN BINFORD ELEMENTARY	250	Public	Elementary School	21	73	0	68	76	74	72	99	0	0	0	0	0	0	0	483
	001	MATHESON PARK ELEMENTARY	305	Public	Elementary School	16	27	0	25	36	30	31	30	0	0	0	0	0	0	0	195
	001	MCCOLLUM ELEMENTARY	307	Public	Elementary School	70	40	0	29	43	40	30	35	0	0	0	0	0	0	0	287
	001	MCKINLEY MIDDLE	440	Public	Middle School	0	0	0	0	0	0	0	0	147	170	172	0	0	0	0	489
	001	MISC PRESCHOOL PROGRAM	992	Off-Site	Prekindergarten	86	0	0	0	0	0	0	0	0	0	0	0	0	0	0	86
	001	MISC PRIVATE	997	Private	Non-Accredited	0	10	0	19	18	29	18	19	17	8	13	10	10	11	8	190
	001	MISSION AVENUE ELEMENTARY	309	Public	Elementary School	19	56	0	59	53	48	61	54	0	0	0	0	0	0	0	350
	001	MITCHELL ELEMENTARY	310	Public	Elementary School	0	38	0	43	41	50	48	45	0	0	0	0	0	0	0	265
	001	MONTE VISTA ELEMENTARY	312	Public	Elementary School	0	70	0	74	79	53	83	71	0	0	0	0	0	0	0	430
	001	MONTESSORI OF THE RIO GRANDE	095	Charter	Elementary School	0	35	0	36	37	36	35	35	0	0	0	0	0	0	0	214
	001	MONTEZUMA ELEMENTARY	315	Public	Elementary School	0	46	0	61	59	52	84	61	0	0	0	0	0	0	0	363
	001	MOUNTAIN MAHOGANY COMMUNITY SCHOOL	098	Charter	Elementary School	0	21	0	24	23	21	23	25	22	36	29	0	0	0	0	224
	001	MOUNTAIN VIEW ELEMENTARY	324	Public	Elementary School	13	28	0	40	33	35	36	29	0	0	0	0	0	0	0	214
	001	NATIVE AMERICAN COMMUNITY ACADEMY	006	Charter	High School	0	20	0	19	18	21	22	21	45	52	46	68	52	36	25	445
	001	NAVAJO ELEMENTARY	327	Public	Elementary School	16	55	0	50	51	66	59	60	0	0	0	0	0	0	0	357
	001	NEW AMERICA SCHOOL	708	Charter	High School	0	0	0	0	0	0	0	0	0	0	0	82	66	45	22	215
	001	NEW FUTURES HIGH SCHOOL	549	Public	High School	0	0	0	0	0	0	0	0	0	1	1	23	14	23	13	75
	001	NEW MEXICO INTERNATIONAL SCHOOL	768	Charter	Elementary School	0	63	0	66	57	63	56	38	22	11	15	0	0	0	0	391
	001	NEX GEN ACADEMY	516	Public	High School	0	0	0	0	0	0	0	0	0	0	0	51	78	49	55	233
	001	NMSVH PRESCHOOL	983	Off-Site	Special Education	41	11	0	0	0	0	0	0	0	0	0	0	0	0	0	52
	001	NORTH STAR ELEMENTARY	268	Public	Elementary School	0	65	0	72	80	106	103	120	0	0	0	0	0	0	0	546
	001	ONATE ELEMENTARY	227	Public	Elementary School	0	42	0	56	50	42	38	41	0	0	0	0	0	0	0	269
	001	OSUNA ELEMENTARY	332	Public	Elementary School	0	67	0	81	76	63	79	69	0	0	0	0	0	0	0	435
	001	PAINTED SKY ELEMENTARY	275	Public	Elementary School	19	110	0	107	86	89	89	110	0	0	0	0	0	0	0	610
	001	PAJARITO ELEMENTARY	333	Public	Elementary School	59	58	0	49	48	38	50	48	0	0	0	0	0	0	0	350
	001	PETROGLYPH ELEMENTARY	317	Public	Elementary School	75	60	0	65	76	62	72	67	0	0	0	0	0	0	0	477
	001	POLK MIDDLE	448	Public	Middle School	0	0	0	0	0	0	0	0	89	91	87	0	0	0	0	267
	001	PUBLIC ACADEMY FOR PERFORMING ARTS	047	Charter	High School	0	0	0	0	0	0	0	0	70	66	69	65	64	55	42	431
	001	REGINALD CHAVEZ ELEMENTARY	330	Public	Elementary School	0	24	0	36	34	37	33	37	0	0	0	0	0	0	0	201
	001	RIO GRANDE HIGH	540	Public	High School	0	0	0	0	0	0	0	0	0	0	0	633	431	235	216	1515
	001	ROBERT F. KENNEDY CHARTER	051	Charter	High School	0	0	0	0	0	0	0	0	17	35	30	120	90	54	28	374
	001	ROOSEVELT MIDDLE	452	Public	Middle School	0	0	0	0	0	0	0	0	125	117	138	0	0	0	0	380
	001	RUDOLFO ANAYA ELEMENTARY	392	Public	Elementary School	45	76	0	98	89	100	91	91	0	0	0	0	0	0	0	590
	001	S. Y. JACKSON ELEMENTARY	360	Public	Elementary School	0	76	0	82	93	77	89	98	0	0	0	0	0	0	0	515
	001	SAN ANTONITO ELEMENTARY	345	Public	Elementary School	0	52	0	49	55	59	67	58	0	0	0	0	0	0	0	340
	001	SANDIA BASE ELEMENTARY	348	Public	Elementary School	0	71	0	66	50	55	63	38	0	0	0	0	0	0	0	343
	001	SANDIA HIGH	550	Public	High School	0	0	0	0	0	0	0	0	0	0	0	581	455	326	352	1714
	001	SCHOOL ON WHEELS HIGH SCHOOL	597	Public	High School	0	0	0	0	0	0	0	0	0	0	0	14	26	28	9	77
	001	SEVEN BAR ELEMENTARY	265	Public	Elementary School	0	71	0	89	69	96	83	80	0	0	0	0	0	0	0	488
	001	SIEMBRA LEADERSHIP HIGH SCHOOL	750	Charter	High School	0	0	0	0	0	0	0	0	0	0	0	85	78	68	50	281
	001	SIERRA VISTA ELEMENTARY	356	Public	Elementary School	33	56	0	74	64	66	64	87	0	0	0	0	0	0	0	444
	001	SOMBRA DEL MONTE ELEMENTARY	357	Public	Elementary School	0	36	0	43	29	48	54	46	0	0	0	0	0	0	0	256
	001	SOUTH VALLEY ACADEMY	025	Charter	High School	0	0	0	0	0	0	0	0	93	94	97	80	88	81	72	605
	001	SUNSET VIEW ELEMENTARY	393	Public	Elementary School	0	63	0	76	81	86	93	86	0	0	0	0	0	0	0	485
	001	SUSIE RAYOS MARMON ELEMENTARY	280	Public	Elementary School	21	93	0	79	105	98	96	89	0	0	0	0	0	0	0	581
	001	TAFT MIDDLE	455	Public	Middle School	0	0	0	0	0	0	0	0	90	100	101	0	0	0	0	291
	001	TAYLOR MIDDLE	457	Public	Middle School	0	0	0	0	0	0	0	0	93	109	115	0	0	0	0	317
	001	TECHNOLOGY LEADERSHIP HIGH SCHOOL	753	Charter	High School	0	0	0	0	0	0	0	0	0	0	0	70	83	117	45	315

DISTRICT NAME	DISTRICT CODE	LOCATION NAME	LOCATION ID	ORG TYPE	SCHOOL TYPE DESC	GRADE PK	GRADE KF	GRADE KN	GRADE 01	GRADE 02	GRADE 03	GRADE 04	GRADE 05	GRADE 06	GRADE 07	GRADE 08	GRADE 09	GRADE 10	GRADE 11	GRADE 12	TOTAL ENROLLMENT
	001	THE INTERNATIONAL SCHOOL AT MESA DEL SOL	781	Charter	High School	16	37	0	26	33	34	28	32	31	27	21	19	12	8	6	330
	001	TIERRA ANTIGUA ELEMENTARY	389	Public	Elementary School	0	115	0	130	119	134	142	161	0	0	0	0	0	0	0	801
	001	TOMASITA ELEMENTARY	363	Public	Elementary School	0	31	0	35	33	46	50	38	0	0	0	0	0	0	0	233
	001	TONY HILLERMAN MIDDLE SCHOOL	492	Public	Middle School	0	0	0	0	0	0	0	0	318	335	373	0	0	0	0	1026
	001	TRANSITION SERVICES	040	Off-Site	Special Education	10	0	0	0	0	0	0	0	0	0	0	0	0	0	160	170
	001	TRES VOLCANES COMMUNITY COLLABORATIVE SCHOOL	497	Public	Elementary School	0	55	0	79	76	71	91	76	157	159	155	0	0	0	0	919
	001	TRUMAN MIDDLE	475	Public	Middle School	0	0	0	0	0	0	0	0	205	207	258	0	0	0	0	670
	001	VALLE VISTA ELEMENTARY	370	Public	Elementary School	85	35	0	44	31	41	47	42	0	0	0	0	0	0	0	325
	001	VALLEY HIGH	560	Public	High School	0	0	0	0	0	0	0	0	0	0	0	376	303	202	153	1034
	001	VAN BUREN MIDDLE	460	Public	Middle School	0	0	0	0	0	0	0	0	131	118	154	0	0	0	0	403
	001	VENTANA RANCH ELEMENTARY	264	Public	Elementary School	33	96	0	89	98	114	112	95	0	0	0	0	0	0	0	637
	001	VISION QUEST ALTERNATIVE MIDDLE	840	Public	Middle School	0	0	0	0	0	0	0	0	0	0	1	0	0	0	0	1
	001	VOLCANO VISTA HIGH	575	Public	High School	0	0	0	0	0	0	0	0	0	0	0	637	610	506	454	2207
	001	VOZ COLLEGIATE PREPARATORY CHARTER SCHOOL	709	Charter	Middle School	0	0	0	0	0	0	0	0	15	37	12	0	0	0	0	64
	001	WASHINGTON MIDDLE	465	Public	Middle School	0	0	0	0	0	0	0	0	73	96	105	0	0	0	0	274
	001	WEST MESA HIGH	570	Public	High School	0	0	0	0	0	0	0	0	0	0	0	720	479	307	248	1754
	001	WHERRY ELEMENTARY	376	Public	Elementary School	11	37	0	54	44	50	40	43	0	0	0	0	0	0	0	279
	001	WHITTIER ELEMENTARY	379	Public	Elementary School	38	46	0	43	38	37	54	44	0	0	0	0	0	0	0	300
	001	WILLIAM W & JOSEPHINE DORN CHARTER COMMUNITY SCHOOL	782	Charter	Elementary School	0	8	0	8	11	6	8	10	0	0	0	0	0	0	0	51
	001	WILSON MIDDLE	470	Public	Middle School	0	0	0	0	0	0	0	0	124	126	141	0	0	0	0	391
	001	ZIA ELEMENTARY	385	Public	Elementary School	0	45	0	38	43	35	42	31	0	0	0	0	0	0	0	234
	001	ZUNI ELEMENTARY	388	Public	Elementary School	17	38	0	26	40	41	37	43	0	0	0	0	0	0	0	242
ALBUQUERQ	**Total**	**181**				**1999**	**5191**	**0**	**5507**	**5471**	**5710**	**5795**	**5870**	**5395**	**5565**	**6017**	**9107**	**7723**	**5660**	**5147**	**80157**
RIO RANCHO	083	CIELO AZUL ELEMENTARY	021	Public	Elementary School	0	114	0	128	107	108	109	128	0	0	0	0	0	0	0	694
	083	CLEVELAND HIGH SCHOOL	011	Public	High School	0	0	0	0	0	0	0	0	0	0	0	726	703	628	542	2599
	083	COLINAS DEL NORTE ELEMENTARY	050	Public	Elementary School	0	86	0	95	86	109	95	112	0	0	0	0	0	0	0	583
	083	EAGLE RIDGE MIDDLE	001	Public	Middle School	0	0	0	0	0	0	0	0	274	262	283	0	0	0	0	819
	083	ENCHANTED HILLS ELEMENTARY	100	Public	Elementary School	0	98	0	122	107	129	129	135	0	0	0	0	0	0	0	720
	083	ERNEST STAPLETON ELEMENTARY	372	Public	Elementary School	0	125	0	150	138	132	140	132	0	0	0	0	0	0	0	817
	083	INDEPENDENCE HIGH SCHOOL	013	Public	High School	0	0	0	0	0	0	0	0	0	0	0	0	1	30	153	184
	083	JOE HARRIS ELEMENTARY	025	Public	Elementary School	0	85	0	95	89	91	84	79	0	0	0	0	0	0	0	523
	083	LINCOLN MIDDLE	481	Public	Middle School	0	0	0	0	0	0	0	0	265	283	275	0	0	0	0	823
	083	MAGGIE CORDOVA ELEMENTARY SCHOOL	012	Public	Elementary School	0	129	0	124	92	123	105	98	0	0	0	0	0	0	0	671
	083	MARTIN KING JR ELEMENTARY	375	Public	Elementary School	0	78	0	87	121	105	125	115	0	0	0	0	0	0	0	631
	083	MISC PRIVATE	997	Private	Non-Accredited	2	4	0	2	5	7	6	11	6	3	1	4	0	4	3	58
	083	MOUNTAIN VIEW MIDDLE	105	Public	Middle School	0	0	0	0	0	0	0	0	303	292	337	0	0	0	0	932
	083	PUESTA DEL SOL ELEMENTARY	319	Public	Elementary School	0	78	0	104	109	106	98	105	0	0	0	0	0	0	0	600
	083	RIO RANCHO CYBER ACADEMY	018	Public	High School	0	0	0	0	0	0	0	0	20	26	33	23	30	37	34	203
	083	RIO RANCHO DIST OFFICE	000	Central Office	Central Office	0	0	0	1	0	0	0	0	0	0	0	0	0	0	0	1
	083	RIO RANCHO ELEMENTARY	340	Public	Elementary School	0	79	0	99	82	91	84	102	0	0	0	0	0	0	0	537
	083	RIO RANCHO HIGH	006	Public	High School	0	0	0	0	0	0	0	0	0	0	0	733	624	628	570	2555
	083	RIO RANCHO MIDDLE SCHOOL	016	Public	Middle School	0	0	0	0	0	0	0	0	384	392	364	0	0	0	0	1140
	083	SANDIA VISTA ELEMENTARY	020	Public	Elementary School	0	98	0	126	111	119	120	117	0	0	0	0	0	0	0	691
	083	SHINING STARS PRESCHOOL	017	Public	Special Education	630	0	0	0	0	0	0	0	0	0	0	0	0	0	0	630
	083	SPARRK ONLINE ACADEMY	110	Public	Elementary School	0	7	0	10	11	20	20	21	0	0	0	0	0	0	0	89
	083	VISTA GRANDE ELEMENTARY	015	Public	Elementary School	0	88	0	129	127	123	138	171	0	0	0	0	0	0	0	776
RIO RANCHO	**Total**	**23**				**632**	**1069**	**0**	**1272**	**1185**	**1263**	**1253**	**1326**	**1252**	**1258**	**1293**	**1486**	**1358**	**1327**	**1302**	**17276**
Grand Total		**204**				**2631**	**6260**	**0**	**6779**	**6656**	**6973**	**7048**	**7196**	**6647**	**6823**	**7310**	**10593**	**9081**	**6987**	**6449**	**97433**

Enrollment by District by School

School Year: 2022-2023

Snapshot Date: 2023-03-01 - 120D

DISTRICT NAME	DISTRICT CODE	LOCATION NAME	LOCATION ID	ORG TYPE	SCHOOL TYPE DESC	GRADE PK	GRADE KF	GRADE KN	GRADE 01	GRADE 02	GRADE 03	GRADE 04	GRADE 05	GRADE 06	GRADE 07	GRADE 08	GRADE 09	GRADE 10	GRADE 11	GRADE 12	TOTAL ENROLLMENT
ALBUQUERQUE	001	A. MONTOYA ELEMENTARY	321	Public	Elementary School	33	51	0	61	52	69	67	74	0	0	0	0	0	0	0	407
	001	ABQ CHARTER ACADEMY	090	Charter	High School	0	0	0	0	0	0	0	0	0	0	0	61	112	125	102	400
	001	ACE LEADERSHIP HIGH SCHOOL	749	Charter	High School	0	0	0	0	0	0	0	0	0	0	0	84	68	63	24	239
	001	ADOBE ACRES ELEMENTARY	206	Public	Elementary School	16	54	0	49	50	52	40	50	0	0	0	0	0	0	0	311
	001	ALAMEDA ELEMENTARY	207	Public	Elementary School	40	34	0	35	24	40	32	34	0	0	0	0	0	0	0	239
	001	ALAMOSA ELEMENTARY	210	Public	Elementary School	15	45	0	58	57	67	60	82	0	0	0	0	0	0	0	384
	001	ALBUQUERQUE HIGH	590	Public	High School	0	0	0	0	0	0	0	0	0	0	0	538	416	361	345	1660
	001	ALBUQUERQUE TALENT DEVELOPMENT CHARTER	016	Charter	High School	0	0	0	0	0	0	0	0	0	0	0	40	45	32	31	148
	001	ALICE KING COMMUNITY SCHOOL	116	Charter	Elementary School	0	49	0	50	53	52	66	47	52	37	42	0	0	0	0	448
	001	ALVARADO ELEMENTARY	213	Public	Elementary School	18	44	0	53	32	50	51	35	0	0	0	0	0	0	0	283
	001	APACHE ELEMENTARY	214	Public	Elementary School	13	36	0	41	54	50	48	39	0	0	0	0	0	0	0	281
	001	ARMIJO ELEMENTARY	215	Public	Elementary School	16	46	0	34	39	41	41	37	0	0	0	0	0	0	0	254
	001	ARROYO DEL OSO ELEMENTARY	329	Public	Elementary School	0	50	0	50	45	56	48	50	0	0	0	0	0	0	0	299
	001	ATRISCO ELEMENTARY	216	Public	Elementary School	14	34	0	33	35	35	48	46	0	0	0	0	0	0	0	245
	001	ATRISCO HERITAGE ACADEMY HS	576	Public	High School	0	0	0	0	0	0	0	0	0	0	0	625	550	418	445	2038
	001	BANDELIER ELEMENTARY	222	Public	Elementary School	0	66	0	70	74	67	82	93	0	0	0	0	0	0	0	452
	001	BARCELONA ELEMENTARY	225	Public	Elementary School	14	39	0	40	38	40	40	39	0	0	0	0	0	0	0	250
	001	BEL-AIR ELEMENTARY	228	Public	Elementary School	16	34	0	41	37	41	37	48	0	0	0	0	0	0	0	254
	001	BELLEHAVEN ELEMENTARY	229	Public	Elementary School	20	29	0	32	38	35	40	40	0	0	0	0	0	0	0	234
	001	BERNALILLO COUNTY JUVENILE DETENTION	048	Off-Site	High School	0	0	0	0	0	0	0	0	0	0	3	18	7	3	2	33
	001	CARLOS REY ELEMENTARY	339	Public	Elementary School	35	77	0	79	82	73	80	98	0	0	0	0	0	0	0	524
	001	CHAMIZA ELEMENTARY	295	Public	Elementary School	0	42	0	57	43	52	55	52	0	0	0	0	0	0	0	301
	001	CHAPARRAL ELEMENTARY	234	Public	Elementary School	79	80	0	68	68	78	83	94	0	0	0	0	0	0	0	550
	001	CHELWOOD ELEMENTARY	236	Public	Elementary School	0	50	0	64	42	84	57	61	0	0	0	0	0	0	0	358
	001	CHILDRENS TREATMENT CENTER	971	Off-Site	Special Education	0	0	0	0	1	0	0	1	0	1	0	0	0	0	0	3
	001	CHRISTINE DUNCAN HERITAGE ACADEMY	118	Charter	Elementary School	36	42	0	48	50	30	39	43	39	43	41	0	0	0	0	411
	001	CIBOLA HIGH	580	Public	High School	0	0	0	0	0	0	0	0	0	0	0	465	494	346	387	1692
	001	CIEN AGUAS INTERNATIONAL	780	Charter	Elementary School	0	40	0	46	46	48	45	50	47	48	50	0	0	0	0	420
	001	CLEVELAND MIDDLE	407	Public	Middle School	0	0	0	0	0	0	0	0	192	178	162	0	0	0	0	532
	001	COCHITI ELEMENTARY	237	Public	Elementary School	17	34	0	24	36	33	30	33	0	0	0	0	0	0	0	207
	001	COLLEGE AND CAREER HIGH SCHOOL	591	Public	High School	0	0	0	0	0	0	0	0	0	0	0	62	71	61	61	255
	001	COLLET PARK ELEMENTARY	240	Public	Elementary School	63	47	0	39	52	52	44	43	0	0	0	0	0	0	0	340
	001	COMANCHE ELEMENTARY	241	Public	Elementary School	16	44	0	52	48	55	47	54	0	0	0	0	0	0	0	316
	001	CONTINUATION SCHOOL	035	Public	Special Education	0	0	0	0	0	0	0	0	0	0	1	7	5	0	0	13
	001	CORAL COMMUNITY CHARTER	706	Charter	Elementary School	38	40	0	40	40	36	26	22	0	0	0	0	0	0	0	242
	001	CORONADO ELEMENTARY	243	Public	Elementary School	0	42	0	62	43	64	43	56	0	0	0	0	0	0	0	310
	001	CORRALES ELEMENTARY	351	Public	Elementary School	0	62	0	57	51	66	55	49	0	0	0	0	0	0	0	340
	001	CORRALES INTERNATIONAL	028	Charter	High School	0	19	0	19	26	25	17	20	23	22	30	10	12	9	15	247
	001	COTTONWOOD CLASSICAL PREP	769	Charter	High School	0	0	0	0	0	0	0	0	128	130	125	111	112	75	64	745
	001	COYOTE WILLOW FAMILY SCHOOL	952	Public	Elementary School	0	32	0	42	42	37	38	32	26	16	6	0	0	0	0	271
	001	DEL NORTE HIGH	514	Public	High School	0	0	0	0	0	0	0	0	0	0	0	337	298	196	185	1016
	001	DENNIS CHAVEZ ELEMENTARY	203	Public	Elementary School	69	85	0	80	87	89	89	86	0	0	0	0	0	0	0	585
	001	DESERT RIDGE MIDDLE	430	Public	Middle School	0	0	0	0	0	0	0	0	236	284	298	0	0	0	0	818
	001	DESERT WILLOW FAMILY SCHOOL	900	Public	Elementary School	0	21	0	45	41	42	33	29	26	27	21	0	0	0	0	285
	001	DIGITAL ARTS AND TECHNOLOGY ACADEMY	063	Charter	High School	0	0	0	0	0	0	0	0	0	29	41	75	86	66	59	356

DISTRICT NAME	DISTRICT CODE	LOCATION NAME	LOCATION ID	ORG TYPE	SCHOOL TYPE DESC	GRADE PK	GRADE KF	GRADE KN	GRADE 01	GRADE 02	GRADE 03	GRADE 04	GRADE 05	GRADE 06	GRADE 07	GRADE 08	GRADE 09	GRADE 10	GRADE 11	GRADE 12	TOTAL ENROLLMENT
	001	DOLORES GONZALES ELEMENTARY	244	Public	Elementary School	18	56	0	50	47	55	57	38	0	0	0	0	0	0	0	321
	001	DOUBLE EAGLE ELEMENTARY	350	Public	Elementary School	0	90	0	79	101	91	102	100	0	0	0	0	0	0	0	563
	001	DURANES ELEMENTARY	249	Public	Elementary School	43	18	0	18	14	10	17	22	0	0	0	0	0	0	0	142
	001	EARLY COLLEGE ACADEMY	593	Public	High School	0	0	0	0	0	0	0	0	0	0	0	51	58	49	54	212
	001	EAST MOUNTAIN HIGH SCHOOL	024	Charter	High School	0	0	0	0	0	0	0	0	0	0	0	117	94	80	79	370
	001	EAST SAN JOSE ELEMENTARY	252	Public	Elementary School	20	49	0	48	48	52	64	55	0	0	0	0	0	0	0	336
	001	ECADEMY	517	Public	High School	0	0	0	0	0	0	0	0	0	0	0	280	276	277	231	1064
	001	ECADEMY K-8	498	Public	Elementary School	0	33	0	64	54	72	79	98	113	173	199	0	0	0	0	885
	001	EDMUND G ROSS ELEMENTARY	219	Public	Elementary School	14	50	0	66	58	80	64	65	0	0	0	0	0	0	0	397
	001	EDWARD GONZALES ELEMENTARY	262	Public	Elementary School	0	0	0	0	0	117	111	148	0	0	0	0	0	0	0	376
	001	EISENHOWER MIDDLE	480	Public	Middle School	0	0	0	0	0	0	0	0	263	269	285	0	0	0	0	817
	001	EL CAMINO REAL ACADEMY	069	Charter	High School	0	19	0	26	23	18	25	32	35	37	40	26	27	14	17	339
	001	ELDORADO HIGH	515	Public	High School	20	0	0	0	0	0	0	0	0	0	0	427	448	337	328	1560
	001	EMERSON ELEMENTARY	255	Public	Elementary School	19	60	0	57	48	57	60	45	0	0	0	0	0	0	0	346
	001	ERNIE PYLE MIDDLE	450	Public	Middle School	0	0	0	0	0	0	0	0	128	151	159	0	0	0	0	438
	001	EUGENE FIELD ELEMENTARY	261	Public	Elementary School	16	20	0	16	26	26	15	24	0	0	0	0	0	0	0	143
	001	FREEDOM HIGH	596	Public	High School	0	0	0	0	0	0	0	0	0	0	0	37	32	22	23	114
	001	GARFIELD MIDDLE	410	Public	Middle School	0	0	0	0	0	0	0	0	96	99	111	0	0	0	0	306
	001	GEORGE I SANCHEZ	496	Public	Elementary School	0	77	0	84	72	64	87	102	237	231	268	0	0	0	0	1222
	001	GEORGIA O'KEEFFE ELEMENTARY	328	Public	Elementary School	0	74	0	72	80	101	77	87	0	0	0	0	0	0	0	491
	001	GILBERT L SENA CHARTER HS	707	Charter	High School	0	0	0	0	0	0	0	0	0	0	0	66	30	18	23	137
	001	GORDON BERNELL CHARTER	030	Charter	High School	0	0	0	0	0	0	0	0	0	0	0	62	48	36	13	159
	001	GOV BENT ELEMENTARY	230	Public	Elementary School	15	43	0	61	49	55	43	53	0	0	0	0	0	0	0	319
	001	GRANT MIDDLE	413	Public	Middle School	0	0	0	0	0	0	0	0	104	116	125	0	0	0	0	345
	001	GRIEGOS ELEMENTARY	267	Public	Elementary School	0	29	0	35	44	45	45	39	0	0	0	0	0	0	0	237
	001	HARRISON MIDDLE	415	Public	Middle School	0	0	0	0	0	0	0	0	103	114	115	0	0	0	0	332
	001	HAWTHORNE ELEMENTARY	270	Public	Elementary School	20	42	0	49	49	51	55	58	0	0	0	0	0	0	0	324
	001	HAYES MIDDLE	416	Public	Middle School	0	0	0	0	0	0	0	0	152	109	111	0	0	0	0	372
	001	HEALTH LEADERSHIP HIGH SCHOOL	752	Charter	High School	0	0	0	0	0	0	0	0	0	0	0	42	59	66	40	207
	001	HELEN CORDERO PRIMARY	395	Public	Elementary School	95	126	0	130	132	0	0	0	0	0	0	0	0	0	0	483
	001	HIGHLAND AUTISM CENTER	611	Public	Special Education	12	0	0	4	1	0	2	1	2	5	1	3	4	0	10	45
	001	HIGHLAND HIGH	520	Public	High School	0	0	0	0	0	0	0	0	0	0	0	331	354	216	190	1091
	001	HODGIN ELEMENTARY	273	Public	Elementary School	72	54	0	55	54	58	64	63	0	0	0	0	0	0	0	420
	001	HOMEBOUND	998	Off-Site	Central Office	6	2	0	4	2	1	6	3	3	5	6	8	3	6	9	64
	001	HOOVER MIDDLE	418	Public	Middle School	0	0	0	0	0	0	0	0	118	109	156	0	0	0	0	383
	001	HUBERT H HUMPHREY ELEMENTARY	221	Public	Elementary School	0	69	0	90	74	89	78	83	0	0	0	0	0	0	0	483
	001	INEZ ELEMENTARY	276	Public	Elementary School	0	45	0	40	60	46	71	47	0	0	0	0	0	0	0	309
	001	JACKSON MIDDLE	420	Public	Middle School	0	0	0	0	0	0	0	0	132	122	151	0	0	0	0	405
	001	JAMES MONROE MIDDLE	490	Public	Middle School	0	0	0	0	0	0	0	0	246	191	241	0	0	0	0	678
	001	JANET KAHN FINE ARTS ACADEMY	258	Public	Elementary School	19	47	0	56	42	45	53	63	0	0	0	0	0	0	0	325
	001	JEFFERSON MIDDLE	425	Public	Middle School	0	0	0	0	0	0	0	0	209	208	223	0	0	0	0	640
	001	JIMMY CARTER MIDDLE	445	Public	Middle School	0	0	0	0	0	0	0	0	154	167	190	0	0	0	0	511
	001	JOHN ADAMS MIDDLE	405	Public	Middle School	0	0	0	0	0	0	0	0	135	156	166	0	0	0	0	457
	001	JOHN BAKER ELEMENTARY	217	Public	Elementary School	0	72	0	70	63	68	75	86	0	0	0	0	0	0	0	434
	001	KENNEDY MIDDLE	427	Public	Middle School	0	0	0	0	0	0	0	0	107	113	107	0	0	0	0	327
	001	KIRTLAND ELEMENTARY	279	Public	Elementary School	81	23	0	21	18	18	15	18	0	0	0	0	0	0	0	194
	001	KIT CARSON ELEMENTARY	231	Public	Elementary School	28	61	0	58	60	51	52	54	0	0	0	0	0	0	0	364
	001	L.B. JOHNSON MIDDLE	485	Public	Middle School	0	0	0	0	0	0	0	0	184	193	206	0	0	0	0	583
	001	LA ACADEMIA DE ESPERANZA	061	Charter	High School	0	0	0	0	0	0	0	0	0	0	0	63	59	61	67	250
	001	LA CUEVA HIGH	525	Public	High School	0	0	0	0	0	0	0	0	0	0	0	482	454	440	408	1784
	001	LA LUZ ELEMENTARY	282	Public	Elementary School	23	20	0	25	21	15	9	22	0	0	0	0	0	0	0	135
	001	LA MESA ELEMENTARY	285	Public	Elementary School	21	66	0	69	78	63	59	76	0	0	0	0	0	0	0	432
	001	LAVALAND ELEMENTARY	288	Public	Elementary School	38	56	0	62	59	71	72	59	0	0	0	0	0	0	0	417
	001	LEW WALLACE ELEMENTARY	373	Public	Elementary School	0	32	0	24	27	30	34	39	0	0	0	0	0	0	0	186
	001	LONGFELLOW ELEMENTARY	291	Public	Elementary School	0	18	0	26	28	32	34	28	0	0	0	0	0	0	0	166
	001	LOS PADILLAS ELEMENTARY	297	Public	Elementary School	15	44	0	27	28	38	38	37	0	0	0	0	0	0	0	227
	001	LOS PUENTES CHARTER	017	Charter	High School	0	0	0	0	0	0	0	0	0	1	15	33	26	26	18	119

DISTRICT NAME	DISTRICT CODE	LOCATION NAME	LOCATION ID	ORG TYPE	SCHOOL TYPE DESC	GRADE PK	GRADE KF	GRADE KN	GRADE 01	GRADE 02	GRADE 03	GRADE 04	GRADE 05	GRADE 06	GRADE 07	GRADE 08	GRADE 09	GRADE 10	GRADE 11	GRADE 12	TOTAL ENROLLMENT
	001	LOS RANCHOS ELEMENTARY	336	Public	Elementary School	18	27	0	42	34	25	41	39	0	0	0	0	0	0	0	226
	001	LOWELL ELEMENTARY	300	Public	Elementary School	1	45	0	32	47	37	46	46	0	0	0	0	0	0	0	254
	001	MACARTHUR ELEMENTARY	303	Public	Elementary School	16	31	0	27	26	31	18	30	0	0	0	0	0	0	0	179
	001	MADISON MIDDLE	435	Public	Middle School	0	0	0	0	0	0	0	0	210	178	199	0	0	0	0	587
	001	MANZANO HIGH	530	Public	High School	16	0	0	0	0	0	0	0	0	0	0	445	333	243	243	1280
	001	MANZANO MESA ELEMENTARY	260	Public	Elementary School	47	65	0	88	96	89	72	82	0	0	0	0	0	0	0	539
	001	MARIE M HUGHES ELEMENTARY	365	Public	Elementary School	0	68	0	51	66	72	73	82	0	0	0	0	0	0	0	412
	001	MARK ARMIJO ACADEMY	039	Charter	High School	0	0	0	0	0	0	0	0	0	0	0	42	69	44	45	200
	001	MARK TWAIN ELEMENTARY	364	Public	Elementary School	74	38	0	30	44	37	39	32	0	0	0	0	0	0	0	294
	001	MARYANN BINFORD ELEMENTARY	250	Public	Elementary School	21	70	0	66	76	73	71	96	0	0	0	0	0	0	0	473
	001	MATHESON PARK ELEMENTARY	305	Public	Elementary School	17	27	0	27	35	31	30	30	0	0	0	0	0	0	0	197
	001	MCCOLLUM ELEMENTARY	307	Public	Elementary School	68	40	0	29	40	42	31	34	0	0	0	0	0	0	0	284
	001	MCKINLEY MIDDLE	440	Public	Middle School	0	0	0	0	0	0	0	0	142	164	165	0	0	0	0	471
	001	MISC PRESCHOOL PROGRAM	992	Off-Site	Prekindergarten	103	0	0	0	0	0	0	0	0	0	0	0	0	0	0	103
	001	MISC PRIVATE	997	Private	Non-Accredited	0	11	0	21	22	34	18	20	19	10	13	10	10	12	8	208
	001	MISSION AVENUE ELEMENTARY	309	Public	Elementary School	19	57	0	58	54	51	63	56	0	0	0	0	0	0	0	358
	001	MITCHELL ELEMENTARY	310	Public	Elementary School	0	38	0	44	42	50	47	44	0	0	0	0	0	0	0	265
	001	MONTE VISTA ELEMENTARY	312	Public	Elementary School	0	69	0	72	77	53	81	70	0	0	0	0	0	0	0	422
	001	MONTESSORI OF THE RIO GRANDE	095	Charter	Elementary School	0	35	0	36	38	37	35	36	0	0	0	0	0	0	0	217
	001	MONTEZUMA ELEMENTARY	315	Public	Elementary School	0	46	0	63	58	52	83	62	0	0	0	0	0	0	0	364
	001	MOUNTAIN MAHOGANY COMMUNITY SCHOOL	098	Charter	Elementary School	0	21	0	23	23	21	23	25	24	36	28	0	0	0	0	224
	001	MOUNTAIN VIEW ELEMENTARY	324	Public	Elementary School	12	26	0	39	31	34	37	31	0	0	0	0	0	0	0	210
	001	NATIVE AMERICAN COMMUNITY ACADEMY	006	Charter	High School	0	21	0	21	17	21	22	21	46	51	44	58	46	45	33	446
	001	NAVAJO ELEMENTARY	327	Public	Elementary School	16	54	0	48	52	64	59	62	0	0	0	0	0	0	0	355
	001	NEW AMERICA SCHOOL	708	Charter	High School	0	0	0	0	0	0	0	0	0	0	0	67	55	54	25	201
	001	NEW FUTURES HIGH SCHOOL	549	Public	High School	0	0	0	0	0	0	0	0	0	1	1	25	13	16	17	73
	001	NEW MEXICO INTERNATIONAL SCHOOL	768	Charter	Elementary School	0	61	0	66	56	63	56	38	22	12	15	0	0	0	0	389
	001	NEX GEN ACADEMY	516	Public	High School	0	0	0	0	0	0	0	0	0	0	0	55	72	46	57	230
	001	NMSVH PRESCHOOL	983	Off-Site	Special Education	44	10	0	0	0	0	0	0	0	0	0	0	0	0	0	54
	001	NORTH STAR ELEMENTARY	268	Public	Elementary School	0	65	0	72	81	105	103	121	0	0	0	0	0	0	0	547
	001	ONATE ELEMENTARY	227	Public	Elementary School	0	43	0	56	50	41	37	38	0	0	0	0	0	0	0	265
	001	OSUNA ELEMENTARY	332	Public	Elementary School	0	67	0	82	74	63	80	70	0	0	0	0	0	0	0	436
	001	PAINTED SKY ELEMENTARY	275	Public	Elementary School	18	105	0	104	85	89	88	108	0	0	0	0	0	0	0	597
	001	PAJARITO ELEMENTARY	333	Public	Elementary School	68	61	0	47	50	39	50	47	0	0	0	0	0	0	0	362
	001	PETROGLYPH ELEMENTARY	317	Public	Elementary School	79	64	0	68	75	59	72	66	0	0	0	0	0	0	0	483
	001	POLK MIDDLE	448	Public	Middle School	0	0	0	0	0	0	0	0	85	92	85	0	0	0	0	262
	001	PUBLIC ACADEMY FOR PERFORMING ARTS	047	Charter	High School	0	0	0	0	0	0	0	0	73	65	70	66	63	55	40	432
	001	REGINALD CHAVEZ ELEMENTARY	330	Public	Elementary School	0	24	0	35	33	36	32	35	0	0	0	0	0	0	0	195
	001	RIO GRANDE HIGH	540	Public	High School	0	0	0	0	0	0	0	0	0	0	0	517	418	260	246	1441
	001	ROBERT F. KENNEDY CHARTER	051	Charter	High School	0	0	0	0	0	0	0	0	18	35	33	115	90	38	46	375
	001	ROOSEVELT MIDDLE	452	Public	Middle School	0	0	0	0	0	0	0	0	126	118	141	0	0	0	0	385
	001	RUDOLFO ANAYA ELEMENTARY	392	Public	Elementary School	45	76	0	97	89	99	92	90	0	0	0	0	0	0	0	588
	001	S. Y. JACKSON ELEMENTARY	360	Public	Elementary School	0	76	0	83	91	75	91	98	0	0	0	0	0	0	0	514
	001	SAN ANTONITO ELEMENTARY	345	Public	Elementary School	0	51	0	48	56	60	64	58	0	0	0	0	0	0	0	337
	001	SANDIA BASE ELEMENTARY	348	Public	Elementary School	0	70	0	68	53	55	62	38	0	0	0	0	0	0	0	346
	001	SANDIA HIGH	550	Public	High School	0	0	0	0	0	0	0	0	0	0	0	523	423	340	379	1665
	001	SCHOOL ON WHEELS HIGH SCHOOL	597	Public	High School	0	0	0	0	0	0	0	0	0	0	0	11	20	21	22	74
	001	SEVEN BAR ELEMENTARY	265	Public	Elementary School	0	71	0	94	66	97	81	80	0	0	0	0	0	0	0	489
	001	SIEMBRA LEADERSHIP HIGH SCHOOL	750	Charter	High School	0	0	0	0	0	0	0	0	0	0	0	95	69	67	56	287
	001	SIERRA VISTA ELEMENTARY	356	Public	Elementary School	32	53	0	73	64	66	64	86	0	0	0	0	0	0	0	438
	001	SOMBRA DEL MONTE ELEMENTARY	357	Public	Elementary School	0	37	0	44	31	47	55	43	0	0	0	0	0	0	0	257
	001	SOUTH VALLEY ACADEMY	025	Charter	High School	0	0	0	0	0	0	0	0	94	93	94	81	87	77	72	598
	001	SUNSET VIEW ELEMENTARY	393	Public	Elementary School	0	64	0	75	79	87	93	84	0	0	0	0	0	0	0	482
	001	SUSIE RAYOS MARMON ELEMENTARY	280	Public	Elementary School	19	93	0	80	105	97	99	86	0	0	0	0	0	0	0	579

DISTRICT NAME	DISTRICT CODE	LOCATION NAME	LOCATION ID	ORG TYPE	SCHOOL TYPE DESC	GRADE PK	GRADE KF	GRADE KN	GRADE 01	GRADE 02	GRADE 03	GRADE 04	GRADE 05	GRADE 06	GRADE 07	GRADE 08	GRADE 09	GRADE 10	GRADE 11	GRADE 12	TOTAL ENROLLMENT
	001	TAFT MIDDLE	455	Public	Middle School	0	0	0	0	0	0	0	0	87	99	102	0	0	0	0	288
	001	TAYLOR MIDDLE	457	Public	Middle School	0	0	0	0	0	0	0	0	101	108	108	0	0	0	0	317
	001	TECHNOLOGY LEADERSHIP HIGH SCHOOL	753	Charter	High School	0	0	0	0	0	0	0	0	0	0	0	69	79	101	60	309
	001	THE INTERNATIONAL SCHOOL AT MESA DEL SOL	781	Charter	High School	15	37	0	26	33	35	29	32	30	25	22	20	11	6	6	327
	001	TIERRA ANTIGUA ELEMENTARY	389	Public	Elementary School	0	116	0	133	122	133	144	160	0	0	0	0	0	0	0	808
	001	TOMASITA ELEMENTARY	363	Public	Elementary School	0	31	0	35	32	47	50	39	0	0	0	0	0	0	0	234
	001	TONY HILLERMAN MIDDLE SCHOOL	492	Public	Middle School	0	0	0	0	0	0	0	0	313	333	370	0	0	0	0	1016
	001	TRANSITION SERVICES	040	Off-Site	Special Education	11	0	0	0	0	0	0	0	0	0	0	0	0	0	153	164
	001	TRES VOLCANES COMMUNITY COLLABORATIVE SCHOOL	497	Public	Elementary School	0	55	0	78	75	71	87	75	157	157	157	0	0	0	0	912
	001	TRUMAN MIDDLE	475	Public	Middle School	0	0	0	0	0	0	0	0	204	201	253	0	0	0	0	658
	001	VALLE VISTA ELEMENTARY	370	Public	Elementary School	95	36	0	44	31	39	46	41	0	0	0	0	0	0	0	332
	001	VALLEY HIGH	560	Public	High School	0	0	0	0	0	0	0	0	0	0	0	315	291	205	178	989
	001	VAN BUREN MIDDLE	460	Public	Middle School	0	0	0	0	0	0	0	0	132	119	159	0	0	0	0	410
	001	VENTANA RANCH ELEMENTARY	264	Public	Elementary School	33	93	0	90	97	114	113	92	0	0	0	0	0	0	0	632
	001	VISION QUEST ALTERNATIVE MIDDLE	840	Public	Middle School	0	0	0	0	0	0	0	0	0	0	2	0	0	0	0	2
	001	VOLCANO VISTA HIGH	575	Public	High School	0	0	0	0	0	0	0	0	0	0	0	609	565	515	480	2169
	001	VOZ COLLEGIATE PREPARATORY CHARTER SCHOOL	709	Charter	Middle School	0	0	0	0	0	0	0	0	14	37	13	0	0	0	0	64
	001	WASHINGTON MIDDLE	465	Public	Middle School	0	0	0	0	0	0	0	0	74	98	109	0	0	0	0	281
	001	WEST MESA HIGH	570	Public	High School	0	0	0	0	0	0	0	0	0	0	0	602	447	302	306	1657
	001	WHERRY ELEMENTARY	376	Public	Elementary School	11	33	0	53	44	48	42	39	0	0	0	0	0	0	0	270
	001	WHITTIER ELEMENTARY	379	Public	Elementary School	40	47	0	43	38	37	58	47	0	0	0	0	0	0	0	310
	001	WILLIAM W & JOSEPHINE DORN CHARTER COMMUNITY SCHOOL	782	Charter	Elementary School	0	8	0	8	10	6	8	9	0	0	0	0	0	0	0	49
	001	WILSON MIDDLE	470	Public	Middle School	0	0	0	0	0	0	0	0	127	131	142	0	0	0	0	400
	001	ZIA ELEMENTARY	385	Public	Elementary School	0	46	0	37	43	37	41	31	0	0	0	0	0	0	0	235
	001	ZUNI ELEMENTARY	388	Public	Elementary School	18	37	0	26	39	41	35	42	0	0	0	0	0	0	0	238
ALBUQUERQU	**Total**	**181**				**2119**	**5182**	**0**	**5537**	**5466**	**5718**	**5805**	**5873**	**5388**	**5547**	**6020**	**8186**	**7409**	**5850**	**5702**	**79802**
RIO RANCHO	083	CIELO AZUL ELEMENTARY	021	Public	Elementary School	0	114	0	128	110	108	107	128	0	0	0	0	0	0	0	695
	083	CLEVELAND HIGH SCHOOL	011	Public	High School	0	0	0	0	0	0	0	0	0	0	0	725	699	610	536	2570
	083	COLINAS DEL NORTE ELEMENTARY	050	Public	Elementary School	0	86	0	95	86	108	95	113	0	0	0	0	0	0	0	583
	083	EAGLE RIDGE MIDDLE	001	Public	Middle School	0	0	0	0	0	0	0	0	281	261	286	0	0	0	0	828
	083	ENCHANTED HILLS ELEMENTARY	100	Public	Elementary School	0	101	0	123	106	126	126	134	0	0	0	0	0	0	0	716
	083	ERNEST STAPLETON ELEMENTARY	372	Public	Elementary School	0	125	0	148	145	134	141	134	0	0	0	0	0	0	0	827
	083	INDEPENDENCE HIGH SCHOOL	013	Public	High School	0	0	0	0	0	0	0	0	0	0	0	0	1	60	148	209
	083	JOE HARRIS ELEMENTARY	025	Public	Elementary School	0	83	0	95	87	89	82	80	0	0	0	0	0	0	0	516
	083	LINCOLN MIDDLE	481	Public	Middle School	0	0	0	0	0	0	0	0	266	289	276	0	0	0	0	831
	083	MAGGIE CORDOVA ELEMENTARY SCHOOL	012	Public	Elementary School	0	130	0	126	92	124	105	97	0	0	0	0	0	0	0	674
	083	MARTIN KING JR ELEMENTARY	375	Public	Elementary School	0	79	0	87	119	107	127	114	0	0	0	0	0	0	0	633
	083	MISC PRIVATE	997	Private	Non-Accredited	2	4	0	2	5	6	6	11	6	3	1	4	0	4	3	57
	083	MOUNTAIN VIEW MIDDLE	105	Public	Middle School	0	0	0	0	0	0	0	0	306	294	331	0	0	0	0	931
	083	PUESTA DEL SOL ELEMENTARY	319	Public	Elementary School	0	78	0	108	107	108	97	104	0	0	0	0	0	0	0	602
	083	RIO RANCHO CYBER ACADEMY	018	Public	High School	0	0	0	0	0	0	0	0	19	24	31	21	28	35	34	192
	083	RIO RANCHO DIST OFFICE	000	Central	Central Office	0	0	0	1	0	0	0	0	0	0	0	0	0	0	0	1
	083	RIO RANCHO ELEMENTARY	340	Public	Elementary School	0	79	0	101	85	90	86	102	0	0	0	0	0	0	0	543
	083	RIO RANCHO HIGH	006	Public	High School	0	0	0	0	0	0	0	0	0	0	0	718	615	619	560	2512
	083	RIO RANCHO MIDDLE SCHOOL	016	Public	Middle School	0	0	0	0	0	0	0	0	388	397	367	0	0	0	0	1152
	083	SANDIA VISTA ELEMENTARY	020	Public	Elementary School	9	104	0	124	112	119	119	116	0	0	0	0	0	0	0	703
	083	SHINING STARS PRESCHOOL	017	Public	Special Education	666	0	0	0	0	0	0	0	0	0	0	0	0	0	0	666
	083	SPARRK ONLINE ACADEMY	110	Public	Elementary School	0	5	0	10	12	20	19	20	0	0	0	0	0	0	0	86
	083	VISTA GRANDE ELEMENTARY	015	Public	Elementary School	0	90	0	131	131	121	142	172	0	0	0	0	0	0	0	787
RIO RANCHO	**Total**	**23**				**677**	**1078**	**0**	**1279**	**1197**	**1260**	**1252**	**1325**	**1266**	**1268**	**1292**	**1468**	**1343**	**1328**	**1281**	**17314**
Grand Total		**204**				**2796**	**6260**	**0**	**6816**	**6663**	**6978**	**7057**	**7198**	**6654**	**6815**	**7312**	**9654**	**8752**	**7178**	**6983**	**97116**

CITY OF RIO RANCHO
COVER PAGE

Legislation Item: O17

AGENDA DATE:
September 28, 2023

DEPARTMENT:
Administration

SUBJECT:
O17, Ordinance Amending Ordinance No. 29, Enactment No. 22-230 Relating to the Issuance and Sale of City of Rio Rancho, New Mexico Taxable Industrial Revenue Bonds (Atrisco Energy Solar LLC Project), In a Maximum Principal Amount of up to $430,000,000, for the Purpose of Approving Allocation of the Annual Payments In Lieu Of Taxes (PILOT) to Rio Rancho Public Schools (RRPS) and Albuquerque Public Schools (APS) in Conformity with the Requirements of Section 3-32-6 NMSA 1978; Authorizing Execution and Delivery of the Bonds with Updated Series Designation to Reflect the Date of Issuance and Delivery; Ratifying Certain Actions Taken Previously; and Repealing All Actions Inconsistent with this Ordinance

BACKGROUND AND ANALYSIS:
During the 2023 New Mexico Legislative Session, Section 3-32-6 of the IRB Act was amended to modify the formula for distributions of PILOT to school districts. Previously, this section stated that the annual PILOT required for electricity generation or transmission facilities “shall be shared among the school districts located within the municipality, equally if there is more than one school district in such municipality.”

The 2023 amendment to Subsection A, Subparagraph A(2)(c) reads:

“the in-lieu payment shall be allocated as follows: 1) fifty percent allocated equally among all school districts in which the project is located; 2) forty percent allocated to the school districts within the municipality in proportion to the area of each school district within the municipality; and 3) ten percent allocated to the school districts in proportion to the average of each school district's student membership pursuant to the Public School Code reported on the second and third reporting dates for the most recent school year for which data is available as of the date of issuance of the bonds”

The Governing Body approved R-104 22-101, an IRB Inducement Resolution for Atrisco Solar LLC Project and Atrisco Energy Storage LLC Project on October 27, 2022, and adopted the original IRB Ordinances (O-28 22-29 and O-29 22-30) on December 15, 2022. Because the issued bonds have not closed, the PILOT distributions for Rio Rancho Public Schools and Albuquerque Public schools must be consistent with the modified formula in Section 3-32-6 NMSA 1978, as amended.

The attached exhibits detail the calculations of the modified formula (Exhibit I) based on GIS data with RRPS boundary information via the RRPS web map (August 2023) and APS boundary information via cabq.gov (August 2023) (Exhibit II and III), and enrollment data from the New Mexico Public Education Department (Exhibit IV). Under the modified formula, APS will receive 64.24% and RRPS will receive 35.76% of the annual PILOT, compared to the previous 50%/50% distribution formula.

IMPACT:

Approval of this amendatory Ordinance will bring the PILOT distribution formula into compliance with Section 3-32-6 NMSA 1978.

ALTERNATIVES:

Approve the Ordinance.

Do not approve the Ordinance.

DEPARTMENT RECOMMENDATION:

City staff recommends approval of the Ordinance.

ATTACHMENT: Ordinance
ATTACHMENT: Exhibit I - Atrisco Solar PILOT Distribution Calculation.pdf
ATTACHMENT: Exhibit II - RRPS APS and Solar Location.pdf
ATTACHMENT: Exhibit III - RRPS and APS Boundary Percentages.pdf
ATTACHMENT: Exhibit IV - APS-RRPS Enrollment Reports.pdf

CITY OF RIO RANCHO
ORDINANCE

ORDINANCE NO. **ENACTMENT NO.**

ORDINANCE AMENDING ORDINANCE NO. 29, ENACTMENT NO. 22-30 RELATING TO THE ISSUANCE AND SALE OF CITY OF RIO RANCHO, NEW MEXICO TAXABLE INDUSTRIAL REVENUE BONDS (ATRISCO ENERGY SOLAR LLC PROJECT), IN A MAXIMUM PRINCIPAL AMOUNT OF UP TO $430,000,000, FOR THE PURPOSE OF APPROVING ALLOCATION OF THE ANNUAL PAYMENTS IN LIEU OF TAXES TO RIO RANCHO PUBLIC SCHOOLS AND ALBUQUERQUE PUBLIC SCHOOLS IN CONFORMITY WITH THE REQUIREMENTS OF SECTION 3-32-6 NMSA 1978; AUTHORIZING EXECUTION AND DELIVERY OF THE BONDS WITH UPDATED SERIES DESIGNATION TO REFLECT THE DATE OF ISSUANCE AND DELIVERY; RATIFYING CERTAIN ACTIONS TAKEN PREVIOUSLY; AND REPEALING ALL ACTIONS INCONSISTENT WITH THIS ORDINANCE

WHEREAS: the City of Rio Rancho (the "City") is a legally and regularly created, established, organized and existing municipality under the general laws of the State of New Mexico (the "State"); and

WHEREAS: pursuant to the proposal of Atrisco Storage LLC (the "Company"), on December 15, 2022, the Governing Body of the City (the "Governing Body") adopted Ordinance No. O29, Enactment No. 22-30 ("Ordinance No. O29"), authorizing the issuance of Taxable Industrial Revenue Bonds (Atrisco Energy Solar LLC Project), Series 2022 (the "Bonds") for the purpose of acquiring solar energy power generation equipment and facilities to be located within the corporate boundaries of the City, to be used by the Company for the generation of electrical energy (the "Project"); and

WHEREAS: the form of lease agreement presented to the Governing Body in connection with its consideration and adoption of Ordinance No. O29 included payments in lieu of taxes ("PILOT") to each of the City, Rio Rancho Public Schools ("RRPS") and Albuquerque Public Schools ("APS") allocated according to the requirements of Section 3-32-6 NMSA 1978 in effect at that time, which provided for allocation of equal shares of the portion of the PILOT payable to school districts to RRPS and APS; and

WHEREAS: Section 3-32-6 NMSA 1978 was amended by the Legislature of the State, effective on April 5, 2023, to provide for that the PILOT payable to the school districts within the boundaries of the municipality is to be allocated as follows: fifty percent (50%) is to be allocated equally among all school districts in which the project is to be located; forty percent (40%) is to be allocated to each school district in proportion to the area of each school district within the municipality; and ten percent (10%) allocated to the school districts in proportion to each school district's student membership pursuant to the Public School Code reported on the second and third reporting dates for the most recent school year for which data is available as of the date of

issuance of the bonds; and

WHEREAS: the Governing Body has determined that it is necessary to approve PILOT allocations to RRPS and APS which are consistent with Section 3-32-6 NMSA 1978, as amended; and

WHEREAS: the Governing Body has determined that it is appropriate and advisable to authorize the Mayor of the City to execute and deliver the Bonds with a series designation that corresponds to the year in which the Bonds are executed and delivered; and

WHEREAS: the Governing Body intends that, except as expressly provided in this Amendatory Ordinance, all provisions of Ordinance O29 shall remain effective; and

WHEREAS: there has been published in Rio Rancho Observer, a newspaper of general circulation in the City, public notice of the City Council's intention to adopt this Amendatory Ordinance, which notice was published at least fourteen (14) days prior to final action upon this Bond Ordinance.

NOW THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF RIO RANCHO:

Section 1. Ratification. All actions not inconsistent with the provisions of this Amendatory Ordinance previously taken by the City Council and the officials of the City directed toward approval of the issuance and sale of the Bonds be approved and the same hereby are ratified, approved and confirmed.

Section 2. Amendment of Approval of Form of Lease Agreement. The form of Lease Agreement approved in Ordinance O29 is hereby amended to delete the PILOT payment schedule attached as Exhibit D thereto, and to substitute in its place the PILOT payment schedule (Solar PILOT Payments Schedule) presented to the Governing Body in connection with its consideration of this Amendatory Ordinance.

Section 3. Delegation of Authority to Execute and Deliver Bonds with Updated Series Designation. The Mayor is hereby authorized to execute and deliver the Bonds with a series designation that corresponds to the year in which execution and delivery of the Bonds occurs.

Section 4. Ordinance No. O29 Otherwise not Amended. Except as expressly provided herein, all other provisions of Ordinance No. O29 shall remain effective.

Section 5. Recording; Authentication; Publication; Effective Date. This Ordinance, immediately upon its final passage and approval, shall be authenticated by the signature of the Mayor, and by the signature of the City Clerk or any Deputy City Clerk, and shall be recorded in the Ordinance book of the City, kept for that purpose, and shall be in full force and in effect ten days after adoption, and notice of adoption thereof shall be published once in a newspaper which maintains an office in, and is of general circulation in the City.

ADOPTED THIS _____DAY OF _____, 2023.

_____
Greggory D. Hull, Mayor

ATTEST:

_____
Rebecca A. Martinez, City Clerk
(SEAL)

EXHIBIT D

SOLAR PILOT PAYMENTS

Year	Total PILOT	City Portion	Percent Payable to School Districts	APS	RRPS
1	$50,588.24	$35,569.71	$15,018.53	$ 9,648.17	$ 5,370.36
2	$480,588.24	$337,912.22	$142,676.02	$ 91,657.61	$ 51,018.41
3	$531,176.47	373,481.93	$157,694.54	$ 101,305.78	$ 56,388.77
4	$531,176.47	373,481.93	$157,694.54	$ 101,305.78	$ 56,388.77
5	$531,176.47	373,481.93	$157,694.54	$ 101,305.78	$ 56,388.77
6	$531,176.47	373,481.93	$157,694.54	$ 101,305.78	$ 56,388.77
7	$531,176.47	373,481.93	$157,694.54	$ 101,305.78	$ 56,388.77
8	$531,176.47	373,481.93	$157,694.54	$ 101,305.78	$ 56,388.77
9	$531,176.47	373,481.93	$157,694.54	$ 101,305.78	$ 56,388.77
10	$531,176.47	373,481.93	$157,694.54	$ 101,305.78	$ 56,388.77
11	$531,176.47	373,481.93	$157,694.54	$ 101,305.78	$ 56,388.77
12	$531,176.47	373,481.93	$157,694.54	$ 101,305.78	$ 56,388.77
13	$531,176.47	373,481.93	$157,694.54	$ 101,305.78	$ 56,388.77
14	$531,176.47	373,481.93	$157,694.54	$ 101,305.78	$ 56,388.77
15	$531,176.47	373,481.93	$157,694.54	$ 101,305.78	$ 56,388.77
16	$531,176.47	373,481.93	$157,694.54	$ 101,305.78	$ 56,388.77
17	$531,176.47	373,481.93	$157,694.54	$ 101,305.78	$ 56,388.77
18	$531,176.47	373,481.93	$157,694.54	$ 101,305.78	$ 56,388.77
19	$531,176.47	373,481.93	$157,694.54	$ 101,305.78	$ 56,388.77
20	$531,176.47	373,481.93	$157,694.54	$ 101,305.78	$ 56,388.77
21	$531,176.47	373,481.93	$157,694.54	$ 101,305.78	$ 56,388.77
22	$531,176.47	373,481.93	$157,694.54	$ 101,305.78	$ 56,388.77

23	$531,176.47	373,481.93	$157,694.54	$ 101,305.78	$ 56,388.77
24	$531,176.47	373,481.93	$157,694.54	$ 101,305.78	$ 56,388.77
25	$531,176.47	373,481.93	$157,694.54	$ 101,305.78	$ 56,388.77
26	$531,176.47	373,481.93	$157,694.54	$ 101,305.78	$ 56,388.77
27	$531,176.47	373,481.93	$157,694.54	$ 101,305.78	$ 56,388.77
28	$531,176.47	373,481.93	$157,694.54	$ 101,305.78	$ 56,388.77
29	$531,176.47	373,481.93	$157,694.54	$ 101,305.78	$ 56,388.77
30	$531,176.47	373,481.93	$157,694.54	$ 101,305.78	$ 56,388.77

1

Atrisco Solar Proposed PILOT Schedule - Combined

Assessed Value: $ 850,000,000.00
MW: 300

		PILOT-% Payable to Schools	*PILOT-% Split between School Districts*	
Average/MW	$ 3,383.33	29.6878%	64.24%	35.76%

Year	PILOT	$ Payable to Schools	APS	RRPS	Net to City of Rio Rancho
1	$ 100,000.00	$ 29,687.79	$ 19,071.96	$ 10,615.83	$ 70,312.21
2	$ 950,000.00	$ 282,033.99	$ 181,183.64	$ 100,850.34	$ 667,966.01
3	$ 1,050,000.00	$ 311,721.77	$ 200,255.61	$ 111,466.17	$ 738,278.23
4	$ 1,050,000.00	$ 311,721.77	$ 200,255.61	$ 111,466.17	$ 738,278.23
5	$ 1,050,000.00	$ 311,721.77	$ 200,255.61	$ 111,466.17	$ 738,278.23
6	$ 1,050,000.00	$ 311,721.77	$ 200,255.61	$ 111,466.17	$ 738,278.23
7	$ 1,050,000.00	$ 311,721.77	$ 200,255.61	$ 111,466.17	$ 738,278.23
8	$ 1,050,000.00	$ 311,721.77	$ 200,255.61	$ 111,466.17	$ 738,278.23
9	$ 1,050,000.00	$ 311,721.77	$ 200,255.61	$ 111,466.17	$ 738,278.23
10	$ 1,050,000.00	$ 311,721.77	$ 200,255.61	$ 111,466.17	$ 738,278.23
11	$ 1,050,000.00	$ 311,721.77	$ 200,255.61	$ 111,466.17	$ 738,278.23
12	$ 1,050,000.00	$ 311,721.77	$ 200,255.61	$ 111,466.17	$ 738,278.23
13	$ 1,050,000.00	$ 311,721.77	$ 200,255.61	$ 111,466.17	$ 738,278.23
14	$ 1,050,000.00	$ 311,721.77	$ 200,255.61	$ 111,466.17	$ 738,278.23
15	$ 1,050,000.00	$ 311,721.77	$ 200,255.61	$ 111,466.17	$ 738,278.23
16	$ 1,050,000.00	$ 311,721.77	$ 200,255.61	$ 111,466.17	$ 738,278.23
17	$ 1,050,000.00	$ 311,721.77	$ 200,255.61	$ 111,466.17	$ 738,278.23
18	$ 1,050,000.00	$ 311,721.77	$ 200,255.61	$ 111,466.17	$ 738,278.23
19	$ 1,050,000.00	$ 311,721.77	$ 200,255.61	$ 111,466.17	$ 738,278.23
20	$ 1,050,000.00	$ 311,721.77	$ 200,255.61	$ 111,466.17	$ 738,278.23
21	$ 1,050,000.00	$ 311,721.77	$ 200,255.61	$ 111,466.17	$ 738,278.23
22	$ 1,050,000.00	$ 311,721.77	$ 200,255.61	$ 111,466.17	$ 738,278.23
23	$ 1,050,000.00	$ 311,721.77	$ 200,255.61	$ 111,466.17	$ 738,278.23
24	$ 1,050,000.00	$ 311,721.77	$ 200,255.61	$ 111,466.17	$ 738,278.23
25	$ 1,050,000.00	$ 311,721.77	$ 200,255.61	$ 111,466.17	$ 738,278.23
26	$ 1,050,000.00	$ 311,721.77	$ 200,255.61	$ 111,466.17	$ 738,278.23
27	$ 1,050,000.00	$ 311,721.77	$ 200,255.61	$ 111,466.17	$ 738,278.23
28	$ 1,050,000.00	$ 311,721.77	$ 200,255.61	$ 111,466.17	$ 738,278.23
29	$ 1,050,000.00	$ 311,721.77	$ 200,255.61	$ 111,466.17	$ 738,278.23
30	$ 1,050,000.00	$ 311,721.77	$ 200,255.61	$ 111,466.17	$ 738,278.23
Sum	$ 30,450,000.00	$ 9,039,931.47	$ 5,807,412.57	$ 3,232,518.90	$ 21,410,068.53
Validate	$ 30,450,000.00	$ 9,039,931.47	$ 5,807,412.57	$ 3,232,518.90	$ 21,410,068.53

Atrisco Solar Proposed PILOT Schedule - Storage

Assessed Value: $ 420,000,000.00

		PILOT-% Split between School Districts	
	49.41%	64.24%	35.76%

Storage

Yr.	PILOT	$ Payable to Schools	APS	RRPS	Net to City of Rio Rancho
1	$ 49,411.76	$ 14,669.26	$ 9,423.79	$ 5,245.47	$ 34,742.50
2	$ 469,411.76	$ 139,357.97	$ 89,526.04	$ 49,831.93	$ 330,053.79
3	$ 518,823.53	$ 154,027.23	$ 98,949.83	$ 55,077.40	$ 364,796.30
4	$ 518,823.53	$ 154,027.23	$ 98,949.83	$ 55,077.40	$ 364,796.30
5	$ 518,823.53	$ 154,027.23	$ 98,949.83	$ 55,077.40	$ 364,796.30
6	$ 518,823.53	$ 154,027.23	$ 98,949.83	$ 55,077.40	$ 364,796.30
7	$ 518,823.53	$ 154,027.23	$ 98,949.83	$ 55,077.40	$ 364,796.30
8	$ 518,823.53	$ 154,027.23	$ 98,949.83	$ 55,077.40	$ 364,796.30
9	$ 518,823.53	$ 154,027.23	$ 98,949.83	$ 55,077.40	$ 364,796.30
10	$ 518,823.53	$ 154,027.23	$ 98,949.83	$ 55,077.40	$ 364,796.30
11	$ 518,823.53	$ 154,027.23	$ 98,949.83	$ 55,077.40	$ 364,796.30
12	$ 518,823.53	$ 154,027.23	$ 98,949.83	$ 55,077.40	$ 364,796.30
13	$ 518,823.53	$ 154,027.23	$ 98,949.83	$ 55,077.40	$ 364,796.30
14	$ 518,823.53	$ 154,027.23	$ 98,949.83	$ 55,077.40	$ 364,796.30
15	$ 518,823.53	$ 154,027.23	$ 98,949.83	$ 55,077.40	$ 364,796.30
16	$ 518,823.53	$ 154,027.23	$ 98,949.83	$ 55,077.40	$ 364,796.30
17	$ 518,823.53	$ 154,027.23	$ 98,949.83	$ 55,077.40	$ 364,796.30
18	$ 518,823.53	$ 154,027.23	$ 98,949.83	$ 55,077.40	$ 364,796.30
19	$ 518,823.53	$ 154,027.23	$ 98,949.83	$ 55,077.40	$ 364,796.30
20	$ 518,823.53	$ 154,027.23	$ 98,949.83	$ 55,077.40	$ 364,796.30
21	$ 518,823.53	$ 154,027.23	$ 98,949.83	$ 55,077.40	$ 364,796.30
22	$ 518,823.53	$ 154,027.23	$ 98,949.83	$ 55,077.40	$ 364,796.30
23	$ 518,823.53	$ 154,027.23	$ 98,949.83	$ 55,077.40	$ 364,796.30
24	$ 518,823.53	$ 154,027.23	$ 98,949.83	$ 55,077.40	$ 364,796.30
25	$ 518,823.53	$ 154,027.23	$ 98,949.83	$ 55,077.40	$ 364,796.30
26	$ 518,823.53	$ 154,027.23	$ 98,949.83	$ 55,077.40	$ 364,796.30
27	$ 518,823.53	$ 154,027.23	$ 98,949.83	$ 55,077.40	$ 364,796.30
28	$ 518,823.53	$ 154,027.23	$ 98,949.83	$ 55,077.40	$ 364,796.30
29	$ 518,823.53	$ 154,027.23	$ 98,949.83	$ 55,077.40	$ 364,796.30
30	$ 518,823.53	$ 154,027.23	$ 98,949.83	$ 55,077.40	$ 364,796.30
	$ 15,045,882.35	$ 4,466,789.67	$ 2,869,545.03	$ 1,597,244.63	$ 10,579,092.69
	$ 15,045,882.35	$ 4,466,789.67	$ 2,869,545.03	$ 1,597,244.63	$ 10,579,092.69

Atrisco Solar Proposed PILOT Schedule - Solar

Assessed Value: $ 430,000,000.00

		PILOT-% Split between School Districts	
	50.59%	64.24%	35.76%

Solar

Yr.	PILOT	$ Payable to Schools	APS	RRPS	Net to City of Rio Rancho
1	$ 50,588.24	$ 15,018.53	$ 9,648.17	$ 5,370.36	$ 35,569.71
2	$ 480,588.24	$ 142,676.02	$ 91,657.61	$ 51,018.41	$ 337,912.22
3	$ 531,176.47	$ 157,694.54	$ 101,305.78	$ 56,388.77	$ 373,481.93
4	$ 531,176.47	$ 157,694.54	$ 101,305.78	$ 56,388.77	$ 373,481.93
5	$ 531,176.47	$ 157,694.54	$ 101,305.78	$ 56,388.77	$ 373,481.93
6	$ 531,176.47	$ 157,694.54	$ 101,305.78	$ 56,388.77	$ 373,481.93
7	$ 531,176.47	$ 157,694.54	$ 101,305.78	$ 56,388.77	$ 373,481.93
8	$ 531,176.47	$ 157,694.54	$ 101,305.78	$ 56,388.77	$ 373,481.93
9	$ 531,176.47	$ 157,694.54	$ 101,305.78	$ 56,388.77	$ 373,481.93
10	$ 531,176.47	$ 157,694.54	$ 101,305.78	$ 56,388.77	$ 373,481.93
11	$ 531,176.47	$ 157,694.54	$ 101,305.78	$ 56,388.77	$ 373,481.93
12	$ 531,176.47	$ 157,694.54	$ 101,305.78	$ 56,388.77	$ 373,481.93
13	$ 531,176.47	$ 157,694.54	$ 101,305.78	$ 56,388.77	$ 373,481.93
14	$ 531,176.47	$ 157,694.54	$ 101,305.78	$ 56,388.77	$ 373,481.93
15	$ 531,176.47	$ 157,694.54	$ 101,305.78	$ 56,388.77	$ 373,481.93
16	$ 531,176.47	$ 157,694.54	$ 101,305.78	$ 56,388.77	$ 373,481.93
17	$ 531,176.47	$ 157,694.54	$ 101,305.78	$ 56,388.77	$ 373,481.93
18	$ 531,176.47	$ 157,694.54	$ 101,305.78	$ 56,388.77	$ 373,481.93
19	$ 531,176.47	$ 157,694.54	$ 101,305.78	$ 56,388.77	$ 373,481.93
20	$ 531,176.47	$ 157,694.54	$ 101,305.78	$ 56,388.77	$ 373,481.93
21	$ 531,176.47	$ 157,694.54	$ 101,305.78	$ 56,388.77	$ 373,481.93
22	$ 531,176.47	$ 157,694.54	$ 101,305.78	$ 56,388.77	$ 373,481.93
23	$ 531,176.47	$ 157,694.54	$ 101,305.78	$ 56,388.77	$ 373,481.93
24	$ 531,176.47	$ 157,694.54	$ 101,305.78	$ 56,388.77	$ 373,481.93
25	$ 531,176.47	$ 157,694.54	$ 101,305.78	$ 56,388.77	$ 373,481.93
26	$ 531,176.47	$ 157,694.54	$ 101,305.78	$ 56,388.77	$ 373,481.93
27	$ 531,176.47	$ 157,694.54	$ 101,305.78	$ 56,388.77	$ 373,481.93
28	$ 531,176.47	$ 157,694.54	$ 101,305.78	$ 56,388.77	$ 373,481.93
29	$ 531,176.47	$ 157,694.54	$ 101,305.78	$ 56,388.77	$ 373,481.93
30	$ 531,176.47	$ 157,694.54	$ 101,305.78	$ 56,388.77	$ 373,481.93
	$ 15,404,117.65	$ 4,573,141.80	$ 2,286,570.90	$ 2,286,570.90	$ 10,830,975.85
	$ 15,404,117.65	$ 4,573,141.80	$ 2,937,867.53	$ 1,635,274.27	$ 10,830,975.85

PILOT Allocation as defined in Section 3-32-6 NMSA 1978

Criteria

(c) 1) "1) *fifty percent allocated equally among all school districts in which the project is located;* "

See Exhibit II - RRPS APS and Solar Location

That overlays the City's boundaries to the respective school districts service area

APS	50%
RRPS	0%

(c) 2) *"2) forty percent allocated to the school districts within the municipality in proportion to the area of each school district within the municipality ;"*

See Exhibit III - RRPS and APS Boundary Percentages

Shows the service areas with respect to the City's limits.

	Acres	*% of Area*		
RRPS	56,362.10	84.95%	34.0%	of the PILOT for Schools Districts
APS	9,984.76	15.05%	6.0%	of the PILOT for Schools Districts
CoRR	66,346.87			

(c) 3) *"and 3) ten percent allocated to the school districts in proportion to the average of each school district's student membership pursuant to the Public School Code [Chapter 22 NMSA 1978, except Article 5A] reported on the second and third reporting dates for the most recent school year for which data is available as of the date of*

10%

District	Date	Total	Average	RRPS Proportion	APS Proportion
RRPS	22-Dec	17,276			
RRPS	23-Mar	17,314	17,295	17.78%	
APS	22-Dec	80,157			
APS	23-Mar	79,802	79,980		82.22%
			97,275	1.78%	8.22%

* See Exhbits IV and V (Enrollmend data provided by NM Public Education Department on Aug 4, 2023).

Total Allocation:

APS	64.24%
RRPS	35.76%

PILOT % Attributable to School Districts

TY2022	Sandoval County	Sandoval County	Bernalillo County
MUNICIPALITY:	**Rio Rancho**	**Rio Rancho**	**Rio Rancho**
TAXABLE VALUE:	2,153,487,919	388,524,962	9,051,534
CATEGORY:	94 IN R	94 IN NR	R1-A NR
State Debt Service	1.360	1.360	1.360
Total State	1.360	1.360	1.360
County Operational	6.089	10.350	10.750
County Debt Service	0.606	0.606	1.264
			0.200
Bern. County Judgement (A) (4)			0.006
Bern. County Debt Service (4)			
Total County	6.695	10.956	12.220
Municipal Operational	7.004	7.650	7.650
Municipal Debt Service	2.772	2.772	2.772
Total Municipal	9.776	10.422	10.422
School District Operational	0.254	0.477	0.500
School District Debt Service	8.543	8.543	4.480
School Dist. Cap. Improvement	1.908	1.908	2.000
HB 33 School Building	0.000	0.000	4.344
School Dist. Educ. Tech. Debt Service	0.000	0.000	0.000
Total School District	10.705	10.928	11.324
Total State, County, Municipal, & School District	28.536	33.666	35.326
Other:			
Contracting Hospitals	1.893	1.893	6.400
Central NM Comm College (1)	2.790	3.000	3.000
Central NM Comm. College Debt	1.000	1.000	1.000
Total Other	5.683	5.893	10.400
SUB-TOTAL	**34.219**	**39.559**	**45.726**
SSCAFCA/AMAFCA	2.025	2.074	1.152
AMAFCA			
Grand Total - with Flood Control	**36.244**	**41.633**	**46.878**

The relevant portion of the IRB statute setting out the requirements for School District PILOT, Section 3-32-6(A)(2) is as follows:

A municipality shall not acquire any electricity generation or transmission facility project unless the school districts within the municipality in which the project is located receive annual in-lieu tax payments; provided that the annual in-lieu tax payments required by this paragraph shall be:

(a) payable to the school districts for the period the municipality owns and leases the project;

(b) in an aggregate amount equal to the amount received by the municipality multiplied by the percentage [School District PILOT Percentage] determined by dividing the average of the operating, capital improvement and bond mills imposed by the school districts in the municipality [Average School District Mill Levy] and state debt service mills [State Debt Service Mill Levy] as of the date of issuance of the bonds [together, the Numerator] by the average of the mills imposed by all entities levying taxes on property in the municipality [Average Total Mill Levy as the Denominator] as of such date;

(c) shared among the school districts located within the municipality equally; and

(d) not be less than the amount due to the school districts in the tax year immediately preceding the issuance of the bonds from the property included in a project, had such project not been created;

Average School District Mill Levies	State Debt Sevice Mill Levy	Numerator
10.986	1.36	12.346

Average Total Mill Levy in Municipality as the Denominator
39.835

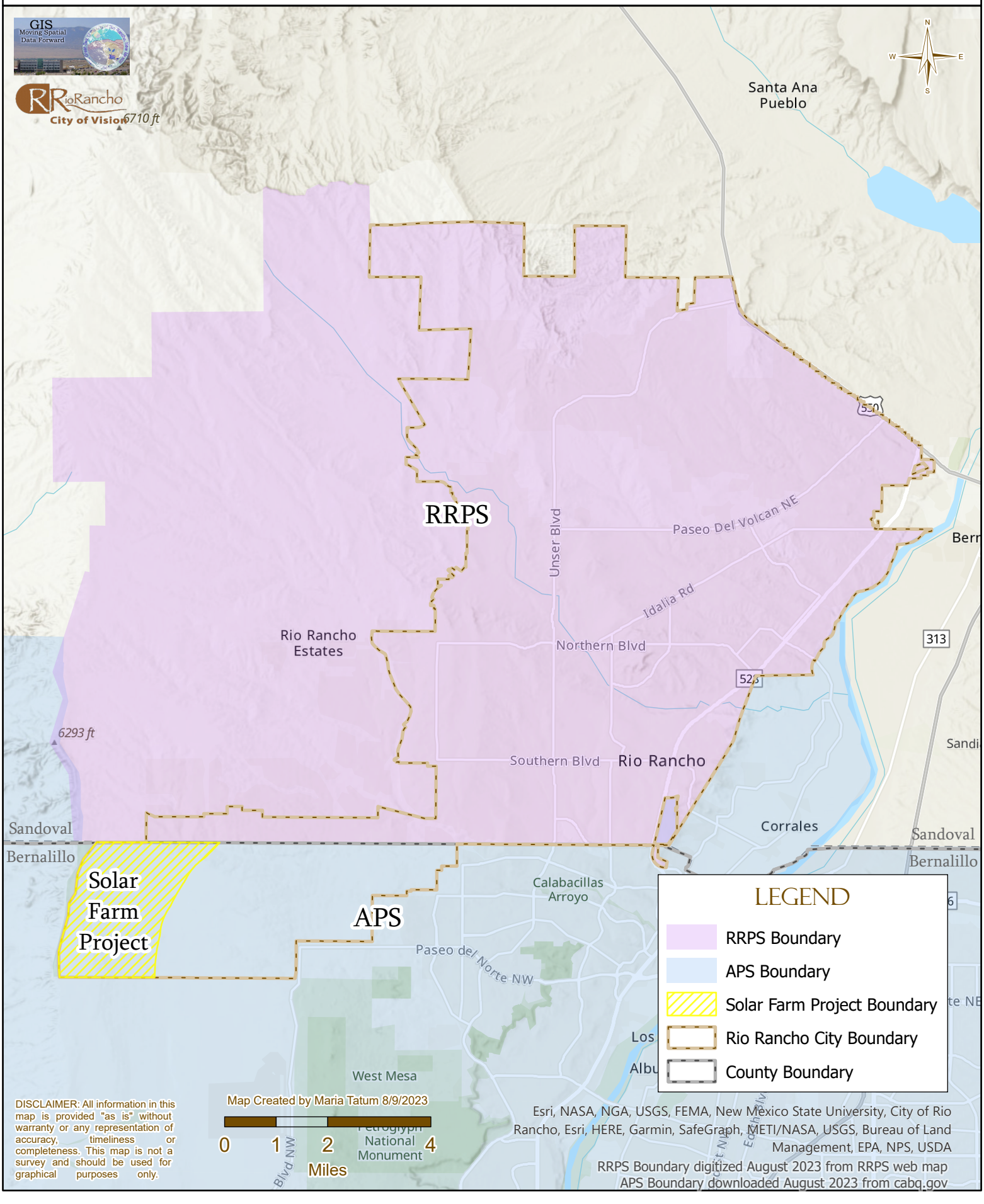
School District PILOT Percentage (Total Numerator/Total Denominator)
30.9923%

Average Total Mill Levy in Municipality as the Denominator
41.585

School District PILOT Percentage (Total Numerator/Total Denominator)
29.6878%

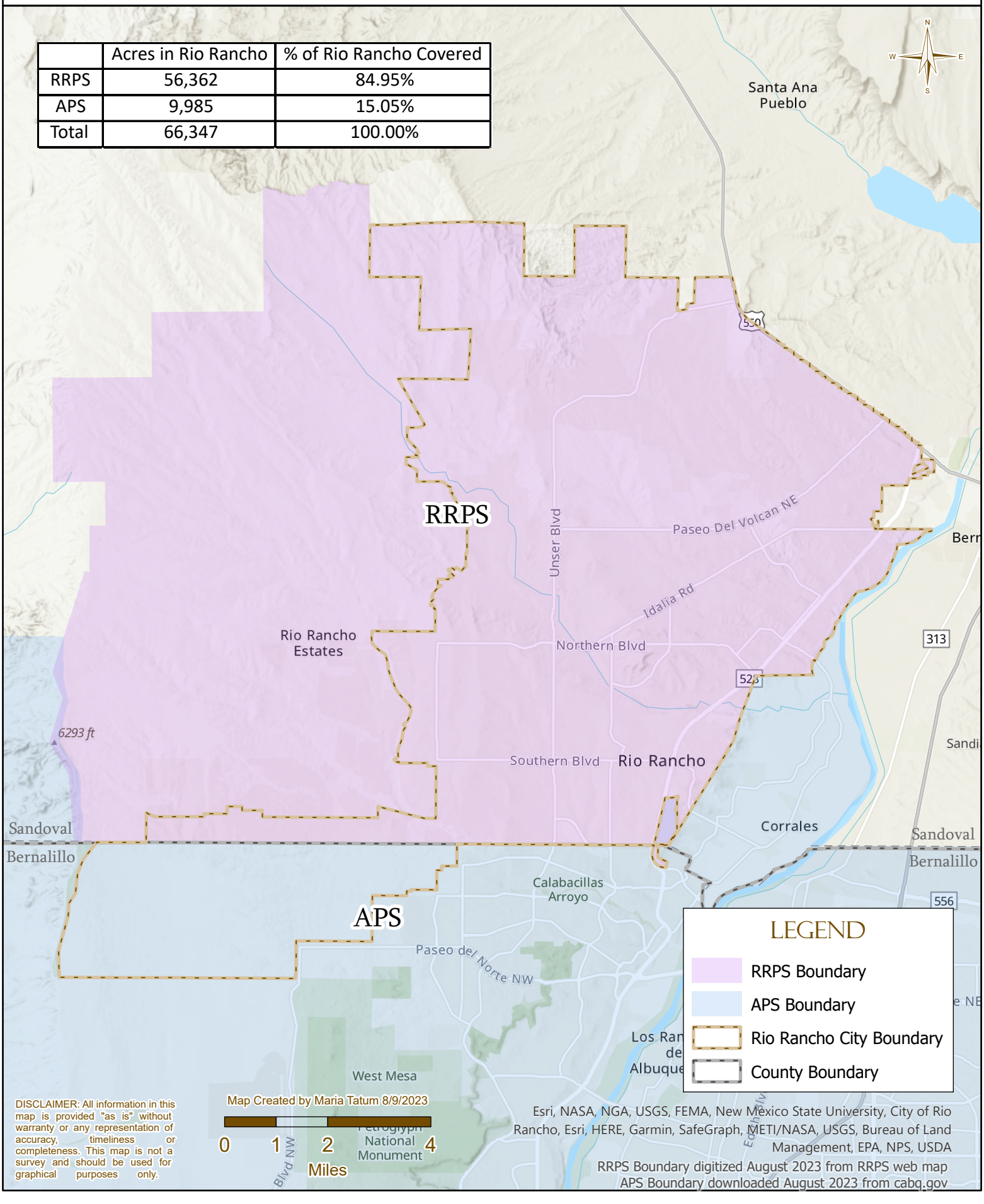
Average School District Mill Levies	10.986	
(+) State Debt Service Levy (1.360)	12.346	(a) = numerator
Average Total Mill Levies	41.585	(b) = denominator
School District PILOT Percentage (a / b)	29.6878%	
Number of School Districts In City	2	

RRPS, APS, AND SOLAR FARM BOUNDARIES



RRPS AND APS BOUNDARIES

	Acres in Rio Rancho	% of Rio Rancho Covered
RRPS	56,362	84.95%
APS	9,985	15.05%
Total	66,347	100.00%



Enrollment by District by School

School Year: 2022-2023

Snapshot Date: 2022-12-15 - 80D

DISTRICT NAME	DISTRICT CODE	LOCATION NAME	LOCATION ID	ORG TYPE	SCHOOL TYPE DESC	GRADE PK	GRADE KF	GRADE KN	GRADE 01	GRADE 02	GRADE 03	GRADE 04	GRADE 05	GRADE 06	GRADE 07	GRADE 08	GRADE 09	GRADE 10	GRADE 11	GRADE 12	TOTAL ENROLLMENT
ALBUQUERQUE	001	A. MONTOYA ELEMENTARY	321	Public	Elementary School	30	51	0	64	52	72	70	74	0	0	0	0	0	0	0	413
	001	ABQ CHARTER ACADEMY	090	Charter	High School	0	0	0	0	0	0	0	0	0	0	0	54	102	123	78	357
	001	ACE LEADERSHIP HIGH SCHOOL	749	Charter	High School	0	0	0	0	0	0	0	0	0	0	0	77	69	63	26	235
	001	ADOBE ACRES ELEMENTARY	206	Public	Elementary School	15	55	0	47	49	52	41	50	0	0	0	0	0	0	0	309
	001	ALAMEDA ELEMENTARY	207	Public	Elementary School	39	36	0	34	24	38	32	34	0	0	0	0	0	0	0	237
	001	ALAMOSA ELEMENTARY	210	Public	Elementary School	15	46	0	57	56	65	58	77	0	0	0	0	0	0	0	374
	001	ALBUQUERQUE HIGH	590	Public	High School	0	0	0	0	0	0	0	0	0	0	0	611	442	327	324	1704
	001	ALBUQUERQUE TALENT DEVELOPMENT CHARTER	016	Charter	High School	0	0	0	0	0	0	0	0	0	0	0	43	49	30	19	141
	001	ALICE KING COMMUNITY SCHOOL	116	Charter	Elementary School	0	51	0	50	53	52	62	48	52	37	45	0	0	0	0	450
	001	ALVARADO ELEMENTARY	213	Public	Elementary School	19	44	0	51	33	49	52	37	0	0	0	0	0	0	0	285
	001	APACHE ELEMENTARY	214	Public	Elementary School	13	41	0	43	57	48	47	39	0	0	0	0	0	0	0	288
	001	ARMIJO ELEMENTARY	215	Public	Elementary School	15	48	0	33	39	39	41	36	0	0	0	0	0	0	0	251
	001	ARROYO DEL OSO ELEMENTARY	329	Public	Elementary School	0	49	0	49	48	53	50	49	0	0	0	0	0	0	0	298
	001	ATRISCO ELEMENTARY	216	Public	Elementary School	15	32	0	34	35	36	49	46	0	0	0	0	0	0	0	247
	001	ATRISCO HERITAGE ACADEMY HS	576	Public	High School	0	0	0	0	0	0	0	0	0	0	0	705	606	375	401	2087
	001	BANDELIER ELEMENTARY	222	Public	Elementary School	0	65	0	70	74	66	81	93	0	0	0	0	0	0	0	449
	001	BARCELONA ELEMENTARY	225	Public	Elementary School	15	40	0	41	38	39	41	37	0	0	0	0	0	0	0	251
	001	BEL-AIR ELEMENTARY	228	Public	Elementary School	15	35	0	41	37	39	37	48	0	0	0	0	0	0	0	252
	001	BELLEHAVEN ELEMENTARY	229	Public	Elementary School	20	30	0	32	35	35	41	41	0	0	0	0	0	0	0	234
	001	BERNALILLO COUNTY JUVENILE DETENTION	048	Off-Site	High School	0	0	0	0	0	0	0	0	0	1	1	17	4	2	2	27
	001	CARLOS REY ELEMENTARY	339	Public	Elementary School	35	75	0	79	81	75	82	95	0	0	0	0	0	0	0	522
	001	CHAMIZA ELEMENTARY	295	Public	Elementary School	0	42	0	56	42	52	54	50	0	0	0	0	0	0	0	296
	001	CHAPARRAL ELEMENTARY	234	Public	Elementary School	70	75	0	70	68	77	81	91	0	0	0	0	0	0	0	532
	001	CHELWOOD ELEMENTARY	236	Public	Elementary School	0	53	0	61	43	82	60	63	0	0	0	0	0	0	0	362
	001	CHILDRENS TREATMENT CENTER	971	Off-Site	Special Education	0	0	0	0	0	0	0	1	0	0	0	0	0	0	0	1
	001	CHRISTINE DUNCAN HERITAGE ACADEMY	118	Charter	Elementary School	37	44	0	46	49	31	38	42	39	43	40	0	0	0	0	409
	001	CIBOLA HIGH	580	Public	High School	0	0	0	0	0	0	0	0	0	0	0	543	515	338	351	1747
	001	CIEN AGUAS INTERNATIONAL	780	Charter	Elementary School	0	40	0	45	45	48	47	49	47	49	50	0	0	0	0	420
	001	CLEVELAND MIDDLE	407	Public	Middle School	0	0	0	0	0	0	0	0	196	179	173	0	0	0	0	548
	001	COCHITI ELEMENTARY	237	Public	Elementary School	17	35	0	23	37	36	29	31	0	0	0	0	0	0	0	208
	001	COLLEGE AND CAREER HIGH SCHOOL	591	Public	High School	0	0	0	0	0	0	0	0	0	0	0	67	73	60	60	260
	001	COLLET PARK ELEMENTARY	240	Public	Elementary School	54	45	0	36	52	51	43	45	0	0	0	0	0	0	0	326
	001	COMANCHE ELEMENTARY	241	Public	Elementary School	18	43	0	54	49	54	45	53	0	0	0	0	0	0	0	316
	001	CONTINUATION SCHOOL	035	Public	Special Education	0	0	0	0	0	0	0	0	0	1	3	9	4	0	0	17
	001	CORAL COMMUNITY CHARTER	706	Charter	Elementary School	37	41	0	39	39	34	27	22	0	0	0	0	0	0	0	239
	001	CORONADO ELEMENTARY	243	Public	Elementary School	0	41	0	60	43	65	43	57	0	0	0	0	0	0	0	309
	001	CORRALES ELEMENTARY	351	Public	Elementary School	0	62	0	55	52	67	53	48	0	0	0	0	0	0	0	337
	001	CORRALES INTERNATIONAL	028	Charter	High School	0	19	0	19	25	25	18	20	21	21	29	10	12	10	15	244
	001	COTTONWOOD CLASSICAL PREP	769	Charter	High School	0	0	0	0	0	0	0	0	131	130	128	111	113	77	66	756
	001	COYOTE WILLOW FAMILY SCHOOL	952	Public	Elementary School	0	34	0	42	43	39	38	32	26	18	6	0	0	0	0	278
	001	DEL NORTE HIGH	514	Public	High School	0	0	0	0	0	0	0	0	0	0	0	406	309	180	152	1047
	001	DENNIS CHAVEZ ELEMENTARY	203	Public	Elementary School	65	84	0	80	88	91	89	88	0	0	0	0	0	0	0	585
	001	DESERT RIDGE MIDDLE	430	Public	Middle School	0	0	0	0	0	0	0	0	233	285	299	0	0	0	0	817
	001	DESERT WILLOW FAMILY SCHOOL	900	Public	Elementary School	0	21	0	45	41	43	32	30	28	27	21	0	0	0	0	288
	001	DIGITAL ARTS AND TECHNOLOGY ACADEMY	063	Charter	High School	0	0	0	0	0	0	0	0	0	30	40	69	86	64	57	346
	001	DOLORES GONZALES ELEMENTARY	244	Public	Elementary School	18	51	0	51	45	53	57	38	0	0	0	0	0	0	0	313

DISTRICT NAME	DISTRICT CODE	LOCATION NAME	LOCATION ID	ORG TYPE	SCHOOL TYPE DESC	GRADE PK	GRADE KF	GRADE KN	GRADE 01	GRADE 02	GRADE 03	GRADE 04	GRADE 05	GRADE 06	GRADE 07	GRADE 08	GRADE 09	GRADE 10	GRADE 11	GRADE 12	TOTAL ENROLLMENT
	001	DOUBLE EAGLE ELEMENTARY	350	Public	Elementary School	0	90	0	79	100	92	102	100	0	0	0	0	0	0	0	563
	001	DURANES ELEMENTARY	249	Public	Elementary School	36	20	0	18	14	10	17	21	0	0	0	0	0	0	0	136
	001	EARLY COLLEGE ACADEMY	593	Public	High School	0	0	0	0	0	0	0	0	0	0	0	53	61	51	51	216
	001	EAST MOUNTAIN HIGH SCHOOL	024	Charter	High School	0	0	0	0	0	0	0	0	0	0	0	120	93	80	80	373
	001	EAST SAN JOSE ELEMENTARY	252	Public	Elementary School	20	49	0	46	47	52	65	54	0	0	0	0	0	0	0	333
	001	ECADEMY	517	Public	High School	0	0	0	0	0	0	0	0	0	0	0	215	222	234	226	897
	001	ECADEMY K-8	498	Public	Elementary School	0	27	0	60	53	66	74	96	98	144	169	0	0	0	0	787
	001	EDMUND G ROSS ELEMENTARY	219	Public	Elementary School	14	51	0	68	58	82	65	67	0	0	0	0	0	0	0	405
	001	EDWARD GONZALES ELEMENTARY	262	Public	Elementary School	0	0	0	0	0	117	111	149	0	0	0	0	0	0	0	377
	001	EISENHOWER MIDDLE	480	Public	Middle School	0	0	0	0	0	0	0	0	269	272	283	0	0	0	0	824
	001	EL CAMINO REAL ACADEMY	069	Charter	High School	0	18	0	27	22	18	25	32	35	40	40	28	26	15	18	344
	001	ELDORADO HIGH	515	Public	High School	20	0	0	0	0	0	0	0	0	0	0	507	449	335	307	1618
	001	EMERSON ELEMENTARY	255	Public	Elementary School	20	61	0	58	50	62	60	48	0	0	0	0	0	0	0	359
	001	ERNIE PYLE MIDDLE	450	Public	Middle School	0	0	0	0	0	0	0	0	131	158	158	0	0	0	0	447
	001	EUGENE FIELD ELEMENTARY	261	Public	Elementary School	14	19	0	15	26	24	15	22	0	0	0	0	0	0	0	135
	001	FREEDOM HIGH	596	Public	High School	0	0	0	0	0	0	0	0	0	0	0	32	32	21	19	104
	001	GARFIELD MIDDLE	410	Public	Middle School	0	0	0	0	0	0	0	0	96	102	110	0	0	0	0	308
	001	GEORGE I SANCHEZ	496	Public	Elementary School	0	76	0	82	72	64	83	103	242	225	263	0	0	0	0	1210
	001	GEORGIA O'KEEFFE ELEMENTARY	328	Public	Elementary School	0	76	0	71	77	98	78	84	0	0	0	0	0	0	0	484
	001	GILBERT L SENA CHARTER HS	707	Charter	High School	0	0	0	0	0	0	0	0	0	0	0	59	43	26	17	145
	001	GORDON BERNELL CHARTER	030	Charter	High School	0	0	0	0	0	0	0	0	0	0	0	61	44	24	29	158
	001	GOV BENT ELEMENTARY	230	Public	Elementary School	17	43	0	62	49	58	42	54	0	0	0	0	0	0	0	325
	001	GRANT MIDDLE	413	Public	Middle School	0	0	0	0	0	0	0	0	101	115	129	0	0	0	0	345
	001	GRIEGOS ELEMENTARY	267	Public	Elementary School	0	30	0	35	45	46	45	39	0	0	0	0	0	0	0	240
	001	HARRISON MIDDLE	415	Public	Middle School	0	0	0	0	0	0	0	0	107	117	113	0	0	0	0	337
	001	HAWTHORNE ELEMENTARY	270	Public	Elementary School	18	42	0	48	53	52	59	58	0	0	0	0	0	0	0	330
	001	HAYES MIDDLE	416	Public	Middle School	0	0	0	0	0	0	0	0	151	117	112	0	0	0	0	380
	001	HEALTH LEADERSHIP HIGH SCHOOL	752	Charter	High School	0	0	0	0	0	0	0	0	0	0	0	40	62	71	41	214
	001	HELEN CORDERO PRIMARY	395	Public	Elementary School	91	125	0	126	130	0	0	0	0	0	0	0	0	0	0	472
	001	HIGHLAND AUTISM CENTER	611	Public	Special Education	12	0	0	3	1	0	1	1	3	5	1	4	3	1	8	43
	001	HIGHLAND HIGH	520	Public	High School	0	0	0	0	0	0	0	0	0	0	0	419	370	192	149	1130
	001	HODGIN ELEMENTARY	273	Public	Elementary School	70	56	0	57	58	61	66	59	0	0	0	0	0	0	0	427
	001	HOMEBOUND	998	Off-Site	Central Office	4	2	0	5	2	2	5	3	3	4	6	9	6	5	7	63
	001	HOOVER MIDDLE	418	Public	Middle School	0	0	0	0	0	0	0	0	121	111	157	0	0	0	0	389
	001	HUBERT H HUMPHREY ELEMENTARY	221	Public	Elementary School	0	67	0	89	73	90	79	85	0	0	0	0	0	0	0	483
	001	INEZ ELEMENTARY	276	Public	Elementary School	0	45	0	42	58	46	71	46	0	0	0	0	0	0	0	308
	001	JACKSON MIDDLE	420	Public	Middle School	0	0	0	0	0	0	0	0	129	124	153	0	0	0	0	406
	001	JAMES MONROE MIDDLE	490	Public	Middle School	0	0	0	0	0	0	0	0	251	192	252	0	0	0	0	695
	001	JANET KAHN FINE ARTS ACADEMY	258	Public	Elementary School	16	45	0	59	42	43	53	59	0	0	0	0	0	0	0	317
	001	JEFFERSON MIDDLE	425	Public	Middle School	0	0	0	0	0	0	0	0	211	203	224	0	0	0	0	638
	001	JIMMY CARTER MIDDLE	445	Public	Middle School	0	0	0	0	0	0	0	0	155	174	191	0	0	0	0	520
	001	JOHN ADAMS MIDDLE	405	Public	Middle School	0	0	0	0	0	0	0	0	140	155	162	0	0	0	0	457
	001	JOHN BAKER ELEMENTARY	217	Public	Elementary School	0	74	0	72	63	68	75	84	0	0	0	0	0	0	0	436
	001	KENNEDY MIDDLE	427	Public	Middle School	0	0	0	0	0	0	0	0	102	112	108	0	0	0	0	322
	001	KIRTLAND ELEMENTARY	279	Public	Elementary School	65	23	0	21	17	17	16	18	0	0	0	0	0	0	0	177
	001	KIT CARSON ELEMENTARY	231	Public	Elementary School	26	61	0	57	61	50	51	53	0	0	0	0	0	0	0	359
	001	L.B. JOHNSON MIDDLE	485	Public	Middle School	0	0	0	0	0	0	0	0	185	195	204	0	0	0	0	584
	001	LA ACADEMIA DE ESPERANZA	061	Charter	High School	0	0	0	0	0	0	0	0	0	0	0	80	69	59	40	248
	001	LA CUEVA HIGH	525	Public	High School	0	0	0	0	0	0	0	0	0	0	0	508	473	429	398	1808
	001	LA LUZ ELEMENTARY	282	Public	Elementary School	19	19	0	25	22	15	12	22	0	0	0	0	0	0	0	134
	001	LA MESA ELEMENTARY	285	Public	Elementary School	18	64	0	64	77	62	56	74	0	0	0	0	0	0	0	415
	001	LAVALAND ELEMENTARY	288	Public	Elementary School	37	55	0	61	59	74	69	58	0	0	0	0	0	0	0	413
	001	LEW WALLACE ELEMENTARY	373	Public	Elementary School	0	31	0	22	28	27	34	40	0	0	0	0	0	0	0	182
	001	LONGFELLOW ELEMENTARY	291	Public	Elementary School	0	18	0	27	25	33	35	29	0	0	0	0	0	0	0	167
	001	LOS PADILLAS ELEMENTARY	297	Public	Elementary School	15	43	0	28	31	39	38	36	0	0	0	0	0	0	0	230
	001	LOS PUENTES CHARTER	017	Charter	High School	0	0	0	0	0	0	0	0	0	1	12	36	30	24	12	115
	001	LOS RANCHOS ELEMENTARY	336	Public	Elementary School	17	27	0	42	34	24	42	41	0	0	0	0	0	0	0	227
	001	LOWELL ELEMENTARY	300	Public	Elementary School	1	44	0	31	45	34	41	43	0	0	0	0	0	0	0	239
	001	MACARTHUR ELEMENTARY	303	Public	Elementary School	17	32	0	26	25	31	18	30	0	0	0	0	0	0	0	179

DISTRICT NAME	DISTRICT CODE	LOCATION NAME	LOCATION ID	ORG TYPE	SCHOOL TYPE DESC	GRADE PK	GRADE KF	GRADE KN	GRADE 01	GRADE 02	GRADE 03	GRADE 04	GRADE 05	GRADE 06	GRADE 07	GRADE 08	GRADE 09	GRADE 10	GRADE 11	GRADE 12	TOTAL ENROLLMENT
	001	MADISON MIDDLE	435	Public	Middle School	0	0	0	0	0	0	0	0	208	183	202	0	0	0	0	593
	001	MANZANO HIGH	530	Public	High School	16	0	0	0	0	0	0	0	0	0	0	523	354	243	207	1343
	001	MANZANO MESA ELEMENTARY	260	Public	Elementary School	45	67	0	86	95	90	72	81	0	0	0	0	0	0	0	536
	001	MARIE M HUGHES ELEMENTARY	365	Public	Elementary School	0	68	0	52	65	70	69	83	0	0	0	0	0	0	0	407
	001	MARK ARMIJO ACADEMY	039	Charter	High School	0	0	0	0	0	0	0	0	0	0	0	57	63	50	29	199
	001	MARK TWAIN ELEMENTARY	364	Public	Elementary School	65	39	0	29	47	38	40	32	0	0	0	0	0	0	0	290
	001	MARYANN BINFORD ELEMENTARY	250	Public	Elementary School	21	73	0	68	76	74	72	99	0	0	0	0	0	0	0	483
	001	MATHESON PARK ELEMENTARY	305	Public	Elementary School	16	27	0	25	36	30	31	30	0	0	0	0	0	0	0	195
	001	MCCOLLUM ELEMENTARY	307	Public	Elementary School	70	40	0	29	43	40	30	35	0	0	0	0	0	0	0	287
	001	MCKINLEY MIDDLE	440	Public	Middle School	0	0	0	0	0	0	0	0	147	170	172	0	0	0	0	489
	001	MISC PRESCHOOL PROGRAM	992	Off-Site	Prekindergarten	86	0	0	0	0	0	0	0	0	0	0	0	0	0	0	86
	001	MISC PRIVATE	997	Private	Non-Accredited	0	10	0	19	18	29	18	19	17	8	13	10	10	11	8	190
	001	MISSION AVENUE ELEMENTARY	309	Public	Elementary School	19	56	0	59	53	48	61	54	0	0	0	0	0	0	0	350
	001	MITCHELL ELEMENTARY	310	Public	Elementary School	0	38	0	43	41	50	48	45	0	0	0	0	0	0	0	265
	001	MONTE VISTA ELEMENTARY	312	Public	Elementary School	0	70	0	74	79	53	83	71	0	0	0	0	0	0	0	430
	001	MONTESSORI OF THE RIO GRANDE	095	Charter	Elementary School	0	35	0	36	37	36	35	35	0	0	0	0	0	0	0	214
	001	MONTEZUMA ELEMENTARY	315	Public	Elementary School	0	46	0	61	59	52	84	61	0	0	0	0	0	0	0	363
	001	MOUNTAIN MAHOGANY COMMUNITY SCHOOL	098	Charter	Elementary School	0	21	0	24	23	21	23	25	22	36	29	0	0	0	0	224
	001	MOUNTAIN VIEW ELEMENTARY	324	Public	Elementary School	13	28	0	40	33	35	36	29	0	0	0	0	0	0	0	214
	001	NATIVE AMERICAN COMMUNITY ACADEMY	006	Charter	High School	0	20	0	19	18	21	22	21	45	52	46	68	52	36	25	445
	001	NAVAJO ELEMENTARY	327	Public	Elementary School	16	55	0	50	51	66	59	60	0	0	0	0	0	0	0	357
	001	NEW AMERICA SCHOOL	708	Charter	High School	0	0	0	0	0	0	0	0	0	0	0	82	66	45	22	215
	001	NEW FUTURES HIGH SCHOOL	549	Public	High School	0	0	0	0	0	0	0	0	0	1	1	23	14	23	13	75
	001	NEW MEXICO INTERNATIONAL SCHOOL	768	Charter	Elementary School	0	63	0	66	57	63	56	38	22	11	15	0	0	0	0	391
	001	NEX GEN ACADEMY	516	Public	High School	0	0	0	0	0	0	0	0	0	0	0	51	78	49	55	233
	001	NMSVH PRESCHOOL	983	Off-Site	Special Education	41	11	0	0	0	0	0	0	0	0	0	0	0	0	0	52
	001	NORTH STAR ELEMENTARY	268	Public	Elementary School	0	65	0	72	80	106	103	120	0	0	0	0	0	0	0	546
	001	ONATE ELEMENTARY	227	Public	Elementary School	0	42	0	56	50	42	38	41	0	0	0	0	0	0	0	269
	001	OSUNA ELEMENTARY	332	Public	Elementary School	0	67	0	81	76	63	79	69	0	0	0	0	0	0	0	435
	001	PAINTED SKY ELEMENTARY	275	Public	Elementary School	19	110	0	107	86	89	89	110	0	0	0	0	0	0	0	610
	001	PAJARITO ELEMENTARY	333	Public	Elementary School	59	58	0	49	48	38	50	48	0	0	0	0	0	0	0	350
	001	PETROGLYPH ELEMENTARY	317	Public	Elementary School	75	60	0	65	76	62	72	67	0	0	0	0	0	0	0	477
	001	POLK MIDDLE	448	Public	Middle School	0	0	0	0	0	0	0	0	89	91	87	0	0	0	0	267
	001	PUBLIC ACADEMY FOR PERFORMING ARTS	047	Charter	High School	0	0	0	0	0	0	0	0	70	66	69	65	64	55	42	431
	001	REGINALD CHAVEZ ELEMENTARY	330	Public	Elementary School	0	24	0	36	34	37	33	37	0	0	0	0	0	0	0	201
	001	RIO GRANDE HIGH	540	Public	High School	0	0	0	0	0	0	0	0	0	0	0	633	431	235	216	1515
	001	ROBERT F. KENNEDY CHARTER	051	Charter	High School	0	0	0	0	0	0	0	0	17	35	30	120	90	54	28	374
	001	ROOSEVELT MIDDLE	452	Public	Middle School	0	0	0	0	0	0	0	0	125	117	138	0	0	0	0	380
	001	RUDOLFO ANAYA ELEMENTARY	392	Public	Elementary School	45	76	0	98	89	100	91	91	0	0	0	0	0	0	0	590
	001	S. Y. JACKSON ELEMENTARY	360	Public	Elementary School	0	76	0	82	93	77	89	98	0	0	0	0	0	0	0	515
	001	SAN ANTONITO ELEMENTARY	345	Public	Elementary School	0	52	0	49	55	59	67	58	0	0	0	0	0	0	0	340
	001	SANDIA BASE ELEMENTARY	348	Public	Elementary School	0	71	0	66	50	55	63	38	0	0	0	0	0	0	0	343
	001	SANDIA HIGH	550	Public	High School	0	0	0	0	0	0	0	0	0	0	0	581	455	326	352	1714
	001	SCHOOL ON WHEELS HIGH SCHOOL	597	Public	High School	0	0	0	0	0	0	0	0	0	0	0	14	26	28	9	77
	001	SEVEN BAR ELEMENTARY	265	Public	Elementary School	0	71	0	89	69	96	83	80	0	0	0	0	0	0	0	488
	001	SIEMBRA LEADERSHIP HIGH SCHOOL	750	Charter	High School	0	0	0	0	0	0	0	0	0	0	0	85	78	68	50	281
	001	SIERRA VISTA ELEMENTARY	356	Public	Elementary School	33	56	0	74	64	66	64	87	0	0	0	0	0	0	0	444
	001	SOMBRA DEL MONTE ELEMENTARY	357	Public	Elementary School	0	36	0	43	29	48	54	46	0	0	0	0	0	0	0	256
	001	SOUTH VALLEY ACADEMY	025	Charter	High School	0	0	0	0	0	0	0	0	93	94	97	80	88	81	72	605
	001	SUNSET VIEW ELEMENTARY	393	Public	Elementary School	0	63	0	76	81	86	93	86	0	0	0	0	0	0	0	485
	001	SUSIE RAYOS MARMON ELEMENTARY	280	Public	Elementary School	21	93	0	79	105	98	96	89	0	0	0	0	0	0	0	581
	001	TAFT MIDDLE	455	Public	Middle School	0	0	0	0	0	0	0	0	90	100	101	0	0	0	0	291
	001	TAYLOR MIDDLE	457	Public	Middle School	0	0	0	0	0	0	0	0	93	109	115	0	0	0	0	317
	001	TECHNOLOGY LEADERSHIP HIGH SCHOOL	753	Charter	High School	0	0	0	0	0	0	0	0	0	0	0	70	83	117	45	315

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	001	THE INTERNATIONAL SCHOOL AT MESA DEL SOL	781	Charter	High School	16	37	0	26	33	34	28	32	31	27	21	19	12	8	6	330
	001	TIERRA ANTIGUA ELEMENTARY	389	Public	Elementary School	0	115	0	130	119	134	142	161	0	0	0	0	0	0	0	801
	001	TOMASITA ELEMENTARY	363	Public	Elementary School	0	31	0	35	33	46	50	38	0	0	0	0	0	0	0	233
	001	TONY HILLERMAN MIDDLE SCHOOL	492	Public	Middle School	0	0	0	0	0	0	0	0	318	335	373	0	0	0	0	1026
	001	TRANSITION SERVICES	040	Off-Site	Special Education	10	0	0	0	0	0	0	0	0	0	0	0	0	0	160	170
	001	TRES VOLCANES COMMUNITY COLLABORATIVE SCHOOL	497	Public	Elementary School	0	55	0	79	76	71	91	76	157	159	155	0	0	0	0	919
	001	TRUMAN MIDDLE	475	Public	Middle School	0	0	0	0	0	0	0	0	205	207	258	0	0	0	0	670
	001	VALLE VISTA ELEMENTARY	370	Public	Elementary School	85	35	0	44	31	41	47	42	0	0	0	0	0	0	0	325
	001	VALLEY HIGH	560	Public	High School	0	0	0	0	0	0	0	0	0	0	0	376	303	202	153	1034
	001	VAN BUREN MIDDLE	460	Public	Middle School	0	0	0	0	0	0	0	0	131	118	154	0	0	0	0	403
	001	VENTANA RANCH ELEMENTARY	264	Public	Elementary School	33	96	0	89	98	114	112	95	0	0	0	0	0	0	0	637
	001	VISION QUEST ALTERNATIVE MIDDLE	840	Public	Middle School	0	0	0	0	0	0	0	0	0	0	1	0	0	0	0	1
	001	VOLCANO VISTA HIGH	575	Public	High School	0	0	0	0	0	0	0	0	0	0	0	637	610	506	454	2207
	001	VOZ COLLEGIATE PREPARATORY CHARTER SCHOOL	709	Charter	Middle School	0	0	0	0	0	0	0	0	15	37	12	0	0	0	0	64
	001	WASHINGTON MIDDLE	465	Public	Middle School	0	0	0	0	0	0	0	0	73	96	105	0	0	0	0	274
	001	WEST MESA HIGH	570	Public	High School	0	0	0	0	0	0	0	0	0	0	0	720	479	307	248	1754
	001	WHERRY ELEMENTARY	376	Public	Elementary School	11	37	0	54	44	50	40	43	0	0	0	0	0	0	0	279
	001	WHITTIER ELEMENTARY	379	Public	Elementary School	38	46	0	43	38	37	54	44	0	0	0	0	0	0	0	300
	001	WILLIAM W & JOSEPHINE DORN CHARTER COMMUNITY SCHOOL	782	Charter	Elementary School	0	8	0	8	11	6	8	10	0	0	0	0	0	0	0	51
	001	WILSON MIDDLE	470	Public	Middle School	0	0	0	0	0	0	0	0	124	126	141	0	0	0	0	391
	001	ZIA ELEMENTARY	385	Public	Elementary School	0	45	0	38	43	35	42	31	0	0	0	0	0	0	0	234
	001	ZUNI ELEMENTARY	388	Public	Elementary School	17	38	0	26	40	41	37	43	0	0	0	0	0	0	0	242
ALBUQUERQ	**Total**	**181**				**1999**	**5191**	**0**	**5507**	**5471**	**5710**	**5795**	**5870**	**5395**	**5565**	**6017**	**9107**	**7723**	**5660**	**5147**	**80157**
RIO RANCHO	083	CIELO AZUL ELEMENTARY	021	Public	Elementary School	0	114	0	128	107	108	109	128	0	0	0	0	0	0	0	694
	083	CLEVELAND HIGH SCHOOL	011	Public	High School	0	0	0	0	0	0	0	0	0	0	0	726	703	628	542	2599
	083	COLINAS DEL NORTE ELEMENTARY	050	Public	Elementary School	0	86	0	95	86	109	95	112	0	0	0	0	0	0	0	583
	083	EAGLE RIDGE MIDDLE	001	Public	Middle School	0	0	0	0	0	0	0	0	274	262	283	0	0	0	0	819
	083	ENCHANTED HILLS ELEMENTARY	100	Public	Elementary School	0	98	0	122	107	129	129	135	0	0	0	0	0	0	0	720
	083	ERNEST STAPLETON ELEMENTARY	372	Public	Elementary School	0	125	0	150	138	132	140	132	0	0	0	0	0	0	0	817
	083	INDEPENDENCE HIGH SCHOOL	013	Public	High School	0	0	0	0	0	0	0	0	0	0	0	0	1	30	153	184
	083	JOE HARRIS ELEMENTARY	025	Public	Elementary School	0	85	0	95	89	91	84	79	0	0	0	0	0	0	0	523
	083	LINCOLN MIDDLE	481	Public	Middle School	0	0	0	0	0	0	0	0	265	283	275	0	0	0	0	823
	083	MAGGIE CORDOVA ELEMENTARY SCHOOL	012	Public	Elementary School	0	129	0	124	92	123	105	98	0	0	0	0	0	0	0	671
	083	MARTIN KING JR ELEMENTARY	375	Public	Elementary School	0	78	0	87	121	105	125	115	0	0	0	0	0	0	0	631
	083	MISC PRIVATE	997	Private	Non-Accredited	2	4	0	2	5	7	6	11	6	3	1	4	0	4	3	58
	083	MOUNTAIN VIEW MIDDLE	105	Public	Middle School	0	0	0	0	0	0	0	0	303	292	337	0	0	0	0	932
	083	PUESTA DEL SOL ELEMENTARY	319	Public	Elementary School	0	78	0	104	109	106	98	105	0	0	0	0	0	0	0	600
	083	RIO RANCHO CYBER ACADEMY	018	Public	High School	0	0	0	0	0	0	0	0	20	26	33	23	30	37	34	203
	083	RIO RANCHO DIST OFFICE	000	Central Office	Central Office	0	0	0	1	0	0	0	0	0	0	0	0	0	0	0	1
	083	RIO RANCHO ELEMENTARY	340	Public	Elementary School	0	79	0	99	82	91	84	102	0	0	0	0	0	0	0	537
	083	RIO RANCHO HIGH	006	Public	High School	0	0	0	0	0	0	0	0	0	0	0	733	624	628	570	2555
	083	RIO RANCHO MIDDLE SCHOOL	016	Public	Middle School	0	0	0	0	0	0	0	0	384	392	364	0	0	0	0	1140
	083	SANDIA VISTA ELEMENTARY	020	Public	Elementary School	0	98	0	126	111	119	120	117	0	0	0	0	0	0	0	691
	083	SHINING STARS PRESCHOOL	017	Public	Special Education	630	0	0	0	0	0	0	0	0	0	0	0	0	0	0	630
	083	SPARRK ONLINE ACADEMY	110	Public	Elementary School	0	7	0	10	11	20	20	21	0	0	0	0	0	0	0	89
	083	VISTA GRANDE ELEMENTARY	015	Public	Elementary School	0	88	0	129	127	123	138	171	0	0	0	0	0	0	0	776
RIO RANCHO	**Total**	**23**				**632**	**1069**	**0**	**1272**	**1185**	**1263**	**1253**	**1326**	**1252**	**1258**	**1293**	**1486**	**1358**	**1327**	**1302**	**17276**
Grand Total		**204**				**2631**	**6260**	**0**	**6779**	**6656**	**6973**	**7048**	**7196**	**6647**	**6823**	**7310**	**10593**	**9081**	**6987**	**6449**	**97433**

Enrollment by District by School

School Year: 2022-2023

Snapshot Date: 2023-03-01 - 120D

DISTRICT NAME	DISTRICT CODE	LOCATION NAME	LOCATION ID	ORG TYPE	SCHOOL TYPE DESC	GRADE PK	GRADE KF	GRADE KN	GRADE 01	GRADE 02	GRADE 03	GRADE 04	GRADE 05	GRADE 06	GRADE 07	GRADE 08	GRADE 09	GRADE 10	GRADE 11	GRADE 12	TOTAL ENROLLMENT
ALBUQUERQUE	001	A. MONTOYA ELEMENTARY	321	Public	Elementary School	33	51	0	61	52	69	67	74	0	0	0	0	0	0	0	407
	001	ABQ CHARTER ACADEMY	090	Charter	High School	0	0	0	0	0	0	0	0	0	0	0	61	112	125	102	400
	001	ACE LEADERSHIP HIGH SCHOOL	749	Charter	High School	0	0	0	0	0	0	0	0	0	0	0	84	68	63	24	239
	001	ADOBE ACRES ELEMENTARY	206	Public	Elementary School	16	54	0	49	50	52	40	50	0	0	0	0	0	0	0	311
	001	ALAMEDA ELEMENTARY	207	Public	Elementary School	40	34	0	35	24	40	32	34	0	0	0	0	0	0	0	239
	001	ALAMOSA ELEMENTARY	210	Public	Elementary School	15	45	0	58	57	67	60	82	0	0	0	0	0	0	0	384
	001	ALBUQUERQUE HIGH	590	Public	High School	0	0	0	0	0	0	0	0	0	0	0	538	416	361	345	1660
	001	ALBUQUERQUE TALENT DEVELOPMENT CHARTER	016	Charter	High School	0	0	0	0	0	0	0	0	0	0	0	40	45	32	31	148
	001	ALICE KING COMMUNITY SCHOOL	116	Charter	Elementary School	0	49	0	50	53	52	66	47	52	37	42	0	0	0	0	448
	001	ALVARADO ELEMENTARY	213	Public	Elementary School	18	44	0	53	32	50	51	35	0	0	0	0	0	0	0	283
	001	APACHE ELEMENTARY	214	Public	Elementary School	13	36	0	41	54	50	48	39	0	0	0	0	0	0	0	281
	001	ARMIJO ELEMENTARY	215	Public	Elementary School	16	46	0	34	39	41	41	37	0	0	0	0	0	0	0	254
	001	ARROYO DEL OSO ELEMENTARY	329	Public	Elementary School	0	50	0	50	45	56	48	50	0	0	0	0	0	0	0	299
	001	ATRISCO ELEMENTARY	216	Public	Elementary School	14	34	0	33	35	35	48	46	0	0	0	0	0	0	0	245
	001	ATRISCO HERITAGE ACADEMY HS	576	Public	High School	0	0	0	0	0	0	0	0	0	0	0	625	550	418	445	2038
	001	BANDELIER ELEMENTARY	222	Public	Elementary School	0	66	0	70	74	67	82	93	0	0	0	0	0	0	0	452
	001	BARCELONA ELEMENTARY	225	Public	Elementary School	14	39	0	40	38	40	40	39	0	0	0	0	0	0	0	250
	001	BEL-AIR ELEMENTARY	228	Public	Elementary School	16	34	0	41	37	41	37	48	0	0	0	0	0	0	0	254
	001	BELLEHAVEN ELEMENTARY	229	Public	Elementary School	20	29	0	32	38	35	40	40	0	0	0	0	0	0	0	234
	001	BERNALILLO COUNTY JUVENILE DETENTION	048	Off-Site	High School	0	0	0	0	0	0	0	0	0	0	3	18	7	3	2	33
	001	CARLOS REY ELEMENTARY	339	Public	Elementary School	35	77	0	79	82	73	80	98	0	0	0	0	0	0	0	524
	001	CHAMIZA ELEMENTARY	295	Public	Elementary School	0	42	0	57	43	52	55	52	0	0	0	0	0	0	0	301
	001	CHAPARRAL ELEMENTARY	234	Public	Elementary School	79	80	0	68	68	78	83	94	0	0	0	0	0	0	0	550
	001	CHELWOOD ELEMENTARY	236	Public	Elementary School	0	50	0	64	42	84	57	61	0	0	0	0	0	0	0	358
	001	CHILDRENS TREATMENT CENTER	971	Off-Site	Special Education	0	0	0	0	1	0	0	1	0	1	0	0	0	0	0	3
	001	CHRISTINE DUNCAN HERITAGE ACADEMY	118	Charter	Elementary School	36	42	0	48	50	30	39	43	39	43	41	0	0	0	0	411
	001	CIBOLA HIGH	580	Public	High School	0	0	0	0	0	0	0	0	0	0	0	465	494	346	387	1692
	001	CIEN AGUAS INTERNATIONAL	780	Charter	Elementary School	0	40	0	46	46	48	45	50	47	48	50	0	0	0	0	420
	001	CLEVELAND MIDDLE	407	Public	Middle School	0	0	0	0	0	0	0	0	192	178	162	0	0	0	0	532
	001	COCHITI ELEMENTARY	237	Public	Elementary School	17	34	0	24	36	33	30	33	0	0	0	0	0	0	0	207
	001	COLLEGE AND CAREER HIGH SCHOOL	591	Public	High School	0	0	0	0	0	0	0	0	0	0	0	62	71	61	61	255
	001	COLLET PARK ELEMENTARY	240	Public	Elementary School	63	47	0	39	52	52	44	43	0	0	0	0	0	0	0	340
	001	COMANCHE ELEMENTARY	241	Public	Elementary School	16	44	0	52	48	55	47	54	0	0	0	0	0	0	0	316
	001	CONTINUATION SCHOOL	035	Public	Special Education	0	0	0	0	0	0	0	0	0	0	1	7	5	0	0	13
	001	CORAL COMMUNITY CHARTER	706	Charter	Elementary School	38	40	0	40	40	36	26	22	0	0	0	0	0	0	0	242
	001	CORONADO ELEMENTARY	243	Public	Elementary School	0	42	0	62	43	64	43	56	0	0	0	0	0	0	0	310
	001	CORRALES ELEMENTARY	351	Public	Elementary School	0	62	0	57	51	66	55	49	0	0	0	0	0	0	0	340
	001	CORRALES INTERNATIONAL	028	Charter	High School	0	19	0	19	26	25	17	20	23	22	30	10	12	9	15	247
	001	COTTONWOOD CLASSICAL PREP	769	Charter	High School	0	0	0	0	0	0	0	0	128	130	125	111	112	75	64	745
	001	COYOTE WILLOW FAMILY SCHOOL	952	Public	Elementary School	0	32	0	42	42	37	38	32	26	16	6	0	0	0	0	271
	001	DEL NORTE HIGH	514	Public	High School	0	0	0	0	0	0	0	0	0	0	0	337	298	196	185	1016
	001	DENNIS CHAVEZ ELEMENTARY	203	Public	Elementary School	69	85	0	80	87	89	89	86	0	0	0	0	0	0	0	585
	001	DESERT RIDGE MIDDLE	430	Public	Middle School	0	0	0	0	0	0	0	0	236	284	298	0	0	0	0	818
	001	DESERT WILLOW FAMILY SCHOOL	900	Public	Elementary School	0	21	0	45	41	42	33	29	26	27	21	0	0	0	0	285
	001	DIGITAL ARTS AND TECHNOLOGY ACADEMY	063	Charter	High School	0	0	0	0	0	0	0	0	0	29	41	75	86	66	59	356

DISTRICT NAME	DISTRICT CODE	LOCATION NAME	LOCATION ID	ORG TYPE	SCHOOL TYPE DESC	GRADE PK	GRADE KF	GRADE KN	GRADE 01	GRADE 02	GRADE 03	GRADE 04	GRADE 05	GRADE 06	GRADE 07	GRADE 08	GRADE 09	GRADE 10	GRADE 11	GRADE 12	TOTAL ENROLLMENT
	001	DOLORES GONZALES ELEMENTARY	244	Public	Elementary School	18	56	0	50	47	55	57	38	0	0	0	0	0	0	0	321
	001	DOUBLE EAGLE ELEMENTARY	350	Public	Elementary School	0	90	0	79	101	91	102	100	0	0	0	0	0	0	0	563
	001	DURANES ELEMENTARY	249	Public	Elementary School	43	18	0	18	14	10	17	22	0	0	0	0	0	0	0	142
	001	EARLY COLLEGE ACADEMY	593	Public	High School	0	0	0	0	0	0	0	0	0	0	0	51	58	49	54	212
	001	EAST MOUNTAIN HIGH SCHOOL	024	Charter	High School	0	0	0	0	0	0	0	0	0	0	0	117	94	80	79	370
	001	EAST SAN JOSE ELEMENTARY	252	Public	Elementary School	20	49	0	48	48	52	64	55	0	0	0	0	0	0	0	336
	001	ECADEMY	517	Public	High School	0	0	0	0	0	0	0	0	0	0	0	280	276	277	231	1064
	001	ECADEMY K-8	498	Public	Elementary School	0	33	0	64	54	72	79	98	113	173	199	0	0	0	0	885
	001	EDMUND G ROSS ELEMENTARY	219	Public	Elementary School	14	50	0	66	58	80	64	65	0	0	0	0	0	0	0	397
	001	EDWARD GONZALES ELEMENTARY	262	Public	Elementary School	0	0	0	0	0	117	111	148	0	0	0	0	0	0	0	376
	001	EISENHOWER MIDDLE	480	Public	Middle School	0	0	0	0	0	0	0	0	263	269	285	0	0	0	0	817
	001	EL CAMINO REAL ACADEMY	069	Charter	High School	0	19	0	26	23	18	25	32	35	37	40	26	27	14	17	339
	001	ELDORADO HIGH	515	Public	High School	20	0	0	0	0	0	0	0	0	0	0	427	448	337	328	1560
	001	EMERSON ELEMENTARY	255	Public	Elementary School	19	60	0	57	48	57	60	45	0	0	0	0	0	0	0	346
	001	ERNIE PYLE MIDDLE	450	Public	Middle School	0	0	0	0	0	0	0	0	128	151	159	0	0	0	0	438
	001	EUGENE FIELD ELEMENTARY	261	Public	Elementary School	16	20	0	16	26	26	15	24	0	0	0	0	0	0	0	143
	001	FREEDOM HIGH	596	Public	High School	0	0	0	0	0	0	0	0	0	0	0	37	32	22	23	114
	001	GARFIELD MIDDLE	410	Public	Middle School	0	0	0	0	0	0	0	0	96	99	111	0	0	0	0	306
	001	GEORGE I SANCHEZ	496	Public	Elementary School	0	77	0	84	72	64	87	102	237	231	268	0	0	0	0	1222
	001	GEORGIA O'KEEFFE ELEMENTARY	328	Public	Elementary School	0	74	0	72	80	101	77	87	0	0	0	0	0	0	0	491
	001	GILBERT L SENA CHARTER HS	707	Charter	High School	0	0	0	0	0	0	0	0	0	0	0	66	30	18	23	137
	001	GORDON BERNELL CHARTER	030	Charter	High School	0	0	0	0	0	0	0	0	0	0	0	62	48	36	13	159
	001	GOV BENT ELEMENTARY	230	Public	Elementary School	15	43	0	61	49	55	43	53	0	0	0	0	0	0	0	319
	001	GRANT MIDDLE	413	Public	Middle School	0	0	0	0	0	0	0	0	104	116	125	0	0	0	0	345
	001	GRIEGOS ELEMENTARY	267	Public	Elementary School	0	29	0	35	44	45	45	39	0	0	0	0	0	0	0	237
	001	HARRISON MIDDLE	415	Public	Middle School	0	0	0	0	0	0	0	0	103	114	115	0	0	0	0	332
	001	HAWTHORNE ELEMENTARY	270	Public	Elementary School	20	42	0	49	49	51	55	58	0	0	0	0	0	0	0	324
	001	HAYES MIDDLE	416	Public	Middle School	0	0	0	0	0	0	0	0	152	109	111	0	0	0	0	372
	001	HEALTH LEADERSHIP HIGH SCHOOL	752	Charter	High School	0	0	0	0	0	0	0	0	0	0	0	42	59	66	40	207
	001	HELEN CORDERO PRIMARY	395	Public	Elementary School	95	126	0	130	132	0	0	0	0	0	0	0	0	0	0	483
	001	HIGHLAND AUTISM CENTER	611	Public	Special Education	12	0	0	4	1	0	2	1	2	5	1	3	4	0	10	45
	001	HIGHLAND HIGH	520	Public	High School	0	0	0	0	0	0	0	0	0	0	0	331	354	216	190	1091
	001	HODGIN ELEMENTARY	273	Public	Elementary School	72	54	0	55	54	58	64	63	0	0	0	0	0	0	0	420
	001	HOMEBOUND	998	Off-Site	Central Office	6	2	0	4	2	1	6	3	3	5	6	8	3	6	9	64
	001	HOOVER MIDDLE	418	Public	Middle School	0	0	0	0	0	0	0	0	118	109	156	0	0	0	0	383
	001	HUBERT H HUMPHREY ELEMENTARY	221	Public	Elementary School	0	69	0	90	74	89	78	83	0	0	0	0	0	0	0	483
	001	INEZ ELEMENTARY	276	Public	Elementary School	0	45	0	40	60	46	71	47	0	0	0	0	0	0	0	309
	001	JACKSON MIDDLE	420	Public	Middle School	0	0	0	0	0	0	0	0	132	122	151	0	0	0	0	405
	001	JAMES MONROE MIDDLE	490	Public	Middle School	0	0	0	0	0	0	0	0	246	191	241	0	0	0	0	678
	001	JANET KAHN FINE ARTS ACADEMY	258	Public	Elementary School	19	47	0	56	42	45	53	63	0	0	0	0	0	0	0	325
	001	JEFFERSON MIDDLE	425	Public	Middle School	0	0	0	0	0	0	0	0	209	208	223	0	0	0	0	640
	001	JIMMY CARTER MIDDLE	445	Public	Middle School	0	0	0	0	0	0	0	0	154	167	190	0	0	0	0	511
	001	JOHN ADAMS MIDDLE	405	Public	Middle School	0	0	0	0	0	0	0	0	135	156	166	0	0	0	0	457
	001	JOHN BAKER ELEMENTARY	217	Public	Elementary School	0	72	0	70	63	68	75	86	0	0	0	0	0	0	0	434
	001	KENNEDY MIDDLE	427	Public	Middle School	0	0	0	0	0	0	0	0	107	113	107	0	0	0	0	327
	001	KIRTLAND ELEMENTARY	279	Public	Elementary School	81	23	0	21	18	18	15	18	0	0	0	0	0	0	0	194
	001	KIT CARSON ELEMENTARY	231	Public	Elementary School	28	61	0	58	60	51	52	54	0	0	0	0	0	0	0	364
	001	L.B. JOHNSON MIDDLE	485	Public	Middle School	0	0	0	0	0	0	0	0	184	193	206	0	0	0	0	583
	001	LA ACADEMIA DE ESPERANZA	061	Charter	High School	0	0	0	0	0	0	0	0	0	0	0	63	59	61	67	250
	001	LA CUEVA HIGH	525	Public	High School	0	0	0	0	0	0	0	0	0	0	0	482	454	440	408	1784
	001	LA LUZ ELEMENTARY	282	Public	Elementary School	23	20	0	25	21	15	9	22	0	0	0	0	0	0	0	135
	001	LA MESA ELEMENTARY	285	Public	Elementary School	21	66	0	69	78	63	59	76	0	0	0	0	0	0	0	432
	001	LAVALAND ELEMENTARY	288	Public	Elementary School	38	56	0	62	59	71	72	59	0	0	0	0	0	0	0	417
	001	LEW WALLACE ELEMENTARY	373	Public	Elementary School	0	32	0	24	27	30	34	39	0	0	0	0	0	0	0	186
	001	LONGFELLOW ELEMENTARY	291	Public	Elementary School	0	18	0	26	28	32	34	28	0	0	0	0	0	0	0	166
	001	LOS PADILLAS ELEMENTARY	297	Public	Elementary School	15	44	0	27	28	38	38	37	0	0	0	0	0	0	0	227
	001	LOS PUENTES CHARTER	017	Charter	High School	0	0	0	0	0	0	0	0	0	1	15	33	26	26	18	119

DISTRICT NAME	DISTRICT CODE	LOCATION NAME	LOCATION ID	ORG TYPE	SCHOOL TYPE DESC	GRADE PK	GRADE KF	GRADE KN	GRADE 01	GRADE 02	GRADE 03	GRADE 04	GRADE 05	GRADE 06	GRADE 07	GRADE 08	GRADE 09	GRADE 10	GRADE 11	GRADE 12	TOTAL ENROLLMENT
	001	LOS RANCHOS ELEMENTARY	336	Public	Elementary School	18	27	0	42	34	25	41	39	0	0	0	0	0	0	0	226
	001	LOWELL ELEMENTARY	300	Public	Elementary School	1	45	0	32	47	37	46	46	0	0	0	0	0	0	0	254
	001	MACARTHUR ELEMENTARY	303	Public	Elementary School	16	31	0	27	26	31	18	30	0	0	0	0	0	0	0	179
	001	MADISON MIDDLE	435	Public	Middle School	0	0	0	0	0	0	0	0	210	178	199	0	0	0	0	587
	001	MANZANO HIGH	530	Public	High School	16	0	0	0	0	0	0	0	0	0	0	445	333	243	243	1280
	001	MANZANO MESA ELEMENTARY	260	Public	Elementary School	47	65	0	88	96	89	72	82	0	0	0	0	0	0	0	539
	001	MARIE M HUGHES ELEMENTARY	365	Public	Elementary School	0	68	0	51	66	72	73	82	0	0	0	0	0	0	0	412
	001	MARK ARMIJO ACADEMY	039	Charter	High School	0	0	0	0	0	0	0	0	0	0	0	42	69	44	45	200
	001	MARK TWAIN ELEMENTARY	364	Public	Elementary School	74	38	0	30	44	37	39	32	0	0	0	0	0	0	0	294
	001	MARYANN BINFORD ELEMENTARY	250	Public	Elementary School	21	70	0	66	76	73	71	96	0	0	0	0	0	0	0	473
	001	MATHESON PARK ELEMENTARY	305	Public	Elementary School	17	27	0	27	35	31	30	30	0	0	0	0	0	0	0	197
	001	MCCOLLUM ELEMENTARY	307	Public	Elementary School	68	40	0	29	40	42	31	34	0	0	0	0	0	0	0	284
	001	MCKINLEY MIDDLE	440	Public	Middle School	0	0	0	0	0	0	0	0	142	164	165	0	0	0	0	471
	001	MISC PRESCHOOL PROGRAM	992	Off-Site	Prekindergarten	103	0	0	0	0	0	0	0	0	0	0	0	0	0	0	103
	001	MISC PRIVATE	997	Private	Non-Accredited	0	11	0	21	22	34	18	20	19	10	13	10	10	12	8	208
	001	MISSION AVENUE ELEMENTARY	309	Public	Elementary School	19	57	0	58	54	51	63	56	0	0	0	0	0	0	0	358
	001	MITCHELL ELEMENTARY	310	Public	Elementary School	0	38	0	44	42	50	47	44	0	0	0	0	0	0	0	265
	001	MONTE VISTA ELEMENTARY	312	Public	Elementary School	0	69	0	72	77	53	81	70	0	0	0	0	0	0	0	422
	001	MONTESSORI OF THE RIO GRANDE	095	Charter	Elementary School	0	35	0	36	38	37	35	36	0	0	0	0	0	0	0	217
	001	MONTEZUMA ELEMENTARY	315	Public	Elementary School	0	46	0	63	58	52	83	62	0	0	0	0	0	0	0	364
	001	MOUNTAIN MAHOGANY COMMUNITY SCHOOL	098	Charter	Elementary School	0	21	0	23	23	21	23	25	24	36	28	0	0	0	0	224
	001	MOUNTAIN VIEW ELEMENTARY	324	Public	Elementary School	12	26	0	39	31	34	37	31	0	0	0	0	0	0	0	210
	001	NATIVE AMERICAN COMMUNITY ACADEMY	006	Charter	High School	0	21	0	21	17	21	22	21	46	51	44	58	46	45	33	446
	001	NAVAJO ELEMENTARY	327	Public	Elementary School	16	54	0	48	52	64	59	62	0	0	0	0	0	0	0	355
	001	NEW AMERICA SCHOOL	708	Charter	High School	0	0	0	0	0	0	0	0	0	0	0	67	55	54	25	201
	001	NEW FUTURES HIGH SCHOOL	549	Public	High School	0	0	0	0	0	0	0	0	0	1	1	25	13	16	17	73
	001	NEW MEXICO INTERNATIONAL SCHOOL	768	Charter	Elementary School	0	61	0	66	56	63	56	38	22	12	15	0	0	0	0	389
	001	NEX GEN ACADEMY	516	Public	High School	0	0	0	0	0	0	0	0	0	0	0	55	72	46	57	230
	001	NMSVH PRESCHOOL	983	Off-Site	Special Education	44	10	0	0	0	0	0	0	0	0	0	0	0	0	0	54
	001	NORTH STAR ELEMENTARY	268	Public	Elementary School	0	65	0	72	81	105	103	121	0	0	0	0	0	0	0	547
	001	ONATE ELEMENTARY	227	Public	Elementary School	0	43	0	56	50	41	37	38	0	0	0	0	0	0	0	265
	001	OSUNA ELEMENTARY	332	Public	Elementary School	0	67	0	82	74	63	80	70	0	0	0	0	0	0	0	436
	001	PAINTED SKY ELEMENTARY	275	Public	Elementary School	18	105	0	104	85	89	88	108	0	0	0	0	0	0	0	597
	001	PAJARITO ELEMENTARY	333	Public	Elementary School	68	61	0	47	50	39	50	47	0	0	0	0	0	0	0	362
	001	PETROGLYPH ELEMENTARY	317	Public	Elementary School	79	64	0	68	75	59	72	66	0	0	0	0	0	0	0	483
	001	POLK MIDDLE	448	Public	Middle School	0	0	0	0	0	0	0	0	85	92	85	0	0	0	0	262
	001	PUBLIC ACADEMY FOR PERFORMING ARTS	047	Charter	High School	0	0	0	0	0	0	0	0	73	65	70	66	63	55	40	432
	001	REGINALD CHAVEZ ELEMENTARY	330	Public	Elementary School	0	24	0	35	33	36	32	35	0	0	0	0	0	0	0	195
	001	RIO GRANDE HIGH	540	Public	High School	0	0	0	0	0	0	0	0	0	0	0	517	418	260	246	1441
	001	ROBERT F. KENNEDY CHARTER	051	Charter	High School	0	0	0	0	0	0	0	0	18	35	33	115	90	38	46	375
	001	ROOSEVELT MIDDLE	452	Public	Middle School	0	0	0	0	0	0	0	0	126	118	141	0	0	0	0	385
	001	RUDOLFO ANAYA ELEMENTARY	392	Public	Elementary School	45	76	0	97	89	99	92	90	0	0	0	0	0	0	0	588
	001	S. Y. JACKSON ELEMENTARY	360	Public	Elementary School	0	76	0	83	91	75	91	98	0	0	0	0	0	0	0	514
	001	SAN ANTONITO ELEMENTARY	345	Public	Elementary School	0	51	0	48	56	60	64	58	0	0	0	0	0	0	0	337
	001	SANDIA BASE ELEMENTARY	348	Public	Elementary School	0	70	0	68	53	55	62	38	0	0	0	0	0	0	0	346
	001	SANDIA HIGH	550	Public	High School	0	0	0	0	0	0	0	0	0	0	0	523	423	340	379	1665
	001	SCHOOL ON WHEELS HIGH SCHOOL	597	Public	High School	0	0	0	0	0	0	0	0	0	0	0	11	20	21	22	74
	001	SEVEN BAR ELEMENTARY	265	Public	Elementary School	0	71	0	94	66	97	81	80	0	0	0	0	0	0	0	489
	001	SIEMBRA LEADERSHIP HIGH SCHOOL	750	Charter	High School	0	0	0	0	0	0	0	0	0	0	0	95	69	67	56	287
	001	SIERRA VISTA ELEMENTARY	356	Public	Elementary School	32	53	0	73	64	66	64	86	0	0	0	0	0	0	0	438
	001	SOMBRA DEL MONTE ELEMENTARY	357	Public	Elementary School	0	37	0	44	31	47	55	43	0	0	0	0	0	0	0	257
	001	SOUTH VALLEY ACADEMY	025	Charter	High School	0	0	0	0	0	0	0	0	94	93	94	81	87	77	72	598
	001	SUNSET VIEW ELEMENTARY	393	Public	Elementary School	0	64	0	75	79	87	93	84	0	0	0	0	0	0	0	482
	001	SUSIE RAYOS MARMON ELEMENTARY	280	Public	Elementary School	19	93	0	80	105	97	99	86	0	0	0	0	0	0	0	579

DISTRICT NAME	DISTRICT CODE	LOCATION NAME	LOCATION ID	ORG TYPE	SCHOOL TYPE DESC	GRADE PK	GRADE KF	GRADE KN	GRADE 01	GRADE 02	GRADE 03	GRADE 04	GRADE 05	GRADE 06	GRADE 07	GRADE 08	GRADE 09	GRADE 10	GRADE 11	GRADE 12	TOTAL ENROLLMENT
	001	TAFT MIDDLE	455	Public	Middle School	0	0	0	0	0	0	0	0	87	99	102	0	0	0	0	288
	001	TAYLOR MIDDLE	457	Public	Middle School	0	0	0	0	0	0	0	0	101	108	108	0	0	0	0	317
	001	TECHNOLOGY LEADERSHIP HIGH SCHOOL	753	Charter	High School	0	0	0	0	0	0	0	0	0	0	0	69	79	101	60	309
	001	THE INTERNATIONAL SCHOOL AT MESA DEL SOL	781	Charter	High School	15	37	0	26	33	35	29	32	30	25	22	20	11	6	6	327
	001	TIERRA ANTIGUA ELEMENTARY	389	Public	Elementary School	0	116	0	133	122	133	144	160	0	0	0	0	0	0	0	808
	001	TOMASITA ELEMENTARY	363	Public	Elementary School	0	31	0	35	32	47	50	39	0	0	0	0	0	0	0	234
	001	TONY HILLERMAN MIDDLE SCHOOL	492	Public	Middle School	0	0	0	0	0	0	0	0	313	333	370	0	0	0	0	1016
	001	TRANSITION SERVICES	040	Off-Site	Special Education	11	0	0	0	0	0	0	0	0	0	0	0	0	0	153	164
	001	TRES VOLCANES COMMUNITY COLLABORATIVE SCHOOL	497	Public	Elementary School	0	55	0	78	75	71	87	75	157	157	157	0	0	0	0	912
	001	TRUMAN MIDDLE	475	Public	Middle School	0	0	0	0	0	0	0	0	204	201	253	0	0	0	0	658
	001	VALLE VISTA ELEMENTARY	370	Public	Elementary School	95	36	0	44	31	39	46	41	0	0	0	0	0	0	0	332
	001	VALLEY HIGH	560	Public	High School	0	0	0	0	0	0	0	0	0	0	0	315	291	205	178	989
	001	VAN BUREN MIDDLE	460	Public	Middle School	0	0	0	0	0	0	0	0	132	119	159	0	0	0	0	410
	001	VENTANA RANCH ELEMENTARY	264	Public	Elementary School	33	93	0	90	97	114	113	92	0	0	0	0	0	0	0	632
	001	VISION QUEST ALTERNATIVE MIDDLE	840	Public	Middle School	0	0	0	0	0	0	0	0	0	0	2	0	0	0	0	2
	001	VOLCANO VISTA HIGH	575	Public	High School	0	0	0	0	0	0	0	0	0	0	0	609	565	515	480	2169
	001	VOZ COLLEGIATE PREPARATORY CHARTER SCHOOL	709	Charter	Middle School	0	0	0	0	0	0	0	0	14	37	13	0	0	0	0	64
	001	WASHINGTON MIDDLE	465	Public	Middle School	0	0	0	0	0	0	0	0	74	98	109	0	0	0	0	281
	001	WEST MESA HIGH	570	Public	High School	0	0	0	0	0	0	0	0	0	0	0	602	447	302	306	1657
	001	WHERRY ELEMENTARY	376	Public	Elementary School	11	33	0	53	44	48	42	39	0	0	0	0	0	0	0	270
	001	WHITTIER ELEMENTARY	379	Public	Elementary School	40	47	0	43	38	37	58	47	0	0	0	0	0	0	0	310
	001	WILLIAM W & JOSEPHINE DORN CHARTER COMMUNITY SCHOOL	782	Charter	Elementary School	0	8	0	8	10	6	8	9	0	0	0	0	0	0	0	49
	001	WILSON MIDDLE	470	Public	Middle School	0	0	0	0	0	0	0	0	127	131	142	0	0	0	0	400
	001	ZIA ELEMENTARY	385	Public	Elementary School	0	46	0	37	43	37	41	31	0	0	0	0	0	0	0	235
	001	ZUNI ELEMENTARY	388	Public	Elementary School	18	37	0	26	39	41	35	42	0	0	0	0	0	0	0	238
ALBUQUERQU	**Total**	**181**				**2119**	**5182**	**0**	**5537**	**5466**	**5718**	**5805**	**5873**	**5388**	**5547**	**6020**	**8186**	**7409**	**5850**	**5702**	**79802**
RIO RANCHO	083	CIELO AZUL ELEMENTARY	021	Public	Elementary School	0	114	0	128	110	108	107	128	0	0	0	0	0	0	0	695
	083	CLEVELAND HIGH SCHOOL	011	Public	High School	0	0	0	0	0	0	0	0	0	0	0	725	699	610	536	2570
	083	COLINAS DEL NORTE ELEMENTARY	050	Public	Elementary School	0	86	0	95	86	108	95	113	0	0	0	0	0	0	0	583
	083	EAGLE RIDGE MIDDLE	001	Public	Middle School	0	0	0	0	0	0	0	0	281	261	286	0	0	0	0	828
	083	ENCHANTED HILLS ELEMENTARY	100	Public	Elementary School	0	101	0	123	106	126	126	134	0	0	0	0	0	0	0	716
	083	ERNEST STAPLETON ELEMENTARY	372	Public	Elementary School	0	125	0	148	145	134	141	134	0	0	0	0	0	0	0	827
	083	INDEPENDENCE HIGH SCHOOL	013	Public	High School	0	0	0	0	0	0	0	0	0	0	0	0	1	60	148	209
	083	JOE HARRIS ELEMENTARY	025	Public	Elementary School	0	83	0	95	87	89	82	80	0	0	0	0	0	0	0	516
	083	LINCOLN MIDDLE	481	Public	Middle School	0	0	0	0	0	0	0	0	266	289	276	0	0	0	0	831
	083	MAGGIE CORDOVA ELEMENTARY SCHOOL	012	Public	Elementary School	0	130	0	126	92	124	105	97	0	0	0	0	0	0	0	674
	083	MARTIN KING JR ELEMENTARY	375	Public	Elementary School	0	79	0	87	119	107	127	114	0	0	0	0	0	0	0	633
	083	MISC PRIVATE	997	Private	Non-Accredited	2	4	0	2	5	6	6	11	6	3	1	4	0	4	3	57
	083	MOUNTAIN VIEW MIDDLE	105	Public	Middle School	0	0	0	0	0	0	0	0	306	294	331	0	0	0	0	931
	083	PUESTA DEL SOL ELEMENTARY	319	Public	Elementary School	0	78	0	108	107	108	97	104	0	0	0	0	0	0	0	602
	083	RIO RANCHO CYBER ACADEMY	018	Public	High School	0	0	0	0	0	0	0	0	19	24	31	21	28	35	34	192
	083	RIO RANCHO DIST OFFICE	000	Central	Central Office	0	0	0	1	0	0	0	0	0	0	0	0	0	0	0	1
	083	RIO RANCHO ELEMENTARY	340	Public	Elementary School	0	79	0	101	85	90	86	102	0	0	0	0	0	0	0	543
	083	RIO RANCHO HIGH	006	Public	High School	0	0	0	0	0	0	0	0	0	0	0	718	615	619	560	2512
	083	RIO RANCHO MIDDLE SCHOOL	016	Public	Middle School	0	0	0	0	0	0	0	0	388	397	367	0	0	0	0	1152
	083	SANDIA VISTA ELEMENTARY	020	Public	Elementary School	9	104	0	124	112	119	119	116	0	0	0	0	0	0	0	703
	083	SHINING STARS PRESCHOOL	017	Public	Special Education	666	0	0	0	0	0	0	0	0	0	0	0	0	0	0	666
	083	SPARRK ONLINE ACADEMY	110	Public	Elementary School	0	5	0	10	12	20	19	20	0	0	0	0	0	0	0	86
	083	VISTA GRANDE ELEMENTARY	015	Public	Elementary School	0	90	0	131	131	121	142	172	0	0	0	0	0	0	0	787
RIO RANCHO	**Total**	**23**				**677**	**1078**	**0**	**1279**	**1197**	**1260**	**1252**	**1325**	**1266**	**1268**	**1292**	**1468**	**1343**	**1328**	**1281**	**17314**
Grand Total		**204**				**2796**	**6260**	**0**	**6816**	**6663**	**6978**	**7057**	**7198**	**6654**	**6815**	**7312**	**9654**	**8752**	**7178**	**6983**	**97116**

CITY OF RIO RANCHO
COVER PAGE

Legislation Item: R116

AGENDA DATE:
September 28, 2023

DEPARTMENT:
Administration

SUBJECT:
R116, Resolution Adopting the City of Rio Rancho Strategic Plan 2023-2028

BACKGROUND AND ANALYSIS:
In 2022, the City of Rio Rancho completed its first 5-year Strategic Plan. The plan was implemented as a means to set, prioritize, and track goals and objectives of the City operations, in an effort to fulfill the mission of the organization.

With input from the Governing Body, the community, and City staff, the 2023-2028 Strategic Plan is a continuance of the City's commitment to using a systematic method for policy formation and the delivery of services to the citizens of Rio Rancho.

The plan identifies long-term, broad, and achievable goals and objectives in five key service areas: Quality of Life, Community and Economic Development, Public Infrastructure, Public Safety, and Organizational Excellence.

Progress on the plan will be tracked and reported to the Governing Body annually and made available to the public.

IMPACT:
Approving the Resolution adopting the proposed 2023-2028 Strategic Plan will result in an operational focus in meeting the goals and objectives listed.

ALTERNATIVES:
Approve the Resolution.

Do not approve the Resolution.

DEPARTMENT RECOMMENDATION:
City staff recommends approval of the Resolution.

ATTACHMENT: Resolution
ATTACHMENT: 2023-2028 Strategic Plan FINAL September 14 2023.pdf

CITY OF RIO RANCHO
RESOLUTION

RESOLUTION NO. **ENACTMENT NO.**

RESOLUTION ADOPTING THE CITY OF RIO RANCHO STRATEGIC PLAN 2023-2028

WHEREAS: a Strategic Plan is an agreed upon set of priorities that helps guide organizational decision-making and resource allocation; and

WHEREAS: the City of Rio Rancho concluded the previous five-year Strategic Plan in 2022; and

WHEREAS: the 2023-2028 Strategic Plan was developed at the direction of the Governing Body, based on input from citizens and City staff; and

WHEREAS: upon adoption, efforts will shift towards implementing the plan's goals and objectives; and

WHEREAS: regular progress updates on plan implementation will be provided to the Governing body annually and made available to the public, along with reviewing any identified modifications.

NOW THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF RIO RANCHO:

That the City of Rio Rancho 2023-2028 Strategic Plan, attached hereto, is adopted.

ADOPTED THIS _____DAY OF _____, 2023.

_____
Greggory D. Hull, Mayor

ATTEST:

_____
Rebecca A. Martinez, City Clerk
(SEAL)

CITY OF RIO RANCHO

STRATEGIC PLAN 2023 - 2028

RioRancho
City of Vision

TABLE OF CONTENTS

Table of Contents 2

Introduction 3

What is Strategic Planning? 4

Development Process 5

Vision 6

Mission 7

Core Values 8

Methodology 9

Quality of Life 10-11

Community & Economic Development 12-15

Infrastructure 16-17

Public Safety 18-19

Organizational Excellence 20-23

Review & Updates 24

INTRODUCTION

In 2022, the City of Rio Rancho completed its first 5-year Strategic Plan. The Plan was implemented as a means to set, prioritize, and track goals and objectives of the city operations, in an effort to fulfill the mission of the organization.

This 2023-2028 Strategic Plan is a continuance of the City's commitment to using a systematic method for policy formation and the delivery of services to the citizens of the City of Rio Rancho.

This document highlights the strategic planning process utilized for the development of the 2023-2028 Plan and outlines what the Plan entails.

WHAT IS STRATEGIC PLANNING?

Strategic planning is a proactive technique to managing an organization. This planning process entails a comprehensive examination of the operations, including an assessment of law-mandating obligations and stakeholder and community expectations in line with established goals and objectives. Further, performance and productivity of the organization and the availability of resources are reviewed. Feedback is obtained from internal and external stakeholders and used throughout the strategic planning process to understand satisfaction levels, identify critical issues, and to pursue the most effective path to provide services.

The strategic planning technique is known for its ability to communicate purpose, prioritize tasks, track progress, and to identify and help address organization issues:

Communication - the plan communicates established tasks and activities to staff workers so that they know what is expected of them and how their individual efforts support the overall mission of the City.

Prioritization - goals and resources are prioritized. The Governing Body, City Manager, and staff must work together to accomplish the same set of goals in the established order of importance or need, as identified through the strategic planning process.

Tracking Progress/Accountability – the plan is an instrument for monitoring and reporting progress on goals and objectives. The data is then used to evaluate the advancement against set standards or benchmarks. Together, the tracking and evaluating provide for accountability, both internally and externally.

Addressing Organizational Issues – The evaluation data is also used to flag or address potential issues so that adjustments can be made proactively, as needed.

DEVELOPMENT PROCESS

INPUT FROM GOVERNING BODY

In December 2022, the Governing Body held a working group meeting with a planning consultant to review results of 2022 plan and to begin the process of establishing a new, five-year Strategic Plan. The Governing Body identified strengths and opportunities for improvement based on the results of the previous Strategic Plan, reviewed citizen input, reaffirmed goals, and identified objectives to be pursued in the new Plan.

INPUT FROM THE COMMUNITY

From December 2022 through January 2023, community and stakeholder feedback was collected during a series of town-hall meetings conducted by a third-party moderator. An online survey was also made available for two months to obtain input, whereby the results were aggregated by the consultant and trending data from the bi-annual National Community Survey was analyzed.

INPUT FROM STAFF

A Strategic Planning Committee was formed in January 2023 to review the results of the previous Strategic Plan and draft a new one. The Strategic Plan Committee, comprised of one representative from each department, utilized input from the Governing Body, the public, and their own subject matter expertise to develop the goals and objectives listed in the Plan. To help guide the process, the committee established a project charter which detailed the Committee's objectives, scope, deliverables, roles/responsibilities and plan of action, as well as a project timeline.The Committee met over the months of February to June 2023, during which they reviewed the data collected, developed proposed vision and mission statements, core values, key service areas, and goals and objectives.

VISION

Where do we want to be?

To provide a nationally recognized, small community environment with robust amenities for all.

MISSION

Why do we do what we do?

How will we get there?

The mission of the City of Vision is to deliver high quality of life for all people of Rio Rancho through exceptional municipal services.

CORE VALUES

How do we behave?

- **Stewardship – be fiscally responsible, conserve, and sustain for future generations.**
- **Integrity – be ethical and transparent with the highest degree of honesty.**
- **Safety and well-being – be responsive, proactive, and resilient in maintaining a safe and enjoyable living environment.**
- **Respect – treat one another with dignity and professionalism.**

METHODLOLGY

KEY SERVICE AREAS:

Five Key Service areas have been identified as those most reflective and essential to the citizens based on survey data and stakeholder input. Each goal and objective contributes to one or more Key Service Area:

Quality of Life | Community & Economic Development
Public Infrastructure | Public Safety | Organizational Excellence

GOALS:

As part of the strategic planning process, goals have been set to support the organization in achieving the vision and mission of the City of Rio Rancho. Each goal was developed using the S.M.A.R.T criteria (Doran, 1981), in that they are specific, measurable, attainable, realistic and timely.

Each goal has been grouped under the Key Service Area that it most accurately relates to.

S.M.A.R.T METHOD:

SPECIFIC

MEASURABLE

ATTAINABLE

RELEVANT

TIME-BASED

OBJECTIVES:

Objectives, action items or outputs required to accomplish the goals have been created to track and assess the progress of accomplishing both the objectives and goals. Reports on the progress of the goals/objectives will be maintained and provided to the Governing Body and made available to the public via the City's website.

QUALITY OF LIFE

ENHANCE COMMUNITY GATHERING SPACES

- Complete construction of Phase 2 of Campus Park
- Complete construction of Phase 2 of Broadmoor Senior Center
- Execute initial planning of Multi-Generational Recreation Facility (FMP)

INCREASE CULTURAL AND LIFELONG LEARNING OPPORTUNITIES

- Apply for or secure at least one temporary museum-quality exhibit to the library per year
- Conduct four all-ages, community-wide Library events per year
- Enhance existing large-scale community events at City parks and open spaces by increasing participant capacity and vendor opportunities

EXPAND PUBLIC ACCESS OF LIBRARY SERVICES

- Increase the number of Library cardholders from 35 thousand to 50 thousand
- Conduct 40 offsite events per year
- Enhance avenues for user feedback

ENCOURAGE AND AID IN HOME AND PROPERTY MAINTENANCE FOR COMMUNITY AESTHETICS

- Review and update property maintenance code
- Review and update nuisance sections of the Municipal Code
- Continue home repair assistance programs (subject to appropriations)

COMMUNITY & ECONOMIC DEVELOPMENT

IDENTIFY AND PROVIDE OPPORTUNITIES FOR ECONOMIC GROWTH

- Conduct site readiness gap analysis and a needs assessment plan to attract investments for economic base job creation and identify developmental steps needed to overcome hindrances businesses face in preparing a site for construction (target of 3 sites in plan cycle)
- Conduct an opportunity assessment for economic base job creation and capital investment in the chip manufacturing ecosystem and related supply chain

EXPAND DEVELOPMENT OF CITY CENTER FOR BUSINESS INVESTMENT AND EDUCATIONAL OPPORTUNITIES

- Complete Phase 1 of College Blvd. project
- Design Phase 2 of College Blvd. Project (Subject to UNM identifying and dedicating right-of-way)
- Develop 5-year sources and uses forecast for Higher Education GRT fund

TO IMPROVE SITE READINESS AND REINVESTMENT OPPORTUNITIES BY CREATING METROPOLITAN REDEVELOPMENT AREAS (MRAS)

- Update City ordinance to align with State
- MRA legislation
- Identify targeted areas for MRA designation and outline scope and intent of MRA plan designation to assess up to three nodes

SUPPORT AND ATTRACT BUSINESSES AND INVESTMENTS IN RIO RANCHO

- Develop and implement Business Retention and Expansion Program that supports the City's economic base businesses
- Develop and implement a micro-economic gardening program that helps micro- and small enterprises advance their growth trajectory
- Evaluate economic development organizational structure, tools, and resources and update existing ordinances, policies, and tools, as applicable
- Support additional and improved high-speed internet options

UPDATE GUIDELINES FOR THE NEXT 20 YEARS OF GROWTH IN THE CITY

- Reevaluate the Generalized Land Use Map (GLUM) in the Comprehensive Plan to identify new growth areas for residential and non-residential uses
- Use updated GLUM to encourage rezoning of Transitional Zoning areas
- Utilize land use best practices and community feedback to develop well-designed neighborhoods, commercial nodes, and increase housing variety

ADOPT AND IMPLEMENT AFFORDABLE HOUSING PLAN

- Complete Affordable Housing Study to assess demands and needs for diverse housing product
- Adopt and implement Affordable Housing Plan to enable resources and tools for affordable housing development

ADOPT AND IMPLEMENT UPDATES TO DEVELOPMENT-RELATED LEGISLATION

- **Update Development Process Manual (DPM) with corresponding updates to Municipal Code**
- **Update and modernize the Sign Code**
- **Update Impact Fee Schedule**

INFRASTRUCTURE

DEVELOP AND IMPLEMENT FACILITIES MASTER PLAN (FMP)

- Identify new building needs, funding sources, and begin planning and construction. Initially identified facilities (subject to Governing Body input):
  - Fire Station 8
  - Fire and Rescue Training Facility
  - Joint Public Safety Headquarters
  - Multi-Generational Recreation Facility
  - Operational Annex
- Assess conditions of existing facilities and develop regular maintenance schedule and capital reinvestment plan

PROVIDE TRANSPORTATION INFRASTRUCTURE TO EXPAND AND IMPROVE OVERALL MULTI-MODAL EXPERIENCE

- Advance long-range transportation planning and future road project pipeline through corridor studies, right-of-way acquisition, engineering design for construction-ready projects for State/Federal funding opportunities and potential future GO Bond Cycles
- Address 26 miles per year of residential roads through crack-patch-seal or hybrid-mill-inlay
- Repair 90% of street lighting on arterial roadways within 48 hours of reported outage
- Improve access to City Center for existing and future users

PROVIDE A SAFE, RELIABLE, AND SUSTAINABLE WATER INFRASRUCTURE SYSTEM

- Implement the Automatic Meter Infrastructure (AMI) program to install a minimum of 20 thousand smart water meters allowing access to usage data and remote notification of leaks, etc.
- Implement new customer experience and billing software system for new AMI
- Replace 3,000 antiquated service lines in accordance with EPA standards
- Pursue external state and federal grants to construct second Aquifer Injection Well
- Review utilities rate schedule

PUBLIC SAFETY

STRENGTHEN OUR CORE EMERGENCY RESPONSE AND SUPPORTING FUNCTIONS IN LINE WITH THE GROWTH AND NEEDS OF THE COMMUNITY

- Monitor local community trends to ensure Fire and Rescue and Police Departments meet public safety expectations and together develop short- and long-term goals to address growth in the community and departments.
- Deploy and deliver advanced training opportunities for public safety staff
- Plan Fire Station 8 (FMP)
- Plan Fire and Rescue Training Facility (FMP)
- Plan Joint Public Safety Headquarters (FMP)

IDENTIFY AND IMPLEMENT THE LATEST TECHNOLOGY TO IMPROVE EFFECTIVENESS AND EFFICIENCY OF PUBLIC SAFETY SERVICES

- Implement new Computer Aided Dispatch (CAD) system
- Implement new Records Management System (RMS)
- Evaluate feasibility of a Real-time Crime Center to increase community safety and integrate monitoring services

ENHANCE PUBLIC SAFETY COMMUNITY OUTREACH AND PROACTIVE COMMUNITY RISK REDUCTION EFFORTS

- Increase traffic education and enforcement for safe streets
- Evaluate and develop a joint Police and Fire comprehensive plan for preventative community outreach programs

ORGANIZATIONAL EXCELLENCE

DEVELOP LONG-TERM FINANCIAL PLANNING TO SUPPORT STRATEGIC INITIATIVES, FACILITIES MASTER PLAN (FMP), LARGE-SCALE CAPITAL (ICIP), AND OTHER NEEDS

- Utilize debt financing in strategic, long-term planning for capital projects, infrastructure, and other growth-related initiatives
- Review and update fee schedules to ensure appropriate cost recovery, counter inflation and maintain fair and equitable charges for services

STRIVE TO BE A PREFERRED EMPLOYER IN THE METRO AREA

- Assess department organizational structures for multiyear staffing projections
- Develop and implement career professional development for existing employees' progression
- Expand avenues to drive employee engagement
- Augment recruitment efforts through various types of targeted advertising and candidate outreach
- Maintain competitive employee compensation plan and total benefits package through continued market analysis and adjustments

CULTIVATE A HEALTHY AND SAFE WORK ENVIRONMENT

- Promote and expand access to mental health resources
- Further departmental risk assessment for targeted safety and technical training
- Establish online interactive employee benefits manual to allow for self-service

ENHANCE ACCESS TO MUNICIPAL GOVERNMENT

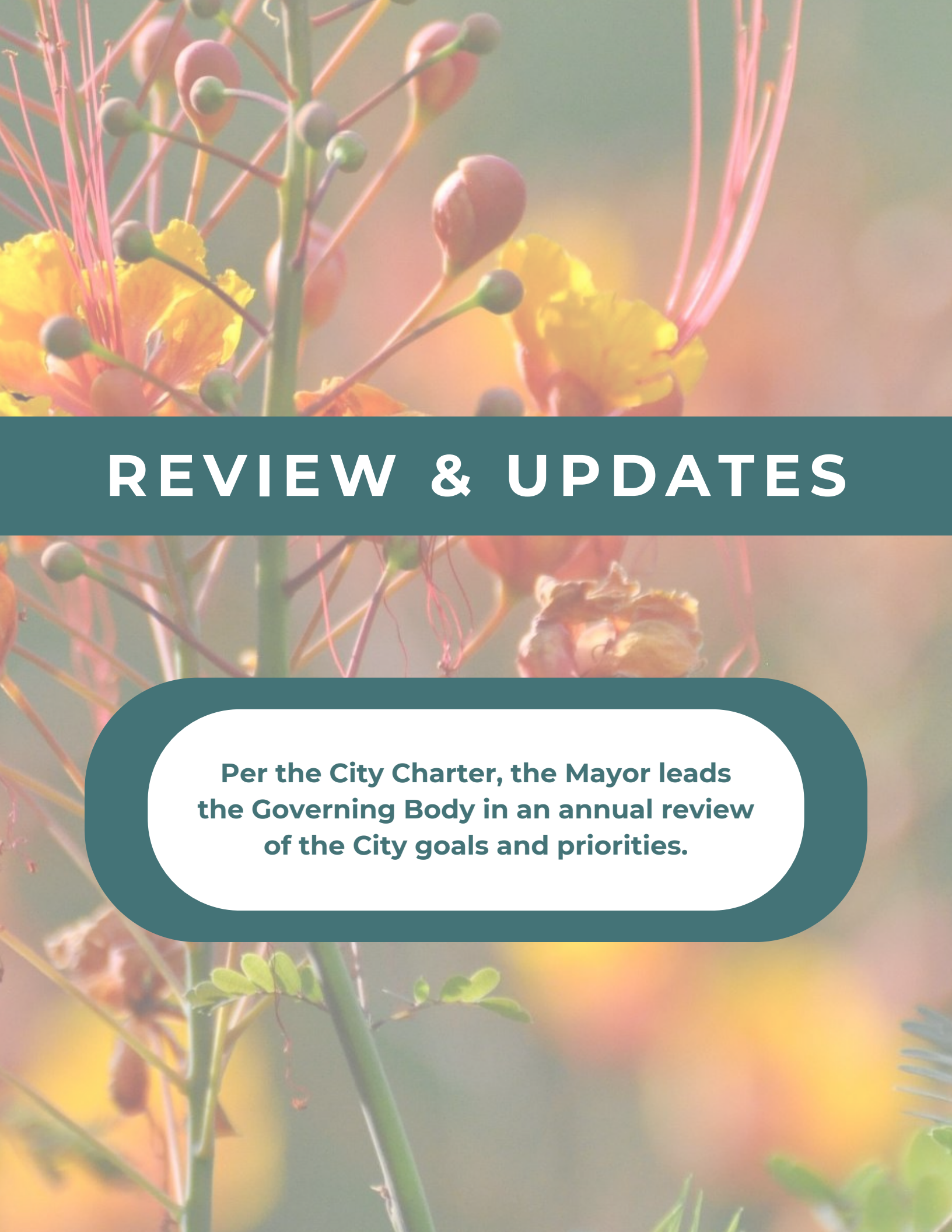
- Improve public interface to access and retrieve public records
- Enhance methods of e-payments and online customer interactions/transactions for city services

BUILD A SENSE OF COMMUNITY THROUGH CITIZEN PARTICIPATION

- Establish process to afford citizen further volunteer opportunities
- Continue to assess municipal election options with the goal of increasing voter turnout

IMPROVE OPERATIONAL EXCELLENCE THROUGH INTERDEPARTMENTAL SUPPORT AND COLLABORATION

- Strive for 50% of vehicles and equipment, including first responders, are repaired by in-house staff within 24 hours
- Implement a new Enterprise Resource Planning (ERP) system
- Establish and/or update interdepartmental processes



REVIEW & UPDATES

Per the City Charter, the Mayor leads the Governing Body in an annual review of the City goals and priorities.

CITY OF RIO RANCHO
COVER PAGE

Legislation Item: D38

AGENDA DATE:
September 28, 2023

DEPARTMENT:
Administration

SUBJECT:
D38, Advice and Consent of the Governing Body for American Rescue Plan Act Subrecipient Agreement Between the City of Rio Rancho and Homewise, Inc., for a Home Repair Program

BACKGROUND AND ANALYSIS:
In 2021, the Federal government passed the American Rescue Plan Act (ARPA), which provided $350 billion for state, local, territorial, and tribal governments to respond to the COVID-19 pandemic and its economic impacts. The City of Rio Rancho received a direct allocation of ARPA funds in the amount of $12,873,197.

Federal guidance states that assistance to households via home repairs is an eligible expenditure, and anyone low- to moderate-income is presumed to have a negative economic impact due to COVID-19 and is therefore eligible to receive assistance via a program such as home repair.

In December 2021, the Governing Body authorized the use of ARPA funds, $360,000, to launch and administer a pilot home repair program for low- and moderate-income homeowners in Rio Rancho. Homewise, Inc., contracted with the City to perform duties including income qualify homeowners, offer technical assistance and education to homeowners, verify work, and manage the program within Federal guidelines as required by ARPA funding regulations.

The City's pilot program was launched in spring 2022. Homewise, Inc., received more than 250 applications for available funding (up to $25,000 per home/project) to make eligible repairs that included heating/mechanical systems, plumbing systems, roofs, doors, windows siding, electrical systems, and other principal components where those systems were severely deteriorated or failing or in order to bring those systems up to current building codes and standards.

By March 2023, all available funding had been utilized with 15 homes receiving a variety of repair work.

The current Fiscal Year Budget approved by the Governing Body includes approximately $580,000 in ARPA funds earmarked for a home repair program.

City staff and Homewise, Inc., have developed an agreement, subject to Governing Body consent, to allocate and administer available funding for the second phase of a home repair program.

As a subrecipient of the ARPA funding, Homewise, Inc., would assist a minimum of 20 homeowners to repair and preserve their homes. Assistance would be capped at $25,000 for each home (a total of $500,000 for all projects) and is limited to assistance to homeowners who are at or below 65% of the area median income for county and size of household (see attachment) based on the most

recent data published by the U.S. Department of Housing and Urban Development. The 65% threshold related to income is pursuant to the final Federal rule for ARPA funding use.

Households eligible for program assistance and who hold legal title to a property in need of repair may qualify for financial assistance in the form of a grant. Eligible expenses would include heating/mechanical systems, plumbing systems, roofs, doors, windows, siding, electrical systems, and other principal fixtures and standard components where systems are severely deteriorated or failing and/or to bring them up to current building codes and standards while simultaneously increasing efficiency of the home.

Homewise, Inc., will use a point scale to direct the use of funds to those most in need. Applicants will be ranked equitably according to the same program criteria that includes applicant's income, homeowner's age, disability status, and the results of a complimentary third-party needs assessments designed to identify, health, safety, durability, and energy-efficiency concerns. This approach ensures that funds are targeted to households most in need. Homewise, Inc., will also screen applicants from the 2022 pilot program waiting list.

Homewise, Inc., will income qualify homeowners, offer technical assistance and education to the homeowners, verify completion of work via on-site inspection with before and after photo documentation, audit contractor work, and manage the program within Federal guidelines as required by the ARPA funding regulations. Homewise will pay contractors directly in two installments. The first 50% at approval of bids and the second 50% after work completion with corresponding certification and photo documentation. Homewise, Inc., will be paid up to 15% ($75,000) of the total agreement amount to administer the home repair program. Homewise, Inc., will request reimbursement for allowable expenses and payment of its administrative fee by submitting to the City a request form with supporting documentation.

The proposed agreement with Homewise, Inc., has a termination date of December 31, 2024, which ensures use of the funds pursuant to Federal deadlines.

The City's recent Affordable Housing Study identified minor/major home repair programs as a method to support affordable housing in the community.

Pursuant to policy, the advice and consent of the Governing Body is required for contracts in excess of $500,000.

IMPACT:

If consent is provided, the City Manager will execute the Subrecipient Agreement with Homewise, Inc.

Upon execution of the agreement, $575,000 of Federal ARPA funds will be available for a low- and moderate-income home repair program.

There is no impact to the General Fund.

ALTERNATIVES:

Accept the agreement.

Do not accept the agreement.

DEPARTMENT RECOMMENDATION:

Staff recommends acceptance of the agreement.

ATTACHMENT: FY 2023 Income Limits Documentation Sys...pdf
ATTACHMENT: Draft_Agreement_RR_and_Homewise_September_2023_with_Attachments Updated.pdf

FY 2023 Income Limits Documentation System

FY 2023 Income Limits Summary

FY 2023 Income Limit Area	Median Family Income Click for More Detail	FY 2023 Income Limit Category	Persons in Family							
			1	2	3	4	5	6	7	8
Albuquerque, NM MSA	$86,500	Very Low (50%) Income Limits ($) Click for More Detail	28,000	32,000	36,000	**39,950**	43,150	46,350	49,550	52,750
		Extremely Low Income Limits ($)* Click for More Detail	16,800	19,720	24,860	**30,000**	35,140	40,280	45,420	50,560
		Low (80%) Income Limits ($) Click for More Detail	44,750	51,150	57,550	**63,900**	69,050	74,150	79,250	84,350

NOTE: **Sandoval County** is part of the **Albuquerque, NM MSA**, so all information presented here applies to all of the Albuquerque, NM MSA.

The **Albuquerque, NM MSA** contains the following areas: Bernalillo County, NM; Sandoval County, NM; Torrance County, NM; and Valencia County, NM.

* The FY 2014 Consolidated Appropriations Act changed the definition of extremely low-income to be the greater of 30/50ths (60 percent) of the Section 8 very low-income limit or the poverty guideline as established by the Department of Health and Human

Services (HHS), provided that this amount is not greater than the Section 8 50% very low-income limit. Consequently, the extremely low income limits may equal the very low (50%) income limits.

Income Limit areas are based on FY 2023 Fair Market Rent (FMR) areas. For information on FMRs, please see our associated FY 2023 Fair Market Rent documentation system.

For last year's Median Family Income and Income Limits, please see here:

FY2022 Median Family Income and Income Limits for Albuquerque, NM MSA

Select a different county or county equivalent in New Mexico:

Quay County
Rio Arriba County
Roosevelt County
San Juan County
San Miguel County
Sandoval County

Select county or county equivalent

Select any FY2023 HUD Metropolitan FMR Area's Income Limits:

Albuquerque, NM MSA

Select HMFA Income Limits Area

Or press below to start over and select a different state:

Select a new state

Update URL for Bookmarking or Emailing

Prepared by the Program Parameters and Research Division, HUD.

ARPA SUBRECIPIENT AGREEMENT BETWEEN CITY OF RIO RANCHO AND HOMEWISE INC., FOR RIO RANCHO HOME REPAIR PROGRAM

THIS AGREEMENT, entered this day of _____, 2023 by and between the **CITY OF RIO RANCHO** (herein called the "City") and **Homewise Inc.,** (herein called the "Subrecipient") for the Rio Rancho Home Repair Program (herein called the "Program").

WHEREAS, the United States Department of the Treasury ("Treasury") has allocated to the City $12,873,197.00 as federal stimulus funding from the Coronavirus State Fiscal Recovery Fund and Coronavirus Local Fiscal Recovery Funds ("ARPA Funds") under Section 603(b) of the Social Security Act, as amended by Section 9901 of the American Rescue Plan Act ("ARPA"), of which $6,436,598.50 was transmitted to the City on May 19, 2021, with the remainder of $6,436,598.50 disbursed by the Treasury to the City one year thereafter, for the limited purposes identified in the Interagency Agreement between the Treasury and the City ("IGA"), identified as Attachment A, the Coronavirus State and Local Fiscal Recovery Funds Final Rule ("Final Rule"), identified in Attachment B, and the Compliance and Reporting Guidance for State and Local Fiscal Recovery Funds ("Compliance and Reporting Guidelines"), identified in Attachment C. Attachments A, B, and C are attached hereto and incorporated herein by this reference; and

WHEREAS, ARPA section 603(c) authorizes the City to use ARPA Funds awarded to the City for the eligible purpose of responding to the public health emergency with respect to the Coronavirus Disease 2019 ("COVID-19") or its negative economic impacts, including assistance to households; and

WHEREAS, The City desires to allocate a portion of ARPA Funds the City has received to address the impact of COVID-19 on low- to moderate-income households in accordance with section 603(c)(1)(A); and

WHEREAS, ARPA section 603(c)(3) authorizes the City to transfer funds to a private non-profit entity for the purpose of meeting ARPA's overarching goals in accordance with ARPA's requirements for use of ARPA Fund's; and

WHEREAS, the City wishes to engage the Subrecipient (Federal Tax ID No. 016268406 , DUNS No.: 48LN5) to assist the City in utilizing ARPA Funds to address the impact of COVID-19 on low- to moderate-income households through appropriate and qualifying expenditures; and

WHEREAS, Subrecipient desires to enter into this Agreement with the City to assist in utilizing ARPA Funds to address the impact of COVID-19 on low- to moderate-income households through appropriate and qualifying expenditures as described in the Scope of Work, identified in Attachment D and incorporated herein by this reference; and

WHEREAS, Subrecipient acknowledges and agrees to be bound by all ARPA Fund requirements applicable to the City whether such requirements are now in effect or become effective at a future date; and

WHEREAS, the funds used in this Agreement are not for use in research and development; NOW, THEREFORE, in consideration of the foregoing recitals which are incorporate herein by reference, and the terms and conditions set for the below, the parties agree as follows:

1. Scope of Work. The City is responsible for ensuring ARPA Funds are used in accordance with all applicable requirements. The City will provide assistance and guidance to the Subrecipient as may be required to administer the Project and comply with all applicable ARPA Funds requirements. The Subrecipient will be responsible for administering the Program in accordance with the Scope of Work (identified in Attachment D), ARPA, the IGA, the Final Rule, and the Compliance and Reporting Guidelines. The Subrecipient shall administer the Program in a manner satisfactory to the City and consistent with all applicable and requisite rules and standards which pertain to ARPA Funds expenditures.

2. Effective Date and Term. This Agreement shall commence upon execution by all parties and shall remain in effect until it terminates December 31, 2024, unless the City elects to terminate earlier by issuing to Subrecipient a written termination notice.

3. ARPA Funds. The City agrees to make available to the Subrecipient a total sum not to exceed $575,000. of ARPA Funds, which shall be used to reimburse Subrecipient for work performed prior to the termination of this Agreement and in accordance with the Scope of Work, and as allowed pursuant to ARPA Funds allowable uses.

4. Subrecipient's Use of ARPA Funds. The Subrecipient shall ensure that all requests for reimbursement of expenses from ARPA Funds are eligible uses defined in the IGA, the Final Rule, and the Compliance and Reporting Guidelines. Subrecipient acknowledges and agrees that the use of ARPA Funds requires strict compliance with all applicable federal laws, rules, and regulations. Subrecipient agrees to be bound by all such ARPA Funds requirements now in effect, or which may become effective in the future, and shall comply with all ARPA Fund requirements.

5. Ineligible Uses of ARPA Funds. The Subrecipient shall not seek reimbursement from the City for ineligible expenses, as defined in the IGA, the Final Rule, the Compliance and Reporting Guidelines, or any other rules and regulations applicable to ARPA Funds. The City reserves the right, in its sole discretion, to deny any reimbursement request for ineligible expenses. In the event that a reimbursement is paid by the City to Subrecipient and later identified as an ineligible use of ARPA Funds, the Subrecipient shall immediately return the funds to the City, without hesitation or delay. Furthermore, Subrecipient acknowledges and accepts hereby that all funds distributed pursuant to this agreement are ARPA Funds and are subject to all regulations, requirements and restrictions generally associated with federally funded programs in addition to all ARPA Funding specific requirements.

6. Reimbursement Request and Reporting Requirements. All reimbursement requests shall be made in accordance with the Scope of Work, as identified in Attachment D. Subrecipient shall adhere to, and comply with all reporting requirements defined in the IGA, the Final Rule, the Compliance and Reporting Guidelines, and any other applicable rule, regulation, or law. Furthermore, the Subrecipient shall provide all required reports to the City in the form and format proscribed by the City in the Scope of Work.

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7. Termination. The City may terminate this Agreement, for convenience or otherwise and for no consideration or damages, upon written notice to the Subrecipient.

8. Independent Contractor. Nothing contained in this Agreement is intended to, or shall be construed in any manner, as creating or establishing the relationship of employer/employee between the parties. The Subrecipient shall at all times remain an "independent contractor" with respect to the services to be performed under this Agreement. The City shall be exempt from payment of all Unemployment Compensation, FICA, retirement, life and/or medical insurance and Workers' Compensation Insurance, as the Subrecipient is an independent contractor.

9. Hold Harmless and Indemnification. The Subrecipient shall hold harmless, defend and indemnify the City, its officers, officials, employees, and agents from any and all claims, actions, suits, charges and judgments whatsoever that arise out of the Subrecipient's performance or nonperformance of the services or subject matter called for in this Agreement or any Attachments thereto. This section shall survive the expiration or termination of this Agreement.

10. Compliance with Laws and Guidelines. The Subrecipient shall comply with all federal, state, and local laws and all requirements of the IGA, Final Rule, and Compliance and Reporting Guidelines (attached hereto as Attachments A, B, and C). Furthermore, Subrecipient agrees to abide by any future laws or regulations which may apply to the expense of ARPA Funds.

11. Maintenance and Audit of Records. The Subrecipient shall maintain records, books, documents, and other materials relevant to its performance under this Agreement as required by the City and pursuant to the IGA, Final Rule, and Compliance and Reporting Guidelines. These records shall be subject to inspection, review, and audit by the City or its designee and the Treasury as required by the IGA, Final Rule and the Compliance and Reporting Guidelines for a minimum of five (5) years following termination of this Agreement. Additionally, the Subrecipient shall adhere to any future guidelines or requirements that may be established by the Treasury during the term of this Agreement which apply to the expense of ARPA Funds. If it is determined during the course of an audit that Subrecipient was reimbursed for unallowable or ineligible costs under this Agreement, the Subrecipient agrees to promptly, without hesitation or delay, repay the City for such payments.

12. Notices. Notices required by, or made pursuant to this Agreement shall be in writing and delivered via mail (postage prepaid), commercial courier, or personal delivery, or sent by facsimile or other electronic means. Any notice delivered or sent as aforesaid shall be effective on the date of delivery or sending. All notices and other written communications under this Agreement shall be addressed to the individuals in the capacities indicated below, unless otherwise modified by subsequent written notice.

    Communication and details concerning this contract shall be directed to the following contract representatives:

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City:	Subrecipient:
Carole Jaramillo	Johanna Gilligan
Department of Financial Services	Homewise, Inc.
3200 Civic Center Circle NE	500 2nd St. SW
Rio Rancho, NM 87144-450	Albuquerque, NM 87102
Telephone: (505) 896-8766	Telephone: (505) 243-6566
Fax Number: (505) 891-5762	Fax Number: (505) 545-6804
Email: cjaramillo@rrnm.gov	Email: jgilligan@homewise.org

13. Survival. The provisions of this Agreement that by their sense and purpose should survive expiration or termination of this Agreement shall so survive. Those provisions include without limitation Indemnification and Audit of Records.

14. Amendment. No amendment or modification to the Agreement will be effective without the prior written consent of the authorized representatives of the Parties.

15. Governing Law and Venue. The Agreement shall be governed in all respects by the laws of the state of New Mexico, without regard to conflicts of law or choice of law provisions. Any action arising out of or in connection with the Agreement shall be heard by a court of competent jurisdiction in Sandoval County, New Mexico.

16. Non-Waiver. No failure on the part of the City to exercise, and no delay in exercising, any right hereunder shall operate as a waver thereof; nor shall any single or partial exercise by the City of any right hereunder preclude any other or further exercise thereof or the exercise of any other right. The remedies herein provided are cumulative and not exclusive of any remedy available to the City at law or in equity.

17. Binding Effect. This Agreement and all Attachments shall be binding upon and inure to the benefit of the Parties hereto and their respective successors.

18. Assignment. The Subrecipient shall not assign or transfer any of its interests in or obligations under this Agreement without the prior written consent of the City.

19. Entire Agreement. This Agreement and Attachments constitutes the entire agreement between the City and the Subrecipient for the use of funds received under this Agreement and it supersedes all prior or contemporaneous communications and proposals, whether electronic, oral, or written between the Parties with respect to this Agreement.

20. No Third-Party Beneficiaries. Nothing herein shall be deemed to create or confer any right, action, or benefit in, to, or on the part of any person or entity that is not a party to this Agreement. This provision shall not limit any obligation which either Party has to the Treasury in connection with the use of ARPA Funds, including the obligations to provide access to records, cooperate with audits, or adhere to all applicable rules or regulations relating to use of federal funds.

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21. Severability. If any provision of this Agreement is held invalid, the remainder of the Agreement shall not be affected thereby and all other parts of this Agreement shall nevertheless be in full force and effect.

22. Section Headings. The section headings and subheadings contained in this Agreement are included for convenience only and shall not limit or otherwise affect the terms of this Agreement.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement.

City:
CITY OF RIO RANCHO

By: _____

Matthew Geisel, City Manager

Date: _____

Subrecipient:
HOMEWISE, INC

By: _____

Johanna Gilligan,

Chief External Affairs Officer

Date: _____

APPROVED AS TO FORM:

By: _____
Joshua Rubin, City Attorney

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ATTACHMENT A

OMB Approved No.:1505-0271
Expiration Date: 11/30/2021

U.S. DEPARTMENT OF THE TREASURY
CORONAVIRUS LOCAL FISCAL RECOVERY FUND

Recipient name and address: City or Rio Rancho 3200 Civic Center Circle Rio Rancho, New Mexico 87144-4501	DUNS Number: 002186047 Taxpayer Identification Number: 850288264 Assistance Listing Number and Title: 21.019

Sections 602(b) and 603(b) of the Social Security Act (the Act) as added by section 9901 of the American Rescue Plan Act, Pub. L. No. 117-2 (March 11, 2021) authorize the Department of the Treasury (Treasury) to make payments to certain recipients from the Coronavirus State Fiscal Recovery Fund and the Coronavirus Local Fiscal Recovery Fund.

Recipient hereby agrees, as a condition to receiving such payment from Treasury, to the terms attached hereto.

Recipient:

Authorized Representative: Matthew B. Geisel
Title: City Manager
Date signed: 12-May-2021

U.S. Department of the Treasury:

Authorized Representative:
Title:
Date signed:

PAPERWORK REDUCTION ACT NOTICE
The information collected will be used for the U.S. Government to process requests for support. The estimated burden associated with this collection of information is 15 minutes per response. Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be directed to the Office of Privacy, Transparency and Records, Department of the Treasury, 1500 Pennsylvania Ave., N.W., Washington, D.C. 20220. DO NOT send the form to this address. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by OMB.

U.S. DEPARTMENT OF THE TREASURY
CORONAVIRUS LOCAL FISCAL RECOVERY FUND
AWARD TERMS AND CONDITIONS

1. Use of Funds.

   a. Recipient understands and agrees that the funds disbursed under this award may only be used in compliance with section 603(c) of the Social Security Act (the Act), Treasury's regulations implementing that section, and guidance issued by Treasury regarding the foregoing.

   b. Recipient will determine prior to engaging in any project using this assistance that it has the institutional, managerial, and financial capability to ensure proper planning, management, and completion of such project.

2. Period of Performance. The period of performance for this award begins on the date hereof and ends on December 31, 2026. As set forth in Treasury's implementing regulations, Recipient may use award funds to cover eligible costs incurred during the period that begins on March 3, 2021, and ends on December 31, 2024.

3. Reporting. Recipient agrees to comply with any reporting obligations established by Treasury as they relate to this award.

4. Maintenance of and Access to Records

   a. Recipient shall maintain records and financial documents sufficient to evidence compliance with section 603(c) of the Act, Treasury's regulations implementing that section, and guidance issued by Treasury regarding the foregoing.

   b. The Treasury Office of Inspector General and the Government Accountability Office, or their authorized representatives, shall have the right of access to records (electronic and otherwise) of Recipient in order to conduct audits or other investigations.

   c. Records shall be maintained by Recipient for a period of five (5) years after all funds have been expended or returned to Treasury, whichever is later.

5. Pre-award Costs. Pre-award costs, as defined in 2 C.F.R. § 200.458, may not be paid with funding from this award.

6. Administrative Costs. Recipient may use funds provided under this award to cover both direct and indirect costs.

7. Cost Sharing. Cost sharing or matching funds are not required to be provided by Recipient.

8. Conflicts of Interest. Recipient understands and agrees it must maintain a conflict of interest policy consistent with 2 C.F.R. § 200.318(c) and that such conflict of interest policy is applicable to each activity funded under this award. Recipient and subrecipients must disclose in writing to Treasury or the pass-through entity, as appropriate, any potential conflict of interest affecting the awarded funds in accordance with 2 C.F.R. § 200.112.

9. Compliance with Applicable Law and Regulations.

   a. Recipient agrees to comply with the requirements of section 602 of the Act, regulations adopted by Treasury pursuant to section 602(f) of the Act, and guidance issued by Treasury regarding the foregoing. Recipient also agrees to comply with all other applicable federal statutes, regulations, and executive orders, and Recipient shall provide for such compliance by other parties in any agreements it enters into with other parties relating to this award.

   b. Federal regulations applicable to this award include, without limitation, the following:

      i. Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, 2 C.F.R. Part 200, other than such provisions as Treasury may determine are inapplicable to this Award and subject to such exceptions as may be otherwise provided by Treasury. Subpart F – Audit Requirements of the Uniform Guidance, implementing the Single Audit Act, shall apply to this award.

      ii. Universal Identifier and System for Award Management (SAM), 2 C.F.R. Part 25, pursuant to which the award term set forth in Appendix A to 2 C.F.R. Part 25 is hereby incorporated by reference.

      iii. Reporting Subaward and Executive Compensation Information, 2 C.F.R. Part 170, pursuant to which the award term set forth in Appendix A to 2 C.F.R. Part 170 is hereby incorporated by reference.

      iv. OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement), 2 C.F.R. Part 180, including the requirement to include a term or condition in all lower tier covered transactions (contracts and subcontracts described in 2 C.F.R. Part 180, subpart B) that the award is subject to 2 C.F.R. Part 180 and Treasury's implementing regulation at 31 C.F.R. Part 19.

v. Recipient Integrity and Performance Matters, pursuant to which the award term set forth in 2 C.F.R. Part 200, Appendix XII to Part 200 is hereby incorporated by reference.

vi. Governmentwide Requirements for Drug-Free Workplace, 31 C.F.R. Part 20.

vii. New Restrictions on Lobbying, 31 C.F.R. Part 21.

viii. Uniform Relocation Assistance and Real Property Acquisitions Act of 1970 (42 U.S.C. §§ 4601-4655) and implementing regulations.

ix. Generally applicable federal environmental laws and regulations.

c. Statutes and regulations prohibiting discrimination applicable to this award include, without limitation, the following:

i. Title VI of the Civil Rights Act of 1964 (42 U.S.C. §§ 2000d et seq.) and Treasury's implementing regulations at 31 C.F.R. Part 22, which prohibit discrimination on the basis of race, color, or national origin under programs or activities receiving federal financial assistance;

ii. The Fair Housing Act, Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§ 3601 et seq.), which prohibits discrimination in housing on the basis of race, color, religion, national origin, sex, familial status, or disability;

iii. Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of disability under any program or activity receiving federal financial assistance;

iv. The Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101 et seq.), and Treasury's implementing regulations at 31 C.F.R. Part 23, which prohibit discrimination on the basis of age in programs or activities receiving federal financial assistance; and

v. Title II of the Americans with Disabilities Act of 1990, as amended (42 U.S.C. §§ 12101 et seq.), which prohibits discrimination on the basis of disability under programs, activities, and services provided or made available by state and local governments or instrumentalities or agencies thereto.

10. Remedial Actions. In the event of Recipient's noncompliance with section 602 of the Act, other applicable laws, Treasury's implementing regulations, guidance, or any reporting or other program requirements, Treasury may impose additional conditions on the receipt of a subsequent tranche of future award funds, if any, or take other available remedies as set forth in 2 C.F.R. § 200.339. In the case of a violation of section 602(c) of the Act regarding the use of funds, previous payments shall be subject to recoupment as provided in section 602(e) of the Act and any additional payments may be subject to withholding as provided in sections 602(b)(6)(A)(ii)(III) of the Act, as applicable.

11. Hatch Act. Recipient agrees to comply, as applicable, with requirements of the Hatch Act (5 U.S.C. §§ 1501-1508 and 7324-7328), which limit certain political activities of State or local government employees whose principal employment is in connection with an activity financed in whole or in part by this federal assistance.

12. False Statements. Recipient understands that making false statements or claims in connection with this award is a violation of federal law and may result in criminal, civil, or administrative sanctions, including fines, imprisonment, civil damages and penalties, debarment from participating in federal awards or contracts, and/or any other remedy available by law.

13. Publications.Any publications produced with funds from this award must display the following language: "This project [is being] [was] supported, in whole or in part, by federal award number [enter project FAIN] awarded to [name of Recipient] by the U.S. Department of the Treasury."

14. Debts Owed the Federal Government.

a. Any funds paid to Recipient (1) in excess of the amount to which Recipient is finally determined to be authorized to retain under the terms of this award; (2) that are determined by the Treasury Office of Inspector General to have been misused; or (3) that are determined by Treasury to be subject to a repayment obligation pursuant to sections 602(e) and 603(b)(2)(D) of the Act and have not been repaid by Recipient shall constitute a debt to the federal government.

b. Any debts determined to be owed the federal government must be paid promptly by Recipient. A debt is delinquent if it has not been paid by the date specified in Treasury's initial written demand for payment, unless other satisfactory arrangements have been made or if the Recipient knowingly or improperly retains funds that are a debt as defined in paragraph 14(a). Treasury will take any actions available to it to collect such a debt.

15. Disclaimer.

a. The United States expressly disclaims any and all responsibility or liability to Recipient or third persons for the actions of Recipient or third persons resulting in death, bodily injury, property damages, or any other losses resulting in any way from the performance of this award or any other losses resulting in any way from the performance of this award or any contract, or subcontract under this award.

b. The acceptance of this award by Recipient does not in any way establish an agency relationship between the United States and Recipient.

16. Protections for Whistleblowers.

a. In accordance with 41 U.S.C. § 4712, Recipient may not discharge, demote, or otherwise discriminate against an employee in reprisal for disclosing to any of the list of persons or entities provided below, information that the employee reasonably believes is evidence of gross mismanagement of a federal contract or grant, a gross waste of federal funds, an abuse of authority relating to a federal contract or grant, a substantial and specific danger to public health or safety, or a violation of law, rule, or regulation related to a federal contract (including the competition for or negotiation of a contract) or grant.

b. The list of persons and entities referenced in the paragraph above includes the following:

i. A member of Congress or a representative of a committee of Congress;

ii. An Inspector General;

iii. The Government Accountability Office;

iv. A Treasury employee responsible for contract or grant oversight or management;

v. An authorized official of the Department of Justice or other law enforcement agency;

vi. A court or grand jury; or

vii. A management official or other employee of Recipient, contractor, or subcontractor who has the responsibility to investigate, discover, or address misconduct.

c. Recipient shall inform its employees in writing of the rights and remedies provided under this section, in the predominant native language of the workforce.

17. Increasing Seat Belt Use in the United States. Pursuant to Executive Order 13043, 62 FR 19217 (Apr. 18, 1997), Recipient should encourage its contractors to adopt and enforce on-the-job seat belt policies and programs for their employees when operating company-owned, rented or personally owned vehicles.

18. Reducing Text Messaging While Driving. Pursuant to Executive Order 13513, 74 FR 51225 (Oct. 6, 2009), Recipient should encourage its employees, subrecipients, and contractors to adopt and enforce policies that ban text messaging while driving, and Recipient should establish workplace safety policies to decrease accidents caused by distracted drivers.

OMB Approved No. 1505-0271
Expiration Date: November 30, 2021

ASSURANCES OF COMPLIANCE WITH CIVIL RIGHTS REQUIREMENTS
ASSURANCES OF COMPLIANCE WITH TITLE VI OF THE CIVIL RIGHTS ACT OF 1964

As a condition of receipt of federal financial assistance from the Department of the Treasury, the recipient named below (hereinafter referred to as the "Recipient") provides the assurances stated herein. The federal financial assistance may include federal grants, loans and contracts to provide assistance to the Recipient's beneficiaries, the use or rent of Federal land or property at below market value, Federal training, a loan of Federal personnel, subsidies, and other arrangements with the intention of providing assistance. Federal financial assistance does not encompass contracts of guarantee or insurance, regulated programs, licenses, procurement contracts by the Federal government at market value, or programs that provide direct benefits.

The assurances apply to all federal financial assistance from or funds made available through the Department of the Treasury, including any assistance that the Recipient may request in the future.

The Civil Rights Restoration Act of 1987 provides that the provisions of the assurances apply to all of the operations of the Recipient's program(s) and activity(ies), so long as any portion of the Recipient's program(s) or activity(ies) is federally assisted in the manner prescribed above.

1. Recipient ensures its current and future compliance with Title VI of the Civil Rights Act of 1964, as amended, which prohibits exclusion from participation, denial of the benefits of, or subjection to discrimination under programs and activities receiving federal financial assistance, of any person in the United States on the ground of race, color, or national origin (42 U.S.C. § 2000d et seq.), as implemented by the Department of the Treasury Title VI regulations at 31 CFR Part 22 and other pertinent executive orders such as Executive Order 13166, directives, circulars, policies, memoranda, and/or guidance documents.

2. Recipient acknowledges that Executive Order 13166, "Improving Access to Services for Persons with Limited English Proficiency," seeks to improve access to federally assisted programs and activities for individuals who, because of national origin, have Limited English proficiency (LEP). Recipient understands that denying a person access to its programs, services, and activities because of LEP is a form of national origin discrimination prohibited under Title VI of the Civil Rights Act of 1964 and the Department of the Treasury's implementing regulations. Accordingly, Recipient shall initiate reasonable steps, or comply with the Department of the Treasury's directives, to ensure that LEP persons have meaningful access to its programs, services, and activities. Recipient understands and agrees that meaningful access may entail providing language assistance services, including oral interpretation and written translation where necessary, to ensure effective communication in the Recipient's programs, services, and activities.

3. Recipient agrees to consider the need for language services for LEP persons when Recipient develops applicable budgets and conducts programs, services, and activities. As a resource, the Department of the Treasury has published its LEP guidance at 70 FR 6067. For more information on taking reasonable steps to provide meaningful access for LEP persons, please visit http://www.lep.gov.

4. Recipient acknowledges and agrees that compliance with the assurances constitutes a condition of continued receipt of federal financial assistance and is binding upon Recipient and Recipient's successors, transferees, and assignees for the period in which such assistance is provided.

5. Recipient acknowledges and agrees that it must require any sub-grantees, contractors, subcontractors, successors, transferees, and assignees to comply with assurances 1-4 above, and agrees to incorporate the following language in every contract or agreement subject to Title VI and its regulations between the Recipient and the Recipient's sub-grantees, contractors, subcontractors, successors, transferees, and assignees:

   The sub-grantee, contractor, subcontractor, successor, transferee, and assignee shall comply with Title VI of the Civil Rights Act of 1964, which prohibits recipients of federal financial assistance from excluding from a program or activity, denying benefits of, or otherwise discriminating against a person on the basis of race, color, or national origin (42 U.S.C. § 2000d et seq.), as implemented by the Department of the Treasury's Title VI regulations, 31 CFR Part 22, which are herein incorporated by reference and made a part of this contract (or agreement). Title VI also includes protection to persons with "Limited English Proficiency" in any program or activity receiving federal financial assistance, 42 U.S.C. § 2000d et seq., as implemented by the Department of the Treasury's Title VI regulations, 31 CFR Part 22, and herein incorporated by reference and made a part of this contract or agreement.

6. Recipient understands and agrees that if any real property or structure is provided or improved with the aid of federal financial assistance by the Department of the Treasury, this assurance obligates the Recipient, or in the case of a subsequent transfer, the transferee, for the period during which the real property or structure is used for a purpose for which the federal

financial assistance is extended or for another purpose involving the provision of similar services or benefits. If any personal property is provided, this assurance obligates the Recipient for the period during which it retains ownership or possession of the property.

7. Recipient shall cooperate in any enforcement or compliance review activities by the Department of the Treasury of the aforementioned obligations. Enforcement may include investigation, arbitration, mediation, litigation, and monitoring of any settlement agreements that may result from these actions. The Recipient shall comply with information requests, on-site compliance reviews and reporting requirements.

8. Recipient shall maintain a complaint log and inform the Department of the Treasury of any complaints of discrimination on the grounds of race, color, or national origin, and limited English proficiency covered by Title VI of the Civil Rights Act of 1964 and implementing regulations and provide, upon request, a list of all such reviews or proceedings based on the complaint, pending or completed, including outcome. Recipient also must inform the Department of the Treasury if Recipient has received no complaints under Title VI.

9. Recipient must provide documentation of an administrative agency's or court's findings of non-compliance of Title VI and efforts to address the non-compliance, including any voluntary compliance or other agreements between the Recipient and the administrative agency that made the finding. If the Recipient settles a case or matter alleging such discrimination, the Recipient must provide documentation of the settlement. If Recipient has not been the subject of any court or administrative agency finding of discrimination, please so state.

10. If the Recipient makes sub-awards to other agencies or other entities, the Recipient is responsible for ensuring that sub-recipients also comply with Title VI and other applicable authorities covered in this document State agencies that make sub-awards must have in place standard grant assurances and review procedures to demonstrate that that they are effectively monitoring the civil rights compliance of subrecipients.

The United States of America has the right to seek judicial enforcement of the terms of this assurances document and nothing in this document alters or limits the federal enforcement measures that the United States may take in order to address violations of this document or applicable federal law.

Under penalty of perjury, the undersigned official(s) certifies that official(s) has read and understood the Recipient's obligations as herein described, that any information submitted in conjunction with this assurances document is accurate and complete, and that the Recipient is in compliance with the aforementioned nondiscrimination requirements.

City or Rio Rancho
Recipient

12-May-2021
Date

Signature of Authorized Official City Manager

PAPERWORK REDUCTION ACT NOTICE
The information collected will be used for the U.S. Government to process requests for support. The estimated burden associated with this collection of information is 30 minutes per response. Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be directed to the Office of Privacy, Transparency and Records, Department of the Treasury, 1500 Pennsylvania Ave., N.W., Washington, D.C. 20220. DO NOT send the form to this address. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by OMB.

DEPARTMENT OF THE TREASURY

31 CFR Part 35

RIN 1505–AC77

Coronavirus State and Local Fiscal Recovery Funds

AGENCY: Department of the Treasury.

ACTION: Final rule.

SUMMARY: The Secretary of the Treasury (Treasury) is adopting as final the interim final rule published on May 17, 2021, with amendments. This rule implements the Coronavirus State Fiscal Recovery Fund and the Coronavirus Local Fiscal Recovery Fund established under the American Rescue Plan Act.

DATES: The provisions in this final rule are effective April 1, 2022.

FOR FURTHER INFORMATION CONTACT: Katharine Richards, Director, Coronavirus State and Local Fiscal Recovery Funds, Office of Recovery Programs, Department of the Treasury, (844) 529–9527.

SUPPLEMENTARY INFORMATION:

I. Introduction

Overview

Since the first case of coronavirus disease 2019 (COVID–19) was discovered in the United States in January 2020, the pandemic has caused severe, intertwined public health and economic crises. In March 2021, as these crises continued, the American Rescue Plan Act of 2021 (ARPA) [1] established the Coronavirus State and Local Fiscal Recovery Funds (SLFRF) to provide state, local, and Tribal governments [2] with the resources needed to respond to the pandemic and its economic effects and to build a stronger, more equitable economy during the recovery. The U.S. Department of the Treasury (Treasury) issued an interim final rule implementing the SLFRF program on May 10, 2021 [3] and has since disbursed over $240 billion to state, local, and Tribal governments and received over 1,500 public comments on the interim final rule. Treasury is now issuing this final rule which responds to public comments, implements the ARPA statutory provisions on eligible and ineligible uses of SLFRF funds, and makes several changes to the provisions of the interim final rule, summarized below in the section Executive Summary of Major Changes.

Since Treasury issued the interim final rule in May 2021, both the public health and economic situations facing the country have evolved. On the public health front, the United States has made tremendous progress in the fight against COVID–19, including a historic vaccination campaign that has reached over 80 percent of adults with at least one dose and is reaching millions of children as well.[4] However, the disease continues to present an imminent threat to public health, especially among unvaccinated individuals. As the Delta variant spread across the country this summer and fall, the United States faced another severe wave of cases, deaths, and strain on the healthcare system, with the risk of hospitalization and mortality exponentially greater to unvaccinated Americans. COVID–19 has now infected over 50 million and killed over 800,000 Americans since January 2020; tens of thousands of Americans continue to be infected each day.[5] Even as the nation recovers, new and emerging COVID–19 variants may continue to pose threats to both public health and the economy. Moving forward, state, local, and Tribal governments will continue to play a major role in responding through vaccination campaigns, testing, and other services.

The economic recovery similarly has made tremendous progress but faces continued risks from the disease and the disruptions it has caused. In the early months of the pandemic, the United States experienced the sharpest economic downturn on record, with unemployment spiking to 14.8 percent in April 2020.[6] The economy has gradually added back jobs, with growth accelerating in the first half of 2021.[7] However, as the Delta variant spread, the intensified health risks and renewed disruptions slowed growth, demonstrating the continued risks from the virus. By fall 2021, the economy had exceeded its pre-pandemic size [8] and unemployment had fallen below 5 percent,[9] but despite this progress, too many Americans remain unemployed, out of the labor force, or unable to pay their bills, with this pain particularly acute among lower-income Americans and communities of color. Again, moving forward, state, local, and Tribal governments will remain on the frontlines of the economic response and rebuilding a stronger economy in the aftermath of the pandemic.

However, as state, local, and Tribal governments continue to face substantial needs to respond to public health and economic conditions, they have also experienced severe impacts from the pandemic and resulting recession. State, local, and Tribal governments cut over 1.5 million jobs in the early months of the pandemic amid sharp declines in revenue and remain over 950,000 jobs below their pre-pandemic levels.[10] As the Great Recession demonstrated, austerity among state, local, and Tribal governments can hamper overall economic growth and severely curtail the ability of governments to serve their constituents.

Recognizing these imperatives, the SLFRF program provides vital resources for state, local, and Tribal governments to respond to the pandemic and its economic effects and to replace revenue lost due to the public health emergency, preventing cuts to government services. Specifically, the ARPA provides that SLFRF funds [11] may be used:

(a) To respond to the public health emergency or its negative economic impacts, including assistance to households, small businesses, and nonprofits, or aid to impacted industries such as tourism, travel, and hospitality;

(b) To respond to workers performing essential work during the COVID–19

[1] Public Law 117–2. *https://www.congress.gov/117/plaws/publ2/PLAW-117publ2.pdf.*

[2] Throughout this Supplementary Information, Treasury uses ''state, local, and Tribal governments'' or ''recipients'' to refer generally to governments receiving SLFRF funds; this includes states, territories, Tribal governments, counties, metropolitan cities, and nonentitlement units of local government.

[3] 86 FR 26786 (May 17, 2021).

[4] Centers for Disease Control and Prevention, COVID Data Tracker: COVID–19 Vaccinations in the United States, *https://covid.cdc.gov/covid-data-tracker/#vaccinations* (last visited December 31, 2021).

[5] Centers for Disease Control and Prevention, COVID Data Tracker, *http://www.covid.cdc.gov/covid-data-tracker/#datatracker-home* (last visited December 7, 2021).

[6] U.S. Bureau of Labor Statistics, Unemployment Rate [UNRATE], retrieved from FRED, Federal Reserve Bank of St. Louis; *https://fred.stlouisfed.org/series/UNRATE* (last visited December 7, 2021).

[7] *Id.*

[8] U.S. Bureau of Economic Analysis, Real Gross Domestic Product [GDPC1], retrieved from FRED, Federal Reserve Bank of St. Louis, *https://fred.stlouisfed.org/series/GDPC1* (last visited December 7, 2021).

[9] U.S. Bureau of Labor Statistics, *supra* note 6.

[10] U.S. Bureau of Labor Statistics, All Employees, State Government [CES9092000001] and All Employees, Local Government [CES9093000001], retrieved from FRED, Federal Reserve Bank of St. Louis, *https://fred.stlouisfed.org/series/CES9092000001* and *https://fred.stlouisfed.org/series/CES9093000001* (last visited December 7, 2021).

[11] The ARPA adds section 602 of the Social Security Act, which creates the State Fiscal Recovery Fund, and section 603 of the Social Security Act, which creates the Local Fiscal Recovery Fund (together, SLFRF). Sections 602 and 603 contain substantially similar eligible uses; the primary difference between the two sections is that section 602 establishes a fund for states, territories, and Tribal governments and section 603 establishes a fund for metropolitan cities, nonentitlement units of local government, and counties.

public health emergency by providing premium pay to eligible workers;

(c) For the provision of government services to the extent of the reduction in revenue due to the COVID–19 public health emergency relative to revenues collected in the most recent full fiscal year prior to the emergency; and

(d) To make necessary investments in water, sewer, or broadband infrastructure.

In addition, Congress specified two types of ineligible uses of funds: funds may not be used for deposit into any pension fund or, for states and territories only, to directly or indirectly offset a reduction in net tax revenue resulting from a change in law, regulation, or administrative interpretation.

Issued May 10, 2021, Treasury's interim final rule provided further detail on eligible uses of funds within the four statutory categories, ineligible uses of funds, and administration of the program. The interim final rule provided state, local, and Tribal governments substantial flexibility to determine how best to use payments from the SLFRF program to meet the needs of their communities. The interim final rule aimed to facilitate swift and effective implementation by establishing a framework for determining the types of programs and services that are eligible under the ARPA along with examples of eligible uses of funds that state, local, and Tribal governments may consider.

State, local, and Tribal governments are already deploying SLFRF funds to make an impact in their communities. The SLFRF program ensures that state, local, and Tribal governments have the resources needed to fight the pandemic, sustain and strengthen the economic recovery, maintain vital public services, and make investments that support long-term growth, opportunity, and equity. Treasury looks forward to supporting and engaging with state, local, and Tribal governments as they use these funds to make transformative investments in their communities. Finally, with so many pressing and effective ways to use SLFRF funds, there is no excuse for waste, fraud, or abuse of these funds.

Treasury received over 1,500 comments spanning nearly all aspects of the interim final rule. The final rule considers and responds to comments, provides clarification to many aspects of the interim final rule, and makes several changes to eligible uses under the program, summarized immediately below.

Executive Summary of Major Changes and Clarifications

The final rule provides broader flexibility and greater simplicity in the program, in response to public comments. Among other clarifications and changes, the final rule provides for the following:

- *Public Health and Negative Economic Impacts:* In addition to programs and services, the final rule clarifies that recipients may use funds for capital expenditures that support an eligible COVID–19 public health or economic response. For example, recipients may build certain affordable housing, childcare facilities, schools, hospitals, and other projects consistent with the requirements in this final rule and the Supplementary Information.

In addition, the final rule presumes that an expanded set of households and communities are ''impacted'' or ''disproportionately impacted'' by the pandemic, thereby allowing recipients to provide responses to a broad set of households and entities without requiring additional analysis. Further, the final rule provides a broader set of enumerated eligible uses available for these communities as part of COVID–19 public health and economic response, including making affordable housing, childcare, and early learning services eligible in all impacted communities and making certain community development and neighborhood revitalization activities eligible for disproportionately impacted communities.

Further, the final rule allows for a broader set of uses to restore and support government employment, including hiring above a recipient's pre-pandemic baseline, providing funds to employees that experienced pay cuts or furloughs, avoiding layoffs, and providing retention incentives.

- *Premium Pay:* The final rule offers more streamlined options to provide premium pay, by broadening the share of essential workers who can receive premium pay without a written justification while maintaining a focus on lower-income and frontline essential workers.
- *Revenue Loss:* The final rule offers a standard allowance for revenue loss of up to $10 million, not to exceed a recipient's SLFRF award amount, allowing recipients to select between a standard amount of revenue loss or complete a full revenue loss calculation. Recipients that select the standard allowance may use that amount for government services.
- *Water, Sewer, and Broadband Infrastructure:* The final rule significantly broadens eligible broadband infrastructure investments to address challenges with broadband access, affordability, and reliability, and adds additional eligible water and sewer infrastructure investments, including a broad range of lead remediation and stormwater management projects.

Structure of the Supplementary Information

In addition to this Introduction, this Supplementary Information is organized into four sections: (1) Eligible Uses, (2) Restrictions on Use, (3) Program Administration Provisions, and (4) Regulatory Analyses.

The Eligible Uses section describes the standards to determine eligible uses of funds in each of the four eligible use categories:

(1) Responding to the public health and negative economic impacts of the pandemic (which includes several sub-categories)

(2) Providing premium pay to essential workers

(3) Providing government services to the extent of revenue loss due to the pandemic, and

(4) Making necessary investments in water, sewer, and broadband infrastructure.

Each eligible use category has separate and distinct standards for assessing whether a use of funds is eligible. Standards, restrictions, or other provisions in one eligible use category do not apply to the others. Therefore, recipients should first determine which eligible use category a potential use of funds fits within, then assess whether the potential use of funds meets the eligibility standard or criteria for that category. In the case of uses to respond to the public health and negative economic impacts of the pandemic, recipients should also determine which sub-category the eligible use fits within (*i.e.,* public health, assistance to households, assistance to small businesses, assistance to nonprofits, aid to impacted industries, or public sector capacity and workforce), then assess whether the potential use of funds meets the eligibility standard for that sub-category. Treasury does not pre-approve uses of funds; recipients are advised to review the final rule and may pursue eligible projects under it.

In some sections of the rule, Treasury identifies specific uses of funds that are eligible, called ''enumerated eligible uses''; for example, Treasury provides many enumerated eligible uses of funds to respond to the public health and negative economic impacts of the pandemic. Uses of funds that are not specifically named as eligible in this

final rule may still be eligible in two ways. First, under the revenue loss eligible use category, recipients have broad latitude to use funds for government services up to their amount of revenue loss due to the pandemic. A potential use of funds that does not fit within the other three eligible use categories may be permissible as a government service, which recipients can fund up to their amount of revenue loss. For example, transportation infrastructure projects are generally ineligible as a response to the public health and negative economic impacts of the pandemic; however, a recipient could fund these projects as a government service up to its amount of revenue loss, provided that other restrictions on use do not apply. See sections Revenue Loss and Restrictions on Use for further information. Second, the eligible use category for responding to the public health and negative economic impacts of the pandemic provides a non-exhaustive list of enumerated eligible uses, which means that the listed eligible uses include some, but not all, of the uses of funds that could be eligible. The Eligible Uses section provides a standard for determining if other uses of funds, beyond those specifically enumerated, are eligible. If a recipient would like to pursue a use of funds that is not specifically enumerated, the recipient should use the standard and other guidance provided in the section Public Health and Negative Economic Impacts to assess whether the use of funds is eligible.

Next, the Restrictions on Use section describes limitations on how funds may be used. Treasury has divided the Restriction on Use section into (A) statutory restrictions under the ARPA, which include (1) offsetting a reduction in net tax revenue, and (2) deposits into pension funds, and (B) other restrictions on use, which include (1) debt service and replenishing reserves, (2) settlements and judgments, and (3) general restrictions. These restrictions apply to all eligible use categories; however, some restrictions apply only to certain types of recipient governments, and recipients are advised to review the final rule to determine which restrictions apply to their type of government (*e.g.,* state, territory, Tribal government, county, metropolitan city, or nonentitlement unit of government). To reiterate, for recipient governments covered by a specific restriction, that restriction applies to all eligible use categories and any use of funds under the SLFRF program. Specifically:

- For states and territories only, funds may not be used to offset directly or indirectly a reduction in net tax revenue resulting from a change in state or territory law.
- For all recipients except Tribal governments, funds may not be used for deposits into a pension fund.
- For all recipients, funds may not be used for debt service or replenishing financial reserves.
- All recipients must also comply with three general restrictions. First, a recipient may not use SLFRF funds for a program, service, or capital expenditure that conflicts with or contravenes the statutory purpose of ARPA, including a program, service, or capital expenditure that includes a term or condition that undermines efforts to stop the spread of COVID–19. Second, recipients may not use SLFRF funds in violation of the conflict-of-interest requirements contained in the Award Terms and Conditions, including any self-dealing or violation of ethics rules. Lastly, recipients should be aware that federal, state, and local laws and regulations, outside of SLFRF program requirements, also apply, including for example, environmental laws and federal civil rights and nondiscrimination requirements, which include prohibitions on discrimination on the basis of race, color, national origin, sex (including sexual orientation and gender identity), religion, disability, age, or familial status (having children under the age of 18).

The Program Administration Provisions section describes the processes and requirements for administering the program on an ongoing basis, specifically as relates to the following: Distribution of funds, timeline for using funds, transfer of funds from a recipient to different organizations, use of funds for program administration, reporting on use of funds, and remediation and recoupment of funds used for ineligible purposes. Of note, SLFRF funds may only be used for costs incurred within a specific time period, beginning March 3, 2021, with all funds obligated by December 31, 2024 and all funds spent by December 31, 2026. Recipients are advised to also consult Treasury's Reporting and Compliance Guidance for additional information on program administration processes and requirements, including applicability of the Uniform Guidance.

Finally, the section Regulatory Analyses provides Treasury's analysis of the impacts of this rulemaking, as required by several laws, regulations, and Executive Orders.

Throughout this Supplementary Information, statements using the terms ''should'' or ''must'' refer to requirements, except when used in summarizing opinions expressed in public comments. Statements using the term ''encourage'' refer to recommendations, not requirements.

II. Eligible Uses

A. Public Health and Negative Economic Impacts

Background

Since the first case of COVID–19 was discovered in the United States in January 2020, the disease has infected over 50 million and killed over 800,000 Americans.[12] The disease—and necessary measures to respond—have had an immense public health and economic impact on millions of Americans across many areas of life, as detailed below in the respective sections on Public Health and Negative Economic Impacts. Since the release of the interim final rule in May 2021, the country has made major progress in fighting the disease and rebuilding the economy but faces continued risks, as illustrated by the spread of the Delta variant and the resulting slowdown in the economic recovery. The SLFRF program, and Treasury's interim final rule, provide substantial flexibility to recipients to respond to pandemic impacts in their local community; this flexibility is designed to help state, local, and Tribal governments adapt to the evolving public health emergency and tailor their response as needs evolve and to the particular local needs of their communities.

Indeed, state, local, and Tribal governments face continued needs to respond at scale to the public health emergency. This includes continued public health efforts to slow the spread of the disease, to increase vaccination rates and provide vaccinations to new populations as they become eligible, to protect individuals living in congregate facilities, and to address the broader impacts of the pandemic on public health. Similarly, while a strong economic recovery is underway, the economy remains 3.9 million jobs below its pre-pandemic level, pointing to the continued need for response efforts, with low-income workers and communities of color facing elevated rates of unemployment and economic hardship.[13] Long-standing disparities in health and economic outcomes in

[12] Centers for Disease Control and Prevention, COVID Data Tracker, *http://www.covid.cdc.gov/covid-data-tracker/#datatracker-home* (last visited December 31, 2021).

[13] U.S. Bureau of Labor Statistics, All Employees, Total Nonfarm [PAYEMS] *https://fred.stlouisfed.org/series/PAYEMS* (last visited December 7, 2021).

underserved [14] communities, that amplified and exacerbated the impacts of the pandemic, also present continued barriers to full and equitable recovery.

As state, local, and Tribal governments work to meet the public health and economic needs of their communities, these governments are also confronting the need to rebuild their own capacity. Facing severe budget challenges during the pandemic, many state, local, and Tribal governments have been forced to make cuts to services or their workforces, including cutting over 1.5 million jobs from February to May 2020, or delay critical investments. As of fall 2021, state, local, and Tribal government employment remained over 950,000 jobs below pre-pandemic levels.[15] In the recovery from the Great Recession, cuts to state, local, and Tribal governments became a meaningful drag on economic growth for several years, and the SLFRF program provides the resources needed to re-invest in vital public services and workers to avoid this outcome.[16]

1. General Provisions: Structure and Standards

Background: Sections 602(c)(1)(A) and 603(c)(1)(A) of the Social Security Act establish that recipients may use funds ''to respond to the public health emergency with respect to 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.'' The interim final rule established three categories within this eligible use: (1) Public health responses for those impacted by the pandemic, including the general public; (2) responses to the negative economic impacts that were experienced by those impacted as a result of the pandemic; and (3) additional services, either as a public health response or a response to the negative economic impacts of the pandemic, for disproportionately impacted communities.

The interim final rule established the method to determine which specific programs or services may be eligible to respond to the public health emergency or to respond to the negative economic impacts of the public health emergency within this framework. The interim final rule included multiple enumerated uses that are eligible within each of these categories when provided to eligible populations, including populations that the interim final rule presumed to have been *impacted* (in the case of public health responses and responses to negative economic impacts) or *disproportionately impacted* (in the case of disproportionately impacted communities). Finally, the interim final rule also allowed recipients to designate additional individuals or classes as impacted or disproportionately impacted. The standards for each of these criteria under the interim final rule are discussed below.

To assess whether a program or service would be eligible to respond to the public health emergency or its negative economic impacts, the interim final rule stated that, ''the recipient [is required] to, first, identify a need or negative impact of the COVID–19 public health emergency and, second, identify how the program, service, or other intervention addresses the identified need or impact [. . . .] [E]ligible uses under this category must be in response to the disease itself or the harmful consequences of the economic disruptions resulting from or exacerbated by the COVID–19 public health emergency.'' The enumerated eligible uses were presumed to meet this criterion.

With respect to uses not specifically enumerated in the interim final rule as eligible public health responses, the interim final rule stated that, ''[t]o assess whether additional uses would be eligible under this category, recipients should identify an effect of COVID–19 on public health, including either or both of immediate effects or effects that may manifest over months or years, and assess how the use would respond to or address the identified need.''

With respect to uses not specifically enumerated in the interim final rule as eligible responses to a negative economic impact of the public health emergency, the interim final rule stated that ''[e]ligible uses that respond to the negative economic impacts of the public health emergency must be designed to address an economic harm resulting from or exacerbated by the public health emergency. In considering whether a program or service would be eligible under this category, the recipient should assess whether, and the extent to which, there has been an economic harm, such as loss of earnings or revenue, that resulted from the COVID–19 public health emergency and whether, and the extent to which, the use would respond to or address this harm.[17] A recipient should first consider whether an economic harm exists and whether this harm was caused or made worse by the COVID–19 public health emergency.'' The interim final rule went on to say that: ''In addition, the eligible use must 'respond to' the identified negative economic impact. Responses must be related and reasonably proportional to the extent and type of harm experienced; uses that bear no relation or are grossly disproportionate to the type or extent of harm experienced would not be eligible uses.''

Throughout this final rule, Treasury refers to households, communities, small businesses, nonprofits, and industries that experienced public health or negative economic impacts of the pandemic as ''impacted.'' The first section in the interim final rule under this eligible use category included public health responses for these impacted classes. The second category in the interim final rule under this eligible use category included responses to the negative economic impacts that were experienced by these impacted classes as a result of the pandemic.

The interim final rule further recognized that certain populations have experienced disproportionate health or negative economic impacts during the pandemic, as pre-existing disparities in these communities amplified the impacts of the pandemic. For example, the interim final rule recognized that the negative economic effects of the pandemic were particularly pronounced among lower-income families, who were more likely to experience income loss and more likely to have a job that required in-person work. The interim final rule recognized the role of pre-existing social vulnerabilities and disparities in driving the disparate health and economic outcomes and presumed that programs designed to address these health or economic disparities are responsive to the public health or negative economic impacts of the COVID–19 public health emergency, when provided in disproportionately impacted communities. In addition to identifying certain populations and communities

[14] Treasury uses ''underserved'' to refer to populations sharing a particular characteristic, as well as geographic communities, that have been systematically denied a full opportunity to participate in aspects of economic, social, and civic life. In the interim final rule, Treasury generally used the term ''disadvantaged'' to refer to these same populations and communities.

[15] U.S. Bureau of Labor Statistics, All Employees, State Government [CES9092000001] and All Employees, Local Government [CES9093000001], retrieved from FRED, Federal Reserve Bank of St. Louis, *https://fred.stlouisfed.org/series/CES9092000001* and *https://fred.stlouisfed.org/series/CES9093000001* (last visited December 7, 2021).

[16] Tracy Gordon, State and Local Budgets and the Great Recession, Brookings Institution (Dec. 31, 2012), *http://www.brookings.edu/articles/state-and-local-budgets-and-the-great-recession.*

[17] In some cases, a use may be permissible under another eligible use category even if it falls outside the scope of section (c)(1)(A) of section 602 and 603 of the Social Security Act.

presumed to be disproportionately impacted, it also empowered recipients to identify other disproportionately impacted households, populations, communities, or small businesses. The interim final rule provided that, in identifying these disproportionately impacted communities, recipients should be able to support their determination that the pandemic resulted in disproportionate public health or economic outcomes to the specific populations, households, or geographic areas to be served.

Throughout this final rule, Treasury refers to those households, communities, small businesses, and nonprofits that experienced disproportionate public health or negative economic impacts of the pandemic as ''disproportionately impacted.'' The third category in the interim final rule under this eligible use included public health responses and responses to the negative economic impacts for these disproportionately impacted classes.

The interim final rule provided significant flexibility for recipients to determine which households, populations, communities, or small businesses have been impacted and/or disproportionately impacted by the pandemic and to identify appropriate responses. The interim final rule included several provisions to provide simple methods for recipients to identify impacts and design programs to address those impacts. First, the interim final rule allowed recipients to demonstrate a negative economic impact on a population or class and provide assistance to households or small businesses that fall within that population or class. In such cases, the recipient need only demonstrate that an individual household or business is within the class that experienced a negative economic impact, rather than requiring a recipient to demonstrate that each individual household or small business experienced a negative economic impact, because the impact was already identified for the class.

Second, in the interim final rule, Treasury presumed that certain populations have been impacted or disproportionately impacted and are thus eligible for services that respond to these impacts or disproportionate impacts. Specifically, the interim final rule permitted recipients to presume that households that experienced unemployment, increased food or housing insecurity, or are low- or moderate-income experienced a negative economic impact from the pandemic. The interim final rule also permitted recipients to presume that certain services provided in Qualified Census Tracts (QCTs), to individuals living in QCTs, or by Tribal governments are responsive to disproportionate impacts of the pandemic. In addition to the populations presumed to be impacted or disproportionately impacted, under the interim final rule, recipients could identify other impacted households or classes, as described above, as well as other populations, households, or geographic areas that are disproportionately impacted by the pandemic.

Third, as mentioned previously, the interim final rule included a non-exhaustive list of uses of funds that Treasury identified as responsive to the impacts or disproportionate impacts of the pandemic. Treasury refers to these as ''enumerated eligible uses.''

To summarize, the interim final rule identified certain populations that are presumed to be *impacted* by the pandemic (and specific enumerated uses of funds that are responsive to that impact) and populations that are presumed to be *disproportionately impacted* by the pandemic (and specific enumerated uses of funds that are responsive to those disproportionate impacts). In addition, the interim final rule provided standards for recipients to assess whether additional uses of funds, beyond the enumerated eligible uses, are eligible for impacted and disproportionately impacted populations and permitted recipients to identify other households or classes that experienced impacts of the pandemic or disproportionate impacts of the pandemic.

Rule Structure

Public Comment: Many commenters expressed concern regarding the structure of the eligible uses, indicating they found the structure of the public health and negative economic impacts section of the interim final rule to be confusing or difficult to navigate. Other commenters indicated that they understood the enumerated uses to be the only eligible uses and/or the presumed eligible populations to be the only eligible populations. Several commenters expressed frustration about the number of eligible uses specifically enumerated in the interim final rule, which they considered too few, and commenters proposed a wide range of additional enumerated eligible uses (for further discussion, see the section Public Health and section Negative Economic Impacts). Commenters expressed concern with pursuing uses of funds not explicitly enumerated in the eligible use section or uncertainty regarding the broad flexibility provided under the interim final rule to pursue additional programs that respond to the public health or negative economic impacts of the pandemic or the process for doing so.

Treasury Response: Treasury recognizes that many commenters felt the structure of the interim final rule could be clarified. These comments are consistent with many of the questions that Treasury has received from recipients, which requested clarification regarding the category their desired response fits into. Treasury observes that these comments and questions generally fall into four categories: (1) How to identify the correct public health or negative economic impact category for a particular response, (2) how to identify whether a particular use is eligible, (3) how to identify an impacted or disproportionately impacted class, and (4) whether an enumerated use can be provided to a class other than those presumed impacted or disproportionately impacted. In response to comments, Treasury is adjusting the structure of the public health and negative economic impacts eligible use section of the final rule to improve clarity and make it easier for recipients to interpret and apply the final rule.

Specifically, Treasury is restructuring the rule to aid recipients in determining whether a particular response is eligible and how the particular response might be eligible under a particular category. This restructuring reinforces the fundamental criteria that a use of funds is eligible based on its responsiveness to a public health or negative economic impact experienced by individuals, households, small businesses, nonprofits, or impacted industries (together ''beneficiaries'').[18] This restructuring is intended to make the rule easier to navigate and to implement, including any criteria or conditions on particular uses of funds.

The reorganization of the public health and negative economic impacts section of the final rule is also intended to clarify the enumerated eligible uses described in the interim final rule. The reorganization itself is not intended to change the scope of the enumerated uses that were included in the interim final rule or that were allowable under the interim final rule. In some cases, specific enumerated uses are being altered, and those changes are discussed

[18] Note that small businesses, nonprofits, and industries may also function as subrecipients. For additional information on these distinctions see section Distinguishing Subrecipients versus Beneficiaries.

as changes within the section on that enumerated use.

The final rule streamlines and aligns services and standards that are generally applicable or are provided for public health purposes. Under this approach, eligible uses to respond to the public health emergency are organized based on the type of public health problem: (1) COVID–19 mitigation and prevention, (2) medical expenses, (3) behavioral health care, and (4) preventing and responding to violence. Under this approach, eligible uses to respond to the negative economic impacts of the public health emergency are organized based on the type of beneficiary: (1) Assistance to households, (2) assistance to small businesses, and (3) assistance to nonprofits, alongside a fourth standalone eligibility category for aid to travel, tourism, hospitality, and other impacted industries. The first three categories, assistance to households, small businesses, and nonprofits, include enumerated eligible uses for impacted and disproportionately impacted beneficiaries. This change in structure is intended to provide a framework that clearly identifies the intended beneficiaries of uses of funds and provides clarity about what types of assistance are ''responsive to the pandemic or its negative economic impacts'' for these beneficiaries.

a. Standards for Identifying a Public Health or Negative Economic Impact

Standards: Designating a Public Health Impact

Public Comment: Many commenters expressed uncertainty about how to determine whether a use of funds, beyond those specifically enumerated as eligible, might be an eligible public health response. For example, many commenters submitted questions asking whether specific uses of funds would be eligible. Others described what they considered to be impacts of the pandemic and argued that uses of funds to respond to these issues should be eligible. Some commenters requested that Treasury provide additional detail to guide their assessments of eligible uses of funds. For example, a commenter requested more clarification around exactly what and whose medical expenses can be covered. These comments ranged in their specificity and covered the full range of the enumerated eligible uses.

Treasury Response: Treasury is clarifying that when assessing whether a program or service is an eligible use to respond to the public health impacts of the COVID–19 public health emergency, the Department will consider the two eligibility requirements discussed below. These standards apply to all proposed public health uses.

First, there must be a negative public health impact or harm experienced by an individual or a class. For ease of administration, the interim final rule allowed, and the final rule maintains the ability for, recipients to identify a public health impact on a population or group of individuals, referred to as a ''class,'' and to provide assistance to that class. In determining whether an individual is eligible for a program designed to address a harm experienced by a class, the recipient need only document that the individual is within the class that experienced a public health impact, see section Standards: Designating Other Impacted Classes. In the case of some impacts, for example impacts of COVID–19 itself that are addressed by providing prevention and mitigation services, such a class could reasonably include the general public.

Second, the program, service, or other intervention must address or respond to the identified impact or harm. The final rule maintains the interim final rule requirement that eligible uses under this category must be in response to the disease itself or other public health harms that it caused.[19]

Responses must be reasonably designed to benefit the individual or class that experienced the public health impact or harm. Uses of funds should be assessed based on their responsiveness to their intended beneficiaries and the ability of the response to address the impact or harm experienced by those beneficiaries.

Responses must also be related and reasonably proportional to the extent and type of public health impact or harm experienced. 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. In evaluating whether a use is reasonably proportional, recipients should consider relevant factors about the harm identified and the response. For example, recipients may consider the size of the population impacted and the severity, type, and duration of the impact. Recipients may also consider the efficacy, cost, cost-effectiveness, and time to delivery of the response.

If a recipient intends to fund capital expenditures in response to the public health impacts of the pandemic, recipients should refer to the section Capital Expenditures for details about the eligibility of capital expenditures.

Standards: Designating a Negative Economic Impact

Public Comment: Many commenters expressed uncertainty about how to determine whether uses of funds, beyond those specifically enumerated as eligible, might be eligible responses to negative economic impacts. For example, many commenters submitted questions asking whether specific uses of funds would be eligible. Others described what they considered to be impacts of the pandemic and argued that uses of funds to respond to these issues should be eligible. Some commenters requested that Treasury provide additional detail to guide their assessments of eligible uses of funds. These comments ranged in their specificity and covered the full range of eligible uses to respond to negative economic impacts. Several commenters asked for clarification about what types of food assistance would be considered eligible. Another commenter requested that the establishment of outdoor dining be eligible. Many commenters inquired about homeless shelters as an eligible use of SLFRF funds.

Commenters also expressed uncertainty about the ability to establish classes, including geographic areas, that experienced a negative economic impact or disagreed with the requirement that an individual entity be impacted by the pandemic in order to receive assistance. For example, a commenter argued that interventions should not be limited to individuals or businesses that experienced an economic impact and should instead be used broadly to support economic growth. These commenters argued that an expenditure that supports a more robust economy may help combat the pandemic's negative economic impacts, and it can do so even if funding is provided to individuals or entities that did not themselves experience a negative economic impact during the pandemic.

Treasury Response: The final rule maintains the standard articulated in

[19] In designing an intervention to mitigate COVID–19, the recipient should consider guidance from public health authorities, particularly the Centers for Disease Control and Prevention (CDC), in assessing appropriate COVID–19 mitigation and prevention strategies (*see* Centers for Disease Control and Prevention, COVID–19, *https://www.cdc.gov/coronavirus/2019-ncov/index.html*). A program or service that imposes conditions on participation in or acceptance of the service that would undermine efforts to stop the spread of COVID–19 or discourage compliance with practices in line with CDC guidance for stopping the spread of COVID–19 is not a permissible use of funds.

the interim final rule. For clarity, the final rule re-articulates that when assessing whether a program or service is an eligible use to respond to the negative economic impacts of the COVID–19 public health emergency, Treasury will consider the two eligibility requirements discussed below.

First, there must be a negative economic impact, or an economic harm, experienced by an individual or a class. The recipient should assess whether, and the extent to which, there has been an economic harm, such as loss of earnings or revenue, that resulted from the COVID–19 public health emergency. A recipient should first consider whether an economic harm exists and then whether this harm was caused or made worse by the COVID–19 public health emergency. This approach is consistent with the text of the statute, which provides that funds in this category must be used to ''respond to the public health emergency with respect to . . . its negative economic impacts.''

While economic impacts may either be immediate or delayed, individuals or classes that did not experience a negative economic impact from the public health emergency would not be eligible beneficiaries under this category. As noted above, the interim final rule permitted recipients to presume that households that experienced unemployment, increased food or housing insecurity, or are low- or moderate-income experienced a negative economic impact from the pandemic. For discussion of the final rule's approach to this presumption, see section Populations Presumed Eligible.

The final rule also maintains several provisions included in the interim final rule and subsequent guidance that are intended to ease administration of identifying that the beneficiary experienced a negative economic impact or harm. For example, the interim final rule allowed, and the final rule maintains the ability for, recipients to demonstrate a negative economic impact on a population or group, referred to as a ''class,'' and to provide assistance to households, small businesses, or nonprofits that fall within that class. In such cases, the recipient need only demonstrate that the household, small business, or nonprofit is within the class that experienced a negative economic impact, see section Standards: Designating Other Impacted Classes. This would allow, for example, an internet access assistance program for all households with children to support those households' ability to participate in healthcare, work, and educational activities like extending learning opportunities, among other critical activities. In that case, the recipient would only need to identify a negative economic impact to the class of ''households with children'' and would not need to document or otherwise demonstrate that each individual household served experienced a negative economic impact.

Second, the response must be designed to address the identified economic harm or impact resulting from or exacerbated by the public health emergency. In selecting responses, the recipient must assess whether, and the extent to which, the use would respond to or address this harm or impact. This approach is consistent with the text of the statute, which provides that funds may be used to ''respond to'' the ''negative economic impacts'' of the public health emergency ''including assistance to households, small businesses, and nonprofits, or aid to impacted industries such as tourism, travel, and hospitality.'' The list of potential responses (''assistance'' or ''aid'') suggests that responses should address the ''negative economic impacts'' of particular types of beneficiaries (*e.g.,* households or small businesses).

Responses must be reasonably designed to benefit the individual or class that experienced the negative economic impact or harm. Uses of funds should be assessed based on their responsiveness to their intended beneficiary and the ability of the response to address the impact or harm experienced by that beneficiary.[20]

Responses must also be related and reasonably proportional to the extent and type of harm experienced; uses that bear no relation or are grossly disproportionate to the type or extent of harm experienced would not be eligible uses.[21] 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. In evaluating whether a use is reasonably proportional, recipients should consider relevant factors about the harm identified and the response. For example, recipients may consider the size of the population impacted and the severity, type, and duration of the impact. Recipients may also consider the efficacy, cost, cost-effectiveness, and time to delivery of the response.

Finally, recipients should be aware of the distinction between beneficiaries of funds and subrecipients; a recipient may provide services to beneficiaries through subrecipients that did not experience a negative economic impact, see section Distinguishing Subrecipients versus Beneficiaries. That is, a recipient may award SLFRF funds to an entity that did not experience a negative economic impact in order to implement a program or provide a service to beneficiaries on its behalf. Such transfers, when implementing a public health or negative economic impact response, should be responsive to and designed to benefit individuals, households, small businesses, nonprofits, or impacted industries that did experience a public health or negative economic impact.

Determining the Appropriate Eligible Use Category

Public Comment: Some commenters expressed uncertainty about how to analyze negative economic impacts to different entities (*e.g.,* households, small businesses, nonprofits). For example, commenters asked whether a nonprofit, which did not experience a negative economic impact itself, could be granted funds to provide services to individuals experiencing homelessness, who did experience negative economic impacts. Other commenters proposed providing assistance to support the expansion of small businesses, under the theory that this would create more job opportunities for unemployed workers who experienced negative economic impacts.

Treasury Response: In the final rule, Treasury is clarifying that recipients should assess a potential use of funds based on which beneficiary experienced the negative economic impact, in other words, the households, small businesses, nonprofits, or impacted industries that experienced the negative economic impact.

Treasury notes that recipients may award SLFRF funds to many different types of organizations to carry out eligible uses of funds and serve beneficiaries on behalf of a recipient.

[20] For example, expenses such as excessive compensation to employees or expenses which have already been reimbursed through another federal program, are not reasonably designed to address a negative economic impact to a beneficiary.

[21] For example, a program or service that imposes conditions on participation in or acceptance of the service that would undermine efforts to stop the spread of COVID–19 or discourage compliance with practices in line with CDC guidance for stopping the spread of COVID–19 is not a permissible use of funds.

When a recipient provides funds to another entity to carry out eligible uses of funds and serve beneficiaries the entity becomes a subrecipient (see section Distinguishing a Subrecipient versus a Beneficiary). For example, a recipient may grant funds to a nonprofit organization to provide food assistance (an eligible use) to low-income households (the beneficiaries). Recipients only need to assess whether the beneficiaries experienced a negative economic impact and whether the eligible use responds to that impact, consistent with the two-part framework described above; the organization carrying out the eligible use does not need to have experienced a negative economic impact if it is serving as the vehicle for reaching the beneficiaries. When making determinations about how to implement a program, recipients should consider whether that method of program implementation is an effective and efficient method to implement the program and do so in accordance with the Uniform Guidance provisions that govern procurements and sub-granting of federal funds, as applicable.

As noted above, recipients should analyze eligible uses based on the beneficiary of the assistance or the entity that experienced a negative economic impact. Assistance to a small business or to an impacted industry must respond to a negative economic impact experienced by that small business or industry. Recipients may not provide assistance to small businesses or impacted industries that did not experience a negative economic impact, although recipients can identify negative economic impacts for classes, rather than individual businesses, and may also presume that small businesses in certain areas experienced impacts; see section General Provisions: Structure and Standards and section Assistance to Small Businesses for details.

Several examples illustrate the application of these concepts. For example, a recipient could provide assistance to households via a contract with a business to create subsidized jobs for the long-term unemployed; in this case the business is a subrecipient and need not have experienced a negative economic impact, but the recipient would need to identify a specific connection between the assistance provided and addressing the negative economic impact experienced by the unemployed households. The recipient could, for instance, document the subsidized jobs created under the contract and their reservation for long-term unemployed individuals. Similarly, a recipient might provide assistance to a small business that experienced a pandemic-related loss of revenue. This small business is a beneficiary and may use those funds in many ways, potentially including hiring or retaining staff. However, general assistance to a business that did not experience a negative economic impact under the theory that this assistance generally grows the economy and therefore enhances opportunities for unemployed workers would not be an eligible use, because such assistance is not reasonably designed to impact the individuals or classes that experienced a negative economic impact. In other words, there is not a reasonable connection between the assistance provided and an impact on the beneficiaries. Such an activity would be attenuated from and thus not reasonably designed to benefit the households that experienced the negative economic impact.

b. Populations Presumed Eligible

Presumed Eligibility: Impacted and Disproportionately Impacted Households and Communities

Background: As noted above, the interim final rule allowed recipients to presume that certain households were impacted or disproportionately impacted by the pandemic and thus eligible for responsive programs or services. Specifically, under the interim final rule, recipients could presume that a household or population that experienced unemployment, experienced increased food or housing insecurity, or is low- or moderate-income experienced negative economic impacts resulting from the pandemic, and recipients may provide services that respond to these impacts.

The interim final rule also recognized that pre-existing health, economic, and social disparities contributed to disproportionate pandemic impacts in certain communities and allowed for a broader list of enumerated eligible uses to respond to the pandemic in disproportionately impacted communities. Under the interim final rule, recipients were allowed to presume that families residing in QCTs or receiving services provided by Tribal governments were disproportionately impacted by the pandemic.

Definition of Low- and Moderate-Income

Public Comment: As noted earlier, many commenters sought a definition for ''low- and moderate-income'' to provide recipients greater clarity on which specific households could be presumed to be impacted by the pandemic.

Treasury Response: The final rule maintains the presumptions identified in the interim final rule and defines low- and moderate-income for the purposes of determining which households and populations recipients may presume to have been impacted. To simplify the administration of this presumption, the final rule adopts a definition of low- and moderate-income based on thresholds established and used in other federal programs.

Definitions. The final rule defines a household as *low income* if it has (i) income at or below 185 percent of the Federal Poverty Guidelines (FPG) for the size of its household based on the most recently published poverty guidelines by the Department of Health and Human Services (HHS) or (ii) income at or below 40 percent of the Area Median Income (AMI) for its county and size of household based on the most recently published data by the Department of Housing and Urban Development (HUD).[22]

The final rule defines a household as *moderate income* if it has (i) income at or below 300 percent of the FPG for the size of its household based on the most recently published poverty guidelines by HHS or (ii) income at or below 65 percent of the AMI for its county and size of household based on the most recently published data by HUD.[23]

Recipients may determine whether to measure income levels for specific households or for a geographic area based on the type of service to be provided. For example, recipients developing a program that serves specific households (*e.g.,* a subsidy for internet access, a childcare program) may measure income at the household level. Recipients providing a service that reaches a general geographic area (*e.g.,* a park) may measure median income of that area.

Further, recipients should generally use the income threshold for the size of the household to be served (*e.g.,* when providing childcare to a household of five, recipients should reference the income threshold for a household of five); however, recipients may use the income threshold for a default household size of three if providing

[22] AMI is also often referred to as median family income for the area. Since AMI is synonymous with this term and used more generally, the final rule refers to AMI.

[23] For the six New England states of Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont, HUD provides AMI for towns rather than counties. Recipients in these states should use the AMI corresponding to their town when determining thresholds for both low and moderate income.

services that reach a general geographic area or if doing so would simplify administration of the program to be provided (*e.g.,* when developing a park, recipients should use the income threshold for a household size of three and compare it to median income of the geographic area to be served).

Note that recipients can also identify and serve other classes of households that experienced negative economic impacts or disproportionate impacts from the pandemic; recipients can identify these classes based on their income levels, including above the levels defined as low- and moderate-income in the final rule. For example, a recipient may identify that households in their community with incomes above the final rule threshold for low-income nevertheless experienced disproportionate impacts from the pandemic and provide responsive services. See section General Provisions: Standards for Identifying Other Eligible Populations for details on applicable standards.

Applicable levels. For reference, the FPG is commonly referred to as the federal poverty level (FPL) and is related to—although distinct from—the U.S. Census Bureau's poverty threshold. The final rule uses the FPG when referring specifically to the HHS guidelines, as these are the quantitative metrics used for determining low- and moderate-income households.

The FPG by household size for 2021 is included in the table below. Recipients should refer to HHS Poverty Guidelines for this information, which is updated annually and available on the HHS website.[24] For calculating the thresholds of 40 percent and 65 percent of AMI, recipients should refer to the annual HUD Section 8 50 percent income limits by county and household size published by HUD and available on the HUD website; in particular, recipients should calculate the 40 percent threshold as 0.8 times the 50 percent income limit, and recipients should calculate the 65 percent threshold as 1.3 times the 50 percent income limit.[25] Finally, for median income of Census Tracts and other geographic areas, recipients should refer to the most recent American Community Survey 5-year estimates available through the Census website.[26]

2021 Federal Poverty Guidelines

Household size	48 contiguous states and the District of Columbia	Alaska	Hawaii
1	$12,880	$16,090	$14,820
2	17,420	21,770	20,040
3	21,960	27,450	25,260
4	26,500	33,130	30,480
5	31,040	38,810	35,700
6	35,580	44,490	40.920
7	40,120	50,170	46,140
8	44,660	55,850	51,360

For families/households with more than 8 persons, add the following amounts for each additional person:
48 Contiguous States and the District of Columbia: $4,540.
Alaska: $5,680.
Hawaii: $5,220.
Source: "HHS Poverty Guidelines for 2021," available at *https://aspe.hhs.gov/topics/poverty-economic-mobility/poverty-guidelines.*

Rationale. In defining low income, the final rule uses both the FPG and AMI to account for national trends and regional differences. The metric of 185 percent of FPG aligns with some other programs; for instance, under the National School Lunch Program, students with household incomes under 185 percent of FPG qualify for free or reduced-price lunch, and schools often use eligibility for free or reduced-price lunch as an indicator of low-income status under Title 1–A of the Elementary and Secondary Education Act. Eligibility for other programs, such as the Federal Communications Commission's e-Rate program and the Special Supplemental Nutrition Program for Women, Infants and Children employ this metric as well. In addition, 185 percent of the FPG for a family of four is $49,025, which is approximately the wage earnings for a two-earner household in which both earners receive the median wage in occupations, such as waiters and waitresses and hotel clerks, that were heavily impacted by COVID–19.[27] This measure is targeted toward those at the bottom of the income distribution and thus helps to promote use of SLFRF funds towards populations with the greatest needs. At the same time, with approximately one-quarter of Americans below 185 percent of the poverty threshold, this approach is broad enough to facilitate use of SLFRF funds across many jurisdictions.[28] Because regions have different cost and income levels, this definition also allows for upward adjustment based on AMI for those regions where 40 percent of AMI exceeds 185 percent of FPG. The metric of 40 percent of AMI is based on the midpoint of values often used to designate certain categories of low-income households; specifically, it is the midpoint of the 30 percent income limit and the 50 percent income limit

[24] U.S. Department of Health and Human Service, HHS Poverty Guidelines for 2021, *available at https://aspe.hhs.gov/topics/poverty-economic-mobility/poverty-guidelines.*

[25] U.S. Department of Housing and Urban Development, FY 2021 Section 8 Income Limits, *available at https://www.huduser.gov/portal/datasets/il/il21/Section8-FY21.xlsx.* Recipients may refer to the list of counties (and New England towns) identified by state and metropolitan area for identifying the appropriate area. U.S. Department of Housing and Urban Development, FY 2021 List of Counties (and New England Towns) Identified by State and Metropolitan Area, *available at https://www.huduser.gov/portal/datasets/il/il21/area-definitions-FY21.pdf.*

[26] The U.S. Census Bureau provides an interactive map: U.S. Census Bureau, Median Household Income State Selection Map, *available at https://data.census.gov/cedsci/map?q=Median%20Household%20Income&g=0100000US%2404000%24001&tid=ACSST5Y2019.S1901&cid=S1901_C01_012E&vintage=2019.* The U.S. Census Bureau also provides an interactive table: U.S. Census Bureau, Median Household Income In The Past 12 Months (In 2019 Inflation-Adjusted Dollars), *available at https://data.census.gov/cedsci/table?q=b19013&tid=ACSDT5Y2019.B19013&hidePreview=true.*

[27] *See* U.S. Bureau of Labor Statistics, Occupational Employment and Wage Estimates, *https://www.bls.gov/oes/current/oes_nat.htm* (last visited December 7, 2021).

[28] U.S. Census Bureau, Poverty Status by State, *https://www.census.gov/data/tables/time-series/demo/income-poverty/cps-pov/pov-46.html* (last visited December 7, 2021).

used in programs such as the Community Development Block Grant (CDBG) Program.

In defining moderate income, the final rule uses both the FPG and AMI to account for national trends and regional differences. While there are different definitions of moderate income, 300 percent of FPG falls within the range commonly used by researchers.[29] Analysis of median wages among a sample of occupations likely impacted by the pandemic also suggests that an income cutoff of 300 percent of FPG would include many households with workers in such occupations.[30] Moreover, the metric of 300 percent of FPG covers households that, while above the poverty line, often lack economic security.[31] Treasury determined the AMI threshold for moderate income by maintaining the same ratio of FPG multiplier to AMI multiplier as in the definition of low income. This anchors the threshold to the existing definitions of moderate income from the literature while taking into account geographical variation in income and expenses in the same manner as the definition of low income.

Eligibility Presumptions

Public Comment: Many commenters believed that a broader range of groups should be considered presumptively impacted and disproportionately impacted, arguing that many households had been affected by the pandemic and that broader presumed eligibility would help recipients provide assistance quickly and effectively.

Treasury also received many comments on the presumption that families living in QCTs or receiving services from Tribal governments were disproportionately impacted by the pandemic. While many commenters supported the interim final rule's recognition of disproportionate impacts of the pandemic on low-income communities, many commenters disagreed with treating QCTs as the only presumed eligible group of disproportionately impacted households, apart from households served by Tribal governments. While acknowledging a potential increase in administrative burden, commenters recommended that Treasury presume other households or geographic areas, in addition to QCTs, were disproportionately impacted; suggestions included all low- and moderate-income households, geographic areas designated as Opportunity Zones, Difficult Development Areas (DDAs), areas with a certain amount of Real Estate Advantage Program (REAP) recipients, or use of eligibility criteria from the Community Reinvestment Act. One commenter generally recommended that a clearer definition of ''disproportionately impacted'' should be provided and that any definition should include communities of color and people of limited means. Another recommended specific eligibility for people that had recently interacted with the criminal justice system. Many commenters representing Tribal governments and groups recommended a presumption of eligibility for all Tribal uses of funds, clarification that off reservation members remained eligible, and broad flexibility on use of funds.

Additionally, commenters noted that some areas are technically eligible to be QCTs but fall short because of the aggregate population of eligible tracts. One commenter noted that these areas should be considered the same as QCTs for the purpose of SLFRF funds. Some commenters argued that rural counties typically have few QCTs despite high levels of poverty and disruption caused by the COVID–19 pandemic. Other rural commenters recommended that the designation be by county rather than at a more granular level, arguing that the QCT designation is biased towards urban areas and understates the harm done to rural America. Many commenters representing Tribal governments supported the presumption that services provided by Tribal governments respond to disproportionate impacts.

Treasury Response

Summary: While households residing in QCTs or served by Tribal governments were presumed to be disproportionately impacted, Treasury emphasizes that under the interim final rule recipients could also identify other households, populations, or geographic areas that were disproportionately impacted by the pandemic and provide services to respond.

The final rule maintains the presumptions identified in the interim final rule, as well as recipients' ability to identify other impacted or disproportionately impacted classes. The final rule also allows recipients to presume that low-income households were disproportionately impacted, and as discussed above, defines low- and moderate-income. Finally, under the final rule recipients may also presume that households residing in the U.S. territories or receiving services from territorial governments were disproportionately impacted.

Households presumed to be impacted: Impacted households are those that experienced a public health or negative economic impact from the pandemic.

With regard to public health impacts, recipients may presume that the general public experienced public health impacts from the pandemic for the purposes of providing services for COVID–19 mitigation and behavioral health. In other words, recipients may provide a wide range of enumerated eligible uses in these categories to the general public without further analysis. As discussed in the introduction, COVID–19 as a disease has directly affected the health of tens of millions of Americans, and efforts to prevent and mitigate the spread of the disease are needed and in use across the country. Further, the stress of the pandemic and resulting recession have affected nearly all Americans. Accordingly, the final rule presumes that the general public are impacted by and eligible for services to respond to COVID–19 mitigation and prevention needs, as well as behavioral health needs.

With regard to negative economic impacts, as with the interim final rule, under the final rule recipients may presume that a household or population that experienced unemployment, experienced increased food or housing insecurity, or is low- or moderate-income experienced negative economic impacts resulting from the pandemic. The final rule's definition of low- and moderate-income, by providing standard metrics based on widely available data, is intended to simplify administration for recipients.

Households presumed to be disproportionately impacted: Disproportionately impacted households are those that experienced a

[29] For instance, Melissa Kearney et al. (2013) cap the ''struggling lower middle-income class'' at 250 percent of the federal poverty level, while Isabel Sawhill and Edward Rodrigue (2015) define the ''middle class'' as those with incomes of at least 300 percent of the poverty line. Melissa Kearney et al., ''A Dozen Facts about America's Struggling Lower-Middle Class,'' The Hamilton Project (December 2013), *https://www.hamiltonproject.org/assets/legacy/files/downloads_and_links/THP_12LowIncomeFacts_Final.pdf;* Isabel Sawhill and Edward Rodrigue, ''An Agenda for Reducing Poverty and Improving Opportunity,'' Brookings Institution, *https://www.brookings.edu/wp-content/uploads/2016/07/Sawhill_FINAL.pdf.*

[30] Data on median annual wages from: U.S. Bureau of Labor and Statistics, Occupational Employment and Wage Statistics, *available at https://www.bls.gov/oes/current/oes_nat.htm* (last visited December 7, 2021).

[31] For instance, households earning between 200 and 300 percent of the FPG have significantly higher rates of food and housing insecurity than those earning above 300 percent of the FPG. Table 1, Kyle J. Caswell and Stephen Zuckerman, Food Insecurity, Housing Hardship, and Medical Care Utilization, Urban Institute (June 2018), *https://www.urban.org/sites/default/files/publication/98701/2001896_foodinsecurity_housinghardship_medicalcareutilization_finalized.pdf.*

disproportionate, or meaningfully more severe, impact from the pandemic. As discussed in the interim final rule, pre-existing disparities in health and economic outcomes magnified the impact of the COVID–19 public health emergency on certain households and communities. As with the interim final rule, under the final rule recipients may presume that households residing in QCTs or receiving services provided by Tribal governments were disproportionately impacted by the pandemic. In addition, under the final rule recipients may presume that low-income households were disproportionately impacted by the pandemic. Finally, under the final rule recipients may also presume that households residing in the U.S. territories or receiving services from territorial governments were disproportionately impacted.

Treasury notes that households presumed to be disproportionately impacted would also be presumptively impacted, as these households have not only experienced pandemic impacts but have experienced disproportionate pandemic impacts; as a result, these households are presumptively eligible for responsive services for both impacted and disproportionately impacted households.

Many different geographic, income-based, or poverty-based presumptions could be used to designate disproportionately impacted populations. The combination of permitting recipients to use QCTs, low-income households, and services provided by Tribal or territorial governments as presumptions balances these varying methods. Specifically, QCTs are a commonly used designation of geographic areas based on low incomes or high poverty rates of households in the community; for recipients providing geographically targeted services, QCTs may provide a simple metric with readily available maps for use. However, Treasury recognizes that QCTs do not capture all underserved populations, including for reasons noted by commenters. By allowing recipients to also presume that low-income households were disproportionately impacted, the final rule provides greater flexibility to serve underserved households or communities. Data on household incomes is also readily available at varying levels of geographic granularity (*e.g.,* Census Tracts, counties), again permitting flexibility to adapt to local circumstances and needs. Finally, Treasury notes that, as discussed further below, recipients may also identify other households, populations, and communities disproportionately impacted by the pandemic, in addition to those presumed to be disproportionately impacted.

Additionally, Tribal and territorial governments may face both disproportionate impacts of the pandemic and administrability challenges with operationalizing the income-based standard; therefore, Treasury has presumed that services provided by these governments respond to disproportionate pandemic impacts. Given a lack of regularly published data on household incomes in most territories,[32] as well as a lack of poverty guidelines developed for these jurisdictions,[33] it may be highly challenging to assess disproportionate impact in these communities according to an income- or poverty-based standard. Similarly, data on incomes in Tribal communities are not readily available.[34] Finally, as described in the sections on Public Health and Negative Economic Impacts, Tribal communities have faced particularly severe health and economic impacts of the pandemic. Similarly, available research suggests that preexisting health and economic disparities in the territories amplified the impact of the pandemic on these communities.[35]

Categorical Eligibility

Public Comment: Several commenters suggested that the final rule permit recipients to rely on a beneficiary's eligibility for other federal benefits programs as an easily administrable proxy for identifying a group or population that experienced a negative economic impact as a result of the COVID–19 public health emergency (*i.e.,* categorical eligibility). In other words, a recipient would determine that individuals or households are eligible for an SLFRF-funded program based on the individual or household's eligibility in another program, typically another federal benefit program. Commenters noted that categorical eligibility is a common policy in program administration that can significantly ease administrative burden on both program administrators and beneficiaries.

Treasury Response: Treasury agrees that allowing recipients to identify impacted and disproportionately impacted beneficiaries based on their eligibility for other programs with similar income tests would ease administrative burden. To the extent that the other program's eligibility criteria align with a population or class that experienced a negative economic impact of the pandemic, this approach is also consistent with the process allowed under the final rule for recipients to determine that a class has experienced a negative economic impact, and then document that an individual receiving services is a member of the class. For these reasons, the final rule recognizes categorical eligibility for the following programs and populations:

- *Impacted households.* Treasury will recognize a household as impacted if it otherwise qualifies for any of the following programs:
  - Children's Health Insurance Program (CHIP)
  - Childcare Subsidies through the Child Care and Development Fund (CCDF) Program
  - Medicaid
  - National Housing Trust Fund (HTF), for affordable housing programs only
  - Home Investment Partnerships Program (HOME), for affordable housing programs only
- *Disproportionately impacted households.* Treasury will recognize a household as disproportionately impacted if it otherwise qualifies for any of the following programs:
  - Temporary Assistance for Needy Families (TANF)
  - Supplemental Nutrition Assistance Program (SNAP)
  - Free and Reduced-Price Lunch (NSLP) and/or School Breakfast (SBP) programs
  - Medicare Part D Low-income Subsidies
  - Supplemental Security Income (SSI)
  - Head Start and/or Early Head Start
  - Special Supplemental Nutrition Program for Women, Infants, and Children (WIC)
  - Section 8 Vouchers
  - Low-Income Home Energy Assistance Program (LIHEAP)
  - Pell Grants
  - For services to address educational disparities, Treasury will recognize Title

[32] For instance, the American Community Survey does not include all territories. U.S. Census Bureau, Areas Published, *https://www.census.gov/programs-surveys/acs/geography-acs/areas-published.html* (last visited November 9, 2021).

[33] U.S. Department of Health and Human Services, *supra* note 24.

[34] For instance, data from the American Community Survey is based on geographical location rather than Tribal membership. U.S. Census Bureau, My Tribal Area, *https://www.census.gov/Tribal/Tribal_glossary.php.*

[35] Lina Stoylar et. al., Challenges in the U.S. Territories: COVID–19 and the Medicaid Financing Cliff, Kaiser Family Foundation (May 18, 2021), *https://www.kff.org/coronavirus-covid-19/issue-brief/challenges-in-the-u-s-territories-covid-19-and-the-medicaid-financing-cliff/.*

I eligible schools [36] as disproportionately impacted and responsive services that support the school generally or support the whole school as eligible

c. Standards for Identifying Other Eligible Populations

Standards: Designating Other Impacted Classes

Public Comment: Treasury received multiple comments requesting additional clarification about how classes of impacted individuals may be designated, as well as questions asking whether recipients must demonstrate a specific public health or negative economic impact to each entity served (*e.g.,* each household receiving assistance under a program). There were several comments requesting that specific geographic designations, like a county or Impact Zone, be eligible to use as a determining boundary.

Treasury Response: The interim final rule allowed, and the final rule maintains, the ability for recipients to demonstrate a public health or negative economic impact on a class and to provide assistance to beneficiaries that fall within that class. Consistent with the scope of beneficiaries included in sections 602(c)(1)(A) and 603(c)(1)(A) of the Social Security Act, Treasury is clarifying that a recipient may identify such impacts for a class of households, small businesses, or nonprofits. In such cases, the recipient need only demonstrate that the household, small business, or nonprofit is within the relevant class. For example, a recipient could determine that restaurants in the downtown area had generally experienced a negative economic impact and provide assistance to those small businesses to respond. When providing this assistance, the recipient would only need to demonstrate that the small businesses receiving assistance were restaurants in the downtown area. The recipient would not need to demonstrate that each restaurant served experienced its own negative economic impact.

In identifying an impacted class and responsive program, service, or capital expenditure, recipients should consider the relationship between the definition of the class and proposed response. Larger and less-specific classes are less likely to have experienced similar harms and thus the responses are less likely to be responsive to the harms identified. That is, as the group of entities being served by a program has a wider set of fact patterns, or the type of entities, their circumstances, or their pandemic experiences differ more substantially, it may be more difficult to determine that the class has actually experienced the same or similar negative economic impact and that the response is appropriately tailored to address that impact.

Standard: Designating Other Disproportionately Impacted Classes

Summary of Interim Final Rule: As noted above, the interim final rule provided a broad set of enumerated eligible uses of funds in disproportionately impacted communities, including to address pre-existing disparities that contributed to more severe pandemic impacts in these communities. The interim final rule presumed that these services are eligible uses when provided in a QCT, to families and individuals living in QCTs, or when these services are provided by Tribal governments. Recipients may also provide these services to ''other populations, households, or geographic areas disproportionately impacted by the pandemic'' and, in identifying these disproportionately impacted communities, should be able to support their determination that the pandemic resulted in disproportionate public health or economic outcomes to the group identified.

Public Comment: A significant number of commenters expressed uncertainty regarding the process for determining eligibility for disproportionately impacted communities beyond QCTs. A commenter noted that a clearer definition of ''disproportionately impacted'' should be delineated and that any definition should include communities of color and people of limited means. Some commenters suggested a template or checklist to see if an area meets the standard for disproportionately impacted communities outside of QCTs. Some commenters stated that QCT and non-QCT beneficiaries should be treated the same.

Treasury Response: Under the interim final rule, presuming eligibility for services in QCTs, for populations living in QCTs, and for Tribal governments was intended to ease administrative burden, providing a simple path for recipients to offer services in underserved communities, and is not an exhaustive list of disproportionately impacted communities. To further clarify, the final rule codifies the interpretive framework discussed above, including presumptions of groups disproportionately impacted, as well as the ability to identify other disproportionately impacted populations, households, or geographies (referred to here as disproportionately impacted classes).

As discussed in the interim final rule, in identifying other disproportionately impacted classes, recipients should be able to support their determination that the pandemic resulted in disproportionate public health or economic outcomes to the specific populations, households, or geographic areas to be served. For example, the interim final rule considered data regarding the rate of COVID–19 infections and deaths in low-income and socially vulnerable communities, noting that these communities have experienced the most severe health impacts, compared to national averages. Similarly, the interim final rule considered the high concentration of low-income workers performing essential work, the reduced ability to socially distance, and other pre-existing public health challenges, all of which correlate with more severe COVID–19 outcomes. The interim final rule also considered the disproportionate economic impacts of the pandemic, citing, for example, the rate of job losses among low-income persons as compared to the general population. The interim final rule then identified QCTs, a common, readily accessible, and geographically granular method of identifying communities with a large proportion of low-income residents, as presumed to be disproportionately impacted by the pandemic.

In other words, the interim final rule identified disproportionately impacted populations by assessing the impacts of the pandemic and finding that some populations experienced meaningfully more severe impacts than the general public. Similarly, to identify disproportionately impacted classes, recipients should compare the impacts experienced by that class to the typical or average impacts of the pandemic in their local area, state, or nationally.

Recipients may identify classes of households, communities, small businesses, nonprofits, or populations that have experienced a disproportionate impact based on academic research or government research publications, through analysis of their own data, or through analysis of other existing data sources. To augment their analysis, or when quantitative data is not readily available, recipients may also consider qualitative research and sources like resident interviews or

[36] *Title I eligible schools* means schools eligible to receive services under section 1113 of Title I, Part A of the Elementary and Secondary Education Act of 1965, as amended (20 U.S.C. 6313), including schools served under section 1113(b)(1)(C) of that Act.

feedback from relevant state and local agencies, such as public health departments or social services departments. In both cases, recipients should consider the quality of the research, data, and applicability of analysis to their determination.

In designing a program or service that responds to a disproportionately impacted class, a recipient must first identify the impact and then identify an appropriate response. To assess disproportionate impact, recipients should rely on data or research that measures the public health or negative economic impact. An assessment of the effects of a response (*e.g.,* survey data on levels of resident support for various potential responses) is not a substitute for an assessment of the impact experienced by a particular class. Data about the appropriateness or desirability of a response may be used to assess the reasonableness of a response, once an impact or disproportionate impact has been identified but should not be the basis for assessing impact.

2. Public Health

Background

On January 21, 2020, the Centers for Disease Control and Prevention (CDC) identified the first case of novel coronavirus in the United States.[37] Since that time, and through present day, the United States has faced numerous waves of the virus that have brought acute strain on health care and public health systems. At various points in the pandemic, hospitals and emergency medical services have seen significant influxes of patients; response personnel have faced shortages of personal protective equipment; testing for the virus has been scarce; and congregate living facilities like nursing homes have seen rapid spread.

Since the initial wave of the COVID–19 pandemic, the United States has faced several additional major waves that continued to impact communities and stretch public health services. The summer 2020 wave impacted communities in the south and southwest. As the weather turned colder and people spent more time indoors, a wave throughout fall and winter 2020 impacted communities in almost every region of the country as the virus reached a point of uncontrolled spread and over 3,000 people died per day due to COVID–19.[38]

In December 2020, the Food and Drug Administration (FDA) authorized COVID–19 vaccines for emergency use, and soon thereafter, mass vaccination in the United States began. At the time of the interim final rule publication in May 2021, the number of daily new infections was steeply declining as rapid vaccination campaigns progressed across the country. By summer 2021, COVID–19 cases had fallen to their lowest level since early months of the pandemic, when testing was scarce. However, throughout late summer and early fall, the Delta variant, a more infectious and transmittable variant of the SARS–CoV–2 virus, sparked yet another surge. From June to early September, the seven-day moving average of reported cases rose from 12,000 to 165,000.[39]

As of December 2021, COVID–19 in total has infected over 50 million and killed over 800,000 Americans.[40] Preventing and mitigating the spread of COVID–19 continues to require a major public health response from federal, state, local, and Tribal governments.

First, state, local, and Tribal governments across the country have mobilized to support the national vaccination campaign. As of December 2021, more than 80 percent of adults have received at least one dose, with more than 470 million total doses administered.[41] Additionally, more than 15 million children over the age of 12 have received at least one dose of the vaccine and over 47 million people have received a booster dose.[42] Vaccines for younger children, ages 5 through 11, have been approved and are reaching communities and families across the country. As new variants continue to emerge globally, the national effort to administer vaccinations and other COVID–19 mitigation strategies will be a critical component of the public health response.

In early reporting on uses of SLFRF funds, recipients have indicated that they plan to put funds to immediate use to support continued vaccination campaigns. For example, one recipient has indicated that it plans to use SLFRF funds to support a vaccine incentive program, providing $100 gift cards to residents at community vaccination clinics. The program aimed to target communities with high public health needs.[43] Another recipient reported that it is partnering with multiple agencies, organizations, and providers to distribute COVID–19 vaccinations to homebound residents in assisted living facilities.[44]

State, local, and Tribal governments have also continued to execute other aspects of a wide-ranging public health response, including increasing access to COVID–19 testing and rapid at-home tests, contact tracing, support for individuals in isolation or quarantine, enforcement of public health orders, new public communication efforts, public health surveillance (*e.g.,* monitoring case trends and genomic sequencing for variants), enhancement to health care capacity through alternative care facilities, and enhancement of public health data systems to meet new demands or scaling needs.

State, local, and Tribal governments have also supported major efforts to prevent COVID–19 spread through safety measures at key settings like nursing homes, schools, congregate living settings, dense worksites, incarceration settings, and in other public facilities. This has included, for example, implementing infection prevention measures or making ventilation improvements.

In particular, state, local, and Tribal governments have mounted significant efforts to safely reopen schools. A key factor in school reopening is the ability to implement COVID–19 mitigation strategies such as providing masks and other hygiene resources, improving air-quality and ventilation, increasing outdoor learning and eating spaces, testing and contact tracing protocols, and a number of other measures.[45] For example, one recipient described plans to use SLFRF funds to further invest in school health resources that were critical components of school reopening and reducing the spread of COVID–19 in schools. Those investments include the increasing school nurses and social

[37] Press Release, Centers for Disease Control and Prevention, First Travel-related Case of 2019 Novel Coronavirus Detected in United States (Jan. 21, 2020), *https://www.cdc.gov/media/releases/2020/p0121-novel-coronavirus-travel-case.html.*

[38] Centers for Disease Control and Prevention, COVID Data Tracker: Trends in Number of COVID–19 Cases and Deaths in the US Reported to CDC, by State/Territory, *https://covid.cdc.gov/covid-data-tracker/#trends_dailytrendscases* (last visited December 7, 2021).

[39] *Id.*

[40] Centers for Disease Control and Prevention, COVID Data Tracker, *http://www.covid.cdc.gov/covid-data-tracker/#datatracker-home* (last visited December 31, 2021).

[41] Centers for Disease Control and Prevention, COVID Data Tracker: COVID–19 Vaccinations in the United States, *https://covid.cdc.gov/covid-data-tracker/#vaccinations* (last visited December 7, 2021).

[42] *Id.*

[43] Columbus, Ohio Recovery Plan, *https://www.columbus.gov/recovery/.*

[44] Luzerne County, Pennsylvania Recovery Plan, *https://www.luzernecounty.org/DocumentCenter/View/26304/Final-Interim-Recovery-Plan-Performance-Report-83121.*

[45] This includes implementing mitigation strategies consistent with the Centers for Disease Control and Prevention's (CDC) Guidance for COVID–19 Prevention in K–12 Schools (November 5, 2021), *available at https://www.cdc.gov/coronavirus/2019-ncov/community/schools-childcare/k-12-guidance.html.*

workers, improved ventilation systems, and other health and safety measures.

The need for public health measures to respond to COVID–19 will continue moving forward. This includes the continuation of vaccination campaigns for the general public, booster doses, and children. This also includes monitoring the spread of COVID–19 variants, understanding the impact of these variants, developing approaches to respond, and monitoring global COVID–19 trends. Finally, the long-term health impacts of COVID–19 will continue to require a public health response, including medical services for individuals with ''long COVID,'' and research to understand how COVID–19 impacts future health needs and raises risks for the tens of millions of Americans who have been infected.

The COVID–19 pandemic also negatively impacted other areas of public health, particularly mental health and substance use. In January 2021, over 40 percent of American adults reported symptoms of depression or anxiety, up from 11 percent in the first half of 2019.[46] The mental health impacts of the pandemic have been particularly acute for adults ages 18 to 24, racial and ethnic minorities, caregivers for adults, and essential workers, with all reporting significantly higher rates of considering suicide.[47] The proportion of children's emergency department visits related to mental health has also risen noticeably.[48] Similarly, rates of substance use and overdose deaths have spiked: Preliminary data from the CDC show a nearly 30 percent increase in drug overdose mortality from April 2020 to April 2021, bringing the estimated overdose death toll for a 12-month period over 100,000 for the first time ever.[49] The CDC also found that 13 percent of adults started or increased substance use to cope with stress related to COVID–19 and 26 percent reported having symptoms of trauma- and stressor-related disorder (TRSD) related to the pandemic.[50]

Another public health challenge exacerbated by the pandemic was violent crime and gun violence, which increased during the pandemic and has disproportionately impacted low-income communities.[51] According to the Federal Bureau of Investigation (FBI), although the property crime rate fell 8 percent in 2020, the violent crime rate increased 6 percent in 2020 compared to 2019 data.[52] In particular, the estimated number of aggravated assault offenses rose 12 percent, while murder and manslaughter increased 30 percent from 2019 to 2020.[53] The proportion of homicides committed with firearms rose from 73 percent in 2019 to 76 percent in 2020.[54] Exposure to violence can create serious short-term and long-term harmful effects to health and development, and repeated exposure to violence may be connected to negative health outcomes.[55] Addressing community violence as a public health issue may help prevent and even reduce additional harm to individuals, households, and communities.[56]

Many communities are using SLFRF funds to invest in holistic approaches in violence prevention that are rooted in targeted outreach and addressing root causes. For example, the City of St. Louis is planning to invest in expanding a ''community responder'' model designed to provide clinical help and to divert non-violent calls away from the police department. Additionally, the city will expand access to mental health services, allowing residents to seek support at city recreation centers, libraries, and other public spaces.[57] Similarly, Los Angeles County will further invest in its ''Care First, Jails Last'' program which seeks to replace ''arrest and incarceration'' responses with health interventions.[58]

While the pandemic affected communities across the country, it disproportionately impacted some demographic groups and exacerbated health inequities along racial, ethnic, and socioeconomic lines.[59] The CDC has found that racial and ethnic minorities are at increased risk for infection, hospitalization, and death from COVID–19, with Hispanic or Latino and Native American or Alaska Native patients at highest risk.[60]

Similarly, low-income and socially vulnerable communities have seen the most severe health impacts. For example, counties with high poverty rates also have the highest rates of infections and deaths, with 308 deaths per 100,000 compared to the U.S. average of 238 deaths per 100,000, as of December 2021.[61] Counties with high social vulnerability, as measured by factors such as poverty and educational attainment, have also fared more poorly than the national average, with 325 deaths per 100,000 as of December 2021.[62] Over the course of the

[46] Nirmita Panchal et al., The Implications of COVID–19 for Mental Health and Substance Abuse (Feb. 10, 2021), *https://www.kff.org/coronavirus covid-19/issue-brief/the-implications-of-covid-19-for-mental-health-and-substance-use/#:~:text= Older%20adults%20are%20also%20 more, prior%20to%20the%20current%20crisis;* Mark É. Czeisler et al., Mental Health, Substance Abuse, and Suicidal Ideation During COVID–19 Pandemic—United States, June 24–30 2020, Morb. Mortal. Wkly. Rep. 69(32):1049–57 (Aug. 14, 2020), *https://www.cdc.gov/mmwr/volumes/69/wr/mm6932a1.htm.*

[47] *Id.*

[48] Rebecca T. Leeb et al., Mental Health-Related Emergency Department Visits Among Children Aged <18 Years During the COVID Pandemic—United States, January 1–October 17, 2020, Morb. Mortal. Wkly. Rep. 69(45):1675–80 (Nov. 13, 2020), *https://www.cdc.gov/mmwr/volumes/69/wr/mm6945a3.htm.*

[49] Centers for Disease Prevention and Control, National Center for Health Statistics, Provisional Drug Overdose Death Counts, *https://www.cdc.gov/nchs/nvss/vsrr/drug-overdose-data.htm* (last visited May 8 December 6, 2021).

[50] Panchal, *supra* note 46; Mark É. Czeisler et al., *supra* note 46.

[51] The White House, FACT SHEET: More Details on the Biden-Harris Administration's Investments in Community Violence Interventions (April 7, 2021), *https://www.whitehouse.gov/briefing-room/statements-releases/2021/04/07/fact-sheet-more-details-on-the-biden-harris-administrations-investments-in-community-violence-interventions/.*

[52] Federal Bureau of Investigation, FBI Releases 2020 Crime Statistics (September 27, 2021) *https://www.fbi.gov/news/pressrel/press-releases/fbi-releases-2020-crime-statistics.*

[53] *Id.*

[54] *Id.*

[55] The Educational Fund to Stop Gun Violence, Community Gun Violence, *https://efsgv.org/learn/type-of-gun-violence/community-gun-violence/* (last visited November 9, 2021).

[56] Giffords Law Center, Healing Communities in Crisis: Lifesaving Solutions to the Urban Gun Violence Epidemic (March 2016), *https://giffords.org/wp-content/uploads/2019/01/Healing-Communities-in-Crisis.pdf.*

[57] St. Louis, MO Recovery Plan, *https://www.stlouis-mo.gov/government/recovery/covid-19/arpa/plan/.*

[58] Los Angeles County, CA Recovery Plan, *http://file.lacounty.gov/SDSInter/bos/supdocs/160391.pdf.*

[59] Office of the White House, National Strategy for the COVID–19 Response and Pandemic Preparedness (Jan. 21, 2021), *https://www.whitehouse.gov/wp-content/uploads/2021/01/National-Strategy-for-the-COVID-19-Response-and-Pandemic-Preparedness.pdf.*

[60] In a study of 13 states from October to December 2020, the CDC found that Hispanic or Latino and Native American or Alaska Native individuals were 1.7 times more likely to visit an emergency room for COVID–19 than White individuals, and Black individuals were 1.4 times more likely to do so than White individuals. *See* Sebastian D. Romano et al., Trends in Racial and Ethnic Disparities in COVID–19 Hospitalizations, by Region—United States, March–December 2020, MMWR Morb Mortal Wkly Rep 2021, 70:560–565 (Apr. 16, 2021), *https://www.cdc.gov/mmwr/volumes/70/wr/mm7015e2.htm?s_cid=mm7015e2_w.*

[61] Centers for Disease Control and Prevention, COVID Data Tracker: Trends in COVID–19 Cases and Deaths in the United States, by County-level Population Factors, *https://covid.cdc.gov/covid-data-tracker/#pop-factors_totaldeaths* (last visited December 7, 2021).

[62] The CDC's Social Vulnerability Index includes fifteen variables measuring social vulnerability, including unemployment, poverty, education levels, single-parent households, disability status, non-English speaking households, crowded housing, and transportation access.

Centers for Disease Control and Prevention, COVID Data Tracker: Trends in COVID–19 Cases and Deaths in the United States, by Social

Continued

pandemic, Native Americans have experienced more than one and a half times the rate of COVID–19 infections, more than triple the rate of hospitalizations, and more than double the death rate compared to White Americans.[63] Low-income and minority communities also exhibit higher rates of pre-existing conditions that may contribute to an increased risk of COVID–19 mortality.[64] In addition, individuals living in low-income communities may have had more limited ability to socially distance or to self-isolate when ill, resulting in faster spread of the virus, and were over-represented among essential workers, who face greater risk of exposure.[65]

Social distancing measures in response to the pandemic may have also exacerbated pre-existing public health challenges. For example, for children living in homes with lead paint, spending substantially more time at home raises the risk of developing elevated blood lead levels, while screenings for elevated blood lead levels declined during the pandemic.[66] The combination of these underlying social and health vulnerabilities may have contributed to more severe public health outcomes of the pandemic within these communities, resulting in an exacerbation of pre-existing disparities in health outcomes.[67]

Summary of the Interim Final Rule Approach to Public Health

Summary: As discussed above, the interim final rule provided flexibility for recipients to pursue a wide range of eligible uses to ''respond to'' the COVID–19 public health emergency. Uses of funds to ''respond to'' the public health emergency address the SARS-CoV–2 virus itself, support efforts to prevent or decrease spread of the virus, and address other impacts of the pandemic on public health. The interim final rule implemented these provisions by identifying a non-exhaustive list of programs or services that may be funded as responding to COVID–19 (''enumerated eligible uses''), along with considerations for evaluating other potential uses of funds not explicitly listed. Enumerated eligible uses are discussed below. For guidance on how to determine whether a particular use is allowable, beyond those enumerated, see section Standards: Identifying a Public Health Impact.

Enumerated eligible uses under this section built and expanded upon permissible expenditures under the Coronavirus Relief Fund; for clarity, the interim final rule expressly listed as eligible uses the uses permissible under the Coronavirus Relief Fund, with minor exceptions.[68] The interim final rule also recognized that the nature of the COVID–19 public health emergency, and responsive policy measures, programs, and services, had changed over time and is expected to continue evolving.

The interim final rule categorized enumerated eligible uses to respond to the public health emergency into several categories: (1) COVID–19 mitigation and prevention, (2) medical expenses, (3) behavioral health care, (4) public health and safety staff, (5) expenses to improve the design and execution of health and public health programs, and (6) eligible uses to address disparities in public health outcomes. For each category in turn, this section describes public comments received and Treasury's responses, as well as comments received proposing additional enumerated eligible uses.

Reorganizations and Cross-References: In some cases, enumerated eligible uses included in the interim final rule under responding to the public health emergency have been re-categorized in the organization of the final rule to enhance clarity. For discussion of eligible uses for public health and safety staff and to improve the design and execution of public health programs, please see section Public Sector Capacity and Workforce in General Provisions: Other. For discussion of eligible uses to address disparities in public health outcomes, please see section Assistance to Households in Negative Economic Impacts.

Conversely, discussion of eligible assistance to small businesses and nonprofits to respond to public health impacts has been moved from Assistance to Small Businesses and Assistance to Nonprofits in Negative Economic Impacts to this section. This change is consistent with the interim final rule, which provides that appropriate responses to address the public health impacts of COVID–19 may be provided to any type of entity.

a. COVID–19 Mitigation and Prevention

COVID–19 public health response and mitigation tactics. Recognizing the broad range of services and programming needed to contain COVID–19, the interim final rule provided an extensive list of enumerated eligible uses to prevent and mitigate COVID–19 and made clear that the public health response to the virus is expected to continue to evolve over time, necessitating different uses of funds.

Enumerated eligible uses of funds in this category included: Vaccination programs; medical care; testing; contact tracing; support for isolation or quarantine; supports for vulnerable populations to access medical or public health services; public health surveillance (*e.g.,* monitoring case trends, genomic sequencing for variants); enforcement of public health orders; public communication efforts; enhancement to health care capacity, including through alternative care facilities; purchases of personal protective equipment; support for prevention, mitigation, or other services in congregate living facilities (*e.g.,* nursing homes, incarceration settings, homeless shelters, group living facilities) and other key settings like schools; ventilation improvements in congregate settings, health care settings, or other key locations; enhancement of

Vulnerability Index, *https://covid.cdc.gov/covid-data-tracker/#pop-factors_totaldeaths* (last visited December 7, 2021).

[63] Centers for Disease Control and Prevention, Risk for COVID–19 Infection, Hospitalization, and Death By Race/Ethnicity, *https://www.cdc.gov/coronavirus/2019-ncov/covid-data/investigations-discovery/hospitalization-death-by-race-ethnicity.html* (last visited December 7, 2021).

[64] *See, e.g.,* Centers for Disease Control and Prevention, Risk of Severe Illness or Death from COVID–19 (Dec. 10, 2020), *https://www.cdc.gov/coronavirus/2019-ncov/community/health-equity/racial-ethnic-disparities/disparities-illness.html* (last visited December 7, 2021).

[65] Milena Almagro et al., Racial Disparities in Frontline Workers and Housing Crowding During COVID–19: Evidence from Geolocation Data (Sept. 22, 2020), NYU Stern School of Business (forthcoming), *available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3695249;* Grace McCormack et al., Economic Vulnerability of Households with Essential Workers, JAMA 324(4):388–90 (2020), *available at https://jamanetwork.com/journals/jama/fullarticle/2767630.*

[66] *See, e.g.,* Joseph G. Courtney et al., Decreases in Young Children Who Received Blood Lead Level Testing During COVID–19—34 Jurisdictions, January–May 2020, Morb. Mort. Wkly. Rep. 70(5):155–61 (Feb. 5, 2021), *https://www.cdc.gov/mmwr/volumes/70/wr/mm7005a2.htm;* Emily A. Benfer & Lindsay F. Wiley, Health Justice Strategies to Combat COVID–19: Protecting Vulnerable Communities During a Pandemic, Health Affairs Blog (Mar. 19, 2020), *https://www.healthaffairs.org/do/10.1377/hblog20200319.757883/full/.*

[67] *See, e.g.,* Centers *for Disease Control and Prevention, supra note 62;* Benfer & Wiley, *supra* note 66; Nathaniel M. Lewis et al., Disparities in COVID–19 Incidence, Hospitalizations, and Testing, by Area-Level Deprivation—Utah, March 3–July 9, 2020, Morb. Mortal. Wkly. Rep. 69(38):1369–73 (Sept. 25, 2020), *https://www.cdc.gov/mmwr/volumes/69/wr/mm6938a4.htm.*

[68] Generally, funding uses eligible under CRF as a response to the direct public health impacts of COVID–19 will continue to be eligible under the ARPA, including those not explicitly listed in the final rule, with the following two exceptions: (1) The standard for eligibility of public health and safety payrolls has been updated (see section Public Sector Capacity and Workforce in General Provisions: Other) and (2) expenses related to the issuance of tax-anticipation notes are no longer an eligible funding use (see section Restrictions on Use: Debt Service).

public health data systems; other public health responses; and capital investments in public facilities to meet pandemic operational needs, such as physical plant improvements to public hospitals and health clinics or adaptations to public buildings to implement COVID–19 mitigation tactics. These enumerated uses are consistent with guidance from public health authorities, including the CDC.

Public Comment: Many commenters were supportive of expansive enumerated eligible uses for mitigating and preventing COVID–19, noting the wide range of activities that governments may undertake and the continued changing landscape of pandemic response. Some commenters requested that Treasury engage in ongoing consideration of and consultation on evolving public health needs and resulting eligible expenses. Some commenters noted that their jurisdiction does not have an official public health program, for example smaller jurisdictions or those that do not have a health department, and requested clarification on whether their public health expenses would still be eligible in compliance with program rules.

Treasury Response: In the final rule, Treasury is maintaining an expansive list of enumerated eligible uses to mitigate and prevent COVID–19, given the wide-ranging activities that governments may take to further these goals, including ''other public health responses.'' Note that the final rule discusses several of these enumerated uses in more detail below.

Treasury is further clarifying that when providing COVID–19 prevention and mitigation services, recipients can identify the impacted population as the general public. Treasury presumes that all enumerated eligible uses for programs and services, including COVID–19 mitigation and prevention programs and services, are reasonably proportional responses to the harm identified unless a response is grossly disproportionate to the type or extent of harm experienced. Note that capital expenditures are not considered ''programs and services'' and are not presumed to be reasonably proportional responses to an identified harm except as provided in section Capital Expenditures in General Provisions: Other. In other words, recipients can provide any COVID–19 prevention or mitigation service to members of the general public without any further analysis of impacts of the pandemic on those individuals and whether the service is responsive.

This approach gives recipient governments an extensive set of eligible uses that can adapt to local needs, as well as evolving response needs and developments in understanding of transmission of COVID–19. Treasury emphasizes how the enumerated eligible uses can adapt to changing circumstances. For example, when the interim final rule was released, national daily COVID–19 cases were at relatively low levels and declining;[69] as the Delta variant spread and cases peaked in many areas of the country, particularly those with low vaccination rates, government response needs and tactics evolved, and the SLFRF funds provided the ability to quickly and nimbly adapt to new public health needs. Treasury also notes that funds may be used to support compliance with and implementation of COVID–19 safety requirements, including vaccination requirements, testing programs, or other required practices.

Recipient governments do not need to have an official health or public health program in order to utilize these eligible uses; any recipient can pursue these eligible uses, though Treasury recommends consulting with health and public health professionals to support effective implementation.

The CDC has provided recommendations and guidelines to help mitigate and prevent COVID–19. The interim final rule and final rule help support recipients in stopping the spread of COVID–19 through these recommendations and guidelines.[70] The final rule reflects changing circumstances of COVID–19 and provides a broad range of permissible uses for mitigating and preventing the spread of the disease, in a manner consistent with CDC guidelines and recommendations.

The purpose of the SLFRF funds is to mitigate the fiscal effects stemming from the COVID–19 public health emergency, including by supporting efforts to stop the spread of the virus. The interim final rule and final rule implement this objective by, in part, providing that recipients may use SLFRF funds for COVID–19 mitigation and prevention.[71] A program or service that imposes conditions on participation in or acceptance of the service that would undermine efforts to stop the spread of COVID–19 or discourage compliance with recommendations and guidelines in CDC guidance for stopping the spread of COVID–19 is not a permissible use of funds. In other words, recipients may not use funds for a program that undermines practices included in the CDC's guidelines and recommendations for stopping the spread of COVID–19. This includes programs that impose a condition to discourage compliance with practices in line with CDC guidance (*e.g.,* paying off fines to businesses incurred for violation of COVID–19 vaccination or safety requirements), as well as programs that require households, businesses, nonprofits, or other entities not to use practices in line with CDC guidance as a condition of receiving funds (*e.g.,* requiring that businesses abstain from requiring mask use or employee vaccination as a condition of receiving SLFRF funds).

Vaccination programs and vaccine incentives. At the time of the interim final rule release, many vaccination programs were using mass vaccination tactics to rapidly reach Americans en masse for first vaccine doses.[72] Since that time, the FDA has authorized booster vaccine doses for certain groups and certain vaccines and has also authorized vaccines for youths[73] [74] The inclusion of ''vaccination programs'' as an eligible use allows for adaptation as the needs of programs change or new groups become eligible for different types of vaccinations.

Public Comment: Since the release of the interim final rule, many recipient governments have also requested clarification on whether vaccine incentives are a permissible use of funds.

Treasury Response: Treasury issued guidance clarifying that ''[vaccine] 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

[69] *See* Centers for Disease Control and Prevention, COVID Data Tracker, *https://covid.cdc.gov/covid-data-tracker/#trends_dailycases* (last visited December 7, 2021).

[70] *See* Centers for Disease Control and Prevention, COVID–19, *https://www.cdc.gov/coronavirus/2019-ncov/index.html* (last visited November 8, 2021).

[71] *See* § 35.6(b); Coronavirus State and Local Fiscal Recovery Funds, 86 FR at 26786.

[72] Centers for Disease Control and Prevention, COVID Data Tracker: COVID–19 Vaccinations in the United States, *https://covid.cdc.gov/covid-data-tracker/#vaccinations* (last visited October 18, 2021).

[73] U.S. Food and Drug Administration, Coronavirus (COVID–19) Update: FDA Takes Additional Actions on the Use of a Booster Dose for COVID–19 Vaccines, *https://www.fda.gov/news-events/press-announcements/fda-authorizes-pfizer-biontech-covid-19-vaccine-emergency-use-children-5-through-11-years-age* (last visited November 8, 2021).

[74] U.S. Food and Drug Administration, FDA Authorizes Pfizer-BioNTech COVID–19 Vaccine for Emergency Use in Children 5 through 11 Years of Age, *https://www.fda.gov/news-events/press-announcements/fda-authorizes-pfizer-biontech-covid-19-vaccine-emergency-use-children-5-through-11-years-age* (last visited November 8, 2021).

use of funds so long as such costs are reasonably proportional to the expected public health benefit.'' [75] This use of funds remains permissible under the final rule.

Capital Expenditures

Public Comment: Many commenters requested clarification around the types and scope of permissible capital investments in public facilities to meet pandemic operational needs; ventilation improvements in congregate settings, health care settings, or other key locations; and whether support for prevention and mitigation in congregate facilities could include facilities renovations, improvements, or construction of new facilities, or if the facilities must solely be used for COVID–19 response.

Treasury Response: For clarity, Treasury has addressed the eligibility standard for capital expenditures, or investments in property, facilities, or equipment, in one section of this Supplementary Information; see section Capital Expenditures in General Provisions: Other. In recognition of the importance of capital expenditures in the COVID–19 public health response, Treasury enumerates that the following projects are examples of eligible capital expenditures, as long as they meet the standards for capital expenditures in section Capital Expenditures in General Provisions: Other:

- Improvements or construction of COVID–19 testing sites and laboratories, and acquisition of related equipment;
- Improvements or construction of COVID–19 vaccination sites;
- Improvements or construction of medical facilities generally dedicated to COVID–19 treatment and mitigation (*e.g.,* emergency rooms, intensive care units, telemedicine capabilities for COVID–19 related treatment);
- Expenses of establishing temporary medical facilities and other measures to increase COVID–19 treatment capacity, including related construction costs;
- Acquisition of equipment for COVID–19 prevention and treatment, including ventilators, ambulances, and other medical or emergency services equipment;
- Improvements to or construction of emergency operations centers and acquisition of emergency response equipment (*e.g.,* emergency response radio systems);
- Installation and improvements of ventilation systems;
- Costs of establishing public health data systems, including technology infrastructure;
- Adaptations to congregate living facilities, including skilled nursing facilities, other long-term care facilities, incarceration settings, homeless shelters, residential foster care facilities, residential behavioral health treatment, and other group living facilities, as well as public facilities and schools (excluding construction of new facilities for the purpose of mitigating spread of COVID–19 in the facility); and
- Mitigation measures in small businesses, nonprofits, and impacted industries (*e.g.,* developing outdoor spaces).

Other clarifications on COVID–19 mitigation: Medical care, supports for vulnerable populations, data systems, carceral settings. Based on public comments and questions received from recipients following the interim final rule, Treasury is making several further clarifications on enumerated eligible uses in this category.

Public Comment: Several commenters requested clarification on eligible uses of funds for medical care; Treasury addresses those comments in the section Medical Expenses below.

Public Comment: Recipients posed questions on the type and scope of activities eligible as ''supports for vulnerable populations to access medical or public health services.''

Treasury Response: Enumerated eligible uses should be considered in the context of the eligible use category or section where they appear; in this case, ''supports for vulnerable populations to access medical or public health services'' appears in the section COVID–19 Mitigation and Prevention. As such, these eligible uses should help vulnerable or high-risk populations access services that mitigate COVID–19, for example, transportation assistance to reach vaccination sites, mobile vaccination or testing programs, or on-site vaccination or testing services for homebound individuals, those in group homes, or similar settings.

Public Comment: Some commenters asked whether ''enhancement of public health data systems'' could include investments in software, databases, and other information technology resources that support responses to the COVID–19 public health emergency but also provide benefits for other use cases and long-term capacity of public health departments and systems.

Treasury Response: These are permissible uses of funds under the interim final rule and remain eligible under the final rule.

Assistance to Businesses and Nonprofits To Implement COVID–19 Mitigation Strategies

Background: As detailed above, Treasury received many public comments describing uncertainty about which eligible use category should be used to assess different potential uses of funds. As a result, Treasury has re-categorized some uses of funds in the final rule to provide greater clarity, consistent with the principle that uses of funds should be assessed based on their intended beneficiary. For example, COVID–19 mitigation and prevention serves the general public or specific populations within the public. However, in the interim final rule, assistance to small businesses, nonprofits, and impacted industries to implement COVID–19 mitigation and prevention strategies was categorized in the respective sections within Negative Economic Impacts. The final rule consolidates all COVID–19 mitigation and prevention within Public Health.

Public Comment: Treasury has received multiple comments and questions about which eligible use permits the recipient to provide assistance to businesses and nonprofits to address the public health impacts of COVID–19.

Treasury Response: In the final rule, these services have been re-categorized under COVID–19 mitigation and prevention to reflect the fact that this assistance responds to public health impacts of the pandemic rather than the negative economic impacts to a small business, nonprofit, or impacted industry. When providing COVID–19 mitigation and prevention services, recipients can identify the impacted entity as small businesses, nonprofits, or businesses in impacted industries in general. As with all enumerated eligible uses, recipients may presume that all COVID–19 mitigation and prevention programs and services are reasonably proportional responses to the harm identified unless a response is grossly disproportionate to the type or extent of harm experienced. Note that capital expenditures are not considered ''programs and services'' and are not presumed to be reasonably proportional responses to an identified harm except as provided in section Capital Expenditures in General Provisions: Other. In other words, recipients can provide any COVID–19 prevention or mitigation service to small businesses, nonprofits, and businesses in impacted

[75] Coronavirus State and Local Fiscal Recovery Funds, Frequently Asked Questions, as of July 19, 2021; *https://home.treasury.gov/system/files/136/SLFRPFAQ.pdf.* Note that programs may provide incentives to individuals who have already received a vaccination if the incentive is reasonably expected to increase the number of people who choose to get vaccinated or motivate people to get vaccinated sooner and the costs are reasonably proportional to the expected public health benefit.

industries without any further analysis of impacts of the pandemic on those entities and whether the service is responsive.

In some cases, this means that an entity not otherwise eligible to receive assistance to respond to negative economic impacts of the pandemic, for example an entity that did not experience a negative economic impact, may still be eligible to receive assistance under this category for COVID–19 mitigation and prevention services.

Uses of funds can include loans, grants, or in-kind assistance to small businesses, nonprofits, or other entities to implement COVID–19 prevention or mitigation tactics, such as vaccination; testing; contact tracing programs; physical plant changes to enable greater use of outdoor spaces or ventilation improvements; enhanced cleaning efforts; and barriers or partitions. For example, this would include assistance to a restaurant to establish an outdoor patio, given evidence showing much lower risk of COVID–19 transmission outdoors.[76] Uses of funds can also include aid to travel, tourism, hospitality, and other impacted industries to implement COVID–19 mitigation and prevention measures to enable safe reopening, for example, vaccination or testing programs, improvements to ventilation, physical barriers or partitions, signage to facilitate social distancing, provision of masks or personal protective equipment, or consultation with infection prevention professionals to develop safe reopening plans.

Recipients providing assistance to small businesses, nonprofits, or impacted industries that includes capital expenditures (*i.e.,* expenditures on property, facilities, or equipment) should also review the section Capital Expenditures in General Provisions: Other, which describes eligibility standards for these expenditures. Recipients providing assistances in the form of loans should review the section Treatment of Loans Made with SLFRF Funds in General Provisions: Other.

Recipients should also be aware of the difference between beneficiaries of assistance and subrecipients when working with small businesses, nonprofits, or impacted industries. As noted above, Treasury presumes that the general public, as well as small businesses, nonprofits, and impacted industries in general, has been impacted by the COVID–19 disease itself and is eligible for services that mitigate or prevent COVID–19 spread. As such, a small business, nonprofit, or impacted industry receiving assistance to implement COVID–19 mitigation measures is a beneficiary of assistance (*e.g.,* granting funds to a small business to develop an outdoor patio to reduce transmission). In contrast, if a recipient contracts with, or grants funds to, a small business, nonprofit, or impacted industry to carry out an eligible use for COVID–19 mitigation on behalf of the recipient, the entity is a subrecipient (*e.g.,* contracting with a small business to operate COVID–19 vaccination sites). For further information on distinguishing between beneficiaries and subrecipients, as well as the impacts of the distinction on reporting and other requirements, see section Distinguishing Subrecipients versus Beneficiaries.

b. Medical Expenses

Background: The interim final rule also included as an enumerated eligible use medical expenses, including medical care and services to address the near-term and potential longer-term impacts of the disease on individuals infected.

Public Comment: Some commenters sought clarification on the types of medical expenses eligible and for whom, including whether funds could be used under this category for expanding health insurance coverage (*e.g.,* subsidies for premiums, expanding a group health plan), improvements to healthcare facilities or establishment of new medical facilities, direct costs of medical services, and costs to a self-funded health insurance plan (*e.g.,* a county government health plan) for COVID–19 medical care.

Treasury Response: In the final rule, Treasury is maintaining this enumerated eligible use category and clarifying that it covers costs related to medical care provided directly to an individual due to COVID–19 infection (*e.g.,* treatment) or a potential infection (*e.g.,* testing). This can include medical costs to uninsured individuals; deductibles, co-pays, or other costs not covered by insurance; costs for uncompensated care at a health provider; emergency medical response costs; and, for recipients with a self-funded health insurance plan, excess health insurance costs due to COVID–19 medical care. These are medical expenses due to COVID–19 and distinguish this category of eligible uses from other related eligible uses, like COVID–19 mitigation and prevention and health insurance expenses to households, to provide greater clarity for recipients in determining which category of eligible uses they should review to assess a potential use of funds. For discussion of eligibility for programs to expand health insurance coverage, see section Assistance to Households.

c. Behavioral Health Care

Background: Recognizing that the public health emergency, necessary mitigation measures like social distancing, and the economic downturn have exacerbated mental health and substance use challenges for many Americans, the interim final rule included an enumerated eligible use for mental health treatment, substance use treatment, and other behavioral health services, including a non-exhaustive list of specific services that would be eligible under this category.

Public Comment: Many commenters expressed support for the interim final rule's recognition of behavioral health impacts of the pandemic and eligible uses under this category. Several commenters requested clarification on the types of eligible services under this category, specifically whether both acute and chronic care are included as well as services that often do not directly accept insurance payments, like peer support groups. Some commenters highlighted the importance of cultural competence in providing effective behavioral health services. Some commenters suggested that funding should be available broadly and quickly for this purpose, recommending that funding available for behavioral health not be tied to the amount of revenue loss experienced by the recipient.

Treasury Response: In the final rule, Treasury is maintaining this enumerated eligible use category and clarifying that it covers an expansive array of services for prevention, treatment, recovery, and harm reduction for mental health, substance use, and other behavioral health challenges caused or exacerbated by the public health emergency. The specific services listed in the interim final rule also remain eligible.[77]

Treasury is further clarifying that when providing behavioral health services, recipients can identify the impacted population as the general public and, as with all enumerated eligible uses, presume that all programs and services are reasonably proportional responses to the harm identified unless a response is grossly disproportionate to the type or extent of harm experienced. In contrast, capital expenditures are not

[76] *See* Centers for Disease Control and Prevention, Participate in Outdoor and Indoor Activities, *https://www.cdc.gov/coronavirus/2019-ncov/daily-life-coping/outdoor-activities.html* (last visited November 8, 2021).

[77] Hotlines or warmlines, crisis intervention, overdose prevention, infectious disease prevention, and services or outreach to promote access to physical or behavioral health primary care and preventative medicine.

considered ''programs and services'' and are not presumed to be reasonably proportional responses to an identified harm except as provided in section Capital Expenditures in General Provisions: Other.

In other words, recipients can provide behavioral health services to members of the general public without any further analysis of impacts of the pandemic on those individuals and whether the service is responsive. Recipients may also use this eligible use category to respond to increased rates of behavioral health challenges at a population level or, at an individual level, new behavioral health challenges or exacerbation of pre-existing challenges, including new barriers to accessing treatment.

Services that respond to these impacts of the public health emergency may include services across the continuum of care, including both acute and chronic care, such as prevention, outpatient treatment, inpatient treatment, crisis care, diversion programs (*e.g.,* from emergency departments or criminal justice system involvement), outreach to individuals not yet engaged in treatment, harm reduction, and supports for long-term recovery (*e.g.,* peer support or recovery coaching, housing, transportation, employment services).

Recipients may also provide services for special populations, for example, enhanced services in schools to address increased rates of behavioral health challenges for youths, mental health first responder or law enforcement-mental health co-responder programs to divert individuals experiencing mental illness from the criminal justice system, or services for pregnant women with substance use disorders or infants born with neonatal abstinence syndrome. Finally, recipients may use funds for programs or services to support equitable access to services and reduce racial, ethnic, or socioeconomic disparities in access to high-quality treatment.

Eligible uses of funds may include services typically billable to insurance [78] or services not typically billable to insurance, such as peer support groups, costs for residence in supportive housing or recovery housing, and the 988 National Suicide Prevention Lifeline or other hotline services. Recipients may also use funds in conjunction with other federal grants or programs (see section Program Administration Provisions), though eligible services under SLFRF are not limited to those eligible under existing federal programs.

Given the public health emergency's exacerbation of the ongoing opioid and overdose crisis, Treasury highlights several ways that funds may be used to respond to opioid use disorder and prevent overdose mortality.[79] Specifically, eligible uses of funds include programs to expand access to evidence-based treatment like medications to treat opioid use disorder (*e.g.,* direct costs or incentives for emergency departments, prisons, jails, and outpatient providers to offer medications and low-barrier treatment), naloxone distribution, syringe service programs, outreach to individuals in active use, post-overdose follow up programs, programs for diversion from the criminal justice system, and contingency management interventions.

Finally, for clarity, Treasury has addressed the eligibility standard for capital expenditures, or investments in property, facilities, or equipment, in one section of this Supplementary Information; see section Capital Expenditures in General Provisions: Other. Examples of capital expenditures related to behavioral health that Treasury recognizes as eligible include behavioral health facilities and equipment (*e.g.,* inpatient or outpatient mental health or substance use treatment facilities, crisis centers, diversion centers), as long as they adhere to the standards detailed in the Capital Expenditures section.

d. Preventing and Responding to Violence

Background: The interim final rule highlighted that some types of violence had increased during the pandemic and that the ability of victims to access services had decreased, noting as an example the challenges that individuals affected by domestic violence face in accessing services. Accordingly, the interim final rule enumerated as an eligible use, in disproportionately impacted communities, evidence-based community violence intervention programs. Following the release of the interim final rule, Treasury received several recipient questions regarding whether and how funds may be used to respond to an increase in crime, violence, or gun violence in some communities during the pandemic. Treasury released further guidance identifying how enumerated eligible uses and eligible use categories under the interim final rule could support violence reduction efforts, including rehiring public sector staff, behavioral health services, and services to address negative economic impacts of the pandemic that may aid victims of crime. The guidance also identified an expanded set of enumerated eligible uses to address increased gun violence.

Public Comment: Several commenters expressed support for this use of funds.

Treasury Response: In the final rule, Treasury is maintaining enumerated eligible uses in this area and clarifying how to apply eligibility standards. Throughout the final rule, enumerated eligible uses should respond to an identified impact of the COVID–19 public health emergency in a reasonably proportional manner to the extent and type of harm experienced. Many of the enumerated eligible uses—like behavioral health services, services to improve employment opportunities, and services to address educational disparities in disproportionately impacted communities—that respond to the public health and negative economic impacts of the pandemic may also have benefits for reducing crime or aiding victims of crime. For example, the pandemic exacerbated the impact of domestic violence, sexual assault, and human trafficking; enumerated eligible uses like emergency housing assistance, cash assistance, or assistance with food, childcare, and other needs could be used to support survivors of domestic violence, sexual assault, or human trafficking who experienced public health or economic impacts due to the pandemic.

Public Comment: Several commenters expressed support for community violence intervention programs or argued that traditional public safety approaches had negatively impacted the social determinants of health in their communities. Several commenters recommended inclusion of approaches like mental health or substance use diversion programs.

Treasury Response: Treasury recognizes the importance of comprehensive approaches to challenges like violence. The final rule includes an enumerated eligible use for community violence intervention programs in all communities, not just the disproportionately impacted communities eligible under the interim final rule. Given the increased rate of violence during the pandemic, Treasury has determined that this enumerated

[78] However, SLFRF funds may not be used to reimburse a service that was also billed to insurance.

[79] In line with the Department of Health and Human Services, Overdose Prevention Strategy, *https://www.hhs.gov/overdose-prevention/,* and the Office of National Drug Control Policy, Administration's Statement on Drug Policy Priorities for Year One (April 1, 2021), *https://www.whitehouse.gov/wp-content/uploads/2021/03/BidenHarris-Statement-of-Drug-Policy-Priorities-April-1.pdf.*

eligible use is responsive to the impacts of the pandemic in all communities. The final rule incorporates guidance issued after the interim final rule on specifically types of services eligible, including:

- Evidence-based practices like focused deterrence, street outreach, violence interrupters, and hospital-based violence intervention models, complete with wraparound services such as behavioral therapy, trauma recovery, job training, education, housing and relocation services, and financial assistance; and
- Capacity-building efforts at community violence intervention programs like funding more intervention workers, increasing their pay, providing training and professional development for intervention workers, and hiring and training workers to administer the programs.

Public Comment: Some commenters sought further clarification on whether some of the enumerated eligible uses are considered responsive to all crime, violent crime, or gun violence.

Treasury Response: Enumerated eligible uses that respond to an increase in gun violence may be pursued in communities experiencing an increase in gun violence associated with the pandemic, specifically: (1) Hiring law enforcement officials—even above pre-pandemic levels—or paying overtime where the funds are directly focused on advancing community policing strategies for gun violence, (2) additional enforcement efforts to reduce gun violence exacerbated by the pandemic, including prosecuting gun traffickers, dealers, and other parties contributing to the supply of crime guns, as well as collaborative federal, state, and local efforts to identify and address gun trafficking channels, and (3) investing in technology and equipment to allow law enforcement to more efficiently and effectively respond to the rise in gun violence resulting from the pandemic, for example technology to assist in the identification of guns whose serial numbers have been damaged.

3. Negative Economic Impacts

a. Assistance to Households

Background

While the U.S. economy is now on the path to a strong recovery, the public health emergency, including the necessary measures taken to protect public health, resulted in significant economic and financial hardship for many Americans. As businesses closed, consumers stayed home, schools shifted to remote education, and travel declined precipitously, over 22 million jobs were lost in March and April 2020.[80] One year later, in April 2021, the economy still remained over 8 million jobs below its pre-pandemic peak,[81] and the unemployment rate hovered around 6 percent.[82]

In the months since Treasury issued the interim final rule in May 2021, the economy has made large strides in its recovery. The economy gained over 4 million jobs in the seven months from May to November 2021;[83] the unemployment rate fell more than 1.5 percentage points to 4.2 percent, which is the lowest rate since February 2020;[84] and the size of the nation's economy surpassed the pre-pandemic peak in the second quarter of 2021.[85]

While the economy has made immense progress in its recovery since May 2021, the economy has also faced setbacks that illustrate the continued risks to the recovery. As the Delta variant spread across the country this summer and fall, the United States faced another severe wave of cases, deaths, and strain on the healthcare system, which contributed to a slowdown in the pace of recovery in the third quarter.[86] Supply chain disruptions have also demonstrated the difficulties of restarting a global economy.[87] Moreover, although many Americans have returned to work as of November 2021, the economy remains 3.9 million jobs below its pre-pandemic peak,[88] and 2.4 million workers have dropped out of the labor market altogether relative to February 2020.[89] Thus, despite much progress, there is a continued need to respond to the pandemic's economic effects to ensure a full, broad-based, and equitable recovery.

Indeed, the pandemic's economic impacts continue to affect some demographic groups more than others. Rates of unemployment remain particularly severe among workers of color and workers with lower levels of educational attainment; for example, the overall unemployment rate in the United States was 4.2 percent in November 2021, but certain groups saw much higher rates: 6.7 percent for Black workers, 5.2 percent for Hispanic or Latino workers, and 5.7 percent for workers without a high school diploma.[90] Job losses have also been particularly steep among low-wage workers, with these workers remaining furthest from recovery as of the end of 2020.[91] A severe recession, and its concentrated impact among low-income workers, has amplified food and housing insecurity, with an estimated nearly 20 million adults living in households where there is sometimes or often not enough food to eat and an estimated 12 million adults living in households that were not current on rent.[92]

While economic effects have been seen across many communities, there are additional disparities by race and income. For example, approximately

[80] U.S. Bureau of Labor Statistics, All Employees, Total Nonfarm [PAYEMS], retrieved from FRED, Federal Reserve Bank of St. Louis; *https://fred.stlouisfed.org/series/PAYEMS* (last visited December 7, 2021).

[81] *Id.*

[82] U.S. Bureau of Labor Statistics, Unemployment Rate [UNRATE], retrieved from FRED, Federal Reserve Bank of St. Louis; *https://fred.stlouisfed.org/series/UNRATE* (last visited December 7, 2021).

[83] U.S. Bureau of Labor Statistics, *supra* note 80.

[84] U.S. Bureau of Labor Statistics, *supra* note 82.

[85] U.S. Bureau of Economic Analysis, Real Gross Domestic Product [GDPC1], retrieved from FRED, Federal Reserve Bank of St. Louis, *https://fred.stlouisfed.org/series/GDPC1* (last visited December 7, 2021).

[86] U.S. Department of the Treasury, Economy Statement by Catherine Wolfram, Acting Assistant Secretary for Economy Policy, for the Treasury Borrowing Advisory Committee (November 1, 2021), available at *https://home.treasury.gov/news/press-releases/jy0453.*

[87] Yuka Hayashi, IMF Cuts Global Growth Forecast Amid Supply-Chain Disruptions, Pandemic Pressures, Wall Street Journal (October 12, 2021), available at *https://www.wsj.com/articles/imf-cuts-global-growth-forecast-amid-supply-chain-disruptions-warns-of-inflation-risks-11634043601.*

[88] U.S. Bureau of Labor Statistics, *supra* note 80.

[89] U.S. Bureau of Labor Statistics, Civilian Labor Force Level [CLF16OV], retrieved from FRED, Federal Reserve Bank of St. Louis, *https://fred.stlouisfed.org/series/CLF16OV* (last visited December 7, 2021).

[90] U.S. Bureau of Labor Statistics, Labor Force Statistics from the Current Population Survey: Employment status of the civilian population by sex and age (December 6, 2021), *https://www.bls.gov/news.release/empsit.t01.htm* (last visited December 7, 2021); U.S. Bureau of Labor Statistics, Labor Force Statistics from the Current Population Survey: Employment status of the civilian noninstitutional population by race, Hispanic or Latino ethnicity, sex, and age (December 6, 2021), *https://www.bls.gov/web/empsit/cpseea04.htm* (last visited December 7, 2021); U.S. Bureau of Labor Statistics, Labor Force Statistics from the Current Population Survey: Employment status of the civilian noninstitutional population 25 years and over by educational attainment (December 6, 2021), *https://www.bls.gov/web/empsit/cpseea05.htm* (last visited December 7, 2021).

[91] Elise Gould & Jori Kandra, Wages grew in 2020 because the bottom fell out of the low-wage labor market, Economic Policy Institute (Feb. 24, 2021), *https://files.epi.org/pdf/219418.pdf. See also,* Michael Dalton et al., The K-Shaped Recovery: Examining the Diverging Fortunes of Workers in the Recovery from the COVID–19 Pandemic using Business and Household Survey Microdata, U.S. Bureau of Labor Statistics Working Paper Series (July 2021), *https://www.bls.gov/osmr/research-papers/2021/pdf/ec210020.pdf.*

[92] Center on Budget and Policy Priorities, Tracking the COVID–19 Recession's Effects on Food, Housing, and Employment Hardships, *https://www.cbpp.org/research/poverty-and-inequality/tracking-the-covid-19-economys-effects-on-food-housing-and* (last visited December 17, 2021).

half of low-income, Black, and Hispanic parents reported difficulty covering costs related to food, housing, utility, or medical care.[93] Over the course of the pandemic, inequities also manifested along gender lines, as schools closed to in-person activities, leaving many working families without childcare during the day.[94] Women of color have been hit especially hard: The labor force participation rate for Black women has fallen by 3.6 percentage points [95] during the pandemic as compared to 1.3 percentage points for Black men [96] and 1.7 percentage points for White women.[97]

As the economy recovers, the effects of the pandemic-related recession may continue to impact households, including a risk of longer-term effects on earnings and economic potential. For example, unemployed workers, especially those who have experienced longer periods of unemployment, earn lower wages over the long term once rehired.[98] In addition to the labor market consequences for unemployed workers, recessions can also cause longer-term economic challenges through, among other factors, damaged consumer credit scores [99] and reduced familial and childhood wellbeing.[100] These potential long-term economic consequences underscore the continued need for robust policy support.

Low- and moderate-income households, those with income levels at or below 300 percent of the federal poverty level (FPL), face particular hardships and challenges. These households report much higher rates of food insecurity and housing hardships than households with higher incomes. For example, households with incomes at or below 300 percent FPL are several times more likely to have reported struggling with food insecurity compared to households with income above 300 percent FPL.[101] Similarly, low- and moderate-income households reported being housing insecure [102] at rates more than twice as high as higher-income households, and low- and moderate-income households reported housing quality hardship [103] at rates statistically significantly greater than the rate for higher-income households.[104] The economic crisis caused by the pandemic worsened economic outcomes for workers in many low- and moderate-income households. Industries that employed low-wage workers experienced a disproportionate level of job loss. For example, from February 2020 to February 2021, the hospitality and leisure industry lost nearly 3.5 million jobs.[105] While the entire industry was impacted, 72 percent of the job losses occurred in the lowest wage service occupations compared to only a 6 percent rate of job loss in the highest wage management and finance jobs.[106] Similar trends exist in other heavily impacted industries. In public education, the lowest wage occupations, service and transportation jobs, saw a job loss rate of 20 and 26 percent, respectively.[107] During that same time period, the highest wage occupations in public education, management, actually saw jobs increase by 7 percent.[108]

While many households suffered negative economic outcomes as a result of the COVID–19 pandemic and economic recession, households with low incomes were impacted in disproportionate and exceptional ways. From January 2020 to March 2021, low-wage workers experienced job loss at a rate five times higher than middle-wage workers, and high-wage workers actually experienced an increase in job opportunities.[109] Because workers in low-income households were more likely to lose their job or experience reductions in pay, those same households were also more likely to experience economic hardships like trouble paying utility bills, affording rent or mortgage payments, purchasing food, and paying for medical expenses.[110] The disproportionate negative impacts the pandemic has had on low-income families extend beyond financial insecurity. For example, low-income families have reported higher levels of social isolation, stress, and other negative mental health outcomes during the pandemic. While over half of all U.S. adults report that their mental health was negatively affected by the pandemic, adults with low incomes reported major negative mental health impacts at a rate nearly twice that of adults with high incomes.[111]

[93] Michael Karpman, Dulce Gonzalez, Genevieve M. Kenney, Parents Are Struggling to Provide for Their Families during the Pandemic, Urban Institute (May 2020), *https://www.urban.org/research/publication/parents-are-struggling-provide-their-families-during-pandemic?utm_source=urban_researcher&utm_medium=email&utm_campaign=covid_parents&utm_term=lhp.*

[94] Women have carried a larger share of childcare responsibilities than men during the COVID–19 crisis. *See, e.g.,* Gema Zamarro & María J. Prados, Gender differences in couples' division of childcare, work and mental health during COVID–19, Rev. Econ. Household 19:11–40 (2021), *available at https://link.springer.com/article/10.1007/s11150-020-09534-7;* Titan Alon et al., The Impact of COVID–19 on Gender Equality, National Bureau of Economic Research Working Paper 26947 (April 2020), *available at https://www.nber.org/papers/w26947.*

[95] U.S. Bureau of Labor Statistics, Labor Force Participation Rate—20 Yrs. & Over, Black or African American Women [LNS11300032], retrieved from FRED, Federal Reserve Bank of St. Louis; *https://fred.stlouisfed.org/series/LNS11300032* (last visited December 7, 2021).

[96] U.S. Bureau of Labor Statistics, Labor Force Participation Rate—20 Yrs. & Over, Black or African American Men [LNS11300031], retrieved from FRED, Federal Reserve Bank of St. Louis; *https://fred.stlouisfed.org/series/LNS11300031* (last visited December 7, 2021).

[97] U.S. Bureau of Labor Statistics, Labor Force Participation Rate—20 Yrs. & Over, White Women [LNS11300029], retrieved from FRED, Federal Reserve Bank of St. Louis; *https://fred.stlouisfed.org/series/LNS11300029* (last visited December 7, 2021).

[98] *See, e.g.,* Michael Greenstone & Adam Looney, Unemployment and Earnings Losses: A Look at Long-Term Impacts of the Great Recession on American Workers, Brookings Institution (Nov. 4, 2011), *https://www.brookings.edu/blog/jobs/2011/11/04/unemployment-and-earnings-losses-a-look-at-long-term-impacts-of-the-great-recession-on-american-workers/.*

[99] Chi Chi Wu, Solving the Credit Conundrum: Helping Consumers' Credit Records Impaired by the Foreclosure Crisis and Great Recession, National Consumer Law Center (Dec. 2013), *https://www.nclc.org/images/pdf/credit_reports/report-credit-conundrum-2013.pdf.*

[100] Irwin Garfinkel, Sara McLanahan, Christopher Wimer, eds., Children of the Great Recession, Russell Sage Foundation (Aug. 2016), *available at https://www.russellsage.org/publications/children-great-recession.*

[101] Kyle J. Casewell and Stephen Zuckerman, Food Insecurity, Housing Hardship, and Medical Care Utilization, Urban Institute (June 2018), available at *https://www.urban.org/sites/default/files/publication/98701/2001896_foodinsecurity_housinghardship_medicalcareutilization_finalized.pdf.*

[102] Housing insecurity is defined as not paying the full amount of rent or mortgage and/or utility bills (gas, oil, or electricity) sometime in the previous 12 months.

[103] Housing quality hardship is defined as an affirmative response to one or more questions related to problems with a respondent's physical dwelling: Pests and/or insects; leaking roof or ceiling; windows that are broken or cannot shut; exposed electrical wires; broken plumbing (toilet, hot water, other); holes in walls, ceiling, or floor; no appliances (refrigerator or stove); and no phone (of any kind).

[104] *Id.*

[105] Elise Gould and Melat Kassa. Low-wage, low-hours workers were hit hardest in the COVID–19 recession: The State of Working America 2020 employment report, Economic Policy Institute (May 2021), available at *https://www.epi.org/publication/swa-2020-employment-report/.*

[106] *Id.*

[107] *Id.*

[108] *Id.*

[109] R. Chetty, J. Friedman, N. Hendren, M. Stepner, & Team, T. O. I., The Economic Impacts of COVID–19: Evidence from a New Public Database Built Using Private Sector Data (No. w27431; p. w27431) (2020), National Bureau of Economic Research. *https://doi.org/10.3386/w27431.*

[110] M. Despard, Michal Grinstein-Weiss, Yung Chun, and Stephen Roll, COVID–19 job and income loss leading to more hunger and financial hardship, Brookings Institute (July 13, 2020), *https://www.brookings.edu/blog/upfront/2020/07/13/covid-19-job-and-income-loss-leading-to-more-hunger-and-financial-hardship/.*

[111] N. Panchal, R. Kamal, C. Muñana, & P. Chidambaram, The Implications of COVID–19 for Mental Health and Substance Use, Kaiser Family Foundation (February 10, 2021), *https://*

Summary of Interim Final Rule and Final Rule Structure

Summary: The interim final rule provided a non-exhaustive list of enumerated eligible uses to respond to the negative economic impacts of the pandemic through assistance to households, as well as a standard for assessing whether uses of funds beyond those enumerated are eligible.

The interim final rule described enumerated eligible uses for assistance to households in several categories: (1) Assistance to unemployed workers, (2) state Unemployment Insurance Trust Funds, (3) assistance to households, and (4) expenses to improve the efficacy of economic relief. Note that the interim final rule posed several questions to the public on enumerated eligible uses for assistance to households; comments on these questions are addressed in the relevant subject matter section below.

In addition, in recognition that pre-existing health, economic, and social disparities contributed to disproportionate pandemic impacts in certain communities, the interim final rule also provided a broader list of enumerated eligible uses to respond to the pandemic in disproportionately impacted communities, specifically: (1) Building stronger communities through investments in housing and neighborhoods, (2) addressing educational disparities, and (3) promoting healthy childhood environments. In the interim final rule, under the Public Health section, recipients could also provide services to address health disparities and increase access to health and social services; these eligible uses have been re-organized into the Assistance to Households section to consolidate responses in disproportionately impacted communities and enhance clarity.

This section addresses enumerated eligible uses in the final rule to respond to negative economic impacts to households. As a reminder, recipients may presume that a household or population that experienced unemployment, experienced increased food or housing insecurity, or is low or moderate income experienced negative economic impacts resulting from the pandemic, and recipients may provide services to them that respond to these impacts, including these enumerated eligible uses.

For guidance on how to determine whether a particular use, beyond those enumerated, is eligible; further detail on which households and communities are presumed eligible for services; and how to identify eligible households and communities beyond those presumed eligible, see section General Provisions: Structure and Standards.

Reorganizations and Cross-References: The final rule reorganizes all enumerated eligible uses for impacted and disproportionately impacted households into the section Assistance to Households, with the exception that expenses to improve the efficacy of economic relief has been re-categorized into a different section of the final rule for increased clarity; for discussion of that use category, see section General Provisions: Other.

Note that in conducting this reorganization, and based on further analysis and in response to comments, Treasury has determined that several enumerated uses included in the interim final rule for disproportionately impacted communities are directly responsive to negative economic impacts experienced by impacted households. In the final rule, these uses have been moved from ''disproportionately impacted'' to ''impacted'' households accordingly, making these services available to both disproportionately impacted and impacted households. These uses include assistance applying for public benefits or services; programs or services that address or mitigate the impacts of the COVID–19 public health emergency on childhood health or welfare, including childcare, early learning services, programs to provide home visits, and services for families involved in the child welfare system and foster youth; programs to address the impacts of lost instructional time for students; [112] and programs or services that address housing insecurity, lack of affordable housing, or homelessness.

The following activities remain enumerated eligible uses for disproportionately impacted households: Remediation of lead paint or other lead hazards; housing vouchers and assistance relocating to neighborhoods with higher levels of economic opportunity; and programs or services that address educational disparities, including assistance to high-poverty school districts to advance equitable funding across districts and geographies and evidence-based services to address the academic, social, emotional, and mental health needs of students.

Enumerated Eligible Uses for Impacted Households

The interim final rule included several enumerated eligible uses to provide assistance to households or populations facing negative economic impacts due to COVID–19. Enumerated eligible uses included: Food assistance; rent, mortgage, or utility assistance; counseling and legal aid to prevent eviction or homelessness; emergency assistance for burials, home repairs, weatherization, or other needs; internet access or digital literacy assistance; cash assistance; or job training to address negative economic or public health impacts experienced due to a worker's occupation or level of training. It also posed a question as to what other types of services or costs Treasury should consider as eligible uses to respond to the negative economic impacts of COVID–19.

This section addresses each of these enumerated eligible uses in turn, with the exception of job training, which has been re-categorized for increased clarity to the eligible use for ''assistance to unemployed and underemployed workers.'' In general, commenters supported inclusion of these enumerated eligible uses to address key economic needs among households due to the pandemic, and Treasury is maintaining these eligible uses in the final rule, in line with commenters' recommendations.

1. Food assistance. The interim final rule included an enumerated eligible use for food assistance. Some commenters expressed support for this eligible use and emphasized the importance of aid to address food insecurity. Some commenters raised questions as to whether food assistance funds could be used to augment services provided through organizations like food banks, churches, and other food delivery services, or generally be sub-awarded to these organizations.

Treasury Response: Treasury is maintaining this enumerated eligible use without change. Recipients may, as was the case under the interim final rule, administer programs through a wide range of entities, including nonprofit and for-profit entities, to carry out eligible uses on behalf of the recipient government (see section Distinguishing Subrecipients versus Beneficiaries). Further, Treasury is clarifying that capital expenditures related to food banks and other facilities primarily dedicated to addressing food insecurity are eligible; recipients seeking to use funds for capital expenditures should refer to the section Capital Expenditures in General

www.kff.org/coronavirus-covid-19/issue-brief/the-implications-of-covid-19-for-mental-health-and-substance-use/.

[112] For which recipients may presume that any student who did not have access to in-person instruction for a significant period of time was impacted by the pandemic.

Provisions: Other for additional eligibility standards that apply to uses of funds for capital expenditures.

2. Emergency housing assistance. The interim final rule included an enumerated eligible use for rent, mortgage, or utility assistance and counseling and legal aid to prevent eviction or homelessness.

Public Comment: Several commenters supported the inclusion of eviction prevention activities as an eligible use given the high number of households behind on rent and potentially at risk of eviction. Following release of the interim final rule, Treasury had also received requests for elaboration on the types of eligible services in this category. Some commenters also recommended including assistance to households for delinquent property taxes, for example to prevent tax foreclosures on homes, as an enumerated eligible use.

Treasury Response: In response to requests for elaboration on the types of eligible services for eviction prevention, Treasury has provided further guidance that these services include ''housing stability services that enable eligible households to maintain or obtain housing, such as housing counseling, fair housing counseling, case management related to housing stability, outreach to households at risk of eviction or promotion of housing support programs, housing related services for survivors of domestic abuse or human trafficking, and specialized services for individuals with disabilities or seniors that support their ability to access or maintain housing,'' as well as ''legal aid such as legal services or attorney's fees related to eviction proceedings and maintaining housing stability, court-based eviction prevention or eviction diversion programs, and other legal services that help households maintain or obtain housing.'' [113] Treasury also emphasized that recipients may work with court systems, nonprofits, and a wide range of other organizations to implement strategies to support housing stability and prevent evictions.

In the final rule, Treasury is maintaining these enumerated eligible uses, including those described in the interim final rule and later guidance, in line with commenters' recommendations. To enhance clarity, Treasury is also elaborating on some types of services included under this eligible use category; this remains a non-exhaustive list of eligible services. For example, eligible services under this use category include: Rent, rental arrears, utility costs or arrears (*e.g.,* electricity, gas, water and sewer, trash removal, and energy costs, such as fuel oil), reasonable accrued late fees (if not included in rental or utility arrears), mortgage payment assistance, financial assistance to allow a homeowner to reinstate a mortgage or to pay other housing-related costs related to a period of forbearance, delinquency, or default, mortgage principal reduction, facilitating mortgage interest rate reductions, counseling to prevent foreclosure or displacement, relocation expenses following eviction or foreclosure (*e.g.,* rental security deposits, application or screening fees). Treasury is clarifying that assistance to households for delinquent property taxes, for example to prevent tax foreclosures on homes, was permissible under the interim final rule and continues to be so under the final rule. In addition, Treasury is also clarifying 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.

This 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).

Further, Treasury is clarifying that transitional shelters (*e.g.,* temporary residences for people experiencing homelessness) are eligible capital expenditures. Recipients seeking to use funds for capital expenditures should refer to the section Capital Expenditures in General Provisions: Other for additional eligibility standards that apply to uses of funds for capital expenditures.

Note that this enumerated eligible use describes ''emergency housing assistance,'' or assistance for responses to the immediate or near-term negative economic impacts of the pandemic. The final rule also clarifies and expands the ability of recipients to use SLFRF funds to address the general lack of affordable housing and housing challenges underscored by the pandemic. For discussion of affordable housing eligible uses, including services that primarily increase access to affordable, high-quality housing and support stable housing and homeownership over the long term, see the eligible use for ''promoting long-term housing security: Affordable housing and homelessness.''

3. Emergency assistance for pressing needs: Burials, home repairs, weatherization, or other needs. The interim final rule included an enumerated eligible use for emergency assistance for burials, home repairs, weatherization, and other needs; these types of programs may provide emergency assistance for pressing and unavoidable household needs. Treasury did not receive comments on this eligible use and is maintaining it in the final rule.

Background on Home Repairs and Weatherization: The economic downturn has meant fewer households had the resources needed to make necessary home repairs and improvements. In May 2021, 28 percent of landlords reported deferring maintenance and 27 percent of tenants reported maintenance requests going unanswered.[114] While small and cosmetic repairs can often wait, deferring major repairs, such as plumbing needs, can result in unsafe and unhealthy living environments and, eventually, the need for more expensive repairs and fixes.

In addition to repairs, many homes are in need of weatherization. Weatherization assistance helps low- and moderate-income Americans save energy, reduce their utility bills, and keeps them and their homes safe. One in three households is energy insecure,[115] meaning they do not have the ability to meet their energy needs.[116] Weatherization efforts are particularly important for low- and moderate-income households. Households of color, renters, and households with low or moderate incomes are all more likely to report energy insecurity.[117] These

[113] *See FAQ 2.21.* Coronavirus State and Local Fiscal Recovery Funds, Frequently Asked Questions, as of July 19, 2021; *https://home.treasury.gov/system/files/136/SLFRPFAQ.pdf.*

[114] Jung Hyun Choi, Laurie Goodman, and Daniel Pang, The Pandemic Is Making It Difficult for Mom-and-Pop Landlords to Maintain Their Properties, Urban Institute (July 23, 2021), *https://www.urban.org/urban-wire/pandemic-making-it-difficult-mom-and-pop-landlords-maintain-their-properties.*

[115] U.S. Energy Information Administration, Residential Energy Consumption Survey (2017), Retrieved from *https://www.eia.gov/consumption/residential/data/2015/hc/php/hc11.1.php.*

D. Hernández, Understanding 'energy insecurity' and why it matters to health, Social Science & Medicine, 167, 1–10 (2016), *https://doi.org/10.1016/j.socscimed.2016.08.029.*

[116] Hernández, D. (2016). Understanding 'energy insecurity' and why it matters to health. Social Science & Medicine, 167, 1–10. *https://doi.org/10.1016/j.socscimed.2016.08.029.*

[117] U.S. Energy Information Administration, Residential Energy Consumption Survey (RECS) *https://www.eia.gov/consumption/residential/data/2015/hc/php/hc11.1.php.* (last visited November 9, 2021)

disparities are partially a result of economic hardship but are also caused by inequitable access to housing with proper insulation, up to date heating, cooling, and ventilation systems, and functioning and up to date lighting and appliances.[118] While programs that address the effects of energy hardships, like the Low-Income Home Energy Assistance Program (LIHEAP), are critical, weatherization attempts to address root causes by addressing issues that lead to energy insecurities.

4. Internet access or digital literacy assistance. The interim final rule included an enumerated eligible use for assistance to households for internet access or digital literacy assistance. This enumerated eligible use, which responds to the negative economic impacts of the pandemic on a household by providing assistance that helps them secure internet access or increase their ability to use computers and the internet, is separate from the eligible use category for investments in broadband infrastructure, under Sections 602(c)(1)(D) and 603(c)(1)(D), which is used to build new broadband networks through infrastructure construction or modernization. For discussion of broadband infrastructure investment in the final rule, see section Broadband Infrastructure in Infrastructure.

Background: The COVID–19 public health emergency has underscored the importance of universally available, high-speed, reliable, and affordable broadband coverage as millions of Americans rely on the internet to participate in, among other critical activities, school, healthcare, and work. Recognizing the need for such connectivity, SLFRF funds can be used to make necessary investments in broadband infrastructure that increase access over the long term, as well as the necessary supports to purchase internet access or gain digital literacy skills needed to complete activities of daily living during the pandemic.

The National Telecommunications and Information Administration (NTIA) highlighted the growing necessity of broadband in daily lives through its analysis of NTIA internet Use Survey data, noting that Americans turn to broadband internet service for every facet of daily life including work, study, and healthcare.[119] With increased use of technology for daily activities and the movement by many businesses and schools to operating remotely during the pandemic, broadband has become even more critical for people across the country to carry out their daily lives.

However, even in areas where broadband infrastructure exists, broadband access may be out of reach for millions of Americans because it is unaffordable, as the United States has some of the highest broadband prices in the Organisation for Economic Co-operation and Development (OECD).[120] According to a 2021 Pew Research Center study, 20 percent of non-broadband users say that the monthly cost of home broadband is the primary reason they do not have broadband at home, and 40 percent say that cost is one reason for their lack of home broadband.[121] Further, according to another survey, 22 percent of parents with homebound schoolchildren during the COVID–19 pandemic say that it is very or somewhat likely that their children will have to rely on public wi-fi to finish their schoolwork because there is no reliable internet connection at home; this percentage nearly doubles for lower-income parents, 40 percent of whom noted that their children will have to rely on public wi-fi.[122] The same survey showed that 36 percent of lower-income parents with homebound children say their child will not be able to complete their schoolwork because they do not have access to a computer at home.[123]

Public Comment: Many commenters highlighted the importance of broadband access during the pandemic, including for remote work and education, and argued that affordability presents a major barrier to broadband adoption by households; in other words, many households live in areas that have broadband infrastructure and service available but are unable to purchase service for their household due to the high cost. These commenters argued that broadband must be affordable to be accessible.

Commenters proposed several potential responses to affordability concerns. Some commenters recommended that building ''gap networks,'' or broadband networks built at low cost to provide affordable service in areas where it is lacking, be eligible as assistance to households to respond to the negative economic impacts of the pandemic, even if they do not meet the technical standards for eligibility under the eligible use category of broadband infrastructure investment, especially the required speed standards for new service. These commenters argued that the networks have shown promise as a timely means to expand access to affordable broadband internet during the pandemic, even if they may not provide service speeds needed for more intensive internet uses. Another commenter requested eligible uses include funding cellular towers to decrease costs. One commenter recommended that affordability should be addressed through other programs but not SLFRF given that affordability and availability may require nuanced solutions that would be complex to combine.

Treasury Response: The interpretive framework and enumerated eligible uses allow recipients flexibility to address identified pandemic impacts, including through solutions that take into account the particularized issues in their community. Given extensive commenter feedback on the importance of affordability to achieving broadband access, and the centrality of broadband to participating in work, education, healthcare, and other activities during the pandemic, affordability programs are an appropriate eligible use to respond to the negative economic impacts of the pandemic and Treasury is maintaining the enumerated eligible use for assistance to households for internet access and digital literacy programs in the final rule.

Building or constructing new broadband networks is an infrastructure investment and is governed by a separate clause in the statute. Treasury has addressed comments on ''gap networks'' that require infrastructure build-out in the section Broadband Infrastructure in Infrastructure.

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[118] A. Drehobl, & L. Ross, Lifting the high energy burden in America's largest cities: How energy efficiency can improve low income and underserved communities, American Council for an Energy Efficient Economy (2016), *https://www.aceee.org/sites/default/files/publications/researchreports/u1602.pdf.*

[119] *See, e.g.,* Nation Telecommunications and Information Administration, More than Half of American Households Used the Internet for Health-Related Activities in 2019, NTIA Data Show (December 7, 2020), *https://www.ntia.gov/blog/2020/more-half-american-households-used-internet-health-related-activities-2019-ntia-data-show;* Nation Telecommunications and Information Administration, Nearly a Third of American Employees Worked Remotely in 2019, NTIA Data Show (September 3, 2020) *https://www.ntia.gov/blog/2020/nearly-third-american-employees-worked-remotely-2019-ntia-data-show;* and generally, Nation Telecommunications and Information Administration, Digital Nation Data Explorer (June 10, 2020), *https://www.ntia.gov/data/digital-nation-data-explorer.*

[120] BroadbandSearch Blog Post, How Do U.S. Internet Costs Compare To The Rest Of The World?, *available at https://www.broadbandsearch.net/blog/internet-costs-compared-worldwide.*

[121] Pew Research Center, Mobile Technology and Home Broadband 2021 (June 3, 2021), *https://www.pewresearch.org/internet/2021/06/03/mobile-technology-and-home-broadband-2021/.*

[122] Pew Research Center, 53% of Americans Say the internet Has Been Essential During the COVID–19 Outbreak (April 30, 2020), *https://www.pewresearch.org/internet/2020/04/30/53-of-americans-say-the-internet-has-been-essential-during-the-covid-19-outbreak/.*

[123] *Id.*

Public Comment: Some commenters also use the term ''gap networks'' to refer to equipment installed as part of wi-fi systems, such as routers, repeaters, and access points; this equipment provides consumer access to an existing broadband network and does not require new network build-out or construction. These commenters recommended that Treasury permit, as assistance to households for internet access, investments in public wi-fi networks, free wi-fi in public housing communities, and other equipment that offers internet access to end users by utilizing existing broadband networks.

Other commenters recommended that eligible uses in this category include providing devices and equipment necessary to access the internet, like computers and routers, directly to low-income households.

Treasury Response: Treasury has determined that these services, which expand internet access without constructing new networks, are an appropriate enumerated eligible use as assistance to households to respond to a negative economic impact, and they are permitted under the final rule. Treasury is clarifying that eligible uses under this category can also include a wide range of programs and services to expand internet access and digital literacy, such as subsidies for the cost of internet service, other programs that support adoption of internet service where available, digital literacy programs, or programs that provide devices and equipment to access the internet (*e.g.,* programs that provide equipment like tablets, computers, or routers) to households. Recipients seeking to use funds for equipment should refer to the section Capital Expenditures in General Provisions: Other for additional eligibility standards that apply to uses of funds for capital expenditures (*e.g.,* equipment, property, and facilities).

5. Cash assistance. The interim final rule included as an enumerated eligible use cash assistance and provided that cash transfers must be ''reasonably proportional'' to the negative economic impact they address and may not be ''grossly in excess of the amount needed to address'' the impact. In assessing whether a transfer is reasonably proportional, recipients may ''consider and take guidance from the per person amounts previously provided by the Federal Government in response to the COVID–19 crisis,'' and transfers ''grossly in excess of such amounts'' are not eligible.

Public Comment: Several commenters expressed support for this eligible use, noting that this is a common policy tool for some governments to support the well-being of households and individuals in their communities. Some commenters requested that Treasury set a specific dollar amount for permissible cash transfers, and Treasury has also received recipient questions on whether specific types of transfers, such as those to a substantial share of the population in the jurisdiction, would be a permissible use of funds.

Treasury Response: Treasury is maintaining this enumerated eligible use in the final rule, in line with commenters' recommendations. Because the final rule is intended to provide flexibility to recipients to respond to the particularized pandemic impacts in their communities, which may vary in type and intensity, setting a specific dollar threshold for eligible cash transfers would fail to recognize the particularized needs of communities and limit recipients' flexibility to tailor their response to those needs.

To provide greater clarity, Treasury is elaborating on the analysis that recipients may undertake to assess the eligibility of specific cash assistance programs or transfers. Cash transfers, like all eligible uses in this category, must respond to the negative economic impacts of the pandemic on a household or class of households. For the reasons discussed above, recipients may presume that low- and moderate-income households (as defined in the 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.

Finally, Treasury has reiterated in the 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.

6. Survivor's benefits. The interim final rule included an enumerated eligible use for survivor's benefits to surviving family members of individuals who have died from COVID–19, including cash assistance to widows, widowers, or dependents.

Public Comment: Treasury did not receive any comments on the inclusion of survivor's benefits as an enumerated use for impacted households in the interim final rule.

Treasury Response: This use of funds remains eligible under the final rule. Consistent with the general reorganization noted above, the final rule organizes survivor's benefits under assistance to households to clarify that households are the intended beneficiaries of survivor's benefits.

7. Assistance accessing or applying for public benefits or services. Recognizing that eligible households often face barriers to accessing public benefits or services that improve health and economic outcomes, the interim final rule included as an enumerated eligible use in disproportionately impacted communities, public benefits navigators to assist community members with navigating and applying for available federal, state, and local public benefits or services. Treasury also clarified in subsequent guidance after the interim final rule that this eligible use category would include outreach efforts to increase uptake of the Child Tax Credit.

Background: The under-enrollment of eligible households in social assistance programs is a well-recognized and persistent challenge. There are many reasons why a household may not be receiving a particular benefit even though they are eligible. For many federal programs, enrollment processes vary from state-to-state. Sometimes, households are simply unaware that they are eligible for a particular benefit.[124] For example, despite having one of the highest rates of participation of any benefits program, nearly 20 percent of eligible individuals do not participate in the Supplementary Nutritional Assistance Program

[124] Amy Finkelstein & Matthew J Notowidigdo, Take-Up and Targeting: Experimental Evidence from SNAP, The Quarterly Journal of Economics, vol 134(3), pages 1505–1556 (2019), *https://www.nber.org/papers/w24652.*

(SNAP).[125] In other cases, policies like public charge and asset testing can discourage otherwise eligible households.[126] While the gap between households that need assistance and the number of households participating in public benefit programs has always existed, narrowing that gap and ensuring households receive the support they need is critical in mitigating the negative economic impacts of the pandemic.

Public Comment: Treasury has also received feedback from recipients and stakeholders noting the need to increase awareness and uptake of assistance programs, including gaps that remain in enrollment of eligible households in programs to address the negative economic impacts of the pandemic.[127]

Treasury Response: Treasury has determined that this impact of the pandemic is widely experienced across many jurisdictions and programs or services to increase awareness and uptake of assistance programs would respond to the pandemic's negative economic impact in all communities. As such, in the final rule, this use is eligible for any impacted household or class of households, not only in disproportionately impacted communities.

8. Promoting healthy childhood environments. The interim final rule included programs and services that promote healthy childhood environments as an enumerated eligible use for disproportionately impacted households. The interim final rule listed three programs or services included under this use: Childcare; programs to provide home visits by health professionals, parent educators, and social service professionals to individuals with young children to provide education and assistance for economic support, health needs, or child development; and services for child welfare-involved families and foster youth to provide support and education on child development, positive parenting, coping skills, or recovery for mental health and substance use. The interim final rule also included an enumerated eligible use for early learning services in disproportionately impacted communities, to address disparities in education.

Public Comment: Childcare and Early Learning: Treasury received multiple comments that were supportive of the provision of childcare. Treasury has also received multiple comments and questions indicating that recipients have identified a need for childcare for a broader range of households and communities, for example those that may need childcare in order to return to work, in addition to households and communities disproportionately impacted by the pandemic. Several commenters expressed uncertainty about how childcare facilities should interact with the boundaries of a QCT. Finally, one commenter recommended that pre-K or early learning services encompass care for infants and toddlers, arguing that these types of care are often more expensive or challenging to access for families.

Background: Childcare and Early Learning: As daycares and schools closed in-person activities during the pandemic, many working families were left without childcare during the day.[128] Although daycare centers and schools have since reopened in many communities, there remains a persistent childcare shortage as childcare employment levels have not fully rebounded since the sharp decline in childcare employment at the beginning of the pandemic.[129] As a result, working parents in communities across the country, and more specifically women, may face challenges entering or reentering the labor force.[130]

Low-income households are also more likely to lose access to quality childcare.[131] The widespread closure of childcare centers combined with a lack of access to paid family leave means parents in low-income households are more likely to experience a reduction of income or leave their jobs due to a lack of childcare options.[132]

Additionally, childcare providers serving primarily low-income families were less likely to remain open during the pandemic because of tighter profit margins and general community financial insecurity, compared to childcare providers serving primarily high-income families.[133] [134]

In addition to disruptions to childcare, early learning services were also significantly impacted by the pandemic, and the disruption of these services had widespread ramifications for learning loss, parental support, and equity. Early learning centers have seen declined enrollment across the board, though there was a larger dip in enrollment for low-income households.[135] This lower enrollment coincides with a diminishing workforce, as similarly to childcare, early childhood educators have been leaving the profession due to long hours, low pay,[136] and health and safety concerns.[137] As a result, children's school readiness has suffered, leading to potential long-term impacts on life outcomes.[138] The impact also extended

[125] United States Department of Agriculture, Trends in Supplemental Nutrition Assistance Program Participation Rates: Fiscal Year 2016 to Fiscal Year 2018 (May 2021), *https://fns-prod.azureedge.net/sites/default/files/resource-files/Trends2016-2018.pdf.*

[126] Jeremy Barofsky et al., Spreading Fear: The Announcement Of The Public Charge Rule Reduced Enrollment In Child Safety-Net Programs, Health Affairs (October 2020), *https://www.healthaffairs.org/doi/full/10.1377/hlthaff.2020.00763.*

[127] *See, e.g.,* U.S. Department of the Treasury, By ZIP Code: Number of Children under Age 18 with a Social Security Number Who Are Not Found on a Tax Year 2019 or 2020 Tax Return but who Appear on a Tax Year 2019 Form 1095 and Associated Number of Policy Holders (June 2021), *https://home.treasury.gov/system/files/131/Estimated-Counts-of-Children-Unclaimed-for-CTC-by-ZIP-Code-2019.pdf.*

[128] Women have carried a larger share of childcare responsibilities than men during the COVID–19 crisis. See, *e.g.,* Gema Zamarro & Mari´a J. Prados, Gender differences in couples' division of childcare, work and mental health during COVID–19, Rev. Econ. Household 19:11–40 (2021), available at *https://link.springer.com/article/10.1007/s11150-020-09534-7;* Titan Alon et al., The Impact of COVID–19 on Gender Equality, National Bureau of Economic Research Working Paper 26947 (April 2020), available at *https://www.nber.org/papers/w26947.*

[129] *See, e.g.,* Center For The Study Of Child Care Employment (CSCCE), Child Care Sector Jobs: BLS Analysis (November 8, 2021), *https://cscce.berkeley.edu/child-care-sector-jobs-bls-analysis/;* Emma K. Lee, and Zachary Parolin. The Care Burden during COVID–19: A National Database of Child Care Closures in the United States, Socius (January 2021), doi:10.1177/23780231211032028.

[130] Jason Furman, Melissa Schettini Kearney, and Wilson Powell, The Role of Childcare Challenges in the US Jobs Market Recovery During the COVID–19 Pandemic, NBER Working Paper No. 28934 (June 2021), *https://www.nber.org/papers/w28934.*

[131] U.S. Census Bureau, Phase 3.2 Household Pulse Survey: Table 2. Childcare Arrangements in the Last 4 Weeks for Children Under 5 Years Old, by Selected Characteristics, (Washington: 2021), available at *https://www.census.gov/programs-surveys/household-pulse-survey/data.html.*

[132] *Id.*

[133] N. Kalluri, C. Kelly, & A. Garg, Child Care During the COVID–19 Pandemic: A Bad Situation Made Worse. Pediatrics (2021), *https://doi.org/10.1542/peds.2020-041525.*

[134] National Association for the Education of Young Children, Am I Next? Sacrificing to Stay Open, Child Care Providers Face a Bleak Future Without Relief (December 2020), *https://www.naeyc.org/sites/default/files/globally-shared/downloads/PDF.*

[135] G. G. Weisenfeld, Impacts of Covid-19 on Preschool Enrollment and Spending, New Brunswick, NJ: National Institute for Early Education Research (2021), *https://nieer.org/wp-content/uploads/2021/03/NIEER_Policy_Brief_Impacts-of-Covid-19on_Preschool_Enrollment_and_Spending_3_16_21.pdf.*

[136] Heather Long, 'The pay is absolute crap': Child-care workers are quitting rapidly, a red flag for the economy, Washington Post (September 19, 2021), *https://www.washingtonpost.com/business/2021/09/19/childcare-workers-quit/.*

[137] Monash University, The emotional toll of COVID–19 among early childhood educators (August 5, 2020) *https://lens.monash.edu/@education/2020/08/05/1381001/the-emotional-toll-of-covid-19-among-early-childhood-educators.*

[138] Daphna Bassok and Anna Shapiro, Understanding COVID–19-era enrollment drops

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to parents. Parents, especially mothers, may face challenges reentering or remaining in the workforce if early learning services are unavailable.

Treasury Response: Childcare and Early Learning Services: Treasury agrees with commenters' analysis that challenges accessing or affording childcare have been widespread during the pandemic, affecting many jurisdictions and populations across the country. Disruptions to early care and learning services similarly have had broad impact and likely result in negative impacts for young children and their parents. As such, these enumerated eligible uses are generally responsive to the negative economic impacts of the pandemic in all communities, not just in disproportionately impacted communities. Under the final rule, childcare and early learning services are available to impacted households or classes of households, not just those disproportionately impacted. 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, Treasury is clarifying that improvements to or new construction of childcare, daycare, and early learning facilities are eligible capital expenditures. Recipients seeking to use funds for capital expenditures should refer to the section Capital Expenditures in General Provisions: Other for additional eligibility standards that apply to uses of funds for capital expenditures.

Public Comment: Home Visiting: Treasury has also received questions about whether the provision of home visiting services would be responsive to the health and mental health needs of impacted new mothers, citing the positive mental health impacts shown on the mother as well as improved outcomes for children.

Background: Home Visiting: Pregnant and recently pregnant individuals are at an increased risk for serious illness from COVID–19.[139] Furthermore, pregnant individuals with COVID–19 are more likely to experience preterm birth (delivering the baby earlier than 37 weeks).[140] In addition to heightened health risks from COVID–19, pregnant individuals may have experienced significant changes to their prenatal care during the pandemic [141] or may also have experienced increased mental health challenges, including high levels of depression, anxiety, loneliness, and post-traumatic stress during the pandemic.[142]

Home visiting services provided to families, particularly new mothers and newborns, feature regular home visits from trained nurses, social workers, and/or counselors who provide health care, mental health resources, positive parenting support, support in making personal health decisions, and awareness of other potentially helpful services. These functions have become even more essential at mitigating negative factors associated with the pandemic. Home visits give professionals a chance to flag potential domestic violence, which has risen worldwide over the course of the pandemic.[143] Racial health disparities can also be driven down by home visits. For example, Black women are more likely to avoid hospitals during the pandemic, and home visitors can help either assuage concerns around hospitals or give effective advice for alternative methods of childbirth.[144] Given the disproportionate effect of the pandemic on people of color, home visits are an essential equity tool that tackle major negative effects of the pandemic. These are just a few selections from the evidence that suggests many home visiting models can have a positive effect on maternal physical and mental health.[145]

Treasury Response: Home Visiting: Given the widespread impact of COVID–19 on pregnant and recently pregnant individuals, Treasury is re-categorizing home visiting services as an eligible use for impacted communities, not just disproportionately impacted communities. Under the final rule, these eligible uses are available to impacted households or classes of households.

Public Comment: Child Welfare: While the interim final rule noted that certain types of assistance, particularly around child development and parenting, were eligible for child welfare-involved families, Treasury has received some recipient questions asking whether financial, educational, housing, or other supports and services are eligible uses for foster youth, including those aging out of the system, and child welfare-involved families. Other commenters asked about whether funding for kinship care would be eligible.

Background: Child Welfare: The COVID–19 pandemic placed meaningful strain on the child welfare and foster care system. Court hearings were delayed,[146] essential mental health care was shifted to a virtual environment, and attendance and performance in school among foster children dropped sharply.[147] Additionally, there was a nationwide rise of new children entering the foster care system and many states placed temporary moratoria on children aging out of the foster care system.[148] As these temporary moratoria expire, additional support will be needed to assist children exiting the system.

Additionally, financial and material hardship are causal factors in the increase of new children entering the foster care system, whether through loss of a caregiver, domestic violence,[149] or other associated costs of the pandemic. Therefore, support to decrease these hardships will support families and increase positive outcomes for youth

among early-grade public school students, Brookings Institution (February 22, 2021), *https://www.brookings.edu/blog/brown-center-chalkboard/2021/02/22/understanding-covid-19-era-enrollment-drops-among-early-grade-public-school-students/*.

[139] Centers for Disease Control and Prevention, Pregnant and Recently Pregnant People, *https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/pregnant-people.html* (last visited November 9, 2021).

[140] *Id.*

[141] Sarah Javaid, Sarah Barringer, Sarah D Compton, Elizabeth Kaselitz, Maria Muzik, Cheryl A. Moyer, The impact of COVID–19 on prenatal care in the United States: Qualitative analysis from a survey of 2519 pregnant women, Midwifery, Volume 98, 2021, 102991, ISSN 0266–6138, *https://doi.org/10.1016/j.midw.2021.102991*.

[142] A Basu, HH Kim, R Basaldua, KW Choi, L Charron, et al., A cross-national study of factors associated with women's perinatal mental health and wellbeing during the COVID–19 pandemic, PLOS ONE 16(4): e0249780, (2021), *https://doi.org/10.1371/journal.pone.0249780*.

[143] Amanda Taub, A New Covid-19 Crisis: Domestic Abuse Rises Worldwide, New York Times (April 6, 2020), *https://www.nytimes.com/2020/04/06/world/coronavirus-domestic-violence.html*.

[144] Xenia Shih Bion, Efforts to Reduce Black Maternal Mortality Complicated by COVID–19, California Health Care Foundation (April 20, 2020), *https://www.chcf.org/blog/efforts-reduce-black-maternal-mortality-complicated-covid-19/*.

[145] U.S. Department of Health and Human Services, Home Visiting Evidence of Effectiveness, *https://homvee.acf.hhs.gov/outcomes/maternal%20health/In%20Brief*.

[146] National Conference of State Legislatures, Criminal Justice System Responses to COVID–19 (November 16, 2020), *https://www.ncsl.org/research/civil-and-criminal-justice/criminal-justice-and-covid-19.aspx*.

[147] John Burton Advocates for Youth, The Cumulative Impact of the Pandemic on Youth Who Have Been in Foster Care or Homeless (May 2020) *https://jbay.org/wp-content/uploads/2021/04/JBAY-COVID-19-Impact.pdf*.

[148] John Kelly, Next Week, Thousands of Foster Youth Will Age Out on the Same Day (September 21, 2021), *https://imprintnews.org/subscriber-content/thousands-of-foster-youth-will-age-out-on-the-same-day/59006*.

[149] Conrad-Hiebner, Aislinn, and Elizabeth Byram, The Temporal Impact of Economic Insecurity on Child Maltreatment: A Systematic Review. Trauma, Violence, & Abuse, vol. 21, no. 1, Jan. 2020, pp. 157–178, doi:10.1177/1524838018756122.

and families that may otherwise become involved in the child welfare system.

Treasury Response: In the final rule, Treasury is clarifying that services to foster youth, including those aging out of the system, and child welfare-involved families may encompass a wide array of financial, educational, child development, or health supports, or other supports necessary, including supports for kinship care.

9. Addressing the impacts of lost instructional time.

Public Comment: The interim final rule included an enumerated eligible use to address educational disparities in disproportionately impacted communities, recognizing that underserved students have been more severely impacted by the pandemic and including responsive services for early learning, enhance funding to high-poverty districts, and providing evidence-based services to address the academic, social, emotional, and mental health needs of students. Some commenters expressed concerns that learning loss or the negative impacts of lost instructional time due to school closures or remote education during the pandemic had affected a significant share of students in grades kindergarten through twelve (K–12), including students who may not fall within a disproportionally impacted group.

Background: The COVID–19 pandemic resulted in the widespread closure of schools across the nation. While many schools and districts reopened to in-person instruction or implemented remote learning, the shift was not immediate or without consequence. Children who received virtual only or combined remote and in-person instruction were more likely to report experiencing negative mental- and physical health outcomes than children who received in-person instruction.[150]

Treasury Response: Under the final rule, addressing the impact of lost instructional time and/or learning loss is an enumerated eligible use for impacted households. When providing services to address lost instructional time, recipients may presume that any K–12 student who lost access to in-person instruction for a significant period of time has been impacted by the pandemic and is thus eligible for responsive services.

Interventions or services that address the impact of lost instructional time may include offering high-quality tutoring and other extended learning opportunities, providing differentiated instruction, implementing activities to meet the comprehensive needs of students, expanding and improving language access for parents and families, providing information and assistance to parents and families on how they can effectively support students, including in a distance learning environment, improving student engagement in distance education, and administering and using high-quality assessments to assess students' academic progress, among others. In designing services under this eligible use, recipients may wish to reference guidance from the Department of Education on strategies for addressing lost instructional time.[151]

The final rule also maintains a separate enumerated eligible use for addressing educational disparities in disproportionately impacted communities. This eligible use includes services to address disparities in educational outcomes that predate the pandemic and amplified its impact on underserved students; these include, for example, enhanced funding to high-poverty districts and providing evidence-based services to address the academic, social, emotional, and mental health needs of students.

Finally, as described in the section Public Health, recipients can provide a broad range of behavioral health services, including services for children and youth in schools, to respond to the impacts of the pandemic on mental health and other behavioral health issues. When providing behavioral health services, recipients may presume that the general public was impacted by the pandemic and provide behavioral health services to members of the general public, including children and youth in schools, without any further analysis of impacts of the pandemic on those individuals and whether the service is responsive.

10. Promoting long-term housing security: affordable housing and homelessness. Under the interim final rule, recipients may use SLFRF funds to provide a set of housing services to communities that have been disproportionately impacted by the pandemic. Specifically, the interim final rule provided that programs or services that address housing insecurity, lack of affordable housing, or homelessness, were responsive to the negative economic impacts of the pandemic when provided to disproportionately impacted households and communities. The enumerated uses included supportive housing or other programs or services to improve access to stable, affordable housing among individuals who are homeless and development of affordable housing to increase supply of affordable and high-quality living units. Many recipients have already announced plans to use SLFRF funds for affordable housing interventions in all of these categories. Treasury received many comments asking for additional clarity or flexibility in these uses.

As detailed below, based on multiple public comments and questions and Treasury's subsequent analysis, Treasury has determined that supportive housing or other programs or services to improve access to stable, affordable housing among individuals who are homeless, and the development of affordable housing to increase supply of affordable and high-quality living units are responsive to the needs of impacted populations, not only disproportionately impacted populations. This final rule reflects this clarification and builds on the objectives stated in the interim final rule to improve access to stable, affordable housing, including through interventions that increase the supply of affordable and high-quality living units, improve housing security, and support durable and sustainable homeownership.

Finally, note that ''emergency housing assistance,'' or assistance for responses to the immediate negative economic impacts of the pandemic through services like financial assistance for rental arrears or mortgage payments, is also an eligible use category for assistance to households under the final rule; see the eligible use for ''emergency housing assistance'' above. The provision of housing vouchers and assistance relocating to neighborhoods with higher levels of economic opportunity remains an eligible use under assistance to disproportionately impacted households; for discussion, see the eligible use for ''housing vouchers and assistance relocating'' below.

Background: Affordable Housing: It is clear that the ongoing pandemic and resulting economic crisis are having a profound, long-term negative effect on the pre-existing affordable housing crisis facing low-income households.[152]

[150] Verlenden JV, Pampati S, Rasberry CN, et al. Association of Children's Mode of School Instruction with Child and Parent Experiences and Well-Being During the COVID–19 Pandemic—COVID Experiences Survey, United States, October 8–November 13, 2020. MMWR Morb Mortal Wkly Rep 2021;70:369–376. DOI: *http://dx.doi.org/10.15585/mmwr.mm7011a1external* icon.

[151] U.S. Department of Education, Strategies for Using American Rescue Plan Funding to Address the Impact of Lost Instructional Time, August 2021. Retrieved from *https://www2.ed.gov/documents/coronavirus/lost-instructional-time.pdf.*

[152] Consumer Financial Protection Bureau, Housing insecurity and the COVID–19 pandemic

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The combination of a large number of higher-income households who have weathered the pandemic without significant income losses, low interest rates, and housing supply constraints exacerbated by the pandemic, have driven a sharp increase in the sale price of homes.[153] Meanwhile, many low-income renters and homeowners are struggling with lost employment and income and are behind on their housing payments.[154]

Public Comment: Affordable Housing Outside of Low-Income Geographies: A major theme in comments was that affordable housing interventions, especially development of affordable housing, should be allowed outside of QCTs, as concentrating the supply of affordable housing in low-income geographies can have the effect of increasing both concentrated poverty and racial and economic segregation, while locking lower-income households in need of housing support out of high-opportunity neighborhoods with access to employment and amenities.

Treasury Response: Affordable Housing Outside Low-Income Geographies: As previously stated, affordable housing is not confined to low-income geographies under the interim final rule. As discussed elsewhere, the interim final rule presumed that QCTs, as well as communities served by Tribal governments, were disproportionately impacted for administrative convenience, but recipients may identify other populations, households, or geographic areas with disparate impacts of COVID–19 and provide affordable housing services to them. For example, under the interim final rule, a city could determine that its low-income residents faced disproportionate impacts of COVID–19 and develop affordable housing targeted to these households. Such a scenario could include, for example, affordable projects in higher-income neighborhoods that would allow residents to live closer to jobs and well-resourced schools.

Additionally, as noted above, Treasury is finalizing the rule with some changes to the treatment of affordable housing development designed to clarify that permanent supportive housing or other programs or services to improve access to stable, affordable housing among individuals who are homeless, and the development of affordable housing to increase supply of affordable and high-quality living units, are responsive to individuals and households that were impacted by the pandemic in addition to those that were disproportionately impacted. This shift is in line with commenters' recommendations and consistent with the facts described above, which demonstrate that lack of supply of affordable housing units contributed to the pandemic's impact on housing insecurity and unsustainable housing cost burdens and that these impacts were experienced broadly across the country.

Public Comment: Eligible Activities: Many commenters asked for clarity on what types of activities (*e.g.,* land acquisition, construction, pre-construction costs, operating costs, etc.) are eligible uses of SLFRF, and what affordability criteria must be applied to affordable housing development. Commenters encouraged Treasury to allow the full array of affordable housing activities, including particular requests for broad flexibility for Tribal communities, and to specify that ''development'' should include construction, preservation, rehabilitation, and operation. Other commenters requested clarification about permissible program administration approaches for affordable housing, such as contracting methods and distribution of funds.

Some commenters asked that Treasury require SLFRF funds to be focused on the lowest-income households, who suffer the most severe rent burdens and risks of housing instability, and whose housing situation has left them particularly vulnerable to COVID–19. For example, one commenter argued that SLFRF funds should only be used to support affordable housing for households making 50 percent of AMI or less and that recipients should be required to set aside significant portions of any developments for renters making 30 percent of AMI or less and persons with physical and sensory disabilities. Other commenters requested a more flexible approach to affordable housing definitions.

Treasury Response: Eligible Activities: The final rule clarifies eligibility of affordable housing development for recipients; these uses were eligible under the interim final rule, but Treasury is providing further guidance to enhance clarity and respond to recipient and commenter questions.

As with all interventions to address the negative economic impacts of the pandemic, affordable housing projects must be responsive and proportional to the harm identified. This test may be met by affordable housing development projects—which may involve large expenditures and capital investments—if the developments increase the supply of long-term affordable housing for low-income households. While there may be less costly (or non-capital) alternatives to affordable housing development, a comprehensive response to the widespread housing challenges underscored by the pandemic will require the production of additional affordable homes, and targeted affordable housing development is a cost-effective and proportional response to this need.

For purposes of this test, Treasury will presume that any projects that would be eligible for funding under either the National Housing Trust Fund (HTF) or the Home Investment Partnerships Program (HOME) are eligible uses of SLFRF funds. Note that these programs use different income limits than the definition 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 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. Alignment with these programs, which define ''affordable housing'' in a manner consistent with a proportionate response to the affordable housing challenges faced by low- and moderate-income households as a result of the negative economic impacts of the pandemic, is intended to give recipients comfort and clarity as they design a

(March 2020), *https://files.consumerfinance.gov/f/documents/cfpb_Housing_insecurity_and_the_COVID-19_pandemic.pdf.*

[153] Joint Center For Housing Studies Of Harvard University, The State of the Nation's Housing (June 2021), *https://www.jchs.harvard.edu/sites/default/files/reports/files/Harvard_JCHS_State_Nations_Housing_2021.pdf.*

[154] Davin Reed and Eileen Divringi, Household Rental Debt During COVID–19: Update for 2021, Federal Reserve Bank of Philadelphia (2020), available at: *https://www.philadelphiafed.org/community-development/housing-and-neighborhoods/household-rental-debt-during-covid-19-update-for-2021.* Further, some research suggests that liquidity may be a more important predictor of default than other factors, including income or equity. *See* Trading Equity for Liquidity (June 2019), available at *https://www.jpmorganchase.com/content/dam/jpmc/jpmorgan-chase-and-co/institute/pdf/institute-trading-equity-for-liquidity.pdf.*

wide variety of affordable housing interventions, including production, rehabilitation, and preservation of affordable rental housing and, in some cases, affordable homeownership units. These programs allow the financing of a wide range of affordable housing activities and set clear eligibility criteria that many recipients are already familiar with.

Finally, 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 that would be eligible under the Community Development Block Grant (at 24 CFR 507.201(n)) is also an eligible use of SLFRF funds.

Public Comment: Permanent Supportive Housing: Treasury has received comments encouraging the use of SLFRF funds for permanent supportive housing. This is an eligible use under the interim final rule: Both the development of affordable housing (including operating subsidies) and wraparound services such as behavioral health services, employment services, and other supportive services, are eligible responses to the public health crisis or its negative economic impacts.

Treasury Response: The final rule maintains the eligibility of permanent supportive housing as an enumerated use. Treasury is also clarifying that other affordable housing developments targeted to specialized populations are also eligible, for example recovery housing for individuals in recovery from substance use.

Public Comment: Operating Expenses: Commenters specifically asked that Treasury allow the use of SLFRF funds for operating expenses of affordable housing units, as operating subsidies are typically required to reach extremely low-income households, whose affordable rents may be lower than the ongoing cost of operating their unit.

Treasury Response: Operating expenses for eligible affordable housing were an eligible use of funds under the interim final rule and the final rule maintains this treatment. This may include capitalized operating reserves.

Rehabilitation and repair of public housing will also be considered an eligible use of SLFRF funds.

Public Comment: Affordable Housing Loans and Revolving Loan Funds: Some commenters requested that loans with maturities beyond the period of performance or revolving loan funds that revolve beyond the period of performance be eligible uses of SLFRF funds if used for affordable housing. Some commenters pointed out that for-profit developers of low-income housing through the Low-Income Housing Tax Credit (LIHTC) may be deterred from accepting grants to bridge funding gaps in current LIHTC deals by the treatment of grants to for-profit entities in the calculation of eligible basis for the LIHTC.

Treasury Response: The final rule does not change the treatment of loans from the interim final rule. For more details see section Treatment of Loans in Program Administration Provisions. Similarly, the final rule does not change the treatment of grants to support affordable housing development, including developments supported by the LIHTC: such grants are an eligible use of funds.

Additional enumerated eligible uses for assistance to impacted households. As noted above, the interim final rule posed a question on what other types of services or costs Treasury should consider as eligible uses to respond to the negative economic impacts of COVID–19. In response, commenters proposed a wide variety of additional recommended enumerated eligible uses to assist households, ranging from general categories of services (*e.g.,* legal and social services) to services that respond to needs widely experienced across the country (*e.g.,* access to and affordability of health insurance) to services that are most applicable to the particularized needs of certain populations or geographic areas of the United States (*e.g.,* senior citizens, SNAP recipients, immigrants, formerly-incarcerated individuals, responding to environmental issues in certain geographic regions). Other commenters generally requested a high degree of flexibility to respond to the particular needs of their communities.

Treasury Response: Given the large number and diversity of SLFRF recipients, Treasury's approach to assistance to households in the final rule aims to clarify additional enumerated eligible uses that respond to negative economic impacts of the pandemic experienced widely in many jurisdictions across the country, making it clear and simple for recipients to pursue these enumerated eligible uses under the final rule. In the final rule, Treasury is clarifying several additional uses, which generally respond to pandemic impacts experienced broadly across jurisdictions and populations, are eligible under the interim final rule as assistance to households and continue to be so under the final rule, as outlined below.

11. Paid sick, medical, or family leave.

Public Comment: Some commenters argued that the pandemic increased the need for paid sick or medical leave, as staying home when ill is recommended by the CDC to prevent spread of the virus but lack of access to paid sick leave often prevents workers from staying home. Other commenters recommended paid family leave as an eligible use, arguing that shortages in access to childcare or home health assistance, as well as school closures, may increase the need for family members to serve as caretakers.

Background: The COVID–19 pandemic highlighted the importance of paid leave as well as the number of workers who do not have access to paid sick and/or family leave. When workers have access to paid leave, they are less likely to report to work sick, and therefore less likely to spread illnesses in the workplace: One study demonstrates that the emergency sick leave provision of the Families First Coronavirus Response Act (FFCRA) reduced the spread of COVID–19.[155]

The lack of paid leave exacerbates financial hardships experienced as a result of the public health emergency. A 2018 survey by the Department of Labor found that two-thirds of employees that took unpaid or partial-paid leave experienced financial hardship.[156] Furthermore, because the Family and Medical Leave Act (FMLA) excludes small employers, part-time workers, and workers who have been with their employer for less than a year, 44 percent of workers do not have access to even unpaid leave.[157] Workers of color and workers with lower incomes are less likely to have access to paid leave.[158] [159]

[155] Stefan Pichler, Katherine Wen, and Nicolas R. Ziebarth, COVID–19 Emergency Sick Leave Has Helped Flatten The Curve In The United States: Study examines the impact of emergency sick leave on the spread of COVID–19, Health Affairs 39, no. 12 (2020): 2197–2204, *https://www.healthaffairs.org/doi/10.1377/hlthaff.2020.00863.*

[156] Scott Brown et al., Employee and Worksite Perspectives of the Family and Medical Leave Act: Results from the 2018 Surveys, Abt Associates (July 2020), *https://www.dol.gov/sites/dolgov/files/OASP/evaluation/pdf/WHD_FMLA2018SurveyResults_FinalReport_Aug2020.pdf.*

[157] *Id.*

[158] Ann P. Bartel et al., Racial and ethnic disparities in access to and use of paid family and medical leave: evidence from four nationally representative datasets, U.S. Bureau of Labor Statistics (BLS) (January 2019), *https://www.bls.gov/opub/mlr/2019/article/racial-and-ethnic-disparities-in-access-to-and-use-of-paid-family-andmedical-leave.htm.*

Continued

For workers that are also caregivers for children, seniors, or other family members, there may be a similar need for—and benefits of—paid family leave. For example, some workers may have struggled during the pandemic to balance caring for children, as schools and daycares closed, and working. For new parents, paid parental leave results in fewer infant hospitalizations, lowering parental stress, increasing parental involvement, and improving the overall health of parent and child.[160] COVID–19 has also increased the levels of ''caregiving intensity'' [161] and ''caregiving burden'' [162] for those providing care to seniors or older family members.[163] [164] When surveyed, more than half of caregivers reported that COVID–19 increased both the amount of caregiving responsibilities they had as well as the negative physical and mental impacts their caregiving responsibilities had on themselves.[165]

Treasury Response: Treasury agrees that these constitute impacts of the pandemic, and accordingly, under the final rule, creating, expanding, or financially supporting paid sick, medical, or family leave programs is an enumerated eligible use of funds to respond to the negative economic impacts of the pandemic.

12. Health insurance.

Public Comment: Several commenters recommended that uses of funds to expand access to health insurance be enumerated eligible uses; commenters believed that the heightened risk of illness or hospitalization due to COVID–19 had increased the negative economic impacts of lacking health insurance.

Background: In 2019, prior to the pandemic, it was estimated that 11 percent of nonelderly adults lacked health insurance.[166] By mid-2020, job loss had resulted in an estimated 3.3 million people losing their employer sponsored insurance, resulting in an additional 2 million uninsured adults.[167] Participation in Medicaid, the Children's Health Insurance Program (CHIP), and the Affordable Care Act (ACA) marketplace played an important role in minimizing the number of people who completely lost health insurance during the early phases of the pandemic; Medicaid and CHIP enrollment increased by 9 percent from February to September 2020 [168] and 8.3 million people enrolled in insurance through the ACA marketplace.[169]

Although the ACA, CHIP, and Medicaid have significantly reduced the number of uninsured Americans through the pandemic and the economic downturn, adequate coverage and affordability still remains an issue for many. In 2020, 21 percent of working-age adults were inadequately insured, meaning even if they had insurance, they incurred a significant amount of out-of-pocket costs.[170] Additionally, 37 percent of adults reported struggling with medical bills or medical debt and 71 percent of adults who did not purchase insurance cited affordability as the main factor.[171]

Treasury Response: Treasury agrees that loss of health insurance, increased financial risk from lacking health insurance, or excessive out-of-pocket healthcare costs constitute negative economic impacts of the pandemic. Under the final rule, programs or services to expand access to health insurance coverage are an enumerated eligible use as assistance to households, for example, subsidies for health insurance premiums or expansion of a recipient's health insurance plan to cover additional employees who currently lack coverage.

13. Services for the unbanked and underbanked.

Public Comment: One commenter expressed support for the inclusion of services to increase banking access as an allowable expense under SLFRF. The commenter recommended that states be encouraged to offer opportunities for consumers to open safe and affordable accounts capable of receiving direct payments. The commenter emphasized that allowing unbanked and underbanked households to receive funds securely through no-fee, direct deposit will help connect or reconnect consumers to the mainstream financial system.

Background: Banking inequities can make it difficult for unbanked or underbanked households to access housing, jobs, and other important economic opportunities. Being unbanked or underbanked can also make it challenging for households to apply for and receive financial assistance, including services like pandemic emergency housing assistance.

Safe, affordable, and accessible financial services play a critical role in assisting households in the United States in managing income volatility and cash flow shortages.[172] Currently, over 5 percent of families, or 7 million households are ''unbanked,'' meaning they do not have a bank account.[173] Low-income households, non-white households, and households with individuals with disabilities were even more likely to be unbanked. In 2019, 16 percent of Native American households, 14 percent of Black households, and 12 percent of Hispanic households were unbanked, compared to 2.5 percent of white households. Additionally,

[159] U.S. Bureau of Labor Statistics, Employee Benefits in the United States (March 2019), *https://www.bls.gov/ncs/ebs/benefits/2019/ownership/civilian/table31a.pdf.*

[160] Maya Rossin-Slater et al., Local exposure to school shootings and youth antidepressant use, Proceedings of the National Academy of Sciences, vol 117(38), pages 23484–23489 (2020), *https://www.pnas.org/content/117/38/23484;* Ariel Marek Pihl and Gaetano Basso, Did California Paid Family Leave Impact Infant Health?, Journal of Policy Analysis and Management, *https://onlinelibrary.wiley.com/doi/abs/10.1002/pam.2210.*

[161] J.C. Jacobs, A. Laporte, C.H. Van Houtven, P.C. Coyte, Caregiving intensity and retirement status in Canada. Social Science & Medicine, 102, 74–82 (2014), *https://www.sciencedirect.com/science/article/abs/pii/S0277953613006631.*

[162] E. Lightfoot, R.P. Moone, Caregiving in times of uncertainty: Helping adult children of aging parents find support during the COVID–19 outbreak, Journal of Gerontological Social Work, 63(6–7), 542–552 (2020), *https://www.tandfonline.com/doi/abs/10.1080/01634372.2020.1769793.*

[163] Note: ''Caregiving intensity'' is defined as the amount and type of care provided by informal caregivers; ''Caregiving burden'' is defined as the impacts on physical and mental health, and health-related quality of life of informal caregivers.

[164] SA Cohen, ZJ Kunicki, MM Drohan, ML Greaney, Exploring Changes in Caregiver Burden and Caregiving Intensity due to COVID–19, Gerontology and Geriatric Medicine (January 2021), doi:10.1177/2333721421999279.

[165] *Id.*

[166] Jennifer Tolbert et al., Key Facts about the Uninsured Population, Kaiser Family Foundation (November 6, 2020), *https://www.kff.org/uninsured/issue-brief/key-facts-about-the-uninsured-population/.*

[167] Joshua Aarons et. al., As the COVID–19 Recession Extended into the Summer of 2020, More Than 3 Million Adults Lost Employer-Sponsored Health Insurance Coverage and 2 Million Became Uninsured, Urban Institute (September 18, 2020), *https://www.urban.org/research/publication/covid-19-recession-extended-summer-2020-more-3-million-adults-lost-employer-sponsored-health-insurance-coverage-and-2-million-became-uninsured.*

[168] Centers for Medicare and Medicaid Services, Medicaid and CHIP Enrollment Trends Snapshot through September 2020 (Washington: 2021), available at *https://www.medicaid.gov/sites/default/files/2021-01/september-medicaid-chip-enrollment-trend-snapshot.pdf.*

[169] Centers for Medicare and Medicaid Services, 2021 Federal Health Insurance Exchange Weekly Enrollment Snapshot: Final Snapshot (January 12, 2021) available at *https://www.cms.gov/newsroom/fact-sheets/2021-federal-health-insurance-exchange-weekly-enrollment-snapshot-final-snapshot.*

[170] Sara R. Collins, Munira Z. Gunja, and Gabriella N. Aboulafia, U.S. Health Insurance Coverage in 2020: A Looming Crisis in Affordability (New York: Commonwealth Fund, 2020), available at *https://www.commonwealthfund.org/publications/issue-briefs/2020/aug/looming-crisis-health-coverage-2020-biennial.*

[171] *Id.*

[172] Federal Deposit Insurance Corporation, FDIC National Survey of Unbanked and Underbanked Households (2015), *https://www.fdic.gov/householdsurvey/2015/2015execsumm.pdf.*

[173] Federal Deposit Insurance Corporation, How America Banks: Household Use of Banking and Financial Services 2019 FDIC Survey, *https://www.fdic.gov/analysis/household-survey/2019report.pdf.*

underbanked households—those that have a bank account but rely on alternative financial services, such as money orders, payday loans, and check cashing services— account for 16 percent of all households in the United States.[174] As a result of the COVID–19 pandemic, new social distancing protocols have, in some instances, made it more difficult to perform financial transactions with paper instruments, like banknotes, coinage, paper checks, or money orders. Households constrained to these payment methods may face challenges receiving government assistance. Additionally, businesses have transitioned to cashless payments systems to promote contactless payments.[175] As a result, unbanked individuals may face additional challenges conducting financial transactions.

Treasury Response: Recognizing these challenges, Treasury is clarifying that recipients may use SLFRF funds to provide financial services that facilitate the delivery of federal, state, or local benefits (*e.g.,* Child Tax Credit, Earned Income Tax Credit, tax refunds, or emergency housing or food assistance funds). The following includes a non-exhaustive list of uses to provide financial services to unbanked and underbanked households:

- Provide low or no cost financial services, including in conjunction with administration of benefits, such as pre-paid debit cards, *e.g.,* via Economic Impact Payment or General Purpose Reloadable pre-paid cards or for the development of public banking infrastructure that can support benefit delivery.
- Provide transitional services to facilitate long-term access to banking and financial services.
- Provide financial literacy programs and conduct community outreach and deploy engagement resources to increase awareness about low-cost, no-overdraft fee accounts, pilot new strategies and approaches that help overcome barriers to banking access and support the gathering and sharing of information in ways that improve equity, such as community meetings, partnerships with community-based organizations, online surveys, focus groups, human-centered design activities, and other community engagement activities.

Assistance to Unemployed and Underemployed Workers

The interim final rule included assistance to unemployed workers as an enumerated eligible use, including ''services like job training to accelerate rehiring of unemployed workers.'' Treasury provided further guidance, based on recipient questions after the interim final rule, that eligible uses under this section also include ''other efforts to accelerate rehiring and thus reduce unemployment, such as childcare assistance, assistance with transportation to and from a jobsite or interview, and incentives for newly employed workers[,]'' as well as assistance to unemployed workers seeking to start small businesses. Finally, further guidance also provided that ''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'' are all enumerated eligible uses as assistance to unemployed or underemployed workers.

The interim final rule defined eligible beneficiaries of assistance as ''individuals who want and are available for work, including those who have looked for work sometime in the past 12 months or who are employed part time but who want and are available for full-time work.'' This definition is based on definitions used by the Bureau of Labor Statistics to define individuals currently unemployed, as well as persons marginally attached to the labor force and working part-time for economic reasons.[176] The latter two classifications are types of labor underutilization, or ''underemployed'' workers.[177] Finally, the interim final rule specified that assistance to unemployed workers included both workers who lost their job during the pandemic and resulting recession and workers unemployed when the pandemic began who saw further deterioration of their economic prospects due to the pandemic.

Public Comment: Commenters generally supported the inclusion of this enumerated eligible use. One commenter recommended including assistance for underemployed workers who took jobs due to the pandemic that did not fully utilize their skillset or did not provide the hours, wages, or job quality desired. Treasury has also received recipient questions on whether job fairs or grants to businesses to hire underserved workers are eligible uses under this category. Another commenter recommended flexibility in eligible workforce development programs, arguing that rural areas may face particular challenges.

Treasury Response: Treasury is maintaining this eligible use in the final rule, including the enumerated eligible services in the interim final rule and subsequent guidance. Treasury is also confirming that job fairs or grants to businesses to hire underserved workers are eligible uses under this section.

Treasury is also enumerating that job and workforce training centers are eligible capital expenditures, so long as they adhere to the standards and presumptions detailed in the section Capital Expenditures in General Provisions: Other.

The final rule maintains the definition of eligible beneficiaries, which is aligned with the Bureau of Labor Statistics' definitions of unemployed workers and other labor underutilization, using a common, widely known definition that incorporates a broad group of individuals both unemployed or whose skills are otherwise underutilized in the labor market.

In addition, recognizing that the pandemic has generated broad workforce disruption, in the final rule, Treasury is making clear that recipients may provide job training or other enumerated types of assistance to individuals that are currently employed but are seeking to move to a job that provides better opportunities for economic advancement, such as higher wages or more opportunities for career advancement.

Recipient Unemployment Insurance Trust Funds and Related Expenses

Under the interim final rule, a recipient may use funds to make deposits into its account of the Unemployment Trust Fund established under section 904 of the Social Security Act (42 U.S.C. 1104) up to the level needed to restore the pre-pandemic balance of such account as of January 27, 2020 or to pay back advances received under Title XII of the Social Security Act (42 U.S.C. 1321) for the payment of benefits between January 27, 2020 and May 17, 2021. These costs support the solvency of the unemployment insurance system and, ultimately, unemployment insurance benefits provided to unemployed

[174] Board of the Governors of the Federal Reserve System, Report on the Economic Well-Being of U.S. Households in 2018–May 2019, *https://www.federalreserve.gov/publications/2019-economic-well-being-of-us-households-in-2018-banking-and-credit.htm.*

[175] Zaheer Allam, The Forceful Reevaluation of Cash-Based Transactions by COVID–19 and Its Opportunities to Transition to Cashless Systems in Digital Urban Networks. Surveying the Covid-19 Pandemic and its Implications (2020): 107–117. doi:10.1016/B978–0–12–824313–8.00008–5.

[176] Bureau of Labor Statistics, Labor Force Statistics from the Current Population Survey: Concepts and Definitions, *https://www.bls.gov/cps/definitions.htm* (last visited November 9, 2021).

[177] *Id.*

workers during the pandemic.[178] The interim final rule also posed the question of what, if any, conditions should be considered to ensure that funds used under this eligible use category repair economic impacts of the pandemic and strengthen unemployment insurance systems.

Public Comment: Inclusion as an Eligible Use and Conditions: Commenters expressed mixed perspectives on this eligible use category. Some commenters supported its inclusion, arguing that unemployment insurance systems have faced significant costs to support unemployed workers during the pandemic and that this constitutes a negative economic impact that SLFRF funds should be able to address. Other commenters opposed this eligible use category, arguing that funds used under this category may not ultimately support unemployed workers. Some commenters noted that unemployment insurance taxes on businesses automatically increase when trust fund balances are low and suggested that permitting the deposit of funds into unemployment insurance trust funds prevents a tax increase on businesses, some of which may not have faced negative economic impacts from the pandemic, rather than providing assistance to unemployed workers. Other comments suggested that deposits are better thought of as savings for future needs than assistance to unemployed workers in the near term.

Responding to the interim final rule's question, several commenters suggested that, if Treasury maintains this eligible use, the final rule should require detailed reporting on funds used under this category or place conditions on this category to increase the likelihood that funds ultimately support unemployed workers. For example, some commenters suggested that recipients that deposit SLFRF funds into their trust fund should be barred from cutting unemployment insurance benefits for workers during the period of performance or from erecting new barriers to accessing benefits (*e.g.,* through the application process and ongoing requirements to receive benefits). One commenter, noting that unemployment insurance benefits often provide low rates of wage replacement and do not cover some types of unemployed workers, argued that recipients should not be permitted to deposit funds into the trust fund unless the recipient concurrently expands benefits. Finally, one commenter suggested a cap on the amount of funds that can be used for this purpose.

Treasury Response: Inclusion as an Eligible Use and Conditions: In the final rule, Treasury is maintaining the inclusion of this eligible use category. Because unemployment insurance trust funds directly fund benefits to unemployed workers, maintaining the solvency of the trust fund is critical to the continued provision of assistance to unemployed workers. Further, funds deposited into the trust fund must be used as assistance to unemployed workers, an eligible use of SLFRF funds. Finally, while, in the absence of the SLFRF, trust fund deposits would likely be funded through increases on employer payroll taxes, the eligibility of uses of SLFRF funds does not depend on how obligations would otherwise be satisfied if the SLFRF were not available for this use.

While deposits to unemployment insurance trust funds generally serve as assistance to unemployed workers, recipients that make deposits but also cut unemployment insurance benefits to workers substantially decrease the likelihood that the deposited funds will assist unemployed workers. In other words, SLFRF funds deposited into an unemployment insurance trust fund generally serve as assistance to unemployed workers, unless recipients take policy actions that substantially decrease the extent to which SLFRF funds would flow to unemployed workers. As such, 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.,* the maximum benefit entitlement).

Finally, until the final rule becomes effective on April 1, 2022, the interim final rule remains binding and effective.[179] These requirements were not in effect under the interim final rule and do not apply to funds used (*i.e.,* obligated or expended) under the interim final rule while it is in effect. In addition, recognizing that some recipients have taken significant steps toward making a trust fund deposit or repaying principal on Title XII advances under the interim final rule, such as the legislative appropriation of funds for this purpose, even if a formal obligation has not occurred, Treasury will exercise enforcement discretion to not pursue violations of this final rule provision (*i.e.,* the requirement not to reduce benefits) for recipients that have appropriated funds for this purpose prior to the date of adoption of the final rule consistent with the laws and procedures in their jurisdiction. Recipients should refer to Treasury's Statement Regarding Compliance with the Coronavirus State and Local Fiscal Recovery Funds Interim Final Rule and Final Rule, which provides additional detail on these issues.

Public Comment and Treasury Response: Technical Corrections and Amendments: Following the interim final rule, Treasury received recipient questions on whether paying interest on advances received under Title XII of the Social Security Act (42 U.S.C. 1321) is an eligible use of SLFRF funds; Treasury is clarifying that such use is permissible, consistent with Treasury's treatment of the eligibility of interest on Title XII advances under the Coronavirus Relief Fund.

Treasury is further clarifying that 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. In other words, excluding interest due on Title XII advances, the magnitude of the decrease of the balance in the unemployment insurance trust fund plus the principal outstanding on any Title XII borrowings made from the beginning of the public health emergency to the date of publication of the SLFRF interim final rule sets a cap on the amount of SLFRF funds a recipient may use for trust fund contributions and repayment of principal on Title XII advances. Further, a recipient that deposits SLFRF funds into its unemployment insurance trust fund to fully restore the pre-pandemic balance may not draw down that

[178] Note that, while the economic harm being addressed accrued before March 3, 2021, the cost incurred to address the harm occurs after March 3, 2021 and provides assistance to unemployed workers, an eligible use of SLFRF funds.

[179] *See, e.g.,* U.S. Department of the Treasury, More Information on the Conclusion of the Public Comment Period and the Interim Final Rule on the Coronavirus State and Local Fiscal Recovery Funds, *https://home.treasury.gov/system/files/136/IFR-Explainer.pdf.*

balance and deposit more SLFRF funds, back up to the pre-pandemic balance.

Enumerated Eligible Uses for Disproportionately Impacted Households

Background

The COVID–19 pandemic has had disproportionally negative impacts on many households and communities that were already experiencing inequality related to race, gender, age, or income before the pandemic. People of color, low-income workers, and women disproportionately lost their jobs during the COVID–19 pandemic and experienced disproportionate rates of negative health outcomes.[180] [181]

These disproportionate negative impacts experienced by systemically underserved communities are not novel to the COVID–19 pandemic and the economic downturn. Research shows that historically underserved communities that are experiencing economic and social disparities typically experience disproportionate impacts of economic downturns and natural disasters.[182] This pattern held true for the effects of COVID–19 and the economic downturn: Historically undeserved groups experienced amplified negative impacts, further widening inequality.[183]

Many communities facing systemic barriers had not yet recovered from the impact of the Great Recession before experiencing the impacts of COVID–19 and the economic downturn. For example, in 2009, at the end of the Great Recession, households without a high school diploma had an average annual income of $32,300 (measured in 2018 dollars). By 2018, nine years into the economic recovery, those same households saw their average income increase by $600. During that same time period, households with a bachelor's degree saw an increase in their average household income of $6,100 (measured in 2018 dollars).[184]

The impact pre-existing inequalities have on a household or community's ability to recover is intersectional. Research shows that pre-existing racial and gender disparities exacerbated the disproportionate economic and health impact COVID–19 and the economic downturn had on workers of color, and specifically, women of color.[185] Another study found that during the first six months of the pandemic counties that were both high-poverty and majority non-white experienced COVID–19 infection rates eight times higher than high-poverty, majority white counties.[186] Many residents in these communities are still coping with the negative health and economic impacts.

Summary of the Interim Final Rule and Final Rule Structure

As described previously, the interim final rule provided a broader list of enumerated eligible uses to respond to the pandemic in disproportionately impacted communities, in recognition that pre-existing health, economic, and social disparities contributed to disproportionate pandemic impacts in certain communities and that addressing the root causes of those disparities constitutes responding to the public health and negative economic impacts of the pandemic. The interim final rule described eligible uses in disproportionately impacted communities in four categories, spread across public health and negative economic impacts: (1) Addressing disparities in public health outcomes, (2) building stronger communities through investments in housing and neighborhoods, (3) addressing educational disparities, and (4) promoting healthy childhood environments. As described above, Treasury has moved eligible uses related to community violence intervention, assistance accessing or applying to public benefits and services, affordable housing development, healthy childhood environments, and addressing lost instructional time in K–12 schools into the category ''assistance to impacted households,'' recognizing that these pandemic impacts were widely shared across the country.

This section discusses enumerated eligible uses to 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 additional eligible uses to respond to negative economic impacts in disproportionately impacted communities. While many of these services impact both health and economic outcomes, Treasury has consolidated them into a single section for simplicity and clarity and to reflect the intertwined nature of these issues.

As a reminder, recipients can presume these uses are eligible when provided in a QCT, to families and individuals living in QCTs, by Tribal or territorial governments, or to low-income households or communities. As provided in section Standards: Designating Other Disproportionately Impacted Classes, recipients can also provide these services to other populations, households, or geographic areas disproportionately impacted by the pandemic. Recipients may also identify additional disproportionate impacts of the pandemic and design an appropriate response to address that harm. For details on eligibility standards and presumed eligible populations, see section General Provisions: Structure and Standards.

Enumerated Eligible Uses for Disproportionately Impacted Households

1. Addressing health disparities.

Public Comment: General: In general, commenters supported eligible uses to address health disparities and support health equity; several commenters highlighted the disparities faced by communities of color and low-income populations, as well as the importance of community engagement in developing effective programs to serve disproportionately impacted communities. Many commenters recommended additional enumerated eligible uses to address health disparities; these are discussed further below in this section.

Treasury Response: In line with commenters' recommendations, the final rule maintains several enumerated eligible uses to address health disparities, specifically:

a. Community health workers. Treasury received few comments on community health workers, though one

[180] U.S. Department of Health and Human Services, COVID–19 and Economic Opportunity: Inequities in the Employment Crisis, April 2021. Retrieved from *https://aspe.hhs.gov/sites/default/files/migrated_legacy_files//199901/covid-economic-equity-brief.pdf.*

[181] Adelle Simmons et al., Health disparities by race and ethnicity during the COVID–19 pandemic: Current evidence and policy approaches. U.S. Department of Health and Human Services *https://aspe.hhs.gov/sites/default/files/migrated_legacy_files//199516/covid-equity-issue-brief.pdf.*

[182] Perry, Brea L., Brian Aronson, and Bernice A. Pescosolido, Pandemic precarity: COVID–19 is exposing and exacerbating inequalities in the American heartland, National Academy of Sciences (Febuary 2021), *https://www.pnas.org/content/118/8/e2020685118.*

[183] *Id.*

[184] Jesse Bennet & Rakesh Kochhar, Two Recessions, Two Recoveries, Pew Research Center (December 13, 2019), *https://www.pewresearch.org/social-trends/2019/12/13/two-recessions-two-recoveries-2/.*

[185] Darrick Hamilton et al., Building an Equitable Recovery: The role of Race, Labor Markets, and Education, The New School's Institute on Race and Political Economy (February 2021).

[186] Adhikari S, Pantaleo NP, Feldman JM, Ogedegbe O, Thorpe L, Troxel AB. Assessment of Community-Level Disparities in Coronavirus Disease 2019 (COVID–19) Infections and Deaths in Large US Metropolitan Areas. JAMA Netw Open. 2020;3(7):e2016938. doi:10.1001/jamanetworkopen.2020.16938.

requested further clarification on their role.[187] Treasury is maintaining this eligible use in the final rule.

b. Remediation of lead paint or other lead hazards. The interim final rule included remediation of lead paint or other lead hazards as an enumerated eligible use to address health disparities.

Public Comment: Treasury received several comments asking for clarification on the eligibility of a particular use that would indirectly address lead pollution. For example, a commenter requested the ability to fund remedial actions, such as filtration and plumbing procedures to help address lead pollution. One commenter requested that private wells be eligible for funding to address contamination with substances such as lead. Other commenters requested that Treasury allow replacement of lead pipes as an eligible use of funds.

Treasury Response: Recipients may make a broad range of water infrastructure investments under section 602(c)(1)(d) and 603(c)(1)(d), which can include lead service line replacement and other activities to identify and remediate lead in water. These uses are discussed in greater detail in section Water and Sewer Infrastructure of this Supplemental Information.

Treasury has further determined that several of the services identified by commenters are appropriate responses to address health disparities in disproportionately impacted households. These services were eligible under the interim final rule and continue to be so under the final rule. These services include remediation to address lead-based public health risk factors, outside of lead in water, including evaluation and remediation of lead paint, dust, or soil hazards; testing for blood lead levels; public outreach and education; and emergency protection measures, like bottled water and water filters, in areas with an action level exceedance for lead in water in accordance with the Environmental Protection Agency's Lead and Copper Rule.[188]

Further, Treasury had determined that certain capital expenditures, including improvements to existing facilities to remediate lead contaminants (*e.g.,* removal of lead paint), are eligible responses, although this does not include construction of new facilities for the purpose of lead remediation. Recipients should make sure that all capital expenditures adhere to the standards and presumptions detailed in section Capital Expenditures in General Provisions: Other.

c. Medical facilities. Treasury received a few comments from recipients seeking to use SLFRF funds to build new medical facilities, such as hospitals or public health clinics, to serve disproportionately impacted communities. Given the central role of access to high-quality medical care in reducing health disparities and addressing the root causes that led to disproportionate impact COVID–19 health impacts in certain communities, the final rule recognizes that medical equipment and facilities designed to address disparities in public health outcomes are eligible capital expenditures. This includes primary care clinics, hospitals, or integrations of health services into other settings. Recipients should make sure that all capital expenditures adhere to the standards and presumptions detailed in section Capital Expenditures in General Provisions: Other.

2. Housing vouchers and assistance relocating. In addition to other housing services, the interim final rule permitted a variety of rental assistance approaches to support low-income households in securing stable, long-term housing, including housing vouchers, residential counseling, or housing navigation assistance to facilitate household moves to neighborhoods with high levels of economic opportunity and mobility for low-income residents. Examples could include SLFRF-funded analogues to Section 8 Housing Choice vouchers; other kinds of rent subsidies, including shallow subsidies; and programs to help residents move to areas with higher levels of economic mobility.[189] Treasury did not receive public comments on these enumerated eligible uses.

Treasury Response: Treasury maintains the eligibility of vouchers and relocation assistance in the final rule.

3. Building strong, healthy communities through investments in neighborhoods. While the interim final rule included a category of enumerated eligible uses for ''building stronger communities through investments in housing and neighborhoods,'' the examples of services provided generally focused on housing uses. In response to questions following release of the interim final rule, Treasury issued further guidance clarifying that ''investments in parks, public plazas, and other public outdoor recreation spaces may be responsive to the needs of disproportionately impacted communities by promoting healthier living environments.''

Public Comment: General: A significant theme across many public comments was the importance of neighborhood environment to health and economic outcomes and the potential connections between residence in an underserved neighborhood and disproportionate impacts from the pandemic. Many commenters highlighted the connection between neighborhoods and health outcomes, including citing public health research linking neighborhood traits to health outcomes. For example, the CDC states that ''neighborhoods people live in have a major impact on their health and well-being.'' [190] As such, CDC identifies ''neighborhoods and built environment'' as one of five key social determinants of health [191] and includes ''creat[ing] neighborhoods and environments that promote health and safety'' as one of the agency's goals for social determinants of health outcomes.

a. Neighborhood features that promote improved health and safety outcomes.

Public Comment: Commenters argued that neighborhoods impact physical health outcomes in several ways. First, some commenters reasoned that the physical environment and amenities in a community [192] influence a person's level of physical activity, with features like parks, recreation facilities, and safe sidewalks promoting increased physical activity that improves health outcomes. Conversely, commenters argued that a lack of these features in a neighborhood could dampen physical activity and contribute to health conditions like obesity that are risk factors for more severe COVID–19 health outcomes.

Second, some commenters also suggested that access to healthy food in a neighborhood impacts health outcomes. These commenters reasoned

[187] *See, e.g.,* Centers for Disease Control and Prevention, Community Health Worker (CHW) Toolkit, *https://www.cdc.gov/dhdsp/pubs/toolkits/chw-toolkit.htm* (last visited November 9, 2021).

[188] Environmental Protection Agency, 40 CFR 141.80(c)(1), *https://www.ecfr.gov/current/title-40/chapter-I/subchapter-D/part-141/subpart-I/section-141.80.*

[189] *See, e.g.,* Opportunity Insights, Creating Moves To Opportunity (August 2019), *https://opportunityinsights.org/policy/cmto/.*

[190] U.S. Department of Health and Human Services, Neighborhood and Built Environment, *https://health.gov/healthypeople/objectives-and-data/browse-objectives/neighborhood-and-built-environment#cit1* (last visited November 9, 2021).

[191] Social determinants of health are ''the conditions in the places where people live, learn, work, and play that affect a wide range of health risks and outcomes.'' Centers for Disease Control and Prevention, About Social Determinants of Health (SDOH), *https://www.cdc.gov/social determinants/about.html* (last visited November 9, 2021).

[192] In public health, this is referred to as ''built environment,'' or the man-made physical aspects of a community (*e.g.,* homes, buildings, streets, open spaces, and infrastructure).

that lacking adequate access to affordable, healthy food or living in a ''food desert'' may contribute to disparities in diet that influence health outcomes, including contributing to pre-existing conditions that increased risk for severe COVID–19 outcomes. These commenters cited public health research finding ''clear evidence for disparities in food access in the United States by income and race.'' [193]

Some commenters also suggested that neighborhood environment is connected to other public health outcomes, like mental health and public safety. For example, some research suggests that living in neighborhoods with green space and tree cover correlates with improved mental health outcomes.[194] Finally, some commenters argued that activities like installing streetlights, greening or cleanup of public spaces or land, and other efforts to revitalize public spaces would support improved public safety.[195] [196]

These commenters recommended that Treasury include as an enumerated eligible use in disproportionately impacted communities projects to develop 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.

Background: Investments in neighborhood features, including parks, recreation facilities, sidewalks, and healthy food access, can work to improve physical and mental health outcomes. Allowing people access to nature, including parks, has been connected to decreased levels of mortality and illness and increased well-being.[197] Urban park use during the COVID–19 pandemic may have declined among lower-income individuals.[198] Encouraging physical activity can also play a role in health outcomes, as a sedentary lifestyle is a risk factor for chronic diseases and more severe COVID–19 outcomes.[199] Parks, recreation facilities, and sidewalks can promote healthier living environments by allowing for safe and socially distanced recreation during the COVID–19 pandemic.

Additionally, food insecurity rates, which are higher among lower-income households and households of color, doubled among all households and tripled among households with children during the onset of COVID–19 from February 2020 to May 2020.[200] Improving healthy food access supports public health, particularly among lower-income households and households of color that face disproportionate outcomes.

Treasury Response: Treasury recognizes the connection between neighborhood built environment and physical health outcomes as discussed in the research and analysis provided by commenters, including risk factors that may have contributed to disproportionate COVID–19 health impacts in low-income communities. The final rule also recognizes that the public health impacts of the pandemic are broader than just the COVID–19 disease itself and include substantial impacts on mental health and public safety challenges like rates of violent crime, which are correlated with a neighborhood's built environment and features. As such, neighborhood features that promote improved health and safety outcomes respond to the pre-existing disparities that contributed to COVID–19's disproportionate impacts on low-income communities.

The 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,[201] projects that increase access to healthy foods, streetlights, neighborhood cleanup, and other projects to revitalize public spaces. Recipients seeking to use funds for capital expenditures should refer to the section Capital Expenditures in General Provisions: Other, which describes additional eligibility standards that apply to uses of funds for capital expenditures.

b. Vacant or abandoned properties. As discussed above, the interim final rule included enumerated eligible uses for building stronger communities through investments in housing and neighborhoods in disproportionately impacted communities. The interim final rule also posed a question of whether other potential uses in this category, specifically ''rehabilitation of blighted properties or demolition of abandoned or vacant properties,'' address the public health or economic impacts of the pandemic.

Public Comment: Several commenters argued that programs or services to address vacant or abandoned property would respond to the public health and negative economic impacts of the pandemic in disproportionately impacted communities. Some commenters cited research suggesting that living near such property is correlated with worse physical health and mental health outcomes, noted that such properties pose an environmental hazard, or argued that such properties present a barrier to economic recovery. These commenters suggested that renovation or demolition of vacant or abandoned property could benefit community health and raise property values. Other commenters recommended that Treasury include an enumerated eligible use for the operation of land banks that redevelop or renew vacant properties and land.

Treasury Response: As noted throughout the final rule, the pandemic underscored the importance of safe, affordable housing and healthy

[193] J Beaulac, E Kristjansson, S Cummins, A systematic review of food deserts, 1966–2007, Prev Chronic Dis 2009;6(3):A105, *http://www.cdc.gov/pcd/issues/2009/jul/08_0163.htm.*

[194] *See, e.g.,* Yijun Zhang et al. The Association between Green Space and Adolescents' Mental Well-Being: A Systematic Review. International journal of environmental research and public health vol. 17,18 6640 (Sep. 11 2020), doi:10.3390/ijerph17186640; EC South, BC Hohl, MC Kondo, JM MacDonald, CC Branas, Effect of Greening Vacant Land on Mental Health of Community-Dwelling Adults: A Cluster Randomized Trial, JAMA Netw Open. 2018;1(3):e180298 (2018), available at: doi:10.1001/jamanetworkopen.2018.0298.

[195] *See, e.g.,* Yanqing Xu, Cong Fu, Eugene Kennedy, Shanhe Jiang, Samuel Owusu-Agyemang, The impact of street lights on spatial-temporal patterns of crime in Detroit, Michigan, Cities, Volume 79, Pages 45–52, ISSN 0264–2751 (2018), *https://doi.org/10.1016/j.cities.2018.02.021.*

[196] A. Chalfin, B. Hansen, J. Lerner et al., Reducing Crime Through Environmental Design: Evidence from a Randomized Experiment of Street Lighting in New York City, Journal of Quantitative Criminology (2021), *https://doi.org/10.1007/s10940-020-09490-6.*

[197] *See, e.g.,* American Public Health Association, Improving Health and Wellness through Access to Nature (November 5, 2013), *https://www.apha.org/policies-and-advocacy/public-health-policy-statements/policy-database/2014/07/08/09/18/improving-health-and-wellness-through-access-to-nature.*

[198] LR Larson et al., Urban Park Use During the COVID–19 Pandemic: Are Socially Vulnerable Communities Disproportionately Impacted?, Front. Sustain. Cities 3:710243 (2021), *https://doi.org/10.3389/frsc.2021.710243.*

[199] JP Després, Severe COVID–19 outcomes—the role of physical activity. Nat Rev Endocrinol 17, 451–452 (2021). *https://doi.org/10.1038/s41574-021-00521-1.*

[200] Caroline George and Adie Tomer, Beyond 'food deserts': America needs a new approach to mapping food, Brookings Institution (August 17, 2021), *https://www.brookings.edu/research/beyond-food-deserts-america-needs-a-new-approach-to-mapping-food-insecurity/.*

[201] However, Treasury cautions recipients that general infrastructure development, including street or road construction, remains a generally ineligible use of funds under the final rule. Sidewalks and pedestrian safety should be the predominant component of uses of funds in this category. While projects may include ancillary construction needed to execute the predominant component, a project that predominantly involves street construction or repair to benefit vehicular traffic would be ineligible.

neighborhood environments to public health and economic outcomes. Treasury agrees with commenters that high rates of vacant or abandoned properties in a neighborhood may exacerbate public health disparities, for example through environmental contaminants that contribute to poor health outcomes or by contributing to higher rates of crime. As such, certain services for vacant or abandoned properties are eligible to address the public health and negative economic impacts of the pandemic on disproportionately impacted households or communities. Eligible activities include:

- Rehabilitation, renovation, maintenance, or costs to secure vacant or abandoned properties to reduce their negative impact
- Costs associated with acquiring and securing legal title of vacant or abandoned properties and other costs to position the property for current or future productive use
- Removal and remediation of environmental contaminants or hazards from vacant or abandoned properties, when conducted in compliance with applicable environmental laws or regulations
- Demolition or deconstruction of vacant or abandoned buildings (including residential, commercial, or industrial buildings) paired with greening or other lot improvement as part of a strategy for neighborhood revitalization
- Greening or cleanup of vacant lots, as well as other efforts to make vacant lots safer for the surrounding community
- Conversion of vacant or abandoned properties to affordable housing
- Inspection fees and other administrative costs incurred to ensure compliance with applicable environmental laws and regulations for demolition, greening, or other remediation activities

Vacant or abandoned properties are generally those that have been unoccupied for an extended period of time or have no active owner.[202] Such properties may be in significant disrepair (*e.g.,* major structural defects; lack of weather tight conditions; or lack of useable plumbing, kitchen facilities, electricity, or heating infrastructure (not to include utilities currently out of service or disconnected but able to be reconnected and used)), or may be declared unfit for inhabitants by a government authority.

As noted above, demolition and greening (or other structure or lot remediation) of vacant or abandoned properties, including residential, commercial, or industrial buildings, is an eligible use of funds. Treasury encourages recipients to undertake these activities as part of a strategy for neighborhood revitalization and to consider how the cleared property will be used to benefit the disproportionately impacted community. Activities under this eligible use should benefit current residents and businesses, who experienced the pandemic's impact on the community.

Treasury encourages recipients to be aware of potential impacts of demolition of vacant or abandoned residential properties. Demolition activities that exacerbate the pandemic's impact on housing insecurity or lack of affordable housing are not eligible uses of funds. This risk is generally more acute in jurisdictions with low or reasonable vacancy rates and less acute in jurisdictions with high or hyper-vacancy.[203]

Treasury presumes that demolition of vacant or abandoned residential properties that results in a net reduction in occupiable housing units for low- and moderate-income individuals in an area where the availability of such housing is lower than the need for such housing would exacerbate the impacts of the pandemic on disproportionately impacted communities and that use of SLFRF funds for such activities would therefore be ineligible. This includes activities that convert occupiable housing units for low- and moderate-income individuals into housing units unaffordable to current residents in the community. Recipients may assess whether units are ''occupiable'' and what the housing need is for a given area taking into account vacancy rates (as described above), local housing market conditions (including conditions for different types of housing like multi-family or single-family), and applicable law and housing codes as to what units are occupiable. Recipients should also take all reasonable steps to minimize the displacement of persons due to activities under this eligible use category, especially the displacement of low-income households or longtime residents.

Recipients engaging in these activities and other construction activities with SLFRF funds should be mindful of the provisions of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, 42 U.S.C. 4601, and the Department of Transportation's implementing regulations, 49 CFR part 24, that apply to projects funded with federal financial assistance, such as SLFRF funds. Recipients should also be aware of federal, state, and local laws and regulations, outside of SLFRF program requirements, that apply to this activity. Recipients must comply with the applicable requirements of the Uniform Guidance regarding procurement, contracting, and conflicts of interest and must follow the applicable laws and regulations in their jurisdictions. Recipients must also comply with all federal, state, and local public health and environmental laws or regulations that apply to activities under this eligible use category,[204] for example, requirements around the

[202] A state or locality may use its existing classifications of what is considered vacant or abandoned property under state law and local ordinances, as well as any corresponding processes for demolition, for these eligible uses. A recipient without a definition of vacant or abandoned property may refer to definitions used in the Department of Housing and Urban Development's Neighborhood Stabilization Program (available at the citations below); however, recipients should be aware that other federal, state, or local requirements may apply such as compliance with the Uniform Relocation Act (*see* U.S. Department of Housing and Urban Development, Real Estate Acquisition and Relocation Overview in HUD Programs, *https://www.hudexchange.info/programs/relocation/overview/#overview-of-the-ura* (last visited November 9, 2021) and other state and local requirements like condemnation and code enforcement. U.S. Department of Housing and Urban Development, What is the definition of vacant properties as referenced in NSP Eligible Use E—Redevelop Demolished or Vacant Properties? (October 2012), *https://www.hudexchange.info/faqs/programs/neighborhood-stabilization-program-nsp/redevelopment/what-is-the-definition-of-vacant-properties-as-referenced-in-nsp-eligible/.* U.S. Department of Housing and Urban Development, What are the definitions of abandoned and foreclosed? (October 2012), *https://www.hudexchange.info/faqs/programs/neighborhood-stabilization-program-nsp/program-requirements/eligible-activitiesuses/what-are-the-definitions-of-abandoned-and-foreclosed/.*

[203] For analysis of vacancy rates considered low or high, see, *e.g.,* page 12 of Alan Mallach, The Empty House Next Door, Lincoln Institute (May 2018), *https://www.lincolninst.edu/publications/policy-focus-reports/empty-house-next-door#:~:text=%E2%80%9CAlan%20Mallach%20is%20the%20sage,through%20data%20and%20model%20* practices. Recipients may determine the appropriate geographic unit for which to analyze vacancy rates (*e.g.,* county, census tract) based on their circumstances. As needed, recipients may refer to the Current Population Survey/Housing Vacancy Survey data series on Housing Vacancies and Homeownership as one data source to assess vacancy rates. See *https://www.census.gov/housing/hvs/index.html.* Other data sources include the American Community Survey five-year estimates, for smaller geographic areas, or tabulations by the Department of Housing and Urban Development based on United States Postal Service Vacancy Data. See, respectively, *https://data.census.gov/cedsci/table?q=DP04&tid=ACSDP5Y2019.DP04&hidePreview=true* or *https://www.huduser.gov/portal/datasets/usps.html.*

[204] *See* U.S. Environmental Protection Agency, Large-Scale Residential Demolition, *https://www.epa.gov/large-scale-residential-demolition* (last visited November 9, 2021) for a primer on requirements that may apply.

handling and disposal of asbestos-containing materials, lead paint, and other harmful materials may apply, as well as environmental standards for any backfill materials used at demolition sites. Treasury encourages recipients to consult and apply best practices from the Environmental Protection Agency as well.

Recipients must evaluate each subrecipient's risk of noncompliance with federal statutes, regulations, and the terms and conditions of the subaward related to safely and properly conducting activities under this eligible use. This may include checking for any past violations recorded by state or local environmental, workplace safety, licensing, and procurement agencies, as well as regular reviews for suspensions, debarments, or stop work orders. Recipients must establish rigorous oversight and internal controls processes to monitor compliance with any applicable requirements, including compliance by subrecipients.

4. Addressing educational disparities. The interim final rule included an enumerated eligible use for addressing educational disparities in disproportionately impacted communities and outlined some enumerated eligible services under this use. These enumerated uses included early learning services, assistance to high-poverty school districts to advance equitable funding across districts and geographies, and educational and evidence-based services to address the academic, social, emotional, and mental health needs of students. Addressing the many dimensions of resource equity—including equitable and adequate school funding; access to a well-rounded education; well-prepared, effective, and diverse educators and staff; and integrated support services—can also begin to mitigate the impact of COVID–19 on schools and students and can close long-standing gaps in educational opportunity. As discussed above, in the final rule, early learning services and addressing the impacts of lost instructional time for K–12 students are enumerated eligible uses for impacted communities, not just disproportionately impacted communities.

Public Comment: Treasury received some comments in this category. Generally, commenters expressed agreement with the elements of the interim final rule regarding use of funds for addressing educational disparities. Some commenters had questions about whether a few specific uses of funds qualified under this category. For example, commenters inquired about whether the funds could be used for behavioral health in a school setting or cultural language classes.

Treasury Response: Treasury is maintaining these enumerated eligible uses in the final rule, which are now organized under the heading of ''services to address educational disparities.'' Treasury reiterates that these uses include addressing educational disparities exacerbated by COVID–19, including but not limited to: increasing resources for high-poverty school districts, educational services like tutoring or afterschool programs, summer education and enrichment programs, and supports for students' social, emotional, and mental health needs. This also includes responses aimed at addressing the many dimensions of resource equity—including equitable and adequate school funding; access to a well-rounded education; well-prepared, effective, and diverse educators and staff; and integrated support services—in order to close long-standing gaps in educational opportunity.

Further, Treasury is clarifying that improvements or new construction of schools and other educational facilities or equipment are eligible capital expenditures for disproportionately impacted communities. Recipients seeking to use funds for capital expenditures should refer to the section Capital Expenditures in General Provisions: Other for additional eligibility standards that apply to uses of funds for capital expenditures.

Treasury notes that services to promote healthy childhood environments, including childcare, early learning services, and home visiting programs that serve infants and toddlers, is a separate category of enumerated eligible uses for households impacted by the pandemic (see eligible uses for ''promoting healthy childhood environments''). Similarly, education services to address the impact of lost instructional time during the pandemic are a separate eligible use category for households impacted by the pandemic; when providing these services, recipients may presume that any K–12 student who lost access to in-person instruction for a significant period of time has been impacted by the pandemic and is thus eligible for responsive services (see eligible uses for ''addressing the impact of lost instructional time'').

Proposed Additional Enumerated Eligible Uses Not Incorporated

The interim final rule posed a question on what other types of services or costs Treasury should consider as eligible uses to respond to the disproportionate public health or negative economic impacts of COVID–19 on low-income populations and communities.

In response, commenters proposed a wide variety of additional recommended enumerated eligible uses to assist disproportionately impacted households, ranging from general categories of services (*e.g.,* long-term investments to remediate long-term disparities) to highly specific examples of services (*e.g.,* a specific type of healthcare equipment). As discussed above, Treasury is including several additional categories of enumerated eligible uses in the final rule in response to public comments.

Given the large number and diversity of SLFRF recipients, Treasury's approach to assistance to households in disproportionately impacted communities in the final rule aims to provide enumerated eligible uses that respond to disproportionate impacts of the pandemic experienced widely in many jurisdictions across the country and are intended to simplify and clarify these enumerated eligible uses. At the same time, Treasury recognizes that the impacts of the pandemic vary over time, by jurisdiction, and by population; as such, the final rule provides flexibility for recipients to identify additional disproportionate impacts to additional households or classes of households and pursue programs and services that respond to those disproportionate impacts.

In the final rule, Treasury has not chosen to include as enumerated uses all uses proposed by commenters; given the significant range, and in some cases highly specific nature, of the proposed uses Treasury was not able to assess that the proposed uses would respond to disproportionate impacts experienced in many jurisdictions across the country, supporting an enumerated eligible use available to all recipients presumptively. However, the final rule continues to provide a framework to allow recipients to identify and respond to additional disproportionate impacts (for details, see section General Provisions: Structure and Standards). Some types of proposed additional enumerated eligible uses for assistance to households in disproportionately impacted communities were recommended by several commenters:

- Capital expenditures. Many commenters recommended that capital expenditures on many different types of public and private facilities be enumerated eligible uses. For clarity, Treasury has addressed all comments on the eligibility of capital expenditures on property, facilities, or equipment in one

section (see section Capital Expenditures in General Provisions: Other).

• Equity funds. Several commenters recommended that Treasury permit SLFRF funds to be deposited into an equity fund to support long-term racial and economic equity investments. The eligibility of such use would depend on the specific structure and uses of funds. Under the statute, SLFRF funds can only support costs incurred until December 31, 2024; see section Timeline for Use of SLFRF Funds in Program Administration Provisions. Further, recipients may calculate the cost incurred with respect to investments in revolving loan funds based on the methodology described in section Treatment of Loans in Program Administration Provisions. Projects funded by a revolving loan fund using SLFRF funds would also need to be eligible uses of SLFRF funds.

• Environmental quality and climate resilience. Several commenters recommended eligible uses to enhance environmental quality, remediate pollution, promote recycling or composting, or increase energy efficiency or electrical grid resilience. Whether these projects respond to the disproportionate impacts of the pandemic on certain communities would depend on the specific issue they address and its nexus to the public health and economic impacts of the pandemic.

b. Assistance to Small Businesses

Background

The pandemic has severely impacted many businesses, with small businesses hit especially hard. Small businesses make up nearly half of U.S. private-sector employment [205] and play a key role in supporting the overall economic recovery as they are responsible for two-thirds of net new jobs.[206] Since the beginning of the pandemic, however, 400,000 small businesses have closed, with many more at risk.[207] Sectors with a large share of small business employment have been among those with the most drastic drops in employment.[208] The negative outlook for small businesses has continued: As of November 2021, approximately 66 percent of small businesses reported that the pandemic has had a moderate or large negative effect on their business, and over a third expect that it will take over 6 months for their business to return to their normal level of operations.[209]

This negative outlook is likely the result of many small businesses having faced periods of closure and having seen declining revenues as customers stayed home.[210] In general, small businesses can face greater hurdles in accessing credit,[211] and many small businesses were already financially fragile at the outset of the pandemic.[212]

While businesses everywhere faced significant challenges during the pandemic, minority-owned and very small businesses have faced additional obstacles. Between February and April 2020, the number of actively self-employed Black business owners decreased by 41 percent.[213] During that same time period, Asian and Latino business owners decreased by 26 and 32 percent, respectively, compared to a 17 percent decrease in white business owners.[214] Female business owners also saw significant impacts, with businesses owned by women falling by 25 percent.[215]

Many of the disparities in how minority business owners experienced the pandemic are rooted in systemic issues present even before the pandemic. For example, before the economic downturn, only 12 percent of Black-owned businesses and 19 percent of Hispanic-owned businesses had annual earnings of over $1 million compared to 31 percent of white-owned businesses.[216] Minority-owned businesses were also overrepresented in industries hit hardest by the economic downturn (*e.g.,* services, transportation and warehousing, healthcare and social assistance, administrative and support and waste management, and accommodation and food services).[217] Approximately 22 percent of all minority-owned business fell into the hardest hit industries compared to 13 percent of nonminority-owned businesses.[218]

Although disparities in annual revenue are not a direct indication of a business's ability to weather an economic downturn, they do highlight other disparities that make it more challenging for these businesses to survive the effects of the pandemic. Black-owned startups, for example, face larger challenges in raising capital, including securing business loans.[219]

Summary of the Interim Final Rule and Final Rule Structure

Summary of Interim Final Rule: As discussed above, small businesses faced significant challenges in covering payroll, mortgages or rent, and other operating costs as a result of the public health emergency and measures taken to contain the spread of the virus. Under Sections 602(c)(1)(A) and 603(c)(1)(A), recipients may ''respond to the public health emergency or its negative economic impacts,'' by, among other things, providing ''assistance to . . . small businesses.'' Accordingly, the interim final rule allowed recipients to provide assistance to small businesses to address the negative economic impacts faced by those businesses. A

[205] Board of Governors of the Federal Reserve System, Monetary Policy Report (June 12, 2020), *https://www.federalreserve.gov/monetarypolicy/2020-06-mpr-summary.htm.*

[206] U.S. Small Business Administration, Office of Advocacy, Small Businesses Generate 44 Percent of U.S. Economic Activity (Jan. 30, 2019), *https://advocacy.sba.gov/2019/01/30/small-businesses-generate-44-percent-of-u-s-economic-activity/.*

[207] Joseph R. Biden, Remarks by President Biden on Helping Small Businesses (Feb. 22, 2021), *https://www.whitehouse.gov/briefing-room/speechesremarks/2021/02/22/remarks-by-president-bidenon-helping-small-businesses/.*

[208] Daniel Wilmoth, U.S. Small Business Administration Office of Advocacy, The Effects of the COVID–19 Pandemic on Small Businesses, Issue Brief No. 16 (Mar. 2021), *available at https://cdn.advocacy.sba.gov/wp-content/uploads/2021/03/02112318/COVID-19-Impact-On-Small-Business.pdf.*

[209] U.S. Census Bureau, Small Business Pulse Survey, *https://portal.census.gov/pulse/data/* (last visited December 7, 2021).

[210] Olivia S. Kim et al., Revenue Collapses and the Consumption of Small Business Owners in the Early Stages of the COVID–19 Pandemic (Nov. 2020), *https://www.nber.org/papers/w28151.*

[211] *See, e.g.,* Board of Governors of the Federal Reserve System, Report to Congress on the Availability of Credit to Small Businesses (Sept. 2017), *available at https://www.federalreserve.gov/publications/2017-september-availability-of-credit-to-small-businesses.htm.*

[212] Alexander W. Bartik et al., The Impact of COVID–19 on small business outcomes and expectations, PNAS 117(30): 17656–66 (July 28, 2020), *available at https://www.pnas.org/content/117/30/17656.*

[213] Robert Fairlie, The impact of COVID–19 on small business owners: Evidence from the first 3 months after widespread social-distancing restrictions, Journal of economics & management strategy (August 27, 2020), *https://doi.org/10.1111/jems.12400.*

[214] U.S. Small Business Administration, The Effects of the COVID–19 Pandemic on Small Businesses (March 2021), *https://cdn.advocacy.sba.gov/wp-content/uploads/2021/03/02112318/COVID-19-Impact-On-Small-Business.pdf.*

[215] Robert Fairlie, *supra* note 213.

[216] Federal Reserve Bank of Atlanta. 2019. Small Business Credit Survey 2019 Report on Minority-Owned Firms. December. *fedsmallbusiness.org/survey/2019/report-on-minority-owned-firms.*

[217] Ding, Lei, and Alvaro Sanchez. 2020. What Small Businesses Will Be Impacted by COVID–19? Federal Reserve Bank of Philadelphia. *philadelphiafed.org/covid-19/covid-19-equity-in-recovery/what-small-businesses-will-be-impacted.*

[218] Lucas Misera, An Uphill Battle: COVID–19's Outsized Toll on Minority-Owned Firms, Federal Reserve Bank of Cleveland (October 8, 2020), *https://www.clevelandfed.org/newsroom-and-events/publications/community-development-briefs/db-20201008-misera-report.aspx.*

[219] Robert Fairlie, A. Robb, D. Robinson, Black and White: Access to Capital among Minority-Owned Startups, NBER Working Paper 28154 (November 2020), *https://www.nber.org/papers/w28154.*

''small business'' is defined as a business concern or other organization that:

(1) Has no more than 500 employees or, if applicable, the size standard in number of employees established by the Administrator of the Small Business Administration for the industry in which the business concern or organization operates; and

(2) Is a small business concern as defined in section 3 of the Small Business Act (15 U.S.C. 632).

Specifically, the interim final rule provided that recipients may provide assistance to small businesses to adopt safer operating procedures, weather periods of closure, or mitigate financial hardship resulting from the COVID–19 public health emergency, including:

- Loans or grants to mitigate financial hardship such as declines in revenues or impacts of periods of business closure;
- Loans, grants, or in-kind assistance to implement COVID–19 prevention or mitigation tactics; and
- Technical assistance, counseling, or other services to assist with business planning needs.

The interim final rule further provided that recipients may consider additional criteria to target assistance to businesses in need, including small businesses. Such criteria may include businesses facing financial insecurity, substantial declines in gross receipts (*e.g.,* comparable to measures used to assess eligibility for the Paycheck Protection Program), or other economic harm due to the pandemic, as well as businesses with less capacity to weather financial hardship, such as the smallest businesses, those with less access to credit, or those serving underserved communities. The interim final rule also indicated that recipients should consider local economic conditions and business data when establishing such criteria. Finally, the interim final rule posed a question on whether there are other services or costs that Treasury should consider as eligible uses to respond to the disproportionate impacts of COVID–19 on low-income populations and communities.

Final Rule Structure: Consistent with the interim final rule approach, the final rule provides a non-exhaustive list of enumerated eligible uses for assistance to small businesses that are impacted or disproportionately impacted by the pandemic. Further, within Assistance to Small Business, a recipient may also identify a negative economic impact experienced by small businesses and design and implement a response to that negative economic impact, beyond the uses specifically enumerated in the final rule, according to the standard described in the section Standards: Identifying a Negative Economic Impact. A recipient may also identify small businesses that have been disproportionately impacted by the public health emergency and design and implement a program that responds to the source of that disproportionate impact.

Consistent with other eligible use categories to respond to the public health and economic impacts of the pandemic, recipients may identify and serve small businesses that experienced a negative economic impact or disproportionate impact due to the pandemic, as described in the section Standards for Identifying Other Eligible Populations. For example, to identify impacted small businesses, a recipient may consider whether the small businesses faced challenges in covering payroll, mortgage or rent, or other operating costs as a result of the public health emergency and measures taken to contain the spread of the virus. In order to ease administrative burden, the final rule presumes that small businesses operating in QCTs, small businesses operated by Tribal governments or on Tribal Lands, and small businesses operating in the U.S. territories were disproportionately impacted by the pandemic.

Reorganizations and Cross-References: As detailed above, Treasury has re-categorized some uses of funds in the final rule to provide greater clarity. For discussion of assistance to small businesses and impacted industries to implement COVID–19 mitigation and prevention strategies, see section COVID–19 Mitigation and Prevention in Public Health.

Small Businesses Eligible for Assistance

Public Comment: Treasury received many comments about the general benefits or drawbacks of use of SLFRF funds to provide assistance to small businesses. Some commenters suggested that SLFRF funds should be available to assist all small businesses, rather than only businesses that experienced direct negative economic impacts due to the public health emergency. Other commenters argued that aid to small businesses should be narrowed in the final rule, asserting that SLFRF funds should instead focus on assistance to households or building public sector capacity.

Treasury also received comments requesting clarification of the types of small businesses eligible for assistance. For example, some commenters requested clarification about whether microbusinesses were included in the definition of small business. Comments also suggested that self-employed individuals and Tribal enterprises be classified as small businesses, respectively. Commenters argued that these types of small businesses are more common among low-income and minority businessowners and serve as important institutions in underserved communities.

Finally, some commenters suggested that Treasury permit broader enumerated eligible uses to assist small businesses in disproportionately impacted communities and generally strengthen economic growth in these communities. These commenters recommended that Treasury presume small businesses operating in QCTs are disproportionately impacted and eligible for broader enumerated uses.

Treasury Response: As discussed in the section Designating a Negative Economic Impact, in the final rule, recipients must identify an economic harm caused or exacerbated by the pandemic on a small business or class of small businesses to provide services that respond.

As discussed above, programs or services in this category must respond to a harm experienced by a small business or class of small businesses as a result of the public health emergency. To identify impacted small businesses and necessary response measures, recipients may consider impacts such as lost revenue or increased costs, challenges covering payroll, rent or mortgage, or other operating costs, the capacity of a small business to weather financial hardships, and general financial insecurity resulting from the public health emergency.

Recognizing the difficulties faced by small businesses in certain communities, the final rule presumes that small businesses operating in QCTs, small businesses operated by Tribal governments or on Tribal Lands, and small businesses operating in the U.S. territories were disproportionately impacted by the pandemic. This presumption parallels the final rule's approach to assistance to households, reflecting the more severe pandemic impacts in underserved communities and creating a parallel structure across different categories of eligible uses to make the structure simpler for recipients to understand and navigate.

Treasury notes that recipients may also designate a class of small businesses that experienced a negative economic impact or disproportionate negative economic impact (*e.g.,* microbusinesses, small businesses in certain economic sectors), design an intervention to fit the impact, and

document that the individual entity is a member of the class. Additional information about this framework is included in the section General Provisions: Structure and Standards.

Further, Treasury is maintaining the interim final rule definition of ''small business,'' which used the Small Business Administration's (SBA) definition of fewer than 500 employees, or per the standard for that industry, as defined by SBA. This definition includes businesses with very few employees, self-employed individuals, and Tribally owned businesses.[220] Finally, Treasury notes that recipients may award SLFRF funds to many different types of organizations, including small businesses, to function as a subrecipient in carrying out eligible uses of funds on behalf of a recipient government. In this case, a small business need not have experienced a negative economic impact in order to serve as a subrecipient. See section Distinguishing Subrecipients versus Beneficiaries for more detailed discussion of interactions with subrecipients, in contrast to beneficiaries of assistance.

Enumerated Eligible Uses for Assistance to Small Businesses

Public Comment: Treasury received comments requesting clarification of the types of assistance available to small businesses. For example, one commenter suggested that outdoor dining be an eligible use for SLFRF funds as assistance to small businesses. Other commenters asked for clarification about how SLFRF funds could be used to support new businesses and start-ups.

Several commenters requested clarification of whether and how recipients may provide services to business districts or downtown areas, particularly those that exist in whole or in part within a QCT, and requested reduced documentation of the specific negative economic impact for the businesses operating within those areas. These commenters argued in favor of allowing redevelopment or other support, including capital investments, in business districts that were negatively impacted by COVID–19. Several commenters also argued that funds should be available to support and grow microbusinesses, or businesses with five or fewer employees, which are more likely to be owned by women and people of color.

Treasury Response: In the final rule, Treasury is maintaining and clarifying the enumerated eligible uses of funds for assistance to small businesses that are impacted or disproportionately impacted by the pandemic.

Impacted small businesses. Specifically, Treasury is maintaining enumerated eligible uses from the interim final rule for assistance to impacted small businesses. These include but are not limited to:

- Loans or grants to mitigate financial hardship such as declines in revenues or impacts of periods of business closure, for example by supporting payroll and benefits costs, costs to retain employees, mortgage, rent, or utilities costs, and other operating costs;
- Loans, grants, or in-kind assistance to implement COVID–19 prevention or mitigation tactics (see section Public Health for details on these eligible uses); and
- Technical assistance, counseling, or other services to assist with business planning needs.

Treasury acknowledges a range of potential circumstances in which assisting small businesses could be responsive to the negative economic impacts of COVID–19, including for small businesses startups and microbusinesses and individuals seeking to start small or microbusinesses. For example:

- As noted above, a recipient could assist small business startups or microbusinesses with additional costs associated with COVID–19 mitigation tactics; see section Public Health for details on these eligible uses.
- A recipient could identify and respond to a negative economic impact of COVID–19 on new small business startups or microbusinesses; for example, if small business startups or microbusinesses in a locality faced greater difficulty accessing credit than prior to the pandemic or faced increased costs to starting the business due to the pandemic or if particular small businesses or microbusinesses had lost expected startup capital due to the pandemic.
- The interim final rule also discussed, and the final rule maintains, eligible uses that provide support for individuals who have experienced a negative economic impact from the COVID–19 public health emergency, including uses that provide job training for unemployed individuals. These initiatives also may support small business start-ups, microbusinesses, and individuals seeking to start small or microbusinesses.

Disproportionately impacted small businesses. Additionally, Treasury agrees with commenters that disproportionately impacted small businesses may benefit from additional assistance to address the sources of that disparate impact.

As such, the final rule provides a broader set of enumerated eligible uses for disproportionately impacted small businesses and/or small businesses in disproportionately impacted business districts. Recipients may use SLFRF funds to assist these businesses with certain capital investments, such as rehabilitation of commercial properties, storefront improvements, and façade improvements. Recipients may also provide disproportionately impacted microbusinesses additional support to operate the business, including financial, childcare, and transportation supports.

Recipients could also provide technical assistance, business incubators, and grants for start-ups or expansion costs for disproportionately impacted small businesses. Note that some of these types of assistance are similar to those eligible to respond to small businesses that experienced a negative economic impact (''impacted'' small businesses). However, because the final rule presumes that some small businesses were disproportionately impacted, these enumerated eligible uses can be provided to those businesses without any specific assessment of whether they individually experienced negative economic impacts or disproportionate impacts due to the pandemic.

Cross-References: Recipients providing assistance to small businesses for capital expenditures (*i.e.,* expenditures on property, facilities, or equipment) should also review the section Capital Expenditures in General Provisions: Other, which describes eligibility standards that apply to capital expenditures. Recipients should also note that services to address vacant or abandoned commercial or industrial properties are addressed in section Vacant or Abandoned Properties in Assistance to Households.

Loans to Small Businesses

Public Comment: Treasury received many comments requesting clarification on using SLFRF funds to establish funds that provide loans to small businesses. For example, commenters sought clarification of how eligible use

[220] In regard to counting employees, businesses owned and controlled by a Tribal government are not considered affiliates of the Tribal government and are not considered affiliates of other businesses owned by the Tribal government because of their common ownership by the Tribal government or common management, as described in 13 CFR 121.103(b)(2). This definition is consistent with the Small Business Administration (SBA) HUBZone definition of a ''small business concern'' relating to Tribal governments as well as how Tribal enterprises are defined for the State Small Business Credit Initiative (SSBCI).

requirements and applicable dates for SLFRF funds would apply to third party organizations (like economic development organizations) who receive SLFRF funds in order to establish a loan fund. In addition, commenters requested clarification on what requirements apply to loan programs with available funds remaining after December 31, 2024.

Treasury Response: SLFRF funds may be used to make loans, including to small businesses, provided that the loan is an eligible use, and the cost of the loan is tracked and reported in accordance with Treasury's Compliance and Reporting Guidance. Funds that are unobligated after December 31, 2024 must be returned to Treasury. See section Treatment of Loans for more information about using SLFRF funds for loan programs.

c. Assistance to Nonprofits

Background: Nonprofits have faced significant challenges because of the pandemic, including increased demand for services and changing operational needs.[221] Prior to the pandemic, the median U.S. nonprofit reported that it had six months of cash on hand.[222] This varied by sector, however, with some sectors like disaster relief organizations reporting a median of 17 months cash on hand, and others, like mental health and crisis intervention organizations reporting only three months.[223] Evidence suggests that the pandemic has damaged the financial health of nonprofits, with small nonprofits, which tend to rely more heavily on donations than large nonprofits, reporting relatively larger declines in donations — 42 percent versus 29 percent, respectively.[224] Among nonprofits that collect fees for services, the median revenue amount collected from such fees fell by 30 percent from 2019 to 2020, with arts organization experiencing a 50 percent decline.[225] Nonprofits also experienced significant job losses. While employment in the nonprofit sector has recovered from its low point in 2020, as of November 2021, the sector remained 485,000 jobs below its pre-pandemic level.[226] In addition, some nonprofits may have experienced declines in volunteer staffing during the pandemic.[227]

At the same time, nonprofits provide a host of services for their communities, including helping Americans weather the multitude of challenges presented by the pandemic. The ARPA and the interim final rule recognized this dichotomy—nonprofits as entities that have themselves been negatively impacted by the pandemic and as entities that provide services that respond to the public health and negative economic impacts of the pandemic on households and others —by creating two roles for nonprofits.

First, under Sections 602(c)(1)(A) and 603(c)(1)(A), recipients may ''respond to the public health emergency or its negative economic impacts,'' by, among other activities, providing ''assistance to . . . nonprofits.'' The interim final rule defined assistance to nonprofits to include ''loans, grants, in-kind assistance, technical assistance or other services, that responds to the negative economic impacts of the COVID–19 public health emergency,'' and ''nonprofit'' to mean a tax-exempt organization under Section 501(c)(3) of the U.S. Internal Revenue Code.[228]

Second, as discussed above, ARPA and the interim final rule provided that nonprofit organizations may also receive funds as subrecipients of a recipient government (*i.e.,* a government that received SLFRF funds); subrecipients carry out an eligible use of SLFRF funds on behalf of a recipient government (*e.g.,* a recipient government that would like to provide food assistance to impacted households may grant funds to a nonprofit organization to carry out that eligible use). Recipients generally have wide latitude to award funds to many types of organizations, including nonprofit or for-profit organizations, as subrecipients to carry out eligible uses of funds on their behalf. For further information on distinguishing between beneficiaries and subrecipients, as well as the impacts of the distinction on reporting and other requirements, see section Transfers of Funds and section Distinguishing Subrecipients versus Beneficiaries under the Public Health and Negative Economic Impacts eligible use category.[229]

Reorganization and Cross-References: Under the interim final rule, assistance to disproportionately impacted communities was a separate, stand-alone category. The final rule reorganizes the disproportionate impact analysis within the sections Assistance to Households, Assistance to Small Business, and Assistance to Nonprofits to better articulate how recipients can serve disproportionately impacted beneficiaries in each of those categories.

As detailed above in the Public Health subsection, in response to public comments describing uncertainty on which eligible use category should be used to assess different potential uses of funds, Treasury has re-categorized some uses of funds in the final rule to provide greater clarity. For discussion of assistance to nonprofits to implement COVID–19 mitigation and prevention strategies, see section COVID–19 Mitigation and Prevention in Public Health.

Recipients providing assistance via nonprofits involving capital expenditures (*i.e.,* expenditures on property, facilities, or equipment) should also review the section Capital Expenditures in General Provisions: Other, which describes eligibility standards for these expenditures. Recipients providing assistances in the form of loans should review the section Treatment of Loans.

Public Comment: Eligible Assistance to Impacted and Disproportionately Impacted Nonprofits: A few commenters asked Treasury to be more explicit in the final rule that recipients may use funds to provide relief directly to nonprofit organizations and to explain how nonprofits might qualify themselves for assistance and what expenses SLFRF funds may be used to cover.[230] Commenters requested that Treasury note that the pandemic is

[221] *See, e.g.,* Federal Reserve Bank of San Francisco, Impacts of COVID–19 on Nonprofits in the Western United States (May 2020), *https://www.frbsf.org/community-development/files/impact-of-covid.*

[222] Philanthropy and COVID–19: Measuring one year of giving, Candid and the Center for Disaster Philanthropy. (2021), *https://www.issuelab.org/resources/38039/38039.pdf.*

[223] *Id.*

[224] Elizabeth T. Boris et al., Nonprofit Trends and Impacts 2021, Urban Institute (October 7, 2021), *https://www.urban.org/research/publication/nonprofit-trends-and-impacts-2021/view/full_report.*

[225] *Id.*

[226] Chelsea Newhouse, COVID–19 JOBS UPDATE, NOVEMBER 2021: Nonprofits add just 5,000 jobs in November, Center for Civil Society Studies at Johns Hopkins University (December 10, 2021), *http://ccss.jhu.edu/november-2021-jobs/.*

[227] Elizabeth T. Boris et al. *supra* note 224 at p. 38.

[228] § 35.3 Definitions.

[229] The ARPA also states under ''Transfer Authority'' that a Recipient may transfer funds to a private nonprofit organization such as those defined in paragraph (17) of section 401 of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11360(17). *See* 602 & 603(c)(3) of the Social Security Act. *See* section Transfers of Funds for additional information on other types of entities, including other forms of nonprofits, that may receive transfers.

[230] While not stated specifically in the interim final rule, the Department does not require or have a preference as to the payment structure for recipients that transfer funds to subrecipients (*e.g.,* advance payments, reimbursement basis, etc.). Ultimately, recipients must comply with the eligible use requirements and any other applicable laws or requirements and are responsible for the actions of their subrecipients or beneficiaries.

leading to a changing financial landscape for nonprofits.

Treasury Response: Eligible Assistance to Impacted and Disproportionately Impacted Nonprofits: The interim final rule provided for, and the final rule maintains, the ability for recipients to provide direct assistance to nonprofits that experienced public health or negative economic impacts of the pandemic. Specifically, recipients may provide direct assistance to nonprofits if the nonprofit has experienced a public health or negative economic impact as a result of the pandemic. For example, if a nonprofit organization experienced impacts like decreased revenues or increased costs (*e.g.,* through reduced contributions or uncompensated increases in service need), and a recipient provides funds to address that impact, then it is providing direct assistance to the nonprofit as a beneficiary under Subsection (c)(1) of Sections 602 and 603. Direct assistance may take the form of loans, grants, in-kind assistance, technical assistance, or other services that respond to the negative economic impacts of the COVID–19 public health emergency.

A recipient may identify a negative economic impact experienced by a nonprofit, or class of nonprofits, and design and implement a response to that negative economic impact, see section Standards: Designating a Negative Economic Impact. The final rule provides a non-exhaustive list of enumerated eligible uses for assistance to nonprofits that are impacted or disproportionately impacted by the pandemic.

A recipient may also identify a class of nonprofits that have been disproportionately impacted by the public health emergency and design and implement a program that responds to the source of that disproportionate impact. For example, a recipient may determine that nonprofits offering after-school programs within its jurisdiction were disproportionately impacted by the pandemic due to the previous in-person, indoors nature of the work and the nonprofits' reliance on fees received for services (*e.g.,* attendance fees). The recipient might then design an intervention to assist those nonprofits in adapting their programming (*e.g.,* to outdoor or online venues), their revenue structure (*e.g.,* adapting the fee for service structure or developing expertise in digital donation campaigns), or both. Additional information about this framework is included in General Provisions: Structure and Standards. In order to ease administrative burden, the final rule presumes that nonprofits operating in QCTs, operated by Tribal governments or on Tribal Lands, or operating in the U.S. territories were disproportionately impacted by the pandemic.

To summarize, a recipient may determine that certain nonprofits were impacted by the pandemic or were disproportionately impacted by the pandemic and provide responsive services.

Public Comment: Beneficiaries and Subrecipients: As noted elsewhere in this final rule, Treasury received multiple comments expressing uncertainty on how to categorize a particular activity in the eligible use categories. For instance, some commenters requested that recipients be able to use SLFRF funds for certain expenses incurred by nonprofits (*e.g.,* unemployment charges) as a response to a public health or negative economic impact to that nonprofit; others asked if nonprofits providing certain services (*e.g.,* social services) made them eligible for direct assistance. Commenters also requested that Treasury acknowledge that engagement directly with nonprofit organizations in low-income communities and communities of color may allow the recipient to better assess economic harms in these areas.

Treasury Response: Beneficiaries and Subrecipients: Treasury recognizes that many nonprofits play important roles in their communities, and some may have experienced public health or negative economic impacts during the pandemic. As such, under the interim final rule and the final rule, nonprofits may be impacted by the pandemic and receive assistance as a beneficiary, as described above, and/or be a subrecipient providing services on behalf of a recipient.[231]

Specifically, the interim final rule also allowed for, and the final rule maintains, the ability for the recipient to transfer, *e.g.,* via grant or contract, funds to nonprofit entities to carry out an eligible use on behalf of the recipient. Treasury notes that recipients may award SLFRF funds to many different types of organizations to carry out eligible uses of funds and serve beneficiaries on behalf of a recipient government (*e.g.,* assisting in a vaccination campaign, operating a job training program, developing affordable housing). When a recipient provides funds to an organization to carry out eligible uses of funds and serve beneficiaries, the organization becomes a subrecipient. In this case, a nonprofit need not have experienced a negative economic impact in order to serve as a subrecipient.

In the context of SLFRF, nonprofits of all types may be subrecipients. Treasury is not restricting the types of nonprofits that can operate as subrecipients, rather allowing recipients to decide what form best meets the needs of their community. Therefore, a ''nonprofit'' that is acting as subrecipient could include, but is not limited to, a nonprofit as that term is defined in paragraph (17) of section 401 of the McKinney-Vento Homeless Assistance.[232] See section Distinguishing Subrecipients versus Beneficiaries for further information. Additional guidance on determining subrecipient status may be found in the Uniform Guidance.[233]

Recipients may transfer funds to subrecipients in several ways, including advance payments and on a reimbursement basis. Ultimately, recipients must comply with the eligible use requirements and any other applicable laws or requirements and are responsible for the actions of their subrecipients or beneficiaries.

As part of accepting the Award Terms and Conditions for SLFRF, each recipient agreed to maintain a conflict-of-interest policy consistent with 2 CFR 200.318(c) that is applicable to all activities funded with the SLFRF award. Pursuant to this requirement, decisions concerning SLFRF funds must be free of undisclosed personal or organizational conflicts of interest, both in fact and in appearance. Recipients may avoid conflicts of interest in providing assistance to nonprofits or making subrecipient awards by, *inter alia,* making aid available to nonprofits on generally applicable terms or utilizing a competitive grant process, respectively. A recipient may not use control over SLFRF funds for their own private gain. Furthermore, no employee, officer, or agent may participate in the selection, award, or administration of a contract supported by a federal award if he or she has a real or apparent conflict of interest.

Public Comment: Definition of Nonprofit: Treasury also received several requests to expand the definition of nonprofits so that other tax-exempt entities (*e.g.,* 501(c)(7)s, 501(c)(9)s, 501(c)(19)s, nonprofits with ''historical

[231] Note, this response is meant to clarify the difference between nonprofits as beneficiaries and nonprofits as subrecipients. It is not meant to limit the types of relationships that a recipient may enter into with a nonprofit as permitted under the Uniform Guidance.

[232] *See* sections 602(c)(3) and 603(c)(3) of the Social Security Act. *See also* Section 401 of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11360(17), which defines a ''private nonprofit organization.''

significance'') could be eligible for direct assistance as beneficiaries.

Treasury Response: Definition of Nonprofit: The final rule expands the definition of nonprofits to mean 501(c)(3) organizations and 501(c)(19) organizations.[234] The 501(c)(3) classification includes a wide range of organizations with varying charitable or public service-oriented goals (*e.g.,* housing, food assistance, job training). As discussed above, these nonprofit organizations often experienced hardship due to increased needs for services combined with decreased donations and other sources of funding. In response to comments, Treasury has expanded the definition of nonprofit to include 501(c)(19) organizations, which includes veterans' organizations, to provide recipients more flexibility and in alignment with the definition of nonprofit adopted by the CARES Act, wherein 501(c)(3)s and 501(c)(19)s were eligible for assistance.[235]

Public Comment: Reporting Requirements: One commenter asked Treasury to clarify if nonprofits that receive direct assistance as beneficiaries are required to comply with guidelines and reporting requirements.

Treasury Response: Reporting Requirements: Nonprofits that receive direct assistance as beneficiaries are not subrecipients under SLFRF and are therefore not required to comply with SLFRF reporting requirements. However, the recipient must comply with SLFRF reporting requirements, which would require reporting obligations and expenditures for assistance to nonprofits. The recipient may also choose to establish other forms of reporting or accountability as a part of the recipient's direct assistance program.

A nonprofit entity that receives a transfer from a recipient is a subrecipient. Per the Uniform Guidance, subrecipients must adhere to the same requirements as recipients. Therefore, a nonprofit subrecipient may only receive funds to carry out an eligible use of SLFRF funds and must comply with any reporting and compliance requirements. Note that recipients are ultimately responsible for reporting information to Treasury and must collect any necessary information from their subrecipients to complete required reporting.

d. Aid to Impacted Industries

The interim final rule allowed for ''aid to tourism, travel, and hospitality, and other impacted industries'' that responds to the negative economic impacts of the COVID–19 public health emergency. In designating other impacted industries, Treasury specified that recipients should consider the ''extent of the economic impact as compared to tourism, travel, and hospitality'' and ''whether impacts were due to the COVID–19 pandemic, as opposed to longer-term economic or industrial trends unrelated to the pandemic.'' [236] Treasury identified declines in employment and revenue as possible metrics to compare the economic impact on a particular industry relative to the tourism, travel, and hospitality industries.

Treasury further provided that aid should be limited to businesses, attractions, business districts, and Tribal development districts [237] that were operating prior to the pandemic and affected by required closures and other efforts to contain the pandemic. Examples of eligible aid include assistance to implement COVID–19 mitigation and infection prevention measures, aid to support safe reopening of businesses in these industries, as well as aid for a planned expansion or upgrade of tourism, travel, and hospitality facilities delayed due to the pandemic. The interim final rule and Treasury's subsequent Compliance and Reporting Guidance also required governments to publicly report assistance provided to private-sector businesses under this eligible use and maintain records of their assessments to facilitate transparency and accountability.

Reorganization and Cross-References: As detailed above, Treasury has re-categorized some uses of funds in the final rule to provide greater clarity. In the interim final rule, aid to impacted industries to implement COVID–19 mitigation and prevention strategies was categorized under Aid to Impacted Industries; the final rule addresses these items under the section COVID–19 Mitigation and Prevention in Public Health. Recipients should also be aware of the difference between beneficiaries of assistance and subrecipients when working with impacted industries; for further information, see section Distinguishing Subrecipients versus Beneficiaries.

Designating an Impacted Industry

Public Comment: Many commenters requested greater clarity on how to designate ''other impacted industries'' within their jurisdiction. Commenters requested greater specificity as to the metrics used to measure impact, with some suggesting metrics such as the change in the size of an industry's workforce due to the pandemic, as well as consideration of whether and why employees are choosing to return to work at slower rates in certain industries. One commenter asked if this meant nearly every industry was ''disproportionately impacted.'' Some commenters encouraged Treasury to focus on industries most negatively impacted by the pandemic, including disallowing across-the-board business subsidies to businesses that were not negatively impacted by the pandemic and saw revenue or profit growth. Other commenters asked for flexibility for recipients to determine impacted industries based on their local knowledge of the economic landscape.

Treasury Response: The final rule maintains the interim final rule's approach of allowing recipients to designate impacted industries outside the travel, tourism, and hospitality industries, and, in response to comments, provides greater clarity as to how recipients may designate such impacted industries.

Sections 602(c)(1)(A) and 603(c)(1)(A) recognize that the tourism, travel, and hospitality industries are severely negatively impacted by the pandemic. Under the final rule, recipients may provide eligible aid (described in further detail herein) to the tourism, travel, and hospitality industries. Treasury considers Tribal development districts, which are commercial centers for Tribal hospitality, gaming, tourism, and entertainment and can include Tribal enterprises, as part of the tourism, travel, and hospitality industries that have been severely hit by the pandemic. Therefore, Treasury reaffirms that Tribal development districts are considered impacted industries and recipients may provide eligible aid to them.

To identify other industries comparably impacted to the tourism, travel, and hospitality industries, recipients should undertake a two-step process: Identifying an industry and determining whether that industry is comparably impacted.

[234] § 35.3 Definitions.

[235] Treasury considered expanding the definition of nonprofit to include 501(c)(6) organizations, as Congress later did in the Coronavirus Response and Consolidated Appropriations Act of 2021, but ultimately decided to retain the original CARES Act definition. To the extent impacted by the pandemic, 501(c)(6) organizations may be eligible to receive funds to support eligible uses that align with their overall purpose (*e.g.,* tourism promotion in aid of an impacted industry).

[236] Coronavirus State and Local Fiscal Recovery Funds, 86 FR at 26795.

[237] For a definition of ''Tribal development districts,'' please see FAQ 2.9 at the following: Coronavirus State and Local Fiscal Recovery Funds, Frequently Asked Questions, as of July 19, 2021; *https://home.treasury.gov/system/files/136/SLFRPFAQ.pdf.*

First, recipients should identify an industry to be assessed. In identifying this industry, the final rule provides recipients the flexibility to define its substantive or geographic scope.[238] Recipients may identify a broad sector that encompasses a number of sub-industries, or they may identify a specific sub-industry to be assessed. For example, a recipient may identify ''personal care services'' as an industry, or they may identify a more specific category within the ''personal care services'' industry (*e.g.,* barber shops) as an industry. In defining the industry, Treasury encourages recipients to define narrow and discrete industries eligible for aid. Recipients are not required to follow, but may consider following, industry classifications under the North American Industry Classification System (NAICS). Treasury notes that the larger and more diverse the sector, the more difficult it may be to demonstrate that the larger and less specific sector is negatively impacted in the same way given the scale and diversity of businesses within it.

State or territory recipients may also define a constituent industry with greater geographic precision than state or territory-wide. For example, a state may identify a particular industry in a certain region of the state that was negatively impacted by the pandemic, even if the same industry in the rest of the state did not see a meaningful negative economic impact from the pandemic. State recipients oversee large and diverse industries, sometimes with differences in economic activity between geographic regions. Allowing greater geographic precision allows recipients to target aid to those that need it most, ensuring that state averages do not conceal hard-hit areas in their state.

Second, to determine whether the industry is ''impacted,'' recipients should compare the negative economic impacts of the public health emergency on the identified industry to the impacts observed on the travel, tourism, and hospitality industries.

1. *Simplified test.* An industry is presumed to be impacted if the industry experienced employment loss of at least 8 percent.

Specifically, a recipient should compare the percent change in the number of employees of the recipient's identified industry and the national Leisure & Hospitality sector in the three months before the pandemic's most severe impacts began (a straight three-month average of seasonally-adjusted employment data from December 2019, January 2020, and February 2020) with the latest data as of the final rule release (a straight three-month average of seasonally-adjusted employment data from September 2021, October 2021, and November 2021).[239] The national Leisure & Hospitality sector largely represents the national travel, tourism, and hospitality industries enumerated in the statute. According to the Bureau of Labor Statistics, employment has fallen by approximately 8 percent for the national Leisure & Hospitality sector when comparing the most recent three-month period available as of the date of adoption of the final rule to the three-month period immediately before the public health emergency. Therefore, if the identified industry has suffered an employment loss of at least 8 percent, the final rule presumes the industry to be an ''impacted industry.''

For parity and simplicity, smaller recipients without employment data that measure industries in their specific jurisdiction may use data available for a broader unit of government for this calculation (*e.g.,* a county may use data from the state in which it is located; a city may use data for the county, if available, or state in which it is located) solely for purposes of determining whether a particular industry is an impacted industry.

2. *If simplified test is not met.* If an industry does not satisfy the test above or data are unavailable, the recipient may still designate the industry as impacted by demonstrating the following:

a. The recipient can show that the totality of relevant major economic indicators demonstrate that the industry is experiencing comparable or worse economic impacts as the national tourism, travel, and hospitality industries at the time of the publication of the final rule, and that the impacts were generally due to the COVID–19 public health emergency. Example economic indicators include gross output, GDP, net profits, employment levels, and projected time to restore employment back to pre-pandemic levels. Recipients may rely on available economic data, government research publications, research from academic sources, and other quantitative sources for this determination.

If quantitative data is unavailable, the recipient can rely on qualitative data to show that the industry 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. Recipients may rely on sources like community interviews, surveys, and research from relevant state and local government agencies.

As the public health emergency and economic recovery evolves, recipients should assess how industry impacts shift over time. Impacted industries may recover in a short period of time and no longer face a negative economic impact; in those circumstances, the recipient should ensure that the extent and length of aid is reasonably proportional to the negative economic impact that is experienced, as detailed further below and in section General Provisions: Structure and Standards. Recipients may add to their list of impacted industries by showing that the negative economic impacts to the industry at the time of the designation are comparable to the negative economic impacts to the national tourism, travel, and hospitality sectors as of the date of the final rule adoption, as detailed herein.

Eligible Aid

Public Comment: Commenters asked for further clarification as to the definition of eligible aid to an impacted industry, with many requesting that a broad range of aid be eligible. Examples of aid that recipients asked to be considered eligible include aid to businesses to cover COVID–19 mitigation costs and planned renovations or improvements to tourism, travel, and hospitality facilities, as well as marketing and in-kind incentives to attract visitors. Commenters also asked about the eligibility of aid to broadly cover losses incurred by facilities such as convention centers and hotels due to the pandemic's economic impact. Commenters also asked for further clarification about the requirements related to private-sector reporting. Further, some commenters asked for clarification about eligible aid to impacted industries owned and operated by Tribal governments, including for Tribal construction projects that have been delayed due to the pandemic's economic impacts, and for deference to Tribal determinations of negative economic impacts.

[238] Once an industry is designated as impacted, aid should be generally broadly available to businesses in the industry that qualify. Recipients should document how they defined the scope of their industry and how they determined that the industry was impacted. For states and territories, this includes documenting their justification for defining a constituent industry with greater geographic precision than state or territory-wide.

[239] National Leisure & Hospitality supersector employment data can be found on the U.S. Bureau of Labor Statistics website: U.S. Bureau of Labor Statistics, Leisure and Hospitality, *https://www.bls.gov/iag/tgs/iag70.htm* (last visited December 7, 2021).

Treasury Response: In response to commenters' requests for clarification on eligible aid, the final rule requires that aid to impacted industries, including to Tribal development districts, be designed to address the harm experienced by the impacted industry.

First, recipients should identify a negative economic impact, *i.e.,* an economic harm, that is experienced by businesses in the impacted industry. Second, recipients should select a response that is designed to address the identified economic harm resulting from or exacerbated by the public health emergency. Responses must also be related and reasonably proportional to the extent and type of harm experienced; uses that bear no relation or are grossly disproportionate to the type or extent of harm experienced would not be eligible uses. Recipients should consider the further discussion of this standard provided in the sections Standards: Designating a Public Health Impact and Standards: Designating a Negative Economic Impact.

These responses may take the form of direct spending by recipients to promote an industry or support for businesses within an ''impacted'' industry that experienced a negative economic impact (*e.g.,* through a grant program). Examples of eligible responses include:

- Aid to mitigate financial hardship due to declines in revenue or profits by supporting payroll costs and compensation of returning employees for lost pay and benefits during the COVID–19 pandemic, as well as support of operations and maintenance of existing equipment and facilities, such as rent, leases, and utilities;
- Aid for technical assistance, counseling, and other services to assist with business planning needs; and
- Aid to implement COVID–19 mitigation and infection prevention measures, such as vaccination or testing programs, is broadly eligible for many types of entities, including travel, tourism, hospitality, and other impacted industries. Recipients providing aid to impacted industries for COVID–19 public health measures should review the section Assistance to Businesses to Implement COVID–19 Strategies in Public Health, which describes types of eligible uses of funds in this category.

To address the identified harms, responses (*e.g.,* aid through a grant program) should be generally broadly available to all businesses within the impacted industry to avoid the risk of self-dealing, preferential treatment, and conflicts of interest.[240] Treasury encourages recipients to design aid programs such that funds are first used for operational expenses that are generally recognized as ordinary and necessary for the recipient's operation, such as payroll, before being used on other types of costs. As noted in the section General Standards: Structure and Standards, uses of funds that do not respond to the negative economic impacts of the pandemic, such as excessive compensation to employees, is ineligible.

The final rule maintains the interim final rule's requirement that aid may only be considered responsive to the negative economic impacts of the pandemic if it supports businesses, attractions, and Tribal development districts operating prior to the pandemic and affected by required closures and other efforts to contain the pandemic. Further, to facilitate transparency and accountability, the final rule maintains the interim final rule's requirement that recipients publicly report assistance provided to private-sector businesses under this eligible use, including tourism, travel, hospitality, and other impacted industries, and its connection to negative economic impacts of the public health emergency. Recipients also should maintain records to support their assessment of how businesses receiving assistance were affected by the negative economic impacts of the public health emergency and how the aid provided responds to these impacts.

Recipients providing aid to impacted industries for capital expenditures (*i.e.,* expenditures on property, facilities, or equipment), including Tribal governments providing aid to Tribal development districts, should also review the section Capital Expenditures in General Provisions: Other, which describes eligibility standards that are applicable to these expenditures, depending on the type of aid. Recipients providing assistance in the form of loans should review the section Treatment of Loans in Program Administration Provisions.

4. General Provisions: Other

As noted above, the final rule consolidates into a General Provisions section several types of uses of funds; in the interim final rule, the eligibility of these uses of funds was discussed within specific categories of eligible uses for public health and negative economic impacts. Treasury anticipates that this re-organization will enhance recipient clarity in assessing eligible uses of funds. These General Provisions apply across all uses of funds under public health and negative economic impacts.

Specifically, this section considers eligible uses for:

- *Public Sector Capacity and Workforce,* which includes several separate and non-mutually exclusive categories articulated in the interim final rule: public health and safety staff; rehiring state, local, and Tribal government staff; expenses for administering COVID–19 response programs; expenses to improve the efficacy of public health or economic relief programs; and administrative expenses caused or exacerbated by the pandemic. Treasury recognizes that these are closely related and frequently overlapping categories. The final rule treats them as a single purpose, supporting public sector capacity, and provides coordinated guidance on the standards and presumptions that apply to them.
- *Capital Expenditures,* which was addressed only under Public Health in the interim final rule. The final rule moves this expense to General Provisions and provides more clarity on the eligibility of capital expenditures across all aspects of the public health and negative economic impacts eligible use category.
- *Distinguishing Subrecipients versus Beneficiaries,* which describes the differences between these two categories. Recipient governments responding to the public health and negative economic impacts of the pandemic may provide assistance to beneficiaries or execute an eligible use of funds through a subrecipient; some types of entities (*e.g.,* nonprofits) could fit into either category depending on the specific purpose of the use of funds.
- *Uses Outside the Scope of this Category,* which addresses uses of funds that are ineligible or generally ineligible under this eligible use category in the interim final rule. These uses of funds remain ineligible under the final rule, but Treasury has re-categorized where they are addressed, as described below.

[240] As part of accepting the Award Terms and Conditions for SLFRF, each recipient agreed to maintain a conflict-of-interest policy consistent with 2 CFR 200.318(c) that is applicable to all activities funded with the SLFRF award. Pursuant to this policy, decisions concerning SLFRF must be free of undisclosed personal or organizational conflicts of interest, both in fact and in appearance. Recipients may avoid conflicts of interest in awarding aid to impacted industries by, inter alia, making aid available to businesses in the industry on generally applicable terms or utilizing a competitive grant process. A recipient may not use control over SLFRF for their own private gain. Furthermore, no employee, officer, or agent may participate in the selection, award, or administration of a contract supported by a federal award if he or she has a real or apparent conflict of interest.

This section also addresses enumerated eligible uses proposed by commenters that Treasury has not incorporated into the final rule.

Recipients should also note that the Office of Management and Budget's (OMB) *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards* (commonly called the ''Uniform Guidance'') generally applies to SLFRF.

a. Public Sector Capacity and Workforce

Public Safety, Public Health, and Human Services Staff

Summary of Interim Final Rule: Under the interim final rule, funds may be used for payroll and covered benefits [241] for *public safety, public health, health care, human services, and similar employees* [242] of a recipient government, for the portion of the employee's time that is spent responding to COVID–19. For administrative convenience, the recipient may consider *public health and safety* employees to be entirely devoted to responding to COVID–19, and therefore their full payroll and covered benefits eligible to be covered, if the employee, or his or her operating unit or division, is ''primarily dedicated'' to responding to COVID–19, meaning that more than half of the employee, unit, or division's time is dedicated to responding to COVID–19. Recipients may consider other presumptions for assessing the extent to which an employee, division, or operating unit is responding to COVID–19. Recipients must periodically reassess their determination and maintain records to support their assessment, such as payroll records, attestations from supervisors or staff, or regular work product or correspondence; recipients need not track staff hours. The interim final rule also posed a question on how long recipients should be able to use funds for staff responding to COVID–19 and what other measures or presumptions might Treasury consider to assess the extent to which public sector staff are engaged in COVID–19 response in an easily administrable manner.

Treasury also provided further guidance on the types of employees covered by this category of eligible use, specifically: ''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 [243] 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. 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.''

Public Comment: Measuring Time Spent on COVID–19 Response: Treasury received public comments on several components of this eligible use category. Many commenters argued that it poses an administrative burden to identify the extent to which staff are responding to COVID–19 and to maintain records to support that assessment. Largely citing administrative burden in assessing eligibility, several commenters recommended revisions to the administrative convenience that the full payroll and covered benefits for public health and safety staff ''primarily dedicated'' to responding to COVID–19 may be paid with SLFRF funds. Some commenters recommended presuming that all public health and safety staff are primarily dedicated to COVID–19 response, while others proposed that public health and safety workers who primarily serve QCTs or low- and moderate-income areas be presumed to be primarily dedicated to COVID–19 response, given the disproportionate impacts of the pandemic in those communities. Similarly, Tribal communities recommended that their public health staff be presumed eligible due to the disproportionate impact of the pandemic on their communities. Some commenters proposed that they be able to use the administrative convenience for staff outside of public health and safety that are responding to COVID–19 (*i.e.,* to be able to pay the full payroll and covered benefits for any staff ''primarily dedicated'' to COVID–19 response).

Treasury Response: In the final rule, Treasury is maintaining the approach in the interim final rule, including elaborations issued in further guidance, but providing additional clarification on its application, including methods to apply the approach to minimize administrative burden. Treasury notes that recipients may assess the extent to which staff are dedicated to responding to COVID–19 through a variety of means, including establishing presumptions or assessing public health and safety staff at the division or operating unit level. For example, a recipient could consider the amount of time spent by employees in its public health department's epidemiology division in responding to COVID–19 and, if a majority of its employees are dedicated to responding to COVID–19, determine that the entire division is primarily dedicated to responding to COVID–19. Treasury also clarifies that recipients may use reasonable estimates to establish administrable presumptions; for example, a recipient could estimate, based on discussions with staff, the general share of time that employees in a specific role or type of position spend on COVID–19 related tasks and apply that share of time to all employees in that position.

Recipients are generally required to be able to support uses of SLFRF funds as eligible, including, in this instance, maintenance of records to support an assessment that public health and safety staff are primarily dedicated to responding to COVID–19. As noted above, recipients may use reasonable estimates to implement this provision. Recipients should maintain records on how they developed these estimates and need not track staff hours. Treasury notes that records retained can include payroll records (*e.g.,* the number and type of staff in various positions), attestations from supervisors or staff (*e.g.,* self-attestation of share of time spent on COVID–19), or regular work product or correspondence (*e.g.,* calendars, email correspondence, documents, and other electronic

[241] 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 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). As described further in the section Deposits into Pension Funds in Restrictions on Use, that limitation on use does not apply to pension contributions that are part of regular payroll contributions for employees whose wages and salaries are an eligible use of SLFRF funds.

[242] Note that the interim final rule adapted prior guidance issued for CRF that described these four categories of employees; however, when listing the specific occupations or types of employees in each of these categories, the guidance collapses health care and public health into one category titled ''public health.'' Therefore, the presumption described around public health employees also covers health care employees.

[243] 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.

records). Treasury anticipates that these types of records are generally retained in many government settings; recipients should also consult the Award Terms and Conditions for SLFRF funds for requirements on length of record retention. For example, a recipient could establish a reasonable presumption about the share of time that an employee, division, or operating unit is responding to COVID–19 and simply retain those employees' electronic records as a record to support their assessment.

Public Comment: Public Health and Safety Staff Primarily Dedicated to COVID–19 Response: Some commenters recommended expanding the administrative convenience for public health and safety staff primarily dedicated to COVID–19 response to further types of staff, to all public health and safety staff, or to public health and safety staff serving underserved areas.

Treasury Response: The interim final rule recognized that COVID–19 response continues to require substantial staff resources and provides an administrative convenience to make it relatively simpler to identify the eligibility of the types of workers—public health and safety workers—generally most involved in COVID–19 response. At the same time, many public health and safety workers perform roles unrelated to COVID–19; coverage of all roles would be overbroad compared to the workers responding to COVID–19 in actuality. For this reason, the final rule maintains the interim final rule's approach to permitting SLFRF funds to be used for public health and safety staff primarily dedicated to responding to COVID–19. Finally, to the extent that a greater proportion of public health and safety staff time is needed to respond to COVID–19 in disproportionately impacted communities, the ''primarily dedicated'' approach recognizes this increased need.

Public Comment: Eligible Types of COVID–19 Response: Some public commenters also sought further clarification on how to identify eligible types of ''COVID–19 response.'' For example, commenters requested clarification on delineating COVID–19 response from general public health response and defining COVID–19 response for public safety employees.

Treasury Response: Treasury is clarifying that ''responding to'' COVID–19 entails work needed to respond to the public health or negative economic impacts of the pandemic, apart from the typical pre-pandemic job duties or workload of an employee in a comparable role, if one existed. For example, responding to COVID–19 for a public safety worker may entail working in an emergency operations center to coordinate pandemic-related supply distribution, responding to an increased volume of 911 calls, or implementing COVID–19 prevention and mitigation protocols in a carceral setting.

Public Comment: Eligible Employees: Some commenters requested clarification on the types of eligible employees or expansion of eligible employees to include additional types of staff, including in behavioral health; administrative, management, or financial management positions; social services; morgue staff; and nonprofit staff supporting projects to undertake eligible uses of funds under SLFRF.

Treasury Response: Treasury provided further guidance on eligible types of employees following the interim final rule, which expressly included social services and morgue staff, and incorporates that guidance into the final rule. In addition, Treasury is clarifying that public health ''employees involved in providing medical and other health services to patients and supervisory personnel'' includes behavioral health services as well as physical health services.

Treasury also is clarifying that this provision only addresses employees of the recipient government responding to COVID–19. For discussion of eligible expenses to administer SLFRF, including eligible costs for subrecipients performing eligible activities on behalf of a recipient government, see section Administrative Expenses in Program Administration Provisions.

Finally, Treasury is clarifying that indirect costs for administrative, management, and financial management personnel to support public health and safety staff responding to COVID–19 are not permissible under this provision, given the relatively greater challenge of differentiating the marginal increase in staff time and workload due to pandemic response for indirect versus direct costs.

Public Comment: Time Period: Finally, some commenters made recommendations on the time period during which this eligible use should be available. Some commenters recommended eligibility begin before March 3, 2021, the period when Treasury's interim final rule permitted recipients to begin to incur costs using SLFRF funds; for discussion of this topic, see section Timeline for Use of SLFRF Funds in Program Administration Provisions. As noted above, Treasury also posed a question in the interim final rule asking for how long Treasury should maintain the administrative convenience that SLFRF funds may be used for the full payroll and covered benefits of public health and safety staff primarily dedicated to COVID–19 response. Several commenters recommended that Treasury maintain this approach throughout the program or through December 31, 2024. Other commenters requested clarification on whether eligibility for this use of funds was tied to the length of the state of emergency or whether a jurisdiction has an active state of emergency.

Treasury Response: In the final rule, Treasury is clarifying that recipients will be permitted to fund the full payroll and covered benefits of public health and safety staff primarily dedicated to COVID–19 response throughout the period of performance for the SLFRF program, though recipients should periodically reassess their determination of primarily dedicated staff, including as the public health emergency and response evolves.

Government Employment and Rehiring Public Sector Staff

The interim final rule permitted use of funds for costs associated with rehiring state, local, and Tribal government staff in order to bolster the government's ability to effectively administer services. Specifically, recipients may pay for payroll, covered benefits, and other costs associated with the recipient increasing the number of its employees up to the pre-pandemic baseline, or the number of employees that the recipient government employed on January 27, 2020.

Public Comment: Many commenters requested greater flexibility and additional clarification on the provision's requirements, including the pre-pandemic baseline and re-hiring process. Some commenters requested that the final rule allow for hiring above the pre-pandemic baseline given historic underinvestment in the public sector workforce. Commenters suggested a number of adjustments to the pre-pandemic baseline, including adjusting based on population or revenue growth, while some recommended allowing recipients to set their own hiring levels. Others requested clarification on the definition of the baseline and the re-hiring process, including whether the pre-pandemic baseline referred to budgeted or filled positions and whether new hires had to fill the same roles as the previous hires. Commenters also asked whether recipients need to show if the reduction in number of employees was due to the pandemic in order to qualify for funding and requested that workers dedicated to

COVID–19 response be exempted from the calculation of number of employees.

Many commenters also requested an expanded set of eligible uses beyond restoring their workforce up to the pre-pandemic baseline. Commenters requested that funding be able to be used to avoid layoffs, provide back pay, retain employees through pay increases and other retention programs, or reimburse salaries and benefits already paid. Some commenters also requested clarification as to whether recipients can fund re-hired positions through the period of performance and on the definition of payroll and benefits. Other commenters requested preferential hiring for workers laid off, a strong commitment to equity, and a requirement that funds would not be used to pay for contract or temporary replacement workers during a labor dispute.

Treasury Response: The final rule allows for an expanded set of eligible 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, and paying for ancillary administrative costs related to hiring.

Restoring pre-pandemic employment. In response to comments and recognizing underinvestment in public sector employment, the final rule expands the ability to use SLFRF funds to restore pre-pandemic employment. Treasury is also clarifying how, and the extent to which, recipients may use SLFRF funds to rehire public employees.

The final rule provides two options to restore pre-pandemic employment, depending on recipient's needs. Under the first and simpler option, recipients may use SLFRF funds to rehire staff for pre-pandemic positions that were unfilled or were eliminated due the pandemic without undergoing further analysis. Under the second option, the final rule provides recipients an option to hire above the pre-pandemic baseline, by adjusting the pre-pandemic baseline for historical growth in public sector employment over time, as well as flexibility on roles for hire. Recipients may choose between these options but cannot use both.

To pursue the first option, 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, without undergoing further analysis. For these employees, recipients may use SLFRF funds for payroll and covered benefit costs that are obligated by December 31, 2024 and expended by December 31, 2026, consistent with the Uniform Guidance's Cost Principles at 2 CFR part 200 Subpart E. This option provides administrative simplicity for recipients that would simply like to restore pre-pandemic positions and would not like to hire above the pre-pandemic baseline.

To pursue the second option, recipients should undergo the analysis provided below. In short, this option allows recipients to pay for payroll and covered benefits associated with the recipient increasing its number of budgeted full-time equivalent employees (FTEs) up to 7.5 percent above its pre-pandemic employment baseline, which adjusts for the continued underinvestment in state and local governments since the Great Recession. State and local government employment as a share of population in 2019 remained considerably below its share prior to the Great Recession in 2007, which presented major risks to recipients mounting a response to the COVID–19 public health emergency. The *adjustment factor* of 7.5 percent results from estimating how much larger 2019 state and local government employment would have needed to be for the share of state and local government employment to population in 2019 to have been back at its 2007 level and is intended to correct for this gap.

Recipients should complete the steps described below. Recipients may choose whether to conduct this analysis on a government-wide basis or for an individual department, agency, or authority.

- *Step One:* Identify the recipient's budgeted FTE level on January 27, 2020. This includes all budgeted positions, filled and unfilled. This is called the *pre-pandemic baseline.*
- *Step Two:* Multiply the *pre-pandemic baseline* by 1.075 (that is, 1 + *adjustment factor*). This is called the *adjusted pre-pandemic baseline.*
- *Step Three:* Identify the recipient's budgeted FTE level on March 3, 2021, which is the beginning of the period of performance for SLFRF funds. Recipients may, but are not required to, exclude FTEs dedicated to responding to the COVID–19 public health emergency.[244] This is called the *actual number of FTEs.*
- *Step Four:* Subtract the *actual number of FTEs* from the *adjusted pre-pandemic baseline* to calculate the number of FTEs that can be hired and covered by SLFRF funds.

Recipients may use SLFRF funds to cover payroll and covered benefit costs obligated by December 31, 2024, and expended by December 31, 2026, up to the number of FTEs calculated in Step Four, consistent with the Uniform Guidance's Cost Principles at 2 CFR part 200 Subpart E. Recipients may only use SLFRF funds for additional FTEs hired over the March 3, 2021 level of budgeted FTEs (*i.e.,* the *actual number of FTEs*); note again that recipients may choose whether to conduct the analysis of FTEs that can be covered by SLFRF funds on a government-wide basis or for an individual department, agency, or authority.

These FTEs must have begun their employment on or after March 3, 2021, which is the beginning of the period of performance. For administrative convenience, recipients do not need to demonstrate that the reduction in number of FTEs was due to the COVID–19 pandemic, as Treasury assumes the vast majority of employment reductions during this time were due to pandemic fiscal pressures on state and local budgets. Recipients do not need to hire for the same roles that existed pre-pandemic.

For illustration, consider a hypothetical recipient with 1,000 budgeted FTEs on January 27, 2020 (950 filled FTE positions and 50 unfilled FTE positions). The recipient's *pre-pandemic baseline* is 1000 FTEs; its *adjusted pre-pandemic baseline* is 1,000 * 1.075 = 1075 FTEs. Now, assume that on March 3, 2021, the recipient had 800 budgeted FTEs in total (795 filled FTE positions and 5 unfilled FTE positions), with 50 FTEs primarily dedicated to responding to the COVID–19 public health emergency. The recipient would have the option of using either 800 FTEs or 750 FTEs as its *actual number of FTEs* for the calculation; assuming it chooses the lower number, it would be able to fund up to 325 FTEs with SLFRF funds (that is, 1,075 − 750 = 325 FTEs).

[244] Recipients may determine that a portion of an FTE's time is dedicated to responding to the COVID–19 public health emergency. Further, for administrative convenience, the recipient may consider public health and safety FTEs to be entirely devoted to mitigating or responding to the COVID–19 public health emergency if the FTE, or his or her operating unit of division, is primarily dedicated to responding to the COVID–19 public health emergency. Recipients may also consider other presumptions for assessing the extent to which an FTE, division, or operating unit is engaged in activities that respond to the COVID–19 public health emergency, provided that the recipient reassesses periodically and maintains records to support its assessment, such as payroll records, attestations from supervisors or staff, or regular work product or correspondence demonstrating work on the COVID–19 response.

Specifically, the recipient would be able to use SLFRF to fund payroll and covered benefits for up to 325 FTEs that begin their employment on or after March 3, 2021, for costs obligated by December 31, 2024, and expended by December 31, 2026, consistent with the Uniform Guidance's Cost Principles, as long as SLFRF funds are used for additional FTEs hired over the recipient's 750 FTE level (which is its March 3, 2021 budgeted FTE level).

In hiring new employees, the final rule encourages recipients to ensure a diverse workforce. The final rule also prohibits recipients from using funds to temporarily fill positions during a labor dispute, as this would not constitute responding to the public health or negative economic impacts of the pandemic. Further, recipients must ensure that its hiring practices do not violate conflict-of-interest policies.[245] Total compensation for a hired employee that is substantially in excess of typical compensation for employees of their experience and tenure within the recipient's government, without a corresponding business case, may indicate a potential conflict-of-interest in fact or appearance.

Providing additional funding for employees who experienced pay cuts and furloughs. In recognition of the economic hardship caused by pay cuts and furloughs, additional funds may be provided to employees who experienced pay cuts or were furloughed since the onset of the pandemic on January 27, 2020. Recipients must be able to substantiate that the pay cut or furlough was substantially due to the public health emergency or its negative economic impacts (*e.g.,* fiscal pressures on state and local budgets) and should document their assessment. As a reminder, this additional funding must be reasonably proportional to the negative economic impact of the pay cut or furlough on the employee, which would include taking into account unemployment insurance (UI) benefits that a furloughed employee may have received during the furloughed period. Treasury presumes that additional funds beyond the difference in pay had the employee not received a pay cut or been furloughed would not be reasonably proportional.

Recipients may also provide premium pay to certain employees, as detailed further in section Premium Pay.

Avoiding layoffs. Funds may be used to maintain current compensation levels, with adjustments for inflation, in order to prevent layoffs that would otherwise be necessary. Recipients must be able to substantiate that layoffs were likely in the absence of SLFRF funds and would be substantially due to the public health emergency or its negative economic impacts (*e.g.,* fiscal pressures on state and local budgets) and should document their assessment.

Retaining workers. Funds may be used to provide worker retention incentives, which are designed to persuade employees to remain with the employer as compared to other employment options. Recipients must be able to substantiate that the employees were likely to leave employment in the absence of the retention incentive and should document their assessment. For example, a recipient may determine that a retention bonus is necessary based on the presence of an alternative employment offer for an employee.

All worker retention incentives must be 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. Further, because retention incentives are intended to provide additional incentive to remain with the employer, they must be entirely additive to an employee's regular rate of wages and other remuneration and may not be used to reduce or substitute for an employee's normal earnings. Treasury will presume 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 the other requirements are met.

Ancillary administrative costs. Funds may be used to pay for ancillary administrative costs associated with administering SLFRF-funded hiring and retention programs detailed above, including costs to publish job postings, review applications, and onboard and train new hires. For additional information on administrative expenses, see section Administrative Expenses in Program Administration Provisions.

Effective Service Delivery: Administrative Expenses

The interim final rule provided that funds could be used for: ''Expenses to improve efficacy of public health or economic relief programs: Administrative costs associated with the recipient's COVID–19 public health emergency assistance programs, including services responding to the COVID–19 public health emergency or its negative economic impacts, that are not federally funded.'' In the final rule, Treasury is clarifying that there are several categories of eligible administrative expenses.

First, recipients may use funds for administrative costs to improve the efficacy of public health or economic relief programs through tools like program evaluation, data analysis, and targeted consumer outreach (see section Effective Service Delivery: Program Evaluation, Data, and Outreach).

Second, recipients may use funds for administrative costs associated with programs to respond to the public health emergency and its negative economic impacts, including programs that are not funded by SLFRF or not federally funded. In other words, Treasury recognizes that responding to the public health and economic impacts of the pandemic requires many programs and activities, some of which are not funded by SLFRF. Executing these programs effectively is a component of responding to the public health and negative economic impacts of the pandemic.

Finally, recipients may use funds for direct and indirect administrative costs for administering the SLFRF program and projects funded by the SLFRF program. See section Administrative Expenses in Program Administration Provisions for details on this eligible use category.

Effective Service Delivery: Program Evaluation, Data, and Outreach

The Supplementary Information of the interim final rule provided that state, local and Tribal governments may use SLFRF funds to improve the design and execution of programs responding to the COVID–19 pandemic and to improve the efficacy of programs addressing negative economic impacts. The interim final rule included high-level guidance about how SLFRF funds could be used in this eligible use category, including the use of targeted consumer outreach, improvements to data or technology infrastructure, impact evaluations, and data analysis.

Since the publication of the interim final rule, Treasury has also released

[245] As part of accepting the Award Terms and Conditions for SLFRF, each recipient agreed to maintain a conflict-of-interest policy consistent with 2 CFR 200.318(c)112 that is applicable to all activities funded with the SLFRF award. Pursuant to this policy, decisions concerning SLFRF must be free of undisclosed personal or organizational conflicts of interest, both in fact and in appearance. A recipient may not use control over SLFRF for their own private gain. Furthermore, no employee, officer, or agent may participate in the selection, award, or administration of a contract supported by a federal award if he or she has a real or apparent conflict of interest.

supplementary information on data analysis, evidence building, and program evaluation in the Compliance and Reporting Guidance.

Public Comment: Treasury received positive comments about the opportunity to invest in data and technology upgrades with SLFRF funds. For example, one commenter noted that investing in technology for better connectivity, coupled with software and hardware upgrades, will allow the workforce to be more productive. Treasury also received comments seeking clarification on using funds for investments in data and technology, including whether upgrading government websites to improve community outreach and investing in technologies that support social distancing were eligible uses.

Treasury Response: Governments with high capacity to use data and evidence to administer programs are more likely to be responsive to the needs of their community, more transparent about their community impact, and more resilient to emergencies such as the pandemic and its economic impacts.[246] Treasury recognizes that collecting high-quality data and developing community-driven, evidence-based programs requires resources to hire and build the capacity of staff, adopt new processes and systems, and use new technology and tools in order to effectively develop, execute, and evaluate programs. As such, Treasury is clarifying that recipients may use SLFRF funds toward the following non-exhaustive list of uses to address the data, evidence, and program administration needs of recipients. Additional information may be provided in the Compliance and Reporting Guidance.

- *Program evaluation and evidence resources* to support building and using evidence to improve outcomes, including development of Learning Agendas [247] to support strategic evidence building, selection of evidence-based interventions, and program evaluations including impact evaluations (randomized control trials and quasi-experimental designs) as well as rapid-cycle evaluations, process or implementation evaluations, outcome evaluations, and cost-benefit analyses. Recipients are encouraged to undertake rigorous program evaluations when practicable, assess the impact of their programs by beneficiary demographics (including race, ethnicity, gender, income, and other relevant factors), and engage with community stakeholders (including intended beneficiaries) when developing Learning Agendas and designing evaluations to ensure that programmatic, cultural, linguistic, and historical nuances are accurately and respectfully addressed.

  Recipients are also encouraged to use relevant evidence Clearinghouses,[248] among other sources, to assess the level of evidence for their interventions and identify evidence-based models that could be applied in their jurisdiction (meaning models with strong or moderate evidence; see Compliance and Reporting Guidance for details on these terms).
- *Data analysis resources* to gather, assess, and use data for effective policy-making and real-time tracking of program performance to support effective implementation of SLFRF-funded programs and programs that respond to the public health emergency and its negative economic impacts, or which households, small businesses, or impacted industries are accessing during the pandemic that are funded by other sources. These resources include but are not limited to data gathering, data cleaning, data analysis, data infrastructure, data management, data sharing, data transparency, performance management, outcomes-based budgeting, outcomes-based procurement, and other data needs. Treasury encourages the disaggregation of data to identify disparate program impacts and the use of cross-jurisdictional data sharing to better measure and implement government programs.
- *Technology infrastructure* resources to improve access to and the user-experience of government information technology systems, including upgrades to hardware and software as well as improvements to public-facing websites or to data management systems, to increase public access and improve public delivery of government programs and services (including in the judicial, legislative, or executive branches).
- *Community outreach and engagement* resources to support the gathering and sharing of information in ways that improve equity and effective implementation of SLFRF-funded programs and programs that respond to the public health emergency and its negative economic impacts, or which households, small businesses, or impacted industries are accessing during the pandemic that are funded by other sources. These methods include but are not limited to community meetings, online surveys, focus groups, human-centered design activities, behavioral science techniques, and other community engagement tools.
- *Capacity building* resources to support using data and evidence in designing, executing, and evaluating programs, including hiring public sector staff, contractors, academics, consultants, and others with expertise in evaluation, data, technology, and community engagement as well as technical assistance support for public sector staff, staff of subrecipients, and community partners to support effective implementation of SLFRF-funded programs and programs that respond to the public health emergency and its negative economic impacts, or which households, small businesses, or impacted industries are accessing during the pandemic that are funded by other sources.

Administrative Needs Caused or Exacerbated by the Pandemic

As described in guidance and the interim final rule, SLFRF funds may be used to address administrative needs of recipient governments that were caused or exacerbated by the pandemic. Guidance following the interim final rule included several examples of this, for example, uses of funds to address backlogs resulting from pandemic-related shutdowns (*e.g.,* backlogs in court systems).[249] This also includes

[246] Results for America, Invest in What Works State Standard of Excellence (August 2020), *https://2020state.results4america.org/2020_State-Standard-of-Excellence.pdf.*

[247] Learning Agendas are systematic plans to identify, prioritize, answer important questions about programs and policies using analytic techniques that are appropriate to the type of question asked. For more information on learning agendas, please see OMB Memorandum M–19–23, available at: *https://www.whitehouse.gov/wp-content/uploads/2019/07/M-19-23.pdf* and OMB Memorandum M–21–27, available at: *https://www.whitehouse.gov/wp-content/uploads/2021/06/M-21-27.pdf.*

[248] Evidence Clearinghouses are databases of research in particular program areas. Frequently these Clearinghouses identify evidence-based programs, the strength of the evidence for those programs, and provide contextual or supporting information in easy to understand formats. Many federal departments have developed rigorous and helpful Clearinghouses that cover a wide range of uses enumerated in this final rule as well as other programs that may be responsive to public health or negative economic impacts of the pandemic. For more information on Clearinghouses, please see the Compliance and Reporting Guidance: U.S. Department of the Treasury, Recipient Compliance and Reporting Responsibilities, as of November 5, 2021; *https://home.treasury.gov/policy-issues/coronavirus/assistance-for-state-local-and-tribal-governments/state-and-local-fiscal-recovery-funds/recipient-compliance-and-reporting-responsibilities.*

[249] *See FAQ 2.19.* Coronavirus State and Local Fiscal Recovery Funds, Frequently Asked Questions, as of July 19, 2021; *https://home.treasury.gov/system/files/136/SLFRPFAQ.pdf.* In the case of courts specifically, this includes ''implementing COVID–19 safety measures to facilitate court operations, hiring additional court staff or attorneys to increase speed of case

using funds for increased repair or maintenance needs to respond to significantly greater use of public facilities during the pandemic (*e.g.,* increased use of parks resulting in damage or increased need for maintenance). Some commenters expressed support for the ability to use funds for these purposes. Treasury is maintaining these enumerated eligible uses in the final rule and clarifying that capital expenditures such as technology infrastructure to adapt government operations to the pandemic (*e.g.,* video-conferencing software, improvements to case management systems or data sharing resources), reduce government backlogs, or meet increased maintenance needs are eligible.

b. Capital Expenditures

The interim final rule expressly permitted use of funds for a limited number of capital expenditures that mostly pertained to COVID–19 prevention and mitigation. These included capital investments in public facilities to meet pandemic operational needs, such as physical plant improvements to public hospitals and health clinics; adaptations to public buildings to implement COVID–19 mitigation tactics; ventilation improvements in congregate settings, health care settings, or other key locations; assistance to small businesses and nonprofits and aid to impacted industries to implement COVID–19 prevention or mitigation tactics, such as physical plant changes to enable social distancing. For disproportionately impacted populations and communities, the interim final rule also expressly permitted development of affordable housing to increase the supply of affordable and high-quality living units.

Public Comment: Many commenters supported the interim final rule's allowance of capital expenditures in facilities to meet pandemic operational needs but requested that the final rule explicitly allow for a broader range of capital expenditures. Commenters expressed an interest in investing in equipment, real property, and facilities that they argued will yield lasting benefits beyond the SLFRF period of performance. Some commenters stated that the approach in the interim final rule limited the vast majority of capital expenditures to governments that experienced revenue loss under Sections 602(c)(1)(C) and 603(c)(1)(C) and that this approach may prevent some governments from fully meeting the needs of their residents. A few commenters argued that Treasury should limit use of funds on capital expenditures not related to addressing a direct pandemic harm, such as general economic development or workforce development, and some expressed support for generally limiting capital expenditures to those that address the needs of low-income communities and communities of color.

Many commenters requested that capital expenditures related to direct COVID–19 public health response be included as enumerated eligible uses. The requested types of expenditures include improvements and construction of hospitals and health clinics (including behavioral health clinics), as well as other health-related infrastructure improvements, such as improvements to medical equipment or public health information technology. These commenters stated that investments in health and public health systems are vital to ensuring critical infrastructure necessary to respond to continued impacts of COVID–19 or to address disparities in health, due to lack of access to health care, that contributed to disproportionate impacts of COVID–19 on some communities. Further, some commenters requested that construction or improvements of emergency management and public safety facilities be deemed eligible, citing that some of these sites serve as remote vaccination sites or are otherwise crucial to the pandemic public health response.

Commenters also requested use of funds for capital expenditures that support community needs apart from health care, such as new construction or improvements to schools, affordable housing (beyond presumed disproportionately impacted communities), childcare facilities, and community centers; some suggested that all types of projects permissible under the Community Development Block Grant Program should be eligible both for policy and administrability reasons. Further, some commenters also asked for clarification as to whether parks and recreational facilities are eligible if built in certain disproportionately impacted areas, as well as public transportation infrastructure.

Finally, some commenters also requested use of funds for capital expenditures in government administration buildings, such as public courthouses, as well as technology infrastructure that would allow for remote delivery of public benefits. Others also asked about whether funds could be used to renovate vacant business district buildings or commercial spaces to spur economic recovery.

Treasury Response: Capital expenditures, in certain cases, can be appropriate responses to the public health and economic impacts of the pandemic, in addition to programs and services. Like other eligible uses of SLFRF funds in this category, capital expenditures should be a related and reasonably proportional response to a public health or negative economic impact of the pandemic. The final rule clarifies and expands how SLFRF funds may be used for certain capital expenditures, including criteria and documentation requirements specified in this section, as applicable.

Treasury provides presumptions and guidelines for capital expenditures that are enumerated earlier in sections Public Health, Negative Economic Impacts, and General Provisions: Other under the Public Health and Negative Economic Impact eligible use category (''enumerated projects''), along with capital expenditures beyond those enumerated by Treasury. In addition to satisfying the two-part framework in Standards: Designating a Public Health Impact and Standards: Designating a Negative Economic Impact for identifying and designing a response to a pandemic harm, Treasury will require projects with total expected capital expenditure costs of $1 million or greater to undergo additional analysis to justify their capital expenditure. Increased reporting requirements will be required for projects that are larger in size, as well as projects that are not enumerated as eligible by Treasury, with certain exceptions for Tribal governments discussed below. Smaller projects with total expected capital expenditures below $1 million will not be required to undergo additional analysis to justify their capital expenditure, as such projects will be presumed to be reasonably proportional, provided that they are responding to a harm caused or exacerbated by the public health emergency. These standards and documentation requirements are designed to minimize administrative burden while also ensuring that projects are reasonably proportional and supporting Treasury's risk-based approach to overall program management and monitoring.

This section provides (1) an overview of general standards governing capital expenditures; (2) presumptions on capital expenditures, which help guide recipients in determining whether the expenditure meets the standards and the associated documentation requirements; and (3) additional standards and requirements that may apply.

resolution, and other expenses to expedite case resolution are eligible uses.''

Overview of General Standards

In considering whether a capital expenditure would be eligible under the public health and negative economic impacts eligible use category, recipients must satisfy the requirements for all uses under the public health and negative economic impacts eligible use category, including identifying an impact or harm and designing a response that addresses or responds to the identified impact or harm. Responses must be reasonably designed to benefit the individual or class that experienced the impact or harm and must be related and reasonably proportional to the extent and type of impact or harm. Recipients should consult further details on this standard provided in the sections Standards: Designating a Public Health Impact and Standards: Designating a Negative Economic Impact under General Provisions: Structure and Standards.

In addition to the framework described above, for projects with total expected capital expenditures of $1 million or greater, recipients must complete and meet the substantive requirements of a Written Justification for their capital expenditure, except for Tribal governments as discussed below. This Written Justification helps clarify the application of this interpretive framework to capital expenditures, while recognizing that the needs of communities differ. In particular, this justification reflects the fact that the time required for a large construction project may make capital expenditures less responsive to pandemic-related needs relative to other types of responses. In addition, as discussed in section Timeline for Use of SLFRF Funds of this Supplemental Information, SLFRF funds must be obligated by December 31, 2024 and expended by December 31, 2026. Capital expenditures may involve long lead-times, and the Written Justification may support recipients in analyzing proposed capital expenditures to confirm that they conform to the obligation and expenditure timing requirements. Further, such large projects may be less likely to be reasonably proportional to the harm identified. For example, construction of a new, larger public facility for the purpose of increasing the ability to socially distance generally would not be considered a reasonably proportional response compared to other less time- and resource-intensive options that may be available and would be equally or more effective. Other solutions, such as improvements in ventilation, could be made more quickly and are typically more cost effective than construction of a new, larger facility. The needs of communities differ, and recipients are responsible for identifying uses of SLFRF funds that best respond to these needs. The Written Justification recognizes this while also establishing consistent documentation and reporting to support monitoring and compliance with the ARPA and final rule. Finally, the Written Justification also reflects the fact that infrastructure projects are generally not within scope of this eligible use category. See section Uses Outside the Scope of this Category in General Provisions: Other.

As noted above, Tribal governments are not required to complete the Written Justification for projects with total capital expenditures of $1 million or greater. Tribal governments generally have limited administrative capacity due to their small size and corresponding limited ability to supplement staffing for short-term programs. In addition, Tribal governments are already subject to unique considerations that require additional administrative processes and administrative burden for Tribal government decision making, including capital expenditures. Tribal governments generally are subject to a jurisdictionally complex sets of rules and regulations in the case of improvements to land for which the title is held in trust by the United States for a Tribe (Tribal Trust Lands).[250] This includes the requirement in certain circumstances to seek the input or approval of one or more federal agencies such the Department of the Interior, which holds fee title of Tribal Trust Lands.

As a result of their limited administrative capacity and unique and complex rules and regulations applicable to Tribal governments operating on Tribal Trust Lands, Tribal governments would experience significant and redundant administrative burden by also being required to complete a Written Justification for applicable capital expenditures. While Tribal governments are not required to complete the Written Justification for applicable capital expenditures, the associated substantive requirements continue to apply, including the requirement that a capital expenditure must be reasonably designed to benefit the individual or class that experienced the identified impact or harm and must be related and reasonably proportional to the extent and type of impact or harm. Note that, as a general matter, Treasury may also request further information on SLFRF expenditures and projects, including capital expenditures, as part of the regular SLFRF reporting and compliance process, including to assess their eligibility under the final rule.

The Written Justification should (1) describe the harm or need to be addressed; (2) explain why a capital expenditure is appropriate to address the harm or need; and (3) compare the proposed capital expenditure against alternative capital expenditures that could be made. The information required for the Written Justification reflects the framework applicable to all uses under the public health and negative economic impacts eligible use category, providing justification for the reasonable design, relatedness, and reasonable proportionality of the capital expenditure in response to the harm or impact identified.

1. *Description of harm or need to be addressed:* Recipients should provide a description of the specific harm or need to be addressed, and why the harm was exacerbated or caused by the public health emergency. When appropriate, recipients may provide quantitative information on the extent and type of the harm, such as the number of individuals or entities affected.

2. *Explanation of why a capital expenditure is appropriate:* Recipients should provide an independent assessment demonstrating why a capital expenditure is appropriate to address the specified harm or need. This should include an explanation of why existing capital equipment, property, or facilities would be inadequate to addressing the harm or need and why policy changes or additional funding to pertinent programs or services would be insufficient without the corresponding capital expenditures. Recipients are not required to demonstrate that the harm or need would be irremediable but for the additional capital expenditure; rather, they may show that other interventions would be inefficient, costly, or otherwise not reasonably designed to remedy the harm without additional capital expenditure.

3. *Comparison of the proposed capital expenditure against alternative capital expenditures:* Recipients should provide an objective comparison of the proposed capital expenditure against at least two alternative capital expenditures and demonstrate why their proposed capital expenditure is superior to alternative capital expenditures that could be made. Specifically, recipients should assess the proposed capital expenditure against at least two alternative types or sizes of capital expenditures that are potentially effective and reasonably

[250] See 25 U.S.C. 5108.

feasible. Where relevant, recipients should compare the proposal against the alternative of improving existing capital assets already owned or leasing other capital assets. Recipients should use quantitative data when available, although they are encouraged to supplement with qualitative information and narrative description. Recipients that complete analyses with minimal or no quantitative data should provide an explanation for doing so.

In determining whether their proposed capital expenditure is superior to alternative capital expenditures, recipients should consider the following factors against each selected alternative.

a. *A comparison of the effectiveness of the capital expenditures in addressing the harm identified.* Recipients should generally consider the effectiveness of the capital expenditures in addressing the harm over the useful life of the capital asset and may consider metrics such as the number of impacted or disproportionately impacted individuals or entities served, when such individuals or entities are estimated to be served, the relative time horizons of the project, and consideration of any uncertainties or risks involved with the capital expenditure.

b. *A comparison of the expected total cost of the capital expenditures.* Recipients should consider the expected total cost of the capital expenditure required to construct, purchase, install, or improve the capital assets intended to address the public health or negative economic impact of the public health emergency. Recipients should include pre-development costs in their calculation and may choose to include information on ongoing operational costs, although this information is not required.

Recipients should balance the effectiveness and costs of the proposed capital expenditure against alternatives and demonstrate that their proposed capital expenditure is superior. Further, recipients should choose the most cost-effective option unless it substantively reduces the effectiveness of the capital investment in addressing the harm identified.

As an example, a recipient considering building a new diagnostic testing laboratory to enhance COVID–19 testing capacity may consider whether existing laboratories sufficiently meet demand for COVID–19 testing, considering the demand for test results (along with their turnaround time) as well as the impact of current testing availability on the spread of COVID–19. Recipients may also consider other public health impacts of the level of diagnostic testing capacity, for example if insufficient capacity has decreased testing for other health conditions. The recipient may consider alternatives such as expanding existing laboratories or building a laboratory of a different size. In comparing the effectiveness of the capital expenditures, examples of factors that the recipient may consider include when the facilities will become operational and for how long; the daily throughput of COVID–19 tests; and the effect on minimizing delays in test results on the populations that such tests will serve. In comparing costs, the recipient may compare the total expected cost of the new laboratory (including costs of acquisition of real property, construction of the laboratory, and purchase of any necessary equipment needed to operationalize the lab), against the expected costs of expanding existing laboratories (whether by replacing current equipment with higher throughout devices or physically expanding space to accommodate additional capacity) or building a new laboratory of a different size, including by leasing property. As a reminder, recipients should only consider alternatives that are potentially effective and reasonably feasible.

Because, in all cases, uses of SLFRF funds to respond to public health and negative economic impacts of the pandemic must be related and reasonably proportional to a harm caused or exacerbated by the pandemic, some capital expenditures may not eligible. For example, constructing a new correctional facility would generally not be a proportional response to an increase in the rate of certain crimes or overall crime as most correctional facilities have historically accommodated fluctuations in occupancy.[251] In addition, construction of new congregate facilities, which would generally be expected to involve expenditures greater than $1 million, would generally not be a proportional response to mitigate or prevent COVID–19, because such construction is generally expected to be more costly than alternative approaches or capital expenditures that may be equally or more effective in decreasing spread of the disease.[252] These alternatives include personal protective equipment, ventilation improvements, utilizing excess capacity in other facilities or wings, or temporary facility capacity expansions.

Large capital expenditures intended for general economic development or to aid the travel, tourism, and hospitality industries—such as convention centers and stadiums—are, on balance, generally not reasonably proportional to addressing the negative economic impacts of the pandemic, as the efficacy of a large capital expenditure intended for general economic development in remedying pandemic harms may be very limited compared to its cost.[253]

Presumptions on Capital Expenditures

For administrative convenience, the final rule provides presumptions on whether a Written Justification is required—and required to be submitted to Treasury through reporting—based on the type and size of the capital expenditure, as detailed in the table below.

As discussed above, Tribal governments are not required to complete the Written Justification for applicable capital expenditures, but the associated substantive requirements continue to apply, including the requirement that a capital expenditure must be reasonably designed to benefit the individual or class that experienced the identified impact or harm and must be related and reasonably proportional to the extent and type of impact or harm.

[251] *See, e.g.,* ''Economic Perspectives on Incarceration and the Criminal Justice System,'' Council of Economic Advisers (April 2016), pg. 36–43.

[252] For instance, the CDC has published detailed recommendations for nursing homes, long-term care facilities, and correctional and detention facilities, on infection prevention and control. Many of these recommendations are relatively low cost, such as proper use of PPE. In addition, increasing vaccination rates among nursing home staff is among the most important ways to decrease the spread of the disease. Centers for Disease Control and Prevention, Interim Infection Prevention and Control Recommendations to Prevent SARS–CoV–2 Spread in Nursing Homes (September 10, 2021), *https://www.cdc.gov/coronavirus/2019-ncov/hcp/long-term-care.html#anchor_1631030153017.*

[253] For instance, researchers have found no consistent positive relationship between building sports facilities and local economic development. As Siegfried and Zimbalist (2000, 103) write in a review of the literature, ''independent work on the economic impact of stadiums and arenas has uniformly found that there is no statistically significant positive correlation between sports facility construction and economic development.'' John Siegfried and Andrew Zimbalist, The Economics of Sports Facilities and Their Communities, Journal of Economic Perspectives 14, no. 3 (Summer 2000): 95–114, *https://www.aeaweb.org/articles?id=10.1257/jep.14.3.95.*

If a project has total expected capital expenditures of	and the use is enumerated by Treasury as eligible, then [254]	and the use is beyond those enumerated by Treasury as eligible, then [255]
Less than $1 million	No Written Justification required	No Written Justification required.
Greater than or equal to $1 million, but less than $10 million.	Written Justification required but recipients are not required to submit as part of regular reporting to Treasury.	Written Justification required and recipients must submit as part of regular reporting to Treasury.
$10 million or more	Written Justification required and recipients must submit as part of regular reporting to Treasury.	

In selecting these thresholds, Treasury recognized that capital expenditures vary widely in size and therefore would benefit from tiered treatment to implement eligibility standards while minimizing administrative burden, especially for smaller projects. For example, Treasury selected $1 million as a threshold for whether a recipient needs to complete a Written Justification as well as a threshold under which capital expenditures would be presumed reasonably proportional. Treasury estimates that $1 million would encapsulate the costs of a significant portion of equipment or small renovations. These types of smaller projects are often a necessary and reasonably proportional part of a response to the public health emergency; therefore, the $1 million threshold provides a simplified pathway to complete smaller projects more likely to meet the eligibility standard. At the same time, Treasury selected $10 million as the threshold for more intensive reporting requirements, estimating that projects larger than $10 million would likely constitute significant improvements or construction of mid- or large-sized facilities. As discussed above, given their scale and longer time to completion, these types of larger projects may be less likely to be reasonably proportional responses. The $10 million threshold also generally aligns with thresholds in other parts of the SLFRF program, such as for enhanced reporting on labor practices.

Expenditures from closely related activities directed toward a common purpose are considered part of the scope of one project. These expenditures can include capital expenditures, as well as expenditures on related programs, services, or other interventions. A project includes expenditures that are interdependent (*e.g.,* acquisition of land, construction of the school on the land, and purchase of school equipment), or are of the same or similar type and would be utilized for a common purpose (*e.g.,* acquisition of a fleet of ambulances that would be used for COVID–19 emergency response). Recipients must not segment a larger project into smaller projects in order to evade review. A recipient undertaking a set of identical or similar projects (*e.g.,* development of a number of new affordable housing complexes across the recipient jurisdiction) may complete one Written Justification comprehensively addressing the entire set of projects.

Projects Enumerated as Eligible by Treasury

Under the public health and negative economic impacts eligible use category, the final rule provides a non-exclusive list of eligible uses of funding for projects that respond to the public health emergency or its negative economic impacts. Treasury has determined that these enumerated projects are related to the public health emergency and its negative economic impacts; however, recipients (other than Tribal governments) undertaking these projects with total expected capital expenditures of $1 million or greater must still complete and meet the substantive requirements of a Written Justification as part of their demonstration that the project is a related and reasonably proportional response to the harm identified.

- *Projects with total expected capital expenditures of under $1 million:* Treasury provides a safe harbor for projects with total expected capital expenditures of less than $1 million and will not require recipients to complete, submit, or meet the substantive requirements of a Written Justification for the capital expenditure. In essence, recipients may pursue an enumerated project with total expected capital expenditures of under $1 million without having to undergo additional assessments to meet SLFRF requirements.
- *Projects with total expected capital expenditures of at least $1 million but under $10 million:* Recipients should complete a Written Justification for the capital expenditure and make an independent assessment of whether their proposed capital expenditure meets the substantive requirements of the Written Justification. Recipients will not be required to submit the Written Justification as part of regular reporting to Treasury but should keep documentation for their records.
- *Projects with total expected capital expenditures of at least $10 million:* Similar to the above, recipients should complete a Written Justification of the capital expenditure and make an independent assessment of whether their proposed capital expenditure meets the substantive requirements of the Written Justification. Further, recipients will be asked to submit the Written Justification as part of regular reporting to Treasury. Similar to other parts of the SLFRF program, such as on reporting on labor practices, Treasury recognizes that projects with expected total capital expenditures of at least $10 million may be less likely to meet eligibility requirements and therefore requires recipients to provide an enhanced level of information to Treasury.

Projects Beyond Those Enumerated as Eligible by Treasury

As with all uses, recipients that undertake capital expenditures beyond those enumerated as eligible by Treasury must meet the two-part framework under Standards: Designating a Public Health Impact and Standards: Designating a Negative Economic Impact under General Provisions: Structure and Standards,

[254] Whether or not a Written Justification is required, recipients should still determine that the response is related and reasonably proportional to the public health emergency and its negative economic impacts. Treasury recognizes that enumerated eligible uses are ''related'' to the public health emergency and its negative economic impacts and presumed to be reasonably proportional, except recipients pursuing projects with expected total capital expenditures equal to or greater than $1 million should still independently determine that the expenditures are a reasonably proportional response. Enumerated projects with total expected capital expenditures under $1 million receive a safe harbor and deemed to meet the related and reasonably proportional standard.

[255] Whether or not a Written Justification is required, recipients should still determine that the response is related and reasonably proportional to the public health emergency and its negative economic impacts. Treasury presumes that projects with total expected capital expenditures under $1 million are reasonably proportional in size to responding to the public health emergency and its negative economic impacts; however, recipients should determine that the response otherwise meets the requirements of the standard, including that the response is related to the public health emergency and its negative economic impacts.

including the requirement that responses are related and reasonably proportional to the harm or impact identified. As part of that assessment, these recipients may also be asked to complete a Written Justification. Recipients (other than Tribal governments) are subject to the following presumptions for the Written Justification of the capital expenditure, based on the total expected capital expenditures of the project:

- *Projects with total expected capital expenditures of under $1 million:* Treasury provides a safe harbor for unenumerated projects with total expected capital expenditures of under $1 million and will not require recipients to complete, submit, or meet the substantive requirements of a Written Justification of the capital expenditure. Recipients should still make a determination as to whether the capital expenditure is part of a response that is related and reasonably proportional to the public health emergency or its negative economic impacts.
- *Projects with total expected capital expenditures of $1 million or over:* Recipients should complete a Written Justification of the capital expenditure and make an independent assessment that their proposed capital expenditure meets the substantive requirements of the Written Justification. Further, recipients will be asked to submit the Written Justification as part of regular reporting to Treasury.

Treasury employs a risk-based approach to overall program management and monitoring, which may result in heightened scrutiny on larger projects. Accordingly, recipients pursuing projects with larger capital expenditures should complete more detailed analyses for their Written Justification, commensurate with the scale of the project.

Additional Provisions, Standards, and Definitions

Strong Labor Standards in Construction

Treasury encourages recipients to carry out projects in ways that produce high-quality work, avert disruptive and costly delays, and promote efficiency. Treasury encourages recipients to use strong labor standards, including project labor agreements (PLAs) and community benefits agreements that offer wages at or above the prevailing rate and include local hire provisions. Treasury also recommends that recipients prioritize in their procurement decisions employers who can demonstrate that their workforce meets high safety and training standards (*e.g.,* professional certification, licensure, and/or robust in-house training), that hire local workers and/or workers from historically underserved communities, and who directly employ their workforce or have policies and practices in place to ensure contractors and subcontractors meet high labor standards. Treasury further encourages recipients to prioritize employers (including contractors and subcontractors) without recent violations of federal and state labor and employment laws.

Treasury believes that such practices will promote effective and efficient delivery of high-quality projects and support the economic recovery through strong employment opportunities for workers. Such practices will reduce likelihood of potential project challenges like work stoppages or safety accidents, while ensuring a reliable supply of skilled labor and minimizing disruptions, such as those associated with labor disputes or workplace injuries. That will, in turn, promote on-time and on-budget delivery.

Furthermore, among other requirements contained in 2 CFR 200, Appendix II, all contracts made by a recipient or subrecipient in excess of $100,000 with respect to a capital expenditure that involve employment of mechanics or laborers must include a provision for compliance with certain provisions of the Contract Work Hours and Safety Standards Act, 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR part 5).

Treasury will seek information from recipients on their workforce plans and practices related to capital expenditures undertaken under the public health and negative economic impacts eligible use category with SLFRF funds. This reporting will support transparency and competition by enhancing available information on the services being provided.

Environmental, Uniform Guidance, and Other Generally Applicable Requirements

Treasury cautions that, as is the case with all projects using SLFRF funds, all projects must comply with applicable federal, state, and local law. In the case of capital expenditures in particular, this includes environmental and permitting laws and regulations. Likewise, as with all capital expenditure projects using the SLFRF funds, projects must be completed in a manner that is technically sound, meaning that it must meet design and construction methods and use materials that are approved, codified, recognized, fall under standard or acceptable levels of practice, or otherwise are determined to be generally acceptable by the design and construction industry.

Further, as with all other uses of funds under the SLFRF program, the Uniform Guidance at 2 CFR part 200 applies to capital expenditures unless stated otherwise. Importantly, this includes 2 CFR part 200 Subpart D on post-federal award requirements, including property standards pertaining to insurance coverage, real property, and equipment; procurement standards; sub-recipient monitoring and management; and record retention and access.

Definitions

Treasury adopts several definitions from the Uniform Guidance at 2 CFR 200.1 under this section, including for capital expenditures, capital assets, equipment, and supplies.

Per the Uniform Guidance, the term ''capital expenditures'' means ''expenditures to acquire capital assets or expenditures to make additions, improvements, modifications, replacements, rearrangements, reinstallations, renovations, or alterations to capital assets that materially increase their value or useful life.'' The term ''capital assets'' means ''tangible or intangible assets used in operations having a useful life of more than one year which are capitalized in accordance with [Generally Accepted Accounting Principles].''

Capital assets include lands, facilities, equipment, and intellectual property. Equipment means ''tangible personal property (including information technology systems) having a useful life of more than one year and a per-unit acquisition cost which equals or exceeds the lesser of the capitalization level established by the non-Federal entity for financial statement purposes, or $5,000.'' Supplies, which means all tangible personal property other than those included as ''equipment,'' are not considered capital expenditures.

Recipients may also use SLFRF funds for pre-project development costs that are tied to or reasonably expected to lead to an eligible capital expenditure. For example, pre-project costs associated with planning and engineering for an eligible project are considered an eligible use of funds.

c. Distinguishing Subrecipients Versus Beneficiaries

Under the interim final rule, state, local, and Tribal governments that receive a federal award directly from a federal awarding agency, such as Treasury, are designated as ''recipients,''

and state, local, and Tribal governments are authorized to transfer funds to other entities, including private entities like nonprofits. The interim final rule stated that, ''[a] transferee receiving a transfer from a recipient under sections 602(c)(3) and 603(c)(3) will be a subrecipient. Subrecipients are entities that receive a subaward from a recipient to carry out a program or project on behalf of the recipient with the recipient's Federal award funding.''

For funds transferred to a subrecipient, the interim final rule noted that ''[r]ecipients continue to be responsible for monitoring and overseeing the subrecipient's use of SLFRF funds and other activities related to the award to ensure that the subrecipient complies with the statutory and regulatory requirements and the terms and conditions of the award. Recipients also remain responsible for reporting to Treasury on their subrecipients' use of payments from the SLFRF funds for the duration of the award.''

Public Comment: Treasury received many comments requesting clarification about which entities qualify as subrecipients and are, in turn, subject to subrecipient monitoring and reporting requirements. For example, commenters sought clarification about whether a nonprofit that received a grant to provide services under a program to carry out an enumerated eligible use would qualify as a subrecipient and be subject to subrecipient monitoring and reporting requirements. Similarly, commenters also wondered if a nonprofit that received a grant in recognition of experiencing a negative economic impact of the public health emergency would also be a subrecipient and subject to subrecipient reporting requirements.

Treasury Response: Treasury is clarifying the distinction between a subrecipient and beneficiary in the final rule. The Uniform Guidance definitions for subaward and subrecipient inform Treasury's distinction between subrecipients and beneficiaries.

First, per 2 CFR 200.1 of Uniform Guidance ''[s]ubaward means an award provided by a pass-through entity [256] to a subrecipient for the subrecipient to carry out part of a Federal award received by the pass-through entity. It does not include payments to a contractor or payments to an individual that is a beneficiary of a Federal program. A subaward may be provided through any form of legal agreement, including an agreement that the pass-through entity considers a contract.''

Further, 2 CFR 200.1 of the Uniform Guidance defines a subrecipient, in that ''[s]ubrecipient means an entity, usually but not limited to non-Federal entities, that receives a subaward from a pass-through entity to carry out part of a Federal award; but does not include an individual that is a beneficiary of such award. A subrecipient may also be a recipient of other Federal awards directly from a Federal awarding agency.'' Treasury is aligning the definition of subrecipient in the final rule with the definition of subrecipient in the Uniform Guidance.

Treasury is maintaining the monitoring and subrecipient reporting requirements outlined in the final rule. Per 2 CFR 200.101 (b)(2) of the Uniform Guidance, the terms and conditions of federal awards flow down to subawards to subrecipients. Therefore, non-federal entities, as defined in the Uniform Guidance, must comply with the applicable requirements in the Uniform Guidance regardless of whether the non-federal entity is a recipient or subrecipient of a federal award. This includes requirements such as the treatment of eligible uses of funds, procurement, and reporting requirements.

The Uniform Guidance definitions for both subaward and subrecipient specify that payments to individuals or entities that are direct beneficiaries of a federal award are not considered subrecipients. The final rule adopts this definition of a beneficiary and outlines that households, communities, small businesses, nonprofits, and impacted industries are all potential beneficiaries of projects carried out with SLFRF funds. Beneficiaries are not subject to the requirements placed on subrecipients in the Uniform Guidance, including audit pursuant to the Single Audit Act and 2 CFR part 200, subpart F or subrecipient reporting requirements.

The distinction between a subrecipient and a beneficiary, therefore, is contingent upon the rationale for why a recipient is providing funds to the individual or entity. If the recipient is providing funds to the individual or entity for the purpose of carrying out a SLFRF program or project on behalf of the recipient, the individual or entity is acting as a subrecipient. Acting as a subrecipient, the individual or entity is subject to subrecipient monitoring and reporting requirements. Conversely, if the recipient is providing funds to the individual or entity for the purpose of directly benefitting the individual or entity as a result of experiencing a public health impact or negative economic impact of the pandemic, the individual or entity is acting as a beneficiary. Acting as a beneficiary, the individual or entity is not subject to subrecipient monitoring and reporting requirements.

d. Uses Outside the Scope of This Category

Summary of the Interim Final Rule and Final Rule Structure

In the interim final rule, Treasury noted that certain uses of funds are not permissible under the eligible use category of responding to the public health and negative economic impacts of the pandemic. In the final rule, these uses remain impermissible, but Treasury has re-categorized where they are addressed to increase clarity.

Specifically, the interim final rule provided that the following uses of funds are not eligible under this eligible use category: Contributions to rainy day funds, financial reserves, or similar funds; payment of interest or principal on outstanding debt instruments; fees or issuance costs associated with the issuance of new debt; and satisfaction of any obligation arising under or pursuant to a settlement agreement, judgment, consent decree, or judicially confirmed debt restructuring plan in a judicial, administrative, or regulatory proceeding, except to the extent the judgment or settlement requires the provision of services that would respond to the COVID–19 public health emergency. These uses of funds remain ineligible under the final rule; Treasury has re-categorized these issues to the section Restrictions on Use, which describes restrictions that apply to all eligible use categories, to clarify that these uses are not eligible under any eligible use category of SLFRF. Treasury responds to public comments on this issue in the section Restrictions on Use.

As noted above, the interim final rule also posed several questions on what other types of services or costs Treasury should consider as eligible uses to respond to the public health and negative economic impacts of COVID–19, including in disproportionately impacted communities. In this section, Treasury addresses proposed uses of funds suggested by commenters that Treasury has not included as enumerated eligible uses of funds in this eligible use category.

General Eligible Uses

Public Comment: Commenters proposed a wide variety of additional recommended enumerated eligible uses

[256] In this context, a pass-through entity means a recipient of SLFRF funds.

in all sections of the public health and negative economic impacts eligible use category, including in impacted and disproportionately impacted communities. The proposed additional uses included general categories of services (*e.g.,* legal and social services, long-term investments to remediate long-term disparities, response to natural disasters). Other suggested uses of funds respond to needs widely experienced across the country (*e.g.,* access to and affordability of health insurance). Finally, other suggested uses of funds were highly specific (*e.g.,* healthcare equipment for a specific health condition, fire hydrants, weather alert systems) or most applicable to the particularized needs to certain populations or geographic areas of the United States (*e.g.,* senior citizens, immigrants, formerly incarcerated individuals, responding to environmental issues in certain geographic regions). Other commenters generally requested a high degree of flexibility to respond to the particular needs of their communities.

Treasury Response: Given the large number and diversity of SLFRF recipients, Treasury has aimed to include as enumerated eligible uses programs, services, and capital expenditures that respond to public health and negative economic impacts of the pandemic experienced widely in many jurisdictions across the country, making it clear and simple for recipients to pursue these enumerated eligible uses under the final rule. This provides enumerated eligible uses that many recipients may want to pursue, while including uses that are responsive to the pandemic's impacts across the diverse range of SLFRF recipients. In the final rule, Treasury has clarified several additional uses that generally respond to pandemic impacts experienced broadly across jurisdictions and populations.

Treasury has not chosen to include as enumerated uses all uses proposed by commenters; given the significant range, and in some cases highly specific nature, of the proposed uses Treasury was not able to assess that the proposed uses would respond to negative economic impacts experienced generally across the country, supporting an enumerated eligible use available to all recipients presumptively.

However, Treasury emphasizes that the enumerated eligible uses are non-exhaustive and that other uses, beyond those enumerated, are eligible. Treasury recognizes that the impacts of the pandemic vary over time, by jurisdiction, and by population; as such, the final rule provides flexibility for recipients to identify other public health or negative economic impacts to additional households, small businesses, or nonprofits, including classes of these entities, and pursue programs and services that respond to those impacts. Treasury also notes that some populations are presumed to be impacted or disproportionately impacted by the pandemic, and thus eligible for responsive services; these presumed eligible populations may encompass many individuals in the specific populations for whom commenters recommended services. For details on these issues, see section General Provisions: Structure and Standards.

Infrastructure, Community Development, and General Economic Development

Some potential additions to enumerated eligible uses were also recommended by several commenters each but are not included as enumerated eligible uses in the final rule.

Public Comment: Infrastructure: In the interim final rule, Treasury noted that a ''general infrastructure project, for example, typically would not be included [in this eligible use category] unless the project responded to a specific pandemic public health need.''

Numerous commenters requested that Treasury permit investments in infrastructure as a response to the public health and negative economic impacts of the pandemic. While these comments most commonly recommended that constructing and maintaining roads and surface transportation infrastructure be eligible, the proposed uses for infrastructure ranged widely and included parking lots, bridges, traffic management infrastructure, solid waste disposal facilities, and utility infrastructure (outside of water, sewer, and broadband).

Many commenters argued that infrastructure development and maintenance is a pressing need in their communities and that their communities had less need for water, sewer, and broadband infrastructure or other eligible uses to respond to the public health and negative economic impacts of the pandemic. Other commenters argued that these uses would stimulate the economy, attract businesses, or allow for tourist movement; these commenters argued that, by generally supporting a stronger economy or facilitating conditions that are more conducive to business activity and tourism, these uses respond to the negative economic impacts of the pandemic.

Treasury Response: In the final rule, Treasury is maintaining the approach under the interim final rule that general infrastructure projects, including roads, streets, and surface transportation infrastructure, would generally not be eligible, unless the project responded to a specific pandemic public health need or a specific negative economic impact.

The ARPA expressly includes infrastructure if it is ''necessary'' and in water, sewer, or broadband, suggesting that the statute contemplates only those types of infrastructure. Further, responding to the public health and negative economic impacts of the pandemic requires identifying whether, and the extent to which, there has been a harm that resulted from the COVID–19 public health emergency and whether, and the extent to which, the use would respond or address this harm. Uses of funds intended to generally grow the economy and therefore enhance opportunities for workers and businesses would not be an eligible use, because such assistance is not reasonably designed to impact individuals or classes that have been identified as having experienced a negative economic impact. In other words, there is not a reasonable connection between the assistance provided and an impact on the beneficiaries. Such an activity would be attenuated from and thus not reasonably designed to benefit the households that experienced the negative economic impact.

Note, however, that Treasury has clarified that capital expenditures that are related and reasonably proportional to responding to the public health and economic impacts of the pandemic are eligible uses of funds, in addition to programs and services; for details on eligibility criteria for capital expenditures, see section Capital Expenditures in General Provisions: Other.

Public Comment: Community Development Block Grant: Several commenters recommended that Treasury enumerate as eligible uses those eligible under the Department of Housing and Urban Development's Community Development Block Grant (CDBG) or the Housing and Community Development Act of 1974, which established the CDBG program. Commenters requested that these uses be eligible either to respond to the negative economic impacts of the pandemic, or in the alternate the disproportionate negative economic impacts of the pandemic in certain communities. Under the CDBG program, recipient governments may undertake a wide range of community and economic

development services and projects. Commenters reasoned that many state and local governments are familiar with this program, and that aligning to its eligible uses may help recipients easily understand and pursue eligible projects. Commenters also noted that Treasury had chosen to align with existing federal programs in other eligible use categories, namely water infrastructure, in the interim final rule.

Treasury Response: In the final rule, Treasury is not including all categories of projects permissible under CDBG as enumerated eligible uses to respond to the public health and negative economic impacts of the pandemic. Because CDBG permits such a broad range of activities, including services to individual households, communities, small businesses, general economic development activities, and capital expenditures, Treasury determined that it was more appropriate to assess the underlying types of projects eligible within CDBG and whether each type of project responds to the negative economic impacts of the pandemic. In other words, Treasury considered whether various types of community and economic development projects respond to the impacts of the pandemic in different communities and circumstances. In the final rule, Treasury addresses the eligibility of these various types of projects in each relevant eligible use category within public health and negative economic impacts under SLFRF, including assistance for impacted households, disproportionately impacted households, disproportionately impacted small businesses, and capital expenditures.

Public Comment: General Economic Development: Treasury provided guidance following the interim final rule that general economic development or workforce development would generally not be eligible as it does not respond to a negative economic impact of the COVID–19 public health emergency.

Some commenters recommended that Treasury expand enumerated eligible uses to include general economic development activities, beyond those that respond to negative economic impacts of the pandemic, such as creating an economic development strategy for the jurisdiction's overall economic growth, creating a general workforce development strategy, or providing funds to businesses that did not experience negative economic impacts to carry out economic development activities or to incentivize the addition or retention of jobs. Commenters supportive of assistance to businesses for general economic development activities argued that subsidies to businesses increase job growth and that, in some cases, assistance to companies that excelled during the public health emergency would help create more job opportunities for workers or expand the jurisdiction's tax base and produce funds to support government services. In contrast, other commenters argued that academic research consistently finds that economic development subsidies have a negligible, or even negative, economic effect, citing research findings to this effect.[257]

Treasury Response: In the final rule, Treasury maintains the interim final rule's approach that general economic development or workforce development, meaning activities that do not respond to negative economic impacts of the pandemic and rather seek to more generally enhance the jurisdiction's business climate, would generally not be eligible under this eligible use category. As noted above, to identify an eligible use of funds under this 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.

As noted above, recipients should analyze eligible uses based on the beneficiary of the assistance, and recipients may not provide assistance to small businesses or impacted industries that did not experience a negative economic impact. Provision of assistance to a business that did not experience a negative economic impact, under the theory that such assistance would generally grow the economy and therefore enhance opportunities for workers, would not be an eligible use, because such assistance is not reasonably designed to impact individuals or classes that have been identified as having experienced a negative economic impact. In other words, there is not a reasonable connection between the assistance provided and an impact on the beneficiaries. Such an activity would be attenuated from and thus not reasonably designed to benefit the households that experienced the negative economic impact. Research cited by some commenters finding that business subsidies have limited or negative economic impact also suggests that such a response may not be reasonably designed to benefit households and other entities impacted by the pandemic. Similarly, planning activities for an economic development or workforce strategy regarding general future economic growth do not provide a program, service, or capital expenditure that responds to negative economic impacts of the pandemic.

However, Treasury notes that the final rule includes as enumerated eligible uses many types of assistance that respond to negative economic impacts of the pandemic and may produce economic development benefits. For example, see sections Assistance to Unemployed Workers, Assistance to Small Businesses, and Capital Expenditures.

B. Premium Pay

Background and Summary of the Interim Final Rule

Sections 602(c)(1)(B) and 603(c)(1)(B) of the Social Security Act, as added by the ARPA, provide that SLFRF funds may be used ''to respond to workers performing essential work during the COVID–19 public health emergency by providing premium pay to eligible workers of the . . . government that are performing such essential work, or by providing grants to eligible employers

[257] See, *e.g.,* Matthew D. Mitchell et al., The Economics of a Targeted Economic Development Subsidy (Arlington, VA: Mercatus Center at George Mason University, 2019), 5, available at *https://www.mercatus.org/publications/government-spending/economics-targeted-economic-development-subsidy*; Timothy J. Bartik, Who Benefits from Economic Development Incentives? How Incentive Effects on Local Incomes and the Income Distribution Vary with Different Assumptions about Incentive Policy and the Local Economy (Upjohn Institute Technical Report No. 13–034, W.E. Upjohn Institute for Employment Research, March 1, 2018), available at: *https://research.upjohn.org/up_technicalreports/34/*; Cailin Slattery and Owen Zidar, Evaluating State and Local Business Tax Incentives, Journal of Economic Perspectives 34, no. 2 (2020): 90–118, available at: *https://www.aeaweb.org/articles?id=10.1257/jep.34.2.90*; Kenneth Thomas, The State of State and Local Subsidies to Business (Mercatus Policy Brief, Mercatus Center at George Mason University, Arlington, VA, October 2019), available at: *https://www.mercatus.org/system/files/thomas_-_policy_brief_-_the_state_of_state_and_local_subsidies_to_business_-_v1.pdf*; Dennis Coates, Growth Effects of Sports Franchises, Stadiums, and Arenas: 15 Years Later (Mercatus Working Paper, Mercatus Center at George Mason University, Arlington, VA, September 2015), available at: *https://www.mercatus.org/system/files/Coates-Sports-Franchises.pdf*; Dennis Coates and Brad R. Humphreys, Do Economists Reach a Conclusion on Subsidies for Sports Franchises, Stadiums, and Mega-Events?, Econ Journal Watch 5, no. 3 (2008): 294–315, available at: *https://econjwatch.org/articles/do-economists-reach-a-conclusion-on-subsidies-for-sports-franchises-stadiums-and-mega-events*; Matthew D. Mitchell, Daniel Sutter, and Scott Eastman, The Political Economy of Targeted Economic Development Incentives, Review of Regional Studies 48, no. 1 (2018): 1–9, available at: *https://www.mercatus.org/publications/corporate-welfare/political-economy-targeted-economic-development-incentives.*

that have eligible workers who perform essential work.''

Premium pay is designed to compensate workers that, by virtue of their employment, were forced to take on additional burdens and make great personal sacrifices as a result of the COVID–19 pandemic. Premium pay can be thought of as hazard pay by another name.[258]

During the public health emergency, employers' policies on COVID–19-related premium pay or hazard pay have varied widely, with many essential workers not yet compensated for the heightened risks they have faced and continue to face.[259] Many of these workers earn lower wages on average and live in socioeconomically underserved communities as compared to the general population.[260] A recent study found that 25 percent of essential workers were estimated to have low household income, with 13 percent in high-risk households.[261] The low pay of many essential workers makes them less able to cope with the financial consequences of the pandemic or their work-related health risks. As Americans return to work and governments relax certain rules, essential workers will continue to bear the brunt of the risk of maintaining the ongoing operation of vital facilities and services. The added health risk to essential workers is one prominent way in which the pandemic has amplified pre-existing socioeconomic inequities. Premium pay is designed to address the disparity between the critical services provided by and the risks taken by essential workers and the relatively low compensation they tend to receive.

The interim final rule established a three-part framework for recipients seeking to use SLFRF funds for premium pay. First, to receive premium pay one must be an eligible worker. Second, an eligible worker must also perform essential work. Finally, premium pay must respond to workers performing essential work during the COVID–19 public health emergency. Most of the comments received by Treasury pertaining to premium pay related to these three requirements. Comments also addressed the definition of premium pay generally and posed questions regarding premium pay program structuring. This section responds to the comments by addressing the three requirements in turn, then the overall definition of premium pay and, finally, program structure.

Eligible Workers

The ARPA defines ''eligible workers'' as ''those workers needed to maintain continuity of operations of essential critical infrastructure sectors and additional sectors as each . . . [government] may designate as critical to protect the health and wellbeing of [its] residents.'' The interim final rule supplemented this definition by identifying a list of ''essential critical infrastructure sectors'' whose workers are eligible workers, based on the list of sectors in the HEROES Act, a bill introduced in the House of Representatives in 2020 that would have provided premium pay to essential workers.[262] In addition to the critical infrastructure sectors defined in the interim final rule, the chief executive (or equivalent) of a recipient government may designate additional non-public [263] sectors as critical so long as doing so is necessary to protecting the health and wellbeing of the residents of such jurisdiction.

Public Comment: Treasury received multiple comments on the definition of ''eligible worker'' included in the interim final rule. Many commenters agreed with the definition of eligible worker adopted by Treasury. Other commenters sought clarification about or changes to the definition of eligible worker, including the definition of eligible sectors, the inclusion of government workers in the definition of eligible workers, and the process for designating additional non-public sectors as eligible.

Some commenters asked Treasury to change how it identifies eligible sectors, including suggestions to add to or subtract from the list of eligible sectors. For example, some commenters asked Treasury to consider using Bureau of Labor Statistics (BLS)-Standard Occupational Classifications to identify specific sectors or occupations, in contrast to the approach taken in the interim final rule, which included a mixture of economic sectors, industries, and occupations. Many commenters asked Treasury to explicitly clarify that a particular industry or occupation is covered by the definition of ''essential critical infrastructure sector.'' Some of these commenters represented public employees, *e.g.,* employees of facilities and public works; public utilities; courthouse employees; police, fire, and emergency medical services; and waste and wastewater services. Others were a mixture of public and private sector employees, *e.g.,* coroners and medical examiners; transportation infrastructure (specifically electric vehicle infrastructure and supply equipment); electric utilities, natural gas, and steam supply; and grocery employees. Other commenters requested that Treasury prohibit certain occupations currently included in the eligible workers definition (*e.g.,* police and corrections officers) from receiving premium pay for performance of regular duties.

Commenters also asked Treasury to clarify which government workers are included in the definition of eligible workers. The interim final rule included as an essential critical infrastructure sector, ''any work performed by an employee of a State, local, or Tribal government.'' Some commenters requested that Treasury adopt a definition of eligible worker that includes all employees of the recipient government; however, all public employees of state, local, and Tribal governments are already included in the interim final rule definition of ''eligible worker.'' Commenters asked whether this includes governments that did not receive SLFRF funds (*i.e.,* ''non recipient governments''). Many commenters from Tribal governments requested that the definition of eligible worker, which includes ''any work performed by an employee of a . . . Tribal government,'' also include an employee of a ''Tribal enterprise'' to remove uncertainty regarding which employees are included.

Finally, commenters made suggestions for the process by which the chief executive (or equivalent) of a recipient government may designate additional non-public sectors as critical. Commenters asked that Treasury adopt a requirement that Treasury must approve or deny any additional non-public sector identified by the chief executive of a recipient government prior to implementation of the recipient's program.

Some commenters asked Treasury to clarify whether their chief executive (or equivalent) could designate particular, and in some cases *all,* employees of the recipient government as eligible for premium pay.

Treasury Response: In the final rule, Treasury will preserve the definition of ''eligible worker'' as it was defined in the interim final rule with minor modifications to clarify that all public

[258] *See* U.S. Department of Labor, *Hazard Pay, https://www.dol.gov/general/topic/wages/hazardpay* (last visited October 18, 2021).

[259] Economic Policy Institute, Only 30% of those working outside their home are receiving hazard pay (June 16, 2020), *https://www.epi.org/press/only-30-of-those-working-outside-their-home-are-receiving-hazard-pay-black-and-hispanic-workers-are-most-concerned-about-bringing-the-coronavirus-home/.*

[260] McCormack, *supra* note 65.

[261] *Id.*

[262] *See* H.R. 6800, 116th Cong. (2020).

[263] Note that the sectors defined in the interim final rule already include all state, local, and Tribal government employees.

employees of recipient governments are already included in the interim final rule definition of ''eligible worker.'' A more specific eligibility system (*e.g.,* linking eligibility to specific occupational or industry codes) would have provided more certainty but would have been much more rigid. In contrast, the current definition is flexible enough to give recipients the ability to tailor their premium pay programs to meet their needs while ensuring that programs focus on sectors where workers were forced to shoulder substantial risk as a result of the COVID–19 pandemic. Furthermore, the critical infrastructure sectors defined in the interim final rule already include many of the occupations that commenters requested be added. For example, Treasury received many comments from public workers asking to be included in the definition of ''eligible worker'' even though these workers already fall within the scope of ''any work performed by an employee of a State, local, or Tribal government.'' Treasury has clarified in the final rule that the chief executive's discretion to designate additional sectors as critical relates only to ''non-public'' sectors, since all public employees of recipient governments are already included in the definition of ''eligible worker.'' While all such public employees are ''eligible workers'' and the chief executive (or equivalent) of a recipient government may designate additional non-public sectors as critical, in order to receive premium pay, these workers must still meet the other premium pay requirements (*e.g.,* performing essential work).

Treasury recognizes that the list of ''essential critical infrastructure sectors'' includes both occupations and sectors. Recipients, if uncertain which occupations are included in a critical infrastructure sector, may consult government occupational classifications if helpful but are not required to do so.[264] Furthermore, a recipient government does not need to submit to Treasury for approval its designation of a sector as essential critical infrastructure; rather, Treasury will defer to the reasonable interpretation of the recipient government and the discretion of the recipient's chief executive in making such designations. If a recipient is unsure if a non-public sector is covered by the definition in the final rule,[265] the chief executive (or equivalent) of a recipient government may also identify the non-public sector as critical so long as the chief executive deems the non-public sector necessary to protecting the health and wellbeing of residents. Treasury has, where possible, clarified the definition of ''essential critical infrastructure sectors.'' For instance, Treasury has clarified in the final rule that work performed by an employee of a Tribal government includes an employee of a Tribal enterprise and discussed in this Supplementary Information how a recipient may qualify other non-public sectors as essential critical infrastructure.

Essential Work

The interim final rule defined ''essential work'' as work that (1) is not performed while teleworking from a residence and (2) involves either (i) regular, in-person interactions with patients, the public, or coworkers of the individual that is performing the work or (ii) regular physical handling of items that were handled by, or are to be handled by, patients, the public, or coworkers of the individual that is performing the work. Treasury adopted this definition of essential work to ensure that premium pay is targeted to workers that faced or face heightened risks due to the character of their work during a pandemic.

Public Comment: Some commenters found the definition unclear and asked Treasury to clarify what constitutes ''essential work.'' Others disagreed with the essential work test altogether, arguing that it forces recipients to distinguish between essential and non-essential employees, which may be difficult to do. Accordingly, these commenters asked Treasury to allow recipients to determine which workers qualify as essential. Treasury also received several requests that specific occupations be explicitly deemed essential, including all public employees, veterinarians, election administrators, detention staff and sheriff's deputies, and employees of utilities, such as electric power, natural gas, steam supply, water supply, and sewage removal.

Several commenters requested that Treasury not distinguish between remote and in-person work or amend the standard so that employees providing essential services would still be eligible even if they worked remotely. Finally, a few commenters requested clarification as to the definition of ''regular'' in-person interactions and whether Treasury could clarify which job functions merit more (or less) premium pay.

Treasury Response: Treasury is maintaining the definition of ''essential work'' in the final rule without modification. The test adopted in the interim final rule was designed to compensate workers facing disproportionate risk due to the pandemic. COVID–19 is transmitted through person-to-person interactions, and therefore, workers with regular in-person interactions are the primary group facing increased health risks. Although COVID–19 is not transmitted primarily by people handling items, such work may present increased risk in certain cases, and the final rule maintains the interim final rule's inclusion of such work in order to give recipient governments the flexibility to include workers performing such work as they determine appropriate. Changing the test as some commenters suggested, *e.g.,* by eliminating the in-person work requirement or allowing recipients to designate which employees are essential, even if not working in person, would no longer focus the program on workers taking on additional health risks and instead allow premium pay to be awarded to individuals who experienced relatively little risk of exposure to COVID–19. To maintain flexibility, Treasury is not defining the term ''regular'' with regard to in-person interactions, allowing recipients to develop programs based on the specific workforce to be served and local circumstances. Generally speaking, however, recipients are encouraged to consider an eligible worker's risk of exposure in designing premium pay programs.

Respond To

As required by the ARPA, the interim final rule required that premium pay programs ''respond to'' eligible workers performing essential work during the COVID–19 public health emergency. Premium pay responds to eligible workers performing essential work if it prioritizes low- and moderate-income persons, given the significant share of essential workers that are low- and moderate-income and may be least able to bear added costs associated with illness. The level of the award limit—up to $13 per hour not to exceed $25,000 in aggregate—in the ARPA supports this reasoning.

Accordingly, the interim final rule required written justification for how premium pay to certain higher-income workers responds to eligible workers performing essential work: If a recipient

[264] *See, e.g.,* sources such as Bureau of Labor Statistics, Occupational Outlook Handbook, which provide information on which professions or occupations are typically included in interpretations of a sector, *https://www.bls.gov/ooh/*.

[265] Public sector workers are ''eligible workers'' under the interim final rule and final rule.

(or grantee) uses SLFRF funds to provide premium pay to an employee and the pay or grant would increase a worker's total pay above 150 percent of their residing state or county's average annual wage for all occupations, as defined by the BLS Occupational Employment and Wage Statistics, whichever is higher, on an annual basis, then the recipient must provide, whether for themselves or on behalf of a grantee, written justification to Treasury detailing how the award responds to eligible workers performing essential work.

Public Comment: Treasury received numerous comments on the wage threshold and the written justification requirement. Several commenters supported the threshold as a way to encourage recipients to target premium pay to lower-income, eligible workers. Some commenters even asked Treasury to make the wage threshold a firm restriction, above which an eligible worker could not receive premium pay. Others agreed with the threshold but also requested flexibility to use existing worker classifications as an administratively simple way to identify workers for whom premium pay would be responsive. For instance, a few commenters asked Treasury to allow recipients or grantees to presume that premium pay ''responds to'' eligible workers performing essential work when it is provided to employees who are not exempt from the Fair Labor Standards Act (FLSA) overtime provisions—a test that employers are routinely required to apply.[266]

In contrast, several commenters disagreed with the threshold and the requirement for written justification. A few commenters thought the threshold was too low to capture employees in certain critical infrastructure sectors (*e.g.,* public safety, waste collection) and that it did not sufficiently account for the variance in economic need across different geographic areas and family structures. Some smaller communities argued that the threshold was difficult to calculate and apply.

Other commenters proposed revisions for how the threshold is calculated. For instance, a few commenters asked Treasury to consider using alternative earnings measures such as median income. Similarly, another commenter asked Treasury to consider the incomes of workers with different levels of seniority in developing any income thresholds for permitting or reporting on premium pay.

Finally, there was also some uncertainty as to the threshold and the requirement for written justification. Some commenters interpreted the threshold as a hard cap on who was eligible for premium pay, which is not the case. Relatedly, some commenters also requested further guidance on what recipients should include in the written justification submitted to the Secretary.

Treasury Response: The final rule makes some modifications to the determination of when premium pay ''responds to'' eligible workers performing essential work during the public health emergency. Under the interim final rule, premium pay was responsive if either the workers' pay was below a wage threshold or, if the pay was above a wage threshold, the recipient submitted written justification to Treasury explaining how the premium pay was responsive. The final rule retains these two means of establishing premium pay in response to workers performing essential work and adds an additional means of demonstrating that premium pay is responsive. Under the final rule, a recipient may also show that premium pay is responsive by demonstrating that the eligible worker receiving premium pay is not exempt from the FLSA overtime provisions.[267] This change will expand the number of workers eligible to receive premium pay [268] and does not require recipients to provide written justification to Treasury regarding the workers who are not exempt from the FLSA overtime provisions, making the program easier to administer for recipients. Incorporating this change further simplifies application of the final rule for recipients because Treasury understands that most employers, public and private, are familiar with and are routinely required to apply the FLSA.

With this addition, the final rule provides that premium pay is responsive to eligible workers performing essential work during the public health emergency if each eligible worker who receives premium pay falls into one of three categories: (1) The worker's pay is below the wage threshold, (2) the worker is not exempt from the FLSA overtime provisions, or (3) the recipient has submitted a written justification to Treasury.

The final rule makes it clear that written justification to Treasury is not necessary with respect to eligible workers whose pay is less than the wage threshold. Nor is written justification necessary with respect to eligible workers who are not exempt from the FLSA overtime provisions. The written justification is only necessary if the worker's pay (with or without the premium) exceeds the threshold, *and* the worker is exempt from the FLSA overtime provisions. The final rule also clarifies that a worker's pay exceeds the threshold if either the premium pay increases the worker's total pay above the wage threshold or the worker's total pay was already above the threshold, before receiving premium pay.

Treasury has also updated the final rule to clarify that written justification means a brief, written narrative justification of how the premium pay or grant is responsive to workers performing essential work during the public health emergency. This could include a description of the essential workers' duties, health or financial risks faced due to COVID–19, and why the recipient determined that the premium pay was responsive despite the workers' higher income.

Recipients should refer to SLFRF program reporting guidance, user guides, and other documentation for further guidance on the form and content of the written justification. Treasury anticipates that recipients will easily be able to satisfy the justification requirement for front-line workers, like nurses and hospital staff.

Definition of Premium Pay

The statute defines premium pay as ''an amount of up to $13 per hour . . . , in addition to wages or remuneration the eligible worker otherwise receives, for all work performed by the eligible worker during the COVID–19 public health emergency. Such amount may not exceed $25,000 with respect to any single eligible worker.'' The interim

[266] *See generally* 29 U.S.C. 207(a); U.S. Department of Labor, Overtime Pay Requirements of the FLSA (Fact Sheet No. 23), *https://www.dol.gov/agencies/whd/fact-sheets/23-flsa-overtime-pay.*

[267] Department of Labor, Overtime Pay, *https://www.dol.gov/agencies/whd/overtime; see also* 29 U.S.C. 207.

[268] Among workers that report working overtime, roughly 41–44 percent of workers earn above $50,000 per year, which is slightly less than the national average annual wage for all employees according to the Bureau of Labor Statistics' Occupational Employment and Wage Statistics, available at *https://www.bls.gov/oes/.* See also U.S. Census Bureau, Basic Monthly CPS, January 2019 through December 2019, available at *https://www.census.gov/data/datasets/time-series/demo/cps/cps-basic.html.* Notes: Annual earnings reflect weekly wages multiplied by 52. Usual weekly earnings are computed by BLS to include earnings from work such as tips, overtime, regular wages, etc., but not non-labor sources of income such as government transfers and capital gains. Pre-overtime earnings are computed by taking the difference of usual weekly earnings and earnings from overtime last week and multiplying by 52. Note, some sources multiply weekly earnings by 50 instead of 52 to account for unpaid time off and holidays, so these figures may be slightly larger than those reported elsewhere. Either assumption may overestimate earnings if workers do not work year-round.

final rule incorporated this definition and emphasized that premium pay should be in addition to compensation typically received.

Public Comment: Several submitted comments related to the definition of ''premium pay.'' Several commenters asked Treasury to clarify certain aspects of the interim final rule and statutory definition of premium pay. For instance, a few commenters asked whether the $25,000 limit applies to the annual amount of premium pay received or the aggregate amount of premium pay received over the period of performance. A few commenters requested flexibility as to how premium pay may be awarded, including flexibility to make monthly or quarterly payments or lump sum payments. Finally, commenters requested additional clarification as to how premium pay should be calculated. For instance, a commenter asked how to calculate the amount of and account for overtime pay and other incentive pay.[269]

Treasury Response: Treasury has clarified some of these issues in the final rule. For example, Treasury has clarified in the final rule that the $25,000 per employee limit is for the entire period of performance, not an annual cap. Further, recipients have discretion with respect to the way in which premium pay is awarded to eligible workers (*e.g.,* monthly, quarterly, lump sum), provided that the total premium pay awarded to any eligible worker does not exceed $13 per hour or $25,000 over the period of performance. Finally, a recipient may award premium pay to an eligible worker in addition to the overtime pay already earned by the eligible worker but in no instance may the portion of the compensation funded with SLFRF funds exceed $13 per hour, even if strict time-and-a-half calculation requires more.[270] To the extent that an employer is required under the FLSA to make payments to an eligible worker in excess of $13 per hour or $25,000 in the aggregate over the period of performance, the employer must use a source of funding other than the SLFRF funds to satisfy those obligations.

Program Structure

Public Comment: Several commenters also requested elaboration on eligible types of employees and permissible structures for awarding premium pay. A few commenters asked if premium pay could be awarded to volunteers or those in irregular and non-hourly or salaried employment positions. Similarly, various commenters asked if part-time workers were eligible for premium pay.

Some commenters asked Treasury to provide more detail on when premium pay may be paid retroactively or if a government could reimburse its general fund for hazard pay already paid before the start of the period of performance.

Treasury Response: Treasury has also made clear in the final rule that a recipient may award premium pay to non-hourly or salaried workers as well as part-time workers. Premium pay may not, however, be awarded to volunteers. If a recipient is interested in compensating volunteers with SLFRF funds, then it must do so consistent with the requirements set forth in other eligible use categories; for example, see section Public Sector Capacity and Workforce in Public Health and Negative Economic Impacts.

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

Finally, as part of accepting the Award Terms and Conditions for SLFRF, each recipient agreed to maintain a conflict-of-interest policy consistent with 2 CFR 200.318(c) that is applicable to all activities funded with the SLFRF award. This award term requires recipients and subrecipients to report to Treasury or the pass-through agency, as appropriate, any potential conflict of interest related to the award funds per 2 CFR 200.112. Pursuant to this policy, decisions concerning SLFRF funds must be free of undisclosed personal or organizational conflicts of interest, both in fact and in appearance. Consistent with this policy, elected officials are prohibited from using their official position and control over SLFRF funds for their own private gain. This policy also prohibits, among other things, elected officials from steering funds to projects in which they have a financial interest or using funds to pay themselves premium pay.

C. Revenue Loss

Background

Sections 602(c)(1)(C) and 603(c)(1)(C) of the Social Security Act provide that SLFRF funds may be used ''for the provision of government services to the extent of the reduction in revenue of such . . . government due to the COVID–19 public health emergency relative to revenues collected in the most recent full fiscal year of the . . . government prior to the emergency.'' This provision allows recipients experiencing budget shortfalls to use payments from the SLFRF funds to avoid cuts to government services and, thus, enables state, local, and Tribal governments to continue to provide valuable services and ensures that fiscal austerity measures do not hamper the broader economic recovery.

State and local government budgets experienced stress in fiscal year 2020 as delayed tax filings and pandemic-related business closures caused revenues to decline sharply.[271] Twenty-two state governments took actions to close budget gaps in fiscal year 2020[272] and nearly 80 percent of cities reported being less able to meet the fiscal needs of their communities relative to fiscal year 2019.[273] Surveys of Tribal governments and Tribal enterprises conducted in 2020 found majorities of respondents reporting substantial cost increases and revenue decreases, with Tribal governments reporting reductions in health care, housing, social services, and economic development activities as a result of reduced revenues.[274]

The economic recovery, aided by the broad distribution of COVID–19 vaccines and the deployment of federal stimulus, has led to a strong rebound in total state and local government revenue and is contributing to a brighter fiscal

[269] *See* 29 U.S.C. 207(a) (''[A]t a rate not less than one and one-half times the regular rate at which he is employed.'').

[270] All recipients are required to comply with otherwise applicable laws, including any wage and hour requirements in the Fair Labor Standards Act. *See generally,* Department of Labor, *Wages and the Fair Labor Standards Act, https://www.dol.gov/agencies/whd/flsa.*

[271] In the second quarter of 2020, quarterly state and local tax revenues as reported by the U.S. Census Bureau fell 19 percent compared to the second quarter of 2019; U.S. Census Bureau, Quarterly Summary of State and Local Tax Revenue, *https://www.census.gov/programs-surveys/qtax.html.*

[272] National Association of State Budget Officers, Fiscal Survey of the States (Fall 2020), *available at https://higherlogicdownload.s3.amazonaws.com/NASBO/9d2d2db1-c943-4f1b-b750-0fca152d64c2/UploadedImages/Fiscal%20Survey/NASBO_Fall_2020_Fiscal_Survey_of_States_S.pdf.*

[273] National League of Cities, City Fiscal Conditions (2020), available at *https://www.nlc.org/wp-content/uploads/2020/08/City_Fiscal_Conditions_2020_FINAL.pdf.*

[274] Surveys conducted by the Center for Indian Country Development at the Federal Reserve Bank of Minneapolis in March, April, and September 2020. Elijah Moreno & Heather Sobrepena, Tribal entities remain resilient as COVID–19 batters their finances, Federal Reserve Bank of Minneapolis (Nov. 10, 2020), *https://www.minneapolisfed.org/article/2020/tribal-entities-remain-resilient-as-covid-19-batters-their-finances.*

outlook for most jurisdictions as compared to the earlier months of the public health emergency. For the fiscal year ending June 30, 2021, total state and local government tax revenues increased 21 percent relative to the same period in 2020, reflecting the combined impact of the modified tax filing deadline in 2020 and an improving economy.[275] However, despite a stable budget situation overall, many governments face uncertainty as the COVID–19 pandemic continues to impact commuting patterns, hospitality and tourism, and other drivers of jurisdictions' economies. Thirty-five percent of cities still report being less able to meet financial needs than in fiscal year 2020,[276] and over half of surveyed Tribal governments and Tribal enterprises reported losing at least 40 percent of their revenue since the start of the pandemic.[277] Budget challenges persist as governments work to mitigate and contain COVID–19 and help citizens weather the economic downturn.

State, local, and Tribal government budgets affect the broader economic recovery. During the period following the 2007–2009 recession, state and local government budget pressures led to fiscal austerity that was a significant drag on the overall economic recovery.[278] Inflation-adjusted state and local government revenue did not return to the previous peak until 2013,[279] while employment in the sector returned to the previous peak in August 2019, nearly a decade later.[280] Just months after recouping losses from the previous downturn, the COVID–19 pandemic caused state and local government employment to contract again, but this time more sharply: By May 2020, state and local government payrolls fell 7.7 percent compared to February 2020. Despite improvement, non-federal public sector job growth continues to lag behind the rest of the U.S. labor market recovery.[281]

Summary of Interim Final Rule

As stated above, the Social Security Act provides that SLFRF funds may be used ''for the provision of government services to the extent of the reduction in revenue of such . . . government due to the COVID–19 public health emergency relative to revenues collected in the most recent full fiscal year of the . . . government prior to the emergency.'' The interim final rule provided a formula for calculating revenue loss through a four-step process:

- *Step 1:* Identify 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*.
- *Step 2:* Estimate *counterfactual revenue,* which is the amount of revenue the recipient would have expected in the absence of the downturn caused by the pandemic. The counterfactual revenue is equal to *base year revenue* * [(1 + *growth adjustment*) ^ (*n*/12)], where *n* is the number of months elapsed since the end of the base year to the calculation date, and *growth adjustment* is the greater of the average annual growth rate across all State and Local Government ''General Revenue from Own Sources'' in the most recent three years prior to the emergency, 5.2 percent, or the recipient's average annual revenue growth in the three full fiscal years prior to the COVID–19 public health emergency.[282] This approach to the growth rate provides recipients with the option to use a standardized growth adjustment when calculating the counterfactual revenue trend and thus minimizes administrative burden, while not disadvantaging recipients with revenue growth that exceeded the national average prior to the COVID–19 public health emergency by permitting these recipients to use their own revenue growth rate over the preceding three years.
- *Step 3:* Identify *actual revenue,*[283] which equals revenues collected over the twelve months immediately preceding the calculation date.
- *Step 4:* The extent of the reduction in revenue is equal to *counterfactual revenue* less *actual revenue*. If *actual revenue* exceeds *counterfactual revenue,* the extent of the reduction in revenue is set to zero for that calculation date.

For illustration, consider a hypothetical recipient with *base year revenue* equal to 100 (Step 1) that ends on June 30, 2019. In Step 2, the hypothetical recipient finds that the average annual growth across all state and local government ''General Revenue from Own Sources'' in the most recent three years of available data, 5.2 percent, is greater than the recipient's average annual revenue growth in the three full fiscal years prior to the public health emergency. In this illustration, *n* (months elapsed) and *counterfactual revenue* would be equal to:

As of:	12/31/2020	12/31/2021	12/31/2022	12/31/2023
n (months elapsed)	18	30	42	54
Counterfactual revenue:	107.9	113.5	119.4	125.6

[275] Analysis of Quarterly Summary of State and Local Tax Revenue, U.S. Census Bureau, supra note 271.

[276] National League of Cities, City Fiscal Conditions (2021), *available at https://www.nlc.org/wp-content/uploads/2021/10/2021-City-Fiscal-Conditions-Report-2021.pdf*.

[277] Center for Indian Country Development and Federal Reserve Bank of Minneapolis, One Year Into COVID–19, Pandemic's Negative Effects Persist in Indian Country (May 2021), *available at https://www.minneapolisfed.org/article/2021/one-year-into-covid-19-pandemics-negative-effects-persist-in-indian-country*.

[278] *See, e.g.,* Nora Fitzpatrick et al., Fiscal Drag from the State and Local Sector?, Liberty Street Economics Blog, Federal Reserve Bank of New York (June 27, 2012), *https://libertystreeteconomics.newyorkfed.org/2012/06/fiscal-drag-from-the-state-and-local-sector.html*; Jiri Jonas, Great Recession and Fiscal Squeeze at U.S. Subnational Government Level, IMF Working Paper 12/184, (July 2012), available at *https://www.imf.org/external/pubs/ft/wp/2012/wp12184.pdf*; Gordon, supra note 16.

[279] State and local government general revenue from own sources, adjusted for inflation using the Bureau of Economic Analysis' implicit price deflator for GDP. U.S. Census Bureau, Annual Survey of State Government Finances and U.S. Bureau of Economic Analysis, National Income and Product Accounts, *https://www.census.gov/programs-surveys/gov-finances.html*.

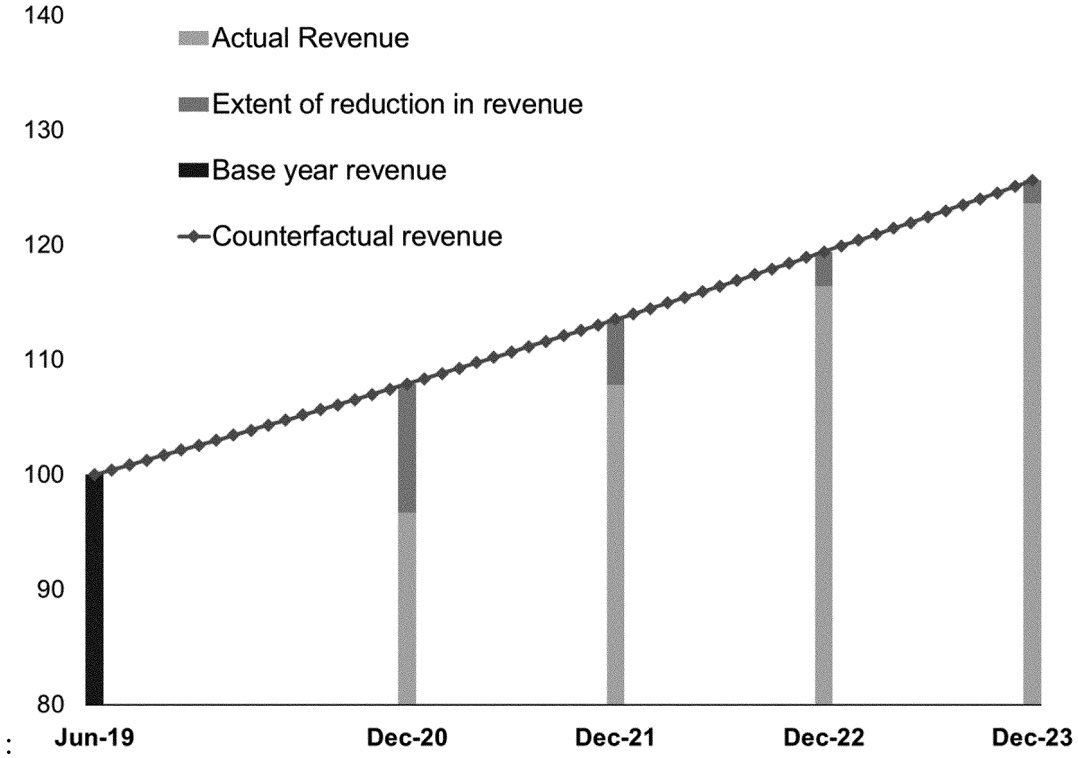
[280] U.S. Bureau of Labor Statistics, All Employees, State Government [CES9092000001] and All Employees, Local Government [CES9093000001], retrieved from FRED, Federal Reserve Bank of St. Louis, *https://fred.stlouisfed.org/series/CES9092000001* and *https://fred.stlouisfed.org/series/CES9093000001*.

[281] Pew Research, State and Local Government Job Growth Lags as Economy Recovers (September 2021), *available at https://www.pewtrusts.org/en/research-and-analysis/articles/2021/09/14/state-and-local-government-job-growth-lags-as-economy-recovers*.

[282] At the time the interim final rule was published, the average annual growth across all state and local government ''General Revenue from Own Sources'' in the most recent three years of available data (2015–2018) was 4.1%, which was presented as one option for the growth adjustment. Since the interim final rule was published, 2019 data has been made available, which increases this rate to 5.2%. The final rule updates the percentage to 5.2%, as shown in Step 2.

[283] As explained below, in the final rule, recipients must adjust actual revenue amounts based on certain tax policy changes.

The figure below illustrates the reduction in revenue for the hypothetical recipient calculated in accordance with the methodology.



Finally, as explained in greater detail below, the clear meaning of the statutory phrase ''due to the COVID–19 public health emergency'' is that it is referring to revenue reductions caused by the public health emergency. As such, it does not include revenue reduced for reasons other than the public health emergency. Treasury in the interim final rule presumed that any reduction in revenue relative to the counterfactual estimate would be considered revenue lost due to the pandemic and thereby relieved recipients of the administrative burden of determining the extent to which reduction in revenue was due to the public health emergency. The calculation methodology in the interim final rule implicitly assumed that recipients did not suffer a loss in revenue due to the public health emergency if they did not experience a reduction in aggregate revenue compared to the counterfactual estimate. The interim final rule invited comments on whether Treasury should revise its presumption to ''take into account other factors, including actions taken by the recipient as well as the expiration of the COVID–19 public health emergency, in determining whether to presume that revenue losses are 'due to' the COVID–19 public health emergency.''

Treasury received a substantial number of comments on the revenue loss provisions set forth in the interim final rule. These comments largely pertained to the following topics: The overall methodology for calculating revenue loss; the definition of ''revenue''; whether revenue should be aggregated or calculated on some alternative basis (*e.g.,* source-by-source or fund-by-fund); the appropriate calculation dates (*i.e.,* fiscal year or calendar year); the presumption that all revenue loss is due to the pandemic; the base year; and the definition of ''government services.''

Overall Methodology for Calculating Revenue Loss

As noted above, the interim final rule provided a formula for recipients to calculate revenue loss by comparing actual revenues received during a given time-period with a counterfactual amount of revenue based on revenues in the base year and an adjustment for expected growth in revenue each year.

Public Comment: Treasury received many public comments on the overall methodology for calculating revenue loss. Some recipients, including smaller governments, have expressed concern regarding the burden associated with the calculation of revenue loss, particularly the burden involved in calculating the amount of general revenue, given that the definition of general revenue in the interim final rule does not always align with the definition of revenue already calculated by recipients for other purposes, and requested clarifications regarding a number of components, including the definition of revenue. Commenters also asked for clarification on the relationship between revenue loss calculations across different calculation dates. Other commenters argued that the revenue loss formula does not precisely capture the nuances of local revenues or their particular situation. For example, some commenters stated that requiring that revenues be aggregated fails to capture decreases in revenue sources that cannot easily be made up for with other revenue sources.

Treasury Response: In the final rule, Treasury is largely maintaining the revenue loss formula as set forth in the interim final rule. To address comments that the formula for calculating revenue loss was difficult to apply, Treasury is including an option for recipients to use a standard allowance for revenue loss. Specifically, in the final rule, recipients will be permitted to elect a fixed amount of loss that can then be used to fund government services. This fixed

amount, referred to as the ''standard allowance,'' is set at up to $10 million total for the entire period of performance not to exceed the recipient's SLFRF award amount. Although Treasury anticipates that this standard allowance will be most helpful to smaller local governments and Tribal governments, any recipient can use this standard allowance instead of calculating revenue loss pursuant to the formula above, so long as recipients employ a consistent methodology across the period of performance (*i.e.,* choose either the standard allowance or the regular formula). Treasury intends to amend its reporting forms to provide a mechanism for recipients to make a one-time, irrevocable election to utilize either the revenue loss formula or the standard allowance.

The $10 million level is based on average revenue loss across state and local governments, taking into consideration potential variation in revenue types and losses and continued uncertainty faced by many recipients regarding revenue shortfalls. To calculate this estimate, Treasury applied a variation of the final rule's revenue loss calculation on available aggregate state and local government tax revenue data as reported by the Census Bureau for the first calculation date of December 31, 2020. This estimate accounts for expected variation across recipient experiences and reflects the fact that the final rule revenue loss calculation provides recipients several options for specific aspects (*e.g.,* calendar year or fiscal year basis; use of average state and local revenue growth rate or specific local rate). Treasury compared actual calendar year 2020 tax revenues, in aggregate for all state and local governments, to several counterfactual trends that vary based on the end date of the fiscal base year.[284] Treasury also assessed counterfactual trends using different revenue growth rates (*e.g.,* the three-year average growth rates of total state and local government general revenue for both fiscal years ending in 2016–2018 and fiscal years ending in 2017–2019; the three-year average growth rates of total state and local government tax revenues for fiscal years ending in 2017–2019; and the one-year growth rate for total state and local government tax revenue in the last full fiscal year before the public health emergency). To account for the fact that the initial estimate, based on tax revenue, only includes a subset of recipient aggregate general revenue, Treasury applied a scaling factor to recognize that tax revenues generally make up just over half of general revenue collected by state and local governments (*i.e.,* Treasury scaled up its estimate based on tax revenue to produce an estimate for total general revenue).[285] The resulting calculation was then extrapolated over the four-year period of performance and divided by a population of interest to arrive at an average loss estimate.

As noted above, Treasury estimated a range of scenarios to account for different values of the variables that would impact average losses. For example, the end date of the fiscal base year and growth rate of counterfactual revenue impact the overall estimate of revenue loss. In addition, this estimate takes into consideration the limitations in the available data. The governments covered by the Census Bureau's survey do not entirely align with SLFRF recipients. The Census Bureau's figures are based on 50 state governments, all local government property tax collectors and local government non-property tax imposers, representing at a minimum the more than 38,000 ''General Purpose Governments'' defined by Census. However, there are only roughly 32,000 recipients of SLFRF funds. Thus, Treasury considered the difference between the number and type of entities in the Census Bureau data and the SLFRF recipients.

Based on this methodology, Treasury estimates that average revenue loss (determined by comparing the counterfactual revenue to actual revenue) may range from $0 to $11.7 million per recipient over the period of performance.[286] Treasury settled on a point estimate toward the upper end of the range of potential averages, in part, to account for significant variation in the experiences of recipient governments: Some recipients likely experienced losses at the upper end of this range of potential averages. A point estimate toward the upper end of the range errs toward ensuring more recipients' experiences are covered and increases the utility of the standard allowance for SLFRF recipients. Specifically, the program includes a very large number of recipients with relatively smaller awards; these recipients have tended to describe having greater difficulty completing the regular revenue loss calculation. Thus, selecting a point estimate toward the higher end of the expected range not only increases the likelihood that the standard allowance will reflect the experience of a larger number of SLFRF recipients but is more responsive to the comments of those with smaller awards. In addition, using a point estimate toward the upper end of the range accounts for the difficulty and uncertainty in predicting revenue losses years into the future, throughout the period of performance.[287]

Finally, Treasury selected a single allowance level, as opposed to varying levels, to further the goals of simplicity, flexibility, and administrability. Furthermore, data limitations make it difficult to distinguish between types of local governments.[288]

General Revenue

The interim final rule adopted a definition of ''general revenue'' based largely on the components reported under ''General Revenue from Own Sources'' in the Census Bureau's Annual Survey of State and Local Government Finances. Under the interim final rule, general revenue included revenue collected by a recipient and generated from its underlying economy, and it would capture a range of different types of tax revenues, as well as other types of revenue that are available to support government services.[289] Specifically, revenue under the interim final rule included money that is received from tax revenue, current charges, and miscellaneous general revenues and excluded refunds and other correcting transactions, proceeds from issuance of debt or the sale of investments, agency or private trust transactions, revenue from utilities, social insurance trust revenues, and intergovernmental

[284] Because the Census Bureau's state and local government tax revenue data is reported on a quarterly frequency, fiscal base year end dates of March 31, June 30, September 30, and December 31 were used in this assessment.

[285] Annual Survey of State and Local Government Finances (2019).

[286] This is the range of averages that Treasury calculated by varying the aforementioned assumptions.

[287] See, *e.g.,* Government Accountability Office, State and Local Governments: Fiscal Conditions During the COVID–19 Pandemic in Selected States (July 2021) (noting that ''[s]tate and local government revenues partly depend on the overall economy, and actions to stem the spread of the virus drastically reduced economic activity.''); Board of Governors of the Federal Reserve System, Monetary Policy Report (July 9, 2021) (noting that the pandemic ''pushed down state and local government tax collections'' and that while some of the drag is ''abating'' state and local ''government payrolls . . . have only edged up from their lows at the onset of the pandemic'').

[288] Local government tax revenue data in the Census Bureau's Quarterly Summary of State and Local Tax Revenue, *supra* note 271, is provided on an aggregated basis.

[289] The Department also released guidance clarifying how a recipient may determine whether a particular entity is ''part of the recipient's government.'' *See FAQ 3.14.* Coronavirus State and Local Fiscal Recovery Funds, Frequently Asked Questions, as of July 19, 2021; *https://home.treasury.gov/system/files/136/SLFRPFAQ.pdf.*

transfers from the federal government, including transfers made pursuant to section 9901 of the ARPA.[290] In the case of Tribal governments, it also included revenue from Tribal business enterprises.

Public Comment: Many commenters asked Treasury to include certain items in the definition of ''general revenue.'' For instance, several commenters that operate their own utilities asked that revenue from utilities be included, arguing that declines in utility revenue directly affect contributions to their general funds. Many of these commenters noted that moratoriums on utility shutoffs and a decline in collections have resulted in significant budgetary pressures.

Some commenters also asked for the exclusion of certain intergovernmental transfers in the definition of general revenue, including transfers of shared revenue from the state.[291] Other commenters asked for the inclusion of certain transfers from the federal government, including fees paid for services and grants that are, in effect, paid for the provision of services.

Treasury also received multiple requests to include revenue from Tribal enterprises in the definition of ''general revenue'' and that ''Tribal enterprise'' be defined broadly. Others asked for the ability to choose whether to include revenue from Tribal enterprises.

Finally, some commenters requested that the definition of general revenue exclude certain sources of revenue, such as revenue sources that do not support a general fund (*i.e.,* revenue sources that are restricted in use). Commenters also asked that general revenue exclude revenue from special assessments, settlements that make the recipient whole for past expenditures, and one-time revenues such as revenue from the sale of property.

Treasury Response: In the final rule, Treasury has maintained the definition of ''general revenue'' from the interim final rule with two exceptions.

Treasury has adjusted the definition to allow recipients that operate utilities that are part of their own government to choose whether to include revenue from these utilities in their revenue loss calculation. This change responds to comments from recipients indicating that revenue from utilities is used to fund other government services and that utility revenues have declined on aggregate.[292] This approach is consistent with other eligible uses, which recognize decreased ability of many households to make utility payments; see section Assistance to Households, which identifies utility assistance as an enumerated eligible use of funds, including through direct or bulk payments to utilities for consumer assistance. Furthermore, for utilities or other entities (*e.g.,* certain service districts) that are not part of the recipient government, a transfer from the utility to the recipient constitutes an intergovernmental transfer and therefore is included in the definition of ''general revenue.'' [293]

Treasury has also added liquor store revenue to the definition of general revenue. The Supplemental Information to the interim final rule stated that the definition of tax revenue would include liquor store revenue, but the text of the rule did not include it. Accordingly, in the final rule, Treasury is clarifying that revenue includes liquor store revenue. However, Treasury believes revenue from government-owned liquor stores is better classified as general revenue than it is as tax revenue, so the final rule includes it as part of general revenue.

In response to requests that the definition of general revenue exclude revenue from special assessments, settlements that make the recipient whole for past expenditures, and one-time revenues such as revenue from the sale of property, Treasury is maintaining its position in the final rule that such revenue is included in general revenue. While such revenues may be less predictable than other sources of revenue (*e.g.,* property taxes), these are not uncommon sources of revenue for recipients, and their inclusion provides a more complete view of the financial health of a recipient government and is consistent with the Census Bureau methodology. Treasury is also maintaining the exclusion of all payments from the federal government (including payments for services) from general revenue in order to avoid substantial dilution of the definition of revenue, particularly in light of extraordinary fiscal support provided during the pandemic. Treasury is maintaining the inclusion of intergovernmental transfers other than from the federal government for the reasons provided in the Supplemental Information to the interim final rule; to do otherwise would be to significantly distort the revenue calculations for local governments that regularly receive revenue sharing payments, for example, from their state governments. Treasury is also maintaining the approach that ''general revenue'' includes revenue from Tribal enterprises. This approach recognizes that these enterprises often form the revenue base for Tribal governments' budgets.

To ease the burden on recipients and account for anomalous variations in revenue, as mentioned above, Treasury has incorporated a ''standard allowance'' option into the final rule. A recipient may choose to use the standard allowance, which under the final rule is set at up to $10 million, not to exceed the recipient's SLFRF award amount, as an alternative to calculating revenue loss according to the formula described above. This addition will promote administrative efficiency and simplify the revenue loss calculation for the vast majority of recipients. Treasury intends to amend its reporting forms to provide a mechanism for recipients to elect to utilize either the revenue loss formula or the standard allowance, in addition to other changes made as part of the final rule.

Aggregate Revenue Loss Calculation

Under the interim final rule, revenue loss was calculated based on aggregate revenues and therefore loss in one type of revenue could be offset by gains in another. The amount of SLFRF funds available to provide government services was based on overall net revenue loss. In the Supplementary Information to the interim final rule, Treasury asked commenters to discuss the advantages and disadvantages of, and any potential concerns with, this approach, including circumstances in which it could be necessary or

[290] The interim final rule stated that ''general revenue'' and ''tax revenue'' excludes refunds and other correcting transactions. Instead of ''excluding'' refunds and other correcting transactions, the Census Bureau methodology upon which those definitions are based provides that general revenue and tax revenue are determined ''net of'' refunds and other correcting transactions. The use of ''excluding'' in the interim final rule is substantively the same as the Census Bureau methodology. However, to be consistent with the terminology used by the Census Bureau, the final rule uses ''net of'' instead of ''excluding.'' Current charges are defined as ''charges imposed for providing current services or for the sale of products in connection with general government activities.'' It includes revenues such as public education institution, public hospital, and toll revenues. Miscellaneous general revenue comprises of all other general revenue of governments from their own sources (*i.e.,* other than utility and insurance trust revenue), including rents, royalties, lottery proceeds, and fines.

[291] The interim final rule excluded governmental transfers from the Federal Government, but it did not exclude intergovernmental transfers from other governmental units for purposes of the revenue loss provisions.

[292] U.S. Energy Information Administration, Annual Electric Utility Data (October 2021), *available at https://www.eia.gov/electricity/sales_revenue_price/.*

[293] FAQ 3.14 provides further guidance on how to determine what entities constitute a government for purposes of calculating revenue loss. *See* Coronavirus State and Local Fiscal Recovery Funds, Frequently Asked Questions, as of July 19, 2021; *https://home.treasury.gov/system/files/136/SLFRPFAQ.pdf.*

appropriate to calculate the reduction in revenue by source.

Public Comment: Treasury received many comments stating that revenue loss should be calculated on a source-by-source basis. Some commenters argued that a source-by-source approach would be administratively simpler. Other commenters argued that calculating revenue loss source-by-source would better reflect the impact of the COVID–19 pandemic on their ability to fund government services because revenue gains in one source cannot always be used to make up for losses in another. For similar reasons, other commenters asked that revenue loss be calculated on a fund basis.

Treasury Response: Treasury considered alternative methods (*e.g.,* source-by-source, fund-by-fund) but ultimately determined to maintain the calculation of revenue loss in the aggregate. The pandemic has had different effects on recipients (and their revenues), and Treasury recognized that one particular type of revenue or one particular source may have experienced a greater amount of loss for some recipients. However, the statute refers only to ''*the* reduction in revenue of such State, local government, or Tribal government.'' The statute is thus clear that Treasury is to refer to the aggregate revenue reduction of the recipient due to the public health emergency. Further, this provision is designed to address declines in the recipients' overall ability to pay for governmental services, and calculating revenue loss on an aggregate basis provides a more accurate representation of the effect of the pandemic on overall revenues and the fiscal health of the recipient. In many circumstances, recipient governments have flexibility to use revenues from an array of sources and offset declines in some sources with gains in others. While the details and configuration of this flexibility vary widely across recipient governments, calculating revenue loss on a source-by-source or fund-by-fund basis would not capture how recipient governments balance their budgets in the regular course of business. Accordingly, the final rule maintains the requirement that revenue loss is to be calculated on an aggregate basis.

Calculation Dates

Public Comment: Under the interim final rule, recipients calculate revenue loss as of the end of the calendar year. Treasury received many comments requesting that recipients be permitted to calculate revenue loss as of the end of their fiscal year. Commenters argued that doing so would be simpler and less burdensome on recipients and that financial data as of the end of the fiscal year is audited and therefore more reliable. Commenters also argued that recipients' fiscal years are structured around the timing of major revenue sources, and that the Census Bureau uses fiscal years in its Annual Survey.

Treasury also received comments about the use of multiple calculation dates. Several Tribal governments stated that they would not see ongoing revenue losses due to the COVID–19 public health emergency and asked to be able to determine revenue loss as of the first calculation date. Several commenters asked whether revenue loss is determined independently for each year, so that a gain in one year does not offset a loss in another, or whether revenue loss is cumulative from the beginning of the pandemic.

Treasury Response: In the final rule, Treasury has made adjustments to give recipients more flexibility with respect to calculation dates and to clarify certain elements. Specifically, the final rule provides recipients the option to choose whether to calculate revenue loss on a fiscal year or calendar year basis, though they must choose a consistent basis for loss calculations throughout the period of performance. Treasury has also clarified in the final rule that revenue loss is calculated separately for each year such that the calculation of revenue lost in one year does not affect the calculation of revenue lost in prior or future years.

Presumption That Revenue Loss Is Due to the Pandemic

As stated above, sections 602(c)(1)(C) and 603(c)(1)(C) of the Social Security Act provide that SLFRF funds may be used ''for the provision of government services to the extent of the reduction in revenue of such . . . government due to the COVID–19 public health emergency relative to revenues collected in the most recent full fiscal year of the . . . government prior to the emergency.'' As discussed in the interim final rule, although revenue may decline for reasons unrelated to COVID–19, in order to minimize the administrative burden on recipients in calculating revenue loss and take into consideration the devastating effects of the COVID–19 public health emergency, any reduction in revenue relative to the counterfactual estimate was presumed in the interim final rule to be considered revenue lost due to the pandemic.

Treasury stated in the Supplementary Information to the interim final rule that it was considering when, if ever, during the period of performance it would be appropriate to reevaluate the presumption that all losses are attributable to the public health emergency. Treasury also sought comment on whether to take into account other factors, including actions taken by the recipient as well as the expiration of the COVID–19 public health emergency, in determining whether to presume that revenue losses are ''due to'' the COVID–19 public health emergency.

Public Comment: Treasury received many comments in support of the presumption, as well as some opposed. Some commenters argued that the presumption eases the administrative burden on recipients because, without it, it would be difficult to identify which losses are attributable to the COVID–19 public health emergency. Many commenters also argued that Treasury should maintain the presumption because recipients are likely to experience losses due to the public health emergency even after the end of the public health emergency. Treasury also received comments asking that it adjust any revenue loss calculation to account for tax changes enacted by the recipient. In particular, some commenters noted that some recipients had increased taxes in order to meet additional demands for government services or to address declines in revenue due to the pandemic. These tax increases have in some cases offset some or all of the actual revenue loss attributable to the public health emergency. Because the interim final rule calculates revenue loss by reference to actual revenue collected, commenters argued that the calculation of revenue loss ''due to'' the public health emergency needs to take into consideration the effects of tax increases by deducting the effect of these tax increases from actual revenue collected.

Treasury Response: In the final rule, Treasury has maintained the presumption that a reduction in a recipient's revenue is due to the public health emergency with certain adjustments to respond to comments and to better account for revenue loss ''due to the COVID–19 public health emergency.'' The final rule makes adjustments to the presumption to take into account certain government actions to change tax policy. In particular, Treasury is adjusting the presumption to account for changes to tax policy by providing that changes in revenue that are caused by tax increases or decreases adopted after the issuance of the final rule will not be treated as due to the public health emergency.

Presumption of Revenue Loss ''Due To'' the Pandemic

In enacting sections 602(c)(1)(C) and 603(c)(1)(C) of the Social Security Act, Congress provided that a state, local government, or Tribal government could use funds to ''cover costs . . . for the provision of government services,'' but only ''to the extent of the reduction in revenue . . . due to the COVID–19 public health emergency relative to revenues collected in the most recent full fiscal year . . . prior to the emergency.'' In doing so, Congress recognized that the pandemic was causing significant disruption to economic activity and sought to minimize the impact of associated revenue losses on the ability of the recipient to provide government services when such services were needed most.[294] The text of the statute itself reinforces this important context: The law specifically limits funds to cover revenue losses that both are ''due to the COVID–19 public health emergency'' and could impact ''the provision of government services.''

Courts have recognized that the phrase ''due to'' can refer to various causal standards.[295] Here, in the context of Congress's addressing economic disruptions caused by the COVID–19 pandemic that could impact both revenues and government services, the key consideration is whether a revenue loss experienced by the recipient resulted from the exogenous impacts of the public health emergency (and were thus ''due to'' the pandemic) or instead from the recipient's own discretionary actions (and, in this context, were not ''due to'' the pandemic). Reductions in revenue due to the public health emergency does not cover revenue reductions that resulted from a recipient's own discretionary actions.

In the interim final rule, Treasury included a presumption that all revenue loss is due to the pandemic in order to minimize the administrative burden on recipients discussed above and take into consideration the devastating effects of the COVID–19 public health emergency. Based on comments, Treasury believes that the reasons for the presumption continue to be valid and has determined to maintain the presumption in the final rule with certain modifications. In particular, at this point in the course of the pandemic, with the fiscal pressure on state and local governments having been significantly reduced, it is appropriate for Treasury to reassess aspects of this presumption. As discussed below, the final rule requires recipients to exclude the value of tax policy changes adopted after January 6, 2022.

Recipients of the SLFRF range from states to the smallest local governments. At the time that the interim final rule was adopted, it was important for recipients to be able to calculate with ease and certainty their amount of revenue loss so that they could begin deploying these funds to continue to maintain essential government services. To this end, the presumption in the interim final rule provided a relatively simple formula for all recipients to use, but the exigent need for recipients to immediately deploy funds for the provision of government services has decreased and the benefit of the presumption in reducing administrative burden is less relevant for those governments that are not likely to avail themselves of the standard allowance described above.

Consistent with these considerations, the final rule requires recipients to exclude revenue loss due to tax changes adopted after January 6, 2022. Eliminating revenue loss due to tax changes from the presumption is appropriate given the significance of tax revenue as a portion of all revenue for state and local governments, the direct impact of tax policy decisions on revenue collected, and the relative ease with which recipients can isolate the estimated effect of a tax change on revenue.[296] Most state budgeting processes require a ''budget score,'' often developed through a consensus process with executive and legislative branch experts,[297] and Treasury expects that larger localities, those most likely to utilize the revenue loss formula rather than the standard allowance, also regularly use revenue or budget estimates when considering changes to tax policies. As such, in many cases, recipients already prepare estimates of the impact of tax changes on revenue, and as discussed below, Treasury will generally permit recipients to rely on such estimates in adjusting their revenue loss calculations.

Reductions in revenue that are not attributable to tax changes would continue to be subject to the presumption. A requirement that recipients evaluate the revenue effect of changes in discretionary policy actions other than tax changes would be more difficult for recipients than evaluating the changes attributable to tax changes given that state and local governments do not generally prepare estimates of the revenue effects of other actions. Finally, as noted above, taxes are the single largest source of revenue for state and local government recipients in the aggregate.

Revisions to Presumption To Address Tax Reductions

For these reasons, Treasury is providing in the final rule that changes in general revenue that are caused by tax cuts adopted after the date of adoption of the final rule (January 6, 2022) will not be treated as due to the public health emergency, and the estimated fiscal impact of such tax cuts must be added to the calculation of ''actual revenue'' for purposes of calculation dates that occur on or after April 1, 2022. Tax cuts include final legislative or regulatory action or a new or changed administrative interpretation that reduces any tax (by providing for a reduction in a rate, a rebate, a deduction, a credit, or otherwise) or delays the imposition of any tax or tax increase and that the recipient assesses has had the effect of reducing tax revenue relative to current law. This includes the phase-in or taking effect of any statute or rule if the phase-in or taking effect was not prescribed prior to the issuance of the final rule.

In assessing whether a tax change has had the effect of reducing tax revenue, recipients may either calculate the actual effect on revenue or rely on estimates prepared at the time the tax change was adopted. More specifically, recipients may rely on information typically prepared in the course of developing the budget (*e.g.,* expected revenues) and/or considering tax changes (*e.g.,* budget scores, revenue notes) to determine the amount of revenue that would have been collected in the absence of the tax cut, as long as those estimates are based on reasonable assumptions and do not use dynamic methodologies that incorporate the projected effects of macroeconomic growth, given that macroeconomic

[294] *See also* sections 602(a)(1) and 603(a) of the Social Security Act (appropriating the funds for payment to recipients in order to ''mitigate the fiscal effects stemming from the public health emergency'').

[295] *U.S. Postal Service* v. *Postal Regulatory Comm'n,* 640 F.3d 1263 (D.C. Cir. 2011); *see Kimber* v. *Thiokol Corp.,* 196 F.3d 1092, 1100 (10th Cir. 1999); *Adams* v. *Director, OWCP,* 886 F.2d 818, 821 (6th Cir. 1989).

[296] Treasury considered whether to also eliminate the presumption with respect to losses resulting from other changes in policy, such as decreases in user fees or fines. However, the effects of these changes are more minor overall and would be more challenging to accurately identify and quantify, so the administrability benefit of the presumption for recipients outweighs whatever distortion there might be as a result of not reflecting such changes.

[297] *See generally,* National Association of State Budget Officers, Budget Processes in the States, (2021), available at *https://higherlogicdownload.s3.amazonaws.com/NASBO/9d2d2db1-c943-4f1b-b750-0fca152d64c2/UploadedImages/Budget%20Processess/NASBO_2021_Budget_Processes_in_the_States_S.pdf.*

growth is accounted for in the counterfactual growth assumptions. Recipients that choose to calculate the actual effect of a tax change on revenue must similarly base their calculations on reasonable estimates that do not use dynamic methodologies. Recipients should apply this adjustment in determining their actual revenue totals at Step 3 in the revenue loss calculation described above.

Revisions to Presumption To Address Tax Increases

As noted above, the calculation methodology in the interim final rule implicitly assumed that recipients did not experience a reduction in revenue due to the public health emergency if they did not experience a reduction in aggregate revenue relative to the counterfactual estimate. Treasury recognizes that some recipients may have experienced a reduction in revenue due to the public health emergency that was offset by other revenue, particularly in the case of increases to tax revenue resulting from a tax increase. The final rule requires recipients that increased taxes to deduct the amount of increases to revenue attributable to such tax increase. This change is also consistent with the incorporation in the interim final rule and final rule of a counterfactual growth rate, which effectively permits recipients to count revenue losses due to the public health emergency that are offset by increased tax revenue resulting from organic growth.

For these reasons, Treasury is providing in the final rule that recipients must subtract from their calculation of actual revenue the effect of tax increases adopted after the date of adoption of this final rule (January 6, 2022) for purposes of calculation dates that occur on or after April 1, 2022. This change and the change to the final rule described above treat tax changes in a consistent manner: In the case of reduction in revenue resulting from a tax cut, a recipient must add the amount of that reduction to its calculation of actual revenue, and in the case of an increase in revenue resulting from a tax increase, a recipient must subtract the amount of additional revenue collected as a result of the tax increase from its calculation of actual revenue.[298]

As is the case with tax cuts, discussed above, tax increases that must be reflected in the calculation of revenue include final legislative or regulatory action or a new or changed administrative interpretation that increases any tax and that the recipient assesses has had the effect of increasing tax revenue relative to current law. In assessing whether a tax change has had the effect of increasing tax revenue, recipients may either calculate the actual effect on revenue or rely on estimates prepared at the time the tax change was adopted. Recipients may rely on information typically prepared in the course of developing the budget (*e.g.,* expected revenues) and/or considering tax changes (*e.g.,* budget scores, revenue notes) to determine the amount of revenue that was collected as a result of the tax increase as long as those estimates are based on reasonable assumptions and do not use dynamic methodologies that incorporate the projected effects of macroeconomic growth, given that macroeconomic growth is accounted for in the counterfactual growth assumptions. Recipients that choose to calculate the actual effect of a tax change on revenue must similarly base their calculations on reasonable estimates that do not use dynamic methodologies. Recipients should apply this adjustment in determining their actual revenue totals at Step 3 in the revenue loss calculation described above.

Previously Adopted Tax Changes

As discussed above, the final rule will not require recipients to reflect the revenue effects of tax increases or decreases adopted prior to the adoption of the final rule. Recipients that adopted a tax change in a previous period will not be required to recalculate the amount of revenue loss as of prior calculation dates or to reflect the fiscal impacts of such tax changes in calculation dates after the effective date of the final rule. However, the final rule will permit recipients to elect to reflect the revenue effects of their tax changes adopted between the beginning of the public health emergency and the adoption of the final rule.[299] If a recipient elects to do so, it must do so with respect to all of its tax changes adopted between the beginning of the public health emergency and the adoption of the final rule. Treasury intends to revise its reporting requirements to permit recipients to amend their previously reported calculation periods to reflect such changes.

Determination of the Base Year

Under the ARPA and interim final rule, SLFRF funds may be used ''for the provision of government services to the extent of the reduction in revenue . . . relative to revenues collected in the most recent full fiscal year'' of the recipient. Therefore, the base year for the revenue loss calculation is the most recent full fiscal year prior to the COVID–19 public health emergency.

Public Comment: Treasury received multiple comments asking for flexibility in determining base year revenues. For instance, some commenters asked to use a different base year than the ''most recent full fiscal year'' prior to the pandemic for calculating revenue loss; others asked to be able to average prior years. Commenters stated that, for various reasons, revenue was artificially low in the last full fiscal year prior to the public health emergency, and, therefore, using revenue in that year as the base year did not accurately reflect expected revenue in a normal year. For example, several Tribes stated that unforeseeable weather events resulted in forced closure of casinos which, in turn, artificially deflated revenues in the base year. Other commenters indicated that one-time anomalies in the timing of tax collection in that year artificially pushed revenue into the following fiscal year. Similarly, a few commenters noted that tax changes that took effect in the middle of the base year may artificially skew the size of the revenue loss experienced by the recipient government.

Treasury Response: Treasury understands that recipients may have experienced events in the base year that led to lower or higher revenues than what they otherwise would have collected. The ARPA provides that revenue loss is to be determined with respect to revenue in the most recent full fiscal year prior to the pandemic, and therefore the final rule maintains its incorporation of the statutory definition.

In calculating revenue loss, recipients may use data on a cash, accrual, or modified accrual basis, provided that recipients are consistent in their choice of methodology throughout the covered period, which might help recipients adjust to certain delays in revenue receipt. Both the standard allowance and elements of the formula (*e.g.,*

[298] The final rule does not permit recipients to reflect the effects of other changes in policy, such as increases in fees adopted after adoption of the final rule. Treasury understands that the main beneficiaries of such a change would be those recipients that will benefit from the standard allowance provided for in the final rule and that for other recipients the administrative burden on recipients needed to calculate these adjustments would outweigh the benefit of having a somewhat larger amount of funds available for government services.

[299] The final rule also addresses the possibility that some recipients may have fiscal years ending during the period between January 6, 2022 and April 1, 2022; such recipients' election to reflect tax changes from prior periods would also apply to changes during this period with respect to the calculation date in this period.

counterfactual growth rate) incorporate generous assumptions to give recipients flexibility and to account for variation among recipients' experiences during the pandemic.

Government Services

The **SUPPLEMENTAL INFORMATION** to the interim final rule provided a non-exhaustive list of examples of services that are government services. The interim final rule also discussed why neither payment of debt service nor replenishing financial reserves constitutes government services, as these expenditures do not provide services but relate to the financing of such services. Similarly, government services under the interim final rule did not include satisfaction of any obligation arising under or pursuant to a settlement agreement, judgment, consent decree, or judicially confirmed debt restructuring in a judicial, administrative, or regulatory proceeding, unless the judgment or settlement required the provision of government services.

Public Comment: Treasury received several comments requesting further clarification regarding the scope of government services, including asking for either a specific definition of government services or that a specific use be expressly deemed to be a government service. Some commenters disagreed with the exclusions from government services in the interim final rule. For instance, many of the comments Treasury received suggested that replenishing reserve funds and at least certain types of debt service should be treated as providing governmental services. Some commenters also suggested that a recipient should be able to use funds for costs incurred before March 3, 2021. Other commenters asked Treasury to maintain the prohibition on using the funds to pay debt service.

Treasury Response: Treasury continues to believe that the lists of activities that either are or are not providing government services are accurate but is clarifying here that, generally speaking, services provided by the recipient governments are ''government services'' under the interim final rule and final rule, unless Treasury has stated otherwise. Government services include, but are not limited to, maintenance or pay-go funded building [300] of infrastructure, including roads; modernization of cybersecurity, including hardware, software, and protection of critical infrastructure; health services; environmental remediation; school or educational services; and the provision of police, fire, and other public safety services.

The aforementioned list of government services is not exclusive. However, recipients should be mindful that other restrictions may apply, including those articulated in the section Restrictions on Use. In the final rule, Treasury is maintaining the limitations on government services included in the interim final rule and has addressed and responded to public commenters on these issues in the section Restrictions on Use.

D. Investments in Water, Sewer, and Broadband Infrastructure

Summary of Interim Final Rule

Under the ARPA, recipients may use funds to make necessary investments in water, sewer, and broadband infrastructure. The interim final rule provided recipients with the ability to use funds for a broad array of uses within these categories.

The interim final rule discussed two general provisions that apply across all water, sewer, and broadband infrastructure investments. First, the interim final rule addressed the meaning of ''necessary'' investments as meaning those designed to provide an adequate minimum level of service and unlikely to be made using private sources of funds. Second, the interim final rule encouraged recipients to use strong labor standards in water, sewer, and broadband projects, as discussed below.

Necessary Investments

The statute limits investments to those that are necessary. As discussed in more detail below, Treasury determined that the types of water and sewer projects that were authorized under the interim final rule by reference to existing Environmental Protection Agency (EPA) programs would in all cases be necessary investments given the conditions applicable to such EPA programs. Similarly, the interim final rule's definition of eligible broadband projects as those designed to provide a certain standard of service to those households and businesses with limited existing service was based on the statutory requirement that investments in water, sewer, and broadband must be ''necessary.''

As discussed further below, Treasury has expanded the scope of what is an eligible water and sewer infrastructure project to include additional uses. In particular, the final rule permits use of SLFRF funds for certain dam and reservoir restoration projects and certain drinking water projects to support population growth. The nature of these additional uses is such that additional factors must be considered in determining whether one of these additional uses is a necessary project. In addition, Treasury recognizes that there may be a need for improvements to broadband beyond those households and businesses with limited existing service as defined in the interim final rule. Treasury has replaced this specific requirement based on an understanding that broadband investments may be necessary for a broader set of reasons.

Given this expansion of what is considered in scope as a water, sewer, or broadband infrastructure project, the final rule provides a further elaboration of Treasury's understanding of the conditions under which an infrastructure project will be considered to be a necessary investment. Treasury considers a necessary investment in infrastructure to be one that is (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 and (2) a cost-effective means for meeting that need, taking into account available alternatives. In addition, given that drinking water is a resource that is subject to depletion, in the case of investments in infrastructure that supply drinking water in order to meet projected population growth, the project must be projected to be sustainable over its estimated useful life.

Not included in the list of criteria above is the requirement in the interim final rule that the project be unlikely to be made using private sources of funds. Given that it may be difficult to assess in a particular case what the probability of private investment in a project would be, Treasury has eliminated this standard from the meaning of necessary but still encourages recipients to prioritize projects that would provide the greatest public benefit in their respective jurisdictions.

Strong Labor Standards in Water, Sewer, and Broadband Construction

As stated in the Supplementary Information to the interim final rule, Treasury encourages recipients to carry out investments in water, sewer, or broadband infrastructure in ways that produce high-quality infrastructure, avert disruptive and costly delays, and

[300] Pay-go infrastructure funding refers to the practice of funding capital projects with cash-on-hand from taxes, fees, grants, and other sources, rather than with borrowed sums.

promote efficiency.[301] Treasury encourages recipients to use strong labor standards, including project labor agreements (PLAs) and community benefits agreements that offer wages at or above the prevailing rate and include local hire provisions. Treasury also recommends that recipients prioritize in their procurement decisions employers who can demonstrate that their workforce meets high safety and training standards (*e.g.,* professional certification, licensure, and/or robust in-house training), that hire local workers and/or workers from historically underserved communities, and who directly employ their workforce or have policies and practices in place to ensure contractors and subcontractors meet high labor standards. Treasury further encourages recipients to prioritize employers (including contractors and subcontractors) without recent violations of federal and state labor and employment laws.

Treasury believes that such practices will promote effective and efficient delivery of high-quality infrastructure projects and support the economic recovery through strong employment opportunities for workers. Such practices will also reduce the likelihood of potential project challenges like work stoppages or safety accidents, while ensuring a reliable supply of skilled labor and minimizing disruptions, such as those associated with labor disputes or workplace injuries. That will, in turn, promote on-time and on-budget delivery.

Furthermore, among other requirements contained in 2 CFR 200, Appendix II, all contracts made by a recipient or subrecipient in excess of $100,000 with respect to water, sewer, or broadband infrastructure project that involve employment of mechanics or laborers must include a provision for compliance with certain provisions of the Contract Work Hours and Safety Standards Act, 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR part 5).

Treasury will continue to seek information from recipients on their workforce plans and water, sewer, and broadband projects undertaken with SLFRF funds. This reporting will support transparency and competition by enhancing available information on the services being provided. Since publication of the interim final rule, Treasury has provided recipients with additional guidance and instructions on the reporting requirements.[302]

Environmental and Other Generally Applicable Requirements

Treasury cautions that, as is the case with all projects engaged in using the SLFRF funds, all projects must comply with applicable federal, state, and local law. In the case of infrastructure projects in particular, this includes environmental and permitting laws and regulations. Likewise, as with all capital expenditure projects using SLFRF funds, projects must be undertaken and completed in a manner that is technically sound, meaning that they must meet design and construction methods and use materials that are approved, codified, recognized, fall under standard or acceptable levels of practice, or otherwise are determined to be generally acceptable by the design and construction industry.

1. Water and Sewer Infrastructure

Sections 602(c)(1)(D) and Section 603(c)(1)(D) of the Social Security Act provide that recipients may use the SLFRF funds ''to make necessary investments in water [and] sewer . . . infrastructure.'' The interim final rule permitted a broad range of necessary investments in projects that improve access to clean drinking water and improve wastewater and stormwater infrastructure systems. As discussed below, after review of comments received on the interim final rule, Treasury has made changes in the final rule to expand the scope of eligible water and sewer projects.

Summary of Interim Final Rule and Final Rule Structure

Background: In the interim final rule, Treasury aligned eligible uses of the SLFRF with the wide range of types or categories of projects that would be eligible to receive financial assistance through the Clean Water State Revolving Fund (CWSRF) or Drinking Water State Revolving Fund (DWSRF) administered by the Environmental Protection Agency (EPA). By referring to these existing programs, with which many recipients are already familiar, Treasury intended to provide flexibility to recipients to respond to the needs of their communities while facilitating recipients' identification of eligible projects. Furthermore, by aligning SLFRF eligible uses with these existing programs, Treasury could ensure that projects using the SLFRF are limited to ''necessary investments.''

Public Comment: Treasury received many comments responding to the water and sewer infrastructure provisions of the interim final rule from state, local, and Tribal governments, industry trade associations, public interest groups, private individuals, and other interested parties. Commenters requested that Treasury provide a wider set of eligible uses for water and sewer infrastructure beyond those uses articulated by the DWSRF and CWSRF, suggesting that Treasury expand the definition of necessary water and sewer infrastructure.

Treasury Response: In response to commenters, Treasury is expanding the eligible use categories for water and sewer infrastructure, discussed in further detail below. Because the interim final rule aligned the definition of necessary water and sewer infrastructure with the eligible uses included in the DWSRF and CWSRF, Treasury is reflecting in the final rule a revised standard for determining a necessary water and sewer infrastructure investment for eligible water and sewer uses beyond those uses that are eligible under the DWSRF and CWSRF.

Interpretation of Necessary Investments and Water and Sewer Infrastructure

Necessary Investments: As discussed above, Treasury considers an investment in infrastructure to be necessary if it is (1) responsive to an identified need to achieve or maintain an adequate minimum level of service, which for some eligible project categories may include a reasonable projection of increased need, whether due to population growth or otherwise and (2) a cost-effective means for meeting that need, taking into account available alternatives. In addition, in the case of investments in drinking water service infrastructure to supply drinking water to satisfy a projected increase in population, the project must also be projected to be sustainable over its estimated useful life. As detailed further below, DWSRF and CWSRF eligible projects continue to be presumed to be necessary investments under the final

[301] Treasury received several comments related to its encouragement of certain wage and labor standards in the Supplementary Information to the interim final rule. Some commenters opposed this encouragement, arguing that even encouragement and reference to PLAs and prevailing wage laws could lead to confusion or make it more likely that recipients would apply labor standards in ways that would discourage competition and raise project costs. Conversely, some commenters supported the encouragement of the use of certain standards, including giving preference to employers that meet certain employment standards (*e.g.,* those that maintain high safety and training standards) because it would support the goal of completing water, sewer, and broadband projects efficiently and safely. As in the interim final rule, this encouragement does not impose a legally binding restriction on recipients.

[302] *See* U.S. Department of the Treasury, *Compliance and Reporting Guidance,* 21 (June 24, 2021), *https://home.treasury.gov/system/files/136/SLFRF-Compliance-and-Reporting-Guidance.pdf.*

rule, with the exception of projects for the rehabilitation of dams and reservoirs, which the EPA has permitted in certain circumstances under the DWSRF and, as discussed below, are addressed separately in the final rule.

In evaluating whether a project would respond to a need to achieve or maintain an adequate minimum level of service, a recipient should consider whether it would meet the needs of the population to be served and would satisfy applicable standards. For example, a drinking water project must be sized such that it provides an adequate volume of water to households and other customers and must meet applicable standards for drinking water quality under the Safe Drinking Water Act (SDWA). Similarly, a centralized wastewater treatment project should be designed to manage updated estimated flow rates and comply with Clean Water Act requirements. These requirements are already reflected in the eligibility criteria of the DWSRF and CWSRF, respectively.

In evaluating whether a project is a cost-effective means of providing the water or sewer service, the recipient should consider the need for the project, the costs and benefits of the project compared to alternatives, and the effectiveness of the project in meeting the identified need. Recipients are not required to conduct a full cost-benefit analysis; however, they should consider and analyze relevant factors. For example, a recipient may not use funds to pursue a costly dam rehabilitation to provide drinking water to a community if it could provide the same service with a significantly smaller investment by drawing water from another available reservoir, assuming that doing so would meet the other requirements of the final rule. As detailed further below, recipients are only required to assess cost-effectiveness of projects 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.

Certain DWSRF eligibilities are already subject to a cost-effectiveness test. Specifically, projects that create new drinking water systems must be a cost-effective solution to addressing the identified problem.[303] The EPA also imposes a cost-effectiveness condition on dam and reservoir rehabilitation projects undertaken pursuant to its class deviation from the DWSRF rule. These projects are particularly expensive and, unlike in the case of other types of eligible projects, there are often available alternatives to conducting these projects. Projects for the extension of drinking water service to meet population growth needs are also often particularly expensive, and there are often different ways to meet the needs of expanding populations. Treasury will accordingly require that recipients engage in a cost-effectiveness analysis when engaging in projects 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. Other types of eligible water or sewer projects will not be subject to this cost-effectiveness test, including lead line replacement and lead remediation.[304]

In the case of projects that expand drinking water service infrastructure to satisfy a projected increase in population, the project must also be sustainable, meaning that the project can continue providing the adequate minimum level of service for its estimated useful life, taking into account projected impacts of changes to the climate and other expected demands on the source of water. For example, a reservoir rehabilitation project may not be pursued if the reservoir will no longer be able to provide an adequate source of drinking water before the end of the estimated useful life of the improvements to the reservoir. In areas currently impacted by drought or where drought conditions are expected to be more frequent or more severe in the future, sources of drinking water may be diminished more quickly than in prior periods. In considering how much of a source of water will be available in the future for the drinking water project, a recipient must consider that a source of water may be drawn upon or otherwise used for other current and expected uses, including use by fish and other wildlife.

The final rule applies this sustainability condition to projects that expand drinking water service infrastructure to satisfy a projected increase in population but not to other drinking water projects. When a new source of water is required to remedy an existing threat to public health, as in the case of source projects eligible under the DWSRF, sustainability should be a consideration, but in some cases, the need to replace a contaminated source may mean that a less sustainable choice may be made. When faced with such an issue, such as in the case of a contaminated well system, a project to replace the contaminated source can be said to be ''necessary'' even if the replaced source is not sustainable over the long term. Expediency may dictate that a shorter-term solution is pursued if it is cost-effective and will prevent health issues while a longer-term solution can be found. In contrast, an expansion to accommodate population growth cannot be said to be necessary if it is not sustainable over its estimated useful life.

Not included in the list of criteria above is the requirement in the interim final rule that the project be unlikely to be made using private sources of funds. Given that it may be difficult to assess in a particular case what the probability of private investment in a project would be, Treasury has eliminated this standard from the meaning of necessary but nevertheless encourages recipients to apply funds to projects that would provide the greatest public benefit.

Water and Sewer Infrastructure: As stated above, Congress provided that SLFRF funds are available for ''necessary water, sewer, and broadband infrastructure.'' Treasury interprets the reference to water and sewer uses consistent with the inclusion of broadband uses. Water, sewer, and broadband infrastructure all involve the provision of essential services to residents, businesses, and other consumers. As the pandemic has made clear, access to broadband has itself become essential for individuals and businesses to participate in education, commerce, work, and civic matters and to receive health care and social services.

Water and sewer services provided broadly to the public as essential services include the provision of drinking water and the removal, management, and treatment of wastewater and stormwater.[305] Although governments are engaged in other infrastructure related to water, including irrigation projects, transportation projects, and recreation projects, such projects go beyond the scope of what is provided to all residents as an essential service. Provision of drinking water and removal, management, and treatment of

[303] *See* 40 CFR 35.3520(b)(2)(vi).

[304] In such cases, either the projects are presumptively cost-effective (*e.g.,* lead projects would always be considered cost-effective given the costs imposed by lead poisoning) or a cost-effectiveness test is less relevant given the lack of available alternatives or the relatively low cost of the project.

[305] In many jurisdictions, stormwater flows into the sewer system rather than into a separate stormwater system. The separate inclusion of ''water'' and ''sewer'' infrastructure also makes clear that ''water'' in this context cannot refer to all uses relevant to water. Given that sewer systems carry wastewater (and often stormwater), if water infrastructure were to refer to all water-related infrastructure in this context, it would make the inclusion of sewer infrastructure redundant.

wastewater and stormwater are the typical responsibilities of ''water and sewer'' authorities throughout the country, and there is a tremendous need for improvements to the ability of state, local, and Tribal governments to provide such services, including to address the consequences of deferred maintenance and additional resiliency needed to adapt to changes to the climate.[306]

Although the meaning of water and sewer infrastructure for purposes of sections 602(c)(1)(D) and 603(c)(1)(D) of the Social Security Act does not include all water-related uses, Treasury has made clear in this final rule that investments to infrastructure include a wide variety of projects. Treasury interprets the word ''infrastructure'' in this context broadly to mean the underlying framework or system for achieving the given public purpose, whether it be provision of drinking water or management of wastewater or stormwater.[307] As discussed below, this can include not just storm drains and culverts for the management of stormwater, for example, but also bioretention basins and rain barrels implemented across a watershed, including on both public and private property, that together reduce the amount of runoff that needs to be managed by traditional infrastructure.

Further, Treasury understands that investments in infrastructure include improvements that increase the capacity of existing infrastructure and extend the useful life of existing infrastructure. Accordingly, water and sewer infrastructure investment projects include those that conserve water, thereby reducing pressure on infrastructure for the provision of drinking water, and that recycle wastewater and stormwater, thereby reducing pressure on the infrastructure for treating and managing wastewater and stormwater.

As with other infrastructure projects and capital expenditure projects that are permitted as responses to the public health emergency and its negative economic impacts, costs for planning and design and associated pre-project costs are eligible uses of SLFRF funds. Costs for the acquisition of land are also eligible, but only if needed for the purposes of locating eligible project components. Recipients should ensure that they have the technical, financial, and managerial capability to ensure compliance with the requirements of the SDWA, or that the assistance will ensure compliance and the owners or operators of the systems will undertake feasible and appropriate changes in operations to ensure compliance over the long-term.

Drinking Water State Revolving Fund and Clean Water State Revolving Fund

Background: As stated above, in the interim final rule, Treasury included eligible uses of the DWSRF and the CWSRF as eligible uses of the SLFRF in the water and sewer infrastructure category. By providing that projects eligible under the DWSRF and the CWSRF are also eligible uses of SLFRF funds, the interim final rule permitted a broad range of projects that improve drinking water infrastructure, such as building or upgrading facilities and transmission, distribution, and storage systems, including replacement of lead service lines. With respect to clean water and wastewater infrastructure, the interim final rule provided that recipients may use SLFRF funds to construct publicly owned treatment infrastructure, manage and treat stormwater or subsurface drainage water, and facilitate water reuse, among other uses. Consistent with the DWSRF and the CWSRF, the interim final rule provided that SLFRF funds may be used for cybersecurity needs to protect water or sewer infrastructure, such as developing effective cybersecurity practices and measures at drinking water systems and publicly owned treatment works.

Use of DWSRF and CWSRF to Support Climate Change Adaptations. Many of the types of projects eligible under either the DWSRF or CWSRF also support efforts to address climate change. For example, by taking steps to manage potential sources of pollution and preventing these sources from reaching sources of drinking water, projects eligible under the DWSRF and CWSRF may reduce energy required to treat drinking water. Similarly, projects eligible under the DWSRF and CWSRF include measures to conserve and reuse water, for example through projects to reuse or recycle wastewater, stormwater, or subsurface drainage water. Treasury encourages recipients to consider green infrastructure investments and projects to improve resilience to the effects of climate change. For example, more frequent and extreme precipitation events combined with construction and development trends have led to increased instances of stormwater runoff, water pollution, and flooding. Green infrastructure projects that support stormwater system resiliency could include bioretention basins that provide water storage and filtration benefits, and green streets, where vegetation, soil, and engineered systems are combined to direct and filter rainwater from impervious surfaces. In cases of a natural disaster, recipients may also use SLFRF funds for water infrastructure to provide relief, such as interconnecting water systems or rehabilitating existing wells during an extended drought.

Public Comment: Many commenters expressed support for the interim final rule's alignment of the use of funds for water and sewer infrastructure under the SLFRF with the project categories provided through the EPA's DWSRF and CWSRF programs.

Many commenters also provided recommendations about the specific types of water infrastructure projects that should be eligible under the final rule. In many of these cases, commenters recommended that Treasury include project types that are already eligible under the DWSRF and CWSRF and thus eligible under the interim final rule and final rule. For example, several commenters requested that aquifer recharge projects, or other groundwater protection and restoration projects, be included as eligible uses of SLFRF when certain aquifer recharge projects that (1) implement a nonpoint source pollution management program [308] or (2) constitute reuse of

[306] In addition, Treasury interprets the eligible uses of SLFRF funds against the background of the Coronavirus Relief Fund (CRF), for which the SLFRF funds are, in part, a successor. CRF recipients expressed great interest in using the CRF to pursue water infrastructure projects, including provision of drinking water and internal plumbing on Tribal lands and in Alaskan villages, and broadband projects throughout the country; Treasury permitted these projects given the connection to the public health emergency (see Coronavirus Relief Fund for States, Tribal Governments, and Certain Eligible Local Governments, 86 FR 4182, 4190, 4192 (Jan. 15, 2021), but the short deadline for use of funds made it difficult to use CRF funds in this way. Congress' inclusion of the water, sewer, and broadband clause in the ARPA, along with the SLFRF funds' longer eligible use date, is responsive to this unmet need. As discussed below, Congress in the Infrastructure Investment and Jobs Act amended sections 602(c) and 603(c) of the Social Security Act to add a new paragraph as sections 602(c)(4) and 603(c)(5), respectively, providing that SLFRF funds may be used to meet non-federal matching requirements of any authorized Bureau of Reclamation project. This authority was added as a separately enumerated eligible use regardless of whether the underlying project would be an eligible use of SLFRF funds under the water and sewer infrastructure eligible use category.

[307] *See, e.g.,* section 502 of the Federal Water Pollution Control Act (33 U.S.C. 1362), defining ''green infrastructure'' as ''the range of measures that use plant or soil systems, permeable pavement or other permeable surfaces or substrates, stormwater harvest and reuse, or landscaping to store, infiltrate, or evapotranspirate stormwater and reduce flows to sewer systems or to surface waters.''

[308] Specifically, this would include desalination projects that decrease the burden on aquifers where there is causal relationship between aquifer withdrawals and saltwater intrusion if the projects implement a nonpoint source pollution

Continued

wastewater, stormwater, or subsurface drainage water are in fact eligible uses under the CWSRF. Furthermore, under the DWSRF, eligible projects include certain aquifer storage and recovery systems for water storage.

Treasury Response: Eligible projects articulated in the DWSRF and CWSRF continue to be eligible uses of SLFRF funds under the final rule. Recognizing that recipients have faced challenges interpreting eligible use categories under the interim final rule or cross-referencing EPA program materials to interpret eligible project types, Treasury is including in this Supplementary Information additional information on the types of projects eligible under the DWSRF and CWSRF. Treasury emphasizes that this further clarification does not represent a change in eligibility. Treasury encourages recipients to reference EPA handbooks for the DWSRF and CWSRF, which provide further information and detail about the types of projects eligible under those programs and thus under the final rule.

Eligible projects under the DWSRF. Eligibilities under the DWSRF, the interim final rule, and the final rule include projects that address present or prevent future violations of health-based drinking water standards. These include projects needed to maintain compliance with existing national primary drinking water regulations for contaminants with acute and chronic health effects. Projects to replace aging infrastructure are also eligible uses if they are needed to maintain compliance or further the public health protection objectives of section 1452 of the SDWA.[309] The following project categories are eligible under the DWSRF, were eligible under the interim final rule, and continue to be eligible under the final rule:

(i) *Treatment projects,* including installation or upgrade of facilities to improve the quality of drinking water to comply with primary or secondary standards and point of entry or central treatment under section 1401(4)(B)(i)(III) of the SDWA.

(ii) *Transmission and distribution projects,* including installation or replacement of transmission and distribution pipes to improve water pressure to safe levels or to prevent contamination caused by leaks or breaks in the pipes.

(iii) *Source projects,* including rehabilitation of wells or development of eligible sources to replace contaminated sources.

(iv) *Storage projects,* including installation or upgrade of eligible storage facilities, including finished water reservoirs, to prevent microbiological contaminants from entering a public water system.

(v) *Consolidation projects,* including projects needed to consolidate water supplies where, for example, a supply has become contaminated or a system is unable to maintain compliance for technical, financial, or managerial reasons.

(vi) *Creation of new systems,* including those that, upon completion, will create a community water system to address existing public health problems with serious risks caused by unsafe drinking water provided by individual wells or surface water sources. Eligible projects are also those that create a new regional community water system by consolidating existing systems that have technical, financial, or managerial difficulties. Projects to address existing public health problems associated with individual wells or surface water sources must be limited in scope to the specific geographic area affected by contamination. Projects that create new regional community water systems by consolidating existing systems must be limited in scope to the service area of the systems being consolidated.

Ineligible projects under the DWSRF. Federally-owned public water systems and for-profit noncommunity water systems are not eligible to receive DWSRF funds and therefore SLFRF funds.[310] The acquisition of water rights, laboratory fees for routine compliance monitoring, and operation and maintenance expenses are not costs associated with investments in infrastructure and thus would not be eligible under the final rule. [311] Projects needed primarily to serve future population growth are also ineligible under the DWSRF; the treatment of such projects under the final rule is discussed separately below under ''Expansion of Drinking Water Service.'' Projects eligible under the DWSRF must be sized only to accommodate a reasonable amount of population growth expected to occur over the useful life of the project.

Eligible projects under the CWSRF. The final rule continues to allow the use of SLFRF funds for projects eligible under the CWSRF, consistent with the interim final rule. Under the CWSRF, a project must meet the criteria of one of the following CWSRF eligibilities to be eligible for assistance. Section 603(c) of the Clean Water Act (CWA) [312] provides that the CWSRF can provide assistance:

(i) to any municipality, intermunicipal, interstate, or state agency for construction of publicly owned treatment works (as defined in section 212 of the CWA); [313]

(ii) for the implementation of a management program established under section 319 of the CWA; [314]

(iii) for the development and implementation of a conservation and management plan under section 320 of the CWA; [315]

(iv) for the construction, repair, or replacement of decentralized wastewater treatment systems that treat municipal wastewater or domestic sewage. Eligible projects include, but are not limited to, the construction of new decentralized systems (*e.g.,* individual onsite systems and cluster systems), as well as the upgrade, repair, or replacement of existing systems.

(v) for measures to manage, reduce, treat, or recapture stormwater or subsurface drainage water. Publicly and privately owned, permitted and unpermitted projects that manage, reduce, treat, or recapture stormwater or subsurface drainage water are eligible. For example, projects that are specifically required by a Municipal Separate Storm Sewer System (MS4) permit are eligible, regardless of ownership. Projects may include, but are not limited to green roofs, bioretention basins, roadside plantings, porous pavement, and rainwater harvesting.

(vi) to any municipality, intermunicipal, interstate, or state agency for measures to reduce the demand for publicly owned treatment works capacity through water conservation, efficiency, or reuse. Eligible projects include, but are not limited to, the installation, replacement, or upgrade of water meters; plumbing fixture retrofits or replacement; and gray water recycling. Water audits and water conservation plans are also eligible.

management program under section 319 of the Clean Water Act. This could include projects in which desalinated seawater is injected into the aquifer to mitigate or prevent salt water intrusion, as well as projects in which brackish water is removed from an aquifer, desalinated, and returned to the aquifer.

[309] *See* 42 U.S.C. 300j–12(a)(2)(B) (limiting financial assistance used by a public water system to expenditures (including expenditures for planning, design, siting, and associated preconstruction activities, or for replacing or rehabilitating aging treatment, storage, or distribution facilities of public water systems, but not including monitoring, operation, and maintenance expenditures of a type or category which the Administrator of the EPA has determined, through guidance, will facilitate compliance with national primary drinking water regulations applicable to the system under 42 U.S.C. 300g–1 or otherwise significantly further the health protection objectives of the SWDA); *See also* 40 CFR 35.3520(b).

[310] *See* 40 CFR 35.3520(d)(1).

[311] *See id at* § 35.3520(e)(2)–(4).

[312] 33 U.S.C. 1383(c).

[313] 33 U.S.C. 1292.

[314] 33 U.S.C. 1329.

[315] 33 U.S.C. 1330.

Equipment to reuse effluent (*e.g.,* gray water, condensate, and wastewater effluent reuse systems) is eligible.

(vii) for the development and implementation of watershed projects meeting the criteria set forth in section 122 of the CWA.[316] Projects that develop or implement a watershed pilot project related to at least one of the six areas identified in section 122 of the CWA are eligible: Watershed management of wet weather discharges, stormwater best management practices, watershed partnerships, integrated water resource planning, municipality-wide stormwater management planning, or increased resilience of treatment works.

(viii) to any municipality, intermunicipal, interstate, or state agency for measures to reduce the energy consumption needs for publicly owned treatment works. Projects may include, but are not limited to, the installation of energy efficient lighting, HVAC, process equipment, and electronic equipment and systems at publicly owned treatment works. Planning activities, such as energy audits and optimization studies are also eligible.

(ix) for reusing or recycling wastewater, stormwater, or subsurface drainage water. Projects involving the reuse or recycling of wastewater, stormwater, or subsurface drainage water are eligible. This includes, as part of a reuse project, the purchase and installation of treatment equipment sufficient to meet reuse standards. Other eligible projects include, but are not limited to, distribution systems to support effluent reuse, including piping the effluent on the property of a private consumer, recharge transmission lines, injection wells, and equipment to reuse effluent (*e.g.,* gray water, condensate, and wastewater effluent reuse systems).

(x) for measures to increase the security of publicly owned treatment works. Security measures for publicly owned treatment works might include, but are not limited to, vulnerability assessments, contingency/emergency response plans, fencing, security cameras/lighting, motion detectors, redundancy (systems and power), secure chemical and fuel storage, laboratory equipment, securing large sanitary sewers, and tamper-proof manholes. The CWSRF cannot fund operations and maintenance activities. Therefore, maintaining a human presence (*i.e.,* security guards) and monitoring activities are not eligible.

[316] 33 U.S.C. 1274.

Other Clarifications of DSWRF and CWSRF Eligible Project Categories

Public Comment: Several commenters requested that Treasury provide clarification of the requirements associated with use of SLFRF funds for necessary investments in water and sewer infrastructure.

Treasury Response: After release of the interim final rule, Treasury clarified in further guidance that, while recipients must ensure that water and sewer infrastructure projects pursued are eligible under the 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 being 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 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 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 pre-approval from another federal or state agency.

Expanded Eligible Uses for Water and Sewer Infrastructure

Summary

Public Comment: Many commenters requested broader flexibility in the use of SLFRF funds for water and sewer infrastructure projects that are not eligible under the DWSRF and CWSRF. These commenters argued that localities are best situated to identify the highest-need water and sewer projects in their communities. Several Tribal government commenters noted that Tribes have different water and sewer infrastructure needs than states and localities and that additional flexibility in the use of funds would lift current barriers to improving infrastructure on Tribal lands.

To achieve additional flexibility, commenters suggested a range of options for broadening the eligible use of SLFRF funds for necessary water and sewer infrastructure. For example, several commenters suggested Treasury broaden the eligibilities provided under the interim final rule to include project types eligible under other federal water and sewer programs.

Treasury Response: Treasury agrees that additional flexibility for use of SLFRF funds is warranted and is providing expanded eligibilities as described below, several of which address specific areas of need outlined by Tribal and rural communities.

As discussed below, Treasury has incorporated into the final rule projects that are eligible under certain programs established by the EPA under the Water Infrastructure Improvements for the Nation Act (WIIN Act). Other water-related grant programs cited by commenters include projects that are otherwise already covered by the final rule, for example because they are covered as eligible under the DWSRF or the CWSRF, or projects that are ineligible under the final rule because they are beyond the scope of the meaning of water and sewer projects for purposes of ARPA. To minimize the need for recipients of SLFRF funds to cross reference eligibilities across multiple federal programs, which may exacerbate current challenges to understanding eligibility under SLFRF, Treasury is providing detailed information related to expanded eligibilities within the text of this **SUPPLEMENTARY INFORMATION** for the final rule.

Stormwater Infrastructure

Public Comment: Several commenters requested that additional stormwater infrastructure projects be included as eligible uses of SLFRF funds under the final rule. Commenters suggested that culvert repair and resizing and replacement of storm sewers is necessary to address increased rainfall brought about by a changing climate. Other commenters noted that rural communities that do not manage their own sewer systems may rely on this type of water infrastructure.

Treasury Response: The CWSRF includes a broad range of stormwater infrastructure projects, and as such these projects were eligible under the interim final rule and continue to be eligible under the final rule. These projects include gray infrastructure projects, such as traditional pipe, storage, and treatment systems. Projects

that manage, reduce, treat, or recapture stormwater or subsurface drainage water are also eligible, including real-time control systems for combined sewer overflow management, and sediment control. Culvert infrastructure projects are eligible under the CWSRF if they (1) implement a nonpoint source management plan, (2) implement National Estuary Program Comprehensive Conservation and Management Plan, or (3) implement a stormwater management plan with the goal of providing a water quality benefit. Stormwater projects under the CWSRF also encompass a number of eligible green infrastructure categories, such as green roofs, green streets, and green walls, rainwater harvesting collection, storage, management, and distribution systems, real-time control systems for harvested rainwater, infiltration basins, constructed wetlands, including surface flow and subsurface flow (*e.g.,* gravel) wetlands, bioretention/bioswales (*e.g.,* bioretention basins, tree boxes), permeable pavement, wetland, riparian, or shoreline creation, protection, and restoration, establishment or restoration of urban tree canopy, and replacement of gray infrastructure with green infrastructure including purchase and demolition costs.

In addition to the eligible uses under the CWSRF, Treasury is expanding the eligible uses under the final rule to include stormwater system infrastructure projects regardless of whether there is an expected water quality benefit from the project. Treasury anticipates that this eligible use will allow recipients to manage increased volumes of stormwater as a result of changes to the climate. For example, the final rule now permits the use of SLFRF funds for the repair, replacement, or removal of culverts or other road-stream crossing infrastructure to the extent the purpose of the project is to manage stormwater. In addition, Treasury understands that the repair, replacement, or removal of culverts may necessitate the repair or upgrade of roads. As noted in guidance issued after the interim final rule, recipients may use SLFRF funds for road repairs and upgrades that interact directly with an eligible stormwater infrastructure project. All stormwater infrastructure projects undertaken should incorporate updated design features and current best practices.

Private Wells and Septic Systems

Public Comment: Several commenters requested that the scope of eligible projects be expanded to allow for the expenditure of SLFRF funds on private wells or septic systems. Commenters noted that wells may be contaminated with dangerous substances, including arsenic, lead, radon, and PFAS (per- and polyfluoroalkyl). Commenters also suggested that, because rural and underserved communities are often reliant on these infrastructure types for their drinking water or wastewater needs, lack of appropriate funding to maintain these systems could present health and safety issues that disproportionately affect certain communities.

Treasury Response: Consistent with the CWSRF, the installation, repair, or replacement of private septic units continues to be an eligible use of SLFRF funds under the final rule. For example, eligible projects include those that address groundwater contamination resulting from faulty septic units and those that would connect failing septic systems to centralized wastewater treatment. Consistent with the DWSRF, connecting homes served by a private well to a public water system is an eligible use of SLFRF funds.

In addition, Treasury has provided in the final rule that recipients may use SLFRF funds for an expanded set of infrastructure projects that improve access to and provision of safe drinking water for individuals served by residential wells. Eligible projects under this category include rehabilitation of private wells, testing initiatives to identify contaminants in wells, and treatment activities and remediation strategies that address contamination.

Remediating Lead in Water

Public Comment: Several commenters emphasized the need to fully remediate lead contamination, especially in structures that serve the public or populations like children that are particularly vulnerable to the effects of lead exposure, such as schools and daycares. Many American households and an estimated 400,000 schools and childcare centers currently lack safe drinking water.[317]

Treasury Response: The replacement of lead service lines, up to premise plumbing, is an eligible use under the DWSRF and continues to be an eligible use of SLFRF funds. Such projects are eligible regardless of the pipe material of the replacement lines and ownership of the property on which the service line is located. Lead service line replacement projects can serve households, schools, or any other entities. Given the lifelong impacts of lead exposure for children and the widespread prevalence of lead service lines, Treasury encourages recipients to consider projects to replace lead service lines.

In addition, Treasury is providing in the final rule that for lead service line replacement projects, recipients must replace the full length of the service line, and not just a partial portion of the service line. Some water utilities, when replacing service lines, will only replace the ''public portion'' of the service line and physically slice through the lead service line at the public/private line. This action can result in elevated drinking water lead levels for some period of time after replacement, suggesting the potential for harm, rather than benefit during that time period.[318] Requiring replacement of the full length of the service line is also consistent with the requirements of the EPA's Lead and Copper Rule Revisions for water systems that have an action level exceedance for lead [319] and certain other water systems.[320]

Treasury is expanding eligible uses of SLFRF funds to include infrastructure projects eligible under EPA grant programs authorized by the WIIN Act.[321] Eligible projects under these programs include the installation or re-optimization of corrosion control treatment, replacing lead service lines, replacing galvanized pipes downstream of a lead service line (other than lead pipes within a home as discussed below), and maintaining an inventory of the drinking water system's service lines. Water quality testing, compliance monitoring, and remediation activities in schools and other childcare facilities, as well as activities necessary to respond to a contaminant, are eligible uses of SLFRF funds.[322] Remediation

[317] The White House, Updated Fact Sheet: Bipartisan Infrastructure Investment and Jobs Act (August 2, 2021), *https://www.whitehouse.gov/briefing-room/statements-releases/2021/08/02/updated-fact-sheet-bipartisan-infrastructure-investment-and-jobs-act/.*

[318] *See* EPA Science Advisory Board, Evaluation of the Effectiveness of Partial Lead Service Line Replacements, (September 2011), *https://www.epa.gov/sdwa/science-advisory-board-evaluation-effectiveness-partial-lead-service-line-replacements* (advising against partial lead service line replacement).

[319] Environmental Protection Agency, *supra* note 188.

[320] Environmental Protection Agency, National Primary Drinking Water Regulations: Lead and Copper Rule Revisions, 86 FR 4198. 40 CFR 141.84, and preamble *at* 4215, January 15, 2021, *https://www.federalregister.gov/d/2020-28691;* scheduled to become effective December 16, 2021, Environmental Protection Agency, 86 FR 31939, *https://www.federalregister.gov/d/2021-12600.*

[321] Eligible uses of funds include those eligible under the Small, Underserved, and Disadvantaged Communities Grant (Section 2104), Reduction in Lead Exposure via Drinking Water Grant Program (Section 2105) and Lead Testing in School and Child Care Program Drinking Water Grant Program (Section 2107).

[322] Such testing and remediation programs would be an eligible use of SLFRF funds given that they

activities such as replacement of faucets, internal plumbing, and fixtures in schools and childcare facilities are also an eligible use of SLFRF funds.

Consistent with the EPA programs, replacement of lead pipes within a home is not eligible under the final rule because the vast majority of lead contamination cases can be solved by replacing lead service lines (including on public and private property) and faucets and fixtures themselves. As such, replacement of lead pipes within a home would not be considered a cost-effective means for achieving the desired level of service and thus would not be a ''necessary'' investment. The provision of bottled water is also not an eligible use of SLFRF funds under this eligible use category, as it is not an investment in infrastructure. However, bottled water in areas with an action level exceedance for lead in water may be an eligible use of SLFRF funds under a separate eligible use category for ''remediation of lead paint and other lead hazards;'' see Assistance to Households in Public Health and Negative Economic Impacts.

Water filtration systems are eligible under the EPA grant programs and the final rule as long as they are installed as a permanent part of a facility's system and not intended for temporary use. Conducting remediation, follow-up monitoring, and conducting public education and outreach about the availability of infrastructure programs, such as water testing and fixture replacement programs funded with SLFRF funds or otherwise, are also eligible projects. Finally, recipients should note that ''remediation of lead paint and other lead hazards'' is a separate eligible use category and a broader range of programs and services may be eligible under that section, including investments that are not infrastructure; see the eligible use for ''remediation of lead paint and other lead hazards'' in section Assistance to Households in Public Health and Negative Economic Impacts.

Dams and Reservoirs

Public Comment: Many commenters requested that Treasury broaden eligibilities to include dams and reservoirs, infrastructure that commenters noted may in its current state be unsafe and could put surrounding communities at risk. Some commenters argued that dams and reservoirs play an important role in providing municipal water supply and water to irrigate farmland, including in areas impacted by recent droughts. Other commenters noted that a large number of dams are currently classified as high-hazard structures, the failure of which would have severe consequences for public safety and the local environment. With respect to reservoirs, commenters articulated that changing climate conditions have necessitated upgrades to reservoir infrastructure to ensure existing facilities can meet the local water needs of a community. Commenters noted that communities facing drought may also need to adjust or enhance reservoirs to maintain adequate water supply.

In contrast, several commenters suggested that infrastructure projects related to dams and reservoirs should not be considered eligible uses of SLFRF funds. These commenters noted that alternate sources of funding exist for dam and reservoir projects and that dams and reservoir infrastructure could result in negative impacts to Tribal communities and negative environmental impacts, including harm to wildlife habitats.

Treasury Response: Treasury understands that many dams and reservoirs in need of rehabilitation are dams and reservoirs whose primary purpose is to provide drinking water. As discussed above, SLFRF funds are available for projects related to the provision of drinking water. Moreover, since issuance of the interim final rule, the EPA has adopted a class deviation from the DWSRF regulations that permits such dam and reservoir rehabilitation projects in certain circumstances.[323] In approving this class deviation, the EPA recognized that many dams used for drinking water are aging and deteriorating and pose a public health risk to communities; that current dam conditions do not meet state safety standards; and that reservoir capacity has diminished and requires dredging to meet drinking water needs of the existing population.

Treasury's final rule provides that funds may be used for rehabilitation of dams and reservoirs if the primary purpose of the dam or reservoir is for drinking water supply and the rehabilitation project is necessary for continued provision of drinking water supply. In considering whether a dam or reservoir project is necessary for the provision of drinking water supply, a recipient may take into consideration future population growth in certain circumstances, as discussed under ''Expansion of Drinking Water Service Infrastructure'' below, but the project must in any case be designed to support no more than a reasonable level of projected increased need. The recipient must also determine that the project is cost-effective, *i.e.,* that there are not significantly superior alternatives that are available, taking into consideration the relative costs and benefits of the project as compared to those alternatives.

This change to the final rule would permit a wide variety of projects.[324] The limitation in the final rule to rehabilitation of existing dams and reservoirs reflects the scope of the EPA class deviation referenced above and Treasury's understanding of the significant need for investments in rehabilitation to address deterioration of dams and the diminished capacity of reservoirs. Further, Treasury expects that in many cases it would be considerably more difficult to demonstrate that construction of a new dam or reservoir would be necessary for the purpose of the provision of drinking water than is the case for rehabilitation of dams and reservoirs already serving that purpose for a particular population, particularly given opportunities to meet drinking water needs through water reuse and conversation efforts. For these reasons, and given that the relatively short period of availability of the funds makes new dam and reservoir construction with these funds less likely, Treasury has limited the scope of the final rule to dam and reservoir rehabilitation projects.

As discussed above, Treasury has determined that ARPA does not authorize the use of SLFRF funds for uses other than the provision of drinking water and the management of wastewater and storm water. As such, the final rule does not include infrastructure projects related to dams and reservoirs as eligible uses of SLFRF funds unless they meet the conditions discussed above.

would help a recipient determine whether an infrastructure project, such as a lead line replacement, is necessary. In contrast, as mentioned above, the costs of continual testing that is part of a drinking water or wastewater facilities' operating costs would not be considered part of an infrastructure project.

[323] *See* EPA, Approval of Class Exception from the Regulatory Prohibitions on the Use of Drinking Water State Revolving Fund for Rehabilitation of Dams and Reservoirs (July 14, 2021), available at *https://www.epa.gov/system/files/documents/2021-07/dwsrf-class-deviation-dam-reservoir-rehab-2021_0.pdf.*

[324] As noted in the EPA's class deviation, examples of dam rehabilitation projects include spillway reconstruction or repair; dam resurfacing, patching, or other structural repairs, including minimal height increases if needed to maintain the structural integrity of the dam; grouting for seepage control or liquefaction remediation (*e.g.,* epoxy resin, asphalt, or rock); repair or replacement of drainage systems; and seismic stability efforts (*e.g.,* anchors). Examples of reservoir rehabilitation projects include sedimentation dredging and reservoir lining.

Public Comment: Several commenters requested that the removal of dams and associated habitat restoration should be eligible uses of SLFRF funds, noting that in some cases, dam removal will improve water quality while removing long-term operational expenses for the recipient.

Treasury Response: Dam removal projects and associated stream and habitat restoration projects are eligible uses of the CWSRF and continue to be eligible under the final rule when the removal implements either a nonpoint source management program plan or a National Estuary Program Comprehensive Conservation and Management Plan or when the removal will provide a water quality benefit. Habitat restoration projects more generally may also be eligible under the CWSRF and the final rule if they constitute a form of stormwater infrastructure.

Expansion of Drinking Water Service Infrastructure

Public Comment: Commenters asked for the ability to use funds for drinking water projects for the purpose of meeting needs arising from future growth, which, given the restrictions applicable to the DWSRF, was not permitted under the interim final rule.

Treasury Response: As provided for in the SDWA, the DWSRF is meant to serve the public health needs of the existing population. The EPA regulation implementing the DWSRF program provides that projects needed primarily to serve future population growth are not eligible uses of the DWSRF. A project that is intended primarily to address public health or regulatory compliance issues for the existing service population may be sized for a ''reasonable'' amount of population growth over the useful life of the project.[325]

ARPA does not include the same limitation as the SDWA. Accordingly, the final rule provides that recipients may use SLFRF funds for projects that are needed to support increased population in certain cases. ARPA limits projects to those investments that are ''necessary.'' As discussed above, Treasury interprets this to mean that the investments must be (1) responsive to an identified need to achieve or maintain an adequate minimum level of service, which for some eligible project categories may include a reasonable projection of increased need, whether due to population growth or otherwise and (2) a cost-effective means for meeting that need, taking into account available alternatives. For this eligible use category, expansion of drinking water service infrastructure, the project must also be projected to be sustainable over its estimated useful life.

Investments must be determined to be necessary when they are initiated. Accordingly, Treasury is clarifying in the final rule that the need identified for a water or sewer project may include a need arising from reasonable expectations of future population growth, provided that it is necessary at the time the investment is initiated for the recipient to make the investment to meet this growth. For example, a recipient expecting increased population during the period of performance may install a drinking water treatment plant to meet that growth. In addition, a recipient expecting increased population growth outside the period of performance may install the treatment plant if the planning and construction timeline for the project would require work to begin during the performance period in order to meet the expected population growth. A recipient may install transmission lines as part of the development of new housing occurring during the period of performance. In this case, the housing development must be in progress; a recipient may not use the SLFRF funds to install a water main, for example, to an undeveloped tract in the expectation that in the future that tract will be developed with housing, because there would be no need for that investment to be made at the time it is initiated.

For the reasons discussed above, if a project is undertaken to address expected growth in population, the project must also be sustainable, meaning that the project can continue providing the adequate minimum level of service for its estimated useful life, taking into account projected impacts of changes to the climate and other expected demands on the source of water. In considering how much of a source of water will be available in the future for the drinking water project, a recipient must consider that a source of water may be drawn upon or otherwise used for other current and expected uses, including use by fish and other wildlife. A drinking water project that is designed to address a growing population cannot be considered a necessary investment if the source of drinking water will cease to be available to meet the population's needs before the end of the estimated useful life of the project. In such a case, a recipient should consider alternative sources for drinking water. See ''Interpretation of Necessary Investments and Water and Sewer Infrastructure'' above for more information.

Non-Federal Matching Requirements for Authorized Bureau of Reclamation Projects

The Infrastructure Investment and Jobs Act amends sections 602(c) and 603(c) of the Social Security Act to add an additional eligible use of SLFRF funds, providing that SLFRF funds ''may be used for purposes of satisfying any non-Federal matching requirement required for [an authorized Bureau of Reclamation project].'' [326]

This amendment permits the use of SLFRF funds to meet non-federal matching requirements of any authorized Bureau of Reclamation project, regardless of whether the underlying project would be an eligible use of SLFRF funds under the water and sewer infrastructure eligible use category. These amendments are effective as of March 11, 2021, as if included in the ARPA at the time of its enactment.[327] Treasury will provide further guidance to recipients on the scope of Bureau of Reclamation water projects and expenses covered by this provision.

Floodplain Management and Flood Mitigation Projects

Public Comment: Several commenters requested that projects to address floodwater, including floodplain management and flood mitigation projects, be included as an eligible use of SLFRF funds. Within this category of floodplain management and flood mitigation infrastructure, several commenters requested that the installation of levees, flood walls, sea walls, elevation projects, dredging, or nature-based flood mitigation projects be included as eligible projects.

Treasury Response: Treasury notes that some floodplain management and flood mitigation infrastructure projects, including green infrastructure designed to protect treatment works from flood waters and flood impact are currently eligible under the CWSRF and therefore continue to be eligible under the final rule.

Treasury has not included floodplain management and flood mitigation projects more generally as eligible under the final rule. Although floodplain management and flood mitigation are functions of many state and local governments, they are not the sort of generally-provided essential services included within the meaning of water

[325] *See* 40 CFR 35.3520(e)(5).

[326] *See* Public Law 117–58, 40909(a)–(b) (Nov. 15, 2021).

[327] *See* Public Law 117–58 § 40909(c).

and sewer projects under the ARPA, as discussed above.

Irrigation

Public Comment: Some commenters requested that irrigation projects be an eligible use because they consider such projects to be critical infrastructure. Several commenters supported this request by noting that irrigation systems may be used to replenish aquifers and recharge wells, in addition to delivering water for irrigation. One commenter also noted that the national irrigation system is antiquated and in need of repair.

Treasury Response: Some irrigation projects were eligible under the interim final rule and continue to be eligible under the final rule as a result of their inclusion as eligible projects under the CWSRF. For example, water efficient irrigation equipment that reduces the runoff of nutrients and implements a management program established under section 319 of the CWA and/or a conservation and management plan under section 320 of the CWA are eligible uses under the CWSRF and therefore continue to be an eligible use of SLFRF funds under the final rule. Likewise, projects to receive and distribute reclaimed water for irrigation systems or other agricultural use are eligible under the CWSRF and therefore continue to be an eligible use under the final rule. Unlike projects for the improvement of irrigation systems generally, these reclaimed water projects are related to wastewater treatment and stormwater management, which are within the scope of the meaning of water and sewer infrastructure for purposes of ARPA.

Treasury considered commenter requests for inclusion of additional irrigation infrastructure and determined that irrigation projects more generally are not permitted under the final rule. Although these types of projects may be water-related infrastructure, they are not the sort of generally-provided essential services included within the meaning of water and sewer projects under ARPA, as discussed above.

Consumer Incentive Programs

Public Comment: One commenter requested that consumer incentive programs in the areas of water use efficiency, conservation, green infrastructure, reuse, and other distributed solutions be an allowable use of SLFRF.

Treasury Response: The DWSRF and CWSRF eligibilities include the development and implementation of incentive and educational programs that address and promote water conservation, source water protection, and efficiency related to infrastructure improvements, *e.g.,* incentives such as rebates to install green infrastructure such as rain barrels or promote other water conservation activities. Treasury clarifies that such project types were eligible under the interim final rule and continue to be eligible under the final rule.

2. Broadband Infrastructure

Under the ARPA, recipient governments may use SLFRF funds to make ''necessary investments in . . . broadband infrastructure.'' In the Supplementary Information to the interim final rule, Treasury interpreted necessary investments in infrastructure as investments ''designed to provide an adequate minimum level of service and [that] are unlikely to be made using private sources of funds.'' Treasury explained that, with respect to broadband specifically, such necessary investments include projects that ''establish [ ] or improve [ ] broadband service to underserved populations to reach an adequate level to permit a household to work or attend school, and that are unlikely to be met with private sources of funds.''

Summary of Interim Final Rule, Public Comments, and Treasury Response

Summary of Interim Final Rule: In implementing the ARPA, the interim final rule provided that eligible broadband infrastructure investments are limited to those that are designed to provide service to unserved or underserved households or businesses, defined as those that lack access to a wireline connection capable of reliably delivering at least minimum speeds of 25 Mbps download and 3 Mbps upload. The interim final rule also provided that eligible projects under the SLFRF are limited to those that are designed to deliver, upon project completion, service that reliably meets or exceeds symmetrical upload and download speeds of 100 Mbps. In instances where it would not be practicable for a project to deliver such service speeds because of the geography, topography, or excessive costs associated with such a project, the interim final rule provided that the project would be required to be designed to deliver, upon project completion, service that reliably meets or exceeds 100 Mbps download speed and between at least 20 Mbps and 100 Mbps upload speeds and be scalable to a minimum of 100 Mbps symmetrical for download and upload speeds.

In addition, Treasury, in the Supplementary Information to the interim final rule, encouraged recipients to pursue a number of other objectives. First, Treasury encouraged recipients to prioritize investments in fiber-optic infrastructure wherever feasible and focus on projects that deliver a physical broadband connection by prioritizing projects that achieve last-mile connections. Second, Treasury encouraged recipients to integrate affordability options into their program design. Third, Treasury encouraged recipients to prioritize support for local networks owned, operated, or affiliated with local governments, nonprofits, and cooperatives. Fourth, Treasury encouraged recipients to avoid investing in locations with existing agreements to build reliable wireline service with minimum speeds of 100 Mbps download and 20 Mbps upload by December 31, 2024, in order to avoid duplication of efforts and resources. Finally, following release of the interim final rule, Treasury provided further guidance clarifying some aspects of broadband infrastructure eligibility, specifically on flexibility for recipients to determine eligible areas to be served,[328] middle-mile projects,[329] pre-project development costs,[330] broadband connections to schools or libraries,[331] and the applicability of the National Environmental Policy Act (NEPA) and the Davis-Bacon Act.[332]

Summary of Public Comments: Treasury received several comments on the interim final rule's requirements regarding eligible areas for investment and build-to speed standards, as well as Treasury's encouragements in the Supplementary Information of the interim final rule. Many commenters found the interim final rule's requirement to limit projects to those designed to provide service to unserved or underserved households or businesses to be appropriately focused on hard-to-reach areas. In contrast, other commenters argued that this requirement was too restrictive and that it would limit the ability for some recipients, particularly local governments, to invest in broadband infrastructure.

Separately, some commenters supported the interim final rule's requirement that eligible projects be built to reliable speeds of 100 Mbps symmetrical, with an exception for areas where it was impracticable, and encouragement that projects be built with fiber-optic infrastructure, while a

[328] *See FAQ 6.8, 6.9, 6.11.* Coronavirus State and Local Fiscal Recovery Funds, Frequently Asked Questions, as of July 19, 2021; *https://home.treasury.gov/system/files/136/SLFRPFAQ.pdf.*

[329] *See FAQ 6.10. Id.*

[330] *See FAQ 6.12. Id.*

[331] *See FAQ 6.16. Id.*

[332] *See FAQ 6.4, 6.17. Id.*

few others argued that the interim final rule should remain technology-neutral and that lower speed standards would be more appropriate for today's usage needs.

Summary of Treasury Response: In response to the comments, the final rule expands eligible areas for investment by requiring recipients to invest in projects designed to provide service to households and businesses with an identified need for additional broadband infrastructure investment, which would include but not be limited to a lack of broadband service reliably delivering certain speeds. In addition, as discussed further below, the final rule further supports the expansion of affordable access to broadband service for households by requiring that recipients use a provider that participates in a qualifying affordability plan. Treasury encourages recipients to prioritize projects that are designed to provide service to locations not currently served by a wireline connection that reliably delivers at least 100 Mbps of download speed and 20 Mbps of upload speed.

The final rule maintains the interim final rule's requirement that eligible projects be designed to, upon completion, reliably meet or exceed symmetrical 100 Mbps download and upload speeds. As was the case under the interim final rule, in cases where it is not practicable, because of the excessive cost of the project or geography or topography of the area to be served by the project, eligible projects may be designed to reliably meet or exceed 100 Mbps download speed and between at least 20 Mbps and 100 Mbps upload speed and be scalable to a minimum of 100 Mbps download speed and 100 Mbps upload speed. Treasury continues to encourage recipients to prioritize investments in fiber-optic infrastructure wherever feasible and to focus on projects that will achieve last-mile connections, whether by focusing directly on funding last-mile projects or by ensuring that funded middle-mile projects have commitments in place to support new and/or improved last-mile service.

The final rule requires recipients to address the affordability needs of low-income consumers in accessing broadband networks funded by SLFRF, given that such a project cannot be considered a necessary investment in broadband infrastructure if it is not affordable to the population the project would serve. Recipients must require the service provider for a completed broadband infrastructure investment project that provides service to households to either participate in the Federal Communications Commission's (FCC) Affordable Connectivity Program (ACP), or otherwise provide access to a broad-based affordability program to low-income consumers in the proposed service area of the broadband infrastructure that provides benefits to households commensurate with those provided under the ACP.

Treasury also recognizes the importance of affordable broadband access for all consumers beyond those that are low-income. As part of their project selection process, recipients are encouraged to consult with the community on the general affordability needs of the target markets in the proposed service area. Additionally, recipients are encouraged to require that services provided by a broadband infrastructure project include at least one low-cost option offered without data usage caps and at speeds that are sufficient for a household with multiple users to simultaneously telework and engage in remote learning. Recipients will be required to report speed, pricing, and any data allowance information as part of mandatory reporting to Treasury.

The final rule also clarifies that subsidies to households and communities impacted by the pandemic to access the internet, broadband adoption programs, digital literacy programs, and device programs are eligible programs to respond to the public health and negative economic impacts of the pandemic under sections 602(c)(1)(A) and 603(c)(1)(A). See section Assistance to Households in Negative Economic Impacts.

Treasury continues to encourage recipients to prioritize support for broadband networks owned, operated by, or affiliated with local governments, nonprofits, and cooperatives. In addition, to the extent recipients are considering deploying broadband to locations where there are existing enforceable federal or state funding commitments for reliable service at speeds of at least 100 Mbps download speed and 20 Mbps upload speed, recipients must ensure that SLFRF funds are designed to address an identified need for additional broadband investment that is not met by existing federal or state funding commitments. Recipients must also ensure that SLFRF funds will not be used for costs that will be reimbursed by the other federal or state funding streams. Further, Treasury highlights that recipients are subject to the prohibition on use of grant funds to procure or obtain certain telecommunications and video surveillance services or equipment as outlined in 2 CFR 200.216 and 2 CFR 200.471 and clarifies that modernization of cybersecurity for existing and new broadband networks are eligible uses of funds under sections 602(c)(1)(D) and 603(c)(1)(D).

Finally, this Supplementary Information to the final rule incorporates and confirms guidance issued by Treasury following the interim final rule regarding middle-mile projects,[333] pre-project development costs,[334] broadband connections to schools or libraries,[335] and applicability of the National Environmental Policy Act (NEPA) and Davis-Bacon Act.[336]

The remainder of this section provides additional details on the final rule. Specifically, these sections address: (1) Eligible areas for investment; (2) build-to speed standards; (3) affordability; (4) public networks; (5) duplication of efforts and resources; (6) cybersecurity; and (7) use of funds to meet non-federal match under the Infrastructure Investment and Jobs Act.

Eligible Areas for Investment

The interim final rule limited eligible broadband investments to projects focused on delivering service to unserved or underserved locations, defined as households or businesses that lack access to a wireline connection capable of reliably delivering at least minimum speeds of 25 Mbps download and 3 Mbps upload. This targeted approach was generally consistent with certain speed thresholds used in other federal programs to identify eligible areas for federal investment in broadband infrastructure, such as the FCC's Rural Digital Opportunity Fund (RDOF) program and the National Telecommunication and Information Administration's (NTIA's) Broadband Infrastructure Program, and generally aligns with the FCC's benchmark for an ''advanced telecommunications capability'' for wireline broadband services.

Public Comment: Many commenters discussed the disadvantages of such an approach. Some commenters, including several local government recipients, argued that limiting investments to locations without access to reliable wireline 25/3 Mbps [337] was too

[333] *See FAQ 6.10.* Coronavirus State and Local Fiscal Recovery Funds, Frequently Asked Questions, as of July 19, 2021; *https://home.treasury.gov/system/files/136/SLFRPFAQ.pdf.*

[334] *See FAQ 6.12. Id.*

[335] *See FAQ 6.16. Id.*

[336] *See FAQ 6.4, 6.17. Id.*

[337] In the remainder of this Supplementary Information, ''25/3 Mbps'' refers to broadband infrastructure that is designed to reliably meet or exceed at least 25 Mbps download speeds and 3

restrictive because some urban jurisdictions are already mostly or entirely covered by a network with at least 25/3 Mbps speeds yet lack widespread broadband adoption for various reasons. Commenters suggested that recipients would benefit from greater flexibility to provide necessary investments in broadband access in areas that are nominally covered by speeds of at least 25/3 Mbps, such as to provide affordable broadband access in low-income areas or to address service quality and reliability issues. Further, commenters argued that Treasury's requirement that new projects meet minimum reliable speeds of 100 Mbps symmetrical was inconsistent with the requirement that broadband infrastructure projects focus on those with access to significantly lower speeds, and further noted that several states have already expanded the focus of their broadband programs beyond those without reliable access to speeds of 25/3 Mbps. Commenters argued that if the limitation to unserved and underserved households and businesses were maintained, the definition of unserved and underserved households and businesses should be revised to include households and businesses currently served by higher standards. Commenters proposed a number of alternative cutoff speeds, including 25/25 Mbps, 50/10 Mbps, and 100 Mbps symmetrical. Others expressed support for providing flexibility for recipients to make their own determination on eligible areas for investment. These commenters referenced studies indicating that 25/3 Mbps is inadequate for today's modern household or business needs.

Some commenters advocated for unserved and underserved areas to be prioritized while providing flexibility for recipients to serve areas beyond those designated as unserved or underserved. Reflecting the perceived restrictiveness of the interim final rule approach, some commenters asked for assurance that projects conducted under other categories of SLFRF eligible uses, specifically to respond to the public health and negative economic impacts of the pandemic under sections 602(c)(1)(A)–(C) and 603(c)(1)(A)–(C), were not barred by the presence of 25/3 Mbps service, including ''gap networks,'' which are networks designed to offer low-cost or no-cost internet access for lower-income households with low broadband adoption rates.

Commenters suggested additional factors to be incorporated in the consideration of locations that are eligible to be served. Many commenters suggested that affordability should be considered a key factor when determining whether a community has access to broadband, as the presence of 25/3 Mbps service does not necessarily mean the service is financially accessible to the area's residents. Commenters noted that surveys indicate that affordability, not lack of coverage, is the most significant barrier for most Americans who do not have robust broadband service in their households. Some advocated that the final rule allow for investments in areas with existing reliable wireline access at or above 25/3 Mbps as long as existing broadband service has been unaffordable for a certain segment of the population; others advocated that Treasury presume eligibility when investments are made in certain areas, such as Qualified Census Tracts or neighborhoods with persistent poverty, or are made by Tribal governments. Separately, some commenters noted that Treasury should provide more clarification on what constitutes a ''reliabl[e]'' connection, including providing details as to latency, jitter, and other technical specifications that would meet that standard, and what it means for certain technologies, such as copper and other outdated technologies, to be deemed presumptively unreliable.

Other commenters supported the interim final rule's approach on eligible areas for investment or suggested tightening eligibility even further. They argued that higher speed thresholds beyond 25/3 Mbps would likely lead to investments in or building of new broadband infrastructure in areas already served by broadband at speeds these commenters considered sufficient; these areas, commenters suggested, are less in need of federal assistance and permitting investments here could divert funding away from rural areas to more densely populated areas.

Treasury Response: The final rule expands eligible areas for investment by requiring recipients to invest in projects designed to provide service to households and businesses with an identified need for additional broadband infrastructure investment. Recipients have flexibility to identify a need for additional broadband infrastructure investment: Examples of need include lack of access to a connection that reliably meets or exceeds symmetrical 100 Mbps download and upload speeds, lack of affordable access to broadband service, or lack of reliable broadband service. Recipients are encouraged to prioritize projects that are designed to provide service to locations not currently served by a wireline connection that reliably delivers at least 100 Mbps of download speed and 20 Mbps of upload speed, as many commenters indicated that those without such service constitute hard-to-reach areas in need of subsidized broadband deployment.

Households and businesses with an identified need for additional broadband infrastructure investment do not have to be the only ones in the service area served by an eligible broadband infrastructure project. Indeed, serving these households and businesses may require a holistic approach that provides service to a wider area, for example, in order to make ongoing service of certain households or businesses within the service area economical.

Consistent with further guidance issued by Treasury,[338] in determining areas for investment, recipients may choose to consider any available data, including but not limited to documentation of existing broadband internet service performance, federal and/or state collected broadband data, user speed test results, interviews with community members and business owners, reports from community organizations, and any other information they deem relevant.

In evaluating such data, recipients may take into account a variety of factors, including whether users actually receive internet service at or above the speed thresholds at all hours of the day, whether factors other than speed such as latency, jitter, or deterioration of the existing connections make their user experience unreliable, and whether the existing service is being delivered by legacy technologies, such as copper telephone lines (typically using Digital Subscriber Line technology) or early versions of cable system technology (DOCSIS 2.0 or earlier),[339] and other factors related to

Mbps upload speeds. ''100 Mbps'' symmetrical refers to broadband infrastructure that is designed to reliably meet or exceed at least 100 Mbps download speeds and 100 Mbps upload speeds.

[338] *See FAQ 6.11.* Coronavirus State and Local Fiscal Recovery Funds, Frequently Asked Questions, as of July 19, 2021; *https://home.treasury.gov/system/files/136/SLFRPFAQ.pdf.*

[339] Legacy technologies such as copper telephone lines (typically using Digital Subscriber Line technology) and early versions of cable system technology (DOCSIS 2.0 or earlier) typically lag on speeds, latency, and other factors, as compared to more modern technologies like fiber-optic. *See, e.g., https://www.fcc.gov/sites/default/files/tech_transitions_network_upgrades_that_may_affect_your_service.pdf* (comparing copper to fiber and noting that copper wire networks have ''limited speeds,'' are ''susceptible to signal interference/loss,'' and have a ''relatively short life''); *https://*

Continued

the services to be provided by the project. In addition, recipients may consider the actual experience of current broadband customers when making their determinations; whether there is a provider serving the area that advertises or otherwise claims to offer broadband at a given speed is not dispositive.

Build-To Speed Standards

The interim final rule provided that a recipient may use funds to make investments in broadband infrastructure that is designed to, upon completion, reliably meet or exceed symmetrical 100 Mbps download and upload speeds. In cases where it is not practicable, because of the excessive cost of the project or the geography or topography of the area to be served by the project, eligible projects may be designed to reliably meet or exceed 100 Mbps download speed and between at least 20 Mbps and 100 Mbps upload speed, so long as it is scalable to a minimum of 100 Mbps download speed and 100 Mbps upload speed. Relatedly, Treasury in the **SUPPLEMENTARY INFORMATION** to the interim final rule encouraged recipients to prioritize investments in fiber-optic infrastructure wherever feasible and to prioritize projects that achieve last-mile connections.

Public Comment: Many commenters discussed the advantages of setting minimum symmetrical download and upload speeds of reliable 100 Mbps as the speed threshold for new projects. Some commenters indicated support for the interim final rule's standard as it takes into account growing demands on internet use resulting from pandemic broadband usage and suggested that such a standard will help to ensure that networks built with SLFRF funds remain valuable for years to come, even as demands continue to accelerate, particularly on upload speeds. Some also indicated that the interim final rule standard has the effect of prioritizing the use of fiber-optic infrastructure to deliver such speeds, which some noted was a ''gold standard'' future-proof technology, although some commenters noted that other technologies like fixed wireless have been shown to deliver such speeds in certain circumstances.

Other commenters suggested that 100 Mbps symmetrical speeds were unnecessary given current broadband usage needs and that such high standards may have the potential to slow down expansion to unserved or underserved rural areas. Some argued that setting this symmetrical threshold may limit the type of technologies that can be used, thereby decreasing competition and limiting flexibility to recipients whose communities might be better served by technologies such as wireless solutions or inexpensive gap networks. Commenters suggested alternate minimum speeds, ranging from 25/3 Mbps (which some argued best balances reaching all communities and maximizing the impact of federal funds) to 100/20 Mbps (which some argued best serves the typical broadband usage patterns of households and businesses, including new pandemic-driven needs). A few commenters suggested a higher minimum speed, such as gigabit speeds, advocating that such speeds were necessary for a network to last at least a decade.

Many commenters supported the interim final rule's lower speed standards for projects where it is impracticable to meet minimum reliable speeds of 100 Mbps symmetrical, as it provides flexibility for recipients to invest in hard-to-reach areas, such as those in mountainous regions. A few commenters indicated that Treasury should more clearly define the characteristics of a location eligible for this exception. Some indicated that the minimum standard for all new projects should be 100 Mbps symmetrical. In contrast, others argued that scalability to 100 Mbps symmetrical should not be a requirement to meet today's demands, particularly in hard-to-reach areas.

Some commenters requested that Treasury clarify eligibility for middle-mile projects as these projects potentially provide connectivity to far-reaching areas, while other commenters suggested that last-mile projects generally require more capital investment and are therefore most in need of government support.

Treasury Response: The final rule maintains the interim final rule's requirement that eligible projects be designed to, upon completion, reliably meet or exceed symmetrical 100 Mbps download and upload speeds, with the interim final rule's exception for projects where it is impracticable to build to such speeds due to excessive cost, geography, or topography of the area to be served by the project. Given the build time associated with broadband infrastructure projects, these standards will enable SLFRF funds to fund lasting infrastructure that will be able to accommodate increased network demand once the network is complete,[340] while providing flexibility for certain locations to meet lower speed standards where 100 Mbps symmetrical speeds are impracticable.

To illustrate the accelerating need for higher upload speeds, by one measure, mean upload speeds as of October 2021 increased to 75.21 Mbps as compared to 62.11 Mbps a year earlier.[341] Jurisdictions are increasingly responding to the growing demands of their communities for high speeds; for example, Illinois requires 100 Mbps symmetrical service as the construction standard for their state broadband grant programs. The 100 Mbps symmetrical standard accounts for increased pandemic internet usage and provides adequate upload speeds for individuals and businesses to accommodate interactive applications such as virtual learning and videoconferencing, while also helping ensure that funding is responsibly used to provide a true and lasting benefit for years to come. Treasury continues to encourage recipients to prioritize investments in fiber-optic infrastructure wherever feasible, as such advanced technology enables the next generation of application solutions for all communities and is capable of delivering superior, reliable performance and is generally most efficiently scalable to meet future needs.[342] In designing these projects, recipients should ensure that the broadband infrastructure provides ''reliable'' service at required speeds and are not required to rely on providers' advertised speeds in their assessments.

Consistent with further guidance issued by Treasury,[343] while recipients are permitted to make investments in ''middle-mile'' connections that otherwise satisfy the requirements of the final rule, Treasury continues to encourage recipients to focus on

data.fcc.gov/download/measuring-broadband-america/2020/2020-Fixed-Measuring-Broadband-America-Report.pdf (comparing fiber with DSL and cable technologies on a number of dimensions); *https://www.eff.org/wp/case-fiber-home-today-why-fiber-superior-medium-21st-century-broadband* (providing a technical background comparing fiber technology to other legacy technologies).

[340] Using the Federal Communications Commission (FCC) Broadband Speed Guide, a household with two telecommuters and two to three remote learners today is estimated to need 100 Mbps download to work simultaneously. *See* Federal Communications Commission, Broadband Speed Guide, available at *https://www.fcc.gov/consumers/guides/broadband-speed-guide* (last visited October 28, 2021).

[341] United States' Mobile and Broadband Internet Speeds—Speedtest Global Index, available at *https://www.speedtest.net/global-index/united-states#fixed.*

[342] Bennett Cyphers, The Case for Fiber to the Home, Today: Why Fiber is a Superior Medium for 21st Century Broadband, Electronic Frontier Foundation (October 16, 2019), *https://www.eff.org/wp/case-fiber-home-today-why-fiber-superior-medium-21st-century-broadband.*

[343] *See FAQ 6.10,* Coronavirus State and Local Fiscal Recovery Funds, Frequently Asked Questions, as of July 19, 2021; *https://home.treasury.gov/system/files/136/SLFRPFAQ.pdf.*

projects that will achieve last-mile connections—whether by focusing directly on funding last-mile projects or by ensuring that funded middle-mile projects have commitments in place to support new and/or improved last-mile service.

Affordability

The interim final rule encouraged recipients to consider ways to integrate affordability options into their program design but did not require recipients to take particular actions. The interim final rule also provided that assisting households with internet access and digital literacy is an eligible use of SLFRF funds under sections 602(c)(1)(A) and 603(c)(1)(A) to respond to the negative economic impacts of COVID–19.

Public Comment: Many commenters suggested that Treasury provide recipients with a broader set of tools to tackle what the commenters characterized as an affordability crisis in the broadband sector. As noted above, some commenters proposed that Treasury consider affordability when determining whether an area is unserved or underserved by broadband. Some commenters indicated that the final rule should allow for the construction of broadband networks in low-income neighborhoods including low-cost or no-cost gap networks, even in areas with existing service at the speeds required under the interim final rule. Other commenters voiced support for direct subsidies to low-income communities to afford broadband service, which would provide additional incentives for providers to serve these communities.

Treasury Response: In response to many commenters that highlighted the importance of affordability in providing meaningful access to necessary broadband infrastructure, the final rule provides additional requirements to address the affordability needs of low-income consumers in accessing broadband networks funded by SLFRF. Recipients must require the service provider for a completed broadband infrastructure investment project that provides service to households to:

- Participate in the Federal Communications Commission's (FCC) Affordable Connectivity Program (ACP); or
- Otherwise provide access to a broad-based affordability program to low-income consumers in the proposed service area of the broadband infrastructure that provides benefits to households commensurate with those provided under the ACP.

Recipients must require providers to participate in or provide access to these programs through the life of the ACP. This requirement will no longer apply once the SLFRF-funded broadband infrastructure is no longer in use.

Furthermore, Treasury also recognizes the importance of affordable broadband access for all consumers beyond those that are low income. As part of their project selection process, recipients are encouraged to consult with the community on the general affordability needs of the target markets in the proposed service area. Additionally, recipients are encouraged to require that services provided by a broadband infrastructure project include at least one low-cost option offered without data usage caps at speeds that are sufficient for a household with multiple users to simultaneously telework and engage in remote learning. Treasury will require recipients to report speed, pricing, and any data allowance information as part of their mandatory reporting to Treasury.

Further, Treasury is clarifying that, as a response to the public health and negative economic impacts of the pandemic, recipients may provide households and communities impacted by the pandemic with subsidies to help pay for internet service, digital literacy programs, broadband adoption programs, and device programs that provide discounted or no-cost devices for low-income households to access the internet. For further discussion of this eligible use category, see the section internet Assistance in Assistance to Households in Public Health and Negative Economic Impacts.

Public Networks

The interim final rule encouraged recipients to prioritize support for local networks owned, operated, or affiliated with local governments, nonprofits, and cooperatives.

Public Comment: Many commenters voiced their support for Treasury's encouragement that recipients work with governmental or community entities to establish local networks, arguing that they have been shown to effectively provide broadband access to areas that would otherwise be left with unaffordable or insufficient service. These commenters suggested that, since these entities are less driven by financial returns to investment than private providers, in some circumstances they may be able to provide robust service at a lower price as compared to private providers, along with potentially increasing local competition in a service area.

Other commenters argued against Treasury's encouragement, remarking that private businesses have a robust track record of serving hard-to-reach customers. These commenters argued that commercial providers have greater technical and operational expertise in deploying and operating broadband networks and may be able to construct broadband networks with greater efficiency. Additionally, some commenters argued that providing what they considered an unfair competitive advantage for government- or community-owned or operated networks may hurt consumers over time.

Treasury Response: The final rule maintains the interim final rule's encouragement for recipients to prioritize support for broadband networks owned, operated by, or affiliated with local governments, nonprofits, and cooperatives, given that these networks have less pressure to generate profits and a commitment to serve entire communities.[344] This encouragement provides flexibility for recipients to select providers that best fit their needs, while noting the critical role that networks owned, operated, or affiliated with local governments and community organizations can play in providing sufficient coverage, affordable access, or increased competition in the broadband sector.

Duplication of Efforts and Resources

Public Comment: Some commenters raised concerns that Treasury's encouragement in the interim final rule that recipients avoid funding projects in locations with an existing agreement to provide service that reliably delivers 100/20 Mbps by December 31, 2024 was too restrictive. Commenters noted that many plans do not always lead to a successful and complete deployment, as issues may arise that prevent such infrastructure from deploying on time or at all, and that several existing federal grants were designed and awarded before the onset of the COVID–19 pandemic and do not meet the critical broadband needs highlighted by the pandemic. Other commenters argued that Treasury's encouragement to avoid duplication of resources should be strengthened, as investing in areas with existing agreements would be an inefficient duplication of efforts.

Treasury Response: Given the final rule's revised requirements on eligible areas for investment, this

[344] The Executive Office of the President, Community-Based Broadband Solutions (January 2015), *https://obamawhitehouse.archives.gov/sites/default/files/docs/community-based_broadband_report_by_executive_office_of_the_president.pdf.*

Supplementary Information to the final rule also modifies the interim final rule's requirements around duplication of resources. Since recipients must ensure that the objective of the broadband projects is to serve locations with an identified need for additional broadband investment, the final rule provides that, to the extent recipients are considering deploying broadband to locations where there are existing enforceable federal or state funding commitments for reliable service at speeds of at least 100 Mbps download speed and 20 Mbps upload speed, recipients must ensure that SLFRF funds are designed to address an identified need for additional broadband investment that is not met by existing federal or state funding commitments. Recipients must also ensure that SLFRF funds will not be used for costs that will be reimbursed by the other federal or state funding streams.

Cybersecurity

Public Comment: Several commenters expressed concern about the cybersecurity of new broadband projects funded with SLFRF funds and urged Treasury to prohibit recipients from utilizing SLFRF funds to procure equipment from certain providers from the People's Republic of China that may pose a national security risk. These commenters pointed out that the 2019 National Defense Authorization Act (NDAA) and the FCC's Universal Service Fund have similar prohibitions. Further, several commenters requested that Treasury explicitly include cybersecurity costs as an eligible use for broadband infrastructure investment given the growing threat of cyber-attacks and cyber-intrusions into the nation's infrastructure.

Treasury Response: Treasury highlights that investments in broadband infrastructure must be carried out in ways that comply with applicable federal laws, including the 2019 NDAA. Among other requirements contained in 2 CFR part 200, 2 CFR 200.216 implements certain provisions of the NDAA and contains prohibitions on the use of federal financial assistance to procure or obtain certain telecommunications and video surveillance services or equipment provided or produced by designated entities, including certain entities owned or controlled by the People's Republic of China. In addition, 2 CFR 200.471 provides that certain telecommunications and video surveillance costs associated with 2 CFR 200.216 are unallowable.

Further, the final rule allows for modernization of cybersecurity for existing and new broadband infrastructure as an eligible use under sections 602(c)(1)(D) and 603(c)(1)(D) as such investments are necessary for the reliability and resiliency of broadband infrastructure.[345] Recipients may provide necessary investments in cybersecurity, including modernization of hardware and software, for existing and new broadband infrastructure regardless of their speed delivery standards. The final rule maintains the interim final rule's provision that allows for broader modernization of cybersecurity, including hardware, software, and protection of critical infrastructure as an eligible provision of government services, to the extent of revenue loss due to the pandemic, under sections 602(c)(1)(C) and 603(c)(1)(C).

Use of Funds To Meet Non-Federal Match Under the Infrastructure Investment and Jobs Act

The Infrastructure Investment and Jobs Act specifies that, except as otherwise provided, an entity using funding under section 60102 of the law for broadband deployment ''shall provide, or require a subgrantee to provide, a contribution, derived from non-Federal funds (or funds from a Federal regional commission or authority) . . . of not less than 25 percent of project costs.'' [346] It further states that the matching contribution may include funds provided to an eligible entity or subgrantee under the American Rescue Plan Act for the purpose of deployment of broadband service, which includes funds provided under the SLFRF program.

SLFRF and the program established under section 60102 of the Infrastructure Investment and Jobs Act are separate programs with separate requirements. While section 60102 allows states and other eligible entities to use SLFRF funds as the source of matching funds for broadband deployment, the requirements of the SLFRF program still apply. As such, recipients that use SLFRF funds to meet the section 60102 matching requirement will continue to be subject to the requirements of the SLFRF program.

[345] For more on the importance of cybersecurity to the reliability and resiliency of broadband networks, see: Federal Communications Commission, *https://docs.fcc.gov/public/attachments/FCC-10-63A1.doc;* Brookings Institute, Protecting the Cybersecurity of America's Networks (February 11, 2021), *https://www.brookings.edu/blog/techtank/2021/02/11/protecting-the-cybersecurity-of-americas-networks/.*

[346] *See* Infrastructure Investment and Jobs Act, Public Law 117–58 (2021).

III. Restrictions on Use

While recipients have considerable flexibility to use funds to address the diverse needs of their communities, some restrictions on use of funds apply. The ARPA includes two statutory provisions that further define the boundaries of the statute's eligible uses. First, section 602(c)(2)(A) of the Social Security Act provides that states and territories may not ''use the funds . . . to either directly or indirectly offset a reduction in . . . net tax revenue . . . resulting from a change in law, regulation, or administrative interpretation during the covered period that reduces any tax . . . or delays the imposition of any tax or tax increase.'' Second, sections 602(c)(2)(B) and 603(c)(2) prohibit all recipients, except Tribal governments, from using funds for deposit into any pension fund. These restrictions support use of funds only for the congressionally permitted purposes described in the Eligible Uses section by providing a backstop against the use of funds for purposes outside of the eligible use categories provided for in the statute.

In addition to the restrictions on use of funds provided for in the ARPA statute, the interim final rule noted that several uses of funds would be ineligible under any eligible use category, including as a response to the public health and negative economic impacts of the pandemic or as a ''government service'' under the revenue loss eligible use category. Specifically, use of funds for debt service, to replenish financial reserves, or to satisfy an obligation arising from a judicial settlement or judgment were ineligible uses of funds under the eligible use categories for public health and negative economic impacts and revenue loss. These restrictions apply to all recipients.

Recipients should note that restrictions on use of funds for debt service, to replenish financial reserves, or to satisfy an obligation arising from a judicial settlement or judgment apply to all eligible use categories, not just the eligible use categories in which they were discussed in the interim final rule.

Recipients are also subject to other restrictions on use of funds in the ARPA, the Award Terms and Conditions, and other federal laws. As discussed further below, uses of funds may not conflict with the overall statutory purpose of the ARPA to reduce the spread of COVID–19. Per the Award Terms and Conditions, recipients must adopt and abide by policies to prevent conflicts of interest. Finally, recipients are reminded that other federal laws

also apply to uses of funds, including environmental and civil rights laws.

To enhance clarity, this **SUPPLEMENTARY INFORMATION** for the final rule consolidates these restrictions on use of funds into one section and makes clear that they apply to all eligible use categories and any use of funds under the program by recipients to whom each specific restriction applies.

This section discusses the aforementioned restrictions, public comments received, and Treasury's response to these comments. For clarity, Treasury has divided the following discussion into (A) statutory restrictions under the ARPA, which include (1) offsetting a reduction in net tax revenue, and (2) deposits into pension funds, and (B) other restrictions on use, which include (1) debt service and replenishing reserves, (2) settlements and judgments, and (3) general restrictions.

A. Ineligible Uses of Funds Under the ARPA Statute

1. Offset a Reduction in Net Tax Revenue

For states and territories (recipient governments [347]), section 602(c)(2)(A)—the offset provision—prohibits the use of SLFRF funds to directly or indirectly offset a reduction in net tax revenue resulting from a change in law, regulation, or administrative interpretation [348] during the covered period. If a state or territory uses SLFRF funds to offset a reduction in net tax revenue resulting from a change in law, regulation, or interpretation, the ARPA provides that the state or territory must repay to Treasury an amount equal to the lesser of (i) the amount of the applicable reduction attributable to the impermissible offset and (ii) the amount of SLFRF funds received by the state or territory. A state or territory that uses SLFRF funds to offset a reduction in net tax revenue does not forfeit its entire allocation of SLFRF funds (unless it misused the full allocation to offset a reduction in net tax revenue) or any non-SLFRF funding.

The interim final rule implements these conditions by establishing a framework for states and territories to determine the cost of changes in law, regulation, or interpretation that reduce tax revenue and to identify and value the sources of funds that will offset—*i.e.,* cover the cost of—any reduction in net tax revenue resulting from such changes. The interim final rule recognizes three sources of funds that may offset a reduction in net tax revenue other than SLFRF funds: Organic revenue growth, increases in revenue due to policy changes (*e.g.,* an increase in a tax rate), and certain cuts in spending.

Specifically, the interim final rule establishes a step-by-step process for determining whether, and the extent to which, SLFRF funds have been used to offset a reduction in net tax revenue, based on information reported by the recipient government:

- First, each year, each recipient government will identify and value the changes in law, regulation, or interpretation that would result in a reduction in net tax revenue, as it would in the ordinary course of its budgeting process. The sum of these values in the year for which the government is reporting is the amount it needs to ''pay for'' with sources other than SLFRF funds (total value of revenue reducing changes).
- Second, the interim final rule recognizes that it may be difficult to predict how a change would affect net tax revenue in future years and, accordingly, provides that if the total value of the changes in the year for which the recipient government is reporting is below a de minimis level, as discussed below, the recipient government need not identify any sources of funding to pay for revenue reducing changes and will not be subject to recoupment.
- Third, a recipient government will consider the amount of actual tax revenue recorded in the year for which it is reporting. If the recipient government's actual tax revenue is greater than the amount of tax revenue received by the recipient for the fiscal year ending 2019, adjusted annually for inflation, the recipient government will not be considered to have violated the offset provision because there will not have been a reduction in net tax revenue.
- Fourth, if the recipient government's actual tax revenue is less than the amount of tax revenue received by the recipient government for the fiscal year ending 2019, adjusted annually for inflation, in the reporting year the recipient government will identify any sources of funds that have been used to permissibly offset the total value of covered tax changes other than SLFRF funds. These are:
  - State or territory tax changes that would increase any source of general fund revenue, such as a change that would increase a tax rate; and
  - Spending cuts in areas not being replaced by SLFRF funds.

The recipient government will calculate the value of revenue reduction remaining after applying these sources of offsetting funding to the total value of revenue reducing changes—that is, how much of the tax change has not been paid for. The recipient government will then compare that value to the difference between the baseline and actual tax revenue. A recipient government will not be required to repay to Treasury an amount that is greater than the recipient government's actual tax revenue shortfall relative to the baseline (*i.e.,* fiscal year 2019 tax revenue adjusted for inflation). This ''revenue reduction cap,'' together with Step 3, ensures that recipient governments can use organic revenue growth to offset the cost of revenue reductions.

- Finally, if there are any amounts that could be subject to recoupment, Treasury will provide notice to the recipient government of such amounts along with an explanation of such amounts. This process is discussed in greater detail in section Remediation and Recoupment of this Supplementary Information.

Together, these steps allow Treasury to identify the amount of reduction in net tax revenue that both is attributable to covered changes and has been directly or indirectly offset with SLFRF funds.

Overview of Comments: Many commenters supported the framework established under the interim final rule. These commenters argued that the offset provision, and the interim final rule's implementation of the offset provision, was essential to ensuring SLFRF funds are used in a manner consistent with the statute's defined eligible uses and, in particular, to support the use of SLFRF funds to build public sector capacity. Several commenters argued that the framework should be made more restrictive; for example, some comments advocated that the offset provision be applied to local governments.

Other commenters argued that the offset provision and the interim final rule's implementation of the offset provision is too restrictive, with some asserting that the offset provision prohibits states from making changes to reduce taxes. Many of these commenters argued that the offset provision presents constitutional concerns. These commenters asserted that the offset provision is ambiguous and the restriction is unrelated to the purpose of the ARPA. These commenters also

[347] In this sub-section, ''recipient governments'' refers only to states and territories. In other sections, ''recipient governments'' refers more broadly to eligible governments receiving funding from the SLFRF.

[348] For brevity, this phrase is referred to as ''changes in law, regulation, or interpretation'' for the remainder of this **SUPPLEMENTARY INFORMATION.**

argued that the generous amount of SLFRF funds provided to those governments gave recipient governments little choice as to whether to accept the SLFRF funds and, as a result, the offset provision is coercive. In describing these concerns and arguments, several of these commenters referenced litigation regarding the offset provision.[349] Many of these commenters also expressed concern regarding the interim final rule's implementation of the offset provision. Some of these commenters argued that Treasury lacked the authority to implement the provision, asserting that the significance of the provision required Congress to make an explicit delegation of rulemaking authority and provide clearer principles by which Treasury should implement the provision. Finally, one commenter argued that the offset provision should only apply if the recipient expressly and intentionally uses SLFRF funds to offset a reduction in revenue, arguing that the term ''offset'' implies a deliberate use SLFRF funds to ''pay for'' a tax cut.

As discussed in the interim final rule, the offset provision does not prevent a recipient government from enacting a broad variety of tax changes. Rather, the offset provision prevents a recipient government from using SLFRF funds to offset a revenue reduction resulting from a tax cut. A recipient government would only be considered to have used SLFRF funds to offset a reduction in net tax revenue resulting from changes in law, regulation, or interpretation if, and to the extent that, the recipient government could not identify sufficient funds from sources other than SLFRF funds to offset the reduction in net tax revenue. Only if sufficient funds from other sources cannot be identified to cover the full cost of the reduction in net tax revenue resulting from changes in law, regulation, or interpretation, will the remaining amount not covered by these sources be considered to have been offset by SLFRF funds, in contravention of the offset provision. Consistent with the statutory text, the approach taken in the interim final rule recognizes that, because money is fungible, even if SLFRF funds are not explicitly or directly used to cover the costs of changes that reduce net tax revenue, those funds may be used in a manner inconsistent with the statute by indirectly being used to substitute for the state's or territory's funds that would otherwise have been needed to cover the costs of the reduction. As discussed below, the scope of changes in law, regulation, or interpretation is further limited to those that the recipient government voluntarily enacted during the covered period.

Congress has the authority under the Spending Clause in Article I, section 8 of the Constitution to specify the permissible and impermissible uses of federal grants. The Supreme Court has repeatedly ''upheld Congress's authority to condition the receipt of funds on the States' complying with restrictions on the use of those funds, because that is the means by which Congress ensures that the funds are spent according to its view of the 'general Welfare.' '' [350] ''The power to keep a watchful eye on expenditures . . . is bound up with congressional authority to spend in the first place.'' [351] Assertions that the amount of SLFRF funds are sufficiently large to be coercive are inconsistent with the Supreme Court's reasoning in *NFIB,* which distinguished between conditions placed on new federal funds and conditions placed on existing federal funds and not based on the size of funds.[352] Further, the conditions placed on the use of SLFRF funds under the ARPA—both the eligible uses and additional limitations on deposits into pension funds and the offset provision—were well known to recipient governments prior to recipient governments requesting to receive SLFRF funds. Finally, the ARPA provides Treasury with the express authority ''to issue such regulations as may be necessary or appropriate to carry out'' section 602, which includes the offset provision.

A number of commenters expressed concern regarding the burden associated with complying with the offset provision and the interim final rule. Similarly, other commenters argued that the framework provided in the interim final rule complicated implementation of the offset provision. Treasury took several steps to minimize burden for recipient governments in the interim final rule. For example, the interim final rule incorporates the types of information and modeling already used by states and territories in their own fiscal and budgeting processes. By incorporating existing budgeting processes and capabilities, states and territories will be able to assess and evaluate the relationship of tax and budget decisions to uses of SLFRF funds based on information they likely have or can readily obtain. This approach ensures that recipient governments have the information they need to understand the implications of their decisions regarding the use of SLFRF funds—and, in particular, whether they are using the funds to directly or indirectly offset a reduction in net tax revenue resulting from a change in law, regulation, or interpretation, making the funds potentially subject to recoupment. To further reduce burden, Treasury is considering whether the scope of reporting requirements can be further tailored.

As described in greater detail below, Treasury is finalizing its implementation of the offset provision largely without change. This approach is consistent with the text of the ARPA. The remainder of this section discusses and responds to comments on specific aspects of the framework.

1. Definitions

Covered change. The offset provision is triggered by a reduction in net tax revenue resulting from ''a change in law, regulation, or administrative interpretation.'' Consistent with this language, the interim final rule defines a ''covered change'' to include any final legislative or regulatory action, a new or changed administrative interpretation, and the phase-in or taking effect of any statute or rule where the phase-in or taking effect was not prescribed prior to the start of the covered period. Thus, the offset provision applies only to actions for which the change in policy occurs during the covered period; it excludes regulations or other actions that implement a change or law substantively enacted prior to March 3, 2021. For example, covered changes do not include a change in rate that is triggered automatically and based on statutory or regulatory criteria in effect prior to the covered period.[353] Changed

[349] *See, e.g., State of West Virginia* v. *U.S. Department of the Treasury,* No. 7:21–cv–00465–LSC, 2021 WL 2952863 (N.D. Ala. Jul. 14, 2021); *State of Ohio* v. *Yellen,* No. 1:21–cv–181, 2021 WL 2712220 (S.D. Ohio Jul. 1, 2021).

[350] *National Fed'n of Indep. Bus.* v. *Sebelius (NFIB),* 567 U.S. 519, 580 (2012) (plurality opinion); see, *e.g., South Dakota* v. *Dole,* 483 U.S. 203, 206–208 (1987); *Gruver* v. *Louisiana Bd. of Supervisors for Louisiana State Univ. Agric. & Mech. Coll.,* 959 F.3d 178, 183 (5th Cir.), cert. denied, 141 S. Ct. 901 (2020). For additional discussion of these issues, *see, e.g., Brief Reply for Appellants, Ohio* v. *Yellen,* No. 21–3787 (6th Cir. Oct. 26, 2021).

[351] *Sabri* v. *United States,* 541 U.S. 600, 608 (2004).

[352] The new federal funds offered by the Affordable Care Act totaled $100 billion per year. Even the dissenting Justices agreed that ''Congress could have made just the new funding provided under the ACA contingent on acceptance of the terms of the Medicaid Expansion,'' although they disagreed with the majority about whether that funding condition was severable. NFIB at 687–688 (joint dissent).

[353] For example, a state law that sets its earned income tax credit (EITC) at a fixed percentage of the federal EITC will see its EITC payments automatically increase—and thus its tax revenue reduced—because of the federal government's expansion of the EITC in the ARPA *See, e.g.,* Tax

administrative interpretations would not include corrections to replace prior inaccurate interpretations; such corrections would instead be treated as changes implementing legislation enacted or regulations issued prior to the covered period. The operative change in those circumstances is the underlying legislation or regulation that occurred prior to the covered period. Moreover, only changes within the control of the state or territory are considered covered changes. Finally, covered changes do not include changes that simply conform with recent changes in federal law (including those to conform to recent changes in federal taxation of unemployment insurance benefits and taxation of loan forgiveness under the Paycheck Protection Program).

Scope of Covered Changes

Public Comment: Several commenters argued that the definition of covered change, and thus the limitations of the offset provision, should apply to subsidies for businesses. Similarly, other commenters requested that Treasury clarify that the offset provision applies to tax abatements and reductions in corporate taxes, even if administered by a sub-unit of the recipient government. Citing to empirical research and other evidence, these commenters argued that these types of economic development policies were poorly administered, reduced public sector capacity, and were ineffective at achieving stated objectives of creating jobs, increasing income, and increasing economic growth. On the other hand, some commenters argued that, because subsidies were economically similar to some tax cuts, neither action should be considered a covered change and subject to the offset provision. Finally, other commenters requested that Treasury clarify whether covered changes must be broad-based policies or whether administrative decisions applicable to individuals would be considered covered changes.

Treasury Response: Section 602(c)(2)(A) applies to any change that ''reduces any tax (by providing for a reduction in a rate, a rebate, a deduction, a credit, or otherwise or delays the imposition of any tax or tax increase.'' Accordingly, and consistent with this statutory text, the final rule applies to covered changes that reduce any tax, which can include tax abatements, but does not apply to loans, grants, or other types of interventions that do not reduce tax revenue.[354] In addition, by including changes in regulation or administrative interpretation, in addition to changes in law, within the scope of the offset provision, the ARPA recognizes that a recipient government may make a covered change through its legislature or may delegate the authority to make a covered change including, but not limited to, to a sub-unit of government. Treasury has revised the definition of ''covered change'' in the final rule using the statutory language above to make clear that the offset provision only applies to such changes in law, regulation, or administrative interpretation. With respect to the question of whether covered changes could include administrative decisions applicable to individuals, as discussed above, a covered change includes a change in law, regulation, or administrative interpretation that reduces any tax. Such changes may apply to one or more individuals or entities, provided that—consistent with the statutory text—they result from a change in law, regulation, or administrative interpretation.

Prior Enactment and Phase-In

Public Comment: A number of commenters expressed concern, or requested clarification, regarding changes that were enacted prior to the covered period but take effect or phase-in during the covered period. Several commenters argued that the definition of covered change should include changes that were made prior to the covered period but that phase-in during the covered period.

Treasury Response: As discussed above, the offset provision is triggered by a reduction in net tax revenue resulting from ''a change in law, regulation, or administrative interpretation'' made during the covered period. Consistent with the statutory text, ''covered change'' is defined to include any final legislative or regulatory action, a new or changed administrative interpretation, and the phase-in or taking effect of any statute or rule where the phase-in or taking effect was not prescribed prior to the start of the covered period.

Conformity

Public Comment: A number of commenters requested clarification on the scope of covered changes. Specifically, several commenters requested clarification on the scope of changes that would be considered as conforming to recent changes in federal law. These commenters requested that Treasury clarify whether actions to selectively conform with federal law would be considered covered changes and requested clarification regarding the extent to which changes would be considered ''recent.'' For example, these commenters requested clarification regarding conformance with the Global Intangible Low-Taxed Income provision of the 2017 Tax Cuts and Jobs Act. Some commenters further argued that changes that selectively conform or decouple from the Internal Revenue Code should be included within scope of covered changes and thus subject to the offset provision.

Treasury Response: The final rule maintains the treatment of changes that simply conform with recent changes in federal law, such as those to conform to recent changes in federal taxation of unemployment insurance benefits and taxation of loan forgiveness under the Paycheck Protection Program [355] and including other changes over the past several years. Regardless of the particular method of conformity and the effect on net tax revenue, Treasury views such changes as permissible under the offset provision.

Accordingly, and for the reasons discussed above, Treasury is maintaining the definition of covered change without change.

Tax revenue. The interim final rule's definition of ''tax revenue'' is based on the Census Bureau's definition of taxes, used for its Annual Survey of State Government Finances.[356] It provides a consistent, well-established definition with which states and territories will be familiar and is consistent with the approach taken in section Revenue Loss of this **SUPPLEMENTARY INFORMATION** describing the implementation of sections 602(c)(1)(C) and 603(c)(1)(C) of the Social Security Act regarding revenue loss. A number of commenters expressed concern and requested clarification regarding the definition of ''tax revenue.'' These comments and responses are discussed in section Revenue Loss of this Supplemental Information and, for the reasons discussed above, Treasury is finalizing the definition of tax revenue without

Policy Center, How do state earned income tax credits work?, *https://www.taxpolicycenter.org/briefing-book/how-do-state-earned-income-tax-credits-work/* (last visited May 9, 2021).

[354] Assistance must be consistent with eligible uses of SLFRF funds. *See* section Eligible Uses of this **SUPPLEMENTARY INFORMATION**.

[355] *See* Statement on State Fiscal Recovery Funds and Tax Conformity, April 7, 2021, available at *https://home.treasury.gov/news/press-releases/jy0113.*

[356] U.S. Census Bureau, Annual Survey of State and Local Government Finances Glossary, *https://www.census.gov/programs-surveys/state/about/glossary.html* (last visited Apr. 30, 2021).

change and maintaining a consistent definition of ''tax revenue.'' [357]

Baseline. For purposes of measuring a reduction in net tax revenue, the interim final rule measures actual changes in tax revenue relative to a revenue baseline (baseline). The baseline is calculated as fiscal year 2019 (FY 2019) tax revenue indexed for inflation in each year of the covered period, with inflation calculated using the Bureau of Economic Analysis's Implicit Price Deflator.[358]

Public Comment: Some commenters expressed concern regarding the choice of FY 2019 as the baseline, arguing that the choice lacked justification and would make the offset provision more restrictive as applied to recipient governments that experienced a decline in revenue independent of making any covered changes.

Treasury Response: Measuring a ''reduction'' in net tax revenue requires identification of a baseline. In other words, a ''reduction'' can be assessed only by comparing two amounts. The Act defines ''covered period'' to begin on March 3, 2021, and thus the baseline year must end prior to March 3, 2021. As discussed in the interim final rule, FY 2019 is the last full fiscal year prior to the COVID–19 public health emergency, and thus is consistent with the statutory definition and does not include the extraordinary effects of the pandemic that began in 2020. Further, as discussed above, the interim final rule recognizes three potential ways that a recipient government may offset or ''pay for'' a reduction in net tax revenue due to a covered change: Increases in taxes, decreases in spending, and organic revenue growth. U.S. gross domestic product rebounded to exceed its pre-pandemic level in 2021,[359] suggesting that an FY 2019 pre-pandemic baseline is a reasonable comparator for future revenue levels and provides recipients with flexibility to identify organic growth as a permissible offset. Finally, this baseline year is consistent with the approach directed by sections 602(c)(1)(C) and 603(c)(1)(C), which identify the ''most recent full fiscal year of the [state, territory, or Tribal government] prior to the emergency'' as the comparator for measuring revenue loss. For these reasons, Treasury is finalizing the definition of ''baseline'' without change.

The interim final rule includes several other definitions that are applicable to the implementation of the offset provision, such as the term ''reporting year.'' [360] Commenters did not express concern regarding other definitions in the interim final rule.

2. Framework

The interim final rule provides a step-by-step framework, to be used in each reporting year, to determine whether a state or territory used SLFRF funds to offset a reduction in net tax revenue. Consistent with section 602(c)(2) and the interim final rule, the final rule applies to states and territories:

(1) *Covered changes that reduce tax revenue.* Under the interim final rule, a recipient government identifies and values covered changes that the recipient government predicts will have the effect of reducing tax revenue in a given reporting year, similar to the way it would in the ordinary course of its budgeting process. The interim final rule states that the value of these covered changes may be reported based on estimated values produced by a budget model, incorporating reasonable assumptions, that aligns with the recipient government's existing approach for measuring the effects of fiscal policies, and that measures these effects relative to a current law baseline. If the recipient would prefer, the covered changes may also be reported based on actual values using a statistical methodology to isolate the change in year-over-year revenue attributable to the covered change(s), relative to the current law baseline prior to the change(s).[361] Further, estimation approaches may not use dynamic methodologies that incorporate the projected effects of macroeconomic growth because macroeconomic growth is accounted for separately in the framework.

Estimation

Public Comment: A number of commenters expressed concern that estimating the value of covered changes required a number of assumptions and that the actual effects of covered changes on tax revenue would be difficult to predict. Several commenters expressed support for the interim final rule's approach to dynamic scoring methodologies, and one commenter argued that the final rule should prohibit the use of prior cash balances in calculations of permissible tax cuts.

Treasury Response: Treasury recognizes that estimating the effects of covered changes requires assumptions and that many other factors influence the amount of tax revenue received. The interim final rule addresses these concerns in several ways. First, in general and where possible, reporting should be produced by the agency of the recipient government responsible for estimating the costs and effects of fiscal policy changes. This approach offers recipient governments the flexibility to determine their reporting methodology based on their existing budget scoring practices and capabilities. In addition, by relying on scoring methodologies that do not incorporate projected effects of macroeconomic growth, the estimation of the value of covered changes relies on fewer assumptions and thus provide greater consistency among states and territories. Finally, as discussed below, the interim final rule includes a de minimis threshold, below which the sum of covered changes will be deemed not to have any revenue-reducing effects.

Timing of the Impact of Covered Changes

Public Comment: Several commenters expressed concern that recipient governments, to evade the offset provision, may backload the costs of certain covered changes outside of the covered period, and advocated that covered changes be instead evaluated as the net present value in the year that the covered change is enacted. These commenters argued that some tax cuts could have effects on tax revenue for many decades or could be structured to take effect after the end of the covered period.

Treasury Response: As discussed in section Timeline for Use of SLFRF Funds, SLFRF funds must be used to cover costs incurred prior to December 31, 2024. Accordingly, SLFRF funds

[357] As discussed in section Revenue Loss of this Supplementary Information, for purposes of measuring revenue lost due to the pandemic under sections 602(c)(1)(C) and 603(c)(1)(C), recipients must adjust the amount of revenue lost to reflect changes that resulted from a tax increase or decrease. These adjustments do not apply to or affect the definition of tax revenue.

[358] U.S. Department of Commerce, Bureau of Economic Analysis, GDP Price Deflator, *https://www.bea.gov/data/prices-inflation/gdp-price-deflator* (last visited Apr. 30, 2021). The FY 2019 baseline revenue is adjusted annually for inflation to allow for direct comparison of actual tax revenue in each year (reported in nominal terms) to baseline revenue in common units of measurement; without inflation adjustment, each dollar of reported actual tax revenue would be worth less than each dollar of baseline revenue expressed in 2019 terms.

[359] Economy Statement by Catherine Wolfram, Acting Assistant Secretary for Economy Policy, for the Treasury Borrowing Advisory Committee November 1, 2021 (Nov. 1, 2021), *available at https://home.treasury.gov/news/press-releases/jy0453*.

[360] One commenter requested clarification that references to fiscal year refer to the fiscal year of the recipient. ''Reporting year'' is defined in the interim final rule and final rule to mean ''a single year or partial year within the covered period, aligned to the current fiscal year of the State or Territory during the covered period.''

[361] By permitting recipient governments to use actual or estimated values, the interim final rule and final rule provide flexibility to recipients and thus minimizes burden.

generally would not be able to offset a reduction in net tax revenue occurring after December 31, 2024.

For these reasons, Treasury is maintaining this element of the interim final rule without change.

(2) *In excess of the de minimis.* Under the framework established in the interim final rule, after establishing that a covered change occurred, the recipient government next calculates the total value of all covered changes in the reporting year resulting in revenue reductions, identified in Step 1. If the total value of the revenue reductions resulting from these changes is below the de minimis level, the recipient government is deemed not to have any revenue-reducing changes for the purpose of determining the recognized net reduction. If the total is above the de minimis level, the recipient government must identify sources of in-year revenue to cover the full costs of changes that reduce tax revenue. Under the interim final rule, the de minimis level is calculated as 1 percent of the reporting year's baseline.

Public Comment: Many commenters supported the inclusion of the de minimis, noting that the de minimis protects recipients from penalty resulting from minor or incidental changes, minimizes administrative burden, and enhances predictability of the application of the offset provision. Some commenters expressed concern that the fixed threshold could result in cliff effects.

Treasury Response: A clear de minimis threshold supports recipient governments' compliance with the offset provision. A de minimis level recognizes the inherent challenges and uncertainties that recipient governments face, and thus allows relatively small reductions in tax revenue without consequence. In other words, states and territories may make many small changes to alter the composition of their tax revenues or implement other policies with marginal effects on tax revenues. They may also make changes based on projected revenue effects that turn out to differ from actual effects, unintentionally resulting in minor revenue changes that are not fairly described as ''resulting from'' tax law changes. However, a de minimis does not automatically result in consequences under the offset provision, since a recipient government could demonstrate that other, non-SLFRF funds to offset a net reduction in tax revenue. Accordingly, any cliff effects associated with a clear de minimis threshold are mitigated by other aspects of the framework.

Public Comment: Commenters expressed a range of views regarding the amount of the de minimis. Some commenters argued that the de minimis was too generous, noting that the choice of 1 percent could, in some cases, permit reductions in net tax revenue of hundreds of millions of dollars. These commenters advocated that the de minimis be lowered (*e.g.,* to 25 basis points) or be tied to a fixed amount. Other commenters argued that the choice of de minimis was not well supported by the statute, advocated for a larger de minimis and suggested that the amount be tied to the recipient government's total expenditures in the prior fiscal year.

Treasury Response: Treasury adopted a de minimis threshold as an administrative accommodation for the reasons discussed above. As discussed in the interim final rule, Treasury determined that the 1 percent de minimis level reflects the historical reductions in revenue due to minor changes in state fiscal policies and was determined by assessing the historical effects of state-level tax policy changes in state EITCs implemented to effect policy goals other than reducing net tax revenues.[362]

For these reasons, Treasury is adopting the 1 percent de minimis without change.

(3) *Safe harbor.* Next, under the interim final rule, if the revenue reduction caused by the covered changes exceeds the 1 percent de minimis threshold, the recipient government compares the reporting year's actual tax revenue to the baseline. If actual tax revenue is greater than the baseline, Treasury will deem the recipient government not to have any recognized net reduction for the reporting year, and therefore to be in a safe harbor and outside the ambit of the offset provision. This approach is consistent with the ARPA, which contemplates recoupment of SLFRF funds only in the event that such funds are used to offset a reduction in net tax revenue. If net tax revenue has not been reduced, the offset provision does not apply. In the event that actual tax revenue is above the baseline, the organic revenue growth that has occurred, plus any other revenue-raising changes, by definition must have been enough to offset the in-year costs of any covered changes. One commenter argued that the offset for organic growth be adjusted to reflect population growth. To minimize administrative burden, and for the reasons discussed above, Treasury is maintaining the measurement of actual tax revenue without adjustment for population growth.

(4) *Consideration of other sources of funding.* The recipient government will then identify and calculate the total value of changes that could pay for revenue reduction due to covered changes and sum these items. This amount can be used to pay for up to the total value of revenue-reducing changes in the reporting year. These changes consist of two categories:

(a) *Tax and other increases in revenue.* The recipient government must identify and consider covered changes in policy that the recipient government predicts will have the effect of increasing general revenue in a given reporting year. Recipient governments should use the same approach to identify and value covered changes that increase tax revenue as applied to covered changes that reduce tax revenue. For the reasons discussed above, Treasury is adopting these aspects of identifying and valuing covered changes without change.

(b) *Covered spending cuts.* A recipient government also may cut spending in certain areas to pay for covered changes that reduce tax revenue, up to the amount of the recipient government's net reduction in total spending as described below. These changes must be reductions in government outlays in an area where the recipient government has not spent SLFRF funds. To better align with existing reporting and accounting, the interim final rule considers the department, agency, or authority from which spending has been cut and whether the recipient government has spent SLFRF funds on that same department, agency, or authority. If the recipient government has not spent SLFRF funds in a department, agency, or authority, the full amount of the reduction in spending counts as a covered spending cut, up to the recipient government's net reduction in total spending. If they have spent SLFRF funds in such department, agency, or authority, the SLFRF funds generally would be deemed to have replaced the amount of spending cut and only reductions in spending above the amount of SLFRF funds spent on the department, agency, or authority would count. This approach—allowing only spending reductions in areas where the recipient government has not spent SLFRF funds to be used as an offset for a reduction in net tax revenue—aims to prevent recipient governments from using SLFRF funds to supplant state or territory funding in the eligible use

[362] Data provided by the Urban-Brookings Tax Policy Center for state-level EITC changes for 2004–2017.

areas, and then using those state or territory funds to offset tax cuts. Such an approach helps ensure that SLFRF funds are not used to ''indirectly'' offset revenue reductions due to covered changes.

Department, Agency, or Authority

Public Comment: Several commenters supported the interim final rule's approach to considering spending cuts at the department, agency, or authority level, on the basis that this approach is supported by the statutory language prohibiting SLFRF funds from being used to ''directly or indirectly'' offset a reduction in net tax revenue. On the other hand, some commenters argued that the methodology for identifying offsetting spending cuts was too restrictive; specifically, that measurement at the agency or department-level may not adequately account for the size and various programs that could occur in one agency or department. One commenter argued that recipient governments should instead be permitted to consider spending cuts on a more granular sub-unit of a department but noted that this additional flexibility would come at the cost of transparency and clarity.

Treasury Comment: Treasury recognizes that some recipients may vary in their budgeting processes, with some budgeting on a department level and others budgeting at more or less granular sub-units of government. Relying on spending at a department, agency, or authority level allows recipient governments to report how SLFRF funds have been spent using reporting units already incorporated into their budgeting process.

Spending Cuts Baseline

Under the interim final rule, to calculate the amount of spending cuts that are available to offset a reduction in tax revenue, the recipient government must first consider whether there has been a reduction in total net spending, excluding SLFRF funds (net reduction in total spending). This approach ensures that reported spending cuts actually create fiscal space, rather than simply offset other spending increases. A net reduction in total spending is measured as the difference between total spending in each reporting year, excluding SLFRF funds spent, relative to total spending for the recipient's fiscal year ending in 2019, adjusted for inflation. Measuring reductions in spending relative to 2019 reflects the fact that the fiscal space created by a spending cut persists so long as spending remains below its original level, even if it does not decline further, relative to the same amount of revenue.

Public Comment: Several commenters expressed concern regarding the measurement of spending cuts relative to the recipient's FY 2019, for example arguing that the choice did not take into account increases in spending in 2020. As one commenter noted, the fiscal year 2020 required extraordinary intervention by recipient governments and the ongoing public health emergency continues to require extraordinary intervention.

Treasury Response: FY 2019 provides a reasonable and relatively generous baseline for considering spending because it is the last full fiscal year prior to the COVID–19 public health emergency and governments' extraordinary efforts to address the impact of the pandemic. This approach also aligns with the FY 2019 baseline for measuring revenue loss. Measuring spending cuts from year to year would, by contrast, not recognize any available funds to offset revenue reductions unless spending continued to decline, failing to reflect the actual availability of funds created by a persistent change and limiting the discretion of states and territories.

For the reasons discussed above, Treasury is adopting the approach taken in the interim final rule without change.

(5) *Identification of amounts subject to recoupment.* If a recipient government (i) reports covered changes that reduce tax revenue (Step 1); (ii) to a degree greater than the de minimis (Step 2); (iii) has experienced a reduction in net tax revenue (Step 3); and (iv) lacks sufficient revenue from other, permissible sources to pay for the entirety of the reduction (Step 4), then the recipient government will be considered to have used SLFRF funds to offset a reduction in net tax revenue, up to the amount that revenue has actually declined. That is, the maximum value of the reduction revenue due to covered changes that a recipient government must cover is capped at the difference between the baseline and actual tax revenue.[363] In the event that the baseline is above actual tax revenue but the difference between them is less than the sum of revenue reducing changes that are not paid for with other, permissible sources, organic revenue growth has implicitly offset a portion of the reduction. The revenue reduction cap implements this approach for permitting organic revenue growth to cover the cost of tax cuts.

Finally, a recipient government may request reconsideration of any amounts identified in a notice from Treasury as subject to recoupment under this framework. Comments and responses to the recoupment process are discussed in section Remediation and Recoupment of this Supplemental Information.

3. Reporting

To facilitate the implementation of the framework above, and in addition to reporting required on eligible uses, recipient governments are required to report certain information. The interim final rule indicated that Treasury would provide additional guidance at a later date and that, on an annual basis, it expected each recipient government would be required to provide the following information:

- Actual net tax revenue for the reporting year;
- Each revenue-reducing change made to date during the covered period and the in-year value of each change;
- Each revenue-raising change made to date during the covered period and the in-year value of each change; and
- Each covered spending cut made to date during the covered period, the in-year value of each cut, and documentation demonstrating that each spending cut is covered as prescribed under the interim final rule.

Since the adoption of the interim final rule, Treasury has provided guidance on reporting regarding eligible uses and has required recipient governments to indicate whether they have made covered changes and the value of such changes.[364]

Reporting Burden

Public Comment: Some commenters argued that the framework for identifying and reporting impermissible offsets was burdensome and that the burdens should be accounted for under Executive Order 13132 (Federalism, August 4, 1999).

Treasury Response: Taking into consideration comments received regarding burden, Treasury is considering a tiered approach to reporting on the offset provision. Specifically, under this approach, a recipient would only be required to report information to the extent needed to determine whether SLFRF funds had been used to offset a reduction in net tax revenue. For example, a recipient government would be required to report

[363] This cap is applied in section 35.8(c) of the final rule, calculating the amount of funds used in violation of the tax offset provision.

[364] *See* Reporting Guidance, Section C.11, available at *https://home.treasury.gov/system/files/136/SLFRF-Compliance-and-Reporting-Guidance.pdf.*

information regarding permissible offsets only if it had also reported covered changes that were in excess of the de minimis and had reported a net reduction in tax revenue. Treasury will provide additional guidance and instructions on the reporting requirements at a later date.

As discussed in section Regulatory Analyses of this Supplemental Information, Treasury maintains that the final rule does not have federalism implications within the meaning of Executive Order 13132 (Federalism, August 4, 1999). In the ARPA, Congress requires states and territories to repay the Secretary for amounts used in violation of the prohibition on using SLFRF funds to offset reductions in net tax revenue, and it authorizes the Secretary to issue regulations to carry out this limitation and other requirements of the statute. Section 6(b) of Executive Order 13132 contemplates that certain regulations will be required by statute, as is the case with the interim final rule and the final rule, in which case section 6(b)(2)(B)'s requirement to include a federalism summary impact statement in the Supplementary Information to the regulation does not apply. Notwithstanding the above, Treasury has engaged in efforts to consult and work cooperatively with affected state, local, and Tribal government officials and associations in the process of developing the interim final rule.

Reporting Transparency

Public Comment: Several commenters argued that information supporting the net tax offset calculation should be publicly available. Some of these commenters requested that reporting be made available in a machine-readable format, and others advocated that recipient governments disclose this information on their local budget agency's website. These commenters argued that making information regarding tax changes publicly available would increase transparency and accountability. Further, several commenters suggested that Treasury provide a mechanism for citizens to register their concerns about particular tax actions.

Treasury Response: As discussed in other sections, reporting requirements promote transparency and accountability for the general public and constituents of recipient governments to understand how state, local, and Tribal governments have used SLFRF funds. Since the publication of the interim final rule, Treasury issued supplementary reporting guidance in the Compliance and Reporting Guidance and in the User Guide: Treasury's Portal for Recipient Reporting (User Guide), which addresses the particular content and form of required reporting. Treasury will continue to issue updated guidance prior to each reporting period clarifying any modifications to requested report content and will continue to consider how reporting can best support transparency and accountability while minimizing recipient administrative burden. Further, as discussed in the section Remediation and Recoupment, Treasury may address potential violations of this final rule based on both information submitted from recipients, either through quarterly reports or self-reporting, and from other sources of information (*e.g.,* information submitted from the public).

2. Deposit Into Pension Funds

Background: Subsection 602(c)(2)(B) of the Social Security Act provides that ''[n]o State or territory may use funds made available under this section for deposit into any pension fund.'' Similarly, subsection 603(c)(2) of the Social Security Act provides that ''[n]o metropolitan city, nonentitlement unit of local government, or county may use funds made available under this section for deposit into any pension fund.''

For purposes of this restriction on pension deposits, the interim final rule defined deposit to mean ''an extraordinary payment of an accrued, unfunded liability.'' The interim final rule also specified that a deposit does not include routine contributions made as part of a payroll obligation, such as the normal cost component of a pension contribution or the component that consists of amortization of unfunded liabilities calculated by reference to the employer's payroll costs. The interim final rule applied the restriction on pension deposits to all recipients.

Public Comment: Several commenters observed that the statutory restriction on deposits into pension funds does not apply to Tribal governments.

Treasury Response: In response, Treasury is clarifying in the final rule that the pension restriction does not apply to Tribal governments.

Public Comment: Treasury also received a comment expressing concern that the interim final rule permitted recipients to make a larger than usual pension contribution, so long as the timing of that contribution aligns with the historical timing of contributions.

Treasury Response: The interim final rule prohibited the use of SLFRF funds from the ARPA to make extraordinary payments, and the **SUPPLEMENTARY INFORMATION** to the interim final rule said that a payment would be an extraordinary payment if it reduces a liability incurred prior to the start of the COVID–19 public health emergency and occurs outside the recipient's regular timing for making the payment. At the same time, however, as suggested by the comment Treasury received, a payment made at the regular time for pension contributions may very well be an extraordinary payment, for example, if it is larger than a regular payment would have been. Such a payment would be a restricted use.

Public Comment: Other commenters asked which pension contributions are permitted.

Treasury Response: To be an eligible use of SLFRF funds, a use must (1) be eligible under one of the eligible use categories and (2) not contravene any of the applicable restrictions on uses of funds. Some pension contributions may be eligible because they both fit within an eligible use category and do not contravene the restriction on deposits into pension funds (*i.e.,* they are not an extraordinary payment of an accrued, unfunded liability). For example, payroll and covered benefits for public health and safety staff responding to COVID–19 are an eligible use of funds to respond to the public health and negative economic impacts of the pandemic; routine pension contributions as part of an employee's regular covered benefits are permissible under that eligible use category.

B. Other Restrictions on Use of Funds

1. Debt Service and Replenishing Financial Reserves

The **SUPPLEMENTARY INFORMATION** to the interim final rule provided that debt service is not an eligible use of funds either to respond to the public health emergency or its negative economic impacts or as a provision of government services to the extent of revenue loss.[365] The interim final rule also provided that replenishing financial reserves (*e.g.,* rainy day funds) is not an eligible use of funds either to respond to the public health emergency or its negative economic impacts or as a provision of

[365] ''[G]overnment services would not include interest or principal on any outstanding debt instrument, including, for example, short-term revenue or tax anticipation notes, or fees or issuance costs associated with the issuance of new debt. For the same reasons, government services would not include satisfaction of any obligation arising under or pursuant to a settlement agreement, judgment, consent decree, or judicially confirmed debt restructuring in a judicial, administrative, or regulatory proceeding, except if the judgment or settlement required the provision of government services.'' 86 FR 26796–97 (May 17, 2021).

government services to the extent of revenue loss.[366]

As explained in greater detail below, Treasury, in the final rule, has retained these restrictions and is clarifying that these restrictions on the use of SLFRF funds apply to all eligible use categories.

Public Comments

Several commenters suggested that debt service and reserve replenishment should qualify as the provision of a government service and be an eligible use of funds, up to the amount of revenue loss due to the pandemic. Many commenters indicated that they had been forced to borrow money or dip into reserve funds to continue providing government services during the public health emergency and that using SLFRF funds for resulting debt service or reserve replenishment costs should therefore be considered a government service.

Many comments from Tribal governments noted that their governments depend on revenue from Tribal enterprises to pay government debts and provide services. The comments suggest that it should be an eligible use of SLFRF to replace lost revenue from these enterprises that would typically be used to pay debt service costs. Other commenters argued that paying the interest or principal on debt should in some cases be considered provision of government services and an eligible use of funds as such expenditures facilitate the provision of government services.

Some commenters argued that debt costs or reserve drawdowns during the public health emergency constitute a negative economic impact to recipient governments, and thus debt service or reserve replenishment should be an eligible use to respond to that negative economic impact. For example, several commenters suggested that there should be a specific carve-out allowing the use of SLFRF funds for debt service on debt incurred for government services after January 27, 2020, the start of the public health emergency, or short-term debt incurred for this purpose. Others suggested that recipient governments should be able to service debt, up to the amount of debt incurred in direct response to the pandemic. These commenters generally reasoned that the cost of responding to the public health emergency and its negative economic impacts prior to APRA's passage constitutes a negative economic impact of the pandemic.

Some commenters argued that the specific impacts of the pandemic on the travel, tourism, and hospitality sector had affected their ability to meet debt service costs. For example, some commenters explained that specific tax streams (*e.g.,* hotel room taxes) or revenue sources (*e.g.,* hospitality generally) are tied to specific debt instruments and that these revenue sources had declined during the public health emergency; commenters argued that this constitutes a negative economic impact that SLFRF funds should be permitted to address.

Finally, some commenters questioned why servicing debt incurred after March 3, 2021 for an otherwise eligible project (*e.g.,* a broadband infrastructure project) would not be an eligible use of funds.

On the other hand, many commenters expressed support for the interim final rule's prohibition on use of funds for debt service and reserve replenishment. These commenters largely argued that SLFRF funds should be used to provide current services to communities in response to the public health emergency and that use of funds for debt service or reserve replenishment represented, respectively, payment for past costs or savings for potential future costs. In addition to the prohibition on debt service and reserve replenishment, some commentors suggested that the final rule should also prevent funds from being used for state UI trust fund replenishment or for paying off debt owed through UI trust funds. One commenter argued that Treasury should further restrict recipient governments, for example by preventing recipients from making cuts to an allowable budget item, filling the budget gap with SLFRF funds, and then using the savings from the initial cut for debt service or reserve replenishment.

Treasury Response

The final rule maintains the restriction on the use of funds for debt service or reserve replenishment for the reasons described below and clarifies that this restriction applies to all eligible use categories.

First, debt service and reserve replenishment costs do not constitute the provision of services to constituents. As noted in the interim final rule, financing expenses—such as issuance of debt or payment of debt service—do not provide services or aid to citizens. Similarly, contributions to rainy day funds and similar financial reserves constitute savings for future spending needs. As such, these expenses do not respond to the current and ongoing public health and negative economic impacts of the pandemic, nor do they provide a government service.

Second, payments from the SLFRF are intended to be used prospectively (see section Timeline for Use of SLFRF Funds). The interim final rule provided that funds may be used for costs incurred beginning on March 3, 2021, which Treasury has maintained in the final rule. Use of funds for debt service on indebtedness issued prior to March 3, 2021 necessarily entails using funds for costs incurred during prior time periods, rather than the present response to the public health emergency and its negative economic impacts or to provide government services.

Third, SLFRF funds provide recipients with substantial latitude to use funds to support the diverse needs in their communities. With SLFRF resources available, recipients have less need to incur debt for otherwise-eligible SLFRF uses.

Finally, given the strong performance of overall revenues and low municipal bond yields, state and local governments generally do not face high levels of fiscal stress. Limits on debt service or replenishment of reserves would not have a substantial impact on recipients' ability to provide services. The ratio of state and local debt-to-GDP, which spiked briefly during the pandemic, has recovered to its pre-pandemic level and remains well below levels seen during the Great Recession.[367]

2. Settlements and Judgments

The interim final rule also provided that satisfaction of any obligation arising under or pursuant to a settlement agreement, judgment, consent decree, or judicially confirmed debt restructuring in a judicial, administrative, or regulatory proceeding would not be an eligible use of funds to respond to the public health and negative economic impacts of the pandemic or as a government service provided under the revenue loss eligible use category. However, if the judgment or settlement requires the recipient to provide services that are otherwise eligible under an SLFRF eligible use category, specifically if the settlement or judgment requires the recipient to provide services to respond to the COVID–19 public health emergency or its negative economic impacts or to provide government services, then those costs are eligible uses of SLFRF funds.

[366] ''In addition, replenishing financial reserves (*e.g.,* rainy day or other reserve funds) would not be considered provision of a government service, since such expenses do not directly relate to the provision of government services.''

[367] Table Z.1 of the Financial Accounts of the United States, Board of Governors of the Federal Reserve System, and Table 1.1.5 of National Income and Product Accounts, Bureau of Economic Analysis.

In other words, satisfaction of a settlement or judgment itself is not itself an eligible use of funds, unless the settlement requires the recipient to provide services or incur other costs that are eligible uses of SLFRF funds.

In the final rule, Treasury is maintaining the interim final rule approach and clarifying that it applies to all eligible use categories and any use of funds under the SLFRF program.

3. General Restrictions

In addition to the above restrictions, there are three general restrictions that apply to SLFRF funds. These restrictions, which reflect existing laws and regulations, the Award Terms and Conditions, and application of the ARPA statute, applied under the interim final rule, and they continue to apply under the final rule.

A primary purpose of the SLFRF in the ARPA is to support efforts to stop the spread of COVID–19.[368] As discussed above, recipients of SLFRF funds are required to comply with the Award Terms and Conditions established for the use of such funds. The interim final rule and final rule implement this objective by, in part, providing that recipients may use SLFRF funds for COVID–19 mitigation and prevention.[369] See section Public Health in Public Health and Negative Economic Impacts.

The CDC has provided recommendations and guidelines to help mitigate and prevent COVID–19 and has identified vaccines and masks as two of the best tools to prevent the spread of COVID–19. The interim final rule and final rule help support recipients in stopping the spread of COVID–19 through these recommendations and guidelines. Consistent with the purpose of the ARPA and as implemented through the interim final rule and final rule, a recipient may not use SLFRF funds for a program, service, or capital expenditure that includes a term or condition that undermines efforts to stop the spread of COVID–19. A program or service that imposes conditions on participation or acceptance of the service that would undermine efforts to stop the spread of COVID–19 or discourage compliance with recommendations and guidelines in CDC guidance for stopping the spread of COVID–19 is not a permissible use of SLFRF funds.

In other words, recipients may not use funds for a program that undermines practices included in the CDC's guidelines and recommendations for stopping the spread of COVID–19. This includes programs that impose a condition to discourage compliance with practices in line with CDC guidance (*e.g.,* paying off fines to businesses incurred for violation of COVID–19 vaccination or safety requirements), as well as programs that require households, businesses, nonprofits, or other entities not to use practices in line with CDC guidance as a condition of receiving funds (*e.g.,* requiring that businesses abstain from requiring mask use or employee vaccination as a condition of receiving SLFRF funds).

Second, a recipient may not use SLFRF funds in violation of the conflict of interest requirements contained in the Award Terms and Conditions or the Office of Management and Budget's Uniform Guidance, including any self-dealing or violation of ethics rules. Recipients are required to establish policies and procedures to manage potential conflicts of interest.[370] Treasury may provide further guidance on the types of activities or conflicts that the recipient's policies and procedures must cover.

Lastly, recipients should also be cognizant that federal, state, and local laws and regulations, outside of SLFRF program requirements, may apply. Recipients may not use revenue loss funds, for instance, to violate other background laws that limit the scope of activities that may be conducted as ''government services,'' including other state and federal laws. State and local procurement, contracting, and conflicts-of-interest laws and regulations may include applicable requirements, including, for example, required procurement processes for contractor selection or competitive price setting. Furthermore, recipients are also required to comply with other federal, state, and local background laws, including environmental laws [371] and federal civil rights and nondiscrimination requirements, which include prohibitions on discrimination on the basis of race, color, national origin, sex, (including sexual orientation and gender identity), religion, disability, or age, or familial status (having children under the age of 18).

IV. Program Administration Provisions

The interim final rule included several sections that described the processes and requirements for administering the program on an ongoing basis, specifically: Distribution of funds, transfer of funds, use of funds for program administration, reporting on the use of funds, and remediation and recoupment of funds used for ineligible purposes.

To enhance clarity, this **SUPPLEMENTARY INFORMATION** for the final rule organizes these issues into one section on Program Administration Provisions. Recipients should also consult Treasury's Compliance and Reporting Guidance for additional information on program administration processes and requirements, including the applicability of the Uniform Guidance.

A. Payments in Tranches to Local Governments and Certain States

Section 602(b)(6)(A)(ii) of the Social Security Act authorizes the Secretary to withhold payment of up to 50 percent of the amount allocated to each state and territory for a period of up to 12 months from the date on which the state or territory provides its statutorily-required certification to the Secretary. The Social Security Act requires any such withholding be based on the unemployment rate in the state or territory as of the date of the certification.

Under the interim final rule, Treasury provided that it would withhold 50 percent of the amount allocated from any state that had an unemployment rate less than two percentage points above its unemployment rate in February 2020 as of the date the state submitted its initial certification for payment of funds pursuant to section 602(d)(1) of the Social Security Act. Based on data available at the time of the issuance of the interim final rule, this threshold was expected to result in a majority of states being paid in two tranches. Treasury did not split the payments of any territories.

Public Comment: One commenter asked Treasury to allow a state to request release of the portion of the state's second tranche payment after the state could demonstrate that it had allocated the entirety of the first tranche, a need to continue ongoing programs, and a desire to avoid borrowing costs. Another commenter asked Treasury to clarify whether states that received half their funding in the

[368] *See* Sec. 602(a)(1); 603(a)(1); 602(c)(1); 603(c)(1).

[369] *See* 35.6(b); Coronavirus State and Local Fiscal Recovery Funds, 86 FR at 26786.

[370] Specifically, the Award Terms and Conditions provide that ''[r]ecipient understands and agrees it must maintain a conflict of interest policy consistent with 2 CFR 200.318(c), and that such conflict-of-interest policy is applicable to each activity funded under this award. Recipients and subrecipients must disclose in writing to Treasury or the pass-through agency, as appropriate, any potential conflict of interest affecting the awarded funds in accordance with 2 CFR 200.112.''

[371] An exception is statutes that do not apply unless explicitly stated, including, *e.g.,* the National Environmental Policy Act and the Davis-Bacon Act.

first payment would receive their second half payment within 12 months. Similarly, some recipients requested clarification on whether they could obligate second tranche funds before receipt or use second tranche funds for costs incurred prior to receipt.

Treasury Response: The final rule maintains the approach in the interim final rule with two modifications. As described in the interim final rule, splitting payments for most states provides consistency with payments to local governments and encourages states to adapt their use of funds to developments that arise in the course of the economic recovery. Moreover, SLFRF funds may be used for costs incurred during the period of performance. Recipients may use their jurisdiction's budgeting and procurement practices and laws to determine how and when second tranche funds may be obligated.

The final rule makes two adjustments for operational purposes. First, the final rule provides that Treasury expects to make all second tranche payments to states available beginning 12 months from the date that funding was first made available by Treasury (May 10, 2021) regardless of when each individual state submitted its initial certification. This should increase clarity and consistency on the timing of second tranche payments for both states and Treasury. Second, also to ease recipient states' administrative burden, the final rule strikes a requirement from the interim final rule that states must certify for their second tranche payments and file all required reports at least 30 days prior to the date on which their second payment is made available. The final rule simply requires that states certify for their second tranche payment and file all required reports before receiving their second tranche payment, with no 30 day wait period required.

B. Payments to Nonentitlement Units of Local Government (NEUs) and Units of Local Government (UGLGs) Within Non-UGLG Counties

The interim final rule established requirements related to distributions of SLFRF funds by states and territories to NEUs and UGLGs within non-UGLG counties. Specifically, the interim final rule provided that the total distribution to an NEU cannot exceed 75 percent of the most recent budget for the NEU (the 75 percent budget cap); a requirement set forth in section 603(b)(2)(C)(iii) of the Social Security Act. The interim final rule **SUPPLEMENTARY INFORMATION** defined the NEU's budget for purposes of calculating the 75 percent budget cap as the NEU's ''most recent annual total operating budget, including its general fund and other funds, as of January 27, 2020.'' The interim final rule further provided that states and territories must permit NEUs without formal budgets as of January 27, 2020 to self-certify their most recent annual expenditures as of January 27, 2020 for the purpose of calculating the 75 percent budget cap. Further, the interim final rule prohibited states and territories from placing additional conditions or requirements on distributions to NEUs beyond those required by the statute, the interim final rule, or Treasury's guidance and from offsetting any debt owed by such NEUs against such distributions.

Commenters predominantly focused on the definition of an NEU's budget for purposes of calculating the 75 percent budget cap, NEU allocations and eligibility, and the prohibition on states and territories imposing additional conditions or requirements in the NEU distribution process.

Definition of NEU Budget

Public Comment: Commenters suggested that Treasury provide greater clarification on the definition of an NEU's ''most recent budget'' for purposes of the 75 percent budget cap calculation. Treasury provided updated guidance on its interpretation of the 75 percent budget cap on June 30, 2021, and a commenter suggested that Treasury incorporate such updated interpretation into the **SUPPLEMENTARY INFORMATION** of the final rule.

Treasury Response: Consistent with the Update on Interpretation for the 75 Percent Budget Cap Calculation published on June 30, 2021,[372] the **SUPPLEMENTARY INFORMATION** of the final rule defines an NEU's budget for purposes of calculating the 75 percent budget cap as its total annual budget, including both operating and capital expenditure budgets, in effect as of January 27, 2020. The guidance also gives states and territories flexibility to provide further guidance to their NEUs to operationalize the 75 percent budget cap. Given the variance in local financial accounting, this updated definition will better facilitate states' and territories' distribution of SLFRF funds to NEUs.

Allocations and Eligibility

Public Comment: Many commenters provided feedback on specific allocation calculations and eligibility of local governments for NEU funding. Commenters addressed how a locality was classified as an NEU or metropolitan city, deviations between Treasury's allocation calculations and earlier estimates from other sources, treatment of unincorporated areas, sources for population data, and Treasury's allocation of NEU funding to states and territories based on the population of a state and territory outside of its metropolitan cities. Two commenters proposed that Treasury provide an appeal process for localities that were not identified on the List of Local Governments used by states and territories as part of the process in which a state or territory determines the eligibility of an NEU in accordance with Treasury guidance, or for Minor Civil Divisions (MCDs) that were denied funding as part of a facts-and-circumstances test undertaken by a weak-MCD state.

Treasury Response: Neither the interim final rule nor the final rule addresses eligibility or allocations issues, and comments on these topics are outside the scope of this rulemaking. These questions are addressed in other Treasury guidance, including the Guidance on Distribution of Funds to Non-entitlement Units of Local Government and Non-entitlement Unit of Local Government Definitional and Data Methodology guidance documents available on Treasury's website.[373] Because Treasury interpreted the definition of an NEU[374] in accordance with the statute and established an NEU distribution process in May 2021, the final rule does not incorporate an appeals process regarding the definitions or the facts-and-circumstances test used for eligibility determinations.

Prohibition on Additional Conditions or Requirements in the NEU Distribution Process

Public Comment: One commenter expressed support for Treasury's prohibition on states and territories

[372] Treasury's Update on Interpretation for the 75 Percent Budget Cap Calculation can be found at: *https://home.treasury.gov/system/files/136/NEU-Update-75-Percent-Budget-Cap.pdf.*

[373] The Guidance on Distribution of Funds to Nonentitlement Units of Local Government can be found at this link: *https://home.treasury.gov/system/files/136/NEU_Guidance.pdf.* The Nonentitlement Unit of Local Government Definitional and Data Methodology can be found at this link: *https://home.treasury.gov/system/files/136/NEU_Methodology.pdf.*

[374] Treasury has interpreted NEU to generally include both incorporated places and MCDs with active functioning governments, subject to the state determining, in the case of weak-MCD States, that a weak MCD has the legal and operational capacity to accept SLFRF funds and provides a broad range of services that would constitute eligible uses under ARPA. More details can be found in the Nonentitlement Unit of Local Government Definitional and Data Methodology, available at *https://home.treasury.gov/system/files/136/NEU_Methodology.pdf.*

placing additional conditions or requirements on distributions to NEUs. This prohibition restricts states and territories from imposing limitations on NEUs' use of SLFRF funds based on an NEU's proposed spending plan or other policies, offsetting any debt owed by an NEU against the NEU's distribution, or providing funding on a reimbursement model. In particular, the commenter noted that a reimbursement model would lead to inequities in accessing SLFRF funds.

Treasury Response: The final rule maintains and finalizes the prohibition on states and territories placing additional conditions or requirements on distributions to NEUs as well as to any UGLGs within counties that are non-UGLGs. Such conditions or requirements may contravene the statutory requirement that states and territories make distributions based on population and within the statutorily defined timeframe.

Other Provisions

Treasury did not receive substantive comments on the requirement that states and territories permit NEUs without formal budgets as of January 27, 2020 to self-certify their most recent annual expenditures as of January 27, 2020 for the purpose of calculating the 75 percent budget cap, or Treasury's interpretation of the 75 percent budget cap applying only to a consolidated government's NEU allocation under section 603(b)(2) but not to a consolidated government's county allocation under section 603(b)(3). Further, Treasury did not receive substantive comments on the interim final rule's allowance that states and territories be able to use SLFRF funds under section 602(c)(1)(A) to fund expenses related to administering payments to NEUs and units of general local government. As such, the final rule maintains these provisions as written in the interim final rule without modification.

Treasury received some comments that are not addressed because they are beyond the scope of the NEU provision of the interim final rule or not authorized by the statute, including comments related to state accounting practices, re-allocations of NEU allocations that exceed the 75 percent budget cap, and concerns around eligible uses under SLFRF that small local governments may find particularly salient.

C. Timeline for Use of SLFRF Funds

The interim final rule provided that ''[a] recipient may only use funds to cover costs incurred during the period beginning March 3, 2021 and ending December 31, 2024.'' The interim final rule also provides that the period of performance will run until December 31, 2026, which will provide recipients an additional two years during which they may expend funds for costs incurred (*i.e.,* obligated).

As explained in more detail below, in the final rule Treasury is maintaining these time periods. Treasury will retain March 3, 2021 as the first date when costs may be incurred, to provide for forward-looking or prospective use of funds and to align with the start date of the ''covered period'' as such term is used in section 602(c)(2)(A). The deadline for costs to be incurred—which the final rule clarifies means obligated—December 31, 2024, is specified in the ARPA statute, and Treasury will retain December 31, 2026 as the end of the period of performance to provide a reasonable amount of time for recipients to liquidate obligations incurred by the statutory deadline.

Public Comments. Some commenters expressed concerns about costs incurred before March 3, 2021 not being covered and recommended the ''start date'' be changed to January 2020 to coincide with the declaration of the public health emergency. These commenters argued that recipient governments began incurring costs to respond to COVID–19 and its economic impacts in January 2020 and that prior federal fiscal relief, such as relief provided in the Coronavirus Aid, Relief, and Economic Security Act, did not fully compensate recipient governments for these costs. These commenters recommended that costs incurred before March 3, 2021 that otherwise fit within eligible use categories for SLFRF should be permissible uses of funds.

Some commenters asked Treasury to clarify whether local governments are subject to the same covered period as states and territories beginning March 3, 2021. Commenters noted that section 603(g) of the Social Security Act does not contain the same definition of ''covered period'' as section 602(g)(1) of the Social Security Act, which references a statutory provision that only applies to states and territories.

Many commenters requested that the deadline for costs to be incurred and the period of performance be extended due to the longer timeline for completing water and sewer projects. One commenter requested that recipients be able to split projects into different phases so that funds could be expended on larger, longer term projects (*e.g.,* by obligating funds on one portion of the project by the statutory deadline). One commenter recommended that the period of performance be extended for at least two additional years beyond the expenditure deadline set forth in the interim final rule, *i.e.,* until December 31, 2028. One commenter wrote that the final rule should allow for extended projects (*e.g.,* over a time horizon of more than ten years) for recipients working to develop long-term water supplies to prepare for extreme drought.

Treasury Response. In the final rule, Treasury is maintaining March 3, 2021 as the date when recipients may begin to incur costs using SLFRF funds. As described in the interim final rule, use of SLFRF funds is forward looking and the eligible use categories provided by statute are all prospective in nature. While recipients may identify and respond to negative economic impacts that occurred during 2020, the costs incurred to respond to these impacts remain prospective. Further, Treasury considers the beginning of the covered period for purposes of determining compliance with section 602(c)(2)(A) to be a relevant reference point for this purpose that provides some flexibility for recipients that began incurring costs in the anticipation of enactment of the ARPA or in advance of the issuance of the interim final rule and receipt of payment.

Finally, establishing an earlier start date would permit governments to use funds received in 2021 to satisfy obligations incurred in 2020. This use raises a substantial risk of SLFRF funds being used to supplant other recipient funds previously used to pay for such 2020 obligations, freeing funds for recipients to use for any purpose rather than eligible uses of SLFRF funds under the ARPA. Permitting such usage would undermine the provisions setting forth permissible and impermissible uses in the statute. Therefore, a reading of the statute permitting use of funds prior to March 3, 2021 would be inconsistent with the statutory structure.

In the final rule, Treasury is also maintaining the deadlines by which funds must be obligated (*i.e.,* December 31, 2024) and by which such obligations must be liquidated (*i.e.,* December 31, 2026). The December 31, 2024 deadline by which eligible costs must be incurred is established by statute. Treasury is finalizing its interpretation of ''incurred'' to be equivalent to the definition of ''obligation,'' based on the definition used for purposes of the Uniform Guidance. Treasury is also maintaining the period of performance, which will run through December 31, 2026, and provides the deadline by which recipients must expend obligated funds. Most recipients received SLFRF funds in the spring and summer of 2021,

meaning that they have over three years to obligate and over five years to expend funds. This provides a sufficient amount of time for recipients to plan and execute projects.

D. Transfers of Funds

Under section 602(c)(3) of the Social Security Act, a state, territory, or Tribal government may transfer SLFRF 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 SLFRF funds to the same entities (other than Tribal organizations). Separately, section 603(c)(4) authorizes a local government to transfer SLFRF funds to the state in which it is located.

Entities Eligible for a Transfer Under Sections 602(c)(3) and 603(c)(3)

Regarding transfers permitted under sections 602(c)(3) and 603(c)(3) of the Act, the interim final rule Supplementary Information clarified that the lists of transferees in these sections are not exclusive and that state, local, territorial, and Tribal governments may transfer funds to other constituent units of government or private entities beyond those specified in the statute.

Public Comment: Several commenters supported Treasury's interpretation of eligible transferees in sections 602(c)(3) and 603(c)(3) as nonexclusive. However, many commenters asked for greater clarity as to whether specific entities not listed in Treasury's examples of eligible subrecipients, such as nonprofits and Tribal governments, were eligible transferees. One commenter also asked whether a recipient may transfer SLFRF funds to a higher level of government, such as a locality to the county in which it is located.

Treasury Response: The final rule clarifies that, in addition to the entities enumerated in sections 602(c)(3) and 603(c)(3), recipients may transfer SLFRF funds to any entity to carry out as a subrecipient an eligible use of funds by the transferor, as long as they comply with the Award Terms and Conditions and other applicable requirements, including the Uniform Guidance at 2 CFR 200.331–200.333. Eligible subrecipients include, but are not limited to, other units of government (including Tribal governments), nonprofits and other civil society organizations, and private entities. Further, the final rule clarifies that transfers may be made to both constituent or non-constituent units of government. For example, county A may transfer SLFRF funds to county B as long as county B abides by the use restrictions applicable to county A and the transfer would constitute an eligible use of the funds by county A. County A must receive a benefit proportionate to the amount transferred.

As detailed in the interim final rule Supplementary Information, once transfers are received, the transferee must abide by the restrictions on use applicable to the transferor under the ARPA and other applicable law, regulations, and program guidance. Further, the transferor remains responsible for monitoring and overseeing the subrecipient's use of SLFRF funds and other activities related to the award to ensure that the subrecipient complies with the statutory and regulatory requirements and the Award Terms and Conditions. Recipients also remain responsible for reporting to Treasury on their subrecipients' use of payments from the SLFRF for the duration of the award.

Pooling Funds

Public Comment: Several commenters asked for clarification about whether they may pool SLFRF funds for a project with other recipients, including when doing so involves a transfer to another entity, such as a regional organization or government that undertakes projects on behalf of a number of local governments. Commenters also asked for clarification on the oversight and reporting obligations that would result from such transfers.

Treasury Response: Consistent with guidance issued following the interim final rule,[375] the final rule clarifies that recipients may pool SLFRF funds for projects, 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 final rule

SUPPLEMENTARY INFORMATION. A recipient may transfer funds to a government outside its boundaries (*e.g.,* county transfers to a neighboring 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.

Blending and Braiding of Funds

Treasury is clarifying in the final rule that, consistent with further guidance issued by Treasury following the interim final rule,[376] recipients may fund a project with both SLFRF funds and other sources of funding, provided that the costs are eligible costs under each source program and are compliant with all other related statutory and regulatory requirements and policies. The recipient must comply with applicable reporting requirements for all sources of funds supporting the SLFRF projects and with any requirements and restrictions on the use of funds from the supplemental funding sources and the SLFRF program. Specifically,

- All funds provided under the SLFRF program must be used for projects, investments, or services that are eligible under the SLFRF program. SLFRF funds may not be used to fund an activity that is not, in its entirety, an eligible use under the SLFRF program. For example:
  - SLFRF funds may be used in conjunction with other sources of funds to make an investment in water infrastructure that is eligible under section 602 or 603 of the Social Security Act and the final rule.
  - SLFRF funds could *not* be used to fund the entirety of a water infrastructure project that was partially, although not entirely, an eligible use under Treasury's final rule. However, the recipient could use SLFRF funds only for a smaller component project that does constitute an eligible use, while using other funds for the remaining portions of the larger planned water infrastructure 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.
- In addition, because SLFRF funds must be obligated by December 31, 2024, and recipients must expend all funds under the award no later than December 31, 2026, 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.

[375] Coronavirus State and Local Fiscal Recovery Funds, Frequently Asked Questions, as of July 19, 2021; *https://home.treasury.gov/system/files/136/SLFRPFAQ.pdf.*

[376] *See FAQ 4.10. Id.*

Scope of a 603(c)(4) Transfer

Unlike in the case of a transfer under sections 602(c)(3) or 603(c)(3), the interim final rule **SUPPLEMENTARY INFORMATION** specified that transfers from a local government to the state under section 603(c)(4) will result in a cancellation or termination of the award on the part of the transferor local government and a modification of the award to the transferee state.

Public Comment: Two commenters suggested that Treasury expand section 603(c)(4) beyond transfers from localities to the state to include transfers from counties to their constituent local governments, which would incentivize counties to augment funds to address the needs of local governments. These commenters noted that counties are disincentivized to make transfers under section 603(c)(3), as is currently allowed, as such transfers would require that counties provide oversight and monitoring over its subrecipients.

Treasury Response: Section 603(c)(4), by its terms, applies only to transfers from local governments to states. Accordingly, the final rule must maintain the interim final rule's limitation of section 603(c)(4) transfers as applicable only to transfers from local governments to states. Expansions of section 603(c)(4) transfer authority beyond transfers from local governments to states were not explicitly authorized by Congress. As such, transfers under section 603(c)(4) may only be made by local governments to the state in which they are located.

Congress enumerated two separate transfer provisions for local governments—section 603(c)(3) and section 603(c)(4)—that use different language and were intended to operate differently. Section 603(c)(4) contains prefatory language (''Notwithstanding paragraph (1)''—a reference to the eligible SLFRF uses) that section 603(c)(3) does not. In other words, section 603(c)(4) transfers are not required to constitute an eligible use of the funds from the perspective of the transferor local government, but section 603(c)(3) transfers are required to constitute an eligible use. A transfer to accomplish an eligible use fits within the recipient-subrecipient framework.

Further, treating section 603(c)(3) transfers as leading to a cancellation of the award for the transferor local government would result in scenarios that are inconsistent with the statutory language. An award cancellation pursuant to a section 603(c)(3) transfer would result in either (1) non-governmental entities becoming award recipients under the program, which would contravene the purpose of SLFRF or (2) transfers to governmental and non-governmental entities being treated in a distinct and inconsistent manner. That is, section 603(c)(3) transfers to governmental entities would lead to award cancellation but section 603(c)(3) transfers to non-governmental entities would lead to a recipient-subrecipient relationship. Therefore, in the final rule, Treasury maintains its distinct treatment of a section 603(c)(3) transfer and section 603(c)(4) transfer.

The final rule clarifies that a transfer under section 603(c)(4) will result in a modification, termination, or cancellation of the award on the part of the transferor local government and a modification of the award to the transferee state or territory. As detailed in the **SUPPLEMENTARY INFORMATION** to the interim final rule, the transferor must provide notice of the transfer to Treasury in a format specified by Treasury. Until the local government provides such notice and Treasury provides confirmation of its acceptance of the notice, the local government will remain responsible for ensuring that the SLFRF award is being used in accordance with the Award Terms and Conditions, section 602 or 603 of the Social Security Act, the final rule, and program guidance including reporting on such uses of the award funds to Treasury.

A state that receives a transfer from a local government under section 603(c)(4) will be bound, by statute, by all of the use restrictions set forth in section 602(c) with respect to the use of those SLFRF funds, including the prohibitions on use of such SLFRF funds to offset certain reductions in taxes or to make deposits into pension funds. The state will be responsible as the prime recipient for the use and reporting on any funds transferred under section 603(c)(4) by the local government. Such transferred funds will be subject to the Award Terms and Conditions previously accepted by the state in connection with its SLFRF award.

Subrecipient Transfers

Public Comment: Commenters sought clarification as to how funds may be transferred from a recipient to another entity. For instance, one commenter requested that recipients be able to advance funds to subrecipients as opposed to reimbursing subrecipients for expenses incurred.

Treasury Response: Treasury did not specify in the interim final rule whether recipients may advance funds to subrecipients. This omission was not intended to prevent recipients from advancing funds to subrecipients, consistent with the various methods permitted under the Uniform Guidance. Given the broad flexibility that recipients have in selecting eligible uses and the broad variety of potential subrecipients, Treasury believes that specifying a single method of advancement or reimbursement would add unnecessary administrative difficulty to program administration. Recipients may determine the optimal payment structure for the transfer of funds (*e.g.,* advance payments, reimbursement basis, etc.) from recipients to subrecipients. Ultimately, recipients must comply with the eligible use requirements and any other applicable laws or requirements and are responsible for the actions of their subrecipients.

E. Administrative Expenses

The interim final rule permitted, under the heading ''[e]xpenses to improve efficacy of public health or economic relief programs,'' use of funds for ''[a]dministrative costs associated with the recipient's COVID–19 public health emergency assistance programs, including services responding to the COVID–19 public health emergency or its negative economic impacts, that are not federally funded.''

Following release of the interim final rule, Treasury issued Compliance and Reporting Guidance that provided that ''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. Further, costs must be reasonable and allocable as outlined in 2 CFR 200.404 and 2 CFR 200.405. Pursuant to the SLFRF Award Terms and Conditions, recipients are permitted to charge both direct and indirect costs to their SLFRF award as administrative costs. Direct costs are those that are identified specifically as costs of implementing the SLFRF program objectives, such as contract support, materials, and supplies for a project. Indirect costs are general overhead costs of an organization where a portion of such costs are [sic] allocable to the SLFRF award such as the cost of facilities or administrative functions like a director's office.'' [377] Several commenters

[377] U.S. Department of the Treasury, Recipient Compliance and Reporting Responsibilities, as of November 5, 2021; *https://home.treasury.gov/policy-issues/coronavirus/assistance-for-state-local-and-tribal-governments/state-and-local-fiscal-*

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requested clarity on which administrative expenses are permissible uses of funds and how recipients should structure administrative costs.

In the final rule, Treasury is clarifying that direct and indirect administrative expenses are permissible uses of SLFRF funds and are a separate eligible use category from ''[e]xpenses to improve efficacy of public health or economic relief programs,'' which refers to efforts to improve the effectiveness of public health and economic programs through use of data, evidence, and targeted consumer outreach. For details on permissible direct and indirect administrative costs, recipients should refer to Treasury's Compliance and Reporting Guidance.[378] Costs incurred for the same purpose in like circumstances must be treated consistently as either direct or indirect costs.

F. Treatment of Loans

The interim final rule allowed recipients to use SLFRF funds to make loans for uses that are otherwise eligible (for example, for small business assistance). Subsequent guidance clarified how recipients must track and dispose of program income from loans, consistent with the statutory requirements for the timing of SLFRF expenditures.

SLFRF funds must be used to cover ''costs incurred'' by the recipient between March 3, 2021 and December 31, 2024. The interim final rule provided that SLFRF funds must be obligated by December 31, 2024 and expended by December 31, 2026. In using SLFRF funds to make loans, recipients must be able to determine the amount of funds used to make a loan and must comply with restrictions on the timing of the use of funds and with restrictions in the Uniform Guidance.

When SLFRF funds are used as the principal for loans, there is an expectation that a significant share of the loaned funds will be repaid. Thus, recipients may not simply consider the full amount of loaned funds to be permanently expended and must appropriately account for the return of loaned funds.

For loans that mature or are forgiven on or before December 31, 2026, the recipient must account for the use of funds on a cash flow basis, consistent with Treasury's guidance regarding loans made by recipients using payments from the Coronavirus Relief Fund.[379] Recipients may use SLFRF funds to fund the principal of the loan and in that case must track repayment of principal and interest (*i.e.,* ''program income,'' as defined under 2 CFR 200). 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 is subject to restrictions on the timing of the use of funds. Interest payments received prior to the end of the period of performance will be considered an addition to the total award and may be used for any purpose that is an eligible use of funds under the statute and final rule. 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, the recipient must estimate the cost to the recipient of extending the loan over the life of the loan. In other words, at origination, the recipient must measure the projected cost of the loan and may use SLFRF funds for the projected cost of the loan. Recipients have two options for estimating this amount: They may estimate the subsidy cost (*i.e.,* net present value of estimated cash flows) or the discounted cash flow under current expected credit losses (*i.e.,* CECL method). See further guidance issued by Treasury for further explanation.[380]

Public Comment: Many commenters asked for further clarification on the treatment of loans and the calculation of ''costs incurred.'' Some commenters requested that grants made for eligible activities prior to December 31, 2024 to a revolving loan fund, an economic development corporation, a land bank, or a similar facility should be considered obligated and expended at the time of the grant. This would allow funds to be expended by the grantee beyond the covered period and for funds returned to the grantee to be re-invested in further uses outside of the covered period.

Treasury Response: The final rule maintains the treatment of loans from the interim final rule and subsequent guidance, as discussed above. This approach is consistent with the statutory requirement that funds be used for costs incurred for eligible purposes by December 31, 2024 and is consistent with standard accounting practices and the Uniform Guidance.

G. Use of Funds for Match or Cost-Share Requirements

As a general matter and as referenced in the **SUPPLEMENTARY INFORMATION** to the interim final rule, funds provided under one federal program may not be used by a recipient to meet the non-federal match or cost-share requirements of another federal program.

However, Treasury has since determined that, consistent with this general principle and the requirements of the Uniform Guidance at 2 CFR 200.306(b)(5), the funds available under sections 602(c)(1)(C) and 603(c)(1)(C) of the Social Security Act for the provision of government services, up to the amount of the recipient's reduction in revenue due to the public health emergency, generally may be used to meet the non-federal cost-share or matching requirements of other federal programs. Federal funds that constitute revenue sharing to state and local governments may generally be used to meet non-federal match requirements.[381] The broad eligible uses of the SLFRF funds available under sections 602(c)(1)(C) and 603(c)(1)(C) of the Social Security Act, combined with the purpose of these provisions (which is to provide general fiscal assistance to governments facing revenue losses due to the public health emergency), demonstrate that these funds are revenue sharing. They thus should generally be permitted to be used to meet the non-federal match and cost-share requirements of other federal programs. As such, the 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, may be used to meet the non-federal match requirements of the Drinking Water State Revolving Fund and Clean Water State Revolving Fund programs administered by the EPA, for example.

Pursuant to 2 CFR 200.306(b) of the Uniform Guidance, if funds are legally available to meet the match or cost-share requirements of an agency's federal program, such awarding agency is required to accept such funds for the purpose of that program's match or cost-share requirements except in the circumstances enumerated in that section. The Office of Management and Budget has authority under 2 CFR

recovery-funds/recipient-compliance-and-reporting-responsibilities.

[378] *Id.*

[379] Coronavirus Relief Fund for States, Tribal Governments, and Certain Eligible Local Governments, 86 FR at 4192.

[380] *See FAQ 4.11.* Coronavirus State and Local Fiscal Recovery Funds, Frequently Asked Questions, as of July 19, 2021; *https://home.treasury.gov/system/files/136/SLFRPFAQ.pdf.*

[381] See U.S. Government Accountability Office, *Principles of Federal Appropriations Law, Third Edition, Volume II,* p. 10–99, GAO–06–382SP (February 2006), *https://www.gao.gov/assets/gao-06-382sp.pdf.*

200.102 of the Uniform Guidance to issue waivers of this requirement on request of the relevant awarding agency. Analogous requirements and waiver authorities may be present in other 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. Note that SLFRF funds may not be used as the non-federal share for purposes of a state's Medicaid and CHIP programs because the Office of Management and Budget has approved a waiver as requested by the Centers for Medicare & Medicaid Services pursuant to 2 CFR 200.102 of the Uniform Guidance and related regulations.

SLFRF funds beyond those that are available under sections 602(c)(1)(C) or 603(c)(1)(C) of the Social Security Act for the provision of government services may not be used to meet the non-federal match or cost-share requirements of other federal programs other than as specifically provided for by statute. For example, as discussed in other sections of this final rule, section 40909 of the Infrastructure Investment and Jobs Act provides that SLFRF funds may be used to meet the non-federal match requirements of any authorized Bureau of Reclamation project, and section 60102 of the Infrastructure Investment and Jobs Act provides that the SLFRF may be used to meet the non-federal match requirements of the broadband infrastructure program authorized under that section (see sections Water and Sewer Infrastructure and Broadband Infrastructure).

H. Reporting

The interim final rule established Treasury's authority to collect information from recipients through requested reports and any additional requests for information. The interim final rule also provided Treasury flexibility to extend or accelerate reporting deadlines and to modify requested content for the Interim Report, Project and Expenditure reports, and Recovery Plan Performance reports.

The **SUPPLEMENTARY INFORMATION** of the interim final rule provided initial guidance on the reporting requirements for the SLFRF funds. States (defined to include the District of Columbia), territories, metropolitan cities, counties, and Tribal governments were required to submit one interim report and quarterly Project and Expenditure reports thereafter. Non-entitlement units of local government were not required to submit an interim report. States, territories, and metropolitan cities and counties with a population greater than 250,000 residents were also required to submit an annual Recovery Plan Performance report to Treasury. The Supplementary Information of the interim final rule provided guidance on the deadlines and content required for each type of report.

Public Comment: Treasury received many comments on the content and specific data elements required of program reporting. Some commenters expressed enthusiasm for including particular details in reporting to promote transparency. Other commenters requested that Treasury streamline reporting requirements to avoid imposing undue administrative burdens and compliance costs. Many commenters requested further clarification on or amendments to particular elements of reporting content. Some commenters requested that reports and specific reporting elements be public, including a request for a public website with a number of programmatic data metrics about the use of SLFRF funds. Some commenters sought clarification and guidance for using the reporting portal, which allows recipients to upload the required information, or requested user modifications to the portal. Finally, some commenters requested that Treasury provide example materials and reporting metrics to aid recipient understanding.

Treasury Response: Since the publication of the interim final rule, Treasury issued supplementary reporting guidance in the Compliance and Reporting Guidance and in the User Guide: Treasury's Portal for Recipient Reporting (User Guide).[382] Treasury has addressed many of these comments in the Compliance and Reporting Guidance and User Guide and will continue to issue updated guidance prior to each reporting period clarifying any modifications to requested report content. Treasury notes that the interim final rule did not address the specific content and data elements required in reporting, the reporting portal or submission process, and the specific form of reporting (*e.g.,* example templates, machine readability); comments on these topics are outside the scope of the final rule and, as noted, are addressed instead in Compliance and Reporting Guidance.

Reporting Deadlines

Public Comment: Treasury received comments requesting various changes to reporting deadlines to ease compliance burdens. For example, Treasury received several comments requesting that Treasury delay early reporting deadlines for various reasons, including to align with the timeline for issuing a final rule and to allow for more time for recipients to determine SLFRF allocations. Commenters also requested changes to the immediacy of reporting, for example requesting that Treasury allow expenses to be reported with a lag instead of the quarter in which they were accrued or that reports be due 90 days after period close instead of 30 days after the close of a reporting period. Some commenters requested changes to the reporting frequency, for example to report biannually rather than quarterly.

Treasury Response: Treasury has clarified reporting deadlines in the Compliance and Reporting guidance.[383] Treasury is retaining the reporting deadline of 30 days after the close of the reporting period to ensure timely accounting of the use of SLFRF funds; this timeline also aligns with practices in many other federal programs. The final rule maintains Treasury's discretion to extend or delay reporting deadlines.

Administrative Costs for Reporting and Compliance

Public Comment: Many commenters sought clarification about whether various administrative costs related to reporting and compliance were eligible uses of funds and asked for clarification on the limits of such use.

Treasury Response: Treasury notes that administrative costs are generally allowable uses of SLFRF funds, including for reporting. For additional information on administrative expenses, please see section Administrative Expenses under Program Administration Provisions.

Uniform Guidance

Public Comment: The **SUPPLEMENTARY INFORMATION** of the interim final rule clarified that SLFRF funds were generally subject to the provisions of the Uniform Administrative Requirements, Cost Principles, and Audit

[382] U.S. Department of the Treasury, Recipient Compliance and Reporting Responsibilities, as of November 5, 2021; *https://home.treasury.gov/policy-issues/coronavirus/assistance-for-state-local-and-tribal-governments/state-and-local-fiscal-recovery-funds/recipient-compliance-and-reporting-responsibilities.*

[383] *Id.*

Requirements for Federal Awards (2 CFR part 200) (the Uniform Guidance), including the cost principles and restrictions on general provisions for selected items of cost. Treasury received many comments requesting clarification about or modifications to the applicability of the Uniform Guidance on various issues.

For example, one commenter requested that Treasury remove requirements that expenditures of funds be made in conformance with the Uniform Guidance, particularly in case of expenditures made during period from March 3, 2021 to the release of the interim final rule, while other comments requested that Treasury raise the single-audit threshold from $750,000 to $5 million. Commenters sought clarification on items such as: The applicability of the Uniform Guidance for funds that are used for the provision of government services, the applicability of particular sections of the cost principles provided in subpart E of the Uniform Guidance, the applicability of the procurement provisions of the Uniform Guidance, and requirements for subrecipient reporting.

Treasury Response: Recipients of SLFRF funds are subject to the provisions of the Uniform Guidance (2 CFR part 200) from the date of award to the end of the period of performance on December 31, 2026 unless otherwise specified in this rule or program-specific guidance. Costs must follow the requirements in 2 CFR 200 Subpart E, Cost Principles, including procurement standards. Recipients that receive an aggregate amount of federal financial assistance in a given fiscal year that exceeds the Single Audit threshold are subject to the requirements in 2 CFR 200 Subpart F, Audit Requirements, unless otherwise specified in program-specific guidance.

SLFRF funds transferred to subrecipients are also subject to reporting and Uniform Guidance requirements. Additional information about the definition of subrecipients is available in the section Distinguishing Subrecipients versus Beneficiaries.

Recipients should refer to the Assistance Listing for details on the specific provisions of the Uniform Guidance that do not apply to this program. The Assistance Listing is available on SAM.gov. Additional changes to compliance and reporting guidelines, including any clarifications on Uniform Guidance requirements, will be addressed in Compliance and Reporting Guidance and the User Guide.[384]

[384] *Id.*

I. Remediation and Recoupment

Sections 602(e) and 603(e) of the Social Security Act provide the Secretary with the power to recoup ''funds used in violation'' of the Social Security Act. The interim final rule implemented these provisions by establishing a process for recoupment. Treasury may identify funds used in violation of the Social Security Act based on information submitted by recipients, including as part of reporting requirements, as well as information from other sources.[385] If a potential violation is identified, Treasury will provide the recipient an initial written notice of the amount subject to recoupment along with an explanation of such amounts. A recipient then has 60 calendar days following receipt of a recoupment notice to submit a request for reconsideration containing any information it believes supports its use of funds. Within 60 calendar days of receipt of the request for reconsideration, the interim final rule provided that a recipient will receive a final notice of the Secretary's decision to affirm, withdraw, or modify the recoupment notice. If the recipient did not submit a request for reconsideration, the initial notice of recoupment would be deemed a final notice. A recipient would then be required to repay any amounts subject to recoupment within 120 calendar days of either the initial recoupment notice, if the recipient does not request reconsideration, or the final recoupment notice, if the recipient does request reconsideration.

Public Comments

Treasury received several comments on the process for recoupment. For instance, some commenters, including many Tribal governments, requested additional time to file a request for reconsideration and submit repayment to ensure that small entities have the time necessary to carry out any logistical steps and consult with counsel. Treasury was also asked to align its recoupment process with that of the Office of the Inspector General and other departmental administrative processes to resolve findings, agency decisions, and related timelines. One commenter asked if the 120-calendar-day time limit for repayment was based on the initial notice, rather than a final decision issued by the Secretary. Several commenters expressed concern regarding the recoupment process, arguing that consideration of ''all relevant facts and circumstances'' provided Treasury with too much authority and created ambiguity. Other commenters urged Treasury to establish a robust enforcement and compliance program and process and advocated for the creation of a whistleblower mechanism or public complaint process to allow public and private entities to report suspected misuses of funds. Finally, some commenters requested clarification regarding the process after a violation is identified and becomes final. One commenter also asked to allow recipients to amend reports deemed to contain ineligible expenses and inform recipients how the agency intends to resolve instances where a use was later deemed unacceptable. Another commenter asked if recouped funds could be released back to the recipient.

Commenters also expressed concern about Treasury's authority to recoup funds used in violation of the tax offset provision. Some commenters requested additional clarity around when tax cuts would trigger Treasury's recoupment authority and the duration of Treasury's authority to seek recoupment of such funds.

Treasury Response

The final rule largely preserves the process established in the interim final rule but includes several adjustments to clarify certain elements.

Like the interim final rule, the final rule provides that, after an initial determination is made that a recipient has used SLFRF funds in violation of the law, a recipient may submit a request for reconsideration concerning any amounts identified in a notice provided by Treasury. If a recipient chooses to seek reconsideration of the initial notice, the recipient must submit a request for reconsideration as provided under the final rule. If a recipient does not request reconsideration, the initial notice that the recipient received will be deemed the final notice.[386] Treasury has clarified that a recipient must invoke and exhaust the procedures available under section 35.10 of the final rule prior to seeking judicial review of a recoupment decision. Consistent with Section 602(b)(6)(A)(ii)(III) of the Social Security Act, if a state or territory is required to repay funds pursuant to the Secretary's recoupment authority, the Secretary may reduce the amount payable to the state or territory in a second tranche payment by the amount that the state or territory would be required to repay as recoupment.

In the final rule, Treasury has clarified that, if it identifies a potential

[385] Treasury will also consider the tax offset provision on an annual basis.

[386] Funds subject to recoupment cannot later be returned.

violation,[387] it may request additional information from a recipient before initiating the recoupment process and, where necessary, provide written notice to the recipient along with an explanation of such amounts potentially subject to recoupment. Furthermore, Treasury has also made clear that it retains the ability to expedite or extend timelines in any adjudication or pre-adjudication process pursuant to section 35.4(b) of the final rule, although the general timelines set forth in the interim final rule are maintained in the final rule.

This process is intended to provide the recipient with an adequate opportunity to present additional information regarding its uses of funds and provides flexibility for recipients to determine the information relevant to the particular facts and circumstances. It is also flexible enough to align with other adjudication procedures in other ARPA recovery programs administered by the Office of Recovery Programs at Treasury. As discussed above, the initial notice will provide recipients with an explanation of the identified potential violation in order to provide recipients with a meaningful opportunity to respond. Such initial notice will generally include information regarding the specific use of SLFRF funds and the source of such information.[388] This process also will allow the Secretary to take into consideration the information provided by recipients, along with other relevant information, to ensure SLFRF funds are used in a manner consistent with the Social Security Act.

Finally, Treasury expects to work with recipients to support the use of SLFRF funds consistent with the law. For example, Treasury may request additional information from a recipient before initiating the recoupment process. In addition, Treasury may pursue other forms of remediation and monitoring in conjunction with, or as an alternative to, recoupment.[389] These efforts may include working with recipients to identify and substitute permissible uses of SLFRF funds or amending uses of SLFRF funds to comply with applicable restrictions.

In response to comments regarding the amount of time provided to respond to an initial notice, the final rule clarifies that Treasury retains the ability to expedite or extend timelines in any adjudication or pre-adjudication process pursuant to section 35.4(b) of the final rule, although the general timelines set forth in the interim final rule are maintained in the final rule.

V. Regulatory Analyses

Executive Orders 12866 and 13563

Regulatory Impact Assessment

This final rule is a ''significant regulatory action'' under section 3(f) of Executive Order 12866 for the purposes of Executive Orders 12866 and 13563 because it is likely to have an annual effect on the economy of $100 million or more.

As explained below, this regulation meets a substantial need: ensuring that recipients—states, territories, Tribal governments, and local governments—of SLFRF funds fully understand the requirements and parameters of the program as set forth in the statute and deploy funds in a manner that best reflects Congress' intent to provide necessary relief to recipient governments adversely impacted by the COVID–19 public health emergency. Furthermore, as required by Executive Orders 12866 and 13563, Treasury has weighed the costs and benefits of this final rule and varying alternatives and has reasonably determined that the benefits of the final rule to recipients and their communities far outweigh any costs.

The rule has been reviewed by the Office of Management and Budget (OMB) in accordance with Executive Order 12866.

Executive Orders 12866 and 13563

Under Executive Order 12866, OMB must determine whether this regulatory action is ''significant,'' and therefore, subject to the requirements of the Executive Order and subject to review by OMB. Section 3(f) of Executive Order 12866 defines a significant regulatory action as an action likely to result in a rule that may, among other things, have an annual effect on the economy of $100 million or more. This rule is likely to have an annual effect on the economy of $100 million or more, and therefore, it is subject to review by OMB under section 3(f) of Executive Order 12866.

Treasury has also reviewed these regulations under Executive Order 13563, which supplements and explicitly reaffirms the principles, structures, and definitions governing regulatory review established in Executive Order 12866. To the extent permitted by law, section 1(b) of Executive Order 13563 requires that an agency: (1) Propose or adopt regulations only upon a reasoned determination that their benefits justify their costs (recognizing that some benefits and costs are difficult to quantify); (2) tailor its regulations to impose the least burden on society, consistent with obtaining regulatory objectives taking into account, among other things, and to the extent practicable, the costs of cumulative regulations; (3) select, in choosing among alternative regulatory approaches, those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity); (4) to the extent feasible, specify performance objectives, rather than the behavior or manner of compliance a regulated entity must adopt; and (5) identify and assess available alternatives to direct regulation, including providing economic incentives—such as user fees or marketable permits—to encourage the desired behavior, or providing information that enables the public to make choices. Executive Order 13563 also requires an agency ''to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible.'' OMB's Office of Information and Regulatory Affairs (OIRA) has emphasized that these techniques may include ''identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes.''

Based on the analysis that follows and the reasons stated elsewhere in this document, Treasury believes that this final rule is consistent with the principles set forth in Executive Orders 12866 and 13563. This Regulatory Impact Analysis discusses the need for regulatory action, the potential benefits, and the potential costs. Treasury has assessed the potential costs and benefits, both quantitative and qualitative, of this regulatory action, and is issuing this final rule only on a reasoned determination that the benefits exceed the costs. In choosing among alternative regulatory approaches, Treasury selected those approaches that would maximize net benefits.

Need for Regulatory Action

This final rule implements the $350 billion SLFRF program of the ARPA, which Congress passed to help states, territories, Tribal governments, and localities respond to the ongoing COVID–19 public health emergency and its economic impacts. As the agency charged with execution of these programs, Treasury has concluded that this final rule is needed to ensure that recipients of SLFRF funds fully

[388] Treasury may address potential violations based on information submitted from recipients, either through quarterly reports or self-reported information, and from other sources of information as Treasury deems necessary and appropriate (*e.g.,* press, information submitted from the public).

[389] Treasury intends to work with recipients to support the use of SLFRF funds consistent with the law.

understand the requirements and parameters of the program as set forth in the statute and deploy funds in a manner that best reflects Congress' mandate for targeted fiscal relief. This final rule governs the use of $350 billion in grant funds from the federal government to states, territories, Tribal governments, and localities, generating a significant macroeconomic effect on the U.S. economy. Treasury has sought to implement the program in ways that maximize its potential benefits while minimizing its costs. It has done so by: aiming to target relief in key areas according to the congressional mandate; offering clarity to states, territories, Tribal governments, and localities while maintaining their flexibility to respond to local needs; and limiting administrative burdens.

Analysis of Benefits

Relative to a pre-statutory baseline, the SLFRF funds provide a combined $350 billion to state, local, and Tribal governments for fiscal relief and support for costs incurred responding to the COVID–19 pandemic. Treasury believes that this transfer will generate substantial additional economic activity, although given the flexibility accorded to recipients in the use of funds, it is not possible to precisely estimate the extent to which this will occur and the timing with which it will occur. Economic research has demonstrated that state fiscal relief is an efficient and effective way to mitigate declines in jobs and output during an economic downturn.[390] Absent such fiscal relief, fiscal austerity among state, local, and Tribal governments could exert a prolonged drag on the overall economic recovery, as occurred following the 2007–2009 recession.[391]

This final rule provides benefits across several areas by implementing the four eligible use categories, as defined in statute: strengthening the response to the COVID–19 public health emergency and its negative economic impacts; replacing lost revenue to ease fiscal pressure on state, local, and Tribal governments that might otherwise lead to harmful cutbacks in employment or government services; providing premium pay to essential workers; and making necessary investments in water, sewer, and broadband infrastructure.

These benefits are achieved in the final rule through a broadly flexible approach that sets clear guidelines on eligible uses of SLFRF funds and provides state, local, and Tribal government officials discretion within those eligible uses to direct SLFRF funds to areas of greatest need within their jurisdiction. While preserving recipients' overall flexibility, the final rule includes several provisions that implement statutory requirements and will help support use of SLFRF funds to achieve the intended benefits. Preserving flexibility for recipients not only serves an important public policy goal by allowing them to meet particularized and diverse needs of their local communities but also enhances the economic benefits of the final rule by allowing recipients to choose eligible uses of funds that provide the highest utility in their jurisdictions.

In implementing the ARPA, Treasury has also prioritized supporting underserved communities that have been disproportionately impacted by the pandemic. The SLFRF program as implemented by the final rule provides even greater flexibility to recipients for uses of funds in underserved communities, recognizing that pre-existing health and economic disparities in these communities amplified the impact of the pandemic there. In general, investments in improving health outcomes and economic opportunities provide high economic returns, so this approach is likely to achieve substantial near-term economic and public health benefits, in addition to the longer-term benefits arising from the allowable investments in water, sewer, and broadband infrastructure.

The remainder of this section clarifies how Treasury's approach to key provisions in the final rule will contribute to greater realization of benefits from the program.

Public Health and Negative Economic Impacts

The eligible use category for responding to the public health and negative economic impacts of the pandemic covers a wide range of eligible uses of funds. Treasury addresses several key uses of funds in this analysis, as well as ways that Treasury has structured this eligible use to minimize recipient administrative burden while also maintaining targeting of the funding to entities that experienced negative impacts from the pandemic.

Government Employment: In order to bolster the government's ability to effectively administer services, the final rule allows for a broader set of eligible uses to restore and support public sector employment relative to the interim final rule. In particular, eligible uses include hiring up to a pre-pandemic baseline that is adjusted for historic underinvestment in the public sector by allowing funds to be used to pay for payroll and covered benefits associated with the recipient increasing its number of employees up to 7.5 percent above its pre-pandemic baseline. Eligible uses also include 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.

Treasury believes this expanded approach, relative to the interim final rule, provides useful flexibility to recipients, which may increase a state or local government's ability to effectively deliver services to its residents. While the interim final rule already explicitly permitted using funds to restore recipients' workforces up to pre-pandemic levels, the final rule's inclusion of an upward adjustment factor recognizes that, as the population or economy of a jurisdiction grows over time, more workers are generally needed to effectively meet responsibilities. It also provides recipients greater room to employ funds toward building back the public sector workforce after years of chronic underinvestment since the Great Recession. Treasury arrived at the 7.5 percent adjustment factor through an analysis of data from the Bureau of Labor Statistics on state and local government employment and data from the Census Bureau on population to estimate the extent of underinvestment in the public sector since the onset of the Great Recession. While Treasury considered a range of methodologies and point estimates to set the adjustment factor, a 7.5 percent factor errs on the side of recipient flexibility. Treasury believes this adjustment enhances recipients' ability to identify and meet the particularized needs of their communities. Treasury also believes that the additional enumerated eligible uses for supporting the workforce provide recipients several means to help retain current workers, decreasing turnover costs.

Identifying Eligible Populations

Treasury has provided several methods for recipients to identify households, populations, and communities eligible for services that respond to the public health and negative economic impacts of the pandemic. In general, these methods seek to provide recipients options to identify eligible populations with minimal administrative burden, while also maintaining targeting of the funds

[390] *See, e.g.,* Gabriel Chodorow-Reich et al., *Does state Fiscal Relief During Recessions Increase Employment? Evidence from the American Recovery and Reinvestment Act,* 4 American Economic Journal 118–145 (2012) *http://dx.doi.org/10.1257/pol.4.3.118.*

[391] See, *e.g.,* Fitzpatrick, *supra* note 278.

to entities impacted by the pandemic. Recipients also retain flexibility to identify and serve other populations and entities that experienced pandemic impacts, ensuring that recipients can meet the particularized needs of their local communities.

Defining Low and Moderate Income: To streamline the provision of funds relating to negative economic impacts resulting from the pandemic, Treasury has created an eligibility standard making it easier for recipients to provide assistance to low- and moderate-income populations without needing to identify and document a specific negative economic impact. Populations falling under the definition of low income are presumed to have been disproportionately impacted by the pandemic, while those falling under the definition of moderate income are presumed to have been impacted by the pandemic. In addition, the final rule recognizes categorical eligibility for certain enumerated programs and populations if a recipient chooses to implement categorical eligibility when identifying impacted and disproportionately impacted populations. Treasury considered several options for eligibility standards that would reduce administrative burdens for recipients when determining who qualifies as low and moderate income.

One option involved defining a household as low income or moderate income based only on FPG thresholds and could use levels lower than those selected. This option involved setting uniform thresholds throughout the country.

A second option took a broader approach, defining a household as low income if it has (i) income at or below 185 percent of the FPG for the size of its household or (ii) income at or below 40 percent of the AMI for its county and size of household. The option defined a household as moderate income if it has (i) income at or below 300 percent of the FPG for the size of its household or (ii) income at or below 65 percent of the AMI for its county and size of household. The combination of an FPG floor with AMI allows for a regional adjustment in areas with substantially higher costs and incomes. Finally, Treasury also considered a range of FPG and AMI thresholds above and below these levels.

Treasury chose the second option. Treasury believes that the higher FPG floor will ease administrative burdens by making more households presumptively eligible for funds meant to address negative economic impacts in a targeted manner. With respect to the low-income cutoff, 185 percent of the FPG for a family of four is $49,025, which is approximately the wage earnings for a two-earner household where both earners receive the median wage in occupations, such as waiters and waitresses and hotel clerks, that were heavily impacted by COVID–19. As such, this cutoff is likely to include more workers in industries heavily impacted by COVID–19, who may be most likely to face disproportionate impacts of the pandemic, than a lower threshold.[392] With respect to the moderate-income cutoff, many households with incomes between 200 percent and 300 percent of the FPG struggle with a lack of economic security, suggesting that 300 percent of the FPG was an appropriate cutoff for moderate income.

Treasury also considered relatively higher thresholds for both an FPG and AMI approach; however, increasing income thresholds for presumed eligibility increases the likelihood that higher-income workers, who generally experienced fewer economic impacts from the pandemic, would become presumed eligible for responsive services. Providing services to households that did not experience a negative economic impact, or experienced a relatively minimal impact, would provide much less benefit than serving households that experienced more severe impacts, diluting the benefits of the SLFRF funds.

In all, Treasury anticipates that these selected thresholds, combined with the regional adjustment, will allow resources to be targeted toward individuals and households with the greatest need while also reducing administrative burdens on recipients.

Disproportionately Impacted Populations: In the interim final rule, Treasury enumerated a broader set of eligible uses for disproportionately impacted communities, in recognition of the pre-existing health, economic, and social disparities that contributed to disproportionate pandemic impacts in certain communities and that addressing root causes of those disparities constitutes responding to the public health and negative economic impacts of the pandemic. To identify these communities and reduce administrative burden, Treasury allowed recipients to presume that certain populations—those in QCTs and those being served by Tribal governments—were disproportionately impacted. In the final rule, to further decrease administrative burden and enhance recipient flexibility, Treasury is allowing recipients to also presume that low-income households were disproportionately impacted. Treasury anticipates that adding low-income households as a presumed eligible population will maintain targeting of funds to populations and communities most likely to have experienced severe pandemic impacts, while providing a more flexible approach for recipients.

Identifying Impacted Classes: In the final rule, Treasury reiterated its stance in the interim final rule allowing recipients to designate a class of households or other entities as impacted or disproportionately impacted and provide responsive services. After designating a class, recipients can serve a household or entity by simply identifying that the household or entity is a member of the class. Relative to restricting services to only presumed eligible populations identified by Treasury, this decision provides vital administrative flexibility for recipients that may identify particular impacted classes in the context of their jurisdiction. Treasury anticipates that SLFRF funds will be targeted to impacted or disproportionately impacted communities, as recipients must demonstrate that the designated class experienced negative economic impacts or meaningfully more severe negative economic impacts. This approach maintains the requirement that entities served have to have experienced a negative economic impact, while simultaneously minimizing any administrative costs associated with meeting this requirement.

Additional Enumerated Uses

The interim final rule enumerated eligible uses of SLFRF funds to serve both impacted and disproportionately impacted communities. For example, enumerated eligible uses to serve impacted communities included food assistance; rent, mortgage, or utility assistance; and counselling and legal aid to prevent eviction or homelessness. Examples of enumerated eligible uses to serve disproportionately impacted communities included remediation of lead paint or other lead hazards and housing vouchers and assistance relocating to neighborhoods with higher levels of economic opportunity. In the final rule, Treasury had the option to retain, expand, or reduce enumerated eligible uses, or shift use eligibility between disproportionately impacted and impacted communities. Many

[392] *See* U.S. Bureau of Labor Statistics, Occupational Employment and Wage Estimates, *https://www.bls.gov/oes/current/oes_nat.htm* (last visited November 9, 2021).

public comments suggested potential expansions of uses, including shifting enumerated eligible uses for disproportionately impacted communities to serve a broader population of impacted communities. Taking these comments into account, Treasury generally took this approach, in anticipation that the benefits of the program will increase while recipient administrative costs in identifying and justifying non-enumerated uses of funds will decrease.

Specifically, Treasury added enumerated eligible uses for impacted populations including paid sick, medical, or family leave; health insurance subsidies; and services for the unbanked and underbanked, on the basis that impacts of the pandemic that were broadly experienced by many communities would be addressed by these uses. Treasury also shifted some eligible uses, formerly restricted only to disproportionately impacted communities, to impacted communities. These uses included community violence intervention, assistance accessing or applying to public benefits and services, affordable housing development, and services to promote healthy childhood environments like childcare and early learning. These uses were shifted on the basis that the associated impacts of the pandemic were experienced by a broader population, and responses are, accordingly, eligible to benefit a broader population.

Additionally, the final rule clarified that investments in parks and other public outdoor recreation spaces are enumerated eligible uses for disproportionately impacted communities. In including these uses, Treasury took into account evidence on the social determinants of health, or the ways that social context, like the neighborhood built environment, impacts health outcomes. By taking a more holistic approach to public health, the final rule allows recipients to respond more broadly to factors that contributed to the pandemic's health impacts and more fully mitigate those health impacts.

To balance administrative flexibility with a maintenance of focus on impacts of the pandemic, Treasury considered, but did not include, other proposed enumerated uses that did not respond to the impacts of the pandemic or responded to impacts that were not experienced generally across the country by many jurisdictions and populations. For example, Treasury did not include pollution remediation broadly, a proposed enumerated eligible use for disproportionately impacted communities, on the basis that associated projects would only respond to disproportionate impacts of the pandemic depending on the specific issue addressed. In sum, Treasury expanded enumerated eligible uses while retaining a focus on broadly experienced impacts of the pandemic. Treasury anticipates that this will give recipients further flexibility to presume eligibility and respond to pandemic impacts without increasing administrative burden.

Capital Expenditures: In the interim final rule, Treasury permitted funds to be used for a limited number of capital expenditures mostly related to the COVID–19 public health response. This decision granted recipients some discretion to use SLFRF funds to address COVID–19 prevention and mitigation through certain investments in equipment, real property, and facilities, which Treasury recognized as critical components of the public health response. In the final rule, Treasury considered maintaining the provisions in the interim final rule or expanding allowable capital expenditures to provide recipients greater flexibility to pursue other capital investments that are responsive to the public health emergency and its negative economic impacts. While expanding allowable capital expenditures may increase the risk that recipients will undertake large expenditures that do not sufficiently address intended harms, or address harms in a less cost-efficient manner than an alternative investment (*e.g.,* a program or service), expanding allowable capital expenditures would likely help fill critical gaps in recipients' response to the pandemic and provide equipment and facilities that generate benefits beyond SLFRF's period of performance. To preserve flexibility while mitigating risks, the final rule allows recipients to undertake an expanded set of capital expenditures while requiring additional written justifications for projects with an expected total cost at or over $1 million. Treasury believes this approach balances the implementation of appropriate risk-based compliance requirements and the provision of administrative convenience for smaller capital expenditures, while generally allowing recipients the flexibility to undertake a greater variety of responsive capital expenditures.

Revenue Loss

Revenue Loss Formula: In this final rule, Treasury's approach to revenue loss allows recipients to compute the extent of reduction in revenue by comparing actual revenue to a counterfactual trend representing what could have plausibly been expected to occur in the absence of the pandemic. The counterfactual trend begins with the last full fiscal year prior to the public health emergency (as required by statute) and projects forward with an annualized growth adjustment. Treasury has made several adjustments in the final rule to decrease administrative burden, reducing costs for recipients, while still accurately capturing reductions in revenue due to the pandemic.

Under the interim final rule, Treasury specified that recipients calculate revenue loss on a calendar year basis. In this final rule, Treasury is providing recipients the option to calculate revenue loss on a calendar year or fiscal year basis, which will allow recipients the administrative flexibility to minimize administrative burdens based on the data available to them.

Treasury's decision to incorporate a growth adjustment into the calculation of revenue loss ensures that the formula more fully captures revenue shortfalls relative to recipients' pre-pandemic expectations. Recipients will have the opportunity to calculate revenue loss at several points throughout the program, recognizing that some recipients may experience revenue effects with a lag. This option to re-calculate revenue loss on an ongoing basis is intended to result in more support for recipients to avoid harmful cutbacks in future years. In calculating revenue loss, recipients will look at general revenue in the aggregate, rather than on a source-by-source basis, given that recipients may have experienced offsetting changes in revenues across sources. The final rule also provides for removing the impact of tax increasing or decreasing changes, which affect the amount of revenue collected but are not ''due to'' the pandemic, from the calculation of revenue loss due to the public health emergency. Both of these components of Treasury's approach provide a more accurate representation of the effect of the pandemic on overall revenues.

Revenue Loss Standard Allowance: In addition to largely preserving the formula to calculate revenue loss from the interim final rule, Treasury also added an alternative ''standard allowance'' option for the revenue loss calculation to this final rule. Treasury's decision to elect to allow a fixed amount of loss that can be used to fund ''government services'' allows recipients the flexibility to use minimal administrative capacity on the calculation if desired. The decision also benefits recipients by allowing them to avoid expending administrative

resources to determine how unique variations in revenue interact with the revenue loss formula.

Premium Pay

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

Water and Sewer Infrastructure

In the interim final rule, Treasury aligned eligible uses of funds for water and sewer infrastructure to those projects eligible to receive financial assistance through the DWSRF and CWSRF administered by the EPA.

The benefits of this approach included giving recipients an existing list that would provide them clarity as well as flexibility in identifying eligible projects, particularly given the broad range of projects eligible under the CWSRF and DWSRF. The approach also ensured that projects would conform to vetted project types from a widely used program. Treasury received comments from recipients requesting additional project categories to be considered eligible, indicating a potential cost to maintaining alignment with the CWSRF and DWSRF.

For the final rule, Treasury has expanded eligibility to include several additional project types beyond those covered by the CWSRF and DWSRF.

Treasury believes that expanded eligibility will benefit recipients by allowing them additional flexibility to pursue beneficial projects, including project categories that support the provision of drinking water and the removal, management, and treatment of wastewater and stormwater: Additional stormwater management projects, private well infrastructure, additional projects that address lead in water, and certain dam and reservoir rehabilitation projects undertaken to address the provision of drinking water. A potential cost of this approach is that uses beyond the CSWRF and DWSRF may have less public guidance available to understand project eligibilities. However, Treasury anticipates that this eligibility expansion will provide a net benefit to recipients by allowing them to pursue projects relevant to their goals that were ineligible under the interim final rule.

The expansion to allow private well infrastructure may also affect the distributional impact of SLFRF. Private wells disproportionately serve rural Americans, including low-income households, and expanding eligibility to include this use may allow SLFRF funds to benefit such households. While distributional impacts are uncertain, Treasury believes that the potential for benefits to accrue to rural and low-income households makes it important to clarify that these types of projects are eligible.

Broadband Infrastructure

In the final rule, Treasury expands eligible areas for broadband investment by requiring that recipients invest in projects designed to provide service to households and businesses with an identified need for additional broadband investment, including increasing access to high-speed broadband, increasing the affordability of broadband services, and improving the reliability of broadband service.[393] Treasury considered multiple alternatives when selecting this standard. The threshold for the interim final rule allowed benefits to accrue in a more targeted manner to the approximately 9 percent of the country with access to speeds under the 25/3 Mbps threshold.[394] However, since SLFRF funds are distributed to tens of thousands of governments across the country with a variety of broadband needs, Treasury believes that allowing recipients greater flexibility to determine locations to serve in their jurisdictions—including considering affordability and competition barriers—will lead to greater long-term public benefit. Further, given that many federal broadband grant programs are focused solely on unserved and underserved areas, Treasury believes that the final rule's flexibility enables these funds to fill an important role in the overall federal broadband landscape.

In the final rule, Treasury also requires that broadband projects must meet a standard of reliably delivering at least 100 Mbps download speeds and upload speeds, or in cases where it is not practicable to do so, reliably delivering at least 100 Mbps download speed and between at least 20 Mbps and 100 Mbps upload speed while being scalable to 100 Mbps upload and download speeds. Treasury expects that this threshold will yield long-term benefits and allow networks to meet both pandemic-related and future needs. The Federal Communications Commission (FCC) estimates that currently a household with two to three remote learners using the internet simultaneously needs a connection supporting 100 Mbps download speeds.[395] While a lower threshold may have resulted in lower near-term costs to build, it would have potentially constrained future utility from the infrastructure by producing infrastructure that would more quickly—potentially in the near-term—become obsolete and no longer meet household needs, potentially requiring sooner replacement and generally decreasing the return on investment. As

[393] Further, the final rule encourages, but does not require, that recipients pursue broadband infrastructure projects in locations not currently served by a wireline connection that reliably delivers at least 100 Mbps of download speed and 20 Mbps of upload speed.

[394] Data from the Federal Communications Commission shows that as of June 2020, 9.07 percent of the U.S. population had no available cable or fiber broadband providers providing greater than 25 Mbps download speeds and 3 Mbps upload speeds. Federal Communications Commission, Fixed Broadband Deployment, *https://broadbandmap.fcc.gov/#/* (last visited May 9, 2021).

[395] *See* Federal Communications Commission, Broadband Speed Guide, available at *https://www.fcc.gov/consumers/guides/broadband-speed-guide* (last visited October 28, 2021).

such, projects meeting a lower threshold could not be considered ''necessary'' investments in broadband infrastructure, so Treasury has retained the threshold from the interim final rule.

Further, the final rule adds a requirement that recipients address the affordability needs of low-income consumers in accessing broadband networks funded by SLFRF, either by requiring service providers that provide service to households to either participate in the FCC's Affordable Connectivity Program (ACP), or a broad-based affordability program with commensurate benefits. Treasury believes that this requirement will increase the number of customers that are able to take advantage of broadband infrastructure funded by SLFRF, increasing the effectiveness of funds in connecting households and businesses to high-speed internet that is critical to work, health, and education. There is a potential that this requirement may marginally increase project costs for recipients and providers, but this impact is uncertain, given the varying business models and pricing structures of broadband projects and providers.

Labor Standards

In this Supplementary Information for the final rule, Treasury encourages recipients to ensure that capital expenditures to respond to the public health and negative economic impacts of the pandemic and water, sewer, and broadband projects use strong labor standards, including, for example, project labor agreements and community benefits agreements that offer wages at or above the prevailing rate and include local hire provisions. Treasury believes that its encouragement of labor standards carries benefits because it will ensure that workers have access to strong employment opportunities associated with infrastructure projects, which will in turn aid the economic recovery. Treasury believes that infrastructure projects may also benefit from stronger labor standards due to the potential of these standards to ensure a stronger skilled labor supply and minimize labor disputes and workplace injuries, which can result in costly disruptions to projects. Treasury assesses that these benefits will increase the economy and efficiency of infrastructure projects undertaken through SLFRF and will outweigh the potential for a marginal increase in labor costs.

Splitting Payments to Recipients

Treasury is required by statute to deliver funds to local governments in two payments separated by at least twelve months, and the interim final rule provided for split payments to a majority of states as well. As discussed above, splitting payments ensures that recipients can adapt spending plans to evolving economic conditions and that at least some of the economic benefits will be realized in 2022 or later. However, consistent with authorities granted to Treasury in the statute, Treasury recognizes that a subset of states with significant remaining elevation in the unemployment rate could face heightened additional near term needs to aid unemployed workers and stimulate the recovery. Therefore, for a subset of state governments, Treasury has provided funds in one payment. Treasury believes that this approach strikes an appropriate balance between the general reasons to provide funds in two payments and the heightened additional near-term needs in specific states. As discussed above, Treasury set a threshold based on historical analysis of unemployment rates in recessions.

Reaching Underserved Communities

Finally, the final rule aims to promote and streamline the provision of assistance to individuals and communities in greatest need, particularly communities that have been historically underserved and have experienced disproportionate impacts of the COVID–19 crisis. Targeting relief is in line with Executive Order 13985, ''Advancing Racial Equity and Support for Underserved Communities Through the Federal Government,'' which laid out an Administration-wide priority to support ''equity for all, including people of color and others who have been historically underserved, marginalized, and adversely affected by persistent poverty and inequality.'' To this end, the final rule enumerates a list of services that may be provided using SLFRF funds in disproportionately impacted communities, including low-income areas, to address the more severe impacts of the pandemic in these communities; establishes the characteristics of essential workers eligible for premium pay and encouragement to serve workers based on financial need; provides that recipients may use SLFRF funds to restore state and local workforces, where women and people of color are disproportionately represented; and requires that broadband infrastructure projects participate in programs to support affordability of broadband service. Collectively, these provisions will promote use of resources to facilitate the provision of assistance to individuals and communities with the greatest need.

Analysis of Costs

This regulatory action will generate administrative costs relative to a pre-statutory baseline. This includes, chiefly, costs required to administer SLFRF funds, oversee subrecipients and beneficiaries, and file periodic reports with Treasury. It also requires states to allocate SLFRF funds to nonentitlement units, which are smaller units of local government that are statutorily required to receive their funds through states. Treasury expects that the administrative burden associated with this program will be moderate for a grant program of its size. Treasury expects that many recipients receive direct or indirect funding from federal government programs and that many have familiarity with how to administer and report on federal funds or grant funding provided by other entities. In particular, states, territories, and large localities will have received funds from the Coronavirus Relief Fund (CRF) and Treasury expects them to rely heavily on established processes developed through that program or other prior grant funding, mitigating burden on these governments. Treasury has enhanced the level of recipient reporting as compared to the CRF, incorporating feedback from the Government Accountability Office and others that additions would improve the oversight of recipients' use of funds. To balance the oversight benefits with the costs of added reporting burdens, Treasury has incorporated other mechanisms to mitigate burden. For example, Treasury is ''tiering'' reporting requirements so that recipients that receive relatively lesser amounts of SLFRF funds are required to submit less frequent reports than recipients receiving greater amounts of funds. Treasury is noting administrative costs as a generally allowable use of SLFRF funds, which defrays administrative expenses to recipients that may be needed to comply with reporting requirements. Treasury has also provided options for recipients to use eligibility thresholds they are already familiar with during administration of SLFRF funds, which will enable recipients to avoid the costs of setting up new programs and reporting mechanisms to meet reporting and compliance requirements. For example, Treasury has permitted recipients to use ''categorical eligibility'' when delivering assistance to particular groups, such as impacted or disproportionately impacted households.

In making implementation choices, Treasury has hosted numerous consultations with a diverse range of direct recipients—states, cities, counties, and Tribal governments—along with various communities across the United States, including those that are underserved. Furthermore, Treasury has made clear in guidance that SLFRF funds may be used to cover certain expenses related to administering programs established using SLFRF funds.[396]

Executive Order 13132

Executive Order 13132 (entitled Federalism) prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial, direct compliance costs on state, local, and Tribal governments, and is not required by statute, or preempts state law, unless the agency meets the consultation and funding requirements of section 6 of the Executive Order. This final rule does not have federalism implications within the meaning of the Executive Order and does not impose substantial, direct compliance costs on state, local, and Tribal governments or preempt state law within the meaning of the Executive Order. The compliance costs are imposed on state, local, and Tribal governments by sections 602 and 603 of the Social Security Act, as enacted by the ARPA. Notwithstanding the above, Treasury has engaged in efforts to consult and work cooperatively with affected state, local, and Tribal government officials and associations in the process of developing the interim final rule and this final rule. Pursuant to the requirements set forth in section 8(a) of Executive Order 13132, Treasury certifies that it has complied with the requirements of Executive Order 13132.

Administrative Procedure Act

The Administrative Procedure Act (APA), 5 U.S.C. 551 *et seq.,* generally requires public notice and an opportunity for comment before a rule becomes effective. However, the APA provides that the requirements of 5 U.S.C. 553 do not apply ''to the extent that there is involved . . . a matter relating to agency . . . grants.'' The APA also provides an exception to ordinary notice-and-comment procedures ''when the agency for good cause finds (and incorporates the finding and a brief statement of reasons therefor in the rules issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.'' 5 U.S.C. 553(b)(B). The interim final rule was issued without prior notice and comment procedures because it implemented statutory conditions on the eligible uses of SLFRF funds, and addressed the payment of those funds, the reporting on uses of funds, and potential consequences of ineligible uses to help address the economic and public health emergency. See the **SUPPLEMENTARY INFORMATION** section of the May 17, 2021 interim final rule for the applicability of the requirements of 5 U.S.C. 553. In addition, under the exception discussed in that section for matters relating to agency grants, the requirements of 5 U.S.C. 553 also do not apply to this final rule. After careful consideration of the comments received, this final rule adopts the May 17, 2021 interim final rule with the revisions discussed in this **SUPPLEMENTARY INFORMATION.**

Congressional Review Act

The Administrator of OIRA has determined that this is a major rule for purposes of Subtitle E of the Small Business Regulatory Enforcement and Fairness Act of 1996 (also known as the Congressional Review Act or CRA) (5 U.S.C. 804(2) *et seq.*). Under the CRA, a major rule generally may take effect no earlier than 60 days after the rule is published in the **Federal Register**. 5 U.S.C. 801(a)(3).

Paperwork Reduction Act

The information collections associated with the SLFRF program have been reviewed and approved by OMB pursuant to the Paperwork Reduction Act (44 U.S.C. Chapter 35) (PRA) and assigned control number 1505–0271. Under the PRA, an agency may not conduct or sponsor, and a respondent is not required to respond to, an information collection unless it displays a valid OMB control number.

Estimates of hourly burden under this program are set forth in the table below.

Reporting	Number respondents	Number responses per respondent	Total responses	Hours per response	Total burden in hours	Cost to respondents ($48.80 per hour*)
Recipient Payment Form	5,050	1	5,050	.25 (15 minutes)	1,262.5	$61,610
Acceptance of Award Terms	5,050	1	5,050	.25 (15 minutes)	1,262.5	61,610
Title VI Assurances	5,050	1	5,050	.50 (30 minutes)	2,525	123,220
Tribal Employment Information Form	584	1	584	.75 (45 minutes)	438	21,374
Request for Extension Form	96	1	96	1	96	4,685
Annual Recovery Plan Performance Report	430	1	430	100	43,000	2,098,400
NEU Distribution Template	55	2	110	10	1,100	53,680
Non-UGLG Distribution Template	55	2	110	5	550	26,840
Transfer Forms	1,500	1	1,500	1	1,500	73,200
Project and Expenditure Report	37,000	1	37,000	5	185,000	9,028,000
Total	54,870		54,980		236,735	11,552,619

*Bureau of Labor Statistics, U.S. Department of Labor, Occupational Outlook Handbook, Accountants and Auditors, on the internet at *https://www.bls.gov/ooh/business-and-financial/accountants-and-auditors.htm* (visited March 28, 2020). Base wage of $33.89/hour increased by 44 percent to account for fully loaded employer cost of employee compensation (benefits, etc.) for a fully loaded wage rate of $48.80.

Regulatory Flexibility Analysis

The Regulatory Flexibility Act (RFA) generally requires that when an agency issues a proposed rule, or a final rule pursuant to section 553(b) of the Administrative Procedure Act or another law, the agency must prepare a regulatory flexibility analysis that meets the requirements of the RFA and publish such analysis in the **Federal Register**. 5 U.S.C. 603, 604.

Rules that are exempt from notice and comment under the APA or any other law are also exempt from the RFA

[396] *See* Coronavirus State and Local Fiscal Recovery Funds, Frequently Asked Questions, 10.2, as of July 19, 2021; *https://home.treasury.gov/system/files/136/SLFRPFAQ.pdf.*

requirements, including the requirement to conduct a regulatory flexibility analysis, when among other things the agency for good cause finds that notice and public procedure are impracticable, unnecessary, or contrary to the public interest. Because this rule is exempt from the notice and comment requirements of the APA, Treasury is not required to conduct a regulatory flexibility analysis.

Rule Text

List of Subjects in 31 CFR Part 35

Executive compensation, State and Local Governments, Tribal Governments, Public health emergency.

For the reasons stated in the preamble, the United States Department of the Treasury amends 31 CFR part 35 as follows:

PART 35—PANDEMIC RELIEF PROGRAMS

■ 1. Revise Subpart A to read as follows:

Subpart A—Coronavirus State and Local Fiscal Recovery Funds

Sec.

35.1 Purpose.
35.2 Applicability.
35.3 Definitions.
35.4 Reservation of authority, reporting.
35.5 Use of funds.
35.6 Eligible uses.
35.7 Pensions.
35.8 Tax.
35.9. Compliance with applicable laws.
35.10. Recoupment.
35.11 Payments to States.
35.12. Distributions to nonentitlement units of local government and units of general local government.

Authority: 42 U.S.C. 802(f); 42 U.S.C. 803(f).

§ 35.1 Purpose.

This part implements section 9901 of the American Rescue Plan Act (Subtitle M of Title IX of Pub. L. 117–2), which amends Title VI of the Social Security Act (42 U.S.C. 801 *et seq.*) by adding sections 602 and 603 to establish the Coronavirus State Fiscal Recovery Fund and Coronavirus Local Fiscal Recovery Fund.

§ 35.2 Applicability.

This part applies to states, territories, Tribal governments, metropolitan cities, nonentitlement units of local government, counties, and units of general local government that accept a payment or transfer of funds made under section 602 or 603 of the Social Security Act.

§ 35.3 Definitions.

Baseline means tax revenue of the recipient for its fiscal year ending in 2019, adjusted for inflation in each reporting year using the Bureau of Economic Analysis's Implicit Price Deflator for the gross domestic product of the United States.

Capital expenditures has the same meaning given in 2 CFR 200.1.

County means a county, parish, or other equivalent county division (as defined by the Census Bureau).

Covered benefits include, but are not limited to, the 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 taxes (which includes Social Security and Medicare taxes).

Covered change means a change in law, regulation, or administrative interpretation that reduces any tax (by providing for a reduction in a rate, a rebate, a deduction, a credit, or otherwise) or delays the imposition of any tax or tax increase. A change in law includes any final legislative or regulatory action, a new or changed administrative interpretation, and the phase-in or taking effect of any statute or rule if the phase-in or taking effect was not prescribed prior to the start of the covered period.

Covered period means, with respect to a state or territory, the period that:

(1) Begins on March 3, 2021; and

(2) Ends on the last day of the fiscal year of such State or territory in which all funds received by the State or territory from a payment made under section 602 or 603 of the Social Security Act have been expended or returned to, or recovered by, the Secretary.

COVID–19 means the Coronavirus Disease 2019.

COVID–19 public health emergency means 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.*).

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.

Eligible employer means an employer of an eligible worker who performs essential work.

Eligible workers means workers needed to maintain continuity of operations of essential critical infrastructure sectors, including health care; emergency response; sanitation, disinfection, and cleaning work; maintenance work; grocery stores, restaurants, food production, and food delivery; pharmacy; biomedical research; behavioral health work; medical testing and diagnostics; home- and community-based health care or assistance with activities of daily living; family or childcare; social services work; public health work; vital services to Tribes; any work performed by an employee of a State, local, or Tribal government; educational work, school nutrition work, and other work required to operate a school facility; laundry work; elections work; solid waste or hazardous materials management, response, and cleanup work; work requiring physical interaction with patients; dental care work; transportation and warehousing; work at hotel and commercial lodging facilities that are used for COVID–19 mitigation and containment; work in a mortuary; and work in critical clinical research, development, and testing necessary for COVID–19 response.

(1) With respect to a recipient that is a metropolitan city, nonentitlement unit of local government, or county, workers in any additional non-public sectors as each chief executive officer of such recipient may designate as critical to protect the health and well-being of the residents of their metropolitan city, nonentitlement unit of local government, or county; or

(2) With respect to a State, territory, or Tribal government, workers in any additional non-public sectors as each Governor of a State or territory, or each Tribal government, may designate as critical to protect the health and well-being of the residents of their State, territory, or Tribal government.

Essential work means work that:

(1) Is not performed while teleworking from a residence; and

(2) Involves:

(i) Regular in-person interactions with patients, the public, or coworkers of the individual that is performing the work; or

(ii) Regular physical handling of items that were handled by, or are to be handled by patients, the public, or coworkers of the individual that is performing the work.

Funds means, with respect to a recipient, amounts provided to the recipient pursuant to a payment made under section 602(b) or 603(b) of the Social Security Act or transferred to the recipient pursuant to section 603(c)(4) of the Social Security Act.

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.

Intergovernmental transfers means money received from other governments, including grants and shared taxes.

Low-income household means a household with:

(1) Income at or below 185 percent of the Federal Poverty Guidelines for the size of its household based on the poverty guidelines published most recently by the Department of Health and Human Services; or

(2) Income at or below 40 percent of the Area Median Income for its county and size of household based on data published most recently by the Department of Housing and Urban Development.

Micro-business means a small business that has five or fewer employees, one or more of whom owns the small business.

Moderate-income household means a household with:

(1) Income at or below 300 percent of the Federal Poverty Guidelines for the size of its household based on poverty guidelines published most recently by the Department of Health and Human Services; or

(2) Income at or below 65 percent of the Area Median Income for its county and size of household based on data published most recently by the Department of Housing and Urban Development.

Metropolitan city has the meaning given that term in section 102(a)(4) of the Housing and Community Development Act of 1974 (42 U.S.C. 5302(a)(4)) and includes cities that relinquish or defer their status as a metropolitan city for purposes of receiving allocations under section 106 of such Act (42 U.S.C. 5306) for fiscal year 2021.

Net reduction in total spending is measured as the State or territory's total spending for a given reporting year excluding its spending of funds, subtracted from its total spending for its fiscal year ending in 2019, adjusted for inflation using the Bureau of Economic Analysis's Implicit Price Deflator for the gross domestic product of the United States for that reporting year.

Nonentitlement unit of local government means a ''city,'' as that term is defined in section 102(a)(5) of the Housing and Community Development Act of 1974 (42 U.S.C. 5302(a)(5)), that is not a metropolitan city.

Nonprofit means a nonprofit organization that is exempt from Federal income taxation and that is described in section 501(c)(3) or 501(c)(19) of the Internal Revenue Code.

Obligation means an order placed for property and services and entering into contracts, subawards, and similar transactions that require payment.

Pension fund means a defined benefit plan and does not include a defined contribution plan.

Period of performance means the time period described in § 35.5 during which a recipient may obligate and expend funds in accordance with sections 602(c)(1) and 603(c)(1) of the Social Security Act and this subpart.

Premium pay means an amount of up to $13 per hour that is paid to an eligible worker, in addition to wages or remuneration the eligible worker otherwise receives, for all work performed by the eligible worker during the COVID–19 public health emergency. Such amount may not exceed $25,000 in total over the period of performance with respect to any single eligible worker. Premium pay may be awarded to non-hourly and part-time eligible workers performing essential work. Premium pay will be considered to be in addition to wages or remuneration the eligible worker otherwise receives if, as measured on an hourly rate, the premium pay is:

(1) With regard to work that the eligible worker previously performed, pay and remuneration equal to the sum of all wages and remuneration previously received plus up to $13 per hour with no reduction, substitution, offset, or other diminishment of the eligible worker's previous, current, or prospective wages or remuneration; or

(2) With regard to work that the eligible worker continues to perform, pay of up to $13 per hour that is in addition to the eligible worker's regular rate of wages or remuneration, with no reduction, substitution, offset, or other diminishment of the worker's current and prospective wages or remuneration.

Qualified census tract has the same meaning given in 26 U.S.C. 42(d)(5)(B)(ii)(I).

Recipient means a State, territory, Tribal government, metropolitan city, nonentitlement unit of local government, county, or unit of general local government that receives a payment made under section 602(b) or 603(b) of the Social Security Act or transfer pursuant to section 603(c)(4) of the Social Security Act.

Reporting year means a single year or partial year within the covered period, aligned to the current fiscal year of the State or territory during the covered period.

Secretary means the Secretary of the Treasury.

State means each of the 50 States and the District of Columbia.

Small business means a business concern or other organization that:

(1) Has no more than 500 employees or, if applicable, the size standard in number of employees established by the Administrator of the Small Business Administration for the industry in which the business concern or organization operates, and

(2) Is a small business concern as defined in section 3 of the Small Business Act (15 U.S.C. 632).

Tax revenue means revenue received from a compulsory contribution that is exacted by a government for public purposes excluding refunds and corrections and, for purposes of § 35.8, intergovernmental transfers. Tax revenue does not include payments for a special privilege granted or service rendered, employee or employer assessments and contributions to finance retirement and social insurance trust systems, or special assessments to pay for capital improvements.

Territory means the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, the Commonwealth of the Northern Mariana Islands, or American Samoa.

Title I eligible schools means schools eligible to receive services under section 1113 of Title I, Part A of the Elementary and Secondary Education Act of 1965, as amended (20 U.S.C. 6313), including schools served under section 1113(b)(1)(C) of that Act.

Tribal enterprise means a business concern:

(1) That is wholly owned by one or more Tribal governments, or by a corporation that is wholly owned by one or more Tribal governments; or

(2) That is owned in part by one or more Tribal governments, or by a corporation that is wholly owned by one or more Tribal governments, if all other owners are either United States citizens or small business concerns, as these terms are used and consistent with the definitions in 15 U.S.C. 657a(b)(2)(D).

Tribal government means the recognized governing body of any Indian or Alaska Native Tribe, band, nation, pueblo, village, community, component band, or component reservation, individually identified (including parenthetically) in the list published on January 29, 2021, pursuant to section 104 of the Federally Recognized Indian Tribe List Act of 1994 (25 U.S.C. 5131).

Unemployment rate means the U–3 unemployment rate provided by the Bureau of Labor Statistics as part of the Local Area Unemployment Statistics program, measured as total unemployment as a percentage of the civilian labor force.

Unemployment trust fund means an unemployment trust fund established under section 904 of the Social Security Act (42 U.S.C. 1104).

Unit of general local government has the meaning given to that term in section 102(a)(1) of the Housing and Community Development Act of 1974 (42 U.S.C. 5302(a)(1)).

§ 35.4 Reservation of authority, reporting.

(a) *Reservation of authority.* Nothing in this part shall limit the authority of the Secretary to take action to enforce conditions or violations of law, including actions necessary to prevent evasions of this subpart.

(b) *Extensions or accelerations of timing.* The Secretary may extend or accelerate any deadline or compliance date of this part, including reporting requirements that implement this subpart, if the Secretary determines that such extension or acceleration is appropriate. In determining whether an extension or acceleration is appropriate, the Secretary will consider the period of time that would be extended or accelerated and how the modified timeline would facilitate compliance with this subpart.

(c) *Reporting and requests for other information.* During the period of performance, recipients shall provide to the Secretary periodic reports providing detailed accounting of the uses of funds, modifications to a State or Territory's tax revenue sources, and such other information as the Secretary may require for the administration of this section. In addition to regular reporting requirements, the Secretary may request other additional information as may be necessary or appropriate, including as may be necessary to prevent evasions of the requirements of this subpart. False statements or claims made to the Secretary may result in criminal, civil, or administrative sanctions, including fines, imprisonment, civil damages and penalties, debarment from participating in Federal awards or contracts, and/or any other remedy available by law.

§ 35.5 Use of funds.

(a) *In general.* A recipient may only use funds to cover costs incurred during the period beginning March 3, 2021, and ending December 31, 2024, for one or more of the purposes enumerated in sections 602(c)(1) and 603(c)(1) of the Social Security Act, as applicable, including those enumerated in § 35.6, subject to the restrictions set forth in sections 602(c)(2) and 603(c)(2) of the Social Security Act, as applicable.

(b) *Costs incurred.* A cost shall be considered to have been incurred for purposes of paragraph (a) of this section if the recipient has incurred an obligation with respect to such cost by December 31, 2024.

(c) *Return of funds.* A recipient must return any funds not obligated by December 31, 2024. A recipient must also return funds obligated by December 31, 2024 but not expended by December 31, 2026.

§ 35.6 Eligible uses.

(a) *In general.* Subject to §§ 35.7 and 35.8, a recipient may use funds for one or more of the purposes described in paragraphs (b) through (f) of this section.

(b) *Responding to the public health emergency or its negative economic impacts.* A recipient may use funds to respond to the public health emergency or its negative economic impacts if the use meets the criteria provided in paragraph (b)(1) of this section or is enumerated in paragraph (b)(3) of this section; provided that, in the case of a use of funds for a capital expenditure under paragraphs (b)(1) or (b)(3) of this section, the use of funds must also meet the criteria provided in paragraph (b)(4) of this section. Treasury may also articulate additional eligible programs, services, or capital expenditures from time to time that satisfy the eligibility criteria of this paragraph (b), which shall be eligible under this paragraph (b).

(1) *Identifying eligible responses to the public health emergency or its negative economic impacts.* (i) A program, service, or capital expenditure is eligible under this paragraph (b)(1) if a recipient identifies a harm or impact to a beneficiary or class of beneficiaries caused or exacerbated by the public health emergency or its negative economic impacts and the program, service, or capital expenditure responds to such harm.

(ii) A program, service, or capital expenditure responds to a harm or impact experienced by an identified beneficiary or class of beneficiaries if it is reasonably designed to benefit the beneficiary or class of beneficiaries that experienced the harm or impact and is related and reasonably proportional to the extent and type of harm or impact experienced.

(2) *Identified harms: Presumptions of impacted and disproportionately impacted beneficiaries.* A recipient may rely on the following presumptions to identify beneficiaries presumptively impacted or disproportionately impacted by the public health emergency or its negative economic impacts for the purpose of providing a response under paragraph (b)(1) or (b)(3) of this section:

(i) Households or populations that experienced unemployment; experienced increased food or housing insecurity; qualify for the Children's Health Insurance Program (42 U.S.C. 1397aa *et seq.*), Childcare Subsidies through the Child Care and Development Fund Program (42 U.S.C. 9857 *et seq.* and 42 U.S.C. 618), or Medicaid (42 U.S.C. 1396 *et seq.*); if funds are to be used for affordable housing programs, qualify for the National Housing Trust Fund (12 U.S.C. 4568) or the Home Investment Partnerships Program (42 U.S.C. 12721 *et seq.*); if funds are to be used to address impacts of lost instructional time for students in kindergarten through twelfth grade, any student who did not have access to in-person instruction for a significant period of time; and low- and moderate-income households and populations are presumed to be impacted by the public health emergency or its negative economic impacts;

(ii) The general public is presumed to be impacted by the public health emergency for the purposes of providing the uses set forth in subparagraphs (b)(3)(i)(A) and (b)(3)(i)(C); and

(iii) The following households, communities, small businesses, and nonprofit organizations are presumed to be disproportionately impacted by the public health emergency or its negative economic impacts:

(A) Households and populations residing in a qualified census tract;

households and populations receiving services provided by Tribal governments; households and populations residing in the territories; households and populations receiving services provided by territorial governments; low-income households and populations; households that qualify for Temporary Assistance for Needy Families (42 U.S.C. 601 *et seq.*), the Supplemental Nutrition Assistance Program (7 U.S.C. 2011 *et seq.*), Free and Reduced Price School Lunch and/or Breakfast programs (42 U.S.C. 1751 *et seq.* and 42 U.S.C. 1773), Medicare Part D Low-income Subsidies (42 U.S.C. 1395w–114), Supplemental Security Income (42 U.S.C. 1381 *et seq.*), Head Start (42 U.S.C. 9831 *et seq.*), Early Head Start (42 U.S.C. 9831 *et seq.*), the Special Supplemental Nutrition Program for Women, Infants, and Children (42 U.S.C. 1786), Section 8 Vouchers (42 U.S.C. 1437f), the Low-Income Home Energy Assistance Program (42 U.S.C. 8621 *et seq.*), Pell Grants (20 U.S.C. 1070a), and, if SLFRF funds are to be used for services to address educational disparities, Title I eligible schools;

(B) Small businesses operating in a qualified census tract, operated by Tribal governments or on Tribal lands, or operating in the territories; and

(C) Nonprofit organizations operating in a qualified census tract, operated by Tribal governments or on Tribal lands, or operating in the territories.

(3) *Enumerated eligible uses: Responses presumed reasonably proportional.* A recipient may use funds to respond to the public health emergency or its negative economic impacts on a beneficiary or class of beneficiaries for one or more of the following purposes unless such use is grossly disproportionate to the harm caused or exacerbated by the public health emergency or its negative economic impacts:

(i) Responding to the public health impacts of the public health emergency for purposes including:

(A) COVID–19 mitigation and prevention in a manner that is consistent with recommendations and guidance from the Centers for Disease Control and Prevention, including vaccination programs and incentives; testing programs; contact tracing; isolation and quarantine; mitigation and prevention practices in congregate settings; acquisition and distribution of medical equipment for prevention and treatment of COVID–19, including personal protective equipment; COVID–19 prevention and treatment expenses for public hospitals or health care facilities, including temporary medical facilities; establishing or enhancing public health data systems; installation and improvement of ventilation systems in congregate settings, health facilities, or other public facilities; and assistance to small businesses, nonprofits, or impacted industries to implement mitigation measures;

(B) Medical expenses related to testing and treating COVID–19 that are provided in a manner consistent with recommendations and guidance from the Centers for Disease Control and Prevention, including emergency medical response expenses, treatment of long-term symptoms or effects of COVID–19, and costs to medical providers or to individuals for testing or treating COVID–19;

(C) Behavioral health care, including prevention, treatment, emergency or first-responder programs, harm reduction, supports for long-term recovery, and behavioral health facilities and equipment; and

(D) Preventing and responding to increased violence resulting from the public health emergency, including community violence intervention programs, or responding to increased gun violence resulting from the public health emergency, including payroll and covered benefits associated with community policing strategies; enforcement efforts to reduce gun violence; and investing in technology and equipment;

(ii) Responding to the negative economic impacts of the public health emergency for purposes including:

(A) Assistance to households and individuals, including:

(1) Assistance for food; emergency housing needs; burials, home repairs, or weatherization; internet access or digital literacy; cash assistance; and assistance accessing public benefits;

(2) Paid sick, medical, or family leave programs, or assistance to expand access to health insurance;

(3) Childcare, early learning services, home visiting, or assistance for child welfare-involved families or foster youth;

(4) Programs to address the impacts of lost instructional time for students in kindergarten through twelfth grade;

(5) Development, repair, and operation of affordable housing and services or programs to increase long-term housing security;

(6) Financial services that facilitate the delivery of Federal, State, or local benefits for unbanked and underbanked individuals;

(7) Benefits for the surviving family members of individuals who have died from COVID–19, including cash assistance to surviving spouses or dependents of individuals who died of COVID–19;

(8) Assistance for individuals who want and are available for work, including those who are unemployed, have looked for work sometime in the past 12 months, who are employed part time but who want and are available for full-time work, or who are employed but seeking a position with greater opportunities for economic advancement;

(9) Facilities and equipment related to the provision of services to households provided in subparagraphs (b)(3)(ii)(A)(1)–(8);

(10) The following expenses related to Unemployment Trust Funds:

(i) Contributions to a recipient Unemployment Trust Fund and repayment of principal amounts due on advances received under Title XII of the Social Security Act (42 U.S.C. 1321) up to an amount equal to the difference between the balance in the recipient's Unemployment Trust Fund as of January 27, 2020 and the balance of such 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; provided that if a recipient repays principal on Title XII advances or makes a contribution to an Unemployment Trust Fund after April 1, 2022, such recipient shall not reduce average weekly benefit amounts or maximum benefit entitlements prior to December 31, 2024; and

(ii) Any interest due on such advances received under Title XII of the Social Security Act (42 U.S.C. 1321); and

(11) A program, service, capital expenditure, or other assistance that is provided to a disproportionately impacted household, population, or community, including:

(i) Services to address health disparities of the disproportionately impacted household, population, or community;

(ii) Housing vouchers and relocation assistance;

(iii) Investments in communities to promote improved health outcomes and public safety such as parks, recreation facilities, and programs that increase access to healthy foods;

(iv) Capital expenditures and other services to address vacant or abandoned properties;

(v) Services to address educational disparities; and

(vi) Facilities and equipment related to the provision of these services to the disproportionately impacted household, population, or community.

(B) Assistance to small businesses, including:

(1) Programs, services, or capital expenditures that respond to the negative economic impacts of the COVID–19 public health emergency, including loans or grants to mitigate financial hardship such as declines in revenues or impacts of periods of business closure, or providing technical assistance; and

(2) A program, service, capital expenditure, or other assistance that responds to disproportionately impacted small businesses, including rehabilitation of commercial properties; storefront and façade improvements; technical assistance, business incubators, and grants for start-ups or expansion costs for small businesses; and programs or services to support micro-businesses;

(C) Assistance to nonprofit organizations including programs, services, or capital expenditures, including loans or grants to mitigate financial hardship such as declines in revenues or increased costs, or technical assistance;

(D) Assistance to tourism, travel, hospitality, and other impacted industries for programs, services, or capital expenditures, including support for payroll costs and covered benefits for employees, compensating returning employees, support for operations and maintenance of existing equipment and facilities, and technical assistance; and

(E) Expenses to support public sector capacity and workforce, including:

(1) Payroll and covered benefit expenses for public safety, public health, health care, human services, and similar employees to the extent that the employee's time is spent mitigating or responding to the COVID–19 public health emergency;

(2) Payroll, covered benefit, and other costs associated with programs or services to support the public sector workforce and with the recipient:

(i) Hiring or rehiring staff to fill budgeted full-time equivalent positions that existed on January 27, 2020 but that were unfilled or eliminated as of March 3, 2021; or

(ii) Increasing the number of its budgeted full-time equivalent employees by up to the difference between the number of its budgeted full-time equivalent employees on January 27, 2020, multiplied by 1.075, and the number of its budgeted full-time equivalent employees on March 3, 2021, provided that funds shall only be used for additional budgeted full-time equivalent employees above the recipient's number of budgeted full-time equivalent employees as of March 3, 2021;

(3) Costs to improve the design and execution of programs responding to the COVID–19 pandemic and to administer or improve the efficacy of programs addressing the public health emergency or its negative economic impacts; and

(4) Costs associated with addressing administrative needs of recipient governments that were caused or exacerbated by the pandemic.

(4) *Capital expenditures.* A recipient, other than a Tribal government, must prepare a written justification for certain capital expenditures according to Table 1 to paragraph (b)(4) of this section. Such written justification must include the following elements:

(i) Describe the harm or need to be addressed;

(ii) Explain why a capital expenditure is appropriate; and

(iii) Compare the proposed capital expenditure to at least two alternative capital expenditures and demonstrate why the proposed capital expenditure is superior.

TABLE 1 TO PARAGRAPH (b)(4)

If a project has total expected capital expenditures of	and the use is enumerated in (b)(3), then	and the use is not enumerated in (b)(3), then
Less than $1 million	No Written Justification required	No Written Justification required.
Greater than or equal to $1 million, but less than $10 million.	Written Justification required but recipients are not required to submit as part of regular reporting to Treasury.	Written Justification required and recipients must submit as part of regular reporting to Treasury.
$10 million or more	Written Justification required and recipients must submit as part of regular reporting to Treasury.	

(c) *Providing premium pay to eligible workers.* A recipient may use funds to provide premium pay to eligible workers of the recipient who perform essential work or to provide grants to eligible employers that have eligible workers who perform essential work, provided that any premium pay or grants provided under this paragraph (c) must respond to eligible workers performing essential work during the COVID–19 public health emergency. A recipient uses premium pay or grants provided under this paragraph (c) to respond to eligible workers performing essential work during the COVID–19 public health emergency if:

(1) The eligible worker's total wages and remuneration, including the premium pay, is less than or equal to 150 percent of the greater of such eligible worker's residing State's or county's average annual wage for all occupations as defined by the Bureau of Labor Statistics' Occupational Employment and Wage Statistics;

(2) The eligible worker is not exempt from the Fair Labor Standards Act overtime provisions (29 U.S.C. 207); or

(3) The recipient has submitted to the Secretary a written justification that explains how providing premium pay to the eligible worker is responsive to the eligible worker performing essential work during the COVID–19 public health emergency (such as a description of the eligible workers' duties, health, or financial risks faced due to COVID–19, and why the recipient determined that the premium pay was responsive despite the worker's higher income).

(d) *Providing government services.* A recipient may use funds for the provision of government services to the extent of the reduction in the recipient's general revenue due to the public health emergency, calculated according to this paragraph (d). A recipient must make a one-time election to calculate the amount of the reduction in the recipient's general revenue due to the public health emergency according to either paragraph (d)(1) or (d)(2) of this section:

(1) *Standard allowance.* The reduction in the recipient's general revenue due to the public health emergency over the period of performance will be deemed to be ten million dollars; or

(2) *Formula.* The reduction in the recipient's general revenue due to the public health emergency over the period of performance equals the sum of the reduction in revenue, calculated as of each date identified in paragraph (d)(2)(i) of this section and according to the formula in paragraph (d)(2)(ii) of this section:

(i) A recipient must make a one-time election to calculate the reduction in its general revenue using information as of either:

(A) December 31, 2020, December 31, 2021, December 31, 2022, and December 31, 2023; or

(B) The last day of each of the recipient's fiscal years ending in 2020, 2021, 2022, and 2023.

(ii) A reduction in a recipient's general revenue for each date identified in paragraph (d)(2)(i) of this section equals:

Max {*[Base Year Revenue* * (1 + *Growth Adjustment)^(*n_t*/12)] − Actual General Revenue;* 0}

Where:

(A) Base Year Revenue is the recipient's general revenue for the most recent full fiscal year prior to the COVID–19 public health emergency;

(B) Growth Adjustment is equal to the greater of 5.2 percent (or 0.052) and the recipient's average annual revenue growth over the three full fiscal years prior to the COVID–19 public health emergency;

(C) n equals the number of months elapsed from the end of the base year to the calculation date;

(D) Subscript t denotes the specific calculation date; and

(E) Actual General Revenue is a recipient's actual general revenue collected during the 12-month period ending on each calculation date identified in paragraph (d)(2)(i) of this section, except:

(1) For purposes of all calculation dates on or after April 1, 2022, in the case of any change made after January 6, 2022 to any law, regulation, or administrative interpretation that reduces any tax (by providing for a reduction in a rate, a rebate, a deduction, a credit, or otherwise) or delays the imposition of any tax or tax increase and that the recipient assesses has had the effect of decreasing the amount of tax revenue collected during the 12-month period ending on the calculation date relative to the amount of tax revenue that would have been collected in the absence of such change, the recipient must add to actual general revenue the amount of such decrease in tax revenue;

(2) For purposes of any calculation date on or after April 1, 2022, in the case of any change made after January 6, 2022 to any law, regulation, or administrative interpretation that increases any tax (by providing for an increase in a rate, the reduction of a rebate, a deduction, or a credit, or otherwise) or accelerates the imposition of any tax or tax increase and that the recipient assesses has had the effect of increasing the amount of tax revenue collected during the 12-month period ending on the calculation date relative to the amount of tax revenue that would have been collected in the absence of such change, the recipient must subtract from actual general revenue the amount of such increase in tax revenue;

(3) If the recipient makes a one-time election to adjust general revenue to reflect tax changes made during the period beginning on January 27, 2020 and ending on January 6, 2022, for purposes of each calculation date identified in paragraph (d)(2)(i) of this section:

(i) In the case of any change made during such prior period to any law, regulation, or administrative interpretation that reduces any tax (by providing for a reduction in a rate, a rebate, a deduction, a credit, or otherwise) or delays the imposition of any tax or tax increase and that the recipient assesses has had the effect of decreasing the amount of tax revenue collected during the 12-month period ending on the calculation date relative to the amount of tax revenue that would have been collected in the absence of such change, the recipient must add to actual general revenue the amount of such decrease in tax revenue; and

(ii) In the case of any change made during such prior period to any law, regulation, or administrative interpretation that increases any tax (by providing for an increase in a rate, the reduction of a rebate, a deduction, or a credit, or otherwise) or accelerates the imposition of any tax or tax increase and that the recipient assesses has had the effect of increasing the amount of tax revenue collected during the 12-month period ending on the calculation date relative to the amount of tax revenue that would have been collected in the absence of such change, the recipient must subtract from actual general revenue the amount of such increase in tax revenue; and

(4) With respect to any calculation date during the period beginning on January 6, 2022 and ending on March 31, 2022, if the recipient makes the election in paragraph (d)(3) of this section, the recipient must also make the adjustments referenced in paragraph (d)(3) of this section with respect to any such changes in law, regulation, or administrative interpretation during the period beginning on January 6, 2022 and ending on such calculation date.

(e) *Making necessary investments in water, sewer, and broadband infrastructure.* A recipient may use funds to make the following investments in water, sewer, and broadband infrastructure.

(1) *Water and sewer investments*—(i) *Clean Water State Revolving Fund projects.* Projects or activities of the type that meet the eligibility requirements of section 603(c) of the Federal Water Pollution Control Act (33 U.S.C. 1383(c));

(ii) *Additional stormwater projects.* Projects to manage, reduce, treat, or recapture stormwater or subsurface drainage water regardless of whether such projects would improve water quality if such projects would otherwise meet the eligibility requirements of section 603(c)(5) of the Federal Water Pollution Control Act (33 U.S.C. 1383(c)(5));

(iii) *Drinking Water State Revolving Fund projects.* Projects or activities of the type that meet the eligibility requirements of section 1452 of the Safe Drinking Water Act (42 U.S.C. 300j–12) as implemented by the regulations adopted by the Environmental Protection Agency (EPA) under 40 CFR 35.3520, provided that:

(A) The recipient is not required to comply with the limitation under 40 CFR 35.3520(c)(2) to acquisitions of land from willing sellers or the prohibition under 40 CFR 35.3520(e)(6) on uses of funds for certain Tribal projects; and

(B) In the case of lead service line replacement projects, the recipient must replace the full length of the service line and may not replace only a partial portion of the service line.

(iv) *Additional lead remediation and household water quality testing.* Projects or activities to address lead in drinking water or provide household water quality testing that are within the scope of the programs the EPA is authorized to establish under sections 1459A(b)(2), 1459B(b)(1), 1464(d)(2), and 1465 of the Safe Drinking Water Act (42 U.S.C. 300j–19a(b)(2), 300j–19b(b)(1), 300j–24(d)(2), and 300j–25), provided that:

(A) In the case of lead service line replacement projects, the recipient must replace the full length of the service line and may not replace only a partial portion of the service line; and

(B) In the case of projects within the scope of the program the EPA is authorized to establish under section 1459B(b)(1) of the Safe Drinking Water Act, the recipient may determine the income eligibility of homeowners served by lead service line replacement projects in its discretion.

(v) *Drinking water projects to support increased population.* Projects of the type that meet the eligibility requirements of 40 CFR 35.3520 other than the requirement of subparagraph

(b)(1) of such regulation to address present or prevent future violations of health-based drinking water standards, if the following conditions are met:

(A) The project is needed to support increased population, with need assessed as of the time the project is undertaken;

(B) The project is designed to support no more than a reasonable level of projected increased need, whether due to population growth or otherwise;

(C) The project is a cost-effective means for achieving the desired level of service; and

(D) The project is projected to continue to provide an adequate level of drinking water over its estimated useful life.

(vi) *Dams and reservoirs.* Rehabilitation of dams and reservoirs if the following conditions are met:

(A) The project meets the requirements of 40 CFR 35.3520 other than the following requirements:

(1) The prohibition on the rehabilitation of dams and reservoirs in 40 CFR 35.3520(e)(1) and (3); and

(2) The requirement in 40 CFR 35.3520(b)(1) that the project is needed to address present or prevent future violations of health-based drinking water standards, provided that if the dam or reservoir project does not meet this requirement, the project must be needed to support increased population, with need assessed as of the time the project is undertaken, and the project must be projected to continue to provide an adequate level of drinking water over its estimated useful life;

(B) The primary purpose of the dam or reservoir is for drinking water supply;

(C) The project is needed for the provision of drinking water supply, with need assessed as of the time the project is initiated;

(D) The project is designed to support no more than a reasonable level of projected increased need, whether due to population growth or otherwise; and

(E) The project is a cost-effective means for achieving the desired level of service.

(vii) *Private wells.* Rehabilitation of private wells, testing initiatives to identify contaminants in private wells, and treatment activities and remediation projects that address contamination in private wells, if the project meets the requirements of 40 CFR 35.3520 other than the limitation to certain eligible systems under 40 CFR 35.3520(a).

(2) *Broadband investments*—(i) *General.* Broadband infrastructure if the following conditions are met:

(A) The broadband infrastructure is designed to provide service to households and businesses with an identified need, as determined by the recipient, for such infrastructure;

(B) The broadband infrastructure is designed to, upon completion:

(*1*) Reliably meet or exceed symmetrical 100 Mbps download speed and upload speeds; or

(*2*) In cases where it is not practicable, because of the excessive cost of the project or geography or topography of the area to be served by the project, to provide service reliably meeting or exceeding symmetrical 100 Mbps download speed and upload speeds:

(i) Reliably meet or exceed 100 Mbps download speed and between at least 20 Mbps and 100 Mbps upload speed; and

(ii) Be scalable to a minimum of 100 Mbps download speed and 100 Mbps upload speed; and

(C) The service provider for a completed broadband infrastructure investment project that provides service to households is required, for as long as the SLFRF-funded broadband infrastructure is in use, by the recipient to:

(*1*) Participate in the Federal Communications Commission's Affordable Connectivity Program (ACP) through the lifetime of the ACP; or

(*2*) Otherwise provide access to a broad-based affordability program to low-income consumers in the proposed service area of the broadband infrastructure that provides benefits to households commensurate with those provided under the ACP through the lifetime of the ACP.

(ii) *Cybersecurity infrastructure investments.* Cybersecurity infrastructure investments that are designed to improve the reliability and resiliency of new and existing broadband infrastructure. Such investments may include the addition or modernization of network security hardware and software tools designed to strengthen cybersecurity for the end-users of these networks.

(f) *Meeting the non-federal matching requirements for Bureau of Reclamation projects.* A recipient may use funds to meet the non-federal matching requirements of any authorized Bureau of Reclamation project.

§ 35.7 Pensions.

A recipient (other than a Tribal government) may not use funds for deposit into any pension fund.

§ 35.8 Tax.

(a) *Restriction.* A State or Territory shall not use funds to either directly or indirectly offset a reduction in the net tax revenue of the State or Territory resulting from a covered change during the covered period.

(b) *Violation.* Treasury will consider a State or Territory to have used funds to offset a reduction in net tax revenue if, during a reporting year:

(1) *Covered change.* The State or Territory has made a covered change that, either based on a reasonable statistical methodology to isolate the impact of the covered change in actual revenue or based on projections that use reasonable assumptions and do not incorporate the effects of macroeconomic growth to reduce or increase the projected impact of the covered change, the State or Territory assesses has had or predicts to have the effect of reducing tax revenue relative to current law;

(2) *Exceeds the de minimis threshold.* The aggregate amount of the measured or predicted reductions in tax revenue caused by covered changes identified under paragraph (b)(1) of this section, in the aggregate, exceeds 1 percent of the State's or Territory's baseline;

(3) *Reduction in net tax revenue.* The State or Territory reports a reduction in net tax revenue, measured as the difference between actual tax revenue and the State's or Territory's baseline, each measured as of the end of the reporting year; and

(4) *Consideration of other changes.* The aggregate amount of measured or predicted reductions in tax revenue caused by covered changes is greater than the sum of the following, in each case, as calculated for the reporting year:

(i) The aggregate amount of the expected increases in tax revenue caused by one or more covered changes that, either based on a reasonable statistical methodology to isolate the impact of the covered change in actual revenue or based on projections that use reasonable assumptions and do not incorporate the effects of macroeconomic growth to reduce or increase the projected impact of the covered change, the State or Territory assesses has had or predicts to have the effect of increasing tax revenue; and

(ii) Reductions in spending, up to the amount of the State's or Territory's net reduction in total spending, that are in:

(A) Departments, agencies, or authorities in which the State or Territory is not using funds; and

(B) Departments, agencies, or authorities in which the State or Territory is using funds, in an amount equal to the value of the spending cuts in those departments, agencies, or authorities, minus funds used.

(c) *Amount and revenue reduction cap.* If a State or Territory is considered to be in violation pursuant to paragraph (b) of this section, the amount used in

violation of paragraph (a) of this section is equal to the lesser of:

(1) The reduction in net tax revenue of the State or Territory for the reporting year, measured as the difference between the State's or Territory's baseline and its actual tax revenue, each measured as of the end of the reporting year; and,

(2) The aggregate amount of the reductions in tax revenues caused by covered changes identified in paragraph (b)(1) of this section, minus the sum of the amounts in identified in paragraphs (b)(4)(i) and (ii) of this section.

§ 35.9 Compliance with applicable laws.

A recipient must comply with all other applicable Federal statutes, regulations, and executive orders, and a recipient shall provide for compliance with the American Rescue Plan Act, this subpart, and any interpretive guidance by other parties in any agreements it enters into with other parties relating to these funds.

§ 35.10 Recoupment.

(a) *Identification of violations*—(1) *In general.* Any amount used in violation of § 35.5, 35.6, or 35.7 may be identified at any time prior to December 31, 2026.

(2) *Annual reporting of amounts of violations.* On an annual basis, a recipient that is a State or territory must calculate and report any amounts used in violation of § 35.8.

(b) *Calculation of amounts subject to recoupment*—(1) *In general.* Except as provided in paragraph (b)(2) of this section, the Secretary will calculate any amounts subject to recoupment resulting from a violation of § 35.5, 35.6 or 35.7 as the amounts used in violation of such restrictions.

(2) *Violations of § 35.8.* The Secretary will calculate any amounts subject to recoupment resulting from a violation of § 35.8, equal to the lesser of:

(i) The amount set forth in § 35.8(c); and,

(ii) The amount of funds received by such recipient.

(c) *Initial notice.* If the Secretary calculates an amount subject to recoupment under paragraph (b) of this section, Treasury will provide the recipient an initial written notice of the amount subject to recoupment along with an explanation of such amounts.

(d) *Request for reconsideration.* Unless the Secretary extends or accelerates the time period, within 60 calendar days of receipt of an initial notice of recoupment provided under paragraph (c) of this section, a recipient may submit a written request to the Secretary requesting reconsideration of any amounts subject to recoupment under paragraph (b) of this section. To request reconsideration of any amounts subject to recoupment, a recipient must submit to the Secretary a written request that includes:

(1) An explanation of why the recipient believes all or some of the amount should not be subject to recoupment; and

(2) A discussion of supporting reasons, along with any additional information.

(e) *Final amount subject to recoupment.* Unless the Secretary extends or accelerates the time period, within 60 calendar days of receipt of the recipient's request for reconsideration provided pursuant to paragraph (d) of this section or the expiration of the period for requesting reconsideration provided under paragraph (d), the recipient will be notified of the Secretary's decision to affirm, withdraw, or modify the notice of recoupment. Such notification will include an explanation of the decision, including responses to the recipient's supporting reasons and consideration of additional information provided. A recipient must invoke and exhaust the procedures available under this subpart prior to seeking judicial review of a decision under § 35.10.

(f) *Repayment of funds.* Unless the Secretary extends or accelerates the time period, a recipient shall repay to the Secretary any amounts subject to recoupment in accordance with instructions provided by the Secretary:

(1) Within 120 calendar days of receipt of the notice of recoupment provided under paragraph (c) of this section, in the case of a recipient that does not submit a request for reconsideration in accordance with the requirements of paragraph (d) of this section; or

(2) Within 120 calendar days of receipt of the Secretary's decision under paragraph (e) of this section, in the case of a recipient that submits a request for reconsideration in accordance with the requirements of paragraph (d) of this section.

(g) *Other remedial actions.* Prior to seeking recoupment or taking other appropriate action pursuant to paragraph (c), (d), (e), or (f) of this section, the Secretary may notify the recipient of potential violations and provide the recipient an opportunity for informal consultation and remediation.

§ 35.11 Payments to States.

(a) *In general.* With respect to any State or Territory that has an unemployment rate as of the date that it submits an initial certification for payment of funds pursuant to section 602(d)(1) of the Social Security Act that is less than two percentage points above its unemployment rate in February 2020, the Secretary will withhold 50 percent of the amount of funds allocated under section 602(b) of the Social Security Act to such State or territory until at least May 10, 2022 and not more than twelve months from the date such initial certification is provided to the Secretary.

(b) *Payment of withheld amount.* In order to receive the amount withheld under paragraph (a) of this section, the State or Territory must submit to the Secretary the following information:

(1) A certification, in the form provided by the Secretary, that such State or Territory requires the payment to carry out the activities specified in section 602(c) of the Social Security Act and will use the payment in compliance with section 602(c) of the Social Security Act; and

(2) Any reports required to be filed by that date pursuant to this part that have not yet been filed.

§ 35.12 Distributions to nonentitlement units of local government and units of general local government.

(a) *Nonentitlement units of local government.* Each State or Territory that receives a payment from the Secretary pursuant to section 603(b)(2)(B) of the Social Security Act shall distribute the amount of the payment to nonentitlement units of local government in such State or Territory in accordance with the requirements set forth in section 603(b)(2)(C) of the Social Security Act and without offsetting any debt owed by such nonentitlement units of local governments against such payments.

(b) *Budget cap.* A State or Territory may not make a payment to a nonentitlement unit of local government pursuant to section 603(b)(2)(C) of the Social Security Act and paragraph (a) of this section in excess of the amount equal to 75 percent of the most recent budget for the nonentitlement unit of local government as of January 27, 2020. For purposes of this section 35.12, a nonentitlement unit of local government's most recent budget shall mean the nonentitlement unit of local government's total annual budget, including both operating and capital expenditure budgets, in effect as of January 27, 2020. A State or Territory shall permit a nonentitlement unit of local government without a formal budget as of January 27, 2020, to provide a certification from an authorized officer of the nonentitlement unit of local government of its most recent annual expenditures as of

January 27, 2020, and a State or Territory may rely on such certification for purposes of complying with this section 35.12.

(c) *Units of general local government.* Each State or Territory that receives a payment from the Secretary pursuant to section 603(b)(3)(B)(ii) of the Social Security Act, in the case of an amount to be paid to a county that is not a unit of general local government, shall distribute the amount of the payment to units of general local government within such county in accordance with the requirements set forth in section 603(b)(3)(B)(ii) of the Social Security Act and without offsetting any debt owed by such units of general local government against such payments.

(d) *Additional conditions.* A State or Territory may not place additional conditions or requirements on distributions to nonentitlement units of local government or units of general local government beyond those required by section 603 of the Social Security Act or this subpart.

Jacob Leibenluft,

Chief Recovery Officer.

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Attachment C

Compliance and Reporting Guidance

State and Local Fiscal Recovery Funds

September 20, 2022
Version: 5.0

Coronavirus State and Local Fiscal Recovery Funds Guidance on Recipient Compliance and Reporting Responsibilities

On March 11, 2021, the American Rescue Plan Act was signed into law, and established the Coronavirus State Fiscal Recovery Fund and Coronavirus Local Fiscal Recovery Fund, which together make up the Coronavirus State and Local Fiscal Recovery Funds ("SLFRF") program. This program is intended to provide support to State, territorial, local, and Tribal governments in responding to the economic and public health impacts of COVID-19 and in their efforts to contain impacts on their communities, residents, and businesses.

In May 2021, Treasury published the interim final rule ("IFR") describing eligible and ineligible uses of SLFRF, as well as other program requirements. The initial versions of this Compliance and Reporting guidance reflected the IFR and its eligible use categories. On January 6, 2022, the U.S. Department of the Treasury ("Treasury") adopted the final rule implementing the SLFRF program. The final rule became effective on April 1, 2022. Prior to the final rule effective date, the IFR remained in effect; funds used consistently with the IFR while it was in effect were in compliance with the SLFRF program. However, recipients could choose to take advantage of the final rule's flexibilities and simplifications ahead of the effective date. Recipients may consult the *Statement Regarding Compliance with the Coronavirus State and Local Fiscal Recovery Funds Interim Final Rule and Final Rule* for more information on compliance with the IFR and the final rule.

To support recipients in complying with the final rule, this reporting guidance reflects the final rule and provides additional detail and clarification for each recipient's compliance and reporting responsibilities under the SLFRF program, and should be read in concert with the Award Terms and Conditions, the authorizing statute, the final rule, other program guidance including the Final Rule FAQs, and other regulatory and statutory requirements, including regulatory requirements under the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards ("Uniform Guidance" or 2 CRF Part 200), and 2021 SLFRF Compliance Supplement – Technical Update and 2022 SLFRF Compliance Supplement. Please see the Assistance Listing in SAM.gov under assistance listing number (formerly known as CFDA number) 21.027 for more information.

Please Note: This guidance document applies to the SLFRF program only and does not change or impact reporting and compliance requirements for the Coronavirus Relief Fund ("CRF") established by the CARES Act.

This guidance includes two parts:

Part 1: General Guidance

This section provides an orientation to recipients' compliance responsibilities and Treasury's expectations and recommends best practices where appropriate under the SLFRF program.

A. Key Principles…….. P. 4
B. Statutory Eligible Uses…… P. 4
C. Treasury's Final Rule…….…… P. 5
D. Uniform Guidance (2 CFR Part 200)…….…… P. 7
E. Award Terms and Conditions……..……... P. 11

Part 2: Reporting Requirements

This section provides information on the reporting requirements for the SLFRF program.

A. Interim Report..... P. 16
B. Project and Expenditure Report..... P. 17
C. Recovery Plan Performance Report..... P. 34

Appendix 1: Expenditure Categories..... P. 42
Appendix 2: Evidenced-Based Intervention Additional Information..... P. 47
Appendix 3: Expenditure Categories under the Interim Final Rule..... P. 48

OMB Control Number: 1505-0271

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PAPERWORK REDUCTION ACT NOTICE

The information collected will be used for the U.S. Government to process requests for support. The estimated burden for the collections of information included in this guidance is as follows: 30 minutes for Title VI Assurances, 2 hours per response for the Interim Report, 6 hours per response for the Project and Expenditure Report and 100 hours per response for the Recovery Plan Performance Report (if applicable). Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be directed to the Office of Privacy, Transparency and Records, Department of the Treasury, 1500 Pennsylvania Ave., N.W., Washington, D.C. 20220. DO NOT send the form to this address. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by OMB.

Part 1: General Guidance

This section provides an orientation on recipients' compliance responsibilities and Treasury's expectations and recommended best practices where appropriate under the SLFRF program.

Recipients under the SLFRF program are the eligible entities identified in sections 602 and 603 of the Social Security Act as added by section 9901 of the American Rescue Plan Act of 2021 (the "SLFRF statute") that receive an SLFRF award. Subrecipients under the SLFRF program are entities that receive a subaward from a recipient to carry out the purposes (program or project) of the SLFRF award on behalf of the recipient.

Recipients are accountable to Treasury for oversight of their subrecipients in accordance with 2 CFR 200.332, including ensuring their subrecipients comply with the SLFRF statute, SLFRF Award Terms and Conditions, Treasury's interim final rule and final rule, applicable federal statutes, regulations, and reporting requirements.

A. Key Principles

There are several guiding principles for developing your own effective compliance regimes:

- Recipients and subrecipients are the first line of defense and responsible for ensuring the SLFRF award funds are not used for ineligible purposes, and there is no fraud, waste, or abuse associated with their SLFRF award;
- Many SLFRF-funded projects respond to the COVID-19 public health emergency and meet urgent community needs. Swift and effective implementation is vital, and recipients must balance facilitating simple and rapid program access widely across the community and maintaining a robust documentation and compliance regime;
- Treasury encourages recipients to use SLFRF-funded projects to advance shared interests and promote equitable delivery of government benefits and opportunities to underserved communities, as outlined in Executive Order 13985, On Advancing Racial Equity and Support for Underserved Communities Through the Federal Government; and
- Transparency and public accountability for SLFRF award funds and use of such funds are critical to upholding program integrity and trust in all levels of government, and SLFRF award funds should be managed consistent with Administration guidance per Memorandum M-21-20 and Memorandum M-20-21.

B. Statutory Eligible Uses

As a recipient of an SLFRF award, your organization has substantial discretion to use the award funds in the ways that best suit the needs of your constituents – as long as such use fits into one of the following four statutory categories:

1. To respond to the COVID-19 public health emergency or its negative economic impacts;
2. To respond to workers performing essential work during the COVID-19 public health emergency by providing premium pay to eligible workers of the recipient that are performing such essential work, or by providing grants to eligible employers that have eligible workers who perform essential work;
3. For the provision of government services, to the extent of the reduction in revenue of such recipient due to the COVID–19 public health emergency, relative to revenues collected in the most recent full fiscal year of the recipient prior to the emergency; or
4. To make necessary investments in water, sewer, or broadband infrastructure.

Treasury adopted an interim final rule in May 2021 and the final rule on January 6, 2022 to implement these eligible use categories and other restrictions on the use of funds under the SLFRF

program. The final rule took effect on April 1, 2022, and the interim final rule remained in effect until that time, although recipients could choose to take advantage of the final rule's flexibilities and simplifications prior to April 1, 2022. Recipients may consult the Statement Regarding Compliance with the Coronavirus State and Local Fiscal Recovery Funds Interim Final Rule and Final Rule for more information on compliance with the interim final rule and the final rule.

It is the recipient's responsibility to ensure all SLFRF award funds are used in compliance with the program's requirements. In addition, recipients should be mindful of any additional compliance obligations that may apply – for example, additional restrictions imposed upon other sources of funds used in conjunction with SLFRF award funds, or statutes and regulations that may independently apply to water, broadband, and sewer infrastructure projects. Recipients should ensure they maintain proper documentation supporting determinations of costs and applicable compliance requirements, and how they have been satisfied as part of their award management, internal controls, and subrecipient oversight and management.

C. Treasury's Final Rule

Treasury's final rule details recipients' compliance responsibilities and provides additional information on eligible and restricted uses of SLFRF award funds and reporting requirements.

1. **Eligible and Restricted Uses of SLFRF Funds.** As described in the SLFRF statute and summarized above, there are four enumerated eligible uses of SLFRF award funds. As a recipient of an award under the SLFRF program, your organization is responsible for complying with requirements for the use of funds. In addition to determining a given project's eligibility, recipients are also responsible for determining subrecipient's or beneficiaries' eligibility, and must monitor subrecipients' use of SLFRF award funds.

   To help recipients build a greater understanding of eligible uses, Treasury's final rule establishes a framework for determining whether a specific project would be eligible under the SLFRF program, including some helpful definitions. For example, Treasury's final rule establishes:

   - A framework for determining whether a project responds to the COVID-19 public health emergency or its negative economic impacts;
   - Definitions of "eligible employers," "essential work," "eligible workers," and "premium pay" for cases where premium pay is an eligible use;
   - The option to select between a standard amount of revenue loss or complete a full revenue loss calculation of revenue lost due to the COVID-19 public health emergency;
   - A framework for necessary water and sewer infrastructure projects that aligns eligible uses with projects that are eligible under the Environmental Protection Agency's Drinking Water and Clean Water State Revolving Funds along with certain additional projects, including a wider set of lead remediation and stormwater infrastructure projects and aid for residential wells; and
   - A framework for necessary broadband projects that allows for projects that are designed to provide service of sufficient speeds to eligible areas, as well as an affordability requirement for providers that provide service to households.

   Treasury's final rule also provides more information on important restrictions on use of SLFRF award funds, including that recipients other than Tribal governments may not deposit SLFRF funds into a pension fund; and recipients that are States or territories may not use SLFRF funds to offset a reduction in net tax revenue resulting from the recipient's change in law, regulation, or administrative interpretation. In addition, recipients may not use SLFRF funds directly to service debt, satisfy a judgment or settlement, or contribute to a "rainy day" fund. Recipients should refer to Treasury's final rule for more information on these restrictions.

Treasury's final rule outlines that funds available 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, the final rule notes that SLFRF funds may not be used as the non-federal share for purposes of a state's Medicaid and CHIP programs because the Office of Management and Budget ("OMB") 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. 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. For example, the Infrastructure Investment and Jobs Act 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.

2. **Eligible Costs Timeframe.** Your organization, as a recipient of an SLFRF award, may use SLFRF funds to cover eligible costs that your organization incurred during the period that begins on March 3, 2021 and ends on December 31, 2024, as long as the award funds for the obligations incurred by December 31, 2024 are expended by December 31, 2026. Costs for projects incurred by the recipient State, territorial, local, or Tribal government prior to March 3, 2021 are not eligible, as provided for in Treasury's final rule.

   Recipients may, in certain circumstances, use SLFRF award funds for the eligible use categories described in Treasury's final rule for costs incurred prior to March 3, 2021. Specifically,

   a. Public Health/Negative Economic Impacts: Recipients may use SLFRF award funds to provide assistance to households, small businesses, and nonprofits to respond to the public health emergency or negative economic impacts of the pandemic – such as rent, mortgage, or utility assistance – for costs incurred by the beneficiary (e.g., a household) prior to March 3, 2021, provided that the recipient State, territorial, local or Tribal government did not incur the cost of providing such assistance prior to March 3, 2021.
   b. Premium Pay: 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 premium pay must not have been incurred by the recipient prior to March 3, 2021.
   c. Revenue Loss: Recipients have broad discretion to use funds for the provision of government services to the extent of reduction in revenue. While calculation of lost revenue is based on the recipient's revenue in the last full fiscal year prior to the COVID-19 public health emergency, use of funds for government services must be forward looking for costs incurred by the recipient after March 3, 2021.
   d. Investments in Water, Sewer, and Broadband: Recipients may use SLFRF award funds to make necessary investments in water, sewer, and broadband infrastructure. Recipients may use SLFRF award funds to cover costs incurred for eligible projects planned or started prior to March 3, 2021, provided that the project costs covered by the SLFRF award funds were incurred by the recipient after March 3, 2021.

   Any funds not obligated or expended for eligible uses by the timelines above must be returned to Treasury, including any unobligated or unexpended funds that have been provided to subrecipients and contractors as part of the award closeout process pursuant to 2 C.F.R. 200.344(d). For the purposes of determining expenditure eligibility, Treasury's final rule provides

that "incurred" means the recipient has incurred an obligation, which has the same meaning given to "financial obligation" in 2 CFR 200.1.

3. **Reporting.** Generally, recipients must submit one initial Interim Report, quarterly or annual Project and Expenditure reports which include subaward reporting, and in some cases annual Recovery Plan reports. Treasury's final rule and Part 2 of this guidance provide more detail around SLFRF reporting requirements.

4. **Expenditure Categories**. Treasury's final rule provides greater flexibility and simplicity for recipients to fight the pandemic and support families and businesses struggling with its impacts, maintain vital services amid revenue shortfalls, and build a strong, resilient, and equitable recovery. As such, recipients report on a broader set of eligible uses and associated Expenditure Categories ("EC"), which began with the April 2022 Project and Expenditure Report. Appendix 1 includes the new ECs, as well as a reference to previous ECs used for reporting under the interim final rule.

Assistance Listing

The Assistance Listing for the Coronavirus State and Local Fiscal Recovery Funds (SLFRF) was published May 28, 2021 on SAM.gov under Assistance Listing Number ("ALN"), formerly known as CFDA Number, **21.027**.

The assistance listing includes helpful information including program purpose, statutory authority, eligibility requirements, and compliance requirements for recipients. The ALN is the unique 5-digit number assigned to identify a federal assistance listing, and can be used to search for federal assistance program information, including funding opportunities, spending on USASpending.gov, or audit results through the Federal Audit Clearinghouse.

To expedite payments and meet statutory timelines Treasury issued initial payments under an existing ALN, 21.019, assigned to the CRF. If you have already received funds or captured the initial number in your records, please update your systems and reporting to reflect the new ALN 21.027 for the SLFRF program. **Recipients must use ALN 21.027 for all financial accounting, subawards, and associated program reporting requirements for the SLFRF awards.**

D. Uniform Administrative Requirements

The SLFRF awards are generally subject to the requirements set forth in the Uniform Guidance. In all instances, your organization should review the Uniform Guidance requirements applicable to your organization's use of SLFRF funds, and SLFRF-funded projects. Additional details about applicability of certain provisions of the Uniform Guidance may be found in:

- SLFRF final rule;
- SLFRF Assistance Listing; and
- SLFRF Final Rule FAQs, including FAQ 4.9, 10.1, and Section 13.

The following sections provide a general summary of your organization's compliance responsibilities under applicable statutes and regulations, including the Uniform Guidance, as described in the most recent compliance supplement issued by OMB. Note that the descriptions below are only general summaries and all recipients and subrecipients are advised to carefully review the Uniform Guidance requirements and any additional regulatory and statutory requirements applicable to the program.

1. **Allowable Activities.** Each recipient should review program requirements, including Treasury's final rule and the recipient's Award Terms and Conditions, to determine and record eligible uses

of SLFRF funds. Per 2 CFR Part 200.303, your organization must develop and implement effective internal controls to ensure that funding decisions under the SLFRF award constitute eligible uses of funds, and document determinations.

2. **Allowable Costs/Cost Principles.** As outlined in the Uniform Guidance at 2 CFR Part 200, Subpart E regarding Cost Principles, allowable costs are based on the premise that a recipient is responsible for the effective administration of Federal awards, application of sound management practices, and administration of Federal funds in a manner consistent with the program objectives and terms and conditions of the award. Recipients must implement robust internal controls and effective monitoring to ensure compliance with the Cost Principles, which are important for building trust and accountability. Please note that as outlined in Final Rule FAQ 13.15, only a subset of the Uniform Guidance requirements at 2 CFR Part 200 Subpart E (Cost Principles) applies to recipients' use of funds in the revenue loss eligible use category.

   SLFRF funds may be, but are not required to be, used along with other funding sources for a given project. Recipients should note that SLFRF funds available under the "revenue loss" eligible use category generally may be used to meet the non-federal cost-share or matching requirements of other federal programs. If a recipient seeks to use SLFRF funds to satisfy match or cost-share requirements for a federal grant program, the recipient 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. For instance, recipients should note that SLFRF funds may not be used as the non-federal share for purposes of a state's Medicaid and CHIP programs because the OMB has approved a waiver from this provision as requested by the Centers for Medicare & Medicaid Services pursuant to 2 CFR 200.102 of the Uniform Guidance and related regulations.

   SLFRF funds beyond those that are available under 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. As an example, the Infrastructure Investment and Jobs Act 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 final rule for further details if they seek to utilize SLFRF funds as a match for these projects.

   Treasury's final rule, program guidance, and the Uniform Guidance outline the types of costs that are allowable, including certain audit costs. For example, per 2 CFR 200.425, a reasonably proportionate share of the costs of audits required by the Single Audit Act Amendments of 1996 are allowable; however, costs for audits that were not performed in accordance with 2 CFR Part 200, Subpart F and the Compliance Supplement are not allowable. Please see 2 CFR Part 200, Subpart E regarding the Cost Principles for more information.

   a. Administrative costs*:* 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.[1] Further, costs must be reasonable and allocable as outlined in 2 CFR 200.404 and 2 CFR 200.405. Pursuant to the SLFRF Award Terms and Conditions, recipients are permitted to charge both direct and indirect costs to their SLFRF award as administrative costs as long as they are accorded consistent treatment per 2 CFR 200.403. Direct costs are those that are identified specifically as costs of implementing the SLFRF program objectives, such as

[1] Recipients also may use SLFRF funds directly for administrative costs to improve the design and execution of programs responding to the COVID-19 pandemic and to administer or improve the efficacy of programs addressing the public health emergency or its negative economic impacts. 31 CFR 35.6(b)(3)(ii)(E)(3).

contract support, materials, and supplies for a project. Indirect costs are general overhead costs of an organization where a portion of such costs are allocable to the SLFRF award such as the cost of facilities or administrative functions like a director's office.[2][3] Each category of cost should be treated consistently in like circumstances as direct or indirect, and recipients may not charge the same administrative costs to both direct and indirect cost categories, or to other programs. If a recipient has a current Negotiated Indirect Costs Rate Agreement ("NICRA") established with a Federal cognizant agency responsible for reviewing, negotiating, and approving cost allocation plans or indirect cost proposals, then the recipient may use its current NICRA. Alternatively, if the recipient does not have a NICRA, the recipient may elect to use the de minimis rate of 10 percent of the modified total direct costs pursuant to 2 CFR 200.414(f).

b. Salaries and Expenses*:* In general, certain employees' wages, salaries, and covered benefits are an eligible use of SLFRF award funds. Please see Treasury's final rule for details.

3. **Cash Management.** SLFRF payments made to recipients are not subject to the requirements of the Cash Management Improvement Act and Treasury's implementing regulations at 31 CFR Part 205 or 2 CFR 200.305(b)(8)-(9).

   As such, recipients can place funds in interest-bearing accounts, do not need to remit interest to Treasury, and are not limited to using that interest for eligible uses under the SLFRF award.

4. **Eligibility.** Under this program, recipients are responsible for ensuring funds are used for eligible purposes. Generally, recipients must develop and implement policies and procedures, and retain records, to determine and monitor implementation of criteria for determining the eligibility of beneficiaries and/or subrecipients. Your organization, and if applicable, the subrecipient(s) administering a program on behalf of your organization, will need to maintain procedures for obtaining information evidencing a given beneficiary, subrecipient, or contractor's eligibility, including a valid SAM.gov registration (except with respect to individuals or households for which a SAM.gov registration is not required). Implementing risk-based due diligence for eligibility determinations is a best practice to augment your organization's existing controls.

5. **Property Management.** Any purchase of real or personal property with SLFRF funds must be consistent with the Uniform Guidance at 2 CFR Part 200, Subpart D, unless stated otherwise by Treasury. For example, as outlined in Final Rule FAQ 13.15, only a subset of the Uniform Guidance requirements at 2 CFR Part 200 Subpart D (Post Federal Award Requirements) applies to recipients' use of funds in the revenue loss eligible use category. Furthermore, as outlined in Final Rule FAQ 13.16, Treasury has clarified the use and disposition requirements for real and personal property, supplies, and equipment purchased with SLFRF funds.

6. **Matching, Level of Effort, Earmarking.** There are no matching, level of effort, or earmarking compliance responsibilities associated with the SLFRF award. See Section C.1 (Eligible and Restricted Uses of SLFRF Funds) for a discussion of restrictions on use of SLFRF funds. Please see 2. Allowable Costs/Cost Principles above for information on the use of SLFRF funds for non-Federal match or cost-sharing requirements in other Federal programs.

7. **Period of Performance.** Your organization should also develop and implement internal controls related to activities occurring outside the period of performance. All funds remain subject to statutory and regulatory requirements that they must be used for costs incurred by the recipient during the period that begins on March 3, 2021, and ends on December 31, 2024, and that award funds for the financial obligations incurred by December 31, 2024 must be expended by December

[2] 2 CFR 200.413 Direct Costs.
[3] 2 CFR 200.414 Indirect Costs.

31, 2026. Any funds not used must be returned to Treasury as part of the award closeout process pursuant to 2 C.F.R. 200.344(d).

8. **Procurement, Suspension & Debarment.** Recipients are responsible for ensuring that any procurement using SLFRF funds, or payments under procurement contracts using such funds, are consistent with the procurement standards set forth in the Uniform Guidance at 2 CFR 200.317 through 2 CFR 200.327, unless stated otherwise by Treasury. As outlined in Final Rule FAQ 13.15, only a subset of the Uniform Guidance requirements at 2 CFR Part 200 Subpart D (Post Federal Award Requirements) applies to recipients' use of funds in the revenue loss eligible use category. The procurement standards set forth in the Uniform Guidance at 2 CRF 200.317 through 2 CRF 200.327 are not included in Final Rule FAQ 13.15's list of applicable Subpart D requirements that apply to recipients' use of funds in the revenue loss eligible use category.

   The Uniform Guidance establishes in 2 CFR 200.319 that all procurement transactions for property or services must be conducted in a manner providing full and open competition, consistent with standards outlined in 2 CFR 200.320, which allows for non-competitive procurements only in certain circumstances. Recipients must have and use documented procurement procedures that are consistent with the standards outlined in 2 CFR 200.317 through 2 CFR 200.320. The Uniform Guidance, pursuant to 2 CFR 180, requires an infrastructure for competitive bidding and contractor oversight, including maintaining written standards of conduct and prohibitions on dealing with suspended or debarred parties. Your organization must ensure adherence to all applicable local, State, and federal procurement laws and regulations.

9. **Program Income.** Generally, 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, and principal and interest on loans made with Federal award funds. Program income does not include interest earned on advances of Federal funds, rebates, credits, discounts, or interest on rebates, credits, or discounts. Recipients of SLFRF funds should calculate, document, and record the organization's program income. Additional controls that your organization should implement include written policies that explicitly identify appropriate allocation methods, accounting standards and principles, compliance monitoring checks for program income calculations, and records.

   The Uniform Guidance outlines the requirements that pertain to program income at 2 CFR 200.307. Treasury has clarified in its Final Rule FAQs 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. Further, Final Rule FAQ 4.9 provides additional information about program income requirements applicable to certain eligible uses, and Final Rule FAQ 13.15 clarifies that only a subset of the Uniform Guidance requirements at 2 CFR 200 Subpart D (Post Federal Award Requirements) applies to recipients' use of funds in the revenue loss eligible use category. The list of applicable Subpart D requirements in Final Rule FAQ 13.15 does not include the program income requirements in 2 CFR 200.307.

10. **Reporting.** All recipients of federal funds must complete financial, performance, and compliance reporting as required and outlined in Part 2 of this guidance. Expenditures may be reported on a cash or accrual basis, as long as the methodology is disclosed and consistently applied. Reporting must be consistent with the definition of expenditures pursuant to 2 CFR 200.1. Your organization should appropriately maintain accounting records for compiling and reporting accurate, compliant financial data, in accordance with appropriate accounting standards and principles.

    In addition, where appropriate, your organization needs to establish controls to ensure completion and timely submission of all mandatory performance and/or compliance reporting. See Part 2 of this guidance for a full overview of recipient reporting responsibilities.

    Consolidated jurisdictions or other types of jurisdictions that received multiple SLFRF allocations

(e.g., a county and city with a consolidated government) are only required to file once per reporting period, and such reports will cover the total SLFRF allocations received by the jurisdiction. This includes Non-entitlement units of local government ("NEUs") and/or Units of general local government located within counties that are not units of general local government. In addition, the total SLFRF allocations across all sources for a given jurisdiction will be used to identify that jurisdiction's Reporting Tier.

11. **Subrecipient Monitoring.** SLFRF recipients that are pass-through entities as described under 2 CFR 200.1 are required to manage and monitor their subrecipients to ensure compliance with requirements of the SLFRF award pursuant to 2 CFR 200.332 regarding requirements for pass-through entities.

    First, your organization must clearly identify to the subrecipient: (1) that the award is a subaward of SLFRF funds; (2) any and all compliance requirements for use of SLFRF funds; and (3) any and all reporting requirements for expenditures of SLFRF funds.

    Next, your organization will need to evaluate each subrecipient's risk of noncompliance based on a set of common factors. These risk assessments may include factors such as prior experience in managing Federal funds, previous audits, personnel, and policies or procedures for award execution and oversight. Ongoing monitoring of any given subrecipient should reflect its assessed risk and include monitoring, identification of deficiencies, and follow-up to ensure appropriate remediation.

    Accordingly, your organization should develop written policies and procedures for subrecipient monitoring and risk assessment and maintain records of all award agreements identifying or otherwise documenting subrecipients' compliance obligations.

    Recipients should note that NEUs are not subrecipients under the SLFRF program. They are SLFRF recipients that report directly to Treasury.

    Recipients should also note that subrecipients do not include individuals and organizations that received SLFRF funds as end users. Such individuals and organizations are beneficiaries and not subject to audit pursuant to the Single Audit Act and 2 C.F.R. Part 200, Subpart F.

    Many recipients may choose to provide a subaward or contract to other entities to provide services to other end users. For example, a recipient may provide a subaward to a nonprofit to provide homeless services to individuals experiencing homelessness. In this case, the subaward to a nonprofit is based on the services that the recipient intends to provide (assistance to households experiencing homelessness), and the nonprofit is serving as the subrecipient, providing services on behalf of the recipient. Subrecipients are subject to an audit pursuant to the Single Audit Act and 2 CFR part 200, subpart F regarding audit requirements, whereas contractors are not subject to an audit pursuant to the Single Audit Act and 2 CFR part 200, subpart F regarding audit requirements.

    Please note that as outlined in Final Rule FAQ 13.14, recipients' use of funds in the revenue loss eligible use category does not give rise to subrecipient relationships. As a result, subaward reporting is not required for projects in the revenue loss eligible use category.

12. **Special Tests and Provisions.** From time-to-time, Treasury may issue subregulatory guidance as well as frequently asked questions.

    Across each of the compliance requirements above, Treasury has described some best practices for development of internal controls in **Table 1** below, with an example of each best practice.

Table 1: Internal controls best practices

Best Practice	Description	Example
Written policies and procedures	Formal documentation of recipient policies and procedures	Documented procedure for determining worker eligibility for premium pay
Written standards of conduct	Formal statement of mission, values, principles, and professional standards	Documented code of conduct / ethics for subcontractors
Risk-based due diligence	Pre-payment validations conducted according to an assessed level of risk	Enhanced eligibility review of subrecipient with imperfect performance history
Risk-based compliance monitoring	Ongoing validations conducted according to an assessed level of risk	Higher degree of monitoring for projects that have a higher risk of fraud, given program characteristics
Record maintenance and retention	Creation and storage of financial and non-financial records.	Storage of all subrecipient payment information.

E. Award Terms and Conditions

The Award Terms and Conditions of the SLFRF financial assistance agreement sets forth the compliance obligations for recipients pursuant to the SLFRF statute, the Uniform Guidance, Treasury's final rule, and applicable federal laws and regulations. Recipients should ensure they remain in compliance with all Award Terms and Conditions. These obligations include the following items in addition to those described above:

1. **SAM.gov Requirements.** All eligible recipients are required to have an active registration with the System for Award Management ("SAM") (https://www.sam.gov) pursuant to 2 CFR Part 25. To ensure timely receipt of funding, Treasury has stated that NEUs who have not previously registered with SAM.gov may do so after receipt of the award, but before the submission of mandatory reporting.[4]

2. **Recordkeeping Requirements.** Generally, your organization must maintain records and financial documents for five years after all funds have been expended or returned to Treasury, as outlined in paragraph 4.c. of the Award Terms and Conditions. Treasury may request transfer of records of long-term value at the end of such period. Wherever practicable, such records should be collected, transmitted, and stored in open and machine-readable formats.

   Your organization must agree to provide or make available such records to Treasury upon request, and to the Government Accountability Office ("GAO"), Treasury's Office of Inspector General ("OIG"), and their authorized representative in order to conduct audits or other investigations.

3. **Single Audit Requirements.** Recipients and subrecipients that expend more than $750,000 in Federal awards during their fiscal year will be subject to an audit under the Single Audit Act and its implementing regulation at 2 CFR Part 200, Subpart F regarding audit requirements.[5] Note that the Compliance Supplement provides information on the existing, important compliance requirements that the federal government expects to be considered as a part of such audit. For example, the SLFRF Compliance Supplement describes an alternative to the Single Audit for

[4] See flexibility provided in https://www.whitehouse.gov/wp-content/uploads/2021/03/M_21_20.pdf.
[5] For-profit entities that receive SLFRF subawards are not subject to Single Audit requirements. However, they are subject to other audits as deemed necessary by authorized governmental entities, including Treasury and Treasury's OIG.

eligible recipients. Recipients should consult the Compliance Supplement for more information about the alternative compliance examination engagement. The Compliance Supplement is routinely updated, and is made available in the Federal Register and on OMB's website: https://www.whitehouse.gov/omb/office-federal-financial-management/ Recipients and subrecipients should consult the Federal Audit Clearinghouse to see examples of Single Audit submissions.

4. **Civil Rights Compliance**. Recipients of Federal financial assistance from the Treasury are required to meet legal requirements relating to nondiscrimination and nondiscriminatory use of Federal funds. Those requirements include ensuring that entities receiving Federal financial assistance from the Treasury do not deny benefits or services, or otherwise discriminate on the basis of race, color, national origin (including limited English proficiency), disability, age, or sex (including sexual orientation and gender identity), in accordance with the following authorities: Title VI of the Civil Rights Act of 1964 (Title VI) Public Law 88-352, 42 U.S.C. 2000d-1 et seq., and the Department's implementing regulations, 31 CFR part 22; Section 504 of the Rehabilitation Act of 1973 (Section 504), Public Law 93-112, as amended by Public Law 93-516, 29 U.S.C. 794; Title IX of the Education Amendments of 1972 (Title IX), 20 U.S.C. 1681 et seq., and the Department's implementing regulations, 31 CFR part 28; Age Discrimination Act of 1975, Public Law 94-135, 42 U.S.C. 6101 et seq., and the Department implementing regulations at 31 CFR part 23.

   In order to carry out its enforcement responsibilities under Title VI of the Civil Rights Act, Treasury will collect and review information from recipients to ascertain their compliance with the applicable requirements before and after providing financial assistance. Treasury's implementing regulations, 31 CFR part 22, and the Department of Justice (DOJ) regulations, Coordination of Non-discrimination in Federally Assisted Programs, 28 CFR part 42, provide for the collection of data and information from recipients (see 28 CFR 42.406). Treasury may request that non-tribal recipients submit data for post-award compliance reviews, including information such as a narrative describing their Title VI compliance status. As explained in Treasury FAQ 12.1, the award terms and conditions for Treasury's pandemic recovery programs, including the SLFRF program, do not impose antidiscrimination requirements on Tribal governments beyond what would otherwise apply under federal law.

Part 2: Reporting Guidance

There are three types of reporting requirements for the SLFRF program. The report requirements are approved and documented under OMB PRA number - OMB # 1505-0271.

- **Interim Report:** Provide initial overview of status and uses of funding. This is a one-time report. **See Section A, page 16.**

- **Project and Expenditure Report:** Report on projects funded, expenditures, and contracts and subawards equal to or greater than $50,000, and other information. **See Section B, page 17.**

- **Recovery Plan Performance Report:** The Recovery Plan Performance Report (the "Recovery Plan") will provide information on the projects that large recipients are undertaking with program funding and how they plan to ensure program outcomes are achieved in an effective, efficient, and equitable manner. It will include key performance indicators identified by the recipient and some mandatory indicators identified by Treasury. The Recovery Plan will be posted on the website of the recipient as well as provided to Treasury. **See Section C, page 28.**

The reporting threshold is based on the total award amount allocated by Treasury under the SLFRF program, not the funds received by the recipient as of the time of reporting.

States and territories are also required to submit information on their distributions to NEUs. Please refer to Section D for additional details.

Table 2: Reporting requirements by recipient type

Tier	Recipient	Interim Report	Project and Expenditure Report	Recovery Plan Performance Report
1	States, U.S. territories, metropolitan cities and counties with a population that exceeds 250,000 residents	By August 31, 2021 or 60 days after receiving funding if funding was received by October 15, with expenditures by category. *Note: NEUs were not required to submit an Interim Report*	By January 31, 2022, and then the last day of the month after the end of each quarter thereafter *Note: NEUs were not required to submit a Project and Expenditure Report on January 31, 2022. The first reporting date for NEUs was April 30, 2022.*	By August 31, 2021 or 60 days after receiving funding, and annually thereafter by July 31
2	Metropolitan cities and counties with a population below 250,000 residents that are allocated more than $10 million in SLFRF funding, and NEUs that are allocated more than $10 million in SLFRF funding			
3	Tribal Governments that are allocated more than $30 million in SLFRF funding			
4	Tribal Governments that are allocated less than $30 million in SLFRF funding		By April 30, 2022, and then annually thereafter	
5	Metropolitan cities and counties with a population below 250,000 residents that are allocated less than $10 million in SLFRF funding, and NEUs that are allocated less than $10 million in SLFRF funding			

Note: Based on the period of performance, reports will be collected through April 30, 2027. See the specific due dates listed in Sections B and C.

As mentioned above, the total SLFRF allocations across all sources for a given jurisdiction will be used to identify that jurisdiction's Reporting Tier, beginning in April of 2022. Treasury may reach out to jurisdictions to update Reporting Tiers.

The remainder of this document describes these reporting requirements. User guides describing how and where to submit required reports are posted at www.treasury.gov/SLFRPReporting and updated on a regular basis.

Comparison to reporting for the CRF

This guidance does not change the reporting or compliance requirements pertaining to the CRF. Reporting and compliance requirements for the SLFRF are separate from CRF reporting requirements. Differences between CRF and SLFRF include:

- **Project, Expenditure, and Subaward Reporting**: The SLFRF reporting requirements leverage the existing reporting regime used for CRF to foster continuity and provide many recipients with a familiar reporting mechanism. The data elements for the Project and Expenditure Report will largely mirror those used for CRF, with some minor exceptions noted in this guidance. The users' guide will describe how reporting for CRF funds will relate to reporting for the SLFRF.
- **Timing of Reports**: CRF reports were due within 10 days of each calendar quarter end. For quarterly reporters, SLFRF reporting will be due the last day of the month following the end of the period covered. For annual reporters, SLFRF reporting will be due on an annual schedule (see table in Section B below).
- **Program and Performance Reporting**: The CRF reporting did not include any program or performance reporting. To build public awareness and accountability and allow Treasury to monitor compliance with eligible uses, some program and performance reporting is required for SLFRF.

A. Interim Report

Note: The Interim Reports were submitted under the interim final rule.

States, U.S. territories, metropolitan cities, counties, and Tribal governments were required to submit a one-time interim report with expenditures[6] by Expenditure Category covering the period from March 3rd to July 31, 2021, by August 31, 2021 or sixty (60) days after first receiving funding if the recipient's date of award was between July 15, 2021 and October 15, 2021. The recipient was required to enter obligations[7] and expenditures and, for each, select the specific expenditure category from the available options. See Appendix 3 for Expenditure Categories applicable for the Interim Report.

1. Required Programmatic Data

Recipients were also required to provide the following information if they had or planned to have expenditures in the following Expenditure Categories.

a. Revenue replacement (EC 6.1[8]): Key inputs into the revenue replacement formula in the Interim Final Rule and estimated revenue loss due to the Covid-19 public health emergency calculated using the formula in the Interim Final Rule as of December 31, 2020.
- Base year general revenue (e.g., revenue in the last full fiscal year prior to the public health emergency)
- Fiscal year end date
- Growth adjustment used (either 4.1 percent or average annual general revenue growth over 3 years prior to pandemic)
- Actual general revenue as of the twelve months ended December 31, 2020

[6] For purposes of reporting in the SLFRF portal, an expenditure is the amount that has been incurred as a liability of the entity (the service has been rendered or the good has been delivered to the entity).
[7] For purposes of reporting in the SLFRF portal, an obligation is an order placed for property and services, contracts and subawards made, and similar transactions that require payment.
[8] See Appendix 3 for the full Expenditure Category (EC) list. Please note that Appendix 3 includes the expenditure categories under the interim final rule, applicable to the Interim Report.

- Estimated revenue loss due to the Covid-19 public health emergency as of December 31, 2020
- An explanation of how revenue replacement funds were allocated to government services (Note: additional instructions was provided in the user guide)

In calculating general revenue and the other items discussed above, recipients should have used audited data if it was available. When audited data was not available, recipients were not required to obtain audited data if substantially accurate figures could be produced on an unaudited basis. Recipients should have used their own data sources to calculate general revenue and did not need to rely on revenue data published by the Census Bureau. Treasury acknowledges that due to differences in timing, data sources, and definitions, recipients' self-reported general revenue figures may differ from those published by the Census Bureau. Recipients were permitted to provide data on a cash, accrual, or modified accrual basis, provided that recipients are consistent in their choice of methodology throughout the covered period and until reporting is no longer required. Recipients' reporting should align with their own financial reporting.

In calculating general revenue, recipients should have excluded 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 CRF or SLFRF. To the extent federal funds are passed through States or other entities or intermingled with other funds, recipients should have attempted to identify and exclude the federal portion of those funds from the calculation of general revenue on a best-efforts basis.

Consistent with the broad latitude provided to recipients to use funds for government services to the extent of reduction in revenue, recipients were required to submit a description of services provided. This description may be in narrative or in another form, and recipients were encouraged to report based on their existing budget processes and to minimize administrative burden. For example, a recipient with $100 in revenue replacement funds available could indicate that $50 were used for law enforcement operating expenses and $50 were used for pay-go building of sidewalk infrastructure. As discussed in the interim final rule, these services can include a broad range of services but may not be used directly for pension deposits or debt service.

Reporting requirements did not require tracking the indirect effects of Fiscal Recovery Funds, apart from the restrictions on use of Fiscal Recovery Funds to offset a reduction in net tax revenue. In addition, recipients were required to indicate that Fiscal Recovery Funds were not used to make a deposit in a pension fund.

B. Project and Expenditure Report

All recipients are required to submit Project and Expenditure Reports.

Note on NEUs: To facilitate reporting, each NEU will need an NEU Recipient Number. This is a unique identification code for each NEU assigned by the State or territory to the NEU as part of its request for funding.

1. Quarterly Reporting

The following recipients are required to submit quarterly Project and Expenditure Reports:

- States and U.S. territories
- Tribal governments that are allocated more than $30 million in SLFRF funding
- Metropolitan cities and counties with a population that exceeds 250,000 residents

- Metropolitan cities and counties with a population below 250,000 residents that are allocated more than $10 million in SLFRF funding and NEUs that are allocated more than $10 million in SLFRF funding.

For these recipients, the initial quarterly Project and Expenditure Report covers three calendar quarters from March 3, 2021 to December 31, 2021 and was required to be submitted to Treasury by January 31, 2022. The subsequent quarterly reports will cover one calendar quarter and must be submitted to Treasury by the last day of the month following the end of the period covered. Quarterly reports are not due concurrently with applicable annual reports. **Table 3** summarizes the quarterly report timelines:

Table 3: Quarterly Project and Expenditure Report Timeline

Report	Year	Quarter	Period Covered	Due Date
1	2021	2 – 4	March 3 – December 31	January 31, 2022
2	2022	1	January 1 – March 31	April 30, 2022
3	2022	2	April 1 – June 30	July 31, 2022
4	2022	3	July 1 – September 30	October 31, 2022
5	2022	4	October 1 – December 31	January 31, 2023
6	2023	1	January 1 – March 31	April 30, 2023
7	2023	2	April 1 – June 30	July 31, 2023
8	2023	3	July 1 – September 30	October 31, 2023
9	2023	4	October 1 – December 31	January 31, 2024
10	2024	1	January 1 – March 31	April 30, 2024
11	2024	2	April 1 – June 30	July 31, 2024
12	2024	3	July 1 – September 30	October 31, 2024
13	2024	4	October 1 – December 31	January 31, 2025
14	2025	1	January 1 – March 31	April 30, 2025
15	2025	2	April 1 – June 30	July 31, 2025
16	2025	3	July 1 – September 30	October 31, 2025
17	2025	4	October 1 – December 31	January 31, 2026
18	2026	1	January 1 – March 31	April 30, 2026
19	2026	2	April 1 – June 30	July 31, 2026
20	2026	3	July 1 – September 30	October 31, 2026
21	2026	4	October 1 – December 31	April 30, 2027

2. Annual Reporting

The following recipients are required to submit annual Project and Expenditure Reports:

- Tribal governments that are allocated less than $30 million in SLFRF funding
- Metropolitan cities and counties with a population below 250,000 residents that are allocated less than $10 million in SLFRF funding and NEUs that are allocated less than $10 million in SLFRF funding.

For these recipients, the initial Project and Expenditure Report covered from March 3, 2021 to March 31, 2022 and was required to be submitted to Treasury by April 30, 2022. The subsequent annual reports will cover one calendar year and must be submitted to Treasury by April 30. **Table 4** summarizes the annual report timelines:

Table 4: Annual Project and Expenditure Report timeline

Report	Period Covered	Due Date
1	March 3, 2021 – March 31, 2022	April 30, 2022
2	April 1, 2022 – March 31, 2023	April 30, 2023
3	April 1, 2023 – March 31, 2024	April 30, 2024
4	April 1, 2024 – March 31, 2025	April 30, 2025
5	April 1, 2025 – March 31, 2026	April 30, 2026
6	April 1, 2026 – December 31, 2026	April 30, 2027

3. Required Information

The following information is required in Project and Expenditure Reports for both quarterly and annual reporting:

a. Projects: Provide information on all SLFRF funded projects. Projects are defined as a grouping of closely related activities that together are intended to achieve a specific goal or are directed toward a common purpose. These activities can include new or existing eligible government services or investments funded in whole or in part by SLFRF funding. For each project, the recipient is required to enter the project name, identification number (created by the recipient), project expenditure category (see Appendix 1), description, and status of completion. Project descriptions must describe the project in sufficient detail to provide an understanding of the major activities that will occur, and must be between 50 and 250 words. Projects should be defined to include only closely related activities directed toward a common purpose. Recipients should review the Required Programmatic Data described in 3.g. below and define their projects at a sufficient level of granularity.

   Note: For each project, the recipient is asked to select the appropriate Expenditure Category based on the scope of the project (see Appendix 1). Projects should be scoped to align to a single Expenditure Category. For select Expenditure Categories, the recipient also is asked to provide additional programmatic data (described further below).

b. Obligations and Expenditures: Once a project is entered the recipient will be able to report on the project's obligations and expenditures. Recipients will be asked to report:
   - Current period obligation
   - Cumulative obligation
   - Current period expenditure
   - Cumulative expenditure

c. Project Status: Once a project is entered the recipient will be asked to report on project status each reporting period, in four categories:
   - Not Started
   - Completed less than 50 percent
   - Completed 50 percent or more
   - Completed

d. Program Income: Recipients should report the program income earned and expended to cover eligible project costs, if applicable.

e. Adopted Budget *(States, U.S. territories, metropolitan cities and counties with a population that exceeds 250,000 residents only)*: Each state, territory and metropolitan city and county with a population that exceeds 250,000 residents will provide the budget adopted for each project by its jurisdiction associated with SLFRF funds. Treasury will use this information to better understand the intended impact, identify opportunities for outreach, and understand the recipient's progress in program implementation. Treasury is not approving or pre-approving projects or budgets.

- Recipients will enter the Adopted Budget based on information that exists currently in the recipient's financial systems and the recipient's established budget process. Treasury understands that recipients may use different budget processes. For example, a recipient may consider a project budgeted once a legislature has appropriated funds; whereas another recipient may consider a project budgeted at the moment when the funds have been obligated.
- Additional information is provided on the differences between Adopted Budget, Obligations, and Expenditures as part of the user guide posted at www.treasury.gov/SLFRPReporting.

f. Project Demographic Distribution (applicable to Public Health and Negative Economic Impact ECs: EC 1.1-2.37)– *Collection began April 2022*

Recognizing the disproportionate public health and negative economic impacts of the pandemic on many households, communities, and other entities, recipients must report whether certain types of projects are targeted to impacted and disproportionately impacted communities. Recipients will be asked to respond to the following:

a. What Impacted and/or Disproportionally Impacted population does this project primarily serve? Please select the population primarily served.
b. If this project primarily serves more than one Impacted and/or Disproportionately Impacted population, please select up to two additional populations served.

Recipients will select from the following options:

	Impacted	Disproportionately Impacted
Public Health	• General Public	
Assistance to Households	• Low- or-moderate income households or populations[9] • Households that experienced unemployment • Households that experienced increased food or housing insecurity • Households that qualify for certain federal programs[10] • For services to address lost instructional time in K-12 schools: any students that lost access to in-person instruction for a significant period of time	• Low-income households and populations[11] • Households and populations residing in Qualified Census Tracts • Households that qualify for certain federal programs[12] • Households receiving services provided by Tribal governments • Households residing in the U.S. territories or receiving services from these governments

[9] Low or moderate-income households and communities are those with (i) 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 by the Department of Health and Human Services (HHS) or (ii) 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 by the Department of Housing and Urban Development (HUD).

[10] For Impacted households, these programs are Children's Health Insurance Program ("CHIP"); Childcare Subsidies through the Child Care and Development Fund ("CCDF") Program; Medicaid; National Housing Trust Fund ("HTF"), for affordable housing programs only; Home Investment Partnerships Program ("HOME"), for affordable housing programs only.

[11] Low-income households and communities are those with (i) income at or below 185 percent of the Federal Poverty Guidelines for the size of the household based on the most recently published poverty guidelines by HHS or (ii) income at or below 40 percent of Area Median Income for its county and size of household based on the most recently published data by HUD.

[12] For Disproportionately Impacted households, 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, Special Supplemental Nutrition Program for Women, Infants, and Children ("WIC"), Section 8 Vouchers, Low-Income Home Energy Assistance Program ("LIHEAP"), and Pell Grants.

	Impacted	Disproportionately Impacted
	• Other households or populations that experienced a negative economic impact of the pandemic other than those listed above (please specify)	• For services to address educational disparities, Title I eligible schools[13] • Other households or populations that experienced a disproportionate negative economic impact of the pandemic other than those listed above (please specify)
Assistance to Small Businesses	• Small businesses that experienced a negative economic impact of the pandemic • Classes of small businesses designated as negatively economically impacted by the pandemic (please specify)	• 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 • Other small businesses disproportionately impacted by the pandemic (please specify)
Assistance to Non-Profits	• Non-profits that experienced a negative economic impact of the pandemic (please specify) • Classes of non-profits designated as negatively economically impacted by the pandemic (please specify)	• Non-profits operating in Qualified Census Tracts • Non-profits operated by Tribal governments or on Tribal lands • Non-profits operating in the U.S. territories • Other non-profits disproportionately impacted by the pandemic (please specify)
Aid to Impacted Industries	• Travel, tourism, or hospitality sectors (including Tribal development districts) • Industry outside the travel, tourism, or hospitality sectors that experienced a negative economic impact of the pandemic (please specify)	N/A

g. Subawards, Contracts, Grants, Loans, Transfers, and Direct Payments: Each recipient shall also provide detailed obligation and expenditure information for any contracts and grants awarded, loans issued, transfers made to other government entities, and direct payments made by the recipient that are equal to or greater than $50,000. As noted in Treasury's Project & Expenditure User Guides, subaward reporting for funds spent under the revenue loss eligible use category has not been required in past reporting periods. Please note that as outlined in Final Rule FAQ 13.14, Treasury is not collecting subaward data for projects categorized under the revenue loss eligible use category.

   Recipients do not need to submit separate monthly subaward reports to FSRS.gov as required pursuant to the 2 CFR Part 170, Appendix A award term regarding reporting subaward and executive compensation, which is included in the SLFRF Award Terms and Conditions. Treasury

[13] For educational services and other efforts 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 service as eligible. "Title I eligible schools" means schools eligible to receive services under section 1113 of Title I, Part A of the Elementary and Secondary Education Act of 1965, as amended (20 U.S.C. 6313), including schools served under section 1113(b)(1)(C) of that Act.

will submit this reporting on behalf of recipients using the $50,000 reporting threshold, timing, and data elements discussed in this guidance. If recipients choose to continue reporting to FSRS.gov in addition to reporting directly to Treasury on these funds, they may do so and will be asked to notify Treasury as part of their quarterly submission.

In general, recipients will be asked to provide the following information for each Contract, Grant, Loan, Transfer, or Direct Payment equal to or greater than $50,000:

- Subrecipient identifying and demographic information (e.g., UEI/TIN number and location)
- Award number (e.g., Award number, Contract number, Loan number)
- Award date, type, amount, and description
- Award payment method (reimbursable or lump sum payment(s))
- For loans, expiration date (date when loan expected to be paid in full)
- Primary place of performance
- Related project name(s)
- Related project identification number(s) (created by the recipient)
- Period of performance start date
- Period of performance end date
- Quarterly obligation amount
- Quarterly expenditure amount
- Project(s)
- Additional programmatic performance indicators for select Expenditure Categories (see below)

Aggregate reporting is required for contracts, grants, transfers made to other government entities, loans, and direct payments that are below $50,000. This information will be accounted for by Expenditure Category at the project level. Note that all obligations and expenditures made directly to individuals, regardless of dollar amount, should be included in aggregate reporting.

As required by the 2 CFR Part 170, Appendix A award term regarding reporting subaward and executive compensation, recipients must also report the names and total compensation of their five most highly compensated executives and their subrecipients' executives for the preceding completed fiscal year if (1) the recipient received 80 percent or more of its annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as provided by 2 CFR 170.320 (and subawards), and received $25,000,000 or more in annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act (and subawards), and (2) if the information is not otherwise public. In general, most SLFRF recipients are governmental entities with executive salaries that are already disclosed, so no additional information would be required to be reported for them. The recipient is responsible for the subrecipients' compliance with registering and maintaining an updated profile on SAM.gov.

h. Civil Rights Compliance: Treasury will request information on recipients' compliance with Title VI of the Civil Rights Act of 1964, as applicable, on an annual basis. This information may include a narrative describing the recipient's compliance with Title VI, along with other questions and assurances. This collection does not apply to Tribal governments[14]

i. Ineligible Activities: Tax Offset Provision (States and territories only): Section 602(c)(2)(A) of the Social Security Act prohibits a State or territory from using SLFRF funds to directly or indirectly offset a reduction in the net tax revenue of the State or territory resulting from a change in law, regulation, or administrative interpretation during the covered period (the "Tax Offset Provision"). The Final Rule implements the Tax Offset Provision at 31 CFR § 35.8. Violations of the Tax

[14] Please note, as explained in Treasury FAQ 12.1, that the award terms and conditions for Treasury's pandemic recovery programs, including the SLFRF, do not impose antidiscrimination requirements on Tribal governments beyond what would otherwise apply under federal law.

Offset Provision may be subject to recoupment. The following information is required for Treasury to ensure SLFRF funding is not used for ineligible activities related to the Tax Offset Provision.

For each reporting year, in the quarterly reporting cycle occurring 90 days after the end of the recipient's fiscal year, States and territories will report certain items related to the Tax Offset Provision, as detailed below. For example, if a recipient's fiscal year ends June 30, 2022, reporting on the Tax Offset Provision for fiscal year 2022 will be due in October 2022. All States and territories reported on the Tax Offset Provision for fiscal year 2021 in July 2022.

As indicated in the final rule, Treasury is implementing a tiered approach to reporting on the Tax Offset Provision, which is described below. Although Treasury is implementing a tiered approach to reporting, recipients should maintain records to support their compliance with the Tax Offset Provision.

The terms "reporting year," "baseline," "covered change," "covered period," "net reduction in total spending," and "tax revenue" are defined in the Final Rule, 31 CFR § 35.3. For purposes of calculating a net reduction in total spending, total spending for the fiscal year ending 2019 should be reported on an inflation-adjusted basis, consistent with the Final Rule. Similarly, for purposes of calculating baseline tax revenue, tax revenue for the fiscal year 2019 should be reported on an inflation-adjusted basis, consistent with the Final Rule.

For purposes of reporting actual tax revenue for the requested fiscal year and baseline tax revenue for the fiscal year ending 2019,[15] (a) if available, recipients should report information using audited financials and (b) recipients may provide data on a cash, accrual, or modified accrual basis, but must be consistent in their approach across all reporting periods. Similarly, for purposes of calculating a net reduction in total spending, recipients should report data using audited financials where available.

Recipients will first answer a series of summary questions to determine the tiering of their tax offset reporting:

Summary Questions

- Do you have revenue-reducing covered change(s) to report for the requested fiscal year and for future fiscal years? Yes/No
  - If no, recipients have no further reporting requirements in the tax offset section. (Remaining summary questions will be greyed out).
  - If yes, recipients will complete part 1 and additional fields.
- Is the aggregate value of your revenue-reducing covered change(s) for the requested fiscal year less than the de minimis? Yes/No.
  - If yes, recipients will complete parts 1 and 2, and no further reporting is required in the tax offset section. (Remaining summary questions will be greyed out).
  - If no, recipients will complete parts 1, 2 and additional fields.
- Do you have a reduction in net tax revenue for the requested fiscal year, meaning that actual tax revenue for the requested fiscal year is less than baseline tax revenue? Yes/No.
  - If yes, recipients will complete parts 1, 2, and 3 and additional fields.
  - If no, recipients will complete parts 1, 2, and 3, and no further reporting is required in the tax offset section. (Remaining summary questions will be greyed out).
- Do you have revenue-increasing covered change(s) and/or covered spending cuts to report for the requested fiscal year? Yes/No
  - If yes, recipients will complete parts 1, 2, 3, and 4.
  - If no, recipients will complete the revenue reduction cap.

Reporting Part 1: Revenue-reducing Covered Changes

[15] Tax revenue for fiscal year ending 2019 is relevant for calculating the recipient's baseline.

- Do you have revenue-reducing covered change(s) to report for the requested fiscal year and for future fiscal years? Yes/No
    - If yes, complete grid or upload spreadsheet with the name of each revenue-reducing covered change and the value of the revenue-reducing covered change for the requested fiscal year and for future fiscal years.
    - If no, a recipient has no revenue-reducing covered changes to report, no additional reporting is required.
- Enter in the aggregate value of all revenue-reducing covered change(s) for the requested fiscal year.[16]

Revenue-reducing Covered Changes: Guidance
For each reporting year, a recipient must report the value of covered changes that the recipient predicts will have the effect of reducing tax revenue in a given reporting year (revenue-reducing covered changes), similar to the way it would in the ordinary course of its budgeting process. The value of these revenue-reducing covered changes may be reported based on estimated values produced by a budget model, incorporating reasonable assumptions, that aligns with the recipient government's existing approach for measuring the effects of fiscal policies, and that measures relative to a current law baseline. The revenue-reducing covered changes may also be reported based on actual values using a statistical methodology to isolate the change in year-over-year revenue attributable to the covered change(s), relative to the current law baseline prior to the change(s). Estimation approaches should not use dynamic methodologies that incorporate the projected effects of the policies on macroeconomic growth. In general and where possible, reported values should be produced by the agency of the recipient government responsible for estimating the costs and effects of fiscal policy changes. Recipients must maintain records regarding the identification and predicted effects of revenue-reducing covered changes.

Reporting Part 2: Baseline Revenue and De Minimis Threshold

- Enter Baseline Revenue:
- Enter in the aggregate value of the revenue-reducing covered change(s) for the requested fiscal year as a percentage of baseline revenue:
- Is the aggregate value of the revenue-reducing covered change(s) for the requested fiscal year less than one percent of baseline revenue? Y/N
    - If yes, a recipient's aggregate value of the revenue-reducing covered changes in the reporting year is less than the *de minimis threshold*, and no additional reporting is required.

Baseline Revenue: Guidance
Baseline has the meaning defined in the Final Rule, 31 CFR 35.3.

Recipients must determine whether the aggregate value of the revenue-reducing covered changes in the reporting year is less than one percent of baseline revenue (the de minimis threshold).

Reporting Part 3: Actual Tax Revenue and Reduction in Net Tax Revenue

- Enter Actual Tax Revenue for the requested fiscal year:
- Enter Reduction in Net Tax Revenue: baseline revenue minus actual tax revenue

[16] The final rule defines covered change. "Covered change means a change in law, regulation, or administrative interpretation that reduces any tax (by providing for a reduction in a rate, a rebate, a deduction, a credit, or otherwise) or delays the imposition of any tax or tax increase. A change in law includes any final legislative or regulatory action, a new or changed administrative interpretation, and the phase-in or taking effect of any statute or rule if the phase-in or taking effect was not prescribed prior to the start of the covered period."

  - If the value of the reduction in net tax revenue is zero or negative (meaning that actual tax revenue is equal to or greater than baseline revenue), no additional reporting is required.

Actual Tax Revenue: Guidance
Actual tax revenue means the tax revenue received by the recipient government in the reporting year. Tax revenue has the meaning defined in the Final Rule, 31 CFR 35.3.

Reduction in Net Tax Revenue: Guidance
The reduction in net tax revenue is equal to baseline revenue minus actual tax revenue in each reporting year. If this value is zero or negative, there is no reduction in net tax revenue.

Reporting Part 4: Revenue-increasing Covered Changes and Covered Spending Cuts

- Do you have revenue-increasing covered change(s) and/or covered spending cuts to report for the requested fiscal year? Yes/No.
- If yes, complete grid or upload spreadsheet with the name of each revenue-increasing covered change and the value.
- Enter in the aggregate value of revenue-increasing covered change(s):

- Enter net reduction in total spending for the requested fiscal year:
- Complete grid or upload spreadsheet of specific spending cuts and the corresponding "reporting unit", including the name of the reporting unit, description of the spending cut, the amount of the reduction in spending in the reporting unit for the reporting year relative to its inflation-adjusted FY 2019 level, the amount of any Fiscal Recovery Funds spent in the reporting unit in the reporting year, and the amount by which the reduction in spending in the reporting unit in the reporting year exceeds the Fiscal Recovery Funds spent in the reporting unit in the reporting year, if at all.
- Enter the aggregate value of covered spending cuts.

- Enter the aggregate value of revenue-increasing covered changes + the aggregate value of covered spending cuts.
- Enter the total value of revenue-reducing covered changes minus the total of (aggregate value of revenue-increasing covered changes + aggregate value of covered spending cuts).
- Is the aggregate value of revenue-reducing covered changes minus the total of (aggregate value of revenue-increasing changes + aggregate value of covered spending cuts) negative or equal to zero? (Yes/No)
  - If yes, recipients have no further reporting requirements related to the Tax Offset Provision.
  - If no, recipients must move on to the calculation of the revenue reduction cap.

Revenue-increasing covered changes: Guidance
If a recipient has revenue-reducing covered changes, the aggregate value of which exceed the de minimis threshold, and its actual tax revenue does not exceed baseline tax revenue, a recipient must report the value of covered changes that have had or that the recipient predicts will have the effect of increasing tax revenue in a given reporting year (revenue-increasing covered changes), similar to the way it would in the ordinary course of its budgeting process. The value of these revenue-increasing covered changes may be reported based on estimated values produced by a budget model, incorporating reasonable assumptions, that aligns with the recipient's existing approach for measuring the effects of fiscal policies, and that measures relative to a current law baseline. The revenue-increasing covered changes may also be reported based on actual values using a statistical methodology to isolate the change in year-over-year revenue attributable to the revenue-increasing covered change(s), relative to the current law baseline prior to the change(s). Estimation approaches should not use dynamic methodologies that incorporate the projected effects of the policies on macroeconomic growth.

In general and where possible, reporting should be produced by the agency of the recipient responsible for estimating the costs and effects of fiscal policy changes. Recipients should maintain records regarding revenue-increasing covered changes and estimates of such changes.

Net reduction in total spending, and tables of specific spending cuts: Guidance
Recipients may cut spending in certain areas to pay for revenue-reducing covered changes, up to the amount of the recipient's net reduction in total spending. To calculate the amount of spending cuts that are available to offset a reduction in tax revenue, the recipient must first consider whether there has been a reduction in total net spending, excluding Fiscal Recovery Funds (net reduction in total spending). As defined in the Final Rule, 35 CFR 35.3, net reduction in total spending is measured as the recipient government's total spending for a given reporting year excluding Fiscal Recovery Funds, subtracted from its total spending for its fiscal year ending in 2019, adjusted for inflation using the Bureau of Economic Analysis's Implicit Price Deflator for the gross domestic product of the United States for that reporting year. If that calculation yields a positive value, there has been a net reduction in total spending; if it yields zero or a negative value, there has not been a net reduction in total spending. If there has been no net reduction in total spending, a recipient will have no spending cuts to offset a reduction in net tax revenue.

Next, a recipient must determine and aggregate the value of spending cuts in each "reporting unit." "Reporting units" are departments, agencies, or authorities of the recipient's government. For each reporting unit, the recipient must report (1) the amount of the reduction in spending in the reporting unit for the reporting year relative to its inflation-adjusted FY 2019 level, (2) the amount of any Fiscal Recovery Funds spent in the reporting unit in the reporting year, and (3) the amount by which the reduction in spending in the reporting year exceeds the Fiscal Recovery funds spent in the reporting unit in the reporting year. If a recipient has not spent amounts received from the Fiscal Recovery Funds in a reporting unit, the full amount of the reduction in spending counts as a covered spending cut and may be included in the aggregate value of spending cuts. If the recipient has spent amounts received from the Fiscal Recovery Funds, such amounts generally would be deemed to have replaced the amount of spending cut, and only reductions in spending above the amount of Fiscal Recovery Funds spent on the reporting unit would be eligible to offset a reduction in net tax revenue. Only such amounts above the amount of Fiscal Recovery Funds spent on the reporting unit should be included in the aggregate value of spending cuts.

To align with existing reporting and accounting, the Final Rule considers the department, agency, or authority from which spending has been cut and whether the recipient government has spent amounts received from the Fiscal Recovery Funds on that same department, agency, or authority. Some commenters on the interim final rule argued that the methodology for identifying offsetting spending cuts at the department, agency, or authority level was too restrictive, but as discussed in the final rule, Treasury maintained the approach of requiring this reporting at the department, agency, or authority level. Recipients are encouraged to define reporting units in a manner consistent with their existing budget process and should, to the extent possible, report using the same reporting unit in each reporting year. Spending cuts must be reported relative to FY 2019 spending levels, adjusted for inflation, and excluding Fiscal Recovery Funds from reporting year spending levels.

Recipients should maintain records regarding spending cuts.

Reporting Part 5: Revenue Reduction Cap
The "revenue reduction cap," together with Part 3, ensures that recipient governments can use organic revenue growth to offset the cost of revenue-reducing covered changes. If, based on the calculations completed so far, a recipient has not yet demonstrated how its revenue-reducing

covered changes were offset by non-SLFRF sources, the reporting portal will auto-calculate the revenue reduction cap, which will be the lesser of the following two amounts:

- Reduction in Net Tax Revenue (baseline tax revenue minus actual tax revenue) [pre-populated from Part 3] and
- Aggregate Value of revenue-reducing covered changes minus (total of (aggregate value of revenue-increasing changes + aggregate value of covered spending cuts) [pre-populated from Part 4].

j. Required Programmatic Data (other than infrastructure projects): For all projects listed under the following Expenditure Categories (see Appendix 1), the information listed must be provided in each report.

1. Public Health and Negative Economic Impact (EC 1.1-3.5) - *Collection began in April 2022*
   - Brief description of structure and objectives of assistance program(s), including public health or negative economic impact experienced
   - Brief description of how a recipient's response is related and reasonably proportional to a public health or negative economic impact of COVID-19.[17]

     Note: The final rule presumes that all enumerated eligible uses for programs and services, including COVID-19 mitigation and prevention programs and services, are reasonably proportional responses to the harm identified unless a response is grossly disproportionate to the type or extent of harm experienced. Many of the Eligibility Categories encompass multiple specific enumerated eligible uses and may be provided to a variety of populations. For example, EC 2.13 *Healthy Childhood Environments: Services to Foster Youth or Families Involved in Child Welfare System* includes a wide array of financial, educational, child development, or health supports, or other supports necessary, including supports for kinship care, and may be provided to foster youth and/or families involved in the child welfare system. Between these two fields above, recipients should provide enough information to identify the type of enumerated eligible use being provided within the EC (e.g., kinship care support services), the public health or economic impact experienced, who the program and/or service is being provided to, and what services are being provided (e.g., respite resources). For enumerated eligible uses, recipients are not required to provide substantive documentation that the response is related and reasonably proportional in the Project and Expenditure Report.

2. Capital Expenditures (EC 1.1-3.5) - *Collection began in January 2022, with additional fields required starting in July 2022*
   - Does this project include a capital expenditure? *(Collection began in January 2022)*
   - Total expected capital expenditure, including pre-development costs, if applicable *(Collection began in January 2022)*
   - Type of capital expenditure, based on the following enumerated uses (*Collection began in July 2022*):
     - COVID-19 testing sites and laboratories, and acquisition of related equipment
     - COVID-19 vaccination sites
     - Medical facilities generally dedicated to COVID-19 treatment and mitigation (e.g., emergency rooms, intensive care units, telemedicine capabilities for COVID-19 related treatment)
     - Temporary medical facilities and other measures to increase COVID-19 treatment capacity, including related construction costs
     - Acquisition of equipment for COVID-19 prevention and treatment, including ventilators, ambulances, and other medical or emergency services equipment

[17] Please note that capital expenditures are not considered "programs and services" and are not presumed to be reasonably proportional responses to an identified harm except as provided in the final rule.

  - Emergency operations centers and acquisition of emergency response equipment (e.g., emergency response radio systems)
  - Installation and improvement of ventilation systems in congregate settings, health facilities, or other public facilities
  - Public health data systems, including technology infrastructure
  - Adaptations to congregate living facilities, including skilled nursing facilities, other long-term care facilities, incarceration settings, homeless shelters, residential foster care facilities, residential behavioral health treatment, and other group living facilities, as well as public facilities and schools (excluding construction of new facilities for the purpose of mitigating spread of COVID-19 in the facility)
  - Mitigation measures in small businesses, nonprofits, and impacted industries (e.g., developing outdoor spaces)
  - Behavioral health facilities and equipment (e.g., inpatient or outpatient mental health or substance use treatment facilities, crisis centers, diversion centers)
  - Technology and equipment to allow law enforcement to efficiently and effectively respond to the rise in gun violence resulting from the pandemic
  - Affordable housing, supportive housing, or recovery housing development
  - Food banks and other facilities primarily dedicated to addressing food insecurity
  - Transitional shelters (e.g., temporary residences for people experiencing homelessness)
  - Devices and equipment that assist households in accessing the internet (e.g., tablets, computers, or routers)
  - Childcare, daycare, and early learning facilities
  - Job and workforce training centers
  - Improvements to existing facilities to remediate lead contaminants (e.g., removal of lead paint)
  - Medical equipment and facilities designed to address disparities in public health outcomes (includes primary care clinics, hospitals, or integrations of health services into other settings)
  - Parks, green spaces, recreational facilities, sidewalks, pedestrian safety features like crosswalks, streetlights, neighborhood cleanup, and other projects to revitalize public spaces
  - Rehabilitations, renovation, remediation, cleanup, or conversions of vacant or abandoned properties
  - Schools and other educational facilities or equipment to address educational disparities
  - Technology and tools to effectively develop, execute, and evaluate government programs
  - Technology infrastructure to adapt government operations to the pandemic (e.g., video-conferencing software, improvements to case management systems or data sharing resources), reduce government backlogs, or meet increased maintenance needs
  - Other (please specify)
- For recipients (other than Tribal governments) investing in projects with total expected capital expenditures for an enumerated eligible use of $10 million or more, as well as projects with total expected capital expenditures for an “other” use of $1 million or more, provide a written justification (*Collection began in July 2022)*
- For projects with total expected capital expenditures of over $10 million, provide labor reporting as outlined for infrastructure projects on pages 26 and 27 (*Collection began July 2022*)

3. Household Assistance (EC 2.1-2.8) – *Collection began January 2022*:
   - Number of households served (by program if recipient establishes multiple separate household assistance programs)

4. Small Business Economic Assistance (EC 1.8, 2.29-2.33) – *Collection began April 2022*
   - Number of small businesses served (by program if recipient establishes multiple separate small business assistance programs)

5. Assistance to Non-Profits (EC 1.9, 2.34)- *Collection began April 2022*
   - Number of Non-Profits served (by program if recipient establishes multiple separate non-profit assistance programs)

6. Aid to Travel, Tourism, and Hospitality or Other Impacted Industries (EC 1.10, 2.35-2.36) – *Collection began April 2022*:
   - If aid is provided to industries other than travel, tourism, and hospitality (EC 2.36), describe if the industry experienced at least 8 percent employment loss from pre-pandemic levels, or the industry is experiencing comparable or worse economic impacts as the national tourism, travel, and hospitality industries as of the date of the final rule, and rationale for providing aid to the industry
   - For each subaward:
     - Sector of employer (Note: additional detail, including list of sectors, to be provided in the user guide posted to www.treasury.gov/SLFRP)
     - Purpose of funds (e.g., payroll support, safety measure implementation)

7. Education Assistance (EC 2.14, 2.24-.2.27) – *Collection began in January 2022*:
   - The National Center for Education Statistics ("NCES") School ID or NCES District ID. List the School District if all schools within the school district received some funds. If not all schools within the school district received funds, list the School ID of the schools that received funds. These can allow evaluators to link data from the NCES to look at school-level demographics and, eventually, student performance.[18]

8. Payroll for Public Health and Safety Employees (EC 3.1) – *Collection began in January 2022*:
   - Number of government FTEs responding to COVID-19 supported under this authority

9. Rehiring Public Sector Staff (EC 3.2) – *Collection began in January 2022*:
   - Number of FTEs rehired by governments under this authority

10. Premium Pay (both Public Sector EC 4.1 and Private Sector EC 4.2) – *Collection began in January 2022*; *additional field began in April 2022*
    - List of sectors designated as critical to protecting the health and well-being of residents by the chief executive of the jurisdiction, if beyond those included in the final rule *(Collection began January 2022)*
    - Number of workers to be served (*Collection began January 2022)*
    - Employer sector for all subawards to third-party employers (i.e., employers other than the State, local, or Tribal government) (*Collection began January 2022)*
    - For groups of workers (e.g., an operating unit, a classification of worker, etc.) or, to the extent applicable, individual workers, other than those where the eligible worker receiving premium pay is earning (with the premium pay included) below 150 percent of their residing state or county's average annual wage for all occupations, as defined by the Bureau of Labor Statistics Occupational Employment and Wage Statistics, whichever is

[18] For more information on NCES identification numbers see https://nces.ed.gov/ccd/districtsearch/ (districts) and https://nces.ed.gov/ccd/schoolsearch/ (schools).

higher, on an annual basis; OR the eligible worker receiving premium pay is not exempt from the Fair Labor Standards Act overtime provisions:
    - A brief written narrative justification of how the premium pay or grant is responsive to workers performing essential work during the public health emergency. This could include a description of the essential workers' duties, health or financial risks faced due to COVID-19, and why the recipient government determined that the premium pay was responsive to workers performing essential work during the pandemic. This description should not include personally identifiable information; when addressing individual workers, recipients should be careful not to include this information. Recipients may consider describing the workers' occupations and duties in a general manner as necessary to protect privacy (*Collection began January 2022)*
- Number of workers to be served with premium pay in K-12 schools (*Collection began April 2022)*

11. Revenue replacement (EC 6.1) – *Collection began in August 2021*:
As outlined in the final rule, recipients have the option to make a one-time decision to calculate revenue loss according to the formula outlined in the final rule or elect a "Standard Allowance" of up to $10 million, not to exceed the award allocation, to spend on government services throughout the period of performance. The option to make this one-time decision was provided during the April 30, 2022 reporting deadline.

    For recipients electing the "Standard Allowance," Treasury will presume that up to $10 million, not to exceed the award allocation, in revenue has been lost due to the public health emergency. Recipients are permitted to use that amount to fund "government services." Please note that electing the standard allowance does not change a recipient's total allocation. Recipients that elect to use this standard allowance will make this election instead of calculating lost revenue using the formula.

    For recipients calculating revenue loss according to the formula, the final rule permits recipients to choose whether to use calendar or fiscal year calculation dates. Recipients must use the same calculation time frame (calendar or fiscal year) throughout the award period.

    Recipients calculating lost revenue using the formula should report the following:

    - Choice of fiscal or calendar year revenue loss (choice must remain consistent throughout award period)
    - General revenue collected over the past 12 months as of the most recent calculation date, as outlined in the final rule.
    - Calculated revenue loss due to the Covid-19 public health emergency; and
    - An explanation of how the revenue replacement funds were allocated to government services (note: additional instructions and/or template provided in the user guide posted at www.treasury.gov/SLFRPReporting).

        For information on treatment of future tax changes, please see the *Statement Regarding Compliance with the Coronavirus State and Local Fiscal Recovery Funds Interim Final Rule and Final Rule*.

k. Required Programmatic Data for Infrastructure Projects (EC 5): For all projects listed under the Water, Sewer, and Broadband Expenditure Categories (see Appendix 1), more detailed project-level information is required. Each project will be required to report expenditure data as described above, but will also report the following information:

    1. All infrastructure projects (EC 5) – *Collection began in January 2022:*

- Projected/actual construction start date (month/year)
- Projected/actual initiation of operations date (month/year)
- Location
- For projects over $10 million (based on expected total cost):
  a. A recipient may provide a certification that, for the relevant project, all laborers and mechanics employed by contractors and subcontractors in the performance of such project are paid wages at rates not less than those prevailing, as determined by the U.S. Secretary of Labor in accordance with subchapter IV of chapter 31 of title 40, United States Code (commonly known as the "Davis-Bacon Act"), for the corresponding classes of laborers and mechanics employed on projects of a character similar to the contract work in the civil subdivision of the State (or the District of Columbia) in which the work is to be performed, or by the appropriate State entity pursuant to a corollary State prevailing-wage-in-construction law (commonly known as "baby Davis-Bacon Acts"). If such certification is not provided, a recipient must provide a project employment and local impact report detailing:
     - The number of employees of contractors and sub-contractors working on the project;
     - The number of employees on the project hired directly and hired through a third party;
     - The wages and benefits of workers on the project by classification; and
     - Whether those wages are at rates less than those prevailing.[19]

     Recipients must maintain sufficient records to substantiate this information upon request.
  b. A recipient may provide a certification that a project includes a project labor agreement, meaning a pre-hire collective bargaining agreement consistent with section 8(f) of the National Labor Relations Act (29 U.S.C. 158(f)). If the recipient does not provide such certification, the recipient must provide a project workforce continuity plan, detailing:
     - How the recipient will ensure the project has ready access to a sufficient supply of appropriately skilled and unskilled labor to ensure high-quality construction throughout the life of the project, including a description of any required professional certifications and/or in-house training;
     - How the recipient will minimize risks of labor disputes and disruptions that would jeopardize timeliness and cost-effectiveness of the project;
     - How the recipient will provide a safe and healthy workplace that avoids delays and costs associated with workplace illnesses, injuries, and fatalities, including descriptions of safety training, certification, and/or licensure requirements for all relevant workers (e.g., OSHA 10, OSHA 30);
     - Whether workers on the project will receive wages and benefits that will secure an appropriately skilled workforce in the context of the local or regional labor market; and
     - Whether the project has completed a project labor agreement.
  c. Whether the project prioritizes local hires.
  d. Whether the project has a Community Benefit Agreement, with a description of any such agreement.

2. Water and sewer projects (EC 5.1-5.18) *Required once the project starts:*
   - National Pollutant Discharge Elimination System (NPDES) Permit Number (if applicable; for projects aligned with the Clean Water State Revolving Fund) (*Collection began in January 2022)*

[19] As determined by the U.S. Secretary of Labor in accordance with subchapter IV of chapter 31 of title 40, United States Code (commonly known as the "Davis-Bacon Act"), for the corresponding classes of laborers and mechanics employed on projects of a character similar to the contract work in the civil subdivision of the State (or the District of Columbia) in which the work is to be performed.

- Public Water System (PWS) ID number (if applicable; for projects aligned with the Drinking Water State Revolving Fund) (*Collection began January 2022)*
- Median Household Income of service area *(Collection began in April 2022)*
- Lowest Quintile Income of the service area *(Collection began in April 2022)*

3. Broadband projects (EC 5.19-5.21) *Collection includes new fields that began in July 2022. Additional fields will be phased in through future reporting periods, as noted below.*

Overall Project Information

- Confirm that the project is designed to, upon completion, reliably meet or exceed symmetrical 100 Mbps download and upload speeds.
  - If the project is not designed to reliably meet or exceed symmetrical 100 Mbps download and upload speeds, explain why not, and
  - Confirm that the project is designed to, upon completion, meet or exceed 100 Mbps download speed and between at least 20 Mbps and 100 Mbps upload speed, and be scalable to a minimum of 100 Mbps download speed and 100 Mbps upload speed.
- Confirm that the service provider for the project has, or will upon completion of the project, either participated in the Federal Communications Commission (FCC)'s Affordable Connectivity Program (ACP) or otherwise provided access to a broad-based affordability program that provides benefits to households commensurate with those provided under the ACP to low-income consumers in the proposed service area of the broadband infrastructure *(applicable only to projects that provide service to households).*

Detailed Project Information

- Project technology type(s) (Planned/Actual)
  - Fiber
  - Coaxial Cable
  - Terrestrial Fixed Wireless
  - Other (specify)
- Total miles of fiber deployed (Planned/Actual)
- Total number of funded locations served (Planned/Actual)
  - Total number of funded locations served, broken out by speeds:
    - Pre-SLFRF Investment:
      - Number receiving 25/3 Mbps or below
      - Number receiving between 25/3 Mbps and 100/20 Mbps
    - Post-SLFRF Investment (Planned/Actual):
      - Number receiving minimum 100/100 Mbps
      - Number receiving minimum 100/20 Mbps and scalable to minimum 100/100 Mbps
  - Total number of funded locations served, broken out by type (Planned/Actual):
    - Residential
      - Total Housing Units
    - Business
    - Community anchor institution
- Speed tiers offered, corresponding non-promotional prices, including associated fees, and data allowance for each speed tier of broadband service (*collection to be phased in a future reporting period)*

Location-by-Location Project Information

For each location served by a Project, the recipient must collect from the subrecipient or contractor and submit the following information to Treasury using a predetermined file format that will be provided by Treasury (*collection of certain fields will begin in October 2022, as specified below*):

- Latitude/longitude at the structure where service will be installed (*required starting October 2022)*
- Technology used to offer service at the location (*required starting October 2022)*
- Location type (*required starting October 2022)*
  - Residential
    - If Residential, Number of Housing Units
  - Business
  - Community anchor institution
- Speed tier at the location pre-SLFRF investment (*collection to be phased in)*
  - 25/3 Mbps or below
  - Between 25/3 Mbps and 100/20 Mbps
- Speed and latency at the location post-SLFRF investment (*collection to be phased in)*
  - Maximum download speed offered
  - Maximum download speed delivered
  - Maximum upload speed offered
  - Maximum upload speed delivered
  - Latency

l. Additional Required Programmatic Data for States, U.S. territories, and metropolitan cities and counties with a population that exceeds 250,000 residents only: As noted in the Recovery Plan section of this guidance, states, U.S. territories, and metropolitan cities and counties with a population over 250,000 are required to provide additional data in the Project and Expenditure report for projects in the following expenditure categories:

1. Use of Evidence (for relevant ECs noted in Appendix 1)—*Collection began April 2022*
   - The dollar amount of the total project spending that is allocated towards evidence-based interventions
   - Whether a program evaluation of the project is being conducted

2. Household Assistance (EC 2.2, Long-Term Housing Security (EC 2.15-2.16) and Housing Support (EC 2.17-2.18):
   - Number of households receiving eviction prevention services (including legal representation)
   - Number of affordable housing units preserved or developed

3. Assistance to Unemployed or Underemployed Workers (EC 2.10) and Community Violence Interventions (EC 1.11):
   - Number of workers enrolled in sectoral job training programs
   - Number of workers completing sectoral job training programs
   - Number of people participating in summer youth employment programs

4. Addressing Educational Disparities (EC 2.24-2.26) and Addressing Impacts of Lost Instructional Time (EC 2.27):
   - Number of students participating in evidence-based tutoring programs[20]

5. Healthy Childhood Environments (EC 2.11-2.14):
   - Number of children served by childcare and early learning services (pre-school/pre-K/ages 3-5)
   - Number of families served by home visiting

[20] For more information on evidence-based tutoring programs, refer to the U.S. Department of Education's 2021 ED COVID-19 Handbook (Volume 2), which summarizes research on evidence-based tutoring programs (see the bottom of page 20.

m. NEU Documentation (NEUs only): Each NEU is also required to provide the following information once its accounts are established in Treasury's Reporting Portal and prior to the due date for their first Project and Expenditure Report (due April 30, 2022):
   - Copy of the signed award terms and conditions agreement (which was signed and submitted to the State as part of the request for funding)
   - Copy of the signed assurances of compliance with Title VI of the Civil Rights Act of 1964 (which was signed and submitted to the State as part of the request for funding)
   - Copy of actual budget documents validating the top-line budget total provided to the State as part of the request for funding

   NEU accounts are established in Treasury's Portal based on information provided by the States or territories, as further described in Section Part 2 D below.

C. Recovery Plan Performance Report

States, territories, and metropolitan cities and counties with a population that exceeds 250,000 residents (i.e., Tier 1 recipients) will also be required to publish and submit to Treasury a Recovery Plan performance report ("Recovery Plan"). Each Recovery Plan must be posted on an easily discoverable webpage on the public-facing website of the recipient by the same date the recipient submits the report to Treasury. Treasury recommends that Recovery Plans be accessible within three clicks or fewer from the homepage of the recipient's website. Within Treasury's reporting portal, recipients must upload a link to the publicly available Recovery Plan and provide required data.

The Recovery Plan provides the public and Treasury both retrospective and prospective information on the projects recipients are undertaking or planning to undertake with program funding and how they are planning to ensure program outcomes are achieved in an effective, efficient, and equitable manner. While this guidance outlines some minimum requirements for the Recovery Plan, each recipient is encouraged to add information to the plan that they feel is appropriate to provide information to their constituents on efforts they are taking to respond to the pandemic and promote economic recovery. Each jurisdiction may determine the general form and content of the Recovery Plan, as long as it includes the minimum information required by Treasury. Treasury provided a template (located at www.treasury.gov/SLFRP) but recipients may modify this template as appropriate for their jurisdiction, provided the modified template meets Treasury's requirements, outlined below. Through the Recovery Plan, recipients may link to public documents, including, but not limited to, legislation, dashboards, survey results, community engagement reports, and equity frameworks to support the Recovery Plan narrative. The Recovery Plan should include key performance indicators identified by the recipient and some mandatory indicators identified by Treasury, as noted below.

The initial Recovery Plan covered the period from the date of award to July 31, 2021 and was required to be submitted to Treasury by August 31, 2021, or 60 days after receiving funding. Thereafter, the Recovery Plan will cover a 12-month period and recipients are required to submit the report to Treasury after the end of the 12-month period by July 31**.** The Recovery Plan should include both retrospective information covering the time period of the Recovery Plan along with prospective information on future work to be undertaken with SLFRF funds or on the planning that has been undertaken during the covered period. **Table 5** summarizes the report timelines:

Table 5 Recovery Plan Timeline

Annual Report	Period Covered	Due Date
1	Award Date – July 31, 2021	August 31, 2021 or 60 days after receiving funding
2	July 1, 2021 – June 30, 2022	July 31, 2022

Annual Report	Period Covered	Due Date
3	July 1, 2022 – June 30, 2023	July 31, 2023
4	July 1, 2023 – June 30, 2024	July 31, 2024
5	July 1, 2024 – June 30, 2025	July 31, 2025
6	July 1, 2025 – June 30, 2026	July 31, 2026
7	July 1, 2026 – December 31, 2026	April 30, 2027

Recovery Plans submitted as part of reporting are used by Treasury, third party organizations, the public, and other stakeholders to obtain a comprehensive understanding of SLFRF's largest recipients' planned and actual usage of SLFRF funding, including the jurisdiction's policy goals, its strategy for achieving them, and specific projects or initiatives underway. Alignment of data reported in Project and Expenditure reports and Recovery Plans is expected by both Treasury and SLFRF's many stakeholders. Finally, Recovery Plans will be posted publicly by Treasury to provide transparency about how program funds are being used by recipient governments.

The Recovery Plan must include, at a minimum, the following information:

1. Executive Summary

In this section, recipients should provide a high-level overview of the jurisdiction's intended and actual uses of funding including, but not limited to: the jurisdiction's strategy, goals, and plan for using Fiscal Recovery Funds to respond to the pandemic and promote economic recovery, key outcome goals, progress to date on those outcomes, and any noteworthy challenges or opportunities identified during the reporting period.

2. Uses of Funds

In this section, recipients should describe in further detail the strategy and goals of their jurisdiction's SLFRF program, such as how their jurisdiction's approach would help support a strong and equitable recovery from the COVID-19 pandemic and economic downturn. Recipients should describe how their intended and actual uses of funds will achieve their goals. Given the broad eligible uses of funds established by the final rule and the specific needs of different jurisdictions, recipients should also explain how the funds would support the communities, populations, or individuals in their jurisdiction. Recipients should describe how their use of funds supports their overall strategy and goals in the following areas:

a. Public Health (EC 1): As relevant, describe how funds are being used to respond to COVID-19, the broader health impacts of COVID-19, and the COVID-19 public health emergency, including community violence interventions and behavioral health.
b. Negative Economic Impacts (EC 2): As relevant, describe how funds are being used to respond to negative economic impacts of the COVID-19 public health emergency, including services to households (such as affordable housing, job training, and childcare), small businesses, non-profits, and impacted industries.
c. Public Health-Negative Economic Impact: Public Sector Capacity (EC 3): As relevant, describe how funds are being used to support public sector workforce and capacity, including public sector payroll, rehiring of public sector workers, and building of public sector capacity.
d. Premium Pay (EC 4): As relevant, describe the approach, goals, and sectors or occupations served in any premium pay program. Describe how the approach prioritizes low-income workers and/or any particular group of eligible workers.
e. Water, sewer, and broadband infrastructure (EC 5): As relevant, describe the approach, goals, and types of projects being pursued. Where relevant, recipients should note how projects contribute to addressing climate change and/or how projects benefit disadvantaged communities in line with the Justice40 Initiative.[21]

[21] See Executive Order 14008, On Tackling the Climate Crisis at Home and Abroad and the Interim Implementation Guidance for the Justice40 Initiative, OMB M-21-28.

f. Revenue Replacement (EC 6): Describe the loss in revenue, including if electing the standard allowance, due to the COVID-19 public health emergency, and how funds have been used to provide government services, including any funds used under revenue loss for non-federal cost-share or matching requirements of other federal programs.

If appropriate, recipients may also include information on their jurisdiction's use (or planned use) of other federal recovery funds, including other programs under the American Rescue Plan such as Emergency Rental Assistance, the Homeowner Assistance Fund, the Capital Projects Fund, the State Small Business Credit Initiative, and so forth, to provide broader context on the overall approach for pandemic recovery. Jurisdictions may also address use of SLFRF funds in coordination with, or in preparation for, funding available through the Infrastructure Investment and Jobs Act.

3. Promoting equitable outcomes

Treasury encourages uses of funds that advance strong, equitable growth, including economic and racial equity. For the purposes of the SLFRF, equity is described in the Executive Order 13985 On Advancing Racial Equity and Support for Underserved Communities Through the Federal Government, as issued on January 20, 2021.

In this section, recipients should describe, as applicable, their efforts to promote equitable outcomes, including economic and racial equity, and their efforts to design, implement, and measure their SLFRF program and projects with equity in mind.

In describing their efforts to **design** their SLFRF program and projects with equity in mind, recipients may consider the following:

a. Goals: Are there particular historically underserved, marginalized, or adversely affected groups that recipients intend to serve within their jurisdiction?
b. Awareness: How equitable and practical is the ability for residents or businesses to become aware of the services funded by SLFRF?
c. Access and Distribution: Are there differences in levels of access to benefits and services across groups? Are there administrative requirements that result in disparities in ability to complete applications or meet eligibility criteria?
d. Outcomes: How are intended outcomes focused on closing gaps and/or reaching universal levels of service? How is the considering disaggregating outcomes by race, ethnicity, and other equity dimensions where relevant for the policy objective?

In describing their efforts to **implement** their SLFRF program and projects with equity in mind, recipients may consider the following:

a. Goals and Targets: Please describe how planned or current uses of funds prioritize economic and racial equity as a goal, name specific targets intended to produce meaningful equity results at scale, and include initiatives to achieve those targets.
b. Project Implementation: In addition, please explain how the jurisdiction's overall equity strategy translates into focus areas for SLFRF projects and the specific services or programs offered by the jurisdiction in the following Expenditure Category, as indicated in the final rule.

    Negative Economic Impacts (EC 2): assistance to households, small businesses, and non-profits to address impacts of the pandemic, which have been most severe among low-income populations. This includes assistance with food, housing, and other needs; employment programs for people with barriers to employment who faced negative economic impacts from the pandemic (such as residents of low-income neighborhoods, minorities, disconnected youth, the unemployed, formerly incarcerated people, veterans, and people with disabilities); services to provide long-term housing security and housing supports, address educational disparities, or provide child care and early learning services; and other strategies that provide

impacted and disproportionately impacted communities with services to address the negative economic impacts of the pandemic

The first annual Recovery Plan, due in 2021, was required to describe initial efforts and intended outcomes to promote equity, as applicable. Beginning in 2022, each annual Recovery Plan must provide an update, using qualitative and quantitative data, on how the recipients' approach achieved or promoted equitable outcomes or progressed against equity goals during the performance period, as applicable. Each jurisdiction should describe any constraints or challenges that impacted project success in terms of increasing equity. In particular, this section should describe the geographic and demographic distribution of funding, including whether it is targeted toward traditionally marginalized communities (recipients may reference the demographic data information in their Project and Expenditure Reports as relevant).

4. Community Engagement

In this section, recipients should describe how their jurisdiction's planned or current use of funds incorporates community engagement strategies including written feedback through surveys, project proposals, and related documents; oral feedback through community meetings, issue-specific listening sessions, stakeholder interviews, focus groups, and additional public engagement; as well as other forms of input, such as steering committees, taskforces, and digital campaigns that capture diverse feedback from the community. Recipients may describe completed or planned community engagement strategies specifically focused on their SLFRF program and projects or community engagement strategies that included SLFRF among other government programs. Recipients should also describe how community engagement strategies support their equity goals, including engagement with communities that have historically faced significant barriers to services, such as people of color, people with low incomes, limited English proficient populations, and other traditionally underserved groups.

5. Labor Practices

In this section, recipients should describe workforce practices on any infrastructure projects or capital expenditures being pursued. How are projects using strong labor standards to promote effective and efficient delivery of high-quality infrastructure projects while also supporting the economic recovery through strong employment opportunities for workers? For example, report whether any of the following practices are being utilized: project labor agreements, community benefits agreements, prevailing wage requirements, and local hiring.

6. **Use of Evidence**

In this section of the Recovery Plan, recipients should describe whether and how evidence-based interventions and/or program evaluation are incorporated into their SLFRF program. Recipients may include links to evidence standards, evidence dashboards, evaluation policies, and other public facing tools that are used to track and communicate the use of evidence and evaluation for Fiscal Recovery Funds. Recipients are encouraged to consider how a learning agenda, either narrowly focused on SLFRF or broadly focused on the recipient's broader policy agenda, could support their overarching evaluation efforts in order to create an evidence-building strategy for their jurisdiction.[22]

In the Project Inventory section of the Recovery Plan (see Section 8 below), recipients should identify whether SLFRF funds are being used for evidence-based interventions[23] and/or if projects are being evaluated through rigorous program evaluations that are designed to build evidence. In the Project Inventory, recipients must briefly describe the goals of the project and the evidence base for the interventions funded by the project. As part of the Project Inventory section, recipients must also specifically identify the dollar amount of the total project spending that is allocated towards evidence-based interventions for each project in the Expenditure Categories noted with an asterisk in Appendix 1. Please note that to increase consistency, the Project and Expenditure report now also includes

[22] For more information on learning agendas, please see OMB M-19-23

[23] As noted in Appendix 2, evidence-based refers to interventions with strong or moderate levels of evidence.

fields for recipients to identify the dollar amount of the total project spending that is allocated to evidence-based interventions and to indicate if a program evaluation of the project is being conducted.

Recipients are encouraged to reference relevant evidence clearinghouses, among other sources, to assess the level of evidence for their interventions and identify evidence-based models that could be applied in their jurisdiction; such evidence clearinghouses include the U.S. Department of Education's What Works Clearinghouse, the U.S. Department of Labor's CLEAR, and the Childcare & Early Education Research Connections and the Home Visiting Evidence of Effectiveness clearinghouses from Administration for Children and Families, as well as other clearinghouses relevant to particular projects conducted by the recipient.

Recipients are exempt from reporting on evidence-based interventions in cases where a program evaluation is being conducted. In such cases where a recipient is conducting a program evaluation, recipients must describe the evaluation design, including whether it is a randomized or quasi-experimental design; the key research questions being evaluated; whether the study has sufficient statistical power to disaggregate outcomes by demographics; and the timeframe for the completion of the evaluation (including a link to the completed evaluation if relevant).[24] Once the evaluation has been completed, recipients must post the evaluation publicly and link to the completed evaluation in the Recovery Plan. Once an evaluation has been completed (or has sufficient interim findings to determine the efficacy of the intervention), recipients should determine whether the spending for the evaluated interventions should be counted towards the dollar amount categorized as evidence-based for the relevant project.

For all projects, recipients may be selected to participate in a national evaluation, which might, for example, study their project along with similar projects in other jurisdictions that are focused on the same set of outcomes. In such cases, recipients may be asked to share information and data that is needed for the national evaluation.

Appendix 2 contains additional information on evidence-based interventions for the purposes of the Recovery Plan.

7. Performance Report

In this section, recipients should describe how performance management is incorporated into their SLFRF program, including how they are tracking their overarching jurisdictional goals for these funds as well as measuring results for individual projects. The recipient has flexibility in terms of how this information is presented in the Recovery Plan, and may report key performance indicators for each project, or may group projects with substantially similar goals and the same outcome measures. In some cases, the recipient may choose to include some indicators for each individual project as well as crosscutting indicators. Recipients may include links to performance management dashboards, performance management policies, and other public facing tools that are used to track and communicate the performance of Fiscal Recovery Funds. In addition to outlining in this section their high-level approach to performance management, recipients must also include key performance indicators for each SLFRF project in the Project Inventory section (described below in #8).

Performance indicators should include both output and outcome measures. Output measures, such as the number of students enrolled in an early learning program, provide valuable information about the early implementation stages of a project. Outcome measures, such as the percent of students reading on grade level, provide information about whether a project is achieving its overall goals. Recipients are encouraged to use logic models[25] to identify their output and outcome measures.

[24] For more information on the required standards for program evaluation, see OMB M-20-12.
[25] A logic model is a tool that depicts the intended links between program investments and outcomes, specifically the relationships among the resources, activities, outputs, outcomes, and impact of a program.

While the initial Recovery Plan focused heavily on early output goals, recipients should include the related outcome goal for each project and provide updated information on achieving these outcome goals in subsequent annual reports. In cases where recipients are conducting a program evaluation for a project (as described above), the outcome measures in the performance report should be aligned with those being evaluated in the program. As described in the final rule, to support their performance measurement and program improvement efforts, recipients are permitted to use funds to make improvements to data or technology infrastructure and data analytics, as well as perform program evaluations.

While recipients have discretion on the full suite of performance indicators to include, a number of mandatory performance indicators and programmatic data must be included. These are necessary to allow Treasury to conduct oversight as well as understand and aggregate program outcomes across recipients. This section provides an overview of the mandatory performance indicators and programmatic data. This information should be included in the Project Inventory, but this data will also need to be entered directly into the Treasury reporting portal as part of the Project and Expenditure report, as Treasury has added these fields (for Tier 1 recipients only) to the Project and Expenditure report. Below is a list of required data for each Expenditure Category, where relevant.

a. Household Assistance (EC 2.2), Long-Term Housing Security (EC 2.15-2.16) and Housing Support (EC 2.17-2.18):
   - Number of households receiving eviction prevention services (including legal representation)
   - Number of affordable housing units preserved or developed

b. Assistance to Unemployed or Underemployed Workers (EC 2.10) and Community Violence Interventions (EC 1.11):
   - Number of workers enrolled in sectoral job training programs
   - Number of workers completing sectoral job training programs
   - Number of people participating in summer youth employment programs

c. Addressing Educational Disparities (EC 2.24-2.26) and Addressing Impacts of Lost Instructional Time (EC 2.27):
   - Number of students participating in evidence-based tutoring programs[26]

d. Healthy Childhood Environments (EC 2.11-2.14):
   - Number of children served by childcare and early learning services (pre-school/pre-K/ages 3-5)
   - Number of families served by home visiting

The initial report should have included the key indicators above. Each annual report thereafter should include updated data for the performance period as well as prior period data, and a brief narrative adding any additional context to help the reader interpret the results and understand any changes in performance indicators over time. To the extent possible, Treasury also encourages recipients to provide data disaggregated by race, ethnicity, gender, income, and other relevant factors.

8. Project Inventory

In this section, recipients should list the name and provide a brief description of each SLFRF funded project. Projects are defined as a grouping of closely related activities that together are intended to achieve a specific goal or are directed toward a common purpose. These activities can include new or existing eligible government services or investments funded in whole or in part by SLFRF funding.

[26] For more information on evidence-based tutoring programs, refer to the U.S. Department of Education's 2021 ED COVID-19 Handbook (Volume 2), which summarizes research on evidence-based tutoring programs (see the bottom of page 20.).

For each project, recipients should include the project name, funding amount, identification number (the same identification number created by the recipient that matches the identification number used in the quarterly Project and Expenditure Report), project Expenditure Category (see Appendix 1), and a description of the project that includes an overview of the main activities of the project, approximate timeline, primary delivery mechanisms and partners, and intended outcomes. Each jurisdiction should also include a link to the website of the project if available. This information will provide context and additional detail for the information reported quarterly in the Project and Expenditure Report.

For infrastructure projects, where relevant, recipients should describe how the project contributes to addressing climate change and/or advances the Justice40 initiative[27], which sets a target of providing 40 percent of the benefits of certain federal investments, including climate and clean energy investments to disadvantaged communities.

As noted above in section 6, the Project Inventory must also include information about the dollar amount of the total project spending that is allocated towards evidence-based interventions (or describe how projects are being evaluated as noted above). As described above in section 7, the Project Inventory must also contain information about the performance indicators for each project, including both those measures that recipients have defined for each project as well as the mandatory performance indicators defined by Treasury.

Recipients have flexibility in the presentation and format of their Project Inventory, provided it includes the minimum required information. Recipients have the option of downloading a spreadsheet of the information entered into their Project and Expenditure Report to assist them in creating the Project Inventory in their Recovery Plan. However, recipients must ensure that their Project Inventory contains the additional information required by this guidance, including but not limited to information about performance measures and evidence/evaluation for each project. In all cases, recipients must post publicly (and submit to Treasury) a single PDF file of their Recovery Plan, which includes the Project Inventory.

D. Distributions to NEUs

Each state and territory is required to provide regular updates on their NEU distributions as well as their distributions to units of general local government within counties that are not units of general local government. The distribution template generally requests information on whether the local government has (1) received funding; (2) declined funding and requested a transfer to the state under Section 603(c)(4) of the Act; or (3) not taken action on its funding or declined funding.

For NEUs, states and territories should be prepared to report on their information, including the following:

- NEU name
- NEU UEI number
- NEU Taxpayer Identification Number (TIN)
- NEU Recipient Number (a unique identification code for each NEU assigned by the State or territory to the NEU as part of the request for funding)
- NEU contact information (e.g., address, point of contact name, point of contact email address, and point of contact phone number)
- NEU authorized representative name and email address
- Initial allocation and, if applicable, subsequent allocation to the NEU (before application of the 75 percent cap)

[27] See Executive Order 14008, On Tackling the Climate Crisis at Home and Abroad and the Interim Implementation Guidance for the Justice40 Initiative, OMB M-21-28.

- Total NEU reference budget (as submitted by the NEU to the State or territory as part of the request for funding)
- Amount of the initial and, if applicable, subsequent allocation above 75 percent of the NEU's reference budget which will be returned to Treasury
- Payment amount(s)
- Payment date(s)

States with "weak" minor civil divisions (i.e., Illinois, Indiana, Kansas, Missouri, Nebraska, North Dakota, Ohio, and South Dakota) should also list any minor civil divisions that the state deemed ineligible.

For each eligible NEU that declined funding and requested a transfer to the state under Section 603(c)(4) of the Social Security Act, the state or territory must also attach a form signed by the NEU, as detailed in the Guidance on Distributions of Funds to Non-Entitlement Units of Local Government.

Appendix 1: Expenditure Categories

Treasury's final rule provides greater flexibility and simplicity for recipients to fight the pandemic and support families and businesses struggling with its impacts, maintain vital services amid revenue shortfalls, and build a strong, resilient, and equitable recovery. As such, recipients began reporting on a broader set of eligible uses and associated Expenditure Categories ("EC"), starting with the April 2022 Project and Expenditure Report than they did in their interim reports, initial Recovery Plans, and January Project and Expenditure Report. The table below includes the new Expenditure Categories, as well as a reference to previous Expenditure Categories aligned with the interim final rule and used for reporting before this date.

The Expenditure Categories (EC) listed below must be used to categorize each project as noted in Part 2 above. The term "Expenditure Category" refers to the detailed level (e.g., 1.1 COVID-19 Vaccination). When referred to as a category (e.g., EC 1) it includes all Expenditure Categories within that level.

*Denotes areas where recipients must identify the amount of the total funds that are allocated to evidence-based interventions (see Use of Evidence section above for details)

^Denotes areas where recipients must report on whether projects are primarily serving disproportionately impacted communities (see Project Demographic Distribution section above for details)

Expenditure Category	EC[28]	Previous EC[29]
1: Public Health		
COVID-19 Mitigation & Prevention		
COVID-19 Vaccination^	1.1	1.1
COVID-19 Testing^	1.2	1.2
COVID-19 Contact Tracing^	1.3	1.3
Prevention in Congregate Settings (Nursing Homes, Prisons/Jails, Dense Work Sites, Schools, Child care facilities, etc.)*^	1.4	1.4
Personal Protective Equipment^	1.5	1.5
Medical Expenses (including Alternative Care Facilities)^	1.6	1.6
Other COVID-19 Public Health Expenses (including Communications, Enforcement, Isolation/Quarantine)^	1.7	1.8
COVID-19 Assistance to Small Businesses^	1.8	-
COVID 19 Assistance to Non-Profits^	1.9	-
COVID-19 Aid to Impacted Industries^	1.10	-
Community Violence Interventions		
Community Violence Interventions*^	1.11	3.16
Behavioral Health		
Mental Health Services*^	1.12	1.10
Substance Use Services*^	1.13	1.11
Other		
Other Public Health Services^	1.14	1.12
Capital Investments or Physical Plant Changes to Public Facilities that respond to the COVID-19 public health emergency	-	1.7
2: Negative Economic Impacts		
Assistance to Households		
Household Assistance: Food Programs*^	2.1	2.1

[28] Under the final rule to be used starting with April 2022 reports

[29] Under the interim final rule to be used in Interim Report and January 2022 Project and Expenditure Report

Expenditure Category	EC[28]	Previous EC[29]
Household Assistance: Rent, Mortgage, and Utility Aid*^	2.2	2.2
Household Assistance: Cash Transfers*^	2.3	2.3
Household Assistance: Internet Access Programs*^	2.4	2.4
Household Assistance: Paid Sick and Medical Leave^	2.5	-
Household Assistance: Health Insurance*^	2.6	-
Household Assistance: Services for Un/Unbanked*^	2.7	-
Household Assistance: Survivor's Benefits^	2.8	-
Unemployment Benefits or Cash Assistance to Unemployed Workers*^	2.9	2.6
Assistance to Unemployed or Underemployed Workers (e.g. job training, subsidized employment, employment supports or incentives)*^	2.10	2.7
Healthy Childhood Environments: Child Care*^	2.11	3.6
Healthy Childhood Environments: Home Visiting*^	2.12	3.7
Healthy Childhood Environments: Services to Foster Youth or Families Involved in Child Welfare System*^	2.13	3.8
Healthy Childhood Environments: Early Learning*^	2.14	3.1
Long-term Housing Security: Affordable Housing*^	2.15	3.10
Long-term Housing Security: Services for Unhoused Persons*^	2.16	3.11
Housing Support: Housing Vouchers and Relocation Assistance for Disproportionately Impacted Communities*^	2.17	-
Housing Support: Other Housing Assistance*^	2.18	3.12
Social Determinants of Health: Community Health Workers or Benefits Navigators*^	2.19	3.14
Social Determinants of Health: Lead Remediation*^	2.20	3.15
Medical Facilities for Disproportionately Impacted Communities^	2.21	-
Strong Healthy Communities: Neighborhood Features that Promote Health and Safety^	2.22	-
Strong Healthy Communities: Demolition and Rehabilitation of Properties^	2.23	-
Addressing Educational Disparities: Aid to High-Poverty Districts^	2.24	3.2
Addressing Educational Disparities: Academic, Social, and Emotional Services*^	2.25	3.3
Addressing Educational Disparities: Mental Health Services*^	2.26	3.4
Addressing Impacts of Lost Instructional Time^	2.27	-
Contributions to UI Trust Funds^	2.28	2.8
Assistance to Small Businesses		
Loans or Grants to Mitigate Financial Hardship^	2.29	2.9
Technical Assistance, Counseling, or Business Planning*^	2.30	
Rehabilitation of Commercial Properties or Other Improvements^	2.31	-
Business Incubators and Start-Up or Expansion Assistance*^	2.32	
Enhanced Support to Microbusinesses*^	2.33	
Assistance to Non-Profits		
Assistance to Impacted Nonprofit Organizations (Impacted or Disproportionately Impacted)^	2.34	2.10
Aid to Impacted Industries		
Aid to Tourism, Travel, or Hospitality^	2.35	2.11
Aid to Other Impacted Industries^	2.36	2.12
Other		
Economic Impact Assistance: Other*^	2.37	2.13
Household Assistance: Eviction Prevention*^	-	2.5
Education Assistance: Other*^	-	3.5

Expenditure Category	EC[28]	Previous EC[29]
Healthy Childhood Environments: Other*^	-	3.9
Social Determinants of Health: Other*^	-	3.13
3: Public Health-Negative Economic Impact: Public Sector Capacity		
General Provisions		
Public Sector Workforce: Payroll and Benefits for Public Health, Public Safety, or Human Services Workers	3.1	1.9
Public Sector Workforce: Rehiring Public Sector Staff	3.2	2.14
Public Sector Workforce: Other	3.3	-
Public Sector Capacity: Effective Service Delivery	3.4	7.2
Public Sector Capacity: Administrative Needs	3.5	-
4: Premium Pay		
Public Sector Employees	4.1	4.1
Private Sector: Grants to Other Employers	4.2	4.2
5: Infrastructure		
Water and Sewer		
Clean Water: Centralized Wastewater Treatment	5.1	5.1
Clean Water: Centralized Wastewater Collection and Conveyance	5.2	5.2
Clean Water: Decentralized Wastewater	5.3	5.3
Clean Water: Combined Sewer Overflows	5.4	5.4
Clean Water: Other Sewer Infrastructure	5.5	5.5
Clean Water: Stormwater	5.6	5.6
Clean Water: Energy Conservation	5.7	5.7
Clean Water: Water Conservation	5.8	5.8
Clean Water: Nonpoint Source	5.9	5.9
Drinking water: Treatment	5.10	5.10
Drinking water: Transmission & Distribution	5.11	5.11
Drinking water: Lead Remediation, including in Schools and Daycares	5.12	5.12
Drinking water: Source	5.13	5.13
Drinking water: Storage	5.14	5.14
Drinking water: Other water infrastructure	5.15	5.15
Water and Sewer: Private Wells	5.16	-
Water and Sewer: IIJA Bureau of Reclamation Match	5.17	-
Water and Sewer: Other	5.18	-
Broadband		
Broadband: “Last Mile” projects	5.19	5.16
Broadband: IIJA Match	5.20	-
Broadband: Other projects	5.21	5.17
6: Revenue Replacement		
Provision of Government Services	6.1	6.1
Non-federal Match for Other Federal Programs	6.2	-
7: Administrative		
Administrative Expenses	7.1	7.1
Transfers to Other Units of Government	7.2	7.3
Transfers to Non-entitlement Units (States and territories only)	-	7.4

Treasury has prepared the additional guidance below to support recipients in implementing the new expenditure categories. This table includes only those previous expenditure categories that are changing under the new structure, aligned with the final rule.

January 2022 Expenditure Categories		April 2022 Guidance
1: Public Health		
1.7	Capital Investments or Physical Plant Changes to Public Facilities that respond to the COVID-19 public health emergency	EC removed, capital expenditures can be designated in any relevant PH-NEI EC (e.g., new hospital wing would be tracked under EC 1.4)
1.8	Other COVID-19 Public Health Expenses (including Communications, Enforcement, Isolation/Quarantine)	EC is 1.7
1.9	Payroll Costs for Public Health, Safety, and Other Public Sector Staff Responding to COVID-19	EC is 3.1
1.10	Mental Health Services*	EC is 1.12
1.11	Substance Use Services*	EC is 1.13
1.12	Other Public Health Services	EC is 1.14
2: Negative Economic Impacts		
2.5	Household Assistance: Eviction Prevention	EC is now included as part of 2.2
2.6	Unemployment Benefits or Cash Assistance to Unemployed Workers*	EC is 2.9
2.7	Job Training Assistance (e.g., Sectoral job-training, Subsidized Employment, Employment Supports or Incentives)*^	EC is 2.10
2.8	Contributions to UI Trust Funds	EC is 2.28
2.9	Small Business Economic Assistance (General)*^	If public-health related (e.g., providing rapid tests for small businesses), EC is 1.8; if related to negative economic impact eligible use (e.g., grants, technical assistance, rehabilitation, incubators, or microbusinesses), EC is 2.29-2.33
2.10	Aid to Nonprofit Organizations*	If public-health related (e.g., providing rapid tests for non-profits), EC is 1.9; if related to negative economic impact (e.g., grants to stabilize non-profit budget), EC is 2.34
2.11	Aid to Tourism, Travel, or Hospitality	EC is 2.35
2.12	Aid to Other Impacted Industries	EC is 2.36
2.13	Other Economic Support*^	EC is 2.37, re-named Other Economic Impact
2.14	Rehiring Public Sector Staff	EC is 3.2
3: Services to Disproportionately Impacted Communities		
3.1	Education Assistance: Early Learning*^	EC is 2.14
3.2	Education Assistance: Aid to High-Poverty Districts ^	EC is 2.24
3.3	Education Assistance: Academic Services*^	EC is 2.25, social and emotional services will now be tracked under this EC
3.4	Education Assistance: Social, Emotional, and Mental Health Services*^	EC is 2.26, if social and emotional services, EC is 2.25;

January 2022 Expenditure Categories	April 2022 Guidance
3.5 Education Assistance: Other*^	EC is 2.37, collected under Other Economic Impact
3.6 Healthy Childhood Environments: Child Care*^	EC is 2.11
3.7 Healthy Childhood Environments: Home Visiting*^	EC is 2.12
3.8 Healthy Childhood Environments: Services to Foster Youth or Families Involved in Child Welfare System*^	EC is 2.13
3.9 Healthy Childhood Environments: Other*^	EC is 2.37, collected under Other Economic Impact
3.10 Housing Support: Affordable Housing*^	EC is 2.15
3.11 Housing Support: Services for Unhoused Persons*^	EC is 2.16
3.12 Housing Support: Other Housing Assistance*^	EC is 2.18
3.13 Social Determinants of Health: Other*^	EC is 2.37, collected under Other Economic Impact
3.14 Social Determinants of Health: Community Health Workers or Benefits Navigators*^	EC is 2.19
3.15 Social Determinants of Health: Lead Remediation^	EC is 2.20
3.16 Social Determinants of Health: Community Violence Interventions*^	EC is 1.11
5: Infrastructure	
5.16 Broadband: “Last Mile” projects	EC is 5.19
5.17 Broadband: Other projects	EC is 5.20
7: Administrative	
7.2 Evaluation and Data Analysis	EC is 3.4 and has been renamed Effective Service Delivery
7.3 Transfers to Other Units of Government	EC is 7.2
7.4 Transfers to Non-entitlement Units (States and territories only)	To be separately reported as part of NEU/Non-UGLG module. Refer to Part 2 Section D.

Appendix 2: Evidenced-Based Intervention Additional Information

What is evidence-based?
For the purposes of the SLFRF, with the exception of investments in educational services (see additional information below), evidence-based refers to interventions with strong or moderate evidence as defined below:

Strong evidence means that the evidence base can support causal conclusions for the specific program proposed by the applicant with the highest level of confidence. This consists of one or more well-designed and well-implemented experimental studies conducted on the proposed program with positive findings on one or more intended outcomes.

Moderate evidence means that there is a reasonably developed evidence base that can support causal conclusions. The evidence base consists of one or more quasi-experimental studies with positive findings on one or more intended outcomes OR two or more non-experimental studies with positive findings on one or more intended outcomes. Examples of research that meet the standards include: well-designed and well-implemented quasi-experimental studies that compare outcomes between the group receiving the intervention and a matched comparison group (i.e., a similar population that does not receive the intervention).

Preliminary evidence means that the evidence base can support conclusions about the program's contribution to observed outcomes. The evidence base consists of at least one non-experimental study. A study that demonstrates improvement in program beneficiaries over time on one or more intended outcomes OR an implementation (process evaluation) study used to learn about and improve program operations would constitute preliminary evidence. Examples of research that meet the standards include: (1) outcome studies that track program beneficiaries through a service pipeline and measure beneficiaries' responses at the end of the program; and (2) pre- and post-test research that determines whether beneficiaries have improved on an intended outcome.

For investments in educational services, "evidence-based", consistent with the American Rescue Plan Act, has the meaning in section 8101(21) of the Elementary and Secondary Education Act of 1965, as amended (20 U.S.C. 6301 *et seq*.). Please see page 16 of this Frequently Asked Questions resource on the Department of Education's Elementary and Secondary School Emergency Relief Programs and Governor's Emergency Education Relief Programs for more information.

Appendix 3: Expenditure Categories aligned with the Interim Final Rule

1: Public Health	
1.1	COVID-19 Vaccination ^
1.2	COVID-19 Testing ^
1.3	COVID-19 Contact Tracing
1.4	Prevention in Congregate Settings (Nursing Homes, Prisons/Jails, Dense Work Sites, Schools, etc.)*
1.5	Personal Protective Equipment
1.6	Medical Expenses (including Alternative Care Facilities)
1.7	Capital Investments or Physical Plant Changes to Public Facilities that respond to the COVID-19 public health emergency
1.8	Other COVID-19 Public Health Expenses (including Communications, Enforcement, Isolation/Quarantine)
1.9	Payroll Costs for Public Health, Safety, and Other Public Sector Staff Responding to COVID-19
1.10	Mental Health Services*
1.11	Substance Use Services*
1.12	Other Public Health Services
2: Negative Economic Impacts	
2.1	Household Assistance: Food Programs* ^
2.2	Household Assistance: Rent, Mortgage, and Utility Aid* ^
2.3	Household Assistance: Cash Transfers* ^
2.4	Household Assistance: Internet Access Programs* ^
2.5	Household Assistance: Eviction Prevention* ^
2.6	Unemployment Benefits or Cash Assistance to Unemployed Workers*
2.7	Job Training Assistance (e.g., Sectoral job-training, Subsidized Employment, Employment Supports or Incentives)* ^
2.8	Contributions to UI Trust Funds
2.9	Small Business Economic Assistance (General)* ^
2.10	Aid to Nonprofit Organizations*
2.11	Aid to Tourism, Travel, or Hospitality
2.12	Aid to Other Impacted Industries
2.13	Other Economic Support* ^
2.14	Rehiring Public Sector Staff
3: Services to Disproportionately Impacted Communities	
3.1	Education Assistance: Early Learning* ^
3.2	Education Assistance: Aid to High-Poverty Districts ^
3.3	Education Assistance: Academic Services* ^
3.4	Education Assistance: Social, Emotional, and Mental Health Services* ^
3.5	Education Assistance: Other* ^
3.6	Healthy Childhood Environments: Child Care* ^
3.7	Healthy Childhood Environments: Home Visiting* ^
3.8	Healthy Childhood Environments: Services to Foster Youth or Families Involved in Child Welfare System* ^
3.9	Healthy Childhood Environments: Other* ^
3.10	Housing Support: Affordable Housing* ^
3.11	Housing Support: Services for Unhoused Persons* ^

3.12	Housing Support: Other Housing Assistance* ^
3.13	Social Determinants of Health: Other* ^
3.14	Social Determinants of Health: Community Health Workers or Benefits Navigators* ^
3.15	Social Determinants of Health: Lead Remediation ^
3.16	Social Determinants of Health: Community Violence Interventions* ^
4: Premium Pay	
4.1	Public Sector Employees
4.2	Private Sector: Grants to Other Employers
5: Infrastructure	
5.1	Clean Water: Centralized Wastewater Treatment
5.2	Clean Water: Centralized Wastewater Collection and Conveyance
5.3	Clean Water: Decentralized Wastewater
5.4	Clean Water: Combined Sewer Overflows
5.5	Clean Water: Other Sewer Infrastructure
5.6	Clean Water: Stormwater
5.7	Clean Water: Energy Conservation
5.8	Clean Water: Water Conservation
5.9	Clean Water: Nonpoint Source
5.10	Drinking water: Treatment
5.11	Drinking water: Transmission & Distribution
5.12	Drinking water: Transmission & Distribution: Lead Remediation
5.13	Drinking water: Source
5.14	Drinking water: Storage
5.15	Drinking water: Other water infrastructure
5.16	Broadband: “Last Mile” projects
5.17	Broadband: Other projects
6: Revenue Replacement	
6.1	Provision of Government Services
7: Administrative	
7.1	Administrative Expenses
7.2	Evaluation and Data Analysis
7.3	Transfers to Other Units of Government
7.4	Transfers to Non-entitlement Units (States and territories only)

Revision Log

Version	Date Published	Summary of changes
1.0	June 17, 2021	Initial publication
1.1	June 24, 2021	• Pg. 12, removed references to “summary” level with respect to reporting by Expenditure Categories in the Interim Report to avoid confusion. • Pg. 13, revised the coverage period end date for the Interim Report from June 30, 2021 to July 31, 2021 to align with the IFR. • Pg. 13, removed references to “summary” level with respect to reporting by Expenditure Categories in the Interim Report to avoid confusion. • Pg. 31, removed references to “summary level” with respect to Expenditure Categories in Appendix 1 to avoid confusion.
1.1	September 30, 2021	• Announced the extension in the Project and Expenditure Report submission date, originally due on October 31, 2021.
2.0	November 5, 2021	• Updated Subrecipient Monitoring section to clarify beneficiaries and recipients. • Updated references to Interim Final Rule comment period as comment period is closed. • Updated reporting tiers, thresholds and timelines in Part 2 Table 2, Reporting Requirements by recipient type, as well as Part 2 A and Part 2 B. • Updated reporting periods for Interim Report and Project and Expenditure reports. • Added concept of Adopted Budget to Project and Expenditure Report data fields. • Noted phase in of Required Programmatic Data in the Project and Expenditure Report. • Removed certain data fields from the Ineligible Activities: Tax Offset Provision under the Recovery Plan. • Separated reporting of NEU Distributions (for States and territories) from the Interim Report and Project and Expenditure Reports as information will be provided on an ongoing basis.
2.1	November 15, 2021	• Updated pages 9 and 11 to note that civil rights certification is not applicable to Tribal Governments.
3.0	February 28, 2022	• Updated to incorporate reporting updates under the final rule
4.0	June 10, 2022	• Updated Recovery Plan guidance to incorporate minor revisions • Updated language around certain data fields that were required for April 2022 reporting • Updated data fields for Ineligible Activities: Tax Offset Provision for the Project and Expenditure report • Updated Broadband data fields
4.1	June 17, 2022	• Updated clerical errors in Ineligible Activities: Tax Offset Provision
4.2	August 15, 2022	• Updated to clarify resources for Uniform Guidance applicability and add a reference to an alternative to the Single Audit available for eligible recipients
5.0	September 20, 2022	• Updated to note phase in of broadband location by location data fields

SCOPE OF WORK

Scope of Service for Rio Rancho Home Repair Program (a Subaward of the City of Rio Rancho, Coronavirus Local Fiscal Recovery Fund grant):

1. Service Activities and Outputs:

    a. Homewise will provide up to $25,000 for home repairs to a minimum of twenty (20) eligible homeowners at or below 65% of Area Median Income for county (Sandoval) and size of household based on the most recently published data by the U.S. Department of Housing and Urban Development.

    The home repair program will address critically needed repairs and increase energy efficiency simultaneously. Weatherization and other energy-saving measures can significantly decrease energy cost burdens. Eligible expenses include heating/mechanical systems, plumbing systems, roofs, doors, windows, siding, electrical systems and other principal fixtures and standard components where these systems are severely deteriorated or failing, and/or to bring them up to current building codes and standards while simultaneously increasing efficiency of the home.

    Homewise will use a point scale to direct the use of funds to those most in need. Applicants will be ranked equitably according to the same program criteria that includes applicant's income, homeowner's age, disability status, and the results of a complimentary third-party needs assessments designed to identify, health, safety, durability and energy-efficiency concerns. This approach ensures that funds are targeted to households most in need. Homewise will also screen applicants from the 2022 Rio Rancho Home Repair Program waiting list.

    b. Households eligible for program assistance and who hold legal title to a property in need of repair may qualify for financial assistance in the form of a grant. A limited title search will be completed to ensure the applicant has sufficiently clear title to accept the grant. Homewise staff will ensure that the home is located within the city limits via the City's mapping website https://www.rrnm.gov. Eligible property types include single-family attached or detached home, condominium, or a mobile home with a permanent foundation.

    c. Homewise will provide information, education and technical assistance for applicants regarding repairs, energy efficiency and contractor selection to guide their renovation process.

2. Service Outcomes/Performance Measures:

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a. A minimum of 20 owner-occupied homes will be successfully repaired and preserved in Rio Rancho.

3. Service Implementation:

   a. Homewise will income qualify participants to ensure they are at or below 65% of Area Median Income for county (Sandoval) and size of household based on the most recently published data by the U.S. Department of Housing and Urban Development. Homewise will pay contractors directly in two installments. The first 50% at approval of bids and the second 50% after work completion with corresponding certification and photo documentation.

   b. Homewise staff will offer technical assistance to the household to prioritize needed home repairs while offering educational information on energy efficiency that may result in lower utility bills.

   c. Homewise will maintain a file for each household served to include:
      i. Relevant income qualification documentation.
      ii. Application/client profile
      iii. Contractor bids
      iv. Third party audit of contractor work.
      v. Verification of completion of work via on-site inspection with before and after photo documentation of completed work
      vi. Proof subject property is within Rio Rancho city limits

4. Program Administration:

   a. Homewise will be paid 15% of the funds distributed for home repairs to administer the home repair program. This will include program set-up, client management, oversight and documentation of repair work, and quarterly reporting.

Administrative Costs.

The City will pay Homewise an administrative fee of 15% of the funds distributed for home repairs, not to exceed $75,000. The administrative fee may be requested concurrent with reimbursement requested for funds distributed for home repairs.

Payment Terms.

Homewise may request reimbursement for allowable expenses, and payment of its administrative fee by completing a Project Payment Request Form and submitting it along with supporting documentation (paid invoice, cleared check image or proof of ACH) for each expenditure to:

Carole Jaramillo at cjaramillo@rrnm.gov

Payment requests will be processed within 10 business days of receiving a complete Project Payment Request Form package.

Reports

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Homewise will provide periodic reports to the City. Quarterly project and expenditure reports are due 15 days after the end of each calendar quarter for the period covering the quarter just ended. The content of the reports will be determined by Federal reporting requirements per the Coronavirus Stat and Local Fiscal Recover Funds Compliance and Reporting Guidance.

Close Out Procedures

Within 30 days of the expiration or termination of the Subaward, Homewise will submit a final Project Payment Request Form package for all eligible expenses and the administrative fee due through the expiration or termination date. In addition, Homewise will submit final project and expenditure reports within 30 days of expiration or termination of the Subaward or the regular applicable quarterly due date, whichever is earlier. Finally, upon expiration or termination of the Subaward, or upon request, Homewise will submit to the City, a copy of all client documentation as outlined in Section 3(c) above for each household assisted by the Rio Rancho Home Repair Program Subaward.

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PROJECT PAYMENT REQUEST

PROJECT: XXXXXXX RIO RANCHO HOME REPAIR PROGRAM

PURCHASE ORDER: _____

REQUEST NUMBER: _____

AMOUNT REQUESTED: _____

VENDOR NUMBER: _____

VENDOR NAME/ADDRESS: _____

_____

DESCRIPTION OF ASSISTANCE PROVIDED:

EXPENSE DETAIL (ADD ADDITIONAL SPACE AS NEEDED):

PAYEE	PURPOSE	AMOUNT
	Administrative Fee (15%)	

I certify that the payment requested herein is for eligible costs associated with the Rio Rancho Home Repair Program in compliance with the agreement executed on _____. Further, I certify that this request is not for costs which have been previously paid by another source or in previous project payment requests. Finally, I certify that the work for which this request is being made is complete and has been accepted by Homewise.

BY: _____ DATE: _____

TITLE: _____

CITY OF RIO RANCHO USE

Reviewed by: _____ Date: _____

Approved by: _____ Date: _____

SUBRECIPIENT INFORMATION FORM

Subrecipient Name	Homewise
Subrecipient Identifying (DUNS number, SAM number)	
Subaward Number	
Name of Federal Awarding Agency, Pass-through Entity, and Contact Information for Awarding Official of the Pass-through Entity	US Department of Treasury Pass-through to City of Rio Rancho, New Mexico Carole H. Jaramillo 505-896-8761 cjaramillo@rrnm.gov 3200 Civic Center Circle, NE Rio Rancho, NM 87144
CFDA Number and Name	21.027, Coronavirus State and Local Fiscal Recovery Funds
Subaward Date	
Subaward Amount	$575,000
Subaward Description	Rio Rancho Home Repair to assist low- to moderate-income households with home repair and preservation costs.
Subaward Payment Method	Reimbursement
Beneficiary Loan Expiration	N/A
Place of Performance	Within the municipal boundaries of the City of Rio Rancho, New Mexico
Related Project Name(s)	Rio Rancho Home Repair
Period of Performance Start Date	
Period of Performance End Date	December 31, 2024
Quarterly Obligation Amount	N/A
Quarterly Expenditure Amount	N/A
Required Programmatic Data	Household Support: Other Housing Assistance (EC 2.18)
Identification of Whether the Award is R & D	No R & D
Indirect Cost Rate for the Federal Award	N/A

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CITY OF RIO RANCHO
COVER PAGE

Legislation Item:

AGENDA DATE:
September 28, 2023

DEPARTMENT:
Administration

SUBJECT:
Central New Mexico Community College G.O. Bond 2023 Presentation

BACKGROUND AND ANALYSIS:

IMPACT:

ALTERNATIVES:

DEPARTMENT RECOMMENDATION:
Presentation