

ARPA SLFRF: Interim Rule, FAQ

Highlights, July 19, 2021



Key Points:

- Currently, the guidance available from Treasury is the [Interim Final Rule](#) and [FAQs](#). Cities should proceed with caution when considering how to use your funds since the rules are not yet final. Now is the time for strategic planning and assessment of community-wide needs that could be addressed with ARPA funds with ARPA Local Fiscal Relief Funds AND with other ARPA funds for residents, businesses, individuals, non-profits, and other entities.
- Treasury has also issued its initial [Compliance and Reporting Guidance](#) which outlines over 60 eligible uses. Cities may use this as a guide to consider project ideas and remember you will need to tie your use of funds back to the final rule and compliance and reporting guidance to insure consistency with the regulations and the law.
- It is critical for city officials, including your city attorney, to review these documents and understand them before making any commitments for how your funds will be spent.
- The Carl Vinson Institute of Government is hosting a webinar series with information on best practices in managing these funds, along with mandatory requirements. Webinars are available and will be archived at <https://cviog.uga.edu/arpa-webinars.html>.
- Keep in mind that most eligible spending is for items in the “covered period”, beginning March 3, 2021, and going forward. Premium pay is one exception: this can be retroactive to January 27, 2020.
- As we await final guidance, the IFR and FAQs, along with the reporting guidance, provide the most detailed guidance for spending in the following areas:

Infrastructure Funding

- One of the four eligible use categories specified in ARPA and implemented in the IFR is: **To make necessary investments in water, sewer, or broadband infrastructure.**
- For guidance on investments in infrastructure, please look at the IFR beginning on page 62 of the PDF at <https://home.treasury.gov/system/files/136/FRF-Interim-Final-Rule.pdf>.
- According to the Treasury [FAQ](#), “6. Eligible Uses – Water, Sewer, and Broadband Infrastructure 6.1. What types of water and sewer projects are eligible uses of funds? The Interim Final Rule generally aligns eligible uses of the Funds with the wide range of types or categories of projects that would be eligible to receive financial assistance through the Environmental Protection Agency’s Clean Water State Revolving Fund (CWSRF) or Drinking Water State Revolving Fund (DWSRF).
- The EPA Drinking Water State Revolving Fund Eligibility Guidelines are at https://www.epa.gov/sites/production/files/2017-06/documents/dwsrf_eligibility_handbook_june_13_2017_updated_508_version.pdf. The EPA Overview of Clean Water State Revolving Fund Eligibilities is at https://www.epa.gov/sites/default/files/2016-07/documents/overview_of_cwsrf_eligibilities_may_2016.pdf.
- Under the DWSRF, categories of eligible projects include: treatment, transmission, and distribution (including lead service line replacement), source rehabilitation and decontamination, storage, consolidation, and new systems development.
- Under the CWSRF, categories of eligible projects include: construction of publicly owned treatment works, nonpoint source pollution management, national estuary program projects, decentralized wastewater treatment systems, stormwater systems, water conservation, efficiency, and reuse measures, watershed pilot projects, energy efficiency measures for publicly-owned treatment works, water reuse projects, security measures at publicly-owned treatment works, and technical assistance to ensure compliance with the Clean Water Act.”
- As mentioned in the Interim Final Rule, eligible projects under the DWSRF and CWSRF support efforts to address climate change, as well as to meet cybersecurity needs to protect water and sewer infrastructure. Given the

lifelong impacts of lead exposure for children, and the widespread nature of lead service lines, Treasury also encourages recipients to consider projects to replace lead service lines.

Revenue Loss – see [FAQ](#)

- Revenue Loss – The Interim Final Rule gives recipients broad latitude to use funds for the provision of government services to the extent of reduction in revenue. The calculation of lost revenue begins with the recipient’s revenue in the last full fiscal year prior to the COVID-19 public health emergency and includes the 12-month period ending December 31, 2020. However, use of funds for government services must be forward looking for costs incurred by the recipient after March 3, 2021.
- CVIOG Revenue Loss Calculation Worksheet: <https://cviog.uga.edu/arpa-resources.html>
- GFOA Revenue Loss Calculator: <https://www.gfoa.org/materials/arpa-revenue-calculator>
- Per FAQ, Section 4 “Eligible Uses – General” **4.2. May recipients use funds to invest in infrastructure other than water, sewer, and broadband projects (e.g., roads, public facilities)?** Under 602(c)(1)(C) or 603(c)(1)(C), recipients may use funds for maintenance of infrastructure or pay-go spending for building of new infrastructure as part of the general provision of government services, to the extent of the estimated reduction in revenue due to the public health emergency. Under 602(c)(1)(A) or 603(c)(1)(A), a general infrastructure project typically would not be considered a response to the public health emergency and its negative economic impacts unless the project responds to a specific pandemic-related public health need (e.g., investments in facilities for the delivery of vaccines) or a specific negative economic impact of the pandemic (e.g., affordable housing in a Qualified Census Tract).

Premium Pay

- One of the four eligible use categories specified in ARPA and implemented in the IFR is: **To respond to workers performing essential work during the COVID-19 public health emergency by providing premium pay to eligible workers**
- Please pay particular attention to the Interim Final Rule and FAQ guidelines for premium pay for essential workers, including (page 22 of the FAQ):
- **5.1. What criteria should recipients use in identifying essential workers to receive premium pay?** Essential workers are those in critical infrastructure sectors who regularly perform in person work, interact with others at work, or physically handle items handled by others. Critical infrastructure sectors include healthcare, education and childcare, transportation, sanitation, grocery and food production, and public health and safety, among others, as provided in the Interim Final Rule. Governments receiving Fiscal Recovery Funds have the discretion to add additional sectors to this list, so long as the sectors are considered critical to protect the health and well-being of residents. The Interim Final Rule emphasizes the need for recipients to prioritize premium pay for lower income workers. Premium pay that would increase a worker’s total pay above 150% of the greater of the state or county average annual wage requires specific justification for how it responds to the needs of these workers.
- Relevant excerpts from the Interim Final Rule:
- P.48-49 “In providing premium pay to essential workers or grants to eligible employers, a recipient must consider whether the pay or grant would “respond to” to the worker or workers performing essential work. Premium pay or grants provided under this section respond to workers performing essential work if it addresses the heightened risk to workers who must be physically present at a jobsite and, for many of whom, the costs associated with illness were hardest to bear financially. Many of the workers performing critical essential services are low- or moderate-income workers, such as those described above. The ARPA recognizes this by defining premium pay to mean an amount up to \$13 per hour in addition to wages or remuneration the worker otherwise receives and in an aggregate amount not to exceed \$25,000 per eligible worker.”

“As such, providing premium pay to eligible workers responds to such workers by helping address the disparity between the critical services and risks taken by essential workers and the relatively low compensation they tend to receive in exchange. If premium pay would increase a worker’s total pay above 150 percent of their residing state’s average annual wage for all occupations, as defined by the Bureau of Labor Statistics’ Occupational Employment and Wage Statistics, or their residing county’s average annual wage, as defined by the Bureau of Labor Statistics’ Occupational Employment and Wage Statistics, whichever is higher, on an annual basis, the State, local, or Tribal government must provide Treasury and make publicly available, whether for themselves or on behalf of a grantee, a written justification of how the premium pay or grant is responsive to workers performing essential worker during the public health emergency. The threshold of 150 percent for requiring additional written justification is based on an analysis of the distribution of labor income for a sample of 20 occupations that generally correspond to the essential workers as defined in the Interim Final Rule.¹⁰⁶ For these occupations, labor income for the vast majority of workers was under 150 percent of average annual labor income across all occupations. Treasury anticipates that the threshold of 150 percent of the annual average wage will be greater than the annual average wage of the vast majority of eligible workers performing essential work. These enhanced reporting requirements help to ensure grants are directed to essential workers in critical infrastructure sectors and responsive to the impacts of the pandemic observed among essential workers, namely the misalignment between health risks and compensation. Enhanced reporting also provides transparency to the public. Finally, using a localized measure reflects differences in wages and cost of living across the country, making this standard administrable and reflective of essential worker incomes across a diverse range of geographic areas. Furthermore, because premium pay is intended to compensate essential workers for heightened risk due to COVID-19, it must be entirely additive to a worker’s regular rate of wages and other remuneration and may not be used to reduce or substitute for a worker’s normal earnings. The definition of premium pay also clarifies that premium pay may be provided retrospectively for work performed at any time since the start of the COVID-19 public health emergency, where those workers have yet to be compensated adequately for work previously performed. ¹⁰⁷ Treasury encourages recipients to prioritize providing retrospective premium pay where possible, recognizing that many essential workers have not yet received additional compensation for work conducted over the course of many months. Essential workers who have already earned premium pay for essential work performed during the COVID-19 public health emergency remain eligible for additional payments, and an essential worker may receive both retrospective premium pay for prior work as well as prospective premium pay for current or ongoing work. To ensure any grants respond to the needs of essential workers and are made in a fair and transparent manner, the rule imposes some additional reporting requirements for grants to third-party employers, including the public disclosure of grants provided. See Section VIII of this Supplementary Information, discussing reporting requirements. In responding to the needs of essential workers, a grant to an employer may provide premium pay to eligible workers performing essential work, as these terms are defined in the Interim Final Rule and discussed above. A grant provided to an employer may also be for essential work performed by eligible workers pursuant to a contract. For example, if a municipality contracts with a third party to perform sanitation work, the third-party contractor could be eligible to receive a grant to provide premium pay for these eligible workers.”

- p.119 “Premium Pay: Per the statute, recipients have broad latitude to designate critical infrastructure sectors and make grants to third-party employers for the purpose of providing premium pay or otherwise respond to essential workers. While the Interim Final Rule generally preserves the flexibility in the statute, it does add a requirement that recipients give written justification in the case that premium pay would increase a worker’s annual pay above a certain 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. Treasury believes the threshold in the Interim Final Rule strikes the appropriate balance between preserving flexibility and helping encourage use of these resources to help those in greatest need. The Interim Final Rule also requires that eligible workers have regular in-person interactions or regular physical handling of

items that were also handled by others. This requirement will also help encourage use of financial resources for those who have endured the heightened risk of performing essential work.”

Public Safety – FAQ Update/ Clarification from June 23

- **FAQ 4.8. How can I use CSFRF/CLFRF funds to prevent and respond to crime, and support public safety in my community? [6/23]** Under Treasury’s Interim Final Rule, there are many ways in which the State and Local Fiscal Recovery Funds (“Funds”) under the American Rescue Plan Act can support communities working to reduce and respond to increased violence due to the pandemic. Among the eligible uses of the Funds are restoring of public sector staff to their prepandemic levels and responses to the public health crisis and negative economic impacts resulting from the pandemic. The Interim Final Rule provides several ways for recipients to “respond to” this pandemic-related gun violence, ranging from community violence intervention programs to mental health services to hiring of public safety personnel.
- Below are some examples of how Fiscal Recovery Funds can be used to address public safety:
 - In all communities, recipients may use resources to rehire police officers and other public servants to restore law enforcement and courts to their pre-pandemic levels. Additionally, Funds can be used for expenses to address COVID-related court backlogs, including hiring above pre-pandemic levels, as a response to the public health emergency. See FAQ 2.19.
 - In communities where an increase in violence or increased difficulty in accessing or providing services to respond to or mitigate the effects of violence, is a result of the pandemic they may use funds to address that harm. This spending may include: AS OF JUNE 24, 2021, 20
 - Hiring law enforcement officials – even above pre-pandemic levels – or paying overtime where the funds are directly focused on advancing community policing strategies in those communities experiencing an increase in gun violence associated with the pandemic
 - Community Violence Intervention (CVI) programs, including capacity building efforts at CVI programs like funding and training additional intervention workers
 - 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 of 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.