

ARPA - The Basics

1. 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;
2. To respond to workers performing essential work during the COVID-19 public health emergency by providing premium pay to eligible workers;
3. To make necessary investments in water, sewer, or broadband infrastructure
4. 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

Revenue Loss: General Revenue Definition

- Final Rule implements new provisions related to calculating revenue loss:
 - Recipients may choose from two options to determine revenue loss
 1. Elect to use a standard allowance of \$10 million. No calculation necessary!
 2. Calculate revenue loss at four points in time using a growth adjustment factor of at least 5.2%
 - Note that if you previously reported no revenue loss, you may update the revenue loss on the Project and Expenditure Report

Revenue Loss Uses

- Act provide recipients with broad latitude to use the Fiscal Recovery Funds for the provision of government services
- Government services can include, but are not limited to
 - maintenance or pay-go funded building 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 Forbidden List

- Ineligible uses (even if you have revenue loss):
 - **Debt service payments** including (for example, short-term revenue or tax anticipation notes, or fees or issuance costs associated with the issuance of new debt)
 - 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
 - Replenishing financial **reserves** (e.g., rainy day or other reserve funds)
 - Activities that **conflict** with the purpose of American Rescue Plan Act

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

- Recipients should identify eligible uses of that both (1) identify a COVID-19 **public health or economic impact** on an individual or class (i.e., a group) and (2) design a program that **responds** to that impact.
- Projects should be related and reasonably proportional to the harm identified and reasonably designed to benefit those impacted.
- Sub-categories identified by the Treasury include:
 - public health,
 - assistance to households,
 - assistance to small businesses,
 - assistance to nonprofits,
 - aid to impacted industries, and
 - public sector capacity.

Premium Pay

Allows recipients to remunerate essential workers for the elevated health risks they have faced and continue to face during the public health emergency

- The Treasury offer the following definition of eligible worker:
 - *Eligible workers include workers “needed to maintain continuity of operations of essential critical infrastructure sectors.”*
 - Worker would not be engaged in essential work for telework performed from a residence

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

- Any premium pay should prioritize compensation of those lower income eligible workers that perform essential work
- It must be entirely additive to a worker’s regular rate of wages and may not be used to reduce or substitute for a worker’s normal earnings
- Essential worker may receive both retrospective premium pay for prior work as well as prospective premium pay for current or ongoing work.

Premium Pay: Maximum Amount Before Written Justification

If premium pay would increase a worker's total pay above **150 percent** of their residing state's average annual wage for all occupations (the higher residing state average annual wage or residing county average annual wage) or eligible worker is not exempt from FLSA overtime provisions then the recipient must submit written justification to Treasury detailing how the premium pay is in response to responsive to work performed during the public health emergency.

| Annual Mean Wage | 150% |
|------------------------------|-----------|
| NYS: \$67,850 | \$101,775 |
| Cattaraugus County: \$48,703 | \$73,054 |

Water or sewer infrastructure

- **Clean Water State Revolving Fund (CWSRF)**
 - to construct, improve, and repair wastewater treatment plants
 - control non-point sources of pollution,
- **Drinking Water State Revolving Fund (DWSRF)**
 - Assist communities in making water infrastructure capital improvements, including the installation and replacement of failing treatment and distribution systems
- Additional types of projects— such as additional stormwater infrastructure, residential wells, lead remediation, and certain rehabilitations of dams and reservoirs, if deemed to be necessary

Broadband infrastructure

- Eligible investments in broadband are those that are designed to provide services meeting adequate speeds and are provided to unserved and underserved households and businesses
 - Identify areas lacking access to reliable and affordable high-speed broadband
 - Eligible projects are expected to be designed to deliver, upon project completion, service that reliably meets or exceeds symmetrical upload and download speeds of 100 Mbps
- Encourages recipients to offer low-cost option with no data caps

Accounting Guidance

- OSC advises local governments to record the receipt of the funds in the general fund by recording a liability. As expenditures are made for eligible activities, revenues are recognized. If expenditures are made in other funds, interfund transfers will be recorded.
- Expenditures based on revenue loss are not recorded as revenue until specific expenditures are identified.

Important Dates

- Project and Expenditure reports are due:
 - Cities/Counties - January 31, 2022
 - Towns/Villages - April 30, 2022
- December 31, 2024 – Obligate all funds
- December 31, 2026 – Expend all funds
- March 3, 2021 – Eligible costs must be incurred after this date

Do you need an audit?

- § 200.501 Audit requirements.
- (a) Audit required. A non-Federal entity that expends \$750,000 or more during the non-Federal entity's fiscal year in Federal awards must have a single or program-specific audit conducted for that year in accordance with the provisions of this part.
- (b) Single audit. A non-Federal entity that expends \$750,000 or more during the non-Federal entity's fiscal year in Federal awards must have a single audit conducted in accordance with § 200.514 except when it elects to have a program-specific audit conducted in accordance with paragraph (c) of this section.
- (c) Program-specific audit election. When an auditee expends Federal awards under only one Federal program (excluding R&D) and the Federal program's statutes, regulations, or the terms and conditions of the Federal award do not require a financial statement audit of the auditee, the auditee may elect to have a program-specific audit conducted in accordance with § 200.507. A program-specific audit may not be elected for R&D unless all of the Federal awards expended were received from the same Federal agency, or the same Federal agency and the same pass-through entity, and that Federal agency, or pass-through entity in the case of a subrecipient, approves in advance a program-specific audit.

Uniform Guidance Requirements

- CSLFRF awards are subject to the requirements set forth in the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, 2 CFR Part 200 (the “Uniform Guidance”) and should be reported under CFDA Number 21.027.
- The Treasury had advised that “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. “

Compliance Highlights

- **Cash management** - funds can be deposited in interest-bearing accounts. Interest does **not** need to be remitted to the Treasury and does not need to be used for allowable costs under the SLFRF award.
- **Period of Performance** – funds must be obligated by December 31, 2024 and should not be used for costs incurred before March 3, 2021.
- **Equipment and Real Property Management** - Equipment and real property acquired under this program must be used for the originally authorized purpose. Consistent with 2 CFR 200.311 and 2 CFR 200.313, any equipment or real property acquired using SLFRF funds shall vest in the non-Federal entity.

Subrecipient or Contractor?

- A *subrecipient* is defined in 2 CFR section 200.93 as “a non-Federal entity that receives a subaward from a pass-through entity to carry out part of a Federal program but does not include an individual that is a beneficiary of such program.”
 - Determines eligibility
 - Makes programmatic decisions
 - Shares costs of project
- 2 CFR section 200.23 defines a *contractor* as “an entity that receives a contract . . .”
A *contract* is defined in 2 CFR section 200.22 as “a legal instrument by which a non-Federal entity purchases property or services needed to carry out the project or program under a Federal award.”
 - Provides goods or services in a competitive environment to many different purchasers
 - Goods or services ancillary to the federal program

Pass-through entity responsibilities

- 2 CFR section 200.331 lists the following responsibilities related to subrecipients:
 - Clearly identify award to subrecipient
 - Evaluate risk of noncompliance
 - Impose conditions if necessary
 - Monitor compliance and goals
 - Ensure audit is completed if subrecipient expends more than \$750,000 in federal awards

Contact info

Gregg Evans

The Bonadio Group

315-214-2743

gevans@bonadio.com