

WORKSHOP  
APALACHICOLA CITY COMMISSION  
MONDAY, APRIL 25, 2022 – 4:00PM  
BATTERY PARK COMMUNITY CENTER  
1 BAY AVE., APALACHICOLA, FLORIDA 32320

**Agenda**

You are welcome to comment on any matter under consideration by the Apalachicola City Commission when recognized to do so by the Mayor. Once recognized please rise to the podium, state your name for the record and adhere to the three minute time limit for public comment. Comments may also be sent by email to the City Manager or to Commissioners.

**I. Call to Order**

- Invocation
- Pledge of Allegiance

**II. Noise Ordinance Workshop**

**III. American Rescue Plan Act Workshop**

**IV. Public Comment**

**VI. Adjournment**

Any person who desires to appeal any decision at this meeting will need a record of the proceeding and for this purpose, may need to ensure that a verbatim record of the proceeding is made which includes testimony and evidence upon which the appeal is based. Persons with disabilities needing assistance to participate in any of these proceedings should contact the City Clerk's Office 48 hours in advance of the meeting.



**AN ORDINANCE OF THE CITY OF APALACHICOLA, FLORIDA REGULATING AND PROHIBITING THE EMISSION OF HARMFUL NOISE; DECLARING SAID NOISES TO BE DETRIMENTAL TO THE PUBLIC HEALTH, COMFORT, CONVENIENCE, SAFETY, WELFARE AND PROSPERITY OF THE RESIDENTS OF SAID CITY; ESTABLISHING AND DEFINING CERTAIN TERMS; ESTABLISHING AND PROVIDING FOR CERTAIN EXCEPTIONS; PROHIBITING THE MAKING, CAUSING OR ALLOWING OF SAID NOISES WHICH CAUSE A NOISE DISTURBANCE OR EXCEED CERTAIN SOUND LEVELS; PROVIDING FOR TECHNIQUES TO BE USED IN MEASURING LEVELS OF SAID NOISE AND THE ESTABLISHMENT OF SAID LIMITS; PROVIDING FOR PENALTIES; PROVIDING FOR ADDITIONAL CIVIL REMEDIES AND CITATIONS; PROVIDING FOR THE REPEAL OF ANY ORDINANCE OR PARTS THEREFROM IN Lee and CONFLICT HEREWITH; PROVIDING FOR SPECIAL PERMITS; PROVIDING FOR APPEALS OF SPECIAL PERMITS; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, the making and creation of excessive and unusually loud noises within the City of Apalachicola, Florida, is a condition which has existed for some time; and

**WHEREAS**, the said noises and the amount, intensity, duration and vibration of said noises are increasing within the area of said City as population, industry and tourism grows; and

**WHEREAS**, the making and creation of said noises are prolonged, unusual and unnatural in their time, place and use and effect and are a detriment to the public health, comfort, convenience, safety, welfare and prosperity of the residents of said City; and

**WHEREAS**, as a matter of legislative determination and public policy, the City Commission of the City of Apalachicola finds it in the public interest for the provisions and prohibitions hereinafter contained to be enacted; and

**WHEREAS**, it is further declared that the provisions and prohibitions hereinafter contained and enacted are in the pursuance of and for the purpose of securing and promoting the 2 public health, comfort, safety, welfare and prosperity of the inhabitants of said City of Apalachicola; and

**WHEREAS**, it is the intent of this Ordinance to prohibit the use or operation of any radio receiving set, "boom box," musical instrument, television, phonograph, tape or compact disc player, loudspeaker or any other devise for the production or reproduction of sound in such manner as to cause a noise disturbance; and

**WHEREAS**, it is the intent of this Ordinance that it shall work harmoniously with existing ordinances and valid state statutes regulating noise emissions and shall be an additional regulation to any such pre-existing ordinances and statutes; and

**WHEREAS**, it is the intent of this ordinance to repeal all ordinances or parts thereof in conflict with this ordinance and provide a valid procedure for enforcement; and

**WHEREAS**, it is not the intent of this Ordinance to interfere with the individual rights to freedom of speech or religion.

**NOW THEREFORE, BE IT INACTED BY THE PEOPLE OF THE CITY OF APALACHCOLA, FLORIDA:**

## ARTICLE I. NOISE

### Section 1. Terminology; Definitions.

All terminology used in this article not defined below shall be defined according to applicable publications of the American National Standards Institute (ANSI) or the American Society for Testing and Materials (ASTM) or their successor bodies.

*A-weighted sound level (dBA):* The sound pressure level in decibels as measured on a sound level meter using the A-weighted network. The level so read is designated “dBA.”

*Ambient Noise:* The surrounding or steady background noise in a particular location as distinct from the specific noise being measured.

*Commercial Area:* Land used primarily for the sale of merchandise or goods, or for the performances of a service, or for office or clerical work.

*Construction Activity:* Any site preparation, assembly, erection, substantial repair, alteration, or improvement of realty, whether publicly or privately owned, and whether above ground or below ground.

*Decibel (dB):* The practical unit of measurement for sound pressure level; the number of decibels of a measured sound is equal to twenty (20) times the logarithm to the base ten (10) of the ratio of the sound pressure of the measured sound to the sound pressure of a standard sound (twenty (20) micropascals; abbreviated “dB.”

*Emergency:* Any occurrence or set of circumstances involving actual or imminent physical trauma to human beings or living creatures or property damage which necessitates immediate action.

*Emergency Work:* Any work performed for the purpose of preventing or alleviating the physical trauma or property damage threatened or caused by an emergency, including work necessary to restore property to a safe condition following an emergency.

*Industrial Area:* Land use which is primarily for manufacturing, processing or an airport.

*Multifamily Dwellings:* a building designed or used exclusively for residential occupancy by two (2) or more families.

*Noise:* Any sound which annoys or disturbs humans or causes or tends to cause an adverse psychological effect on humans. “Noise” includes low frequency vibrations, such as caused by amplifications of bass instrumental sounds.

*Noise Disturbance:* Sound which (a) is or may be harmful or injurious to the health or welfare of a reasonable person with normal sensitivities, or (b) significantly interferes with the enjoyment or normal conduct of life, property or outdoor recreation, or (c) causes noise pollution.

*Noise Pollution:* presence of noise in an excessive or disturbing amount or of such duration, wave frequency or intensity as to be injurious to human or animal life or property.

*Park Land:* Land that is used primarily for public recreational activities.

*Person:* Any individual, natural person, public or private corporation, firm, association, joint venture, partnership, or any other entity whatsoever or any combination of such, jointly and severally.

*Public Right-of-Way:* Any street, avenue, boulevard, highway, sidewalk or alley or similar place normally accessible to the public which is owned or controlled by a governmental entity.

*Public Space:* Any real property or structure thereon normally accessible to the public which is owned or controlled by a governmental entity.

*Pure Tone:* Any sound which can be distinctly heard as single pitch or a set of single pitches. For the purposes of measurement, a pure tone shall exist if the one-third octave band sound pressure level in the band with the tones exceeds arithmetic value the sound pressure levels of the two (2) contiguous one-third octave bands by five (5) dB.

*Real Property Line:* (a) The imaginary line including its vertical extension that separates one parcel of real property from another; or (b) The vertical and horizontal boundaries of a dwelling unit that is one unit in a multi dwelling-unit building.

*Receiving Land:* Land area neighboring or in the vicinity of a sound source and on or at which the sound emanating from the sound source is audible to the normal human ear.

*Residential:* Land use that is primarily for living and sleeping or park land or hospitals or schools or nursing homes or the individual plots within a mobile home park assigned by the owner of the park or any land use that is not commercial or industrial.

*Short Durations:* Any sound with a duration of less than one minute.

*Sound:* An oscillation in pressure, particle displacement, particle velocity or other physical parameter, in a medium with internal forces that causes compression and rarefaction of that medium. The description of sound may include any characteristic of such sound, including duration, intensity and frequency.

*Sound Analyzer:* A device for measuring the octave band level of a sound as a function of frequency.

*Sound Level:* The weighted sound pressure level obtained by use of a metering characteristic and weighting A, B or C as specified in the American National Standards Institute specifications for sound level meters ANSI S1.4-1971, or in successor publications. If the weighting employed is not indicated, the A-weighting shall apply.

*Sound Level Meter:* An instrument which includes a microphone, amplifier, RMS detector, integrator or time average, output meter, and weighting networks used to measure sound pressure levels. The output meter reads sound pressure level when properly calibrated, and the instrument is of type 2 or better, as specified in the American National Standards Institute publication S1.4- 1972 or its successor publication.

*Sound Pressure:* The instantaneous difference between the actual pressure and the average or barometric pressure at a given point in space, as produced by the presence of energy.

*Sound Pressure Level:* Twenty (20) times the logarithm to the base ten (10) of the ratio of the RMS sound pressure to the reference pressure of twenty (20) micronewtons per square meter ( $20 \times 10^{-6} \text{ N/m}^2$ ). The sound pressure level is expressed in decibels.

## **Section 2. Area of applicability:**

This article shall be applicable to and embrace all areas within the City limits of the City of Apalachicola.

## **Section 3. Exceptions.**

The following activities or sources are exempt from the requirements of this article:

(1) The emission of sound for the purpose of alerting persons to the existence of an emergency, or in the performance of emergency work.

(2) Between the hours of 7:00 a.m. and 11:00 p.m., ceremonial or traditional activities or events, including the sounding of church bells and the normal sounds of organized sporting and cultural events, ~~but specifically not including music or other amplified sounds performed or played at volumes or vibrations that violate standards of this article.~~

(3) Operation of equipment or conduct of activities normal to residential or agricultural communities as set forth herein:

(a) lawn care, soil cultivation, domestic power tools, lawn mowers, maintenance of trees, hedges, gardens, saws and tractors, street sweepers, mosquito fogging, tree trimming and limb chipping and other normal community operations – 7:00 a.m. to 10:00 p.m

(b) operation of equipment for solid waste and recycling collection in or adjacent to residential uses – 6:00 a.m. to 6:00 p.m.

(c) operation of equipment for solid waste collection in nonresidential locations – 4:00 a.m. to 10:00 p.m

(4) Operation of manufacturing in areas zoned for such activities and which do not create a noise disturbance on any properties not designated for such activities.

(5) Usual noises of construction and operation of construction equipment between the hours of 7:00 a.m. to 8:00 p.m.

(6) Usual engine noises of traffic and motor vehicles on the public right-of-way.

(7) Single family residential air-conditioning units when in reasonable mechanical condition operating with the standard noise and vibration control systems typically provided by the manufacturer. A unit is presumed to be in reasonable mechanical condition if it meets the noise specifications contained in the Air Conditioning and Refrigeration Institute's ("ARI") Applied Directory of Certified Produce Performance Variable Air Volume terminals. See <http://www.aridirectory.org/ari/vav.php>.

~~(8) Properly licensed and zoned commercial establishments serving food and/or beverages within a building as their main operational business purpose that have entertainment located within the confines of their occupied building walls and ceilings with the doors and windows not left open.~~

## **Section 4. Prohibited Acts.**

The occurrence of the conditions, acts or omissions as described in subsections (1) or (2) of this section shall constitute a violation of this article. Requirements in any one of said subsections stand alone. Measurements described in subsection (2) shall constitute prima facie evidence of a violation of this article. However, such measurements are not necessary for enforcement of this article, i.e., neither sound

measurements as provided in subsection (2) nor any other type of sound measurements are necessary to prove a violation of subsection (1) of this section.

**(1) Noise Disturbance:** Notwithstanding any other provision of this article, and in addition thereto, it shall be unlawful for any person to make or continue, or cause to permit to be made or continued, any noise disturbance, as defined in Section 1.

**(a) Standards:** The standards to be considered in determining whether a violation of subsection (1) of this section exists may include but shall not be limited to the following:

1. The volume of noise.
2. The intensity of the noise.
3. Whether the nature of the noise is usual or unusual.
4. The volume and intensity of the ambient noise, if any.
5. The proximity of the noise to residential sleeping facilities.
6. The nature and zoning of the area from which the noise emanates.
7. The nature and zoning of the receiving land.
8. The time of the day or night the noise occurs.
9. The duration of the noise.
10. Whether the noise is produced by a commercial or noncommercial activity.

**(b) Enforcement:** Enforcement does not depend on any minimum number of standards being met.

**(c) Persons Affected:** Persons affected may include residents, passersby, law enforcement or code enforcement officials.

## **(2) Maximum Permissible Sound Levels**

**(a) Sound:** No person shall operate or cause to be operated, from any source, sound which, when measured at the property line of the property where the sound is being generated, exceeds:

1. ~~Sixty (60) dBA during the hours between 7:00 a.m. and 10:00 p.m. at the property line of the noise source.~~ Seventy-Five (75) dBA during the hours between 7:00am and 10:00pm if the property generating the noise is zoned R-1, R-2, R-3, R-4, O/R, RC. Measurement will be taken at the complainant's real property line.
2. ~~Fifty-five (55) dBA during the hours between 10:00 p.m. and 7:00 a.m. at the property line of the noise source.~~ Sixty-five (65) dBA during the hours between 10:00pm to 7:00am if the property generating the noise is zoned R-1, R-2, R-3, R-4, O/R, RC. Measurement will be taken at the complainant's real property line.
3. ~~Sixty-five (65) dBA if the receiving land is a commercial area.~~ Eighty-five (85) dBA from 7am-11pm Sunday through Thursday, and until 12am on Friday and Saturday, if the property generating the noise is zoned C-1, C-2,C-3,C-4, RF. The measurement will be taken at the complainant's real property line.
4. ~~Eighty (80) dBA if the receiving land is industrial.~~ Seventy (70) dBA between the hours of 10:00pm and 7:00am if the property generating the noise is zoned C-

1, C-2, C-3, C-4, RF. Measurement will be taken at the complainant's real property line.

~~(b) Correction for Character of Sound: For any source of sound which emits a pure tone, the maximum sound level limits set forth in subsection (2)(a) shall be reduced by five (5) dBA. For any source of sound which is of short duration and is non-repetitive, the maximum sound level limits set forth in subsection (2)(a) shall be increased by ten (10) dBA from 7:00 a.m. to 10:00 p.m.~~

(c) Correction for Ambient Noise: Corrections for ambient noise should be made in accordance with applicable ASTM standards.

(d) Methods of Measurements.

1. The measurement of sound shall be made with a decibel or a sound level meter operating on the A-weighted scale of any standard design and quality meeting the standards prescribed by the American National Standards Association. The instruments shall be maintained in calibration and good working order. Measurements recorded shall be taken so as to provide a proper representation of the sound source. The microphone used during measurement shall be positioned so as to not to create any unnatural enhancement or diminution of the measured sound. A windscreen for the microphone shall be used when required. Traffic, aircraft, and other background ambient sounds shall not be considered in taking measurements except where such ambient sound interferes with the primary noise being measured.

2. ~~The measurement shall be made at or beyond the real property line of the property on which such sound is generated or on the receiving land, as appropriate, approximately five (5) feet above ground.~~ The measurement shall be made at the real property line of the complainant.

**Section 5. Enforcement and Penalties:**

Any person or entity violating any of the provisions of this article shall be prosecuted in the same manner as misdemeanors are prosecuted. Such violations shall be prosecuted in the name of the State of Florida in a court having jurisdiction of misdemeanors by the prosecuting attorney thereof and, upon conviction for the first offense shall be punished by a fine not to exceed fifty dollars (\$50.00); for the second offense, shall be punished by a fine not to exceed one hundred fifty dollars (\$150.00); and for the third offense and thereafter, shall be punished by a fine not to exceed two hundred fifty dollars (\$250.00) or by imprisonment in the county jail not to exceed sixty (60) days or by both such fine and imprisonment. Each incident or separate occurrence of an act that violates this article shall be deemed a separate offense.

**Section 6. Civil Remedies and Citations:** In addition to the criminal penalties provided in Section 5 above, the City Commission of the City of Apalachicola is authorized to institute any appropriate action or proceeding, including suit for injunctive relief, as may be necessary, in order to prevent or abate violations of this article. Citations may also be issued to enforce this article as provided by other Ordinances authorized by the City of Apalachicola.

**Section 7. Special Permits:** Special permits for prospective activities that will exceed the maximum permissible noise levels permitted by this section may be obtained by completed application to the City Administrator or her/his designee. Such special permit shall not be unreasonably withheld so long as the prospective activity will not adversely affect the health, safety, and welfare of nearby residents. The



administrative determination shall be made within ten (10) business days of application, or the subject activity shall be deemed permitted.

**Section 8. Appeals:** Any person denied a Special Permit may file an administrative appeal to the City Commission.

**Section 9. Severability:** Any section, sentence, clause, phrase or provision of this Ordinance is held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not be construed as to render invalid or unconstitutional the remaining provisions of this Ordinance.

**Section 10: Effective Date:** This Ordinance shall take effect immediately upon adoption by the City of Apalachicola, Florida.



To: Travis Wade and Bree Robinson

From: Commissioner Anita Grove

Re: American Rescue funds

Upgrade drinking water system to eliminate TTHM issue and improve overall quality

Replace damaged stormwater conveyance and make associated street repairs

Backflow preventers along Bay outfalls to prevent water from entering outfalls

Replace fire hydrants

Scipio Creek repairs

Battery Park Marina seawall

Small projects- Replace street signs, floating dock downtown



## **Coronavirus State and Local Fiscal Recovery Funds (SLFRF) – American Rescue Plan**

The City formerly made application to the SLFRF program and received an award of \$1,179,010.00. The City has received half of this allocated amount and will receive the second half after spending the first deposit.

There were original stipulations on how to spend this money with there being 4 categories noted:

1. Public health & economic impacts
2. Premium pay
3. Revenue loss
4. Investments in water, sewer, or broadband infrastructure

**There was a FINAL RULE that went into effect on April 1<sup>st</sup> – the FINAL RULE offers more uses for this funding and could potentially fund several city projects.**

### Dates:

- » First Report due April 30, 2022
- » Funds must be obligated by December 31, 2024
- » All expenditures must be complete by December 31, 2026

Please see extra info below:

### American Rescue Plan Info:

- Final Rule takes place starting on April 1, 2022, until then, the Interim Rule remains in effect. (4 categories)
- Electing the “standard allowance” to spend on government services
  - Government Services generally include any service traditionally provided by government unless Treasury has stated otherwise. Here are some examples:
    - Construction of schools and hospitals
    - Road building and maintenance and other infrastructure
    - Health Services
    - General Government administration, staff, and admin facilities
    - Environmental remediation
    - Provision of police, fire, and other public safety services, including purchase of vehicles
  - **However, these funds may not be used for a project that conflicts with or contravenes the purpose of the American Rescue Plan Act statute (uses of funds that undermine COVID-19 mitigation practices in line with CDC guidance and recommendations)**
  - All projects MUST follow 2CFR procurement

- No construction of the following:
  - New correctional facilities as a response to an increase in rate of crime
  - New congregate facilities to decrease the spread of COVID 19 in the facility
  - Convention centers, stadiums or other large capital projects intended for general economic development or to aid impacted industries
- Funds cannot be used for payments for debt services or replenishing rainy day funds.
- Reporting – first report will be due on April 30, 2022



## Introduction

The Coronavirus State and Local Fiscal Recovery Funds (SLFRF), a part of the American Rescue Plan, delivers \$350 billion to state, local, and Tribal governments across the country to support their response to and recovery from the COVID-19 public health emergency. The program ensures that governments have the resources needed to:

- Fight the pandemic and support families and businesses struggling with its public health and economic impacts,
- Maintain vital public services, even amid declines in revenue, and
- Build a strong, resilient, and equitable recovery by making investments that support long-term growth and opportunity.

### EARLY PROGRAM IMPLEMENTATION

In May 2021, Treasury published the Interim final rule (IFR) describing eligible and ineligible uses of funds (as well as other program provisions), sought feedback from the public on these program rules, and began to distribute funds. The IFR went immediately into effect in May, and since then, governments have used SLFRF funds to meet their immediate pandemic response needs and begin building a strong and equitable recovery, such as through providing vaccine incentives, development of affordable housing, and construction of infrastructure to deliver safe and reliable water.

As governments began to deploy this funding in their communities, Treasury carefully considered the feedback provided through its public comment process and other forums. Treasury received over 1,500 comments, participated in hundreds of meetings, and received correspondence from a wide range of governments and other stakeholders.

### KEY CHANGES AND CLARIFICATIONS IN THE FINAL RULE

The final rule delivers broader flexibility and greater simplicity in the program, responsive to feedback in the comment process. Among other clarifications and changes, the final rule provides the features below.

#### Replacing Lost Public Sector Revenue

The final rule offers a standard allowance for revenue loss of up to \$10 million, 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 – in many cases their full award – for government services, with streamlined reporting requirements.

#### Public Health and Economic Impacts

In addition to programs and services, the final rule clarifies that recipients can 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 final rule requirements.



In addition, the final rule provides an expanded set of households and communities that are presumed to be “impacted” and “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 uses available for these communities as part of COVID-19 public health and economic response, including making affordable housing, childcare, early learning, and services to address learning loss during the pandemic 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 delivers more streamlined options to provide premium pay, by broadening the share of eligible workers who can receive premium pay without a written justification while maintaining a focus on lower-income and frontline workers performing essential work.

### **Water, Sewer & 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 broader range of lead remediation and stormwater management projects.

### **FINAL RULE EFFECTIVE DATE**

The final rule takes effect on April 1, 2022. Until that time, the interim final rule remains in effect; funds used consistently with the IFR while it is in effect are in compliance with the SLFRF program.

However, recipients can choose to take advantage of the final rule’s flexibilities and simplifications now, even ahead of the effective date. Treasury will not take action to enforce the interim final rule to the extent that a use of funds is consistent with the terms of the final rule, regardless of when the SLFRF funds were used. Recipients may consult the *Statement Regarding Compliance with the Coronavirus State and Local Fiscal Recovery Funds Interim Final Rule and Final Rule*, which can be found on Treasury’s website, for more information on compliance with the interim final rule and the final rule.





## Overview of the Program

The Coronavirus State and Local Fiscal Recovery Funds (SLFRF) program provides substantial flexibility for each jurisdiction to meet local needs within the four separate eligible use categories. This Overview of the Final Rule addresses the four eligible use categories ordered from the broadest and most flexible to the most specific.

Recipients may use SLFRF funds to:

- **Replace lost public sector revenue**, using this funding to provide government services up to the amount of revenue loss due to the pandemic.
  - Recipients may determine their revenue loss by choosing between two options:
    - **A standard allowance of up to \$10 million in aggregate, not to exceed their award amount, during the program;**
    - Calculating their jurisdiction's specific revenue loss each year using Treasury's formula, which compares actual revenue to a counterfactual trend.
  - Recipients may use funds up to the amount of revenue loss for government services; generally, services traditionally provided by recipient governments are government services, unless Treasury has stated otherwise.
- **Support the COVID-19 public health and economic response** by addressing COVID-19 and its impact on public health as well as addressing economic harms to households, small businesses, nonprofits, impacted industries, and the public sector.
  - Recipients can use funds for programs, services, or capital expenditures that respond to the public health and negative economic impacts of the pandemic.
  - To provide simple and clear eligible uses of funds, Treasury provides a list of enumerated uses that recipients can provide to households, populations, or classes (i.e., groups) that experienced pandemic impacts.
  - Public health eligible uses include COVID-19 mitigation and prevention, medical expenses, behavioral healthcare, and preventing and responding to violence.
  - Eligible uses to respond to negative economic impacts are organized by the type of beneficiary: assistance to households, small businesses, and nonprofits.
    - Each category includes assistance for "impacted" and "disproportionately impacted" classes: impacted classes experienced the general, broad-based impacts of the pandemic, while disproportionately impacted classes faced meaningfully more severe impacts, often due to preexisting disparities.
    - To simplify administration, the final rule presumes that some populations and groups were impacted or disproportionately impacted and are eligible for responsive services.

*Coronavirus State & Local Fiscal Recovery Funds: Overview of the Final Rule*



- Eligible uses for assistance to impacted households include aid for re-employment, job training, food, rent, mortgages, utilities, affordable housing development, childcare, early education, addressing learning loss, and many more uses.
- Eligible uses for assistance to impacted small businesses or nonprofits include loans or grants to mitigate financial hardship, technical assistance for small businesses, and many more uses.
- Recipients can also provide assistance to impacted industries like travel, tourism, and hospitality that faced substantial pandemic impacts, or address impacts to the public sector, for example by re-hiring public sector workers cut during the crisis.
- Recipients providing funds for enumerated uses to populations and groups that Treasury has presumed eligible are clearly operating consistently with the final rule. Recipients can also identify (1) other populations or groups, beyond those presumed eligible, that experienced pandemic impacts or disproportionate impacts and (2) other programs, services, or capital expenditures, beyond those enumerated, to respond to those impacts.
- **Provide premium pay for eligible workers performing essential work**, offering additional support to those who have and will bear the greatest health risks because of their service in critical sectors.
  - Recipients may provide premium pay to eligible workers – generally those working in-person in key economic sectors – who are below a wage threshold or non-exempt from the Fair Labor Standards Act overtime provisions, or if the recipient submits justification that the premium pay is responsive to workers performing essential work.
- **Invest in water, sewer, and broadband infrastructure**, making necessary investments to improve access to clean drinking water, to support vital wastewater and stormwater infrastructure, and to expand affordable access to broadband internet.
  - Recipients may fund a broad range of water and sewer projects, including those eligible under the EPA’s Clean Water State Revolving Fund, EPA’s Drinking Water State Revolving Fund, and certain additional projects, including a wide set of lead remediation, stormwater infrastructure, and aid for private wells and septic units.
  - Recipients may fund high-speed broadband infrastructure in areas of need that the recipient identifies, such as areas without access to adequate speeds, affordable options, or where connections are inconsistent or unreliable; completed projects must participate in a low-income subsidy program.

While recipients have considerable flexibility to use funds to address the diverse needs of their communities, some restrictions on use apply across all eligible use categories. These include:

- **For states and territories:** No offsets of a reduction in net tax revenue resulting from a change in state or territory law.

*Coronavirus State & Local Fiscal Recovery Funds: Overview of the Final Rule*



- **For all recipients except for Tribal governments:** No extraordinary contributions to a pension fund for the purpose of reducing an accrued, unfunded liability.
- **For all recipients:** No payments for debt service and replenishments of rainy day funds; no satisfaction of settlements and judgments; no uses that contravene or violate the American Rescue Plan Act, Uniform Guidance conflicts of interest requirements, and other federal, state, and local laws and regulations.

Under the SLFRF program, funds must be used for costs incurred on or after March 3, 2021. Further, funds must be obligated by December 31, 2024, and expended by December 31, 2026. This time period, during which recipients can expend SLFRF funds, is the “period of performance.”

In addition to SLFRF, the American Rescue Plan includes other sources of funding for state and local governments, including the [Coronavirus Capital Projects Fund](#) to fund critical capital investments including broadband infrastructure; the [Homeowner Assistance Fund](#) to provide relief for our country’s most vulnerable homeowners; the [Emergency Rental Assistance Program](#) to assist households that are unable to pay rent or utilities; and the [State Small Business Credit Initiative](#) to fund small business credit expansion initiatives. Eligible recipients are encouraged to visit the Treasury website for more information.



## Replacing Lost Public Sector Revenue

The Coronavirus State and Local Fiscal Recovery Funds provide needed fiscal relief for recipients that have experienced revenue loss due to the onset of the COVID-19 public health emergency. Specifically, SLFRF funding may be used to pay for “government services” in an amount equal to the revenue loss experienced by the recipient due to the COVID-19 public health emergency.

Government services generally include any service traditionally provided by a government, including construction of roads and other infrastructure, provision of public safety and other services, and health and educational services. Funds spent under government services are subject to streamlined reporting and compliance requirements.

In order to use funds under government services, recipients should first determine revenue loss. They may, then, spend up to that amount on general government services.

### DETERMINING REVENUE LOSS

Recipients have two options for how to determine their amount of revenue loss. Recipients must choose one of the two options and cannot switch between these approaches after an election is made.

**1. Recipients may elect a “standard allowance” of \$10 million to spend on government services through the period of performance.**

Under this option, which is newly offered in the final rule Treasury presumes that up to \$10 million in revenue has been lost due to the public health emergency and recipients are permitted to use that amount (not to exceed the award amount) to fund “government services.” The standard allowance provides an estimate of revenue loss that is based on an extensive analysis of average revenue loss across states and localities, and offers a simple, convenient way to determine revenue loss, particularly for SLFRF’s smallest recipients.

All recipients may elect to use this standard allowance instead of calculating lost revenue using the formula below, including those with total allocations of \$10 million or less. Electing the standard allowance does not increase or decrease a recipient’s total allocation.

**2. Recipients may calculate their actual revenue loss according to the formula articulated in the final rule.**

Under this option, recipients calculate revenue loss at four distinct points in time, either at the end of each calendar year (e.g., December 31 for years 2020, 2021, 2022, and 2023) or the end of each fiscal year of the recipient. Under the flexibility provided in the final rule, recipients can choose whether to use calendar or fiscal year dates but must be consistent throughout the period of performance. Treasury has also provided several adjustments to the definition of general revenue in the final rule.

To calculate revenue loss at each of these dates, recipients must follow a four-step process:



- a. Calculate 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*.
- b. Estimate *counterfactual revenue*, which is equal to the following formula, where  $n$  is the number of months elapsed since the end of the base year to the calculation date:

$$\text{base year revenue} \times (1 + \text{growth adjustment})^{\frac{n}{12}}$$

The *growth adjustment* is the greater of either a standard growth rate—5.2 percent—or the recipient’s average annual revenue growth in the last full three fiscal years prior to the COVID-19 public health emergency.

- c. Identify *actual revenue*, which equals revenues collected over the twelve months immediately preceding the calculation date.

Under the final rule, recipients must adjust actual revenue totals for the effect of tax cuts and tax increases that are adopted after the date of adoption of the final rule (January 6, 2022). Specifically, the estimated fiscal impact of tax cuts and tax increases adopted after January 6, 2022, must be added or subtracted to the calculation of actual revenue for purposes of calculation dates that occur on or after April 1, 2022.

Recipients may subtract from their calculation of actual revenue the effect of tax increases enacted prior to the adoption of the final rule. Note that recipients that elect to remove the effect of tax increases enacted before the adoption of the final rule must also remove the effect of tax decreases enacted before the adoption of the final rule, such that they are accurately removing the effect of tax policy changes on revenue.

- d. Revenue loss for the calculation date is equal to *counterfactual revenue* minus *actual revenue* (adjusted for tax changes) for the twelve-month period. If actual revenue exceeds counterfactual revenue, the loss is set to zero for that twelve-month period. Revenue loss for the period of performance is the sum of the revenue loss on for each calculation date.

The supplementary information in the final rule provides an example of this calculation, which recipients may find helpful, in the Revenue Loss section.



### SPENDING ON GOVERNMENT SERVICES

Recipients can use SLFRF funds on government services up to the revenue loss amount, whether that be the standard allowance amount or the amount calculated using the above approach. **Government services generally include *any service* traditionally provided by a government**, unless Treasury has stated otherwise. Here are some common examples, although this list is not exhaustive:

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

Government services is the most flexible eligible use category under the SLFRF program, and funds are subject to streamlined reporting and compliance requirements. Recipients should be mindful that certain restrictions, which are detailed further in the Restrictions on Use section and apply to all uses of funds, apply to government services as well.



## Restrictions on Use

While recipients have considerable flexibility to use Coronavirus State and Local Fiscal Recovery Funds to address the diverse needs of their communities, some restrictions on use of funds apply.

### OFFSET A REDUCTION IN NET TAX REVENUE

- **States and territories may not use this funding to directly or indirectly offset a reduction in net tax revenue resulting from a change in law, regulation, or administrative interpretation beginning on March 3, 2021, through the last day of the fiscal year in which the funds provided have been spent.** If a state or territory cuts taxes during this period, it must demonstrate how it paid for the tax cuts from sources other than SLFRF, such as by enacting policies to raise other sources of revenue, by cutting spending, or through higher revenue due to economic growth. If the funds provided have been used to offset tax cuts, the amount used for this purpose must be repaid to the Treasury.

### DEPOSITS INTO PENSION FUNDS

- **No recipients except Tribal governments may use this funding to make a deposit to a pension fund.** Treasury defines a “deposit” as an extraordinary contribution to a pension fund for the purpose of reducing an accrued, unfunded liability. While pension deposits are prohibited, recipients may use funds for routine payroll contributions connected to an eligible use of funds (e.g., for public health and safety staff). Examples of extraordinary payments include ones that:
  - × Reduce a liability incurred prior to the start of the COVID-19 public health emergency and occur outside the recipient's regular timing for making the payment
  - × Occur at the regular time for pension contributions but is larger than a regular payment would have been

### ADDITIONAL RESTRICTIONS AND REQUIREMENTS

Additional restrictions and requirements that apply across all eligible use categories include:

- **No debt service or replenishing financial reserves.** Since SLFRF funds are intended to be used prospectively, recipients may not use SLFRF funds for debt service or replenishing financial reserves (e.g., rainy day funds).
- **No satisfaction of settlements and judgments.** 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 is itself not an eligible use. However, if a settlement requires the recipient to provide services or incur other costs that are an eligible use of SLFRF funds, SLFRF may be used for those costs.
- **Additional general restrictions.** SLFRF funds may not be used for a project that conflicts with or contravenes the purpose of the American Rescue Plan Act statute (e.g., uses of funds that

*Coronavirus State & Local Fiscal Recovery Funds: Overview of the Final Rule*



## U.S. DEPARTMENT OF THE TREASURY

undermine COVID-19 mitigation practices in line with CDC guidance and recommendations) and may not be used in violation of the Award Terms and Conditions or conflict of interest requirements under the Uniform Guidance. Other applicable laws and regulations, outside of SLFRF program requirements, may also apply (e.g., laws around procurement, contracting, conflicts-of-interest, environmental standards, or civil rights).