

# Funding Stormwater Quality Projects Using ARPA State and Local Fiscal Recovery Funds

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# American Rescue Plan Act

- The American Rescue Plan Act (PL 117-2) provides \$1.9 trillion of federal funding to aid in recovery from the COVID-19 health emergency.
- ARPA provides a total of \$350 billion to state, local, territorial and tribal governments through the Coronavirus State and Local Fiscal Recovery Funds (SLFRF) program.
- SLFRF funds are distributed to direct recipients (States, Territories, Tribal Governments and Entitlement Communities) and indirect recipients (Nonentitlement Communities).

# State and Local Fiscal Recovery Funds

- SLFRF funds are intended for the following statutory eligible uses:
  - To respond to the COVID-19 public health emergency or its negative economic impacts;
  - To respond to workers performing essential work during the COVID-19 public health emergency by providing premium pay to such eligible workers of the recipient, or by providing grants to eligible employers that have eligible workers who performed essential work;
  - For the provision of government services, to the extent of the revenue reduction 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; and
  - To make necessary improvements in water, sewer or broadband infrastructure.
- SLFRF funds may be used to cover eligible costs during the period that begins on March 3, 2021 and ending on December 31, 2024, with all funding to be spent by December 31, 2026.
  - Some retroactive assistance to individuals, households and businesses is permissible.

# SLFRF Eligible Uses

- The Treasury Department's Interim Final Rule provides guidance on eligibility, compliance and reporting for the use of SLFRF funds.
- The Interim Final Rule provides a nonexclusive listing of eligible projects that fall into 7 Expenditure Categories:
  - Public Health
  - Negative Economic Impacts
  - Services to Disproportionately Impacted Communities
  - Premium Pay
  - Infrastructure
  - Revenue Replacement
  - Administrative
- The following costs are ineligible: deposits to pension funds, payment of debt service or judgements, contributions to "rainy day" funds or (for states) offset of tax cuts.

# SLFRF Lenses: Equity and Evidence

- The SLFRF introduces two important lenses that are important with regard to eligibility and reporting: equity and evidence.
- Recipients must conduct meaningful community engagement about use of funds and must seek to use funds in a manner that increases overall equity, with particular attention to reducing barriers for those traditionally unable to access or benefit from government services.
- Recipients must report on any projects that qualify as “evidence-based interventions” or for which a detailed program evaluation will be conducted.

# SLFRF Reporting

**Table 2: Reporting requirements by recipient type**

Recipient	Interim Report	Project and Expenditure Report	Recovery Plan Performance Report
States, U.S. territories, metropolitan cities and counties with a population that exceeds 250,000 residents	By August 31, 2021, with expenditures by category	By October 31, 2021, and then 30 days after the end of each quarter thereafter <sup>9</sup>	By August 31, 2021, and annually thereafter by July 31 <sup>10</sup>
Metropolitan cities and counties with a population below 250,000 residents which received more than \$5 million in SLFRF funding			Not required
Tribal Governments		By October 31, 2021, and then annually thereafter <sup>11</sup>	Not required
Metropolitan cities and counties with a population below 250,000 residents which received less than \$5 million in SLFRF funding			
NEUs	Not required		

*Source: SLFRF Compliance and Reporting Guidance*

# Important SLFRF Guidance Documents

- Interim Final Rule
- SLFRF FAQ
- SLFRF Compliance and Reporting Guidance
- SLFRF Treasury's Portal for Recipient Reporting User Guide
- Various Fact Sheets and Webinars

<https://home.treasury.gov/policy-issues/coronavirus/assistance-for-state-local-and-tribal-governments/state-and-local-fiscal-recovery-funds>

# Stormwater Quality Project Eligibility

- Stormwater Quality Projects are eligible for funding under the SLFRF program in two Expenditure Categories:
  - Expenditure Category 5: Infrastructure
  - Expenditure Category 6: Revenue Replacement
- Each of these categories has different eligibility and reporting requirements, including different performance indicators that must be tracked.

# Expenditure Category 5.6 – Infrastructure – Clean Water: Stormwater

- Projects are eligible if they would meet the criteria for eligibility under the program rules for the Clean Water State Revolving Fund.

# CWSRF Eligible Projects

- Eleven general eligibilities. Of these, the relevant eligibilities are found in Section 122 of the Clean Water Act.
  - **Watershed Management of Wet Weather Discharges** – management of CSOs, sanitary sewer overflows and stormwater discharges.
  - **Stormwater Management Best Practices (BMPs)** – activities that manage, reduce, recapture or reuse municipal stormwater.
  - **Integrated Water Resource Planning** – facilitates the coordinated management and protection of surface water, ground water and stormwater resources on a watershed or subwatershed basis.
  - **Municipality-Wide Stormwater Management Planning** – identifies the most effective placement of stormwater technologies and management approaches to reduce water quality impairments on a municipality-wide basis.

*Source: Overview of Clean Water State Revolving Fund Eligibilities, US Environmental Protection Agency, May 2016, p. 6*

# Expenditure Category 6.1 – Revenue Replacement – Provision of Government Services

- Recipients who experienced revenue loss during the COVID-19 health emergency may use SLFRF funds for the provision of government services, including constructing infrastructure on a “pay-go” basis, up to the amount of the reduction in revenue.

# Additional Possible Eligibility

- Projects that serve a disproportionately impacted community (Qualified Census Tract), address a health impact that arose during the COVID-19 health emergency, address a negative economic impact or support an impacted industry (Tourism, Travel, or Hospitality) could be eligible, particularly if the stormwater component was part of a larger project.

# Special Considerations for Infrastructure Projects

- Fairly minimal key performance indicators required in the guidance.
- Must take labor into account and report on labor relations issues, although Davis-Bacon compliance is not necessarily mandated.
- Procurement is per Uniform Guidance as with any use of federal funds (2 CFR 200).
- Direct funded infrastructure projects may minimize some of the more burdensome administrative requirements like subrecipient monitoring, but proper internal controls are essential and drive reporting.

# Disclaimer

- Project eligibility is always based on the specific project design and is a fact-based determination.
- The Interim Final Rule and guidance documents provide support for decisionmakers, but Treasury does not approve pre-approve projects.
- Depending on how a project is classified for eligibility purposes, reporting requirements may vary greatly, with significantly different required performance indicators mandated by the guidance.
- Consult with appropriate State/County/City management and legal authorities regarding all eligibility determinations and subsequent program administration questions.

# Questions