



22 EAST MIFFLIN STREET, SUITE 900
MADISON, WI 53703
TOLL FREE: 1.866.404.2700
PHONE: 608.663.7188
FAX: 608.663.7189
www.wicounties.org

CORONAVIRUS STATE & LOCAL FISCAL RECOVERY FUNDS: FINAL RULE SUMMARY

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The Wisconsin Counties Association (WCA) and its general counsel, Attolles Law, s.c., have received many questions surrounding ARPA, interpretation of its terms, and its impact on counties. Below, please find comprehensive final guidance for counties regarding the implementation of the Local Fiscal Recovery Fund, as prepared by WCA general counsel. For additional questions, please contact Attolles Law, s.c. President & CEO Andrew Phillips at aphillips@attolles.com.

County officials are encouraged to review this guidance carefully with corporation counsel to ensure appropriate interpretation and otherwise assess the impact of any local rules, policies, and regulations.

On January 6, 2022, The U.S. Department of the Treasury (Treasury) adopted a Final Rule implementing the Coronavirus Fiscal Recovery Funds (FRF). As a part of the American Rescue Plan Act (“ARPA”), the FRF 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.

On August 11, 2021 we issued a guidance memorandum providing an overview of the Interim Final Rule. Now that the Final Rule has been published, this update will provide a summary of its most salient provisions, as well as highlighting any changes from the Interim Final Rule.

Recipients of FRF must comply with the Final Rule beginning on its effective date of April 1, 2022.

Counties can choose to either use funds according to the Interim Final Rule or the Final Rule until April 1. After that date, the Final Rule must be followed. Recipients may continue to obligate and expend funds in a manner consistent with the Interim Final Rule before April 1, 2022 or obligate and expend funds in a manner consistent with the Final Rule. Treasury will not enforce the Interim Final Rule to the extent that the recipient changes its planned uses of FRF funds in a manner consistent with the Final Rule.

ELIGIBLE USES

As under the Interim Final Rule, the FRF funds may be used for the following eligible use categories:

1. Replace lost Public Sector Revenue
2. Support the COVID-19 Public Health and Economic Response
3. Premium Pay for eligible workers performing Essential Work
4. Investment in water, sewer, and broadband services

SUMMARY OF MAJOR CHANGES

While the same basic expenditure categories carry over to the Final Rule, the Final Rule expands and simplifies the administration of these categories, as summarized below:

1. Revenue Loss

- a. Allows recipients to choose between a standard allowance for revenue loss of \$10 million and completing a full revenue loss calculation. Under the Interim Final Rule, the full revenue loss calculation was the only option for this category.

2. Public Health and Negative Impacts

- a. Expands use of funds for capital expenditures that support an eligible COVID-19 public health or economic response.
- b. Expands the set of households and communities that are “impacted” or “disproportionately impacted” by the pandemic without requiring additional analysis.
- c. Provides broader set of eligible uses for eligible communities including affordable housing, childcare, early learning services, community development and neighborhood revitalization.
- d. Expands the set of eligible uses to restore and support government employment including, hiring above pre-pandemic baseline, providing funds to employees that experience pay cuts or furloughs, avoiding layoffs, and providing retention incentives.

3. Premium Pay

- e. Broadens the share of essential workers who can receive premium pay without a written justification.

4. Water, Sewer, and Broadband Infrastructure

- f. Broadens eligible broadband infrastructure investments to address challenges with broadband access, affordability and reliability.
- g. Adds eligible water and sewer infrastructure investments, including a broad range of lead remediation and stormwater management projects.

PROHIBITED USES

Before analyzing the main categories of eligible uses, it is instructive to first understand the prohibited uses of ARPA funds under the Final Rule.

Among other prohibited uses, the Final Rule maintains the restriction on the use of funds for debt service or reserve replenishment and clarifies that this restriction applies to all eligible use categories. Second, 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. Third, while deposits into pension funds remain generally prohibited, Treasury has offered the following guidance regarding certain nuances related to pension contributions as a part of the standard payroll obligation:

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.

Finally, pursuant to the Final Rule, 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).

REPLACING LOST PUBLIC SECTOR REVENUE

Under the Final Rule, recipients will now have two options for how to determine their amount of revenue loss. Recipients must carefully evaluate which option to select, as it cannot thereafter be changed. Please note that the method of calculating revenue loss has been changed from the method in the Interim Final Rule, and these changes are explained below in Section 2.

1. “Standard Allowance” of \$10 million

- a. Under this option, Treasury presumes that up to \$10 million in revenue has been lost due to the public health emergency.
- b. Recipients are permitted to use up to \$10 million (not to exceed the award amount) to fund “government services.” Selecting this option will not increase or decrease a recipient’s total allocation.
- c. Selecting this allowance is in lieu of calculating the lost revenue, as described below in item 2.

2. Calculate Actual Revenue Loss

- a. 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. Recipients can choose whether to use calendar or fiscal year dates but must be consistent throughout the period of performance.
- b. To calculate revenue loss at each of the listed dates, recipient must follow a four-step process:

- i. 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.

- ii. 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:

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

The growth adjustment is the greater of either a standard growth rate (4.2% under the Interim Final Rule but 5.2% under the Final Rule) or the recipient’s average annual revenue growth in the last full three fiscal years prior to the COVID-19 public health emergency.

- iii. 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 between the beginning of the public health emergency and 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.

iv. 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 for each calculation date.

Whether a recipient uses the standard allowance or the actual revenue loss method, recipients can use funds on government services up to the revenue loss amount. Government services generally include any service provided by the government. Common examples include:

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

RESPONDING TO PUBLIC HEALTH AND ECONOMIC IMPACTS OF COVID-19

This eligible use category is organized around the types of assistance a recipient may provide and includes several sub-categories:

1. Public health,
2. Assistance to households,
3. Assistance to small businesses,
4. Assistance to nonprofits,
5. Aid to impacted industries, and

6. Public sector capacity.

In general, to identify eligible uses of funds in this category, recipients should: (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. Responses should be related and reasonably proportional to the harm identified and reasonably designed to benefit those impacted.

1. Responding to the Public Health Emergency

In the Final Rule, Treasury has identified and enumerated the following expanded list of eligible uses of funds to respond to populations impacted by the COVID-19 Health Emergency:

- a. Covid-19 mitigation and prevention. Enumerated eligible uses include:
 - i. Vaccination programs, including vaccine incentives and vaccine sites
 - ii. Testing programs, equipment, and sites
 - iii. Monitoring, contact tracing & public health surveillance (e.g., monitoring for variants)
 - iv. Public communication efforts
 - v. Public health data systems
 - vi. COVID-19 prevention and treatment equipment, such as ventilators and ambulances
 - vii. Medical and PPE/protective supplies
 - viii. Support for isolation or quarantine
 - ix. Ventilation system installation and improvement
 - x. Technical assistance on mitigation of COVID-19 threats to public health and safety
 - xi. Transportation to reach vaccination or testing sites, or other prevention and mitigation services for vulnerable populations
 - xii. Support for prevention, mitigation, or other services in congregate living facilities, public facilities, and schools
 - xiii. Support for prevention and mitigation strategies in small businesses, nonprofits, and impacted industries
 - xiv. Medical facilities generally dedicated to COVID-19 treatment and mitigation (e.g., ICUs, emergency rooms)
 - xv. Temporary medical facilities and other measures to increase COVID-19 treatment capacity
 - xvi. Emergency operations centers & emergency response equipment (e.g., emergency response radio systems)
 - xvii. Public telemedicine capabilities for COVID-19 related treatment
- b. Medical Expenses

- i. Unreimbursed expenses for medical care for COVID-19 testing or treatment, such as uncompensated care costs for medical providers or out-of-pocket costs for individuals
- ii. Paid family and medical leave for public employees to enable compliance with COVID-19 public health precautions
- iii. Emergency medical response expenses
- iv. Treatment of long-term symptoms or effects of COVID-19

c. Behavior Health Care

- i. Prevention, outpatient treatment, inpatient treatment, crisis care, diversion programs, outreach to individuals not yet engaged in treatment, harm reduction & long-term recovery support
- ii. Enhanced behavioral health services in schools
- iii. Services for pregnant women or infants born with neonatal abstinence syndrome
- iv. Support for equitable access to reduce disparities in access to high-quality treatment
- v. Peer support groups, costs for residence in supportive housing or recovery housing, and the 988 National Suicide Prevention Lifeline or other hotline services
- vi. Expansion of access to evidence-based services for opioid use disorder prevention, treatment, harm reduction, and recovery
- vii. Behavioral health facilities & equipment

d. Preventing and Responding to Violence

- i. Referrals to trauma recovery services for victims of crime
- ii. Community violence intervention programs, including:
 - 1. Evidence-based practices like focused deterrence, with wraparound services such as behavioral therapy, trauma recovery, job training, education, housing and relocation services, and financial assistance
- iii. In communities experiencing increased gun violence due to the pandemic:
 - 1. Law enforcement officers focused on advancing community policing
 - 2. Enforcement efforts to reduce gun violence, including prosecution
 - 3. Technology & equipment to support law enforcement response

2. Responding to Negative Economic Impacts

To simplify administration of the program, the Final Rule presumes certain populations were “impacted” and “disproportionately impacted” by the pandemic and enumerates a list of eligible uses. Recipients are also able to identify other pandemic impacts, impacted or disproportionately impacted populations or classes, and responses.

- a. Assistance to Households and Communities
 - i. Treasury presumes the following are impacted by the pandemic:
 - 1. Low- or-moderate income households or communities¹
 - 2. Households that experienced unemployment
 - 3. Households that experience increased food or housing insecurity
 - 4. Households that qualify for the Children’s Health Insurance Program, Childcare Subsidies through the Child Care Development Fund (CCDF) Program, or Medicaid
 - 5. When providing affordable housing programs: households that qualify for the National Housing Trust Fund and Home Investment Partnerships Program
 - 6. When providing services to address lost instructional time in K-12 schools: any student that lost access to in-person instruction for a significant period of time
 - ii. Treasury recognizes the following enumerated projects to respond to those impacted by the pandemic:
 - 1. Food assistance & food banks
 - 2. Emergency housing assistance: rental assistance, mortgage assistance, utility assistance, assistance paying delinquent property taxes, counseling and legal aid to prevent eviction and homelessness & emergency programs or services for homeless individuals, including temporary residences for people experiencing homelessness
 - 3. Health insurance coverage expansion
 - 4. Benefits for surviving family members of individuals who have died from COVID-19
 - 5. Assistance to individuals who want and are available for work, including job training, public jobs programs and fairs, support for childcare and transportation to and from a jobsite or interview, incentives for newly employed workers, subsidized employment, grants to hire underserved workers, assistance to unemployed individuals to start small businesses & development of job and workforce training centers
 - 6. Financial services for the unbanked and underbanked
 - 7. Burials, home repair & home weatherization
 - 8. Programs, devices & equipment for internet access and digital literacy, including subsidies for costs of access

¹ The income limit for 300 percent of the Federal Poverty Guidelines for a household of three is \$65,880 per year. Recipients can always presume that a household earning below this level, or a community with median income below this level, is impacted by the pandemic and eligible for services.

9. Cash assistance
 10. Paid sick, medical, and family leave programs
 11. Assistance in accessing and applying for public benefits or services
 12. Childcare and early learning services, home visiting programs, services for child welfare involved families and foster youth & childcare facilities
 13. Assistance to address the impact of learning loss for K-12 students (e.g., high-quality tutoring, differentiated instruction)
 14. Programs or services to support long-term housing security: including development of affordable housing and permanent supportive housing
 15. Certain contributions to an Unemployment Insurance Trust Fund
- iii. Treasury presumes the following households and communities are disproportionately impacted by the pandemic:
1. Low -income households and communities
 2. Households residing in Qualified Census Tracts
 3. Households that qualify for certain federal benefits
 4. Households receiving services provided by Tribal governments
 5. Households residing in the U.S. territories or receiving services from these governments
- iv. Treasury recognizes the following enumerated projects to respond to those disproportionately impacted by the pandemic:
1. Pay for community health workers to help households access health & social services
 2. Remediation of lead paint or other lead hazards
 3. Primary care clinics, hospitals, integration of health services into other settings, and other investments in medical equipment & facilities designed to address health disparities
 4. Housing vouchers & assistance relocating to neighborhoods with higher economic opportunity
 5. Investments in neighborhoods to promote improved health outcomes
 6. Improvements to vacant and abandoned properties, including rehabilitation or maintenance, renovation, removal and remediation of environmental contaminants, demolition or deconstruction, greening/vacant lot cleanup & conversion to affordable housing
 7. Services to address educational disparities, including assistance to high-poverty school districts & educational and evidence-based services to address student academic, social, emotional, and mental health needs
 8. Schools and other educational equipment & facilities

3. Public Sector Capacity

a. Government Employment and Rehiring Public Sector Staff

i. Restoring pre-pandemic employment

1. If the recipient simply wants to hire back employees for pre-pandemic positions: Recipients may use FRF 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. Recipients may use FRF funds to cover payroll and covered benefits for such positions through the period of performance.
2. If the recipient wants to hire above the pre-pandemic baseline and/or would like to have flexibility in positions: Recipients may use FRF funds to pay for payroll and covered benefits associated with the recipient increasing its number of budgeted FTEs up to 7.5 percent above its pre-pandemic baseline. Specifically, recipients should undergo the following steps:
 - (a) Supervisor Rodriguez 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.
 - (b) Multiply the pre-pandemic baseline by 1.075%. This is called the adjusted pre-pandemic baseline.
 - (c) Identify the recipient's budgeted FTE level on March 3, 2021, which is the beginning of the period of performance for FRF funds. Recipients may, but are not required to, exclude the number of FTEs dedicated to responding to the COVID-19 public health emergency. This is called the actual number of FTEs.
 - (d) Subtract the actual number of FTEs from the adjusted pre-pandemic baseline to calculate the number of FTEs that can be covered by FRF funds. Recipients do not have to hire for the same roles that existed pre-pandemic
3. Recipients may use FRF funds to cover payroll and covered benefits through the period of performance; these employees must have begun their employment on or after March 3, 2021. Recipients may only use FRF funds for additional FTEs hired over the March 3, 2021 level (i.e., the actual number of FTEs).

ii. Supporting and retaining public sector workers

Recipients can also use funds to support the public sector in the following ways:

1. Providing additional funding for employees who experienced pay reductions or were furloughed since the onset of the pandemic, up to the difference in the employee's pay, taking into account unemployment benefits received.
 2. Maintaining current compensation levels to prevent layoffs. FRF funds may be used to maintain current compensation levels, with adjustments for inflation, in order to prevent layoffs that would otherwise be necessary.
 3. Providing worker retention incentives, including reasonable increases in compensation to persuade employees to remain with the employer as compared to other employment options. Retention incentives must be entirely additive to an employee's regular compensation, 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. Treasury presumes 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 other requirements are met.
- iii. Covering Administrative costs associated with administering the hiring, support, and retention of the programs in i) and ii).

Capital Expenditures

The Final Rule clarifies that recipients may use funds for programs, services, and capital expenditures that respond to the public health and negative economic impacts of the pandemic. Any use of funds in this category for a capital expenditure must comply with the capital expenditure requirements, in addition to other standards for uses of funds. Capital expenditures must be related and reasonably proportional to the pandemic impact identified and reasonably designed to benefit the impacted population or class.

The list of enumerated types of capital expenditures are in the **Responding to Public Health and Economic Impacts of COVID-19** section. Recipients may also identify other responsive capital expenditures which are subject to the same eligibility standard as other eligible uses to respond to the pandemic's public health and economic impacts.

The following chart details which capital expenditures require recipients to submit written justification as part of regular reporting:

If a project has total capital expenditures of:	...and the use is enumerated by Treasury as eligible, then...	...and the use is beyond those enumerated by Treasury as eligible, 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	Written Justification required and recipients must submit as part of regular reporting to Treasury

1. A Written Justification includes:

- a. Description of the 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. Recipients may provide quantitative information on the extent and the type of harm, such as the number of individuals or entities affected.
- b. Explanation of why a capital expenditure is appropriate. For example, recipients should include an explanation of why existing equipment and facilities, or policy changes or additional funding to pertinent programs or services, would be inadequate.
- c. Comparison of proposed capital project against at least two alternative capital expenditures and demonstration of why the proposed capital expenditure is superior. Recipients should consider the effectiveness of the capital expenditure in addressing the harm identified and the expected total cost (including pre-development costs) against at least two alternative capital expenditures.

2. Treasury presumes that the following capital projects are generally ineligible:

- a. Construction of new correctional facilities as a response to an increase in rate of crime
- b. Construction of new congregate facilities to decrease spread of COVID-19 in the facility
- c. Construction of convention centers, stadiums, or other large capital projects intended for general economic development or to aid impacted industries

Premium Pay

The FRF Funds may be used to provide premium pay to eligible workers performing essential work during the pandemic. Premium pay may be awarded to eligible workers up to \$13 per hour. Premium pay may not exceed \$25,000 for any single worker during the program. Premium pay may be awarded in installments or lump sums (e.g., monthly, quarterly, etc.) and may be awarded to hourly, part-time, or salaried or non-hourly workers. Premium pay must be paid in addition to wages already received and may be paid retrospectively.

A recipient may not use FRF to merely reimburse itself for premium pay or hazard pay already received by the worker, and premium pay may not be paid to volunteers.

Recipients should undergo the following steps to provide premium pay to eligible workers.

1. Identify an “eligible” worker. Eligible workers include workers “needed to maintain continuity of operations of essential critical infrastructure sectors.” These sectors and occupations are eligible:

- a. Health care
- b. Emergency response
- c. Sanitation, disinfection & cleaning
- d. Maintenance
- e. Grocery stores, restaurants, food production, and food delivery
- f. Pharmacy
- g. Biomedical research
- h. Behavioral health
- i. Medical testing and diagnostics
- j. Home and community-based health care or assistance with activities of daily living
- k. Family or childcare
- l. Social services
- m. Public health
- n. Mortuary
- o. Critical clinical research, development, and testing necessary for COVID-19 response
- p. State, local, or Tribal government workforce
- q. Workers providing vital services to Tribes
- r. Educational, school nutrition, and other work required to operate a school facility
- s. Laundry
- t. Elections
- u. Solid waste or hazardous materials management, response, and cleanup
- v. Work requiring physical interaction with patients

- w. Dental care
- x. Transportation and warehousing
- y. Hotel and commercial lodging facilities that are used for COVID-19 mitigation and containment
- z. Note: in addition, the chief executive (or equivalent) of a recipient government may designate additional non-public sectors as critical so long as doing so is necessary to protecting the health and wellbeing of the residents of such jurisdictions.

2. Verify that the eligible worker performs “essential work,” meaning work that:

- a. Work that is not performed while teleworking from a residence; and
- b. 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.

3. Confirm that the premium pay “responds to” workers performing essential work during the COVID-19 public health emergency. Workers may meet the definition of those who can receive premium pay without a written justification if they meet one of the following requirements:

- a. Eligible worker receiving premium pay is earning (with the premium included) at or 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 higher, on an annual basis; or
- b. Eligible worker receiving premium pay is not exempt from the Fair Labor Standards Act overtime provisions.

If a worker does not meet either of the above requirements, the recipient must submit written justification to Treasury detailing how the premium pay is otherwise responsive to workers performing essential work during the public health emergency.

This may include a description of the essential worker’s duties, health, or financial risks faced due to COVID-19, and why the recipient determined that the premium pay was responsive. Treasury anticipates that recipients will easily be able to satisfy the justification requirement for front-line workers, like nurses and hospital staff.

INFRASTRUCTURE

1. Water & Sewer

- a. The following projects are eligible under the broadened Final Rule, if they are found to be “necessary”.
 - i. Culvert repair, resizing, and removal, replacement of storm sewers, and additional types of stormwater infrastructure
 - ii. Infrastructure to improve access to safe drinking water for individuals served by residential wells, including testing initiatives, and treatment/remediation strategies that address contamination
 - iii. Dam and reservoir rehabilitation if primary purpose of dam or reservoir is for drinking water supply and project is necessary for provision of drinking water
 - iv. Broad set of lead remediation projects eligible under EPA grant programs authorized by the Water Infrastructure Improvements for the Nation (WIIN) Act, such as lead testing, installation of corrosion control treatment, lead service line replacement, as well as water quality testing, compliance monitoring, and remediation activities, including replacement of internal plumbing and faucets and fixtures in schools and childcare facilities

A “Necessary” investment in infrastructure must be:

- i. 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,
 - ii. a cost-effective means for meeting that need, taking into account available alternatives, and
 - iii. for investments in infrastructure that supply drinking water in order to meet projected population growth, projected to be sustainable over its estimated useful life.
- b. Projects under the EPA’s Clean Water State Revolving Fund (CWSRF) and Drinking Water State Revolving Fund (DWSRF) are generally presumed to be necessary investments.
 - i. Eligible projects under the CWSRF, and the Final Rule, include:
 1. Construction of publicly owned treatment works
 2. Projects pursuant to implementation of a nonpoint source pollution management program established under the Clean Water Act (CWA)
 3. Decentralized wastewater treatment systems that treat municipal wastewater or domestic sewage

4. Management and treatment of stormwater or subsurface drainage water
 5. Water conservation, efficiency, or reuse measures
 6. Development and implementation of a conservation and management plan under the CWA
 7. Watershed projects meeting the criteria set forth in the CWA
 8. Energy consumption reduction for publicly owned treatment works
 9. Reuse or recycling of wastewater, stormwater, or subsurface drainage water
 10. Security of publicly owned treatment works
- ii. Eligible drinking water projects under the DWSRF, and the Final Rule, include:
1. Facilities to improve drinking water quality
 2. Transmission and distribution, including improvements of water pressure or prevention of contamination in infrastructure and lead service line replacements
 3. New sources to replace contaminated drinking water or increase drought resilience, including aquifer storage and recovery system for water storage
 4. Green infrastructure, including green roofs, rainwater harvesting collection, permeable pavement
 5. Storage of drinking water, such as to prevent contaminants or equalize water demands
 6. Purchase of water systems and interconnection of systems
 7. New community water systems

2. Broadband Infrastructure

- a. Recipients should adhere to the following requirements when designing a broadband infrastructure project:
- i. Identify an eligible area for investment. Recipients are encouraged to prioritize projects that are designed to serve locations without access to reliable wireline 100/20 Mbps broadband service (meaning service that reliably provides 100 Mbps download speed and 20 Mbps upload speed through a wireline connection), but are broadly able to invest in projects designed to provide service to locations with an identified need for additional broadband investment. Recipients have broad flexibility to define need in their community. Examples of need could include:
 1. Lack of access to a reliable high-speed broadband connection
 2. Lack of affordable broadband

3. Lack of reliable service

If recipients are considering deploying broadband to locations where there are existing and enforceable federal or state funding commitments for reliable service of at least 100/20 Mbps, recipients must ensure that FRF 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 FRF funds will not be used for costs that will be reimbursed by the other federal or state funding streams.

- ii. Design project to meet high-speed technical standards. Recipients are required to design projects 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 geography or topography of the area to be served by the project, eligible projects may be designed to reliably meet or exceed 100/20 Mbps and be scalable to a minimum of symmetrical 100 Mbps download and upload speeds.

Treasury encourages recipients to prioritize investments in fiber-optic infrastructure wherever feasible and to focus on projects that will achieve last-mile connections. Further, Treasury encourages recipients to prioritize support for broadband networks owned, operated by, or affiliated with local governments, nonprofits, and co-operatives.

- iii. Require enrollment in a low-income subsidy program. Recipients must require the service provider for a broadband project that provides service to households to either:
 1. Participate in the FCC's Affordable Connectivity Program (ACP)
 2. Provide access to a broad-based affordability program to low-income consumers that provides benefits commensurate to ACP

Treasury encourages broadband services to also include at least one low-cost option offered without data usage caps at speeds sufficient for a household with multiple users to simultaneously telework and engage in remote learning. Recipients are also encouraged to consult with the community on affordability needs.

TIMELINE FOR USE OF FUNDS

1. Funds must be used for costs incurred on or after March 3, 2021.
2. Funds must be obligated by December 31, 2024.
 - a. The term “obligated” is defined as “an order placed for property and services and entering into contracts, subawards, and similar transactions that require payment.”
3. Funds must be expended by December 31, 2026.

REQUIRED REPORTING

Recipients of FRF Funds were required to submit a one-time Interim Report by August 31, 2021, outlining specific expenditures by category level. The Final Rule requires a Project and Expenditure Report be submitted by recipients, but the first due date and frequency of follow-up reports is divided into two categories.

1. States, U.S. territories, Tribal governments that received more than \$30 million in funding, and metropolitan cities and counties with a population that exceeds 250,000 residents or have less than 250,000 residents but have been allocated more than \$10 million in funding:
 - a. Must submit the Project and Expenditure Report by January 31, 2022.
 - b. Are required to submit subsequent Project and Expenditure Reports quarterly, thirty days after the end of each quarter.
2. Tribal governments that receive less than \$30 million in funding, metropolitan cities and counties with a population below 250,000 residents which have been allocated less than \$10 million in funding, and non-entitlement units of local government:
 - a. Must submit the Project and Expenditure Report by April 30, 2022.
 - b. Are required to submit subsequent Project and Expenditure Reports annually, with a due date of every April 30th each year.

Similar to the Interim Report, entities will be submitting this report through the Treasury’s Portal, but the forms look different because the Project and Expenditure Report requires additional information. On January 24, 2022, The Department of the Treasury issued the [Project and Expenditure Report User Guide](#), which outlines how to navigate each step of the Report.