

# American Rescue Plan

## State and Local Fiscal Recovery Funds-

### Accounting and Auditing

Presented by:

Meghan Needham,  
Partner – CPA, CFE



# What We Will Cover in This Session

- Overview
- Key Principles, eligible uses, timing
- Uniform Guidance
- Resources
- Roundtable Discussion of Lessons Learned from the CARES Act
- Q&As

# What This Session is Not

- The Final Treasury Guidance (NOT YET RELEASED)
- I am not a lawyer nor am I able to give you legal advice (my lawyer made me write this)
- Guidance does not apply to Coronavirus Relief Fund established by the CARES ACT



# OVERVIEW

On March 11, 2021, the American Rescue Plan Act was signed into law, and established the Coronavirus State Fiscal Recovery Fund and Coronavirus Local Fiscal Recovery Funds, which together make up the Coronavirus State and Local Fiscal Recovery Funds (“SLFRF”) program.

This program is intended to provide support to State, territorial, local, and Tribal governments in responding to the economic and public health impacts of COVID-19 and in their efforts to contain impacts on their communities, residents, and businesses.

# Key Principles

Recipients and Subrecipients are first line of defense

- Funds not used for ineligible purposes
- No Fraud, Waste and Abuse

Question:

- What are ways you can ensure this key principle is achieved?

# Key Principles

Response to urgent community needs with:

- Swift and effective implementation
- Simple and rapid program access widely across the community
- Balances with robust documentation and compliance regime

Question:

- Can these three objectives all be met together? What are some challenges and potential stumbling blocks?

# Key Principles

Advance shared interests and promote equitable delivery of government benefits and opportunities to underserved communities

Transparency and public accountability

# Eligible Uses – 4 Categories

- Respond to COVID 19 public health emergency or negative economic impact
- Premium pay to workers performing essential work during COVID 19
- Government services (to the extent of the reduction in revenue due to COVID 19)
- Investments in water, sewer, or broadband infrastructure

# Timing

Costs incurred between March 3, 2021 and December 31, 2024 and spent by December 31, 2026 (with exceptions)

-Household assistance can be for costs incurred by the household prior to March 31, 2021 (but not paid by the government until after)

-Premium pay can be for work performed prior to March 31, 2021

-Revenue loss includes the 12 month period ending December 31, 2020

-Investments in water, sewer, and broadband can be for projects started or planned prior to March 3, 2021 – but not for costs incurred prior to March 3, 2021.

# Best Practices in Grants Management

- Effective Communication
- Team Building
- Grants Management Plan
- Adherence to Reporting Obligations
- Internal Guidelines and Rules for Management Grants
- Quality Review / Quality Control
- Accountability and Transparency
- Compliance

# Uniform Administrative Requirements

## 2 CFR Part 200

- Allowable Activities
  - Organization must develop and implement effective internal controls to ensure funding decisions under the SLFRF award constitute eligible uses of funds
  - ***Document determination***
  - Program requirements include Treasury's Interim Final Rule and recipient's Award Terms and Conditions

# Uniform Administrative Requirements

## 2 CFR Part 200

- Allowable Costs
  - Robust internal controls and effective monitoring to ensure compliance with the Cost principles
  - Effective administration of Federal Awards
  - Application of sound management practices
  - Administration of Federal funds in a manner consistent with program objectives and terms and conditions of the award.

# Uniform Administrative Requirements

## 2 CFR Part 200

- Allowable Costs
  - Administrative costs are allowed
    - Can include costs of consultants for effective management and oversight (legal and regulatory)
  - Direct costs (contract support, materials, supplies)
  - Indirect costs (facilities or administrative functions)
  - Can use the de minimis rate of 10 percent (2 CFR 200.414(f) or Federal Negotiated Indirect Cost Rate Agreement (NICRA))
  - Employee wages, salaries and covered benefits

# Internal Controls Best Practices

Best Practice	Description	Example
<b>Written policies and procedures</b>	Formal documentation of recipient policies and procedures	Documented procedure for determining worker eligibility for premium pay
<b>Written standards of conduct</b>	Formal statement of mission, values, principles, and professional standards	Documented code of conduct / ethics for subcontractors
<b>Risk-based due diligence</b>	Pre-payment validations conducted according to an assessed level of risk	Enhanced eligibility review of subrecipient with imperfect performance history
<b>Risk-based compliance monitoring</b>	Ongoing validations conducted according to an assessed level of risk	Higher degree of monitoring for projects that have a higher risk of fraud, given program characteristics
<b>Record maintenance and retention</b>	Creation and storage of financial and non-financial records.	Storage of all subrecipient payment information.

# Cash Management

- Payments are NOT subject to 31 CFR Part 205 or 2 CFR 200.305(b)(8)-(9)
  - Funds CAN be in an interest bearing account
  - Interest does not need remitted to Federal Treasury
  - Interest is not limited to eligible uses under SLFRF award

# Procurement

## Procurement "Claw" (Sections 200.317-326)



# Procurement

2 CFR 200.317 through 2 CFR 200.327

- Full and Open Competition

- Infrastructure for competitive bidding and contract oversight – including written standards of conduct and prohibitions on dealing with suspended or debarred parties

- Adherence to local, state and federal procurement laws

# Eligibility

- Develop and implement policies and procedures to determine and monitor implementation of criteria for determining eligibility
- Risk based due diligence
- Maintain sam.gov registration
- Record retention

# Reporting Requirements

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			Not required
Metropolitan cities and counties with a population below 250,000 residents which received less than \$5 million in SLFRF funding		By October 31, 2021, and then annually thereafter <sup>11</sup>	
NEUs	Not required		

# Subrecipient Monitoring

- Clearly identify to subrecipient:
  - Award is a subaward of the SLFRF funds
  - Any and all compliance requirements for the use of SLFRF funds
  - Any and all report requirements for expenditures of SLFRF funds
- Evaluate subrecipient risk of noncompliance (common factors)
- Ongoing monitoring, identification of deficiencies, follow-up to ensure appropriate remediation
- Written policies and procedures for subrecipient monitoring and risk assessment
- Maintenance of records and documentation of subrecipient monitoring

# Other Areas of 2 CFR 200

- **Equipment and Real Property** (2 CFR Part 200 Subpart D)
- **Matching, Level of Effort, Earmarking** - no matching, level of effort or earmarking
- **Program Income** — 2 CFR 200.307(e)(1) — additional guidance expected regarding program income and lending programs. Stay tuned.
- **Special Tests and Provisions** — Final rule expected soon — public comments closed July 16, 2021. Treasury can add clarifications to implementation guidance
- **Record Retention**

# Relevant FAQs (July 14, 2021)

2.3. If a use of funds is not explicitly permitted in the Interim Final Rule as a response to the public health emergency and its negative economic impacts, does that mean it is prohibited?

The Interim Final Rule contains a non-exclusive list of programs or services that may be funded as responding to COVID-19 or the negative economic impacts of the COVID-19 public health emergency, along with considerations for evaluating other potential uses of Fiscal Recovery Funds not explicitly listed. The Interim Final Rule also provides flexibility for recipients to use Fiscal Recovery Funds for programs or services that are not identified on these non-exclusive lists but which meet the objectives of section 602(c)(1)(A) or 603(c)(1)(A) by responding to the COVID-19 public health emergency with respect to COVID-19 or its negative economic impacts.

# Relevant FAQs (July 14, 2021)

6.17. Are eligible infrastructure projects subject to the Davis-Bacon Act? [7/14]

The Davis-Bacon Act requirements (prevailing wage rates) do not apply to projects funded solely with award funds from the CSFRF/CLFRF program, except for CSFRF/CLFRF-funded construction projects undertaken by the District of Columbia. The Davis-Bacon Act specifically applies to the District of Columbia when it uses federal funds (CSFRF/CLFRF funds or otherwise) to enter into contracts over \$2,000 for the construction, alteration, or repair (including painting and decorating) of public buildings or public works. Recipients may be otherwise subject to the requirements of the Davis-Bacon Act, when CSFRF/CLFRF award funds are used on a construction project in conjunction with funds from another federal program that requires enforcement of the Davis-Bacon Act. Additionally, corollary state prevailing-wage-in-construction laws (commonly known as “baby Davis-Bacon Acts”) may apply to projects. Please refer to FAQ 4.10 concerning projects funded with both CSFRF/CLFRF funds and other sources of funding.

# Relevant FAQs (July 14, 2021)

- Treasury has indicated in its Interim Final Rule that it is important that necessary investments in water, sewer, or broadband infrastructure be carried out in ways that produce high-quality infrastructure, avert disruptive and costly delays, and promote efficiency. Treasury encourages recipients to ensure that water, sewer, and broadband projects use strong labor standards, including project labor agreements and community benefits agreements that offer wages at or above the prevailing rate and include local hire provisions, not only to promote effective and efficient delivery of high-quality infrastructure projects, but also to support the economic recovery through strong employment opportunities for workers. Using these practices in construction projects may help to ensure a reliable supply of skilled labor that would minimize disruptions, such as those associated with labor disputes or workplace injuries. Treasury has also indicated in its reporting guidance that recipients will need to provide documentation of wages and labor standards for infrastructure projects over \$10 million, and that that these requirements can be met with certifications that the project is in compliance with the Davis-Bacon Act (or related state laws, commonly known as “baby Davis-Bacon Acts”) and subject to a project labor agreement. Please refer to the Reporting and Compliance Guidance, page 21, for more detailed information on the reporting requirement.

# Relevant FAQs (July 14, 2021)

## 9.1 What records must be kept by governments receiving funds?

- Financial records and supporting documents related to the award must be retained for a period of five years after all funds have been expended or returned to Treasury, whichever is later. This includes those which demonstrate the award funds were used for eligible purposes in accordance with the ARPA, Treasury's regulations implementing those sections, and Treasury's guidance on eligible uses of funds.

# Relevant FAQs (July 14, 2021)

6.4. Does the National Environmental Policy Act (NEPA) apply to eligible infrastructure projects?

NEPA does not apply to Treasury's administration of the Funds. Projects supported with payments from the Funds may still be subject to NEPA review if they are also funded by other federal financial assistance programs.

# Relevant FAQs (July 14, 2021)

10.1. May governments retain assets purchased with Fiscal Recovery Funds? If so, what rules apply to the proceeds of disposition or sale of such assets?

Yes, if the purchase of the asset was consistent with the limitations on the eligible use of funds. If such assets are disposed of prior to December 31, 2024, the proceeds would be subject to the restrictions on the eligible use of payments.

# Relevant FAQs (July 14, 2021)

4.9. May recipients pool funds for regional projects? [7/14]

Yes, provided that the project is itself an eligible use of funds and that recipients can track the use of funds in line with the reporting and compliance requirements of the CSFRF/CLFRF. In general, when pooling funds for regional projects, recipients may expend funds directly on the project or transfer funds to another government that is undertaking the project on behalf of multiple recipients. To the extent recipients undertake regional projects via transfer to another government, recipients would need to comply with the rules on transfers specified in the Interim Final Rule, Section V. A recipient may transfer funds to a government outside its boundaries (e.g., county transfers to a neighboring county), provided that the recipient can document that its jurisdiction receives a benefit proportionate to the amount contributed.

# RESOURCES

The Ohio Grants Partnership

<https://grants.ohio.gov/fundingopportunities.aspx#funding-opportunities-arpa>

US Department of Treasury Coronavirus State and Local Fiscal Recovery Funds Site

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

Ohio Auditor of State COVID-19 Resources for Local Government

[https://ohioauditor.gov/resources/COVID19\\_assistance.html](https://ohioauditor.gov/resources/COVID19_assistance.html)



# RESOURCES

SLFRF Implementing Regulations

<https://www.govinfo.gov/content/pkg/FR-2021-05-17/pdf/2021-10283.pdf>

Uniform Guidance 2 CRF Part 200

<https://ecfr.federalregister.gov/current/title-2/subtitle-A>

[https://www.whitehouse.gov/wp-content/uploads/2020/08/2020-Compliance-Supplement\\_FINAL\\_08.06.20.pdf](https://www.whitehouse.gov/wp-content/uploads/2020/08/2020-Compliance-Supplement_FINAL_08.06.20.pdf)

Assistance Listing Number (formerly known as CFDA number)

<https://sam.gov/fal/7cecfdef62dc42729a3fdcd449bd62b8/view>

# Discussion Questions

- What is something unique or highly successful that your organization implemented related to the management of the CARES Act funding?
- Any areas that were not as successful or stumbling blocks?
- What is something you are planning to do different for this funding opportunity?
- If you were to retire tomorrow – best piece of advice for someone filling your role?



thank you!

**Meghan Needham**  
**[mneedham@jginc.biz](mailto:mneedham@jginc.biz)**  
**614-846-1899**

**JG** | Julian  
& Grube