

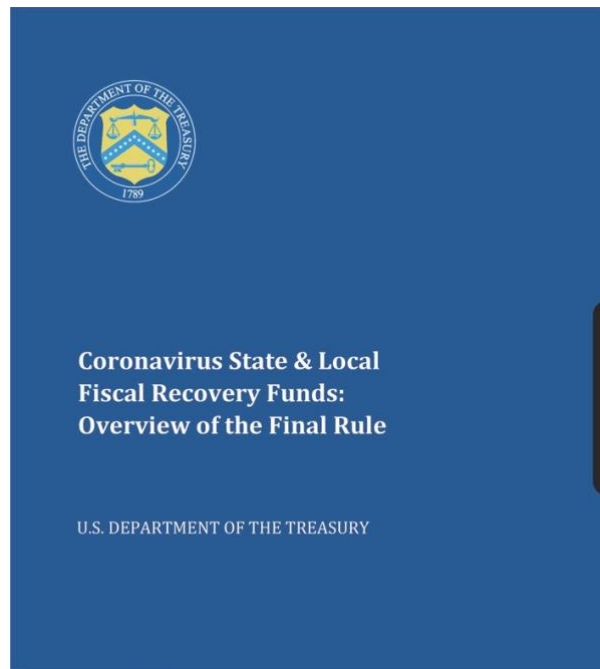
Capitol Contact

Virginia General Assembly

Virginia Association of Counties • 1207 E. Main Street, Suite 300 • Richmond, VA 23219
www.vaco.org • 804.788.6652

Tuesday, January 11, 2022

Treasury Releases Final Rule for Fiscal Recovery Fund Implementation



January 2022

The U.S. Department of Treasury released the Final Rule for implementation of the Coronavirus State and Local Fiscal Recovery Fund on January 6. The Final Rule, which may be found at [this link](#), makes several significant changes to the Interim Final Rule in response to public comment on the rule that Treasury received in summer 2021.

Treasury's overview of the key changes to the rule may be found at [this link](#). Treasury is holding several webinars on the Final Rule, and recordings of these briefings will be posted on Treasury's website.

Following is an overview of key revisions and clarifications in the Final Rule:

Responding to the public health emergency or its negative economic

impacts: This category includes spending on public health, assistance to households, assistance to small businesses, assistance to nonprofits, aid to impacted industries, and public sector capacity. The Final Rule has been reorganized to provide a non-exhaustive list of eligible uses for these categories, as well as a method for determining whether a potential use not included in Treasury's list is allowable. The Final Rule stipulates that in order to determine whether a use of funds not enumerated in the rule is allowable under this category, a recipient of funds must identify other populations or groups, beyond those presumed eligible, that experienced pandemic impacts or disproportionate impacts and other programs, services, or capital expenditures, beyond those enumerated, to respond to those impacts; responses must be related and reasonably proportional to the extent and type of impact or harm experienced.

Public health, assistance to households, and assistance to small businesses: While the general public may be presumed to be impacted by the public health emergency for the purposes of providing certain public health interventions (COVID-19 mitigation and behavioral health), certain populations, businesses, or nonprofits may be presumed to be "impacted" or "disproportionately impacted" for purposes of determining other eligible uses of funding. In addition to these presumptively eligible populations, Fiscal Recovery Fund recipients may demonstrate a public health or negative economic impact on a class and provide assistance to beneficiaries that fall within that class (for example, demonstrating that downtown restaurants had generally experienced a negative economic impact and providing assistance to those small businesses).

Under this broad category, the final rule clarifies that certain capital projects that respond to the public health or negative economic impacts of the pandemic are eligible capital expenditures, subject to the general rules for capital expenditures (discussed below).

Aid to impacted industries: The final rule details how an industry may be designated as "impacted." Industries in the travel, tourism, or hospitality sector are considered to be impacted. Other industries may be defined as impacted if the industry experienced at least 8 percent employment loss from pre-pandemic levels, or is experiencing comparable or worse economic impacts as the national tourism, travel, and hospitality industries that are generally due to the COVID-19 public health emergency.

Public sector capacity: Treasury is clarifying that recipients will be permitted to fund the full payroll and covered benefits of public health and public safety staff who are primarily dedicated to COVID-19 response throughout the period of performance for the SLFRF program, though recipients should periodically reassess their determination of “primarily dedicated” staff as the pandemic evolves. The final rule also allows additional options for restoring public sector employment: recipients may hire employees to fill the same positions that existed on January 27, 2020, but were unfilled or eliminated as of March 3, 2021, or may hire up to a pre-pandemic baseline “that is adjusted for historic underinvestment in the public sector,” in accordance with a formula spelled out in the final rule. Recipients may also provide additional funds for employees who experienced pay cuts or were furloughed, maintain current compensation levels to avoid layoffs, provide worker retention incentives, and cover administrative costs related to hiring.

Capital expenditures responding to the public health and negative economic impacts of the pandemic: In addition to identifying and designing a response to a pandemic harm, projects with expected capital expenditure costs of \$1 million or greater must be justified via additional analysis and written justification (to include an independent assessment demonstrating why a capital expenditure is appropriate, as well as a comparison of the proposed capital expenditure against alternative capital expenditures). Projects with costs of \$10 million or more must also provide written justification as part of regular reporting to Treasury.

Replacement of lost public sector revenue: In response to concerns about the complexity of calculating lost revenues in accordance with the formula included in the interim final rule, the final rule includes an option for recipients to use a standard allowance of up to \$10 million for the period of performance in lieu of calculating revenue loss (not to exceed the recipient’s total award allocation). Funds under this category may be used flexibly to provide government services, subject to certain restrictions, such as the prohibition against using funds for debt service or deposits into rainy day funds.

If recipients opt to continue to use the revenue loss formula, the final rule now allows recipients that operate utilities that are part of their own government to choose whether to include revenue from these utilities in their revenue loss calculation. The final rule also allows the option to calculate revenue loss at the end of the fiscal year rather than at the end of the calendar year (a request made by VACo and others for ease of administration). Revenue loss calculations must exclude the value of tax policy changes (tax cuts and tax increases) adopted after January 6, 2022. Revenue loss calculations may exclude the effect of tax increases enacted prior to the adoption of the final rule, but if this option is exercised, recipient must also remove the effect of tax reductions

enacted before the adoption of the final rule. Treasury has revised the growth rate that may be assumed in calculating revenues against a counterfactual scenario in which the pandemic did not occur (from 4.1 percent to 5.2 percent).

Premium pay: The final rule largely preserves the provisions of the interim final rule (workers qualify for premium pay if they are an eligible worker performing essential work, as defined in the rule, and the pay must “respond to” workers performing essential work during the public health emergency). Under the interim final rule, a written justification of how the premium pay was responsive was required if the worker’s pay was above a wage threshold. The final rule adds a mechanism by which a recipient may show that premium pay responds to eligible workers performing essential work (by demonstrating that the eligible worker is not exempt from the overtime provisions of the Fair Labor Standards Act) – so that a written justification is only necessary if the worker’s pay exceeds the percentage of the average annual wage set out in the final rule and the worker is exempt from FLSA overtime. The final rule makes clear that the cap of \$25,000 per employee applies to the entire period of performance (not each year), and clarifies that premium pay may not be awarded to volunteers. The final rule also provides that SLFRF funds may not be used to reimburse a recipient or eligible employer grantee for premium pay or hazard pay already received by the employee.

Water and sewer infrastructure: The final rule expands eligibility to include lead remediation projects that are eligible under certain programs established under the Water Infrastructure Improvements for the Nation Act, assuming these projects are deemed to be necessary investments (responsive to an identified need, a cost-effective means of meeting that need, and sustainable over their useful lives). Treasury explains, “[e]ligible projects under these programs include the installation or re-optimization of corrosion control treatment, replacing lead service lines, replacing galvanized pipes downstream of a lead service line...and maintaining an inventory of the drinking water system’s service lines.” Water quality testing and remediation activities in schools and child care facilities are also eligible uses of funds. For lead service line replacement projects, Treasury is requiring that recipients replace the full length of the service line, and not just a partial portion.

The final rule also expands eligible uses to include stormwater system infrastructure projects regardless of whether there is an expected water quality benefit from the project. Treasury writes, “Treasury anticipates that this eligible use will allow recipients to manage increased volumes of stormwater as a result of changes to the climate. For example, the final rule now permits the use of SLFRF funds for the repair, replacement, or removal of culverts or other road-stream crossing infrastructure to the extent the purpose of the project is to manage stormwater.”

The final rule also allows infrastructure projects that improve access to and provision of safe drinking water for individuals served by residential wells, such as rehabilitation of private wells, testing initiatives to identify contaminants in wells, and treatment and remediation strategies to address contamination. The final rule also provides that funds may be used for rehabilitation of dams and reservoirs, “if that primary purpose of the dam or reservoir is for drinking water supply and the rehabilitation project is necessary for continued provision of drinking water supply.”

Broadband infrastructure: The final rule expands eligible investments to encourage prioritization of projects that are designed to serve locations without access to reliable wireline 100 Mbps download speed and 20 Mbps upload speed (rather than locations without access to speeds of 25 Mbps download/3 Mbps upload, as in the Interim Final Rule required). Recipients may identify other eligible areas with a need for additional broadband infrastructure investment, which would include but not be limited to a lack of broadband service reliably delivering certain speeds. Recipients have flexibility to identify need (“examples of need include lack of access to a connection that reliably meets or exceeds symmetrical 100 Mbps download and upload speeds, lack of affordable access to broadband service, or lack of reliable broadband services.”). Recipients must require the broadband service provider to participate in a qualifying affordability plan.

Effective date: The final rule takes effect on April 1, 2022; the interim final rule remains in effect until that time. However, recipients may take advantage of the provisions of the final rule ahead of the effective date; Treasury has stated that it “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.” Further details about the transition to the final rule may be found in Treasury’s “Statement Regarding Compliance with the Coronavirus State and Local Fiscal Recovery Funds Interim Final Rule and Final Rule,” which may be found at [this link](#).

VACo Contact: [Katie Boyle](#)

2022 General Assembly Convenes January 12 – Look for Capitol Contact on Tuesdays and Thursdays

The 2022 General Assembly session will begin next week as legislators will deliberate on many issues of critical importance to local government, including

the state budget, broadband, education funding, economic development, public safety, taxes and other policy matters.

VACo will continually provide updates during the session through [Capitol Contact](#). VACo Members – To ensure that you are receiving Capitol Contact, please send [Gage Harter](#) your best email address.

Capitol Contact will be published every Tuesday and Thursday. In addition, VACo will email and text Capitol Contact Alerts to County Officials on important issues before they are heard by select committees.

Please check [VACo's website](#) and the [General Assembly webpage](#) often to get the latest information and bill updates. Also, be on the lookout for legislative podcasts and videos with state lawmakers and VACo Staff. VACo will continue to release its newsletter, [County Connections](#), around the first and 15th of each month.

And be sure to attend [VACo's Local Government Day](#) on Thursday, February 3. We've invited Governor-Elect Glenn Youngkin to speak. VACo Staff also will give legislative reports and encourage local leaders to advocate on behalf of localities. Be a part of the legislative process at the 2022 General Assembly Session.

VACo Contact: [Dean Lynch](#)

Advocate for your locality at the VACo Local Government Day

In Partnership with VML, VAPDC and the Virginia Rural Center

Thursday, February 3, 2022 | [Omni Richmond Hotel](#) | [REGISTRATION FORM](#) | [REGISTER ONLINE](#)

Local Government Day

It's a day for all of us. Counties. Cities. Towns. Planning Districts. It's a day for us to learn how the decisions being made by the General Assembly might affect us. And it's a day to make our voices heard. Attend Local Government Day. Then visit the Capitol to

meet with your legislators and observe committee meetings. Later join us for a reception.

Registration Fee

\$100 Day Briefing only (Noon – 2pm)

\$100 Reception only (530pm)

\$150 for both | \$175 late registration

Agenda

- Welcome, Introductions, and Lunch
- Governor-Elect Glenn Youngkin (Invited)
- Team Legislative Reports
- Visit Capitol to speak with Legislators
- Legislative Reception

For information on how to reach your representatives, see the [Virginia House of Delegates](#) and the [Senate of Virginia](#) member websites. Find information about VACo's positions in the [2022 Legislative Program](#). We will distribute the Local Government Day Bulletin before the event.

Be a part of the legislative process at the 2022 General Assembly Session.

Register for the event at [VACo Local Government Day Online](#) or fax the [Registration Form](#) to 804.788.0083.

Hotel Reservation Details

Lodging costs are not covered in the registration fee. Local Government Day is held at the Omni Richmond Hotel, 100 South 12th Street, Richmond, VA 23219. Room rates start at \$162 (single room occupancy). To reserve a hotel room, call 804.344.7000 by January 24, 2022, with this code: **Government Legislative Day 2022 Group** or reserve a room at this [Omni Richmond Hotel link](#).

VACo Contact: [Valerie Russell](#)