Important Guidance on the State and Local Fiscal Recovery Funds Program

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One thing we can all say is that the pandemic continues to have rippling effects on state, local, and tribal governments, many of whom are still struggling with the economic and public health impacts of COVID-19. In response, the American Rescue Plan Act, which was signed into law on March 11, 2021, established the Coronavirus State and Local Fiscal Recovery Funds ("SLFRF") program. Additional guidance has recently been released for this program regarding eligible uses, reporting requirements, and other award terms and conditions through the issuance of the Final Rule, the US Department of Treasury Compliance and Reporting Guidance, and most recently the Treasury's Technical Update.

Receipts of SLFRF awards – primarily states, cities, towns and counties – are given a large amount of trust and discretion in how they want to use the funds in order to accommodate the needs of their citizens. Statute allows for the funds to be used in alignment with four main categories:

- To respond to the COVID-19 public health emergency or its negative economic impacts, including providing assistance to impacted households, small businesses, and non-profit organizations. The Final Rule also allows for recipients to use SLFRF funds to invest in certain capital expenditures.
- To respond to workers performing essential work during the public health emergency, including premium pay or grants. Any premium pay must be in addition to wages already received, and the work must have been performed prior to March

3, 2021. The Treasury has clarified that this category must server workers who earn at or below 150 percent of their state or county's average annual wage, and are not exempt from Fair Labor Standards Act overtime rules. (Capped at $13/hour and $25,000/person)

- For the provision of government services, to the extent of the reduction in revenue due to the public health emergency, *relative to revenues collected in the most recent full fiscal year prior to the emergency*.
- To make necessary investments in water, sewer, or broadband infrastructure.

This funding source is considerably more flexible than some other COVID-19 relief funds, as it allows recipients to obligate funds for both prior and future costs – although each category has its own stipulations. Let's revisit that third one, because it is probably the one that is most "open" in terms of eligible costs. The definition of government services is broad, although there are still guidelines for eligible uses of the funds. The Treasury's Final Rule established an option for Non-entitlement Units of local governments (NEU's), to select between a standard amount of revenue loss – up to $10 million, not to exceed the award amount – or to complete a full revenue loss calculation. Refer to the Overview of the Final Rule provided by the Treasury for instructions on how to perform that calculation. Remember that, for purposes of the Schedule of Expenditures of Federal Awards (SEFA), recipients would still report the aggregate current year expenditures for all four eligible use categories, rather than the amount of revenue replacement.

One unique aspect of that the 3rd eligible expenditure category is that unlike most federal awards, you can, in certain circumstances, use SLFRF funds to meet matching requirements for another federal program. You should check with the awarding agency of the other program prior to using the funds in such a way. Keep in mind that this only applies to the revenue-loss expenditure category. If you have funds earmarked for premium pay, or for broadband investments, for example, then they cannot be used as a non-federal match.

Next, let's discuss the expenditure category that allows for investments in water, sewer, or broadband infrastructure. The Treasury's Final Rule has expanded eligibility for these projects, many of which were restricted under the previous interim rule. Now, SLFRF funds may be used for drinking water projects to support anticipated population growth, for lead remediation projects, and stormwater management projects. Eligible broadband expansions are no longer limited to underserved communities; therefore, recipients can use SLFRF awards to enhance or provide service of sufficient speed to any locations where the recipient has identified a need for additional investment. Recipients are encouraged, however, to invest specifically in locations without reliable service. For any infrastructure project, recipients will have to provide more detailed programmatic data to Treasury to demonstrate the impact of each project.

The Treasury's Final Rule also provides additional guidance related to administrative costs. Both direct and indirect costs are allowable to the extent that the costs are reasonable and allocable. Direct costs include things like supplies and materials for a specific project, while indirect costs are general overhead costs that can be allocated to the SLFRF award. Some common examples of indirect costs are things like rent and utilities expenses for your organization's building, or perhaps a portion of the salaries, wages, and benefits related to certain administrative personnel. If a recipient does not have a negotiated and approved indirect cost rate agreement, then they may use the de minimis rate of 10 percent of the modified total direct costs. Remember to not “double dip” by charging the same administrative costs to both direct and indirect cost categories, or to other programs.

Several other compliance requirements are covered in the Final Rule. Two of the more significant requirements covered relate to reporting and procurement. There are three types of reporting requirements for the SLFRF program, and whether or not you have to complete the reports depends on certain reporting thresholds, such as the population size of your organization, and the amount of your SLFRF award. The three reports are 1) the Interim Report, a one-time report which is filled out at the onset of funding and provides an overview of uses of funding, 2) the Project and Expenditure Report, which reports on projects funded and to-date expenditures, including other information, and 3) the Recovery Plan Performance Report, which provides information to demonstrate program outcomes. Refer to Table 2 in the Compliance and Reporting Guide for more detailed information on reporting requirements by recipient type. Each organization falls into a specific tier which affects the reporting requirements. Refer to the Treasury website for a full listing of Tier assignments to grantees. In order to ensure your organization is compliant with these requirements, special care should be taken to appropriately maintain accounting records for compiling and reporting financial data, in accordance with appropriate accounting standards and principles. Either the cash or accrual basis may be utilized for expenditures for these reporting purposes. Based on the period of performance, these reports will continue to be collected through April 30, 2027, so make sure to stay on top of them! More detailed information on the components of these reports, as well as submission timelines, is available in the Final Rule and the Compliance and Reporting Guidance.

As for procurement – recipients of SLFRF funds are required to conduct all procurement transactions for property or services that ensures full an open competition in accordance with Uniform Guidance procurement requirements. These requirements can be sidestepped only if at least one of the following conditions applies: if the item is below the micro-purchase threshold, if the item is only available from a sole source, if the public emergency will not permit the delay involved from a competitive bid process, or if, after solicitation of numerous sources, competition is deemed to be inadequate. Of course, in addition to Uniform Guidance, your organization must ensure adherence to all applicable State and local procurement regulations.

The SLFRF funds can be used on eligible costs incurred through December 31, 2024, provided that the obligations incurred by that date are ultimately expended by December 31, 2026.

Lastly, Treasury recently collaborated with various governmental agencies and public accounting associations to provide relief from single audit requirements for some small governments. Direct recipients that normally would not have exceeded the $750,000 threshold without SLFRF expenditures, are eligible to elect to have a compliance examination engagement in lieu of a single audit. More information will be provided on this alternative in a future article.

As you can see, SLFRF funds have the potential of having a significant impact on your organization’s fiscal recovery from the public health emergency. The Final Rule went into effect April 1, 2022 (although early implementation was permitted), and it is important for your organization to fully understand the expansions and flexibilities provided in the rule prior to obligating the funds. We recommend you read it in its entirety, and reach out to us at HeinfeldMeech if you have questions!

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