



Policy: American Rescue Plan Act of 2021 – Coronavirus State and Local Fiscal Recovery Funds – Subrecipient Selection Policy

Policy Owner: CAO – Administrative Office

Approval Date: February 1, 2022 (Fresno County Board of Supervisors)

Policy Purpose: This policy has been developed to guide the County of Fresno through the process of allocating Coronavirus State and Local Fiscal Recovery Funds to subrecipients to carry out eligible programs or projects on behalf of the County (also known as external projects).

Background

On March 11, 2021, the American Rescue Plan Act of 2021 (H.R. 1319) (ARPA) 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. The SLFRF program provides local fiscal aid to support urgent COVID-19 response efforts, cover increased expenditures, replenish lost revenue, and mitigate economic harm from the COVID-19 pandemic.

Per the SLFRF Compliance and Reporting Guidance, recipients of SLFRF awards have substantial discretion to use the award funds, if their use fits into one of the following statutory categories:

- 1) To respond to the COVID-19 public health emergency or its negative economic impacts, including assistance to households, small businesses, and nonprofits, or aid to impacted industries such as tourism, travel, and hospitality;
- 2) 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;
- 3) For the provision of government services, to the extent of the reduction in revenue 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
- 4) To make necessary investments in water, sewer, or broadband infrastructure.

The County must ensure all SLFRF awarded are used in compliance with the U.S. Department of Treasury's (Treasury) Interim Final Rule (Interim Final Rule), which was adopted to implement the eligible use categories above, and restrictions on the use of funds under the SLFRF program. On January 6, 2022, Treasury issued a Final Rule (Final Rule), which will be effective April 1, 2022. The Interim Final Rule is binding and effective for the use of the SLFRF until April 1, 2022. Any requirements in the Final Rule that are not in effect under the Interim Final Rule do not apply to funds used (i.e., obligated or expended) under the Interim Final Rule before

April 1, 2022. However, the County may take advantage of the Final Rule's flexibilities and simplifications prior to the Final Rule effective date, and Treasury 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 are used. Refer to Appendix 1 for example uses of funds and Appendix 2 for expenditure categories.

Eligible Costs Timeframe

Recipients of SLFRF awards, including the County, must use funds to cover eligible costs incurred during the period that begins on March 3, 2021 and ends on December 31, 2024. Award funds for obligations incurred by December 31, 2024 must be expended by December 31, 2026. Any award funds not obligated or expended by such timelines must be returned to Treasury.

Ineligible Uses

Treasury's Interim Final Rule and Final Rule provide information on restrictions on the use of SLFRF. Ineligible uses of SLFRF are as follows:

1. Recipients may **not** deposit SLFRF into a pension fund;
2. Recipients may **not** use SLFRF as non-Federal match where prohibited;
3. Recipients may **not** use SLFRF directly to service debt;
4. Recipients may **not** use SLFRF to satisfy a judgement or settlement;
5. Recipients may **not** use SLFRF to replenish financial reserves or contribute to a "rainy day" fund;
6. General infrastructure spending is **not** covered as an eligible use outside of water, sewer, and broadband investments or above the amount allocated under the revenue loss provision;
7. Uses of funds may **not** contravene the conflict of interest requirements;
8. Uses of funds may **not** conflict with the overall statutory purpose of the ARPA to reduce the spread of COVID-19. The County may not use SLFRF for a program, service, or capital expenditure that includes a term or condition that undermines efforts to stop the spread of COVID-19.

Uniform Administrative Requirements

The SLFRF awards are generally subject to the requirements set forth in Part 200 of Title 2 of the Code of Federal Regulations (Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards), often referred to by the short-hand terms of "2 CFR 200" or the "Uniform Guidance." As such, the County, and its subrecipients, must comply with all applicable requirements of 2 CFR 200.

Definition of Subrecipients

This policy guides the County's process for allocating SLFRF awards to subrecipients to carry out eligible programs or projects on behalf of the County.

The Final Rule clarifies that if the County is providing SLFRF to an individual or entity for the purpose of carrying out an SLFRF program or project on behalf of the County, then that individual or entity is acting as a subrecipient.

If the County is providing funds to an individual or entity for the purpose of directly benefitting that individual or entity as a result of experiencing a public health impact or negative economic impact of the pandemic, then that individual or entity is acting as a beneficiary, not a subrecipient.

The County expects that beneficiaries will receive funds through programs or projects that are operated by the County or through programs or projects that are operated on behalf of the County by subrecipients that are selected according to this policy.

Subrecipient Monitoring

Per the SLFRF Compliance and Reporting Guidance, the County is accountable to Treasury for oversight of its subrecipients, and the County must ensure it and its subrecipients comply with all requirements of 2 CFR 200.

The County must ensure subrecipients comply with the SLFRF statute, SLFRF Award Terms and Conditions, the Interim Final Rule, the Final Rule, and reporting requirements, as applicable, in distributing SLFRF to beneficiaries. The County will develop a Subrecipient Monitoring Policy to provide guidelines for monitoring subrecipients of federal awards.

Subrecipient Eligibility

Subrecipients of SLFRF through the County must be a legal entity incorporated or registered and in good standing to do business within the State of California. Eligible subrecipients must also:

- Possess the Technical/Managerial/Fiscal (TMF) abilities associated with the documentation and reporting of receiving federal funds, and
- If applicable, possess an active registration with the System for Award Management (SAM) (<https://www.sam.gov>); and
- Maintain records and financial documents for a period of five (5) years after all funds have been expended; and
- If receiving more than \$750,000 in awards, subrecipients will be subject to an audit under the Single Audit Act and its implementing regulation at 2 CFR Part 200, Subpart F regarding audit requirements.

Process for Selection of Subrecipients

If the Board of Supervisors (Board) takes action to earmark SLFRF for potential allocation according to general categories to subrecipients, the County may utilize either a web-based application software or PDF, and/or Microsoft Word application form to solicit proposals from eligible subrecipients.

The application “open” period shall be 30 calendar days.

The outreach to be conducted for the “open” period shall be accomplished through advertisements/postings on the County’s ARPA website (www.fresnocountyca.gov/arpa), media press release(s), social media postings, direct emails to subscribed interested organizations and entities, virtual webinar(s), physical posting at the Hall of Records, 2281 Tulare Street, Fresno, CA 93724 and Fresno County Libraries.

Applications received during the “open” period will be reviewed by County staff, and incomplete applications, as determined by County staff, may be removed from consideration without notice to the applicant, or opportunity to correct the incomplete application.

All complete applications, as determined by County staff, shall be placed on the Fresno County’s ARPA website for public viewing (www.fresnocountyca.gov/ARPA). Applicants shall be notified that all applications and related records submitted to consideration for SLFRF are subject to public disclosure under the California Public Records Act, Government Code § 6250 et. seq.

Special Consideration

As part of the selection process, the Board may elect to prioritize selection and award to certain subrecipients without those subrecipients going through the selection process described above, subject to a determination by the Board that each selected subrecipient meets the ARPA eligibility requirements, that each subrecipient’s proposal fits into one of the statutory eligible use categories, and provided each subrecipient enters into a subrecipient agreement with the County on terms and conditions acceptable to the County. These subrecipients would still need to comply with all procurement requirements, for procurement of goods and services, following award of SLFRF.

Priority Subrecipients

The County shall take all necessary affirmative steps to assure that minority businesses, women’s business enterprises, and labor surplus area (a civil jurisdiction that has an unemployment rate during the previous two calendar years of 20% or more below the average annual civilian unemployment rate for all states) firms are used when possible.

The County shall provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States.

In its selection of subrecipients, the County shall seek to:

- Ensure that SLFRF awards are not used for ineligible purposes, and that award descriptions provide specificity about the award purpose, activities to be performed, deliverables and expected outcomes, and intended beneficiaries, as well as subrecipient activities, at the time of award;
- Prioritize the use of SLFRF for evidence-based interventions and evaluations of projects that support the lawful use of the SLFRF for beneficiaries; and
- Use the SLFRF to promote equitable outcomes for beneficiaries, including how programs were designed with equity in mind.
 - For purposes of this requirement, “equity” is defined as: “[T]he consistent and systematic fair, just, and impartial treatment of all individuals, including individuals who belong to underserved communities that have been denied such treatment, such as Black, Latino, and Indigenous and Native American persons, Asian Americans and Pacific Islanders and other persons of color; members of religious minorities; lesbian, gay, bisexual, transgender, and queer (LGBTQ+) persons; persons with disabilities; persons who live in rural areas; and persons otherwise adversely affected by persistent poverty or inequality.”

Application Review and Ranking

After the initial review of the submitted applications by prospective subrecipients, County staff shall meet with the ARPA Ad-Hoc committee to review and rank the submitted applications based on the intent of the SLFRF (such as the project’s promotion of equitable outcomes for beneficiaries, benefits to disadvantaged communities, and the applicant’s ability to meet the TMF responsibilities associated with the documentation and reporting of receiving federal funds). The Ad-Hoc Committee shall then make award recommendations, through County staff, to the Board, at a regularly scheduled Board meeting.

Award

The Board shall, at a public meeting, take action to tentatively approve or deny recommended SLFRF awards to prospective subrecipients after making a determination that the prospective subrecipient’s proposal complies with the intent of the SLFRF, and the prospective subrecipient has the reasonable ability to comply with the documentation and reporting guidelines pursuant to the then-current Treasurer’s SLFRF Compliance and Reporting Guidance (<https://home.treasury.gov/system/files/136/SLFRF-Compliance-and-Reporting-Guidance.pdf>), subject to the prospective subrecipient entering into a written agreement with the County on terms and conditions acceptable to the County.

Prospective subrecipient proposals tentatively approved for SLFRF award by the Board will be contacted by County staff, and the applicant shall then execute such a written agreement, which, when approved by the Board, shall be considered the final approval of allocation of award funding.

Revision History

Date	Changes Made
02/01/2022	Policy Adopted.