NACo OVERVIEW: TREASURY INTERIM FINAL RULE FOR ARPA FLEXIBILITY
AUGUST 15, 2023
TABLE OF CONTENTS

1. Resources
   • NACo resources on IFR
   • U.S. Treasury resources on IFR

2. Key highlights of the IFR

3. New eligible uses
   • Disaster relief
   • Surface transportation projects
   • Title I projects

4. Public comment period

Scan the QR code to access NACo’s analysis on Treasury’s new Interim Final Rule
Coronavirus State and Local Fiscal Recovery Funds

The Coronavirus State and Local Fiscal Recovery Funds (SLFRF) program authorized by the American Rescue Plan Act, delivers $350 billion to state, territorial, local, and Tribal governments across the country to support their response to and recovery from the COVID-19 public health emergency.

Scan the QR code for Treasury’s ARPA resource hub
OVERVIEW OF TREASURY’S INTERIM FINAL RULE

Treasury released this Interim Final Rule for the bipartisan State, Local, Tribal, and Territorial Fiscal Recovery, Infrastructure, and Disaster Relief Flexibility Act that was signed into law as part of the Fiscal Year 2023 omnibus package.

• Public sector revenue: Provide general government services up to the amount of revenue loss, either using the standard allowance (up to $10M) or Treasury’s revenue loss formula

• Public health and economic response: Address, mitigate and respond to COVID-19 public health impacts, along with its negative economic harms

• Premium pay for essential workers: Offer additional compensation for workers, including the county government workforce, who bear the greatest health risks because of their service in critical sectors

• Water, sewer and broadband infrastructure: Invest in critical water and sewer projects (including stormwater and culverts), along with high-speed broadband infrastructure

• Emergency Relief from Natural Disasters: Use funds to provide emergency relief from natural disasters or the negative economic effects of natural disasters

• Surface Transportation Infrastructure: Invest in surface transportation infrastructure, in line with certain U.S. Department of Transportation program

• Title I Projects: Invest in community development in line with HUD’s Community Development Block Grant Program
TOP 10 HIGHLIGHTS OF ARPA FLEXIBILITY GUIDANCE

1. The IFR provides information on additional eligible uses authorized under the Cornyn/Padilla amendment.
2. The IFR does NOT alter existing eligible uses for SLFRF as outlined under the 2022 Final Rule.
3. Counties may use ARPA funds for these newly eligible uses for costs incurred beginning December 29, 2022.
4. Counties may use funds for mitigation activities to lessen or avert the threat of a natural disaster and its potential physical or negative economic impacts.
5. Counties must still obligate funds, including newly eligible activities, by December 31, 2024.
6. Counties must expend ARPA funds obligated to provide emergency relief from natural disasters by December 31, 2026.
7. Counties must expend SLFRF funds obligated for Surface Transportation projects and CDBG projects by September 30, 2026.
8. Counties can use SLFRF funds to satisfy the non-federal match requirement for certain surface transportation and FEMA projects.
9. Counties can use SLFRF funds for non-federal match for activities that would be eligible under the CDBG program.
EMERGENCY RELIEF FROM NATURAL DISASTERS

Counties are allowed to use ARPA funds to provide emergency relief from natural disasters or the negative economic effects of natural disasters. If a county wants to use ARPA funds for emergency relief, it will need to participate in a two-step process:

1. **Natural disaster**: Identify a natural disaster that has OCCURRED or is EXPECTED TO OCCUR imminently or a natural disaster that is threatened to occur in the future.

2. **Emergency relief**: Identify emergency relief that RESPONDS to the physical or negative economic impacts, or potential physical or negative economic impacts, of the natural disaster—emergency relief MUST be related and reasonably proportional to the impact identified.

ALL EMERGENCY RELIEF MUST BE RELATED AND REASONABLY PROPORTIONAL TO THE DISASTER ITS ADDRESSING
## EMERGENCY RELIEF FROM NATURAL DISASTERS

**STEP 1: IDENTIFY A NATURAL DISASTER**

<table>
<thead>
<tr>
<th>TREASURY DEFINED NATURAL DISASTERS</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Hurricane</td>
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<tr>
<td>• Tornado</td>
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<tr>
<td>• Flood</td>
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<tr>
<td>• Tidal wave</td>
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<tr>
<td>• Earthquake</td>
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<tr>
<td>• Landslide</td>
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<tr>
<td>• Snowstorm</td>
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<tr>
<td>• Fire</td>
</tr>
<tr>
<td>• High water</td>
</tr>
<tr>
<td>• Storm</td>
</tr>
<tr>
<td>• Wind-driven water</td>
</tr>
<tr>
<td>• Tsunami</td>
</tr>
<tr>
<td>• Volcanic eruption</td>
</tr>
<tr>
<td>• Mudslide</td>
</tr>
<tr>
<td>• Drought</td>
</tr>
<tr>
<td>• Any other natural catastrophe attributable to natural causes</td>
</tr>
</tbody>
</table>
EMERGENCY RELIEF FROM NATURAL DISASTERS

STEP 2: IDENTIFY EMERGENCY RELIEF

Treasury defines emergency relief as:

• Assistance needed to:
  • Save lives
  • Protect property and public health and safety
  • Lessen or avert the threat of a catastrophe

• Responds to the physical or negative economics, or potential physical or negative economic impacts, of a natural disaster

• Is related and reasonably proportional to the impact identified

There are two scenarios (A and B) for providing emergency relief:

A. Natural disaster has occurred or is expected to occur imminently: Assistance needed to save live and to protect property and public health and safety

B. Natural disaster is expected to occur in the future: Assistance to lessen or avert the threat of catastrophe

*Deciding on which scenario your disaster is will determine eligible uses*
EMERGENCY RELIEF FROM NATURAL DISASTERS

HOW TO IMPLEMENT THE TWO-STEP PROCESS – REQUIREMENTS & ELIGIBLE USES

A. Natural disaster has occurred or is expected to occur imminently

STEP 1: IDENTIFY A NATURAL DISASTER

- Event meets Treasury’s definition of a natural disaster AND is/was the subject of a declaration or designation in the form of:
  - Stafford Act declaration
  - Emergency declaration by the Governor or a state
  - Designation of an event as a natural disaster by the county’s chief executive

STEP 2: IDENTIFY THE EMERGENCY RELIEF NEEDED

- Eligible uses include:
  - Temporary emergency housing
  - Food assistance
  - Financial assistance or lost wages
  - Other immediate needs:
    - Debris removal
    - Public infrastructure repair
    - Increased operational costs
    - Cash assistance
    - Home repairs
  - Emergency protective measures
EMERGENCY RELIEF FROM NATURAL DISASTERS

HOW TO IMPLEMENT THE TWO-STEP PROCESS – REQUIREMENTS & ELIGIBLE USES

B. Natural disaster is expected to occur in the future

STEP 1: IDENTIFY A NATURAL DISASTER

- Document evidence of historical patterns or predictions of natural disasters that reasonably demonstrate the likelihood of future occurrence of a natural disaster
  - FEMA’s National Risk Index
  - Use this information to support the county’s determination that mitigation activities would help with a future natural disaster

STEP 2: IDENTIFY THE EMERGENCY RELIEF NEEDED

- Mitigation activities:
  - Structure elevation
  - Mitigation reconstruction
  - Dry flood proofing
  - Structural retrofitting
  - Non-structure retrofitting
  - Wind retrofit
  - Infrastructure retrofit
EMERGENCY RELIEF FROM NATURAL DISASTERS

MITIGATION ACTIVITIES & CAPITAL EXPENDITURES REQUIREMENTS

B. Natural disaster is expected to occur in the future | 2. Emergency relief

• Counties can use ARPA funds for mitigation activities that are proportional to the impacts of a future disaster

• Capital expenditures can be stand-alone projects OR projects incorporated into repair or reconstruction projects that reduce or eliminate the potential impacts of the threat of natural disaster

• To ensure the expenditure is eligible, counties are required to write a written justification for capital expenditures equal to or greater than $1 million, which includes the following:
  • Description of emergency relief to be provided and potential impact to be addressed
  • Explanation of why a capital expenditure is appropriate
  • Comparison of the proposed capital expenditure against alternative capital expenditures

THERE IS NO PRE-APPROVAL FROM TREASURY FOR DISASTER RELIEF PROJECTS
EMERGENCY RELIEF FROM NATURAL DISASTERS

DUPLICATION OF BENEFITS

- Natural disasters that are the subject of a Stafford Act declaration, the Stafford Act’s prohibition on duplication of benefits applies.

- Counties cannot provide financial assistance to a person, business or other entity for disaster losses which the beneficiary will receive financial assistance under any other program or from insurance or any other source.

- Assistance may be provided if the individual or business has NOT received the other benefits by the time of application for SLFRF funds and they agree to repay any duplicative assistance.

- ARPA funds may be used for any portion of disaster assistance not covered by other benefits.

COUNTIES CANNOT USE ARPA FUNDS TO PROVIDE RELIEF TO ANY ENTITY IF THAT ENTITY WILL RECEIVE ASSISTANCE FROM ANOTHER FEDERAL PROGRAM.
EMERGENCY RELIEF FROM NATURAL DISASTERS

TIMELINE FOR USE OF FUNDS FOR EMERGENCY RELIEF

Funds can cover activities that were incurred from December 29, 2022, and beyond.

Funds must be obligated by December 31, 2024 (in line with the 2022 Final Rule).

Funds must be expended by December 31, 2026 (in line with the 2022 Final Rule).
SURFACE TRANSPORTATION & TITLE I PROJECTS

If counties use ARPA funds for Surface Transportation and Title I/CDBG projects, they must comply with the following requirements:

1. **Limitation of ARPA contribution towards Surface Transportation and CDBG projects**: The total amount of SLFRF funds that a county may use for Surface Transportation projects and CDBG projects, combined, cannot exceed the greater of $10 million and 30 percent of a county’s SLFRF allocation.

2. **Supplanting funds**: Counties using SLFRF funds for Surface Transportation and CDBG projects must supplement, not supplant, other federal, state, territorial, tribal and other local government funds otherwise available for such uses.
   - Cannot de-obligate funds
   - Cannot replace federal or non-federal funds identified in a federal commitment

3. **Compliance with other existing laws**: Activities under this eligible use category are subject to certain other laws, including requirements under the National Environmental Policy Act (NEPA) and Title I of the Housing and Development Act.

4. **Obligation and expenditure deadlines**: Counties using SLFRF funds for Surface Transportation and CDBG projects must obligate funds by December 31, 2024, and expend funds by September 30, 2026.
SURFACE TRANSPORTATION PROJECTS

Treasury has categorized Surface Transportation projects into three categories, which dictate what activities and projects are eligible.

1. **Pathway One:** Supplementing surface transportation projects receiving funding from the U.S. Department of Transportation (USDOT)

2. **Pathway Two:** Funding Surface Transportation projects that are not receive funding from USDOT and are funded with SLFRF

3. **Pathway Three:** Satisfying the non-federal match requirements for certain Surface Transportation projects or repaying a loan provided under the Transportation Infrastructure Finance and Innovation Act (TIFIA) program
SURFACE TRANSPORTATION PROJECTS

PATHWAY ONE PROJECTS: Transportation Projects Receiving Funding from USDOT

• Counties can use ARPA funds for 26 programs administered by USDOT that are currently receiving funding or will receive funding by December 31, 2024

• Eligible activities for Pathway One include:
  • Expand existing USDOT projects
  • Cover unexpected costs of existing USDOT projects
  • Fund projects not currently approved by USDOT

• Surface Transportation projects that are funded by ARPA are subject to USDOT oversight
## ELIGIBLE SURFACE TRANSPORTATION PROJECTS UNDER PATHWAY ONE

<table>
<thead>
<tr>
<th>Infra Grants</th>
<th>National Highway Performance Program</th>
<th>Bridge Investment Program</th>
</tr>
</thead>
<tbody>
<tr>
<td>Surface Transportation Block Grant Program</td>
<td>Highway Safety Improvement Program</td>
<td>Congestion Mitigation and Air Quality Improvement Program</td>
</tr>
<tr>
<td>Charging and Fueling Infrastructure Discretionary Grant Program</td>
<td>Territorial and Puerto Rico Highway Program</td>
<td>National Highway Freight Program</td>
</tr>
<tr>
<td>Rural Surface Transportation Grant Program</td>
<td>Carbon Reduction Program</td>
<td>PROTECT Program</td>
</tr>
<tr>
<td>Tribal Transportation Program</td>
<td>Federal Lands Transportation Program</td>
<td>Federal Lands Access Program</td>
</tr>
<tr>
<td>RAISE Grant Program</td>
<td>TIFIA</td>
<td>Urbanized Formula Grants</td>
</tr>
<tr>
<td>Fixed Guideway Capital Investment Grant</td>
<td>Formula Grants for Rural Area</td>
<td>State of Good Repair Grants</td>
</tr>
<tr>
<td>Grants for buses and bus facilities</td>
<td>Culvert AOP Program</td>
<td>Bridge Formula Program</td>
</tr>
<tr>
<td>Activities to carry out metropolitan transportation planning</td>
<td>Projects that further completion of a designated route of ADHS</td>
<td></td>
</tr>
</tbody>
</table>

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### SURFACE TRANSPORTATION PROJECTS

**PATHWAY TWO PROJECTS:** Surface Transportation Projects NOT Receiving USDOT Funding

<table>
<thead>
<tr>
<th>STREAMLINED FRAMEWORK</th>
<th>REGULAR FRAMEWORK</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Projects that qualify under the RAISE program</td>
<td>• Projects outside of the Streamlined Framework</td>
</tr>
<tr>
<td>• Counties are <strong>NOT</strong> required to obtain Treasury approval prior to using funds on</td>
<td>• Treasury will design a process for counties seeking to funds these projects –</td>
</tr>
<tr>
<td>these Surface Transportation projects</td>
<td>use the public comment period</td>
</tr>
<tr>
<td>• <strong>Not subject to NEPA</strong> environmental review requirements</td>
<td>• <strong>Subject to NEPA</strong> environmental review requirements</td>
</tr>
<tr>
<td>• Treasury deems as projects that are “less costly and more compliant”</td>
<td>• Treasury deems as projects that are higher-risk</td>
</tr>
</tbody>
</table>

National Association of Counties | NACo.org | August 15, 2023 | 18
SURFACE TRANSPORTATION PROJECTS

PATHWAY TWO PROJECTS: Surface Transportation Projects NOT Receiving USDOT Funding

ELIGIBLE PROJECTS

• Projects under the RAISE program, including but not limited to:
  • Highway
  • Bridge
  • Public transportation projects
  • Port infrastructure investments
  • Intermodal projects

• No more than $10 million in SLFRF contributed to a project

• Does not have a substantial environmental impact – Needs to meet the criteria for NEPA Categorial Exclusion

Scan the QR code for the 2023 RAISE Grants Notice of Funding Opportunity
SURFACE TRANSPORTATION PROJECTS

PATHWAY TWO PROJECTS: Surface Transportation Projects NOT Receiving USDOT Funding

REQUIREMENTS

• Counties must comply with all federal program requirements under the IFR and USDOT implementing regulations
  • Wage and labor requirements
  • Procurement requirements
• NOT subject to NEPA (if only funded by SLFRF)
• Limitation on certain operating expenses (i.e. cost of fuel, equipment, etc.)
  • Urbanized Formula Grants
  • Fixed Guideway Capital Investment Grants

Scan the QR code for the 2023 RAISE Grants Notice of Funding Opportunity
SURFACE TRANSPORTATION PROJECTS

PATHWAY TWO PROJECTS: Surface Transportation Projects NOT Receiving USDOT Funding

PROJECTS OUTSIDE OF THE STREAMLINED FRAMEWORK

• These include projects that are:
  • Not eligible under the RAISE program
  • Above the $10 million threshold
  • Includes activities that do not fall within the categorical exclusions

• If a county wants to pursue a project outside of the Streamlined Framework, it will need to submit a notice of intent to Treasury – *These projects are subject to Treasury approval*

• Notice of intent must be submitted to NOI-SLFRF@Treasury.gov and is due 30 days after the end of the IFR comment period

• Treasury has not yet released a framework for approving these types of projects – *Framework will be released with the 2023 Final Rule*
SURFACE TRANSPORTATION PROJECTS

PATHWAY TWO PROJECTS: Surface Transportation Projects NOT Receiving USDOT Funding

PROJECTS OUTSIDE OF THE STREAMLINED FRAMEWORK: Example of Notice of Intent

• Project description
• Dollar value of the SLFRF-financed portion of the project
• Total expected project cost
• Presence of other federal funding
• Status of NEPA review
• County’s plans to comply with Buy America requirements
• Assessment to ensure the county is able to meet the December 31, 2024 obligation deadline and September 30, 2026 expenditure deadline
• Assessment of the county’s capability to ensure proper planning, management and completion of the project
SURFACE TRANSPORTATION PROJECTS

PATHWAY THREE PROJECTS: Using SLFRF to Satisfy Local Match Requirements for Certain Transportation Projects

ELIGIBLE PROJECTS

- Under the IFR, counties can use SLFRF funding to repay a TIFIA loan or to satisfy non-federal share requirements for projects under the following programs:
  - Infrastructure for Rebuilding America (INFRA) Grants – *Freight and highway projects*
  - Fixed Guideway Capital Investment Grants – *Fixed guideway investments including new and expanded rapid rail, commuter rail, light rail, streetcars, bus rapid transit, and ferries*
  - Mega Grants – *Larger scale highway, bridge, railway, freight intermodal, public transportation*
  - Projects eligible for credit assistance under the TIFIA program – *Highway, transit, railroad, intermodal freight and port access*
SURFACE TRANSPORTATION PROJECTS

PATHWAY THREE PROJECTS: Using SLFRF to Satisfy Non-Federal Share Requirements for Certain Transportation Projects

REQUIREMENTS

• Counties must consult with USDOT prior to using funds for the non-federal match

• All funds used for the non-federal match requirement must comply with requirements associated with the project unless otherwise stated by USDOT

• Counties must comply with the existing USDOT reporting requirements associated with the project they are using SLFRF funds for the non-federal match

• Counties will be required to report certain information to Treasury

COUNTIES CAN STILL USE SLFRF FUNDS FOR THE NON-FEDERAL MATCH FOR OTHER PROGRAMS OUTLINED IN THE 2022 FINAL RULE
SURFACE TRANSPORTATION PROJECTS

TIMELINE FOR USE OF FUNDS FOR SURFACE TRANSPORTATION & TITLE I

- Funds can cover activities that were incurred from December 29, 2022, and beyond
- Funds must be obligated by December 31, 2024 (in line with the 2022 Final Rule)
- Funds must be expended by September 30, 2026 – Three months earlier than most eligible uses

Most other eligible uses - Funds must be expended by December 31, 2026
### ELIGIBLE ACTIVITIES

<table>
<thead>
<tr>
<th>Activities</th>
<th>Activities</th>
</tr>
</thead>
<tbody>
<tr>
<td>Acquisition of certain real property for a public purpose</td>
<td>Rehabilitation and reconstruction of housing, conversion of structures to housing, or construction of certain housing</td>
</tr>
<tr>
<td>Disposition of certain property,</td>
<td>Homeownership assistance</td>
</tr>
<tr>
<td>Acquisition, construction, reconstruction, rehabilitation, or installation of public facilities and improvements, clearance and remediation activities</td>
<td>Technical assistance to entities to increase capacity to carry out CDBG-eligible projects</td>
</tr>
<tr>
<td>Relocation payments for relocated families, businesses, nonprofit organizations, and farm operations, under certain conditions</td>
<td>Assistance to certain institutions of higher education to carry out eligible activities</td>
</tr>
<tr>
<td>Payments to housing owners for loss of certain rental income</td>
<td>Administration activities including general management, oversight, and coordination costs, fair housing activities, indirect costs, and submission of applications for federal programs</td>
</tr>
<tr>
<td>Certain housing services</td>
<td>Planning activities including the development of plans and studies, policy planning, management and capacity building activities</td>
</tr>
<tr>
<td>Satisfying the non-federal share requirements of a federal financial assistance program in support of activities that would be eligible under the CDBG and ICDBG programs</td>
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</tr>
</tbody>
</table>

Counties may use SLFRF funds for Title I projects, which are activities that are eligible under the CDBG program. Counties must also comply with Title I requirements and associated regulations.
TITLE I/CDBG PROJECTS

INELIGIBLE ACTIVITIES

There are a handful of activities that are not eligible under the CDBG program and, and therefore, not eligible to use SLFRF funds. Ineligible activities under Title I include:

- Building or portions used for the general conduct of government
- General government expenses
- Political activities
- Purchase of equipment
- Operating and maintenance expenses
- New housing construction
- Income payments

ALTHOUGH THESE ARE INELIGIBLE USES UNDER TITLE I, THEY MAY STILL BE ELIGIBLE USES OF SLFRF UNDER OTHER ELIGIBLE USE CATEGORIES
TITLE I/CDBG PROJECTS

PROJECT REQUIREMENTS

Counties must generally comply with Title I requirements and associated regulations.

- **Primary Objective:** Direct at least 70 percent of SLFRF funds used for Title I projects to project that benefit low- and moderate-income individuals
- **Public Services Cap:** No more than 15 percent of SLFRF funds can be spent under the “public services” category
- **Planning and Administrative Costs Cap:** No more than 20 percent of SLFRF funds can be spent on planning and administrative costs
- **BEAD Program requirements** under Section 60120 apply
- **NEPA environmental requirements** apply
- **CDBG National Objectives:** Each project must satisfy at least CDBG National Objective
- **Davis-Bacon Act** and other labor standards applied by HUD
TITLE I/CDBG PROJECTS

PRE-APPROVAL REQUIREMENTS

• Counties must do the following before implementing a project:
  • Comply with NEPA
  • Submit a project-eve certification to Treasury
  • Receive Treasury approval prior to using funds for a Title I project
• There are some exemptions that will not require counties to submit certifications or obtain Treasury approval for Title I projects
  • Counties must write a document demonstrating the project meets the exemptions
  • Maintain an Environmental Review Record

HUD IS NOT OVERSEEING THESE PROGRAMS. COUNTIES WILL REPORT PROJECTS ONLY TO TREASURY
TITLE I/CDBG PROJECTS

TIMELINE FOR USE OF FUNDS FOR SURFACE TRANSPORTATION & TITLE I

- Funds can cover activities that were incurred from December 29, 2022, and beyond.
- Funds must be obligated by December 31, 2024 (in line with the 2022 Final Rule).
- Funds must be expended by September 30, 2026 – Three months earlier than most eligible uses.

Most other eligible uses – Funds must be expended by December 31, 2026.
PUBLIC COMMENTS

Comments also can be mailed to:

Office of Recovery Programs
Department of the Treasury
1500 Pennsylvania Avenue
Washington, DC 20220

All comments should be captioned “Coronavirus State and Local Fiscal Recovery Funds 2023 Interim Final Rule Comments.” Include your:

Name
Organization affiliation
Address
Email address
Telephone number

You can submit comments electronically by scanning the QR code
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