NACo INFORMATION SESSION: FISCAL RECOVERY FUND

ELIGIBLE USES FOR BROADBAND INFRASTRUCTURE

JANUARY 20, 2022

KEY HIGHLIGHTS OF THE GUIDANCE

1. Final Rule is effective April 1, 2022, but counties can take advantage of flexibility prior to that date
2. Allows counties to use up to $10 million of ARPA Recovery Funds as “loss revenue” for the provision of general government services without needing to use the Treasury revenue loss formula
3. Improves revenue loss calculation formula **to include utility revenue and liquor store sales, at option of counties**
4. Clarifies eligible use of funds for capital expenditures and written justification for certain projects
5. **Presumes certain populations were “impacted” and “disproportionately impacted” by the pandemic** and therefore are eligible to receive a broad range of services and support
6. Streamlines options for premium pay, by **broadening the share of eligible workers who can receive premium pay**
7. Authorizes re-hiring of local government staff, either at or above pre-pandemic levels
8. Allows Recovery Funds to be used for modernization of cybersecurity, including hardware and software
9. Broadens eligible use of funds for water and sewer projects to include culvert repair, dam and reservoir rehabilitation
10. **Broadens eligible broadband infrastructure investments to ensure better connectivity to broader populations**

REPORTING REQUIREMENTS

On January 7, Treasury released the Project and Expenditure Report and User Guide.

- **The following counties are required to submit a <u>Project and Expenditure Report the Treasury by January 31, 2022</u>:**
  - Counties with populations that **exceed 250,000 residents** (referred to as Tier 1 recipients by Treasury)
  - Counties with a population **below 250,000 residents yet received more than $10 million** in Recovery Funds (referred to as Tier 2 recipient by Treasury)
- The **Project and Expenditure Report will cover the period between March 3, 2021, and December 31, 2021,** and requires the reporting of project, obligations and expenditure data, subaward data, as well as certain required programmatic data
- Counties with **populations below 250,000 residents and received less than $10 million** in Recovery Funds, **<u>are not required to submit</u>** a report by January 31, 2022
  - First reporting deadline is now **<u>April 30, 2022,</u>** and annually afterwards

ILLUSTRATION ONLY OF ***SAMPLE*** ALLOWABLE USES OF RECOVERY FUNDS, PER U.S. TREASURY GUIDANCE

Support Public Health Response

Fund COVID-19 mitigation efforts, medical expenses, behavioral healthcare, and certain public health and safety staff

Replace Public Sector Revenue Loss

Use funds to provide government services to the extent of the reduction in revenue experienced due to the pandemic

Water and Sewer Infrastructure

Make necessary investments to improve access to clean drinking water and invest in wastewater and stormwater infrastructure

Address Negative Economic Impacts

Respond to economic harms to workers, families, small businesses, impacted industries, and the public sector

Premium Pay for Essential Workers

Offer additional support to those who have and will bear the greatest health risks because of their service in critical infrastructure sectors

Broadband Infrastructure

Make necessary investments to provide unserved or underserved locations with new or expanded broadband access

DECODING *THE LANGUAGE* OF THE GUIDANCE

Throughout the Final Rule, U.S. Treasury uses various *key words* that are important to understand in determining the eligible use of funds.

- “Should” and “must” = **Mandatory** reporting, use and compliance
- “May” and “encourage” = Allows county **discretion**
- Proportional & Reasonable

REPLACING LOST REVENUE

Counties can use Recovery Funds to provide government services, up to the amount revenue loss experienced. Under the Final Rule, <u>counties now have two options:</u>

<u>KEY NEW FEATURES IN FINAL RULE</u>

1. **NEW $10 MILLION <u>REVENUE LOSS</u> ALLOWANCE**
    - Counties can allocate up to $10 million of their total Recovery Fund allocation to spend on government services
    - Counties can still calculate actual revenue loss through Treasury formula
    - Simplifies reporting requirements for counties using the standard $10M standard allowance
    - <u>2,137 counties (70%) now eligible to invest entirety of allocated Recovery Funds in general government services</u>

2. **IMPROVEMENTS TO THE REVENUE LOSS FORMULA**
    - General revenue now includes utility revenue and liquor store revenue, at discretion of the county
    - Counties can choose to calculate revenue loss on a fiscal year **<u>or</u>** calendar year basis – *must pick & stay with 1 option*
    - Counties must adjust actual revenue totals for the effect of tax cuts/increases adopted after January 6, 2022
    - Revenue loss growth rate changed from 4.1% to 5.2%

REPLACING LOST REVENUE

Counties may use "lost revenue" for **<u>general government services up to the *revenue loss* amount</u>**, whether that be the standard allowance amount ($10 million) or the amount calculated using Treasury's formula:

- **Government services generally include any service traditionally provided by a government,** unless Treasury has stated otherwise
- **Common examples** include, but are not limited to:
  - Construction of schools and hospital
  - Road building and maintenance, and other infrastructure
  - Health services
  - General government administration, staff and administrative facilities
  - Environmental remediation
  - Police, first responders and other public safety services (including purchase of fire trucks and police vehicles)

RECOVERY FUNDS USED TO REPLACE "REVENUE LOSS" ARE MORE FLEXIBLE AND MAY BE USED FOR A BROAD RANGE OF GOVERNMENT SERVICES, PROGRAMS AND PROJECTS OUTSIDE OF TYPICAL ELIGIBLE USES OF RECOVERY FUNDS UNDER THE INTERIM RULE. **HOWEVER, REVENUE RECOUPMENT CANNOT BE USED FOR RAINY DAY FUNDS OR DEBT SERVICES**

REPLACING LOST REVENUE

KEY TAKEAWAYS

- Counties have two options to calculate revenue loss:
    1. Up to $10 million of ARPA allocation
    2. Calculate revenue loss with Treasury formula

- If your county previously declared “$0” for revenue loss in the Interim Report, you are allowed to update this number in the first Project and Expenditure Report

- If your county is declaring revenue loss, you may abide by the reporting requirements within the Project and Expenditure Report’s “revenue loss” category

REPLACING LOST REVENUE

Counties may use “lost revenue” for **general government services up to the *revenue loss* amount**, whether that be the standard allowance amount ($10 million) or the amount calculated using Treasury’s formula:

HOWEVER, the **following activities are NOT an eligible use** of a county’s “revenue loss” allowance:

- Extraordinary contribution to a **pension fund**
- **Debt service** payment, including Tax Anticipation Notes (TANs)
- Rainy day or **reserve account**
- **Settlement agreement, judgment, consent decree or judicially confirmed debt** *(with limited exceptions)*
- **Activity that conflicts with the purpose of the American Rescue Plan Act statute** (e.g. uses of funds that conflict with COVID-19 mitigation practices in line with CDC guidance and recommendations)
- **Violations of Award Terms and Conditions or conflict of interest requirements under the Uniform Guidance**

BROADBAND INFRASTRUCTURE

The Final Rule broadens eligible broadband infrastructure investments to ensure better connectivity for residents.

KEY NEW FEATURES IN FINAL RULE

1. **BROADENS BROADBAND INFRASTRUCTURE FLEXIBILITY**
   - Under IFR, counties were required to invest in households and businesses without reliable wireline 25 Mbps download/3 Mbps upload
   - Final Rule allows counties to invest in locations without reliable wireline 100 Mbps download/20 Mbps upload
2. **AFFORDABILITY IS A REQUIREMENT**
   - Projects must include an affordability option for households with an identified need for broadband infrastructure investment

Under the IFR, counties were required to invest in households and businesses without reliable wireline 25 Mbps download/ 3 Mbps upload

BROADBAND INFRASTRUCTURE

PROJECT IDENTIFICATION AND DESIGN

1. **IDENTIFY AN ELIGIBLE AREA FOR INVESTMENT**
    - Counties are encouraged to prioritize projects that are designed to serve locations without access to reliable wireline 100 Mbps download/20 Mbps upload speeds
    - Beyond the threshold, counties have broad flexibility to define need in a community, including:
        - Lack of access to a reliable high-speed broadband connection
        - Lack of affordable broadband
        - Lack of reliable service
2. **DESIGNING THE PROJECT**
    - Projects are required to meet or exceed 100 Mbps download/100 Mbps upload (flexibility for 100 Mbps/20 Mbps)
    - Households and businesses with an identified need for additional broadband do not need to be the only ones in the service area served by an eligible broadband infrastructure project
    - Projects can choose to consider <u>any available data for determining areas for investment</u>

BROADBAND INFRASTRUCTURE

BUILD-TO SPEED STANDARDS

1. **BUILD-TO SPEED STANDARDS**
    - Projects are required to meet or exceed 100 Mbps download/100 Mbps upload
        - Flexibility remains in place building to 100 Mbps/20 Mbps with scalability to 100 Mbps symmetrical if geographical, topological or cost restraints exist
2. **FIBER-OPTIC INFRASTRUCTURE**
    - Recipients are encouraged to prioritize investments in fiber-optic infrastructure wherever feasible
3. **RELIABILITY**
    - Recipients should ensure that their broadband infrastructure provides “reliable” service at required speeds and does not require a reliance on providers’ advertised speeds in their assessments.
4. **MIDDLE-MILE**
    - Recipients are permitted to make investments in “middle-mile” connections, but Treasury continues to encourage recipients to focus on projects that will achieve last-mile connections

BROADBAND INFRASTRUCTURE

AFFORDABILITY

1. **AFFORDABILITY PROGRAM INTEGRATION**
    - FCC's Affordable Connectivity Program (ACP) and/or provide access to broad-based affordability program to low-income consumers
2. **ENCOURAGEMENTS**
    - Recipients are encouraged to consult with the community on the general affordability needs of the target markets in the proposed service area.
    - Recipients also encouraged to require that services provided by a broadband infrastructure project include at least one low-cost option offered without data usage caps and at speeds that are sufficient for a household with multiple users to simultaneously telework and engage in remote learning.
3. **REPORTING**
    - Recipients will be required to report speed, pricing, and any data allowance information as part of mandatory reporting to Treasury

BROADBAND INFRASTRUCTURE

NEGATIVE ECONOMIC IMPACTS

1. **AID TO HOUSEHOLDS AND COMMUNITIES**
    - Recipients are reminded under the Final Rule that subsidies to households and communities impacted by the pandemic to access the internet, broadband adoption programs, digital literacy programs, and device programs are eligible programs to respond to the public health and negative economic impacts of the pandemic.
2. **EQUIPMENT COSTS**
    - Services that expand internet access without constructing new networks are an appropriate use of funds as assistance to households in responding to a negative economic impact. This can include: subsidies for the cost of internet service, other programs that support adoption of internet service where available, digital literacy programs, or programs that provide devices and equipment to access the internet (e.g. programs that provide equipment like tablets, computers, or routers) to households.

BROADBAND INFRASTRUCTURE

ADDITIONAL CLARIFICATIONS

1. **PRIORITIZING SUPPORT FOR PUBLIC NETWORKS**
    - The Final Rule continues to prioritize support for broadband networks owned, operated by, or affiliated with local governments, nonprofits, and cooperatives.
2. **DUPLICATION OF EFFORTS AND RESOURCES**
    - To the extent that recipients consider deploying broadband to locations where there are existing enforceable federal or state funding commitments for reliable service at speeds of at least 100 Mbps download and 20 Mbps upload, recipients must ensure Recovery Funds are designed to address an identified need for additional broadband investment that is not met by existing commitments.
3. **CYBERSECURITY**
    - The Final Rule allows for modernization of cybersecurity for existing and new broadband infrastructure as an eligible use, regardless of their speed delivery standards.
    - Cybersecurity modernizations through hardware, software, and protection of critical infrastructure is an eligible provision of government services under revenue loss as well.

BROADBAND INFRASTRUCTURE

ADDITIONAL CLARIFICATIONS

1. **USE OF FUNDS TO MEET NON-FEDERAL MATCH UNDER IIJA**
    - The IIJA specifies under the BEAD program a contribution of not less than 25% of non-Federal funds. The IIJA further states that **matching contributions may include funds provided to an eligible entity or subgrantee under ARPA** for the purpose of deployment of broadband services.
    - The project must comply with program requirements established by both programs in order to use funds from the IIJA and the Recovery Funds

COUNTY SNAPSHOT

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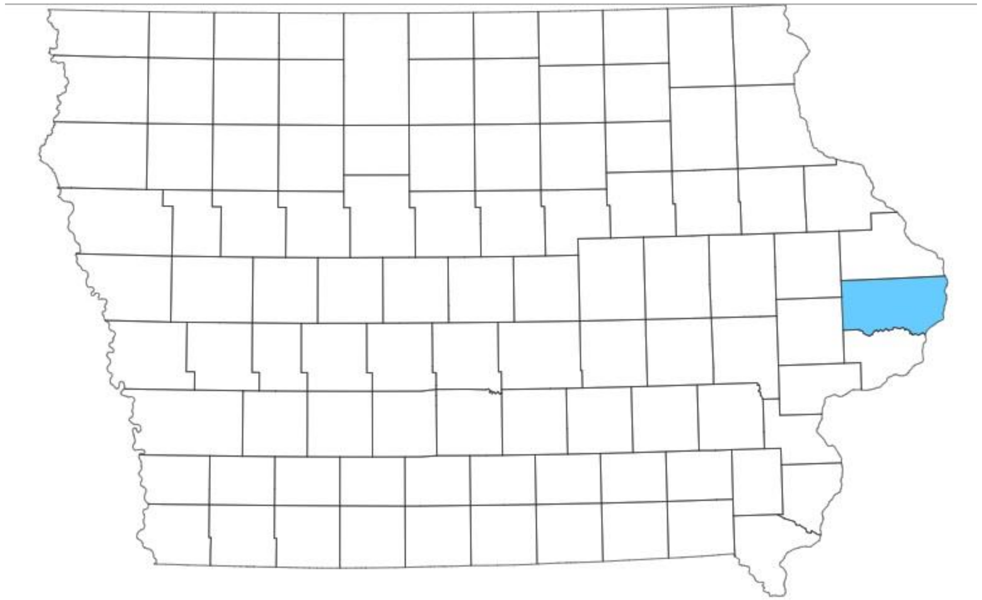
DENTON COUNTY, TEXAS

- County is allocating funds for a broadband project and needs assessment student.
- Goals of the project are to deliver services to every household in Denton County, allow local providers to purchases services for their area, create a system to deliver 100 Mbps upload and download speeds and provide options to operate a cooperative/non-profit to distribute and manage the system.

SUMMIT COUNTY, OHIO

- Allocated $35 million for the county’s broadband fiber ring expansion, and $25 million for community broadband grants to build off the fiber ring
- Project will connect 31 community governments and the County government, and each community will have the ability to build broadband networks and provide internet/data services to schools, libraries, businesses and residents.
- Ring will serve as the backbone for public safety communications network

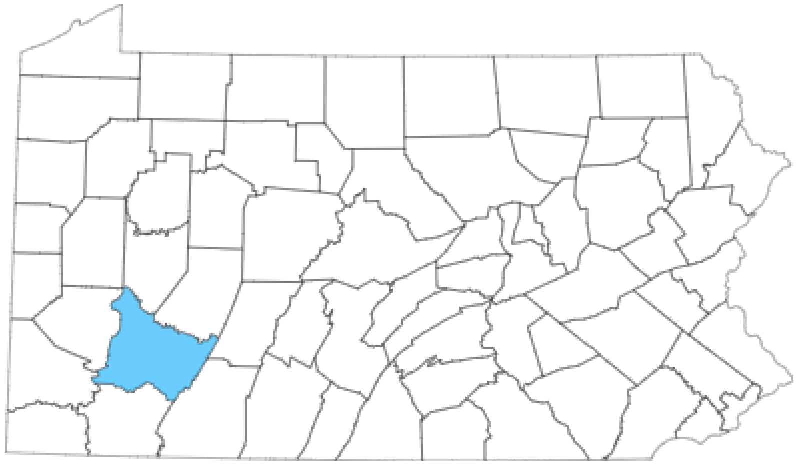


COUNTY SNAPSHOT

WESTMORELAND COUNTY, PA

CYBERSECURITY

- County has allocated $277,000 to modernize cybersecurity and improve critical infrastructure
- County has also allocated $344,000 for the purchase of a five-year licensing agreement with Cisco Unified Connections to improve digital collaboration



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