Coronavirus State & Local Fiscal Recovery Funds: Overview of the Interim Final Rule

U.S. DEPARTMENT OF THE TREASURY

August 2023

CONTENTS

This Overview of the 2023 Interim Final Rule provides a summary of major provisions of the State and Local Fiscal Recovery Funds (SLFRF) 2023 interim final rule for informational purposes and is intended as a brief, simplified user guide to the interim final rule provisions.

The descriptions provided in this document summarize key provisions of the 2023 interim final rule but are non-exhaustive, do not describe all terms and conditions associated with the use of SLFRF funds, and do not describe all requirements that may apply to this funding. Recipients should refer to the 2023 interim final rule for a complete description of the new eligible uses and associated requirements. Any SLFRF funds received are also subject to the terms and conditions of the agreement entered into by Treasury and the respective jurisdiction, which incorporate the provisions of the 2023 interim final rule, the 2022 final rule, and the guidance that implements this program. Recipients seeking information about the eligible uses discussed in the 2022 final rule should reference the Overview of the 2022 Final Rule and the 2022 final rule.

Introduction

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

On May 10, 2021, Treasury issued an interim final rule implementing the SLFRF program. On January 6, 2022, Treasury subsequently issued a final rule that responded to public comments. On April 1, 2022, the final rule became effective. On December 29, 2022, the Consolidated Appropriations Act, 2023 was enacted, amending the SLFRF program to provide additional flexibility for recipients to use SLFRF funds to respond to natural disasters, build critical infrastructure, and support community development.

Treasury has issued an interim final rule (IFR) implementing the amendments to the SLFRF program and is seeking feedback from the public on all aspects of the IFR. Comments on the IFR may be submitted electronically through the Federal eRulemaking Portal at http://www.regulations.gov or by mailing comments to the address provided in the IFR. Refer to the IFR for additional information about the comment process.

The existing eligible uses, as discussed in the 2022 final rule, remain unchanged. Recipients may continue to use SLFRF funds in alignment with the 2022 final rule.

EMERGENCY RELIEF FROM NATURAL DISASTERS

The IFR provides a framework for using SLFRF funds to provide emergency relief from natural disasters or their negative economic impacts. Specifically, the IFR discusses the standard for providing emergency relief from natural disasters, using a two-step process. Recipients must first 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, and then identify emergency relief that responds to the physical or negative economic impacts, or potential physical or negative economic impacts of the identified natural disaster. The emergency relief must be related and reasonably proportional to the impact identified.

SURFACE TRANSPORTATION PROJECTS

The IFR provides a framework for using SLFRF funds for projects eligible under the 26 surface transportation programs specified in the 2023 CAA (Surface Transportation projects). This eligible use category is broken out into three pathways. Pathway One outlines how recipients may use SLFRF funds for projects receiving funding from DOT. Pathway Two outlines how recipients may use SLFRF funds for projects that are not receiving funding from DOT. Pathway Three outlines how recipients may use SLFRF funds to satisfy non-federal share requirements for certain Surface Transportation projects or to repay a loan provided under the Transportation Infrastructure Finance and Innovation Act (TIFIA) program. The requirements of titles 23, 40, and 49 of the U.S. code generally apply to this eligible use category.

TITLE I PROJECTS

The IFR outlines how recipients may use SLFRF funds for activities that are eligible under section 105(a) of the Housing and Community Development Act of 1974 (Title I projects), which are the eligible activities under the Community Development Block Grant (CDBG) and Indian Community Development Block Grant (ICDBG) programs. The eligible activities under the Title I projects eligible use category are broad and enable recipients to undertake a wide range of projects. The requirements of title I of the Housing and Community Development Act of 1974 generally apply to this eligible use category.

INTERIM FINAL RULE EFFECTIVE DATE AND TIMELINE FOR USE OF FUNDS

The IFR was submitted for publication in August 2023 and will become effective when published. Recipients may use SLFRF funds for the new eligible uses for costs incurred beginning December 29, 2022. Consistent with the existing eligible uses, recipients must obligate SLFRF funds for the new eligible uses by December 31, 2024. Recipients must expend SLFRF funds obligated to provide emergency relief from natural disasters by December 31, 2026. Recipients must expend SLFRF funds obligated for Surface Transportation projects and Title I projects by September 30, 2026.

Emergency Relief from Natural Disasters

Recipients may use SLFRF funds to provide emergency relief from natural disasters or the negative economic effects of natural disasters. Recipients seeking to use SLFRF funds for this eligible use category should undertake the following two-step process:

1. 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. Identify emergency relief that responds to the physical or negative economic impacts, or potential physical or negative economic impacts, of the natural disaster. The emergency relief must be related and reasonably proportional to the impact identified.

IDENTIFYING NATURAL DISASTERS

The IFR defines a natural disaster as a hurricane, tornado, storm, flood, high water, wind-driven water, tidal wave, tsunami, earthquake, volcanic eruption, landslide, mudslide, snowstorm, drought, or fire, in each case attributable to natural causes, that causes or may cause substantial damage, injury, or imminent threat to civilian property or persons. A natural disaster may also include another type of natural catastrophe, attributable to natural causes, that causes or may cause substantial damage, injury, or imminent threat to civilian property or persons.

IDENTIFYING EMERGENCY RELIEF

The IFR defines emergency relief as assistance that is needed to save lives and to protect property and public health and safety, or to lessen or avert the threat of catastrophe. The assistance must be related and reasonably proportional to the physical or negative economic impacts of the natural disaster that has occurred or is expected to occur imminently, or to the potential physical or negative economic impacts of a natural disaster that is threatened to occur in the future.

If responding to a natural disaster that has occurred or is expected to occur imminently, recipients must identify a natural disaster that meets Treasury's definition above and an emergency declaration or designation for the recipient's geography and jurisdiction in the form of:

- An emergency declaration pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act;
- An emergency declaration by the Governor of a state pursuant to respective state law;
- An emergency declaration by a Tribal government; or
- A designation of an event of a natural disaster by the chief executive (or equivalent) of a recipient government as long as the chief executive documents the event satisfies the definition of natural disaster provided above.

If providing assistance to lessen or avert the threat of a future natural disaster, recipients should document evidence of historical patterns or predictions of natural disasters that would reasonably demonstrate the likelihood of future occurrence of a natural disaster in its community.[1] Recipients should use this evidence to support its determination that mitigation measures would be related and reasonably proportional to the threat of a natural disaster.

1 For example, a recipient could utilize FEMA's National Risk Index to establish the likelihood of a future hurricane, or a Tribal government could cite Indigenous Traditional Ecological Knowledge to determine future risks

NON-EXHAUSTIVE LIST OF ELIGIBLE USES

Below, Treasury identifies a non-exhaustive list of eligible emergency relief, which means that the listed eligible uses include some, but not all, of the uses of funds that could be eligible. The list distinguishes between emergency relief provided from a declared or designated natural disaster that has occurred or is expected to occur imminently, and emergency relief provided from the threat of a future natural disaster. To assess whether additional types of emergency relief would be eligible under this category beyond the non-exhaustive list provided below, recipients should first identify a natural disaster and then identify emergency relief that responds to the natural disaster's physical or negative economic impacts according to the standards discussed above.

Declared or Designated Natural Disasters

- Temporary housing:

- Rental assistance, reimbursement for hotel costs
- Temporary housing units when individuals are facing challenges finding permanent housing due to shortages caused by a natural disaster
- Temporary emergency housing including congregate and non-congregate shelter
- Shelter following an evacuation

- Food assistance

- **Financial assistance for lost wages:**
  Supplemental benefits for individuals participating in state unemployment insurance programs or the Department of Labor's DUA program at the time of the disaster or following the disaster. The supplemental benefit may not exceed $400 a week for the duration of the need for emergency relief.

- Other immediate needs. Additional eligible uses to address other immediate needs:

Emergency protective measures, including:	
✓ Transportation and pre-positioning equipment and resources	✓ Storage and interment of unidentified human remains
✓ Flood fighting	✓ Mass mortuary services
✓ Firefighting	✓ Construction of emergency berms or temporary levees to provide protection from floodwaters or landslides
✓ Supplies and commodities	✓ Emergency repairs necessary to prevent further damages
✓ Medical care and transport	✓ Buttressing, shoring or bracing facilities to stabilize them or prevent collapse
✓ Evacuation and sheltering	✓ Emergency slope stabilization
✓ Childcare	✓ Mold remediation
✓ Demolition of structures	✓ Extracting water and clearing mud, silt, or other accumulated debris
✓ Search and rescue to locate survivors, household pets and service animals	✓ Taking actions to save the lives of animals
✓ Use or lease of temporary generators for facilities that provide essential community services	✓ Snow removal
✓ Dissemination of information to the public to provide warnings and guidance about health and safety hazards	
✓ Searching to locate and recover human remains	

In addition to eligible uses summarized above, recipients may also use SLFRF funds to address other immediate needs such as those listed below.

- **Debris removal**, including the clearance, removal, and disposal of vegetable debris (such as tree limbs, branches, stumps, or tress), construction and demolition debris, sand, mud, silt, gravel, rocks, boulders, white goods, and vehicle and vessel wreckage.
- **Public infrastructure repair**, including roads, bridges, and utilities damaged by a natural disaster, restoring the infrastructure to its pre-disaster size, capacity, and function. Recipients may incorporate mitigation measures into the repair project by following the requirements described in the mitigation section below.
- **Increased operational costs** including payroll costs and costs for government facilities and government services used before, during or after a natural disaster.
- **Cash assistance for uninsured or underinsured disaster-caused expenses** such as repair or replacement of personal property and vehicles, or funds for moving and storage, medical, dental, childcare, funeral expenses, behavioral health services, and other miscellaneous items.
- **Cash assistance for low-income households** that have been impacted by a natural disaster.
  - Low-income households are ones with (i) income at or below 185 percent of the Federal Poverty Guidelines for the size of the household based on the most recently published poverty guidelines by the Department of Health and Human Services or (ii) income at or below 40 percent of area median income for the county and size of household based on the most recently published data by the Department of Housing and Urban Development.
- **Home repairs for primary residences not covered by insurance that have become uninhabitable** because of natural disaster to make the residence habitable again. Recipients may incorporate mitigation measures into the repair project by following the requirements described in the mitigation section below.

Threat of Future Natural Disasters

Mitigation Activities to lessen or avert the threat of a natural disaster and its potential physical or negative economic impacts, including structure elevation, mitigation reconstruction, dry flood proofing, structural retrofitting, non-structure retrofitting, wind retrofit, and infrastructure retrofit. Mitigation activities may be stand-alone projects that reduce or eliminate the potential impacts of the threat of natural disaster and may also be incorporated into repair or reconstruction projects that address the impacts of a natural disaster.

MITIGATION ACTIVITIES WITH CAPITAL EXPENDITURES EXCEEDING $1 MILLION

For mitigation activities with total expected capital expenditures of $1 million or greater, recipients (except for Tribal governments) must complete and meet the substantive requirements of a Written Justification for the capital expenditures in their project.

A Written Justification includes:

- *Description of emergency relief to be provided and potential impact to be addressed*: Recipients must provide a description of the specific mitigation activities to be provided, and why the emergency relief is needed to lessen or avert the potential impacts of the natural disaster that is threatened to occur in the future. When appropriate, recipients may provide quantitative information on the extent and type of assistance needed, such as the number of individuals or entities that may be affected. Recipients must use the documented evidence of historical patterns or predictions of natural disasters that would reasonably demonstrate the likelihood of future occurrence of a natural disaster in their communities, along with considerations of efficacy, cost, cost effectiveness, and time to delivery, to support their determinations that mitigation activities would be related and reasonably proportional.
- *Explanation of why a capital expenditure is appropriate*: Recipients must provide an assessment demonstrating why a mitigation activity capital expenditure is appropriate to address the specified potential impact identified. The assessment must include an explanation of why existing equipment and facilities, or policy changes or additional funding to pertinent programs or services, would be inadequate to addressing the potential impact of the threat of a natural disaster and why policy changes or additional funding to pertinent programs or services would be insufficient without the corresponding capital expenditures.
- *Comparison of the proposed capital expenditure against alternative capital expenditures:* Recipients must provide an objective comparison of the proposed mitigation capital expenditure against at least two alternative capital expenditures and demonstrate why their proposed capital expenditure is superior to alternative capital expenditures that could be made. Specifically, recipients must assess the proposed capital expenditure against at least two alternative types or sizes of capital expenditures that are potentially effective and reasonably feasible. Where relevant, recipients must compare the proposal against the alternative of improving existing capital assets already owned or leasing other capital assets. Recipients must use quantitative data when available, although they are encouraged to supplement with qualitative information and narrative description. Recipients that complete analyses with minimal or no quantitative data must provide an explanation for doing so.

DUPLICATION OF BENEFITS

As a general matter, recipients may not claim use of federal financial assistance to cover a cost that the recipient is covering with another federal award, by insurance, or from another source, and subrecipients are bound by the same requirements as recipients. Specific requirements apply when recipients use federal funds to provide assistance with respect to losses suffered as a result of a major disaster or emergency declared under the Stafford Act (disaster losses). If a recipient uses SLFRF funds to cover disaster losses, the Stafford Act's prohibition on duplication of benefits applies. Recipients may not provide financial assistance to a person, business concern, or other entity with respect to disaster losses for which the beneficiary will receive financial assistance under any other program or from insurance or any other source. Recipients may provide assistance with respect to disaster losses to a person, business concern, or other entity that is or may be entitled to receive assistance for those losses from another source, if such person, business concern, or other entity has not received the other benefits by the time of application for SLFRF funds and the person, business concern, or other entity agrees to repay any duplicative assistance to the SLFRF recipient. Recipients also may use SLFRF funds to provide assistance for any portion of disaster losses not covered by other benefits. Recipients are advised to review FEMA's guidance, which describes a "delivery sequence" for assistance for disaster losses. Recipients must treat SLFRF funds as last in the delivery sequence, unless the recipient, in consultation with the appropriate FEMA Regional Administrator or state disaster-assistance administrator, determines that another sequence is appropriate. Recipients also must notify subrecipients and contractors that, when providing assistance in response to a Stafford Act declaration, they are responsible for ensuring that beneficiaries disclose any other assistance received for the same disaster losses prior to receiving assistance with SLFRF funds.

LABOR STANDARDS

Treasury encourages recipients to adhere to strong labor standards when undertaking capital expenditures to provide emergency relief from natural disasters, including project labor agreements and community benefits agreements that offer wages at or above the prevailing rate and include local hire provisions. Treasury also encourages recipients to prioritize, in their procurements, employers with high labor standards and to prioritize employers without recent violations of federal and state labor and employment laws.

Surface Transportation and Title I Projects

Recipients may use SLFRF funds for Surface Transportation projects and Title I projects. For projects undertaken under these eligible use categories, there are several statutory requirements that apply to these eligible use categories, including:

Limitation on SLFRF Contribution Towards Surface Transportation and Title I Projects: The total amount of SLFRF funds that a recipient may use for Surface Transportation projects and Title I projects, taken together, cannot exceed the greater of $10 million and 30% of a recipient's SLFRF allocation. For example:

- Consider a recipient that received $60 million in SLFRF funds. This recipient would have $18 million available to use for Surface Transportation projects and Title I projects.
- This recipient could choose to spend $10 million under the Surface Transportation projects eligible use category and $8 million in the Title I projects eligible use category, or $3 million for Surface Transportation projects and $15 million for Title I projects, or some other combination.
- This recipient cannot spend more than $18 million in SLFRF funds across the Surface Transportation projects and Title I projects eligible use categories, taken together.

Restriction on Supplanting of Funds: Recipients using SLFRF funds for Surface Transportation projects and Title I projects must supplement, and not supplant, other federal, state, territorial, Tribal, and local government funds (as applicable) otherwise available for such uses. Funds are considered "otherwise available for such uses":

- For non-federal funds, if they have been obligated for activities or projects that are eligible as part of any Surface Transportation project or Title I project, or
- For federal funds, if a federal agency has committed to a particular project pursuant to an award agreement or otherwise.

For the Surface Transportation projects and Title I projects eligible use categories, this means that SLFRF recipients may not:

- De-obligate funds that were obligated for specific uses that are eligible Surface Transportation project or Title I project activities (e.g., cancel, amend, renegotiate, or otherwise revise or abrogate a contract, subaward, or similar transaction that requires payment) and replace those previously obligated funds with SLFRF funds.
- Use SLFRF funds to replace federal or non-federal funds identified in a federal commitment, such as an award agreement.

The supplement, not supplant restriction does not apply to the other eligible use categories in the SLFRF program, including the emergency relief from natural disasters eligible use category.

Applicability of Certain Existing Laws: Except as otherwise determined by the Secretary, the use of SLFRF funds for Surface Transportation and Title I projects is subject to certain other laws, including the requirements of titles 23, 40, and 49 of the U.S. Code, title I of the Housing and Community Development Act of 1974, and the National Environmental Policy Act of 1969. The sections that follow discuss how these laws apply.

Obligation and Expenditure Deadline: Recipients using SLFRF funds for Surface Transportation and Title I projects must obligate funds by December 31, 2024 and expend funds by September 30, 2026.

Surface Transportation Projects

Recipients may use SLFRF funds for Surface Transportation projects in the following ways:

1. Supplementing surface transportation projects receiving funding from DOT (Pathway One)
2. Funding surface transportation projects not receiving funding from DOT (Pathway Two)
3. Satisfying non-federal share requirements for certain surface transportation projects or repaying a loan provided under the TIFIA program (Pathway Three)

In addition to the limitations and requirements described above, the eligible projects and additional requirements and limitations associated with each pathway are outlined below.

PATHWAY ONE: SURFACE TRANSPORTATION PROJECTS RECEIVING FUNDING FROM DOT

Recipients may use SLFRF funds for Surface Transportation projects that are or will be receiving funding from DOT prior to the obligation deadline of December 31, 2024. A Surface Transportation project must be subject to DOT's oversight during the period that SLFRF funds are used for the project. Recipients must consult with DOT before using SLFRF funds under Pathway One. Under Pathway One, recipients may:

- Expand an existing project that is receiving funding from DOT
- Cover unexpected costs of an existing project receiving funding from DOT
- Expand the scope of a project, cover additional costs, or in other ways supplement DOT funding for projects that have not yet, but will receive funding from DOT by the December 31, 2024 obligation deadline

PATHWAY ONE - ELIGIBLE DOT PROGRAMS

Under Pathway One, recipients may use SLFRF funds for projects eligible only under the programs listed below. Recipients should refer to the relevant program guidance for DOT programs of interest for further information and detail about the types of projects eligible under those programs.

- ✓ INFRA Grants
- ✓ National Highway Performance Program
- ✓ Bridge Investment Program
- ✓ Surface Transportation Block Grant Program
- ✓ Highway Safety Improvement Program
- ✓ Congestion Mitigation and Air Quality Improvement Program
- ✓ Charging and Fueling Infrastructure Discretionary Grant Program
- ✓ Territorial and Puerto Rico Highway Program
- ✓ National Highway Freight Program
- ✓ Rural Surface Transportation Grant Program
- ✓ Carbon Reduction Program
- ✓ Promoting Resilient Operations for Transformative, Efficient, and Cost-Saving Transportation Program
- ✓ Tribal Transportation Program
- ✓ Federal Lands Transportation Program
- ✓ Federal Lands Access Program
- ✓ Rebuilding American Infrastructure with Sustainability and Equity Grant Program
- ✓ Transportation Infrastructure Finance and Innovation Act Program
- ✓ Urbanized Formula Grants
- ✓ Fixed Guideway Capital Investment Grant
- ✓ Formula Grants for Rural Areas
- ✓ State of Good Repair Grants
- ✓ Grants for Buses and Bus Facilities
- ✓ National Culvert Removal, Replacement, and Restoration Grant Program
- ✓ Bridge Replacement, Rehabilitation, Preservation, Protection, and Construction Program
- ✓ Activities to carry out metropolitan transportation planning
- ✓ Projects that further the completion of a designated route of the Appalachian Development Highway System

PATHWAY ONE – APPLICABLE REQUIREMENTS

Recipients using SLFRF funds for Surface Transportation projects under Pathway One must comply with the applicable requirements and limitations that apply to the project as administered by DOT, including the applicable requirements of titles 23, 40, and 49. Recipients are responsible for ensuring all requirements are met, as would typically be the case for a DOT-funded project in the absence of SLFRF funds.

Recipients using SLFRF funds for Surface Transportation projects under Pathway One are not required to contribute cost-sharing or matching funds alongside SLFRF funds. However, because SLFRF funds are federal funds, using SLFRF funds under Pathway One will still impact the cost-share requirements that apply to certain Surface Transportation projects due to differences in applicable non-federal cost share requirements across DOT projects and programs. In some cases, DOT programs are capped in the amount of federal funds that may be used in a project, regardless of whether those funds are provided by DOT or another federal source. This is true, for example, of the State of Good Repair Grant Formula Program, the Railcar Vehicle Replacement Program, and Grants for Buses and Bus Facilities Program. Recipients must consult with DOT to determine the applicable non-federal cost share requirements.

In addition, recipients must also comply with the following requirements:

- **Limitation on Operating Expenses:** Recipients using SLFRF funds for projects eligible for Urbanized Formula Grants, Fixed Guideway Capital Investment Grants, Formula Grants for Rural Areas, State of Good Repair Grants, or Grants for Buses and Bus Facilities may not use SLFRF funds for operating expenses of these projects. Operating expenses are those costs necessary to operate and manage a public transportation system, including costs such as driver salaries, the cost of fuel, and the cost of equipment and supplies having a useful life of less than one year. Operating expenses do not include preventive maintenance activities. The limitation on operating expenses does not apply to other Surface Transportation projects or to other uses of SLFRF funds, including under the revenue loss eligible use category.
- **State of Good Repair and Performance Targets:** States that use SLFRF funds for Surface Transportation projects under Pathway One for programs eligible under title 23, or that otherwise are subject to the requirements of title 23, must either demonstrate progress in achieving a state of good repair under 23 U.S.C. 119(e) or support the achievement of one or more performance targets under 23 U.S.C. 150.

Treasury is delegating authority to DOT to oversee and administer compliance with certain requirements applicable to Surface Transportation projects within Pathway One. Recipients that direct SLFRF funds toward Surface Transportation projects under Pathway One are required to complete the existing DOT reporting requirements that already apply to projects funded by DOT and will be required to report certain information to Treasury. In all instances, recipients must consult with DOT prior to using SLFRF funds under Pathway One.

PATHWAY TWO - SURFACE TRANSPORTATION PROJECTS NOT RECEIVING FUNDING FROM DOT

If recipients wish to pursue Surface Transportation projects that are not or will not be funded by DOT, they may pursue them under Pathway Two. Pathway Two projects will be administered by Treasury. Within this pathway, Treasury is articulating a streamlined framework for recipients to use up to $10 million in SLFRF funds per project on Surface Transportation projects that do not include DOT funding but meet certain parameters. Recipients may begin using SLFRF funds now for projects that meet the parameters of the streamlined framework, outlined below.

For recipients seeking to use SLFRF funds under Pathway Two for projects outside the parameters of the streamlined framework, recipients must submit a Notice of Intent to Treasury through the process described in the next section. Treasury will use the notices of intent, along with comments to the IFR, to design and implement the framework for approving these projects.

PATHWAY TWO - STREAMLINED FRAMEWORK

In the streamlined framework, recipients may use SLFRF funds for a Surface Transportation project not receiving funding from DOT to conduct a project that would be eligible under the RAISE grant program and that meets the criteria discussed below.[2] For these projects, recipients are not required to submit an application to, or receive approval from, Treasury to conduct the project. For a RAISE-eligible project to qualify for the streamlined framework, it must satisfy the following criteria:

- **Contributes no more than $10 million SLFRF**: The recipient's contribution of SLFRF funding to the project under Pathway Two must not exceed $10 million. If a recipient has more than $10 million available for Surface Transportation and Title I projects, as discussed in the earlier example, then it could choose to fund multiple $10 million projects under Pathway Two. (It could also choose to fund one $10 million project under Pathway Two and use remaining funds available under the cap on funds for Title I projects. It could also choose to spend the remaining funds in another eligible use category where there is no cap on funds.)
- **Limited to actions that typically do not have a significant environmental impact:** The entire project scope must be limited to the set of actions or activities deemed by DOT as meeting the criteria for categorical exclusion as listed under 23 C.F.R. 771.116(c)(1)-(22), 771.117(c)(1)-(30), and 771.118(c)(1)-(16). The recipient also must determine that those actions do not involve unusual circumstances, as described in 23 CFR 771.116(b), 771.117(b), and 771.118(b).

PATHWAY TWO– APPLICABLE REQUIREMENTS

Generally, the requirements of titles 23, 40, and 49 apply to recipients' use of SLFRF funds under Pathway Two (both to projects under the streamlined framework and projects outside the streamlined framework). Furthermore, restrictions that apply to projects regardless of the source of funds of the project apply as they would to any other project carried out by a recipient. For all of the applicable requirements under titles 23, 40, and 49 described below, the associated DOT regulations also apply, unless Treasury states otherwise.

Applicable portions of Titles 23, 40, and 49 generally include:

- Title 23: All parts of title 23
- Title 40: Chapters 141 and 145
- Title 49: Chapters 53, 55, 67, 471, and subtitle V

2 The eligibility of projects under the RAISE grant program is described in the "Notice of Funding Opportunity for the Department of Transportation's National Infrastructure Investments (i.e., the Rebuilding American Infrastructure with Sustainability and Equity (RAISE) Grant Program) under the Infrastructure Investment and Jobs Act ("Bipartisan Infrastructure Law"), Amendment No. 2" (2023 RAISE Grant NOFO) under "3. Other" in "C. Eligibility Information, available at https://www.transportation.gov/sites/dot.gov/files/2023-02/RAISE%20 2023%20NOFO%20Amendment2.pdf.

More specifically, applicable provisions include those relating to the following requirements:

- Underlying project requirements.
  - For example, if a recipient intends to use SLFRF funds under Pathway Two for an INFRA project that would be eligible under title 23 (as included by the RAISE program), then in addition to complying with the requirements established in the RAISE NOFO, the recipient must also comply with the project eligibility and execution requirements of the INFRA program in 23 U.S.C. 117.
- Design, planning, construction, operation, maintenance, vehicle weight limit, and toll requirements with respect to particular projects.
- Location requirements for particular projects.
- Project approval requirements.
  - The approval requirements of titles 23, 40, and 49 of the U.S. Code apply to Pathway Two projects other than those that qualify for the streamlined framework described above. Treasury has determined not to require recipients to submit an application to, or receive approval from, Treasury to conduct a project that would be eligible under the RAISE grant program and meets the criteria of the streamlined framework of Pathway Two. Depending on the nature of the project, a recipient may still be required to obtain approval pursuant to a specific requirement under titles 23, 40 or 49 or the regulations adopted by DOT thereunder.
- Procurement requirements.
  - Recipients generally must satisfy the Buy America requirements of titles 23, 40, and 49 of the U.S. Code when funds are used on Surface Transportation projects under Pathway Two. However, recipients are not required to satisfy with the Buy America requirements in the case of Surface Transportation projects meeting the criteria for streamlined projects under Pathway Two.
- Wage and labor requirements.
  - For example, the requirements of 23 U.S.C. 113, applying Davis-Bacon prevailing wage protections for highway projects, apply.
- Compliance requirements.
  - Compliance provisions apply to the extent that they require recipients to establish and maintain measures to oversee the eligible projects that they are undertaking.
- Definitions of terms used in the provisions above.

Recipients should note that the RAISE program includes eligibility for projects with applicable requirements that are found outside of titles 23, 40, and 49. If a recipient would like to use SLFRF funds for a project eligible under the RAISE program but governed by laws outside titles 23, 40, and 49, the general principles described above for titles 23, 40, and 49 will apply, and recipients may ask Treasury for more detail about the specific requirements that apply to the particular project.

In addition to the applicable requirements of titles 23, 40, and 49 described above, recipients pursuing Surface Transportation projects under Pathway Two must also comply with the following requirements:

- **Limitation on Operating Expenses:** Recipients using SLFRF funds for projects eligible for Urbanized Formula Grants, Fixed Guideway Capital Investment Grants, Formula Grants for Rural Areas, State of Good Repair Grants, or Grants for Buses and Bus Facilities may not use SLFRF funds for operating expenses of these projects. Operating expenses are those costs necessary to operate and manage a public transportation system, including costs such as driver salaries, the cost of fuel, and the cost of equipment and supplies having a useful life of less than one year. Operating expenses do not include preventive maintenance activities. The limitation on operating expenses does not apply to other Surface Transportation projects or to other uses of SLFRF funds, including under the revenue loss eligible use category.

- **State of Good Repair and Performance Targets:** States that use SLFRF funds for Surface Transportation projects under Pathway Two for programs eligible under title 23, or that otherwise are subject to the requirements of title 23, must either demonstrate progress in achieving a state of good repair under 23 U.S.C. 119(e) or support the achievement of one or more performance targets under 23 U.S.C. 150.
- **National Environmental Policy Act (NEPA):** Recipients using funds for Surface Transportation projects that qualify for the streamlined framework under Pathway Two are not required to conduct NEPA environmental reviews. However, projects supported with SLFRF funds may still be subject to NEPA review and other environmental statutes if they are also funded by other federal financial assistance programs or have certain federal licensing or registration requirements. In addition, a project that qualifies for the streamlined framework may still be subject to limitations or prohibitions as a result of the application of other environmental statutes. For projects under Pathway Two outside of the streamlined framework, recipients must submit a notice of intent as outlined above, and the requirements of NEPA and other environmental laws apply to these Surface Transportation projects

PATHWAY TWO - INAPPLICABLE REQUIREMENTS OF TITLES 23, 40, AND 49

Certain sections of the relevant chapters of titles 23, 40, and 49 of the U.S. Code do not apply to recipients' use of SLFRF funds for Surface Transportation projects under Pathway Two. The following types of provisions generally do not apply:

- Grant size requirements
- Allocation requirements that require states to distribute funds received under certain programs to their local governments or to spend funds received under certain programs for the benefit of particular areas
- Non-federal cost-share requirements
- Reporting requirements that would normally apply when DOT provides funding for a project
- STIP/TIP Requirements
    - Generally, the STIP and TIP requirements do not apply to SLFRF funds used for Surface Transportation projects under Pathway Two. However, if a project receiving SLFRF funds under this framework is regionally significant and requires an action by the FHWA or the FTA, it will still be required to be included in the STIP or TIP. If a project receiving SLFRF funds under this framework is included in a TIP, for informational and conformity purposes, it also may be required to be included in the STIP.

PATHWAY TWO – PROJECTS OUTSIDE OF THE STREAMLINED APPROACH – NOTICE OF INTENT

Recipients interested in financing Surface Transportation projects outside of the parameters of the streamlined approach in Pathway Two must submit a notice of intent to Treasury. The notice of intent must be submitted to NOI-SLFRF@Treasury.gov and is due 30 calendar days after the end of the IFR comment period. For an example of what an ideal notice of intent would include, please see the IFR section titled "Pathway Two: Notice of Intent for Projects Outside Streamlined Framework."

Treasury will evaluate the projects included in these notices of intent, along with comments to this IFR, to design and implement the framework for approving these types of projects.

PATHWAY THREE: USING SLFRF TO SATISFY NON-FEDERAL SHARE REQUIREMENTS FOR CERTAIN SURFACE TRANSPORTATION PROJECTS

Under Pathway Three, recipients may use SLFRF funding to repay a TIFIA loan or to satisfy non-federal share requirements for projects eligible under the following programs:

- ✓ INFRA Grants
- ✓ Fixed Guideway Capital Investment Grants
- ✓ Mega Grants
- ✓ Projects eligible for credit assistance under the TIFIA program

If a recipient uses SLFRF funds to satisfy the non-federal share requirements for projects eligible under the programs noted above, DOT will not treat the SLFRF funds as federal funds for this limited purpose and will credit SLFRF toward applicable cost-share or non-federal match requirements accordingly.

Recipients using SLFRF funds to satisfy non-federal cost share requirements under Pathway Three must consult with DOT to understand the applicable non-federal cost share requirements and how SLFRF funds may be used for these purposes. As with any use of funds to meet non-federal cost share requirements, the requirements associated with the project, as administered by DOT, continue to apply unless otherwise provided by DOT. Recipients are required to comply with the existing DOT reporting requirements associated with the project for which they are using SLFRF funds for non-federal share requirements. Recipients will also be required to report certain information to Treasury.

Title I projects

Recipients may use SLFRF funds for Title I projects, which are the activities eligible under the CDBG and ICDBG programs, subject to certain requirements and limitations.

ELIGIBLE ACTIVITIES

Below is an illustrative list of eligible Title I projects:

- ✓ Acquisition of certain real property for a public purpose, subject to certain limitations
- ✓ Disposition of certain property, subject to certain limitations and rules
- ✓ Acquisition, construction, reconstruction, rehabilitation, or installation of public facilities and improvements, clearance and remediation activities
- ✓ Public services, subject to the limitation discussed below
- ✓ Interim assistance where immediate action is required for certain activities such as street repair, and costs to complete an urban renewal project under Title I
- ✓ Relocation payments for relocated families, businesses, nonprofit organizations, and farm operations, under certain conditions
- ✓ Payments to housing owners for loss of certain rental income
- ✓ Certain housing services
- ✓ Acquisition, construction, reconstruction, rehabilitation, or installation of privately owned utilities
- ✓ Rehabilitation and reconstruction of housing, conversion of structures to housing, or construction of certain housing
- ✓ Homeownership assistance
- ✓ Technical assistance to entities to increase capacity to carry out CDBG-eligible projects
- ✓ Assistance to certain institutions of higher education to carry out eligible activities
- ✓ Administration activities including general management, oversight, and coordination costs, fair housing activities, indirect costs, and submission of applications for federal programs
- ✓ Planning activities including the development of plans and studies, policy planning, and management and capacity building activities; and
- ✓ 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[3]

3 Recipients using SLFRF funds to satisfy non-federal match or cost-share requirements under the Title I eligible use category must analyze the projects and activities for which they intend to use SLFRF funds to meet non-federal share requirements to confirm that the project or activity is an eligible activity under section 105 of the Housing and Community Development Act and would comply with HUD's statutory, regulatory, and other requirements apply to CDBG and ICDBG activities.

INELIGIBLE ACTIVITIES UNDER TITLE I

Specific activities are generally not eligible projects under CDBG or ICDBG and accordingly, are not available as eligible projects under the Title I eligible use category. While the following projects are not eligible uses of SLFRF funds as a Title I project, they still may be eligible uses of SLFRF funds under other SLFRF eligible use categories. Non-Tribal government recipients should reference HUD's regulations at 24 CFR 570.207 and the "Activities Specified as Ineligible" section of HUD's Guide to National Objectives and Eligible Activities for CDBG Entitlement Communities for more information. Tribal governments should reference HUD's regulations at 24 CFR 1003.207. The activities that are generally ineligible under CDBG and ICDBG are the following:

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

TITLE I PROJECTS PROGRAM REQUIREMENTS

Recipients using SLFRF funds for Title I projects generally must comply with Title I requirements and the associated regulations. For example, project-level approval and certification requirements generally must be satisfied prior to recipients obligating and expending funds on Title I projects, which in the CDBG program, exist for projects subject to certain environmental reviews. On the other hand, recipients are not required to provide the Title I certification requirements that apply at the consolidated and annual planning level. In addition, recipients must comply with NEPA requirements, as implemented by Title I and the associated HUD regulations, and as adapted to the SLFRF program by Treasury.

Eligible activities must also satisfy other program requirements such as adherence to the Primary Objective and CDBG National Objectives, as described below, to be eligible under this eligible use category. Recipients should refer to and must comply with the following HUD regulations when determining eligible projects under this eligible use category: 24 C.F.R. 570.201 - 570.209 with respect to non-Tribal governments and 24 C.F.R. 1003.201 – 1003.209 with respect to Tribal governments. Recipients may refer to additional HUD guidance for information about the full list of projects eligible under CDBG, including guidance about complying with the National Objectives and other program requirements.

Where applicable, program requirements of the CDBG Entitlement Grants program will apply to non-Tribal government SLFRF recipients, and program requirements of the ICDBG Single Purpose Grants will apply to Tribal Government SLFRF recipients.

Project-level Approval and Certification Requirements

As noted above, when using SLFRF funds for Title I projects, recipients must satisfy project-level approval and certification requirements related to NEPA environmental review requirements.

Recipients are not required to submit certifications or obtain Treasury approval for Title I projects that satisfy either of the criteria below. Additionally, they may begin using SLFRF funds for the project right away:

- ✓ **Exempt Activities**: as contemplated by 24 FR 58.34(a).
- ✓ **Categorically Excluded Activities Not Subject to 24 CFR 58.5**: as contemplated by 24 CFR 58.35(b), provided that the circumstances described in 24 CFR 58.35(c) are not present.

For exempt projects, recipients must document in writing that the project meets the conditions of a specified exemption. For categorically excluded projects, recipients are required to maintain an Environmental Review Record, which is a well-organized written record of the process and determinations made with respect to the categorical exclusion. Treasury will provide additional information on the Environmental Review Record and certification requirements following issuance of the IFR.

For recipients using SLFRF funds for Title I projects that do not meet the criteria above, recipients must comply with the environmental review requirements set forth in the HUD statute and regulations, submit a certification to Treasury, and receive approval.

Other Program Requirements
When using SLFRF funds for Title I projects, recipients must comply with the following requirements that apply to the total amount of SLFRF used towards Title I projects, including:

For all SLFRF recipients:

- ✓ **The Primary Objective**: SLFRF recipients must direct at least 70% of SLFRF funds used for Title I projects to projects that principally benefit low- and moderate-income persons.
- ✓ **Public Services Cap**: Not more than 15% of SLFRF funds used for Title I projects may be spent under the "public services" category of eligible activities.
- ✓ **Planning and Administrative Costs Cap**: Not more than 20% of SLFRF funds used for Title I projects may be spent on planning and administrative costs.
- ✓ **BEAD Program Requirements**: Requirements of the Broadband Equity, Access, and Deployment (BEAD) program apply as outlined in section 60102 of the Infrastructure Investment and Jobs Act.[4]

For non-Tribal SLFRF recipients only:

- ✓ **CDBG National Objectives**: Any project undertaken by a non-Tribal SLFRF recipient must satisfy at least one CDBG National Objective.
- ✓ **Labor Standards Requirements**: Prevailing wage rate requirements in accordance with the Davis-Bacon Act and other labor standards applied by HUD to construction work under Title I apply.[5]

SLFRF recipients that are also CDBG grantees (but not ICDBG grantees) should note that HUD program requirements related to timely expenditures of CDBG funds continue to apply to their CDBG funds. Treasury encourages SLFRF recipients that are also CDBG grantees to continue to spend their CDBG funds in compliance with such requirements.

Treasury is not delegating authority to HUD to oversee or administer Title I projects. Accordingly, recipients will report projects only to Treasury.

4 For more guidance, see Section 1.2 of NTIA's BEAD Program "Letter of Intent and Initial Planning Funding Grant Application Guidance," available at https://broadbandusa.ntia.doc.gov/sites/default/files/2022-05/BEAD%20Planning%20Application%20Guidance.pdf.

5 Non-Tribal government recipients must comply with these requirements in accordance with HUD regulations for Title I labor standards requirements at 24 CFR 570.603 and may reference Chapter 16.1.1 of HUD's "Basically CDBG for Entitlements" Guide, HUD's "Davis-Bacon and Labor Standards: Agency/Contractor Guide," and HUD's "Davis-Bacon and Labor Standards: Contractor Guide Addendum." Such requirements do not apply to Tribal government recipients of SLFRF.

Finally, many of the uses in the Title I projects eligible use category are also eligible in the public health and negative economic impacts eligible use category where there is no cap on the amount of SLFRF funds that may be directed toward an eligible use. Recipients seeking to use SLFRF funds for Title I projects may consider the relevant eligible uses and available funding levels to determine which eligible use category best supports their community's needs. As noted above, this IFR did not alter the public health and negative economic impact eligible use category. Please see the 2022 final rule for more information.

Program Administration

Generally, recipients using SLFRF funds for the new eligible uses added by the 2023 CAA must comply with the general rules and restrictions that apply to the SLFRF program. For example, the restrictions on use set forth in the final rule generally apply to the new eligible uses described in the IFR.

The IFR describes program administration requirements, including timeline for use of funds, use of funds to meet non-federal match or cost-share requirements, and reporting on use of funds.

TIMELINE FOR USE OF FUNDS

The IFR was submitted for publication in August 2023 and will become effective when published. Recipients may use SLFRF funds for these new eligible uses for costs incurred beginning December 29, 2022. Consistent with the existing eligible uses discussed in the 2022 final rule, recipients must obligate SLFRF funds for these new eligible uses by December 31, 2024. Recipients must expend SLFRF funds obligated to provide emergency relief from natural disasters by December 31, 2026. Recipients must expend SLFRF funds obligated for Surface Transportation projects and Title I projects by September 30, 2026.

NON-FEDERAL MATCH OR COST-SHARE REQUIREMENTS

Under the Surface Transportation projects eligible use category, recipients may use SLFRF funds to satisfy non-federal cost share requirements for certain programs under Pathway Three. Under the Title I projects eligible use category, recipients may use SLFRF funds to satisfy 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.

The 2023 CAA did not alter the existing eligible uses of SLFRF funds. Recipients may still use SLFRF funds in accordance with the 2022 final rule. As described in the 2022 final rule, SLFRF funds available under the "revenue loss" eligible use category generally still may be used to meet the non-federal cost-share or matching requirements of other federal programs. However, note that SLFRF funds under the revenue loss eligible use category may not be used as the nonfederal share for purposes of a state's Medicaid and CHIP programs because the Office of Management and Budget has approved a waiver as requested by the Centers for Medicare & Medicaid Services pursuant to 2 CFR 200.102 of the Uniform Guidance and related regulations. SLFRF funds beyond those available under the revenue loss eligible use category may not be used to meet the non-federal match or cost-share requirements of other federal programs, other than as specifically provided for by statute.

REPORTING, COMPLIANCE & RECOUPMENT

Recipients are required to comply with Treasury's Compliance and Reporting Guidance, which includes submitting mandatory periodic reports to Treasury. Recipients must maintain records supporting their determination that projects meet relevant requirements, and recipients should be prepared to attest to having completed these determinations as part of their ongoing reporting to Treasury. Treasury will update the Compliance and Reporting Guidance with additional information regarding the IFR.