

Summary of Key Topics and Updates to U.S. Department of Treasury Frequently Asked Questions (“FAQ”) as of July 19, 2021¹

1) Topic: Transferring, Pooling and Blending

FAQ #1.8 asks whether non-profit and private organizations can receive Coronavirus State and Local Fiscal Recovery Funds (“FRF”) assistance. Treasury’s response indicates that while the American Rescue Plan Act of 2021 (“ARP”) does not authorize the U.S. Department of Treasury (“Treasury”) to provide FRF assistance directly to non-profit or private organizations, the ARP authorizes relief funds to be transferred to various governmental and non-governmental organizations, including non-profit and private organizations, while funding projects that are eligible for this assistance.

FAQ #4.9 asks whether recipients of FRF assistance can pool funds for regional projects, and Treasury’s response states that funds can be pooled regionally, as long as the project is eligible for this assistance.

Finally, **FAQ #4.10** asks whether recipients can fund projects using both ARP funds and other sources of funding. Treasury’s response states in part, “Funds may be used in conjunction with other funding sources, provided that the costs are eligible costs under each source program....” Recipients should remain aware of any ongoing requirements imposed by legislation when pooling funds from another federal program. An example of this is provided under **FAQ #6.17**, which asks whether eligible infrastructure projects are subject to the Davis-Bacon Act. Treasury’s response states in part, “Recipients may be ... subject to the requirements of the Davis Bacon-Act, when CSFRF/CLFRF award funds are used on a construction project in conjunction with funds from another federal program that requires enforcement of the Davis-Bacon Act.”

When read together, these new FAQs indicate that Treasury is giving recipients and subrecipients of FRF assistance broad latitude in the use of those funds. It seems clear that Treasury will approve of the use of ARP funds for eligible projects, including: 1) transfer of those funds to non-profit and private organizations; 2) pooling of the funds for regional projects; and 3) using ARP funds in conjunction with other sources of funding.

2) Topic: Revenue Loss Calculation

FAQ #3.14 asks for clarification of which entities constitute governmental units for the purposes of calculating Revenue Loss. Treasury’s response indicates that recipient governments “should identify all the entities included in their government...on a best-efforts basis.” Treasury also states, “In cases in which the autonomy of certain authorities...is not readily distinguishable from the recipient’s government, recipients may adopt the Census

¹ <https://home.treasury.gov/system/files/136/SLFRPFAQ.pdf> (New FAQs added: 1.8, 3.14, 3.15, 4.9-4.12, 6.13-6.17 and 10.3; FAQ 1.4 updated to change the date that Tribal governments must confirm employment numbers from July 16, 2021 to July 23, 2021 to receive an Employment Allocation from Fiscal Recovery Funds.

Bureau's criteria for judging whether an entity is independent from, or a constituent of, a given government."

FAQ #3.15 asks for clarification of Treasury's definition of "Utility Revenue" in the context of Treasury's determination that "General Revenue" excludes utility revenue. Treasury's response to this question indicates that the exclusion of Utility Revenue from the General Revenue calculation relates to four types of publicly-owned and controlled utilities: 1) water supply systems; 2) electric power systems; 3) gas supply systems; and 4) public mass transit systems.

These answers are helpful in clarifying Treasury's plans to implement the ARP. It is likely that additional questions about the calculation of Revenue Loss will arise and additional guidance will ensue. Interested parties should submit additional feedback to Treasury, which in turn will continue to publish updates to its FAQs.

3) Topic: Uses of Coronavirus State and Local Fiscal Recovery Funds Assistance

FAQ #4.11 asks whether FRF assistance may be used to make loans, including loans to small businesses and loans to finance investments in infrastructure projects. Treasury's response indicates that such loans can be made, as long as the loan is for an eligible use.

FAQ #4.12 asks whether FRF assistance can be used for outreach activities related to other federal programs, such as the Child Tax Credit and Supplemental Nutrition Assistance Program, and Treasury states that CRF funds can be used for outreach purposes.

FAQ #6.13 relates to the use of FRF assistance to support infrastructure that will be used to power water treatment plants and wastewater systems. Treasury indicates that "State and Local Fiscal Recovery Funds may be used to finance the generation and delivery of clean power to a wastewater system or a wastewater treatment plant on a pro-rata basis."

FAQ #6.14 asks whether stormwater management projects are eligible for CRF assistance. Treasury's response states that stormwater management projects "should be designed to incorporate water quality benefits consistent with the goals of the Clean Water Act."

FAQ #6.15 asks about the use of FRF for "road repairs and upgrades that occur in connection with an eligible water or sewer project." Treasury's response states that recipients may use CRF assistance for road repairs and upgrades related to eligible water or sewer projects.

FAQ #6.16 asks whether FRF assistance can be used to build or upgrade broadband connections to schools or libraries. Treasury states in response that "recipients may use Fiscal Recovery Funds to invest in broadband infrastructure...." in some circumstances, and that those investments include "private businesses...that serve the public, such as schools [and] libraries...."

Treasury's responses to these FAQs indicate that Treasury is interpreting its CRF authorities to facilitate a broad use of the funding provided by ARP. However, it is

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inevitable that fact-specific questions will develop in the course of recipients' decision making about the use of these funds. The specific details of every employment of funds are obviously critically important. State and local governments should submit comments to Treasury encouraging the department to clarify its ARP implementation plans.