**TOWN OF HERNDON, VIRGINIA**
**PUBLIC HEARING AGENDA**
**HERNDON COUNCIL CHAMBERS BUILDING**
**765 LYNN STREET**
**August 10, 2021**
**7:00 PM**

## CALL TO ORDER

1. Pledge of Allegiance to the Flag of the United States of America
2. Roll Call & Determination of Quorum

## APPROVAL OF MINUTES

| | |
|---|---|
| May 4, 2021 | Town Council Work Session Draft Minutes |
| May 6, 2021 | Town Council Strategic Planning Minutes |
| May 11, 2021 | Town Council Public Hearing Draft Minutes |

## COMMENTS

3. Comments from the Town Manager
4. Comments from the Town Council
5. Comments from the Audience

## PUBLIC HEARINGS

6. Resolution 21-G-66, to authorize the Reserve of Fiscal Year (FY) 2021 funding for on-going operations & maintenance, Capital Projects, and outstanding Encumbrances at June 30, 2021 for FY 2022 Adopted Budget

7. Ordinance 21-O-16, to amend the Fiscal Year 2022 Adopted Budget by recognizing the outstanding encumbrances, reserved amounts, and re-appropriate funds for FY2021 as appropriated amounts for FY2022

8. Ordinance 21-O-17, to authorize the American Rescue Act (ARPA) Allocation Plan and appropriating ARPA funds for FY2022

9. Ordinance 21-O-18, to consider zoning ordinance text amendment, ZOTA #21-02, to amend Chapter 78 (ZONING), Article V (Planned Development Districts), Section 78-51.1 (PD-UR – Planned Development Urban Residential), to allow for an increase in permitted density up to 28 dwelling units per acre when a zoning map amendment includes adaptive reuse of existing buildings for residential dwelling units

## GENERAL

10. Ordinance 21-O-20, to amend Chapter 42 (MOTOR VEHICLES AND TRAFFIC), Article IV (Stopping, Standing, Parking), Division 1 (Generally), Section 42-152(b) (Parking prohibited; fines imposed) by adding thereto a new subsection prohibiting parking in front of or within ten feet of a driveway and the fine imposed

## CONSENT

11. Resolution 21-G-71, to Award a Contract for Financial Budget Planning System/Software, RFP #21-11

12. Ordinance 21-O-19, to amend and reenact Chapter 54 (PERSONNEL), Article I (In General), Article II (Pay), Article III (Leave), and Article VI (Benefits)

13. Resolution 21-G-67, to award Contract #B-21-03, Historic Herndon Streetscape Project - Phase III

14. Resolution 21-G-68, to approve a temporary license agreement to use a designated public space in the alley adjacent to Jimmy's Old Town Tavern for outdoor seating for an event

15. Resolution 21-G-69, to approve a Temporary License Agreement pursuant to Ordinance 20-O-23 Continuity of Governmental Operations, as amended, between the Town and Dulles Regional Chamber of Commerce d/b/a Herndon Chamber of Commerce for use of Town-owned municipal parking lot spaces for portable toilets and an ice machine for Friday Night Live events

16. Resolution 21-G-70, to approve and authorize the Mayor to sign a 3-year license agreement between the Town of Herndon and Nafis Peter Ahmed and Ruth Llabres Ahmed for the Town's use of the lot at the corner of Lynn and Station Streets for public parking and other public purposes

17. Resolution 21-G-72, to appoint the Town of Herndon's "Principal" member to the Northern Virginia Transportation Authority's Planning Coordination Advisory Committee (NVTA PCAC)

18. Resolution 21-G-73, to appoint William Savage as the 'Virginia State Bar' member to the Architectural Review/Historic District Review Boards

**Future Town Council Meetings**

| | | |
|---|---|---|
| September 7, 2021 | Town Council Work Session | 7:00 PM |
| September 14, 2021 | Town Council Public Hearing | 7:00 PM |
| September 21, 2021 | Town Council Work Session | 7:00 PM |
| September 28, 2021 | Town Council Public Hearing | 7:00 PM |

**TOWN OF HERNDON, VIRGINIA**

**RESOLUTION**

**August 10, 2021**

**Resolution - to authorize the Reserve of Fiscal Year (FY) 2021 funding for on-going operations & maintenance, Capital Projects, and outstanding Encumbrances at June 30, 2021 for FY 2022 Adopted Budget.**

**WHEREAS,** the Town of Herndon closes its fiscal year on June 30, 2021; and

**WHEREAS,** the FY 2021 Annual Budget and subsequent amendments to the annual budget authorized and appropriated various monies for specific activities which were expected to be concluded at the close of the fiscal year; and

**WHEREAS,** it is the intent of the Town Council to reserve, encumber and re-appropriate these funds into the next fiscal year; and

**WHEREAS,** staff have reviewed the various accounts and balances and recommends the establishment of the estimated encumbrances and reserves as listed on the attached Schedules.

**NOW, THEREFORE, BE IT RESOLVED** that the Town Council of the Town of Herndon, Virginia, hereby establishes and re-appropriates the reserved or encumbered amounts for the fiscal year ended June 30, 2021, as listed on the attached Schedules.

**BE IT FURTHER RESOLVED** that this resolution is effective retroactively to June 30, 2021.

**Schedule 1 – Operations & Maintenance Reserves**

| Fund | Department | Cost Center | Amount | Description |
|---|---|---|---|---|
| **General Fund** | ARPA | 0019394 | $12,761,973 | First Installment of the American Rescue Plan Act |
| **General Fund** | Non-departmental | 0019797 | $80,000 | Community donations |
| **General Fund** | HPD | 0010770 | $21,478 | Vehicle/Vehicle Equipment Back Order |
| **Total O&M** | | | $12,863,451 | |

**Schedule 2 – Capital Reserves**

| Fund | Account Number | Description | Amount ($) |
|---|---|---|---|
| Capital Projects Fund | 0150880-491710 | Stream Restoration | 1,206,096 |
| Capital Projects Fund | 0150884-491590 | Town-wide Security Initiative | 300,000 |
| Capital Projects Fund | 0150885-491050 | Gateway/Wayfinding/Historical | 51,865 |
| Capital Projects Fund | 0150885-491860 | Bicycle Facilities/Accommodation | 62,000 |
| Capital Projects Fund | 0150886-491470 | Hern Pk/Spring St to Fx Co Pkwy | 1,549,000 |
| Capital Projects Fund | 0150886-491630 | Sidewalks & Minor Trails | 247,950 |
| Capital Projects Fund | 0150886-491640 | Central Elden Walkability | 1,087,000 |
| Capital Projects Fund | 0150886-491650 | Elden-Center St Intersection | 564,996 |
| Capital Projects Fund | 0150886-491740 | H Parkway/VanBuren Intersection | 3,057,675 |
| Capital Projects Fund | 0150886-491780 | Trails to Herndon Metro | 589,270 |
| Capital Projects Fund | 0150886-491790 | Veh/Ped Access to Metro | 1,732,061 |
| Capital Projects Fund | 0150886-491800 | Sterling/HP Inter-70% | 45,496 |
| Capital Projects Fund | 0150886-491810 | Van Buren Complete Streets | 2,351,141 |
| Capital Projects Fund | 0150886-491830 | Elden/Monroe Intersection | 2,612,852 |
| Capital Projects Fund | 0150886-491840 | Van Buren-Hern Pk to S Town Ln | 2,630,000 |
| Capital Projects Fund | 0150886-491850 | Sterling Road Improvements | 50,000 |
| Capital Projects Fund | 0150886-491910 | Traffic Signal UPS | 50,000 |
| Capital Projects Fund | 0159999-490080 | Storm Drain Improve | 479,096 |
| Capital Projects Fund | 0159999-490360 | Bready Pk Court Ren | 125,000 |
| Capital Projects Fund | 0159999-490650 | Downtown Improve | 523,195 |
| Capital Projects Fund | 0159999-490670 | DT U&L Underground | 840,000 |
| Capital Projects Fund | 0159999-491900 | Parking & Arts Center | 462,500 |
| **Total Capital Projects Fund** | | | **$20,617,193** |
| | | | |
| Water & Sewer Fund | 0020887-480020 | Capital Projects | 2,299,318 |
| Water & Sewer Fund | 0020887-480030 | Vehicle/Equipment | 30,036 |
| Water & Sewer Fund | 0020887-480090 | Microcomputer/Peripherals | 1,200 |
| Water & Sewer Fund | 0020887-480190 | Sewer Facility Repair | 522,525 |
| Water & Sewer Fund | 0020887-480410 | Utility Capacity Study | 15,000 |
| Water & Sewer Fund | 0020887-481100 | SCADA | 19,099 |
| Water & Sewer Fund | 0020888-480020 | Capital Projects | 2,133,486 |
| Water & Sewer Fund | 0020888-480070 | Water Meters | 9,983 |
| Water & Sewer Fund | 0020888-480090 | Microcomputer/Peripherals | 4,200 |
| Water & Sewer Fund | 0020888-480350 | Water Tank Pumps & Tank Rehab | 31,850 |
| **Total Water & Sewer Fund** | | | $5,066,697 |
| | | | |
| Downtown Parking Fund | 0088005-480320 | Downtown Parking Garage | 200,000 |
| **Total Downtown Parking Fund** | | | **$200,000** |
| | | | |
| **Total Capital Reserves** | | | **$25,883,890** |

**Schedule 3 – Estimated Outstanding Encumbrances at June 30, 2021**

| | |
|---|---|
| General Fund | $785,534 |
| Water & Sewer Fund | $2,092,839 |
| Chestnut Grove Cemetery Fund | $10,700 |
| Capital Projects Fund | $3,260,064 |
| Downtown Parking Fund | $30,213 |
| **Total** | $6,179,350 |

**TOWN OF HERNDON, VIRGINIA**

**ORDINANCE**

**August 10, 2021**

**Ordinance - to amend the Fiscal Year 2022 Adopted Budget by recognizing the outstanding encumbrances, reserved amounts, and re-appropriate funds for FY2021 as appropriated amounts for FY2022.**

## Recital

In adopting this ordinance, the Town Council has considered the Town Manager's recommended budget modifications as described in Attachment A, FY 2022 Budget Amendment Number 1.

**BE IT ORDAINED** by the Council of the Town of Herndon, Virginia, that the financial adjustments to the FY 2022 Budget, as described in Attachment A, Budget Amendment FY2022, Number 1 to this ordinance, are hereby approved. This ordinance shall be effective on and after the date of its adoption.

**TOWN OF HERNDON, VA**
**FY 2022**

## BUDGET AMENDMENT NUMBER 1

The following appropriations and revenue sources are proposed for amendment:

| **General Fund** | |
|---|---|
| Increase Expenditure Appropriations: | |
| Estimated Outstanding Encumbrances at June 30, 2021 | $785,534 |
| ARPA – American Rescue Plan Act Funding | $12,761,973 |
| Authorized Reserves at June 30, 2021 | $101,478 |
| Salaries – Market Rate Adjustment | $265,000 |
| Total General Fund Appropriation Increase: | $13,913,985 |
| | |
| Increase Revenue Account Budgets: | |
| Federal Grant – ARPA | $12,761,973 |
| General Fund Designated Reserves | $1,152,012 |
| Total General Fund Revenue Increase | $13,913,985 |

| **Water & Sewer Fund** | |
|---|---|
| Increase Expenditure Appropriations: | |
| Estimated Outstanding Encumbrances at June 30, 2021 | $2,092,839 |
| Authorized Reserves at June 30, 2021 | $5,066,697 |
| Total Water & Sewer Appropriation Increase: | $7,159,536 |
| | |
| Increase Revenue Account Budgets: | |
| Water and Sewer Fund Designated Reserves | $7,159,536 |

| **CHESTNUT GROVE CEMETERY FUND** | |
|---|---|
| Increase Expenditure Appropriations: | |
| Estimated Outstanding Encumbrances at June 30, 2021 | $10,700 |
| Authorized Reserves at June 30, 2021 | $0 |
| Total Chestnut Grove Cemetery Fund Appropriation Increase: | $10,700 |
| | |
| Increase Revenue Account Budgets: | |
| Cemetery Fund Designated Reserves | $10,700 |

| DOWNTOWN PARKING ENTERPRISE FUND | |
|---|---|
| Increase Expenditure Appropriations: | |
| Estimated Outstanding Encumbrances at June 30, 2021 | $30,213 |
| Authorized Reserves at June 30, 2021 | $200,000 |
| Total Downtown Parking Enterprise Fund Appropriation Increase: | $230,213 |
| | |
| Increase Revenue Account Budgets: | |
| Downtown Parking Enterprise Fund Designated Reserves | $230,213 |

| CAPITAL PROJECTS FUNDS | |
|---|---|
| Increase Expenditure Appropriations: | |
| Estimated Outstanding Encumbrances at June 30, 2021 | $3,260,064 |
| Authorized Reserves at June 30, 2021 | $20,617,193 |
| Total Capital Projects Funds Appropriation Increase: | $23,877,257 |
| | |
| Increase Revenue Account Budgets: | |
| Capital Projects Designated Reserves | $23,877,257 |

**TOWN OF HERNDON, VIRGINIA**

**ORDINANCE**

**August 10, 2021**

**Ordinance - to authorize the American Rescue Act (ARPA) Allocation Plan and appropriating ARPA funds for FY2022.**

**Recital**

In adopting this ordinance, the Town Council has considered the Town Manager's recommended appropriations for FY 2022 Adopted Budget as described in ARPA Allocation Plan.

**BE IT ORDAINED** by the Council of the Town of Herndon, Virginia, that the financial adjustments to the FY 2022 budget, as described in the ARPA Allocation Plan are hereby approved. This ordinance shall be effective on and after the date of its adoption.

**DEPARTMENT OF THE TREASURY**

**31 CFR Part 35**

**RIN 1505–AC77**

## Coronavirus State and Local Fiscal Recovery Funds

**AGENCY:** Department of the Treasury.

**ACTION:** Interim final rule.

**SUMMARY:** The Secretary of the Treasury (Treasury) is issuing this interim final rule to implement the Coronavirus State Fiscal Recovery Fund and the Coronavirus Local Fiscal Recovery Fund established under the American Rescue Plan Act.

**DATES:** *Effective date:* The provisions in this interim final rule are effective May 17, 2021.

*Comment date:* Comments must be received on or before July 16, 2021. ADDRESSES: Please submit comments electronically through the Federal eRulemaking Portal: *http://www.regulations.gov.* Comments can be mailed to the Office of the Undersecretary for Domestic Finance, Department of the Treasury, 1500 Pennsylvania Avenue NW, Washington, DC 20220. Because postal mail may be subject to processing delay, it is recommended that comments be submitted electronically. All comments should be captions with ''Coronavirus State and Local Fiscal Recovery Funds Interim Final Rule Comments.'' Please include your name, organization affiliation, address, email address and telephone number in your comment. Where appropriate, a comment should include a short executive summary.

In general, comments received will be posted on *http://www.regulations.gov* without change, including any business or personal information provided. Comments received, including attachments and other supporting materials, will be part of the public record and subject to public disclosure. Do not enclose any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

**FOR FURTHER INFORMATION CONTACT:** Katharine Richards, Senior Advisor, Office of Recovery Programs, Department of the Treasury, (844) 529–9527.

**SUPPLEMENTARY INFORMATION:**

## I. Background Information

### *A. Overview*

Since the first case of coronavirus disease 2019 (COVID–19) was discovered in the United States in January 2020, the disease has infected over 32 million and killed over 575,000 Americans.[1] The disease has impacted every part of life: As social distancing became a necessity, businesses closed, schools transitioned to remote education, travel was sharply reduced, and millions of Americans lost their jobs. In April 2020, the national unemployment rate reached its highest level in over seventy years following the most severe month-over-month decline in employment on record.[2] As of April 2021, there were still 8.2 million fewer jobs than before the pandemic.[3] During this time, a significant share of households have faced food and housing insecurity.[4] Economic disruptions impaired the flow of credit to households, State and local governments, and businesses of all sizes.[5] As businesses weathered closures and sharp declines in revenue, many were forced to shut down, especially small businesses.[6]

Amid this once-in-a-century crisis, State, territorial, Tribal, and local governments (State, local, and Tribal governments) have been called on to respond at an immense scale. Governments have faced myriad needs to prevent and address the spread of COVID–19, including testing, contact tracing, isolation and quarantine, public communications, issuance and enforcement of health orders, expansions to health system capacity like alternative care facilities, and in recent months, a massive nationwide mobilization around vaccinations. Governments also have supported major efforts to prevent COVID–19 spread through safety measures in settings like nursing homes, schools, congregate living settings, dense worksites, incarceration settings, and public facilities. The pandemic's impacts on behavioral health, including the toll of pandemic-related stress, have increased the need for behavioral health resources.

At the same time, State, local and Tribal governments launched major efforts to address the economic impacts of the pandemic. These efforts have been tailored to the needs of their communities and have included expanded assistance to unemployed workers; food assistance; rent, mortgage, and utility support; cash assistance; internet access programs; expanded services to support individuals experiencing homelessness; support for individuals with disabilities and older adults; and assistance to small businesses facing closures or revenue loss or implementing new safety measures.

In responding to the public health emergency and its negative economic impacts, State, local, and Tribal governments have seen substantial increases in costs to provide these services, often amid substantial declines in revenue due to the economic downturn and changing economic patterns during the pandemic.[7] Facing these budget challenges, many State, local, and Tribal governments have been forced to make cuts to services or their workforces, or delay critical investments. From February to May of 2020, State, local, and Tribal governments reduced their workforces by more than 1.5 million jobs and, in April of 2021, State, local, and Tribal government employment remained nearly 1.3 million jobs below pre-pandemic levels.[8] These cuts to State, local, and Tribal government workforces

[1] Centers for Disease Control and Prevention, COVID Data Tracker, *http://www.covid.cdc.gov/covid-data-tracker/#datatracker-home* (last visited May 8, 2021).

[2] U.S. Bureau of Labor Statistics, Unemployment Rate [UNRATE], retrieved from FRED, Federal Reserve Bank of St. Louis; *https://fred.stlouisfed.org/series/UNRATE,* May 3, 2021. U.S. Bureau of Labor Statistics, Employment Level [LNU02000000], retrieved from FRED, Federal Reserve Bank of St. Louis; *https://fred.stlouisfed.org/series/LNU02000000,* May 3, 2021.

[3] U.S. Bureau of Labor Statistics, All Employees, Total Nonfarm [PAYEMS], retrieved from FRED, Federal Reserve Bank of St. Louis; *https://fred.stlouisfed.org/series/PAYEMS,* May 7, 2021.

[4] Nirmita Panchal et al., The Implications of COVID–19 for Mental Health and Substance Abuse (Feb. 10, 2021), https://www.kff.org/coronavirus-covid-19/issue-brief/the-implications-of-covid-19-for-mental-health-and-substance-use/#:~:text=Older%20adults%20are%20also%20more,prior%20to%20the%20current%20crisis; U.S. Census Bureau, Household Pulse Survey: Measuring Social and Economic Impacts during the Coronavirus Pandemic, https://www.census.gov/programs-surveys/household-pulse-survey.html (last visited Apr. 26, 2021); Rebecca T. Leeb et al., Mental Health-Related Emergency Department Visits Among Children Aged <18 Years During the COVID Pandemic—United States, January 1—October 17, 2020, Morb. Mortal. Wkly. Rep. 69(45):1675–80 (Nov. 13, 2020), *https://*www.cdc.gov/mmwr/volumes/69/wr/mm6945a3.htm.

[5] Board of Governors of the Federal Reserve System, Monetary Policy Report (June 12, 2020), *https://www.federalreserve.gov/monetarypolicy/2020-06-mpr-summary.htm.*

[6] Joseph R. Biden, Remarks by President Biden on Helping Small Businesses (Feb. 22, 2021), *https://www.whitehouse.gov/briefing-room/speeches-remarks/2021/02/22/remarks-by-president-biden-on-helping-small-businesses/.*

[7] Michael Leachman, House Budget Bill Provides Needed Fiscal Aid for States, Localities, Tribal Nations, and Territories (Feb. 10, 2021), *https://www.cbpp.org/research/state-budget-and-tax/house-budget-bill-provides-needed-fiscal-aid-for-states-localities.*

[8] U.S. Bureau of Labor Statistics, All Employees, State Government [CES9092000001] and All Employees, Local Government [CES9093000001], retrieved from FRED, Federal Reserve Bank of St. Louis, *https://fred.stlouisfed.org/series/CES9092000001* and *https://fred.stlouisfed.org/series/CES9093000001* (last visited May 8, 2021).

come at a time when demand for government services is high, with State, local, and Tribal governments on the frontlines of fighting the pandemic. Furthermore, State, local, and Tribal government austerity measures can hamper overall economic growth, as occurred in the recovery from the Great Recession.[9]

Finally, although the pandemic's impacts have been widespread, both the public health and economic impacts of the pandemic have fallen most severely on communities and populations disadvantaged before it began. Low-income communities, people of color, and Tribal communities have faced higher rates of infection, hospitalization, and death,[10] as well as higher rates of unemployment and lack of basic necessities like food and housing.[11] Pre-existing social vulnerabilities magnified the pandemic in these communities, where a reduced ability to work from home and, frequently, denser housing amplified the risk of infection. Higher rates of pre-existing health conditions also may have contributed to more severe COVID–19 health outcomes.[12] Similarly, communities or households facing economic insecurity before the pandemic were less able to weather business closures, job losses, or declines in earnings and were less able to participate in remote work or education due to the inequities in access to reliable and affordable broadband infrastructure.[13] Finally, though schools in all areas faced challenges, those in high poverty areas had fewer resources to adapt to remote and hybrid learning models.[14] Unfortunately, the pandemic also has reversed many gains made by communities of color in the prior economic expansion.[15]

*B. The Statute and Interim Final Rule*

On March 11, 2021, the American Rescue Plan Act (ARPA) was signed into law by the President.[16] Section 9901 of ARPA amended Title VI of the Social Security Act[17] (the Act) to add section 602, which establishes the Coronavirus State Fiscal Recovery Fund, and section 603, which establishes the Coronavirus Local Fiscal Recovery Fund (together, the Fiscal Recovery Funds).[18] The Fiscal Recovery Funds are intended to provide support to State, local, and Tribal governments (together, recipients) in responding to the impact of COVID–19 and in their efforts to contain COVID–19 on their communities, residents, and businesses. The Fiscal Recovery Funds build on and expand the support provided to these governments over the last year, including through the Coronavirus Relief Fund (CRF).[19]

Through the Fiscal Recovery Funds, Congress provided State, local, and Tribal governments with significant resources to respond to the COVID–19 public health emergency and its economic impacts through four categories of eligible uses. Section 602 and section 603 contain the same eligible uses; the primary difference between the two sections is that section 602 establishes a fund for States, territories, and Tribal governments and section 603 establishes a fund for metropolitan cities, nonentitlement units of local government, and counties. Sections 602(c)(1) and 603(c)(1) provide that funds may be used:

(a) To respond to the public health emergency or its negative economic impacts, including assistance to households, small businesses, and nonprofits, or aid to impacted industries such as tourism, travel, and hospitality;

(b) To respond to workers performing essential work during the COVID–19 public health emergency by providing premium pay to eligible workers;

(c) For the provision of government services to the extent of the reduction in revenue due to the COVID–19 public health emergency relative to revenues collected in the most recent full fiscal year prior to the emergency; and

(d) To make necessary investments in water, sewer, or broadband infrastructure.

In addition, Congress clarified two types of uses which do not fall within these four categories. Sections 602(c)(2)(B) and 603(c)(2) provide that these eligible uses do not include, and thus funds may not be used for, depositing funds into any pension fund. Section 602(c)(2)(A) also provides, for States and territories, that the eligible uses do not include ''directly or indirectly offset[ting] a reduction in the net tax revenue of [the] State or territory resulting from a change in law, regulation, or administrative interpretation.''

The ARPA provides a substantial infusion of resources to meet pandemic response needs and rebuild a stronger, more equitable economy as the country recovers. First, payments from the Fiscal Recovery Funds help to ensure that State, local, and Tribal governments have the resources needed to continue to take actions to decrease the spread of COVID–19 and bring the pandemic under control. Payments from the Fiscal Recovery Funds may also be used by recipients to provide support for costs incurred in addressing public health and economic challenges resulting from the pandemic, including resources to offer premium pay to essential workers, in recognition of their sacrifices over the

[9] Tracy Gordon, State and Local Budgets and the Great Recession, Brookings Institution (Dec. 31, 2012), *http://www.brookings.edu/articles/state-and-local-budgets-and-the-great-recession.*

[10] Sebastian D. Romano et al., Trends in Racial and Ethnic Disparities in COVID–19 Hospitalizations, by Region—United States, March–December 2020, MMWR Morb Mortal Wkly Rep 2021, 70:560–565 (Apr. 16, 2021), *https://www.cdc.gov/mmwr/volumes/70/wr/mm7015e2.htm?s_cid=mm7015e2_w.*

[11] Center on Budget and Policy Priorities, Tracking the COVID–19 Recession's Effects on Food, Housing, and Employment Hardships, *https://www.cbpp.org/research/poverty-and-inequality/tracking-the-covid-19-recessions-effects-on-housing-and* (last visited May 4, 2021).

[12] Lisa R. Fortuna et al., Inequity and the Disproportionate Impact of COVID–19 on Communities of Color in the United States: The Need for Trauma-Informed Social Justice Response, Psychological Trauma Vol. 12(5):443–45 (2020), *available at https://psycnet.apa.org/fulltext/2020-37320-001.pdf.*

[13] Emily Vogles et al., 53% of Americans Say the internet Has Been Essential During the COVID–19 Outbreak (Apr. 30, 2020), *https://www.pewresearch.org/internet/2020/04/30/53-of-americans-say-the-internet-has-been-essential-during-the-covid-19-outbreak/.*

[14] Emma Dorn et al., COVID–19 and student learning in the United States: The hurt could last a lifetime (June 2020), *https://webtest.childrensinstitute.net/sites/default/files/documents/COVID-19-and-student-learning-in-the-United-States_FINAL.pdf;* Andrew Bacher-Hicks et al., Inequality in Household Adaptation to Schooling Shocks: Covid-Induced Online Engagement in Real Time, J. of Public Econ. Vol. 193(C) (July 2020), *available at https://www.nber.org/papers/w27555.*

[15] *See, e.g.,* Tyler Atkinson & Alex Richter, Pandemic Disproportionately Affects Women, Minority Labor Force Participation, *https://www.dallasfed.org/research/economics/2020/1110* (last visited May 9, 2021); Jared Bernstein & Janelle Jones, The Impact of the COVID19 Recession on the Jobs and Incomes of Persons of Color, *https://www.cbpp.org/sites/default/files/atoms/files/6-2-20bud_0.pdf* (last visited May 9, 2021).

[16] American Rescue Plan Act of 2021 (ARPA), sec. 9901, Public Law 117–2, codified at 42 U.S.C. 802 *et seq.* The term ''state'' as used in this **SUPPLEMENTARY INFORMATION** and defined in section 602 of the Act means each of the 50 States and the District of Columbia. The term ''territory'' as used in this **SUPPLEMENTARY INFORMATION** and defined in section 602 of the Act means the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, the Commonwealth of Northern Mariana Islands, and American Samoa. Tribal government is defined in the Act and the interim final rule to mean ''the recognized governing body of any Indian or Alaska Native tribe, band, nation, pueblo, village, community, component band, or component reservation, individually identified (including parenthetically) in the list published most recently as of the date of enactment of the [American Rescue Plan Act] pursuant to section 104 of the Federally Recognized Indian Tribe List Act of 1994 (25 U.S.C. 5131).'' See section 602(g)(7) of the Social Security Act, as added by the American Rescue Plan Act. On January 29, 2021, the Bureau of Indian Affairs published a current list of 574 Tribal entities. See 86 FR 7554, January 29, 2021. The term ''local governments'' as used in this **SUPPLEMENTARY INFORMATION** includes metropolitan cities, counties, and nonentitlement units of local government.

[17] 42 U.S.C. 801 *et seq.*

[18] Sections 602, 603 of the Act.

[19] The CRF was established by the section 601 of the Act as added by the Coronavirus Aid, Relief, and Economic Security Act (CARES Act), Public Law 116–136, 134 Stat. 281 (2020).

last year. Recipients may also use payments from the Fiscal Recovery Funds to replace State, local, and Tribal government revenue lost due to COVID–19, helping to ensure that governments can continue to provide needed services and avoid cuts or layoffs. Finally, these resources lay the foundation for a strong, equitable economic recovery, not only by providing immediate economic stabilization for households and businesses, but also by addressing the systemic public health and economic challenges that may have contributed to more severe impacts of the pandemic among low-income communities and people of color.

Within the eligible use categories outlined in the Fiscal Recovery Funds provisions of ARPA, State, local, and Tribal governments have flexibility to determine how best to use payments from the Fiscal Recovery Funds to meet the needs of their communities and populations. The interim final rule facilitates swift and effective implementation by establishing a framework for determining the types of programs and services that are eligible under the ARPA along with examples of uses that State, local, and Tribal governments may consider. These uses build on eligible expenditures under the CRF, including some expansions in eligible uses to respond to the public health emergency, such as vaccination campaigns. They also reflect changes in the needs of communities, as evidenced by, for example, nationwide data demonstrating disproportionate impacts of the COVID–19 public health emergency on certain populations, geographies, and economic sectors. The interim final rule takes into consideration these disproportionate impacts by recognizing a broad range of eligible uses to help States, local, and Tribal governments support the families, businesses, and communities hardest hit by the COVID–19 public health emergency.

Implementation of the Fiscal Recovery Funds also reflect the importance of public input, transparency, and accountability. Treasury seeks comment on all aspects of the interim final rule and, to better facilitate public comment, has included specific questions throughout this **SUPPLEMENTARY INFORMATION**. Treasury encourages State, local, and Tribal governments in particular to provide feedback and to engage with Treasury regarding issues that may arise regarding all aspects of this interim final rule and Treasury's work in administering the Fiscal Recovery Funds. In addition, the interim final rule establishes certain regular reporting requirements, including by requiring State, local, and Tribal governments to publish information regarding uses of Fiscal Recovery Funds payments in their local jurisdiction. These reporting requirements reflect the need for transparency and accountability, while recognizing and minimizing the burden, particularly for smaller local governments. Treasury urges State, territorial, Tribal, and local governments to engage their constituents and communities in developing plans to use these payments, given the scale of funding and its potential to catalyze broader economic recovery and rebuilding.

## II. Eligible Uses

### *A. Public Health and Economic Impacts*

Sections 602(c)(1)(A) and 603(c)(1)(A) provide significant resources for State, territorial, Tribal governments, and counties, metropolitan cities, and nonentitlement units of local governments (each referred to as a recipient) to meet the wide range of public health and economic impacts of the COVID–19 public health emergency.

These provisions authorize the use of payments from the Fiscal Recovery Funds to respond to the public health emergency with respect to COVID–19 or its negative economic impacts. Section 602 and section 603 also describe several types of uses that would be responsive to the impacts of the COVID–19 public health emergency, including assistance to households, small businesses, and nonprofits and aid to impacted industries, such as tourism, travel, and hospitality.[20]

Accordingly, to assess whether a program or service is included in this category of eligible uses, a recipient should consider whether and how the use would respond to the COVID–19 public health emergency. Assessing whether a program or service "responds to" the COVID–19 public health emergency requires the recipient to, first, identify a need or negative impact of the COVID–19 public health emergency and, second, identify how the program, service, or other intervention addresses the identified need or impact. While the COVID–19 public health emergency affected many aspects of American life, eligible uses under this category must be in response to the disease itself or the harmful consequences of the economic disruptions resulting from or exacerbated by the COVID–19 public health emergency.

[20] Sections 602(c)(1)(A), 603(c)(1)(A) of the Act.

The interim final rule implements these provisions by identifying a non-exclusive list of programs or services that may be funded as responding to COVID–19 or the negative economic impacts of the COVID–19 public health emergency, along with considerations for evaluating other potential uses of the Fiscal Recovery Funds not explicitly listed. The interim final rule also provides flexibility for recipients to use payments from the Fiscal Recovery Funds for programs or services that are not identified on these non-exclusive lists but that fall under the terms of section 602(c)(1)(A) or 603(c)(1)(A) by responding to the COVID–19 public health emergency or its negative economic impacts. As an example, in determining whether a program or service responds to the negative economic impacts of the COVID–19 public health emergency, the interim final rule provides that payments from the Fiscal Recovery Funds should be designed to address an economic harm resulting from or exacerbated by the public health emergency. Recipients should assess the connection between the negative economic harm and the COVID–19 public health emergency, the nature and extent of that harm, and how the use of this funding would address such harm.

As discussed, the pandemic and the necessary actions taken to control the spread had a severe impact on households and small businesses, including in particular low-income workers and communities and people of color. While eligible uses under sections 602(c)(1)(A) and 603(c)(1)(A) provide flexibility to recipients to identify the most pressing local needs, Treasury encourages recipients to provide assistance to those households, businesses, and non-profits in communities most disproportionately impacted by the pandemic.

#### 1. Responding to COVID–19

On January 21, 2020, the Centers for Disease Control and Prevention (CDC) identified the first case of novel coronavirus in the United States.[21] By late March, the virus had spread to many States and the first wave was growing rapidly, centered in the northeast.[22] This wave brought acute

[21] Press Release, Centers for Disease Control and Prevention, First Travel-related Case of 2019 Novel Coronavirus Detected in United States (Jan. 21, 2020), *https://www.cdc.gov/media/releases/2020/p0121-novel-coronavirus-travel-case.html.*

[22] Anne Schuchat et al., Public Health Response to the Initiation and Spread of Pandemic COVID–19 in the United States, February 24–April 21, 2021, MMWR Morb Mortal Wkly Rep 2021, 69(18):551–56 (May 8, 2021), *https://www.cdc.gov/mmwr/volumes/69/wr/mm6918e2.htm.*

strain on health care and public health systems: Hospitals and emergency medical services struggled to manage a major influx of patients; response personnel faced shortages of personal protective equipment; testing for the virus was scarce; and congregate living facilities like nursing homes and prisons saw rapid spread. State, local, and Tribal governments mobilized to support the health care system, issue public health orders to mitigate virus spread, and communicate safety measures to the public. The United States has since faced at least two additional COVID–19 waves that brought many similar challenges: The second in the summer, centered in the south and southwest, and a wave throughout the fall and winter, in which the virus reached a point of uncontrolled spread across the country and over 3,000 people died per day.[23] By early May 2021, the United States has experienced over 32 million confirmed COVID–19 cases and over 575,000 deaths.[24]

Mitigating the impact of COVID–19, including taking actions to control its spread and support hospitals and health care workers caring for the sick, continues to require a major public health response from State, local and Tribal governments. New or heightened public health needs include COVID–19 testing, major expansions in contact tracing, support for individuals in isolation or quarantine, enforcement of public health orders, new public communication efforts, public health surveillance (*e.g.,* monitoring case trends and genomic sequencing for variants), enhancement to health care capacity through alternative care facilities, and enhancement of public health data systems to meet new demands or scaling needs. State, local, and Tribal governments have also supported major efforts to prevent COVID–19 spread through safety measures at key settings like nursing homes, schools, congregate living settings, dense worksites, incarceration settings, and in other public facilities. This has included implementing infection prevention measures or making ventilation improvements in congregate settings, health care settings, or other key locations.

Other response and adaptation costs include capital investments in public facilities to meet pandemic operational needs, such as physical plant improvements to public hospitals and health clinics or adaptations to public buildings to implement COVID–19 mitigation tactics. In recent months, State, local, and Tribal governments across the country have mobilized to support the national vaccination campaign, resulting in over 250 million doses administered to date.[25]

The need for public health measures to respond to COVID–19 will continue in the months and potentially years to come. This includes the continuation of the vaccination campaign for the general public and, if vaccinations are approved for children in the future, eventually for youths. This also includes monitoring the spread of COVID–19 variants, understanding the impact of these variants (especially on vaccination efforts), developing approaches to respond to those variants, and monitoring global COVID–19 trends to understand continued risks to the United States. Finally, the long-term health impacts of COVID–19 will continue to require a public health response, including medical services for individuals with ''long COVID,'' and research to understand how COVID–19 impacts future health needs and raises risks for the millions of Americans who have been infected.

Other areas of public health have also been negatively impacted by the COVID–19 pandemic. For example, in one survey in January 2021, over 40 percent of American adults reported symptoms of depression or anxiety, up from 11 percent in the first half of 2019.[26.] The proportion of children's emergency department visits related to mental health has also risen noticeably.[27] Similarly, rates of substance misuse and overdose deaths have spiked: Preliminary data from the CDC show a nearly 30 percent increase in drug overdose mortality from September 2019 to September 2020.[28] Stay-at-home orders and other pandemic responses may have also reduced the ability of individuals affected by domestic violence to access services.[29] Finally, some preventative public health measures like childhood vaccinations have been deferred and potentially forgone.[30]

While the pandemic affected communities across the country, it disproportionately impacted some demographic groups and exacerbated health inequities along racial, ethnic, and socioeconomic lines.[31] The CDC has found that racial and ethnic minorities are at increased risk for infection, hospitalization, and death from COVID–19, with Hispanic or Latino and Native American or Alaska Native patients at highest risk.[32]

Similarly, low-income and socially vulnerable communities have seen the most severe health impacts. For example, counties with high poverty rates also have the highest rates of infections and deaths, with 223 deaths per 100,000 compared to the U.S. average of 175 deaths per 100,000, as of May 2021.[33] Counties with high social vulnerability, as measured by factors such as poverty and educational attainment, have also fared more poorly than the national average, with 211 deaths per 100,000 as of May 2021.[34]

[23] Centers for Disease Control and Prevention, COVID Data Tracker: Trends in Number of COVID–19 Cases and Deaths in the US Reported to CDC, by State/Territory, *https://covid.cdc.gov/covid-data-tracker/#trends_dailytrendscases* (last visited May 8, 2021).

[24] *Id.*

[25] Centers for Disease Control and Prevention, COVID Data Tracker: COVID–19 Vaccinations in the United States, *https://covid.cdc.gov/covid-data-tracker/#vaccinations* (last visited May 8, 2021).

[26] Panchal, *supra* note 4; Mark É. Czeisler et al., Mental Health, Substance Abuse, and Suicidal Ideation During COVID–19 Pandemic– United States, June 24–30 2020, Morb. Mortal. Wkly. Rep. 69(32):1049–57 (Aug. 14, 2020), *https://www.cdc.gov/mmwr/volumes/69/wr/mm6932a1.htm.*

[27] Leeb, *supra* note 4.

[28] Centers for Disease Prevention and Control, National Center for Health Statistics, Provisional Drug Overdose Death Counts, *https://www.cdc.gov/nchs/nvss/vsrr/drug-overdose-data.htm* (last visited May 8, 2021).

[29] Megan L. Evans, et al., A Pandemic within a Pandemic—Intimate Partner Violence during Covid–19, N. Engl. J. Med. 383:2302–04 (Dec. 10, 2020), *available at https://www.nejm.org/doi/full/10.1056/NEJMp2024046.*

[30] Jeanne M. Santoli et al., Effects of the COVID–19 Pandemic on Routine Pediatric Vaccine Ordering and Administration—United States, Morb. Mortal. Wkly. Rep. 69(19):591–93 (May 8, 2020), *https://www.cdc.gov/mmwr/volumes/69/wr/mm6919e2.htm;* Marisa Langdon-Embry et al., Notes from the Field: Rebound in Routine Childhood Vaccine Administration Following Decline During the COVID–19 Pandemic—New York City, March 1–June 27, 2020, Morb. Mortal. Wkly. Rep. 69(30):999–1001 (Jul. 31 2020), *https://www.cdc.gov/mmwr/volumes/69/wr/mm6930a3.htm.*

[31] Office of the White House, National Strategy for the COVID–19 Response and Pandemic Preparedness (Jan. 21, 2021), *https://www.whitehouse.gov/wp-content/uploads/2021/01/National-Strategy-for-the-COVID-19-Response-and-Pandemic-Preparedness.pdf.*

[32] In a study of 13 states from October to December 2020, the CDC found that Hispanic or Latino and Native American or Alaska Native individuals were 1.7 times more likely to visit an emergency room for COVID–19 than White individuals, and Black individuals were 1.4 times more likely to do so than White individuals. *See* Romano, *supra* note 10.

[33] Centers for Disease Control and Prevention, COVID Data Tracker: Trends in COVID–19 Cases and Deaths in the United States, by County-level Population Factors, *https://covid.cdc.gov/covid-data-tracker/#pop-factors_totaldeaths* (last visited May 8, 2021).

[34] The CDC's Social Vulnerability Index includes fifteen variables measuring social vulnerability, including unemployment, poverty, education levels, single-parent households, disability status, non-English speaking households, crowded housing, and transportation access.

Centers for Disease Control and Prevention, COVID Data Tracker: Trends in COVID–19 Cases

Continued

Over the last year, Native Americans have experienced more than one and a half times the rate of COVID–19 infections, more than triple the rate of hospitalizations, and more than double the death rate compared to White Americans.[35] Low-income and minority communities also exhibit higher rates of pre-existing conditions that may contribute to an increased risk of COVID–19 mortality.[36]

In addition, individuals living in low-income communities may have had more limited ability to socially distance or to self-isolate when ill, resulting in faster spread of the virus, and were over-represented among essential workers, who faced greater risk of exposure.[37] Social distancing measures in response to the pandemic may have also exacerbated pre-existing public health challenges. For example, for children living in homes with lead paint, spending substantially more time at home raises the risk of developing elevated blood lead levels, while screenings for elevated blood lead levels declined during the pandemic.[38] The combination of these underlying social and health vulnerabilities may have contributed to more severe public health outcomes of the pandemic within these communities, resulting in an exacerbation of pre-existing disparities in health outcomes.[39]

*Eligible Public Health Uses.* The Fiscal Recovery Funds provide resources to meet and address these emergent public health needs, including through measures to counter the spread of COVID–19, through the provision of care for those impacted by the virus, and through programs or services that address disparities in public health that have been exacerbated by the pandemic. To facilitate implementation and use of payments from the Fiscal Recovery Funds, the interim final rule identifies a non-exclusive list of eligible uses of funding to respond to the COVID–19 public health emergency. Eligible uses listed under this section build and expand upon permissible expenditures under the CRF, while recognizing the differences between the ARPA and CARES Act, and recognizing that the response to the COVID–19 public health emergency has changed and will continue to change over time. To assess whether additional uses would be eligible under this category, recipients should identify an effect of COVID–19 on public health, including either or both of immediate effects or effects that may manifest over months or years, and assess how the use would respond to or address the identified need.

The interim final rule identifies a non-exclusive list of uses that address the effects of the COVID–19 public health emergency, including:

• *COVID–19 Mitigation and Prevention.* A broad range of services and programming are needed to contain COVID–19. Mitigation and prevention efforts for COVID–19 include vaccination programs; medical care; testing; contact tracing; support for isolation or quarantine; supports for vulnerable populations to access medical or public health services; public health surveillance (*e.g.,* monitoring case trends, genomic sequencing for variants); enforcement of public health orders; public communication efforts; enhancement to health care capacity, including through alternative care facilities; purchases of personal protective equipment; support for prevention, mitigation, or other services in congregate living facilities (*e.g.,* nursing homes, incarceration settings, homeless shelters, group living facilities) and other key settings like schools;[40] ventilation improvements in congregate settings, health care settings, or other key locations; enhancement of public health data systems; and other public health responses.[41] They also include capital investments in public facilities to meet pandemic operational needs, such as physical plant improvements to public hospitals and health clinics or adaptations to public buildings to implement COVID–19 mitigation tactics. These COVID–19 prevention and mitigation programs and services, among others, were eligible expenditures under the CRF and are eligible uses under this category of eligible uses for the Fiscal Recovery Funds.[42]

• *Medical Expenses.* The COVID–19 public health emergency continues to have devastating effects on public health; the United States continues to average hundreds of deaths per day and the spread of new COVID–19 variants has raised new risks and genomic surveillance needs.[43] Moreover, our understanding of the potentially serious and long-term effects of the virus is growing, including the potential for symptoms like shortness of breath to continue for weeks or months, for multi-organ impacts from COVID–19, or for post-intensive care syndrome.[44] State and local governments may need to continue to provide care and services to address these near- and longer-term needs.[45]

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and Deaths in the United States, by Social Vulnerability Index, *https://covid.cdc.gov/covid-data-tracker/#pop-factors_totaldeaths* (last visited May 8, 2021).

[35] Centers for Disease Control and Prevention, Risk for COVID–19 Infection, Hospitalization, and Death By Race/Ethnicity, *https://www.cdc.gov/coronavirus/2019-ncov/covid-data/investigations-discovery/hospitalization-death-by-race-ethnicity.html* (last visited Apr. 26, 2021).

[36] *See, e.g.,* Centers for Disease Control and Prevention, Risk of Severe Illness or Death from COVID–19 (Dec. 10, 2020), *https://www.cdc.gov/coronavirus/2019-ncov/community/health-equity/racial-ethnic-disparities/disparities-illness.html* (last visited Apr. 26, 2021).

[37] Milena Almagro et al., Racial Disparities in Frontline Workers and Housing Crowding During COVID–19: Evidence from Geolocation Data (Sept. 22, 2020), NYU Stern School of Business (forthcoming), *available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3695249;* Grace McCormack et al., Economic Vulnerability of Households with Essential Workers, JAMA 324(4):388–90 (2020), *available at https://jamanetwork.com/journals/jama/fullarticle/2767630.*

[38] *See, e.g.,* Joseph G. Courtney et al., Decreases in Young Children Who Received Blood Lead Level Testing During COVID–19—34 Jurisdictions, January–May 2020, Morb. Mort. Wkly. Rep. 70(5):155–61 (Feb. 5, 2021), *https://www.cdc.gov/mmwr/volumes/70/wr/mm7005a2.htm;* Emily A. Benfer & Lindsay F. Wiley, Health Justice Strategies to Combat COVID–19: Protecting Vulnerable Communities During a Pandemic, Health Affairs Blog (Mar. 19, 2020), *https://www.healthaffairs.org/do/10.1377/hblog20200319.757883/full/.*

[39] *See, e.g.,* Centers for Disease Control and Prevention, *supra* note 34; Benfer & Wiley, *supra* note 38; Nathaniel M. Lewis et al., Disparities in COVID–19 Incidence, Hospitalizations, and Testing, by Area-Level Deprivation—Utah, March 3–July 9, 2020, Morb. Mortal. Wkly. Rep. 69(38):1369–73 (Sept. 25, 2020), *https://www.cdc.gov/mmwr/volumes/69/wr/mm6938a4.htm.*

[40] This includes implementing mitigation strategies consistent with the Centers for Disease Control and Prevention's (CDC) Operational Strategy for K–12 Schools through Phased Prevention, *available at https://www.cdc.gov/coronavirus/2019-ncov/community/schools-childcare/operation-strategy.html.*

[41] Many of these expenses were also eligible in the CRF. Generally, funding uses eligible under CRF as a response to the direct public health impacts of COVID–19 will continue to be eligible under the ARPA, including those not explicitly listed here (*e.g.,* telemedicine costs, costs to facilitate compliance with public health orders, disinfection of public areas, facilitating distance learning, increased solid waste disposal needs related to PPE, paid sick and paid family and medical leave to public employees to enable compliance with COVID–19 public health precautions), with the following two exceptions: (1) The standard for eligibility of public health and safety payrolls has been updated (see section II.A of this **SUPPLEMENTARY INFORMATION**) and (2) expenses related to the issuance of tax-anticipation notes are no longer an eligible funding use (see discussion of debt service in section II.B of this **SUPPLEMENTARY INFORMATION**).

[42] Coronavirus Relief Fund for States, Tribal Governments, and Certain Eligible Local Governments, 86 FR 4182 (Jan. 15, 2021), *available at https://home.treasury.gov/system/files/136/CRF-Guidance-Federal-Register_2021-00827.pdf.*

[43] Centers for Disease Control and Prevention, *supra* note 24.

[44] Centers for Disease Control and Prevention, Long-Term Effects (Apr. 8, 2021), *https://www.cdc.gov/coronavirus/2019-ncov/long-term-effects.html* (last visited Apr. 26, 2021).

[45] Pursuant to 42 CFR 433.51 and 45 CFR 75.306, Fiscal Recovery Funds may not serve as a State or locality's contribution of certain Federal funds.

• *Behavioral Health Care.* In addition, new or enhanced State, local, and Tribal government services may be needed to meet behavioral health needs exacerbated by the pandemic and respond to other public health impacts. These services include mental health treatment, substance misuse treatment, other behavioral health services, hotlines or warmlines, crisis intervention, overdose prevention, infectious disease prevention, and services or outreach to promote access to physical or behavioral health primary care and preventative medicine.

• *Public Health and Safety Staff.* Treasury recognizes that responding to the public health and negative economic impacts of the pandemic, including administering the services described above, requires a substantial commitment of State, local, and Tribal government human resources. As a result, the Fiscal Recovery Funds may be used for payroll and covered benefits expenses for public safety, public health, health care, human services, and similar employees, to the extent that their services are devoted to mitigating or responding to the COVID–19 public health emergency.[46] Accordingly, the Fiscal Recovery Funds may be used to support the payroll and covered benefits for the portion of the employee's time that is dedicated to responding to the COVID–19 public health emergency. For administrative convenience, the recipient may consider public health and safety employees to be entirely devoted to mitigating or responding to the COVID–19 public health emergency, and therefore fully covered, if the employee, or his or her operating unit or division, is primarily dedicated to responding to the COVID–19 public health emergency. Recipients may consider other presumptions for assessing the extent to which an employee, division, or operating unit is engaged in activities that respond to the COVID–19 public health emergency, provided that the recipient reassesses periodically and maintains records to support its assessment, such as payroll records, attestations from supervisors or staff, or regular work product or correspondence demonstrating work on the COVID–19 response. Recipients need not routinely track staff hours.

• *Expenses to Improve the Design and Execution of Health and Public Health Programs.* State, local, and Tribal governments may use payments from the Fiscal Recovery Funds to engage in planning and analysis in order to improve programs addressing the COVID–19 pandemic, including through use of targeted consumer outreach, improvements to data or technology infrastructure, impact evaluations, and data analysis.

*Eligible Uses to Address Disparities in Public Health Outcomes.* In addition, in recognition of the disproportionate impacts of the COVID–19 pandemic on health outcomes in low-income and Native American communities and the importance of mitigating these effects, the interim final rule identifies a broader range of services and programs that will be presumed to be responding to the public health emergency when provided in these communities. Specifically, Treasury will presume that certain types of services, outlined below, are eligible uses when provided in a Qualified Census Tract (QCT),[47] to families living in QCTs, or when these services are provided by Tribal governments.[48] Recipients may also provide these services to other populations, households, or geographic areas that are disproportionately impacted by the pandemic. In identifying these disproportionately-impacted communities, recipients should be able to support their determination that the pandemic resulted in disproportionate public health or economic outcomes to the specific populations, households, or geographic areas to be served.

Given the exacerbation of health disparities during the pandemic and the role of pre-existing social vulnerabilities in driving these disparate outcomes, services to address health disparities are presumed to be responsive to the public health impacts of the pandemic. Specifically, recipients may use payments from the Fiscal Recovery Funds to facilitate access to resources that improve health outcomes, including services that connect residents with health care resources and public assistance programs and build healthier environments, such as:

• Funding community health workers to help community members access health services and services to address the social determinants of health;[49]

• Funding public benefits navigators to assist community members with navigating and applying for available Federal, State, and local public benefits or services;

• Housing services to support healthy living environments and neighborhoods conducive to mental and physical wellness;

• Remediation of lead paint or other lead hazards to reduce risk of elevated blood lead levels among children; and

• Evidence-based community violence intervention programs to prevent violence and mitigate the increase in violence during the pandemic.[50]

2. Responding to Negative Economic Impacts

*Impacts on Households and Individuals.* The public health emergency, including the necessary measures taken to protect public health, resulted in significant economic and financial hardship for many Americans. As businesses closed, consumers stayed home, schools shifted to remote

[46] In general, if an employee's wages and salaries are an eligible use of Fiscal Recovery Funds, recipients may treat the employee's covered benefits as an eligible use of Fiscal Recovery Funds. For purposes of the Fiscal Recovery Funds, covered benefits include costs of all types of leave (vacation, family-related, sick, military, bereavement, sabbatical, jury duty), employee insurance (health, life, dental, vision), retirement (pensions, 401(k)), unemployment benefit plans (Federal and state), workers compensation insurance, and Federal Insurance Contributions Act (FICA) taxes (which includes Social Security and Medicare taxes).

[47] Qualified Census Tracts are a common, readily-accessible, and geographically granular method of identifying communities with a large proportion of low-income residents. Using an existing measure may speed implementation and decrease administrative burden, while identifying areas of need at a highly-localized level.

While QCTs are an effective tool generally, many tribal communities have households with a wide range of income levels due in part to non-tribal member, high income residents living in the community. Mixed income communities, with a significant share of tribal members at the lowest levels of income, are often not included as eligible QCTs yet tribal residents are experiencing disproportionate impacts due to the pandemic. Therefore, including all services provided by Tribal governments is a more effective means of ensuring that disproportionately impacted Tribal members can receive services.

[48] U.S. Department of Housing and Urban Development (HUD), Qualified Census Tracts and Difficult Development Areas, *https://www.huduser.gov/portal/datasets/qct.html* (last visited Apr. 26, 2021); U.S. Department of the Interior, Bureau of Indian Affairs, Indian Lands of Federally Recognized Tribes of the United States (June 2016), *https://www.bia.gov/sites/bia.gov/files/assets/bia/ots/webteam/pdf/idc1-028635.pdf* (last visited Apr. 26, 2021).

[49] The social determinants of health are the social and environmental conditions that affect health outcomes, specifically economic stability, health care access, social context, neighborhoods and built environment, and education access. *See, e.g.,* U.S. Department of Health and Human Services, Office of Disease Prevention and Health Promotion, Healthy People 2030: Social Determinants of Health, *https://health.gov/healthypeople/objectives-and-data/social-determinants-health* (last visited Apr. 26, 2021).

[50] National Commission on COVID–19 and Criminal Justice, Impact Report: COVID–19 and Crime (Jan. 31, 2021), *https://covid19.counciloncj.org/2021/01/31/impact-report-covid-19-and-crime-3/* (showing a spike in homicide and assaults); Brad Boesrup et al., Alarming Trends in US domestic violence during the COVID–19 pandemic, Am. J. of Emerg. Med. 38(12): 2753–55 (Dec. 1, 2020), *available at https://www.ajemjournal.com/article/S0735-6757(20)30307-7/fulltext* (showing a spike in domestic violence).

education, and travel declined precipitously, over 20 million jobs were lost in March and April 2020.[51] Although many have returned to work, as of April 2021, the economy remains 8.2 million jobs below its pre-pandemic peak,[52] and more than 3 million workers have dropped out of the labor market altogether relative to February 2020.[53]

Rates of unemployment are particularly severe among workers of color and workers with lower levels of educational attainment; for example, the overall unemployment rate in the United States was 6.1 percent in April 2021, but certain groups saw much higher rates: 9.7 percent for Black workers, 7.9 percent for Hispanic or Latino workers, and 9.3 percent for workers without a high school diploma.[54] Job losses have also been particularly steep among low wage workers, with these workers remaining furthest from recovery as of the end of 2020.[55] A severe recession—and its concentrated impact among low-income workers—has amplified food and housing insecurity, with an estimated nearly 17 million adults living in households where there is sometimes or often not enough food to eat and an estimated 10.7 million adults living in households that were not current on rent.[56] Over the course of the pandemic, inequities also manifested along gender lines, as schools closed to in-person activities, leaving many working families without child care during the day.[57] Women of color have been hit especially hard: The labor force participation rate for Black women has fallen by 3.2 percentage points [58] during the pandemic as compared to 1.0 percentage points for Black men [59] and 2.0 percentage points for White women.[60]

As the economy recovers, the effects of the pandemic-related recession may continue to impact households, including a risk of longer-term effects on earnings and economic potential. For example, unemployed workers, especially those who have experienced longer periods of unemployment, earn lower wages over the long term once rehired.[61] In addition to the labor market consequences for unemployed workers, recessions can also cause longer-term economic challenges through, among other factors, damaged consumer credit scores [62] and reduced familial and childhood wellbeing.[63] These potential long-term economic consequences underscore the continued need for robust policy support.

*Impacts on Businesses.* The pandemic has also severely impacted many businesses, with small businesses hit especially hard. Small businesses make up nearly half of U.S. private-sector employment [64] and play a key role in supporting the overall economic recovery as they are responsible for two-thirds of net new jobs.[65] Since the beginning of the pandemic, however, 400,000 small businesses have closed, with many more at risk.[66] Sectors with a large share of small business employment have been among those with the most drastic drops in employment.[67] The negative outlook for small businesses has continued: As of April 2021, approximately 70 percent of small businesses reported that the pandemic has had a moderate or large negative effect on their business, and over a third expect that it will take over 6 months for their business to return to their normal level of operations.[68]

This negative outlook is likely the result of many small businesses having faced periods of closure and having seen declining revenues as customers stayed home.[69] In general, small businesses can face greater hurdles in accessing credit,[70] and many small businesses were already financially fragile at the outset of the pandemic.[71] Non-profits, which provide vital services to communities, have similarly faced

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51 U.S. Bureau of Labor Statistics, All Employees, Total Nonfarm (PAYEMS), retrieved from FRED, Federal Reserve Bank of St. Louis; *https://fred.stlouisfed.org/series/PAYEMS* (last visited May 8, 2021).

52 *Id.*

53 U.S. Bureau of Labor Statistics, Civilian Labor Force Level [CLF16OV], retrieved from FRED, Federal Reserve Bank of St. Louis, *https://fred.stlouisfed.org/series/CLF16OV* (last visited May 8, 2021).

54 U.S. Bureau of Labor Statistics, Labor Force Statistics from the Current Population Survey: Employment status of the civilian population by sex and age (May 8 2021), *https://www.bls.gov/news.release/empsit.t01.htm* (last visited May 8, 2021); U.S. Bureau of Labor Statistics, Labor Force Statistics from the Current Population Survey: Employment status of the civilian noninstitutional population by race, Hispanic or Latino ethnicity, sex, and age (May 8, 2021), *https://www.bls.gov/web/empsit/cpseea04.htm* (last visited May 8, 2021); U.S. Bureau of Labor Statistics, Labor Force Statistics from the Current Population Survey: Employment status of the civilian noninstitutional population 25 years and over by educational attainment (May 8, 2021), *https://www.bls.gov/web/empsit/cpseea05.htm* (last visited May 8, 2021).

55 Elise Gould & Jori Kandra, Wages grew in 2020 because the bottom fell out of the low-wage labor market, Economic Policy Institute (Feb. 24, 2021), *https://files.epi.org/pdf/219418.pdf. See also,* Michael Dalton et al., The K-Shaped Recovery: Examining the Diverging Fortunes of Workers in the Recovery from the COVID–19 Pandemic using Business and Household Survey Microdata, U.S. Bureau of Labor Statistics Working Paper Series (Feb. 2021), *https://www.bls.gov/osmr/research-papers/2021/pdf/ec210020.pdf.*

56 Center on Budget and Policy Priorities, Tracking the COVID–19 Recession's Effects on Food, Housing, and Employment Hardships, *https://www.cbpp.org/research/poverty-and-inequality/tracking-the-covid-19-recessions-effects-on-food-housing-and* (last visited May 8, 2021).

57 Women have carried a larger share of childcare responsibilities than men during the COVID–19 crisis. *See, e.g.,* Gema Zamarro & María J. Prados, Gender differences in couples' division of childcare, work and mental health during COVID–19, Rev. Econ. Household 19:11–40 (2021), *available at https://link.springer.com/article/10.1007/s11150-020-09534-7;* Titan Alon et al., The Impact of COVID–19 on Gender Equality, National Bureau of Economic Research Working Paper 26947 (April 2020), *available at https://www.nber.org/papers/w26947.*

58 U.S. Bureau of Labor Statistics, Labor Force Participation Rate—20 Yrs. & Over, Black or African American Women [LNS11300032], retrieved from FRED, Federal Reserve Bank of St. Louis; *https://fred.stlouisfed.org/series/LNS11300032* (last visited May 8, 2021).

59 U.S. Bureau of Labor Statistics, Labor Force Participation Rate—20 Yrs. & Over, Black or African American Men [LNS11300031], retrieved from FRED, Federal Reserve Bank of St. Louis; *https://fred.stlouisfed.org/series/LNS11300031* (last visited May 8, 2021).

60 U.S. Bureau of Labor Statistics, Labor Force Participation Rate—20 Yrs. & Over, White Women [LNS11300029], retrieved from FRED, Federal Reserve Bank of St. Louis; *https://fred.stlouisfed.org/series/LNS11300029* (last visited May 8, 2021).

61 *See, e.g.,* Michael Greenstone & Adam Looney, Unemployment and Earnings Losses: A Look at Long-Term Impacts of the Great Recession on American Workers, Brookings Institution (Nov. 4, 2021), *https://www.brookings.edu/blog/jobs/2011/11/04/unemployment-and-earnings-losses-a-look-at-long-term-impacts-of-the-great-recession-on-american-workers/.*

62 Chi Chi Wu, Solving the Credit Conundrum: Helping Consumers' Credit Records Impaired by the Foreclosure Crisis and Great Recession (Dec. 2013), *https://www.nclc.org/images/pdf/credit_reports/report-credit-conundrum-2013.pdf.*

63 Irwin Garfinkel, Sara McLanahan, Christopher Wimer, eds., Children of the Great Recession, Russell Sage Foundation (Aug. 2016), *available at https://www.russellsage.org/publications/children-great-recession.*

64 Board of Governors of the Federal Reserve System, *supra* note 5.

65 U.S. Small Business Administration, Office of Advocacy, Small Businesses Generate 44 Percent of U.S. Economic Activity (Jan. 30, 2019), *https://advocacy.sba.gov/2019/01/30/small-businesses-generate-44-percent-of-u-s-economic-activity/.*

66 Biden, *supra* note 6.

67 Daniel Wilmoth, U.S. Small Business Administration Office of Advocacy, The Effects of the COVID–19 Pandemic on Small Businesses, Issue Brief No. 16 (Mar. 2021), *available at https://cdn.advocacy.sba.gov/wp-content/uploads/2021/03/02112318/COVID-19-Impact-On-Small-Business.pdf.*

68 U.S. Census Bureau, Small Business Pulse Survey, *https://portal.census.gov/pulse/data/* (last visited May 8, 2021).

69 Olivia S. Kim et al., Revenue Collapses and the Consumption of Small Business Owners in the Early Stages of the COVID–19 Pandemic (Nov. 2020), *https://www.nber.org/papers/w28151.*

70 *See e.g.,* Board of Governors of the Federal Reserve System, Report to Congress on the Availability of Credit to Small Businesses (Sept. 2017), *available at https://www.federalreserve.gov/publications/2017-september-availability-of-credit-to-small-businesses.htm.*

71 Alexander W. Bartik et al., The Impact of COVID–19 on small business outcomes and expectations, PNAS 117(30): 17656–66 (July 28, 2020), *available at https://www.pnas.org/content/117/30/17656.*

economic and financial challenges due to the pandemic.[72]

*Impacts to State, Local, and Tribal Governments.* State, local, and Tribal governments have felt substantial fiscal pressures. As noted above, State, local, and Tribal governments have faced significant revenue shortfalls and remain over 1 million jobs below their pre-pandemic staffing levels.[73] These reductions in staffing may undermine the ability to deliver services effectively, as well as add to the number of unemployed individuals in their jurisdictions.

*Exacerbation of Pre-existing Disparities.* The COVID–19 public health emergency may have lasting negative effects on economic outcomes, particularly in exacerbating disparities that existed prior to the pandemic.

The negative economic impacts of the COVID–19 pandemic are particularly pronounced in certain communities and families. Low- and moderate-income jobs make up a substantial portion of both total pandemic job losses,[74] and jobs that require in-person frontline work, which are exposed to greater risk of contracting COVID–19.[75] Both factors compound pre-existing vulnerabilities and the likelihood of food, housing, or other financial insecurity in low- and moderate-income families and, given the concentration of low- and moderate-income families within certain communities,[76] raise a substantial risk that the effects of the COVID–19 public health emergency will be amplified within these communities.

These compounding effect of recessions on concentrated poverty and the long-lasting nature of this effect were observed after the 2007–2009 recession, including a large increase in concentrated poverty with the number of people living in extremely poor neighborhoods more than doubling by 2010–2014 relative to 2000.[77] Concentrated poverty has a range of deleterious impacts, including additional burdens on families and reduced economic potential and social cohesion.[78] Given the disproportionate impact of COVID–19 on low-income households discussed above, there is a risk that the current pandemic-induced recession could further increase concentrated poverty and cause long-term damage to economic prospects in neighborhoods of concentrated poverty.

The negative economic impacts of COVID–19 also include significant impacts to children in disproportionately affected families and include impacts to education, health, and welfare, all of which contribute to long-term economic outcomes.[79] Many low-income and minority students, who were disproportionately served by remote or hybrid education during the pandemic, lacked the resources to participate fully in remote schooling or live in households without adults available throughout the day to assist with online coursework.[80] Given these trends, the pandemic may widen educational disparities and worsen outcomes for low-income students,[81] an effect that would substantially impact their long-term economic outcomes. Increased economic strain or material hardship due to the pandemic could also have a long-term impact on health, educational, and economic outcomes of young children.[82] Evidence suggests that adverse conditions in early childhood, including exposure to poverty, food insecurity, housing insecurity, or other economic hardships, are particularly impactful.[83]

The pandemic's disproportionate economic impacts are also seen in Tribal communities across the country—for Tribal governments as well as families and businesses on and off Tribal lands. In the early months of the pandemic, Native American unemployment spiked to 26 percent and, while partially recovered, remains at nearly 11 percent.[84] Tribal enterprises are a significant source of revenue for Tribal governments to support the provision of government services. These enterprises, notably concentrated in gaming, tourism, and hospitality, frequently closed, significantly reducing both revenues to Tribal governments and employment. As a result, Tribal governments have reduced essential services to their citizens and communities.[85]

*Eligible Uses.* Sections 602(c)(1)(A) and 603(c)(1)(A) permit use of payments from the Fiscal Recovery Funds to respond to the negative economic impacts of the COVID–19 public health emergency. Eligible uses that respond to the negative economic impacts of the public health emergency must be designed to address an economic harm resulting from or exacerbated by the public health emergency. In considering whether a program or service would be

[72] Federal Reserve Bank of San Francisco, Impacts of COVID–19 on Nonprofits in the Western United States (May 2020), *https://www.frbsf.org/community-development/files/impact-of-covid-nonprofits-serving-western-united-states.pdf.*

[73] Bureau of Labor Statistics, *supra* note 8; Elijah Moreno & Heather Sobrepena, Tribal entities remain resilient as COVID–19 batters their finances, Federal Reserve Bank of Minneapolis (Nov. 10, 2021), *https://www.minneapolisfed.org/article/2020/tribal-entities-remain-resilient-as-covid-19-batters-their-finances.*

[74] Kim Parker et al., Economic Fallout from COVID–19 Continues to Hit Lower-Income Americans the Hardest, Pew Research Center (Sept. 24, 2020), *https://www.pewresearch.org/social-trends/2020/09/24/economic-fallout-from-covid-19-continues-to-hit-lower-income-americans-the-hardest/;* Gould, *supra* note 55.

[75] *See infra* Section II.B of this Supplementary Information.

[76] Elizabeth Kneebone, The Changing geography of US poverty, Brookings Institution (Feb. 15, 2017), *https://www.brookings.edu/testimonies/the-changing-geography-of-us-poverty/.*

[77] Elizabeth Kneebone & Natalie Holmes, U.S. concentrated poverty in the wake of the Great Recession, Brookings Institution (Mar. 31, 2016), *https://www.brookings.edu/research/u-s-concentrated-poverty-in-the-wake-of-the-great-recession/.*

[78] David Erickson et al., The Enduring Challenge of Concentrated Poverty in America: Case Studies from Communities Across the U.S. (2008), *available at https://www.frbsf.org/community-development/files/cp_fullreport.pdf.*

[79] Educational quality, as early as Kindergarten, has a long-term impact on children's public health and economic outcomes. *See, e.g.,* Tyler W. Watts et al., The Chicago School Readiness Project: Examining the long-term impacts of an early childhood intervention, PLoS ONE 13(7) (2018), *available at https://journals.plos.org/plosone/article?id=10.1371/journal.pone.0200144;* Opportunity Insights, How Can We Amplify Education as an Engine of Mobility? Using big data to help children get the most from school, *https://opportunityinsights.org/education/* (last visited Apr. 26, 2021); U.S. Department of Health and Human Services (HHS), Office of Disease Prevention and Health Promotion, Early Childhood Development and Education, *https://www.healthypeople.gov/2020/topics-objectives/topic/social-determinants-health/interventions-resources/early-childhood-development-and-education* (last visited Apr. 26, 2021).

[80] *See, e.g.,* Bacher-Hicks, *supra* note 14.

[81] A Department of Education survey found that, as of February 2021, 42 percent of fourth grade students nationwide were offered only remote education, compared to 48 percent of economically disadvantaged students, 54 percent of Black students and 57 percent of Hispanic students. Large districts often disproportionately serve low-income students. *See* Institute of Education Sciences, Monthly School Survey Dashboard, *https://ies.ed.gov/schoolsurvey/* (last visited Apr. 26, 2021). In summer 2020, a review found that 74 percent of the largest 100 districts chose remote learning only. *See* Education Week, School Districts' Reopening Plans: A Snapshot (Jul. 15, 2020), *https://www.edweek.org/leadership/school-districts-reopening-plans-a-snapshot/2020/07* (last visited May 4, 2021).

[82] HHS, *supra* note 79.

[83] Hirokazu Yoshikawa, Effects of the Global Coronavirus Disease—2019 Pandemic on Early Childhood Development: Short- and Long-Term Risks and Mitigating Program and Policy Actions, J. of Pediatrics Vol. 223:188–93 (Aug. 1, 2020), *available at https://www.jpeds.com/article/S0022-3476(20)30606-5/abstract.*

[84] Based on calculations conducted by the Minneapolis Fed's Center for Indian Country Development using Flood et al. (2020)'s Current Population Survey.'' Sarah Flood, Miriam King, Renae Rodgers, Steven Ruggles and J. Robert Warren. Integrated Public Use Microdata Series, Current Population Survey: Version 8.0 [dataset]. Minneapolis, MN: IPUMS, 2020. *https://doi.org/10.18128/D030.V8.0; see also* Donna Feir & Charles Golding, Native Employment During COVID–19: Hard hit in April but Starting to Rebount? (Aug. 5, 2020), *https://www.minneapolisfed.org/article/2020/native-employment-during-covid-19-hit-hard-in-april-but-starting-to-rebound.*

[85] Moreno & Sobrepena, *supra* note 73.

eligible under this category, the recipient should assess whether, and the extent to which, there has been an economic harm, such as loss of earnings or revenue, that resulted from the COVID–19 public health emergency and whether, and the extent to which, the use would respond or address this harm.[86] A recipient should first consider whether an economic harm exists and whether this harm was caused or made worse by the COVID–19 public health emergency. While economic impacts may either be immediate or delayed, assistance or aid to individuals or businesses that did not experience a negative economic impact from the public health emergency would not be an eligible use under this category.

In addition, the eligible use must ''respond to'' the identified negative economic impact. Responses must be related and reasonably proportional to the extent and type of harm experienced; uses that bear no relation or are grossly disproportionate to the type or extent of harm experienced would not be eligible uses. Where there has been a negative economic impact resulting from the public health emergency, States, local, and Tribal governments have broad latitude to choose whether and how to use the Fiscal Recovery Funds to respond to and address the negative economic impact. Sections 602(c)(1)(A) and 603(c)(1)(A) describe several types of uses that would be eligible under this category, including assistance to households, small businesses, and nonprofits and aid to impacted industries such as tourism, travel, and hospitality.

To facilitate implementation and use of payments from the Fiscal Recovery Funds, the interim final rule identifies a non-exclusive list of eligible uses of funding that respond to the negative economic impacts of the public health emergency. Consistent with the discussion above, the eligible uses listed below would respond directly to the economic or financial harms resulting from and or exacerbated by the public health emergency.

- *Assistance to Unemployed Workers.* This includes assistance to unemployed workers, including services like job training to accelerate rehiring of unemployed workers; these services may extend to workers unemployed due to the pandemic or the resulting recession, or who were already unemployed when the pandemic began and remain so due to the negative economic impacts of the pandemic.
- *State Unemployment Insurance Trust Funds.* Consistent with the approach taken in the CRF, recipients may make deposits into the state account of the Unemployment Trust Fund established under section 904 of the Social Security Act (42 U.S.C. 1104) up to the level needed to restore the pre-pandemic balances of such account as of January 27, 2020 or to pay back advances received under Title XII of the Social Security Act (42 U.S.C. 1321) for the payment of benefits between January 27, 2020 and May 17, 2021, given the close nexus between Unemployment Trust Fund costs, solvency of Unemployment Trust Fund systems, and pandemic economic impacts. Further, Unemployment Trust Fund deposits can decrease fiscal strain on Unemployment Insurance systems impacted by the pandemic. States facing a sharp increase in Unemployment Insurance claims during the pandemic may have drawn down positive Unemployment Trust Fund balances and, after exhausting the balance, required advances to fund continuing obligations to claimants. Because both of these impacts were driven directly by the need for assistance to unemployed workers during the pandemic, replenishing Unemployment Trust Funds up to the pre-pandemic level responds to the pandemic's negative economic impacts on unemployed workers.
- *Assistance to Households.* Assistance to households or populations facing negative economic impacts due to COVID–19 is also an eligible use. This includes: Food assistance; rent, mortgage, or utility assistance; counseling and legal aid to prevent eviction or homelessness; cash assistance (discussed below); emergency assistance for burials, home repairs, weatherization, or other needs; internet access or digital literacy assistance; or job training to address negative economic or public health impacts experienced due to a worker's occupation or level of training. As discussed above, in considering whether a potential use is eligible under this category, a recipient must consider whether, and the extent to which, the household has experienced a negative economic impact from the pandemic. In assessing whether a household or population experienced economic harm as a result of the pandemic, a recipient may presume that a household or population that experienced unemployment or increased food or housing insecurity or is low- or moderate-income experienced negative economic impacts resulting from the pandemic. For example, a cash transfer program may focus on unemployed workers or low- and moderate-income families, which have faced disproportionate economic harms due to the pandemic. Cash transfers must be reasonably proportional to the negative economic impact they are intended to address. Cash transfers grossly in excess of the amount needed to address the negative economic impact identified by the recipient would not be considered to be a response to the COVID–19 public health emergency or its negative impacts. In particular, when considering the appropriate size of permissible cash transfers made in response to the COVID–19 public health emergency, State, local and Tribal governments may consider and take guidance from the per person amounts previously provided by the Federal Government in response to the COVID–19 crisis. Cash transfers that are grossly in excess of such amounts would be outside the scope of eligible uses under sections 602(c)(1)(A) and 603(c)(1)(A) and could be subject to recoupment. In addition, a recipient could provide survivor's benefits to surviving family members of COVID–19 victims, or cash assistance to widows, widowers, and dependents of eligible COVID–19 victims.
- *Expenses to Improve Efficacy of Economic Relief Programs.* State, local, and Tribal governments may use payments from the Fiscal Recovery Funds to improve efficacy of programs addressing negative economic impacts, including through use of data analysis, targeted consumer outreach, improvements to data or technology infrastructure, and impact evaluations.
- *Small Businesses and Non-profits.* As discussed above, small businesses and non-profits faced significant challenges in covering payroll, mortgages or rent, and other operating costs as a result of the public health emergency and measures taken to contain the spread of the virus. State, local, and Tribal governments may provide assistance to small businesses to adopt safer operating procedures, weather periods of closure, or mitigate financial hardship resulting from the COVID–19 public health emergency, including:
  - Loans or grants to mitigate financial hardship such as declines in revenues or impacts of periods of business closure, for example by supporting payroll and benefits costs, costs to retain employees, mortgage, rent, or utilities costs, and other operating costs;
  - Loans, grants, or in-kind assistance to implement COVID–19 prevention or mitigation tactics, such as physical

[86] In some cases, a use may be permissible under another eligible use category even if it falls outside the scope of section (c)(1)(A) of the Act.

plant changes to enable social distancing, enhanced cleaning efforts, barriers or partitions, or COVID–19 vaccination, testing, or contact tracing programs; and

○ Technical assistance, counseling, or other services to assist with business planning needs.

As discussed above, these services should respond to the negative economic impacts of COVID–19. Recipients may consider additional criteria to target assistance to businesses in need, including small businesses. Such criteria may include businesses facing financial insecurity, substantial declines in gross receipts (*e.g.,* comparable to measures used to assess eligibility for the Paycheck Protection Program), or other economic harm due to the pandemic, as well as businesses with less capacity to weather financial hardship, such as the smallest businesses, those with less access to credit, or those serving disadvantaged communities. Recipients should consider local economic conditions and business data when establishing such criteria.[87]

• *Rehiring State, Local, and Tribal Government Staff.* State, local, and Tribal governments continue to see pandemic impacts in overall staffing levels: State, local, and Tribal government employment remains more than 1 million jobs lower in April 2021 than prior to the pandemic.[88] Employment losses decrease a state or local government's ability to effectively administer services. Thus, the interim final rule includes as an eligible use payroll, covered benefits, and other costs associated with rehiring public sector staff, up to the pre-pandemic staffing level of the government.

• *Aid to Impacted Industries.* Sections 602(c)(1)(A) and 603(c)(1)(A) recognize that certain industries, such as tourism, travel, and hospitality, were disproportionately and negatively impacted by the COVID–19 public health emergency. Aid provided to tourism, travel, and hospitality industries should respond to the negative economic impacts of the pandemic on those and similarly impacted industries. For example, aid may include assistance to implement COVID–19 mitigation and infection prevention measures to enable safe resumption of tourism, travel, and hospitality services, for example, improvements to ventilation, physical barriers or partitions, signage to facilitate social distancing, provision of masks or personal protective equipment, or consultation with infection prevention professionals to develop safe reopening plans.

Aid may be considered responsive to the negative economic impacts of the pandemic if it supports businesses, attractions, business districts, and Tribal development districts operating prior to the pandemic and affected by required closures and other efforts to contain the pandemic. For example, a recipient may provide aid to support safe reopening of businesses in the tourism, travel, and hospitality industries and to business districts that were closed during the COVID–19 public health emergency, as well as aid for a planned expansion or upgrade of tourism, travel, and hospitality facilities delayed due to the pandemic.

When considering providing aid to industries other than tourism, travel, and hospitality, recipients should consider the extent of the economic impact as compared to tourism, travel, and hospitality, the industries enumerated in the statute. For example, on net, the leisure and hospitality industry has experienced an approximately 24 percent decline in revenue and approximately 17 percent decline in employment nationwide due to the COVID–19 public health emergency.[89] Recipients should also consider whether impacts were due to the COVID–19 pandemic, as opposed to longer-term economic or industrial trends unrelated to the pandemic.

To facilitate transparency and accountability, the interim final rule requires that State, local, and Tribal governments publicly report assistance provided to private-sector businesses under this eligible use, including tourism, travel, hospitality, and other impacted industries, and its connection to negative economic impacts of the pandemic. Recipients also should maintain records to support their assessment of how businesses or business districts receiving assistance were affected by the negative economic impacts of the pandemic and how the aid provided responds to these impacts.

As discussed above, economic disparities that existed prior to the COVID–19 public health emergency amplified the impact of the pandemic among low-income and minority groups. These families were more likely to face housing, food, and financial insecurity; are over-represented among low-wage workers; and many have seen their livelihoods deteriorate further during the pandemic and economic contraction. In recognition of the disproportionate negative economic impacts on certain communities and populations, the interim final rule identifies services and programs that will be presumed to be responding to the negative economic impacts of the COVID–19 public health emergency when provided in these communities.

Specifically, Treasury will presume that certain types of services, outlined below, are eligible uses when provided in a QCT, to families and individuals living in QCTs, or when these services are provided by Tribal governments.[90] Recipients may also provide these services to other populations, households, or geographic areas disproportionately impacted by the pandemic. In identifying these disproportionately impacted communities, recipients should be able to support their determination that the pandemic resulted in disproportionate public health or economic outcomes to the specific populations, households, or geographic areas to be served. The interim final rule identifies a non-exclusive list of uses that address the disproportionate negative economic effects of the COVID–19 public health emergency, including:

○ *Building Stronger Communities through Investments in Housing and Neighborhoods.* The economic impacts of COVID–19 have likely been most acute in lower-income neighborhoods, including concentrated areas of high unemployment, limited economic opportunity, and housing insecurity.[91]

[87] *See* Federal Reserve Bank of Cleveland, An Uphill Battle: COVID–19's Outsized Toll on Minority-Owned Firms (Oct. 8, 2020), *https://www.clevelandfed.org/newsroom-and-events/publications/community-development-briefs/db-20201008-misera-report.aspx* (discussing the impact of COVID–19 on minority owned businesses).

[88] U.S. Bureau of Labor Statistics, All Employees, State Government [CES9092000001] and All Employees, Local Government [CES9093000001], retrieved from FRED, Federal Reserve Bank of St. Louis, *https://fred.stlouisfed.org/series/CES9092000001* and *https://fred.stlouisfed.org/series/CES9093000001* (last visited May 8, 2021).

[89] From February 2020 to April 2021, employment in ''Leisure and hospitality'' has fallen by approximately 17 percent. *See* U.S. Bureau of Labor Statistics, All Employees, Leisure and Hospitality, retrieved from FRED, Federal Reserve Bank of St. Louis, *https://fred.stlouisfed.org/series/USLAH* (last visited May 8, 2021). From 2019Q4 to 2020Q4, gross output (*e.g.* revenue) in arts, entertainment, recreation, accommodation, and food services has fallen by approximately 24 percent. *See* Bureau of Economic Analysis, News Release: Gross Domestic Product (Third Estimate), Corporate Profits, and GDP by Industry, Fourth Quarter and Year 2020 (Mar. 25, 2021), Table 17, *https://www.bea.gov/sites/default/files/2021-03/gdp4q20_3rd.pdf.*

[90] HUD, *supra* note 48.

[91] Stuart M. Butler & Jonathan Grabinsky, Tackling the legacy of persistent urban inequality and concentrated poverty, Brookings Institution (Nov. 16, 2020), *https://www.brookings.edu/blog/up-front/2020/11/16/tackling-the-legacy-of-*

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Services in this category alleviate the immediate economic impacts of the COVID–19 pandemic on housing insecurity, while addressing conditions that contributed to poor public health and economic outcomes during the pandemic, namely concentrated areas with limited economic opportunity and inadequate or poor-quality housing.[92] Eligible services include:

▪ Services to address homelessness such as supportive housing, and to improve access to stable, affordable housing among unhoused individuals;

▪ Affordable housing development to increase supply of affordable and high-quality living units; and

▪ Housing vouchers, residential counseling, or housing navigation assistance to facilitate household moves to neighborhoods with high levels of economic opportunity and mobility for low-income residents, to help residents increase their economic opportunity and reduce concentrated areas of low economic opportunity.[93]

○ *Addressing Educational Disparities.* As outlined above, school closures and the transition to remote education raised particular challenges for lower-income students, potentially exacerbating educational disparities, while increases in economic hardship among families could have long-lasting impacts on children's educational and economic prospects. Services under this prong would enhance educational supports to help mitigate impacts of the pandemic. Eligible services include:

▪ New, expanded, or enhanced early learning services, including pre-kindergarten, Head Start, or partnerships between pre-kindergarten programs and local education authorities, or administration of those services;

▪ Providing assistance to high-poverty school districts to advance equitable funding across districts and geographies;

▪ Evidence-based educational services and practices to address the academic needs of students, including tutoring, summer, afterschool, and other extended learning and enrichment programs; and

▪ Evidence-based practices to address the social, emotional, and mental health needs of students;

○ *Promoting Healthy Childhood Environments.* Children's economic and family circumstances have a long-term impact on their future economic outcomes.[94] Increases in economic hardship, material insecurity, and parental stress and behavioral health challenges all raise the risk of long-term harms to today's children due to the pandemic. Eligible services to address this challenge include:

▪ New or expanded high-quality childcare to provide safe and supportive care for children;

▪ Home visiting programs to provide structured visits from health, parent educators, and social service professionals to pregnant women or families with young children to offer education and assistance navigating resources for economic support, health needs, or child development; and

▪ Enhanced services for child welfare-involved families and foster youth to provide support and training on child development, positive parenting, coping skills, or recovery for mental health and substance use challenges.

State, local, and Tribal governments are encouraged to use payments from the Fiscal Recovery Funds to respond to the direct and immediate needs of the pandemic and its negative economic impacts and, in particular, the needs of households and businesses that were disproportionately and negatively impacted by the public health emergency. As highlighted above, low-income communities and workers and people of color have faced more severe health and economic outcomes during the pandemic, with pre-existing social vulnerabilities like low-wage or insecure employment, concentrated neighborhoods with less economic opportunity, and pre-existing health disparities likely contributing to the magnified impact of the pandemic. The Fiscal Recovery Funds provide resources to not only respond to the immediate harms of the pandemic but also to mitigate its longer-term impact in compounding the systemic public health and economic challenges of disproportionately impacted populations. Treasury encourages recipients to consider funding uses that foster a strong, inclusive, and equitable recovery, especially uses with long-term benefits for health and economic outcomes.

*Uses Outside the Scope of this Category.* Certain uses would not be within the scope of this eligible use category, although may be eligible under other eligible use categories. A general infrastructure project, for example, typically would not be included unless the project responded to a specific pandemic public health need (*e.g.,* investments in facilities for the delivery of vaccines) or a specific negative economic impact like those described above (*e.g.,* affordable housing in a QCT). The ARPA explicitly includes infrastructure if it is ''necessary'' and in water, sewer, or broadband. *See* Section II.D of this **SUPPLEMENTARY INFORMATION**. State, local, and Tribal governments also may use the Fiscal Recovery Funds under sections 602(c)(1)(C) or 603(c)(1)(C) to provide ''government services'' broadly to the extent of their reduction in revenue. *See* Section II.C of this **SUPPLEMENTARY INFORMATION.**

This category of eligible uses also would not include contributions to rainy day funds, financial reserves, or similar funds. Resources made available under this eligible use category are intended to help meet pandemic response needs and provide relief for households and businesses facing near- and long-term negative economic impacts. Contributions to rainy day funds and similar financial reserves would not address these needs or respond to the COVID–19 public health emergency but would rather constitute savings for future spending needs. Similarly, this eligible use category would not include payment of interest or principal on outstanding debt instruments, including, for example, short-term revenue or tax anticipation notes, or other debt service costs. As discussed below, payments from the Fiscal Recovery Funds are intended to be used prospectively and the interim final rule precludes use of these funds to cover the costs of debt incurred prior to March 3, 2021. Fees or issuance costs associated with the issuance of new debt would also not be covered using payments from the Fiscal Recovery Funds because such costs would not themselves have been incurred to address the needs of pandemic response or its negative economic impacts. The purpose of the Fiscal Recovery Funds is to provide fiscal relief that will permit State, local, and Tribal governments to continue to respond to the COVID–19 public health emergency.

For the same reasons, this category of eligible uses would not include satisfaction of any obligation arising under or pursuant to a settlement agreement, judgment, consent decree, or judicially confirmed debt restructuring

*persistent-urban-inequality-and-concentrated-poverty/.*

[92] U.S. Department of Health and Human Services (HHS), Office of Disease Prevention and Health Promotion, Quality of Housing, *https://www.healthypeople.gov/2020/topics-objectives/topic/social-determinants-health/interventions-resources/quality-of-housing#11* (last visited Apr. 26, 2021).

[93] The Opportunity Atlas, *https://www.opportunityatlas.org/* (last visited Apr. 26, 2021); Raj Chetty & Nathaniel Hendren, The Impacts of Neighborhoods on Intergenerational Mobility I: Childhood Exposure Effects, Quarterly J. of Econ. 133(3):1107–162 (2018), *available at https://opportunityinsights.org/paper/neighborhoodsi/.*

[94] *See* supra notes 52 and 84.

plan in a judicial, administrative, or regulatory proceeding, except to the extent the judgment or settlement requires the provision of services that would respond to the COVID–19 public health emergency. That is, satisfaction of a settlement or judgment would not itself respond to COVID–19 with respect to the public health emergency or its negative economic impacts, unless the settlement requires the provision of services or aid that did directly respond to these needs, as described above.

In addition, as described in Section V.III of this **SUPPLEMENTARY INFORMATION**, Treasury will establish reporting and record keeping requirements for uses within this category, including enhanced reporting requirements for certain types of uses.

*Question 1: Are there other types of services or costs that Treasury should consider as eligible uses to respond to the public health impacts of COVID–19? Describe how these respond to the COVID–19 public health emergency.*

*Question 2: The interim final rule permits coverage of payroll and benefits costs of public health and safety staff primarily dedicated to COVID–19 response, as well as rehiring of public sector staff up to pre-pandemic levels. For how long should these measures remain in place? What other measures or presumptions might Treasury consider to assess the extent to which public sector staff are engaged in COVID–19 response, and therefore reimbursable, in an easily-administrable manner?*

*Question 3: The interim final rule permits rehiring of public sector staff up to the government's pre-pandemic staffing level, which is measured based on employment as of January 27, 2020. Does this approach adequately measure the pre-pandemic staffing level in a manner that is both accurate and easily administrable? Why or why not?*

*Question 4: The interim final rule permits deposits to Unemployment Insurance Trust Funds, or using funds to pay back advances, up to the pre-pandemic balance. What, if any, conditions should be considered to ensure that funds repair economic impacts of the pandemic and strengthen unemployment insurance systems?*

*Question 5: Are there other types of services or costs that Treasury should consider as eligible uses to respond to the negative economic impacts of COVID–19? Describe how these respond to the COVID–19 public health emergency.*

*Question 6: What other measures, presumptions, or considerations could be used to assess ''impacted industries'' affected by the COVID–19 public health emergency?*

*Question 7: What are the advantages and disadvantages of using Qualified Census Tracts and services provided by Tribal governments to delineate where a broader range of eligible uses are presumed to be responsive to the public health and economic impacts of COVID–19? What other measures might Treasury consider? Are there other populations or geographic areas that were disproportionately impacted by the pandemic that should be explicitly included?*

*Question 8: Are there other services or costs that Treasury should consider as eligible uses to respond to the disproportionate impacts of COVID–19 on low-income populations and communities? Describe how these respond to the COVID–19 public health emergency or its negative economic impacts, including its exacerbation of pre-existing challenges in these areas.*

*Question 9: The interim final rule includes eligible uses to support affordable housing and stronger neighborhoods in disproportionately-impacted communities. Discuss the advantages and disadvantages of explicitly including other uses to support affordable housing and stronger neighborhoods, including rehabilitation of blighted properties or demolition of abandoned or vacant properties. In what ways does, or does not, this potential use address public health or economic impacts of the pandemic? What considerations, if any, could support use of Fiscal Recovery Funds in ways that do not result in resident displacement or loss of affordable housing units?*

### *B. Premium Pay*

Fiscal Recovery Funds payments may be used by recipients to provide premium pay to eligible workers performing essential work during the COVID–19 public health emergency or to provide grants to third-party employers with eligible workers performing essential work.[95] These are workers who have been and continue to be relied on to maintain continuity of operations of essential critical infrastructure sectors, including those who are critical to protecting the health and wellbeing of their communities.

Since the start of the COVID–19 public health emergency in January 2020, essential workers have put their physical wellbeing at risk to meet the daily needs of their communities and to provide care for others. In the course of this work, many essential workers have contracted or died of COVID–19.[96] Several examples reflect the severity of the health impacts for essential workers. Meat processing plants became ''hotspots'' for transmission, with 700 new cases reported at a single plant on a single day in May 2020.[97] In New York City, 120 employees of the Metropolitan Transit Authority were estimated to have died due to COVID–19 by mid-May 2020, with nearly 4,000 testing positive for the virus.[98] Furthermore, many essential workers are people of color or low-wage workers.[99] These workers, in particular, have borne a disproportionate share of the health and economic impacts of the pandemic. Such workers include:

- Staff at nursing homes, hospitals, and home care settings;
- Workers at farms, food production facilities, grocery stores, and restaurants;
- Janitors and sanitation workers;
- Truck drivers, transit staff, and warehouse workers;
- Public health and safety staff;
- Childcare workers, educators, and other school staff; and
- Social service and human services staff.

During the public health emergency, employers' policies on COVID–19-related hazard pay have varied widely, with many essential workers not yet compensated for the heightened risks they have faced and continue to face.[100]

[95] Sections 602(c)(1)(B), 603(c)(1)(B) of the Act.

[96] *See, e.g.,* Centers for Disease Control and Prevention, COVID Data Tracker: Cases & Death among Healthcare Personnel, *https://covid.cdc.gov/covid-data-tracker/#health-care-personnel* (last visited May 4, 2021); Centers for Disease Control and Prevention, COVID Data Tracker: Confirmed COVID–19 Cases and Deaths among Staff and Rate per 1,000 Resident-Weeks in Nursing Homes, by Week—United States, *https://covid.cdc.gov/covid-data-tracker/#nursing-home-staff* (last visited May 4, 2021).

[97] *See, e.g.,* The Lancet, The plight of essential workers during the COVID–19 pandemic, Vol. 395, Issue 10237:1587 (May 23, 2020), *available at https://www.thelancet.com/journals/lancet/article/PIIS0140-6736%2820%2931200-9/fulltext.*

[98] *Id.*

[99] Joanna Gaitens et al., Covid–19 and essential workers: A narrative review of health outcomes and moral injury, Int'l J. of Envtl. Research and Pub. Health 18(4):1446 (Feb. 4, 2021), *available at https://pubmed.ncbi.nlm.nih.gov/33557075/;* Tiana N. Rogers et al., Racial Disparities in COVID–19 Mortality Among Essential Workers in the United States, World Med. & Health policy 12(3):311–27 (Aug. 5, 2020), *available at https://onlinelibrary.wiley.com/doi/full/10.1002/wmh3.358* (finding that vulnerability to coronavirus exposure was increased among non-Hispanic blacks, who disproportionately occupied the top nine essential occupations).

[100] Economic Policy Institute, Only 30% of those working outside their home are receiving hazard pay (June 16, 2020), *https://www.epi.org/press/only-30-of-those-working-outside-their-home-are-receiving-hazard-pay-black-and-hispanic-workers-are-most-concerned-about-bringing-the-coronavirus-home/.*

Many of these workers earn lower wages on average and live in socioeconomically vulnerable communities as compared to the general population.[101] A recent study found that 25 percent of essential workers were estimated to have low household income, with 13 percent in high-risk households.[102] The low pay of many essential workers makes them less able to cope with the financial consequences of the pandemic or their work-related health risks, including working hours lost due to sickness or disruptions to childcare and other daily routines, or the likelihood of COVID–19 spread in their households or communities. Thus, the threats and costs involved with maintaining the ongoing operation of vital facilities and services have been, and continue to be, borne by those that are often the most vulnerable to the pandemic. The added health risk to essential workers is one prominent way in which the pandemic has amplified pre-existing socioeconomic inequities.

The Fiscal Recovery Funds will help respond to the needs of essential workers by allowing recipients to remunerate essential workers for the elevated health risks they have faced and continue to face during the public health emergency. To ensure that premium pay is targeted to workers that faced or face heightened risks due to the character of their work, the interim final rule defines essential work as work involving regular in-person interactions or regular physical handling of items that were also handled by others. A worker would not be engaged in essential work and, accordingly may not receive premium pay, for telework performed from a residence.

Sections 602(g)(2) and 603(g)(2) define eligible worker to mean ''those workers needed to maintain continuity of operations of essential critical infrastructure sectors and additional sectors as each Governor of a State or territory, or each Tribal government, may designate as critical to protect the health and well-being of the residents of their State, territory, or Tribal government.'' [103] The rule incorporates this definition and provides a list of industries recognized as essential critical infrastructure sectors.[104] These sectors include healthcare, public health and safety, childcare, education, sanitation, transportation, and food production and services, among others as noted above. As provided under sections 602(g)(2) and 603(g)(2), the chief executive of each recipient has discretion to add additional sectors to this list, so long as additional sectors are deemed critical to protect the health and well-being of residents.

In providing premium pay to essential workers or grants to eligible employers, a recipient must consider whether the pay or grant would ''respond to'' to the worker or workers performing essential work. Premium pay or grants provided under this section respond to workers performing essential work if it addresses the heightened risk to workers who must be physically present at a jobsite and, for many of whom, the costs associated with illness were hardest to bear financially. Many of the workers performing critical essential services are low- or moderate-income workers, such as those described above. The ARPA recognizes this by defining premium pay to mean an amount up to $13 per hour in addition to wages or remuneration the worker otherwise receives and in an aggregate amount not to exceed $25,000 per eligible worker. To ensure the provision is implemented in a manner that compensates these workers, the interim final rule provides that any premium pay or grants provided using the Fiscal Recovery Funds should prioritize compensation of those lower income eligible workers that perform essential work.

As such, providing premium pay to eligible workers responds to such workers by helping address the disparity between the critical services and risks taken by essential workers and the relatively low compensation they tend to receive in exchange. If premium pay would increase a worker's total pay above 150 percent of their residing state's average annual wage for all occupations, as defined by the Bureau of Labor Statistics' Occupational Employment and Wage Statistics, or their residing county's average annual wage, as defined by the Bureau of Labor Statistics' Occupational Employment and Wage Statistics, whichever is higher, on an annual basis, the State, local, or Tribal government must provide Treasury and make publicly available, whether for themselves or on behalf of a grantee, a written justification of how the premium pay or grant is responsive to workers performing essential worker during the public health emergency.[105]

The threshold of 150 percent for requiring additional written justification is based on an analysis of the distribution of labor income for a sample of 20 occupations that generally correspond to the essential workers as defined in the interim final rule.[106] For these occupations, labor income for the vast majority of workers was under 150 percent of average annual labor income across all occupations. Treasury anticipates that the threshold of 150 percent of the annual average wage will be greater than the annual average wage of the vast majority of eligible workers performing essential work. These enhanced reporting requirements help to ensure grants are directed to essential workers in critical infrastructure sectors and responsive to the impacts of the pandemic observed among essential workers, namely the mis-alignment between health risks and compensation. Enhanced reporting also provides transparency to the public. Finally, using a localized measure reflects differences in wages and cost of living across the country, making this standard administrable and reflective of essential worker incomes across a diverse range of geographic areas.

Furthermore, because premium pay is intended to compensate essential workers for heightened risk due to COVID–19, it must be entirely additive to a worker's regular rate of wages and other remuneration and may not be used to reduce or substitute for a worker's normal earnings. The definition of premium pay also clarifies that premium pay may be provided retrospectively for work performed at any time since the start of the COVID–19 public health emergency, where those workers have yet to be compensated adequately for work previously performed.[107] Treasury encourages recipients to prioritize providing retrospective premium pay where possible, recognizing that many essential workers have not yet received additional compensation for work conducted over the course of many

[101] McCormack, *supra* note 37.

[102] *Id.*

[103] Sections 602(g)(2), 603(g)(2) of the Act.

[104] The list of critical infrastructure sectors provided in the interim final rule is based on the list of essential workers under The Heroes Act, H.R. 6800, 116th Cong. (2020).

[105] County median annual wage is taken to be that of the metropolitan or nonmetropolitan area that includes the county. *See* U.S. Bureau of Labor Statistics, State Occupational Employment and Wage Estimates, *https://www.bls.gov/oes/current/oessrcst.htm* (last visited May 1, 2021); U.S. Bureau of Labor Statistics, May 2020 Metropolitan and Nonmetropolitan Area Estimates listed by county or town, *https://www.bls.gov/oes/current/county_links.htm* (last visited May 1, 2021).

[106] Treasury performed this analysis with data from the U.S. Census Bureau's 2019 Annual Social and Economic Supplement. In determining which occupations to include in this analysis, Treasury excluded management and supervisory positions, as such positions may not necessarily involve regular in-person interactions or physical handling of items to the same extent as non-managerial positions.

[107] However, such compensation must be ''in addition to'' remuneration or wages already received. That is, employers may not reduce such workers' current pay and use Fiscal Recovery Funds to compensate themselves for premium pay previously provided to the worker.

months. Essential workers who have already earned premium pay for essential work performed during the COVID–19 public health emergency remain eligible for additional payments, and an essential worker may receive both retrospective premium pay for prior work as well as prospective premium pay for current or ongoing work.

To ensure any grants respond to the needs of essential workers and are made in a fair and transparent manner, the rule imposes some additional reporting requirements for grants to third-party employers, including the public disclosure of grants provided. *See* Section VIII of this **SUPPLEMENTARY INFORMATION**, discussing reporting requirements. In responding to the needs of essential workers, a grant to an employer may provide premium pay to eligible workers performing essential work, as these terms are defined in the interim final rule and discussed above. A grant provided to an employer may also be for essential work performed by eligible workers pursuant to a contract. For example, if a municipality contracts with a third party to perform sanitation work, the third-party contractor could be eligible to receive a grant to provide premium pay for these eligible workers.

*Question 10: Are there additional sectors beyond those listed in the interim final rule that should be considered essential critical infrastructure sectors?*

*Question 11: What, if any, additional criteria should Treasury consider to ensure that premium pay responds to essential workers?*

*Question 12: What consideration, if any, should be given to the criteria on salary threshold, including measure and level, for requiring written justification?*

### C. Revenue Loss

Recipients may use payments from the Fiscal Recovery Funds for the provision of government services to the extent of the reduction in revenue experienced due to the COVID–19 public health emergency.[108] Pursuant to sections 602(c)(1)(C) and 603(c)(1)(C) of the Act, a recipient's reduction in revenue is measured relative to the revenue collected in the most recent full fiscal year prior to the emergency.

Many State, local, and Tribal governments are experiencing significant budget shortfalls, which can have a devastating impact on communities. State government tax revenue from major sources were down 4.3 percent in the six months ended September 2020, relative to the same period 2019.[109] At the local level, nearly 90 percent of cities have reported being less able to meet the fiscal needs of their communities and, on average, cities expect a double-digit decline in general fund revenues in their fiscal year 2021.[110] Similarly, surveys of Tribal governments and Tribal enterprises found majorities of respondents reporting substantial cost increases and revenue decreases, with Tribal governments reporting reductions in healthcare, housing, social services, and economic development activities as a result of reduced revenues.[111] These budget shortfalls are particularly problematic in the current environment, as State, local, and Tribal governments work to mitigate and contain the COVID–19 pandemic and help citizens weather the economic downturn.

Further, State, local, and Tribal government budgets affect the broader economic recovery. During the period following the 2007–2009 recession, State and local government budget pressures led to fiscal austerity that was a significant drag on the overall economic recovery.[112] Inflation-adjusted State and local government revenue did not return to the previous peak until 2013,[113] while State, local, and Tribal government employment did not recover to its prior peak for over a decade, until August 2019—just a few months before the COVID–19 public health emergency began.[114]

Sections 602(c)(1)(C) and 603(c)(1)(C) of the Act allow recipients facing budget shortfalls to use payments from the Fiscal Recovery Funds to avoid cuts to government services and, thus, enable State, local, and Tribal governments to continue to provide valuable services and ensure that fiscal austerity measures do not hamper the broader economic recovery. The interim final rule implements these provisions by establishing a definition of ''general revenue'' for purposes of calculating a loss in revenue and by providing a methodology for calculating revenue lost due to the COVID–19 public health emergency.

*General Revenue.* The interim final rule adopts a definition of ''general revenue'' based largely on the components reported under ''General Revenue from Own Sources'' in the Census Bureau's Annual Survey of State and Local Government Finances, and for purposes of this interim final rule, helps to ensure that the components of general revenue would be calculated in a consistent manner.[115] By relying on a methodology that is both familiar and comprehensive, this approach minimizes burden to recipients and provides consistency in the measurement of general revenue across a diverse set of recipients.

The interim final rule defines the term ''general revenue'' to include revenues collected by a recipient and generated from its underlying economy and would capture a range of different types of tax revenues, as well as other types of revenue that are available to support government services.[116] In calculating revenue, recipients should sum across all revenue streams covered as general revenue. This approach minimizes the administrative burden for recipients, provides for greater consistency across recipients, and presents a more accurate representation of the overall impact of

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[108] ARPA, *supra* note 16.

[109] Major sources include personal income tax, corporate income tax, sales tax, and property tax. *See* Lucy Dadayan., States Reported Revenue Growth in July–September Quarter, Reflecting Revenue Shifts from the Prior Quarter, State Tax and Econ. Rev. (Q. 3, 2020), *available at https://www.urban.org/sites/default/files/publication/103938/state-tax-and-economic-review-2020-q3_0.pdf.*

[110] National League of Cities, City Fiscal Conditions (2020), *available at https://www.nlc.org/wp-content/uploads/2020/08/City_Fiscal_Conditions_2020_FINAL.pdf.*

[111] Surveys conducted by the Center for Indian Country Development at the Federal Reserve Bank of Minneapolis in March, April, and September 2020. *See* Moreno & Sobrepena, *supra* note 73.

[112] *See, e.g.,* Fitzpatrick, Haughwout & Setren, Fiscal Drag from the State and Local Sector?, Liberty Street Economics Blog, Federal Reserve Bank of New York (June 27, 2012), *https://www.libertystreeteconomics.newyorkfed.org/2012/06/fiscal-drag-from-the-state-and-local-sector.html;* Jiri Jonas, Great Recession and Fiscal Squeeze at U.S. Subnational Government Level, IMF Working Paper 12/184, (July 2012), *available at https://www.imf.org/external/pubs/ft/wp/2012/wp12184.pdf;* Gordon, *supra* note 9.

[113] State and local government general revenue from own sources, adjusted for inflation using the GDP price index. U.S. Census Bureau, Annual Survey of State Government Finances and U.S. Bureau of Economic Analysis, National Income and Product Accounts.

[114] U.S. Bureau of Labor Statistics, All Employees, State Government [CES9092000001] and All Employees, Local Government [CES9093000001], retrieved from FRED, Federal Reserve Bank of St. Louis, *https://fred.stlouisfed.org/series/CES9092000001* and *https://fred.stlouisfed.org/series/CES9093000001* (last visited Apr. 27, 2021).

[115] U.S. Census Bureau, Annual Survey of State and Local Government Finances, *https://www.census.gov/programs-surveys/gov-finances.html* (last visited Apr. 30, 2021).

[116] The interim final rule would define tax revenue in a manner consistent with the Census Bureau's definition of tax revenue, with certain changes (*i.e.,* inclusion of revenue from liquor stores and certain intergovernmental transfers). Current charges are defined as ''charges imposed for providing current services or for the sale of products in connection with general government activities.'' It includes revenues such as public education institution, public hospital, and toll revenues. Miscellaneous general revenue comprises of all other general revenue of governments from their own sources (*i.e.,* other than liquor store, utility, and insurance trust revenue), including rents, royalties, lottery proceeds, and fines.

the COVID–19 public health emergency on a recipient's revenue, rather than relying on financial reporting prepared by each recipient, which vary in methodology used and which generally aggregates revenue by purpose rather than by source.[117]

Consistent with the Census Bureau's definition of ''general revenue from own sources,'' the definition of general revenue in the interim final rule would exclude refunds and other correcting transactions, proceeds from issuance of debt or the sale of investments, and agency or private trust transactions. The definition of general revenue also would exclude revenue generated by utilities and insurance trusts. In this way, the definition of general revenue focuses on sources that are generated from economic activity and are available to fund government services, rather than a fund or administrative unit established to account for and control a particular activity.[118] For example, public utilities typically require financial support from the State, local, or Tribal government, rather than providing revenue to such government, and any revenue that is generated by public utilities typically is used to support the public utility's continued operation, rather than being used as a source of revenue to support government services generally.

The definition of general revenue would include all revenue from Tribal enterprises, as this revenue is generated from economic activity and is available to fund government services. Tribes are not able to generate revenue through taxes in the same manner as State and local governments and, as a result, Tribal enterprises are critical sources of revenue for Tribal governments that enable Tribal governments to provide a range of services, including elder care, health clinics, wastewater management, and forestry.

Finally, the term ''general revenue'' includes intergovernmental transfers between State and local governments, but excludes intergovernmental transfers from the Federal Government, including Federal transfers made via a State to a local government pursuant to the CRF or as part of the Fiscal Recovery Funds. States and local governments often share or collect revenue on behalf of one another, which results in intergovernmental transfers. When attributing revenue to a unit of government, the Census Bureau's methodology considers which unit of government imposes, collects, and retains the revenue and assigns the revenue to the unit of government that meets at least two of those three factors.[119] For purposes of measuring loss in general revenue due to the COVID–19 public health emergency and to better allow continued provision of government services, the retention and ability to use the revenue is a more critical factor. Accordingly, and to better measure the funds available for the provision of government services, the definition of general revenue would include intergovernmental transfers from States or local governments other than funds transferred pursuant to ARPA, CRF, or another Federal program. This formulation recognizes the importance of State transfers for local government revenue.[120]

*Calculation of Loss.* In general, recipients will compute the extent of the reduction in revenue by comparing actual revenue to a counterfactual trend representing what could have been expected to occur in the absence of the pandemic. This approach measures losses in revenue relative to the most recent fiscal year prior to the COVID–19 public health emergency by using the most recent pre-pandemic fiscal year as the starting point for estimates of revenue growth absent the pandemic. In other words, the counterfactual trend starts with the last full fiscal year prior to the COVID–19 public health emergency and then assumes growth at a constant rate in the subsequent years. Because recipients can estimate the revenue shortfall at multiple points in time throughout the covered period as revenue is collected, this approach accounts for variation across recipients in the timing of pandemic impacts.[121] Although revenue may decline for reasons unrelated to the COVID–19 public health emergency, to minimize the administrative burden on recipients and taking into consideration the devastating effects of the COVID–19 public health emergency, any diminution in actual revenues relative to the counterfactual pre-pandemic trend would be presumed to have been due to the COVID–19 public health emergency.

For purposes of measuring revenue growth in the counterfactual trend, recipients may use a *growth adjustment* of either 4.1 percent per year or the recipient's average annual revenue growth over the three full fiscal years prior to the COVID–19 public health emergency, whichever is higher. The option of 4.1 percent represents the average annual growth across all State and local government ''General Revenue from Own Sources'' in the most recent three years of available data.[122] This approach provides recipients with a standardized growth adjustment when calculating the counterfactual revenue trend and thus minimizes administrative burden, while not disadvantaging recipients with revenue growth that exceeded the national average prior to the COVID–19 public health emergency by permitting these recipients to use their own revenue growth rate over the preceding three years.

Recipients should calculate the extent of the reduction in revenue as of four points in time: December 31, 2020; December 31, 2021; December 31, 2022; and December 31, 2023. To calculate the extent of the reduction in revenue at each of these dates, recipients should follow a four-step process:

- *Step 1:* Identify revenues collected in the most recent full fiscal year prior to the public health emergency (*i.e.,* last full fiscal year before January 27, 2020), called the *base year revenue.*
- *Step 2:* Estimate *counterfactual revenue,* which is equal to *base year revenue* * [(1 + *growth adjustment*) ^ (*n*/12)], where *n* is the number of months elapsed since the end of the base year to the calculation date, and *growth adjustment* is the greater of 4.1 percent and the recipient's average annual revenue growth in the three full fiscal

[117] Fund-oriented reporting, such as what is used under the Governmental Accounting Standards Board (GASB), focuses on the types of uses and activities funded by the revenue, as opposed to the economic activity from which the revenue is sourced. *See* Governmental Accounting Standards Series, Statement No. 54 of the Governmental Accounting Standards Board: Fund Balance Reporting and Governmental Fund Type Definitions, No. 287–B (Feb. 2009).

[118] *Supra* note 116.

[119] U.S. Census Bureau, Government Finance and Employment Classification Manual (Dec. 2000), *https://www2.census.gov/govs/class/classfull.pdf.*

[120] For example, in 2018, state transfers to localities accounted for approximately 27 percent of local revenues. U.S. Census Bureau, Annual Survey of State and Local Government Finances, Table 1 (2018), *https://www.census.gov/data/datasets/2018/econ/local/public-use-datasets.html.*

[121] For example, following the 2007–09 recession, local government property tax collections did not begin to decline until 2011, suggesting that property tax collection declines can lag downturns. *See* U.S. Bureau of Economic Analysis, Personal current taxes: State and local: Property taxes [S210401A027NBEA], retrieved from Federal Reserve Economic Data, Federal Reserve Bank of St. Louis, *https://fred.stlouisfed.org/graph/?g=r3YI* (last visited Apr. 22, 2021). Estimating the reduction in revenue at points throughout the covered period will allow for this type of lagged effect to be taken into account during the covered period.

[122] Together with revenue from liquor stores from 2015 to 2018. This estimate does not include any intergovernmental transfers. A recipient using the three-year average to calculate their growth adjustment must be based on the definition of general revenue, including treatment of intergovernmental transfers. 2015–2018 represents the most recent available data. *See* U.S. Census Bureau, State & Local Government Finance Historical Datasets and Tables (2018), *https://www.census.gov/programs-surveys/gov-finances/data/datasets.html.*

years prior to the COVID–19 public health emergency.

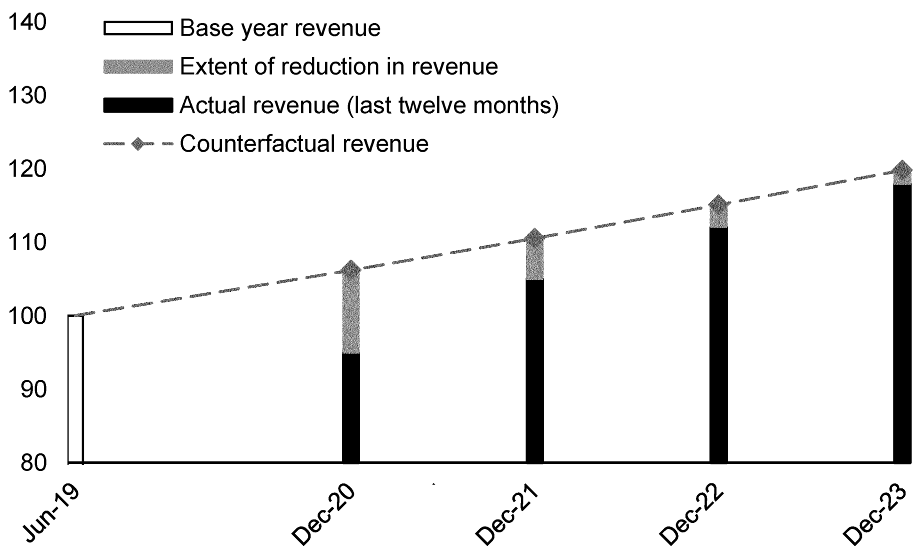
• *Step 3:* Identify *actual revenue,* which equals revenues collected over the past twelve months as of the calculation date.

• *Step 4:* The extent of the reduction in revenue is equal to *counterfactual revenue* less *actual revenue.* If actual revenue exceeds counterfactual revenue, the extent of the reduction in revenue is set to zero for that calculation date.

For illustration, consider a hypothetical recipient with *base year revenue* equal to 100. In Step 2, the hypothetical recipient finds that 4.1 percent is greater than the recipient's average annual revenue growth in the three full fiscal years prior to the public health emergency. Furthermore, this recipient's base year ends June 30. In this illustration, *n* (months elapsed) and *counterfactual revenue* would be equal to:

| As of: | 12/31/2020 | 12/31/2021 | 12/31/2022 | 12/31/2023 |
|---|---|---|---|---|
| *n* (months elapsed) | 18 | 30 | 42 | 54 |
| *Counterfactual revenue:* | 106.2 | 110.6 | 115.1 | 119.8 |

The overall methodology for calculating the reduction in revenue is illustrated in the figure below:




Upon receiving Fiscal Recovery Fund payments, recipients may immediately calculate revenue loss for the period ending December 31, 2020.

Sections 602(c)(1)(C) and 603(c)(1)(C) of the Act provide recipients with broad latitude to use the Fiscal Recovery Funds for the provision of government services. Government services can include, but are not limited to, maintenance or pay-go funded building[123] of infrastructure, including roads; modernization of cybersecurity, including hardware, software, and protection of critical infrastructure; health services; environmental remediation; school or educational services; and the provision of police, fire, and other public safety services. However, expenses associated with obligations under instruments evidencing financial indebtedness for borrowed money would not be considered the provision of government services, as these financing expenses do not directly provide services or aid to citizens. Specifically, government services would not include interest or principal on any outstanding debt instrument, including, for example, short-term revenue or tax anticipation notes, or fees or issuance costs associated with the issuance of new debt. For the same reasons, government services would not include satisfaction of any obligation arising under or pursuant to a settlement agreement, judgment, consent decree, or judicially confirmed debt restructuring in a judicial, administrative, or regulatory proceeding, except if the judgment or settlement required the provision of government services. That is, satisfaction of a settlement or judgment itself is not a government service, unless the settlement required the provision of government services. In addition, replenishing financial reserves (*e.g.,* rainy day or other reserve funds) would not be considered provision of a government service, since such expenses do not directly relate to the provision of government services.

*Question 13: Are there sources of revenue that either should or should not be included in the interim final rule's measure of ''general revenue'' for recipients? If so, discuss why these sources either should or should not be included.*

*Question 14: In the interim final rule, recipients are expected to calculate the reduction in revenue on an aggregate basis. Discuss the advantages and disadvantages of, and any potential concerns with, this approach, including circumstances in which it could be necessary or appropriate to calculate the reduction in revenue by source.*

*Question 15: Treasury is considering whether to take into account other factors, including actions taken by the recipient as well as the expiration of the COVID–19 public health emergency, in determining whether to presume that revenue losses are ''due to'' the COVID–*

[123] Pay-go infrastructure funding refers to the practice of funding capital projects with cash-on-hand from taxes, fees, grants, and other sources, rather than with borrowed sums.

*19 public health emergency. Discuss the advantages and disadvantages of this presumption, including when, if ever, during the covered period it would be appropriate to reevaluate the presumption that all losses are attributable to the COVID–19 public health emergency.*

*Question 16: Do recipients anticipate lagged revenue effects of the public health emergency? If so, when would these lagged effects be expected to occur, and what can Treasury to do support these recipients through its implementation of the program?*

*Question 17: In the interim final rule, paying interest or principal on government debt is not considered provision of a government service. Discuss the advantages and disadvantages of this approach, including circumstances in which paying interest or principal on government debt could be considered provision of a government service.*

*D. Investments in Infrastructure*

To assist in meeting the critical need for investments and improvements to existing infrastructure in water, sewer, and broadband, the Fiscal Recovery Funds provide funds to State, local, and Tribal governments to make necessary investments in these sectors. The interim final rule outlines eligible uses within each category, allowing for a broad range of necessary investments in projects that improve access to clean drinking water, improve wastewater and stormwater infrastructure systems, and provide access to high-quality broadband service. Necessary investments are designed to provide an adequate minimum level of service and are unlikely to be made using private sources of funds. Necessary investments include projects that are required to maintain a level of service that, at least, meets applicable health-based standards, taking into account resilience to climate change, or establishes or improves broadband service to unserved or underserved populations to reach an adequate level to permit a household to work or attend school, and that are unlikely to be met with private sources of funds.[124]

It is important that necessary investments in water, sewer, or broadband infrastructure be carried out in ways that produce high-quality infrastructure, avert disruptive and costly delays, and promote efficiency. Treasury encourages recipients to ensure that water, sewer, and broadband projects use strong labor standards, including project labor agreements and community benefits agreements that offer wages at or above the prevailing rate and include local hire provisions, not only to promote effective and efficient delivery of high-quality infrastructure projects but also to support the economic recovery through strong employment opportunities for workers. Using these practices in construction projects may help to ensure a reliable supply of skilled labor that would minimize disruptions, such as those associated with labor disputes or workplace injuries.

To provide public transparency on whether projects are using practices that promote on-time and on-budget delivery, Treasury will seek information from recipients on their workforce plans and practices related to water, sewer, and broadband projects undertaken with Fiscal Recovery Funds. Treasury will provide additional guidance and instructions on the reporting requirements at a later date.

1. Water and Sewer Infrastructure

The ARPA provides funds to State, local, and Tribal governments to make necessary investments in water and sewer infrastructure.[125] By permitting funds to be used for water and sewer infrastructure needs, Congress recognized the critical role that clean drinking water and services for the collection and treatment of wastewater and stormwater play in protecting public health. Understanding that State, local, and Tribal governments have a broad range of water and sewer infrastructure needs, the interim final rule provides these governments with wide latitude to identify investments in water and sewer infrastructure that are of the highest priority for their own communities, which may include projects on privately-owned infrastructure. The interim final rule does this by aligning eligible uses of the Fiscal Recovery Funds with the wide range of types or categories of projects that would be eligible to receive financial assistance through the Environmental Protection Agency's (EPA) Clean Water State Revolving Fund (CWSRF) or Drinking Water State Revolving Fund (DWSRF).[126]

Established by the 1987 amendments[127] to the Clean Water Act (CWA),[128] the CWSRF provides financial assistance for a wide range of water infrastructure projects to improve water quality and address water pollution in a way that enables each State to address and prioritize the needs of their populations. The types of projects eligible for CWSRF assistance include projects to construct, improve, and repair wastewater treatment plants, control non-point sources of pollution, improve resilience of infrastructure to severe weather events, create green infrastructure, and protect waterbodies from pollution.[129] Each of the 51 State programs established under the CWSRF have the flexibility to direct funding to their particular environmental needs, and each State may also have its own statutes, rules, and regulations that guide project eligibility.[130]

The DWSRF was modeled on the CWSRF and created as part of the 1996 amendments to the Safe Drinking Water Act (SDWA),[131] with the principal objective of helping public water systems obtain financing for improvements necessary to protect public health and comply with drinking water regulations.[132] Like the CWSRF,

[124] Treasury notes that using funds to support or oppose collective bargaining would not be included as part of ''necessary investments in water, sewer, or broadband infrastructure.''

[125] Sections 602(c)(1)(D), 603(c)(1)(D) of the Act.

[126] Environmental Protection Agency, Drinking Water State Revolving fund, *https://www.epa.gov/dwsrf* (last visited Apr. 30, 2021); Environmental Protection Agency, Clean Water State Revolving Fund, *https://www.epa.gov/cwsrf* (last visited Apr. 30, 2021).

[127] Water Quality Act of 1987, Public Law 100–4.

[128] Federal Water Pollution Control Act as amended, codified at 33 U.S.C. 1251 *et seq.*, common name (Clean Water Act). In 2009, the American Recovery and Reinvestment Act created the Green Project Reserve, which increased the focus on green infrastructure, water and energy efficient, and environmentally innovative projects. Public Law 111–5. The CWA was amended by the Water Resources Reform and Development Act of 2014 to further expand the CWSRF's eligibilities. Public Law 113–121. *The CWSRF's eligibilities were further expanded in 2018 by the America's Water Infrastructure Act of 2018, Public Law 115–270.*

[129] *See* Environmental Protection Agency, The Drinking Water State Revolving Funds: Financing America's Drinking Water, EPA–816–R–00–023 (Nov. 2000), *https://nepis.epa.gov/Exe/ZyPDF.cgi/200024WB.PDF?Dockey=200024WB.PDF; See also* Environmental Protection Agency, *Learn About the Clean Water State Revolving Fund, https://www.epa.gov/cwsrf/learn-about-clean-water-state-revolving-fund-cwsrf (last visited Apr. 30, 2021).*

[130] 33 U.S.C. 1383(c). *See also Environmental Protection Agency, Overview of Clean Water State Revolving Fund Eligibilities (May 2016), https://www.epa.gov/sites/production/files/2016-07/documents/overview_of_cwsrf_eligibilities_may_2016.pdf; Claudia Copeland, Clean Water Act: A Summary of the Law, Congressional Research Service (Oct. 18, 2016), https://fas.org/sgp/crs/misc/RL30030.pdf; Jonathan L Ramseur, Wastewater Infrastructure: Overview, Funding, and Legislative Developments, Congressional Research Service (May 22, 2018), https://fas.org/sgp/crs/misc/R44963.pdf.*

[131] 42 U.S.C. 300j–12.

[132] Environmental Protection Agency, Drinking Water State Revolving Fund Eligibility Handbook, (June 2017), *https://www.epa.gov/sites/production/files/2017-06/documents/dwsrf_eligibility_handbook_june_13_2017_updated_508_version.pdf;* Environmental Protection Agency, Drinking Water

the DWSRF provides States with the flexibility to meet the needs of their populations.[133] The primary use of DWSRF funds is to assist communities in making water infrastructure capital improvements, including the installation and replacement of failing treatment and distribution systems.[134] In administering these programs, States must give priority to projects that ensure compliance with applicable health and environmental safety requirements; address the most serious risks to human health; and assist systems most in need on a per household basis according to State affordability criteria.[135]

By aligning use of Fiscal Recovery Funds with the categories or types of eligible projects under the existing EPA state revolving fund programs, the interim final rule provides recipients with the flexibility to respond to the needs of their communities while ensuring that investments in water and sewer infrastructure made using Fiscal Recovery Funds are necessary. As discussed above, the CWSRF and DWSRF were designed to provide funding for projects that protect public health and safety by ensuring compliance with wastewater and drinking water health standards.[136] The need to provide funding through the state revolving funds suggests that these projects are less likely to be addressed with private sources of funding; for example, by remediating failing or inadequate infrastructure, much of which is publicly owned, and by addressing non-point sources of pollution. This approach of aligning with the EPA state revolving fund programs also supports expedited project identification and investment so that needed relief for the people and communities most affected by the pandemic can deployed expeditiously and have a positive impact on their health and wellbeing as soon as possible. Further, the interim final rule is intended to preserve flexibility for award recipients to direct funding to their own particular needs and priorities and would not preclude recipients from applying their own additional project eligibility criteria.

In addition, responding to the immediate needs of the COVID–19 public health emergency may have diverted both personnel and financial resources from other State, local, and Tribal priorities, including projects to ensure compliance with applicable water health and quality standards and provide safe drinking and usable water.[137] Through sections 602(c)(1)(D) and 603(c)(1)(D), the ARPA provides resources to address these needs. Moreover, using Fiscal Recovery Funds in accordance with the priorities of the CWA and SWDA to ''assist systems most in need on a per household basis according to state affordability criteria'' would also have the benefit of providing vulnerable populations with safe drinking water that is critical to their health and, thus, their ability to work and learn.[138]

Recipients may use Fiscal Recovery Funds to invest in a broad range of projects that improve drinking water infrastructure, such as building or upgrading facilities and transmission, distribution, and storage systems, including replacement of lead service lines. Given the lifelong impacts of lead exposure for children, and the widespread nature of lead service lines, Treasury encourages recipients to consider projects to replace lead service lines.

Fiscal Recovery Funds may also be used to support the consolidation or establishment of drinking water systems. With respect to wastewater infrastructure, recipients may use Fiscal Recovery Funds to construct publicly owned treatment infrastructure, manage and treat stormwater or subsurface drainage water, facilitate water reuse, and secure publicly owned treatment works, among other uses. Finally, consistent with the CWSRF and DWSRF, Fiscal Recovery Funds may be used for cybersecurity needs to protect water or sewer infrastructure, such as developing effective cybersecurity practices and measures at drinking water systems and publicly owned treatment works.

Many of the types of projects eligible under either the CWSRF or DWSRF also support efforts to address climate change. For example, by taking steps to manage potential sources of pollution and preventing these sources from reaching sources of drinking water, projects eligible under the DWSRF and the ARPA may reduce energy required to treat drinking water. Similarly, projects eligible under the CWSRF include measures to conserve and reuse water or reduce the energy consumption of public water treatment facilities. Treasury encourages recipients to consider green infrastructure investments and projects to improve resilience to the effects of climate change. For example, more frequent and extreme precipitation events combined with construction and development trends have led to increased instances of stormwater runoff, water pollution, and flooding. Green infrastructure projects that support stormwater system resiliency could include rain gardens that provide water storage and filtration benefits, and green streets, where vegetation, soil, and engineered systems are combined to direct and filter rainwater from impervious surfaces. In cases of a natural disaster, recipients may also use Fiscal Recovery Funds to provide relief, such as interconnecting water systems or rehabilitating existing wells during an extended drought.

*Question 18: What are the advantages and disadvantages of aligning eligible uses with the eligible project type requirements of the DWSRF and CWSRF? What other water or sewer project categories, if any, should Treasury consider in addition to DWSRF and CWSRF eligible projects? Should Treasury consider a broader general category of water and sewer projects?*

*Question 19: What additional water and sewer infrastructure categories, if any, should Treasury consider to address and respond to the needs of unserved, undeserved, or rural communities? How do these projects differ from DWSFR and CWSRF eligible projects?*

*Question 20: What new categories of water and sewer infrastructure, if any, should Treasury consider to support State, local, and Tribal governments in mitigating the negative impacts of climate change? Discuss emerging technologies and processes that support resiliency of water and sewer infrastructure. Discuss any challenges faced by States and local governments when pursuing or implementing climate resilient infrastructure projects.*

*Question 21: Infrastructure projects related to dams and reservoirs are generally not eligible under the CWSRF and DWSRF categories. Should Treasury consider expanding eligible*

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Infrastructure Needs Survey and Assessment: Sixth Report to Congress (March 2018), *https://www.epa.gov/sites/production/files/2018-10/documents/corrected_sixth_drinking_water_infrastructure_needs_survey_and_assessment.pdf.*

[133] *Id.*

[134] *Id.*

[135] 42 U.S.C. 300j–12(b)(3)(A).

[136] Environmental Protection Agency, Learn About the Clean Water State Revolving Fund, *https://www.epa.gov/cwsrf/learn-about-clean-water-state-revolving-fund-cwsrf* (last visited Apr. 30, 2021); 42 U.S.C. 300j–12.

[137] House Committee on the Budget, State and Local Governments are in Dire Need of Federal Relief (Aug. 19, 2020), *https://budget.house.gov/publications/report/state-and-local-governments-are-dire-need-federal-relief.*

[138] Environmental Protection Agency, Drinking Water State Revolving Fund (Nov. 2019), *https://www.epa.gov/sites/production/files/2019-11/documents/fact_sheet_-_dwsrf_overview_final_0.pdf;* Environmental Protection Agency, National Benefits Analysis for Drinking Water Regulations, *https://www.epa.gov/sdwa/national-benefits-analysis-drinking-water-regulations* (last visited Apr. 30, 2020).

*infrastructure under the interim final rule to include dam and reservoir projects? Discuss public health, environmental, climate, or equity benefits and costs in expanding the eligibility to include these types of projects.*

2. Broadband Infrastructure

The COVID–19 public health emergency has underscored the importance of universally available, high-speed, reliable, and affordable broadband coverage as millions of Americans rely on the internet to participate in, among critical activities, remote school, healthcare, and work. Recognizing the need for such connectivity, the ARPA provides funds to State, territorial, local, and Tribal governments to make necessary investments in broadband infrastructure.

The National Telecommunications and Information Administration (NTIA) highlighted the growing necessity of broadband in daily lives through its analysis of NTIA Internet Use Survey data, noting that Americans turn to broadband internet access service for every facet of daily life including work, study, and healthcare.[139] With increased use of technology for daily activities and the movement by many businesses and schools to operating remotely during the pandemic, broadband has become even more critical for people across the country to carry out their daily lives.

By at least one measure, however, tens of millions of Americans live in areas where there is no broadband infrastructure that provides download speeds greater than 25 Mbps and upload speeds of 3 Mbps.[140] By contrast, as noted below, many households use upload and download speeds of 100 Mbps to meet their daily needs. Even in areas where broadband infrastructure exists, broadband access may be out of reach for millions of Americans because it is unaffordable, as the United States has some of the highest broadband prices in the Organisation for Economic Co-operation and Development (OECD).[141] There are disparities in availability as well; historically, Americans living in territories and Tribal lands as well as rural areas have disproportionately lacked sufficient broadband infrastructure.[142] Moreover, rapidly growing demand has, and will likely continue to, quickly outpace infrastructure capacity, a phenomenon acknowledged by various states around the country that have set scalability requirements to account for this anticipated growth in demand.[143]

The interim final rule provides that eligible investments in broadband are those that are designed to provide services meeting adequate speeds and are provided to unserved and underserved households and businesses. Understanding that States, territories, localities, and Tribal governments have a wide range of varied broadband infrastructure needs, the interim final rule provides award recipients with flexibility to identify the specific locations within their communities to be served and to otherwise design the project.

Under the interim final rule, eligible projects are expected to be designed to deliver, upon project completion, service that reliably meets or exceeds symmetrical upload and download speeds of 100 Mbps. There may be instances in which it would not be practicable for a project to deliver such service speeds because of the geography, topography, or excessive costs associated with such a project. In these instances, the affected project would be expected to be designed to deliver, upon project completion, service that reliably meets or exceeds 100 Mbps download and between at least 20 Mbps and 100 Mbps upload speeds and be scalable to a minimum of 100 Mbps symmetrical for download and upload speeds.[144] In setting these standards, Treasury identified speeds necessary to ensure that broadband infrastructure is sufficient to enable users to generally meet household needs, including the ability to support the simultaneous use of work, education, and health applications, and also sufficiently robust to meet increasing household demands for bandwidth. Treasury also recognizes that different communities and their members may have a broad range of internet needs and that those needs may change over time.

In considering the appropriate speed requirements for eligible projects, Treasury considered estimates of typical households demands during the pandemic. Using the Federal Communication Commission's (FCC) Broadband Speed Guide, for example, a household with two telecommuters and two to three remote learners today are estimated to need 100 Mbps download to work simultaneously.[145] In households with more members, the demands may be greater, and in households with fewer members, the demands may be less.

In considering the appropriate speed requirements for eligible projects, Treasury also considered data usage patterns and how bandwidth needs have changed over time for U.S. households and businesses as people's use of technology in their daily lives has evolved. In the few years preceding the pandemic, market research data showed that average upload speeds in the United States surpassed over 10 Mbps in 2017[146] and continued to increase significantly, with the average upload speed as of November, 2019 increasing to 48.41 Mbps,[147] attributable, in part to a shift to using broadband and the internet by individuals and businesses

[139] *See, e.g., https://www.ntia.gov/blog/2020/more-half-american-households-used-internet-health-related-activities-2019-ntia-data-show; https://www.ntia.gov/blog/2020/nearly-third-american-employees-worked-remotely-2019-ntia-data-show;* and generally, *https://www.ntia.gov/data/digital-nation-data-explorer.*

[140] As an example, data from the Federal Communications Commission shows that as of June 2020, 9.07 percent of the U.S. population had no available cable or fiber broadband providers providing greater than 25 Mbps download speeds and 3 Mbps upload speeds. Availability was significantly less for rural versus urban populations, with 35.57 percent of the rural population lacking such access, compared with 2.57 percent of the urban population. Availability was also significantly less for tribal versus non-tribal populations, with 35.93 percent of the tribal population lacking such access, compared with 8.74 of the non-tribal population. Federal Communications Commission, Fixed Broadband Deployment, *https://broadbandmap.fcc.gov/#/* (last visited May 9, 2021).

[141] How Do U.S. Internet Costs Compare To The Rest Of The World?, BroadbandSearch Blog Post, *available at https://www.broadbandsearch.net/blog/internet-costs-compared-worldwide.*

[142] *See, e.g.,* Federal Communications Commission, Fourteenth Broadband Deployment Report, *available at https://docs.fcc.gov/public/attachments/FCC-21-18A1.pdf.*

[143] *See, e.g.,* Illinois Department of Commerce & Economic Opportunity, Broadband Grants, h (last visited May 9, 2021), *https://www2.illinois.gov/dceo/ConnectIllinois/Pages/BroadbandGrants.aspx;* Kansas Office of Broadband Development, Broadband Acceleration Grant, *https://www.kansascommerce.gov/wp-content/uploads/2020/11/Broadband-Acceleration-Grant.pdf* (last visited May 9, 2021); New York State Association of Counties, Universal Broadband: Deploying High Speed Internet Access in NYS (Jul. 2017), *https://www.nysac.org/files/BroadbandUpdate Report2017(1).pdf.*

[144] This scalability threshold is consistent with scalability requirements used in other jurisdictions. *Id.*

[145] Federal Communications Commission, Broadband Speed Guide, *https://www.fcc.gov/consumers/guides/broadband-speed-guide* (last visited Apr. 30, 2021).

[146] Letter from Lisa R. Youngers, President and CEO of Fiber Broadband Association to FCC, WC Docket No. 19–126 (filed Jan. 3, 2020), including an Appendix with research from RVA LLC, *Data Review Of The Importance of Upload Speeds* (Jan. 2020), and Ookla speed test data, *available at https://ecfsapi.fcc.gov/file/101030085118517/FCC%20RDOF%20Jan%203%20 Ex%20Parte.pdf.*Additional information on historic growth in data usage is provided in Schools, Health & Libraries Broadband Coalition, *Common Sense Solutions for Closing the Digital Divide,* Apr. 29, 2021.

[147] *Id. See also* United States's Mobile and Broadband internet Speeds—Speedtest Global Index, *available at https://www.speedtest.net/global-index/united-states#fixed.*

to create and share content using video sharing, video conferencing, and other applications.[148]

The increasing use of data accelerated markedly during the pandemic as households across the country became increasingly reliant on tools and applications that require greater internet capacity, both to download data but also to upload data. Sending information became as important as receiving it. A video consultation with a healthcare provider or participation by a child in a live classroom with a teacher and fellow students requires video to be sent and received simultaneously.[149] As an example, some video conferencing technology platforms indicate that download and upload speeds should be roughly equal to support two-way, interactive video meetings.[150] For both work and school, client materials or completed school assignments, which may be in the form of PDF files, videos, or graphic files, also need to be shared with others. This is often done by uploading materials to a collaboration site, and the upload speed available to a user can have a significant impact on the time it takes for the content to be shared with others. [151] These activities require significant capacity from home internet connections to both download and upload data, especially when there are multiple individuals in one household engaging in these activities simultaneously.

This need for increased broadband capacity during the pandemic was reflected in increased usage patterns seen over the last year. As OpenVault noted in recent advisories, the pandemic significantly increased the amount of data users consume. Among data users observed by OpenVault, per-subscriber average data usage for the fourth quarter of 2020 was 482.6 gigabytes per month, representing a 40 percent increase over the 344 gigabytes consumed in the fourth quarter of 2019 and a 26 percent increase over the third quarter 2020 average of 383.8 gigabytes.[152] OpenVault also noted significant increases in upstream usage among the data users it observed, with upstream data usage growing 63 percent—from 19 gigabytes to 31 gigabytes—between December, 2019 and December, 2020.[153] According to an OECD Broadband statistic from June 2020, the largest percentage of U.S. broadband subscribers have services providing speeds between 100 Mbps and 1 Gbps.[154]

Jurisdictions and Federal programs are increasingly responding to the growing demands of their communities for both heightened download and upload speeds. For example, Illinois now requires 100 Mbps symmetrical service as the construction standard for its state broadband grant programs. This standard is also consistent with speed levels, particularly download speed levels, prioritized by other Federal programs supporting broadband projects. Bids submitted as part of the FCC in its Rural Digital Opportunity Fund (RDOF), established to support the construction of broadband networks in rural communities across the country, are given priority if they offer faster service, with the service offerings of 100 Mbps download and 20 Mbps upload being included in the ''above baseline'' performance tier set by the FCC.[155] The Broadband Infrastructure Program (BBIP) [156] of the Department of Commerce, which provides Federal funding to deploy broadband infrastructure to eligible service areas of the country also prioritizes projects designed to provide broadband service with a download speed of not less than 100 Mbps and an upload speed of not less than 20 Mbps.[157]

The 100 Mbps upload and download speeds will support the increased and growing needs of households and businesses. Recognizing that, in some instances, 100 Mbps upload speed may be impracticable due to geographical, topographical, or financial constraints, the interim final rule permits upload speeds of between at least 20 Mbps and 100 Mbps in such instances. To provide for investments that will accommodate technologies requiring symmetry in download and upload speeds, as noted above, eligible projects that are not designed to deliver, upon project completion, service that reliably meets or exceeds symmetrical speeds of 100 Mbps because it would be impracticable to do so should be designed so that they can be scalable to such speeds. Recipients are also encouraged to prioritize investments in fiber optic infrastructure where feasible, as such advanced technology enables the next generation of application solutions for all communities.

Under the interim final rule, eligible projects are expected to focus on locations that are unserved or underserved. The interim final rule treats users as being unserved or underserved if they lack access to a wireline connection capable of reliably delivering at least minimum speeds of 25 Mbps download and 3 Mbps upload as households and businesses lacking this level of access are generally not viewed as being able to originate and receive high-quality voice, data, graphics, and video telecommunications. This threshold is consistent with the FCC's benchmark for an ''advanced telecommunications capability.'' [158] This threshold is also consistent with thresholds used in other Federal programs to identify eligible areas to be served by programs to improve broadband services. For example, in the FCC's RDOF program, eligible areas include those without current (or already funded) access to terrestrial broadband service providing 25 Mbps download and 3 Mbps upload speeds.[159] The Department of Commerce's BBIP also considers households to be ''unserved'' generally if they lack access to broadband service

[148] *Id.*

[149] One high definition Zoom meeting or class requires approximately 3.8 Mbps/3.0 Mbps (up/down).

[150] *See, e.g.,* Zoom, System Requirements for Windows, macOS, and Linux, *https://support.zoom.us/hc/en-us/articles/201362023-System-requirements-for-Windows-macOS-and-Linux#h_d278c327-e03d-4896-b19a-96a8f3c0c69c* (last visited May 8, 2021).

[151] By one estimate, to upload a one gigabit video file to YouTube would take 15 minutes at an upload speed of 10 Mbps compared with 1 minute, 30 seconds at an upload speed of 100 Mbps, and 30 seconds at an upload speed of 300 Mbps. *Reviews.org:* What is Symmetrical internet? (March 2020).

[152] OVBI: Covid-19 Drove 15 percent Increase in Broadband Traffic in 2020, OpenVault, Quarterly Advisory, (Feb. 10, 2021), *available at https://openvault.com/ovbi-covid-19-drove-51-increase-in-broadband-traffic-in-2020; See* OpenVault's data set incorporates information on usage by subscribers across multiple continents, including North America and Europe. Additional data and detail on increases in the amount of data users consume and the broadband speeds they are using is provided in *OpenVault Broadband Insights Report Q4,* Quarterly Advisory (Feb. 10, 2021), *available at https://openvault.com/complimentary-report-4q20/.*

[153] OVBI Special Report: 202 Upstream Growth Nearly 4X of Pre-Pandemic Years, OpenVault, Quarterly Advisory, (April 1, 20201), *available at https://openvault.com/ovbi-special-report-2020-upstream-growth-rate-nearly-4x-of-pre-pandemic-years/;* Additional data is provided in *OpenVault Broadband Insights Pandemic Impact on Upstream Broadband Usage and Network Capacity, available at https://openvault.com/upstream-whitepaper/.*

[154] Organisation for Economic Co-operation and Development, Fixed broadband subscriptions per 100 inhabitants, per speed tiers (June 2020), *https://www.oecd.org/sti/broadband/5.1-FixedBB-SpeedTiers-2020-06.xls www.oecd.org/sti/broadband/broadband-statistics.*

[155] *Rural Digital Opportunity Fund,* Report and Order, 35 FCC Rcd 686, 690, para. 9 (2020), *available at https://www.fcc.gov/document/fcc-launches-20-billion-rural-digital-opportunity-fund-0.*

[156] The BIPP was authorized by the Consolidated Appropriations Act, 2021, Section 905, Public Law 116–260, 134 Stat. 1182 (Dec. 27, 2020).

[157] Section 905(d)(4) of the Consolidated Appropriations Act, 2021.

[158] *Deployment Report, supra* note 142.

[159] *Rural Digital Opportunity Fund, supra* note 156.

with a download speed of not less than 25 Mbps download and 3 Mbps upload, among other conditions. In selecting an area to be served by a project, recipients are encouraged to avoid investing in locations that have existing agreements to build reliable wireline service with minimum speeds of 100 Mbps download and 20 Mbps upload by December 31, 2024, in order to avoid duplication of efforts and resources.

Recipients are also encouraged to consider ways to integrate affordability options into their program design. To meet the immediate needs of unserved and underserved households and businesses, recipients are encouraged to focus on projects that deliver a physical broadband connection by prioritizing projects that achieve last mile-connections. Treasury also encourages recipients to prioritize support for broadband networks owned, operated by, or affiliated with local governments, non-profits, and co-operatives—providers with less pressure to turn profits and with a commitment to serving entire communities.

Under sections 602(c)(1)(A) and 603(c)(1)(A), assistance to households facing negative economic impacts due to COVID–19 is also an eligible use, including internet access or digital literacy assistance. As discussed above, in considering whether a potential use is eligible under this category, a recipient must consider whether, and the extent to which, the household has experienced a negative economic impact from the pandemic.

*Question 22: What are the advantages and disadvantages of setting minimum symmetrical download and upload speeds of 100 Mbps? What other minimum standards would be appropriate and why?*

*Question 23: Would setting such a minimum be impractical for particular types of projects? If so, where and on what basis should those projects be identified? How could such a standard be set while also taking into account the practicality of using this standard in particular types of projects? In addition to topography, geography, and financial factors, what other constraints, if any, are relevant to considering whether an investment is impracticable?*

*Question 24: What are the advantages and disadvantages of setting a minimum level of service at 100 Mbps download and 20 Mbps upload in projects where it is impracticable to set minimum symmetrical download and upload speeds of 100 Mbps? What are the advantages and disadvantages of setting a scalability requirement in these cases? What other minimum standards would be appropriate and why?*

*Question 25: What are the advantages and disadvantages of focusing these investments on those without access to a wireline connection that reliably delivers 25 Mbps download by 3 Mbps upload? Would another threshold be appropriate and why?*

*Question 26: What are the advantages and disadvantages of setting any particular threshold for identifying unserved or underserved areas, minimum speed standards or scalability minimum? Are there other standards that should be set (e.g., latency)? If so, why and how? How can such threshold, standards, or minimum be set in a way that balances the public's interest in making sure that reliable broadband services meeting the daily needs of all Americans are available throughout the country with the providing recipients flexibility to meet the varied needs of their communities?*

## III. Restrictions on Use

As discussed above, recipients have considerable flexibility to use Fiscal Recovery Funds to address the diverse needs of their communities. To ensure that payments from the Fiscal Recovery Funds are used for these congressionally permitted purposes, the ARPA includes two provisions that further define the boundaries of the statute's eligible uses. Section 602(c)(2)(A) of the Act provides that States and territories may not ''use the funds . . . to either directly or indirectly offset a reduction in . . . net tax revenue . . . resulting from a change in law, regulation, or administrative interpretation during the covered period that reduces any tax . . . or delays the imposition of any tax or tax increase.'' In addition, sections 602(c)(2)(B) and 603(c)(2) prohibit any recipient, including cities, nonentitlement units of government, and counties, from using Fiscal Recovery Funds for deposit into any pension fund. These restrictions support the use of funds for the congressionally permitted purposes described in Section II of this Supplementary Information by providing a backstop against the use of funds for purposes outside of the eligible use categories.

These provisions give force to Congress's clear intent that Fiscal Recovery Funds be spent within the four eligible uses identified in the statute—(1) to respond to the public health emergency and its negative economic impacts, (2) to provide premium pay to essential workers, (3) to provide government services to the extent of eligible governments' revenue losses, and (4) to make necessary water, sewer, and broadband infrastructure investments—and not otherwise. These four eligible uses reflect Congress's judgment that the Fiscal Recovery Funds should be expended in particular ways that support recovery from the COVID–19 public health emergency. The further restrictions reflect Congress's judgment that tax cuts and pension deposits do not fall within these eligible uses. The interim final rule describes how Treasury will identify when such uses have occurred and how it will recoup funds put toward these impermissible uses and, as discussed in Section VIII of this **SUPPLEMENTARY INFORMATION**, establishes a reporting framework for monitoring the use of Fiscal Recovery Funds for eligible uses.

### *A. Deposit Into Pension Funds*

The statute provides that recipients may not use Fiscal Recovery Funds for ''deposit into any pension fund.'' For the reasons discussed below, Treasury interprets ''deposit'' in this context to refer to an extraordinary payment into a pension fund for the purpose of reducing an accrued, unfunded liability. More specifically, the interim final rule does not permit this assistance to be used to make a payment into a pension fund if both:

1. The payment reduces a liability incurred prior to the start of the COVID–19 public health emergency, and
2. the payment occurs outside the recipient's regular timing for making such payments.

Under this interpretation, a ''deposit'' is distinct from a ''payroll contribution,'' which occurs when employers make payments into pension funds on regular intervals, with contribution amounts based on a pre-determined percentage of employees' wages and salaries.

As discussed above, eligible uses for premium pay and responding to the negative economic impacts of the COVID–19 public health emergency include hiring and compensating public sector employees. Interpreting the scope of ''deposit'' to exclude contributions that are part of payroll contributions is more consistent with these eligible uses and would reduce administrative burden for recipients. Accordingly, if an employee's wages and salaries are an eligible use of Fiscal Recovery Funds, recipients may treat the employee's covered benefits as an eligible use of Fiscal Recovery Funds. For purposes of the Fiscal Recovery Funds, covered benefits include costs of all types of leave (vacation, family-related, sick, military, bereavement, sabbatical, jury duty), employee insurance (health, life, dental, vision), retirement (pensions, 401(k)), unemployment benefit plans

(Federal and State), workers' compensation insurance, and Federal Insurance Contributions Act taxes (which includes Social Security and Medicare taxes).

Treasury anticipates that this approach to employees' covered benefits will be comprehensive and, for employees whose wage and salary costs are eligible expenses, will allow all covered benefits listed in the previous paragraph to be eligible under the Fiscal Recovery Funds. Treasury expects that this will minimize the administrative burden on recipients by treating all the specified covered benefit types as eligible expenses, for employees whose wage and salary costs are eligible expenses.

*Question 27: Beyond a ''deposit'' and a ''payroll contribution,'' are there other types of payments into a pension fund that Treasury should consider?*

*B. Offset a Reduction in Net Tax Revenue*

For States and territories (recipient governments [160]), section 602(c)(2)(A)—the offset provision—prohibits the use of Fiscal Recovery Funds to directly or indirectly offset a reduction in net tax revenue resulting from a change in law, regulation, or administrative interpretation [161] during the covered period. If a State or territory uses Fiscal Recovery Funds to offset a reduction in net tax revenue, the ARPA provides that the State or territory must repay to the Treasury an amount equal to the lesser of (i) the amount of the applicable reduction attributable to the impermissible offset and (ii) the amount received by the State or territory under the ARPA. *See* Section IV of this **SUPPLEMENTARY INFORMATION**. As discussed below Section IV of this **SUPPLEMENTARY INFORMATION**, a State or territory that chooses to use Fiscal Recovery Funds to offset a reduction in net tax revenue does not forfeit its entire allocation of Fiscal Recovery Funds (unless it misused the full allocation to offset a reduction in net tax revenue) or any non-ARPA funding received.

The interim final rule implements these conditions by establishing a framework for States and territories to determine the cost of changes in law, regulation, or interpretation that reduce tax revenue and to identify and value the sources of funds that will offset—*i.e.,* cover the cost of—any reduction in net tax revenue resulting from such changes. A recipient government would only be considered to have used Fiscal Recovery Funds to offset a reduction in net tax revenue resulting from changes in law, regulation, or interpretation if, and to the extent that, the recipient government could not identify sufficient funds from sources other than the Fiscal Recovery Funds to offset the reduction in net tax revenue. If sufficient funds from other sources cannot be identified to cover the full cost of the reduction in net tax revenue resulting from changes in law, regulation, or interpretation, the remaining amount not covered by these sources will be considered to have been offset by Fiscal Recovery Funds, in contravention of the offset provision. The interim final rule recognizes three sources of funds that may offset a reduction in net tax revenue other than Fiscal Recovery Funds—organic growth, increases in revenue (*e.g.,* an increase in a tax rate), and certain cuts in spending.

In order to reduce burden, the interim final rule's approach also incorporates the types of information and modeling already used by States and territories in their own fiscal and budgeting processes. By incorporating existing budgeting processes and capabilities, States and territories will be able to assess and evaluate the relationship of tax and budget decisions to uses of the Fiscal Recovery Funds based on information they likely have or can obtain. This approach ensures that recipient governments have the information they need to understand the implications of their decisions regarding the use of the Fiscal Recovery Funds—and, in particular, whether they are using the funds to directly or indirectly offset a reduction in net tax revenue, making them potentially subject to recoupment.

Reporting on both the eligible uses and on a State's or territory's covered tax changes that would reduce tax revenue will enable identification of, and recoupment for, use of Fiscal Recovery Funds to directly offset reductions in tax revenue resulting from tax relief. Moreover, this approach recognizes that, because money is fungible, even if Fiscal Recovery Funds are not explicitly or directly used to cover the costs of changes that reduce net tax revenue, those funds may be used in a manner inconsistent with the statute by indirectly being used to substitute for the State's or territory's funds that would otherwise have been needed to cover the costs of the reduction. By focusing on the cost of changes that reduce net tax revenue—and how a recipient government is offsetting those reductions in constructing its budget over the covered period—the framework prevents efforts to use Fiscal Recovery Funds to indirectly offset reductions in net tax revenue for which the recipient government has not identified other offsetting sources of funding.

As discussed in greater detail below in this preamble, the framework set forth in the interim final rule establishes a step-by-step process for determining whether, and the extent to which, Fiscal Recovery Funds have been used to offset a reduction in net tax revenue. Based on information reported annually by the recipient government:

• First, each year, each recipient government will identify and value the changes in law, regulation, or interpretation that would result in a reduction in net tax revenue, as it would in the ordinary course of its budgeting process. The sum of these values in the year for which the government is reporting is the amount it needs to ''pay for'' with sources other than Fiscal Recovery Funds (total value of revenue reducing changes).

• Second, the interim final rule recognizes that it may be difficult to predict how a change would affect net tax revenue in future years and, accordingly, provides that if the total value of the changes in the year for which the recipient government is reporting is below a de minimis level, as discussed below, the recipient government need not identify any sources of funding to pay for revenue reducing changes and will not be subject to recoupment.

• Third, a recipient government will consider the amount of actual tax revenue recorded in the year for which they are reporting. If the recipient government's actual tax revenue is greater than the amount of tax revenue received by the recipient for the fiscal year ending 2019, adjusted annually for inflation, the recipient government will not be considered to have violated the offset provision because there will not have been a reduction in net tax revenue.

• Fourth, if the recipient government's actual tax revenue is less than the amount of tax revenue received by the recipient government for the fiscal year ending 2019, adjusted annually for inflation, in the reporting year the recipient government will identify any sources of funds that have been used to permissibly offset the total value of covered tax changes other than Fiscal Recovery Funds. These are:

○ State or territory tax changes that would increase any source of general

[160] In this sub-section, ''recipient governments'' refers only to States and territories. In other sections, ''recipient governments'' refers more broadly to eligible governments receiving funding from the Fiscal Recovery Funds.

[161] For brevity, referred to as ''changes in law, regulation, or interpretation'' for the remainder of this preamble.

fund revenue, such as a change that would increase a tax rate; and

◦ Spending cuts in areas not being replaced by Fiscal Recovery Funds.

The recipient government will calculate the value of revenue reduction remaining after applying these sources of offsetting funding to the total value of revenue reducing changes—that, is, how much of the tax change has not been paid for. The recipient government will then compare that value to the difference between the baseline and actual tax revenue. A recipient government will not be required to repay to the Treasury an amount that is greater than the recipient government's actual tax revenue shortfall relative to the baseline (*i.e.,* fiscal year 2019 tax revenue adjusted for inflation). This ''revenue reduction cap,'' together with Step 3, ensures that recipient governments can use organic revenue growth to offset the cost of revenue reductions.

• Finally, if there are any amounts that could be subject to recoupment, Treasury will provide notice to the recipient government of such amounts. This process is discussed in greater detail in Section IV of this SUPPLEMENTARY INFORMATION.

Together, these steps allow Treasury to identify the amount of reduction in net tax revenue that both is attributable to covered changes and has been directly or indirectly offset with Fiscal Recovery Funds. This process ensures Fiscal Recovery Funds are used in a manner consistent with the statute's defined eligible uses and the offset provision's limitation on these eligible uses, while avoiding undue interference with State and territory decisions regarding tax and spending policies.

The interim final rule also implements a process for recouping Fiscal Recovery Funds that were used to offset reductions in net tax revenue, including the calculation of any amounts that may be subject to recoupment, a process for a recipient government to respond to a notice of recoupment, and clarification regarding amounts excluded from recoupment. *See* Section IV of this SUPPLEMENTARY INFORMATION.

The interim final rule includes several definitions that are applicable to the implementation of the offset provision.

*Covered change.* The offset provision is triggered by a reduction in net tax revenue resulting from ''a change in law, regulation, or administrative interpretation.'' A covered change includes any final legislative or regulatory action, a new or changed administrative interpretation, and the phase-in or taking effect of any statute or rule where the phase-in or taking effect was not prescribed prior to the start of the covered period. Changed administrative interpretations would not include corrections to replace prior inaccurate interpretations; such corrections would instead be treated as changes implementing legislation enacted or regulations issued prior to the covered period; the operative change in those circumstances is the underlying legislation or regulation that occurred prior to the covered period. Moreover, only the changes within the control of the State or territory are considered covered changes. Covered changes do not include a change in rate that is triggered automatically and based on statutory or regulatory criteria in effect prior to the covered period. For example, a state law that sets its earned income tax credit (EITC) at a fixed percentage of the Federal EITC will see its EITC payments automatically increase—and thus its tax revenue reduced—because of the Federal Government's expansion of the EITC in the ARPA.[162] This would not be considered a covered change. In addition, the offset provision applies only to actions for which the change in policy occurs during the covered period; it excludes regulations or other actions that implement a change or law substantively enacted prior to March 3, 2021. Finally, Treasury has determined and previously announced that income tax changes—even those made during the covered period—that simply conform with recent changes in Federal law (including those to conform to recent changes in Federal taxation of unemployment insurance benefits and taxation of loan forgiveness under the Paycheck Protection Program) are permissible under the offset provision.

*Baseline.* For purposes of measuring a reduction in net tax revenue, the interim final rule measures actual changes in tax revenue relative to a revenue baseline (baseline). The baseline will be calculated as fiscal year 2019 (FY 2019) tax revenue indexed for inflation in each year of the covered period, with inflation calculated using the Bureau of Economic Analysis's Implicit Price Deflator.[163]

FY 2019 was chosen as the starting year for the baseline because it is the last full fiscal year prior to the COVID–19 public health emergency.[164] This baseline year is consistent with the approach directed by the ARPA in sections 602(c)(1)(C) and 603(c)(1)(C), which identify the ''most recent full fiscal year of the [State, territory, or Tribal government] prior to the emergency'' as the comparator for measuring revenue loss. U.S. gross domestic product is projected to rebound to pre-pandemic levels in 2021,[165] suggesting that an FY 2019 pre-pandemic baseline is a reasonable comparator for future revenue levels. The FY 2019 baseline revenue will be adjusted annually for inflation to allow for direct comparison of actual tax revenue in each year (reported in nominal terms) to baseline revenue in common units of measurement; without inflation adjustment, each dollar of reported actual tax revenue would be worth less than each dollar of baseline revenue expressed in 2019 terms.

*Reporting year.* The interim final rule defines ''reporting year'' as a single year within the covered period, aligned to the current fiscal year of the recipient government during the covered period, for which a recipient government reports the value of covered changes and any sources of offsetting revenue increases (''in-year'' value), regardless of when those changes were enacted. For the fiscal years ending in 2021 or 2025 (partial years), the term ''reporting year'' refers to the portion of the year falling within the covered period. For example, the reporting year for a fiscal year beginning July 2020 and ending June 2021 would be from March 3, 2021 to July 2021.

*Tax revenue.* The interim final rule's definition of ''tax revenue'' is based on the Census Bureau's definition of taxes, used for its Annual Survey of State Government Finances.[166] It provides a consistent, well-established definition with which States and territories will be familiar and is consistent with the approach taken in Section II.C of this SUPPLEMENTARY INFORMATION describing the implementation of sections 602(c)(1)(C) and 603(c)(1)(C) of the Act, regarding revenue loss. Consistent with the approach described in Section II.C of this SUPPLEMENTARY INFORMATION, tax

[162] *See, e.g.,* Tax Policy Center, How do state earned income tax credits work?, *https://www.taxpolicycenter.org/briefing-book/how-do-state-earned-income-tax-credits-work/* (last visited May 9, 2021).

[163] U.S. Department of Commerce, Bureau of Economic Analysis, GDP Price Deflator, *https://www.bea.gov/data/prices-inflation/gdp-price-deflator* (last visited May 9, 2021).

[164] Using Fiscal Year 2019 is consistent with section 602 as Congress provided for using that baseline for determining the impact of revenue loss affecting the provision of government services. *See* section 602(c)(1)(C).

[165] Congressional Budget Office, An Overview of the Economic Outlook: 2021 to 2031 (February 1, 2021), *available at https://www.cbo.gov/publication/56965.*

[166] U.S. Census Bureau, Annual Survey of State and Local Government Finances Glossary, *https://www.census.gov/programs-surveys/state/about/glossary.html* (last visited Apr. 30, 2021).

revenue does not include revenue taxed and collected by a different unit of government (*e.g.,* revenue from taxes levied by a local government and transferred to a recipient government).

*Framework.* The interim final rule provides a step-by-step framework, to be used in each reporting year, to calculate whether the offset provision applies to a State's or territory's use of Fiscal Recovery Funds:

(1) *Covered changes that reduce tax revenue.* For each reporting year, a recipient government will identify and value covered changes that the recipient government predicts will have the effect of reducing tax revenue in a given reporting year, similar to the way it would in the ordinary course of its budgeting process. The value of these covered changes may be reported based on estimated values produced by a budget model, incorporating reasonable assumptions, that aligns with the recipient government's existing approach for measuring the effects of fiscal policies, and that measures relative to a current law baseline. The covered changes may also be reported based on actual values using a statistical methodology to isolate the change in year-over-year revenue attributable to the covered change(s), relative to the current law baseline prior to the change(s). Further, estimation approaches should not use dynamic methodologies that incorporate the projected effects of macroeconomic growth because macroeconomic growth is accounted for separately in the framework. Relative to these dynamic scoring methodologies, scoring methodologies that do not incorporate projected effects of macroeconomic growth rely on fewer assumptions and thus provide greater consistency among States and territories. Dynamic scoring that incorporates macroeconomic growth may also increase the likelihood of underestimation of the cost of a reduction in tax revenue.

In general and where possible, reporting should be produced by the agency of the recipient government responsible for estimating the costs and effects of fiscal policy changes. This approach offers recipient governments the flexibility to determine their reporting methodology based on their existing budget scoring practices and capabilities. In addition, the approach of using the projected value of changes in law that enact fiscal policies to estimate the net effect of such policies is consistent with the way many States and territories already consider tax changes.[167]

(2) *In excess of the de minimis.* The recipient government will next calculate the total value of all covered changes in the reporting year resulting in revenue reductions, identified in Step 1. If the total value of the revenue reductions resulting from these changes is below the de minimis level, the recipient government will be deemed not to have any revenue-reducing changes for the purpose of determining the recognized net reduction. If the total is above the de minimis level, the recipient government must identify sources of in-year revenue to cover the full costs of changes that reduce tax revenue.

The de minimis level is calculated as 1 percent of the reporting year's baseline. Treasury recognizes that, pursuant to their taxing authority, States and territories may make many small changes to alter the composition of their tax revenues or implement other policies with marginal effects on tax revenues. They may also make changes based on projected revenue effects that turn out to differ from actual effects, unintentionally resulting in minor revenue changes that are not fairly described as ''resulting from'' tax law changes. The de minimis level recognizes the inherent challenges and uncertainties that recipient governments face, and thus allows relatively small reductions in tax revenue without consequence. Treasury determined the 1 percent level by assessing the historical effects of state-level tax policy changes in state EITCs implemented to effect policy goals other than reducing net tax revenues.[168] The 1 percent de minimis level reflects the historical reductions in revenue due to minor changes in state fiscal policies.

(3) *Safe harbor.* The recipient government will then compare the reporting year's actual tax revenue to the baseline. If actual tax revenue is greater than the baseline, Treasury will deem the recipient government not to have any recognized net reduction for the reporting year, and therefore to be in a safe harbor and outside the ambit of the offset provision. This approach is consistent with the ARPA, which contemplates recoupment of Fiscal Recovery Funds only in the event that such funds are used to offset a reduction in net tax revenue. If net tax revenue has not been reduced, this provision does not apply. In the event that actual tax revenue is above the baseline, the organic revenue growth that has occurred, plus any other revenue-raising changes, by definition must have been enough to offset the in-year costs of the covered changes.

(4) *Consideration of other sources of funding.* Next, the recipient government will identify and calculate the total value of changes that could pay for revenue reduction due to covered changes and sum these items. This amount can be used to pay for up to the total value of revenue-reducing changes in the reporting year. These changes consist of two categories:

(a) *Tax and other increases in revenue.* The recipient government must identify and consider covered changes in policy that the recipient government predicts will have the effect of increasing general revenue in a given reporting year. As when identifying and valuing covered changes that reduce tax revenue, the value of revenue-raising changes may be reported based on estimated values produced by a budget model, incorporating reasonable assumptions, aligned with the recipient government's existing approach for measuring the effects of fiscal policies, and measured relative to a current law baseline, or based on actual values using a statistical methodology to isolate the change in year-over-year revenue attributable to the covered change(s). Further, and as discussed above, estimation approaches should not use dynamic scoring methodologies that incorporate the effects of macroeconomic growth because growth is accounted for separately under the interim final rule. In general and where possible, reporting should be produced by the agency of the recipient government responsible for estimating the costs and effects of fiscal policy changes. This approach offers recipient governments the flexibility to determine their reporting methodology based on their existing budget scoring practices and capabilities.

(b) *Covered spending cuts.* A recipient government also may cut spending in certain areas to pay for covered changes that reduce tax revenue, up to the amount of the recipient government's net reduction in total spending as described below. These changes must be reductions in government outlays not in an area where the recipient government has spent Fiscal Recovery Funds. To better align with existing reporting and accounting, the interim final rule considers the department, agency, or

[167] *See, e.g.,* Megan Randall & Kim Rueben, Tax Policy Center, Sustainable Budgeting in the States: Evidence on State Budget Institutions and Practices (Nov. 2017), *available at https://www.taxpolicycenter.org/sites/default/files/publication/149186/sustainable-budgeting-in-the-states_1.pdf.*

[168] Data provided by the Urban-Brookings Tax Policy Center for state-level EITC changes for 2004–2017.

authority from which spending has been cut and whether the recipient government has spent Fiscal Recovery Funds on that same department, agency, or authority. This approach was selected to allow recipient governments to report how Fiscal Recovery Funds have been spent using reporting units already incorporated into their budgeting process. If they have not spent Fiscal Recovery Funds in a department, agency, or authority, the full amount of the reduction in spending counts as a covered spending cut, up to the recipient government's net reduction in total spending. If they have, the Fiscal Recovery Funds generally would be deemed to have replaced the amount of spending cut and only reductions in spending above the amount of Fiscal Recovery Funds spent on the department, agency, or authority would count.

To calculate the amount of spending cuts that are available to offset a reduction in tax revenue, the recipient government must first consider whether there has been a reduction in total net spending, excluding Fiscal Recovery Funds (net reduction in total spending). This approach ensures that reported spending cuts actually create fiscal space, rather than simply offsetting other spending increases. A net reduction in total spending is measured as the difference between total spending in each reporting year, excluding Fiscal Recovery Funds spent, relative to total spending for the recipient's fiscal year ending in 2019, adjusted for inflation. Measuring reductions in spending relative to 2019 reflects the fact that the fiscal space created by a spending cut persists so long as spending remains below its original level, even if it does not decline further, relative to the same amount of revenue. Measuring spending cuts from year to year would, by contrast, not recognize any available funds to offset revenue reductions unless spending continued to decline, failing to reflect the actual availability of funds created by a persistent change and limiting the discretion of States and territories. In general and where possible, reporting should be produced by the agency of the recipient government responsible for estimating the costs and effects of fiscal policy changes. Treasury chose this approach because while many recipient governments may score budget legislation using projections, spending cuts are readily observable using actual values.

This approach—allowing only spending reductions in areas where the recipient government has not spent Fiscal Recovery Funds to be used as an offset for a reduction in net tax revenue—aims to prevent recipient governments from using Fiscal Recovery Funds to supplant State or territory funding in the eligible use areas, and then use those State or territory funds to offset tax cuts. Such an approach helps ensure that Fiscal Recovery Funds are not used to ''indirectly'' offset revenue reductions due to covered changes.

In order to help ensure recipient governments use Fiscal Recovery Funds in a manner consistent with the prescribed eligible uses and do not use Fiscal Recovery Funds to indirectly offset a reduction in net tax revenue resulting from a covered change, Treasury will monitor changes in spending throughout the covered period. If, over the course of the covered period, a spending cut is subsequently replaced with Fiscal Recovery Funds and used to indirectly offset a reduction in net tax revenue resulting from a covered change, Treasury may consider such change to be an evasion of the restrictions of the offset provision and seek recoupment of such amounts.

(5) *Identification of amounts subject to recoupment.* If a recipient government (i) reports covered changes that reduce tax revenue (Step 1); (ii) to a degree greater than the de minimis (Step 2); (iii) has experienced a reduction in net tax revenue (Step 3); and (iv) lacks sufficient revenue from other, permissible sources to pay for the entirety of the reduction (Step 4), then the recipient government will be considered to have used Fiscal Recovery Funds to offset a reduction in net tax revenue, up to the amount that revenue has actually declined. That is, the maximum value of reduction in revenue due to covered changes which a recipient government must cover is capped at the difference between the baseline and actual tax revenue.[169] In the event that the baseline is above actual tax revenue and the difference between them is less than the sum of revenue reducing changes that are not paid for with other, permissible sources, organic revenue growth has implicitly offset a portion of the reduction. For example, if a recipient government reduces tax revenue by $1 billion, makes no other changes, and experiences revenue growth driven by organic economic growth worth $500 million, it need only pay for the remaining $500 million with sources other than Fiscal Recovery Funds. The revenue reduction cap implements this approach for permitting organic revenue growth to cover the cost of tax cuts.

Finally, as discussed further in Section IV of this **SUPPLEMENTARY INFORMATION**, a recipient government may request reconsideration of any amounts identified as subject to recoupment under this framework. This process ensures that all relevant facts and circumstances, including information regarding planned spending cuts and budgeting assumptions, are considered prior to a determination that an amount must be repaid. Amounts subject to recoupment are calculated on an annual basis; amounts recouped in one year cannot be returned if the State or territory subsequently reports an increase in net tax revenue.

To facilitate the implementation of the framework above, and in addition to reporting required on eligible uses, in each year of the reporting period, each State and territory will report to Treasury the following items:

- Actual net tax revenue for the reporting year;
- Each revenue-reducing change made to date during the covered period and the in-year value of each change;
- Each revenue-raising change made to date during the covered period and the in-year value of each change;
- Each covered spending cut made to date during the covered period, the in-year value of each cut, and documentation demonstrating that each spending cut is covered as prescribed under the interim final rule;

Treasury will provide additional guidance and instructions the reporting requirements at a later date.

*Question 28: Does the interim final rule's definition of tax revenue accord with existing State and territorial practice and, if not, are there other definitions or elements Treasury should consider? Discuss why or why not.*

*Question 29: The interim final rule permits certain spending cuts to cover the costs of reductions in tax revenue, including cuts in a department, agency, or authority in which the recipient government is not using Fiscal Recovery Funds. How should Treasury and recipient governments consider the scope of a department, agency, or authority for the use of funds to ensure spending cuts are not being substituted with Fiscal Recovery Funds while also avoiding an overbroad definition of that captures spending that is, in fact, distinct?*

*Question 30: Discuss the budget scoring methodologies currently used by States and territories. How should the interim final rule take into consideration differences in approaches? Please discuss the use of*

[169] This cap is applied in § 35.8(c) of the interim final rule, calculating the amount of funds used in violation of the tax offset provision.

*practices including but not limited to macrodynamic scoring, microdynamic scoring, and length of budget windows.*

*Question 31: If a recipient government has a balanced budget requirement, how will that requirement impact its use of Fiscal Recovery Funds and ability to implement this framework?*

*Question 32: To implement the framework described above, the interim final rule establishes certain reporting requirements. To what extent do recipient governments already produce this information and on what timeline? Discuss ways that Treasury and recipient governments may better rely on information already produced, while ensuring a consistent application of the framework.*

*Question 33: Discuss States' and territories' ability to produce the figures and numbers required for reporting under the interim final rule. What additional reporting tools, such as a standardized template, would facilitate States' and territories' ability to complete the reporting required under the interim final rule?*

*C. Other Restrictions on Use*

Payments from the Fiscal Recovery Funds are also subject to pre-existing limitations provided in other Federal statutes and regulations and may not be used as non-Federal match for other Federal programs whose statute or regulations bar the use of Federal funds to meet matching requirements. For example, payments from the Fiscal Recovery Funds may not be used to satisfy the State share of Medicaid.[170]

As provided for in the award terms, payments from the Fiscal Recovery Funds as a general matter will be subject to the provisions of the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (2 CFR part 200) (the Uniform Guidance), including the cost principles and restrictions on general provisions for selected items of cost.

*D. Timeline for Use of Fiscal Recovery Funds*

Section 602(c)(1) and section 603(c)(1) require that payments from the Fiscal Recovery Funds be used only to cover costs incurred by the State, territory, Tribal government, or local government by December 31, 2024. Similarly, the CARES Act provided that payments from the CRF be used to cover costs incurred by December 31, 2021.[171] The definition of ''incurred'' does not have a clear meaning. With respect to the CARES Act, on the understanding that the CRF was intended to be used to meet relatively short-term needs, Treasury interpreted this requirement to mean that, for a cost to be considered to have been incurred, performance of the service or delivery of the goods acquired must occur by December 31, 2021. In contrast, the ARPA, passed at a different stage of the COVID–19 public health emergency, was intended to provide more general fiscal relief over a broader timeline. In addition, the ARPA expressly permits the use of Fiscal Recovery Funds for improvements to water, sewer, and broadband infrastructure, which entail a longer timeframe. In recognition of this, Treasury is interpreting the requirement in section 602 and section 603 that costs be incurred by December 31, 2024, to require only that recipients have obligated the Fiscal Recovery Funds by such date. The interim final rule adopts a definition of ''obligation'' that is based on the definition used for purposes of the Uniform Guidance, which will allow for uniform administration of this requirement and is a definition with which most recipients will be familiar.

Payments from the Fiscal Recovery Funds are grants provided to recipients to mitigate the fiscal effects of the COVID–19 public health emergency and to respond to the public health emergency, consistent with the eligible uses enumerated in sections 602(c)(1) and 603(c)(1).[172] As such, these funds are intended to provide economic stimulus in areas still recovering from the economic effects of the pandemic. In implementing and interpreting these provisions, including what it means to ''respond to'' the COVID–19 public health emergency, Treasury takes into consideration pre-pandemic facts and circumstances (*e.g.,* average revenue growth prior to the pandemic) as well as impact of the pandemic that predate the enactment of the ARPA (*e.g.,* replenishing Unemployment Trust balances drawn during the pandemic). While assessing the effects of the COVID–19 public health emergency necessarily takes into consideration the facts and circumstances that predate the ARPA, use of Fiscal Recovery Funds is forward looking.

As discussed above, recipients are permitted to use payments from the Fiscal Recovery Funds to respond to the public health emergency, to respond to workers performing essential work by providing premium pay or providing grants to eligible employers, and to make necessary investments in water, sewer, or broadband infrastructure, which all relate to prospective uses. In addition, sections 602(c)(1)(C) and 603(c)(1)(C) permit recipients to use Fiscal Recovery Funds for the provision of government services. This clause provides that the amount of funds that may be used for this purpose is measured by reference to the reduction in revenue due to the public health emergency relative to revenues collected in the most recent full fiscal year, but this reference does not relate to the period during which recipients may use the funds, which instead refers to prospective uses, consistent with the other eligible uses.

Although as discussed above the eligible uses of payments from the Fiscal Recovery Funds are all prospective in nature, Treasury considers the beginning of the covered period for purposes of determining compliance with section 602(c)(2)(A) to be the relevant reference point for this purpose. The interim final rule thus permits funds to be used to cover costs incurred beginning on March 3, 2021. This aligns the period for use of Fiscal Recovery Funds with the period during which these funds may not be used to offset reductions in net tax revenue. Permitting Fiscal Recovery Funds to be used to cover costs incurred beginning on this date will also mean that recipients that began incurring costs in the anticipation of enactment of the ARPA and in advance of the issuance of this rule and receipt of payment from the Fiscal Recovery Funds would be able to cover them using these payments.[173]

As set forth in the award terms, the period of performance will run until December 31, 2026, which will provide recipients a reasonable amount of time to complete projects funded with payments from the Fiscal Recovery Funds.

**IV. Recoupment Process**

Under the ARPA, failure to comply with the restrictions on use contained in sections 602(c) and 603(c) of the Act may result in recoupment of funds.[174] The interim final rule implements these provisions by establishing a process for recoupment.

*Identification and Notice of Violations.* Failure to comply with the restrictions on use will be identified based on reporting provided by the

[170] *See* 42 CFR 433.51 and 45 CFR 75.306.

[171] Section 1001 of Division N of the Consolidated Appropriations Act, 2021 amended section 601(d)(3) of the Act by extending the end of the covered period for CRF expenditures from December 30, 2020 to December 31, 2021.

[172] Sections 602(a), 603(a), 602(c)(1) and 603(c)(1) of the Act.

[173] Given the nature of this program, recipients will not be permitted to use funds to cover pre-award costs, *i.e.,* those incurred prior to March 3, 2021.

[174] Sections 602(e) and 603(e) of the Act.

recipient. As discussed further in Sections III.B and VIII of this **SUPPLEMENTARY INFORMATION**, Treasury will collect information regarding eligible uses on a quarterly basis and on the tax offset provision on an annual basis. Treasury also may consider other information in identifying a violation, such as information provided by members of the public. If Treasury identifies a violation, it will provide written notice to the recipient along with an explanation of such amounts.

*Request for Reconsideration.* Under the interim final rule, a recipient may submit a request for reconsideration of any amounts identified in the notice provided by Treasury. This reconsideration process provides a recipient the opportunity to submit additional information it believes supports its request in light of the notice of recoupment, including, for example, additional information regarding the recipient's use of Fiscal Recovery Funds or its tax revenues. The process also provides the Secretary with an opportunity to consider all information relevant to whether a violation has occurred, and if so, the appropriate amount for recoupment.

The interim final rule also establishes requirements for the timing of a request for reconsideration. Specifically, if a recipient wishes to request reconsideration of any amounts identified in the notice, the recipient must submit a written request for reconsideration to the Secretary within 60 calendar days of receipt of such notice. The request must include an explanation of why the recipient believes that the finding of a violation or recoupable amount identified in the notice of recoupment should be reconsidered. To facilitate the Secretary's review of a recipient's request for reconsideration, the request should identify all supporting reasons for the request. Within 60 calendar days of receipt of the recipient's request for reconsideration, the recipient will be notified of the Secretary's decision to affirm, withdraw, or modify the notice of recoupment. Such notification will include an explanation of the decision, including responses to the recipient's supporting reasons and consideration of additional information provided.

The process and timeline established by the interim final rule are intended to provide the recipient with an adequate opportunity to fully present any issues or arguments in response to the notice of recoupment.[175] This process will allow the Secretary to respond to the issues and considerations raised in the request for reconsideration taking into account the information and arguments presented by the recipient along with any other relevant information.

*Repayment.* Finally, the interim final rule provides that any amounts subject to recoupment must be repaid within 120 calendar days of receipt of any final notice of recoupment or, if the recipient has not requested reconsideration, within 120 calendar days of the initial notice provided by the Secretary.

*Question 34: Discuss the timeline for requesting reconsideration under the interim final rule. What, if any, challenges does this timeline present?*

## V. Payments in Tranches to Local Governments and Certain States

Section 603 of the Act provides that the Secretary will make payments to local governments in two tranches, with the second tranche being paid twelve months after the first payment. In addition, section 602(b)(6)(A)(ii) provides that the Secretary may withhold payment of up to 50 percent of the amount allocated to each State and territory for a period of up to twelve months from the date on which the State or territory provides its certification to the Secretary. Any such withholding for a State or territory is required to be based on the unemployment rate in the State or territory as of the date of the certification.

The Secretary has determined to provide in this interim final rule for withholding of 50 percent of the amount of Fiscal Recovery Funds allocated to all States (and the District of Columbia) other than those with an unemployment rate that is 2.0 percentage points or more above its pre-pandemic (*i.e.,* February 2020) level. The Secretary will refer to the latest available monthly data from the Bureau of Labor Statistics as of the date the certification is provided. Based on data available at the time of public release of this interim final rule, this threshold would result in a majority of States being paid in two tranches.

Splitting payments for the majority of States is consistent with the requirement in section 603 of the Act to make payments from the Coronavirus Local Fiscal Recovery Fund to local governments in two tranches.[176] Splitting payments to States into two tranches will help encourage recipients to adapt, as necessary, to new developments that could arise over the coming twelve months, including potential changes to the nature of the public health emergency and its negative economic impacts. While the U.S. economy has been recovering and adding jobs in aggregate, there is still considerable uncertainty in the economic outlook and the interaction between the pandemic and the economy.[177] For these reasons, Treasury believes it will be appropriate for a majority of recipients to adapt their plans as the recovery evolves. For example, a faster-than-expected economic recovery in 2021 could lead a recipient to dedicate more Fiscal Recovery Funds to longer-term investments starting in 2022. In contrast, a slower-than-expected economic recovery in 2021 could lead a recipient to use additional funds for near-term stimulus in 2022.

At the same time, the statute contemplates the possibility that elevated unemployment in certain States could justify a single payment. Elevated unemployment is indicative of a greater need to assist unemployed workers and stimulate a faster economic recovery. For this reason, the interim final rule provides that States and territories with an increase in their unemployment rate over a specified threshold may receive a single payment, with the expectation that a single tranche will better enable these States and territories to take additional immediate action to aid the unemployed and strengthen their economies.

Following the initial pandemic-related spike in unemployment in 2020, States' unemployment rates have been trending back towards pre-pandemic levels. However, some States' labor markets are healing more slowly than others. Moreover, States varied widely in their pre-pandemic levels of unemployment, and some States remain substantially further from their pre-

[175] The interim final rule also provides that Treasury may extend any deadlines.

[176] With respect to Federal financial assistance more generally, States are subject to the requirements of the Cash Management Improvement Act (CMIA), under which Federal funds are drawn upon only on an as needed basis and States are required to remit interest on unused balances to Treasury. Given the statutory requirement for Treasury to make payments to States within a certain period, these requirements of the CMIA and Treasury's implementing regulations at 31 CFR part 205 will not apply to payments from the Fiscal Recovery Funds. Providing funding in two tranches to the majority of States reflects, to the maximum extent permitted by section 602 of the Act, the general principles of Federal cash management and stewardship of Federal funding, yet will be much less restrictive than the usual requirements to which States are subject.

[177] The potential course of the virus, and its impact on the economy, has contributed to a heightened degree of uncertainty relative to prior periods. *See, e.g.,* Dave Altig et al., Economic uncertainty before and during the COVID–19 pandemic, J. of Public Econ. (Nov. 2020), *available at https://www.sciencedirect.com/science/article/abs/pii/S0047272720301389*.

pandemic starting point. Consequently, Treasury is delineating States with significant remaining elevation in the unemployment rate, based on the net difference to pre-pandemic levels.

Treasury has established that significant remaining elevation in the unemployment rate is a net change in the unemployment rate of 2.0 percentage points or more relative to pre-pandemic levels. In the four previous recessions going back to the early 1980s, the national unemployment rate rose by 3.6, 2.3, 2.0, and 5.0 percentage points, as measured from the start of the recession to the eventual peak during or immediately following the recession.[178] Each of these increases can therefore represent a recession's impact on unemployment. To identify States with significant remaining elevation in unemployment, Treasury took the lowest of these four increases, 2.0 percentage points, to indicate states where, despite improvement in the unemployment rate, current labor market conditions are consistent still with a historical benchmark for a recession.

No U.S. territory will be subject to withholding of its payment from the Fiscal Recovery Funds. For Puerto Rico, the Secretary has determined that the current level of the unemployment rate (8.8 percent, as of March 2021 [179]) is sufficiently high such that Treasury should not withhold any portion of its payment from the Fiscal Recovery Funds regardless of its change in unemployment rate relative to its pre-pandemic level. For U.S. territories that are not included in the Bureau of Labor Statistics' monthly unemployment rate data, the Secretary will not exercise the authority to withhold amounts from the Fiscal Recovery Funds.

## VI. Transfer

The statute authorizes State, territorial, and Tribal governments; counties; metropolitan cities; and nonentitlement units of local government (counties, metropolitan cities, and nonentitlement units of local government are collectively referred to as ''local governments'') to transfer amounts paid from the Fiscal Recovery Funds to a number of specified entities. By permitting these transfers, Congress recognized the importance of providing flexibility to governments seeking to achieve the greatest impact with their funds, including by working with other levels or units of government or private entities to assist recipient governments in carrying out their programs. This includes special-purpose districts that perform specific functions in the community, such as fire, water, sewer, or mosquito abatement districts.

Specifically, under section 602(c)(3), a State, territory, or Tribal government may transfer funds to a ''private nonprofit organization . . . a Tribal organization . . . a public benefit corporation involved in the transportation of passengers or cargo, or a special-purpose unit of State or local government.'' [180] Similarly, section 603(c)(3) authorizes a local government to transfer funds to the same entities (other than Tribal organizations).

The interim final rule clarifies that the lists of transferees in sections 602(c)(3) and 603(c)(3) are not exclusive. The interim final rule permits State, territorial, and Tribal governments to transfer Fiscal Recovery Funds to other constituent units of government or private entities beyond those specified in the statute. Similarly, local governments are authorized to transfer Fiscal Recovery Funds to other constituent units of government (*e.g.,* a county is able to transfer Fiscal Recovery Funds to a city, town, or school district within it) or to private entities. This approach is intended to help provide funding to local governments with needs that may exceed the allocation provided under the statutory formula.

State, local, territorial, and Tribal governments that receive a Federal award directly from a Federal awarding agency, such as Treasury, are ''recipients.'' A transferee receiving a transfer from a recipient under sections 602(c)(3) and 603(c)(3) will be a subrecipient. Subrecipients are entities that receive a subaward from a recipient to carry out a program or project on behalf of the recipient with the recipient's Federal award funding. The recipient remains responsible for monitoring and overseeing the subrecipient's use of Fiscal Recovery Funds and other activities related to the award to ensure that the subrecipient complies with the statutory and regulatory requirements and the terms and conditions of the award. Recipients also remain responsible for reporting to Treasury on their subrecipients' use of payments from the Fiscal Recovery Funds for the duration of the award.

Transfers under sections 602(c)(3) and 603(c)(3) must qualify as an eligible use of Fiscal Recovery Funds by the transferor. Once Fiscal Recovery Funds are received, the transferee must abide by the restrictions on use applicable to the transferor under the ARPA and other applicable law and program guidance. For example, if a county transferred Fiscal Recovery Funds to a town within its borders to respond to the COVID–19 public health emergency, the town would be bound by the eligible use requirements applicable to the county in carrying out the county's goal. This also means that county A may not transfer Fiscal Recovery Funds to county B for use in county B because such a transfer would not, from the perspective of the transferor (county A), be an eligible use in county A.

Section 603(c)(4) separately provides for transfers by a local government to its State or territory. A transfer under section 603(c)(4) will not make the State a subrecipient of the local government, and such Fiscal Recovery Funds may be used by the State for any purpose permitted under section 602(c). A transfer under section 603(c)(4) will result in a cancellation or termination of the award on the part of the transferor local government and a modification of the award to the transferee State or territory. The transferor must provide notice of the transfer to Treasury in a format specified by Treasury. If the local government does not provide such notice, it will remain legally obligated to Treasury under the award and remain responsible for ensuring that the awarded Fiscal Recovery Funds are being used in accordance with the statute and program guidance and for reporting on such uses to Treasury. A State that receives a transfer from a local government under section 603(c)(4) will be bound by all of the use restrictions set forth in section 602(c) with respect to the use of those Fiscal Recovery Funds, including the prohibitions on use of such Fiscal Recovery Funds to offset certain reductions in taxes or to make deposits into pension funds.

*Question 35: What are the advantages and disadvantages of treating the list of transferees in sections 602(c)(3) and 603(c)(3) as nonexclusive, allowing States and localities to transfer funds to entities outside of the list?*

*Question 36: Are there alternative ways of defining ''special-purpose unit of State or local government'' and*

[178] Includes the period during and immediately following recessions, as defined by the National Bureau of Economic Research. National Bureau of Economic Research, US Business Cycle Expansions and Contractions, *https://www.nber.org/research/data/us-business-cycle-expansions-and-contractions* (last visited Apr. 27, 2021). Based on data from U.S. Bureau of Labor Statistics, Unemployment Rate [UNRATE], retrieved from FRED, Federal Reserve Bank of St. Louis, *https://fred.stlouisfed.org/series/UNRATE* (last visited Apr. 27, 2021).

[179] U.S. Bureau of Labor Statistics, Economic News Release—Table 1. Civilian labor force and unemployment by state and selected area, seasonally adjusted, *https://www.bls.gov/news.release/laus.t01.htm* (last visited Apr. 30, 2021).

[180] Section 602(c)(3) of the Act.

*"public benefit corporation" that would better further the aims of the Funds?*

## VII. Nonentitlement Units of Government

The Fiscal Recovery Funds provides for $19.53 billion in payments to be made to States and territories which will distribute the funds to nonentitlement units of local government (NEUs); local governments which generally have populations below 50,000. These local governments have not yet received direct fiscal relief from the Federal Government during the COVID–19 public health emergency, making Fiscal Recovery Funds payments an important source of support for their public health and economic responses. Section 603 requires Treasury to allocate and pay Fiscal Recovery Funds to the States and territories and requires the States and territories to distribute Fiscal Recovery Funds to NEUs based on population within 30 days of receipt unless an extension is granted by the Secretary. The interim final rule clarifies certain aspects regarding the distribution of Fiscal Recovery by States and territories to NEUs, as well as requirements around timely payments from the Fiscal Recovery Funds.

The ARPA requires that States and territories allocate funding to NEUs in an amount that bears the same proportion as the population of the NEU bears to the total population of all NEUs in the State or territory, subject to a cap (described below). Because the statute requires States and territories to make distributions based on population, States and territories may not place additional conditions or requirements on distributions to NEUs, beyond those required by the ARPA and Treasury's implementing regulations and guidance. For example, a State may not impose stricter limitations than permitted by statute or Treasury regulations or guidance on an NEU's use of Fiscal Recovery Funds based on the NEU's proposed spending plan or other policies. States and territories are also not permitted to offset any debt owed by the NEU against the NEU's distribution. Further, States and territories may not provide funding on a reimbursement basis—*e.g.,* requiring NEUs to pay for project costs up front before being reimbursed with Fiscal Recovery Funds payments—because this funding model would not comport with the statutory requirement that States and territories make distributions to NEUs within the statutory timeframe.

Similarly, States and territories distributing Fiscal Recovery Funds payments to NEUs are responsible for complying with the Fiscal Recovery Funds statutory requirement that distributions to NEUs not exceed 75 percent of the NEU's most recent budget. The most recent budget is defined as the NEU's most recent annual total operating budget, including its general fund and other funds, as of January 27, 2020. Amounts in excess of such cap and therefore not distributed to the NEU must be returned to Treasury by the State or territory. States and territories may rely for this determination on a certified top-line budget total from the NEU.

Under the interim final rule, the total allocation and distribution to an NEU, including the sum of both the first and second tranches of funding, cannot exceed the 75 percent cap. States and territories must permit NEUs without formal budgets as of January 27, 2020 to self-certify their most recent annual expenditures as of January 27, 2020 for the purpose of calculating the cap. This approach will provide an administrable means to implement the cap for small local governments that do not adopt a formal budget.

Section 603(b)(3) of the Social Security Act provides for Treasury to make payments to counties but provides that, in the case of an amount to be paid to a county that is not a unit of general local government, the amount shall instead be paid to the State in which such county is located, and such State shall distribute such amount to each unit of general local government within such county in an amount that bears the same proportion to the amount to be paid to such county as the population of such units of general local government bears to the total population of such county. As with NEUs, States may not place additional conditions or requirements on distributions to such units of general local government, beyond those required by the ARPA and Treasury's implementing regulations and guidance.

In the case of consolidated governments, section 603(b)(4) allows consolidated governments (*e.g.,* a city-county consolidated government) to receive payments under each allocation based on the respective formulas. In the case of a consolidated government, Treasury interprets the budget cap to apply to the consolidated government's NEU allocation under section 603(b)(2) but not to the consolidated government's county allocation under section 603(b)(3).

If necessary, States and territories may use the Fiscal Recovery Funds under section 602(c)(1)(A) to fund expenses related to administering payments to NEUs and units of general local government, as disbursing these funds itself is a response to the public health emergency and its negative economic impacts. If a State or territory requires more time to disburse Fiscal Recovery Funds to NEUs than the allotted 30 days, Treasury will grant extensions of not more than 30 days for States and territories that submit a certification in writing in accordance with section 603(b)(2)(C)(ii)(I). Additional extensions may be granted at the discretion of the Secretary.

*Question 37: What are alternative ways for States and territories to enforce the 75 percent cap while reducing the administrative burden on them?*

*Question 38: What criteria should Treasury consider in assessing requests for extensions for further time to distribute NEU payments?*

## VIII. Reporting

States (defined to include the District of Columbia), territories, metropolitan cities, counties, and Tribal governments will be required to submit one interim report and thereafter quarterly Project and Expenditure reports through the end of the award period on December 31, 2026. The interim report will include a recipient's expenditures by category at the summary level from the date of award to July 31, 2021 and, for States and territories, information related to distributions to nonentitlement units. Recipients must submit their interim report to Treasury by August 31, 2021. Nonentitlement units of local government are not required to submit an interim report.

The quarterly Project and Expenditure reports will include financial data, information on contracts and subawards over $50,000, types of projects funded, and other information regarding a recipient's utilization of the award funds. The reports will include the same general data (*e.g.,* on obligations, expenditures, contracts, grants, and sub-awards) as those submitted by recipients of the CRF, with some modifications. Modifications will include updates to the expenditure categories and the addition of data elements related to specific eligible uses, including some of the reporting elements described in sections above. The initial quarterly Project and Expenditure report will cover two calendar quarters from the date of award to September 30, 2021, and must be submitted to Treasury by October 31, 2021. The subsequent quarterly reports will cover one calendar quarter and must be submitted to Treasury within 30 days after the end of each calendar quarter.

Nonentitlement units of local government will be required to submit annual Project and Expenditure reports until the end of the award period on December 31, 2026. The initial annual Project and Expenditure report for nonentitlement units of local government will cover activity from the date of award to September 30, 2021 and must be submitted to Treasury by October 31, 2021. The subsequent annual reports must be submitted to Treasury by October 31 each year.

States, territories, metropolitan cities, and counties with a population that exceeds 250,000 residents will also be required to submit an annual Recovery Plan Performance report to Treasury. The Recovery Plan Performance report will provide the public and Treasury information on the projects that recipients are undertaking with program funding and how they are planning to ensure project outcomes are achieved in an effective, efficient, and equitable manner. Each jurisdiction will have some flexibility in terms of the form and content of the Recovery Plan Performance report, as long as it includes the minimum information required by Treasury. The Recovery Plan Performance report will include key performance indicators identified by the recipient and some mandatory indicators identified by Treasury, as well as programmatic data in specific eligible use categories and the specific reporting requirements described in the sections above. The initial Recovery Plan Performance report will cover the period from the date of award to July 31, 2021 and must be submitted to Treasury by August 31, 2021. Thereafter, Recovery Plan Performance reports will cover a 12-month period, and recipients will be required to submit the report to Treasury within 30 days after the end of the 12-month period. The second Recovery Plan Performance report will cover the period from July 1, 2021 to June 30, 2022, and must be submitted to Treasury by July 31, 2022. Each annual Recovery Plan Performance report must be posted on the public-facing website of the recipient. Local governments with fewer than 250,000 residents, Tribal governments, and nonentitlement units of local government are not required to develop a Recovery Plan Performance report.

Treasury will provide additional guidance and instructions on the reporting requirements outlined above for the Fiscal Recovery Funds at a later date.

## IX. Comments and Effective Date

This interim final rule is being issued without advance notice and public comment to allow for immediate implementation of this program. As discussed below, the requirements of advance notice and public comment do not apply ''to the extent that there is involved . . . a matter relating to agency . . . grants.'' [181] The interim final rule implements statutory conditions on the eligible uses of the Fiscal Recovery Funds grants, and addresses the payment of those funds, the reporting on uses of funds, and potential consequences of ineligible uses. In addition and as discussed below, the Administrative Procedure Act also provides an exception to ordinary notice-and-comment procedures ''when the agency for good cause finds (and incorporates the finding and a brief statement of reasons therefor in the rules issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.'' [182] This good cause justification also supports waiver of the 60-day delayed effective date for major rules under the Congressional Review Act at 5 U.S.C. 808(2). Although this interim final rule is effective immediately, comments are solicited from interested members of the public and from recipient governments on all aspects of the interim final rule.

These comments must be submitted on or before July 16, 2021.

## X. Regulatory Analyses

*Executive Orders 12866 and 13563*

This interim final rule is economically significant for the purposes of Executive Orders 12866 and 13563. Treasury, however, is proceeding under the emergency provision at Executive Order 12866 section 6(a)(3)(D) based on the need to act expeditiously to mitigate the current economic conditions arising from the COVID–19 public health emergency. The rule has been reviewed by the Office of Management and Budget (OMB) in accordance with Executive Order 12866. This rule is necessary to implement the ARPA in order to provide economic relief to State, local, and Tribal governments adversely impacted by the COVID–19 public health emergency.

Under Executive Order 12866, OMB must determine whether this regulatory action is ''significant'' and, therefore, subject to the requirements of the Executive Order and subject to review by OMB. Section 3(f) of Executive Order 12866 defines a significant regulatory action as an action likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more, or adversely affect a sector of the economy; productivity; competition; jobs; the environment; public health or safety; or State, local, or Tribal governments or communities in a material way (also referred to as ''economically significant'' regulations);

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impacts of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles stated in the Executive order.

This regulatory action is an economically significant regulatory action subject to review by OMB under section 3(f) of Executive Order 12866. Treasury has also reviewed these regulations under Executive Order 13563, which supplements and explicitly reaffirms the principles, structures, and definitions governing regulatory review established in Executive Order 12866. To the extent permitted by law, section 1(b) of Executive Order 13563 requires that an agency:

(1) Propose or adopt regulations only upon a reasoned determination that their benefits justify their costs (recognizing that some benefits and costs are difficult to quantify);

(2) Tailor its regulations to impose the least burden on society, consistent with obtaining regulatory objectives taking into account, among other things, and to the extent practicable, the costs of cumulative regulations;

(3) Select, in choosing among alternative regulatory approaches, those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity);

(4) To the extent feasible, specify performance objectives, rather than the behavior or manner of compliance a regulated entity must adopt; and

(5) Identify and assess available alternatives to direct regulation, including providing economic incentives—such as user fees or marketable permits—to encourage the desired behavior, or providing information that enables the public to make choices.

Executive Order 13563 also requires an agency ''to use the best available

[181] 5 U.S.C. 553(a)(2).

[182] 5 U.S.C. 553(b)(3)(B); *see also* 5 U.S.C. 553(d)(3) (creating an exception to the requirement of a 30-day delay before the effective date of a rule ''for good cause found and published with the rule'').

techniques to quantify anticipated present and future benefits and costs as accurately as possible.'' OMB's Office of Information and Regulatory Affairs (OIRA) has emphasized that these techniques may include ''identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes.''

Treasury has assessed the potential costs and benefits, both quantitative and qualitative, of this regulatory action, and is issuing this interim final rule only on a reasoned determination that the benefits exceed the costs. In choosing among alternative regulatory approaches, Treasury selected those approaches that would maximize net benefits. Based on the analysis that follows and the reasons stated elsewhere in this document, Treasury believes that this interim final rule is consistent with the principles set forth in Executive Order 13563.

Treasury also has determined that this regulatory action does not unduly interfere with States, territories, Tribal governments, and localities in the exercise of their governmental functions.

This Regulatory Impact Analysis discusses the need for regulatory action, the potential benefits, and the potential costs.

*Need for Regulatory Action.* This interim final rule implements the $350 billion Fiscal Recovery Funds of the ARPA, which Congress passed to help States, territories, Tribal governments, and localities respond to the ongoing COVID–19 public health emergency and its economic impacts. As the agency charged with execution of these programs, Treasury has concluded that this interim final rule is needed to ensure that recipients of Fiscal Recovery Funds fully understand the requirements and parameters of the program as set forth in the statute and deploy funds in a manner that best reflects Congress' mandate for targeted fiscal relief.

This interim final rule is primarily a transfer rule: It transfers $350 billion in aid from the Federal Government to states, territories, Tribal governments, and localities, generating a significant macroeconomic effect on the U.S. economy. In making this transfer, Treasury has sought to implement the program in ways that maximize its potential benefits while minimizing its costs. It has done so by aiming to target relief in key areas according to the congressional mandate; offering clarity to States, territories, Tribal governments, and localities while maintaining their flexibility to respond to local needs; and limiting administrative burdens.

*Analysis of Benefits.* Relative to a pre-statutory baseline, the Fiscal Recovery Funds provide a combined $350 billion to State, local, and Tribal governments for fiscal relief and support for costs incurred responding to the COVID–19 pandemic. Treasury believes that this transfer will generate substantial additional economic activity, although given the flexibility accorded to recipients in the use of funds, it is not possible to precisely estimate the extent to which this will occur and the timing with which it will occur. Economic research has demonstrated that state fiscal relief is an efficient and effective way to mitigate declines in jobs and output during an economic downturn.[183] Absent such fiscal relief, fiscal austerity among State, local, and Tribal governments could exert a prolonged drag on the overall economic recovery, as occurred following the 2007–09 recession.[184]

This interim final rule provides benefits across several areas by implementing the four eligible funding uses, as defined in statute: Strengthening the response to the COVID–19 public health emergency and its economic impacts; easing fiscal pressure on State, local, and Tribal governments that might otherwise lead to harmful cutbacks in employment or government services; providing premium pay to essential workers; and making necessary investments in certain types of infrastructure. In implementing the ARPA, Treasury also sought to support disadvantaged communities that have been disproportionately impacted by the pandemic. The Fiscal Recovery Funds as implemented by the interim final rule can be expected to channel resources toward these uses in order to achieve substantial near-term economic and public health benefits, as well as longer-term benefits arising from the allowable investments in water, sewer, and broadband infrastructure and aid to families.

[183] Gabriel Chodorow-Reich et al., Does State Fiscal Relief during Recessions Increase Employment? Evidence from the American Recovery and Reinvestment Act, American Econ. J.: Econ. Policy, 4:3 118–45 (Aug. 2012), *available at https://www.aeaweb.org/articles?id=10.1257/pol.4.3.118.*

[184] *See, e.g.,* Fitzpatrick, Haughwout & Setren, Fiscal Drag from the State and Local Sector?, Liberty Street Economics Blog, Federal Reserve Bank of New York (June 27, 2012), *https://www.libertystreeteconomics.newyorkfed.org/2012/06/fiscal-drag-from-the-state-and-local-sector.html;* Jiri Jonas, Great Recession and Fiscal Squeeze at U.S. Subnational Government Level, IMF Working Paper 12/184, (July 2012), *available at https://www.imf.org/external/pubs/ft/wp/2012/wp12184.pdf;* Gordon, *supra* note 9.

These benefits are achieved in the interim final rule through a broadly flexible approach that sets clear guidelines on eligible uses of Fiscal Recovery Funds and provides State, local, and Tribal government officials discretion within those eligible uses to direct Fiscal Recovery Funds to areas of greatest need within their jurisdiction. While preserving recipients' overall flexibility, the interim final rule includes several provisions that implement statutory requirements and will help support use of Fiscal Recovery Funds to achieve the intended benefits. The remainder of this section clarifies how Treasury's approach to key provisions in the interim final rule will contribute to greater realization of benefits from the program.

- *Revenue Loss:* Recipients will compute the extent of reduction in revenue by comparing actual revenue to a counterfactual trend representing what could have plausibly been expected to occur in the absence of the pandemic. The counterfactual trend begins with the last full fiscal year prior to the public health emergency (as required by statute) and projects forward with an annualized growth adjustment. Treasury's decision to incorporate a growth adjustment into the calculation of revenue loss ensures that the formula more fully captures revenue shortfalls relative to recipients' pre-pandemic expectations. Moreover, recipients will have the opportunity to re-calculate revenue loss at several points throughout the program, recognizing that some recipients may experience revenue effects with a lag. This option to re-calculate revenue loss on an ongoing basis should result in more support for recipients to avoid harmful cutbacks in future years. In calculating revenue loss, recipients will look at general revenue in the aggregate, rather than on a source-by-source basis. Given that recipients may have experienced offsetting changes in revenues across sources, Treasury's approach provides a more accurate representation of the effect of the pandemic on overall revenues.
- *Premium Pay:* Per the statute, recipients have broad latitude to designate critical infrastructure sectors and make grants to third-party employers for the purpose of providing premium pay or otherwise respond to essential workers. While the interim final rule generally preserves the flexibility in the statute, it does add a requirement that recipients give written justification in the case that premium pay would increase a worker's annual pay above a certain threshold. To set this threshold, Treasury analyzed data

from the Bureau of Labor Statistics to determine a level that would not require further justification for premium pay to the vast majority of essential workers, while requiring higher scrutiny for provision of premium pay to higher-earners who, even without premium pay, would likely have greater personal financial resources to cope with the effects of the pandemic. Treasury believes the threshold in the interim final rule strikes the appropriate balance between preserving flexibility and helping encourage use of these resources to help those in greatest need. The interim final rule also requires that eligible workers have regular in-person interactions or regular physical handling of items that were also handled by others. This requirement will also help encourage use of financial resources for those who have endured the heightened risk of performing essential work.

- *Withholding of Payments to Recipients:* Treasury believes that for the vast majority of recipient entities, it will be appropriate to receive funds in two separate payments. As discussed above, withholding of payments ensures that recipients can adapt spending plans to evolving economic conditions and that at least some of the economic benefits will be realized in 2022 or later. However, consistent with authorities granted to Treasury in the statute, Treasury recognizes that a subset of States with significant remaining elevation in the unemployment rate could face heightened additional near-term needs to aid unemployed workers and stimulate the recovery. Therefore, for a subset of State governments, Treasury will not withhold any funds from the first payment. Treasury believes that this approach strikes the appropriate balance between the general reasons to provide funds in two payments and the heightened additional near-term needs in specific States. As discussed above, Treasury set a threshold based on historical analysis of unemployment rates in recessions.
- *Hiring Public Sector Employees:* The interim final rule states explicitly that recipients may use funds to restore their workforces up to pre-pandemic levels. Treasury believes that this statement is beneficial because it eliminates any uncertainty that could cause delays or otherwise negatively impact restoring public sector workforces (which, at time of publication, remain significantly below pre-pandemic levels).

Finally, the interim final rule aims to promote and streamline the provision of assistance to individuals and communities in greatest need, particularly communities that have been historically disadvantaged and have experienced disproportionate impacts of the COVID–19 crisis. Targeting relief is in line with Executive Order 13985, ''Advancing Racial Equity and Support for Underserved Communities Through the Federal Government,'' which laid out an Administration-wide priority to support ''equity for all, including people of color and others who have been historically underserved, marginalized, and adversely affected by persistent poverty and inequality.'' [185] To this end, the interim final rule enumerates a list of services that may be provided using Fiscal Recovery Funds in low-income areas to address the disproportionate impacts of the pandemic in these communities; establishes the characteristics of essential workers eligible for premium pay and encouragement to serve workers based on financial need; provides that recipients may use Fiscal Recovery Funds to restore (to pre-pandemic levels) state and local workforces, where women and people of color are disproportionately represented; [186] and targets investments in broadband infrastructure to unserved and underserved areas. Collectively, these provisions will promote use of resources to facilitate the provision of assistance to individuals and communities with the greatest need.

*Analysis of Costs.* This regulatory action will generate administrative costs relative to a pre-statutory baseline. This includes, chiefly, costs required to administer Fiscal Recovery Funds, oversee subrecipients and beneficiaries, and file periodic reports with Treasury. It also requires States to allocate Fiscal Recovery Funds to nonentitlement units, which are smaller units of local government that are statutorily required to receive their funds through States.

Treasury expects that the administrative burden associated with this program will be moderate for a grant program of its size. Treasury expects that most recipients receive direct or indirect funding from Federal Government programs and that many have familiarity with how to administer and report on Federal funds or grant funding provided by other entities. In particular, States, territories, and large localities will have received funds from the CRF and Treasury expects them to rely heavily on established processes developed last year or through prior grant funding, mitigating burden on these governments.

Treasury expects to provide technical assistance to defray the costs of administration of Fiscal Recovery Funds to further mitigate burden. In making implementation choices, Treasury has hosted numerous consultations with a diverse range of direct recipients—States, small cities, counties, and Tribal governments—along with various communities across the United States, including those that are underserved. Treasury lacks data to estimate the precise extent to which this interim final rule generates administrative burden for State, local, and Tribal governments, but seeks comment to better estimate and account for these costs, as well as on ways to lessen administrative burdens.

*Executive Order 13132*

Executive Order 13132 (entitled Federalism) prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial, direct compliance costs on State, local, and Tribal governments, and is not required by statute, or preempts state law, unless the agency meets the consultation and funding requirements of section 6 of the Executive order. This interim final rule does not have federalism implications within the meaning of the Executive order and does not impose substantial, direct compliance costs on State, local, and Tribal governments or preempt state law within the meaning of the Executive order. The compliance costs are imposed on State, local, and Tribal governments by sections 602 and 603 of the Social Security Act, as enacted by the ARPA. Notwithstanding the above, Treasury has engaged in efforts to consult and work cooperatively with affected State, local, and Tribal government officials and associations in the process of developing the interim final rule. Pursuant to the requirements set forth in section 8(a) of Executive Order 13132, Treasury certifies that it has complied with the requirements of Executive Order 13132.

*Administrative Procedure Act*

The Administrative Procedure Act (APA), 5 U.S.C. 551 *et seq.,* generally requires public notice and an opportunity for comment before a rule

[185] Executive Order on Advancing Racial Equity and Support for Underserved Communities through the Federal Government (Jan. 20, 2021) (86 FR 7009, January 25, 2021), *https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/20/executive-order-advancing-racial-equity-and-support-for-underserved-communities-through-the-federal-government/* (last visited May 9, 2021).

[186] David Cooper, Mary Gable & Algernon Austin, Economic Policy Institute Briefing Paper, The Public-Sector Jobs Crisis: Women and African Americans hit hardest by job losses in state and local governments, *https://www.epi.org/publication/bp339-public-sector-jobs-crisis* (last visited May 9, 2021).

becomes effective. However, the APA provides that the requirements of 5 U.S.C. 553 do not apply ''to the extent that there is involved . . . a matter relating to agency . . . grants.'' The interim final rule implements statutory conditions on the eligible uses of the Fiscal Recovery Funds grants, and addresses the payment of those funds, the reporting on uses of funds, and potential consequences of ineligible uses. The rule is thus ''both clearly and directly related to a federal grant program.'' *National Wildlife Federation* v. *Snow,* 561 F.2d 227, 232 (D.C. Cir. 1976). The rule sets forth the ''process necessary to maintain state . . . eligibility for federal funds,'' *id.,* as well as the ''method[s] by which states can . . . qualify for federal aid,'' and other ''integral part[s] of the grant program,'' *Center for Auto Safety* v. *Tiemann,* 414 F. Supp. 215, 222 (D.D.C. 1976). As a result, the requirements of 5 U.S.C. 553 do not apply.

The APA also provides an exception to ordinary notice-and-comment procedures ''when the agency for good cause finds (and incorporates the finding and a brief statement of reasons therefor in the rules issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.'' 5 U.S.C. 553(b)(3)(B); *see also* 5 U.S.C. 553(d)(3) (creating an exception to the requirement of a 30-day delay before the effective date of a rule ''for good cause found and published with the rule''). Assuming 5 U.S.C. 553 applied, Treasury would still have good cause under sections 553(b)(3)(B) and 553(d)(3) for not undertaking section 553's requirements. The ARPA is a law responding to a historic economic and public health emergency; it is ''extraordinary'' legislation about which ''both Congress and the President articulated a profound sense of 'urgency.''' *Petry* v. *Block,* 737 F.2d 1193, 1200 (D.C. Cir. 1984). Indeed, several provisions implemented by this interim final rule (sections 602(c)(1)(A) and 603(c)(1)(A)) explicitly provide funds to ''respond to the public health emergency,'' and the urgency is further exemplified by Congress's command (in sections 602(b)(6)(B) and 603(b)(7)(A)) that, ''[t]o the extent practicable,'' funds must be provided to Tribes and cities ''not later than 60 days after the date of enactment.'' *See Philadelphia Citizens in Action* v. *Schweiker,* 669 F.2d 877, 884 (3d Cir. 1982) (finding good cause under circumstances, including statutory time limits, where APA procedures would have been ''virtually impossible''). Finally, there is an urgent need for States to undertake the planning necessary for sound fiscal policymaking, which requires an understanding of how funds provided under the ARPA will augment and interact with existing budgetary resources and tax policies. Treasury understands that many states require immediate rules on which they can rely, especially in light of the fact that the ARPA ''covered period'' began on March 3, 2021. The statutory urgency and practical necessity are good cause to forego the ordinary requirements of notice-and-comment rulemaking.

*Congressional Review Act*

The Administrator of OIRA has determined that this is a major rule for purposes of Subtitle E of the Small Business Regulatory Enforcement and Fairness Act of 1996 (also known as the Congressional Review Act or CRA) (5 U.S.C. 804(2) *et seq.*). Under the CRA, a major rule takes effect 60 days after the rule is published in the **Federal Register**. 5 U.S.C. 801(a)(3). Notwithstanding this requirement, the CRA allows agencies to dispense with the requirements of section 801 when the agency for good cause finds that such procedure would be impracticable, unnecessary, or contrary to the public interest and the rule shall take effect at such time as the agency promulgating the rule determines. 5 U.S.C. 808(2). Pursuant to section 808(2), for the reasons discussed above, Treasury for good cause finds that a 60-day delay to provide public notice is impracticable and contrary to the public interest.

*Paperwork Reduction Act*

The information collections associated with State, territory, local, and Tribal government applications materials necessary to receive Fiscal Recovery Funds (*e.g.,* payment information collection and acceptance of award terms) have been reviewed and approved by OMB pursuant to the Paperwork Reduction Act (44 U.S.C. chapter 35) (PRA) emergency processing procedures and assigned control number 1505–0271. The information collections related to ongoing reporting requirements, as discussed in this interim final rule, will be submitted to OMB for emergency processing in the near future. Under the PRA, an agency may not conduct or sponsor and a respondent is not required to respond to, an information collection unless it displays a valid OMB control number.

Estimates of hourly burden under this program are set forth in the table below. Burden estimates below are preliminary.

| Reporting | Number of respondents (estimated) | Number of responses per respondent | Total responses | Hours per response | Total burden in hours | Cost to respondent ($48.80 per hour*) |
|---|---|---|---|---|---|---|
| Recipient Payment Form | 5,050 | 1 | 5,050 | .25 (15 minutes) | 1,262.5 | $61,610 |
| Acceptance of Award Terms | 5,050 | 1 | 5,050 | .25 (15 minutes) | 1,262.5 | 61,610 |
| Title VI Assurances | 5,050 | 1 | 5,050 | .50 (30 minutes) | 2,525 | 123,220 |
| Quarterly Project and Expenditure Report. | 5,050 | 4*** | 20,200 | 25 | 505,000 | 24,644,000 |
| Annual Project and Expenditure Report from NEUs. | TBD | 1 per year | † 20,000–40,000 | 15 | 300,000–600,000 | 14,640,000–29,280,000 |
| Annual Recovery Plan Performance report. | 418 | 1 per year | 418 | 100 | 41,800 | 2,039,840 |
| Total | (**) | N/A | 55,768–75,768 | 141 | 851,850–1,151,850 | 41,570,280–56,210,280 |

*Bureau of Labor Statistics, U.S. Department of Labor, Occupational Outlook Handbook, Accountants and Auditors, on the internet at *https://www.bls.gov/ooh/business-and-financial/accountants-and-auditors.htm* (visited March 28, 2020). Base wage of $33.89/hour increased by 44 percent to account for fully loaded employer cost of employee compensation (benefits, etc.) for a fully loaded wage rate of $48.80.
**5,050–TBD.
***Per year after first year.
† (Estimate only).

Periodic reporting is required by section 602(c) of Section VI of the Social Security Act and under the interim final rule.

As discussed in Section VIII of this **SUPPLEMENTARY INFORMATION**, recipients of Fiscal Recovery Funds will be required to submit one interim report and thereafter quarterly Project and Expenditure reports until the end of the award period. Recipients must submit interim reports to Treasury by August

31, 2021. The quarterly Project and Expenditure reports will include financial data, information on contracts and subawards over $50,000, types of projects funded, and other information regarding a recipient's utilization of the award funds.

Nonentitlement unit recipients will be required to submit annual Project and Expenditure reports until the end of the award period. The initial annual Project and Expenditure report for Nonentitlement unit recipients must be submitted to Treasury by October 31, 2021. The subsequent annual reports must be submitted to Treasury by October 31 each year. States, territories, metropolitan cities, and counties with a population that exceeds 250,000 residents will also be required to submit an annual Recovery Plan Performance report to Treasury. The Recovery Plan Performance report will include descriptions of the projects funded and information on the performance indicators and objectives of the award. Each annual Recovery Plan Performance report must be posted on the public-facing website of the recipient. Treasury will provide additional guidance and instructions on the all the reporting requirements outlined above for the Fiscal Recovery Funds program at a later date.

These and related periodic reporting requirements are under consideration and will be submitted to OMB for approval under the PRA emergency provisions in the near future.

Treasury invites comments on all aspects of the reporting and recordkeeping requirements including: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information. Comments should be sent by the comment deadline to the *www.regulations.gov* docket with a copy to the Office of Information and Regulatory Affairs, U.S. Office of Management and Budget, 725 17th Street NW, Washington, DC 20503; or email to *oira_submission@omb.eop.gov.*

*Regulatory Flexibility Analysis*

The Regulatory Flexibility Act (RFA) generally requires that when an agency issues a proposed rule, or a final rule pursuant to section 553(b) of the Administrative Procedure Act or another law, the agency must prepare a regulatory flexibility analysis that meets the requirements of the RFA and publish such analysis in the **Federal Register**. 5 U.S.C. 603, 604.

Rules that are exempt from notice and comment under the APA are also exempt from the RFA requirements, including the requirement to conduct a regulatory flexibility analysis, when among other things the agency for good cause finds that notice and public procedure are impracticable, unnecessary, or contrary to the public interest. Since this rule is exempt from the notice and comment requirements of the APA, Treasury is not required to conduct a regulatory flexibility analysis.

**List of Subjects in 31 CFR Part 35**

Executive compensation, Public health emergency, State and local governments, Tribal governments.

For the reasons stated in the preamble, the Department of the Treasury amends 31 CFR part 35 as follows:

## PART 35—PANDEMIC RELIEF PROGRAMS

■ 1. The authority citation for part 35 is revised to read as follows:

**Authority:** 42 U.S.C. 802(f); 42 U.S.C. 803(f); 31 U.S.C. 321; Division N, Title V, Subtitle B, Pub. L. 116–260, 134 Stat. 1182; Section 104A, Pub. L. 103–325, 108 Stat. 2160, as amended (12 U.S.C. 4701 *et seq.*); Pub. L. 117–2, 135 Stat. 4 (42 U.S.C. 802 *et seq.*).

■ 2. Revise the part heading to read as set forth above.

■ 3. Add subpart A to read as follows:

## Subpart A—Coronavirus State and Local Fiscal Recovery Funds

Sec.



### § 35.1 Purpose.

This subpart implements section 9901 of the American Rescue Plan Act (Subtitle M of Title IX of Pub. L. 117–2), which amends Title VI of the Social Security Act (42 U.S.C. 801 *et seq.*) by adding sections 602 and 603 to establish the Coronavirus State Fiscal Recovery Fund and Coronavirus Local Fiscal Recovery Fund.

### § 35.2 Applicability.

This subpart applies to States, territories, Tribal governments, metropolitan cities, nonentitlement units of local government, counties, and units of general local government that accept a payment or transfer of funds made under section 602 or 603 of the Social Security Act.

### § 35.3 Definitions.

As used in this subpart:

*Baseline* means tax revenue of the recipient for its fiscal year ending in 2019, adjusted for inflation in each reporting year using the Bureau of Economic Analysis's Implicit Price Deflator for the gross domestic product of the United States.

*County* means a county, parish, or other equivalent county division (as defined by the Census Bureau).

*Covered benefits* include, but are not limited to, the costs of all types of leave (vacation, family-related, sick, military, bereavement, sabbatical, jury duty), employee insurance (health, life, dental, vision), retirement (pensions, 401(k)), unemployment benefit plans (Federal and State), workers' compensation insurance, and Federal Insurance Contributions Act taxes (which includes Social Security and Medicare taxes).

*Covered change* means a change in law, regulation, or administrative interpretation. A change in law includes any final legislative or regulatory action, a new or changed administrative interpretation, and the phase-in or taking effect of any statute or rule if the phase-in or taking effect was not prescribed prior to the start of the covered period.

*Covered period* means, with respect to a State, Territory, or Tribal government, the period that:

(1) Begins on March 3, 2021; and

(2) Ends on the last day of the fiscal year of such State, Territory, or Tribal government in which all funds received by the State, Territory, or Tribal government from a payment made under section 602 or 603 of the Social Security Act have been expended or returned to, or recovered by, the Secretary.

*COVID–19* means the Coronavirus Disease 2019.

*COVID–19 public health emergency* means the period beginning on January 27, 2020 and until the termination of the national emergency concerning the COVID–19 outbreak declared pursuant to the National Emergencies Act (50 U.S.C. 1601 *et seq.*).

*Deposit* means an extraordinary payment of an accrued, unfunded liability. The term deposit does not refer to routine contributions made by an employer to pension funds as part of the employer's obligations related to payroll, such as either a pension contribution consisting of a normal cost component related to current employees or a component addressing the amortization of unfunded liabilities calculated by reference to the employer's payroll costs.

*Eligible employer* means an employer of an eligible worker who performs essential work.

*Eligible workers* means workers needed to maintain continuity of operations of essential critical infrastructure sectors, including health care; emergency response; sanitation, disinfection, and cleaning work; maintenance work; grocery stores, restaurants, food production, and food delivery; pharmacy; biomedical research; behavioral health work; medical testing and diagnostics; home- and community-based health care or assistance with activities of daily living; family or child care; social services work; public health work; vital services to Tribes; any work performed by an employee of a State, local, or Tribal government; educational work, school nutrition work, and other work required to operate a school facility; laundry work; elections work; solid waste or hazardous materials management, response, and cleanup work; work requiring physical interaction with patients; dental care work; transportation and warehousing; work at hotel and commercial lodging facilities that are used for COVID–19 mitigation and containment; work in a mortuary; work in critical clinical research, development, and testing necessary for COVID–19 response.

(1) With respect to a recipient that is a metropolitan city, nonentitlement unit of local government, or county, workers in any additional sectors as each chief executive officer of such recipient may designate as critical to protect the health and well-being of the residents of their metropolitan city, nonentitlement unit of local government, or county; or

(2) With respect to a State, Territory, or Tribal government, workers in any additional sectors as each Governor of a State or Territory, or each Tribal government, may designate as critical to protect the health and well-being of the residents of their State, Territory, or Tribal government.

*Essential work* means work that:

(1) Is not performed while teleworking from a residence; and

(2) Involves:

(i) Regular in-person interactions with patients, the public, or coworkers of the individual that is performing the work; or

(ii) Regular physical handling of items that were handled by, or are to be handled by patients, the public, or coworkers of the individual that is performing the work.

*Funds* means, with respect to a recipient, amounts provided to the recipient pursuant to a payment made under section 602(b) or 603(b) of the Social Security Act or transferred to the recipient pursuant to section 603(c)(4) of the Social Security Act.

*General revenue* means money that is received from tax revenue, current charges, and miscellaneous general revenue, excluding refunds and other correcting transactions, proceeds from issuance of debt or the sale of investments, agency or private trust transactions, and intergovernmental transfers from the Federal Government, including transfers made pursuant to section 9901 of the American Rescue Plan Act. General revenue does not include revenues from utilities. Revenue from Tribal business enterprises must be included in general revenue.

*Intergovernmental transfers* means money received from other governments, including grants and shared taxes.

*Metropolitan city* has the meaning given that term in section 102(a)(4) of the Housing and Community Development Act of 1974 (42 U.S.C. 5302(a)(4)) and includes cities that relinquish or defer their status as a metropolitan city for purposes of receiving allocations under section 106 of such Act (42 U.S.C. 5306) for fiscal year 2021.

*Net reduction in total spending* is measured as the State or Territory's total spending for a given reporting year excluding its spending of funds, subtracted from its total spending for its fiscal year ending in 2019, adjusted for inflation using the Bureau of Economic Analysis's Implicit Price Deflator for the gross domestic product of the United States.

*Nonentitlement unit of local government* means a ''city,'' as that term is defined in section 102(a)(5) of the Housing and Community Development Act of 1974 (42 U.S.C. 5302(a)(5)), that is not a metropolitan city.

*Nonprofit* means a nonprofit organization that is exempt from Federal income taxation and that is described in section 501(c)(3) of the Internal Revenue Code.

*Obligation* means an order placed for property and services and entering into contracts, subawards, and similar transactions that require payment.

*Pension fund* means a defined benefit plan and does not include a defined contribution plan.

*Premium pay* means an amount of up to $13 per hour that is paid to an eligible worker, in addition to wages or remuneration the eligible worker otherwise receives, for all work performed by the eligible worker during the COVID–19 public health emergency. Such amount may not exceed $25,000 with respect to any single eligible worker. Premium pay will be considered to be in addition to wages or remuneration the eligible worker otherwise receives if, as measured on an hourly rate, the premium pay is:

(1) With regard to work that the eligible worker previously performed, pay and remuneration equal to the sum of all wages and remuneration previously received plus up to $13 per hour with no reduction, substitution, offset, or other diminishment of the eligible worker's previous, current, or prospective wages or remuneration; or

(2) With regard to work that the eligible worker continues to perform, pay of up to $13 that is in addition to the eligible worker's regular rate of wages or remuneration, with no reduction, substitution, offset, or other diminishment of the workers' current and prospective wages or remuneration.

*Qualified census tract* has the same meaning given in 26 U.S.C. 42(d)(5)(B)(ii)(I).

*Recipient* means a State, Territory, Tribal government, metropolitan city, nonentitlement unit of local government, county, or unit of general local government that receives a payment made under section 602(b) or 603(b) of the Social Security Act or transfer pursuant to section 603(c)(4) of the Social Security Act.

*Reporting year* means a single year or partial year within the covered period, aligned to the current fiscal year of the State or Territory during the covered period.

*Secretary* means the Secretary of the Treasury.

*State* means each of the 50 States and the District of Columbia.

*Small business* means a business concern or other organization that:

(1) Has no more than 500 employees, or if applicable, the size standard in number of employees established by the Administrator of the Small Business Administration for the industry in which the business concern or organization operates; and

(2) Is a small business concern as defined in section 3 of the Small Business Act (15 U.S.C. 632).

*Tax revenue* means revenue received from a compulsory contribution that is exacted by a government for public purposes excluding refunds and corrections and, for purposes of § 35.8, intergovernmental transfers. Tax revenue does not include payments for a special privilege granted or service rendered, employee or employer assessments and contributions to finance retirement and social insurance trust systems, or special assessments to pay for capital improvements.

*Territory* means the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, the Commonwealth of the Northern Mariana Islands, or American Samoa.

*Tribal enterprise* means a business concern:

(1) That is wholly owned by one or more Tribal governments, or by a corporation that is wholly owned by one or more Tribal governments; or

(2) That is owned in part by one or more Tribal governments, or by a corporation that is wholly owned by one or more Tribal governments, if all other owners are either United States citizens or small business concerns, as these terms are used and consistent with the definitions in 15 U.S.C. 657a(b)(2)(D).

*Tribal government* means the recognized governing body of any Indian or Alaska Native tribe, band, nation, pueblo, village, community, component band, or component reservation, individually identified (including parenthetically) in the list published by the Bureau of Indian Affairs on January 29, 2021, pursuant to section 104 of the Federally Recognized Indian Tribe List Act of 1994 (25 U.S.C. 5131).

*Unemployment rate* means the U–3 unemployment rate provided by the Bureau of Labor Statistics as part of the Local Area Unemployment Statistics program, measured as total unemployment as a percentage of the civilian labor force.

*Unemployment trust fund* means an unemployment trust fund established under section 904 of the Social Security Act (42 U.S.C. 1104).

*Unit of general local government* has the meaning given to that term in section 102(a)(1) of the Housing and Community Development Act of 1974 (42 U.S.C. 5302(a)(1)).

*Unserved and underserved households or businesses* means one or more households or businesses that are not currently served by a wireline connection that reliably delivers at least 25 Mbps download speed and 3 Mbps of upload speed.

### § 35.4 Reservation of authority, reporting.

(a) *Reservation of authority.* Nothing in this subpart shall limit the authority of the Secretary to take action to enforce conditions or violations of law, including actions necessary to prevent evasions of this subpart.

(b) *Extensions or accelerations of timing.* The Secretary may extend or accelerate any deadline or compliance date of this subpart, including reporting requirements that implement this subpart, if the Secretary determines that such extension or acceleration is appropriate. In determining whether an extension or acceleration is appropriate, the Secretary will consider the period of time that would be extended or accelerated and how the modified timeline would facilitate compliance with this subpart.

(c) *Reporting and requests for other information.* During the covered period, recipients shall provide to the Secretary periodic reports providing detailed accounting of the uses of funds, all modifications to a State or Territory's tax revenue sources, and such other information as the Secretary may require for the administration of this section. In addition to regular reporting requirements, the Secretary may request other additional information as may be necessary or appropriate, including as may be necessary to prevent evasions of the requirements of this subpart. False statements or claims made to the Secretary may result in criminal, civil, or administrative sanctions, including fines, imprisonment, civil damages and penalties, debarment from participating in Federal awards or contracts, and/or any other remedy available by law.

### § 35.5 Use of funds.

(a) *In general.* A recipient may only use funds to cover costs incurred during the period beginning March 3, 2021, and ending December 31, 2024, for one or more of the purposes enumerated in sections 602(c)(1) and 603(c)(1) of the Social Security Act, as applicable, including those enumerated in section § 35.6, subject to the restrictions set forth in sections 602(c)(2) and 603(c)(2) of the Social Security Act, as applicable.

(b) *Costs incurred.* A cost shall be considered to have been incurred for purposes of paragraph (a) of this section if the recipient has incurred an obligation with respect to such cost by December 31, 2024.

(c) *Return of funds.* A recipient must return any funds not obligated by December 31, 2024, and any funds not expended to cover such obligations by December 31, 2026.

### § 35.6 Eligible uses.

(a) *In general.* Subject to §§ 35.7 and 35.8, a recipient may use funds for one or more of the purposes described in paragraphs (b) through (e) of this section

(b) *Responding to the public health emergency or its negative economic impacts.* A recipient may use funds to respond to the public health emergency or its negative economic impacts, including for one or more of the following purposes:

(1) *COVID–19 response and prevention.* Expenditures for the mitigation and prevention of COVID–19, including:

(i) Expenses related to COVID–19 vaccination programs and sites, including staffing, acquisition of equipment or supplies, facilities costs, and information technology or other administrative expenses;

(ii) COVID–19-related expenses of public hospitals, clinics, and similar facilities;

(iii) COVID–19 related expenses in congregate living facilities, including skilled nursing facilities, long-term care facilities, incarceration settings, homeless shelters, residential foster care facilities, residential behavioral health treatment, and other group living facilities;

(iv) Expenses of establishing temporary public medical facilities and other measures to increase COVID–19 treatment capacity, including related construction costs and other capital investments in public facilities to meet COVID–19-related operational needs;

(v) Expenses of establishing temporary public medical facilities and other measures to increase COVID–19 treatment capacity, including related construction costs and other capital investments in public facilities to meet COVID–19-related operational needs;

(vi) Costs of providing COVID–19 testing and monitoring, contact tracing, and monitoring of case trends and genomic sequencing for variants;

(vii) Emergency medical response expenses, including emergency medical transportation, related to COVID–19;

(viii) Expenses for establishing and operating public telemedicine capabilities for COVID–19-related treatment;

(ix) Expenses for communication related to COVID–19 vaccination programs and communication or enforcement by recipients of public health orders related to COVID–19;

(x) Expenses for acquisition and distribution of medical and protective supplies, including sanitizing products and personal protective equipment;

(xi) Expenses for disinfection of public areas and other facilities in response to the COVID–19 public health emergency;

(xii) Expenses for technical assistance to local authorities or other entities on mitigation of COVID–19-related threats to public health and safety;

(xiii) Expenses for quarantining or isolation of individuals;

(xiv) Expenses of providing paid sick and paid family and medical leave to public employees to enable compliance with COVID–19 public health precautions;

(xv) Expenses for treatment of the long-term symptoms or effects of COVID–19, including post-intensive care syndrome;

(xvi) Expenses for the improvement of ventilation systems in congregate settings, public health facilities, or other public facilities;

(xvii) Expenses related to establishing or enhancing public health data systems; and

(xviii) Mental health treatment, substance misuse treatment, and other behavioral health services.

(2) *Public health and safety staff.* Payroll and covered benefit expenses for public safety, public health, health care, human services, and similar employees to the extent that the employee's time is spent mitigating or responding to the COVID–19 public health emergency.

(3) *Hiring State and local government staff.* Payroll, covered benefit, and other costs associated with the recipient increasing the number of its employees up to the number of employees that it employed on January 27, 2020.

(4) *Assistance to unemployed workers.* Assistance, including job training, for individuals who want and are available for work, including those who have looked for work sometime in the past 12 months or who are employed part time but who want and are available for full-time work.

(5) *Contributions to State unemployment insurance trust funds.* Contributions to an unemployment trust fund up to the level required to restore the unemployment trust fund to its balance on January 27, 2020 or to pay back advances received under Title XII of the Social Security Act (42 U.S.C. 1321) for the payment of benefits between January 27, 2020 and May 17, 2021.

(6) *Small businesses.* Assistance to small businesses, including loans, grants, in-kind assistance, technical assistance or other services, that responds to the negative economic impacts of the COVID–19 public health emergency.

(7) *Nonprofits.* Assistance to nonprofit organizations, including loans, grants, in-kind assistance, technical assistance or other services, that responds to the negative economic impacts of the COVID–19 public health emergency.

(8) *Assistance to households.* Assistance programs, including cash assistance programs, that respond to the COVID–19 public health emergency.

(9) *Aid to impacted industries.* Aid to tourism, travel, hospitality, and other impacted industries that responds to the negative economic impacts of the COVID–19 public health emergency.

(10) *Expenses to improve efficacy of public health or economic relief programs.* Administrative costs associated with the recipient's COVID–19 public health emergency assistance programs, including services responding to the COVID–19 public health emergency or its negative economic impacts, that are not federally funded.

(11) *Survivor's benefits.* Benefits for the surviving family members of individuals who have died from COVID–19, including cash assistance to widows, widowers, or dependents of individuals who died of COVID–19.

(12) *Disproportionately impacted populations and communities.* A program, service, or other assistance that is provided in a qualified census tract, that is provided to households and populations living in a qualified census tract, that is provided by a Tribal government, or that is provided to other households, businesses, or populations disproportionately impacted by the COVID–19 public health emergency, such as:

(i) Programs or services that facilitate access to health and social services, including:

(A) Assistance accessing or applying for public benefits or services;

(B) Remediation of lead paint or other lead hazards; and

(C) Community violence intervention programs;

(ii) Programs or services that address housing insecurity, lack of affordable housing, or homelessness, including:

(A) Supportive housing or other programs or services to improve access to stable, affordable housing among individuals who are homeless;

(B) Development of affordable housing to increase supply of affordable and high-quality living units; and

(C) Housing vouchers and assistance relocating to neighborhoods with higher levels of economic opportunity and to reduce concentrated areas of low economic opportunity;

(iii) Programs or services that address or mitigate the impacts of the COVID–19 public health emergency on education, including:

(A) New or expanded early learning services;

(B) Assistance to high-poverty school districts to advance equitable funding across districts and geographies; and

(C) Educational and evidence-based services to address the academic, social, emotional, and mental health needs of students; and

(iv) Programs or services that address or mitigate the impacts of the COVID–19 public health emergency on childhood health or welfare, including:

(A) New or expanded childcare;

(B) Programs to provide home visits by health professionals, parent educators, and social service professionals to individuals with young children to provide education and assistance for economic support, health needs, or child development; and

(C) Services for child welfare-involved families and foster youth to provide support and education on child development, positive parenting, coping skills, or recovery for mental health and substance use.

(c) *Providing premium pay to eligible workers.* A recipient may use funds to provide premium pay to eligible workers of the recipient who perform essential work or to provide grants to eligible employers, provided that any premium pay or grants provided under this paragraph (c) must respond to eligible workers performing essential work during the COVID–19 public health emergency. A recipient uses premium pay or grants provided under this paragraph (c) to respond to eligible workers performing essential work during the COVID–19 public health emergency if it prioritizes low- and moderate-income persons. The recipient must provide, whether for themselves or on behalf of a grantee, a written justification to the Secretary of how the premium pay or grant provided under this paragraph (c) responds to eligible workers performing essential work if the premium pay or grant would increase an eligible worker's total wages and remuneration above 150 percent of such eligible worker's residing State's average annual wage for all occupations or their residing county's average annual wage, whichever is higher.

(d) *Providing government services.* For the provision of government services to the extent of a reduction in the recipient's general revenue, calculated according to paragraphs (d)(1) and (2) of this section.

(1) *Frequency.* A recipient must calculate the reduction in its general revenue using information as-of December 31, 2020, December 31, 2021, December 31, 2022, and December 31, 2023 (each, a calculation date) and following each calculation date.

(2) *Calculation.* A reduction in a recipient's general revenue equals:

$$Max\ \{[Base\ Year\ Revenue * \ (1 + Growth\ Adjustment)^{\left(\frac{n_t}{12}\right)}] - Actual\ General\ Revenue_t; 0\}$$

Where:

*Base Year Revenue* is the recipient's general revenue for the most recent full fiscal year prior to the COVD–19 public health emergency;

*Growth Adjustment* is equal to the greater of 4.1 percent (or 0.041) and the recipient's average annual revenue growth over the three full fiscal years prior to the COVID–19 public health emergency.

*n* equals the number of months elapsed from the end of the base year to the calculation date.

*Actual General Revenue* is a recipient's actual general revenue collected during 12-month period ending on each calculation date;

Subscript *t* denotes the specific calculation date.

(e) *To make necessary investments in infrastructure.* A recipient may use funds to make investments in:

(1) *Clean Water State Revolving Fund and Drinking Water State Revolving Fund investments.* Projects or activities of the type that would be eligible under section 603(c) of the Federal Water Pollution Control Act (33 U.S.C. 1383(c)) or section 1452 of the Safe Drinking Water Act (42 U.S.C. 300j–12); or,

(2) *Broadband.* Broadband infrastructure that is designed to provide service to unserved or underserved households and businesses and that is designed to, upon completion:

(i) Reliably meet or exceed symmetrical 100 Mbps download speed and upload speeds; or

(ii) In cases where it is not practicable, because of the excessive cost of the project or geography or topography of the area to be served by the project, to provide service meeting the standards set forth in paragraph (e)(2)(i) of this section:

(A) Reliably meet or exceed 100 Mbps download speed and between at least 20 Mbps and 100 Mbps upload speed; and

(B) Be scalable to a minimum of 100 Mbps download speed and 100 Mbps upload speed.

**§ 35.7 Pensions.**

A recipient may not use funds for deposit into any pension fund.

**§ 35.8 Tax.**

(a) *Restriction.* A State or Territory shall not use funds to either directly or indirectly offset a reduction in the net tax revenue of the State or Territory resulting from a covered change during the covered period.

(b) *Violation.* Treasury will consider a State or Territory to have used funds to offset a reduction in net tax revenue if, during a reporting year:

(1) *Covered change.* The State or Territory has made a covered change that, either based on a reasonable statistical methodology to isolate the impact of the covered change in actual revenue or based on projections that use reasonable assumptions and do not incorporate the effects of macroeconomic growth to reduce or increase the projected impact of the covered change, the State or Territory assesses has had or predicts to have the effect of reducing tax revenue relative to current law;

(2) *Exceeds the de minimis threshold.* The aggregate amount of the measured or predicted reductions in tax revenue caused by covered changes identified under paragraph (b)(1) of this section, in the aggregate, exceeds 1 percent of the State's or Territory's baseline;

(3) *Reduction in net tax revenue.* The State or Territory reports a reduction in net tax revenue, measured as the difference between actual tax revenue and the State's or Territory's baseline, each measured as of the end of the reporting year; and

(4) *Consideration of other changes.* The aggregate amount of measured or predicted reductions in tax revenue caused by covered changes is greater than the sum of the following, in each case, as calculated for the reporting year:

(i) The aggregate amount of the expected increases in tax revenue caused by one or more covered changes that, either based on a reasonable statistical methodology to isolate the impact of the covered change in actual revenue or based on projections that use reasonable assumptions and do not incorporate the effects of macroeconomic growth to reduce or increase the projected impact of the covered change, the State or Territory assesses has had or predicts to have the effect of increasing tax revenue; and

(ii) Reductions in spending, up to the amount of the State's or Territory's net reduction in total spending, that are in:

(A) Departments, agencies, or authorities in which the State or Territory is not using funds; and

(B) Departments, agencies, or authorities in which the State or Territory is using funds, in an amount equal to the value of the spending cuts in those departments, agencies, or authorities, minus funds used.

(c) *Amount and revenue reduction cap.* If a State or Territory is considered to be in violation pursuant to paragraph (b) of this section, the amount used in violation of paragraph (a) of this section is equal to the lesser of:

(1) The reduction in net tax revenue of the State or Territory for the reporting year, measured as the difference between the State's or Territory's baseline and its actual tax revenue, each measured as of the end of the reporting year; and,

(2) The aggregate amount of the reductions in tax revenues caused by covered changes identified in paragraph (b)(1) of this section, minus the sum of the amounts in identified in paragraphs (b)(4)(i) and (ii).

**§ 35.9 Compliance with applicable laws.**

A recipient must comply with all other applicable Federal statutes, regulations, and Executive orders, and a recipient shall provide for compliance with the American Rescue Plan Act, this subpart, and any interpretive guidance by other parties in any agreements it enters into with other parties relating to these funds.

**§ 35.10 Recoupment.**

(a) *Identification of violations*—(1) *In general.* Any amount used in violation of § 35.5, § 35.6, or § 35.7 may be identified at any time prior to December 31, 2026.

(2) *Annual reporting of amounts of violations.* On an annual basis, a recipient that is a State or Territory must calculate and report any amounts used in violation of § 35.8.

(b) *Calculation of amounts subject to recoupment*—(1) *In general.* Except as provided in paragraph (b)(2) of this section, Treasury will calculate any amounts subject to recoupment resulting from a violation of § 35.5, § 35.6, or § 35.7 as the amounts used in violation of such restrictions.

(2) *Violations of § 35.8.* Treasury will calculate any amounts subject to recoupment resulting from a violation of § 35.8, equal to the lesser of:

(i) The amount set forth in § 35.8(c); and,

(ii) The amount of funds received by such recipient.

(c) *Notice.* If Treasury calculates an amount subject to recoupment under paragraph (b) of this section, Treasury will provide the recipient a written notice of the amount subject to recoupment along with an explanation of such amounts.

(d) *Request for reconsideration.* Unless Treasury extends the time period, within 60 calendar days of receipt of a notice of recoupment provided under paragraph (c) of this section, a recipient may submit a written request to Treasury requesting reconsideration of any amounts subject to recoupment under paragraph (b) of this section. To request reconsideration of any amounts subject to recoupment, a recipient must submit to Treasury a written request that includes:

(1) An explanation of why the recipient believes all or some of the amount should not be subject to recoupment; and

(2) A discussion of supporting reasons, along with any additional information.

(e) *Final amount subject to recoupment.* Unless Treasury extends the time period, within 60 calendar days of receipt of the recipient's request for reconsideration provided pursuant to paragraph (d) of this section, the recipient will be notified of the Secretary's decision to affirm, withdraw, or modify the notice of recoupment. Such notification will include an explanation of the decision, including responses to the recipient's supporting reasons and consideration of additional information provided.

(f) *Repayment of funds.* Unless Treasury extends the time period, a recipient shall repay to the Secretary any amounts subject to recoupment in accordance with instructions provided by Treasury:

(1) Within 120 calendar days of receipt of the notice of recoupment provided under paragraph (c) of this section, in the case of a recipient that does not submit a request for reconsideration in accordance with the requirements of paragraph (d) of this section; or

(2) Within 120 calendar days of receipt of the Secretary's decision under paragraph (e) of this section, in the case of a recipient that submits a request for reconsideration in accordance with the requirements of paragraph (d) of this section.

**§ 35.11 Payments to States.**

(a) *In general.* With respect to any State or Territory that has an unemployment rate as of the date that it submits an initial certification for payment of funds pursuant to section 602(d)(1) of the Social Security Act that is less than two percentage points above its unemployment rate in February 2020, the Secretary will withhold 50 percent of the amount of funds allocated under section 602(b) of the Social Security Act to such State or territory until the date that is twelve months from the date such initial certification is provided to the Secretary.

(b) *Payment of withheld amount.* In order to receive the amount withheld under paragraph (a) of this section, the State or Territory must submit to the Secretary at least 30 days prior to the date referenced in paragraph (a) the following information:

(1) A certification, in the form provided by the Secretary, that such State or Territory requires the payment to carry out the activities specified in section 602(c) of the Social Security Act and will use the payment in compliance with section 602(c) of the Social Security Act; and,

(2) Any reports required to be filed by that date pursuant to this subpart that have not yet been filed.

**§ 35.12 Distributions to nonentitlement units of local government and units of general local government.**

(a) *Nonentitlement units of local government.* Each State or Territory that receives a payment from Treasury pursuant to section 603(b)(2)(B) of the Social Security Act shall distribute the amount of the payment to nonentitlement units of government in such State or Territory in accordance with the requirements set forth in section 603(b)(2)(C) of the Social Security Act and without offsetting any debt owed by such nonentitlement units of local governments against such payments.

(b) *Budget cap.* A State or Territory may not make a payment to a nonentitlement unit of local government pursuant to section 603(b)(2)(C) of the Social Security Act and paragraph (a) of this section in excess of the amount equal to 75 percent of the most recent budget for the nonentitlement unit of local government as of January 27, 2020. A State or Territory shall permit a nonentitlement unit of local government without a formal budget as of January 27, 2020, to provide a certification from an authorized officer of the nonentitlement unit of local government of its most recent annual expenditures as of January 27, 2020, and a State or Territory may rely on such certification for purposes of complying with this paragraph (b).

(c) *Units of general local government.* Each State or Territory that receives a payment from Treasury pursuant to section 603(b)(3)(B)(ii) of the Social Security Act, in the case of an amount to be paid to a county that is not a unit of general local government, shall distribute the amount of the payment to units of general local government within such county in accordance with the requirements set forth in section 603(b)(3)(B)(ii) of the Social Security Act and without offsetting any debt owed by such units of general local government against such payments.

(d) *Additional conditions.* A State or Territory may not place additional conditions or requirements on distributions to nonentitlement units of local government or units of general local government beyond those required by section 603 of the Social Security Act or this subpart.

**Laurie Schaffer,**

*Acting General Counsel.*

[FR Doc. 2021–10283 Filed 5–13–21; 11:15 am]

**BILLING CODE 4810–AK–P**

## Town of Herndon ARPA Allocation Plan

| Project | Description | FY2022 Appropriation | Total ARPA Funding |
|---|---|---|---|
| Fire Alarm System at HMC | Upgrades to the fire alarm system at Herndon Municipal Center | $ 200,000.00 | $ 1,700,000.00 |
| Building Assessment | Assessment of buildings in Town of Herndon | $ 60,000.00 | $ 60,000.00 |
| HCC Back Log | Herndon Community Center backlog maintenance items | $ 300,000.00 | $ 700,000.00 |
| HCC Pool ColdPak | The dual Pool Pak units serving the natatorium are reaching the end of their life cycle and have significant repairs that are in need, plus removal of the old units, curbing, design specifications and contingency. | $ 525,000.00 | $ 525,000.00 |
| HPD HVAC | The Police Department has dedicated server rooms and a communications room that houses physical servers, telephone/data lines, and other crucial equipment to store, power, and support critical data and computer systems necessary for police operations. Due to environmental failures of the current server and communications rooms, a need exists for new air conditioning units. The project includes removal of a current aging HVAC unit and installation of new air conditioning units to service three rooms housing this equipment. Additionally, due to current and future server requirements a need exists for additional server space. The project would require subsequent redesign, expansion and build-out of the existing server room, and relocation of the Information Technology office across the hall | $ 400,000.00 | $ 400,000.00 |
| HPD Parking Lot Expansion | The police department facility has limited secure parking spaces available for employee and police vehicles and equipment. This project involves initiating a study to determine the best option for increasing the number of secure parking spaces and to determine a budget for expansion of the parking lot including projected operational costs. | $ 500,000.00 | $ 500,000.00 |
| Information Technology and Infrastructure | Upgrade aging network switching infrastructure to the latest stable release hosted on new hardware and preserve the existing system configuration. increase reliability, performance, security, expansion, and flexibility in Network infrastructure. Many switches are end of life and need to be replaced to support increased network utilization, cyber security, bandwidth, throughput, latency, network packet delay and improve error rate and data flow. | $ 35,000.00 | $ 69,000.00 |
| Park Equipment Replacement Program | This project accounts for any playground replacement or significant improvements in Town parks. With the loss of a large, mature shade tree at Haley Smith Park several years ago, the picnic experience needs enhancement with installation of a pavilion | $ 85,000.00 | $ 555,000.00 |
| Sports Field & Park Improvements | The expected increase in use of Bready Park and the Community Center warrant the expansion of the parking lot by adding 30 spaces between Ferndale Ave. and the tennis courts. This section would be connected to both the softball drive and the community center drive to improve traffic flow, estimated at 2019 costs.The tennis court lights in Bready Park are nearing their end of life value. The poles were originally installed in the 1980's and the light fixtures were updated in 1999. Replacement with LED fixtures and new poles will enhance efficiency and output significantly. This estimate includes pre-cast concrete bases, galvanized steel poles, remote electrical component enclosures, pole length wire harnesses and factory-aimed and assembled luminaries, plus estimated installation costs. It does not include the cost of a new electrical transformer. It assumes standard soil conditions. | $ 85,000.00 | $ 565,000.00 |
| Tennis Courts & Bubble | The project replaces the inner membrane of the air structure as well as the lighting system (including conversion to LED's for improved efficiency and longevity, thus meeting our sustainability objectives), mechanical system and other identified repairs. Pricing is based on 2020 estimates, plus a 10% contingency amount. The air structure is over 20 years old, and has exceeded its expected lifespan by more than five years. | $ 784,000.00 | $ 784,000.00 |

| | | | |
|---|---|---|---|
| Town Security Upgrades | The initial most critical town building security improvements or upgrades as identified by the security consultant. | $ 500,000.00 | $ 1,250,000.00 |
| Vehicle Replacement | vehicle replacement for the Town | $ 1,500,000.00 | $ 5,500,000.00 |
| HMC/ Chamber Backlog | Herndon Municipal Center and Chamber backlog items for maintenance | $ 250,000.00 | $ 1,250,000.00 |
| 1479 Backlog - Linked to 1481 | This project provides for the design and construction of the replacement of the roof and four HVAC units for the building located at 1481 Sterling Road. The existing roof has many leaks contibuting to the deterioration of the underlying poured gypsum decking as well as damage to the interior of the facility. The current HVAC units were installed circa 1986 and require extensive maintenance to keep them operational. Both the roof and HVAC units have greatly exceeded their life expectancies. | $ - | $ 440,000.00 |
| 397 Improvements | | $ 300,000.00 | $ 300,000.00 |
| Convert Building Drawings to AutoCAD | Convert current building drawings into AutoCAD format for better efficiency and planning | $ - | $ 100,000.00 |
| Old Town Hall, Caboose, Depot Backlog | | $ - | $ 250,000.00 |
| W&OD Trail Lighting - Downtown | Final phase to illuminate the length of the trail through the town, from Van Buren to the connection with the Sugarland Run Trail, east of the Herndon Parkway bridge | $ 75,000.00 | $ 715,000.00 |
| HPD Garage | Construction of a permanent exterior garage facility (30' x 40') is needed to expand storage capacity for police bicycles, bulky emergency readiness equipment and supplies, adverse weather equipment and other agency property where space is not available nor suitable for storage inside the police facility. The garage will also support an area to perform technology maintenance associated with police vehicles and equipment. Adding an exterior garage will alleviate haphazard storage of bulky operational equipment inside and around the police facility and provide defined workspace to properly access, maintain, utilize and store the property and equipment. | $ - | $ 1,700,000.00 |
| Purchase "Your Speed" Signs (10/ year) | Traffic Engineering Improvement Committee project | $ 100,000.00 | $ 200,000.00 |
| HPD Equipment | Herndon Police body camera replacement and forensic computer equipment | $ 1,042,660.80 | $ 1,042,660.80 |
| Community Development Positions | Community Development Positions that needed to be filled but was not due to the pandemic | $ 200,000.00 | $ 200,000.00 |
| Community Grants | Grants that were not awarded in Fiscal year 2021 due to the covid-19 pandemic | $ 195,499.00 | $ 195,499.00 |
| Water Pump Station and Vaults | Coordinated preliminary design for a new Fairfax Water pump station to enhance the Town's water system capacity o This project will ensure system demands are met as development occurs in the Downtown and HTOC areas | $ - | $ 3,150,000.00 |
| Sewer Pump Station | This project will provide for conveying most of the future growth in wastewater flows to the Fairfax County sewer system. The design concept consists of a new pumping station near the Sugarland Run Interceptor, along with a combination of a force main and gravity sewer heading east that would transport wastewater to their collection system and treatment plant. | $ 1,480,000.00 | $ 1,480,000.00 |
| Folly Lick Sewer Improvements | This project is designed to meet the increase in system conveyance capacity associated primarily with the Comstock project, along with other development that feeds into this portion of the system | $ 1,116,000.00 | $ 1,116,000.00 |

# TOWN OF HERNDON, VIRGINIA

## ORDINANCE

**August 10, 2021**

**Ordinance, to consider zoning ordinance text amendment, ZOTA #21-02, to amend Chapter 78 (ZONING), Article V (Planned Development Districts), Section 78-51.1 (PD-UR – Planned Development Urban Residential), to allow for an increase in permitted density up to 28 dwelling units per acre when a zoning map amendment includes adaptive reuse of existing buildings for residential dwelling units.**

**Sec. 78-51.1. - PD-UR - Planned development urban residential district.**

(a) *Purpose and intent*. The intent of the PD-UR district is to encourage harmonious and creative new residential development that allows for a mix of housing types and creates attractive and appropriate transitions between commercial, commercial mixed-use, and existing adjacent residential districts. PD-UR districts provide buffers to existing adjacent residential development while creating thoughtful interfaces with potential commercial redevelopment and mixed-use. The district regulations are designed to ensure cohesive residential developments that provide a diversity of housing types at different price points. PD-UR districts provide multimodal options and connections allowing residents to benefit from non-motorized vehicle connections to adjacent commercial areas and access to transit. PD-UR development will provide safe, well-integrated parking, circulation patterns, building massing, and appropriately located open spaces and site amenities. Applications for zoning map amendments and generalized development plans implement the policies of the comprehensive plan and adopted small area plans. The following concepts should be addressed in applications in addition to the adopted policies.

***

*(4) Adaptive reuse. Projects that are reusing an existing building(s) for residential use may be eligible for increased density as specified in table 78-51.1(e). Sites for adaptive reuse should be located along a minimum of one existing transit route and within 0.5 miles of an existing commercial node.*

*(5) Affordable dwelling units. Projects should provide a percentage of dwelling units available to those earning low to moderate incomes for the Washington Standard Metropolitan Statistical Area.*

***

(e) *Dimensional standards*. Structures in the PD-UR zoning district are subject to the dimensional standards set forth in Table 51.1(e).

| **TABLE 78-51.1(e): PD-UR DIMENSIONAL STANDARDS** | |
|---|---|
| **STANDARD** | **ALL USES** |
| Density, maximum | |
| 1 housing type | 15 dwelling units per acre |

| | |
|---|---|
| 2 housing types | 20 dwelling units per acre |
| *Adaptive reuse for residential dwelling units* | *28 dwelling units per acre* |
| *** | |

***

(g) Site planning and building design in PD-UR. The following standards apply to sites and buildings within the PD-UR district:

***

*(11) Water and sewer. Adaptive reuse of an existing building(s) shall result in a less than or neutral impact on water and sewer demand than the present use.*

*(h) Modifications to dimensional standards. Projects that are reusing an existing building(s) may be entitled to modifications pursuant to the modification review standards of Section 78-50.2(d).*

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**Section 78-180. – Definitions**

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*Adaptive reuse. Rehabilitation or renovation of existing building(s) or structures for any use(s) other than the present use.*

***

**TOWN OF HERNDON, VIRGINIA**

**ORDINANCE**

**APRIL 13, 2021**

**Ordinance – to amend Chapter 42 (MOTOR VEHICLES AND TRAFFIC), Article IV (Stopping, Standing, Parking), Division 1 (Generally), Section 42-152(b) (Parking prohibited; fines imposed) by adding thereto a new subsection prohibiting parking in front of or within ten feet of a driveway and the fine imposed.**

**BE IT ORDAINED** by the Town Council of the Town of Herndon, Virginia, that:

1. The following section or provision of the Herndon Town Code (2000), as amended, is amended and re-ordained as follows:

**CHAPTER 42 (MOTOR VEHICLES AND TRAFFIC)**

**Article IV. Stopping, Standing, Parking**

**Division 1. Generally**

**Sec. 42-152. - Parking prohibited; fines imposed.**

(a) No person shall park a vehicle, except in compliance with the directions of a police officer or traffic control device, in a manner inconsistent with the regulations in this section and other sections of this article. The following fines are imposed for the respective violations where the violator pays the fine in accordance with section 42-63(b):

(b) Parking in the following manner or manners is unlawful:

***

**(29) Parking in front of, or within ten feet to either side of, a public or private driveway.........50.00**

***

2. This ordinance shall be effective on and after the date of its adoption.

**TOWN OF HERNDON, VIRGINIA**

**RESOLUTION**

**AUGUST 10, 2021**

**Resolution, to Award a Contract for Financial Budget Planning System/Software, RFP #21-11.**

**WHEREAS,** the Request for Proposal process was used to solicit offers from software contractors; and

**WHEREAS,** the request for proposal solicited services for an initial five-year contract with an option of five one-year renewals; and

**WHEREAS,** the Request for Proposal was posted April 29, 2021, on the eVA Commonwealth of Virginia procurement website, Town's Website and DemandStar Website to maximize fullest competition; and

**WHEREAS,** six proposals were received on May 28, 2021, at 3:00 p.m. and the proposal award was based on the best solution for the Town with the results as follows:

1. ClearGov
2. OpenGov
3. Neubrain
4. turED
5. Vigilant Technologies, LLC.
6. GNC Public Sector; and

**WHEREAS,** it is the staff's recommendation to award the contract to the best proposal that fits the Town's needs, ClearGov; and

**WHEREAS,** funds to support the work with proposal costs established by the contract are available in the following account: I.T. Budget 001/0225/420790.

**NOW, THEREFORE, BE IT RESOLVED** that the Town Council of the Town of Herndon, Virginia hereby awards a five-year contract, RFP #21-11, to **ClearGov** for the Financial Budget Planning System/Software, in the amount of $29,400 for the initial setup and annual fees followed by $25,000 annually for the annual subscription and that the contract may be renewed to up to five one-year agreements.

**TOWN OF HERNDON, VIRGINIA**

**ORDINANCE**

**AUGUST 10, 2021**

**Ordinance -** **to amend and reenact Chapter 54 (PERSONNEL), Article I (In General), Article II (Pay), Article III (Leave), and Article VI (Benefits).**

**BE IT ORDAINED** by the Town Council for the Town of Herndon, Virginia, that:

1. The following sections or provision of the Herndon Town Code (2000), as amended, are amended and re-ordained as follows:

## CHAPTER 54 (PERSONNEL)

### Article I. In General

### Sec. 54-1. Applicability of chapter; administration.

~~(a) The rules, regulations, policies and procedures in this chapter constitute the "Town of Herndon Personnel Policies and Procedures," and they are for use by the town council, supervisory personnel and employees of the town.~~

~~(b) The rules, regulations, policies and procedures apply to all nonappointed employees of the town except as otherwise provided; provided further, however, that officers and deputy and assistant officers of the town, including, without limitation, the heads and directors of departments and officers and their named deputies, appointed by the town manager, may be removed or suspended by the town manager without regard to the rules, regulations, policies and procedures of this chapter, and the town manager, the town attorney and the deputy town attorney may be removed or suspended by the town council without regard to the rules, regulations, policies and procedures of this chapter.~~

~~(c)~~ **(a)** The town manager is responsible for the administration of the provisions of this chapter and has the authority to take appropriate action in dealing with cases of violations of this chapter.

~~(d)~~ **(b)** ~~In implementing this chapter,~~ **T**he town manager is authorized to prepare administrative regulations on personnel management not inconsistent with this chapter. Administrative regulations may be promulgated by the town manager and will generally itemize or detail specifics relating to a personnel management subject. They may be implemented in conjunction with this chapter. Administrative regulations will be posted on the town's website, and on an internal electronic location available to employees. ~~A paper copy of all current regulations~~

~~will be kept in the human resources department. In addition to these regulations, employees may be subject to departmental regulations and policies.~~

~~(e)~~ **(c)** ~~In addition to these regulations, employees may be subject to administrative regulations of the town manager and to departmental regulations and policies. The town manager maintains final responsibility for personnel administration.~~ The director of human resources, subject to the direction of the town manager, is responsible for administering personnel rules and regulations.

**Sec. 54-3. Definitions.**

***

*Time paid* means all hours paid, to include time worked, ~~types of paid leave taken, and holidays an employee may be paid for, excluding compensatory time used.~~ **and types of paid leave taken, as defined in administrative regulation, and in accordance with state and federal laws.** Synonyms include "hours paid".

***

**Article II. Pay**

**Sec. 54-25. Overtime pay.**

(a) Employees who are subject to the overtime provision of the Fair Labor Standards Act (non-exempt personnel) who perform **approved** necessary and assigned overtime work shall have their schedules adjusted within the same work period or shall be compensated for overtime work on an overtime ~~or compensatory time basis as determined by the supervisor or department head.~~ **pay basis.** Overtime pay shall be at the rate of 1½ times the regular rate of pay. Overtime should be kept to a minimum and used to relieve occasional excessive workloads or to address emergencies and not to provide for recurring requirements. Classified employees must work necessary and assigned overtime work as directed by their supervisor. ~~For purposes of calculating overtime pay, all time paid as defined in the definitions section, is included in determining eligibility.~~ **Overtime pay will be calculated in accordance with town administrative regulations and in compliance with state and federal law.**

(b) Employees who are covered by the overtime provisions of the Fair Labor Standards Act, (non-exempt personnel), shall receive overtime pay for time paid over 40 hours, or in the case of sworn police officers, for time paid over 80 hours within the work periods as defined below. The regular work period for employees other than sworn police officers shall begin on Saturday at 12:01 a.m. and continue for seven calendar days ending on Friday at midnight. The regular work period for sworn police officers shall be 14 consecutive calendar days, beginning on Saturday at 12:01 a.m. and continuing 14 calendar days ending on Friday at midnight. ~~The number of hours worked during the 14-day work period will be established by the~~

~~chief of police and may vary depending on shift schedules and department needs.~~ Work periods exceeding 40 or 80 hours respectively, should be adjusted, as much as possible as directed by the supervisor, to avoid overtime. No overtime ~~or compensatory time~~ shall be earned on days in which any type of leave is taken~~. For non-exempt employees: The total number of hours worked in a day where paid or un-paid leave is used, may not exceed the regularly scheduled hours for that work day. The employee shall offset the number of leave hours taken by the number of excess hours worked.~~

***

## Article III. Leave

### ~~Sec. 54-51. Annual leave.~~

~~(a) Employees are eligible to use annual leave as soon as it is accrued, with appropriate supervisory approval in accordance with administrative regulation.~~

~~(b) Annual leave shall be accrued in accordance with the administrative regulation concerning leave, which may be changed in accordance with state or federal law, or in accordance with town operational necessity.~~

~~(c) Department heads, the town manager and the town attorney will receive an additional amount of 2.47 hours of annual leave per pay period.~~

~~(d) For positions that are critical to the town's mission and for which the town has significant difficulty attracting or retaining qualified employees, the town manager may provide certain annual leave benefits as incentives to accept or continue employment. The town manager may grant, at his/her discretion a higher accrual rate, not to exceed a total of eight hours per pay period to new or existing employees. The town manager may grant up to 80 hours of additional annual leave during a leave year to a new employee as an incentive to accept employment or to a current employee as an inducement to continue employment with the town.~~

~~(e) Former employees rehired within one year of their separation date shall retain their time in service for annual leave accrual purposes.~~

~~(f) Former employees rehired within one year of their separation date shall retain their time in service for annual leave accrual purposes.~~

~~(g) Procedural information pertaining to annual leave is outlined by administrative regulation.~~

~~(h) Annual leave may be accumulated up to a maximum of 300 hours of such leave and carried into the next year. Department heads, the town attorney and the town manager may accumulate up to 320 hours of such leave and carry it into the next year. Each employee can carry over an accrued annual leave balance up to such maximum accrued leave from year to year during continuous service. Excess leave deducted may be donated to the sick leave bank or the catastrophic leave program. Proper notice, in accordance with administrative regulation should be given for known sick outages.~~

## ~~Sec. 54-52. Sick leave.~~

~~(a) Regular status full time or regular part time town employees accrue sick leave in accordance with the administrative regulation concerning leave, which may be changed in accordance with state or federal law, or in accordance with town operational necessity. Sick leave does not accrue when an employee is on leave without pay, injury leave, disability leave, or catastrophic leave for at least a full pay period. Employees are eligible to use sick leave as soon as it is accrued. Employees shall give proper notice, in accordance with administrative regulation for known sick outages.~~

~~(b) Employees may take sick leave for the following purposes:~~

~~(1) Personal illness or injury.~~

~~(2) A temporary disability related to pregnancy, miscarriage or childbirth.~~

~~(3) Serious illness of the immediate family where the employee's attendance is required. This may be utilized with the Family and Medical Leave Act, as contained in section 54-55.~~

~~(4) Doctor, dental or other health care appointments for the employee or immediate family members for whom the employee is responsible.~~

~~(c) No limits are placed on the accumulation of sick leave for regular status part-time employees or employees covered under the Virginia Retirement System Plan 1 or Plan 2. The maximum accrual for employees covered under the Virginia Retirement System Hybrid Retirement Plan is 600 hours. Upon an employee's retirement under the Virginia Retirement System, the town shall pay to the retiring employee an amount in dollars up to 25 percent of the dollar amount balance of unused sick leave, with a maximum possible payment of $10,000.00. In the event of the death of an active employee covered under the Virginia Retirement System who had at least five years of continuous service the town will pay out to the deceased employee's personal representative or estate, an amount in dollars up to 25 percent of the dollar amount balance of unused sick leave with a maximum possible payment of $10,000.00. Upon termination (except for dismissals), a payment of 25 percent of the balance of unused sick leave with a maximum possible payment of $2,500.00 for non-probationary employees shall be paid to the employee. No such payment shall be made for probationary employees or employees who are dismissed.~~

## ~~Sec. 54-53. Disability leave.~~

~~In the case of an extended illness or non-work related injury, an employee may be eligible to utilize the disability leave insurance or sick leave bank program in accordance with the administrative regulation in effect.~~

## ~~Sec. 54-54. Leave without pay.~~

~~An employee may be granted no more than two consecutive weeks of leave without pay at the discretion of the appropriate department head. Procedures are outlined by administrative regulation.~~

## ~~Sec. 54-55. Family and medical leave.~~

~~An eligible employee may request leave in accordance with the Family and Medical Leave Act of 1993, as amended. Procedures and eligibility are outlined by administrative regulation and by federal law.~~

## ~~Sec. 54-56. Military leave.~~

~~(a) All regular status employees who leave the town's service to join the armed forces of the United States or are drafted into the military service may be placed on military leave without pay in accordance with the Uniformed Services Employment and Reemployment Act of 1994. Such leave will extend through a date 90 days after the employee is relieved from such service. Such employees shall be restored to the position they vacated, or to another position of the same class, provided that they make application within 90 days after the date of honorable discharge and are physically and mentally capable of performing the work of the position. If the employee is not qualified to perform the duties of such position by reason of disability sustained during military service, but is qualified to perform the duties of any other position, every effort will be made to place such employee in such other position, the duties of which the employee is qualified to perform as will provide the employee like seniority, status and pay, or the nearest approximation thereof, consistent with the circumstances in the case.~~

~~(b) A regular status employee who is a member of the National Guard, Virginia Defense Force, or an organized military reserve of the United States will be allowed to attend training not to exceed 15 calendar days during any one fiscal year. Such employees will be paid at their regular hourly rate for no more than 120 hours per fiscal year. If the time of such training is optional, the time allocation shall be designated at the discretion of the town manager upon recommendation of the department head.~~

~~(c) Regular status employees who are activated to federal or state federally funded duty in the case of a war or other national or state emergency declared by the President, Congress or the governor will be paid a military pay differential (MPD) which will be the difference between (i) the gross base pay such employee would have earned during such period as a town employee (gross base town pay) and (ii) the gross base military pay, provided that the gross base town pay is greater than the gross military pay actually earned. The MPD will begin on the first day of activation and will persist until the earlier of deactivation or one year after activation. Gross base military pay includes all forms of military pay and allowances in money whether taxable or non-taxable.~~

~~(d) Employees absent from work due to military duty may elect to remain on the town health insurance plan while serving on active military duty. The employee must continue to pay the employee portion of the premium; the town will pay the employer portion.~~

~~(e) The programs outlined in this section may be detailed by administrative regulation.~~

~~(f) "Employee" includes officers of the town who maintain regular status employment.~~

### ~~Sec. 54-57. Civil leave.~~

~~A regular employee shall be given time off without loss of pay and without charge to any type of leave when performing jury duty; when subpoenaed to appear before a court, public body or commission in connection with town business; when performing emergency civilian duty in connection with national defense; when needed for the purpose of voting (not to exceed one hour); and when serving on an electoral board at a polling place as an officer of election for any election.~~

### Sec. 54-5~~8~~1. Holiday leave.

The following holidays are observed by the town and shall be granted to regular employees with pay and to temporary and part-time flexible employees without pay, unless such employees are required to be on scheduled duty:

New Year's Day

Martin Luther King Jr. Day

~~Presidents' Day~~

Memorial Day

**Juneteenth**

Independence Day

Labor Day

~~Columbus Day~~

Veterans Day

Thanksgiving Day

Friday after Thanksgiving Day

Christmas Eve (half-day)

Christmas Day

If an approved holiday falls on Saturday, the previous Friday will be ~~considered~~ **observed** as the holiday. If the holiday falls on Sunday, it will be observed on Monday. ~~Employees will be granted holiday leave or pay in accordance with the number of hours regularly scheduled to work on the day the holiday is observed as a town holiday.~~

**Sec. 54-5~~9~~2. Compensatory time off.**

(a) ~~Subject to their supervisor's approval, nonexempt, non-sworn personnel who work more than 40 hours in a work period may elect to take compensatory time off in lieu of payment therefor.~~ Subject to their supervisor's approval, **eligible** nonexempt ~~sworn police officers~~ **employees** who work ~~more than 80 hours in a~~ **hours over their respective** work period may elect to take compensatory time off in lieu of payment therefor. Such compensatory time off will be earned on a time and one-half basis. The town reserves the right to pay overtime wages in lieu of compensatory time. Compensatory time earned should be used before annual leave. ~~Supervisors may deny the request to use comp time if the use of compensatory time will disrupt the department's operations. Supervisors can require an employee to take compensatory time off to manage the accrual limitation.~~

~~(b) Exempt employees may earn compensatory time off on an hour-for-hour basis for authorized overtime work in accordance with the current administrative regulation. Exempt employees may be paid for accrued compensatory time up to the amount stated by administrative regulation. Once the threshold is met, any additional time worked will be unpaid.~~

~~(c)~~**(b)** All eligible employees can carry ~~an accrued~~ **a** compensatory time off balance ~~of no more than 120 hours, in accordance with the administrative regulation that applies to leave. Effective January 1, 2019, compensatory time balances shall not exceed 120 hours at any point in a calendar year. Non-exempt employees who have reached the maximum balance of 120 hours, may not earn additional compensatory time and shall be paid overtime compensation in their regular pay check for overtime hours. For exempt employees, once the comp time threshold is met, any additional time will be unpaid.~~ **in accordance with town administrative regulation.**

***

~~**Sec. 54-60. Injury leave.**~~

~~An employee who is injured while performing the duties of his or her position, and such injury is accepted as compensable under Virginia's Workers' Compensation Act, shall be granted injury leave in accordance with the workers compensation administrative regulation.~~

~~**Sec. 54-61. Administrative leave.**~~

~~(a) The town manager may excuse employees from duty for short periods of time with pay and without charge to leave when the town manager determines it is in the best interest of the town. This leave may be limited to specific shifts, times, groups of employees or to an individual employee.~~

~~(b) The chief of police may grant administrative leave to sworn personnel involved in an officer related shooting.~~

~~(c) An immediate supervisor may grant administrative leave to employee to donate blood or platelets, not to exceed four hours.~~

~~(d) Procedures are outlined by administrative regulation.~~

## ~~Sec. 54-62. Bereavement leave.~~

~~All regular town employees may be granted bereavement leave for a death in the immediate family. The maximum number of hours granted per occurrence for full-time employees shall be 40 for the death of employee's spouse, natural or adopted children or parents, and 24 hours for the death of the employee's brother, sister, grandparents, parents-in-law or other dependents residing in the household who qualify as a dependent for federal income tax purposes. Hours granted per occurrence shall be pro-rated for part-time employees according to the ratio that the number of hours designated to be worked bears to a full-time 40 hour workweek.~~

## ~~Sec. 54-63. Catastrophic leave.~~

~~All regular status full and part time employees may participate in the catastrophic leave program. This leave provides for the voluntary transfer of annual leave benefits to an eligible co-worker who has suffered either a non-work related catastrophic illness or injury or whose dependent family member has suffered a catastrophic illness or injury, which may result in the loss of income. This program is detailed by administrative regulation.~~

## ~~Sec. 54-64. Restricted leave.~~

~~An employee who has established a pattern of abuse of leave privileges, may be placed on restricted leave status by the department head for a period not to exceed six months. Restricted leave is not a disciplinary action and does not remove the employee's eligibility to use accrued leave benefits. Procedures are outlined by administrative regulation.~~

## Sec. 54-53. Additional Leave.

**The Town Manager may provide for additional leave through town administrative regulations.**

# Article VI. Benefits

## ~~Sec. 54-137. Credit union.~~

~~The town may participate with a credit union. Employees of the town are eligible to become members, subject to eligibility criteria of the credit union.~~

**Sec. 54-13~~8~~7. - Educational assistance.**

Subject to conditions listed by administrative regulation, eligible employees may be reimbursed all or a portion of the cost of approved educational or training programs.

**Sec. 54-13~~9~~8. - Travel.**

Employees required to travel or use personal conveyances on official businesses for the town may be reimbursed for such expenses as food, lodging and transportation incurred while on such official business of the town at rates set forth by administrative regulation.

**Sec. 54-1~~40~~39. - Employee assistance program.**

The town will provide all regular status employees with an employee assistance program.

**Sec. 54-14~~1~~0. - Flexible benefit program.**

The town will provide a flexible benefit program and fund the administrative fee for premium conversion and spending accounts.

**Sec. 54-14~~2~~1. - Recreational benefits.**

Recreational benefits of town facilities will be provided to employees in accordance with administrative regulation.

2. This ordinance shall be effective on and after the date of its adoption.

**TOWN OF HERNDON, VIRGINIA**

**RESOLUTION**

**AUGUST 10, 2021**

**Resolution-** **to award Contract #B-21-03, Historic Herndon Streetscape Project–Phase III.**

**WHEREAS,** the Historic Herndon Streetscape Project-Phase III is in the Capital Improvement Program; and

**WHEREAS,** Contract #B-21-03, Historic Herndon Streetscape Project-Phase III, was advertised on May 3, 2021; and

**WHEREAS,** a pre-bid conference was held on May 13, 2021 and was attended by one firm; and

**WHEREAS**, the following bids were received and opened on June 3, 2021 at a public bid opening:

| Contractor | Bid |
|---|---|
| Sagres Construction Corporation | $477,740.00 |
| Fort Myer Construction Corporation | $553,549.78 |
| Ashburn Contraction Corporation | $580,385.00 |

**WHEREAS**, the Sagres Construction Corporation submitted the lowest bid which was found to be responsive and responsible; and

**WHEREAS,** staff recommends in addition to the contract that a contingency of $47,774.00, which is approximately 10 percent of the bid, be authorized; and

**WHEREAS,** funds to support this contract are available in the Capital Projects Account Number #015-9999-490650; and

**WHEREAS,** reimbursement of funds up to $382,192 or 80% of total construction costs are available through a Virginia Department of Transportation (VDOT) agreement between the Town of Herndon and VDOT.

**NOW, THEREFORE, BE IT RESOLVED** that the Town Council of the Town of Herndon, Virginia, hereby awards Contract #B-21-03, Historic Herndon Streetscape Project-Phase III, to Sagres Construction Corporation, in the amount of $477,740.00.

**BE IT FURTHER RESOLVED** that the Town Council of the Town of Herndon, Virginia hereby authorizes a contingency of $47,774.00.

**BE IT FURTHER RESOLVED** that the Town Council of the Town of Herndon, Virginia, hereby authorizes the Town Manager’s designee to approve contract modifications (change orders) that increase project scope and costs, utilizing the project contingency.

**TOWN OF HERNDON, VIRGINIA**

**RESOLUTION**

**August 10, 2021**

**Resolution- to approve a temporary license agreement to use a designated public space in the alley adjacent to Jimmy's Old Town Tavern for outdoor seating for an event.**

**BE IT RESOLVED** by the Town Council for the Town of Herndon, Virginia that:

1. The Town Council approves a temporary license agreement dated August 10, 2021 between the Town of Herndon as licensor and JOTT, INC. d/b/a Jimmy's Old Town Tavern (Jimmy's) as licensee. The license allows Jimmy's to use designated public alley space adjacent to Jimmy's for outdoor seating during an event on September 5, 2021. The license agreement may contain other terms agreed to by the Mayor and is on file in the office of the Town Attorney.

2 The Mayor is authorized to sign and deliver this license agreement and any other instrument to evidence or support the license agreement

3. This resolution shall be effective on and after the date of its adoption.

**TEMPORARY LICENSE AGREEMENT**

This Agreement ("Agreement") is made this 10th day of August 2021 by and between JOTT, INC. d/b/a Jimmy's Old Town Tavern ("Jimmy's) and the TOWN OF HERNDON, VIRGINIA, ("Town").

WHEREAS Jimmy's represents that they have a Temporary Use Permit to conduct an event in the Town of Herndon on September 5, 2021 represented in "Exhibit A" attached hereto ("Permit") and that Jimmy's would like to use the Town's property behind Jimmy's Old Town Tavern Restaurant as shown on the Permit and known as the "Alley";

WHEREAS the Town desires to permit the use of the Alley by Jimmy's on the date as described in the Permit (on September 5, 2021 only).

Now therefore the parties agree as follows:

1. The Town hereby grants Jimmy's authorization to temporarily use the Alley for purposes described in the Permit

2. Jimmy's shall comply with the terms of the Permit, this License, and all applicable town, state and federal laws and regulations obtaining and maintaining at all times any other permit(s) required under applicable law for this use.

3. The parties expressly agree and contract that there shall be no fee for the use of the Town property on this occasion only.

4. The permission to use the property granted by this agreement is nonexclusive in nature, and the Town reserves the right to make concurrent use of the Property.

5. Jimmy's hereby assumes all risk of damage by reason of its occupation of the Alley caused by any defects therein or activity occurring thereon, whether caused by the negligence of the Town, its officers, agents, or employees, or otherwise, and Jimmy's hereby agrees to hold harmless and indemnify the Town, its officers, agents and employees, from and against any such liability for such damage or injury to the extent permitted under the laws of the Commonwealth of Virginia.

6. Jimmy's shall secure, provide and maintain insurance to protect the Town of such type and in such amount as is described below naming the Town as an additional insured. This Agreement shall not take effect until evidence of insurance is provided to the Town and the Town gives Jimmy's written confirmation that the type and amount of insurance is accepted.

Insurance limits shall not be less than the following amounts:

**Liability** - Coverage totaling $5,000.000.00. All policies shall be endorsed to name the Town of Herndon as an additional insured

The insurance required hereunder shall be maintained in effect during the duration of this Agreement. Insurance Policy(s) shall contain a valid provision or endorsement that the policy may not be canceled, terminated, changed or modified without giving thirty (30) calendar days advance written notice thereof to the Town.

7. Termination: The Town may terminate this Agreement upon 24 hours notice to Jimmy's for cause.

8. This Agreement, having been executed in the Commonwealth of Virginia, the construction and performance thereof or any dispute shall be governed by the laws of Virginia. Venue shall be proper in the County of Fairfax, Virginia.

9. This Agreement contains the entire and only agreement between the parties, and it supersedes and merges all pre-existing agreements. Any representations, understandings, promises and any conditions not expressly incorporated herein shall not be binding upon either party or their respective successors in interest.

JOTT, INC.
d/b/a Jimmy's Old Town Tavern

By James C Cirrito
James C. Cirrito, President

ATTEST:

_______________________
Town Clerk

TOWN OF HERNDON, VIRGINIA

By_______________________
Sheila A. Olem, Mayor

APPROVED AS TO FORM:

_______________________
Lesa J. Yeatts
Town Attorney

EXHIBIT A

July 2017

TUP 21-06

TOWN OF
Herndon
VIRGINIA

**Department of Community Development**
**777 Lynn Street**
**Herndon, Virginia 20170-4602**

## APPLICATION FOR APPROVAL OF A TEMPORARY USE SITE PLAN AND ASSOCIATED ZONING INSPECTION PERMIT (TEMPORARY USE PERMIT)

(Not all temporary uses require a permit. See § 78-403.4 of the Herndon Town Code.)

Submittal of this form with **original signatures is required.** ***PLEASE PRINT OR TYPE*** *(Unless otherwise indicated.)*

Name of Business or Organization: Jimmy's Old Town Tavern

Street Address of the Subject Property (including apt/suite #): 697 Spring St Herndon VA 20170

Please describe the requested activity, proposed dates and daily hours of operation. Add more sheets if necessary. OUTDOOR DINING/Fundraiser Sept 5. 2021 8pm - 11pm

Lot Area (site area) Proposed for the Temporary Use: Alley behind Jimmy's

Are any site alterations or any alterations to the building's exterior or interior planned or underway in connection with this use (or were any alterations done)? ☐ No ☐ Yes Please describe :

Name of Contact for the Temporary Use (Applicant): Jimmy Cirrito

Address of Permanent Residence: 9254 Matthew Dr. Manassas Park VA

| Jimcirrito@aol.com | 703-470-4014 | |
|---|---|---|
| E-mail address | Telephone # for duration of temporary use | FAX # |

**The undersigned hereby applies for a Temporary Use Permit under the provisions of § 78-202.6 and § 78-403 of the Herndon Town Code.**

***I hereby affirm and certify that:***

- *The information provided on this form is true and correct to the best of my knowledge.*
- *The requirements associated with this application under § 78-202.6 and § 78-403 of the Herndon Town Code have been read and are understood.*
- *The use and occupancy of buildings and/or the use of land noted above is in conformance with all provisions of the Town of Herndon, Virginia Zoning Ordinance regulations to the best of my knowledge.*
- *The site shall be returned within 48 hours to its condition prior to the establishment of the temporary use.*

James C. Cirrito — 4-26-2021

**Signature of Contact (Applicant)** — **Date**

**APPLICATION FOR APPROVAL OF A TEMPORARY USE SITE PLAN AND ASSOCIATED ZONING INSPECTION PERMIT (TEMPORARY USE PERMIT) - continued**

Name and Title of Property Owner (Applicant): Curtis/Herndon Properties

Mailing Address: Vicki Wilhelm

Vickie@vwilhelm.com — 410-404-4839

E-mail address — Telephone — FAX #

**TO BE SUBMITTED WITH THIS APPLICATION** (Zoning Ordinance § 78-202.6)

✓ Proof of the validity of the contact information provided;

✓ A letter signed by the owner or owner's agent consenting to the application for the Temporary Use Permit;

✓ A Site Plan prepared in accordance with § 78-202.6 and showing the area of proposed activity with signage, display areas, illumination, vehicular entrances to the site (location, type and size), parking area associated with the temporary use (location, layout, and surface material);

✓ The detailed description of the proposed temporary activity requested above should include an analysis of any noise that may not comply with the noise provisions in the Herndon Town Code;

✓ Sample signage to be used;

N/A A statement from the landowner(s) authorizing an agent to act on their behalf (if applicable);

N/A If a pre-application conference took place, a statement indicating the date and time a pre-application conference was held with the Town, as well as a list of participants in the conference;

N/A A receipt or other documentation indicating that taxes have been paid on lands subject to the application (may be obtained when application is filed).

**AUTHORIZATION STEP ONE. SITE IMPROVEMENTS ONLY (verification of Site Plan approval)**

The applicant is authorized to proceed to **make the site improvements** shown on Site Plan # ___________ for purposes of conducting the temporary use described above.

***Signature and Authorization of Zoning Administrator*** — ***Date***

**AUTHORIZATION STEP TWO: AUTHORIZATION TO BEGIN OPERATION OF THE TEMPORARY USE (Temporary Use Permit/Zoning Inspection Permit)**

The applicant has completed the site improvements in accordance with Site Plan # ___________ and the applicant is authorized to **begin operation of the temporary use.** This Permit is effective beginning 9/5/2021 for 1 days.

[signature] — 7/16/2021

***Signature and Authorization of Zoning Administrator*** — ***Date***

***Signature of Zoning Inspector*** — ***Date***

✱ Must obtain temporary license agreement for alley

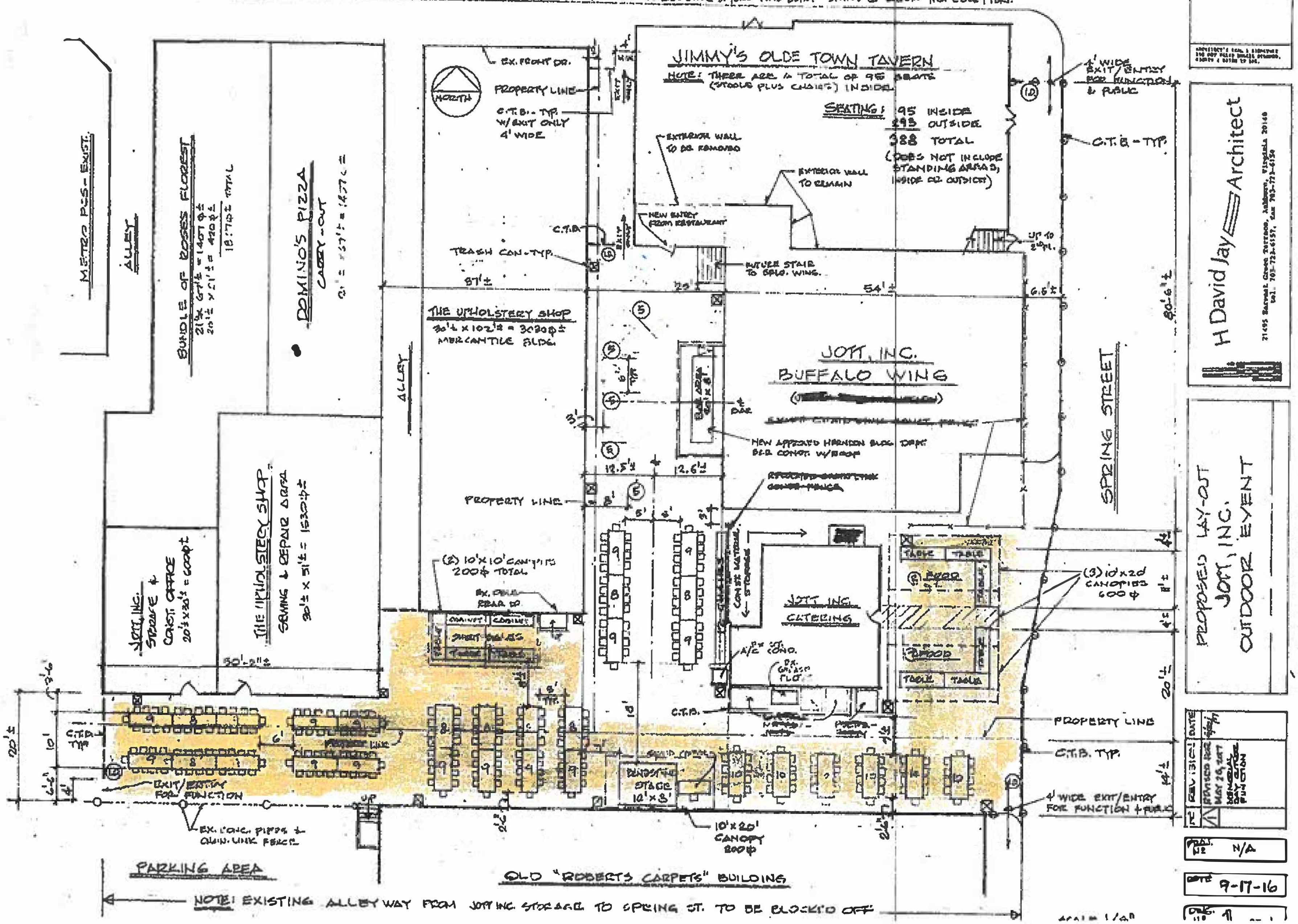
**APPLICATION FOR APPROVAL OF A TEMPORARY USE SITE PLAN AND ASSOCIATED ZONING INSPECTION PERMIT (TEMPORARY USE PERMIT) - continued**

**For Office Use Only:**

<table>
<tr><td rowspan="4">STEP ONE (Site Plan)</td><td>Received by: Lisa W</td><td colspan="2">Fee paid for Temporary Use Site Plan* application:</td><td>Date: 7/16/21</td><td>Case No.: TUP 21-06</td></tr>
<tr><td colspan="5">Use permitted by Town Code Section:</td></tr>
<tr><td colspan="2">Tax Map Reference: 0162 02 0086A</td><td colspan="3">Zoning District: CC</td></tr>
<tr><td colspan="2">Business and Occupational License #:</td><td colspan="3">Status of Taxes: ☑ Paid ☐ Delinquent</td></tr>
<tr><td>STEP TWO (ZIP)</td><td>Received by:</td><td colspan="3">Fee paid for Zoning Inspection Permit/Temporary Use Permit:</td><td>Date:</td></tr>
<tr><td colspan="6">*Note: no application fee is required for uses of less than 90 consecutive days in duration.</td></tr>
</table>

| **Distribution after approval:** | Applicant | Community Development | Fire Department | Finance |
|---|---|---|---|---|

NOTES: • C.T.B. - CAUTION TAPE BARRIER CONNECTED TO EMPTY BEER KEGS @ APPROX. 10'-12' APART WITH "NO ALCOHOL BEYOND THIS POINT" SIGNS ATTACHED TO KEGS.
• NO FIRE HYDRANTS ARE WITHIN THE C.T.B. AREAS.
• LARGE CANOPIES MAY BE PROVIDED RELATIVE TO WEATHER AND/OR BUSINESS OWNER'S OPTION. NONE SHALL EXCEED 800 ◻ IN AREA (2-20'x40' & 1-20'x30')
* PROVIDE "NO ALCOHOL BEYOND THIS POINT" SIGNS @ EACH I.D. LOCATION.



June 10, 2021

David Stromberg

Development Program Planner/Deputy Zoning Administrator

Town of Herndon

Department of Community Development

777 Lynn Street
Herndon VA 20170-0427

Re: Temporary Use Permit for the Extension of Retail Sales, Sunday, September 5, 2021

Dear Mr. Stromberg,

This letter serves as a Request/Application for permission for Jimmy's Old Town Tavern, 697 Spring Street, to have the Town of Herndon issue a Temporary Use Permit for the Extension of Outdoor Retail Sales per The Town of Herndon Zoning Ordinance, Division 3. Temporary Uses; Sec.78-1392 Item (3) and Sec. 78-1395 Item (3) Outdoor Retail Sales Events & Sec. 78-1395 Item (4). Additional Permits for Temporary Use inclusive of Sunday, September 5, 2021 from 8am to 11:00pm.

Enclosed please find the following:

- Drawing of the proposed area
- Letters signed by the adjacent business allowing this event (The Upholstery Shop)
- Letter to the ABC Board of Virginia requesting an extension of license privileges.

If you have any questions, please contact me at 703-470-4014.

Sincerely,

James C. Cirrito

James C. Cirrito
Owner
Jimmy's Old Town Tavern

June 10, 2021

Special Agent, Samantha Rogers
Division of Law Enforcement Operations
Commonwealth of Virginia
Department of Alcoholic Beverage Control
Alexandria Regional Office
6308 Grovedale Drive
Alexandria VA 22310

COPY

Re: Request for Extension of License Privileges for outdoor Event, Sunday, September 5, 2021.

Dear Special Agent Samantha Rogers:

This letter serves as a Request for Permission for JOTT, Inc., trading as Jimmy's Old Town Tavern, License 75822, to extend its license privileges to the alleyway, et al, shown on the enclosed sketch for the following date and time span:

Sunday, September 5, 2021, from 8:00 AM to 11:00 PM

Enclosed please find the following:
- Drawing of the proposed area.
- Application to the Town of Herndon for this event.

The license is obligated to insure full compliance with the ABC laws and all other laws and regulations and is cognizant of criminal action that could be taken toward those involves and administrative action taken toward the license held by JOTT, Inc.

If you have any questions, please contact me at 703-470-4014.

Sincerely,

James C Cirrito

James Cirrito
Owner
Jimmy's Old Town Tavern

697 Spring Street ★ Herndon, VA 20710
Phone: 703.435.JIMS ★ Fax: 703.435.2182 ★ www.jimmystavern.com

TOWN OF Herndon VIRGINIA

# SPECIAL EVENT FACILITY RENTAL APPLICATION

## APPLICANT INFORMATION

Organization: Jimmy's Old Town Tavern

Contact Name: James Cirrito                                                                 Email: Jimcirrito@aol.com

Today's Date: June 15, 2021

Address: 697 Spring St. Herndon VA 20170

Phone Number: 7034704014                                                                 Check One: Mobile

Event Contact Person (if different from above): Click or tap here to enter text.                 Email: Email address

Phone Number: Enter Preferred Contact Phone #                 Check One: Check Mobile, Home or Work from Drop Down

Is the host organization commercial or for-profit entity? Yes

Is the host organization a not-for-profit 501(c)(7)? No

Is the host organization a non-profit 501(c)(3)? No

## FACILITY INFORMATION

Date Requested: September 5, 2021                                                                 Times Requested: 8am to 11pm

Facility Requested: Other *

If you selected: Municipal Parking Lot*, Street Closure* or Other*, please specify: Outdoor seating in Alley behind Jimmy's from 8am until 11pm. Street Closure from 8am til 10am (Spring St between Elden and Locust)

## EVENT INFORMATION

Event Name: Jimmy's Labor Day Poker Run & Pig Roast

Type of Event: Fundraiser

Description of Event: Outdoor seating with live music

Website or Social Media Page(s) for Event: www.jimmystavern.com

| Estimated Expected Attendance: | Times: |
|---|---|
| Public: 200 | Staff Arrival & Set Up: 7am |
| Vendors: 0 | Event Start: Enter 8am |
| Event Staff: 10 | Event End: 11pm |

Others: Enter # Expected        Site Cleaned & Staff Departure midnight

Select YES or NO for each question. *(Answers are REQUIRED for each question).*

| | YES | NO |
|---|---|---|
| Will food, goods or services be offered for sale? | ☒ | ☐ |
| Will food trucks be present? | ☐ | ☒ |
| Will alcohol be available for consumption for free? | ☐ | ☒ |
| Will you provide your own trash removal? | ☒ | ☐ |
| Will you require electrical connections? | ☐ | ☒ |
| Will you be using a generator? | ☐ | ☒ |
| Will you have portable restrooms? | ☐ | ☒ |
| Will you have any animals? | ☐ | ☒ |
| Will there be any amusements such as inflatable structures, climbing walls or rides? | ☐ | ☒ |
| Will there be any bleachers? | ☐ | ☒ |
| Will alcohol be available to purchase? | ☒ | ☐ |
| Will there be any tents over 900 sq ft and/or will hold more than 50 people at one time? | ☐ | ☒ |
| Will you have amplified sound? | ☒ | ☐ |
| Will you charge admission fees? | ☐ | ☒ |
| Is this a fundraiser? | ☒ | ☐ |
| Will you have any other temporary structures? | ☐ | ☒ |

## SUBMISSION REQUIREMENTS

Drafts of required plans are due upon submission of the application. Please see the brochure for additional information and deadlines. All materials may be emailed to: SpecialEventFacilityRental@herndon-va.gov.

☒ Completed Application with non-refundable $50 application fee.

☒ Site Plan

Applicant must submit a plan that includes a diagramed layout of the event. The site plan must indicate the following:

- Overall site map showing perimeter of the event facility/location/site
- Location and dimensions of all temporary tents/structures and the distance from other temporary tents/structures and permanent buildings within the event site boundary
- Location and width of ingress/egress routes
- Location of publicly accessible vehicle parking and event vehicle staging/storage
- Location of display/vendor booths identified by occupant name
- Location of all sanitary facilities
- Location of amusement devices, stages, bleachers, etc.
- Location of all generators and/or temporary electrical service connections

☒ Public Safety & Security Plan

Applicant must submit a plan that includes a diagramed layout of the event. The Public Safety and Security Plan must indicate the following:

- Times of peak attendance
- Plan to provide notification to attendees in the event of an emergency
- Display primary and secondary evacuation routes
- Proposed street closures with details of how to secure the street
- Plan for proposed police presence and/or security

Events with 500+ people will also require a Street Closure Plan, Parking Plan and Crowd Management Plan.
If the plans required by the Fire Marshal contain the same information, a copy of those plans may be submitted.

☒ Set up & Clean-up Plan

Applicant must submit a plan detailing planned set up and clean-up of the event to include a plan for collecting and discarding all refuse and litter associated with the event, removal of any advertisements or signage and any city services requested to accomplish the plan.

- Arrival time of event staff to begin set-up
- Departure time of event staff after clean-up and break down of all equipment
- Plan for removal of all trash and recycling
- Plan for removal of advertisements or signage
- Detail any request for town services (fees apply)

☒ Permits & Insurance

As the event organizer, you are responsible to apply for and secure your own permits and insurance.

Copies of necessary permits and certificates of insurance will be required no later than 30 days prior to your event date.

Additional information regarding permits can be found:

- Carnivals, Fairs and Festivals | Fire and Rescue (fairfaxcounty.gov)
  https://www.fairfaxcounty.gov/fire-ems/fire-marshal/festival
- Health Permits for Mobile Food Service Units | Health (fairfaxcounty.gov)
  https://www.fairfaxcounty.gov/health/permits/mobile-food-unit
- ABC Guidelines (virginia.gov)
  https://www.abc.virginia.gov/licenses/get-a-license/banquet-licenses/banquet-guidelines
- Tents | Fire and Rescue (fairfaxcounty.gov) - https://www.fairfaxcounty.gov/fire-ems/fire-marshal/tents

Additional information on event insurance can be found here: Tenant User Liability Insurance Program (TULIP) – VRSA - https://www.vrsa.us/tulip/

## ACKNOWLEDGEMENT & SIGNATURE

I certify that my answers are true and complete to the best of my knowledge. I understand that this is a request and no guarantees or authorizations have been granted. I acknowledge that I understand that I do not have approval or authorization to advertise my event using the Town of Herndon, its facilities, or locations at this time.

Signature: James C Cirrito James C. Cirrito

Today's Date: June 15, 2021

TOWN OF Herndon VIRGINIA

William H. Ashton II
TOWN MANAGER
T (703) 787-7368
Bill.Ashton@herndon-va.gov

TOWN COUNCIL
Sheila A. Olem, Mayor
Cesar del Aguila, Vice Mayor
Naila Alam
Pradip Dhakal
Signe Friedrichs
Sean M. Regan
Jasbinder Singh

July 20, 2021

Jimmy's Old Town Tavern
697 Spring Street
Herndon, VA 20170
Jimcirrito@aol.com

Dear Mr. Cirrito,

This is in response to your request for a noise permit for the Outdoor Fundraiser for September 6, 2021 to be held in the alley behind Jimmy's, 697 Spring Street, Herndon, VA 20170, between the hours of of 8 AM and 11 PM. Since you will be using amplified sound, you are required to have a noise permit. Please keep in mind that the noise permit only allows amplified sound between 7:00 AM and 10:00 PM.

I am approving the noise permit and this letter will serve as such. By copy of this letter to the Herndon Police, I am advising them of your event since they enforce the noise ordinance.

Best wishes for a successful event.

Sincerely,

Bill Ashton
Town Manager

c. Maggie A. DeBoard, Chief of Police

**TOWN OF HERNDON, VIRGINIA**

**RESOLUTION**

**August 10, 2021**

**Resolution-** **to approve a Temporary License Agreement pursuant to Ordinance 20-O-23 Continuity of Governmental Operations, as amended, between the Town and Dulles Regional Chamber of Commerce d/b/a Herndon Chamber of Commerce for use of Town-owned municipal parking lot spaces for portable toilets and an ice machine for Friday Night Live events.**

**WHEREAS,** the Town of Herndon is the owner of the municipal parking lot adjacent to the Herndon Municipal Center; and

**WHEREAS,** Dulles Regional Chamber of Commerce d/b/a Herndon Chamber of Commerce represents that they have a Special Event Contract to conduct Friday Night Live events in the Town of Herndon on July 2, 9, 16, 23, 30, August 6, 13, 20, 27, September 3, 10, 17, 24 of 2021 as represented in Exhibit A; and

**WHEREAS,** pursuant to Ordinance 20-O-23, Continuity of Governmental Operations, as amended, the Town Manager was authorized to approve temporary license agreements for use of public property or public right-of-way.

**NOW, THEREFORE, BE IT RESOLVED** that the Town Council of the Town of Herndon, Virginia hereby ratifies the Temporary License Agreement dated July 8, 2021 between the Town of Herndon and Dulles Regional Chamber of Commerce d/b/a Herndon Chamber of Commerce for use of town-owned public property or public right-of-way for placement of portable toilets and ice machine for Friday Night live events.

## TEMPORARY LICENSE AGREEMENT

This Agreement ("Agreement") is made this 8th day of July, 2021 by and between DULLES REGIONAL CHAMBER OF COMMERCE d/b/a Herndon Chamber of Commerce, a Virginia corporation ("Chamber") and the TOWN OF HERNDON, VIRGINIA, a municipal corporation ("Town").

WHEREAS Chamber represents that they have a Special Event Contract to conduct Friday Night Live events in the Town of Herndon on July 9, 16, 23, 30, August 6, 13, 20, 27, September 3, 10, 17, 24 of 2021 as represented in the Application and Contract attached hereto and incorporated by reference ("Exhibit A") and that Chamber desires to use the Town's property for portable toilets and an ice machine, also as described in Exhibit A;

WHEREAS the Town desires to permit the use of the Town's property for portable toilets and the ice machine on these dates and as described in Exhibit A.

Now therefore, the parties agree as follows:

1. The Town hereby grants Chamber authorization to temporarily use Town parking spaces for portable toilets and an ice machine as described in Exhibit A.

2. Chamber shall comply with the terms of the Contract and this License and all applicable town, state and federal laws and regulations and obtain and maintain at all times any other permit(s) required under applicable law for this use.

3. The parties expressly agree and contract that there shall be no fee for the use of the Town property for this purpose on these dates.

4. The permission to use the property granted by this agreement is nonexclusive in nature, and the Town reserves the right to make concurrent use of the Property.

5. Chamber hereby assumes all risk of damage by reason of its occupation of the parking spaces caused by any defects therein or activity occurring thereon, and Chamber hereby agrees to hold harmless and indemnify the Town, its officers, agents and employees, from and against any such liability for such damage or injury to the extent permitted under the laws of the Commonwealth of Virginia.

6. Chamber shall secure, provide and maintain insurance to protect the Town of such type and in such amount as is described below naming the Town as an additional insured. This Agreement shall not take effect until evidence of insurance is provided to the Town and the Town gives Chamber written confirmation that the type and amount of insurance is accepted.

Insurance limits shall not be less than the following amounts:

**Commercial General Liability** – Combined single limit of at least $1,000,000 per occurrence and $2,000,000 general aggregate. Policy shall be endorsed to name the Town as an additional insured.

The insurance required hereunder shall be maintained in effect during the duration of this Agreement. Insurance Policy(s) shall contain a valid provision or endorsement that the policy may not be canceled, terminated, changed or modified without giving thirty (30) calendar days advance written notice thereof to the Town.

7. Termination: The Town may terminate this Agreement upon 24 hours notice to Chamber for cause.

8. The ice machine must remain securely and safely locked when not retrieving ice from the machine. The lock should be secured tightly so that the doors will not open. The portable toilets and the ice machine must be removed following the last event but in no event no later than October 4, 2021.

9. This Agreement, having been executed in the Commonwealth of Virginia, the construction and performance thereof or any dispute shall be governed by the laws of Virginia. Venue shall be proper in the County of Fairfax, Virginia.

10. This Agreement contains the entire and only agreement between the parties and it supersedes and merges all pre-existing agreements. Any representations, understandings, promises and any conditions not expressly incorporated herein shall not be binding upon either party or their respective successors in interest.

DULLES REGIONAL CHAMBER OF COMMERCE
d/b/a HERNDON CHAMBER OF COMMERCE

By: Pres & CEO
Name: Joseph Martin
Title: President & CEO

TOWN OF HERNDON, VIRGINIA

William H. Ashton II
Town Manager

APPROVED AS TO FORM:

Lesa J. Yeatts

Lesa J. Yeatts
Town Attorney

**EXHIBIT A**

## FNL Packet Contents

TOWN OF Herndon VIRGINIA

# SPECIAL EVENT FACILITY RENTAL APPLICATION

## Applicant Information

Organization: Dulles Regional Chamber of Commerce

Name: Poindexter, Laura

Date: 31 May 2021

Address: P.O. Box 327
Street Address
Apartment/Unit #

Herndon
City

VA
State

20172
ZIP Code

Phone: 703-609-2200

Email info@herndonrocks.com

| | | |
|---|---|---|
| Is the host organization commercial or for-profit entity? | YES ☐ | NO x |
| Is the host organization a non-profit? | YES ☐ | NO x |
| Is the host organization a not-for-profit? | YES x | NO ☐ |

## Facility Information

Date Requested: : July 2, 9, 16, 23, 30; August 6. 13, 20, 27; September 3, 10, 17, 24, 2021

Times Requested: 6:00-10:30PM

Facility Requested (select one):

| | | | |
|---|---|---|---|
| Town Hall Square | ☐ | Herndon Municipal Center Atrium Lobby | LP |
| Town Green | x | Ingram Council Chambers | ☐ |
| Hoover Conference Room | ☐ | Ingram Council Chamber Lobby | ☐ |

Municipal Parking Lot* ☐ Specify ____________________

Street Closure* ☐ Specify ____________________

* Special criteria applies

TOWN OF Herndon VIRGINIA

# SPECIAL EVENT FACILITY RENTAL APPLICATION

## Event Information

**Event Name:** Friday Night Live!

**Type of Event:** Outdoor Concert Series

**Description of Event:**

Friday Night Live! is a FREE outdoor concert series on the Town Green in Herndon. We feature the most popular local acts from up and down the East Coast. Most of our bands play rock and roll covers from classic to modern rock. Friday Night Live! is produced by the Herndon Chamber of Commerce.

**Expected Attendance:**

| | |
|---|---|
| Public | 690 |
| Vendors | 15 |
| Event Staff | 45 |
| Others | 0 |

**Times:**

| | |
|---|---|
| Staff Arrival & Set up | 4:00pm |
| Event Start | 6:00pm |
| Event End | 10:30pm |
| Site Cleaned & Staff Departure | 10:30pm |

TOWN OF Herndon VIRGINIA

# SPECIAL EVENT FACILITY RENTAL APPLICATION

**Select Yes or No for each question. ALL QUESTIONS ARE REQUIRED.**

| | YES | NO | | YES | NO |
|---|---|---|---|---|---|
| Will food, goods or services be offered for sale? | ☒ | ☐ | Will there be any amusements such as inflatable structures, climbing walls or rides? | ☐ | ☒ |
| Will food trucks be present? | ☐ | ☒ | Will there be any bleachers? | ☐ | ☒ |
| Will alcohol be offered for consumption? | ☒ | ☐ | Will there be any tents over 900 sq ft and/or will hold more than 50 people at one time? | ☐ | ☒ |
| Will you provide your own trash removal? | ☐ | ☒ | Will you have amplified sound? | ☒ | ☐ |
| Will you require electrical connections? | ☒ | ☐ | Will you post signs? | ☒ | ☐ |
| Will you be using a generator? | ☐ | ☒ | Will you charge admission fees? | ☐ | ☒ |
| Will you have portable restrooms? | ☒ | ☐ | Is this a fundraiser? | ☒ | ☐ |
| Will you have any animals? | ☐ | ☒ | Will you have any other temporary structures? | ☒ | ☐ |

TOWN OF Herndon VIRGINIA

# SPECIAL EVENT FACILITY RENTAL APPLICATION

## Submission Requirements

☐ **Completed Application with <u>non-refundable</u> $50 application fee.**

☐ **Site Plan**

**Applicant must submit a plan that includes a diagramed layout of the event. The site plan must indicate the following:**

- Overall site map showing permitter of the event facility/location/site
- Location and dimensions of all permanent buildings within the event site boundary
- Location and dimensions of all temporary tents/structures and the distance from other temporary tents/structures and permanent buildings within the event site boundary
- Location and width of ingress/egress routes
- Location of publicly accessible vehicle parking and event vehicle staging/storage
- Location of display/vendor booths identified by occupant name
- Location of all sanitary facilities
- Location of amusement devices, stages, bleachers, etc.
- Location of all generators and/or temporary electrical service connections

☐ **Public Safety & Security Plan**

**Applicant must submit a plan that includes a diagramed layout of the event. The Public Safety and Security Plan must indicate the following:**

- Times of peak attendance
- Plan to stop all music, performances, and audio-visual effects in the event of an emergency
- Display primary and secondary evacuation routes
- Proposed street closures with details of how to secure the street
- Plan for proposed police presence and/or security

**Events with 500+ people will also require:**
**Street closure Plan**
**Parking Plan**
**Crowd management Plan**

☐ **Set up & Clean-up Plan**

**Applicant must submit a plan detailing planned set up and clean-up of the event to include a plan for collecting and discarding all refuse and litter associated with the event, removal of any advertisements or signage and any city services requested to accomplish the plan.**

- Arrival time of event staff to begin set-up
- Departure time of event staff after clean-up and break down of all equipment
- Plan for removal of all trash and recycling
- Plan for removal of advertisements or signage
- Detail any request for town services (fees apply)

☐ **Permits & Insurance**

**As the event organizer, you are responsible to apply for and secure your own permits and insurance.**
**Copies of necessary permits and certificates of insurance will be required no later than 30 days prior to your event date.**

**Additional information regarding permits can be found:**

Carnivals, Fairs and Festivals | Fire and Rescue (fairfaxcounty.gov)
Health Permits for Mobile Food Service Units | Health (fairfaxcounty.gov)
ABC Guidelines (virginia.gov)
Tents | Fire and Rescue (fairfaxcounty.gov)

Additional information on event insurance can be found here: Tenant User Liability Insurance Program (TULIP) – VRSA

TOWN OF Herndon VIRGINIA

# SPECIAL EVENT FACILITY RENTAL APPLICATION

***I certify that my answers are true and complete to the best of my knowledge. I understand that this is a request and no guarantees or authorizations have been granted. I acknowledge that I understand that I do not have approval or authorization to advertise my event using the Town of Herndon, its facilities, or locations at this time.***

**Signature:** ____________________ **Date:** 5/31/21

TITLE

# Friday Night Live! Set Up and Clean Up Plan

## SET UP

**FNL seasonal activities for set up:**

Portable restrooms (9 regular + 1 handicap accessible) arrive in Municipal Center Parking Lot on 7/1 and remain until 9/25

Friday Night Live! staff will deliver stage banners to Town by Tuesday, June 29.

**FNL weekly activities:**

Friday Night Live! trailer arrives on Lynn Street around 3:30pm.

Friday Night Live! volunteers set up all our vendor tents and tables between 3:30 – 5:30pm along north side of Green (see site plan).

Food vendors set up all their equipment.

Band and sound set up all their equipment on HMC stage.

**Weekly Town activities for set up:**

- 1 sponsor banner installed by town above stage weekly before concert along with two vertical side stage banners
- Fencing placed in front of stage
- Trash cans and trash bags with trash pickers
- Block off 12 parking spaces on Lynn St. (for vendors)
- Fence off monument in back of Town Green
- Set out cones for two parking spaces on Center St. before 5am for light tower and truck
- Block off 7 parking spaces on lower parking lot at HMC for dump trucks (for trash removal)
- Set up 2 - 8ft. tables and 4 chairs upon request if needed by Friday Night Live!
- Un-lock electrical panel box at stage by 5pm
- Set up light tower on top of HMC

**Town activities during the event:**

- Provide HMC access for clothes changing on July 23 only
- Provide HMC access for money counting each night

## CLEAN UP

Friday Night Live! volunteers remove all our vendor tents and tables.

Food vendors remove all their equipment.

Band and sound remove all their equipment.

Friday Night Live! trailer is removed from Lynn St. by 11am on Saturday morning.

**Town activities for clean up:**

Areas Town is responsible for concerning trash pickup after the event is over:

- Bike trail from Station St., to Bridge.
- Lynn St. from Center St., to Station St., to include trash cans.
- Center St., from bridge to Lynn, to include trash cans
- Lower parking lot
- Underground parking lot
- Hill beside library at bridge, and all areas behind library
- All areas behind HMC, to include trash cans
- All areas around HMC
- Municipal parking lot

Remove bagged trash to DPW shops.

TOWN OF HERNDON, VIRGINIA
FINANCE
777 LYNN STREET
HERNDON, VA 20170-4602
(703)435-6800
Welcome

004634-0010 Bobby H. 06/07/2021 11:21AM

MISCELLANEOUS
MISCELLANEOUS RECEIVABLE
(MR015)
2021 Item: MR015
1 @ 50.00
MISCELLANEOUS
RECEIVABLE (MR015) 50.00

50.00

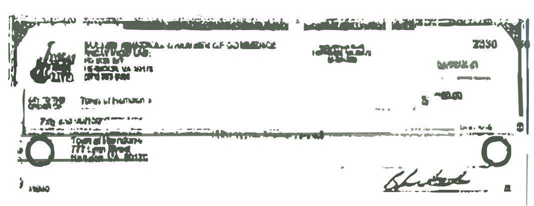
Subtotal 50.00
Total 50.00

CHECK 50.00
Check Number002330

Change due 0.00

Paid by: FRIDAY NIGHT LIVE

Comments: DULLES CHAMBER OF COMMERCE



Thank you for your payment

TOWN OF HERNDON, VIRGINIA COPY
DUPLICATE RECEIPT

# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY): 06/09/2021

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

**IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).**

**PRODUCER**
HRI Associates
718 Pine Street
Herndon VA 20170

CONTACT NAME: Lori VanBuskirk
PHONE (A/C, No, Ext): (703) 435-3500 FAX (A/C, No): (703) 481-0234
E-MAIL ADDRESS: certificates@hriassociates.com

| INSURER(S) AFFORDING COVERAGE | | NAIC # |
|---|---|---|
| INSURER A : | Cincinnati Insurance Company | 10677 |
| INSURER B : | Cincinnati Indemnity Company | 23280 |
| INSURER C : | | |
| INSURER D : | | |
| INSURER E : | | |
| INSURER F : | | |

**INSURED**
Dulles Regional Chamber of Commerce
PO BOX 327
Herndon, VA 20172

**COVERAGES** **CERTIFICATE NUMBER:** **REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

| INSR LTR | TYPE OF INSURANCE | ADDL INSD | SUBR WVD | POLICY NUMBER | POLICY EFF (MM/DD/YYYY) | POLICY EXP (MM/DD/YYYY) | LIMITS | |
|---|---|---|---|---|---|---|---|---|
| A | [X] COMMERCIAL GENERAL LIABILITY; [ ] CLAIMS-MADE [X] OCCUR; GEN'L AGGREGATE LIMIT APPLIES PER: [X] POLICY [ ] PRO-JECT [ ] LOC; [X] OTHER: Liquor Liability | Y | | EPP 049 78 47 | 9/26/2020 | 9/26/2021 | EACH OCCURRENCE | $ 1,000,000 |
| | | | | | | | DAMAGE TO RENTED PREMISES (Ea occurrence) | $ 100,000 |
| | | | | | | | MED EXP (Any one person) | $ 5,000 |
| | | | | | | | PERSONAL & ADV INJURY | $ 1,000,000 |
| | | | | | | | GENERAL AGGREGATE | $ 2,000,000 |
| | | | | | | | PRODUCTS - COMP/OP AGG | $ 2,000,000 |
| | | | | | | | Liquor Liability | $ 1,000,000 |
| A | AUTOMOBILE LIABILITY; [ ] ANY AUTO; [ ] OWNED AUTOS ONLY [ ] SCHEDULED AUTOS; [X] HIRED AUTOS ONLY [X] NON-OWNED AUTOS ONLY | | | EPP 049 78 47 | 9/26/2020 | 9/26/2021 | COMBINED SINGLE LIMIT (Ea accident) | $ 1,000,000 |
| | | | | | | | BODILY INJURY (Per person) | $ |
| | | | | | | | BODILY INJURY (Per accident) | $ |
| | | | | | | | PROPERTY DAMAGE (Per accident) | $ |
| | | | | | | | | $ |
| A | [X] UMBRELLA LIAB [X] OCCUR; [ ] EXCESS LIAB [ ] CLAIMS-MADE; [ ] DED [ ] RETENTION $ NONE | | | EPP 049 78 47 | 9/26/2020 | 9/26/2021 | EACH OCCURRENCE | $ 1,000,000 |
| | | | | | | | AGGREGATE | $ 1,000,000 |
| | | | | | | | | $ |
| B | WORKERS COMPENSATION AND EMPLOYERS' LIABILITY Y / N; ANYPROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? [ ] (Mandatory in NH); If yes, describe under DESCRIPTION OF OPERATIONS below | N / A | | EWC 028 08 30 | 11/12/2020 | 11/12/2021 | [X] PER STATUTE [ ] OTH-ER | |
| | | | | | | | E.L. EACH ACCIDENT | $ 100,000 |
| | | | | | | | E.L. DISEASE - EA EMPLOYEE | $ 100,000 |
| | | | | | | | E.L. DISEASE - POLICY LIMIT | $ 500,000 |

**DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)**

RE: Friday Night Live Concert Series. Town of Herndon is listed as additional insured with respects to general liability when requested by written contract.

**CERTIFICATE HOLDER**

Town of Herndon
777 Lynn Street
Herndon VA 20170

**CANCELLATION**

**SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.**

AUTHORIZED REPRESENTATIVE
Lori VanBuskirk

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The ACORD name and logo are registered marks of ACORD

Form intended to be filled out and submitted electronically.

**FAIRFAX COUNTY FIRE & RESCUE DEPARTMENT**
**OFFICE OF THE FIRE MARSHAL**
12099 Government Center Pkwy, 3rd Floor, Fairfax, VA 22035
Phone: 703-246-4803, TTY 711, Email: Fire.RevenuePermits@fairfaxcounty.gov
OFM Homepage - https://www.fairfaxcounty.gov/fire-ems/fire-marshal

# CARNIVALS, FAIRS, FESTIVALS

and Outdoor Public Assemblages 500+ Persons

## Public Safety Plan Review and FPCP Application

Date: 5/31/2021 Event Type: Outdoor Concert Series

Name of Event Organization: Dulles Regional Chamber of Commerce

Date of Event: July 2, 9, 16, 23, 30, 2021 Approximate Number of Attendees: 750

Event Coordinator/Sponsor: Laura Poindexter Phone #: 703-609-2200

Event Site Owner / Representative / Contact Name: Town of Herndon / Judy Fry

Site Phone #: 703-787-7367 Alternate Phone #: 703-435-6800 x2091

Email: judy.fry@herndon-va.gov

## DOCUMENTATION CHECKLIST

**SUBMIT THIS APPLICATION WITH THE FOLLOWING ITEMS TO THE ABOVE ADDRESS WITH THE $150 PERMIT (FPCP) FEE:**

(✔) **PUBLIC SAFETY PLAN** (✔) **SITE LAYOUT DIAGRAM**

**A SEPARATE FPCP IS REQUIRED FOR THE FOLLOWING ACTIVITIES CONDUCTED AT THE ABOVE-NAMED EVENT:**

( ) **TEMPORARY TENT** - *APPLICATION, PLANS AND A $150 FEE (F3TENT)*
( ) **PORTABLE LP-GAS CYLINDERS, PER EVENT** - *APPLICATION AND A $78 FEE (F3LP6)*
( ) **STATIONARY LP-GAS TANK, TEMPORARY INSTALLATION** - *APPLICATION, PLANS AND A $150 FEE (F3LP5)*
( ) **FIREWORKS/PYROTECHNICS DISPLAY** - *APPLICATION, PLANS AND A $480 FEE (F3FW3 OR F3FW4)*
( ) **OPEN-FLAME/CANDLES INSIDE, EACH EVENT** - *APPLICATION AND A $78 FEE (F3FLM2)*

*Make Check or Money Order Payable to **County of Fairfax***

## BILLING AND INSPECTION LOCATION INFORMATION

Responsible Party Name: Joe Martin Phone #: 703-898-9663

Event Billing Address: Dulles Chamber, P.O. Box 327, Herndon, VA 20172

Inspection Location Name: Herndon Town Green, rear of Herndon Municipal Center

Inspection Location: 777 Lynn Street, Herndon, VA 20170

**All conditions, surroundings and arrangements shall be in accordance with the Fire Prevention Code.**

I, Joe Martin, hereby accept full responsibility for adherence to requirements of the *Virginia Statewide Fire Prevention Code* (SFPC) and *Fairfax County Fire Prevention Code* for the above event.

Name of Person Making Application: Joe Martin
*Print Name* *Signature*

Telephone #: 703-898-9663 Emergency Telephone #: 703-898-9663

OFFICE USE ONLY

A/P Number: ______ Other Permit(s): ______ Non-RUP / TSP Number: ______

Form intended to be filled out and submitted electronically.


**FAIRFAX COUNTY FIRE & RESCUE DEPARTMENT**
**OFFICE OF THE FIRE MARSHAL**
12099 Government Center Pkwy, 3rd Floor, Fairfax, VA 22035
Phone: 703-246-4803, TTY 711, Email: Fire.RevenuePermits@fairfaxcounty.gov
OFM Homepage - https://www.fairfaxcounty.gov/fire-ems/fire-marshal


# CARNIVALS, FAIRS, FESTIVALS

and Outdoor Public Assemblages 500+ Persons

## Public Safety Plan Review and FPCP Application

Date: 5/31/2021 Event Type: Outdoor Concert Series

Name of Event Organization: Dulles Regional Chamber of Commerce

Date of Event: Aug 6, 13, 20, 27, 2021 Approximate Number of Attendees: 750

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Event Site Owner / Representative / Contact Name: Town of Herndon / Judy Fry

Site Phone #: 703-787-7367 Alternate Phone #: 703-435-6800 x2091

Email: judy.fry@herndon-va.gov

## DOCUMENTATION CHECKLIST

SUBMIT THIS APPLICATION WITH THE FOLLOWING ITEMS TO THE ABOVE ADDRESS WITH THE **$150** PERMIT (FPCP) FEE:

(✔) PUBLIC SAFETY PLAN (✔) SITE LAYOUT DIAGRAM

A SEPARATE FPCP IS REQUIRED FOR THE FOLLOWING ACTIVITIES CONDUCTED AT THE ABOVE-NAMED EVENT:

( ) **TEMPORARY TENT** - *APPLICATION, PLANS AND A $150 FEE (F3TENT)*
( ) **PORTABLE LP-GAS CYLINDERS, PER EVENT** - *APPLICATION AND A $78 FEE (F3LP6)*
( ) **STATIONARY LP-GAS TANK, TEMPORARY INSTALLATION** - *APPLICATION, PLANS AND A $150 FEE (F3LP5)*
( ) **FIREWORKS/PYROTECHNICS DISPLAY** - *APPLICATION, PLANS AND A $480 FEE (F3FW3 OR F3FW4)*
( ) **OPEN-FLAME/CANDLES INSIDE, EACH EVENT** - *APPLICATION AND A $78 FEE (F3FLM2)*

*Make Check or Money Order Payable to **County of Fairfax***

## BILLING AND INSPECTION LOCATION INFORMATION

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Event Billing Address: Dulles Chamber, P.O. Box 327, Herndon, VA 20172

Inspection Location Name: Herndon Town Green, rear of Herndon Municipal Center

Inspection Location: 777 Lynn Street, Herndon, VA 20170

**All conditions, surroundings and arrangements shall be in accordance with the Fire Prevention Code.**

I, Joe Martin, hereby accept full responsibility for adherence to requirements of the *Virginia Statewide Fire Prevention Code* (SFPC) and *Fairfax County Fire Prevention Code* for the above event.

Name of Person Making Application: Joe Martin
*Print Name* *Signature*

Telephone #: 703-898-9663 Emergency Telephone #: 703-898-9663

OFFICE USE ONLY

A/P Number: ______ Other Permit(s): ______ Non-RUP / TSP Number: ______

Form intended to be filled out and submitted electronically.


**FAIRFAX COUNTY FIRE & RESCUE DEPARTMENT**
**OFFICE OF THE FIRE MARSHAL**
12099 Government Center Pkwy, 3rd Floor, Fairfax, VA 22035
Phone: 703-246-4803, TTY 711, Email: Fire.RevenuePermits@fairfaxcounty.gov
OFM Homepage - https://www.fairfaxcounty.gov/fire-ems/fire-marshal


# CARNIVALS, FAIRS, FESTIVALS

and Outdoor Public Assemblages 500+ Persons

## Public Safety Plan Review and FPCP Application

Date: 5/31/2021 Event Type: Outdoor Concert Series

Name of Event Organization: Dulles Regional Chamber of Commerce

Date of Event: Sept 3, 10, 17, 24, 2021 Approximate Number of Attendees: 750

Event Coordinator/Sponsor: Laura Poindexter Phone #: 703-609-2200

Event Site Owner / Representative / Contact Name: Town of Herndon / Judy Fry

Site Phone #: 703-787-7367 Alternate Phone #: 703-435-6800 x2091

Email: judy.fry@herndon-va.gov

## DOCUMENTATION CHECKLIST

**SUBMIT THIS APPLICATION WITH THE FOLLOWING ITEMS TO THE ABOVE ADDRESS WITH THE $150 PERMIT (FPCP) FEE:**

- [x] **PUBLIC SAFETY PLAN**
- [x] **SITE LAYOUT DIAGRAM**

**A SEPARATE FPCP IS REQUIRED FOR THE FOLLOWING ACTIVITIES CONDUCTED AT THE ABOVE-NAMED EVENT:**

- [ ] **TEMPORARY TENT** - *APPLICATION, PLANS AND A $150 FEE (F3TENT)*
- [ ] **PORTABLE LP-GAS CYLINDERS, PER EVENT** - *APPLICATION AND A $78 FEE (F3LP6)*
- [ ] **STATIONARY LP-GAS TANK, TEMPORARY INSTALLATION** - *APPLICATION, PLANS AND A $150 FEE (F3LP5)*
- [ ] **FIREWORKS/PYROTECHNICS DISPLAY** - *APPLICATION, PLANS AND A $480 FEE (F3FW3 OR F3FW4)*
- [ ] **OPEN-FLAME/CANDLES INSIDE, EACH EVENT** - *APPLICATION AND A $78 FEE (F3FLM2)*

*Make Check or Money Order Payable to **County of Fairfax***

## BILLING AND INSPECTION LOCATION INFORMATION

Responsible Party Name: Joe Martin Phone #: 703-898-9663

Event Billing Address: Dulles Chamber, P.O. Box 327, Herndon, VA 20172

Inspection Location Name: Herndon Town Green, rear of Herndon Municipal Center

Inspection Location: 777 Lynn Street, Herndon, VA 20170

**All conditions, surroundings and arrangements shall be in accordance with the Fire Prevention Code.**

I, Joe Martin, hereby accept full responsibility for adherence to requirements of the *Virginia Statewide Fire Prevention Code* (SFPC) and *Fairfax County Fire Prevention Code* for the above event.

Name of Person Making Application: Joe Martin (Print Name) ________ (Signature)

Telephone #: 703-898-9663 Emergency Telephone #: 703-898-9663

**OFFICE USE ONLY**

A/P Number: ________ Other Permit(s): ________ Non-RUP / TSP Number: ________

**Act #** 3155194 **A/P #** 36037 **Act Type** FPCP (FIRE PROTECTION PLAN REVIEW) **#** 1

**Property Information**

**Address** 777 LYNN ST
HERNDON VA 20170-0000

**Location**

**Application Information**

**Type** FPCP USE FIRE PREVENT CODE PERMIT (USE) **Priority** **Type of Work** F3CARN **Dept of Commerce**
**Square Footage** 0.00 **Declared Valuation** 0.00 **A/P Name** FRIDAY NIGHT LIVE
**Desc of Work** Friday Night Live..July 2,9,16,23,30. Laura Poindexter 703-609-2200 judy.fry@herndon-va.gov

**Initial Review**

**Issued Date/Time** 06/08/2021 13:28 **Issued By** FPD CASHIER4 ☒ **System Generated**
**Scheduled Date/Time** **Scheduled By** ☐ **Waived**
**Department** FIRE **Assigned To**

**Review Results**

**Reviewed By** SLOFS1 ☒ **Approved** **Suspense Date**
**Start Date/Time** 06/08/2021 16:08 **Completed Date/Time** 06/08/2021 16:08 **Actual Time** 0.50

**Comments**
No Comments

**Problems**

No Problems

**Condition of Approvals**

Condition ZONING TSP Application Date 06/08/2021 13:28 Approvel Date 06/08/2021 13:28
Assigned Applied By FPD CASHIER4 Approved By FPD CASHIER4
Approval F-EXMP ☒ System Generated ☐ Supervisor Required
Comments Town of Herndon

**Activity Review Details**

No Activity Review Details

**Additional Info**

**Specific Location**

**Building Number:** **Floor:** **Suite:**

**Use Group:** **Non Rup Number:**

**Permit Time Frame**

**From:** 07/02/2021 **To:** 07/30/2021 **Days:** 28

**Burn Permit** **New Installation?**

**Air Curtain Destructor:** **Pit Incinerators:**

**Battalion:** 401 **Fire Station:** 404 **Bluebeam?** Y **Expedited Review?** **Emergency Contact Phone** (703)898-9663

**Fairfax County Government**
12055 Government Center Parkway
Fairfax, VA 22035

# Use Review Detail

**Report Date** 06/08/2021 04:11 PM **Submitted By** Page 1

**Act #** 3155195 **A/P #** 36038 **Act Type** FPCP (FIRE PROTECTION PLAN REVIEW) **#** 1

**Property Information**

**Address** 777 LYNN ST
HERNDON VA 20170-0000

**Location**

**Application Information**

**Type** FPCP USE FIRE PREVENT CODE PERMIT (USE) **Priority** **Type of Work** F3CARN **Dept of Commerce**
**Square Footage** 0.00 **Declared Valuation** 0.00 **A/P Name** FRIDAY NIGHT LIVE
**Desc of Work** Friday Night Live..August 6,13,20,27,2021..Laura Poindexter 703-609-2200 judy.fry@herndon-va.gov

**Initial Review**

**Issued Date/Time** 06/08/2021 13:31 **Issued By** FPD CASHIER4 ☒ **System Generated**
**Scheduled Date/Time** **Scheduled By** ☐ **Waived**
**Department** FIRE **Assigned To**

**Review Results**

**Reviewed By** SLOFS1 ☒ **Approved** **Suspense Date**
**Start Date/Time** 06/08/2021 16:10 **Completed Date/Time** 06/08/2021 16:10 **Actual Time** 0.50

**Comments**
No Comments

**Problems**

No Problems

**Condition of Approvals**

Condition ZONING TSP Application Date 06/08/2021 13:31 Approvel Date 06/08/2021 13:31
Assigned Applied By FPD CASHIER4 Approved By FPD CASHIER4
Approval F-EXMP ☒ System Generated ☐ Supervisor Required
Comments

**Activity Review Details**

No Activity Review Details

**Additional Info**

**Specific Location**

**Building Number:** **Floor:** **Suite:**

**Use Group:** **Non Rup Number:**

**Permit Time Frame**

**From:** 08/06/2021 **To:** 08/31/2021 **Days:** 25

**Burn Permit** **New Installation?**

**Air Curtain Destructor:** **Pit Incinerators:**

**Battalion:** 401 **Fire Station:** 404 **Bluebeam?** Y **Expedited Review?** **Emergency Contact Phone** (703)898-9663

**Act #** 3155198 **A/P #** 36039 **Act Type** FPCP (FIRE PROTECTION PLAN REVIEW) **#** 1

**Property Information**

**Address** 777 LYNN ST
HERNDON VA 20170-0000

**Location**

**Application Information**

**Type** FPCP USE FIRE PREVENT CODE PERMIT (USE) **Priority** **Type of Work** F3CARN **Dept of Commerce**
**Square Footage** 0.00 **Declared Valuation** 0.00 **A/P Name** FRIDAY NIGHT LIVE
**Desc of Work** Friday Night Live..Sept 3,10,17,24,2021...Laura Poindexter 703-609-2200 judy.fry@herndon-va.gov

**Initial Review**

**Issued Date/Time** 06/08/2021 13:33 **Issued By** FPD CASHIER4 ☒ **System Generated**
**Scheduled Date/Time** **Scheduled By** ☐ **Waived**
**Department** FIRE **Assigned To**

**Review Results**

**Reviewed By** SLOFS1 ☒ **Approved** **Suspense Date**
**Start Date/Time** 06/08/2021 16:15 **Completed Date/Time** 06/08/2021 16:15 **Actual Time** 0.50

**Comments**

No Comments

**Problems**

No Problems

**Condition of Approvals**

Condition ZONING TSP Application Date 06/08/2021 13:33 Approvel Date 06/08/2021 13:33
Assigned Applied By FPD CASHIER4 Approved By FPD CASHIER4
Approval F-EXMP ☒ System Generated ☐ Supervisor Required
Comments

## Activity Review Details

No Activity Review Details

**Additional Info**

**Specific Location**

**Building Number:** **Floor:** **Suite:**

**Use Group:** **Non Rup Number:**

**Permit Time Frame**

**From:** 09/03/2021 **To:** 09/30/2021 **Days:** 27

**Burn Permit** **New Installation?**

**Air Curtain Destructor:** **Pit Incinerators:**

**Battalion:** 401 **Fire Station:** 404 **Bluebeam?** **Expedited Review?** **Emergency Contact Phone** (703)898-9663

Plans
APPROVED
by Fire Marshal

- Fire Marshal field inspection REQUIRED for final approval.
- No inspection without approved, color-print plans onsite.
- Approval of this plan does not constitute approval to omit, amend, or otherwise not comply with any of the provisions in the adopted codes, standards, or manufacturer's installation requirements.

Date: 06/08/2021
Reviewed by: S. LOFSTROM
Permit #: U36037

# FRIDAY NIGHT LIVE EMERGENCY PLAN – 2021

1. Friday Night Live! - Outdoor Summer Concert Series
2. Dates: July 2, 9, 16, 23, 30; August 6. 13, 20, 27; September 3, 10, 17, 24, 2021 - 6:00-10:30PM
3. Location: Rear of Herndon Municipal Center located at 777 Lynn Street, Herndon, VA 20170
4. Contact Information:

   Property Owner:
   Town of Herndon, Attn. Judy Fry, 777 Lynn Street, Herndon, VA 20170
   Tel: 703-787-7367, Email: judy.fry@herndon-va.gov

   Event Sponsor:
   Dulles Regional Chamber of Commerce, P.O. Box 327, Herndon, VA 20172
   Tel: 571-323-5300

   Key Event Staff:
   Primary: Laura Poindexter, Cell: 703-609-2200, Email: info@herndonrocks.com
   Alternate: Joe Martin, Cell: 703-898-9663, Email: jmartin@dulleschamber.org

5. Event set-up time begins at 4pm each Friday.
6. Approximate number of attendees: 750
7. Event is patrolled by approximately 14 Marshals, most of whom have radios to communicate with each other and event managers as well as cell phones to summon help or call 911. We also have 2 uniformed Herndon Police Department officers on site.
8. The procedure to immediately report any emergency will be via radio if available to event managers, as well as cell phones to 911 or police on site.
9. Evacuation procedures will be via the five ingress/egress points located at each corner of our outdoor venue.
10. All Crowd and Event managers can stop the music and command the PA systems in the event of an emergency.
11. Primary and secondary evacuation routes will be two outdoor paths to Lynn Street, two outdoor paths to the W&OD bike trail and stairs to Center Street.
12. Crowd management plan. Designated and trained crowd managers, including Laura Poindexter, Doug Downer, George Price and others as assigned each night (approximate ratio 1:250) shall appropriately implement the emergency procedures described in this plan. In addition, crowd managers shall also act as fire watch personnel and keep diligent watch for fires, obstructions to means of egress and other hazards during the time our event is open to the public or such activity is being conducted and take prompt measures for remediation of hazards and assist in the evacuation of the public from the event areas. Other Marshals and event staff shall serve as back up or additional crowd managers as needed.

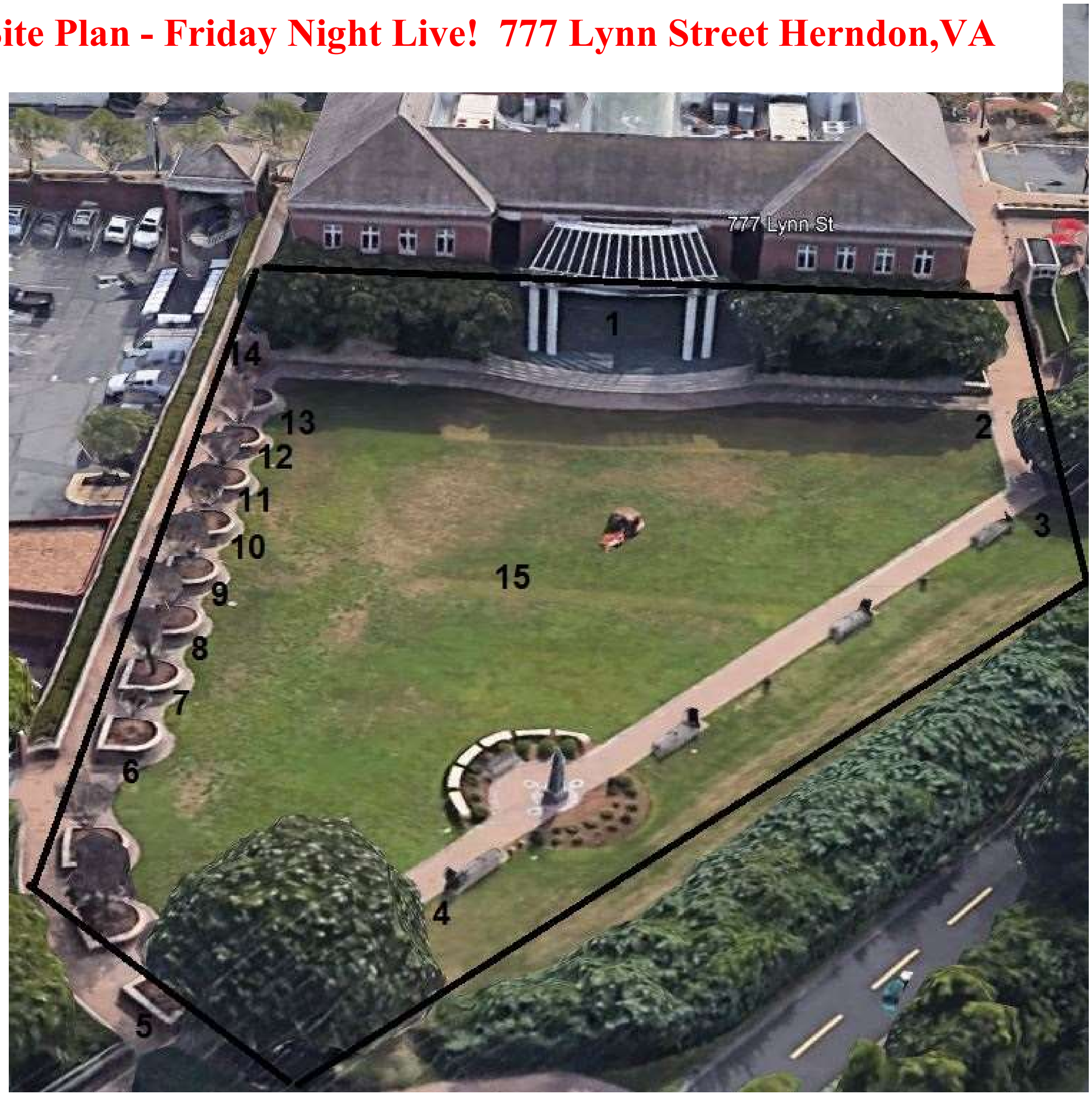
Office of the Fire Marshal
Fairfax County, Virginia
AP#: U36037

# Site Plan - Friday Night Live! 777 Lynn Street Herndon,VA


**Legend:**

1. Stage - Herndon Municipal Center
2. Ingress/Egress to Lynn St. and Emergency vehicle access 12' wide
3. Ingress/Egress to W&OD Trail
4. Ingress/Egress to W&OD Trail
5. Ingress/Egress to Center St.
6. Food Vendor with 10x10 canopy
7. Food Vendor with 10x10 canopy
8. Food Vendor with 10x10 canopy
9. Beer Vendor with 10x10 canopy
10. Beer Vendor with 10x10 canopy
11. ID Booth and Event Management with 10x10 canopy
12. Popcorn sales with 10x10 canopy
13. Ice Cream sales with 10x10 canopy
14. Ingress/Egress to Lynn St.
15. Lawn - seating / standing area
16. **16.** Portable restrooms – 9 regular + 1 handicap accessible

# Site Plan - Friday Night Live!  777 Lynn Street Herndon,VA

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Office of the Fire Marshal
Fairfax County, Virginia
AP#: U36037

**Site Plan Layout Information - Friday Night Live!**

1) Site Map and Legend on previous page

2) Site Map and Legend on previous page

3) There are no permanent buildings within our boundaries. We are located outside.

4) Only 10x10 pop-up canopies, located at Legend numbers 6 through 13.

5) Fire hydrants are located on Lynn and Center Streets.

6) Vehicle Ingress/Egress is Legend item #2 and is 12' wide.

7) Areas to park are all public and located outside of our venue in many various places. Vehicles are not allowed into our event space.

8) Vendor Booths are Legend # 6 through 13.

9) Stage only, no amusements - Legend # 1.

10) Gathering area is Legend # 15. #2-5 are Ingress/Egress points

11) Evacuation routes are legend #'s 2-5. All are staffed with Marshals with radios during event. Crowd managers are located at Legend #11, #1 and stationed throughout the event space. Event boundary is drawn in black line on the photo.

12) None

13) Legend # 6 - No more than one 20-pound cylinder, if any.

14) None.

Office of the Fire Marshal
Fairfax County, Virginia
AP#: U36037

Plans
APPROVED
by Fire Marshal

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- No inspection without approved, color-print plans onsite.
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Date: 06/08/2021
Reviewed by: S. LOFSTROM
Permit #: U36038

# FRIDAY NIGHT LIVE EMERGENCY PLAN – 2021

1. Friday Night Live! - Outdoor Summer Concert Series
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4. Contact Information:

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   Tel: 703-787-7367, Email: judy.fry@herndon-va.gov

   Event Sponsor:
   Dulles Regional Chamber of Commerce, P.O. Box 327, Herndon, VA 20172
   Tel: 571-323-5300

   Key Event Staff:
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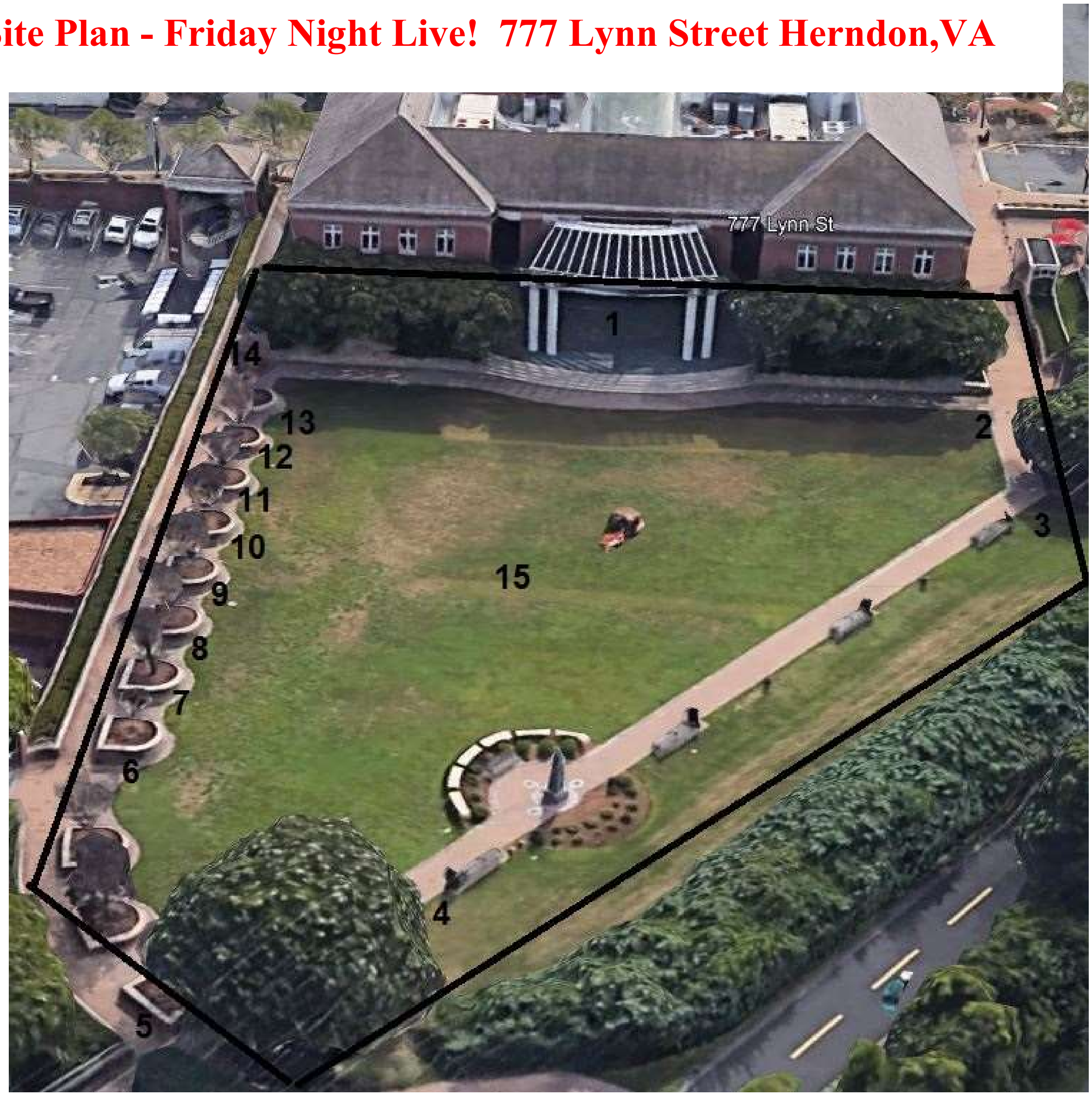
Office of the Fire Marshal
Fairfax County, Virginia
AP#: U36038

# Site Plan - Friday Night Live!  777 Lynn Street Herndon,VA




**Legend:**

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12. Popcorn sales with 10x10 canopy
13. Ice Cream sales with 10x10 canopy
14. Ingress/Egress to Lynn St.
15. Lawn - seating / standing area

Office of the Fire Marshal
Fairfax County, Virginia
AP#: U36038

**Site Plan Layout Information - Friday Night Live!**

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3) There are no permanent buildings within our boundaries. We are located outside.
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10) Gathering area is Legend # 15. #2-5 are Ingress/Egress points
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12) None
13) Legend # 6 - No more than one 20-pound cylinder, if any.
14) None.

Office of the Fire Marshal
Fairfax County, Virginia
AP#: U36038

Plans APPROVED by Fire Marshal

- Fire Marshal field inspection REQUIRED for final approval.
- No inspection without approved, color-print plans onsite.
- Approval of this plan does not constitute approval to omit, amend, or otherwise not comply with any of the provisions in the adopted codes, standards, or manufacturer's installation requirements.

Date: 06/08/2021
Reviewed by: S. LOFSTROM
Permit #: U36039

# FRIDAY NIGHT LIVE EMERGENCY PLAN – 2021

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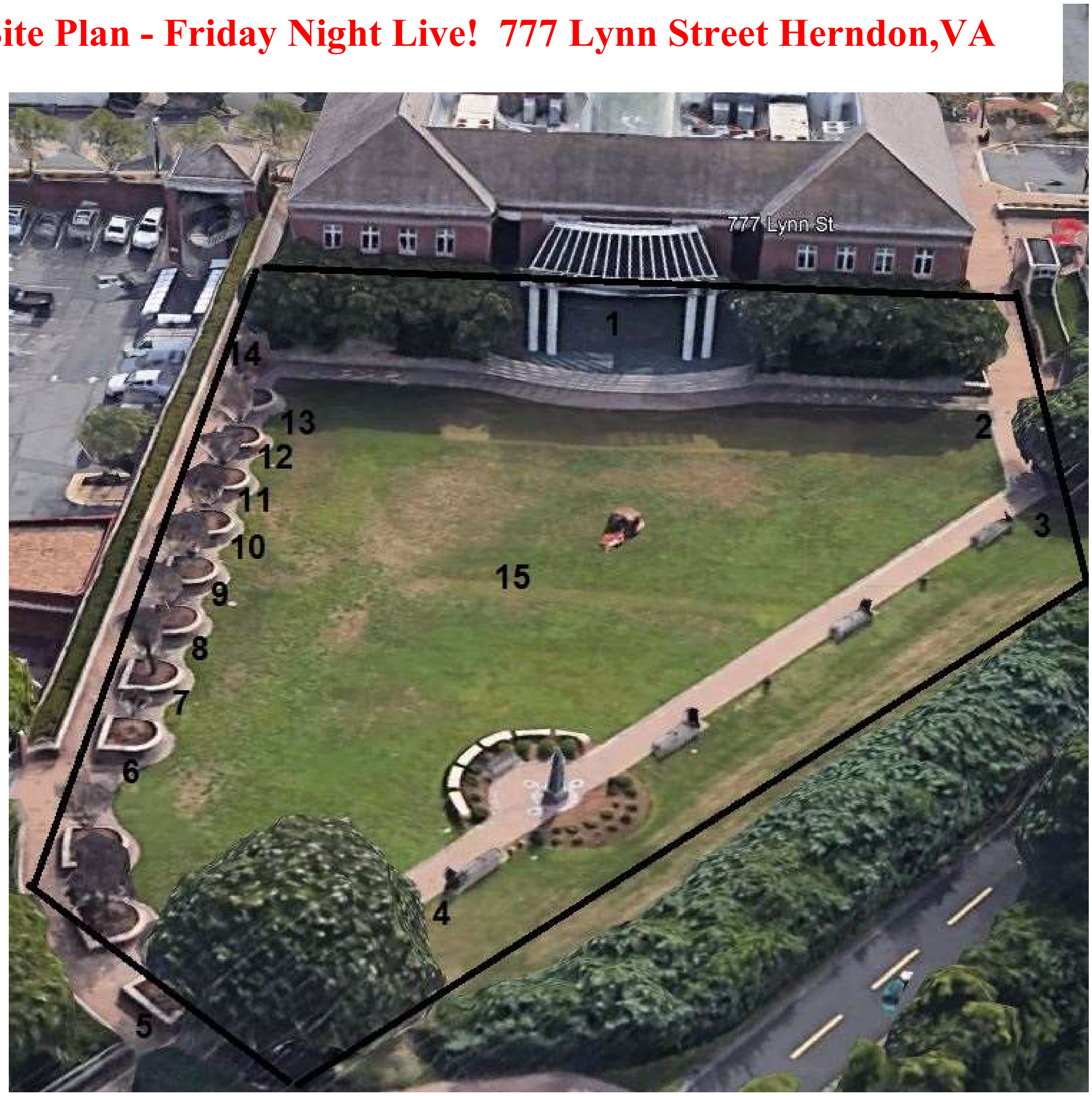
Office of the Fire Marshal
Fairfax County, Virginia
AP#: U36039

## Site Plan - Friday Night Live!  777 Lynn Street Herndon,VA

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Office of the Fire Marshal
Fairfax County, Virginia
AP#: U36039

**Site Plan Layout Information - Friday Night Live!**

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12) None

13) Legend # 6 - No more than one 20-pound cylinder, if any.

14) None.

Office of the Fire Marshal
Fairfax County, Virginia
AP#: U36039

TOWN OF Herndon VIRGINIA

William H. Ashton II
TOWN MANAGER
T (703) 787-7368
Bill.Ashton@herndon-va.gov

TOWN COUNCIL
Sheila A. Olem, Mayor
Cesar del Aguila, Vice Mayor
Naila Alam
Pradip Dhakal
Signe Friedrichs
Sean M. Regan
Jasbinder Singh

July 9, 2021

Dulles Regional Chamber of Commerce
Mr. Joe Martin, President & CEO
Ms. Laura Poindexter
PO Box 327
Herndon, VA 20172
info@herndonrocks.com

Dear Mr. Martin & Ms. Poindexter,

This is in response to your request for a noise permit for the Friday Night Live Outdoor Concert Series for July 2, 9, 16, 23, 30; August 6, 13, 20, 27; and September 3, 10, 17, 24, 2021 to be held on the Town Green, Herndon, VA 20170, between the hours of of 5 PM and 10 PM. Since you will be using amplified sound, you are required to have a noise permit. Please keep in mind that the noise permit only allows amplified sound between 7:00 AM and 10:00 PM.

I am approving the noise permit and this letter will serve as such. By copy of this letter to the Herndon Police, I am advising them of your event since they enforce the noise ordinance.

Best wishes for a successful event.

Sincerely,

Bill Ashton
Town Manager

c. Maggie A. DeBoard, Chief of Police

2021 TOH Sign Board Dates for FNL

SIDE A

June 21-July 2

July 12 - July 23

August 9 - 20

September 13 - 24

VIRGINIA ALCOHOLIC BEVERAGE CONTROL AUTHORITY
2901 Hermitage Road · P O Box 27491 · Richmond VA 23261-7491

# ABC BANQUET LICENSE

*License Number:*
***586641***

*State License Fee Paid:* $200

*License Type:*
**Banquet Special Event (Per Day)**
*Banquet Event Dates:*
**07/02/2021 , 07/09/2021 , 07/16/2021 , 07/23/2021 , 07/30/2021**

*Banquet Name & Event Address*
**Joseph Martin**
**Dulles Regional Chamber of Commerce**
**Herndon Town Green**
**777 Lynn St**
**Herndon, VA 20170-4602**

Fairfax County - Territory # 70
Alexandria - Region 4
(703) 313-4432

**By Order of Alcoholic Beverage Control Board**

Maria K Everett

**Chair**

**Instructions for Operating under a Banquet License**

The privileges of this license are hereby granted by the Virginia Alcoholic Beverage Control Board to the Licensee named above to operate in accordance with the terms of the license herein designated and the applicable statutes of the Commonwealth of Virginia and regulations of the Board.

1. Do not sell or give away any alcoholic beverage to any person who you know or have reason to believe is intoxicated and do not allow any alcoholic beverage to be consumed by such a person in attendance at your banquet. Do not allow any person who you know or have reason to believe is intoxicated to loiter upon your licensed area. Any person who has drunk enough alcoholic beverages to affect his manner, disposition, speech, muscular movements, general appearance or behavior, as to be apparent to observation shall be deemed to be intoxicated.
2. Do not sell or give away any alcoholic beverage to any person who you know or have reason to believe is less than 21 years of age and do not allow any alcoholic beverage to be consumed by such a person in attendance at your banquet.
3. Do not allow any form of illegal gambling to take place during your banquet.
4. Do not possess any illegal gambling apparatus, machine or device upon your licensed premises.
5. Do not be intoxicated or under the influence of a self-administered drug during your banquet.
6. Do not sell or give away any alcoholic beverages on your licensed area during restricted hours.
7. Mixed Beverages under a Mixed Beverage Special Event License must be purchased from a state ABC Store.
8. Do not purchase alcoholic beverages from licensed wholesalers except on the day of the banquet. For those functions held on Saturday or Sunday, purchase may be made on Friday. Payment must be made in cash or a valid check drawn upon a bank account in the name of the licensee or in the name of the group sponsoring the banquet. Each invoice must be signed by the purchasing licensee or his duly authorized agent.
9. Licensed wholesalers may supply, at a reasonable wholesale price, paper or plastic cups upon which advertising matter regarding beer or wine may appear.
10. The license privilege is strictly for on premises sale and/or consumption of alcoholic beverages at the address of event
11. Do not sell, give away or allow the consumption of alcoholic beverage in any portion or your licensed area that has not been approved by the Board. (NOTE: Violation of this instruction could result in arrest for Drinking in Public.) Alcoholic beverages must be confined to the building, room or general area for which the license is issued.
12. Do not allow any person who is less than 18 years of age to sell, serve or dispense beer.

**Joseph Martin**
**Dulles Regional Chamber of Commerce**
**9699 Zimbro Ave**
**Manassas VA 20110**

The license privilege is strictly for on premises sale and/or consumption of alcoholic beverages at the address of event

Virginia Alcoholic Beverage Control Authority

Chief Executive Officer
Travis G. Hill

Chair
Maria J. K. Everett

Vice Chair
Beth G. Hungate-Noland

Board of Directors
William D. Euille
Gregory F. Holland
Mark E. Rubin

New Banquet Licensee:

Enclosed you will find your approved ABC Banquet License. Please check the license for any errors and review your responsibilities while utilizing this license. If you have any questions, please contact the local ABC office listed on your license.

We would appreciate your feedback, and invite you to take a brief online survey about your experience with our banquet licensing process. Your feedback will help us grow, further enhance our processes, and ensure excellent customer service.

Please type https://www.abc.virginia.gov/survey-ebanquet into your web browser and follow the prompts. If you do not have access to a computer, most public libraries have computers for public use.

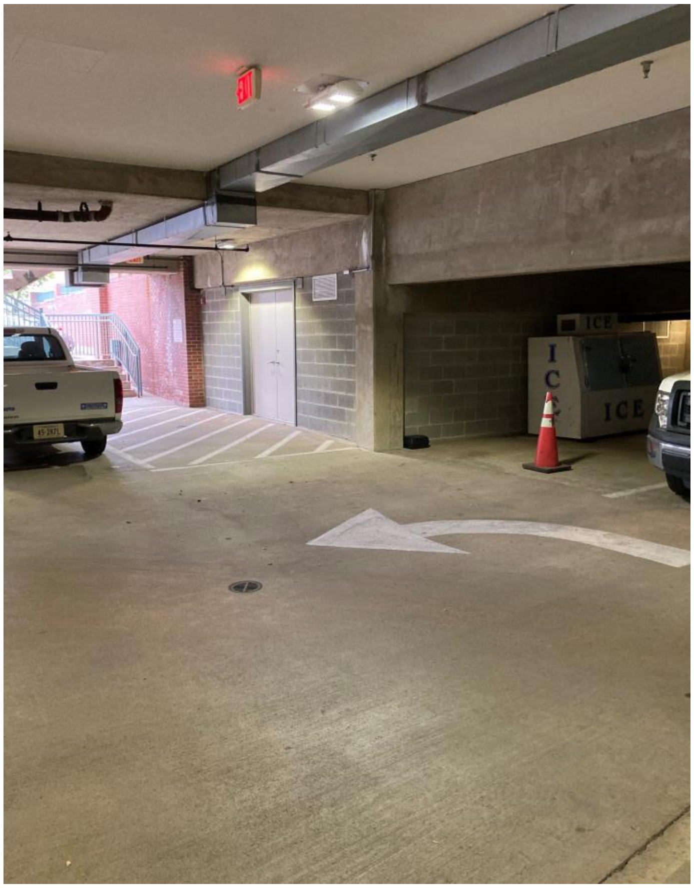
Your participation and feedback is greatly appreciated and we thank you in advance. If you have questions about this survey, please do not hesitate to contact Chris Linton, Compliance Audit Supervisor, via email at Christopher.Linton@abc.virginia.gov or by calling 804-213-4467.

It was a pleasure to serve you and we look forward to assisting you with future needs.

Thank You,

Chris Linton

Compliance Audit Supervisor
Virginia Alcoholic Beverage Control Authority






**ICE MACHINE**

TOWN OF Herndon VIRGINIA

# TOWN EVENT CONTRACT

This contract serves as approval for the use of town facilities by the "applicant" (*applicant organization taken from the special event request form*), from the "town".

Event Name: FRIDAY NIGHT LIVE!

Date of Event: July ~~2~~, 9, 16, 23, 30; August 6, 13, 20, 27; September 3, 10, 17, 24, 2021

Location of Event(s): Town Green and Herndon Municipal Center Lobby

## EVENT DESCRIPTION

Description of Event: Outdoor Concert Series

| Estimated Expected Attendance: | Times: |
|---|---|
| Public: 690 | Staff Arrival & Set Up: 4:00 PM |
| Vendors: 15 | Event Start: 6:00 PM |
| Event Staff: 45 | Event End: 10:30 PM |
| Others: 0 | Site Cleaned & Staff Departure 10:30 PM |

| YES | NO | |
|---|---|---|
| ☒ | ☐ | Food will/will not be sold |
| ☒ | ☐ | Alcohol will/will not be sold |

## LOCATIONS AND FACILITIES

The parameters of the event are as described below and as shown on attachment(s): (a) site plan; (b) traffic plan; (c) security plan; (d) estimate of town services; (e) Certificates of Insurance; (f) receipt for security deposit; (g) schedule of services and (h) special permits.

The Herndon Municipal Center Lobby will be available for the purposes of counting money, at the end of each scheduled show on the following dates July ~~2~~, 9, 16, 23, 30; August 6, 13, 20, 27; and September 3, 10, 17, 24, 2021. In addition, the Herndon Municipal Center Lobby only will be available for use by the Applicant on July 23, 2021 for the duration of the event.

## TEMPORARY STRUCTURES/FACILITIES

The applicant is responsible for the erection of any temporary structures or facilities required for the special event. Temporary structures and facilities shall be as shown on attachment (a) site plan. The applicant is responsible for providing sanitary facilities (portlets) as described and located on attachment (a) site plan.

## SERVICES TO BE PROVIDED BY THE TOWN

The town will provide the services identified in attachment **(G)** schedule of services for the estimated hours and at the estimated cost of $ 21,917.22 (*include a schedule of services, rentals, and equipment including estimated prices as attachment*).

## SECURITY DEPOSIT

The town hereby acknowledges the receipt of a security deposit/bond in the amount of $ 0.00 which shall only be returned/released to the applicant within 30 days of the event if no damages or other costs are incurred by the town. Any charges for damages or additional costs will be billed to the applicant by the town within 30 days of the event.

If an after-event meeting is required by the town, the security deposit will not be returned until the meeting has occurred and the damages and costs have been paid and the event has been closed out by the town.

## PUBLIC ACCESS TO PUBLIC USE PROPERTY

Use of public facilities are limited to the areas described herein. The applicant shall ensure that the public has access to adjacent areas and has reasonable access through the event site.

## ACCESS TO W&OD TRAIL

The W&OD trail is not town property and is not part of this agreement. The applicant shall keep the trail clear for general public use. The trail shall not be blocked or re-routed without written permission of NOVA park authority.

## OTHER APPROVALS, LICENSES AND PERMITS

The applicant shall be responsible to obtain the following additional licenses, permits or approvals, if required:

- ABC license for alcohol, if alcohol will be served
- Health department food licenses, if food will be served
- Approval by NOVA Parks, if the W&OD trail will be used or modified
- Fairfax County Fire Marshal if propane, or other liquified petroleum will be used for cooking
- Amusement permits
- Structural permits
- Noise permit

## CONDITIONS RELATED TO AMPLIFIED SOUND AND COMPLIANCE WITH NOISE ORDINANCE

Applicant shall comply with the Town of Herndon noise ordinance, Section 26, Article VI. Sound amplifying equipment may only be used if expressly permitted in the conditions described below.

Conditions related to amplified sound: Friday Night Live Outdoor Concert Series for July ~~2~~, 9, 16, 23, 30; August 6, 13, 20, 27; and September 3, 10, 17, 24, 2021 to be held on the Town Green, Herndon, VA 20170, between the hours of 5 PM and 10:00 PM.

## COMPLIANCE WITH OTHER FEDERAL, STATE AND LOCAL LAWS

The applicant shall comply with the terms of this contract and all applicable town, state, and federal laws and regulations and maintaining at all times any other permit(s), licenses, etc. required under applicable law for the use. This Contract shall be deemed to be a Virginia contract and shall be governed as to all matters whether of validity, interpretations, obligations, performance or otherwise exclusively by the laws of the Commonwealth of Virginia. Any and all suits for any claims or for any and every breach or dispute arising out of this Contract shall be maintained in the appropriate court of competent jurisdiction in the County of Fairfax.

## FEES AND FINANCIAL REQUIREMENTS

The total amount due to the Town of Herndon is $ SEE ATTACHMENT (G) SCHEDULE OF SERVICES SUMMARY . The fee is detailed in attachment **(G)**, schedule of services. Town services requested or required at the time of the event that are not listed on attachment **(G)** will be charged after the event as an additional cost. If the actual cost incurred differs from attachment (G) schedule of services, the actual cost will be the amount due to the town. Any waivers or reductions in fees authorized by the Town Council are identified in attachment **(G)**. A 50% deposit must be paid to the Town of Herndon at least 7 days prior to the event. Checks are to be made payable to "Town of Herndon." The remaining balance will be billed to the applicant and is due within 30 days after the event.

## CANCELLATION

Cancellation by the applicant within 7 days of the event will result in charges to the applicant of actual costs incurred by the town. The Town of Herndon may cancel the event for inclement weather if the town determines that the event could unreasonably damage town property or the safety of individuals. In addition, the Town of Herndon may cancel the event if the space is required for a public purpose. If the event is canceled by the Town of Herndon, every effort will be made to establish an alternate date. If an alternate date can not be scheduled, the Town of Herndon will return deposits paid by the applicant.

## RESPONSIBILITY TO PROTECT TOWN PROPERTY FROM DAMAGE

The applicant shall clean up following the event and return the sites and facilities to their original condition. All trash shall be stored in proper trash receptacles. Trash shall be removed by: the Town of Herndon Public Works Department. The applicant is responsible for damage to town property caused by event activities.

## INSURANCE

The applicant shall maintain a $2 million general liability policy and a $5 million general liability policy if alcohol is being served for the special event in which the town is listed as an additional insured.

## INDEMNIFICATION

Applicant shall hold harmless the Town of Herndon, its officers, agents, employees and volunteers from any claims, causes of action, penalties, losses, expenses or any other liability for injuries, death or damages to persons or property resulting from the special event which are caused by the omissions or authorized acts of the applicant's or sponsor's officers, agents or employees, The applicant or sponsor assumes the risk of utilization of space.

If the town incurs any costs as a result of the applicant's or sponsor's failure to comply with any provisions of this agreement including clean up or if town property is destroyed or damaged by reason of the event, the applicant shall reimburse the town for the town's actual costs, including actual replacement or repair cost of the destroyed property. The town may retain any deposit or portion thereof as full or partial reimbursement for any such damage.

## RESCISSION OF CONTRACT

The town may rescind this contract at any time upon a determination that the applicant or its users have not adhered to the rules and regulations governing the use of the property and the deposit will be forfeited.

Further, the town reserves the right to terminate the event and rescind the contract without prior notice to the event organizer, in situations that threaten public health, safety and welfare. Such situations include, but are not limited to crowds in excess of property capacity, unruly or violent crowds or extreme weather events. The town shall not issue any refunds if an event is terminated pursuant to this section and will not be liable for any additional expenses incurred by the event organizer as a result of termination.

**Organization:** Dulles Regional Chamber of Commerce

**Contact Name:** Laura Poindexter **Email:** info@herndonrocks.com **Today's Date:** July 8, 2021

**Address:** PO Box 327, Herndon, VA 20172

**Phone Number:** 703-609-2200 **Check One:** Check Mobile, Home or Work from Drop Down

Signature: ____ Pres & CEO Today's Date: July 9, 2021

Joe Martin
Dulles Regional Chamber of Commerce
P.O. Box 327, Herndon, VA 20172

Signature: ____ Today's Date: July 9, 2021

Bill Ashton, Town Manager
Town of Herndon
777 Lynn Street, Herndon, VA 20170





Lisa J. Gnatt
Town Attorney

ATTACHMENT G: SCHEDULE OF SERVICES SUMMARY

*The following is an estimate. Actual costs may vary.

| | |
|---|---|
| STAFF OVERTIME | $21,096.00 |
| MATERIALS | $821.22 |
| ESTIMATED EVENT TOTAL FOR THE SEASON | $21,917.22 |
| COUNCIL APPROVED DONATION | ($20,000.00) |
| POTENTIAL BALANCE. ACTUAL COSTS MAY VARY. | $1,917.22 |

**ATTACHMENT G: SCHEDULE OF SERVICES**

*The following is for estimation purposes only. Actual costs may vary.
** This schedule is intended to list the value of services. It does not reflect acutal charges to the Applicant.
*** Waived for non-profit

| | | DURATION PER EVENT | # OF EVENTS | TOTAL HOURS | PER HOUR COST | TOTAL AMOUNT | SUBTOTALS |
|---|---|---|---|---|---|---|---|
| STAFF | | | | | | | |
| | POLICE OFFICER #1 | 5 HOURS (6PM-11PM) | ~~13~~ 12 | 60 | $75 | $4,500 | |
| | POLICE OFFICER #2 | 5 HOURS (6PM-11PM) | ~~13~~ 12 | 60 | $75 | $4,500 | |
| | | | ~~13~~ 12 | | | | |
| ** | DPW #1 Regular Time | 2 hours | ~~13~~ 12 | 24 | $29 | $696 | |
| ** | DPW #2 Regular Time | 2 hours | ~~13~~ 12 | 24 | $29 | $696 | |
| ** | DPW #3 Regular Time | 2 hours | ~~13~~ 12 | 24 | $29 | $696 | |
| ** | DPW #4 Regular Time | 2 hours | ~~13~~ 12 | 24 | $29 | $696 | |
| | DPW #1 Overtime | 8 hours | ~~13~~ 12 | 96 | $36 | $3,456 | |
| | DPW #2 Overtime | 8 hours | ~~13~~ 12 | 96 | $36 | $3,456 | |
| | DPW #3 Overtime | 6 hours | ~~13~~ 12 | 72 | $36 | $2,592 | |
| | DPW #4 Overtime | 6 hours | ~~13~~ 12 | 72 | $36 | $2,592 | |
| | | | | | | | $23,880.00 |
| EQUIPMENT | | | | | | | |
| ** | 714 (1TON TRUCK) | 2 hours | ~~13~~ 12 | 24 | $35.30 | $847.20 | |
| ** | 729T (2AXLE TRAILER) | 2 hours | ~~13~~ 12 | 24 | $3.90 | $93.60 | |
| ** | 767 (DUMP BED TRUCK) | 8 hours | ~~13~~ 12 | 96 | $55.00 | $5,280.00 | |
| ** | 892 (TRASH TRUCK) | 8 hours | ~~13~~ 12 | 96 | $97.80 | $9,388.80 | |
| ** | 971 (light tower) | 16 hours | ~~13~~ 12 | 192 | $35.00 | $6,720.00 | |
| ** | Light tower | 4 hours | ~~13~~ 12 | 48 | $35.00 | $1,680.00 | |
| ** | 115 (PICK UP TRUCK) | 16 hours | ~~13~~ 12 | 192 | $24.60 | $4,723.20 | |
| ** | | | | | | | $28,732.80 |
| MATERIALS | | QUANTITY | # OF EVENTS | TOTAL QUANTITY | RATE | TOTAL COST | |
| | TRASH BAGS | 32 | ~~13~~ 12 | 384 | $0.42 | $161.28 | |
| | RECYCLING BAGS | 18 | ~~13~~ 12 | 216 | $0.15 | $32.40 | |
| | GREEN TRASHCANS | 10 | ~~13~~ 12 | 120 | $1.00 | $120.00 | |
| | TY-WRAP | 0.5 | ~~13~~ 12 | 6 | $27.59 | $165.54 | |
| | CONES | 19 | ~~13~~ 12 | 228 | $0.50 | $114.00 | |
| | CROWD FENCING | 4 | ~~13~~ 12 | 48 | $1.00 | $48.00 | |
| | SMALL TRASH CANS | 6 | ~~13~~ 12 | 72 | $1.00 | $72.00 | |
| | RECYCLING CANS | 9 | ~~13~~ 12 | 108 | 1.00 | $108.00 | |
| | | | | | | | $821.22 |
| FACILITY | | # OF DATES | COST PER DATE | | | TOTAL COST | |
| *** | TOWN GREEN | ~~13~~ 12 | $500 | | | $6,000 | |
| *** | HMC LOBBY | 1 | $150 | | | | |
| *** | | | | | | | $6,150.00 |
| | | | | | | TOTAL COST OF TOWN SERVICES | $59,584.02 |
| | | | | | | **ACTUAL COST TO APPLICANT** | **$21,917.22** |

**TOWN OF HERNDON, VIRGINIA**

**RESOLUTION**

**August 10, 2021**

**Resolution – to approve and authorize the Mayor to sign a 3-year license agreement between the Town of Herndon and Nafis Peter Ahmed and Ruth Llabres Ahmed for the Town's use of the lot at the corner of Lynn and Station Streets for public parking and other public purposes.**

**BE IT RESOLVED** by the Town Council for the Town of Herndon, Virginia that:

1. The Town Council approves a license agreement dated August 10, 2021 between the Town of Herndon as licensee and Nafis Peter Ahmed and Ruth Llabres Ahmed as licensor. The license agreement allows for the Town use of the lot at the corner of Lynn and Station Streets for public parking and other public purposes for a term of 3-years beginning on September 1, 2021 and expiring on August 31, 2024. The rent will be $1450.00 per calendar month.

2. The license agreement may contain other terms agreed to by the Mayor and is on file in the office of the Town Attorney.

3. The Mayor is authorized to sign and deliver this license agreement and any other instrument to evidence or support the license agreement.

4. This resolution shall be effective on and after the date of its adoption.

# LICENSE AGREEMENT

This License dated August 10, 2021, by and between the TOWN OF HERNDON, VIRGINIA, a municipal corporation (Town) and NAFIS PETER AHMED and RUTH LLABRES AHMED (Ahmed).

**Recitals**

Ahmed is the owner of a lot improved with a parking lot at the corner of Lynn Street and Station Street, Herndon, Virginia, Fairfax County Tax map number 0162-02-0290, as described, and subject to noted title and use restrictions on "Boundary & Physical Survey, Property of Nafis Ahmed," dated July 26, 1991, by Charles R. Johnson Consulting Engineer and Land Surveyor. This plat is incorporated by reference. This lot may be referred to as "the land."

Ahmed and Town propose that Ahmed shall grant Town a license to use the lot for public purposes for five years after the commencement date of this license.

**THEREFORE**, the parties agree as follows in consideration of the mutual covenants in this agreement:

1. <u>Commencement and Ending Date of Term.</u> Beginning September 1, 2021, Ahmed grants to Town an exclusive license to use the land according to the terms of this agreement. Each party has the right to terminate this agreement upon 30 days prior written notice to the other. The license shall expire August 31, 2024.

2. <u>Consideration.</u> Town shall pay Ahmed $1,450.00 per calendar month for the license. Consideration for a partial month will be prorated.

3. Use of the Land. Town may use the land for public purposes, including provision of public parking. The land shall assume the character of a public street during the life of this agreement.

4. Liability Insurance. Town will provide Ahmed evidence of its insurance coverage for lot during the term.

5. Hold Harmless. Each party shall hold each other harmless for any claim, cause of action, or judgment growing out of Town's act or omission under this agreement.

6. Default. A party shall be in default upon failure to perform any term of this agreement for more than five days after written notice of such failure shall have been given by the other. Upon default, the nondefaulting party may exercise rights and powers provided by general law.

7. Changes to the land. Town may make minor improvements to render the land safe, such as replacement of curb bumpers and steel bumper guards, restriping, and minor asphalt patching; and may erect appropriate signage on the land to control its operation.

8. Surrender of Premises. At the expiration or termination of the term of this agreement, Town shall surrender the land to Ahmed.

9. Binding on Successors/Assigns. All of the terms of this agreement shall bind the successors and assigns of Town and Ahmed. This agreement is assignable.

***Signatures on following page***

DRAFT

NAFIS PETER AHMED and RUTH LLABRES AHMED

__________________________________
Nafis Peter Ahmed

__________________________________
Ruth Llabres Ahmed

TOWN OF HERNDON, VIRGINIA

_______________________________
Sheila A. Olem, Mayor

ATTEST:

________________________________
Town Clerk

APPROVED AS TO FORM:

_________________________________
Town Attorney

DRAFT

**TOWN OF HERNDON, VIRGINIA**

**RESOLUTION**

**AUGUST 10, 2021**

**Resolution-** **to appoint the Town of Herndon's "Principal" member to the Northern Virginia Transportation Authority's Planning Coordination Advisory Committee (NVTA PCAC).**

**NOW, THEREFORE, BE IT RESOLVED** that the Town Council of the Town of Herndon, Virginia, hereby appoints **Councilmember Signe Friedrichs**, as the Town's elected official to the Northern Virginia Transportation Authority's Planning Coordination Advisory Committee (NVTA PCAC) **for the remainder of the 2021-2022 term.**

**TOWN OF HERNDON, VIRGINIA**

**RESOLUTION**

**AUGUST 10, 2021**

**Resolution-** **to appoint William Savage as the 'Virginia State Bar' member to the Architectural Review/Historic District Review Boards.**

**BE IT RESOLVED** that the Town Council of the Town of Herndon, Virginia, hereby appoints **William Savage** as the 'Virginia State Bar' member to the Architectural Review/Historic District Review Boards for a three-year term ending August 31, 2024, effective September 1, 2021.