

RESOLUTION NO. 1837

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LAKE FOREST PARK, WASHINGTON, AUTHORIZING THE MAYOR TO SIGN AMERICAN RESCUE PLAN ACT GRANT AGREEMENTS BETWEEN THE CITY AND SHORELAKE ARTS AND GLACIAL CRYOTHERAPY,LLC

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**WHEREAS**, the American Rescue Plan Act of 2021 (“ARPA”) was signed into law on March 11, 2021, and its funds are intended to provide financial support in responding to the impacts of the COVID-19 pandemic; and

**WHEREAS**, ARPA financial support includes funds for tax exempt nonprofit organizations and small businesses (less than 500 employees and a small business concern under the Small Business Act) that have experienced lost revenue and increased costs as a result of the COVID-19 pandemic; and

**WHEREAS**, the City of Lake Forest Park (“City”) has been awarded ARPA funds for 2021 and 2022 of approximately \$3.6 million dollars to be allocated by December 31, 2024 and fully expended by December 31, 2026; and

**WHEREAS**, the City has received approximately \$75,000.00 in requests from ShoreLake Arts, a tax exempt nonprofit, and approximately \$55,000 from Glacial Cryotherapy, LLC , a small business as defined by ARPA rules; and

**WHEREAS**, the City Council and Administration agree that supporting local businesses and community partners, that have been negatively impacted by the COVID-19 pandemic, provides vital assistance to the health and welfare of Lake Forest Park citizens and supports the unique character of Lake Forest Park; and

**NOW, THEREFORE, BE IT RESOLVED**, by the City Council of the City of Lake Forest Park, as follows:

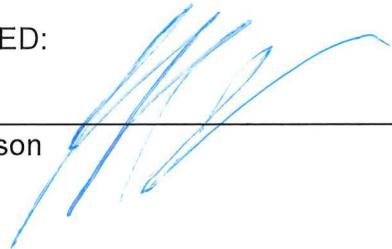
**Section 1. AGREEMENT APPROVAL** . The City Council of the City of Lake Forest Park hereby authorizes the Mayor to sign the ARPA grant agreements between the City and ShoreLake Arts and Glacial Cryotherapy, LLC attached hereto as Attachments A and B.

**Section 2. CORRECTIONS** . The City Clerk is authorized to make necessary corrections to this resolution including, but not limited to, the correction of scrivener's/clerical errors, references, ordinance numbering, section/subsection numbers and any references thereto.

**PASSED BY A MAJORITY VOTE** of the members of the Lake Forest Park City Council this 22<sup>nd</sup> day of February, 2022.

APPROVED:

Jeff Johnson  
Mayor



ATTEST/AUTHENTICATED:



Matthew McLean  
City Clerk

FILED WITH THE CITY CLERK: February 18, 2022  
PASSED BY THE CITY COUNCIL: February 24, 2022  
RESOLUTION NO.: 1837

# ATTACHMENT A

## GRANT AGREEMENT BETWEEN THE CITY OF LAKE FOREST PARK AND THE SHORELINE-LAKE FOREST PARK ARTS COUNCIL FOR AMERICAN RESCUE PLAN ACT FUNDS

This Grant Agreement Between the City of Lake Forest Park and the Shoreline-Lake Forest Park Arts Council For American Rescue Plan Act Funds (the "Agreement") is made the last date signed below by and between the City of Lake Forest Park, a Washington municipal corporation ("the City") and the Shoreline-Lake Forest Park Arts Council dba ShoreLake Arts, a Washington nonprofit corporation ("ShoreLake Arts" and "Recipient"), collectively referred to as the "Parties."

### RECITALS

A. On March 5, 2020, the Lake Forest Park City Council declared a public health emergency in Lake Forest Park arising from the COVID-19 pandemic. Since then, the disease has impacted every part of life in the City. Social distancing became a necessity, businesses closed, schools transitioned to and from remote education, travel was sharply reduced, and many lost their jobs.

B. The City recognizes that one of its essential functions is to secure the health and welfare of Lake Forest Park's citizens, and disperse when able, resources necessary to help individuals, nonprofits and small businesses survive.

C. The City has been awarded Fiscal Recovery Funds through the American Rescue Plan Act ("ARPA") signed into law on March 11, 2021. The Funds are intended to provide support to local communities responding to the impacts of COVID-19.

D. ShoreLake Arts is a §501(c)(3) nonprofit organization under the Internal Revenue Code that operates a public art gallery in the Town Center featuring local artists and presents art programs around the community including art festivals and concerts. The COVID-19 pandemic has impacted ShoreLake Arts by decreasing sales and reducing in-person audiences and attendance.

**NOW THEREFORE**, in consideration of the mutual covenants and agreements herein, the Parties agree as follows:

### AGREEMENT

1. Incorporation of Recitals/Exhibits. The Recitals and referenced Exhibits are incorporated herein by this reference.
2. Funds. The City will provide the Recipient with grant funds in an amount not to exceed Seventy-five Thousand Dollars and 00/100 (\$ 75,000) to be used to reimburse Recipient for loss of revenue caused by the negative economic impact of the COVID-19 pandemics impacts in the community (the "Funds").

3. Deadline for Expenditures and Invoices. Reimbursable expenditures under the Agreement must be incurred and invoiced to the City after March 3, 2021, and prior to December 1, 2022, unless this grant agreement is extended in writing by the City Council and Recipient.

4. Recipient Deliverables.

a. Not more than once every thirty days the Recipient shall send electronically to Accounting Supervisor, ap@ci.lake-forest-park.wa.us, its request for reimbursement of Funds expended per Section 2. Said invoices will document to the City's satisfaction the following:

- (i) the expense incurred and date of same (to include invoices, payroll backup, and any other documentation providing proof of the requested expense for reimbursement);
- (ii) how the expense qualifies for reimbursement under Section 2, above;
- (iii) how the expense qualifies for reimbursement under the final rule from the Department of Treasury at 31 CFR Part 35 (see Exhibit A attached), or as later amended by the Department of Treasury; and
- (iii) the total amount of reimbursement to-date to Recipient under this Agreement.

b. Recipient agrees to submit to the City an IRS Form W-9 with its initial invoice.

c. Payments shall be processed within thirty days from receipt by the City of Recipient's invoice with associated documentation, and following mutual agreement that such documentation provides the appropriate backup for the requested reimbursement.

5. Source of Grant Funds. The Parties acknowledge that funding for this Agreement comes solely from payment made to the City from ARPA funds, and the City has no independent obligation to provide the Recipient with funds from any other source.

6. Amendments. The Parties acknowledge that the City's responsibilities and requirements for expenditure of the ARPA funds may change. Any changes or revisions that are applicable to this Agreement shall be incorporated by written amendment of this Agreement, following written notice by City to the Recipient.

7. Effective Date. The effective date of this Agreement shall be the date signed below by both Parties.

8. Nondiscrimination. During the performance of this Agreement, the Recipient shall comply with all federal and state nondiscrimination laws, including but not limited to, Chapter 49.60 RCW, Washington's Law Against Discrimination, and 42 U.S.C. 12101 *et seq.*, the Americans with Disabilities Act (ADA). In the event of the Recipient's

noncompliance or refusal to comply with any nondiscrimination law, regulation, or policy, this Agreement may be rescinded, canceled, or terminated in whole or in part.

9. Termination.

a. The City may terminate this Agreement for convenience upon providing seven (7) days written notice.

b. If the Recipient fails to fulfill its obligations under this Agreement, the City may terminate this Agreement for cause upon written notice to the Recipient specifying the reason for termination. The termination date shall be specified in the notice of termination. In the event Recipient fails to comply with its obligations, promises, and contract, as set forth in Sections 3 and 4, it shall be obligated to return any Funds received to the City.

10. Public Disclosure. All documents and records comprising the Agreement, and all other documents and records provided to the City by the Recipient are deemed public records subject to disclosure under the Washington State Public Records Act, Chapter 42.56 RCW. Thus, the City may be required, upon request, to disclose the Agreement and documents or records related to it unless an exemption under the Public Records Act or other laws applies.

11. Indemnification. The Recipient shall, at its cost and expense, protect, defend, indemnify, and hold harmless the City, its officers, employees and agents, from and against any and all demands, liabilities, causes of action, costs and expenses (including attorneys' fees), claims, judgements, or awards of damages, arising out of or in any way resulting from the acts or omissions of the Recipient, its directors, officers, employees or agents, relating in any way to the Recipient's performance under this Agreement. These Indemnification obligations shall survive the termination of this Agreement. The Recipient further agrees that it is financially responsible for and will repay the City any and all indicated amounts following an audit exception which occurs due to the Recipient's failure for any reason to comply with the terms of this Agreement.

12. Attorney Fees and Governing Law.

a. In the event a suit, action, arbitration, or other proceeding of any nature whatsoever, including without limitation any proceeding under the U.S. Bankruptcy Code, is instituted, or the services of any attorney are retained, to interpret or enforce any provisions of this Agreement or with respect to any dispute relating to this Agreement, the prevailing party shall be entitled to recover from the losing party its attorneys', paralegals', accountants', and other experts' fees and all other fees, costs, and expenses actually incurred and reasonably necessary in connection therewith. The amount of such fees, costs, and expenses shall be determined by the judge or arbitrator, shall include fees and expenses incurred on any appeal or review, and shall be in addition to all other amounts provided by law.

b. This Agreement shall be governed by and interpreted and enforced in accordance with the laws of the State of Washington and the venue will be in King County, Washington.

13. Entire Agreement. The Parties agree that this Agreement, including referenced exhibits, is the complete expression of the terms agreed to by the Parties. No other understandings or representations, oral or otherwise, regarding the subject matter of this contract shall be deemed to exist or to bind the Parties.

14. Severability. In the event any term or condition of this Agreement or application thereof to any person or circumstances is held invalid, such invalidity shall not affect other terms, conditions, or applications of this Agreement that can be given effect without the invalid term, condition, or application. To this end, the terms and conditions of this Agreement are declared severable.

15. Notices. Notices and other documentation to the City of Lake Forest Park shall be sent to the following address:

To City:

City of Lake Forest Park  
Attn: City Clerk's Office  
17425 Ballinger Way NE  
Lake Forest Park, WA 98155

To the Recipient:

Shoreline-Lake Forest Park Arts Council  
dba ShoreLake Arts  
18560 1<sup>st</sup> Ave NE  
Shoreline, WA 98155

16. Counterpart Signatures. This Agreement may be executed in one or more counterparts, including by scanned or electronic signatures, each of which shall be deemed an original and all of which together shall constitute one and the same instrument.

CITY OF LAKE FOREST PARK

RECIPIENT

By: \_\_\_\_\_  
Jeff Johnson, Mayor

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

**Attachments:**

Exhibit A: 31 CFR Part 35



## ATTACHMENT B

### GRANT AGREEMENT BETWEEN THE CITY OF LAKE FOREST PARK AND GLACIAL CRYOTHERAPY LLC FOR AMERICAN RESCUE PLAN ACT FUNDS

This Grant Agreement Between The City of Lake Forest Park and Glacial Cryotherapy, LLC For American Rescue Plan Act Funds (the "Agreement") is made the last date signed below by and between the City of Lake Forest Park, a Washington municipal corporation ("the City") and Glacial Cryotherapy, LLC, a Washington Limited Liability Company ("Glacial Cryotherapy" and "Recipient"), collectively referred to as the "Parties."

#### RECITALS

A. On March 5, 2020, the Lake Forest Park City Council declared a public health emergency in Lake Forest Park arising from the COVID-19 pandemic. Since then, the disease has impacted every part of life in the City. Social distancing became a necessity, businesses closed, schools transitioned to and from remote education, travel was sharply reduced, and many lost their jobs.

B. The City recognizes that one of its essential functions is to secure the health and welfare of Lake Forest Park's citizens, and disperse when able, resources necessary to help individuals, nonprofits and small businesses survive.

C. The City has been awarded Fiscal Recovery Funds through the American Rescue Plan Act ("ARPA") signed into law on March 11, 2021. The Funds are intended to provide support to local communities responding to the impacts of COVID-19.

D. For purposes of receiving ARPA funds, small businesses are defined as those having not more than 500 employees, being independently owned and operated, and not dominating their field of operation. Glacial Cryotherapy meets this definition of a small business that operates in the City. Glacial Cryotherapy has been deeply affected during the COVID-19 pandemic losing revenue and incurring advertising costs to mitigate the negative impacts of the pandemic.

**NOW THEREFORE**, in consideration of the mutual covenants and agreements herein, the Parties agree as follows:

#### AGREEMENT

1. Incorporation of Recitals/Exhibits. The Recitals and referenced Exhibits are incorporated herein by this reference.
2. Funds. The City will provide the Recipient with grant funds in an amount not to exceed Fifty-Four Thousand Seven Hundred Thirty-Nine Dollars and 51/100 (\$54,739.51) to be used to reimburse Recipient for the following expenses that address COVID-19

pandemics impacts and loss of revenue as a result of the negative economic impacts of the COVID-19 pandemics (the "Funds"):

- a. Advertising (signs, postcards and postage costs) - \$523.67, and
- b. Lost revenue for 2021- \$54,215.84

3. Deadline for Expenditures and Invoices. Reimbursable expenditures under the Agreement must be incurred and invoiced to the City after March 3, 2021, and prior to December 1, 2022, unless this grant agreement is extended in writing by the City Council and Recipient.

4. Recipient Deliverables.

a. Not more than once every thirty days the Recipient shall send electronically to Accounting Supervisor, ap@ci.lake-forest-park.wa.us, its request for reimbursement of Funds expended per Section 2. Said invoices will document to the City's satisfaction the following:

- (i) the expense incurred and date of same (to include invoices, payroll backup, and any other documentation providing proof of the requested expense for reimbursement);
- (ii) how the expense qualifies for reimbursement under Section 2, above;
- (iii) how the expense qualifies for reimbursement under the final rule from the Department of Treasury at 31 CFR Part 35 (see Exhibit A attached), or as later amended by the Department of Treasury; and
- (iv) the total amount of reimbursement to-date to Recipient under this Agreement.

b. Recipient agrees to submit to the City an IRS Form W-9 with its initial invoice.

c. Payments shall be processed within thirty days from receipt by the City of Recipient's invoice with associated documentation, and following mutual agreement that such documentation provides the appropriate backup for the requested reimbursement.

5. Source of Grant Funds. The Parties acknowledge that funding for this Agreement comes solely from payment made to the City from ARPA funds, and the City has no independent obligation to provide the Recipient with funds from any other source.

6. Amendments. The Parties acknowledge that the City's responsibilities and requirements for expenditure of the ARPA funds may change. Any changes or revisions that are applicable to this Agreement shall be incorporated by written amendment of this Agreement, following written notice by City to the Recipient.

7. Effective Date. The effective date of this Agreement shall be the date signed below by both Parties.

8. Nondiscrimination. During the performance of this Agreement, the Recipient shall comply with all federal and state nondiscrimination laws, including but not limited to, Chapter 49.60 RCW, Washington's Law Against Discrimination, and 42 U.S.C. 12101 *et seq.*, the Americans with Disabilities Act (ADA). In the event of the Recipient's noncompliance or refusal to comply with any nondiscrimination law, regulation, or policy, this Agreement may be rescinded, canceled, or terminated in whole or in part.

9. Termination.

a. The City may terminate this Agreement for convenience upon providing seven (7) days written notice.

b. If the Recipient fails to fulfill its obligations under this Agreement, the City may terminate this Agreement for cause upon written notice to the Recipient specifying the reason for termination. The termination date shall be specified in the notice of termination. In the event Recipient fails to comply with its obligations, promises, and contract, as set forth in Sections 3 and 4, it shall be obligated to return any Funds received to the City.

10. Public Disclosure. All documents and records comprising the Agreement, and all other documents and records provided to the City by the Recipient are deemed public records subject to disclosure under the Washington State Public Records Act, Chapter 42.56 RCW. Thus, the City may be required, upon request, to disclose the Agreement and documents or records related to it unless an exemption under the Public Records Act or other laws applies.

11. Indemnification. The Recipient shall, at its cost and expense, protect, defend, indemnify, and hold harmless the City, its officers, employees and agents, from and against any and all demands, liabilities, causes of action, costs and expenses (including attorneys' fees), claims, judgements, or awards of damages, arising out of or in any way resulting from the acts or omissions of the Recipient, its directors, officers, employees or agents, relating in any way to the Recipient's performance under this Agreement. These Indemnification obligations shall survive the termination of this Agreement. The Recipient further agrees that it is financially responsible for and will repay the City any and all indicated amounts following an audit exception which occurs due to the Recipient's failure for any reason to comply with the terms of this Agreement.

12. Attorney Fees and Governing Law.

a. In the event a suit, action, arbitration, or other proceeding of any nature whatsoever, including without limitation any proceeding under the U.S. Bankruptcy Code, is instituted, or the services of any attorney are retained, to interpret or enforce any provisions of this Agreement or with respect to any dispute relating to this Agreement, the prevailing party shall be entitled to recover from the losing party its attorneys', paralegals', accountants', and other experts' fees and all other fees, costs, and expenses actually incurred and reasonably necessary in connection therewith. The amount of such fees,

costs, and expenses shall be determined by the judge or arbitrator, shall include fees and expenses incurred on any appeal or review, and shall be in addition to all other amounts provided by law.

b. This Agreement shall be governed by and interpreted and enforced in accordance with the laws of the State of Washington and the venue will be in King County, Washington.

13. Entire Agreement. The Parties agree that this Agreement, including referenced exhibits, is the complete expression of the terms agreed to by the Parties. No other understandings or representations, oral or otherwise, regarding the subject matter of this contract shall be deemed to exist or to bind the Parties.

14. Severability. In the event any term or condition of this Agreement or application thereof to any person or circumstances is held invalid, such invalidity shall not affect other terms, conditions, or applications of this Agreement that can be given effect without the invalid term, condition, or application. To this end, the terms and conditions of this Agreement are declared severable.

15. Notices. Notices and other documentation to the City of Lake Forest Park shall be sent to the following address:

City of Lake Forest Park  
Attn: City Clerk's Office  
17425 Ballinger Way NE  
Lake Forest Park, WA 98155

To the Recipient:  
Glacial Cryotherapy  
17171 Bothell Way NE  
Suite 16B  
Lake Forest Park, WA 98155

16. Counterpart Signatures. This Agreement may be executed in one or more counterparts, including by scanned or electronic signatures, each of which shall be deemed an original and all of which together shall constitute one and the same instrument.

CITY OF LAKE FOREST PARK

RECIPIENT

By: \_\_\_\_\_  
Jeff Johnson, Mayor

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

**Attachments:**  
Exhibit A: 31 CFR Part 35

## EXHIBIT A to both grant agreements

exempt from the notice and comment requirements of the APA, Treasury is not required to conduct a regulatory flexibility analysis.

### **RULE TEXT**

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

Executive compensation, State and Local Governments, Tribal Governments, Public health emergency.

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

#### Part 35 - PANDEMIC RELIEF PROGRAMS

1. Amend Subpart A to read as follows:

##### Subpart A— CORONAVIRUS STATE AND LOCAL FISCAL RECOVERY FUNDS

Sec.

35.1 Purpose.

35.2 Applicability.

35.3 Definitions.

35.4 Reservation of authority, reporting.

35.5 Use of funds.

35.6 Eligible uses.

35.7 Pensions.

35.8 Tax.

35.9. Compliance with applicable laws.

35.10. Recoupment.

35.11 Payments to States.

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

Authority: 42 U.S.C. 802(f); 42 U.S.C. 803(f)

### **§ 35.1 Purpose.**

This part implements section 9901 of the American Rescue Plan Act (Subtitle M of Title IX of Public Law 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 part 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.**

*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.

*Capital expenditures* has the same meaning given in 2 CFR 200.1.

*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 that reduces any tax (by providing for a reduction in a rate, a rebate, a deduction, a credit, or otherwise) or delays the imposition of any tax or tax increase. 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 or territory, the period that:

- (1) Begins on March 3, 2021; and
- (2) Ends on the last day of the fiscal year of such State or territory in which all funds received by the State or territory 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 lasting 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 childcare; 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; and 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 non-public 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 non-public 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 and 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 also includes revenue from liquor stores that are owned and operated by state and local governments. General revenue does not include revenues from utilities, except recipients may choose to include revenue from utilities that are part of their own government as general revenue provided the recipient does so consistently over the remainder of the period of performance. Revenue from Tribal business enterprises must be included in general revenue.

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

*Low-income household* means a household with:

- (1) Income at or below 185 percent of the Federal Poverty Guidelines for the size of its household based on the poverty guidelines published most recently by the Department of Health and Human Services; or

(2) Income at or below 40 percent of the Area Median Income for its county and size of household based on data published most recently by the Department of Housing and Urban Development.

*Micro-business* means a small business that has five or fewer employees, one or more of whom owns the small business.

*Moderate-income household* means a household with:

(1) Income at or below 300 percent of the Federal Poverty Guidelines for the size of its household based on poverty guidelines published most recently by the Department of Health and Human Services; or

(2) Income at or below 65 percent of the Area Median Income for its county and size of household based on data published most recently by the Department of Housing and Urban Development.

*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 for that reporting year.

*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) or 501(c)(19) 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.

*Period of performance* means the time period described in § 35.5 during which a recipient may obligate and expend funds in accordance with sections 602(c)(1) and 603(c)(1) of the Social Security Act and this subpart.

*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 in total over the period of performance with respect to any single eligible worker. Premium pay may be awarded to non-hourly and part-time eligible workers performing essential work. 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 per hour 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 worker's 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.

*Title I eligible schools* means schools eligible to receive services under section 1113 of Title I, Part A of the Elementary and Secondary Education Act of 1965, as amended (20 U.S.C. 6313), including schools served under section 1113(b)(1)(C) of that Act.

*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 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)).

**§ 35.4 Reservation of authority, reporting.**

(a) *Reservation of authority.* Nothing in this part 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 part, 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 period of performance, recipients shall provide to the Secretary periodic reports providing detailed accounting of the uses of funds, 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 § 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. A recipient must also return funds obligated by December 31, 2024 but not expended 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 (f) 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 if the use meets the criteria provided in subparagraph (b)(1) or is enumerated in subparagraph (b)(3); provided that, in the case of a use of funds for a capital expenditure under subparagraph (b)(1) or (b)(3), the use of funds must also meet the criteria provided in subparagraph (b)(4). Treasury may also articulate additional eligible programs, services, or

capital expenditures from time to time that satisfy the eligibility criteria of this paragraph (b), which shall be eligible under this paragraph (b).

(1) *Identifying eligible responses to the public health emergency or its negative economic impacts.*

(i) A program, service, or capital expenditure is eligible under this subparagraph (1) if a recipient identifies a harm or impact to a beneficiary or class of beneficiaries caused or exacerbated by the public health emergency or its negative economic impacts and the program, service, or capital expenditure responds to such harm.

(ii) A program, service, or capital expenditure responds to a harm or impact experienced by an identified beneficiary or class of beneficiaries if it is reasonably designed to benefit the beneficiary or class of beneficiaries that experienced the harm or impact and is related and reasonably proportional to the extent and type of harm or impact experienced.

(2) *Identified harms: presumptions of impacted and disproportionately impacted beneficiaries.* A recipient may rely on the following presumptions to identify beneficiaries presumptively impacted or disproportionately impacted by the public health emergency or its negative economic impacts for the purpose of providing a response under subparagraph (b)(1) or (b)(3):

(i) Households or populations that experienced unemployment; experienced increased food or housing insecurity; qualify for the Children's Health Insurance Program (42 U.S.C. 1397aa *et seq.*), Childcare Subsidies through the Child Care and Development Fund Program (42 U.S.C. 9857 *et seq.* and 42 U.S.C. 618), or Medicaid (42 U.S.C. 1396 *et seq.*); if funds are to be used for affordable housing programs, qualify for the National Housing Trust Fund (12 U.S.C. 4568) or the Home Investment Partnerships Program (42 U.S.C. 12721 *et seq.*); if funds are to be

used to address impacts of lost instructional time for students in kindergarten through twelfth grade, any student who did not have access to in-person instruction for a significant period of time; and low- and moderate-income households and populations are presumed to be impacted by the public health emergency or its negative economic impacts;

(ii) The general public is presumed to be impacted by the public health emergency for the purposes of providing the uses set forth in subparagraphs (b)(3)(i)(A) and (b)(3)(i)(C); and

(iii) The following households, communities, small businesses, and nonprofit organizations are presumed to be disproportionately impacted by the public health emergency or its negative economic impacts:

(A) Households and populations residing in a qualified census tract; households and populations receiving services provided by Tribal governments; households and populations residing in the territories; households and populations receiving services provided by territorial governments; low-income households and populations; households that qualify for Temporary Assistance for Needy Families (42 U.S.C. 601 *et seq.*), the Supplemental Nutrition Assistance Program (7 U.S.C. 2011 *et seq.*), Free and Reduced Price School Lunch and/or Breakfast programs (42 U.S.C. 1751 *et seq.* and 42 U.S.C. 1773), Medicare Part D Low-income Subsidies (42 U.S.C. 1395w-114), Supplemental Security Income (42 U.S.C. 1381 *et seq.*), Head Start (42 U.S.C. 9831 *et seq.*), Early Head Start (42 U.S.C. 9831 *et seq.*), the Special Supplemental Nutrition Program for Women, Infants, and Children (42 U.S.C. 1786), Section 8 Vouchers (42 U.S.C. 1437f), the Low-Income Home Energy Assistance Program (42 U.S.C. 8621 *et seq.*), Pell Grants (20 U.S.C. 1070a), and, if SLFRF funds are to be used for services to address educational disparities, Title I eligible schools;

(B) Small businesses operating in a qualified census tract, operated by Tribal governments or on Tribal lands, or operating in the territories; and

(C) Nonprofit organizations operating in a qualified census tract, operated by Tribal governments or on Tribal lands, or operating in the territories.

(3) *Enumerated eligible uses: responses presumed reasonably proportional.* A recipient may use funds to respond to the public health emergency or its negative economic impacts on a beneficiary or class of beneficiaries for one or more of the following purposes unless such use is grossly disproportionate to the harm caused or exacerbated by the public health emergency or its negative economic impacts:

(i) Responding to the public health impacts of the public health emergency for purposes including:

(A) COVID-19 mitigation and prevention in a manner that is consistent with recommendations and guidance from the Centers for Disease Control and Prevention, including vaccination programs and incentives; testing programs; contact tracing; isolation and quarantine; mitigation and prevention practices in congregate settings; acquisition and distribution of medical equipment for prevention and treatment of COVID-19, including personal protective equipment; COVID-19 prevention and treatment expenses for public hospitals or health care facilities, including temporary medical facilities; establishing or enhancing public health data systems; installation and improvement of ventilation systems in congregate settings, health facilities, or other public facilities; and assistance to small businesses, nonprofits, or impacted industries to implement mitigation measures;

(B) Medical expenses related to testing and treating COVID-19 that are provided in a manner consistent with recommendations and guidance from the Centers for Disease Control and

Prevention, including emergency medical response expenses, treatment of long-term symptoms or effects of COVID-19, and costs to medical providers or to individuals for testing or treating COVID-19;

(C) Behavioral health care, including prevention, treatment, emergency or first-responder programs, harm reduction, supports for long-term recovery, and behavioral health facilities and equipment; and

(D) Preventing and responding to increased violence resulting from the public health emergency, including community violence intervention programs, or responding to increased gun violence resulting from the public health emergency, including payroll and covered benefits associated with community policing strategies; enforcement efforts to reduce gun violence; and investing in technology and equipment;

(ii) Responding to the negative economic impacts of the public health emergency for purposes including:

(A) Assistance to households and individuals, including:

(1) Assistance for food; emergency housing needs; burials, home repairs, or weatherization; internet access or digital literacy; cash assistance; and assistance accessing public benefits;

(2) Paid sick, medical, or family leave programs, or assistance to expand access to health insurance;

(3) Childcare, early learning services, home visiting, or assistance for child welfare-involved families or foster youth;

(4) Programs to address the impacts of lost instructional time for students in kindergarten through twelfth grade;

(5) Development, repair, and operation of affordable housing and services or programs to increase long-term housing security;

(6) Financial services that facilitate the delivery of Federal, State, or local benefits for unbanked and underbanked individuals;

(7) Benefits for the surviving family members of individuals who have died from COVID-19, including cash assistance to surviving spouses or dependents of individuals who died of COVID-19;

(8) Assistance for individuals who want and are available for work, including those who are unemployed, have looked for work sometime in the past 12 months, who are employed part time but who want and are available for full-time work, or who are employed but seeking a position with greater opportunities for economic advancement;

(9) Facilities and equipment related to the provision of services to households provided in subparagraphs (b)(3)(ii)(A)(1)-(8);

(10) The following expenses related to Unemployment Trust Funds:

(i) Contributions to a recipient Unemployment Trust Fund and repayment of principal amounts due on advances received under Title XII of the Social Security Act (42 U.S.C. § 1321) up to an amount equal to (a) the difference between the balance in the recipient's Unemployment Trust Fund as of January 27, 2020 and the balance of such account as of May 17, 2021 plus (b) the principal amount outstanding as of May 17, 2021 on any advances received under Title XII of the Social Security Act between January 27, 2020 and May 17, 2021; provided that if a recipient repays principal on Title XII advances or makes a contribution to an Unemployment Trust Fund after [INSERT]

**EFFECTIVE DATE**], such recipient shall not reduce average weekly benefit amounts or maximum benefit entitlements prior to December 31, 2024; and

(ii) any interest due on such advances received under Title XII of the Social

Security Act (42 U.S.C. § 1321); and

(1) A program, service, capital expenditure, or other assistance that is provided to a disproportionately impacted household, population, or community, including:

(i) Services to address health disparities of the disproportionately impacted household, population, or community;

(ii) Housing vouchers and relocation assistance;

(iii) Investments in communities to promote improved health outcomes and public safety such as parks, recreation facilities, and programs that increase access to healthy foods;

(iv) Capital expenditures and other services to address vacant or abandoned properties;

(v) Services to address educational disparities; and

(vi) Facilities and equipment related to the provision of these services to the disproportionately impacted household, population, or community.

(B) Assistance to small businesses, including:

(1) Programs, services, or capital expenditures that respond to the negative economic impacts of 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, or providing technical assistance; and

(2) A program, service, capital expenditure, or other assistance that responds to disproportionately impacted small businesses, including rehabilitation of commercial properties; storefront and façade improvements; technical assistance, business incubators, and grants for

start-ups or expansion costs for small businesses; and programs or services to support micro-businesses;

- (C) Assistance to nonprofit organizations including programs, services, or capital expenditures, including loans or grants to mitigate financial hardship such as declines in revenues or increased costs, or technical assistance;
- (D) Assistance to tourism, travel, hospitality, and other impacted industries for programs, services, or capital expenditures, including support for payroll costs and covered benefits for employees, compensating returning employees, support for operations and maintenance of existing equipment and facilities, and technical assistance; and
- (E) Expenses to support public sector capacity and workforce, including:
  - (1) 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;
  - (2) Payroll, covered benefit, and other costs associated with programs or services to support the public sector workforce and with the recipient:
    - (i) Hiring or rehiring staff to fill budgeted full-time equivalent positions that existed on January 27, 2020 but that were unfilled or eliminated as of March 3, 2021; or
    - (ii) Increasing the number of its budgeted full-time equivalent employees by up to the difference between the number of its budgeted full-time equivalent employees on January 27, 2020, multiplied by 1.075, and the number of its budgeted full-time equivalent employees on March 3, 2021, provided that funds shall only be used for additional budgeted full-time equivalent employees above the recipient's number of budgeted full-time equivalent employees as of March 3, 2021;

(3) Costs to improve the design and execution of programs responding to the COVID-19 pandemic and to administer or improve the efficacy of programs addressing the public health emergency or its negative economic impacts; and

(4) Costs associated with addressing administrative needs of recipient governments that were caused or exacerbated by the pandemic.

(4) *Capital expenditures.* A recipient, other than a Tribal government, must prepare a written justification for certain capital expenditures according to Table [ ]. Such written justification must include the following elements:

- (i) Describe the harm or need to be addressed;
- (ii) Explain why a capital expenditure is appropriate; and
- (iii) Compare the proposed capital expenditure to at least two alternative capital expenditures and demonstrate why the proposed capital expenditure is superior.

Table [ ]

If a project has total expected capital expenditures of	and the use is enumerated in (b)(3), then	and the use is not enumerated in (b)(3), then
Less than \$1 million	No Written Justification required	No Written Justification required
Greater than or equal to \$1 million, but less than \$10 million	Written Justification required but recipients are not required to submit as part of regular reporting to Treasury	Written Justification required and recipients must submit as part of regular reporting to Treasury
\$10 million or more	Written Justification required and recipients must submit as part of regular reporting to Treasury	

(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 that have eligible workers who perform essential work, 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:

(1) The eligible worker's total wages and remuneration, including the premium pay, is less than or equal to 150 percent of the greater of such eligible worker's residing State's or county's average annual wage for all occupations as defined by the Bureau of Labor Statistics' Occupational Employment and Wage Statistics;

(2) The eligible worker is not exempt from the Fair Labor Standards Act overtime provisions (29 U.S.C. 207); or

(3) The recipient has submitted to the Secretary a written justification that explains how providing premium pay to the eligible worker is responsive to the eligible worker performing essential work during the COVID-19 public health emergency (such as a description of the eligible workers' duties, health, or financial risks faced due to COVID-19, and why the recipient determined that the premium pay was responsive despite the worker's higher income).

(d) *Providing government services.* A recipient may use funds for the provision of government services to the extent of the reduction in the recipient's general revenue due to the public health emergency, calculated according to this paragraph (d). A recipient must make a one-time election to calculate the amount of the reduction in the recipient's general revenue due to the public health emergency according to either paragraph (d)(1) or (d)(2) of this section:

(1) *Standard allowance.* The reduction in the recipient's general revenue due to the public health emergency over the period of performance will be deemed to be ten million dollars; or

(2) *Formula.* The reduction in the recipient's general revenue due to the public health emergency over the period of performance equals the sum of the reduction in revenue, calculated as of each date identified in paragraph (d)(2)(i) of this section and according to the formula in paragraph (d)(2)(ii) of this section:

(i) A recipient must make a one-time election to calculate the reduction in its general revenue using information as of either:

(A) December 31, 2020, December 31, 2021, December 31, 2022, and December 31, 2023; or

(B) The last day of each of the recipient's fiscal years ending in 2020, 2021, 2022, and 2023.

(ii) A reduction in a recipient's general revenue for each date identified in paragraph (d)(2)(i) equals:

$$\text{Max} \{ [\text{Base Year Revenue} * (1 + \text{Growth Adjustment})^{(n/12)}] - \text{Actual General Revenue}; 0 \}$$

Where:

(A) Base Year Revenue is the recipient's general revenue for the most recent full fiscal year prior to the COVID-19 public health emergency;

(B) Growth Adjustment is equal to the greater of 5.2 percent (or 0.052) and the recipient's average annual revenue growth over the three full fiscal years prior to the COVID-19 public health emergency;

- (C) n equals the number of months elapsed from the end of the base year to the calculation date;
- (D) Subscript t denotes the specific calculation date; and
- (E) Actual General Revenue is a recipient's actual general revenue collected during the 12-month period ending on each calculation date identified in paragraph (d)(2)(i), except:
  - (1) For purposes of all calculation dates on or after [INSERT EFFECTIVE DATE], in the case of any change made after January 6, 2022 to any law, regulation, or administrative interpretation that reduces any tax (by providing for a reduction in a rate, a rebate, a deduction, a credit, or otherwise) or delays the imposition of any tax or tax increase and that the recipient assesses has had the effect of decreasing the amount of tax revenue collected during the 12-month period ending on the calculation date relative to the amount of tax revenue that would have been collected in the absence of such change, the recipient must add to actual general revenue the amount of such decrease in tax revenue;
  - (2) For purposes of any calculation date on or after [INSERT EFFECTIVE DATE], in the case of any change made after January 6, 2022 to any law, regulation, or administrative interpretation that increases any tax (by providing for an increase in a rate, the reduction of a rebate, a deduction, or a credit, or otherwise) or accelerates the imposition of any tax or tax increase and that the recipient assesses has had the effect of increasing the amount of tax revenue collected during the 12-month period ending on the calculation date relative to the amount of tax revenue that would have been collected in the absence of such change, the recipient must subtract from actual general revenue the amount of such increase in tax revenue; and

(3) If the recipient makes a one-time election to adjust general revenue to reflect tax changes made during the period beginning on January 27, 2020 and ending on January 6, 2022, for purposes of each calculation date identified in paragraph (d)(2)(i) of this section:

(i) In the case of any change made during such prior period to any law, regulation, or administrative interpretation that reduces any tax (by providing for a reduction in a rate, a rebate, a deduction, a credit, or otherwise) or delays the imposition of any tax or tax increase and that the recipient assesses has had the effect of decreasing the amount of tax revenue collected during the 12-month period ending on the calculation date relative to the amount of tax revenue that would have been collected in the absence of such change, the recipient must add to actual general revenue the amount of such decrease in tax revenue; and

(ii) In the case of any change made during such prior period to any law, regulation, or administrative interpretation that increases any tax (by providing for an increase in a rate, the reduction of a rebate, a deduction, or a credit, or otherwise) or accelerates the imposition of any tax or tax increase and that the recipient assesses has had the effect of increasing the amount of tax revenue collected during the 12-month period ending on the calculation date relative to the amount of tax revenue that would have been collected in the absence of such change, the recipient must subtract from actual general revenue the amount of such increase in tax revenue; and

(4) With respect to any calculation date during the period beginning on January 6, 2022 and ending on March 31, 2022, if the recipient makes the election in paragraph (3), the recipient must also make the adjustments referenced in paragraph (3) with respect to any such changes in law, regulation, or administrative interpretation during the period beginning on January 6, 2022 and ending on such calculation date.

(e) *Making necessary investments in water, sewer, and broadband infrastructure.* A recipient may use funds to make the following investments in water, sewer, and broadband infrastructure.

(1) *Water and sewer investments.*

(i) *Clean Water State Revolving Fund projects.* Projects or activities of the type that meet the eligibility requirements of section 603(c) of the Federal Water Pollution Control Act (33 U.S.C. 1383(c));

(ii) *Additional stormwater projects.* Projects to manage, reduce, treat, or recapture stormwater or subsurface drainage water regardless of whether such projects would improve water quality if such projects would otherwise meet the eligibility requirements of section 603(c)(5) of the Federal Water Pollution Control Act (33 U.S.C. 1383(c)(5));

(iii) *Drinking Water State Revolving Fund projects.* Projects or activities of the type that meet the eligibility requirements of section 1452 of the Safe Drinking Water Act (42 U.S.C. 300j-12) as implemented by the regulations adopted by the Environmental Protection Agency (EPA) under 40 CFR § 35.3520, provided that:

(A) The recipient is not required to comply with the limitation under 40 CFR § 35.3520(c)(2) to acquisitions of land from willing sellers or the prohibition under 40 CFR § 35.3520(e)(6) on uses of funds for certain Tribal projects; and

(B) In the case of lead service line replacement projects, the recipient must replace the full length of the service line and may not replace only a partial portion of the service line.

(iv) *Additional lead remediation and household water quality testing.* Projects or activities to address lead in drinking water or provide household water quality testing that are within the scope of the programs the EPA is authorized to establish under sections 1459A(b)(2),

1459B(b)(1), 1464(d)(2), and 1465 of the Safe Drinking Water Act (42 U.S.C. 300j-19a(b)(2), 300j-19b(b)(1), 300j-24(d)(2), and 300j-25), provided that:

- (A) In the case of lead service line replacement projects, the recipient must replace the full length of the service line and may not replace only a partial portion of the service line; and
- (B) In the case of projects within the scope of the program the EPA is authorized to establish under section 1459B(b)(1) of the Safe Drinking Water Act, the recipient may determine the income eligibility of homeowners served by lead service line replacement projects in its discretion.

(v) *Drinking water projects to support increased population.* Projects of the type that meet the eligibility requirements of 40 CFR § 35.3520 other than the requirement of subparagraph (b)(1) of such regulation to address present or prevent future violations of health-based drinking water standards, if the following conditions are met:

- (A) The project is needed to support increased population, with need assessed as of the time the project is undertaken;
- (B) The project is designed to support no more than a reasonable level of projected increased need, whether due to population growth or otherwise;
- (C) The project is a cost-effective means for achieving the desired level of service; and
- (D) The project is projected to continue to provide an adequate level of drinking water over its estimated useful life.

(vi) *Dams and reservoirs.* Rehabilitation of dams and reservoirs if the following conditions are met:

- (A) The project meets the requirements of 40 CFR § 35.3520 other than the following requirements:

(1) The prohibition on the rehabilitation of dams and reservoirs in subparagraphs (e)(1) and (e)(3) of 40 CFR § 35.3520; and

(2) The requirement in subparagraph (b)(1) of 40 CFR § 35.3520 that the project is needed to address present or prevent future violations of health-based drinking water standards, provided that if the dam or reservoir project does not meet this requirement, the project must be needed to support increased population, with need assessed as of the time the project is undertaken, and the project must be projected to continue to provide an adequate level of drinking water over its estimated useful life;

(B) The primary purpose of the dam or reservoir is for drinking water supply;

(C) The project is needed for the provision of drinking water supply, with need assessed as of the time the project is initiated;

(D) The project is designed to support no more than a reasonable level of projected increased need, whether due to population growth or otherwise; and

(E) The project is a cost-effective means for achieving the desired level of service.

(vii) *Private wells.* Rehabilitation of private wells, testing initiatives to identify contaminants in private wells, and treatment activities and remediation projects that address contamination in private wells, if the project meets the requirements of 40 CFR § 35.3520 other than the limitation to certain eligible systems under paragraph (a) of 40 CFR § 35.3520.

(2) *Broadband investments.*

(i) *General.* Broadband infrastructure if the following conditions are met:

(A) The broadband infrastructure is designed to provide service to households and businesses with an identified need, as determined by the recipient, for such infrastructure;

(B) The broadband infrastructure is designed to, upon completion:

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

(2) 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 reliably meeting or exceeding symmetrical 100 Mbps download speed and upload speeds:

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

(ii) Be scalable to a minimum of 100 Mbps download speed and 100 Mbps upload speed; and

(C) The service provider for a completed broadband infrastructure investment project that provides service to households is required, for as long as the SLFRF-funded broadband infrastructure is in use, by the recipient to:

(1) Participate in the Federal Communications Commission's Affordable Connectivity Program (ACP) through the lifetime of the ACP; or

(2) Otherwise provide access to a broad-based affordability program to low-income consumers in the proposed service area of the broadband infrastructure that provides benefits to households commensurate with those provided under the ACP through the lifetime of the ACP.

(ii) *Cybersecurity infrastructure investments.* Cybersecurity infrastructure investments that are designed to improve the reliability and resiliency of new and existing broadband infrastructure. Such investments may include the addition or modernization of network security hardware and software tools designed to strengthen cybersecurity for the end-users of these networks.

(f) *Meeting the non-federal matching requirements for Bureau of Reclamation projects.*

A recipient may use funds to meet the non-federal matching requirements of any authorized Bureau of Reclamation project.

**§ 35.7 Pensions.**

A recipient (other than a Tribal government) 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 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, the Secretary 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*. The Secretary 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) *Initial notice.* If the Secretary calculates an amount subject to recoupment under paragraph (b) of this section, Treasury will provide the recipient an initial written notice of the amount subject to recoupment along with an explanation of such amounts.

(d) *Request for reconsideration.* Unless the Secretary extends or accelerates the time period, within 60 calendar days of receipt of an initial notice of recoupment provided under paragraph (c) of this section, a recipient may submit a written request to the Secretary 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 the Secretary 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 the Secretary extends or accelerates the time period, within 60 calendar days of receipt of the recipient's request for reconsideration provided pursuant to paragraph (d) of this section or the expiration of the period for requesting reconsideration provided under paragraph (d), 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. A recipient must invoke and exhaust the procedures available under this subpart prior to seeking judicial review of a decision under §35.10.

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

- (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.

(g) *Other remedial actions.* Prior to seeking recoupment or taking other appropriate action pursuant to paragraph (c), (d), (e), or (f) of this section, the Secretary may notify the recipient of potential violations and provide the recipient an opportunity for informal consultation and remediation.

### **§ 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 at least May 10, 2022 and not more than 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 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 part 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 the Secretary pursuant to section 603(b)(2)(B) of the Social Security Act shall distribute the amount of the payment to nonentitlement units of local 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. For purposes of this section 35.12, a nonentitlement unit of local government's most recent budget shall mean the nonentitlement unit of local government's total annual budget, including both operating and capital expenditure budgets, in effect 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 section 35.12.

(c) *Units of general local government.* Each State or Territory that receives a payment from the Secretary 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.

Dated:

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Jacob Leibenluft,  
Chief Recovery Officer.