

Memorandum

January 19, 2022



Summary: Final Rule Issued by U.S. Treasury Providing Guidance on use of Coronavirus State and Local Fiscal Recovery Funds from the American Rescue Plan for Broadband Deployment

On January 6, 2022, the U.S. Treasury released the [Final Rule](#) (FR) for the \$350 billion in Coronavirus State and Local Fiscal Recovery Funds (SLFRF). Treasury also released an [Overview of the Final Rule](#) (*Broadband starts on p. 39*), which provides a summary of major rule provisions to assist recipients and stakeholders. The Final Rule takes effect on April 1, 2022, though recipients can choose to take advantage of its flexibilities and simplifications now. Recipients may consult the [Statement Regarding Compliance with the Coronavirus State and Local Fiscal Recovery Funds Interim Final Rule and Final Rule](#) for more information on compliance with the Interim Final Rule (issued May 2021) and the Final Rule. NRECA provided a [detailed](#) and [one-page](#) summary of the interim rules back in May, 2021.

Eligible Areas:

- Award recipients have flexibility to identify the specific locations within their communities to be served and to otherwise design the project.
- Recipients are encouraged to design projects to serve locations without access to [reliable wireline 100/20 Mbps](#) broadband service but are broadly able to invest in projects that serve locations with an identified need for additional broadband investment.
 - For locations where there are existing and enforceable federal or state funding commitments for reliable service of at least 100/20 Mbps, recipients must ensure that SLFRF funds are designed to address an identified need for additional broadband investment that is not met by existing federal or state funding commitments (*see nonduplication of support below*).

NRECA Note: *This essentially means the case can be made for an applicant to receive SLFRF funding for areas that have received federal or state broadband funding or that have existing service above 100/20 Mbps. This is the most flexibility in eligible areas to date.*

Nonduplication of support:

- The Final Rule does not prohibit the use of SLFRF funds in areas for which there are already “existing enforceable federal or state funding commitments for reliable service at speeds of at least 100/20 Mbps,” as long as the additional investment is not already being met by existing federal or state funding commitments.
- Recipients must also ensure that SLFRF funds will not be used for costs that will be reimbursed by the other federal or state funding streams.
- Recipients have broad flexibility to define need in their community.
 - Need can be based on a lack of stable, reliable service, access, and/or affordability.

- Localities can document this need using any available data, including local speed tests, federal or state data, interviews with residents and businesses in the affected areas, and just about any other way that proves there is an existing broadband need.

Network Speed Obligations:

- Eligible projects are expected to be designed to deliver, upon project completion, service that reliably meets or exceeds symmetrical 100/100 Mbps.
- Recognizing that this goal may be impracticable in some instances due to geographical, topographical, or financial constraints, the FR permits upload speeds of between at least 20 Mbps and 100 Mbps, but the networks should be scalable to 100/100 Mbps.

Encouraged Priorities:

- Treasury also encourages recipients to prioritize support for broadband networks owned, operated by, or affiliated with local governments, non-profits, and **cooperatives**— providers with less pressure to turn profits and with a commitment to serving entire communities.
- Recipients are encouraged to prioritize investments in fiber optic infrastructure where feasible.

Participation in a Low-Income Subsidy Program:

Recipient service providers are required to:

- Participate in the FCC’s Affordable Connectivity Program (ACP) administered by the FCC or...
- Provide access to a broad-based affordability program to low-income consumers that provides benefits commensurate to ACP.

Recipients are also encouraged to:

- Include at least one low-cost option offered without data usage caps at speeds sufficient for a household with multiple users to simultaneously telework and engage in remote learning.
- Consult with the community on affordability needs.

Cybersecurity:

- Modernization of cybersecurity for existing and new broadband infrastructure is an eligible use for SLFRF broadband infrastructure funds.