

6. Eligible Uses – Water, Sewer, and Broadband Infrastructure

6.1. What types of water and sewer projects are eligible uses of funds?

Eligible water and sewer projects are outlined on pages 37-38 of the [Overview of the Final Rule](#). Under the interim final rule, SLFRF funds could be used to fund projects that would be eligible under EPA’s Clean Water State Revolving Fund or Drinking Water State Revolving Fund. With broadened eligibility under the final rule, SLFRF funds may also be used to fund additional types of projects — such as additional stormwater infrastructure, residential wells, lead remediation, and certain rehabilitations of dams and reservoirs — beyond the CWSRF and DWSRF, if they are found to be “necessary” according to the definition provided in the final rule and outlined on page 38 of the Overview.

6.2. May recipients use funds as a non-federal match for the Clean Water State Revolving Fund (CWSRF) or Drinking Water State Revolving Fund (DWSRF)?

Per [FAQ #4.6](#), SLFRF funds available for the provision of government services, up to the amount of the recipient’s reduction in revenue due to the public health emergency (the revenue loss eligible use category), may be used to meet the non-federal cost-share or matching requirements of other federal programs, including the CWSRF and DWSRF programs administered by the EPA. Per [FAQ #4.9](#), loans funded under the revenue loss eligible use category may be deemed expended at the point of disbursement. Thus, recipients using SLFRF funds available under revenue loss for non-federal matching requirements for the DWSRF or CWSRF may consider funds expended at the point the recipient makes the deposit into the State Revolving Funds. Recipients using SLFRF funds available under revenue loss should log projects under expenditure category 6.2.

As further noted in [FAQ #4.6](#), SLFRF funds beyond those that are available under the revenue loss eligible use category may not be used to meet the non-federal match or cost-share requirements of other federal programs, other than as specifically provided for by statute. Recipients using funds under the eligible use category for water and sewer infrastructure may not use funds as a state match for the CWSRF and DWSRF.

6.3. Does the National Environmental Policy Act (NEPA) apply to projects funded with SLFRF funds?

NEPA does not apply to Treasury’s administration of the funds, including funds expended under the revenue loss, public health and negative economic impacts, and water, sewer, and broadband infrastructure eligible use categories. Projects supported with payments from the funds may still be subject to NEPA review if they are also funded by other federal financial assistance programs or have certain federal licensing or registration requirements.

6.4. What types of broadband projects are eligible uses of funds?

Recipients are required to design projects that, upon completion, reliably meet or exceed

symmetrical 100 Mbps download and upload speeds where practicable. More details on eligible broadband projects, including eligible areas for investment and the affordability requirement, are outlined on pages 39-40 of the [Overview of the Final Rule](#).

6.5. For broadband investments, may recipients use funds for related programs such as cybersecurity or digital literacy training?

Yes. In the final rule, Treasury maintained the enumerated eligible use for assistance to households for internet access and digital literacy programs. Recipients may use funds to provide assistance to households facing negative economic impacts due to the pandemic, including digital literacy training and other programs that promote access to the Internet.

SLFRF may be used for modernization of cybersecurity for existing and new broadband infrastructure, regardless of their speed delivery standards. This includes modernization of hardware and software. Under the final rule, recipients may also invest in general cybersecurity upgrades, unrelated to broadband infrastructure, under the revenue loss eligible use category.

6.6. Do I need pre-approval for my water, sewer, or broadband project?

See [FAQ #4.4](#). Generally, recipients are not required to submit planned expenditures for prior approval by Treasury and recipients are subject to the requirements and guidelines for eligible uses contained in the final rule.

While recipients must ensure that water and sewer infrastructure projects pursued are eligible under the final rule, recipients are not required to obtain project pre-approval from Treasury or any other federal agency when using SLFRF funds for necessary water and sewer infrastructure projects unless otherwise required by federal law. For projects that are being pursued under the eligibility categories provided through the DWSRF or CWSRF programs, project eligibilities are based on federal project categories and definitions for the programs and not on each state's eligibility or definitions. While reference in the final rule to the DWSRF, CWSRF, or other federal water programs is provided to assist recipients in understanding the types of water and sewer infrastructure projects eligible to be funded with SLFRF, recipients do not need to apply for funding from the applicable state programs or through any federal water program. Similarly, besides eligible project categories, the final rule does not incorporate other program requirements or guidance that attach to the DWSRF, CWSRF, or other federal water programs. However, as noted above, recipients should be aware of other federal or state laws or regulations that may apply to construction projects or water and sewer projects, independent of SLFRF funding conditions, and that may require preapproval from another federal or state agency.

6.7. For broadband infrastructure investments, what are eligible areas of investment?

Recipients are encouraged to prioritize projects that are designed to serve locations without access to reliable wireline 100/20 Mbps broadband service, but are broadly able to invest in projects designed to provide service to locations with an identified need for additional

broadband investment. For more details, see page 39 of the [Overview of the Final Rule](#).

6.8. May recipients use payments from the SLFRF for “middle mile” broadband projects?

Yes. Under the final rule, recipients may use payments from the SLFRF for “middle-mile projects,” but Treasury encourages recipients to focus on projects that will achieve last-mile connections—whether by focusing on funding last-mile projects or by ensuring that funded middle-mile projects have potential or partnered last-mile networks that could or would leverage the middle-mile network.

6.9. For broadband infrastructure investments, what does the requirement to “reliably” meet or exceed a broadband speed threshold mean?

See page 39 of the [Overview of the Final Rule](#), as well as pages 4419–4420 of the final rule.

6.10. May recipients use funds for pre-project development for eligible water, sewer, and broadband projects?

Yes. To determine whether funds can be used on pre-project development for an eligible water or sewer project, recipients should consult whether the pre-project development use or cost is eligible under the Drinking Water and Clean Water State Revolving Funds (DWSRF and CWSRF, respectively). Generally, the CWSRF and DWSRF often allow for pre-project development costs that are tied to an eligible project, as well as those that are reasonably expected to lead to a project. For example, the DWSRF [allows](#) for planning and evaluations uses, as well as numerous pre-project development costs, including costs associated with obtaining project authorization, planning and design, and project start-up like training and warranty for equipment. Likewise, the CWSRF [allows](#) for broad pre-project development, including planning and assessment activities, such as cost and effectiveness analyses, water/energy audits and conservation plans, and capital improvement plans.

Similarly, pre-project development uses and costs for broadband projects should be tied to an eligible broadband project or reasonably expected to lead to such a project. For example, pre-project costs associated with planning and engineering for an eligible broadband infrastructure build-out is considered an eligible use of funds, as well as technical assistance and evaluations that would reasonably be expected to lead to commencement of an eligible project (e.g., broadband mapping for the purposes of finding an eligible area for investment).

All funds must be obligated by recipients within the statutory period between March 3, 2021 and December 31, 2024, and expended to cover such obligations by December 31, 2026.

6.11. May funds be used to support energy or electrification infrastructure that would be used to power new water treatment plants and wastewater systems?

The EPA's [Overview of Clean Water State Revolving Fund Eligibilities](#) describes eligible energy-related projects. This includes a "[p]ro rata share of capital costs of offsite clean energy facilities that provide power to a treatment works." Thus, SLFRF funds may be used to finance the generation and delivery of clean power to a wastewater system or a water treatment plant on a pro-rata basis. If the wastewater system or water treatment plant is the sole user of the clean energy, the full cost would be considered an eligible use of funds. If the clean energy provider provides power to other entities, only the proportionate share used by the water treatment plant or wastewater system would be an eligible use of funds.

6.12. How should states and local governments assess whether a stormwater management project, such as a culvert replacement, is an eligible project?

Pages 37-38 of the [Overview of the Final Rule](#) describe the overall approach that recipients must take to evaluate the eligibility of water or sewer projects. With broadened eligibility under the final rule, a wide range of culvert repair, resizing, and removal, replacement of storm sewers, and additional types of stormwater infrastructure are eligible projects, as outlined further in the final rule.

6.13. May recipients use funds for road repairs and upgrades that occur in connection with an eligible water or sewer project?

Yes, recipients may use SLFRF funds for road repairs and upgrades directly related to an eligible water or sewer project. For example, a recipient could use funds to repair or repave a road following eligible sewer repair work beneath it. However, use of funds for general infrastructure projects is subject to the limitations described in [FAQ #8.1](#). Water and sewer infrastructure projects are often a single component of a broader transportation infrastructure project, for example, the implementation of stormwater infrastructure to meet Clean Water Act established water quality standards. In this example, the components of the infrastructure project that interact directly with the stormwater infrastructure project may be funded by SLFRF funds.

6.14. May funds be used to build or upgrade broadband connections to schools or libraries?

As outlined in the final rule, recipients may use SLFRF funds to invest in broadband infrastructure that, where practicable, is designed to deliver service that reliably meets or exceeds symmetrical upload and download speeds of 100 Mbps to households or businesses with an identified need for additional broadband investment. "Businesses" in this context refers broadly to include non-residential users of broadband, including private businesses and institutions that serve the public, such as schools, libraries, healthcare facilities, and public safety organizations.

6.15. Are eligible water, sewer, and broadband infrastructure projects, eligible capital expenditures under the public health and negative economic impacts eligible use category, and eligible projects under the revenue loss eligible use category subject to the Davis-Bacon Act?

The Davis-Bacon Act requirements (prevailing wage rates) do not apply to projects funded solely with award funds from the SLFRF program, except for SLFRF-funded construction projects undertaken by the District of Columbia. The Davis-Bacon Act specifically applies to the District of Columbia when it uses federal funds (SLFRF funds or otherwise) to enter into contracts over \$2,000 for the construction, alteration, or repair (including painting and decorating) of public buildings or public works. Recipients may be otherwise subject to the requirements of the Davis-Bacon Act when SLFRF award funds are used on a construction project in conjunction with funds from another federal program that requires enforcement of the Davis-Bacon Act. Additionally, corollary state prevailing-wage-in-construction laws (commonly known as “baby Davis-Bacon Acts”) may apply to projects. Please refer to [FAQ #4.8](#) concerning projects funded with both SLFRF funds and other sources of funding.

Treasury has indicated in its final rule that it is important that capital expenditure projects and necessary investments in water, sewer, or broadband infrastructure be carried out in ways that produce high-quality results, avert disruptive and costly delays, and promote efficiency. Treasury encourages recipients to ensure that capital expenditure projects and 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 projects, but also to support the economic recovery through strong employment opportunities for workers. Using these practices in 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.

Treasury has also indicated in its reporting guidance that recipients will need to provide documentation of wages and labor standards for capital expenditure projects and infrastructure projects over \$10 million, and that that these requirements can be met with certifications that the project is in compliance with the Davis-Bacon Act (or related state laws, commonly known as “baby Davis-Bacon Acts”) and subject to a project labor agreement. Please refer to the Reporting and Compliance Guidance for more detailed information on the reporting requirement.

6.16. What is the difference between using funds for eligible water and sewer projects and using funds under revenue loss for non-federal match for the Clean Water State Revolving Fund (CWSRF) or Drinking Water State Revolving Fund (DWSRF)?

As noted in [FAQ #6.1](#) and the Overview of the Final Rule, eligible projects that a recipient may fund under the water and sewer infrastructure eligible use category of SLFRF include eligible projects under EPA’s CWSRF and EPA’s DWSRF. Recipients may also fund

certain additional projects, including a wide set of lead remediation, stormwater infrastructure, and aid for private wells and septic units. Per [FAQ #6.6](#), recipients spending SLFRF funds under the water and sewer eligible use category are not required to obtain project pre-approval from Treasury or any other federal agency unless otherwise required by federal law.

Projects that recipients undertake with SLFRF funds under the water and sewer eligible use category are separate and distinct from projects that a recipient manages through their CWSRF and DWSRF. As noted in [FAQ #4.6](#) and [FAQ #6.2](#), recipients may use funds under the revenue loss eligible use category for non-federal matching requirements, including for EPA's Clean Water State Revolving Fund and EPA's Drinking Water State Revolving Fund. By contrast, funds spent under the water and sewer infrastructure eligible use category may not be used to meet non-federal matching requirements.

7. Non-Entitlement Units (NEUs)

Answers to frequently asked questions on distribution of funds to NEUs can be found in this [FAQ supplement](#).

8. Ineligible Uses

8.1. May recipients use funds to replenish a budget stabilization fund, rainy day fund, or similar reserve account?

No. Funds made available to respond to the public health emergency and its negative economic impacts are intended to help meet pandemic response needs and provide immediate stabilization for households and businesses. Contributions to rainy day funds and similar reserve funds would not address these needs or respond to the COVID-19 public health emergency, but would rather be savings for future spending needs. Similarly, funds made available for the provision of governmental services (to the extent of reduction in revenue) are intended to support direct provision of services to citizens. Contributions to rainy day funds are not considered provision of government services, since such expenses do not directly relate to the provision of government services.

8.2. What is meant by a pension “deposit”? Can governments use funds for routine pension contributions for employees whose payroll and covered benefits are eligible expenses?

In the context of the restriction on deposits into pension funds, “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.