



Commonwealth of Massachusetts

Executive Office for Administration & Finance

Federal Funds Office (FFO)

Coronavirus State and Local Fiscal Recovery Fund: Compliance Overview

October 2021



Table of Contents

- I. Introduction to ARPA Guidance
- II. CSLFRF Compliance Considerations
- III. Considerations for Program Design
- IV. Next Steps
- V. Additional Resources
- VI. Appendix



Introduction to ARPA Guidance



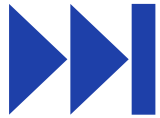
Introduction to SLFRF Guidance



The purpose of this presentation is to help practitioners design programs to incorporate federal compliance requirements



This presentation provides background on compliance requirements and considerations



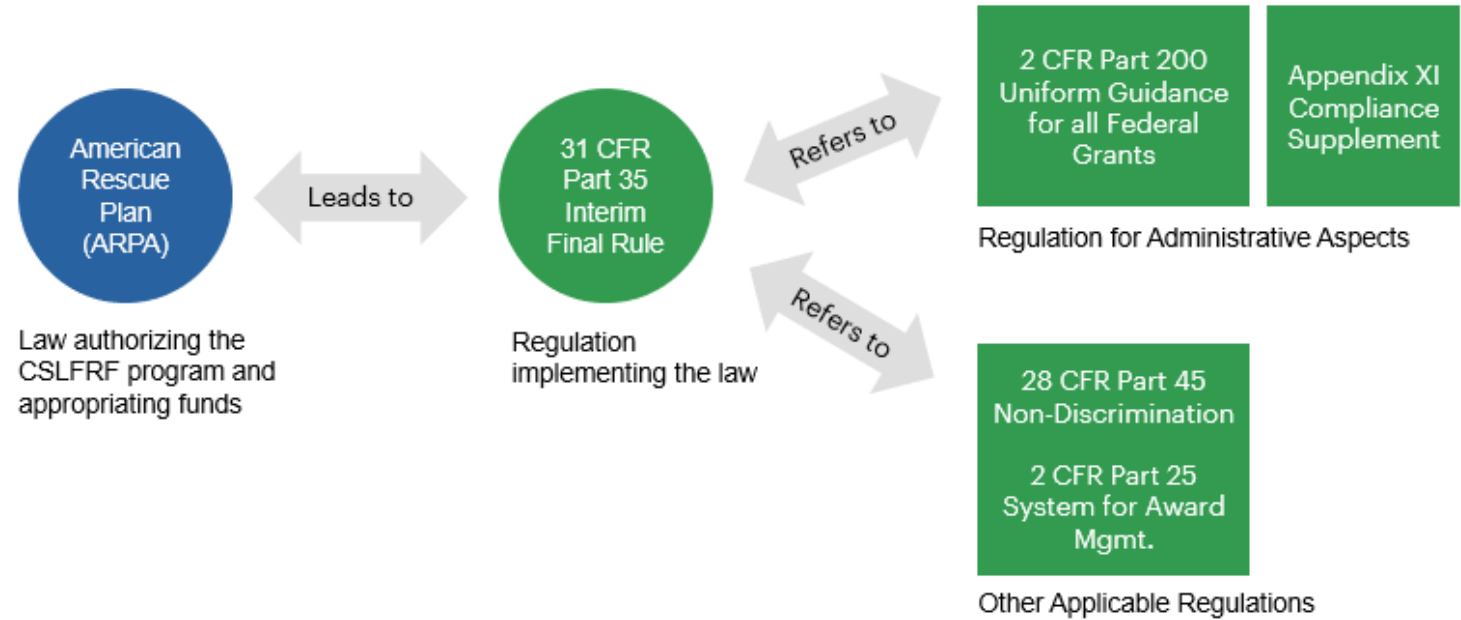
Subsequent webinars will direct recipients to more in-depth guidance



Introduction to Guidance

- CSLFRF compliance requirements are extensive and complex
- Guidance on compliance requirements is spread across many documents, such as the American Rescue Plan Act itself, several regulations, and numerous forms and memos
- Often one source of guidance (such as a regulation) will incorporate by reference other sources of guidance (such as other regulations)

AUTHORITATIVE GUIDANCE





Introduction to Guidance

- As referenced in the authoritative guidance, there is a plethora of operational and informational guidance which also **must be understood and included** in one's overall compliance approach

OPERATIONAL AND INFORMATIONAL GUIDANCE

U.S. Treasury CSLFRF Website

Grant application terms and conditions

Executive Orders, Memos and Fact Sheets

Narratives with answers to FAQs

Methodology to allocate funds and amounts

Narratives explaining CSLFRF program and summarizing compliance requirements




CSLFRF Compliance Considerations

CSLFRF Compliance Leading Practices

- Each recipient government will receive CSLFRF money and therefore have compliance and reporting obligations. **Leading practices include:**

 Prior to spending funds, design a **compliance strategy, data collection process, and reporting approach. Investments will likely be needed for data collection, reporting.**

 Funds can and should be used to support the effective management of federal funds including **robust compliance and reporting operations.**

 For recipients with prior experience with federal awards, program design should **start with pre-existing processes, systems, policies, and people.** Pre-existing infrastructure should be assessed to ensure they are sufficient to manage compliance requirements.

- Consequences of non-compliance can be significant, including but not limited to return of funds determined to be used in a non-compliant manner back to the federal government.



Considerations for Program Design



Eligible Uses & Timeframe

- Recipients may use SLFRF award funds within the following four eligible use categories:
 1. To **respond to the public health emergency** or its negative economic impacts;
 2. To respond to workers performing essential work during the public health emergency by providing **premium pay** to eligible workers or by providing grants to eligible employers;
 3. For the **provision of government services**, to the extent to which the reduction of revenue is due to the public health emergency (relative to specific conditions about revenues collected in the most recent fiscal year); and
 4. To make necessary investments in **water, sewer or broadband infrastructure**
- Funds may be used to cover eligible costs incurred from March 3, 2021 to December 31, 2024
 - › Funds must be obligated by December 31, 2024 and expended by December 31, 2026
 - › Costs for projects incurred by the recipient prior to March 3, 2021 are not eligible



Restricted Uses

- Treasury’s Interim Final Rule highlights the following as ineligible uses of SLFRF awards:
 - › Recipients may not deposit SLFRF funds into a **pension fund**
 - › Recipients that are States or territories may not use SLFRF funds to offset a **reduction in net tax revenue** caused by change in law, regulation, or administrative interpretation
 - › Recipients may not use SLFRF funds as **non-Federal match**, where prohibited
 - › Recipients generally may not use SLFRF funds directly to service debt, satisfy a judgement or settlement, or contribute to a **“rainy day” fund**



Eligibility Determinations

- **Programs must be designed within four eligible use categories.** Recipients should design and apply a framework for determining whether a project is eligible under the four eligible use categories
 - › Whether an expense “responds to” a “negative economic impact” caused by the COVID-19 public health emergency;
 - › Whether a recipient is an “eligible employer”, doing “essential work,” employing “eligible workers” for cases where premium pay is an eligible use;
 - › Whether an expense is considered the “provision of government services” and why;
 - › Whether a proposed project is eligible under the Environmental Protection Agency’s Drinking Water and Clean Water State Revolving Funds; and
- Compliance requirements should be **embedded in program/project designs**
- **Compliance staff should be engaged** in all program/project design activities
- All determinations should be **documented and retained in an accessible format**



Documenting Eligibility

- The following steps should be taken to ensure that eligibility is documented adequately:
 1. Eligibility determinations should be documented by **applying the relevant facts of any given expense to the eligibility requirements** of the category under which it is being categorized
 2. Determinations may take the form of **memoranda or other suitable records**
 3. Facts asserted in eligibility determinations should be **supported by physical evidence** (i.e., invoices, e-mails, contracts, etc.)
- Documentation must be **retained for five years** after all funds have been expended



Application of the Uniform Guidance

- SLFRF awards are generally subject to the requirements set forth in the **Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards at 2 C.F.R. Part 200 (“Uniform Guidance”)**
- Recipients should review the Uniform Guidance requirements applicable to use of SLFRF funds and **determine how and whether certain aspects of the guidance apply**
- Below is a summary of recipients’ compliance responsibilities under applicable statutes and regulations, including the Uniform Guidance (**see Appendix for additional detail**):
 - Allowable Activities
 - Allowable Costs:
 - Cash Management
 - Eligibility
 - Equipment and Real Property Management
 - Matchmaking, Level of Effort, Earmarking
 - Period of Performance
 - Procurement, Suspension & Debarment
 - Program Income
 - Reporting
 - Subrecipient Monitoring



Internal Controls Best Practices

- As referenced in the Uniform Guidance Subparts D & F, internal controls are critical and influence risk level and audit intensity
- U.S. Treasury provided the following table with their view of internal controls best practices

Best Practice	Description	Example
Written policies and procedures	Formal documentation of recipient policies and procedures	Documented procedure for determining worker eligibility for premium pay
Written standards of conduct	Formal statement of mission, values, principles, and professional standards	Documented code of conduct / ethics for subcontractors
Risk-based due diligence	Pre-payment validations conducted according to an assessed level of risk	Enhanced eligibility review of subrecipient with imperfect performance history
Risk-based compliance monitoring	Ongoing validations conducted according to an assessed level of risk	Higher degree of monitoring for projects that have a higher risk of fraud, given program characteristics
Record maintenance and retention	Creation and storage of financial and non-financial records.	Storage of all subrecipient payment information.



Subrecipient Monitoring

- As referenced in Uniform Guidance Subparts C & D, subrecipient determinations and monitoring are required
- When transfers of CSLFRF funds are made, compliance obligations of the recipient flow to the subrecipient. Recipient governments retain obligation to monitor sub-recipients.
- As you make subrecipient determinations and conduct monitoring, consider:
 - › **Determination and documentation:** As part of program design, recipients should determine whether the designed program will operate as a pass-through of federal funds to subrecipients and record that determination
 - › **Grant award letters:** Grant award letters must be issued that clearly identify the source of funding as CSLFRF and communicate associated compliance requirements
 - › **Risk assessment:** Evaluate each subrecipient's risk of noncompliance with Federal statutes, regulations, and the terms and conditions of the subaward. Consider imposing specific subaward conditions upon a subrecipient if appropriate
 - › **Monitoring:** Monitor the activities of the subrecipient to ensure that the subaward is used for authorized purposes and is in compliance with Federal statutes, regulations, and the terms and conditions of the subaward
 - › **Verification:** Recipients getting more than \$750,000 will require a Single Audit. Verify that every subrecipient complies.
 - › **Remediation:** Consider whether the results of the subrecipient's audits, on-site reviews, or other monitoring indicate conditions that necessitate adjustments to the pass-through entity's own records
 - › **Enforcement:** Consider taking enforcement action against noncompliant subrecipients



Terms and Conditions for CSLFRF

- **Record Keeping Requirements**

- › Recipients must maintain records for five years after funds have been expended or returned. Records should be collected, transmitted, and stored in open and machine-readable formats
- › Such records must be made available to Treasury upon request, and to any authorized oversight body, including Government Accountability Office (“GAO”), Treasury’s Office of Inspector General (“OIG”), and the Pandemic Relief Accountability Committee (“PRAC”)

- **Single Audit Requirements**

- › Recipients and subrecipients that expend more than \$750,000 in Federal awards during their fiscal year will be subject to an audit conducted by an independent auditor.

- **Civil Rights Compliance**

- › Recipients of Federal financial assistance from Treasury are required to meet legal requirements relating to nondiscrimination and nondiscriminatory use of Federal funds.
- › Requirements include ensuring that entities do not deny benefits or services, or otherwise discriminate on the basis of race, color, national origin, disability, age, or sex.



Appendix



Uniform Administrative Requirements

Requirement	Description
Allowable Activities	Recipients must review program requirements to determine and record eligible uses of SLFRF funds. Determinations must be robustly documented.
Allowable Costs	Recipient's authorized person must certify all costs are true and accurate. Direct and indirect costs must be reasonable to accomplish the purpose of the federal award.
Cash Management	Recipients can place funds in interest-bearing accounts, do not need to remit interest to Treasury, and are not limited to using that interest for eligible uses.
Eligibility	Recipients must develop and implement policies, procedures, and record retention to determine and monitor implementation of criteria for determining eligibility of beneficiaries and/or subrecipients.
Equipment & Real Property Management	All purchases of equipment or real property must be consistent with Uniform Guidance at 2 CFR Part 200, Subpart D and must be used for its originally authorized purpose. Acquisition and maintenance must also be in compliance with relevant laws and regulations.
Matchmaking, Level of Effort, Earmarking	SLFRF funds may only be used for non-Federal match in other programs where costs are eligible under both SLFRF and the other program and use of such funds is not prohibited by the other program.



Uniform Administrative Requirements

Requirement	Description
Period of Performance	Recipients must develop and implement internal controls related to activities occurring outside the period of performance.
Procurement, Suspension & Debarment	<p>Recipients must ensure that any procurement using SLFRF funds is consistent with procurement standards set forth in Uniform Guidance at 2 CFR 200.317 through 2 CFR 200.319.</p> <p>All procurement transactions for property or services must be conducted in a manner providing full and open competition unless the non-competitive procurement threshold is met as outlined in 2 CFR 200.320. Recipients must have and use documented procurement procedures and must have an infrastructure for competitive bidding and contractor oversight.</p> <p>Recipients must also ensure adherence to all applicable local, State, and federal procurement laws and regulations.</p>
Program Income	Recipients must calculate, document, and record organization's program income. Written policies that identify appropriate allocation methods, accounting standards and principles, and compliance monitoring checks for calculations should all be implemented.



Uniform Administrative Requirements

Requirement	Description
<p>Reporting</p>	<p>Recipients must complete all financial, performance, and compliance reporting. Recipients should maintain accounting records for compiling and reporting accurate, compliant financial data. Where appropriate, recipients should establish controls to ensure completion and submission of all mandatory performance reporting.</p>
<p>Subrecipient Monitoring</p>	<p>Recipients must manage and monitor their subrecipients to ensure compliance with requirements of the SLFRF award pursuant to 2 CFR 200.332 regarding requirements for pass-through entities. Recipients must identify to the subrecipient that the award is a subaward of SLFRF funds and all associated compliance and reporting requirements.</p> <p>Recipients will then need to evaluate each subrecipient's risk of noncompliance based on a set of common factors. Ongoing monitoring of subrecipients should reflect assessed risk and remediation should be taken where needed.</p> <p>Written policies and procedures for subrecipient monitoring and risk assessment should be developed, and all records of award agreements should be documented and maintained.</p>