



Docket ID: TREAS-DO-2021-0008

July 16, 2021

Office of the Undersecretary for Domestic Finance
U.S. Department of the Treasury
1500 Pennsylvania Avenue NW
Washington, DC 20220

To Whom it May Concern:

The National Association of Counties (NACo) appreciates the opportunity to comment on the U.S. Department of Treasury's Interim Final Rule (IFR) for the Coronavirus State and Local Fiscal Recovery Fund (Recovery Fund) established under the *American Rescue Plan Act (ARPA)*. NACo is the only national organization representing America's 3,069 county governments. Collectively, counties have been and continue to be on the front lines of our nation's response to the coronavirus pandemic. During this unprecedented public health emergency and the aftermath of an economic crisis, counties are committed to strong intergovernmental cooperation to mitigate COVID-19 and its far-reaching impacts on America's people and places.

We understand the historic nature of this legislation and the massive undertaking associated with it. Therefore, counties stand ready to work with you as partners to ensure the successful implementation and execution of the Recovery Fund. We appreciate the U.S. Treasury publishing an IFR, which has allowed for ongoing intergovernmental consultation to achieve our shared goal of successfully implementing the Recovery Fund to ensure the health and well-being of our nation's residents and the economic vitality of our local communities.

Since the enactment of the ARPA, America's counties have been working hard to develop implementation plans that will help spur an equitable economic recovery across the nation. Local governments are using these critical recovery funds to invest in public safety, vaccine distribution, housing and rental assistance, local economic support, economic and workforce development, broadband expansion, social safety-net services, hospitality and tourism development and hazard pay for public employees.

The flexibility, transparency and accountability of any federal aid is critical and should be viewed as a cornerstone of our intergovernmental partnership. Given our role as the front line of this pandemic, counties know what our communities need to mitigate the virus, protect the public's health and restore our economy. Counties – rural, suburban and urban – across the country are experiencing detrimental fiscal impacts due to revenue loss and increased demands because of COVID-19.

While we are highly appreciative of the IFR's goal, we are also concerned that current restrictions and limited clarity on eligible and ineligible uses of the Recovery Funds may inhibit our ability to achieve an equitable economic recovery.

We applaud the U.S. Treasury's ongoing efforts to provide clarity on the IFR and Recovery Funds by updating the FAQs, hosting national conference calls and engaging with our membership. To support

these efforts, since the U.S. Treasury IFR was published, NACo surveyed our membership to identify outstanding questions on eligible uses, desired spending and implementation of the Recovery Fund. Over the last two months, we have received over 1,000 questions (Appendix B), comments, recommendations and case studies (Appendix C) from hundreds of counties across the country.

Based on these insights, America's counties have the following recommendations related to each of the categories contained in the U.S. Treasury's IFR:

- Provide additional flexibility for Recovery Funds to ensure our nation's preparedness and responsivity continues.
- Provide further clarity on eligible uses of Recovery Funds to ensure counties comply with the U.S. Treasury's goals and the intentions of the IFR.
- Incorporate additional eligible uses of Recovery Funds that will help support local and national recovery.

PUBLIC HEALTH SUPPORT AND NEGATIVE ECONOMIC IMPACTS

The nearly 40,000 county elected officials and more than 3.5 million county employees across the nation's 3,069 counties, parishes and boroughs remain focused on addressing the devastating, enduring impacts of the COVID-19 pandemic, including through our county public health officials, health care providers, coroners and medical examiners, public safety personnel, human services case managers, and other essential, frontline public servants. Additionally, counties support over 900 hospitals, 824 long-term care facilities and 1,943 local health departments, which have played an integral role in distributing the COVID-19 vaccine.

Given this significant role in providing public health services and serving as the front line of the social safety net, counties require additional clarification and guidance related to allowable and unallowable uses within this category to ensure we are correctly implementing these funds. As the U.S. Treasury provides additional detail and direction in the Final Rule, we urge you to incorporate the following recommendations:

- **Explicitly allow for addiction crisis services as an eligible use.** Last year's unprecedented escalation of the opioid crisis is almost certainly linked to the COVID-19 pandemic, given the impact of social isolation brought on by safety measures implemented to mitigate the public health emergency. This crisis not only burdens the families and individuals of those suffering from an addiction disorder, but it also overwhelms the county-owned and operated treatment facilities that provided necessary care for these families. Given this direct link to the public health crisis, we ask that the U.S. Treasury consider making addiction crisis services, including through country jails and diversion centers, an eligible use of Fiscal Recovery Funds in the Final Rule.
- **Permit long-term equity endowments that address racial and ethnic disparities in healthcare access and outcomes.** Differences in COVID-19 infection and death rates illuminated gaps in healthcare coverage and access for racial and ethnic minorities and other vulnerable residents. Local governments are poised to undertake targeted interventions to these disparities should we have access to dedicated and sustained resources. We encourage the Final Rule to allow counties to establish local equity endowments that would obligate dollars toward addressing

longstanding, systemic inequities and racial disparities. To incentivize this activity, the U.S. Treasury should consider the deposit of grant dollars into such funds as dollars spent so that both grant dollars and locally derived funds could be leveraged and serve as a long-term source of funds to support the long-term work to reduce these disparities.

- **Expand eligible use of Recovery Funds for capital investment projects:** Counties appreciate that the IFR allows that Recovery Funds be used for adaptation costs for capital investments in public facilities to meet pandemic operational needs. However, this only allows for counties to invest in certain sectors impacted by the pandemic and limits our ability to implement projects and services that would benefit our residents and communities. Counties request clarification on whether capital improvement projects beyond water, sewer and broadband are included as an eligible expense. These vital community infrastructure projects include but are not limited to behavioral health, emergency management and public safety facilities, public health-related infrastructure improvements, transportation infrastructure and services, projects for economic development and purchasing or remodeling of public facilities. Furthermore, while we support the provision that allows for revenue loss refunds to be used for the maintenance or pay-go funded building of infrastructure, this also limits the number of counties that can invest in broader critical infrastructure projects. By making capital investment projects an allowable expense, the American Rescue Plan will allow us to meet the needs of our residents as we continue to fight the pandemic.
- **Expand the definition of public sector staff engaged in the COVID-19 response:** The U.S. Treasury should assess the pandemic's impact of all local safety-net services when considering the extent to which public sector staff is engaged in COVID-19, given the multifaceted effect of the pandemic on individuals' physical, mental, financial and social-emotional health. Thus, the measure of engagement in the COVID-19 response should not just be limited to the healthcare sector but should extend to critical county services that meet the total scope of the resident needs for well-being and health to include (but not limited to): staff in the areas of behavioral and mental health, long-term care, home health, public benefits administration and social services for children, adults and veterans.
- **Clarify activities addressing behavioral health and well-being to include both acute and chronic care as well as services, including support groups, that do not often directly accept insurance payments:** As administrators of local safety net systems, including hospitals, health and behavioral health clinics, health departments, and nursing homes, counties are often the "payers of last resort," taking on the cost of care for the underinsured and medically indigent in these settings. Increased numbers of newly uninsured individuals seeking both medical and behavioral health care for acute and chronic conditions in these settings can be directly attributed to the economic impact of the COVID-19 pandemic.
- **Clarify expectations for services in Qualified Census Tracts (QCTs):** Counties agree that QCTs are a reasonable measure of economic disadvantage and that the use of this metric has the benefit of providing a readily available list of communities in which a broader range of eligible uses are presumed to be responsive to the impacts of COVID-19. However, we encourage Treasury to answer the following frequently asked questions:
 - Is it enough that a county use Recovery Funds to provide programs and services so long as at least some of the participating individuals or households live in a QCT, or must the

activity *exclusively serve* individuals living in a QCT? If the former, is there a minimum threshold of participants that the U.S. Treasury would deem acceptable for a program or service to be considered eligible within this category?

- If a county chooses to provide a program or service to additional populations (not just those living in a QCT), must the county provide written justification to support its determination that the pandemic has disproportionately impacted this population?
- **Draw on additional metrics as a proxy for disproportionate impact:** While QCTs are a reasonably appropriate measure of hardship, reliance upon this definition may prevent counties from providing aid to certain communities experiencing economic distress. We encourage the U.S. Treasury to consider expanding its definition of populations experiencing disproportionate impacts to include:
 - Census tracts containing public housing units
 - Schools or school districts participating in the Community Eligibility Provision (CEP) option for federal school meal reimbursement require an Identified Student Percentage (ISP) of 40 percent or higher. To calculate ISP, a school must count all students who are categorically eligible for free school meals and divide by total student enrollment
 - Schools receiving schoolwide eligibility waivers for Title I, Part A funding under the Elementary and Secondary Education Act (ESEA), which requires that low-income families make up at least 40 percent of enrollment
 - Households participating in means-tested public benefits programs
 - Children attending Early Head Start, Head Start or a childcare facility that participate in the federal Child Care and Development Fund Program or have Area Eligibility for the Child and Adult Food Care Program
- **Allow early learning facility construction and improvements:** County governments play a significant role in supporting the childcare sector and recognize the critical importance that access to affordable, safe childcare will play in facilitating economic recovery at the local level, as the IFR acknowledges. According to the Federal Reserve Bank of Minneapolis, childcare employment remains 20 percent below the pre-pandemic level. As a result of the pandemic, two in five childcare providers have taken on debt to stay open, while 20,000 child centers have closed for good since the pandemic began exacerbating existing challenges related to childcare supply. In 2018, [according to the Center for American Progress](#), 51 percent of Americans lived in neighborhoods that qualified as child care deserts, defined as a more than three-to-one ratio of children under age five to the cumulative capacity of licensed or registered child care. A similar [analysis from the Bipartisan Policy Center](#) suggests that in 25 states, some 32 percent of children under age six face a "child care gap," meaning all available parents are in the workforce, but the children lack access to formal care.

This limited supply of quality childcare is especially prevalent in rural areas. Beyond the need for new childcare facilities to address these supply issues, experts also suggest that substantial investments are required simply to upgrade existing childcare facilities and home-based care settings to meet best-practice health and safety standards. Counties appreciate the inclusion of childcare workers within the class of workers eligible for premium pay and the creation of new or expanded high-quality childcare as an example of promoting healthy childhood environments within the eligible use of addressing disproportionate impacts. However, we encourage the U.S.

Treasury to allow county governments to utilize Recovery Funds to build or develop **new** childcare facilities to further address supply issues. Additionally, we ask the U.S. Treasury to address whether counties may use funds for facilities improvements or needs assessments that address safety issues within early learning facilities beyond remediation of lead hazards.

- **Include Community Development Block Grant (CDBG) expenditures as an eligible use:** The Final Rule should explicitly state that allowable activities that address the public health and economic impacts of the pandemic include activities under the U.S. Department of Housing and Urban Development CDBG Program, as one of the several definitions, of eligible expenditures. The CDBG program is proven to assist in supporting local communities with housing, infrastructure and human service needs.
- **Permit property acquisition:** The Final Rule should permit property acquisition for the development of affordable housing in areas other than QCTs, including purchasing properties near public transportation or other public resources that would enhance economic mobility. We encourage the U.S. Treasury to explicitly state that property acquisition would alleviate the economic impacts of COVID-19 and affirm that localities can use grants for this purpose. Furthermore, counties urge the U.S. Treasury to include explicit language allowing Recovery Funds to be used to purchase and/or improve equipment or property that would help address and mitigate the long-term impacts of COVID-19. Long-term investments that could benefit communities are a popular choice for recipients during this time of economic instability.
- **Expand definitions within affordable housing development:** Local governments rarely undertake housing construction directly and usually enact policies that incentivize private developers to build affordable housing. Therefore, the Final Rule should provide a more comprehensive definition of allowable activities related to affordable housing development. For example, Stearns County, Minnesota, is exploring whether Recovery Funds may be used to support the construction of a step-down facility or other mechanisms, such as retrofitted spaces, to facilitate long-term, stable housing among the population interacting with the county's justice and behavioral health system.
- **Provide safe harbor for households receiving direct assistance:** Counties appreciate the inclusion of direct assistance to households as an eligible use to address the negative economic impacts of the pandemic. However, we encourage the U.S. Treasury to ensure that direct aid, especially cash assistance, will be omitted from calculations of taxable income to protect vulnerable residents from losing income eligibility for other means-tested federal public assistance programs. This is a vital step to avoid the unintended consequences of residents losing access to long-term supports in exchange for immediate assistance. Additionally, we ask the U.S. Treasury to provide additional clarification on how counties will need to demonstrate a negative economic impact for a household or business on either a population or group level.
- **Provide a definition of low-income:** The IFR makes numerous references to prioritizing programs and services to low-income residents. To help us best target the funds in compliance with the IFR, we ask that the U.S. Treasury clarify how it measures low income. Specifically, given the broad range of economic landscapes for counties and our residents, we urge that this definition or measurement be based on local data rather than that of national data.

- **Provide additional flexibility for expenses incurred prior to March 3, 2021:** While counties are appreciative of the current flexibility provided for some costs incurred prior to March 3, 2021, such as those incurred by sub-recipients, counties are concerned that, as currently written, the IFR severely limits our ability to cover many of the expenses incurred during the calendar year 2020. For example, in Sarasota County, Fla., the county quickly allocated its CARES Act Coronavirus Relief Funds (CRF) ahead of the original December 30th, 2020 deadline, to cover costs early in the pandemic (i.e., medical and protective supplies, disinfecting supplies and provide paid sick and family leave to employees). Furthermore, Sarasota County also used its CARES Act CRF dollars to cover internal COVID-19 operational and response and recovery expenditures, including vaccine support costs. To date, Sarasota County has spent over \$17 million to support ongoing public safety measures and vaccine deployment. Therefore, counties urge the U.S. Treasury to allow for costs incurred by the recipient (i.e., County) during the height of the COVID-19 pandemic between January 27th, 2020, and March 3rd, 2021.

PREMIUM PAY

- **Expand premium pay for eligible employees:** Under the IFR, premium pay may only be provided to individuals that are defined as essential employees performing essential work. While counties appreciate the broad definition of "essential workers" included in the IFR, we are concerned that the current definition of "essential work" may limit our ability to appropriately and adequately compensate workers who have been and continue to be relied on during this pandemic. For example, some essential employees, such as 911 dispatchers, behavioral healthcare providers, among other employees, were able to perform their job duties from a residence. Although these employees did not have regular in-person interactions, they certainly provided essential services to support the response to COVID-19 impacts. Therefore, counties recommend that the Final Rule allows for additional flexibility in its definition of "essential work" to ensure all essential workers receive premium pay.

REVENUE LOSS FORMULA AND CALCULATION

The impact of COVID-19 on counties has been uneven yet widespread across the nation. Counties vary greatly in terms of population, geography, government structure, funding streams and economic drivers. Depending on these factors and many others, some counties have been largely shielded from the fiscal impacts of COVID-19. Notwithstanding these few exceptions, most counties have felt the devastating effects of the pandemic on our budgets, workforces, economies and residents, albeit in unique ways.

In response to these unprecedented budgetary and workload impacts, more than 50 percent of counties have had to draw down from reserve funds due to COVID-19. Others have been forced to cut capital projects or services, with 55 percent of counties reporting cuts to capital expenditures and 56 percent reporting cuts or delays in infrastructure projects, including maintenance or new projects. Still, other counties have turned to furloughs and layoffs. Sixty-three percent of counties underwent workforce changes, either furloughing or laying off workers or requesting they take early retirement. NACo has tracked the furloughs and layoffs of 165 counties, which have impacted over 20,000 county workers.

Beyond the detrimental impacts at the local level, this decrease in local government spending could cost the U.S. economy up to \$344 billion in decreased GDP and 4.9 million jobs. These losses are based on two different [Harvard analyses](#) of the impact of state and local government spending on economic output and the workforce, one which estimates that every dollar cut in local government spending

would reduce overall economic output by \$1.70 or more, and another which estimates that every \$35,000 spent by state governments generates one additional job.

Therefore, NACo urges the U.S. Treasury to reconsider restrictions around the revenue loss calculation and requirements in the IFR and provides the following recommendations:

- **Adjust revenue loss calculation and fiscal year-end dates:** To calculate revenue loss, the U.S. Treasury should allow the counties to use their unique fiscal year-end dates for the annual calculations of revenue loss, as is already required for the base year and growth adjustment calculations. As outlined in the IFR, the U.S. Treasury uses the definition of "general revenue" based on that of the Census Bureau's Annual Survey of State and Local Government Finances (Annual Survey). However, each year's Annual Survey is completed using the local government's own fiscal year-end date, not solely December 31st, as required by the IFR. For counties that do not complete their budget on the calendar year, this requirement may impact the amount a county claims in revenue loss. Furthermore, the December 31st end date may create unintended administrative burdens when the county is working with external entities that provide financial information to the county ahead of audits.
- **Allow revenue loss funds to be used for rainy day and reserve funds:** Currently, the IFR prohibits state and local governments from placing revenue loss funds into rainy day or reserve funds. As mentioned earlier, over half of the nation's counties drew on their reserves to invest in critical COVID-19 response services or cover detrimental revenue losses. Due to our role as frontline responders, our local reserves have decreased significantly, forcing the delay of projects for which the reserve funds were originally intended, including the construction or enhancement of county-owned or operated infrastructure, such as hospitals, public health facilities and schools. The inability to restore these reserves in the short term puts counties and other local governments at risk of increased borrowing costs due to the impact of reserve funds on municipal credit ratings. Ultimately, this cost is borne by our residents. Therefore, counties urge that the Final Rule allow recipients to use revenue loss funds to replenish our depleted reserves as related to impacts of the coronavirus pandemic.
- **Allow revenue loss funds to be used for debt service:** The Final Rule should permit flexibility regarding expenses related to debt. In a case where a county borrowed funds to respond to the public health emergency or where a county is unable to meet the legal obligation of balancing their budget due to losses related to COVID-19, the principal and interest of the resulting debt should be an eligible use of funds. Further, most municipal bonds issued by counties are for the construction of infrastructure, including hospitals, schools, water, sewer and broadband systems. To facilitate the delivery of critical local infrastructure projects as intended by the IFR, the U.S. Treasury should allow the use of revenue loss funds to cover debt resulting from borrowing funds to deliver a project in one of these covered areas.
- **Allow revenue loss to be calculated on a source-by-source basis:** Counties are very appreciative of the U.S. Treasury's efforts to develop and apply a consistent national approach in calculating revenue loss attributable to the COVID-19 pandemic. When calculating revenue loss, the IFR directs recipients to sum across all revenue streams covered as general revenue. The IFR states that this approach "minimizes the administrative burden for recipients, provides for greater consistency across recipients, and presents a more accurate representation of the overall impact of the COVID-19 public health emergency on the recipient's revenue...." While this may reduce

the administrative burden on recipients, it could unintentionally result in significant disparities in these calculations due to certain revenue sources falling under the U.S. Treasury's definition of "general revenue." For example, in some counties, there was an increase in certain revenue streams, driving down the revenue loss figure, all due to the inclusion of revenue sources that were not impacted by, or unrelated to the COVID-19 pandemic. Therefore, we urge that the Final Rule allows counties to calculate revenue loss on a source-by-source basis instead of an entity-wide basis, which will ultimately provide the best representation of the overall impact of the pandemic.

- **Include public transit system fares in revenue loss calculation:** Counties directly support 78 percent of public transit systems, which have kept our residents connected to vital services throughout the pandemic. Across the country, local transit systems have been significantly impacted by the decrease in ridership resulting from the pandemic, and many are still trying to recover, all the while continuing to operate. Data shows that, despite two rounds of federal relief, [public transit agencies are still facing a \\$39.3 billion projected shortfall](#) through December 2023. Further, while ridership is on the rebound, passenger levels in many places are not expected to return to pre-pandemic levels. The U.S. Treasury should mitigate this tremendous drop in revenue that is a direct result of the pandemic by including lost transit revenue when calculating revenue loss or allowing it as an eligible use under Category 2 of the IFR: Negative Economic Impacts.
- **Include revenue and losses from municipally owned utilities:** The IFR explicitly excludes revenue from municipal utilities from the calculation of general revenue. Where permissible, revenue generated by municipally owned utilities are widely used to subsidize local general funds. Where not permissible, revenue generated by local utilities was adversely impacted by the federally imposed moratorium on service disconnection. Typically, the burden resulting from this unfunded federal mandate would be made up for through a general fund transfer to ensure the continuation of services; however, due to the severe impact of COVID-19 on local general funds, this is simply not possible. Therefore, counties urge the inclusion of municipally owned utilities in the "general revenue" definition to ensure local governments can supplement these losses. Alternatively, counties urge that the Final Rule allow for Recovery Funds to be used to cover these losses under Category 2 of the IFR: Negative Economic Impacts.
- **Exclude new taxes imposed prior to the COVID-19 pandemic:** The current IFR does not provide flexibility regarding new revenue streams enacted after the base year, impacting counties' abilities to claim much-needed revenue loss. For example, many counties enacted new taxes, such as a gas tax, to address revenue shortfalls caused by COVID-19. Now, under the IFR's definition of general revenue and calculation, many counties are above the threshold to claim lost revenue despite the dire need for support. Therefore, the Final Rule should permit counties to exclude new taxes or new revenue sources in the base year when calculating revenue loss.

WATER AND SEWER INFRASTRUCTURE

As major owners, users and regulators of water resources and systems with the responsibility for funding 95 percent of all local public water infrastructure needs, counties and other local governments are directly impacted by this category of eligible use. Counties invest \$134 billion annually in infrastructure construction and the maintenance and operation of public works, including public water systems and water infrastructure projects. Local communities are best suited to build

resilience and other water infrastructure to serve the needs of unserved, underserved or rural communities, and local decisions are best suited to ensure equal distribution of costs and benefits among the population. Therefore, we encourage the U.S. Treasury to consider the following recommendations for the Final Rule to help us better meet the local water and sewer infrastructure needs in our communities:

- **Expand eligibility for water and sewer projects outside of the Clean Water State Revolving Fund (CWSRF) and Drinking Water State Revolving Fund (DWSRF):** Counties appreciate the inclusion of the CWSRF and DWSRF as categories for eligible uses of Recovery Funds. However, given that there are certain limitations for the stormwater projects, among others, counties request that the Final Rule include projects under the U.S. Federal Emergency Management Agency's (FEMA) Floodplain Management Program. By both clarifying the stormwater definition of the IFR and expanding it to include projects under the Flood Management Program, counties will be able to reduce flood risks to new buildings and infrastructure in the most cost-effective means. Furthermore, counties request clarification in the Final Rule by explicitly stating that project eligibility is based on the SRF Program's project categories and definitions **rather than each state's eligibility definitions.**
- **Expand eligible uses of Recovery Funds to include dams and reservoirs:** Collectively, [local governments are responsible](#) for 20 percent of the nation's dams. Counties recognize the critical role dams and levees play when it comes to local flood control. The failure of unsafe or deficient dams and levees can lead to significant property destructions and immeasurable loss of human life. Like other critical infrastructure, these human-made structures deteriorate, and ongoing investment is necessary to ensure the safety of such structures. Therefore, counties support expanding eligible uses of Recovery Funds to include dams, levees and reservoirs to ensure these projects meet national minimum safety standards to provide our residents and communities.
- **Allow routine maintenance of water and sewer infrastructure projects:** Counties urge the U.S. Treasury to expand and/or clarify whether Recovery Funds can be used for routine maintenance of existing local infrastructure including, but not limited to, roadside ditches culverts and other county-owned critical infrastructure. Specifically, in Western counties, local leaders are interested in using Recovery Funds to upgrade damaged culverts to reduce future damage after devastating wildfires. Counties recommend the inclusion of maintenance of roadside ditches, culverts and other county-owned critical infrastructure projects as eligible expenses in the Final Rule. Additionally, just as the National Environmental Policy Act does not apply to Recovery Funds, counties recommend that maintenance and repair of existing infrastructure should also receive a waiver under Section 404 under the Clean Water Act: Permitting Requirements.

BROADBAND INFRASTRUCTURE

ARPA provided much-needed resources to counties across the country to build and maintain broadband infrastructure. As outlined in the IFR, broadband is an essential service and critical infrastructure that is integral to a strong economic recovery and a tool that facilitates education, health care and other vital services. Under the current guidance, NACo appreciates that the U.S. Treasury emphasizes the need to support households and businesses that do not currently have access to adequate broadband to meet their daily needs. However, as currently written, the IFR contains limitations that may create unintended consequences for counties that would disincentive local leaders from investing in broadband projects

that could support larger populations and communities. Therefore, counties provide the following recommendations for the Final Rule:

- **Expand the definition of "unserved and underserved" households:** The IFR defines "unserved or underserved" as a "lack of access to a wireline connection capable of reliably delivering at least minimum speeds of 25 Mbps download and 3 Mbps upload...." While this is consistent with the Federal Communications Commission's (FCC) definition, local officials have expressed concerns that this standard is both extremely outdated and will leave a significant gap of users who may have access to serve between 25-100 Mbps download and 3 Mbps upload, which would not qualify for investment. Therefore, counties recommend that the Final Rule should increase the speed threshold to "unserved and underserved" to include all areas without 100 Mbps download and 100 Mbps upload service to better meet capacity demands and help close the digital divides. NACo strongly supports policies that help counties rapidly expand public-private partnerships and attract affordable, abundant, redundant and reliable high-speed broadband services that meet or exceed federal broadband speed definitions.
- **Allow for scalability when determining broadband investments:** Scalability allows counties to plan upfront for their current and future needs based on data models. For instance, if a local school district grows, so will the need of the entire community. Networks should be designed to allow for maximum flexibility. Further, counties believe that performance factors should include latency, as a high latency metric would suggest that while the area technically has service, it is not meaningful access.
- **Expand general use of Recovery Funds to include cybersecurity:** In addition to the general broadband infrastructure itself, counties believe that cybersecurity training and testing of such infrastructure should be an eligible expense (beyond using revenue loss funds). Use of the Recovery Fund for cybersecurity-related expenses will allow counties to better protect their networks, reduce fraudulent behavior, and create resiliency in new systems as many county employees continue to telework.

INELIGIBLE USES OF FUNDS

- **Allow for non-federal match requirements as an eligible expense:** County expenditures dramatically increased as we poured additional funding into health and hospital systems, justice and public safety services, human services, technology and infrastructure and education. Facing tight budget constraints, counties found innovative ways to stretch their dollars. One of these ways included leveraging local taxpayers' dollars as matching funds for federal discretionary grant programs. As outlined in the IFR, counties can use revenue loss funds for a broad range of government services including, but not limited to, "maintenance or pay-go funded building of infrastructure, including roads; modernization of cybersecurity, including hardware, software, and protection of critical infrastructure; health services; environmental remediation; school or educational services; and the provision of police, fire, and other public safety services." However, counties oftentimes use their revenue to satisfy the local match for federal discretionary programs that are instrumental in providing many of the government services referenced in the IFR. Therefore, counties strongly encourage the U.S. Treasury to allow Recovery Funds to be used to satisfy the local match for federal programs (where there is not a statutory prohibition). There is precedent for this approach under the CARES Act, which allowed counties to use CRF dollars towards the non-federal matching requirements for FEMA's Stafford

Act. This provided local governments with much-needed flexibility to address the far-reaching impacts of COVID-19. Furthermore, this added flexibility freed up existing county resources to respond to COVID-19 and other pressing needs of our residents and communities. Therefore, we encourage that the Final Rule allow counties to use Recovery Funds to meet non-federal match requirements.

RECOMMENDATIONS FOR ADDITIONAL ELIGIBLE USES

- **Expand eligible use of Recovery Funds for capital investment projects:** Counties appreciate that the IFR allows that Recovery Funds be used for adaptation costs for capital investments in public facilities to meet pandemic operational needs. However, this only allows for counties to invest in certain sectors impacted by the pandemic and limits our ability to implement projects and services that would benefit our residents and communities. Counties request clarification on whether capital improvement projects beyond water, sewer and Broadband are included as an eligible expense. These vital community infrastructure projects include but are not limited to behavioral health, emergency management and public safety facilities, public health-related infrastructure improvements, transportation infrastructure and services, projects for economic development and purchasing or remodeling of public facilities. Furthermore, while we support the provision that allows for revenue loss refunds to be used for the maintenance or pay-go funded building of infrastructure, this also limits the number of counties that can invest in broader critical infrastructure projects. By making capital investment projects an allowable expense, the American Rescue Plan will allow us to meet the needs of our residents as we continue to fight the pandemic.
- **Expand eligible use of Recovery Funds for election-related activities:** The IFR does not reference whether expenses related to election administration are an allowable use of Recovery Funds. The unprecedented nature of the rapid spread of COVID-19 has fundamentally altered our nation's election system. America's counties traditionally administer and fund elections at the local level, overseeing more than 109,000 polling places and coordinating more than 694,000 poll workers every two years. Beyond the traditional requirement when it comes to administering elections, counties are not grappling with even more costly election-related challenges from providing additional voting options, keeping locations clean and complying with social distancing mandates. Therefore, counties urge the U.S. Treasury to allow Recovery Funds to be used towards election administration and security efforts to ensure counties can continue to provide safe, free and fair elections while also protecting the health and safety of our residents.

CONCLUSION

America's counties have been engaged in our nation's response to COVID-19 since the earliest days, and providing counties with flexible, essential financial resources is the surest way to see that our nation's preparedness and responsivity continues. As intergovernmental partners, we look forward to our continued work and partnership with the administration to ensure the successful implementation and execution of the Recovery Fund.

On behalf of our membership, we sincerely appreciate the opportunity to submit comments on the U.S. Treasury's IFR. We look forward to maintaining an open dialogue throughout the implementation of this

historic federal investment in our local counties. We are committed to making sound investments that help our nation mitigate, respond and recover from this unprecedented national pandemic.

Thank you again for the opportunity to comment and for your continued hard work and leadership during these challenging times.

With respect,

A handwritten signature in black ink that reads "Matthew D. Chase". The signature is written in a cursive style with a large, prominent loop at the beginning of the word "Matthew".

Matthew D. Chase
Executive Director and CEO
National Association of Counties

APPENDIX A

NACo RESPONSES TO TREASURY'S IFR QUESTIONS

Questions: Public Health Response

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

- **Explicitly allow for addiction crisis services as an eligible use.** Last year's unprecedented escalation of the opioid crisis is almost certainly linked to the COVID-19 pandemic, given the impact of social isolation brought on by safety measures implemented to mitigate the public health emergency. This crisis not only burdens the families and individuals of those suffering from an addiction disorder, but it also overwhelms the county-owned and operated treatment facilities that provided necessary care for these families. Given this direct link to the public health crisis, we ask that the U.S. Treasury consider making addiction crisis services, including through county jails and diversion centers, an eligible use of Fiscal Recovery Funds in the Final Rule.
- **Permit long-term equity endowments that address racial and ethnic disparities in healthcare access and outcomes.** Differences in COVID-19 infection and death rates illuminated gaps in healthcare coverage and access for racial and ethnic minorities and other vulnerable residents. Local governments are poised to undertake targeted interventions to these disparities should we have access to dedicated and sustained resources. We encourage the Final Rule to allow counties to establish local equity endowments that would obligate dollars toward addressing longstanding, systemic inequities and racial disparities. To incentivize this activity, the U.S. Treasury should consider the deposit of grant dollars into such funds as dollars spent so that both grant dollars and locally derived funds could be leveraged and serve as a long-term source of funds to support the long-term work to reduce these disparities.
- **Expand eligible use of Recovery Funds for capital investment projects:** Counties appreciate that the IFR allows that Recovery Funds be used for adaptation costs for capital investments in public facilities to meet pandemic operational needs. However, this only allows for counties to invest in certain sectors impacted by the pandemic and limits our ability to implement projects and services that would benefit our residents and communities. Counties request clarification on whether capital improvement projects beyond water, sewer and Broadband are included as an eligible expense. These vital community infrastructure projects include but are not limited to behavioral health, emergency management and public safety facilities, public health-related infrastructure improvements, transportation infrastructure and services, projects for economic development and purchasing or remodeling of public facilities. Furthermore, while we support the provision that allows for revenue loss refunds to be used for the maintenance or pay-go funded building of infrastructure, this also limits the number of counties that can invest in broader critical infrastructure projects. By making capital investment projects an allowable expense, the American Rescue Plan will allow us to meet the needs of our residents as we continue to fight the pandemic.

Question 2: The interim final rule permits coverage of payroll and benefits costs of public health and safety staff primarily dedicated to COVID-19 response, as well as rehiring of public sector staff up to pre-

pandemic levels. For how long should these measures remain in place? What other measures or presumptions might Treasury consider to assess the extent to which public sector staff are engaged in COVID-19 response, and therefore reimbursable, in an easily administrable manner?

- **Expand the definition of public sector staff engaged in the COVID-19 response:** The U.S. Treasury should assess the pandemic's impact of all local safety-net services when considering the extent to which public sector staff is engaged in COVID-19, given the multifaceted effect of the pandemic on individuals' physical, mental, financial and social-emotional health. Thus, the measure of engagement in the COVID-19 response should not just be limited to the healthcare sector but should extend to critical county services that meet the total scope of the resident needs for well-being and health to include (but not limited to): staff in the areas of behavioral and mental health, long-term care, home health, public benefits administration and social services for children, adults and veterans.
- **Clarify activities addressing behavioral health and well-being to include both acute and chronic care as well as services, including support groups, that do not often directly accept insurance payments:** As administrators of local safety net systems, including hospitals, health and behavioral health clinics, health departments, and nursing homes, counties are often the "payers of last resort," taking on the cost of care for the underinsured and medically indigent in these settings. Increased numbers of newly uninsured individuals seeking both medical and behavioral health care for acute and chronic conditions in these settings can be directly attributed to the economic impact of the COVID-19 pandemic.

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

- **Clarify expectations for services in Qualified Census Tracts (QCTs):** Counties agree that QCTs are a reasonable measure of economic disadvantage and that the use of this metric has the benefit of providing a readily available list of communities in which a broader range of eligible uses are presumed to be responsive to the impacts of COVID-19. However, we encourage Treasury to answer the following frequently asked questions:
 - Is it enough that a county use Recovery Funds to provide programs and services so long as at least some of the participating individuals or households live in a QCT, or must the activity *exclusively serve* individuals living in a QCT? If the former, is there a minimum threshold of participants that the U.S. Treasury would deem acceptable for a program or service to be considered eligible within this category?
 - If a county chooses to provide a program or service to additional populations (not just those living in a QCT), must the county provide written justification to support its determination that the pandemic has disproportionately impacted this population?
- **Draw on additional metrics as a proxy for disproportionate impact:** While QCTs are a reasonably appropriate measure of hardship, reliance upon this definition may prevent counties from providing aid to certain communities experiencing economic distress. We encourage the

U.S. Treasury to consider expanding its definition of populations experiencing disproportionate impacts to include:

- Census tracts containing public housing units
- Schools or school districts participating in the Community Eligibility Provision (CEP) option for federal school meal reimbursement require an Identified Student Percentage (ISP) of 40 percent or higher. To calculate ISP, a school must count all students who are categorically eligible for free school meals and divide by total student enrollment
- Schools receiving schoolwide eligibility waivers for Title I, Part A funding under the Elementary and Secondary Education Act (ESEA), which requires that low-income families make up at least 40 percent of enrollment
- Households participating in means-tested public benefits programs; and
- Children attending Early Head Start, Head Start or a childcare facility that participate in the federal Child Care and Development Fund Program or have Area Eligibility for the Child and Adult Food Care Program

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

- **Allow early learning facility construction and improvements:** County governments play a significant role in supporting the childcare sector and recognize the critical importance that access to affordable, safe childcare will play in facilitating economic recovery at the local level, as the IFR acknowledges. According to the Federal Reserve Bank of Minneapolis, childcare employment remains 20 percent below the pre-pandemic level. As a result of the pandemic, two in five childcare providers have taken on debt to stay open, while 20,000 child centers have closed for good since the pandemic began exacerbating existing challenges related to childcare supply. In 2018, [according to the Center for American Progress](#), 51 percent of Americans lived in neighborhoods that qualified as child care deserts, defined as a more than three-to-one ratio of children under age five to the cumulative capacity of licensed or registered child care. A similar [analysis from the Bipartisan Policy Center](#) suggests that in 25 states, some 32 percent of children under age six face a "child care gap," meaning all available parents are in the workforce, but the children lack access to formal care.

This limited supply of quality childcare is especially prevalent in rural areas. Beyond the need for new childcare facilities to address these supply issues, experts also suggest that substantial investments are required simply to upgrade existing childcare facilities and home-based care settings to meet best-practice health and safety standards. Counties appreciate the inclusion of childcare workers within the class of workers eligible for premium pay and the creation of new or expanded high-quality childcare as an example of promoting healthy childhood environments within the eligible use of addressing disproportionate impacts. However, we encourage the U.S. Treasury to allow county governments to utilize Recovery Funds to build or develop childcare facilities to further address supply issues. Additionally, we ask the U.S. Treasury to address whether counties may use funds for facilities improvements or needs assessments that address safety issues within early learning facilities beyond remediation of lead hazards.

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

- **Permit property acquisition:** The Final Rule should permit property acquisition for the development of affordable housing in areas other than QCTs, including purchasing properties near public transportation or other public resources that would enhance economic mobility. We encourage the U.S. Treasury to explicitly state that property acquisition would alleviate the economic impacts of COVID-19 and affirm that localities can use grants for this purpose. Furthermore, counties urge the U.S. Treasury to include explicit language allowing Recovery Funds to be used to purchase and/or improve equipment or property that would help address and mitigate the long-term impacts of COVID-19. Long-term investments that could benefit communities are a popular choice for recipients during this time of economic instability.
- **Expand definitions within affordable housing development:** Local governments rarely undertake housing construction directly and usually enact policies that incentivize private developers to build affordable housing. Therefore, the Final Rule should provide a more comprehensive definition of allowable activities related to affordable housing development. For example, Stearns County, Minnesota, is exploring whether Recovery Funds may be used to support the construction of a step-down facility or other mechanisms, such as retrofitted spaces, to facilitate long-term, stable housing among the population interacting with the county's justice and behavioral health system.
- **Provide safe harbor for households receiving direct assistance:** Counties appreciate the inclusion of direct assistance to households as an eligible use to address the negative economic impacts of the pandemic. However, we encourage the U.S. Treasury to ensure that direct aid, especially cash assistance, will be omitted from calculations of taxable income to protect vulnerable residents from losing income eligibility for other means-tested federal public assistance programs. This is a vital step to avoid the unintended consequences of residents losing access to long-term supports in exchange for immediate assistance. Additionally, we ask the U.S. Treasury to provide additional clarification on how counties will need to demonstrate a negative economic impact for a household or business on EITHER a population or group level.
- **Provide a definition of low-income:** The IFR makes numerous references to prioritizing programs and services to low-income residents. To help us best target the funds in compliance with the IFR, we ask that the U.S. Treasury clarify how it measures low income. Specifically, given the broad range of economic landscapes for counties and our residents, we urge that this definition or measurement be based on local data rather than that of national data.

Questions: Revenue Loss

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

- Allow revenue loss funds to be used for rainy day and reserve funds:** Currently, the IFR prohibits state and local governments from placing revenue loss funds into rainy day or reserve funds. As mentioned earlier, over half of the nation's counties drew on their reserves to invest in critical COVID-19 response services or cover detrimental revenue losses. Due to our role as frontline responders, our local reserves have decreased significantly, forcing the delay of projects for which the reserve funds were originally intended, including the construction or enhancement of county-owned or operated infrastructure, such as hospitals, public health facilities and schools. The inability to restore these reserves in the short term puts counties and other local governments at risk of increased borrowing costs due to the impact of reserve funds on municipal credit ratings. Ultimately, this cost is borne by our residents. Therefore, counties urge that the Final Rule allow recipients to use revenue loss funds to replenish our depleted reserves as related to impacts of the coronavirus pandemic.
- Include public transit system fares in revenue loss calculation:** Counties directly support 78 percent of public transit systems that have kept our residents connected to vital services throughout the pandemic. Across the country, local transit systems have been significantly impacted by the decrease in ridership resulting from the pandemic, and many are still trying to recover, all the while continuing to operate. Data shows that, despite two rounds of federal relief, [public transit agencies are still facing a \\$39.3 billion projected shortfall](#) through December 2023. Further, while ridership is on the rebound, passenger levels in many places are not expected to return to pre-pandemic levels. The U.S. Treasury should mitigate this tremendous drop in revenue that is a direct result of the pandemic by including lost transit revenue when calculating revenue loss or allow it as an eligible use under Category 2 of the IFR: Negative Economic Impacts.
- Include revenue and losses from municipally owned utilities:** The IFR explicitly excludes revenue from municipal utilities from the calculation of general revenue. Where permissible, revenue generated by municipally owned utilities are widely used to subsidize local general funds. Where not permissible, revenue generated by local utilities was adversely impacted by the federally imposed moratorium on service disconnection. Typically, the burden resulting from this unfunded federal mandate would be made up for through a general fund transfer to ensure the continuation of services; however, due to the severe impact of COVID-19 on local general funds, this is simply not possible. Therefore, counties urge the inclusion of municipally owned utilities in the "general revenue" definition to ensure local governments can supplement these losses. Alternatively, counties urge that the Final Rule allow for Recovery Funds to be used to cover these losses under Category 2 of the IFR: Negative Economic Impacts.

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

- Allow revenue loss to be calculated on a source-by-source basis:** Counties are very appreciative of the U.S. Treasury's efforts to develop and apply a consistent national approach in calculating revenue loss attributable to the COVID-19 pandemic. When calculating revenue loss, the IFR directs recipients to sum across all revenue streams covered as general revenue. The IFR states that this approach "minimizes the administrative burden for recipients provides for greater consistency across recipients and presents a more accurate representation of the overall impact

of the COVID-19 public health emergency on the recipient's revenue...." While this may reduce the administrative burden on recipients, it could unintentionally result in significant disparities in these calculations due to certain revenue sources falling under the U.S. Treasury's definition of "general revenue." For example, in some counties, there was an increase in certain revenue streams, driving down the revenue loss figure, all due to the inclusion of revenue sources that were not impacted by, or unrelated to the COVID-19 pandemic. Therefore, we urge that the Final Rule allows counties to calculate revenue loss on a source-by-source basis instead of an entity-wide basis, which will ultimately provide the best representation of the overall impact of the pandemic.

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

- **Allow revenue loss funds to be used for debt service:** The Final Rule should permit flexibility regarding expenses related to debt. In a case where a county borrowed funds to respond to the public health emergency or where a county is unable to meet the legal obligation of balancing their budget due to losses related to COVID-19, the principal and interest of the resulting debt should be an eligible use of funds. Further, most municipal bonds issued by counties are for the construction of infrastructure, including hospitals, schools, water, sewer and broadband systems. To facilitate the delivery of critical local infrastructure projects as intended by the IFR, the U.S. Treasury should allow the use of revenue loss funds to cover debt resulting from borrowing funds to deliver a project in one of these covered areas.

Questions: Water and Sewer Infrastructure

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

Counties support using the Clean Water State Revolving Fund (CWSRF) and Drinking Water State Revolving Fund (DWSRF) as a framework for eligible uses. The CWSRF and DWSRF are broad programs and support publicly owned and privately-owned drinking water and wastewater systems projects. The SRFs are familiar programs to counties and allow local governments to make the best decisions for their communities. Counties would appreciate further clarification in the final rule by explicitly stating that project eligibility is based on the federal project categories and definitions for the SRF programs and not on each state's eligibility or definitions.

Although counties appreciate the inclusion of the CWSRF and DWSRF as categories for eligible uses of Recovery Fund, there are certain limitations for the stormwater projects, among others. Therefore, counties request that the Final Rule include projects under the U.S. Federal Emergency Management Agency's (FEMA) Floodplain Management Program. By both clarifying the stormwater definition of the IFR and expanding it to include projects under the Flood Management Program, counties will be able to reduce flood risks to new buildings and infrastructure in the most cost-effective means. Furthermore, counties request clarification in the Final Rule by explicitly stating that project eligibility is based on the SRF Program's project categories and definitions **rather than each state's eligibility definitions.**

Counties also urge Treasury to expand and/or clarify whether Recovery Funds can be used for routine maintenance of existing local infrastructure, including, but not limited to, roadside ditches, culverts and other county-owned critical infrastructure. Specifically, in Western counties, local leaders are interested in using Recovery Funds to upgrade damaged culverts to reduce future damage after devastating wildfires. Counties recommend the inclusion of maintenance of roadside ditches, culverts and other county-owned critical infrastructure projects as eligible expenses in the Final Rule. Additionally, just as the National Environmental Policy Act does not apply to Recovery Funds, counties recommend that maintenance and repair of existing infrastructure should also receive a waiver under Section 404 under the Clean Water Act: Permitting Requirements.

Question 21: Infrastructure projects related to dams and reservoirs are generally not eligible under the CWSRF and DWSRF categories. Should Treasury consider expanding eligible infrastructure under the interim final rule to include dam and reservoir projects? Discuss public health, environmental, climate, or equity benefits and costs in expanding the eligibility to include these types of projects.

Collectively, [local governments are responsible](#) for 20 percent of the nation's dams. Counties recognize the critical role dams and levees play when it comes to local flood control. The failure of unsafe or deficient dams and levees can lead to significant property destructions and immeasurable loss of human life. Like other critical infrastructure, these human-made structures deteriorate, and ongoing investment is necessary to ensure the safety of such structures. Therefore, counties support expanded eligible use of Recovery Funds to include dams, levees and reservoirs to ensure these projects meet national minimum safety standards to provide our residents and communities.

Questions: Broadband Infrastructure

Question 24: What are the advantages and disadvantages of setting minimum symmetrical download and upload speeds of 100 Mbps? What other minimum standards would be appropriate and why? 159 Rural Digital Opportunity Fund, supra note 156.

The ARP is a once-in-a-lifetime opportunity to enhance county broadband infrastructure to help us compete in the global economy well into the future. As we look to that future, designing and constructing broadband networks that can eventually be scalable up to 1 Gbps symmetrical up and down should be the ultimate target. The advantages of creating future-proofed broadband infrastructure with a target of 100 Mbps or higher are that economic, education and healthcare sectors will have the necessary 'backbone' infrastructure to achieve success in the global market for generations to come. Given the speed at which technology advances, our country must get in front of these advancements by ensuring we have the infrastructure to succeed. Planning, designing, and constructing broadband infrastructure with up to 1 Gbps scalable capacity will ensure our competitiveness as a country well into the foreseeable future. As for disadvantages, the immediate concern is that only setting a target of 100 Mbps symmetrical without thinking about ultimate scalability up to 1Gbps would disadvantage us in the global economy as the utilization of broadband will only increase into the future.

Question 25: Would setting such a minimum be impractical for particular types of projects? If so, where and on what basis should those projects be identified? How could such a standard be set while also taking into account the practicality of using this standard in particular types of projects? In addition to topography, geography, and financial factors, what other constraints, if any, are relevant to considering whether an investment is impracticable?

While minimum speeds discussed above could be achieved with fiber, setting such a minimum does not necessarily require fiber infrastructure everywhere. Fiber may be impractical in many instances based on topography, geography, and other financial factors. Therefore, many different technologies like satellite, cellular, fixed wireless, cable and future innovations will likely be required to build the scalable and cost-effective broadband networks that we so desperately need to succeed in the future. Determinations of impracticality should ultimately come down to the cost of services to the individual consumer. With affordability being a key consideration, a highly thorough pre-engineering and cost-modeling protocol should be required, which leverages all available technologies and all available public data to design a network that meets the minimum defined standard for speed. Along with thorough consultation with local governments, this type of planning can ensure that practical and cost-effective networks are designed to meet community needs in the future.

Question 26: What are the advantages and disadvantages of setting a minimum level of service at 100 Mbps download and 20 Mbps upload in projects where it is impracticable to set minimum symmetrical download and upload speeds of 100 Mbps? What are the advantages and disadvantages of setting a scalability requirement in these cases? What other minimum standards would be appropriate and why?

The immediate benefit of setting these minimum standards is that it will vastly improve our infrastructure beyond what currently exists today. Without requiring scalability of those networks, our economy, education, and healthcare sectors will be less likely to succeed as the digital age continues to advance. Scalability requirements will ensure future-proofed infrastructure but may also create a model that requires additional federal subsidies. A scalable funding-award system that provides more dollars from projects that design with scalability to 100Mbps or up to 1Gbps symmetrical will alleviate that concern. Regardless of the minimum level of service sought, coordination with local governments should be required. Such public-private partnerships will result in creative solutions to achieve cost-effective options to help meet community broadband needs into the future. To ensure that the goals of these projects are achieved, ISPs should be required to build out their networks as designed and within reasonable timeframes as established and agreed upon by both ISPs and local communities.

Question 27: What are the advantages and disadvantages of focusing these investments on those without access to a wireline connection that reliably delivers 25 Mbps download by 3 Mbps upload? Would another threshold be appropriate and why?

Focusing these investments on unserved communities would help effectively eliminate the digital divide. However, the needs for expansion of broadband access go far beyond just delivering just 25 Mbps download by 3 Mbps upload. Investments should be concurrently focused on achieving universal access to 100 Mbps or higher for the entire country.

Question 28: What are the advantages and disadvantages of setting any particular threshold for identifying unserved or underserved areas, minimum speed standards or scalability minimum? Are there other standards that should be set (e.g., latency)? If so, why and how? How can such threshold, standards, or minimum be set in a way that balances the public's interest in making sure that reliable broadband services meeting the daily needs of all Americans are available throughout the country with the providing recipients flexibility to meet the varied needs of their communities?

The advantage of setting such thresholds is to help prioritize how limited funding is allocated. Given the ARPA's extensive federal investment in eliminating the digital divide, the ultimate goal should be that

every resident and business has access to a scalable broadband infrastructure network at an affordable price point. It is likely, though, even with this historic investment, the federal government will need to commit to ongoing investment for our country to have a genuinely world-leading broadband infrastructure network. This long-term commitment will also require collaboration between ISPs and local communities to understand community broadband needs. The key to success for creating a world-leading national broadband infrastructure is to require that ISPs genuinely work with local governments to design and build networks that meet community needs into the future.

APPENDIX B

NACo MEMBERSHIP QUESTIONS ON FISCAL RECOVERY FUND

The below are submitted by NACo on behalf of member counties about the Fiscal Recovery Fund. The questions below are those that NACo staff could not answer with the current information included in the U.S. Treasury's IFR and FAQs and come directly from NACo's members.

Administration of Funds

- Can counties use a credit union in lieu of a bank to receive ARP funds?
- We are standing up a program to assist counties with the planning, management and completion of the projects undertaken by the rescue funds. Would it be possible to address the issue of utilizing rescue funds to engage an outside source, such as the county association or other entity, to provide administrative services to plan, manage and complete the projects?
- In the case of staff turnover, what is the process of removing the original point of contact/original applicant's name for Recovery Fund certification and changing the forms over to the newly appointed point of contact?
- How will the procurement process work for administering the Fiscal Recovery Funds? Will the Treasury Department provide further information to ensure counties fall within compliance for proper procurement of the funds?

Transfer of Funds

- Can revolving loan funds be established to assist special districts with match requirements for state pass-through programs?
 - If so, when the principal is repaid to the county, does it have to be used within ARPA guidelines?
 - Is the interest earned on these revolving loans considered program income and therefore must meet ARPA requirements to be redistributed?
- Can the county use ARPA funds to make donations to organizations that provide ARPA-allowable services to the public?
- Can economic aid be extended to nonprofits that are registered as something other than a 501(c)(3) such as 501(c)(6) or 501(c)(7)?
- Are there qualifications that private companies need to meet to be eligible to receive funds? For example, does the company need to provide certain services to the community or do funds need to be earmarked to serve a particular purpose (such as be used as aid to assist a start-up, or to provide premium pay to employees, etc., or to respond to a negative economic impact experienced by its workers, etc.)?

General Eligible Uses

- Due to the COVID-19 pandemic, schools in the county are seeing an increase in behavioral issues, family struggles and mental health issues in students. Are these funds available for the county to cost share a School Resource Officer with these schools?

- Regarding QCTs, certain areas of our county are in a QCT in 2020, but not in 2021. Does this impact the services we are able to provide? Also, when new QCT data appear on the maps in future years, can we use funding in the expanded or decreased areas?
- As a self-insured government entity, our employee's medical insurance fund took an unexpected hit from pandemic-related medical expenses paid for insured employees/families covered under our provided medical plan. Is replacing insurance funds for self-insured county/city entities an eligible use of the recovery funds?
- Can counties categorize increased health costs of employees who got sick with COVID-19 as a reduction in revenue or negative economic impact that is eligible for reimbursement using the Fiscal Recovery Funds? Funds would be spent under the covered period for costs incurred prior to March 3rd.
- Are vehicles an allowable purchase in response to COVID? Specifically for transporting jail inmates to court (courts are backlogged due to COVID-19) and for transporting supplies to COVID clinics.
- On pages 21-23 of the IFR, it discusses certain types of services that are eligible to use when provided in a QCT. The county is not a QCT, but are those services outline for QCT's eligible for non-QCTs?

Public Health

- The Interim Final Rule does not provide a sufficient definition to understand the difference between CRF and ARPA eligible public health and safety payrolls. Rather, it mirrors the CRF guidance, as it that it states, "For Administrative Convenience, the recipient may consider public health and safety employees to be entirely devoted to mitigating or responding to the public health emergency." What is the difference between CRF and ARPA funds for public health and safety salaries?

Water, Sewer and Broadband Infrastructure

- It has been widely reported and clearly documented that the FCC method of determining unserved/underserved areas of Broadband is critically flawed. Are there any plans to request a change or addition to the treasury guidance to allow local units of government to challenge or disprove the FCC data? This can be easily done with documented "speed tests" as part of a community survey to determine the actual availability of high-speed internet access in a given area.
- Could a county use funding from ARPA to set up their own DWSRF/CWSRF revolving fund? They would intend to use most of the funds in disadvantaged areas for projects eligible under the DWSRF and CWSRF.
- Can Treasury provide additional guidance on solid waste (including recycling) in eligible infrastructure?

General Infrastructure Projects

- Is new construction a permissible expense in place of renovation if the new construction is more cost-efficient?

- Over the last year, EMS medical calls and dispatching requirements have grown tremendously due to the impact of COVID and the related issues of homelessness and mental illness. The county needs a larger facility to house staff and provide public health services. Can ARPA funds be used to relocate the facility to provide more efficient service and response for the community and for protection for employees?
- A county public health department needs to order supplies and a large van to move items to COVID-19 vaccination clinics along with other equipment. However, they will need storage space for these items.
 - Would the large van be an allowable expense?
 - Would a garage/shed be allowed to be built or bought if the county could find a storage shed/building to buy?
- Can the county acquire warehouse space for PPE and related emergency management storage?
- Would aerial photography be an eligible expense for the ARPA funds? This would help assessors work from their desks and not have potential exposure to COVID-19 when reviewing homes.
- Regarding fiber connection to towers, would the ARPA only cover the initial fiber, or would it also cover maintenance costs for a certain number of years?
- During COVID, the county did not have a way for searchers to search/record documents online. We would like to purchase a new recording system and get the documents digitized so people can search record documents. Would a new system and digitizing the books be an eligible expense? Would generators be covered so that air and power would still work if the county were to lose power?

Premium Pay

- Are payroll contributions that result from premium pay still considered "routine"?
- Given the \$25,000 ceiling (and associated 150 percent of base pay) restriction on premium pay, is the recipient of premium pay or the employer required to track whether or not an employee is receiving ARPA Premium Pay from multiple employers?
- If premium pay is granted by a second or subsequent employer that causes the employee's compensation to fall outside of the guidelines, are the governments out of compliance?
- What are examples or factors that should be considered in providing justification for providing premium pay above 150 percent cap?
- The IFR does not adequately measure the pre-pandemic staffing level in a manner that is both accurate and easily administrable because it does not specifically speak to seasonal, part-time, or temporarily unfilled positions as of the specific date identified.
- The IFR states, "any employees that worked from home are not eligible for premium pay." Does this automatically mean they are not eligible for pay if they worked just a couple of days from home?
 - The county had employees work hybrid schedules to reduce the number of personnel in the office setting to promote social distancing. Are the hours worked in the office eligible for premium pay for these employees?
 - If the time worked in the office is eligible for premium pay, is there a set threshold of the number of hours worked from home that would make the employee ineligible for premium pay?

Lost Revenue

- Can voter-approved tax reduction or TIFF reduction be used towards lost revenue calculations?
- Regarding year-over-year lost revenue calculations, what if those figures or projections change? Should we hold some of the funds in reserve in case we have additional revenue loss in the future that we would like to replenish using the funds? What would be the best way to prepare or plan for this?
- In Louisiana, certain elected officials are considered separate entities from the parish. Are we able to look at them as separate entities to compare their revenue from 2019 to 2020 when calculating revenue loss? Different governmental bodies should be considered separately within each parish to determine revenue loss.
- Should school funds be included in general computing revenues to calculate revenue loss under Treasury's IFR for ARPA Fiscal Recovery Funds?
- Our county received a settlement last year in compensation for wildfire disasters. Therefore, when we use the IFR revenue loss calculation, our county does not qualify for revenue loss, where we would have seen approximately \$55 million (without the settlements). Are we allowed to exclude one-time funding sources from lost revenue?
- We enacted a tax increase effective January 1st, 2020, so when the county develops our growth history and calculate revenue, how do we adjust to reflect the planned increase?

Reporting Requirements

- Has there been any discussion regarding a consolidated method of submitting the quarterly reports which will be required for those of us who are consolidated governments?
- Will counties have the opportunity to correct or amend any reports that are sent to the Treasury Department if the Department has follow-up or responds to a report stating that a particular line item(s) is at risk of not falling into compliance with guidance for how to use the funds?
- Will there be a data file upload feature available to all prime recipients regardless of the number of sub-recipients or contracts in addition to manual data entry for reporting?

APPENDIX C

NACo CASE STUDIES OF COUNTIES INVESTING FISCAL RECOVERY FUNDS

Pierce County, Wash.

Recovery Fund Plan Focus Areas: Diversity, Equity, and Inclusion; Human Services

Population: 904,980

Recovery Fund Plan: Pierce County will allocate a portion of its Recovery Fund the following ways: \$10 million for entrepreneurship and technical assistance programs focused on BIPOC communities; \$3 million for workforce development programs and rapid training for worker reskill and upskill, and paid work experience in recovery industries for young people with high barriers to employment; and \$1.5 million for expanding youth summer programs to provide more learning and socialization opportunities (among others).

Dane County, Wis.

Recovery Fund Plan Focus Areas: Small Business Assistance; Health; Broadband; Housing

Population: 546,695

Recovery Fund Plan: Dane County received \$106 in Fiscal Recovery Funds and will allocate \$10 million to the county's nutrition assistance program, which distributes food to local pantries. The plan will also provide \$15 million for small business assistance, \$13.2 million for a rehousing initiative, \$1.3 million for school-based mental health programs, \$1 million for artist assistance, \$5 million in Broadband, and \$2.4 million for hotel shelter, among other things.

Riverside County, Calif.

Recovery Fund Plan Focus Areas: Economic Recovery; Revenue Loss; Housing

Population: 2,470,546

Recovery Fund Plan: Riverside County will invest its total of \$479 million in Fiscal Recovery Funds toward:

- \$54 million for economic recovery, including programs to help struggling businesses and "strategic investment projects" to boost growth
- \$50 million on housing and help for the homeless
- \$48 million on the county's COVID-19 response
- \$45 million on infrastructure
- \$22 million to replace lost revenue
- \$20 million to help nonprofit groups

Nevada County, Calif.

Recovery Fund Plan Focus Areas: Broadband; Human Services, and Recreation

Population: 99,755

Recovery Fund Plan: The County allocated \$5.8 million of the county's \$19.3 million ARP funds to support community and economic resiliency. Of that portion, \$2 million will go to a community benefits grant program, which will provide grants that serve families, seniors, and the community at large. An additional \$2.5 million will go towards infrastructure and broadband improvements, and \$800,000 will go towards outdoor recreation destinations and improvements.

Travis County, Texas

Recovery Fund Plan Focus Areas: Housing; Employment; Small Business Assistance; Human Services

Population: 1,273,954

Recovery Fund Plan: The county has identified various areas to invest its \$247 million in Recovery Funds. Of the total allocation, \$8 million will be directed towards small business support, \$7.6 million will be directed to the county's nutrition assistance program. Additionally, \$325,000 will be allocated towards behavioral health services to homeless populations, which will be run in partnership with the City of Austin. Finally, additional funds will be allocated to establish new programs for water and broadband infrastructure and public health resource navigation.

King County, Wash.

Recovery Fund Plan Focus Areas: Housing; Employment

Population: 2,252,782

Recovery Fund Plan: King County will allocate \$100 million of their total ARP allocation to support homeless populations. Of that total, \$47.7 will go to house at least 500 chronically homeless individuals, \$40 million for employment and rental assistance for 400 individuals experiencing homelessness, \$7.7 million for behavioral health supports, \$5 million to support residents residing in temporary housing and \$2 million for emergency overnight shelter.

Clinton County, Iowa

Recovery Fund Plan Focus Areas: Broadband

Population: 46,429

Recovery Fund Plan: Clinton County will use \$150,000 of its Recovery Fund allocation to conduct a study of the county's current broadband information infrastructure. The county will partner with a third-party consultant to identify areas that are currently unserved and underserved and use Recovery Funds to make broadband investments in those areas.

Harris County, Texas

Recovery Fund Plan Focus Areas: Diversity, Equity and Inclusion

Population: 4,713,325

Recovery Fund Plan: Harris County plans to use Recovery Funds to assist the county's Equity Framework, which includes disaggregating data and analyzing underlying inequities within the county. Harris County will also engage with community representatives to ensure the county is providing targeted resources to populations that have been disproportionately impacted by COVID-19 and evaluate results through defined metrics.

Hamilton County, Ohio

Recovery Fund Plan Focus Areas: Health; Housing; Transportation and Infrastructure

Population: 817,473

Recovery Fund Plan: Hamilton County outlined its proposal for Recovery Funds, which include \$24 million to strengthen public health infrastructure, with funds being directed toward mental health and substance use disorder programs for populations disproportionately impacted by COVID-19. The county will also allocate \$71 million to address negative economic impacts – this includes \$40 million to maintain affordable housing in the county. Additionally, the county will also allocate a portion towards stabilizing the county's finance and investing in broadband infrastructure and expansion.

Stanislaus County, Calif.

Recovery Fund Plan Focus Areas: Transportation and Infrastructure, Employment, Human Services; Economic Recovery

Population: 550,660

Recovery Fund Plan: Out of its \$107 million, Stanislaus County will use its Recovery Funds to address infrastructure needs for unincorporated communities within the county that need water and wastewater improvements. The county also plans to allocate \$30 million to create a new investment fund to support economic development and job creation, as well as \$5 million to create a nonprofit community development corporation to revitalize struggling communities and assist with affordable housing projects. Finally, the county will allocate \$5 million to help individuals and families navigate and access safety net services.

Columbus County, N.C.

Recovery Fund Plan Focus Areas: Transportation and Infrastructure; Small Business Assistance; Broadband; Revenue Loss

Population: 55,508

Recovery Fund Plan: Columbus County will allocate its \$10 million in Recovery Funds as follows:

- \$800,000 for wage and salary reimbursements
- \$175,000 for Personal Protective Equipment (PPE) and other medical supplies
- \$150,000 for small business grants
- \$900,000 to support emergency radio infrastructure
- \$2 million for water and sewer infrastructure projects
- \$1.5 million for broadband infrastructure projects
- \$2 million for revenue loss

Leon County, Fla.

Recovery Fund Plan Focus Areas: Human Services; Transportation and Infrastructure; Health; Small Business Assistance

Population: 293,582

Recovery Fund Plan: Leon County plans to spend \$57 million in Recovery Funds as follows:

- \$12.6 million for sewer infrastructure improvements
- \$6.6 million for local human services program to address food insecurity
- \$1.6 million for public health response support to address vaccine hesitancy engagement and promotion and provide mental health services
- \$1.4 million for small business support, including entrepreneurship support

DeKalb County, Ga.

Recovery Fund Plan Focus Areas: Justice and Public Safety

Population: 759,297

Recovery Fund Plan: DeKalb County is planning to use a portion of its Recovery Fund allocation towards a comprehensive strategy to enhance public safety and prevent violent crimes. Specifically, the proposal includes \$3,000 towards bonuses for public safety employees. The county also plans to invest Recovery Funds in programs to address violent crimes within the county and impacted communities. Additional investments will be targeted to support the county's court system, which includes expanding accountability programs for young, non-violent offenders and a program aimed at disrupting the school-to-prison pipeline. DeKalb County would also allocate funds to invest in new employees to help upgrade the court system's technology, which will help address the backlog in court cases because of the pandemic. Finally, the county will also invest funds in the DeKalb County Community Service Board to support residents with mental health illnesses.

New Hanover County, N.C.

Recovery Fund Plan Focus Areas: Broadband, Employment, Health and Housing

Population: 234,437

Recovery Fund Plan: Plan to spend \$45.4 million includes:

- **Essential County Employees (\$6,195,177):** Frontline worker bonuses gifted to county employees directly involved in combatting pandemic since last spring, as well as vaccine response bonuses for employees working directly with vaccine response.
- **Broadband Connectivity (\$5,760,000):** Promote access to adequate internet and connect around 8,000 homes focused on households with children who qualify for Medicaid or other benefits.
- **Physical and Mental Health (\$4,136,936):** Make a mental health counselor available at every public school, establish a mobile health outreach team and mental health counselors based in the Senior Resource Center (among others).

Fort Bend County, Texas

Recovery Fund Plan Focus Areas: Health; Small Business; Employment; Human Services

Population: 811,688

Recovery Fund Plan: Fort Bend County will invest Recovery Funds in a broad range of programs and services, including public health, pandemic relief, economic relief, support for local nonprofits and public infrastructure. Specifically, funds will be allocated as follow:

- \$34.6 million invested in economic recovery, including the county's small-business grant program, which will get \$25 million
- \$4 million will be invested in mental health initiatives
- \$3 million for youth summer jobs programs
- \$24 million to support nonprofits
- \$10 million for a mortgage assistance program
- \$2 million for a childcare voucher program

El Paso County, Texas

Recovery Fund Plan Focus Areas: Economic Recovery; Health; Transportation and Infrastructure; Small Business; Employment

Population: 720,403

Recovery Fund Plan: El Paso County plans to allocate a portion of its Recovery Fund allocation to aid economic and workforce development. This includes investing funds for another round of grants to support small businesses financially impacted by the pandemic and provide job training and placement support. These funds will also be directed to support local tourism and the local Chamber of Commerce. Specific activities include:

- \$17 million to fund continued COVID-19 response, particularly in the county jail, where medical costs for inmates are significantly higher due to the pandemic
- El Paso County's Public Health Department will receive \$8 million to ensure fast distribution of COVID-19 vaccines
- \$13 million to invest in stormwater and water projects
- \$2 million to support access to public assistance programs and helping residents navigate those systems

New Castle County, Del.

Recovery Fund Plan Focus Areas: Children and Families

Population: 558,753

Recovery Fund Plan: New Castle County will allocate a portion of its Recovery Funds to provide quality individualized learning environments for children disproportionately impacted by COVID-19. Additionally, the county will invest in summer learning programs and coordinate with K-12 institutions.

Skagit County, Wash.

Recovery Fund Plan Focus Areas: Health; Human Services

Population: 129,205

Recovery Fund Plan: Skagit County will direct Recovery Funds to support the ongoing efforts to respond to the pandemic and address key community health needs. The county will use Recovery Funds as follows:

- Launch of the Skagit County Medical Reserve Corps to assist with ongoing pandemic response and vaccination efforts
- Purchase a van for additional COVID-19 testing and vaccinations, which can also be used for future community health needs
- Hire a community health worker to provide outreach and education on behavioral health issues
- Address the behavioral health needs of children and adolescents by embedding additional social workers and clinical services in schools
- Education supports to address educational disparities exacerbated by the pandemic
- Senior outreach services to overcome isolation and other negative health impacts of the pandemic
- Continued funding for the COVID-19 family resource center to promote healthy childhood environments and access to basic needs for families impacted by the pandemic

San Diego County, Calif.

Recovery Fund Plan Focus Areas: Housing; Health; Transportation and Infrastructure; Small Business Assistance; Human Services

Population: 3,338,330

Recovery Fund Plan: San Diego County will allocate Recovery Funds to a broad range of programs and services, including:

- \$232.5 million for prior and ongoing COVID-19 response costs, along with \$75 million for future evaluation and needs
- \$85 million for homeless services, including creating a county program to help those at risk (\$70 million for housing, shelter, and new facilities, \$10 million for housing vouchers and rent subsidies and \$5 million for LGBTQ housing and services)
- \$20 million for food assistance for vulnerable people and support for community gardens
- \$10 million for senior and youth services
- \$32 million for mental health services
- \$16 million for childcare, including incentives for hiring more childcare workers, supportive grants for providers and vouchers for vulnerable populations to help cover costs of care
- \$40 million direct stimulus payments for residents disproportionately impacted by COVID-19
- \$15 million for legal services and counseling for tenants facing eviction and landlords in financial need
- \$56 million for small business and nonprofit organizations (\$33 million for small business stimulus programs, \$7.5 million to waive restaurant safety permit fees, \$1.5 million to waive

special event fees, \$5 million for arts organizations with a focus on underserved communities and those hardest hit economically, and \$5 million in rental assistance for small landlords)

- \$32 million for infrastructure projects such as improved stormwater improvements, Broadband, fire districts, electric vehicle infrastructure and environmental services
- \$36 million in hazard pay for essential county workers

Baltimore County, Md.

Recovery Fund Plan Focus Areas: Broadband; Health; Transportation and Infrastructure; Human Services

Population: 593,490

Recovery Fund Plan: Baltimore County will use Fiscal Recovery Funds for infrastructure projects, including broadband expansion and water and sewer improvements. Additional investments include funding for behavioral health programs and services, grants for small businesses and nonprofit support. Additional expenditures include investments in the county's Small Business Resource Center, expanded YouthWorks programming, increased support for the county's Community Development Corporations and support for local tourism, which decreased during the pandemic.

Kern County, Calif.

Recovery Fund Plan Focus Areas: Revenue Loss; Broadband; Transportation and Infrastructure; Housing

Population: 900,202

Recovery Fund Plan: Kern County outlined a preliminary plan to spend \$175 million in ARP funds. Expenditures include:

- \$80 million to backfill the budgets within various county departments to make up for lost revenue
- \$40.7 million for Broadband, water and sewer infrastructure
- \$10 million to towards maintenance of county parks and providing Wi-Fi in these public facilities
- \$15 million in homeless mitigation
- \$2.45 million to update and restaff county libraries

Kaua'i County, Hawaii

Recovery Fund Plan Focus Areas: Housing; Health; Employment

Population: 72,293

Recovery Fund Plan: Kaua'i County will allocate its portion of Recovery Funds toward the following programs and services:

- \$1 million to the Kaua'i Emergency Management Agency's Emergency Operation Center
- \$1.1 million to the Office of Economic Development's Rise to Work Program
- \$2.5 million for the Housing Agency to work on permanent supportive housing construction projects
- \$170,000 for houseless outreach resources
- \$200,000 for mental health and food support
- \$500,000 for nonprofit economic loss support grants
- \$121,00 for domestic violence prevention
- \$250,000 for agricultural assistance
- \$200,000 for the adolescent treatment center
- \$300,000 to the Mayor's Office for Youth Mental Recovery Support Programs