# Introduction to American Rescue Plan Act of 2021:

Other Uniform Guidance

Developing Policies & Procedures



















# Agenda

- US Treasury Guidance
- Award Terms
- Uniform Guidance Overview
- Allowable Costs
- Property Management
- Program Income
- Period of Performance
- What Now?





**US Treasury Compliance Guidance** 



OMB Memo on ARP M-20-21 OMB Memo on ARP M-21-20 <u>US</u> Treasury **NCLM** 

**NCACC** 

**NCPRO** 

SOG



Assistance Listing (21.027)

**IFR** 

UG Compliance
Supplement

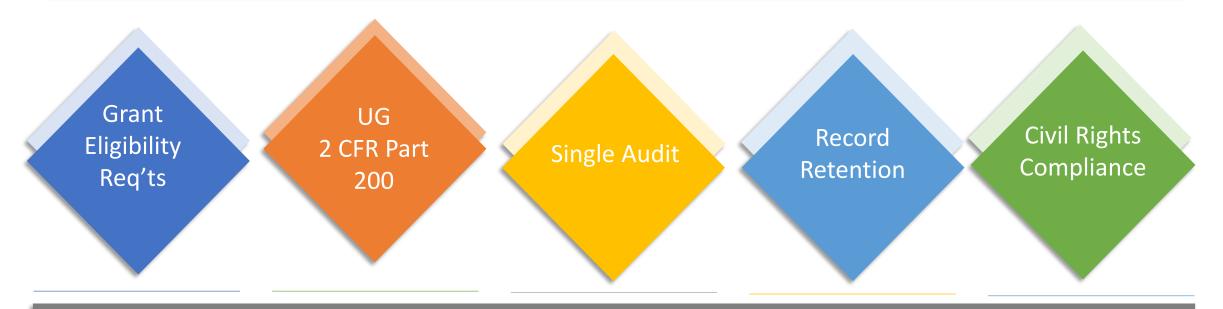
**FAQs** 

**US Treasury Info** 

Where to go for the latest guidance on ARP/CLFRF

### Award Terms and Conditions

If you have not already done so, you must register your LG in SAM.gov



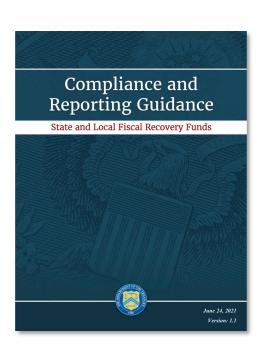
Basic Award Terms and Conditions include following US Treasury guidance on eligible expenditures, complying with most provisions of the Uniform Guidance, retaining all documentation and other records in accessible format for 5 years after end of award term and documenting compliance with federal civil rights laws.

# Uniform Guidance Overview 2 CFR Part 200

Review and identify potentially relevant provisions to ensure your policies, processes, and procedures address all compliance requirements.

- Subpart B, General provisions
- Subpart C, Pre-Federal Award
   Requirements and Contents of Federal
   Awards
- Subpart D, Post Federal; Award Requirements
- Subpart E, Cost Principles
- Subpart F, Audit Requirements
- 2 CFR Part 25
- 2 CFR Part 170
- 2 CFR Part 180

# Guiding Principles for ARP/CLFRF



- Recipients and subrecipients are the first line of defense, and responsible for ensuring the SLFRF award funds are not used for ineligible purposes, and there is no fraud, waste, and abuse associated with their SLFRF award;
- Many SLFRF-funded projects respond to the COVID-19 public health emergency and meet urgent community needs. Swift and effective implementation is vital, and recipients must balance facilitating simple and rapid program access widely across the community and maintaining a robust documentation and compliance regime;
- SLFRF-funded projects should advance shared interests and promote equitable delivery of government benefits and opportunities to underserved communities, as outlined in Executive Order 13985, On Advancing Racial Equity and Support for Underserved Communities Through the Federal Government; and
- Transparency and public accountability for SLFRF award funds and use of such funds are critical to upholding program integrity and trust in all levels of government, and SLFRF award funds should be managed consistent with Administration guidance per Memorandum M-21-20 and Memorandum M-20-21.

### REASONABLE/ NECESSARY

Would a prudent person consider the cost to be ordinary and necessary?

### **ALLOCABLE**

Costs must be charged in accordance with relative benefit received.

# CONSISTENT TREATMENT

"Like" costs must be treated consistently, as either direct or indirect.

# Allowable Costs

- Recipients are allowed to use ARP funds to meet administrative requirements such as consulting services for effective management and oversight, and ensuring compliance with legal, regulatory and other requirements.
- You may use some ARP funds to administer the award, but it must be an allowable cost and a reasonable expense.
  - 2 CFR Part 200 Subpart E (200.404 and 200.405)

Title 2 CFR Part 200 Subpart E

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OMB 2021 Compliance Supplement Addendum System for Award
Management
(www.sam.gov)
Assistance Listing
Number: 21.027

- **Direct Costs:** contract support materials and supplies for a project.
- Indirect Costs: overhead costs where a portion of administrative or facilities costs are incurred by the organization to implement the federal award.
  - Negotiated Indirect Costs Rate Agreement (NICRA)
  - De minimis rate of 10% of the modified total direct costs (unless the governmental department of agency unit receives more than \$35 million from the federal government See Appendix VII).
    - MTDC all direct salaries and wages, applicable fringe benefits, materials and supplies, services, travel, and up to the first \$25,000 of each subaward—see 200.1 Definitions.

Title 2 CFR Part 200 Subpart E

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- ✓ Convene meeting with key leaders to discuss administrative requirements, level of auditing required, and staff capacity.
   Recipients and subrecipients that expend more than \$750,000 will be subject to a rigorous single audit.
- ✓ If you want to use part of the federal award for administrative purposes, check 2 CFR 200 Subpart E to ensure they are allowable and reasonable expenses.
- ✓ If using federal funds for indirect costs, find out if your unit of government has established a NICRA.

Title 2 CFR Part 200 Subpart E

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- Do not rely exclusively on summary documents; place primary reliance on the text of CFR Part 200
- Decide what you need moving forward and reach out for help!
- Lacy.Pate@ncacc.org

Title 2 CFR Part 200 Subpart E

U.S. Treasury
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Property Management Program Income

### Period of Performance

LG may reimburse itself for any eligible expenses incurred after March 3, 2021, but watch for UG compliance issues.

WINTER 2020: PANDEMIC BEGINS

MARCH 3, 2021: ARPA/CLFRF EFFECTIVE DATE

- Premium Pay: May be applied retroactively to beginning of pandemic
- Assistance Programs: May address negative impacts from beginning of pandemic
- Revenue Loss: Will be calculated from beginning of pandemic
- Water/Wastewater/Broadband: May be used for projects that started before March 3, 2021, but only for expenses after that date

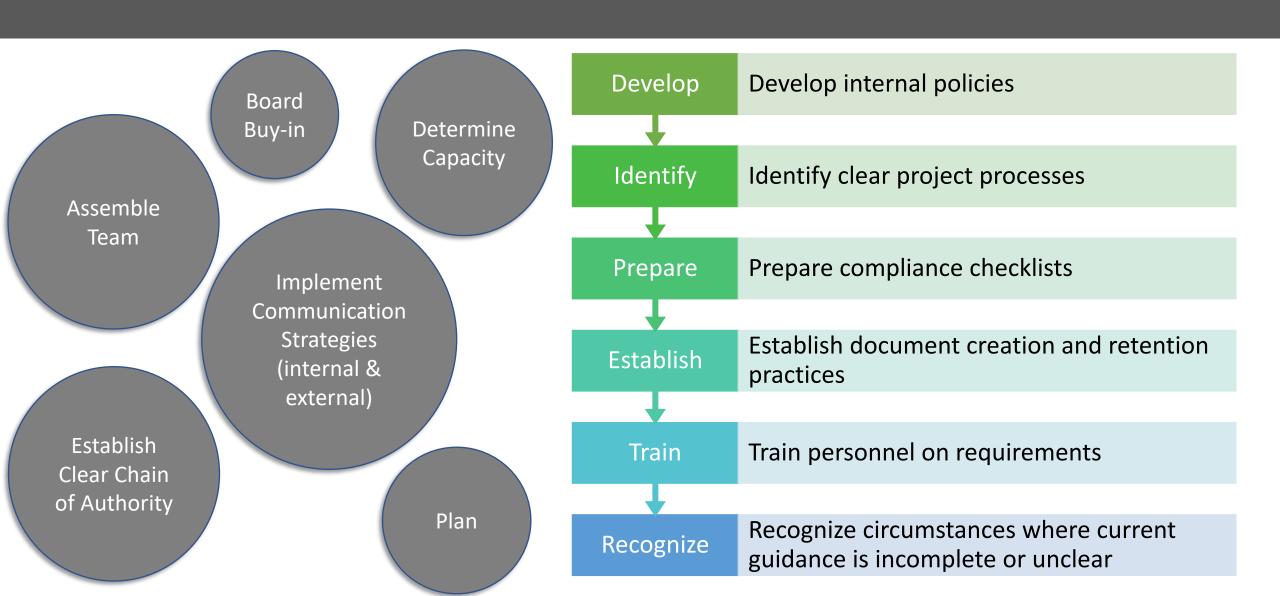
SUMMER 2022: SECOND ½ DISTRIBUTION

SUMMER 2021: FIRST ½ DISTRIBUTION

DECEMBER 31, 2024: ALL FUNDS OBLIGATED

DECEMBER 31, 2026: ALL FUNDS FULLY EXPENDED

## Now What?



## Polices & Procedures

### **Human Resources**

Processes to track FTE's and effort certifications for employees whose compensation are charged to ARP/CLFRF



Procedures to insure, manage, protect, and dispose of property acquired with ARP/CLFRF funds

### Record Retention & Reporting

Processes for creating and maintain appropriate documents, justifications, financial information, and outcome measures in compliance with the law and in a manner that aids in reporting and audit compliance.



### Eligibility & Allowable Costs

Determining if a project and specific expenditure is allowable



### Financial Management

Setting up processes to budget, account for, and manage funds, and to ensure proper cost allocation.



## Procurement / Subaward

Processes and requirements to enter into agreements with outside entities

# Financial Management

# Budgeting, Cash Mgmt & Fund Acct'ing

- Adopt proper budget; budget amendments
- Segregate ARP/CLFRF in separate accounting fund (special revenue fund)
- Detail obligation and disbursement processes
- Accounting system must track all obligations and expenditures at the project level

### **Cost Charging**

- Who will determine whether cost is charged directly or indirectly?
- How will finance perform cost allowability analysis when reviewing invoices and other documentation for obligations and payments?
- How will determinations be documented?
- Who will perform compliance checks on cost charging determinations?

### **Program Income**

- How will program income be treated?
   How will program income be documented?
- Note that we are awaiting more guidance from US Treasury on this issue.

Program/Project #: Program/Project Short Name:

#### ARPA Program/Project File Checklist

This document is to be filled out by the ARPA Coordinator with appropriate back-up and signatures as needed from management and executive team members.

Record must be retained through December 31, 2031.

#### **Basic Information and Description**

Program/Project Name:

Program/Project Short Description:

#### Eligibility Review (Attach correspondence from Attorney as needed)

Justification and Legal Review for ARPA Eligibility:

Justification and Legal Review for State Authority:

#### <u>Financial Information</u> (attach Council Action Form, Resolution, Policy, and Budget Amendments)

**Total Amount Appropriated:** 

FROP Code(s):

Treasury Expenditure Category Level:

**Treasury Expenditure Category:** 

# Eligibility

- Who defines project (each project must fit within only one EC)?
- Who makes eligibility determinations (based on ARP/CLFRF, US Treasury Guidance, and State Law)?
- How are eligibility determinations documented?
- Who reviews eligibility determinations for compliance?

# Cost Allowability

The UG requires written procedures to determine how decisions are made to charge certain costs to the ARP/CLFRF. This is a more detailed review than eligibility, which is done at the project level. A cost allowability review is done at the expenditure item level.

- Who makes cost allowability determinations?
- What guides determinations?
- What happens if an unallowable cost is inadvertently charged to the grant award?
- How to set up project processes to incorporate cost allowability checks?



Reasonable
Allocable
Consistently Treated
Direct vs. Indirect

# Cost Allowability

Selected Cost Item	Uniform Guidance General Reference	Items of Cost Requiring Prior Approval	States, Local Governments, Indian Tribes	Institutions of Higher Education	Nonprofit Organizations	Items of Cost not Treated the Same Across Non- Federal Entities
Advertising and public relations costs	§200.421		Allowable with restrictions	Allowable with restrictions	Allowable with restrictions	
Advisory councils	§200.422		Allowable with restrictions	Allowable with restrictions	Allowable with restrictions	
Alcoholic beverages	§200.423		Unallowable	Unallowable	Unallowable	
Alumni/ae activities	§200.424		Not specifically addressed	Unallowable	Not specifically addressed	X
Audit services	§200.425		Allowable with restrictions	Allowable with restrictions	Allowable with restrictions	
Bad debts	§200.426		Unallowable	Unallowable	Unallowable	
Bonding costs	§200.427		Allowable with restrictions	Allowable with restrictions	Allowable with restrictions	
Collection of improper payments	§200.428		Allowable	Allowable	Allowable	

Create your own cost allowability checklist by identifying possible cost categories from this list.

https://www.whitehouse.gov/wpcontent/uploads/2021/08/OMB-2021-Compliance-Supplement Final V2.pdf

# Sample Eligibility and Allowability

Utility subsidy program for low-income customers for delinquencies that occurred between March 15, 2020 and March 15, 2022.

### **ELIGIBILE COSTS**

### **ARP/CLFRF Eligibility**

- IFR: 31 CFR Subtitle A, Part 35, Subpart A, Sect. 35.6(b)(8)
- EC: 2.2
- Add't Reporting Info:
  - To ensure continued access to drinking water during pandemic for those disproportionately negatively impacted by pandemic.
  - # of individuals served 200 customers
  - Program is limited to those customers who meet US Treasury parameters for disproportionately negatively impacted and is limited to most acute time period of the pandemic.

### **State Law Eligibility**

• G.S. 160D-13

### **ALLOWABLE COSTS**

### Direct

- Subsidy payment amounts
- Direct costs of communicating program to eligible customers
- Direct costs of attorney review of specific program for legal compliance
- Direct costs of hiring internal or external project implementation personnel

#### Indirect

- Management and administrative personnel costs for time spent developing and implementing program
- Finance staff costs for time spent processing and reconciling payments

### Record Retention

Helpful Tip: Set up record-keeping processes in a way that makes reporting easier.

5 Years

LG must maintain records and financial documents for **5 years** after all funds have been expended or returned to US Treasury.

Access

Records must be kept up-to-date in real time. US Treasury may request to view them at any time, as well as GAO, OIG, PRAC, or other government or private entities.

State Law

And don't forget state law retention and access requirements!

What are processes for creating records?

Who maintains records?

Who monitors record-keeping for compliance?

Your attorney should review any sample policies for full legal compliance!

### **Procurement**

- Conflicts of Interest
- Solicitation and Competition
- Documentation of Exceptions
- Contractor Performance

### **Subawards**

- Subaward vs. Contract
- Risk Assessment
- Subaward Terms and Conditions
- Subrecipient Monitoring

# Subaward Policy

#### **Subaward vs. Contract**

Who determines whether subaward or contract? What is process for making that determination? How is that determination documented?

#### **Risk Assessment**

Who performs risk assessment?

What factors are included in risk assessment and how are they weighted?

What happens if entity is designated mid or high risk according to assessment?

Who checks for disbarment or suspension?

Who checks for conflict of interest?

How is risk assessment and other due diligence documented?

#### **Subaward Agreement**

Who drafts subaward?

What state law requirements must be met (preaudit, required clauses, prohibited clauses, etc.)?

Who works with other entity to collect required information (budget, scope of work description, due diligence reviews, etc.)?

Who determines what additional subaward terms must be included?

Who executes subaward?

Who maintains records of subaward and other documents?

#### **Subaward Monitoring**

Who monitors subrecipient for performance, financial, and other compliance?

Who makes decisions about how to respond to noncompliance?

Who provides technical assistance to subrecipient?

Who documents subrecipient monitoring?

Who closes out subaward?

### Human Resources



**Track FTEs** 

For some ARP/CLFRF projects, a local government must track FTE's funded with the award. See compliance guide requirements.



**Effort Certification** 

Method for tracking employee effort on eligible projects.



**Internal Controls** 

Provide reasonable assurance that the charges are accurate, allowable, and properly allocated.

# Property Management



A LG should have a basic property management system that safeguards all property acquired with federal funds.

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### Talk to your attorney!

May be best to take a risk-limiting approach:
Limit capital expenditures to those expressly stated in IFR or FAQs.

Document! Document! Document!

Hope that Final Rule addresses this and other ambiguities.

- 2 FAQs mention other capital projects as examples
- FAQ 4.5: Are governments required to submit proposed expenditures to Treasury for approval? [5/27]
  - No. Recipients are not required to submit planned expenditures for prior approval by Treasury. Recipients are subject to the requirements and guidelines for eligible uses contained in the Interim Final Rule.

written approval of the Federal awarding agency or pass-through entity.

- (3) <u>Capital expenditures</u> for improvements to land, buildings, or equipment which materially increase their value or useful life are unallowable as a direct cost except with the prior written approval of the <u>Federal awarding agency</u>, or <u>pass-through entity</u>. See § 200.436, for rules on the allowability of depreciation on buildings, capital improvements, and equipment. See also § 200.465.
- (4) When approved as a direct charge pursuant to paragraphs (b)(1) through (3) of this section, <u>capital expenditures</u> will be charged in the period in which the expenditure is incurred, or as otherwise determined appropriate and negotiated with the <u>Federal awarding agency</u>.
- **(5)** The unamortized portion of any equipment written off as a result of a change in capitalization levels may be recovered by continuing to <u>claim</u> the otherwise allowable depreciation on the equipment, or by amortizing the amount to be written off over a period of years negotiated with the Federal cognizant agency for indirect cost.
- (6) Cost of equipment disposal. If the <u>non-Federal entity</u> is instructed by the <u>Federal awarding agency</u> to otherwise dispose of or transfer the equipment the costs of such disposal or transfer are allowable.
- (7) Equipment and other <u>capital expenditures</u> are unallowable as indirect costs. See § 200.436.



# Uniform Guidance Overview 2 CFR Part 200

# Reasonableness Filter

"Swift and effective implementation is vital, and recipients must balance facilitating simple and rapid program access widely across the community and maintaining a robust documentation and compliance regime."

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- 2 CFR Part 180

## Small LG's

- Focus on basic compliance
- ID who makes decisions, who tracks information
- Stay within "safe harbors" in IFR/FAQs and State
   Law
- Adopt grant project ordinance and use project tracking template
- Document all eligibility determinations (including allowable costs)
- Track all obligations and expenditures (either in accounting system or separately)
- Establish good record keeping (keep everything)
- If you need to buy goods, contract for services or construction, or partner with an outside entity, consider working with your COG or another local government.

### Wake County

The larger the LG, the higher the award, the more detailed and sophisticated compliance requirements

Town of Halifax