AGENDA
PUBLIC NOTICE
Regular Meeting of the Finance Sub Committee
Wednesday, October 25, 2023
2:00 PM
First 5 Riverside County
585 Technology Ct
Riverside, California 92507

This notice shall confirm the Regular Meeting of the Finance Sub Committee of the Riverside County Children and Families Commission.

Note: If special accommodations are needed to participate in this meeting, please contact Lynn Stephens, Executive Assistant IV, at (951) 955-0200 during regular business hours of the Riverside County Children and Families Commission (Monday-Friday 8:00 a.m. – 5:00 p.m.).

Note: Public Comments will be taken on agenda items at various times during the meeting. Please submit a Request to Speak form to the Executive Assistant IV at any time before or during the meeting indicating the item you wish to address.

Note: Please place all cellular phones on vibrate or off mode during the meeting.

A. **Call to Order – Zachary Ginder, Commission Chair**
   A.1. Pledge of Allegiance
   A.2. Roll Call – Lynn Stephens, Executive Assistant IV
B. **Public Comments (for items not listed on the agenda) – Zachary Ginder, Chair**
C. **Commission and Advisory Committee Business – Zachary Ginder, Chair**
   C.1. Director's Report – Tammi Graham, Executive Director; Yvonne Suarez, Assistant Director; Ricardo Quezada, Deputy Director, Charna Widby, Deputy Director
   C.2. Commissioner Comments
D. **Presentation/Information Item – Zachary Ginder, Chair**
   D.1. Champion for Children Award Presentation to Betty Bash - Sean Pravica, Senior Public Information Specialist

First 5 Riverside County
Champion for Children Award
2023 Recipient

Nominee Profile: Betty Bash

Ms. Bash founded the Norco-based child care center, Town and Country Day School, in 1961 and continues to work there today as she approaches 90 years of age. The center has always been ahead of its time as it provided a curriculum that focused on child development. While years of research since the school's opening have clearly shown the critical importance of providing children with the tools to support their early-brain development, this was not always common practice. Head Start began in 1965, making significant strides in helping to refocus child care around education and not just supervision, several years after Town and Country Day School first opened its doors. Ms. Bash is not just a long-time advocate for children, but an early pioneer in bringing quality child care to Riverside County.

Town and Country Facilities Director, Kevin Bash, said, "Betty Bash overcame banking and governmental bias against a woman-owned business and fulfilled a vision of moving the accepted care of children from simple babysitting services to establishing and pioneering a professional-based, quality early childhood developmental program."

Today, Town and Country Day School has hosted dozens of preschool teachers in training to complete their observation hours. It has also helped launch the careers of many new educators who got their start working as child care providers for Ms. Bash, whose influence helped many of them not only finish high school but also earn college degrees.

In addition to founding Town and Country Day School, Ms. Bash founded the Inland Empire Preschool Association. In this position, she has assisted multiple fledgling child care centers begin their operations. This work included her assistance in designing preschool programs as well as playgrounds and outdoor classrooms to foster active learning and healthy activity.

Ms. Bash is regularly recognized in the community by adults who attended Town and Country Day School decades ago. In many cases, parents and grandparents now enroll their own children and grandchildren in her program. She has been recognized by many different organizations over 60 years, including the Corona and Norco Chambers of Commerce, American Legion, the Corona Norco Unified School District, the State and Federal Legislatures.

FIRST 5
Riverside County
Children & Families Commission

Champion for Children

First 5 Riverside County's Champion for Children Award was created to honor, sponsor, and bring awareness to people and organizations whose leadership and advocacy embody the vision of First 5 Riverside County, where all children in Riverside County are healthy and thrive in supportive, nurturing, and loving environments and enter school ready to learn and embrace lifelong learning.

Award Winners



2020 - Carmela Garnica

Carmela is the Program Director at Escuela de la Raza Unida (ERU), a non-profit organization in Blythe that is dedicated to serving the needs of low-income families with young children in the Palo Verde Valley.



2021 - Desiray Taylor

Desiray was selected as Champion for Children for her work as the director of a child care center where she organized many community events and introduced the center's first lunch program to ensure all children had food to eat.



2022 - Solange Signoret

Solange is the youngest-awarded Champion for Children at 17 years old, and was recognized for her work as Youth Ambassador for the Palm Springs-based nonprofit Boo2Bullying that promotes inclusivity, tolerance, and kindness through anti-bullying campaigns.



2023 - Betty Bash

Betty is the Executive Director of Town & Country Day school in Norco that provides preschool and daycare since 1961 focusing on creativity, nature, friends, academics, fresh air and fun.

D.2. Riverside County Office of Education (RCOE) Update - Jennifer Beggs, Executive Director, Early Care and Education

Division of Early Education Services
Early Care and Education

RIVERSIDE COUNTY OFFICE OF EDUCATION
EDWIN GOMEZ, Ed.D.
County Superintendent of Schools

Updates from Riverside County Office of Education and California Department of Social Services (CDSS)

October 25, 2023

RIVERSIDE COUNTY OFFICE OF EDUCATION
EDWIN GOMEZ, Ed.D. | County Superintendent of Schools

OCTOBER 2023

EARLY EDUCATION SERVICES UPDATE

EARLY EDUCATION SERVICES ENROLLMENT



1,732
Total Children on Eligibility List (All Ranks)
As of October 1, 2023

717 Families

1,080 Children

September Outreach for CAPP Enrollment

Children enrolled in Early Head Start/ Head Start (EHS/HS), Migrant Head Start Program (MHSP), California State Preschool Program (CSPP), and California Center-Base California Center-Base Program (CCTR).

Children enrolled in California Alternative Payment Program (CAPP), CalWORKs Stages 2 and 3 (C2AP and C3AP), Riverside Hybrid Alternative Payment Program (RHAP), and Foster Bridge (Bridge).

SUBSIDIZED CARE PROGRAM SUPPORTS

American Rescue Plan Act (ARPA) on Boarding New Providers (program totals)

7 Centers + **265** Family Child Care Homes = **3,031** Child Care Slots

Riverside Hybrid Alternative Payment Program (RHAP) Incentives – Number of Quality Start Sites Receiving RHAP Incentives - Fiscal YTD

168 Unduplicated Providers **1,629** Children

RHAP Service Supports for Migrant Head Start Program Transition to CAPP - Fiscal YTD

185 Families **232** Children

COMMUNITY SUPPORT

Workforce Development

351 YTD
Early Education Teacher Development Grant Applications Processed

133 hours of training provided for 38 participants

Resource & Referral

2,065
Child Care Referrals Completed

Family and Provider Support – Family Resource Centers
(Mecca and Desert Hot Springs)

543 Parent/Providers
Fiscal YTD

RHAP Incentives Bridging to Rate Reform from CDSS

Incentive Structure: Flat Rate per full time week*	
Center-Based	Family Child Care
$40	$25

*The Flat rate is the same regardless of the child's age and based on a F/T scholarship. Rates are half the amount for P/T scholarship.

The flat rate RHAP quality incentive, effective 7/1/2023, was designed as a continuation of financial support for maintenance of quality in Alternative Payment (AP) program settings. This funding is intended to support approximately 200 QSRC providers, previously on Tiers 3-5, and is received for each enrolled AP child, ages 0 through 4, as a bridge to State rate reform.

This quality incentive amount funded by Prop 10 will be decreased in conjunction with the State increases in the rate reimbursement structure.

RHAP Incentives Bridging to Rate Reform from CDSS

CDSS Cost of Care Plus Rate, effective 1/1/2024

Through SB 140, effective January 1, 2024, through June 30, 2025, all providers will receive a monthly "Cost of Care Plus Rate“ based on the region in which they live and their licensing status.

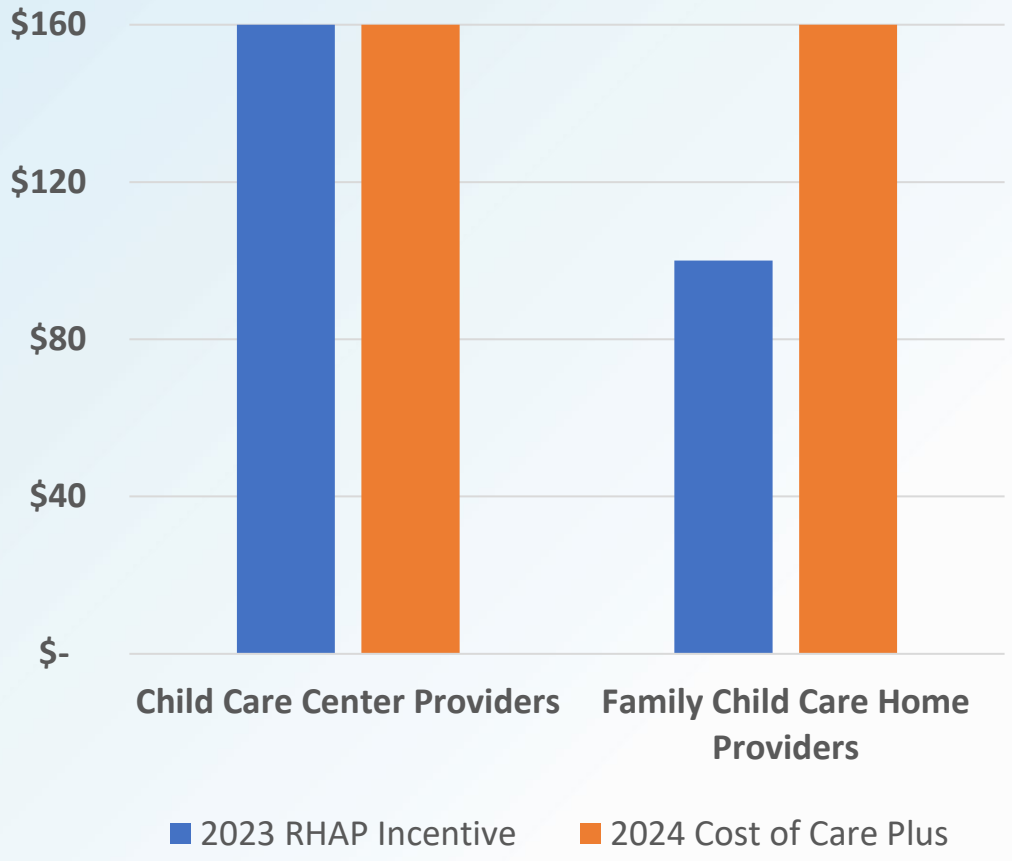
Southern region:

- Licensed Family Child Care Homes and Child Care Centers to receive $160 per child (ages 0-13), per month.
- Unlicensed Family Friend and Neighbor Providers (FFN) to receive $112 per child (ages 0-13), per month.

RHAP Incentives Bridging to Rate Reform from CDSS

Comparison of the forthcoming "Cost of Care Plus Rate" and existing RHAP Incentives:

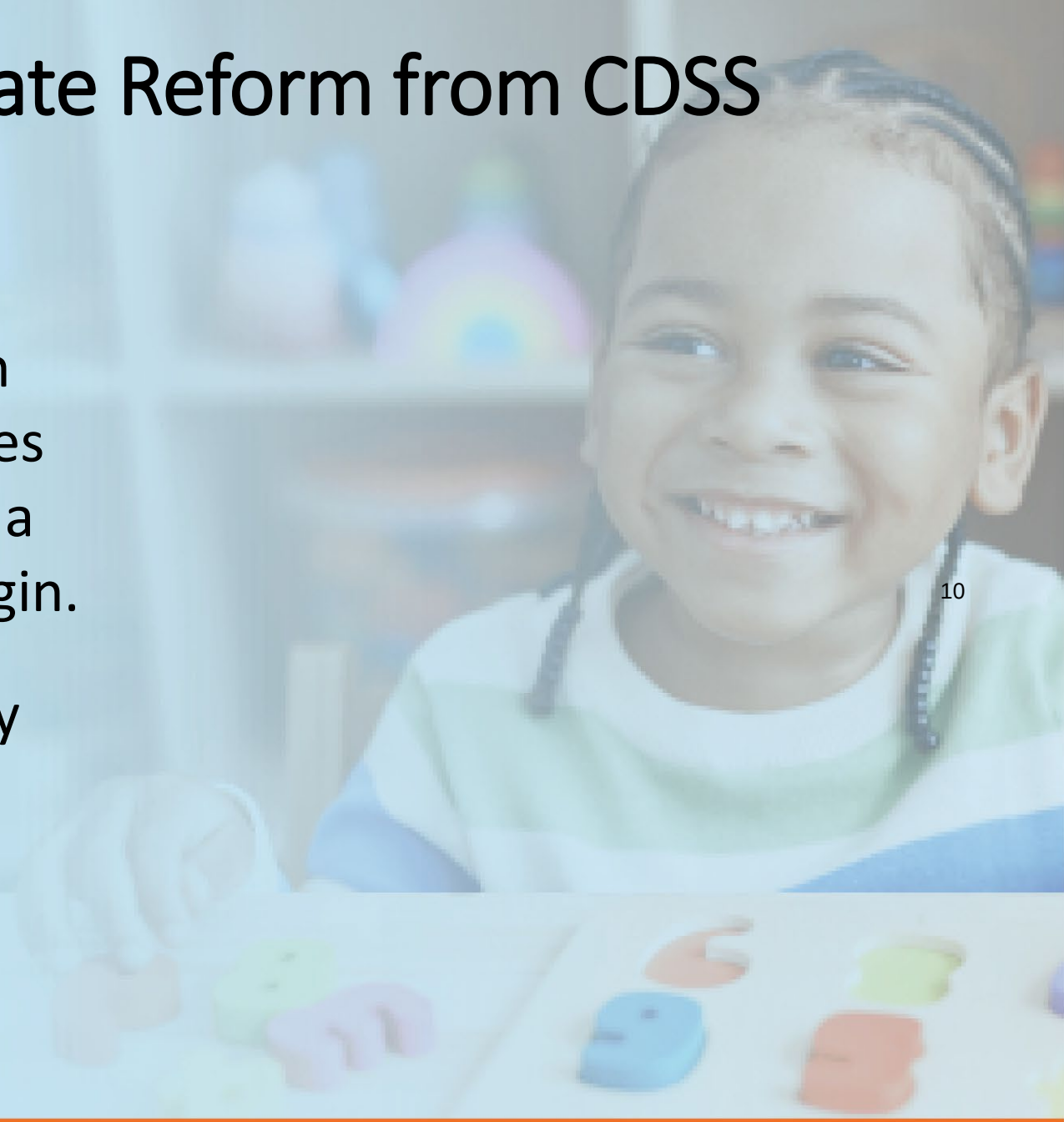
- "Cost of Care Plus Rate" applies to all providers serving children in AP (ages 0-13); RHAP incentive only applies to QSRC providers and only for children ages 0-4.
- "Cost of Care Plus Rate" of $160 per month, per child, exceeds the current RHAP incentive of $25 per week, per child for Family Child Care Home providers.
- "Cost of Care Plus Rate" of $160 per month, per child, offsets the current RHAP incentive of $40 per week, per child for Child Care Center providers.



RHAP Incentives Bridging to Rate Reform from CDSS

Considerations for effective 1/1/2024:

- Ending RHAP incentives effective with January 2024 services as the incentives have served their purpose to provide a bridge until the State investments begin.
- Messaging to the provider community and stakeholders to ensure understanding.





QUESTIONS?

RIVERSIDE COUNTY OFFICE OF EDUCATION
EDWIN GOMEZ, Ed.D.
County Superintendent of Schools

Division of Early Education Services
Early Care and Education



Thank you FOR ATTENDING!

Jennifer Beggs
Executive Director, Early Care and Education
(951) 826-6608
jbeggs@rcoe.us

E. **Consent Items – Zachary Ginder, Chair** (a copy of all action items and attachments can be viewed at www.rccfc.org and at the Commission Business Office)
E.1.Approve First 5 Riverside County Commission 2024 Meeting Schedule

FIRST 5 Riverside County Children & Families Commission

Commission Members	Advisory Committee Members	Commission Administrative Staff
Zachary Ginder, PsyD, MSW, **Dist. I (Chair)**	Antonia Eli Mast, **Dist. II**	Tammi Graham, Executive Director
Jose Campos, **Dist. II (Vice Chair)**	Malinda Margiotta, **Dist. III**	Yvonne Suarez, Assistant Director
V. Manuel Perez **County Supervisor Dist. IV** Chuck Washington **Supervisor Alternate, Dist. III**	Kari Middleton-Hendrix, **Dist. IV**	Ricardo Quezada, Deputy Director
Edwin Gomez, Ed.D. **Ord. 784.11**	Agam Patel, **District IV**	Charna Widby, Deputy Director
Kimberly Saruwatari, **Ord.784.11**	**VACANCIES IN DISTRICTS I, II, III, V**	Lynn Stephens, Executive Assistant IV
Kimberly Britt, **Ord. 784.11**		Martina Guevara, Commission Coordinator
Stephanie Yost, **Dist. III**		Kristine Bell-Valdez, Supervising Deputy County Counsel
Elizabeth Romero, **Dist. IV**		
Angelica Hurtado, **Dist. V**		

The CFC meets regularly on the 2nd Wednesday as scheduled below except for January and October meetings which are held on the 4th Wednesday of the month. The open session of the Board meeting shall begin at 2:00 p.m. unless changed by consent of a quorum of the Commission Members. Meetings are held at First 5 Riverside County Children & Families Commission located at 585 Technology Court in Riverside. ***Any "Special" meetings of the CFC are noticed in advance in accordance with the Brown Act.*** ***Closed Sessions will be scheduled as needed. Meeting dates may be modified as needed.***

Schedule of Commission Meetings 2024

Wednesday, **Jan 24,** 2024 **(4th Wednesday)** .....First 5 Riverside County

Wednesday, **March 13,** 2024 ..... First 5 Riverside County

Wednesday, **May 8,** 2024 .... First 5 Riverside County

Wednesday**, July 10,** 2024 ..... First 5 Riverside County

Wednesday, **September 11,** 2024 ..... First 5 Riverside County

Wednesday, **October 23,** 2024 **(4th Wednesday)** ..... First 5 Riverside County

E.2. Approve First 5 Riverside County Draft Commission Meeting Minutes - July 17, 2023 Session

MINUTES
FIRST 5 RIVERSIDE COUNTY
Regular Meeting
Monday, July 17, 2023
2:00 PM

Present: Kimberly Britt, Jose Campos, Zachary Ginder, Edwin Gomez, Angelica Hurtado, Supervisor V. Manuel Perez, Elizabeth Romero, and Stephanie Yost

Absent: Kim Saruwatari

Administrative Staff Present: Tammi Graham, Executive Director; Yvonne Suarez, Assistant Director; Lynn Stephens, Executive Assistant IV; Carol Abella, Jill Kowalski, and Jennifer Maresh, Regional Managers; Erica Williams and Patricia Perez, Administrative Services Manager I; Sean Pravica, Senior Public Information Specialist; Michelle Rodriguez, Public Information Specialist; Martina Guevara, Commission Coordinator; Marinus (Rens) Van Eenennaam, Reyshawn Bobo and Yolanda Bernal, Contracts & Grants Analysts; and Victor Lopez; Administrative Services Analyst

Legal Counsel: Paula Salcido, Supervising Deputy County Counsel

A. **Call to Order – Zachary Ginder, Commission Chair**

1. Pledge of Allegiance – Vice Chair Campos
2. Roll Call – Lynn Stephens, Executive Assistant IV

B. **Public Comments (for items not listed on the agenda) – Zachary Ginder, Chair**
None

C. **Consent Items – Zachary Ginder, Chair** (a copy of all action items and attachments can be viewed at www.rccfc.org and at the Commission Business Office)

1. Approve First 5 Riverside County Draft Commission Meeting Minutes – May 10, 2023 Session
2. **23-31:** Approve 2023 Champion for Children Nominee Betty Bash as Recommended by the Advisory Committee
3. **23-32:** Approve and Ratify Contract with Loma Linda University Children's Hospital for Help Me Grow-Inland Empire from July 1, 2023 to June 30, 2025 **(CONTRACT NO. CF24126) [$1,128,762-PROP 10 FUNDS]**
4. **23-33:** Approve and Ratify Contract with Family Services Association for Transition Funding to support Safecare Home Visitation from July 1, 2023 - September 30, 2023 **(CONTRACT NO. CF24128) [$25,831 PROP 10 FUNDS]**
5. **23-34:** Approve and Ratify Contract with John F. Kennedy Memorial Foundation for Transition Funding to support Safecare Home Visitation from July 1, 2023 - December 31, 2023 **(CONTRACT NO. CF24127) [$254,280 - PROP 10 FUNDS]**
6. **23-35:** Approve and Ratify Contract with Rady's Children's Hospital for HealthySteps Sustainability Services from July 1, 2023 - December 31, 2024 **(CONTRACT NO.CF24102) [$1,059,663 PROP 10 FUNDS]**

7. **23-36:** Approve and Ratify Contract with Riverside University Health System - Community Health Clinics (RUHS-CHC) for HealthySteps Expansion from July 1, 2023 - June 30, 2024 **(CONTRACT NO. CF24103) [$804,802 - PROP 10 FUNDS]**
8. **23-37:** Approve IMPACT Legacy Pass-Through Funding Agreement Template
9. **23-38:** Approve and Ratify Contract with American Academy of Pediatrics (AAP) District IX, Chapter 2 to Implement Reach Out and Read Initiative in Riverside County **(CONTRACT NO. CF24109)** from July 1, 2023 - June 30, 2024 **[$320,000 - PROP 10 FUNDS]**

Consent Items 10 and 11 were pulled from the block and taken separately due to conflicts.

Commissioner Perez moved to approve Consent Items 1-9. *Commissioner Yost second the motion.* **Absent:** Commissioner Saruwatari. ***Motion carried unanimously.***

Chair Ginder reported Commissioners Gomez and Romero have a conflict of interest with Action Item 23-29. Commissioners Gomez and Romero left the chamber due to conflict and were not part of the discussion or vote.

10. **23-39:** Approve Agreement with Riverside County Office of Education (RCOE) for Quality Start Riverside County (QSRC) Collaborative Support Services **(AGREEMENT NO. C1009211) from July 1, 2023 - June 30, 2024 [$175,000 - RCOE STATE FUNDS]**

Commissioner Britt moved to approve action item 23-29 as presented. Vice Chair Campos second the motion. **Conflict:** Commissioners Gomez and Romero. **Absent:** Commissioner Saruwatari. ***Motion Carried unanimously.***

Commissioners Gomez and Romero returned to the meeting. Chair Ginder noted Commissioner Perez has a conflict of interest on action item 23-40 and he will not be in the chamber or part of discussion and vote. Commissioner Perez left the chambers.

11. **23-40** Approve Acceptance of Unincorporated Communities Initiative Funding Allocated from County of Riverside for Funding Needs for Various ChildCare Centers within the Fourth District **[$250,000 - REVENUE - UNINCORPORATED COMMUNITIES INITIATIVE FUNDS]**

Commissioner Romero moved to approved action item 23-40 as presented. Commissioner Gomez second the motion. ***Conflict:*** *Commissioner Perez****. Absent:*** *Commissioner Saruwatari.* ***Motion carried unanimously.***

Commissioner Perez returned to the meeting.

D. **Action Item – Zachary Ginder, Chair**

1. **23-41:** Approve Acceptance of Riverside County Third District Community Improvement Designation (CID) Funds Infant Survival Swim Lesson Scholarships and Training of Three Instructors **[$60,000 COMMUNITY IMPROVEMENT DESIGNATION FUNDS]**

Commissioner Yost moved to approved action item 23-41 as presented. Vice Chair Campos second the motion. ***Absent:*** *Commissioner Saruwatari.* ***Motion carried unanimously.***

2. **23-42:** Approve Proposition 10 Funds and Allocate ARPA Funds for Child Care Infrastructure Project Adjacent to the French Valley Library - District 3 **[NOT TO EXCEED $2,000,000 PROP 10 FUNDS AND NOT TO EXCEED $2,000,000 ARPA FUNDS]**

Commissioner Perez moved to approved action item 23-42 as presented. Commissioner Britt second the motion. ***Absent:*** *Commissioner Saruwatari.* ***Motion carried unanimously.***

E. **Commission Business – Zachary Ginder, Chair**

1. Director's Report – Tammi Graham, Executive Director; and Yvonne Suarez, Assistant Director

Ms. Graham reported on highlights in her Director's Report:

Governor's Update/Childcare

California continues investing in the youngest learners and the adults who care for them. California has agreed to make preschool free for all 4-year-olds by funding the expansion of transitional kindergarten. The budget provides temporary rate increases to childcare providers and commits to developing an alternative methodology for a reimbursement system.

The First 5 Riverside County Commission and the County of Riverside Board of Supervisors have advocated for rate reform over the past few years and has invested in our early care and education system in partnership with the Riverside County Office of Education through Quality Start Riverside County, Riverside Hybrid Alternate Payment Program, child care for essential workers, infrastructure, facilities, and wage enhancements paid directly to eligible educators.

Key specifics:

- Authorizing the Department of Social Services to develop an alternative methodology to California's reimbursement rate system in order to provide a more equitable reimbursement rate system that works towards covering the real cost of providing state-subsidized child care.
- Ensuring family fees will not be more than one percent of a family's monthly income and charging no family fee for families whose adjusted monthly family income is below 75 percent of the state median family income, starting October 1, 2023.
- An investment of $20 million to support the Bilingual Teacher Professional Development Program to help address the shortage of qualified bilingual teachers by supporting them with grants to receive their bilingual authorization to teach in bilingual classrooms.

First 5 will be working closely with Riverside County Office of Education on the impacts of rate reform on the RHAP program.

The governor's master plan for kids' mental health: nine agencies that support Riverside County have been funded through the Department of Health Care Services. They have awarded $30,000,000 to 63 entities throughout the state for the Children and Youth Behavioral Health Initiative. A few of the agencies awarded are Rady's Children's Hospital, Riverside University Health System - Behavioral Health, and Greater Hope Foundation for Children Inc.

Drowning Prevention

Partner agencies have done great work with drowning prevention this year. So far, First 5 has served 1,666 children through Southern California Water Babies, Corona-Norco Family YMCA, Desert Recreation District, Jurupa Area Recreation and Park District, and the City of Temecula. Since the Commission began investing in survival swim float swim and swim lessons, more than 3,200 children have learned to swim.

Parent story from Julieta, mother of Catalina and Diego:
In May we had the opportunity to participate in the First 5 and SoCal Water Babies Low-Income Scholarship Program, so I wanted to share our experience.

We are very happy with the swimming lessons because we can definitely see the amazing progress that our 4-year-old daughter Catalina made during the 14 lessons she was able to get through this program. She fell in a pool at a hotel in 2021 when she was 3-years-old and I (mom) had to jump in to rescue her. It was an extremely scary experience. Thanks to your program we were able to enroll Catalina in swimming lessons and it's been a blessing for our family. She started the lessons very scared and she didn't even want to get in the pool. But thanks to Cathryn Van Der Linden's great swimming program and patience with little kids, Catalina went from being terrified to get in the water to be excited to go to her swimming class. She finished the lessons with confidence and enjoyed the pool so much that she was crying because the classes were done and she was not coming to her swimming lessons anymore.

This was a great experience not only for her but very important survival swimming skills that she learned but also for her confidence to face her fears and succeed. She was very happy and thankful for this opportunity, we are looking forward to participation in the program one more time with her little brother, almost 2-years-old, his name Diego. Thank you so much for offering this program!

-Julieta and Bryan (parents of Catalina)

Employee Giving Campaign
Ms. Graham served as the Riverside County Employee Giving Campaign Chair. First 5 was recognized for the highest participation rate of a small department. Over 66% of F5 staff contributed to the Employee Giving Campaign - a 50% increase from previous years. County departments, collectively raised over $400,000, with 1,341 Donors and over 165 of those donors were Landmark Donors, 100% of the departments participated and their funds go to more than 250 charities. Ms. Graham thanked Ms. Stephens who was the lead campaign coordinator. Ms. Stephens supported more than 120 department coordinators and she will continue to provide guidance as she moves forward with various opportunities with other county coordinators in supporting departments with donations and fundraiser events.

New Parent Kits
Senior Public Information Specialist, Sean Pravica has been promoting new parent kits. More than 11,000 kits have been distributed in Riverside County during fiscal year 22-23. This equates to approximately 33% of families with newborns. New Parent Kits are free through First 5 California and available in English, Spanish, Korean, Mandarin, and Vietnamese. Kits include F5CA parent guide which has information about developmental milestones children reach through age 5 as well as resource links and phone numbers correlating to each milestone; a book about treatment and identification for illnesses and injuries children may suffer; children's books; dental information for babies including a teething gum massagers; a KN95 mask; poison control information; Talk Read Sing tote bag.

Sean, increased outreach to agencies to educate about contents and purpose of kits and how to receive them. This has led to an increase in kit orders.
Sean is presenting on new parent kits to agency meetings which so far include DPSS Child Services Regional Meeting, RUHS Public Health Practice Management Meeting, FRC Network Meeting, and FRC Service Provider meeting. Orders from new agencies include those from social service practitioners, community clinics, Office of Aging (Grandparents Raising Granchildren), and RUSD FRC.
New parent kit email set up for ease of ordering for partner and community agencies: F5RC-ParentKits@rivco.org. Multiple F5RC staff have access to ensure timely orders. Staff at FRCs promote New Parent Kits to families and service providers and encourage placing orders through the new parent kit email.

Safe Spaces
Dr. Diana Ramos, Calfornia's Surgeon General, will be visiting F5 Riverside Country child care sites in the fall. Staff is waiting to hear back in August to confirm which site(s) she will be visiting. Suggested sites are: Storyland Preschool Thousand Palms, First Step Preschool Coachella, First School of the Desert Palm Desert Palm Desert, Big Sky Preschool Riverside, Concilio Child Development Center Riverside, Moreno Valley USD Moreno Valley

Commissioner Yost thanked Ms. Graham for her update and for sharing the family story. Commissioner Hurtado thanked staff for having the New Parent Toolkit in other languages besides English and Spanish.

2. Commissioner Comments
None.

F. **Presentation/Information Item** – **Zachary Ginder, Chair**

1. Family Resource Center/HARC Community Convening Presentation - Ricardo Quezada, Deputy Director

Mr. Quezada shared updates from the May 23 and May 25 community convenings with HARC. Desert Hot Springs had 17 participants and Mecca had 18 participants. There were 58 participants in the virtual convening with community based partners.

HARC presented data at the three meetings and gave community members an opportunity to engage in discussion and provide feedback. HARC posed a series of questions, asking community members/providers to reflect on the data and give their feedback. These community convenings were organized by F5 staff. F5 staff also conducted outreach to FRC clients to recruit participants for the convenings.

Top Issues: Educational Attainment, Poverty, School Safety, Affordable Housing, Internet Access

In Mecca, the group identified clean air, water, education and accessing reliable internet service as the top needs.

The DHS community members said they do not feel safe and do not want to go to parks where crime is high.

Next Steps: F5 staff will extend HARC's contract so they are able to complete and mail the surveys in each supervisorial district. At a future meeting, HARC will present a report of the survey findings and how they will be used to develop an action plan.

A brief discussion ensued. Commissioner Britt commented on the top issues noted in the word cloud. Mr. Quezada noted that attendees are currently utilizing FRC services.
Commissioner Yost volunteered to help with expanding services in her hometown of Idywild. Anyone interested should reach out to her.

Commissioner Perez asked Mr. Quezada how many FRCs we have in the 4th District? Mr. Quezada responded to Commissioner Perez's question noting First 5 has a total of five brick-and-mortar FRCs. Two (Mecca and DHS) are located in District 4, with the remaining in Mead Valley, Jurupa Valley and Riverside.

Commissioner Perez asked if there's any consideration of expanding the number of FRCs in County. Mr.Quezada replied staff is looking at leveraging current resources that are already in the community to see how First 5 can partner with them to ensure that our services are also available within those partners. Ms. Graham reported on the current pilot to stand up the FRC in the Jurupa Valley Community Health Clinic, which will be the model for expanding family resource centers in other areas of the county. First 5 has created an FRC Network since we began operating the FRCs in July, 2020. Funding for brick-and-mortar sites is up for discussion between First 5 and DPSS, as that is where the primary funding and matching funds come from. The current budget for FRC sites is $4.5M.

Commissioner Perez inquired about the possibility of staff looking at decentralizing efforts and utilizing county and city buildings to integrate FRCs and reach other communities. Ms. Graham noted the FRC Network strategy is built on expanding capacities to decentralize efforts and expand resources for FRCs and community hubs. The 4th district currently has the most county operated brick-and-mortar FRC sites.

Commissioner Britt commented on the amazing things happening with Riverside County. The Integrated Service Delivery Model and Jurupa Valley Piliot are building the vision to incorporate FRCs with partner agencies throughout the county with clinics so community members can receive support in multiple areas. She participates in the ISD meetings and is impressed with the vision of residents going to a clinic with healthcare issues and then getting support in other areas.

Commissioner Yost informed the Commission that Idywild is getting their first mobile clinic this Wednesday. She offered to help in getting the word out to families about services available.

Vice Chair Campos reminded Commissioners that First 5 brought the Family Resource Centers under our umbrella in 2020, at the start of the COVID-19 Pandemic and that the sites were closed for over a year due to COVID. Currently there is the Home Visitng Expansion, and FRC Expansion, nine in network sites, and five brick-and-mortar sites for a total of 13 that represent the current Family Resource Center Network. He agreed that the five brick-and-mortar sites that were in place before First 5 took over the FRCs were not sufficient for a county of our size. Vice Chair Campos noted the network taking place with the support of the Office of Integrated Services work with expansion agencies, mobile clinics, and strengthening the work we all do with school districts, RUHS, RCOE, and the consistent integrated efforts in Riverside County. Vice Chair Campos acknowledged staff

has made great strides. He is thankful for the conversations taking place regarding this topic and the integrated efforts in working together and looks forward to more discussion.

Commissioner Perez left the meeting at 2:41 pm.

G. **Future Agenda Items:**

1. Autism Services Presentation
2. First 5 Riverside County Annual Report Presentation and Public Hearing
3. First 5 Riverside County Annual Audit Presentation and Public Hearing
4. First 5 Riverside County Family Resource Centers Presentation
5. First 5 Riverside County 2023 Communications Plan Presentation
6. Champion for Children Award Presentation to Recipient

H. **Adjournment** At 2:44 pm to the next Regular Meeting of the Riverside County Children and Families Commission to be held on September 13, 2023 beginning at 2:00 p.m.at:

First 5 Riverside County Children and Families Commission Office
585 Technology Court - Conference Room A
Riverside, CA 92507

Meeting Minutes Recorded by Lynn M. Stephens, Executive Assistant IV.

DRAFT

E.3. **23-43:** Ratify and Approve the Second Amendment to the Restated Memorandum of Understanding (MOU) with Riverside County Department of Social Services (DPSS) for Family Resource Centers from July 1, 2022 - June 30, 2024 **(MOU NO. DPSS-0001997) [DPSS FUNDS FY 22/23 - $2,740,259, FY 23/24 - $2,599,500, FY 24/25 and beyond - $2,500,000]**

AGENDA ITEM: 23-43
DATE OF MEETING: October 25, 2023
ACTION: ☒
INFORMATION: ☐

RATIFY AND APPROVE THE SECOND AMENDMENT TO THE RESTATED MEMORANDUM OF UNDERSTANDING (MOU) WITH RIVERSIDE COUNTY DEPARTMENT OF PUBLIC SOCIAL SERVICES (DPSS) FOR FAMILY RESOURCE CENTERS FROM JULY 1, 2022 – JUNE 30, 2024 (MOU NO. DPSS-0001997) [DPSS FUNDS FY 22/23 - $2,740,259, FY 23/24 - $2,599,500, FY 24/25 and beyond - $2,500,000]

SUMMARY OF REQUEST

Ratify and Approve the Second Amendment to the Restated Memorandum of Understanding (MOU) with Riverside County Department of Social Services (DPSS) for Family Resource Centers from July 1, 2022 - June 30, 2024 (MOU NO. DPSS-0001997) [DPSS FUNDS FY 22/23 - $2,740,259, FY 23/24 - $2,599,500, FY 24/25 and beyond - $2,500,000]**.** Approval of this amendment increases the budget in FY 23/24 by $99,500 from $2,500,000 to $2,599,500 to fund staff that provide support for the Integrated Delivery System framework.

This amendment also ratifies the revised FY 2022/2023 annual budget to recognize an adjustment for additional expenditures not originally included in the budget. Ratification will increase the FY 2022/2023 budget by $165,759 from $2,574,500 to $2,740,259 to fund staff designated to support the Integrated Delivery System framework.

BACKGROUND

September 14, 2022 (Action Item No. 22-29): Riverside County Children & Families Commission approved Amendment No. 1 to the Restated Memorandum of Understanding (DPSS-0001997) between DPSS and First 5 Riverside County adding $500,000 in additional DPSS funds for FRC consultant services.

RECOMMENDED ACTION

That the Commission:

1. Ratify the revised FY 2022/2023 annual budget to recognize adjustments to the additional expenditures not originally included in the budget, increasing the budget an additional $169,759 from $2,574,500 to $2,740,259.
2. Approve Amendment No. 2 to the First Amended and Restated Memorandum of Understanding (MOU) No. DPSS-0001997, increasing the budget an additional $99,500, from $2,500,000 to $2,599,500 including FY 24/25 and beyond - $2,500, 000.
3. Authorize the Executive Director, based on the availability of fiscal funding and as approved by County Counsel to sign amendments that exercise the options of the executed MOU, including modifications of the statement of work that stay within the intent of said MOU without requiring further action from the Commission.

BUDGET IMPACT

Authorize budget adjustment with Auditor Controller's Office to recognize additional revenue ($99,500) from $2,500,000 to $2,599,500, not previously included in the FY 23/24 budget (938001-25800-**777540**-92975/92980-ISD).

STRATEGIC PLAN RELEVANCE

Goal Area 3: Resilient Families

POTENTIAL CONFLICTS OF INTEREST

None

ATTACHMENT

First Amended and Restate MOU DPSS-0001997

RIVERSIDE COUNTY DEPARTMENT OF PUBLIC SOCIAL SERVICES
AMENDMENT No. 2 TO THE
FIRST AMENDED AND RESTATED MOU DPSS-0001997
WITH
FIRST 5 RIVERSIDE
FOR
OPERATION AND ADMINISTRATION OF FRCS AND
INTEGRATED SERVICE DELIVERY SYSTEM

MEMORANDUM OF UNDERSTANDING:	DPSS-0001997
PERIOD OF PERFORMANCE:	July 1, 2020 – Perpetual
EFFECTIVE DATE OF RATIFICATION AND AMENDMENT:	July 1, 2022
ANNUAL MAXIMUM REIMBURSABLE AMOUNT:	FY 20/21 - $2,000,000 FY 21/22 - $2,404,500 FY 22/23 - $2,740,259 FY 23/24 - $2,599,500 FY 24/25 and beyond - $2,500,000

This Ratification and Amendment No. 02 to the First Amended and Restated Memorandum of Understanding DPSS-0001997, is made by and between Riverside County Children and Families Commission, First 5 Riverside, ("First 5 Riverside"), and the County of Riverside's Department of Public Social Services ("DPSS"), both as departments of the County of Riverside, political subdivision of the State of California.

RECITALS

WHEREAS, DPSS and First 5 Riverside previously entered into that certain MOU, DPSS-0001997, executed on June 4, 2020 and effective July 1, 2020, for operation and administration of the Family Resource Centers (FRCs) ("Original MOU"); and,

WHEREAS, DPSS and First 5 Riverside previously entered into that certain First Amended and Restated MOU, DPSS-0001997 ("MOU"), executed on September 23, 2021, effective July 1, 2020; and

WHEREAS, DPSS and First 5 Riverside previously entered into that certain Amendment No. 1 to the MOU, executed on October 17, 2022, effective July 1, 2021; and

WHEREAS, notwithstanding the terms of the Original MOU and Amendments, the parties acknowledge and agree that they increased spending for Fiscal Years 2022-2023, without a written amendment; and,

WHEREAS, the parties agree that the additional positions for spending shall be deemed to have been in effect from the effective date of July 1, 2022; and,

WHEREAS, all actions taken by both First 5 Riverside and DPSS prior to the date hereof are hereby confirmed and ratified by way of execution of this Amendment; and,

WHEREAS, DPSS and First 5 Riverside now desire to amend the MOU to increase the maximum reimbursable amount for fiscal year 22/23, all in accordance with terms and conditions (T&C) attached hereto and incorporated herein by this reference. The T&C specify the responsibilities for DPSS and First 5 Riverside; and,

WHEREAS, Section 24 of the MOU allows for modifications by written amendment signed by both parties; and,

NOW THEREFORE, in consideration of their mutual covenants, DPSS and First 5 Riverside agree to ratify and amend the MOU according to the terms and in the manner set forth herein:

1. **Recitals**. The recitals set forth above are true and correct and incorporated herein by this reference.

2. **Ratification**. All actions taken by both DPSS and First 5 Riverside prior to the date hereof were in compliance with, and pursuant to the terms and conditions of the MOU and Amendments and are hereby confirmed and ratified.

3. **Amend Schedule A, "Schedule, Terms, and Method of Payment," Subsection 1.A. "Maximum Reimbursable Amount," "Table 2" to read:**

Table 2
Integrated Service Delivery
July 1, 2021 – June 30, 2024

BUDGET ITEM	PAYMENT
Integrated Service Delivery July 1, 2021-June 30, 2022	$49,500
Integrated Service Delivery July 1, 2022-June 30, 2023	$215,259
Integrated Service Delivery July 1, 2023-June 30, 2024 (FY23/24 Line to cover .5 FTE Salary, Benefits and Mileage)	$99,500
Total	$364,259

4. **Effective Date.** This Amendment is effective July 1, 2022.

5. **Miscellaneous.** All other terms and conditions of the MOU and Amendments not modified herein shall remain unchanged and in full force and effect.

6. **Electronic Signatures.** This Amendment No. may be executed in any number of counterparts, each of which will be an original, but all of which together will constitute one instrument. Each party to this Amendment agrees to the use of electronic signatures, such as digital signatures that meet the requirements of the California Uniform Electronic Transactions Act (("CUETA") Cal. Civ. Code §§ 1633.1 to 1633.17), for executing this Amendment. The parties further agree that the electronic signatures of the parties included

in this Amendment are intended to authenticate this writing and to have the same force and effect as manual signatures. Electronic signature means an electronic sound, symbol, or process attached to or logically associated with an electronic record and executed or adopted by a person with the intent to sign the electronic record pursuant to the CUETA as amended from time to time. The CUETA authorizes use of an electronic signature for transactions and contracts among parties in California, including a government agency. Digital signature means an electronic identifier, created by computer, intended by the party using it to have the same force and effect as the use of a manual signature, and shall be reasonably relied upon by the parties. For purposes of this section, a digital signature is a type of "electronic signature" as defined in subdivision (i) of Section 1633.2 of the Civil Code.

IN WITNESS WHEREOF, the undersigned authorized representatives of the parties have executed this ratification and amendment No. 02 to the First Amended and Restated MOU DPSS-0001997.

County of Riverside, a political Subdivision of the State of California

Charity Douglas
Director, DPSS

Date

Approval as to Form
Minh C. Tran
County Counsel
By: _____
Katherine Wilkins
Deputy County Counsel
Date: _____

First 5 Riverside, a political Subdivision of the State of California

Tammi Graham
Executive Director

Date

Approval as to Form
Minh C. Tran
County Counsel
By: _____
Kristine Bell-Valdez
Deputy County Counsel
Date: _____

E.4. **23-44:** Approve Contract with Simpler North America, LLC for the Provision of Lean Leadership Training and Coaching from October 25, 2023 - June 30, 2025 **(CONTRACT NO. CF24138) [$800,000 - PROP 10 FUNDS]**

AGENDA ITEM: 23-44
DATE OF MEETING: October 25, 2023
ACTION: ☒
INFORMATION: ☐

APPROVE CONTRACT WITH SIMPLER NORTH AMERICA, LLC FOR THE PROVISION OF LEAN TRAINING AND COACHING (CONTRACT NO. CF24138) [$800,000 - PROP 10 FUNDS]

SUMMARY OF REQUEST

Approve Contract No. CF24138 with Simpler North America, LLC for an amount not to exceed $800,000 effective October 25, 2023 – June 30, 2025, for introduction to the Greenbelt quality improvement framework and facilitation of lean principles, tools, and methods in alignment with County of Riverside transformation.

BACKGROUND

Simpler North America, LLC (Simpler) will coach and facilitate First 5 Riverside County (F5RC) workgroups on how to use lean thinking, tools, methods, and principles. During the agreement with Simpler, a designated coach will engage and develop teams to deliver and sustain outstanding results, develop process improvement solutions, and align strategy and resources to optimize operations and resources. The lean Greenbelt primer will be introduced at the F5RC all-staff meeting on November 16, 2023. The continued lean methods will support standardized approaches to performance improvement and implement lean-management measures throughout the department.

Building upon and ensuring alignment with the County's Integrated Service Delivery initiative, F5RC seeks to establish a customer-driven, prevention and early intervention-focused service delivery system.

The Agreement with Simpler North America, LLC for Lean Leadership and Delivery Support for County of Riverside in support of Integrated Services Delivery Model was originally procured through an active United States General Services Administration (GSA) Federal contract (GS-10F-0359S) which was entered into by the GSA and Simpler North America, LLC on August 1, 2006 and will be in effect until July 31, 2026.

RECOMMENDED ACTION

That the Commission:

1. Approve Contract No. CF24138 with Simpler North America, LLC for an amount not to exceed $800,000 effective October 25, 2023 – June 30, 2025, for the provision of lean training and coaching in substantially the same form as the attached hereto and authorize the Executive Director or Designee to sign the contract on behalf of the Commission, subject to County Counsel approval as to form; and

2. Authorize the Executive Director or Designee, based on the availability of fiscal funding and as approved by County Counsel to sign amendments that exercise the options of Contract No. CF24138, on behalf of the Commission including modifications of the statement of work that stay within the intent of said contract without requiring further action from the Commission.

BUDGET IMPACT

Adequate appropriation is included in the revised budget (938001-25800-92980-525440). Additional funding will be included in the subsequent fiscal year's proposed budget.

STRATEGIC PLAN RELEVANCE

Goal Area 4 - Countywide (92980)

POTENTIAL CONFLICTS OF INTEREST

None known.

ATTACHMENTS

1. CF24138_A0_Simpler NORTH AMERICA LLC

County of Riverside
First 5 Riverside County Children and Families Commission (RCCFC)
Contracts & Grants Unit
585 Technology Court
Riverside, CA 92507

and

SIMPLER NORTH AMERICA, LLC
Lean Leadership Training
CF24138

TABLE OF CONTENTS

1. RECITALS 3
2. DEFINITIONS 3
3. DESCRIPTION OF SERVICES 3
4. PERIOD OF PERFORMANCE 4
5. COMPENSATION 4
6. AVAILABILITY OF FUNDS/NON-APPROPRIATION OF FUNDS 4
7. TERMINATION 4
8. REQUEST FOR WAIVER AND WAIVER OF BREACH 5
9. OWNERSHIP, PUBLICATION, REPRODUCTION, AND USE OF MATERIAL 5
10. CONDUCT OF CONTRACTOR/ CONFLICT OF INTEREST 5
11. RECORDS, INSPECTIONS, AND AUDITS 6
12. CONFIDENTIALITY 6
13. HOLD HARMLESS/INDEMNIFICATION AND CONTRACTOR'S LIMITATION OF LIABILITY 7
INDEMNIFICATION 7
14. INSURANCE 8
15. WORKER'S COMPENSATION 10
16. VEHICLE LIABILITY INSURANCE 10
17. COMMERCIAL GENERAL LIABILITY 10
18. INDEPENDENT CONTRACTOR 10
19. USE BY POLITICAL ENTITIES 10
20. LICENSES AND PERMITS 10
21. NO DEBARMENT OR SUSPENSION 11
22. COMPLIANCE WITH RULES, REGULATIONS, AND DIRECTIVES 11
23. PERSONNEL 11
24. EMPLOYMENT PRACTICES 12
25. LOBBYING 12
26. ADVERSE GOVERNMENT ACTION 13
27. SUBCONTRACTS 13
28. SUPPLANTATION 14
29. ASSIGNMENT 14
30. FORCE MAJEURE 14
31. GOVERNING LAW 14
32. DISPUTES 14
33. ADMINISTRATIVE/CONTRACT LIAISON 15
34. CIVIL RIGHTS COMPLIANCE 15
35. NOTICES 15
36. SIGNED IN COUNTERPARTS 16
37. NO SOLICIT 16
38. ELECTRONIC SIGNATURES 16
39. MODIFICATION OF TERMS 17
40. ENTIRE AGREEMENT 18

List of Schedules
Schedule A – "Payment Provisions"
Schedule B – "Scope of Services"

This Agreement is made and entered into upon execution by and between SIMPLER NORTH AMERICA, LLC, a Delaware Corporation (herein referred to as "CONTRACTOR"), and the County of Riverside, a political subdivision of the State of California, on behalf of its First 5 Riverside County, Children and Families Commission (herein referred to as "COUNTY"). The parties agree as follows:

1. RECITALS

WHEREAS, the COUNTY has the legal authority to "piggyback" onto a contract procured by another governmental entity when seeking to utilize the same or similar goods and services provided for in said contract in the interest of the public;

WHEREAS, the COUNTY requires the goods and services of a vendor who can provide Business Program and Project Management Services for Lean Leadership and ongoing support as recommended during the Integrated Services Delivery initiative for the COUNTY;

WHEREAS, the CONTRACTOR has previously entered into an agreement with the Department of General Services, to provide Business Program and Project Management Services for Lean Leadership and Ongoing Support dated August 01, 2006 through July 31, 2026, a copy of which is attached separately as "Attachment III," which those parties entered into upon the Simpler North America, LLC Agency award for Business Program and Project Management Services, CONTRACT No. # GS-10F-0359S;

WHEREAS, the COUNTY desires to "piggyback" onto CONTRACT No. # GS-10F-0359S between Simpler North America, LLC Agency and the State of California Department of General Services for Business Program and Project Management Services; and

WHEREAS, CONTRACTOR consents to the aforesaid "piggybacking."

2. DEFINITIONS

A. "Agreement" refers to the terms and conditions, schedules, and attachments included herein.

B. "CONTRACTOR" or "SIMPLER" refers to SIMPLER NORTH AMERICA, LLC, including its employees, agents, representatives, subcontractors, and suppliers.

C. "RCCFC" or "COUNTY" refers to the County of Riverside and Riverside County Children and Families Commission, First 5 Riverside County, which has administrative responsibility for this Agreement. RCCFC and COUNTY are used interchangeably in this Agreement.

D. "ISD" refers to the County of Riverside Integrated Services Delivery Transformation Initiative. The county-wide initiative seeks to establish a customer-driven, prevention- and early intervention-focused service delivery system.

3. DESCRIPTION OF SERVICES

CONTRACTOR shall provide all services at the prices stated in Schedule A, Payment Provisions, and as outlined and specified in Schedule B, Scope of Services

4. PERIOD OF PERFORMANCE
This Agreement shall be effective upon signature by both parties and approval by the RCCFC Commission on October 25, 2023 (herein referred to as "Effective Date") and continues in effect through June 30, 2025. CONTRACTOR shall commence performance upon the Effective Date and shall diligently perform thereafter.

5. COMPENSATION
COUNTY shall pay CONTRACTOR for services performed, products provided, or expenses incurred in accordance with Schedule A, "Payment Provisions. COUNTY is not responsible for any fees or costs incurred above or beyond the contracted amount and shall have no obligation to purchase any specified amount of services or product. Unless otherwise specifically stated in Schedule A, COUNTY shall not be responsible for payment of any of CONTACTOR's expenses related to this Agreement. At the expiration of the term of this Agreement, or upon termination prior to the expiration of the Agreement, any funds paid to CONTRACTOR, but not used for purposes of this Agreement shall revert to COUNTY within thirty (30) calendar days of the expiration or termination.

6. AVAILABILITY OF FUNDS/NON-APPROPRIATION OF FUNDS
The obligation of COUNTY for payment under this Agreement beyond the current fiscal year is contingent upon and limited by the availability of county funding from which payment can be made. There shall be no legal liability for payment on the part of COUNTY beyond June 30 of each year unless funds are made available for such payment by the RCCFC (Commission). In the event such funds are not forthcoming for any reason, COUNTY shall promptly notify CONTRACTOR in writing and this Agreement shall be deemed terminated and be of no further force or effect. COUNTY shall make all payments to CONTRACTOR that were properly earned prior to the unavailability of funding.

7. TERMINATION
A. Either party may terminate this Agreement without cause upon giving thirty (30) calendar days written notice served to the other stating the extent and effective date of termination.

B. Either party may, upon five (5) calendar days written notice to the other, terminate this Agreement for the other's default, if 1) CONTRACTOR refuses or fails to materially perform pursuant to the terms of this Agreement, or fails to make progress that may endanger performance and does not promptly cure such failure; or 2) COUNTY fails to pay CONTRACTOR, a material breach and grounds for CONTRACTOR'S termination for cause.

C. After CONTRACTOR's receipt of the notice of termination, CONTRACTOR shall:

(1) Stop all work under this Agreement on the date specified in the notice of termination; and

(2) Transfer to COUNTY and deliver in the manner directed by COUNTY any materials, reports or other products, which, if the Agreement had been completed or continued, would be required to be furnished to COUNTY.

D. After termination, COUNTY shall make payment only for CONTRACTOR's performance up to the date of termination in accordance with this Agreement.

E. CONTRACTOR's rights under this Agreement shall terminate (except for fees accrued prior to the date of termination) upon dishonestly or willful and material breach of this Agreement by CONTRACTOR; or in the event of CONTRACTOR's unwillingness or inability, for any reason whatsoever, to perform the terms of this Agreement. In such an event, CONTRACTOR shall not be entitled to any further compensation under this Agreement.

F. The rights and remedies of COUNTY provided in this section shall not be exclusive and are in addition to any other rights or remedies provided by law or this Agreement.

8. REQUEST FOR WAIVER AND WAIVER OF BREACH

Waiver of any provision of this Agreement must be in writing and signed by authorized representatives of the parties. No waiver or breach of any provision of the terms and conditions herein shall be deemed, for any purpose, to be a waiver or a breach of any other provision hereof, or of a continuing or subsequent waiver or breach. Failure of COUNTY to require exact, full compliance with any terms of this Agreement shall not be construed as making any changes to the terms of this Agreement and does not prevent COUNTY from enforcing the terms of this Agreement.

9. OWNERSHIP, PUBLICATION, REPRODUCTION, AND USE OF MATERIAL

CONTRACTOR agrees that all Deliverables created by CONTRACTOR for which CONTRACTOR has been compensated by COUNTY pursuant to this Agreement shall be the sole property of COUNTY with a non-exclusive license to CONTRACTOR. Deliverables exclude works of authorship delivered to COUNTY, but not created, under the SOW, and any modifications or enhancements of such works made under the SOW (Existing Works). COUNTY will not acquire any ownership or other rights or licenses to any tools, techniques, methodologies, documentation, software or other material of CONTRACTOR, including without limitation, the Simpler Business System®, the Simpler Design SystemSM or Integrated Facility Design ("Simpler Property") under this engagement. Simpler Property includes all proprietary methods and processes by which Simpler provides Lean enterprise consulting services and includes, without limitation, assessments, training presentations and material, implementation documents and a structure of activities. Provided COUNTY has paid the fees as set forth in this Agreement and subject to the terms and conditions of this Agreement, if any Simpler Property is incorporated as part of any deliverable under the terms and conditions of this Agreement or if a deliverable requires the use of Simpler Property, Simpler hereby grants to COUNTY a non-exclusive, fully-paid, perpetual, non-transferable, non-sublicensable, irrevocable (except under the "Termination for Cause" section, above) license to use the Simpler Property solely for COUNTY's own internal business purposes. COUNTY may not export or re-export any Simpler Property except as authorized by United States laws. Simpler Property may not be exported or re-exported: (a) into any U.S. embargoed countries; or (b) to anyone on the U.S. Treasury Department's list of Specially Designated Nationals or the U.S. Department of Commerce Denied Person's List or Entity List. By execution of this Agreement, COUNTY represents and warrants that COUNTY is not located in any such country or identified on any such list.

10. CONDUCT OF CONTRACTOR/ CONFLICT OF INTEREST

A. CONTRACTOR covenants that it presently has no interest, including but not limited to, other projects or contracts, and shall not acquire any such interest, direct or indirect, which would conflict in any manner or degree with CONTRACTOR's performance under this

Agreement. CONTRACTOR further covenants that no person or subcontractor having any such interest shall be employed or retained by CONTRACTOR under this Agreement. CONTRACTOR agrees to inform the COUNTY of all CONTRACTOR's interest, if any, which are or may be perceived as incompatible with COUNTY's interests.

B. CONTRACTOR shall not, under any circumstances which could be perceived as an to influence the recipient in the conduct or his/her duties, accept any gratuity or special favor from individuals or firms with whom CONTRACTOR is doing business or proposing to do business, in fulfilling this Agreement.

11. RECORDS, INSPECTIONS, AND AUDITS

A. All performance, including services, workmanship and materials, utilized in the performance of this Agreement, shall be subject to inspection and test by COUNTY or any other regulatory agencies at all times. CONTRACTOR shall cooperate with any inspector or COUNTY representative reviewing compliance with this Agreement.

B. CONTRACTOR shall maintain auditable books, records, documents, and other evidence relating to compliance with this Agreement ("Records"). CONTRACTOR shall maintain these Records for at least three (3) years after final payment has been made or until pending county, state, and federal audits are completed, whichever is later.

C. If CONTRACTOR disagrees with the results an audit of the Records, CONTRACTOR may employ a Certified Public Accountant (CPA) to prepare and file with COUNTY its own certified financial and compliance audit. CONTRACTOR shall not be reimbursed by COUNTY for such an audit regardless of the audit outcome.

D. CONTRACTOR shall establish procedures to self-monitor the quality of services/products under this Agreement and shall permit COUNTY or other inspector to assess and evaluate CONTRACTOR's performance at any time, upon reasonable notice to the CONTRACTOR.

12. CONFIDENTIALITY

A. As required by applicable law, COUNTY and CONTRACTOR shall maintain the privacy and confidentiality of all information and records, regardless of format, received pursuant to the Agreement ("Confidential Information"). Confidential Information shall be identified at the time of disclosure and includes, but is not limited to, unpublished or sensitive technological or scientific information; medical, personnel, or security records; material requirements or pricing/purchasing actions; COUNTY information or data which is not subject to public disclosure; COUNTY operational procedures; and knowledge of contractors, subcontractors or suppliers in advance of official announcement. The parties shall ensure that no person will publish, disclose, use or cause to be disclosed such confidential information of the other party or Confidential Information pertaining to any applicant or recipient of services. The parties shall protect Confidential Information from disclosure using the same standard of care that it uses to protect its own Confidential Information but no less than a reasonable standard of care. Disclosure of Confidential Information by the receiving party will not be precluded if the disclosure is required by law, but the receiving party will give the disclosing party reasonable notice to allow the disclosing party an opportunity to obtain a protective order. The obligations of this Article 12 shall not

apply to information that is: (a) already in the possession of the receiving party without obligation of confidence, (b) independently developed by the receiving party, or (c) publicly available.

B. CONTRACTOR shall take commercially reasonable precautions, including but not limited to, sufficient training of CONTRACTOR's staff before they begin work, to protect such confidential information from loss or unauthorized use, access, disclosure, modification or destruction.

C. It is not the intent of the COUNTY to share information that identifies an individual by name, address, or other specific information (personally identifiable information, PII) or protected health information (PHI), however in the event that PHI or PII is inadvertently shared, CONTRACTOR agrees to treat such information as confidential.

D. CONTRACTOR shall promptly transmit to COUNTY all third-party requests for disclosure of confidential information. CONTRACTOR shall not disclose such information to anyone other than COUNTY except when disclosure is specifically permitted by this Agreement, required by legal proceeding or court order or as authorized in writing in advance by COUNTY.

13. HOLD HARMLESS/INDEMNIFICATION AND CONTRACTOR'S LIMITATION OF LIABILITY INDEMNIFICATION

A. CONTRACTOR will defend and indemnify the COUNTY (including its Agencies, Districts, Special Districts and Departments, their respective directors, officers, Board of Supervisors, elected and appointed officials, and employees for all claims asserted by third parties and arising from CONTRACTOR's acts or omissions or breaches of this Agreement, which acts, omissions or breaches have resulted in or caused the following; (a) bodily injury (including death); (b) damages to real property and tangible personal property; (c) infringement by the services of such third party's patent or copyright, as described in Section 13.B below; or (d) CONTRACTOR's violation of laws that apply to CONTRACTOR as a provider of information technology products and services.

B. If a third party asserts a claim against the County of Riverside that services acquired under the Agreement infringes a patent or copyright, CONTRACTOR will defend the County of Riverside against that claim and pay all amounts finally awarded by a court against the County of Riverside or included in a settlement approved by CONTRACTOR, provided that the County of Riverside promptly: i) notifies CONTRACTOR in writing of the claim; ii) supplies information requested by CONTRACTOR; and iii) allows CONTRACTOR to control, and reasonably cooperates in, the defense and settlement, including mitigation efforts. CONTRACTOR has no responsibility for claims based on non-Contractor products and services, items not provided by CONTRACTOR, or any violation of law or third-party rights caused by the County of Riverside content, materials, designs, or specifications.

C. With respect to any action or claim subject to indemnification herein by CONTRACTOR, CONTRACTOR shall, at their sole cost, have the right to use counsel of their own choice and shall have the right to adjust, settle, or compromise any such action or claim without the

prior consent of COUNTY; provided, however, that any such adjustment, settlement or compromise in no manner whatsoever limits or circumscribes CONTRACTOR indemnification to Indemnitees as set forth herein.

D. CONTRACTOR'S obligation hereunder shall be satisfied when CONTRACTOR has provided to COUNTY the appropriate form of dismissal relieving COUNTY from any liability for the action or claim involved.

E. The specified insurance limits required in this Agreement shall in no way limit or circumscribe CONTRACTOR'S obligations to indemnify and hold harmless the Indemnitees herein from third party claims.

Limitation of Liability

Except as expressly excluded herein, each party's entire liability to the other party for all claims related to the Agreement will not exceed the amount of $1,000,000. Neither party will be liable to the other for special, incidental, exemplary, indirect or economic consequential damages, or lost profits, business, value, revenue, goodwill, or anticipated savings. Notwithstanding the foregoing, the following are not subject to the foregoing limitation: (a) damages for body injury (including death); (b) damages to real property and tangible personal property, (c) CONTRACTOR's indemnification obligations set forth in Section 13.A above, (d) COUNTY's obligations to pay charges and fees for Services as set forth in Exhibit B: Fee Schedule and Price or other mutually agreed upon schedule of charges and fees; and (e) damages that cannot be limited by law. These limitations apply to CONTACTOR and its affiliates including International Business Machines Corporation, and to COUNTY (including its Agencies, Districts, Special Districts and Departments, their respective directors, officers, Board of Supervisors, elected and appointed officials, and employees).

14. INSURANCE

A. CONTRACTOR shall procure and maintain or cause to be maintained, at its sole cost and expense, the following insurance coverage's during the term of this Agreement. As respects to the insurance section only, the COUNTY herein refers to the County of Riverside, its Agencies, Districts, Special Districts, and Departments, their respective directors, officers, Board of Supervisors, employees, elected or appointed officials, agents or representatives as Additional Insureds for Commercial General Liability and Automobile Liability only.

B. Any insurance carrier providing insurance coverage hereunder shall be admitted to the State of California and have an AM BEST rating of not less than A: VII (A:7) unless such requirements are waived, in writing, by the County Risk Manager. If the County's Risk Manager waives a requirement for a particular insurer such waiver is only valid for that specific insurer and only for one policy term.

C. CONTRACTOR's insurance carrier(s) must disclose its insurance self-insured retentions when applicable. If such self-insured retentions exceed $500,000 per occurrence such retentions shall have the written consent of the COUNTY, which consent will not be

unreasonably withheld, before the continuation of operations under this Agreement. Upon notification of self-insured retention unacceptable to COUNTY, and at the election of the County's Risk Manager, CONTRACTOR's carriers shall either; 1) reduce or eliminate such self-insured retention as respects to this Agreement with COUNTY, or 2) procure a bond which guarantees payment of losses and related investigations, claims administration, and defense costs and expenses.

D. CONTRACTOR shall cause CONTRACTOR's insurance carrier(s) to furnish the COUNTY with Certificate(s) of Insurance and any applicable endorsements or 2) if requested to do so orally or in writing by the County Risk Manager, provide clarification of the Certificate of Insurance and any applicable endorsements showing such insurance is in full force and effect. CONTRACTOR shall provide thirty (30) calendar days written notice to the COUNTY prior to any material modification, cancellation, expiration or reduction in coverage of such insurance. In the event of a material modification, cancellation, expiration, or reduction in coverage, this Agreement shall terminate forthwith, unless the COUNTY receives, prior to such effective date, another Certificate of Insurance and any applicable endorsements thereto evidencing coverages set forth herein and the insurance required herein is in full force and effect. CONTRACTOR shall not commence operations until the COUNTY has been furnished certificate(s) of insurance and any applicable endorsements and any or all other attachments as required in this section.

E. It is understood and agreed to by the parties hereto that CONTRACTOR's insurance shall be construed as primary insurance, and COUNTY's insurance and/or deductibles and/or self-insured retentions or self-insured programs shall not be construed as contributory.

F. If, during the term of this Agreement or any extension thereof, there is a material change in the scope of services, or there is a material change in the equipment to be used in the performance of the scope of work which will add additional exposures (such as the use of aircraft, watercraft, cranes, etc.), or the term of this Agreement, including any extensions thereof, exceeds five (5) years, the COUNTY reserves the right to adjust the types of insurance required under this Agreement and the monetary limits of liability for the insurance coverages currently required herein if, in the County Risk Manager's reasonable judgment, the amount or type of insurance carried by the CONTRACTOR has become inadequate.

G. CONTRACTOR shall pass down the insurance obligations contained herein to all tiers of subcontractors working under this Agreement.

H. The insurance requirements contained in this Agreement may be met with a program(s) of self-insurance acceptable to COUNTY.

I. CONTRACTOR agrees to notify COUNTY of any claim by a third party or any incident or event that may give rise to a claim arising from the performance of this Agreement.

15. WORKER'S COMPENSATION
If the CONTRACTOR has employees as defined by the State of California, the CONTRACTOR shall maintain statutory Workers' Compensation Insurance (Coverage A) as prescribed by the laws of the State of California. Policy shall include Employers' Liability (Coverage B) including Occupational Disease with limits not less than $1,000,000 per person per accident. The policy shall be endorsed to waive subrogation in favor of The County of Riverside, except in instances of gross negligence on the part of the COUNTY, where gross negligence is defined to mean carelessness that is reckless disregard for the safety of others and/or a failure to use the slightest degree of care.

16. VEHICLE LIABILITY INSURANCE
If vehicles or mobile equipment are used in the performance of the obligations under this Agreement, then CONTRACTOR shall maintain liability insurance for all owned, non-owned or hired vehicles so used in an amount not less than $2,000,000 per occurrence combined single limit. If such insurance contains a general aggregate limit, it shall apply separately to this agreement or be no less than $2,000,000 per occurrence and $4,000,000 in the aggregate. Only with respect to liability arising out of this Agreement, policy shall name the COUNTY as Additional Insureds.

17. COMMERCIAL GENERAL LIABILITY
Commercial General Liability insurance coverage, including but not limited to, premises liability, unmodified contractual liability, products and completed operations liability, personal and advertising injury, and cross liability coverage, covering claims which may arise from or out of CONTRACTOR'S performance of its obligations hereunder. Only with respect to liability arising out of this Agreement, policy shall name the COUNTY as Additional Insured. Policy's limit of liability shall not be less than $2,000,000 per occurrence combined single limit. If such insurance contains a general aggregate limit, it shall be no less than $2,000,000 per occurrence and $4,000,000 in the aggregate.

18. INDEPENDENT CONTRACTOR
The parties intend that their relationship shall be that of independent contractors who shall each have no liability for the acts or omissions of the other. It is agreed that CONTRACTOR is an independent contractor and that no relationship of employer-employee exists between the parties. CONTRACTOR and its employees shall not be entitled to any benefits payable to employees of COUNTY, including but not limited to, workers' compensation, retirement, or health benefits. COUNTY shall not be required to make any deductions for CONTRACTOR employees from the compensation payable to CONTRACTOR under this Agreement.

19. USE BY POLITICAL ENTITIES
CONTRACTOR agrees to extend the same pricing, terms, and conditions as stated in this Agreement to each and every political entity, special district, and related non-profit entity in Riverside County, and to every political entity located in the State of California. It is understood that other entities shall make purchases in their own name, make direct payment, and be liable directly to CONTRACTOR; and COUNTY shall in no way be responsible to CONTRACTOR for other entities' purchases.

20. LICENSES AND PERMITS

If applicable, CONTRACTOR shall be licensed and have all permits as required by Federal, State, County, or other regulatory authorities at the time the proposal is submitted to COUNTY and throughout the term of this Agreement. CONTRACTOR warrants that it has all necessary permits, approvals, certificates, waivers, and exceptions necessary for performance of this Agreement.

21. NO DEBARMENT OR SUSPENSION

CONTRACTOR certifies that it is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by a federal department or agency; has not within a three-year period preceding this Agreement been convicted of or had a civil judgment rendered against it for the commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state or local) transaction; violation of federal or state anti-trust status; commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property; is not presently indicted or otherwise criminally or civilly charged by a government entity (federal, state or local) with commission of any of the offenses enumerated herein; and has not within a three-year period preceding this Agreement had one or more public transactions (federal, state or local) terminated for cause or default.

22. COMPLIANCE WITH RULES, REGULATIONS, AND DIRECTIVES

CONTRACTOR shall comply with all applicable rules, regulations, requirements and directives of the California Department of Social Services, other applicable State or Federal agencies, funding sources and other governing regulatory authorities which impose duties and regulations upon COUNTY related to this Agreement. These shall be equally applicable to and binding upon CONTRACTOR to the same extent as they are upon COUNTY.

23. PERSONNEL

A. Upon request by COUNTY, CONTRACTOR agrees to make available to COUNTY a current list of personnel that are providing services under this Agreement who have contact with children or adult Clients. The list shall include:

(1) All staff who work full or part-time positions by title, including volunteer positions;

(2) A brief description of the functions of each position and hours each position worked;

(3) The professional degree, if applicable and experience required for each position.

B. COUNTY has the sole discretion to approve or not approve any person on the CONTRACTOR's list that has been convicted of any crimes involving sex, drugs or violence, or who is known to have a substantiated report of child abuse, as defined in Penal Code Section 11165.12, who occupies positions with supervisory or disciplinary power over minors, or who occupies supervisory or teaching positions over adult Clients. COUNTY shall notify CONTRACTOR in writing of any person not approved, but to protect Client confidentiality, may not be able to disclose the reason(s) for non-approval. Upon

notification, CONTRACTOR shall immediately remove that person from providing services under this Agreement.

C. Background Checks
CONTRACTOR shall conduct criminal background records checks on all individuals providing services under this Agreement. Prior to these individuals providing services to Clients, CONTRACTOR shall have received a criminal records clearance from the State of California Department of Justice (DOJ). A signed certification of such clearance shall be retained in each individual's personnel file. The use of criminal records for the purposes of employment decisions must comply with the Office of Federal Contract Compliance Programs Directive 2013-02 "Complying with Nondiscrimination Provisions: Criminal Record Restrictions and Discrimination Based on Race and National Origin" and California Government Code § 12952.

24. EMPLOYMENT PRACTICES

A. CONTRACTOR shall comply with all applicable federal and state statutes and regulations in the hiring of its employees.

B. CONTRACTOR shall not discriminate in its recruiting, hiring, promoting, demoting, or terminating practices on the basis of race, religious creed, color, national origin, ancestry, physical handicap, medical condition, marital status, age, or sex in the performance of this Agreement; if applicable, with the provisions of the Fair Employment and Housing Act (FEHA) and the Federal Civil Rights Act of 1964 (P. L. 88-352).

C. In the provision of benefits, CONTRACTOR shall certify and comply with Public Contract Code 10295.3 and not discriminate between employees with spouses and employees with domestic partners or discriminate between the domestic partners and spouses of those employees. For the purpose of this section "domestic partner" means one of two persons who have filed a declaration of domestic partnership with the Secretary of State pursuant to Division 2.5 (commencing with Section 297) of the Family Code.

D. By signing this Agreement or accepting funds under this Agreement, CONTRACTOR shall comply with Executive Order 11246 of September 24, 1965, entitled " Equal Employment Opportunity," as amended by Department of Labor regulations (41 CFR Chapter 60).

E. Employment Development Department reporting requirements: If applicable, CONTRACTOR shall provide required data and certification to COUNTY in order to comply with child support enforcement requirements. The documentation will be provided within ten (10) days of notification of award of this Agreement when required by the Employment Development Department. Failure to submit the documentation or failure to comply with all federal and state reporting requirement for child support enforcement shall constitute a material breach of this Agreement.

25. LOBBYING

A. CONTRACTOR shall ensure no federal appropriated funds have been paid or will be paid by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the awarding of

any federal contract, continuation, renewal, amendment, or modification of any federal contract, grant loan or cooperative agreement.

B. If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with such federal contract, grant, loan, or cooperative agreement, CONTRACTOR shall complete and submit Standard Form LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

C. CONTRACTOR shall require that the language of this certification be included in the award document for sub-awards at all tiers, including subcontracts, sub-grants, and contract under grants, loans, and cooperative agreements, and that all sub-recipients shall certify and disclose accordingly.

26. ADVERSE GOVERNMENT ACTION

In the event any action of any department, branch or bureau of the federal, state, or local government has a material adverse effect on either party in the performance of their obligations hereunder, then that party shall notify the other of the nature of this action, including in the notice a copy of the adverse action. The parties shall meet within thirty (30) calendar days and shall, in good faith, attempt to negotiate a modification to this Agreement that minimizes the adverse effect. Notwithstanding the provisions herein, if the parties fail to reach a negotiated modification concerning the adverse action, then the affected party may terminate this Agreement by giving at least one hundred eighty (180) calendar days' notice or may terminate sooner if agreed to by both parties.

27. SUBCONTRACTS

A. CONTRACTOR shall not enter into any subcontract with any subcontractor who:

(1) Is presently debarred, suspended, proposed for debarment or suspension, or declared ineligible or voluntarily excluded from covered transactions by a federal department or agency;

(2) Has within a three-year period preceding this Agreement been convicted of or had a civil judgment rendered against them for the commission of fraud, a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state or local) transaction, violation of federal or state anti-trust status, commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(3) Is presently indicted or otherwise criminally or civilly charged by a government entity (federal, state or local) with commission of any of the offenses enumerated in the paragraph above; and

(4) Has within a three-year period preceding this Agreement had one or more public transactions (federal, state or local) terminated for cause or default.

B. CONTRACTOR shall be fully responsible for the acts or omissions of its subcontractors and the subcontractors' employees.

C. CONTRACTOR shall insert clauses in all subcontracts to bind its subcontractors to the terms and conditions of this Agreement.

D. Nothing contained in this Agreement shall create a contractual relationship between any subcontractor or supplier of CONTRACTOR and COUNTY.

28. SUPPLANTATION
CONTRACTOR shall not supplant any federal, state or county funds intended for the purpose of this Agreement with any funds made available under any other agreement. CONTRACTOR shall not claim reimbursement from COUNTY for any sums which have been paid by another source of revenue. CONTRACTOR agrees that it will not use funds received pursuant to this Agreement, either directly or indirectly, as a contribution or compensation for purposes of obtaining state funds under any state program or COUNTY funds under any county programs without prior approval of COUNTY.

29. ASSIGNMENT
Neither party shall assign or transfer any interest in this Agreement without the prior written consent of the other. Any attempt to assign or transfer any interest without written consent of the other party shall be deemed void and of no force or effect. Assignment of CONTRACTOR rights to receive payments is not restricted.

30. FORCE MAJEURE
If either party is unable to comply with any provision of this Agreement due to causes beyond its reasonable control and which could not have been reasonably anticipated, such as acts of God, acts of war, civil disorders, or other similar acts, such party shall not be held liable for such failure to comply.

31. GOVERNING LAW
This Agreement shall be governed by the laws of the State of California. Any legal action related to the interpretation or performance of this Agreement shall be filed only in the Superior Court for the State of California or the U.S. District Court located in Riverside, California.

32. DISPUTES
A. The parties shall attempt to resolve any disputes amicably at the working level. If that is not successful, the dispute shall be referred to the senior management of the parties.

B. Prior to the filing of any legal action related to this Agreement, the parties shall be obligated to attend a mediation session in Riverside County before a neutral third party mediator. A second mediation session shall be required if the first session is not successful. The parties shall share the cost of the mediations.

33. ADMINISTRATIVE/CONTRACT LIAISON
Each party shall designate a liaison that will be the primary point of contact regarding this Agreement.

34. CIVIL RIGHTS COMPLIANCE

A. Assurance of Compliance
CONTRACTOR shall complete the "Vendor Assurance of Compliance with Riverside County Department of Public Social Services Non-Discrimination in State and Federally Assisted Programs," attached as Attachment I. CONTRACTOR will sign and date Attachment I and return it to COUNTY along with the executed agreement.

B. CONTRACTOR shall not discriminate in the provision of services, allocation of benefits, accommodation in facilities, or employment of personnel on the basis of ethnic group identification, race, religious creed, color, national origin, ancestry, physical handicap, medical condition, marital status or sex in the performance of this Agreement; and, to the extent they shall be found to be applicable hereto, shall comply with the provisions of the California Fair Employment and Housing Act (Gov. Code 12900 et. seq), the Federal Civil Rights Act of 1964 (P.L. 88-352), the Americans with Disabilities Act of 1990 (42 U.S.C. **S**1210 et seq.) and all other applicable laws or regulations

35. NOTICES
All notices, claims, correspondence, or statements authorized or required by this Agreement shall be deemed effective three (3) business days after they are made in writing and deposited in the United States mail addressed as follows:

COUNTY:
First 5 Riverside County
585 Technology Court
Riverside, CA 92507

Invoices and other financial documents:
First 5 Riverside County
Fiscal/Contracts & Grants Unit
4060 County Circle Drive
Riverside, CA 92503
Email: RCCFC-accountspayable@rivco.org (fiscal/invoice related inquiries)
Email: RCCFC-CGA-Team@rivco.org (contract related inquiries)

CONTRACTOR:
Email: lpallisco@ibm.com
With notices of a legal nature also to be sent to:
Simpler North America, LLC
1 New Orchard Rd
Armonk, New York 10504
United States
Attn: General Counsel

CONTRACTOR "Remit To" address:
Electronic Transfer (*preferred*):
Bank: PNC Bank N.A.
Pittsburgh, PA
Routing: 043000096
Account: Simpler North America LLC
Account: 1026391374

Physical:
Simpler North America, LLC
PO Box 643979
Pittsburgh, PA 15264-3979
Email:
receivables@simpler.com
Contact: Rhaeanne Hussman
724-934-4600 x122

36. SIGNED IN COUNTERPARTS

This agreement may be executed in any number of counterparts, each of which when executed shall constitute a duplicate original, but all counterparts together shall constitute a single agreement.

37. NO SOLICIT

During the term of the engagement and for a period of 12 months thereafter, COUNTY agrees that it will not actively solicit, any CONTRACTOR employee (or former employee who was employed by CONTRACTOR during the term of the engagement) or contractor of CONTRACTOR without CONTRACTOR's prior written consent. Such consent is not required if CONTRACTOR employees, former employees (who were employed by CONTRACTOR during the term of the project) or contractors answer a general advertisement for employment made by COUNTY in public media channels.

38. ELECTRONIC SIGNATURES

Each party of this Agreement agrees to the use of electronic signatures, such as digital signatures that meet the requirements of the California Uniform Electronic Transactions Act ((("CUETA") Cal. Civ. Code §§ 1633.1 to 1633.17), for executing this Agreement. The parties further agree that the electronic signature(s) included herein are intended to authenticate this writing and to have the same force and effect as manual signatures. Electronic signature means an electronic sound, symbol, or process attached to or logically associated with an electronic record and executed or adopted by a person with the intent to sign the electronic record pursuant to the CUETA as amended from time to time. Digital signature means an electronic identifier, created by computer, intended by the party using it to have the same force and effect as the use of a manual signature, and shall be reasonably relied upon by the parties. For purposes of this section, a digital signature is a type of "electronic signature" as defined in subdivision (i) of Section 1633.2 of the Civil Code.

39. MODIFICATION OF TERMS

This Agreement may be modified only by a written amendment signed by authorized representatives of both parties. Requests to modify fiscal provisions shall be submitted no later than April 1.

40. ENTIRE AGREEMENT
This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof. All prior or contemporaneous agreements of any kind or nature relating to the same subject matter shall be of no force or effect.

Authorized Signature for COMMISSION:	**Authorized Signature for CONTRACTOR:**
Tammi Graham, Executive Director	Kyle Freeman, Vice President, Healthcare
Date Signed:	Date Signed:
585 Technology Court Riverside, CA 92507-2423	7888 Mission Grove Pkwy South, STE 120 Riverside, CA 92508
ATTEST SIGNATURE:	
Lynn M. Stephens Executive Assistant IV	
Date Signed:	
APPROVED AS TO FORM SIGNATURE:	
Kristine Bell-Valdez Supervising Deputy County Counsel	
Date Signed:	

Schedule A
Payment Provisions

A.1 MAXIMUM AMOUNTS –ANNUAL AND AGGREGATE TOTALS
The total annual payments to CONTRACTOR shall not exceed:

FISCAL YEAR PERIOD	TOTAL PAYMENT
Upon Signature and Commission Approval on October 25, 2023 through June 30, 2025	Not to Exceed $800,000.00
Total	Not to Exceed $800,000.00

A.2 UNIT OF SERVICE
The total fixed price for this Statement of Work is Not to Exceed $800,000, based upon an approved annual budget. This Not to Exceed amount is inclusive of consulting fee services (as listed below) and Travel Expenses (capped at 10% and inclusive of total expenses).

Consulting Service Fees are as follows:

- SME billed at a daily rate of $3,369
- Gemba Coach billed at a daily rate of $2,725
- Lean Engineer billed at a daily rate of $1,650

The schedule for days of services shall be reduced to writing and agreed upon by both COUNTY AND CONTRACTOR. Travel expenses are allowable for in-person services. Any additional services other than those listed in Schedule B or dollar amounts exceeding the NTE as listed in this Schedule A will be established in a separate Statement of Work or Schedule to be mutually agreed to by the parties.

A.3 METHOD, TIME, AND CONDITIONS OF PAYMENT

a. CONTRACTOR shall be paid only in accordance with an invoice submitted to COUNTY by CONTRACTOR within fifteen (15) days from the last day of each calendar month, and COUNTY shall pay the invoice within thirty (30) working days from the date of receipt of the invoice. COUNTY may delay payment if the required supporting documentation is not provided, or other requirements are not met. Supporting documentation must include:

    1. Travel expenses - shall be billed at CONTRACTORS actual cost incurred and invoiced on a monthly basis as charges are incurred. The expense shall be without any costs for having advanced for the funds or for expenses generally considered as overhead already reflected in the Daily Per Task Rate.
    2. All receipts and invoices related to travel expenses are required for reimbursement. This includes mileage log sheet for mileage reimbursement.
    3. Detailed breakdown of dates, location, attendance, description or service and type of task as relevant to each billing.
    4. Invoice to be approved by RCCFC established approval workflow.

b. CONTRACTOR invoice estimates for May and June are due no later than June 5. Actual CONTRACTOR invoices for May and June are due no later than July 30.

A.4 FINANCIAL RESOURCES

During the term of this Agreement, CONTRACTOR shall maintain sufficient financial resources necessary to fully perform its obligations. CONTRACTOR confirms there has been no material financial change in CONTRACTOR (including any parent company) since its last financial statement that has resulted in a negative impact to its financial condition.

A.5 DISALLOWANCE

If CONTRACTOR receives payment under this Agreement which is later disallowed by COUNTY for billing errors or discrepancies with the Agreement, CONTRACTOR shall promptly refund the disallowed amount to COUNTY, or, at its option, COUNTY may offset the amount disallowed from any payment due to CONTRACTOR.

Schedule B
Scope of Services

B1. COUNTY RESPONSIBILITIES

COUNTY shall:

A. Provide designated personnel to coordinate leadership coaching and ongoing support, make decisions on behalf of the COUNTY, review, and accept the CONTRACTOR invoice and other administrative activities.

B.2 CONTRACTOR RESPONSIBILITIES

CONTRACTOR shall:

A. Provide designated personnel to coordinate leadership coaching and ongoing support, make decisions on behalf of the CONTRACTOR, and submit the CONTRACTOR invoice and other administrative activities.
B. Proposal for Transformation Services
   - **Training:**
     - Basic Green training for all staff.
     - Bronze training for leaders that are directly connected to the Value Stream work.

   - **Daily Management:**
     - Development and Deployment of Managing for Daily Improvement (MDI Huddles) for the value stream area to provide transparency and discipline around KPI and overall, First Five Metric
   - **Value Stream:**
     - Contracts and Grants VS – to ensure standard processes with standard work to reduce variation and improve timeliness.
     - Support the integration of the “Help Me Grow "and Health Steps Pilots into the ISD pilot at Jurupa Valley Clinic.

E.5.**23-45:** Approve Mutual Recission of Contract with V.I.P. Tots from January 25, 2023 - June 30, 2024 **(CONTRACT NO. CF23110) [$200,000 - PROP 10 FUNDS and $1,000,000 - ARPA FUNDS]**

AGENDA ITEM: 23-45
DATE OF MEETING: October 25, 2023
ACTION: ☒
INFORMATION: ☐

APPROVE MUTUAL RESCISSION OF CONTRACT (CF23110) WITH V.I.P. TOTS FROM JANUARY 25, 2023 – JUNE 30, 2024 [$200,000 – PROP 10 FUNDS AND $1,000,000 – ARPA FUNDS]

SUMMARY OF REQUEST

Approve mutual rescission of Contract No. CF 23110 with V.I.P. Tots for $1,200,000. First 5 Riverside County and V.I.P. Tots agreed to the rescission of the agreement.

BACKGROUND

January 25, 2023 (Action Item No. 23-07) Commission approved Contract No. CF23110 with the Covenant of Restriction as attached with V.I.P. Tots for an amount not to exceed $1,200,000 effective January 25, 2023 – June 30, 2024, for the Infrastructure Development project.

RECOMMENDED ACTION

That the Commission:

1. Approved mutual rescission of contract CF23110 with V.I.P. Tots, project period from January 25, 2023 – June 30, 2024, for an amount not to exceed $1,200,000; and
2. Authorize the Executive Director or designee to execute the necessary actions, including formal notification and documentation of said recession, upon County Counsel approval as to form, without requiring further action of the Commission.

BUDGET IMPACT

None

STRATEGIC PLAN RELEVANCE

Goal Area 1 – Quality Early Learning (92950)

POTENTIAL CONFLICTS OF INTEREST

None known

ATTACHMENTS

Attachment A: Contract
Attachment B: Agreement Letter

FUNDING AGREEMENT

Quality Early Care and Education: ARPA Infrastructure Development

The RIVERSIDE COUNTY CHILDREN AND FAMILIES COMMISSION, ("COMMISSION", “FIRST 5 RIVERSIDE COUNTY” or "COUNTY") and the V.I.P. TOTS., a California nonprofit corporation ("SUBRECIPIENT" or "OWNER") hereby enter into this Funding Agreement ("Agreement") and agree as follows:

1.1 RECITALS

A. SUBSUBRECIPIENT has prepared plans and specifications ("IMPROVEMENT PLANS") for the acquisition, improvement, and development of classrooms at the V.I.P. Tots facility for child care services, “PROJECT,” shown in concept in Exhibit "A" attached hereto and made a part hereof; and

B. V.I.P. Tots, located at 41915 Acacia Avenue, Hemet, CA 92544 and is hereinafter called “OWNER FACILITY”; and

C. SUBRECIPIENT plans to advertise, award, and administer a public works construction contract for PROJECT during Fiscal Years 2022/2023 and 2023/24; and

D. SUBRECIPIENT desires that COMMISSION contribute funding for the construction of PROJECT; and

E. COMMISSION has reviewed IMPROVEMENT PLANS.

F. COMMISSION wishes to support SUBRECIPIENT's efforts to construct PROJECT by providing a financial contribution toward PROJECT's construction costs as set forth herein; and

G. COMMISSION's financial contributions shall be up to one hundred percent (100%) of the proposal amount for the construction of PROJECT ("TOTAL CONTRIBUTION") and as detailed in Exhibit B: Budget;

H. TOTAL CONTRIBUTION for PROJECT shall not exceed a total of ONE MILLION TWO HUNDRED THOUSAND DOLLARS, **($1,200,000)**; and

I. COMMISSION wishes to provide only financial assistance to SUBRECIPIENT and have no other role;

J. The purpose of this Agreement is to memorialize the mutual understandings by and between SUBRECIPIENT and COMMISSION with respect to the construction, ownership, operation, and maintenance of PROJECT and the payment of TOTAL CONTRIBUTION.

K. The term of this Agreement shall be effective **January 25, 2023,** through **June 30, 2024,** unless terminated earlier as provided herein.

L. This Agreement may be terminated by SUBRECIPIENT or COMMISSION, without cause upon thirty (30) days written notice served upon the non-terminating party, as provided herein. In addition, it is

mutually agreed and understood that the obligation of the COMMISSION for payment under this Agreement is limited and contingent upon the availability of Proposition 10 funds from which payment can be made; and that this Agreement may be immediately terminated by the COMMISSION if funds are no longer available. In the event of termination, the COMMISSION shall make payment for all services provided by SUBRECIPIENT up to the date of written notice of termination.

NOW, THEREFORE, in consideration of the preceding recitals and the mutual covenants hereinafter contained, the parties hereto mutually agree as follows:

1.2 SECTION I

SUBRECIPIENT shall:

1. Obtain, at its sole cost and expense, all necessary permits, approvals, or agreements required by any federal, state, and local resource or regulatory agencies pertaining to PROJECT ("REGULATORY PERMITS").

2. Secure, at its sole cost and expense, all necessary rights of way, rights of entry, and temporary construction easements necessary to construct, inspect, operate and maintain PROJECT.

3. Advertise PROJECT for bids. At the time of advertising for bids, provide COMMISSION with a copy of PROJECT plans, specifications, contracts, and any subsequent addenda thereto.

4. Construct or cause to be constructed PROJECT pursuant to a SUBRECIPIENT-administered public works contract in accordance with IMPROVEMENT PLANS.

5. Supervise and inspect all aspects of PROJECT construction.

6. SUBRECIPIENT recognizes and understands that any improvements installed pursuant to this agreement must be completed by SUBRECIPIENT during the term of this Agreement.

7. SUBRECIPIENT shall require that all Sub-Contractors will comply with prevailing wage requirements and be subject to restrictions and penalties in accordance with §1770 et seq. of the Labor Code which requires prevailing wages be paid to appropriate work classifications in all bid specifications and subcontracts.

a. The SUBRECIPIENT shall require that Sub-Contractors shall furnish all subcontractors/employees a copy of the Department of Industrial Relations prevailing wage rates at which the Lessor will post at the job site. All prevailing wages shall be obtained by the SUBRECIPIENT from:

Department of Industrial Relations
Division of Labor Statistics and Research
455 Golden Gate Avenue, 8th Floor
San Francisco, CA 94102

b. SUBRECIPIENT shall require that Sub-Contractors comply with the payroll record keeping and availability requirement of §1776 of the Labor Code.

c. SUBRECIPIENT shall require that Sub-Contractor shall make travel and subsistence payments to workers needed for the performance of work in accordance with §1773.8 of the Labor Code.

d. Prior to the commencement of work, SUBRECIPIENT shall require that Sub-Contractor shall contact the Division of Apprenticeship Standards and comply with §1777.5, §1777.6, and §1777.7 of the Labor Code and applicable regulations.

e. SUBRECIPIENT shall comply and stay current with all applicable local, state, and federal building codes and laws as from time to time amended, including, but not limited to, the Americans with Disabilities Act requirements in providing the County with any requested County improvements.

8. If any agency, division, or department of any governmental entity with appropriate jurisdiction condemns the Premises or any part of the Premises as unsafe or not in conformity with any of the laws or regulations controlling their construction, occupation, or use, or orders or requires any alteration, repair or reconstruction of the Premises the responsible party shall be the SUBRECIPIENT who at its sole cost and expense (and without any right of reimbursement from COMMISSION) immediately effect all necessary alterations and repairs required for the Premises full and exact compliance.

9. Upon completion of PROJECT construction and SUBRECIPIENT's acceptance thereof, accept ownership and sole responsibility for the design, operation, and maintenance of PROJECT.

10. Upon completion of PROJECT construction, provide COMMISSION with a copy of SUBRECIPIENT's Notice of Completion.

2.1 SECTION II

COMMISSION shall:

1. Within forty-five (45) days of receiving SUBRECIPIENT 's appropriate invoice, pay PROJECT costs to SUBRECIPIENT;

2. COMMISSION shall only provide financial assistance to SUBRECIPIENT and have no other role.

3.1 SECTION III

It is further mutually agreed:

1. TOTAL CONTRIBUTION shall not exceed a total of ONE MILLION TWO HUNDRED THOUSAND DOLLARS, **($1,200,000)** and shall be used by SUBRECIPIENT solely for the purpose of constructing PROJECT as set forth herein. No additional funding whatsoever shall be provided by COMMISSION for any subsequent PROJECT modifications, extensions, or repairs.

2. Under the provisions of this Agreement, COMMISSION shall bear no responsibility whatsoever for the design, construction, ownership, operation, or maintenance of PROJECT;

3. The term of this Agreement shall be effective **January 25, 2023**, through **June 30, 2024**, unless terminated earlier as provided herein.

4. SUBRECIPIENT shall indemnify, defend, save and hold harmless County of Riverside (including their agencies, special districts, and departments, their respective directors, officers, Board of Supervisors, elected and appointed officials, commissioners, employees, agents, representatives, independent contractors, and subcontractors) from any liabilities, claim, damage, proceeding or action, present or future, based upon, arising out of or in any way relating to SUBRECIPIENT's (including its officers, elected and appointed officials, employees, agents, representatives, independent contractors, and subcontract) actual or alleged acts or omissions related to this Agreement, performance under this Agreement or failure to comply with the requirements of this Agreement including, but not limited to (a) property damage; (b) bodily injury or death; (c) payment of attorney fees; or (d) any other element of any kind or nature whatsoever. This section shall survive any termination of this agreement until the statute of limitations period has run for any claims that could be asserted under this agreement.

5. If any provision in this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions will nevertheless continue in full force without being impaired or invalidated in any way.

6. This Agreement is to be construed in accordance with the laws of the State of California. Neither SUBRECIPIENT nor COMMISSION shall assign this Agreement without the written consent of the other party.

7. This Agreement is made and entered into for the sole protection and benefit of the parties hereto. No other person or entity shall have any right of action based upon the provisions of this Agreement.

8. Any and all notices sent or required to be sent to the parties of this Agreement will be mailed by first class mail, postage prepaid, to the following addresses:

Riverside County Children & Families Commission First 5 Riverside County 585 Technology Court Riverside, CA 92507 Attn: Tammi Graham Executive Director	SUBRECIPIENT/OWNER V.I.P. TOTS. 41915 Acacia Avenue Hemet, CA 92544 Attn: Jared Dobbins, Executive Director

9. This Agreement is the result of negotiations between the parties hereto and the advice and assistance of their respective counsel. The fact that this Agreement was prepared as a matter of convenience by COMMISSION shall have no import or significance. Any uncertainty or ambiguity in this Agreement shall not be construed against COMMISSION because COMMISSION prepared this Agreement in its final form.

10. Any waiver by COMMISSION or SUBRECIPIENT of any breach by any other party of any provision of this Agreement shall not be construed to be a waiver of any subsequent or other breach of the same

or any other provision hereof. Failure on the part of COMMISSION or SUBRECIPIENT to require from any other party exact, full, and complete compliance with any of the provisions of this Agreement shall not be construed as in any manner changing the terms hereof or estopping COMMISSION or SUBRECIPIENT from enforcing this Agreement.

11. The obligations of COMMISSION are limited by and contingent upon the availability of COMMISSION funds for COMMISSION's financial contribution towards the PROJECT as set forth herein. In the event that such funds are not forthcoming for any reason, COMMISSION shall immediately notify SUBRECIPIENT in writing. AGREEMENT shall be deemed terminated and have no further force and effect immediately upon receipt of COMMISSION's notification by SUBRECIPIENT.

12. This Agreement is intended by the parties hereto as a final expression of their understanding with respect to the subject matter hereof and as a complete and exclusive statement of the terms and conditions thereof and supersedes any and all prior and contemporaneous agreements and understandings, oral or written, in connection therewith. This Agreement may be changed or modified only upon the written consent of the parties hereto.

13. No alternation or variation of the terms of this Agreement shall be valid unless made in writing and signed by both parties and no oral understanding or agreement not incorporated herein shall be binding on either party hereto.

14. Nothing in the provisions of this Agreement is intended to create duties or obligations to or rights in third parties not parties to this Agreement.

Intentionally left blank

IN WITNESS WHEREOF, the parties hereto have executed this Funding Agreement:

V.I.P. TOTS, INC. (SUBRECIPIENT):

By: _____
Jared Dobbins
Executive Director
Authorized Signatory

Date: _____

RIVERSIDE COUNTY CHILDREN AND FAMILIES COMMISSION:

By: _____
Tammi Graham
Executive Director

Date: _____

ATTEST:

By: _____
Lynn M. Stephens
Commission Coordinator

Date: _____

APPROVED AS TO FORM:

_____
Kristine Bell-Valdez
Supervising Deputy County Counsel

Date: _____

EXHIBIT A:

PROJECT SCOPE OF WORK & TIMELINE

Project Scope of Work

Funds will be used for eligible expenses as accepted in the application and subsequent application clarification submitted to the COMMISSION in response to RFQu #CFARC-0020 for V.I.P. Tots, Inc., 41915 Acacia Avenue, Hemet, CA 92544 and PROJECT Site 41861 Acacia Avenue, Hemet, CA 92544.

Project Description

V.I.P. Tots seeks support in the amount of $1,200,000 for a capital project to purchase and improve the property in order to develop and implement a new Early Learning Center in the Hemet/San Jacinto area, providing inclusive classroom environments for approximately 280 infants, toddlers and preschool children, including those with special needs. Currently, V.I.P. Tots is leasing ten (10) classrooms as well as administrative office space from Pilgrim Community Church which is located at 41861 Acacia Ave, Hemet, next to our main building located at 41915 Acacia Avenue. The current V.I.P. Tots facility has been used for more than 40 years and is licensed for 140 children. V.I.P. Tots serves as a subcontractor with numerous outside agencies, the bulk of which are contracts to provide services through the CSPP and CCTR Programs.

According to the most recent data from the Local Planning Council for Riverside County, there are more than 2,500 children aged 0-35 months in the three primary zip codes served by V.I.P. Tots that are currently eligible for subsidized childcare services, who are not currently being served. These numbers indicate that the area surrounding V.I.P. Tots is what is often referred to as a "childcare desert", notably being labeled as a COE Priority 1 area within the 3rd Supervisorial District. With the eventual arrival of Universal Pre-K it is more imperative than ever for key stakeholders to work to provide more physical space in order to accommodate the growing need for childcare in the Hemet/San Jacinto Valley Area and other known childcare deserts. Over the last year alone, V.I.P. Tots has maintained a lengthy waitlist, mostly comprised of families seeking care for their children aged 18-35 months. If funding is awarded through the grant, the bulk of the additional 140 spots will be allocated through the CCTR Program, which will provide much-needed services to children under three years of age.

The new facility located at 41861 Acacia Avenue, Hemet, CA will expand the agency's capacity to serve additional target groups - children under 3 years old - through the CCTR Program, including children with special needs. The current facility has two buildings providing less than 4,000 square feet of classroom space. By securing the property being offered to V.I.P. Tots, once renovations and addition of the portable classrooms are completed, the physical classroom space will be doubled and the licensed capacity dramatically increased from 140 to an estimated 280. This enhances access to child development and early learning services for Hemet/San Jacinto families, including those with special needs children. Among the unique and innovative aspects of the project, V.I.P. Tots has been offering inclusive services for children with and without special needs since 1978. Currently, 45% of children served by V.I.P. Tots have special needs. Starting at a very young age, V.I.P. Tots seeks to model diversity and inclusion and is unique among other competitors in its ability to deliver inclusive learning environments for nearly 40 years. V.I.P. Tots extends beyond the classroom by working closely with families at home, educating and guiding families through the complex issue of having a child with special needs. Additional space will also allow V.I.P. Tots to continue to offer the dynamic "Positive Solutions for Families Classes" and other supportive services to serve families with parenting guidance.

As the Hemet/San Jacinto Valley Area continues to recover from the COVID-19 Pandemic, it is vital that additional childcare spaces are provided in order to allow parents to return to the workforce. A recent services expansion. survey commissioned by V.I.P. Tots found that less than 10% of the jobs available in the Hemet/San Jacinto Valley Area provided enough financial capacity for families to afford unsubsidized childcare.

Additionally, we found that the Leisure and Retail Industry make up almost 35% of available jobs in the area, thereby making it all the more important for adequate physical space in childcare centers to be provided in order to allow essential workers to return or continue to work by providing more affordable high-quality care for their children.

Over the course of the last several months, V.I.P. Tots was approached by Pilgrim Community Church with an offer to purchase property located at 41861 Acacia Avenue, Hemet, CA adjacent to our current site. The purchase proposal includes three buildings:

1. A 6,423 square foot building that V.I.P. Tots is currently using under a lease agreement including 10 classrooms for children 3-5 years old
2. A 1,291 square foot building that is currently occupied by Pilgrim Community Church, and
3. A 1,186 square foot building that is currently occupied by Pilgrim Community Church

Through conversations with various outside agencies and partners, if secured, V.I.P. Tots would undertake a plan to renovate the classrooms in the 6,423 square foot building that is currently being leased and demolish the other two buildings purchased and place portable classrooms.

The outcome of this additional space is expected to double the licensed capacity of V.I.P. Tots from 140 licensed childcare slots to 280 licensed childcare slots, thereby positioning V.I.P. Tots to meet the immense need for childcare in the Hemet/San Jacinto Valley Area.

Project Timeline and Deliverables

Phase I: Months 1 – 3
1. Acquisition of Property at 41861 Acacia Avenue, Hemet, CA
2. Design Documents

Phase II: Months 3 – 6
3. Construction Documents
4. Permitting

Phase III: Months 6 – 9
5. Construction (demolition and site preparation for Portable Classrooms)

Phase IV: Months 9 – 10
6. Furniture, Fixtures & Equipment procurement, and installation

Phase V: Month 11
7. Certificate of Occupancy

Phase VI: Month 12
8. Licensing

Site Visits

The V.I.P. Tots, Inc. project funded under this Agreement will be subject to a site visit review prior to the commencement of the project to be scheduled on a mutually agreed upon date and time.

Quarterly Progress Reports

SUBRECIPIENT shall submit Program Progress Reports (PPR) which includes quarterly and year-to-date progress on actual achievement of PROJECT milestones as detailed in Exhibit A and other data collection information as requested by the COMMISSION. The PPR shall include narrative information on lessons learned, course corrections, client success stories, sustainability, and public awareness/policy change activities

for the quarter. SUBRECIPIENT is required by the COMMISSION to complete and submit PPR electronically via the COMMISSION'S data management system.

For each reporting period, SUBRECIPIENT shall provide the COMMISSION with a PPR within thirty (30) calendar days from the end of the reporting period. In rare and justifiable circumstances, an extension may be requested by the SUBRECIPIENT. Such requests are to be submitted in writing prior to the due date and shall be directed through the COMMISSION'S Contracts and Grants Analyst assigned to the SUBRECIPIENT. Quarterly Program Progress Reporting due dates for each period as follows:

• Quarter 1 (January 1 – March 31): Report Due April 20, 2023
• Quarter 2 (April 1 – June 30): Report Due July 11, 2023
• Quarter 3 (July 1 – September 30): Report Due October 20, 2023
• Quarter 4 (October 1 – December 30): Report Due January 20, 2024
• Quarter 5 (January 1 – March 31): Report Due April 20, 2024
• Quarter 6 (April 1 – June 30): Report Due July 11, 2024 (Final Cumulative Program Progress Report)

If the due date falls on a weekend or County, State, or nationally recognized holiday, the due date will be on the following business day. The first quarterly report is due **April 20, 2023**.

SUBRECIPIENT agrees that failure to submit reports as specified will be sufficient cause for the COMMISSION to withhold any payment due until reporting requirements have been fulfilled.

EXHIBIT B:
BUDGET

January 25, 2023 – June 30, 2024

USE OF FUNDS:		TOTAL REQUESTED:
Development Costs		
1. Acquisition Cost		
1.1	Acquisition Cost 41861 Acacia Ave, Hemet, CA 92544	$870,000
1.2	VIP Tots Funded portion	-$250,000
	Sub-Total:	**$620,000**
2.		
2.1	Architect/Consulting Fees	$40,000
2.2	Permits	$4,500
2.3	Demolition/Preparation	$130,500
2.4	Portable Classrooms	$125,000
2.5	Upgrade Cost	$75,000
2.6	Certificate of Occupancy	$4,500
2.7	Licensing	$500
	Sub-Total:	**$1,000,000**
3. Project-Contingency		
3.1	Contingency (20%)	$200,000
		$1,200,000

Funding

The amount funded consists of:

ARPA (25820) Infrastructure funds for District 3	$1,000,000
Proposition 10 (25800) funds for District 3	$ 200,000
Total Funded:	$1,200,000

EXHIBIT C:
PAYMENT PROVISIONS

1. FISCAL

The maximum amount reimbursable over the life of this Agreement is not to exceed ONE MILLION TWO HUNDRED THOUSAND DOLLARS, **($1,200,000)** for the duration of the Agreement period as funded by the Riverside County Children and Families Commission, also known as First 5 Riverside, (hereinafter the "COMMISSION" or "COUNTY"), provided pursuant to the American Rescue Plan Act and California Children and Families Act of 1998, also known as Proposition 10.

AGREEMENT PERIOD: **January 25, 2023 – June 30, 2024**

1. Method, Time, and Schedule Conditions of Payment

   a. The COMMISSION will disburse funds on a reimbursement payment process based on the Exhibit B (Budget) amount for the applicable fiscal year and monthly report submissions. Payment will be rendered thirty (30) business days from submission of all required documentation and/or the reporting deadline.

   b. Disbursement of any payment of funds to SUBRECIPIENT shall be made so long as all of the following conditions have been met:

      1. The Agreement has been fully executed by all parties;

      2. All applicable licenses to comply with the terms of the SOW are current and valid; and

      3. The SUBRECIPIENT submits monthly itemized invoices, via the data management system to include the supporting documentation separated by a cover sheet in front of each expense category. Documentation shall include, but not limited to; statement of costs, copy of invoice or receipt, and proof payment.

   c. Under special circumstances, SUBRECIPIENT may request advance disbursements. A supplemental disbursement request along with justification must be submitted, in writing, to the Executive Director or designee.

   d. The COMMISSION Executive Director, or designee, reserves the right to withhold or reduce disbursement of funds if SUBRECIPIENT fails to 1) comply with monthly and/or quarterly reports by the indicated due date as set forth in Exhibit A; 2) if results achieved are not as projected and no COMMISSION approved plan is in place for improvement; or 3) if the SUBRECIPIENT is not in compliance with any provision contained within this Agreement.

   e. The final funding period amount approved for the applicable fiscal year will be paid based on final expenditures as of June 30th and reported as of July 11th, which is the final deadline to submit Project expenditures. Expenditures made after June 30th will not be accepted.

2. Allowable Costs

   Funds provided pursuant to this Agreement shall be expended by SUBRECIPIENT in accordance with the Budget.

a. Such specified expenditures will be further limited to those that are considered both reasonable and necessary as determined by the COMMISSION. SUBRECIPIENT agrees COMMISSION may recover any payments for services or goods, which were not reasonable and necessary, or which exceeded the fair market value. The recovery shall be limited to payments over and above reasonable or fair market amounts and any costs of recovery.

b. **Stored Materials.** COMMISSION may, in the exercise of its sole and absolute discretion, approve or disapprove for inclusion in SUBRECIPIENT's invoice the cost of materials to be incorporated, but not yet incorporated, in the Work and delivered and suitably stored either at the Site or at some other appropriate location acceptable to the COMMISSION. As part of any request for such approval, SUBRECIPIENT shall furnish evidence satisfactory to COMMISSION: (1) of the cost of such materials; (2) that such materials are under the exclusive control of SUBRECIPIENT, or if not, that title to the materials is in the COMMISSION, free of any lien or encumbrance; and (3) with respect to materials stored off-Site, that the materials are safely and suitably stored in a bonded warehouse with appropriate insurance coverage satisfactory to COMMISSION. No payment or approval by COMMISSION pursuant to this Paragraph shall (a) be construed as an inspection or acceptance of the materials; (b) relieve SUBRECIPIENT of its continuing and sole responsibility for the care and protection of, and sole responsibility for any Loss to, such materials, from any cause whatsoever; or (c) operate as a waiver of rights by COMMISSION.

c. Notwithstanding any other provision herein, SUBRECIPIENT agrees to reimburse, in full, any and all funds received from the COMMISSION, upon request of the COMMISSION, where such funds as determined by the COMMISSION are not, or have not been utilized by SUBRECIPIENT for services provided to children ages 0 through 5 and their families. The terms and conditions of reimbursement shall be at the sole discretion of the COMMISSION.

d. Any capital improvement projects with an aggregate cost of $25,000 or more funded by Proposition 10 funds shall be maintained by the SUBRECIPIENT for services provided to children ages 0 through 5 and their families. SUBRECIPIENT will ensure any capital improvement projects with an aggregate cost of $25,000 or more is utilized for a minimum of five (5) years from the date that the capital-improvement project is complete. SUBRECIPIENT will submit proof of completion of the improvement project to the COMMISSION. The value of the improvement project is listed in the BUDGET as attached and will be amortized over the 5-year period. If SUBRECIPIENT fails to utilize the improvement project as set forth in EXHIBIT A, SUBRECIPIENT will immediately reimburse the COMMISSION upon COMMISSION's written request, based on the following schedule:

Failure to use for 0-5 purposes Required Compensation

0 Months - 1 year after Completion	100% of the amounts paid under this agreement
1 year - 2 years after Completion	80% of the amounts paid under this agreement
2 years – 3 years after Completion	60% of the amounts paid under this agreement
3 years - 4 years after Completion	40% of the amounts paid under this agreement
4 years – 5 years after Completion	0% of the amounts paid under this agreement

EXHIBIT D:
COMPREHENSIVE TOBACCO CONTROL POLICY

As a material condition of the Contract, the SUBRECIPIENT shall agree that the SUBRECIPIENT and the SUBRECIPIENT'S employees, while receiving funding from the COMMISSION:

1. Shall not use tobacco products while using the SUBRECIPIENT'S property e.g., vehicle, equipment; and

2. Shall not sell, offer, or provide tobacco products on SUBRECIPIENT'S premises; and

3. Shall have tobacco education and cessation materials visibly available and accessible to clients participating in activities funded by Proposition 10 funds; and

4. Shall assure that the SUBRECIPIENT and its employees have no current business association or relationship with the tobacco industry, and further agrees to neither accept nor solicit financial contributions, sponsorships, gifts, or services from any tobacco company, executive, or tobacco-related function; and

5. Shall make a reasonable effort to divest of all investments in companies that derive fifteen percent (15%) or more of revenues from tobacco.

The COMMISSION may terminate for default or breach of this Contract and any other Contract SUBRECIPIENT has with the COMMISSION, if the SUBRECIPIENT or SUBRECIPIENT'S employees are determined by the COMMISSION Executive Director (or designee), not to be in compliance with the conditions set forth herein.

If SUBRECIPIENT or SUBRECIPIENT'S employees are determined by the COMMISSION Executive Director (or designee) not to be in compliance with the conditions set forth herein, the COMMISSION may terminate for default or breach of this Contract and any other Contract the COMMISSION has with the SUBRECIPIENT.

In instances where the SUBRECIPIENT is part of a larger entity, and where the entity has an investment policy set by governance officials other than the SUBRECIPIENT, and the SUBRECIPIENT is not directly involved in such investment decisions, SUBRECIPIENT agrees to the provisions herein as required in the programs and activities under the direct control of the SUBRECIPIENT to the satisfaction of the COMMISSION Executive Director (or designee). Activities of the larger entity other than investment decisions, which are not under the direct control of SUBRECIPIENT, shall not be considered to be in violation of SUBRECIPIENT'S activities pursuant to the policy.

EXHIBIT E:
FEDERAL PROVISIONS

1. ORDERS OF LOCAL, STATE, OR FEDERAL HEALTH OFFICIALS; EXECUTIVE ORDERS. County and SUBRECIPIENT mutually acknowledge that local, state, or federal authorities may issue official orders related to the COVID-19 epidemic, or take other official actions, subsequent to the execution of this Agreement that Parties to this Agreement cannot presently predict. County and Sub SUBRECIPIENT mutually acknowledge and agree that this Agreement shall be subject to the provisions of any such official action or order, particularly but not limited to Executive Orders of the Governor of the State of California and Orders of the County Public Health Officer, and the like ("Official Actions"), and if the provisions of any such Official Actions materially impact the terms of this Agreement, the provisions of those Official Actions shall govern.

    a. In the event that such Official Actions make the services provided to the County under this Agreement illegal, unlawful, or contrary to public policy, County shall provide written notice to SUBRECIPIENT in the manner described herein, and County and SUBRECIPIENT mutually agree that this Agreement shall terminate as of the date of that Official Action, at no penalty to County. In such an event, County shall pay outstanding fees to due to SUBRECIPIENT pro-rated from the date of the Official Action, along with all other remaining sums due to SUBRECIPIENT, within thirty (30) calendar days from the date of that Official Action.

    b. The parties acknowledge that SUBRECIPIENT is providing the services for emergency purposes at the request of the County under the California Emergency Services Act (the "Act" (California Government Code §§ 8550 et seq.)). Pursuant to California Government Code §8655, the County and as such, is subject to certain immunities with respect thereto and shall not be liable for any claim based upon the exercise or performance, or the failure to exercise or perform, a discretionary function or duty on the part of the County or any employee of the County in carrying out the provisions of the Act.

    c. SUBRECIPIENT acknowledges and agrees that this Agreement is subject to the federal Uniform Administrative Requirements, Cost principles, and Audit Requirements for Federal Awards (**2 C.F.R. Part 200),** including the federal provisions attached hereto, and incorporated herein. Should there be any conflict between the provisions of this Agreement and Exhibit F, the terms and conditions in Exhibit F shall govern, unless the more restrictive provision herein is otherwise required to control as a condition of FEMA funding.

    d. Should funding be allocated through American Rescue Plan Act (ARPA; (Title VI of the Social Security Act Section 602 et seq.), the COUNTY will administer and distribute those funds in accordance with ARPA. ARPA requires that payments from the Coronavirus Fiscal Recovery Fund be used to respond to the public health emergency or its negative economic impacts, to respond to workers performing essential work during the COVID-19 public health emergency by providing premium pay, provide government services to the

extent the reduction of revenue due to COVID-19 public health emergency, and to make necessary investments in water, sewer or broadband infrastructure. It is effective beginning May 17, 2021, and ends on December 31, 2024.

2. NON-DISCRIMINATION. SUBRECIPIENT shall not discriminate in the provision of services, allocation of benefits, accommodation in facilities, or employment of personnel on the basis of ethnic group identification, race, religious creed, color, national origin, ancestry, physical handicap, medical condition, marital status or sex in the performance of this Agreement; and, to the extent they shall be found to be applicable hereto, shall comply with the provisions of the California Fair Employment and Housing Act (Gov. Code 12900 et. seq), the Federal Civil Rights Act of 1964 (P.L. 88-352), the Americans with Disabilities Act of 1990 (42 U.S.C. S1210 et seq.) and all other applicable laws or regulations.

3. EQUAL EMPLOYMENT OPPORTUNITY/ FAIR EMPLOYMENT PRACTICES/ FEDERAL PROVISIONS. During the performance of this Agreement, the SUBRECIPIENT shall not deny benefits to any person on the basis of religion, color, ethnic group identification, sex, age, physical or mental disability, nor shall they discriminate unlawfully against any employee or applicant for employment because of race, religion, color, national origin, ancestry, physical handicap, mental disability, medical condition, marital status, age, or sex. SUBRECIPIENT shall ensure that the evaluation and treatment of employees and applicants for employment are free of such discrimination.

   a. SUBRECIPIENT shall comply with the provisions of the Fair Employment and Housing Act (Government Code, Section 12900 et seq.), the regulations promulgated thereunder (California Code of Regulations, Title 2, Section 11000 et seq.), the provisions of Executive Order 11246 of Sept. 23, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor, the provisions of Article 9.5, Chapter 1, Part 1, Division 3, Title 2 of the Government Code (Government Code, Sections 11135-11139.8), and of the rules, regulations or standards adopted by the County to implement such article.

   b. The SUBRECIPIENT shall comply with the provisions of the Copeland "Anti-Kickback" Act, 18 U.S.C. § 874, 40 U.S.C. § 3145, and the requirements of 29 C.F.R. pt. 3 as may be applicable, which are incorporated by reference into this Agreement.

4. OTHER FEDERAL PROVISIONS. SUBRECIPIENT acknowledges and agrees that this Agreement is subject to the federal requirements for seeking FEMA reimbursements, including the federal provisions provided below.

4.1 CLEAN AIR ACT.

The SUBRECIPIENT agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. Section 7401 et seq.

The SUBRECIPIENT agrees to report each violation to the County and understands and agrees that the County will, in turn, report each violation as required to assure notification to

the California Governor's Office of Emergency Services, Federal Emergency Management Agency (FEMA), and the appropriate Environmental Protection Agency Regional Office.

SUBRECIPIENT agrees to include these requirements in each sub-contract exceeding $150,000 financed in whole or in part with Federal assistance provided by FEMA.

4.2. FEDERAL WATER POLLUTION CONTROL ACT

SUBRECIPIENT agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. Sections 1251 et seq.

SUBRECIPIENT agrees to report each violation to the County and understands and agrees that the County will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency (FEMA) and the appropriate Environmental Protection Agency Regional Office.

SUBRECIPIENT agrees to include these requirements in each subcontract exceeding $150,000 financed in whole or in part with Federal assistance provided by FEMA.

4.3. DEBARMENT AND SUSPENSION CLAUSE

This Agreement is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such the SUBRECIPIENT is required to verify that none of the SUBRECIPIENT, its principals (defined at 2 C.F.R. § 180.995), or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).

SUBRECIPIENT must comply with 2 C.F.R. pt. 180, subpart C, and 2 C.F.R. pt. 3000, subpart C and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.

This certification is a material representation of fact relied upon by the County. If it is later determined that the SUBRECIPIENT did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to the County, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.

The bidder or proposer agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower-tier covered transactions.

4.4. BYRD ANTI- LOBBYING AMENDMENT, 31 U.S.C. § 1352 (AS AMENDED)

SUBRECIPIENTS who apply or bid for an award of $100,000 or more shall file the required certification. Each tier certifies to the tier above that it will not and has not used Federal

appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to SUBRECIPIENT who in turn will forward the certification(s) to the County.

Intentionally left blank

APPENDIX A, 44 C.F.R. PART 18- CERTIFICATION REGARDING LOBBYING

The undersigned SUBRECIPIENT certifies, to the best of his or her knowledge, that:

A. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

B. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

C. The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all SUBRECIPIENTS shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31, U.S.C. § 1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

SUBRECIPIENT certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure if any. In addition, SUBRECIPIENT understands and agrees that the provisions of 31 U.S.C. § 3801 et seq., apply to this certification and disclosure if any.

VIP TOTS, INC. SUBRECIPIENT

By _____
AUTHORIZED SIGNATORY
Date _____

4.5. PROCUREMENT OF RECOVERED MATERIALS

In the performance of this Agreement, the SUBRECIPIENT shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired:

i. Competitively within a timeframe providing for compliance with the contract performance schedule;
ii. Meeting contract performance requirements; or
iii. At a reasonable price.

Information about this requirement, along with the list of EPA-designated items, is available at EPA's Comprehensive Procurement Guidelines web-site, https://www.epa.gov/smm/product-resource-guides-comprehensive-procurement-guideline-cpg-program

SUBRECIPIENT also agrees to comply with all other applicable requirements of Section 6002 of the Solid Waste Disposal Act.

4.6. ACCESS TO RECORDS

The following access to records requirements apply to this Agreement:

i. The SUBRECIPIENT agrees to provide the County, the FEMA Administrator, the Comptroller General of the United States, or any of their authorized representatives access to any books, documents, papers, and records of the SUBRECIPIENT which are directly pertinent to this Agreement for the purposes of making audits, examinations, excerpts, and transcriptions.
ii. The SUBRECIPIENT agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
iii. The SUBRECIPIENT agrees to provide the FEMA Administrator or his or her authorized representatives access to construction or other work sites pertaining to the work being completed under the contract.
iv. In compliance with the Disaster Recovery Act of 2018, the County and the SUBRECIPIENT acknowledge and agree that no language in this contract is intended to prohibit audits or internal reviews by the FEMA Administrator or the Comptroller General of the United States.

4.7. DEPARTMENT OF HOMELAND SECURITY SEAL, LOGO, FLAGS

The SUBRECIPIENT shall not use the DHS seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific FEMA pre-approval.

4.8. COMPLIANCE WITH FEDERAL LAW, REGULATIONS, AND EXECUTIVE ORDERS

This is an acknowledgment that FEMA financial assistance will be used to fund all or a portion of the contract. The SUBRECIPIENT will comply with all applicable Federal law, regulations, executive orders, FEMA policies, procedures, and directives.

4.9. NO OBLIGATION BY FEDERAL GOVERNMENT

The Federal Government is not a party to this Agreement and is not subject to any obligations or liabilities to the non-Federal entity, SUBRECIPIENT, or any other party pertaining to any matter resulting from the contract.

4.10. PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS OR RELATED ACTS

The SUBRECIPIENT acknowledges that 31 U.S.C. Chapter 38 (Administrative Remedies for False Claims and Statements) applies to the Contractor's actions pertaining to this Agreement.

4.11. FEDERAL PREVAILING WAGE

A. DAVIS-BACON ACT COMPLIANCE (applicable to construction contracts in excess of $2,000 awarded by grantees and subgrantees when required by Federal grant program legislation)

B. To the extent required by any Federal grant programs applicable to expected funding or reimbursement expenses incurred in connection with the services provided under this Agreement, SUBRECIPIENT agrees to comply with the Davis-Bacon Act (40 U.S.C. §§ 3141-3144 and §§ 3146-3148) as supplemented by Department of Labor regulations (29 CFR Part 5) as set forth below.

C. The Contractor shall be bound to the provisions of the Davis-Bacon Act and agrees to be bound by all the provisions of Labor Code section 1771 regarding prevailing wages. All labor on this project shall be paid neither less than the greater of the minimum wage rates established by the U.S. Secretary of Labor (Federal Wage Rates), or by the State of California Director of Department of Industrial Relations (State Wage Rates). Current DIR requirements may be found at http://www.dir.ca.gov/lcp.asp. Additionally, wages are required to be paid not less than once a week.

D. The general prevailing wage rates may be accessed at the Department of Labor Home Page at www.wdol.gov. Under the Davis Bacon heading, click on "Selecting DBA WDs." In the drop-down menu for State, select, "California." In the drop-down menu for County, select "Riverside." In the drop-down menu for Construction Type, make the appropriate selection. Then, click Search.

E. The Federal minimum wage rates for this project are predetermined by the United States Secretary of Labor. If there is a difference between the minimum wage rates predetermined by the Secretary of Labor and the general prevailing wage rates determined by the Director of the California DIR for similar classifications of labor, the Contractor and subcontractors shall pay not less than the higher wage rate. The County will not accept lower State wage rates not specifically included in the Federal minimum wage determinations. This includes "helper" (or other classifications based on hours of experience) or any other classification not appearing in the Federal wage determinations. Where Federal wage determinations do not contain the State wage rate determination otherwise available for use by the Contractor and subcontractors, the Contractor and subcontractors shall pay not less than the Federal minimum wage rate which most closely approximates the duties of the employees in question.

4.12. CONTRACT WORK HOURS AND SAFETY STANDARDS (applicable to all contracts in excess of $100,000 that involve the employment of mechanics or laborers, but not to purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence)

A. Compliance: Subrecipient agrees that it shall comply with Sections 3702 and 3704 of the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 3701–3708) as supplemented by Department of Labor regulations (29 CFR Part 5), which are incorporated herein.

B. Overtime: No contractor or subcontractor contracting for any part of the work under this Agreement which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

C. Violation; liability for unpaid wages; liquidated damages: In the event of any violation of the provisions of paragraph B of this section, the Contractor and any subcontractor responsible therefore shall be liable for the unpaid wages. In addition, such Contractor and subcontractor shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic employed in violation of the provisions of paragraph B, in the sum of $10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by paragraph B.

D. Withholding for unpaid wages and liquidated damages: SUBRECIPIENT shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the SUBRECIPIENT or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or

subcontractor for unpaid wages and liquidated damages as provided in the clause set for in paragraph C of this section.

E. Subcontracts: SUBRECIPIENT or its subcontractor shall insert in any subcontracts the clauses set forth in paragraphs A through D of this section and also a clause requiring the subcontractors to include these clauses in any lower-tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower-tier subcontractor with the clauses set forth in paragraphs A through D of this section.

4.13. RIGHTS TO INVENTIONS MADE UNDER A CONTRACT OR AGREEMENT— Contracts or agreements for the performance of experimental, developmental, or research work shall provide for the rights of the Federal Government and the SUBRECIPIENT in any resulting invention in accordance with 37 CFR part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by HUD.

414. RIGHTS TO DATA AND COPYRIGHTS – SUBRECIPIENT, its Contractors, sub-contractors, and consultants agree to comply with all applicable provisions pertaining to the use of data and copyrights pursuant to 48 CFR Part 27.4, Federal Acquisition Regulations (FAR).

4.15. PROHIBITION ON CONTRACTING FOR COVERED TELECOMMUNICATIONS EQUIPMENT OR SERVICES

(a) Definitions. As used in this clause, the terms backhaul; covered foreign country; covered telecommunications equipment or services; interconnection arrangements; roaming; substantial or essential component; and telecommunications equipment or services have the meaning as defined in FEMA Policy, #405-143-1 Prohibitions on Expending FEMA Award Funds for Covered Telecommunications Equipment or Services As used in this clause.

(b) Prohibitions.
(1) Section 889(b) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019, Pub. L. No. 115-232, and 2 C.F.R. § 200.216 prohibit the head of an executive agency on or after Aug.13, 2020, from obligating or expending grant, cooperative agreement, loan, or loan guarantee funds on certain telecommunications products or from certain entities for national security reasons.
(2) Unless an exception in paragraph (c) of this clause applies, the contractor and its subcontractors may not use grant, cooperative agreement, loan, or loan guarantee funds from the Federal Emergency Management Agency to:
(i) Procure or obtain any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology of any system;
(ii) Enter into, extend, or renew a contract to procure or obtain any equipment, system, or service that uses covered telecommunications equipment or services as a

substantial or essential component of any system, or as critical technology of any system;

(iii) Enter into, extend, or renew contracts with entities that use covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system; or

(iv) Provide, as part of its performance of this contract, subcontract, or other contractual instrument, any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system.

(c) Exceptions.

(1) This clause does not prohibit contractors from providing:

a. A service that connects to the facilities of a third party, such as backhaul, roaming, or interconnection arrangements; or

b. Telecommunications equipment that cannot route or redirect user data traffic or permit visibility into any user data or packets that such equipment transmits or otherwise handles.

(2) By necessary implication and regulation, the prohibitions also do not apply to:

a. Covered telecommunications equipment or services that:

i. Are not used as a substantial or essential component of any system; and

ii. Are not used as critical technology of any system.

b. Other telecommunications equipment or services that are not considered covered telecommunications equipment or services.

(d) Reporting requirement.

(1) In the event the contractor identifies covered telecommunications equipment or services used as a substantial or essential component of any system, or as critical technology as part of any system, during contract performance, or the contractor is notified of such by a subcontractor at any tier or by any other source, the contractor shall report the information in paragraph (d)(2) of this clause to the SUBRECIPIENT or SUBRECIPIENT, unless elsewhere in this contract are established procedures for reporting the information.

(2) The Contractor shall report the following information pursuant to paragraph (d)(1) of this clause:

i) Within one business day from the date of such identification or notification: The contract number; the order number(s), if applicable; supplier name; supplier unique entity identifier (if known); supplier Commercial and Government Entity (CAGE) code (if known); brand; model number (original equipment manufacturer number, manufacturer part number, or wholesaler number); item description; and any readily available information about mitigation actions undertaken or recommended.

ii) Within 10 business days of submitting the information in paragraph (d)(2)(i) of this clause: Any further available information about mitigation actions undertaken or recommended. In addition, the contractor shall describe the efforts it undertook to

prevent use or submission of covered telecommunications equipment or services, and any additional efforts that will be incorporated to prevent future use or submission of covered telecommunications equipment or services.

(e) Subcontracts. The Contractor shall insert the substance of this clause, including this paragraph (e), in all subcontracts and other contractual instruments.

4.16 REPORTING OF MATTERS RELATED TO SUBRECIPIENT INTEGRITY AND PERFORMANCE

1. General Reporting Requirement

If the total value of your currently active grants, cooperative agreements, and procurement contracts from all Federal awarding agencies exceeds $10,000,000 for any period of time during the period of performance of this Federal award, then you as the SUBRECIPIENT during that period of time must maintain the currency of information reported to the System for Award Management (SAM) that is made available in the designated integrity and performance system (currently the Federal Awardee Performance and Integrity Information System (FAPIIS)) about civil, criminal, or administrative proceedings described in paragraph 2 of this award term and condition. This is a statutory requirement under section 872 of Public Law 110-417, as amended (41 U.S.C. 2313). As required by section 3010 of Public Law 111-212, all information posted in the designated integrity and performance system on or after April 15, 2011, except past performance reviews required for Federal procurement contracts, will be publicly available.

2. Proceedings About Which You Must Report

Submit the information required about each proceeding that:

a. Is in connection with the award or performance of a grant, cooperative agreement, or procurement contract from the Federal Government;
b. Reached its final disposition during the most recent five-year period; and
c. Is one of the following:
   (1) A criminal proceeding that resulted in a conviction, as defined in paragraph 5 of this award term and condition;
   (2) A civil proceeding that resulted in a finding of fault and liability and payment of a monetary fine, penalty, reimbursement, restitution, or damages of $5,000 or more;
   (3) An administrative proceeding, as defined in paragraph 5. of this award term and condition, that resulted in a finding of fault and liability and your payment of either a monetary fine or penalty of $5,000 or more or reimbursement, restitution, or damages in excess of $100,000; or
   (4) Any other criminal, civil, or administrative proceeding if:
      (i) It could have led to an outcome described in paragraph 2.c.(1), (2), or (3) of this award term and condition;
      (ii) It had a different disposition arrived at by consent or compromise with an acknowledgment of fault on your part; and

(iii) The requirement in this award term and condition to disclose information about the proceeding does not conflict with applicable laws and regulations.

3. Reporting Procedures

Enter in the SAM Entity Management area the information that SAM requires about each proceeding described in paragraph 2 of this award term and condition. You do not need to submit the information a second time under assistance awards that you received if you already provided the information through SAM because you were required to do so under Federal procurement contracts that you were awarded.

4. Reporting Frequency

During any period of time when you are subject to the requirement in paragraph 1 of this award term and condition, you must report proceedings information through SAM for the most recent five-year period, either to report new information about any proceeding(s) that you have not reported previously or affirm that there is no new information to report. SUBRECIPIENTs that have Federal contract, grant, and cooperative agreement awards with a cumulative total value greater than $10,000,000 must disclose semiannually any information about the criminal, civil, and administrative proceedings.

5. Definitions

For purposes of this award term and condition:

a. Administrative proceeding means a non-judicial process that is adjudicatory in nature in order to make a determination of fault or liability (*e.g.,* Securities and Exchange Commission Administrative proceedings, Civilian Board of Contract Appeals proceedings, and Armed Services Board of Contract Appeals proceedings). This includes proceedings at the Federal and State level but only in connection with performance of a Federal contract or grant. It does not include audits, site visits, corrective plans, or inspection of deliverables.

b. Conviction, for purposes of this award term and condition, means a judgment or conviction of a criminal offense by any court of competent jurisdiction, whether entered upon a verdict or a plea, and includes a conviction entered upon a plea of nolo contendere.

c. Total value of currently active grants, cooperative agreements, and procurement contracts includes –
   (1) Only the Federal share of the funding under any Federal award with a SUBRECIPIENT cost share or match; and
   (2) The value of all expected funding increments under a Federal award and options, even if not yet exercised.

EXHIBIT F:
AMERICAN RESCUE PLAN ACT – FINAL RULE

26786 **Federal Register** / Vol. 86, No. 93 / Monday, May 17, 2021 / Rules and Regulations

DEPARTMENT OF THE TREASURY

31 CFR Part 35

RIN 1505–AC77

Coronavirus State and Local Fiscal Recovery Funds

AGENCY: Department of the Treasury.

ACTION: Interim final rule.

SUMMARY: The Secretary of the Treasury (Treasury) is issuing this interim final rule to implement the Coronavirus State Fiscal Recovery Fund and the Coronavirus Local Fiscal Recovery Fund established under the American Rescue Plan Act.

DATES: *Effective date:* The provisions in this interim final rule are effective May 17, 2021.

Comment date: Comments must be received on or before July 16, 2021.

ADDRESSES: Please submit comments electronically through the Federal eRulemaking Portal: *http://www.regulations.gov.* Comments can be mailed to the Office of the Undersecretary for Domestic Finance, Department of the Treasury, 1500 Pennsylvania Avenue NW, Washington, DC 20220. Because postal mail may be subject to processing delay, it is recommended that comments be submitted electronically. All comments should be captions with "Coronavirus State and Local Fiscal Recovery Funds Interim Final Rule Comments." Please include your name, organization affiliation, address, email address and telephone number in your comment. Where appropriate, a comment should include a short executive summary.

In general, comments received will be posted on *http://www.regulations.gov* without change, including any business or personal information provided. Comments received, including attachments and other supporting materials, will be part of the public record and subject to public disclosure. Do not enclose any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

FOR FURTHER INFORMATION CONTACT: Katharine Richards, Senior Advisor, Office of Recovery Programs, Department of the Treasury, (844) 529–9527.

SUPPLEMENTARY INFORMATION:

I. Background Information

A. Overview

Since the first case of coronavirus disease 2019 (COVID–19) was discovered in the United States in January 2020, the disease has infected over 32 million and killed over 575,000 Americans.[1] The disease has impacted every part of life: As social distancing became a necessity, businesses closed, schools transitioned to remote education, travel was sharply reduced, and millions of Americans lost their jobs. In April 2020, the national unemployment rate reached its highest level in over seventy years following the most severe month-over-month decline in employment on record.[2] As of April 2021, there were still 8.2 million fewer jobs than before the pandemic.[3] During this time, a significant share of households have faced food and housing insecurity.[4] Economic disruptions impaired the flow of credit to households, State and local governments, and businesses of all sizes.[5] As businesses weathered closures and sharp declines in revenue, many were forced to shut down, especially small businesses.[6]

Amid this once-in-a-century crisis, State, territorial, Tribal, and local governments (State, local, and Tribal governments) have been called on to respond at an immense scale. Governments have faced myriad needs to prevent and address the spread of COVID–19, including testing, contact tracing, isolation and quarantine, public communications, issuance and enforcement of health orders, expansions to health system capacity like alternative care facilities, and in recent months, a massive nationwide mobilization around vaccinations. Governments also have supported major efforts to prevent COVID–19 spread through safety measures in settings like nursing homes, schools, congregate living settings, dense worksites, incarceration settings, and public facilities. The pandemic's impacts on behavioral health, including the toll of pandemic-related stress, have increased the need for behavioral health resources.

At the same time, State, local and Tribal governments launched major efforts to address the economic impacts of the pandemic. These efforts have been tailored to the needs of their communities and have included expanded assistance to unemployed workers; food assistance; rent, mortgage, and utility support; cash assistance; internet access programs; expanded services to support individuals experiencing homelessness; support for individuals with disabilities and older adults; and assistance to small businesses facing closures or revenue loss or implementing new safety measures.

In responding to the public health emergency and its negative economic impacts, State, local, and Tribal governments have seen substantial increases in costs to provide these services, often amid substantial declines in revenue due to the economic downturn and changing economic patterns during the pandemic.[7] Facing these budget challenges, many State, local, and Tribal governments have been forced to make cuts to services or their workforces, or delay critical investments. From February to May of 2020, State, local, and Tribal governments reduced their workforces by more than 1.5 million jobs and, in April of 2021, State, local, and Tribal government employment remained nearly 1.3 million jobs below pre-pandemic levels.[8] These cuts to State, local, and Tribal government workforces

[1] Centers for Disease Control and Prevention, COVID Data Tracker, *http://www.covid.cdc.gov/covid-data-tracker/#datatracker-home* (last visited May 8, 2021).

[2] U.S. Bureau of Labor Statistics, Unemployment Rate [UNRATE], retrieved from FRED, Federal Reserve Bank of St. Louis; *https://fred.stlouisfed.org/series/UNRATE,* May 3, 2021. U.S. Bureau of Labor Statistics, Employment Level [LNU02000000], retrieved from FRED, Federal Reserve Bank of St. Louis; *https://fred.stlouisfed.org/series/LNU02000000,* May 3, 2021.

[3] U.S. Bureau of Labor Statistics, All Employees, Total Nonfarm [PAYEMS], retrieved from FRED, Federal Reserve Bank of St. Louis; *https://fred.stlouisfed.org/series/PAYEMS,* May 7, 2021.

[4] Nirmita Panchal et al., The Implications of COVID–19 for Mental Health and Substance Abuse (Feb. 10, 2021), https://www.kff.org/coronavirus-covid-19/issue-brief/the-implications-of-covid-19-for-mental-health-and-substance-use/#:~:text=Older%20adults%20are%20also%20more,prior%20to%20the%20current%20crisis; U.S. Census Bureau, Household Pulse Survey: Measuring Social and Economic Impacts during the Coronavirus Pandemic, https://www.census.gov/programs-surveys/household-pulse-survey.html (last visited Apr. 26, 2021); Rebecca T. Leeb et al., Mental Health-Related Emergency Department Visits Among Children Aged <18 Years During the COVID Pandemic—United States, January 1—October 17, 2020, Morb. Mortal. Wkly. Rep. 69(45):1675–80 (Nov. 13, 2020), *https://www.cdc.gov/mmwr/volumes/69/wr/mm6945a3.htm.*

[5] Board of Governors of the Federal Reserve System, Monetary Policy Report (June 12, 2020), *https://www.federalreserve.gov/monetarypolicy/2020-06-mpr-summary.htm.*

[6] Joseph R. Biden, Remarks by President Biden on Helping Small Businesses (Feb. 22, 2021), *https://www.whitehouse.gov/briefing-room/speeches-remarks/2021/02/22/remarks-by-president-biden-on-helping-small-businesses/.*

[7] Michael Leachman, House Budget Bill Provides Needed Fiscal Aid for States, Localities, Tribal Nations, and Territories (Feb. 10, 2021), *https://www.cbpp.org/research/state-budget-and-tax/house-budget-bill-provides-needed-fiscal-aid-for-states-localities.*

[8] U.S. Bureau of Labor Statistics, All Employees, State Government [CES9092000001] and All Employees, Local Government [CES9093000001], retrieved from FRED, Federal Reserve Bank of St. Louis, *https://fred.stlouisfed.org/series/CES9092000001* and *https://fred.stlouisfed.org/series/CES9093000001* (last visited May 8, 2021).

come at a time when demand for government services is high, with State, local, and Tribal governments on the frontlines of fighting the pandemic. Furthermore, State, local, and Tribal government austerity measures can hamper overall economic growth, as occurred in the recovery from the Great Recession.[9]

Finally, although the pandemic's impacts have been widespread, both the public health and economic impacts of the pandemic have fallen most severely on communities and populations disadvantaged before it began. Low-income communities, people of color, and Tribal communities have faced higher rates of infection, hospitalization, and death,[10] as well as higher rates of unemployment and lack of basic necessities like food and housing.[11] Pre-existing social vulnerabilities magnified the pandemic in these communities, where a reduced ability to work from home and, frequently, denser housing amplified the risk of infection. Higher rates of pre-existing health conditions also may have contributed to more severe COVID–19 health outcomes.[12] Similarly, communities or households facing economic insecurity before the pandemic were less able to weather business closures, job losses, or declines in earnings and were less able to participate in remote work or education due to the inequities in access to reliable and affordable broadband infrastructure.[13] Finally, though schools in all areas faced challenges, those in high poverty areas had fewer resources to adapt to remote and hybrid learning models.[14] Unfortunately, the pandemic also has reversed many gains made by communities of color in the prior economic expansion.[15]

B. The Statute and Interim Final Rule

On March 11, 2021, the American Rescue Plan Act (ARPA) was signed into law by the President.[16] Section 9901 of ARPA amended Title VI of the Social Security Act[17] (the Act) to add section 602, which establishes the Coronavirus State Fiscal Recovery Fund, and section 603, which establishes the Coronavirus Local Fiscal Recovery Fund (together, the Fiscal Recovery Funds).[18] The Fiscal Recovery Funds are intended to provide support to State, local, and Tribal governments (together, recipients) in responding to the impact of COVID–19 and in their efforts to contain COVID–19 on their communities, residents, and businesses. The Fiscal Recovery Funds build on and expand the support provided to these governments over the last year, including through the Coronavirus Relief Fund (CRF).[19]

Through the Fiscal Recovery Funds, Congress provided State, local, and Tribal governments with significant resources to respond to the COVID–19 public health emergency and its economic impacts through four categories of eligible uses. Section 602 and section 603 contain the same eligible uses; the primary difference between the two sections is that section 602 establishes a fund for States, territories, and Tribal governments and section 603 establishes a fund for metropolitan cities, nonentitlement units of local government, and counties. Sections 602(c)(1) and 603(c)(1) provide that funds may be used:

(a) To respond to the public health emergency or its negative economic impacts, including assistance to households, small businesses, and nonprofits, or aid to impacted industries such as tourism, travel, and hospitality;

(b) To respond to workers performing essential work during the COVID–19 public health emergency by providing premium pay to eligible workers;

(c) For the provision of government services to the extent of the reduction in revenue due to the COVID–19 public health emergency relative to revenues collected in the most recent full fiscal year prior to the emergency; and

(d) To make necessary investments in water, sewer, or broadband infrastructure.

In addition, Congress clarified two types of uses which do not fall within these four categories. Sections 602(c)(2)(B) and 603(c)(2) provide that these eligible uses do not include, and thus funds may not be used for, depositing funds into any pension fund. Section 602(c)(2)(A) also provides, for States and territories, that the eligible uses do not include "directly or indirectly offset[ting] a reduction in the net tax revenue of [the] State or territory resulting from a change in law, regulation, or administrative interpretation."

The ARPA provides a substantial infusion of resources to meet pandemic response needs and rebuild a stronger, more equitable economy as the country recovers. First, payments from the Fiscal Recovery Funds help to ensure that State, local, and Tribal governments have the resources needed to continue to take actions to decrease the spread of COVID–19 and bring the pandemic under control. Payments from the Fiscal Recovery Funds may also be used by recipients to provide support for costs incurred in addressing public health and economic challenges resulting from the pandemic, including resources to offer premium pay to essential workers, in recognition of their sacrifices over the

[9] Tracy Gordon, State and Local Budgets and the Great Recession, Brookings Institution (Dec. 31, 2012), *http://www.brookings.edu/articles/state-and-local-budgets-and-the-great-recession.*

[10] Sebastian D. Romano et al., Trends in Racial and Ethnic Disparities in COVID–19 Hospitalizations, by Region—United States, March–December 2020, MMWR Morb Mortal Wkly Rep 2021, 70:560–565 (Apr. 16, 2021), *https://www.cdc.gov/mmwr/volumes/70/wr/mm7015e2.htm?s_cid=mm7015e2_w.*

[11] Center on Budget and Policy Priorities, Tracking the COVID–19 Recession's Effects on Food, Housing, and Employment Hardships, *https://www.cbpp.org/research/poverty-and-inequality/tracking-the-covid-19-recessions-effects-on-housing-and* (last visited May 4, 2021).

[12] Lisa R. Fortuna et al., Inequity and the Disproportionate Impact of COVID–19 on Communities of Color in the United States: The Need for Trauma-Informed Social Justice Response, Psychological Trauma Vol. 12(5):443–45 (2020), *available at https://psycnet.apa.org/fulltext/2020-37320-001.pdf.*

[13] Emily Vogles et al., 53% of Americans Say the internet Has Been Essential During the COVID–19 Outbreak (Apr. 30, 2020), *https://www.pewresearch.org/internet/2020/04/30/53-of-americans-say-the-internet-has-been-essential-during-the-covid-19-outbreak/.*

[14] Emma Dorn et al., COVID–19 and student learning in the United States: The hurt could last a lifetime (June 2020), *https://webtest.childrensinstitute.net/sites/default/files/documents/COVID-19-and-student-learning-in-the-United-States_FINAL.pdf;* Andrew Bacher-Hicks et al., Inequality in Household Adaptation to Schooling Shocks: Covid-Induced Online Engagement in Real Time, J. of Public Econ. Vol. 193(C) (July 2020), *available at https://www.nber.org/papers/w27555.*

[15] *See, e.g.,* Tyler Atkinson & Alex Richter, Pandemic Disproportionately Affects Women, Minority Labor Force Participation, *https://www.dallasfed.org/research/economics/2020/1110* (last visited May 9, 2021); Jared Bernstein & Janelle Jones, The Impact of the COVID19 Recession on the Jobs and Incomes of Persons of Color, *https://www.cbpp.org/sites/default/files/atoms/files/6-2-20bud_0.pdf* (last visited May 9, 2021).

[16] American Rescue Plan Act of 2021 (ARPA), sec. 9901, Public Law 117–2, codified at 42 U.S.C. 802 *et seq.* The term "state" as used in this **SUPPLEMENTARY INFORMATION** and defined in section 602 of the Act means each of the 50 States and the District of Columbia. The term "territory" as used in this **SUPPLEMENTARY INFORMATION** and defined in section 602 of the Act means the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, the Commonwealth of Northern Mariana Islands, and American Samoa. Tribal government is defined in the Act and the interim final rule to mean "the recognized governing body of any Indian or Alaska Native tribe, band, nation, pueblo, village, community, component band, or component reservation, individually identified (including parenthetically) in the list published most recently as of the date of enactment of the [American Rescue Plan Act] pursuant to section 104 of the Federally Recognized Indian Tribe List Act of 1994 (25 U.S.C. 5131)." See section 602(g)(7) of the Social Security Act, as added by the American Rescue Plan Act. On January 29, 2021, the Bureau of Indian Affairs published a current list of 574 Tribal entities. See 86 FR 7554, January 29, 2021. The term "local governments" as used in this **SUPPLEMENTARY INFORMATION** includes metropolitan cities, counties, and nonentitlement units of local government.

[17] 42 U.S.C. 801 *et seq.*

[18] Sections 602, 603 of the Act.

[19] The CRF was established by the section 601 of the Act as added by the Coronavirus Aid, Relief, and Economic Security Act (CARES Act), Public Law 116–136, 134 Stat. 281 (2020).

last year. Recipients may also use payments from the Fiscal Recovery Funds to replace State, local, and Tribal government revenue lost due to COVID–19, helping to ensure that governments can continue to provide needed services and avoid cuts or layoffs. Finally, these resources lay the foundation for a strong, equitable economic recovery, not only by providing immediate economic stabilization for households and businesses, but also by addressing the systemic public health and economic challenges that may have contributed to more severe impacts of the pandemic among low-income communities and people of color.

Within the eligible use categories outlined in the Fiscal Recovery Funds provisions of ARPA, State, local, and Tribal governments have flexibility to determine how best to use payments from the Fiscal Recovery Funds to meet the needs of their communities and populations. The interim final rule facilitates swift and effective implementation by establishing a framework for determining the types of programs and services that are eligible under the ARPA along with examples of uses that State, local, and Tribal governments may consider. These uses build on eligible expenditures under the CRF, including some expansions in eligible uses to respond to the public health emergency, such as vaccination campaigns. They also reflect changes in the needs of communities, as evidenced by, for example, nationwide data demonstrating disproportionate impacts of the COVID–19 public health emergency on certain populations, geographies, and economic sectors. The interim final rule takes into consideration these disproportionate impacts by recognizing a broad range of eligible uses to help States, local, and Tribal governments support the families, businesses, and communities hardest hit by the COVID–19 public health emergency.

Implementation of the Fiscal Recovery Funds also reflect the importance of public input, transparency, and accountability. Treasury seeks comment on all aspects of the interim final rule and, to better facilitate public comment, has included specific questions throughout this **SUPPLEMENTARY INFORMATION.** Treasury encourages State, local, and Tribal governments in particular to provide feedback and to engage with Treasury regarding issues that may arise regarding all aspects of this interim final rule and Treasury's work in administering the Fiscal Recovery Funds. In addition, the interim final rule establishes certain regular reporting requirements, including by requiring State, local, and Tribal governments to publish information regarding uses of Fiscal Recovery Funds payments in their local jurisdiction. These reporting requirements reflect the need for transparency and accountability, while recognizing and minimizing the burden, particularly for smaller local governments. Treasury urges State, territorial, Tribal, and local governments to engage their constituents and communities in developing plans to use these payments, given the scale of funding and its potential to catalyze broader economic recovery and rebuilding.

II. Eligible Uses

A. Public Health and Economic Impacts

Sections 602(c)(1)(A) and 603(c)(1)(A) provide significant resources for State, territorial, Tribal governments, and counties, metropolitan cities, and nonentitlement units of local governments (each referred to as a recipient) to meet the wide range of public health and economic impacts of the COVID–19 public health emergency.

These provisions authorize the use of payments from the Fiscal Recovery Funds to respond to the public health emergency with respect to COVID–19 or its negative economic impacts. Section 602 and section 603 also describe several types of uses that would be responsive to the impacts of the COVID–19 public health emergency, including assistance to households, small businesses, and nonprofits and aid to impacted industries, such as tourism, travel, and hospitality.[20]

Accordingly, to assess whether a program or service is included in this category of eligible uses, a recipient should consider whether and how the use would respond to the COVID–19 public health emergency. Assessing whether a program or service "responds to" the COVID–19 public health emergency requires the recipient to, first, identify a need or negative impact of the COVID–19 public health emergency and, second, identify how the program, service, or other intervention addresses the identified need or impact. While the COVID–19 public health emergency affected many aspects of American life, eligible uses under this category must be in response to the disease itself or the harmful consequences of the economic disruptions resulting from or exacerbated by the COVID–19 public health emergency.

The interim final rule implements these provisions by identifying a non-exclusive list of programs or services that may be funded as responding to COVID–19 or the negative economic impacts of the COVID–19 public health emergency, along with considerations for evaluating other potential uses of the Fiscal Recovery Funds not explicitly listed. The interim final rule also provides flexibility for recipients to use payments from the Fiscal Recovery Funds for programs or services that are not identified on these non-exclusive lists but that fall under the terms of section 602(c)(1)(A) or 603(c)(1)(A) by responding to the COVID–19 public health emergency or its negative economic impacts. As an example, in determining whether a program or service responds to the negative economic impacts of the COVID–19 public health emergency, the interim final rule provides that payments from the Fiscal Recovery Funds should be designed to address an economic harm resulting from or exacerbated by the public health emergency. Recipients should assess the connection between the negative economic harm and the COVID–19 public health emergency, the nature and extent of that harm, and how the use of this funding would address such harm.

As discussed, the pandemic and the necessary actions taken to control the spread had a severe impact on households and small businesses, including in particular low-income workers and communities and people of color. While eligible uses under sections 602(c)(1)(A) and 603(c)(1)(A) provide flexibility to recipients to identify the most pressing local needs, Treasury encourages recipients to provide assistance to those households, businesses, and non-profits in communities most disproportionately impacted by the pandemic.

1. Responding to COVID–19

On January 21, 2020, the Centers for Disease Control and Prevention (CDC) identified the first case of novel coronavirus in the United States.[21] By late March, the virus had spread to many States and the first wave was growing rapidly, centered in the northeast.[22] This wave brought acute

[20] Sections 602(c)(1)(A), 603(c)(1)(A) of the Act.

[21] Press Release, Centers for Disease Control and Prevention, First Travel-related Case of 2019 Novel Coronavirus Detected in United States (Jan. 21, 2020), *https://www.cdc.gov/media/releases/2020/p0121-novel-coronavirus-travel-case.html.*

[22] Anne Schuchat et al., Public Health Response to the Initiation and Spread of Pandemic COVID–19 in the United States, February 24–April 21, 2021, MMWR Morb Mortal Wkly Rep 2021, 69(18):551–56 (May 8, 2021), *https://www.cdc.gov/mmwr/volumes/69/wr/mm6918e2.htm.*

strain on health care and public health systems: Hospitals and emergency medical services struggled to manage a major influx of patients; response personnel faced shortages of personal protective equipment; testing for the virus was scarce; and congregate living facilities like nursing homes and prisons saw rapid spread. State, local, and Tribal governments mobilized to support the health care system, issue public health orders to mitigate virus spread, and communicate safety measures to the public. The United States has since faced at least two additional COVID–19 waves that brought many similar challenges: The second in the summer, centered in the south and southwest, and a wave throughout the fall and winter, in which the virus reached a point of uncontrolled spread across the country and over 3,000 people died per day.[23] By early May 2021, the United States has experienced over 32 million confirmed COVID–19 cases and over 575,000 deaths.[24]

Mitigating the impact of COVID–19, including taking actions to control its spread and support hospitals and health care workers caring for the sick, continues to require a major public health response from State, local and Tribal governments. New or heightened public health needs include COVID–19 testing, major expansions in contact tracing, support for individuals in isolation or quarantine, enforcement of public health orders, new public communication efforts, public health surveillance (*e.g.,* monitoring case trends and genomic sequencing for variants), enhancement to health care capacity through alternative care facilities, and enhancement of public health data systems to meet new demands or scaling needs. State, local, and Tribal governments have also supported major efforts to prevent COVID–19 spread through safety measures at key settings like nursing homes, schools, congregate living settings, dense worksites, incarceration settings, and in other public facilities. This has included implementing infection prevention measures or making ventilation improvements in congregate settings, health care settings, or other key locations.

Other response and adaptation costs include capital investments in public facilities to meet pandemic operational needs, such as physical plant improvements to public hospitals and health clinics or adaptations to public buildings to implement COVID–19 mitigation tactics. In recent months, State, local, and Tribal governments across the country have mobilized to support the national vaccination campaign, resulting in over 250 million doses administered to date.[25]

The need for public health measures to respond to COVID–19 will continue in the months and potentially years to come. This includes the continuation of the vaccination campaign for the general public and, if vaccinations are approved for children in the future, eventually for youths. This also includes monitoring the spread of COVID–19 variants, understanding the impact of these variants (especially on vaccination efforts), developing approaches to respond to those variants, and monitoring global COVID–19 trends to understand continued risks to the United States. Finally, the long-term health impacts of COVID–19 will continue to require a public health response, including medical services for individuals with "long COVID," and research to understand how COVID–19 impacts future health needs and raises risks for the millions of Americans who have been infected.

Other areas of public health have also been negatively impacted by the COVID–19 pandemic. For example, in one survey in January 2021, over 40 percent of American adults reported symptoms of depression or anxiety, up from 11 percent in the first half of 2019.[26] The proportion of children's emergency department visits related to mental health has also risen noticeably.[27] Similarly, rates of substance misuse and overdose deaths have spiked: Preliminary data from the CDC show a nearly 30 percent increase in drug overdose mortality from September 2019 to September 2020.[28] Stay-at-home orders and other pandemic responses may have also reduced the ability of individuals affected by domestic violence to access services.[29] Finally, some preventative public health measures like childhood vaccinations have been deferred and potentially forgone.[30]

While the pandemic affected communities across the country, it disproportionately impacted some demographic groups and exacerbated health inequities along racial, ethnic, and socioeconomic lines.[31] The CDC has found that racial and ethnic minorities are at increased risk for infection, hospitalization, and death from COVID–19, with Hispanic or Latino and Native American or Alaska Native patients at highest risk.[32]

Similarly, low-income and socially vulnerable communities have seen the most severe health impacts. For example, counties with high poverty rates also have the highest rates of infections and deaths, with 223 deaths per 100,000 compared to the U.S. average of 175 deaths per 100,000, as of May 2021.[33] Counties with high social vulnerability, as measured by factors such as poverty and educational attainment, have also fared more poorly than the national average, with 211 deaths per 100,000 as of May 2021.[34]

[23] Centers for Disease Control and Prevention, COVID Data Tracker: Trends in Number of COVID–19 Cases and Deaths in the US Reported to CDC, by State/Territory, *https://covid.cdc.gov/covid-data-tracker/#trends_dailytrendscases* (last visited May 8, 2021).

[24] *Id.*

[25] Centers for Disease Control and Prevention, COVID Data Tracker: COVID–19 Vaccinations in the United States, *https://covid.cdc.gov/covid-data-tracker/#vaccinations* (last visited May 8, 2021).

[26] Panchal, *supra* note 4; Mark É. Czeisler et al., Mental Health, Substance Abuse, and Suicidal Ideation During COVID–19 Pandemic– United States, June 24–30 2020, Morb. Mortal. Wkly. Rep. 69(32):1049–57 (Aug. 14, 2020), *https://www.cdc.gov/mmwr/volumes/69/wr/mm6932a1.htm.*

[27] Leeb, *supra* note 4.

[28] Centers for Disease Prevention and Control, National Center for Health Statistics, Provisional Drug Overdose Death Counts, *https://www.cdc.gov/nchs/nvss/vsrr/drug-overdose-data.htm* (last visited May 8, 2021).

[29] Megan L. Evans, et al., A Pandemic within a Pandemic—Intimate Partner Violence during Covid–19, N. Engl. J. Med. 383:2302–04 (Dec. 10, 2020), *available at https://www.nejm.org/doi/full/10.1056/NEJMp2024046.*

[30] Jeanne M. Santoli et al., Effects of the COVID–19 Pandemic on Routine Pediatric Vaccine Ordering and Administration—United States, Morb. Mortal. Wkly. Rep. 69(19):591–93 (May 8, 2020), *https://www.cdc.gov/mmwr/volumes/69/wr/mm6919e2.htm;* Marisa Langdon-Embry et al., Notes from the Field: Rebound in Routine Childhood Vaccine Administration Following Decline During the COVID–19 Pandemic—New York City, March 1–June 27, 2020, Morb. Mortal. Wkly. Rep. 69(30):999–1001 (Jul. 31 2020), *https://www.cdc.gov/mmwr/volumes/69/wr/mm6930a3.htm.*

[31] Office of the White House, National Strategy for the COVID–19 Response and Pandemic Preparedness (Jan. 21, 2021), *https://www.whitehouse.gov/wp-content/uploads/2021/01/National-Strategy-for-the-COVID-19-Response-and-Pandemic-Preparedness.pdf.*

[32] In a study of 13 states from October to December 2020, the CDC found that Hispanic or Latino and Native American or Alaska Native individuals were 1.7 times more likely to visit an emergency room for COVID–19 than White individuals, and Black individuals were 1.4 times more likely to do so than White individuals. *See* Romano, *supra* note 10.

[33] Centers for Disease Control and Prevention, COVID Data Tracker: Trends in COVID–19 Cases and Deaths in the United States, by County-level Population Factors, *https://covid.cdc.gov/covid-data-tracker/#pop-factors_totaldeaths* (last visited May 8, 2021).

[34] The CDC's Social Vulnerability Index includes fifteen variables measuring social vulnerability, including unemployment, poverty, education levels, single-parent households, disability status, non-English speaking households, crowded housing, and transportation access.

Centers for Disease Control and Prevention, COVID Data Tracker: Trends in COVID–19 Cases

Continued

Over the last year, Native Americans have experienced more than one and a half times the rate of COVID–19 infections, more than triple the rate of hospitalizations, and more than double the death rate compared to White Americans.[35] Low-income and minority communities also exhibit higher rates of pre-existing conditions that may contribute to an increased risk of COVID–19 mortality.[36]

In addition, individuals living in low-income communities may have had more limited ability to socially distance or to self-isolate when ill, resulting in faster spread of the virus, and were over-represented among essential workers, who faced greater risk of exposure.[37] Social distancing measures in response to the pandemic may have also exacerbated pre-existing public health challenges. For example, for children living in homes with lead paint, spending substantially more time at home raises the risk of developing elevated blood lead levels, while screenings for elevated blood lead levels declined during the pandemic.[38] The combination of these underlying social and health vulnerabilities may have contributed to more severe public health outcomes of the pandemic within these communities, resulting in an exacerbation of pre-existing disparities in health outcomes.[39]

Eligible Public Health Uses. The Fiscal Recovery Funds provide resources to meet and address these emergent public health needs, including through measures to counter the spread of COVID–19, through the provision of care for those impacted by the virus, and through programs or services that address disparities in public health that have been exacerbated by the pandemic. To facilitate implementation and use of payments from the Fiscal Recovery Funds, the interim final rule identifies a non-exclusive list of eligible uses of funding to respond to the COVID–19 public health emergency. Eligible uses listed under this section build and expand upon permissible expenditures under the CRF, while recognizing the differences between the ARPA and CARES Act, and recognizing that the response to the COVID–19 public health emergency has changed and will continue to change over time. To assess whether additional uses would be eligible under this category, recipients should identify an effect of COVID–19 on public health, including either or both of immediate effects or effects that may manifest over months or years, and assess how the use would respond to or address the identified need.

The interim final rule identifies a non-exclusive list of uses that address the effects of the COVID–19 public health emergency, including:

- *COVID–19 Mitigation and Prevention.* A broad range of services and programming are needed to contain COVID–19. Mitigation and prevention efforts for COVID–19 include vaccination programs; medical care; testing; contact tracing; support for isolation or quarantine; supports for vulnerable populations to access medical or public health services; public health surveillance (*e.g.*, monitoring case trends, genomic sequencing for variants); enforcement of public health orders; public communication efforts; enhancement to health care capacity, including through alternative care facilities; purchases of personal protective equipment; support for prevention, mitigation, or other services in congregate living facilities (*e.g.*, nursing homes, incarceration settings, homeless shelters, group living facilities) and other key settings like schools;[40] ventilation improvements in congregate settings, health care settings, or other key locations; enhancement of public health data systems; and other public health responses.[41] They also include capital investments in public facilities to meet pandemic operational needs, such as physical plant improvements to public hospitals and health clinics or adaptations to public buildings to implement COVID–19 mitigation tactics. These COVID–19 prevention and mitigation programs and services, among others, were eligible expenditures under the CRF and are eligible uses under this category of eligible uses for the Fiscal Recovery Funds.[42]
- *Medical Expenses.* The COVID–19 public health emergency continues to have devastating effects on public health; the United States continues to average hundreds of deaths per day and the spread of new COVID–19 variants has raised new risks and genomic surveillance needs.[43] Moreover, our understanding of the potentially serious and long-term effects of the virus is growing, including the potential for symptoms like shortness of breath to continue for weeks or months, for multi-organ impacts from COVID–19, or for post-intensive care syndrome.[44] State and local governments may need to continue to provide care and services to address these near- and longer-term needs.[45]

and Deaths in the United States, by Social Vulnerability Index, *https://covid.cdc.gov/covid-data-tracker/#pop-factors_totaldeaths* (last visited May 8, 2021).

[35] Centers for Disease Control and Prevention, Risk for COVID–19 Infection, Hospitalization, and Death By Race/Ethnicity, *https://www.cdc.gov/coronavirus/2019-ncov/covid-data/investigations-discovery/hospitalization-death-by-race-ethnicity.html* (last visited Apr. 26, 2021).

[36] *See, e.g.*, Centers for Disease Control and Prevention, Risk of Severe Illness or Death from COVID–19 (Dec. 10, 2020), *https://www.cdc.gov/coronavirus/2019-ncov/community/health-equity/racial-ethnic-disparities/disparities-illness.html* (last visited Apr. 26, 2021).

[37] Milena Almagro et al., Racial Disparities in Frontline Workers and Housing Crowding During COVID–19: Evidence from Geolocation Data (Sept. 22, 2020), NYU Stern School of Business (forthcoming), *available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3695249;* Grace McCormack et al., Economic Vulnerability of Households with Essential Workers, JAMA 324(4):388–90 (2020), *available at https://jamanetwork.com/journals/jama/fullarticle/2767630.*

[38] *See, e.g.*, Joseph G. Courtney et al., Decreases in Young Children Who Received Blood Lead Level Testing During COVID–19—34 Jurisdictions, January–May 2020, Morb. Mort. Wkly. Rep. 70(5):155–61 (Feb. 5, 2021), *https://www.cdc.gov/mmwr/volumes/70/wr/mm7005a2.htm;* Emily A. Benfer & Lindsay F. Wiley, Health Justice Strategies to Combat COVID–19: Protecting Vulnerable Communities During a Pandemic, Health Affairs Blog (Mar. 19, 2020), *https://www.healthaffairs.org/do/10.1377/hblog20200319.757883/full/.*

[39] *See, e.g.*, Centers for Disease Control and Prevention, *supra* note 34; Benfer & Wiley, *supra* note 38; Nathaniel M. Lewis et al., Disparities in COVID–19 Incidence, Hospitalizations, and Testing, by Area-Level Deprivation—Utah, March 3–July 9, 2020, Morb. Mortal. Wkly. Rep. 69(38):1369–73 (Sept. 25, 2020), *https://www.cdc.gov/mmwr/volumes/69/wr/mm6938a4.htm.*

[40] This includes implementing mitigation strategies consistent with the Centers for Disease Control and Prevention's (CDC) Operational Strategy for K–12 Schools through Phased Prevention, *available at https://www.cdc.gov/coronavirus/2019-ncov/community/schools-childcare/operation-strategy.html.*

[41] Many of these expenses were also eligible in the CRF. Generally, funding uses eligible under CRF as a response to the direct public health impacts of COVID–19 will continue to be eligible under the ARPA, including those not explicitly listed here (*e.g.*, telemedicine costs, costs to facilitate compliance with public health orders, disinfection of public areas, facilitating distance learning, increased solid waste disposal needs related to PPE, paid sick and paid family and medical leave to public employees to enable compliance with COVID–19 public health precautions), with the following two exceptions: (1) The standard for eligibility of public health and safety payrolls has been updated (see section II.A of this **SUPPLEMENTARY INFORMATION**) and (2) expenses related to the issuance of tax-anticipation notes are no longer an eligible funding use (see discussion of debt service in section II.B of this **SUPPLEMENTARY INFORMATION**).

[42] Coronavirus Relief Fund for States, Tribal Governments, and Certain Eligible Local Governments, 86 FR 4182 (Jan. 15, 2021), *available at https://home.treasury.gov/system/files/136/CRF-Guidance-Federal-Register_2021-00827.pdf.*

[43] Centers for Disease Control and Prevention, *supra* note 24.

[44] Centers for Disease Control and Prevention, Long-Term Effects (Apr. 8, 2021), *https://www.cdc.gov/coronavirus/2019-ncov/long-term-effects.html* (last visited Apr. 26, 2021).

[45] Pursuant to 42 CFR 433.51 and 45 CFR 75.306, Fiscal Recovery Funds may not serve as a State or locality's contribution of certain Federal funds.

• *Behavioral Health Care.* In addition, new or enhanced State, local, and Tribal government services may be needed to meet behavioral health needs exacerbated by the pandemic and respond to other public health impacts. These services include mental health treatment, substance misuse treatment, other behavioral health services, hotlines or warmlines, crisis intervention, overdose prevention, infectious disease prevention, and services or outreach to promote access to physical or behavioral health primary care and preventative medicine.

• *Public Health and Safety Staff.* Treasury recognizes that responding to the public health and negative economic impacts of the pandemic, including administering the services described above, requires a substantial commitment of State, local, and Tribal government human resources. As a result, the Fiscal Recovery Funds may be used for payroll and covered benefits expenses for public safety, public health, health care, human services, and similar employees, to the extent that their services are devoted to mitigating or responding to the COVID–19 public health emergency.[46] Accordingly, the Fiscal Recovery Funds may be used to support the payroll and covered benefits for the portion of the employee's time that is dedicated to responding to the COVID–19 public health emergency. For administrative convenience, the recipient may consider public health and safety employees to be entirely devoted to mitigating or responding to the COVID–19 public health emergency, and therefore fully covered, if the employee, or his or her operating unit or division, is primarily dedicated to responding to the COVID–19 public health emergency. Recipients may consider other presumptions for assessing the extent to which an employee, division, or operating unit is engaged in activities that respond to the COVID–19 public health emergency, provided that the recipient reassesses periodically and maintains records to support its assessment, such as payroll records, attestations from supervisors or staff, or regular work product or correspondence demonstrating work on the COVID–19 response. Recipients need not routinely track staff hours.

• *Expenses to Improve the Design and Execution of Health and Public Health Programs.* State, local, and Tribal governments may use payments from the Fiscal Recovery Funds to engage in planning and analysis in order to improve programs addressing the COVID–19 pandemic, including through use of targeted consumer outreach, improvements to data or technology infrastructure, impact evaluations, and data analysis.

Eligible Uses to Address Disparities in Public Health Outcomes. In addition, in recognition of the disproportionate impacts of the COVID–19 pandemic on health outcomes in low-income and Native American communities and the importance of mitigating these effects, the interim final rule identifies a broader range of services and programs that will be presumed to be responding to the public health emergency when provided in these communities. Specifically, Treasury will presume that certain types of services, outlined below, are eligible uses when provided in a Qualified Census Tract (QCT),[47] to families living in QCTs, or when these services are provided by Tribal governments.[48] Recipients may also provide these services to other populations, households, or geographic areas that are disproportionately impacted by the pandemic. In identifying these disproportionately-impacted communities, recipients should be able to support their determination that the pandemic resulted in disproportionate public health or economic outcomes to the specific populations, households, or geographic areas to be served.

Given the exacerbation of health disparities during the pandemic and the role of pre-existing social vulnerabilities in driving these disparate outcomes, services to address health disparities are presumed to be responsive to the public health impacts of the pandemic. Specifically, recipients may use payments from the Fiscal Recovery Funds to facilitate access to resources that improve health outcomes, including services that connect residents with health care resources and public assistance programs and build healthier environments, such as:

• Funding community health workers to help community members access health services and services to address the social determinants of health;[49]

• Funding public benefits navigators to assist community members with navigating and applying for available Federal, State, and local public benefits or services;

• Housing services to support healthy living environments and neighborhoods conducive to mental and physical wellness;

• Remediation of lead paint or other lead hazards to reduce risk of elevated blood lead levels among children; and

• Evidence-based community violence intervention programs to prevent violence and mitigate the increase in violence during the pandemic.[50]

2. Responding to Negative Economic Impacts

Impacts on Households and Individuals. The public health emergency, including the necessary measures taken to protect public health, resulted in significant economic and financial hardship for many Americans. As businesses closed, consumers stayed home, schools shifted to remote

[46] In general, if an employee's wages and salaries are an eligible use of Fiscal Recovery Funds, recipients may treat the employee's covered benefits as an eligible use of Fiscal Recovery Funds. For purposes of the Fiscal Recovery Funds, covered benefits include costs of all types of leave (vacation, family-related, sick, military, bereavement, sabbatical, jury duty), employee insurance (health, life, dental, vision), retirement (pensions, 401(k)), unemployment benefit plans (Federal and state), workers compensation insurance, and Federal Insurance Contributions Act (FICA) taxes (which includes Social Security and Medicare taxes).

[47] Qualified Census Tracts are a common, readily-accessible, and geographically granular method of identifying communities with a large proportion of low-income residents. Using an existing measure may speed implementation and decrease administrative burden, while identifying areas of need at a highly-localized level.

While QCTs are an effective tool generally, many tribal communities have households with a wide range of income levels due in part to non-tribal member, high income residents living in the community. Mixed income communities, with a significant share of tribal members at the lowest levels of income, are often not included as eligible QCTs yet tribal residents are experiencing disproportionate impacts due to the pandemic. Therefore, including all services provided by Tribal governments is a more effective means of ensuring that disproportionately impacted Tribal members can receive services.

[48] U.S. Department of Housing and Urban Development (HUD), Qualified Census Tracts and Difficult Development Areas, *https://www.huduser.gov/portal/datasets/qct.html* (last visited Apr. 26, 2021); U.S. Department of the Interior, Bureau of Indian Affairs, Indian Lands of Federally Recognized Tribes of the United States (June 2016), *https://www.bia.gov/sites/bia.gov/files/assets/bia/ots/webteam/pdf/idc1-028635.pdf* (last visited Apr. 26, 2021).

[49] The social determinants of health are the social and environmental conditions that affect health outcomes, specifically economic stability, health care access, social context, neighborhoods and built environment, and education access. *See, e.g.,* U.S. Department of Health and Human Services, Office of Disease Prevention and Health Promotion, Healthy People 2030: Social Determinants of Health, *https://health.gov/healthypeople/objectives-and-data/social-determinants-health* (last visited Apr. 26, 2021).

[50] National Commission on COVID–19 and Criminal Justice, Impact Report: COVID–19 and Crime (Jan. 31, 2021), *https://covid19.councilonci.org/2021/01/31/impact-report-covid-19-and-crime-3/* (showing a spike in homicide and assaults); Brad Boesrup et al., Alarming Trends in US domestic violence during the COVID–19 pandemic, Am. J. of Emerg. Med. 38(12): 2753–55 (Dec. 1, 2020), *available at https://www.ajemjournal.com/article/S0735-6757(20)30307-7/fulltext* (showing a spike in domestic violence).

education, and travel declined precipitously, over 20 million jobs were lost in March and April 2020.[51] Although many have returned to work, as of April 2021, the economy remains 8.2 million jobs below its pre-pandemic peak,[52] and more than 3 million workers have dropped out of the labor market altogether relative to February 2020.[53]

Rates of unemployment are particularly severe among workers of color and workers with lower levels of educational attainment; for example, the overall unemployment rate in the United States was 6.1 percent in April 2021, but certain groups saw much higher rates: 9.7 percent for Black workers, 7.9 percent for Hispanic or Latino workers, and 9.3 percent for workers without a high school diploma.[54] Job losses have also been particularly steep among low wage workers, with these workers remaining furthest from recovery as of the end of 2020.[55] A severe recession—and its concentrated impact among low-income workers—has amplified food and housing insecurity, with an estimated nearly 17 million adults living in households where there is sometimes or often not enough food to eat and an estimated 10.7 million adults living in households that were not current on rent.[56] Over the course of the pandemic, inequities also manifested along gender lines, as schools closed to in-person activities, leaving many working families without child care during the day.[57] Women of color have been hit especially hard: The labor force participation rate for Black women has fallen by 3.2 percentage points [58] during the pandemic as compared to 1.0 percentage points for Black men [59] and 2.0 percentage points for White women.[60]

As the economy recovers, the effects of the pandemic-related recession may continue to impact households, including a risk of longer-term effects on earnings and economic potential. For example, unemployed workers, especially those who have experienced longer periods of unemployment, earn lower wages over the long term once rehired.[61] In addition to the labor market consequences for unemployed workers, recessions can also cause longer-term economic challenges through, among other factors, damaged consumer credit scores [62] and reduced familial and childhood wellbeing.[63] These potential long-term economic consequences underscore the continued need for robust policy support.

Impacts on Businesses. The pandemic has also severely impacted many businesses, with small businesses hit especially hard. Small businesses make up nearly half of U.S. private-sector employment [64] and play a key role in supporting the overall economic recovery as they are responsible for two-thirds of net new jobs.[65] Since the beginning of the pandemic, however, 400,000 small businesses have closed, with many more at risk.[66] Sectors with a large share of small business employment have been among those with the most drastic drops in employment.[67] The negative outlook for small businesses has continued: As of April 2021, approximately 70 percent of small businesses reported that the pandemic has had a moderate or large negative effect on their business, and over a third expect that it will take over 6 months for their business to return to their normal level of operations.[68]

This negative outlook is likely the result of many small businesses having faced periods of closure and having seen declining revenues as customers stayed home.[69] In general, small businesses can face greater hurdles in accessing credit,[70] and many small businesses were already financially fragile at the outset of the pandemic.[71] Non-profits, which provide vital services to communities, have similarly faced

[51] U.S. Bureau of Labor Statistics, All Employees, Total Nonfarm (PAYEMS), retrieved from FRED, Federal Reserve Bank of St. Louis; *https://fred.stlouisfed.org/series/PAYEMS* (last visited May 8, 2021).

[52] *Id.*

[53] U.S. Bureau of Labor Statistics, Civilian Labor Force Level [CLF16OV], retrieved from FRED, Federal Reserve Bank of St. Louis, *https://fred.stlouisfed.org/series/CLF16OV* (last visited May 8, 2021).

[54] U.S. Bureau of Labor Statistics, Labor Force Statistics from the Current Population Survey: Employment status of the civilian population by sex and age (May 8 2021), *https://www.bls.gov/news.release/empsit.t01.htm* (last visited May 8, 2021); U.S. Bureau of Labor Statistics, Labor Force Statistics from the Current Population Survey: Employment status of the civilian noninstitutional population by race, Hispanic or Latino ethnicity, sex, and age (May 8, 2021), *https://www.bls.gov/web/empsit/cpseea04.htm* (last visited May 8, 2021); U.S. Bureau of Labor Statistics, Labor Force Statistics from the Current Population Survey: Employment status of the civilian noninstitutional population 25 years and over by educational attainment (May 8, 2021), *https://www.bls.gov/web/empsit/cpseea05.htm* (last visited May 8, 2021).

[55] Elise Gould & Jori Kandra, Wages grew in 2020 because the bottom fell out of the low-wage labor market, Economic Policy Institute (Feb. 24, 2021), *https://files.epi.org/pdf/219418.pdf. See also,* Michael Dalton et al., The K-Shaped Recovery: Examining the Diverging Fortunes of Workers in the Recovery from the COVID–19 Pandemic using Business and Household Survey Microdata, U.S. Bureau of Labor Statistics Working Paper Series (Feb. 2021), *https://www.bls.gov/osmr/research-papers/2021/pdf/ec210020.pdf.*

[56] Center on Budget and Policy Priorities, Tracking the COVID–19 Recession's Effects on Food, Housing, and Employment Hardships, *https://www.cbpp.org/research/poverty-and-inequality/tracking-the-covid-19-recessions-effects-on-food-housing-and* (last visited May 8, 2021).

[57] Women have carried a larger share of childcare responsibilities than men during the COVID–19 crisis. *See, e.g.,* Gema Zamarro & María J. Prados, Gender differences in couples' division of childcare, work and mental health during COVID–19, Rev. Econ. Household 19:11–40 (2021), *available at https://link.springer.com/article/10.1007/s11150-020-09534-7;* Titan Alon et al., The Impact of COVID–19 on Gender Equality, National Bureau of Economic Research Working Paper 26947 (April 2020), *available at https://www.nber.org/papers/w26947.*

[58] U.S. Bureau of Labor Statistics, Labor Force Participation Rate—20 Yrs. & Over, Black or African American Women [LNS11300032], retrieved from FRED, Federal Reserve Bank of St. Louis; *https://fred.stlouisfed.org/series/LNS11300032* (last visited May 8, 2021).

[59] U.S. Bureau of Labor Statistics, Labor Force Participation Rate—20 Yrs. & Over, Black or African American Men [LNS11300031], retrieved from FRED, Federal Reserve Bank of St. Louis; *https://fred.stlouisfed.org/series/LNS11300031* (last visited May 8, 2021).

[60] U.S. Bureau of Labor Statistics, Labor Force Participation Rate—20 Yrs. & Over, White Women [LNS11300029], retrieved from FRED, Federal Reserve Bank of St. Louis; *https://fred.stlouisfed.org/series/LNS11300029* (last visited May 8, 2021).

[61] *See, e.g.,* Michael Greenstone & Adam Looney, Unemployment and Earnings Losses: A Look at Long-Term Impacts of the Great Recession on American Workers, Brookings Institution (Nov. 4, 2021), *https://www.brookings.edu/blog/jobs/2011/11/04/unemployment-and-earnings-losses-a-look-at-long-term-impacts-of-the-great-recession-on-american-workers/.*

[62] Chi Chi Wu, Solving the Credit Conundrum: Helping Consumers' Credit Records Impaired by the Foreclosure Crisis and Great Recession (Dec. 2013), *https://www.nclc.org/images/pdf/credit_reports/report-credit-conundrum-2013.pdf.*

[63] Irwin Garfinkel, Sara McLanahan, Christopher Wimer, eds., Children of the Great Recession, Russell Sage Foundation (Aug. 2016), *available at https://www.russellsage.org/publications/children-great-recession.*

[64] Board of Governors of the Federal Reserve System, *supra* note 5.

[65] U.S. Small Business Administration, Office of Advocacy, Small Businesses Generate 44 Percent of U.S. Economic Activity (Jan. 30, 2019), *https://advocacy.sba.gov/2019/01/30/small-businesses-generate-44-percent-of-u-s-economic-activity/.*

[66] Biden, *supra* note 6.

[67] Daniel Wilmoth, U.S. Small Business Administration Office of Advocacy, The Effects of the COVID–19 Pandemic on Small Businesses, Issue Brief No. 16 (Mar. 2021), *available at https://cdn.advocacy.sba.gov/wp-content/uploads/2021/03/02112318/COVID-19-Impact-On-Small-Business.pdf.*

[68] U.S. Census Bureau, Small Business Pulse Survey, *https://portal.census.gov/pulse/data/* (last visited May 8, 2021).

[69] Olivia S. Kim et al., Revenue Collapses and the Consumption of Small Business Owners in the Early Stages of the COVID–19 Pandemic (Nov. 2020), *https://www.nber.org/papers/w28151.*

[70] *See e.g.,* Board of Governors of the Federal Reserve System, Report to Congress on the Availability of Credit to Small Businesses (Sept. 2017), *available at https://www.federalreserve.gov/publications/2017-september-availability-of-credit-to-small-businesses.htm.*

[71] Alexander W. Bartik et al., The Impact of COVID–19 on small business outcomes and expectations, PNAS 117(30): 17656–66 (July 28, 2020), *available at https://www.pnas.org/content/117/30/17656.*

economic and financial challenges due to the pandemic.[72]

Impacts to State, Local, and Tribal Governments. State, local, and Tribal governments have felt substantial fiscal pressures. As noted above, State, local, and Tribal governments have faced significant revenue shortfalls and remain over 1 million jobs below their pre-pandemic staffing levels.[73] These reductions in staffing may undermine the ability to deliver services effectively, as well as add to the number of unemployed individuals in their jurisdictions.

Exacerbation of Pre-existing Disparities. The COVID–19 public health emergency may have lasting negative effects on economic outcomes, particularly in exacerbating disparities that existed prior to the pandemic.

The negative economic impacts of the COVID–19 pandemic are particularly pronounced in certain communities and families. Low- and moderate-income jobs make up a substantial portion of both total pandemic job losses,[74] and jobs that require in-person frontline work, which are exposed to greater risk of contracting COVID–19.[75] Both factors compound pre-existing vulnerabilities and the likelihood of food, housing, or other financial insecurity in low- and moderate-income families and, given the concentration of low- and moderate-income families within certain communities,[76] raise a substantial risk that the effects of the COVID–19 public health emergency will be amplified within these communities.

These compounding effect of recessions on concentrated poverty and the long-lasting nature of this effect were observed after the 2007–2009 recession, including a large increase in concentrated poverty with the number of people living in extremely poor neighborhoods more than doubling by 2010–2014 relative to 2000.[77] Concentrated poverty has a range of deleterious impacts, including additional burdens on families and reduced economic potential and social cohesion.[78] Given the disproportionate impact of COVID–19 on low-income households discussed above, there is a risk that the current pandemic-induced recession could further increase concentrated poverty and cause long-term damage to economic prospects in neighborhoods of concentrated poverty.

The negative economic impacts of COVID–19 also include significant impacts to children in disproportionately affected families and include impacts to education, health, and welfare, all of which contribute to long-term economic outcomes.[79] Many low-income and minority students, who were disproportionately served by remote or hybrid education during the pandemic, lacked the resources to participate fully in remote schooling or live in households without adults available throughout the day to assist with online coursework.[80] Given these trends, the pandemic may widen educational disparities and worsen outcomes for low-income students,[81] an effect that would substantially impact their long-term economic outcomes. Increased economic strain or material hardship due to the pandemic could also have a long-term impact on health, educational, and economic outcomes of young children.[82] Evidence suggests that adverse conditions in early childhood, including exposure to poverty, food insecurity, housing insecurity, or other economic hardships, are particularly impactful.[83]

The pandemic's disproportionate economic impacts are also seen in Tribal communities across the country—for Tribal governments as well as families and businesses on and off Tribal lands. In the early months of the pandemic, Native American unemployment spiked to 26 percent and, while partially recovered, remains at nearly 11 percent.[84] Tribal enterprises are a significant source of revenue for Tribal governments to support the provision of government services. These enterprises, notably concentrated in gaming, tourism, and hospitality, frequently closed, significantly reducing both revenues to Tribal governments and employment. As a result, Tribal governments have reduced essential services to their citizens and communities.[85]

Eligible Uses. Sections 602(c)(1)(A) and 603(c)(1)(A) permit use of payments from the Fiscal Recovery Funds to respond to the negative economic impacts of the COVID–19 public health emergency. Eligible uses that respond to the negative economic impacts of the public health emergency must be designed to address an economic harm resulting from or exacerbated by the public health emergency. In considering whether a program or service would be

[72] Federal Reserve Bank of San Francisco, Impacts of COVID–19 on Nonprofits in the Western United States (May 2020), *https://www.frbsf.org/community-development/files/impact-of-covid-nonprofits-serving-western-united-states.pdf.*

[73] Bureau of Labor Statistics, *supra* note 8; Elijah Moreno & Heather Sobrepena, Tribal entities remain resilient as COVID–19 batters their finances, Federal Reserve Bank of Minneapolis (Nov. 10, 2021), *https://www.minneapolisfed.org/article/2020/tribal-entities-remain-resilient-as-covid-19-batters-their-finances.*

[74] Kim Parker et al., Economic Fallout from COVID–19 Continues to Hit Lower-Income Americans the Hardest, Pew Research Center (Sept. 24, 2020), *https://www.pewresearch.org/social-trends/2020/09/24/economic-fallout-from-covid-19-continues-to-hit-lower-income-americans-the-hardest/;* Gould, *supra* note 55.

[75] *See infra* Section II.B of this Supplementary Information.

[76] Elizabeth Kneebone, The Changing geography of US poverty, Brookings Institution (Feb. 15, 2017), *https://www.brookings.edu/testimonies/the-changing-geography-of-us-poverty/.*

[77] Elizabeth Kneebone & Natalie Holmes, U.S. concentrated poverty in the wake of the Great Recession, Brookings Institution (Mar. 31, 2016), *https://www.brookings.edu/research/u-s-concentrated-poverty-in-the-wake-of-the-great-recession/.*

[78] David Erickson et al., The Enduring Challenge of Concentrated Poverty in America: Case Studies from Communities Across the U.S. (2008), *available at https://www.frbsf.org/community-development/files/cp_fullreport.pdf.*

[79] Educational quality, as early as Kindergarten, has a long-term impact on children's public health and economic outcomes. *See, e.g.,* Tyler W. Watts et al., The Chicago School Readiness Project: Examining the long-term impacts of an early childhood intervention, PLoS ONE 13(7) (2018), *available at https://journals.plos.org/plosone/article?id=10.1371/journal.pone.0200144;* Opportunity Insights, How Can We Amplify Education as an Engine of Mobility? Using big data to help children get the most from school, *https://opportunityinsights.org/education/* (last visited Apr. 26, 2021); U.S. Department of Health and Human Services (HHS), Office of Disease Prevention and Health Promotion, Early Childhood Development and Education, *https://www.healthypeople.gov/2020/topics-objectives/topic/social-determinants-health/interventions-resources/early-childhood-development-and-education* (last visited Apr. 26, 2021).

[80] *See, e.g.,* Bacher-Hicks, *supra* note 14.

[81] A Department of Education survey found that, as of February 2021, 42 percent of fourth grade students nationwide were offered only remote education, compared to 48 percent of economically disadvantaged students, 54 percent of Black students and 57 percent of Hispanic students. Large districts often disproportionately serve low-income students. *See* Institute of Education Sciences, Monthly School Survey Dashboard, *https://ies.ed.gov/schoolsurvey/* (last visited Apr. 26, 2021). In summer 2020, a review found that 74 percent of the largest 100 districts chose remote learning only. *See* Education Week, School Districts' Reopening Plans: A Snapshot (Jul. 15, 2020), *https://www.edweek.org/leadership/school-districts-reopening-plans-a-snapshot/2020/07* (last visited May 4, 2021).

[82] HHS, *supra* note 79.

[83] Hirokazu Yoshikawa, Effects of the Global Coronavirus Disease—2019 Pandemic on Early Childhood Development: Short- and Long-Term Risks and Mitigating Program and Policy Actions, J. of Pediatrics Vol. 223:188–93 (Aug. 1, 2020), *available at https://www.jpeds.com/article/S0022-3476(20)30606-5/abstract.*

[84] Based on calculations conducted by the Minneapolis Fed's Center for Indian Country Development using Flood et al. (2020)'s Current Population Survey." Sarah Flood, Miriam King, Renae Rodgers, Steven Ruggles and J. Robert Warren. Integrated Public Use Microdata Series, Current Population Survey: Version 8.0 [dataset]. Minneapolis, MN: IPUMS, 2020. *https://doi.org/10.18128/D030.V8.0; see also* Donna Feir & Charles Golding, Native Employment During COVID–19: Hard hit in April but Starting to Rebound? (Aug. 5, 2020), *https://www.minneapolisfed.org/article/2020/native-employment-during-covid-19-hit-hard-in-april-but-starting-to-rebound.*

[85] Moreno & Sobrepena, *supra* note 73.

eligible under this category, the recipient should assess whether, and the extent to which, there has been an economic harm, such as loss of earnings or revenue, that resulted from the COVID–19 public health emergency and whether, and the extent to which, the use would respond or address this harm.[86] A recipient should first consider whether an economic harm exists and whether this harm was caused or made worse by the COVID–19 public health emergency. While economic impacts may either be immediate or delayed, assistance or aid to individuals or businesses that did not experience a negative economic impact from the public health emergency would not be an eligible use under this category.

In addition, the eligible use must "respond to" the identified negative economic impact. Responses must be related and reasonably proportional to the extent and type of harm experienced; uses that bear no relation or are grossly disproportionate to the type or extent of harm experienced would not be eligible uses. Where there has been a negative economic impact resulting from the public health emergency, States, local, and Tribal governments have broad latitude to choose whether and how to use the Fiscal Recovery Funds to respond to and address the negative economic impact. Sections 602(c)(1)(A) and 603(c)(1)(A) describe several types of uses that would be eligible under this category, including assistance to households, small businesses, and nonprofits and aid to impacted industries such as tourism, travel, and hospitality.

To facilitate implementation and use of payments from the Fiscal Recovery Funds, the interim final rule identifies a non-exclusive list of eligible uses of funding that respond to the negative economic impacts of the public health emergency. Consistent with the discussion above, the eligible uses listed below would respond directly to the economic or financial harms resulting from and or exacerbated by the public health emergency.

- *Assistance to Unemployed Workers.* This includes assistance to unemployed workers, including services like job training to accelerate rehiring of unemployed workers; these services may extend to workers unemployed due to the pandemic or the resulting recession, or who were already unemployed when the pandemic began and remain so due to the negative economic impacts of the pandemic.
- *State Unemployment Insurance Trust Funds.* Consistent with the approach taken in the CRF, recipients may make deposits into the state account of the Unemployment Trust Fund established under section 904 of the Social Security Act (42 U.S.C. 1104) up to the level needed to restore the pre-pandemic balances of such account as of January 27, 2020 or to pay back advances received under Title XII of the Social Security Act (42 U.S.C. 1321) for the payment of benefits between January 27, 2020 and May 17, 2021, given the close nexus between Unemployment Trust Fund costs, solvency of Unemployment Trust Fund systems, and pandemic economic impacts. Further, Unemployment Trust Fund deposits can decrease fiscal strain on Unemployment Insurance systems impacted by the pandemic. States facing a sharp increase in Unemployment Insurance claims during the pandemic may have drawn down positive Unemployment Trust Fund balances and, after exhausting the balance, required advances to fund continuing obligations to claimants. Because both of these impacts were driven directly by the need for assistance to unemployed workers during the pandemic, replenishing Unemployment Trust Funds up to the pre-pandemic level responds to the pandemic's negative economic impacts on unemployed workers.
- *Assistance to Households.* Assistance to households or populations facing negative economic impacts due to COVID–19 is also an eligible use. This includes: Food assistance; rent, mortgage, or utility assistance; counseling and legal aid to prevent eviction or homelessness; cash assistance (discussed below); emergency assistance for burials, home repairs, weatherization, or other needs; internet access or digital literacy assistance; or job training to address negative economic or public health impacts experienced due to a worker's occupation or level of training. As discussed above, in considering whether a potential use is eligible under this category, a recipient must consider whether, and the extent to which, the household has experienced a negative economic impact from the pandemic. In assessing whether a household or population experienced economic harm as a result of the pandemic, a recipient may presume that a household or population that experienced unemployment or increased food or housing insecurity or is low- or moderate-income experienced negative economic impacts resulting from the pandemic. For example, a cash transfer program may focus on unemployed workers or low- and moderate-income families, which have faced disproportionate economic harms due to the pandemic. Cash transfers must be reasonably proportional to the negative economic impact they are intended to address. Cash transfers grossly in excess of the amount needed to address the negative economic impact identified by the recipient would not be considered to be a response to the COVID–19 public health emergency or its negative impacts. In particular, when considering the appropriate size of permissible cash transfers made in response to the COVID–19 public health emergency, State, local and Tribal governments may consider and take guidance from the per person amounts previously provided by the Federal Government in response to the COVID–19 crisis. Cash transfers that are grossly in excess of such amounts would be outside the scope of eligible uses under sections 602(c)(1)(A) and 603(c)(1)(A) and could be subject to recoupment. In addition, a recipient could provide survivor's benefits to surviving family members of COVID–19 victims, or cash assistance to widows, widowers, and dependents of eligible COVID–19 victims.
- *Expenses to Improve Efficacy of Economic Relief Programs.* State, local, and Tribal governments may use payments from the Fiscal Recovery Funds to improve efficacy of programs addressing negative economic impacts, including through use of data analysis, targeted consumer outreach, improvements to data or technology infrastructure, and impact evaluations.
- *Small Businesses and Non-profits.* As discussed above, small businesses and non-profits faced significant challenges in covering payroll, mortgages or rent, and other operating costs as a result of the public health emergency and measures taken to contain the spread of the virus. State, local, and Tribal governments may provide assistance to small businesses to adopt safer operating procedures, weather periods of closure, or mitigate financial hardship resulting from the COVID–19 public health emergency, including:
  - Loans or grants to mitigate financial hardship such as declines in revenues or impacts of periods of business closure, for example by supporting payroll and benefits costs, costs to retain employees, mortgage, rent, or utilities costs, and other operating costs;
  - Loans, grants, or in-kind assistance to implement COVID–19 prevention or mitigation tactics, such as physical

[86] In some cases, a use may be permissible under another eligible use category even if it falls outside the scope of section (c)(1)(A) of the Act.

plant changes to enable social distancing, enhanced cleaning efforts, barriers or partitions, or COVID–19 vaccination, testing, or contact tracing programs; and

○ Technical assistance, counseling, or other services to assist with business planning needs.

As discussed above, these services should respond to the negative economic impacts of COVID–19. Recipients may consider additional criteria to target assistance to businesses in need, including small businesses. Such criteria may include businesses facing financial insecurity, substantial declines in gross receipts (*e.g.*, comparable to measures used to assess eligibility for the Paycheck Protection Program), or other economic harm due to the pandemic, as well as businesses with less capacity to weather financial hardship, such as the smallest businesses, those with less access to credit, or those serving disadvantaged communities. Recipients should consider local economic conditions and business data when establishing such criteria.[87]

• *Rehiring State, Local, and Tribal Government Staff.* State, local, and Tribal governments continue to see pandemic impacts in overall staffing levels: State, local, and Tribal government employment remains more than 1 million jobs lower in April 2021 than prior to the pandemic.[88] Employment losses decrease a state or local government's ability to effectively administer services. Thus, the interim final rule includes as an eligible use payroll, covered benefits, and other costs associated with rehiring public sector staff, up to the pre-pandemic staffing level of the government.

• *Aid to Impacted Industries.* Sections 602(c)(1)(A) and 603(c)(1)(A) recognize that certain industries, such as tourism, travel, and hospitality, were disproportionately and negatively impacted by the COVID–19 public health emergency. Aid provided to tourism, travel, and hospitality industries should respond to the negative economic impacts of the pandemic on those and similarly impacted industries. For example, aid may include assistance to implement COVID–19 mitigation and infection prevention measures to enable safe resumption of tourism, travel, and hospitality services, for example, improvements to ventilation, physical barriers or partitions, signage to facilitate social distancing, provision of masks or personal protective equipment, or consultation with infection prevention professionals to develop safe reopening plans.

Aid may be considered responsive to the negative economic impacts of the pandemic if it supports businesses, attractions, business districts, and Tribal development districts operating prior to the pandemic and affected by required closures and other efforts to contain the pandemic. For example, a recipient may provide aid to support safe reopening of businesses in the tourism, travel, and hospitality industries and to business districts that were closed during the COVID–19 public health emergency, as well as aid for a planned expansion or upgrade of tourism, travel, and hospitality facilities delayed due to the pandemic.

When considering providing aid to industries other than tourism, travel, and hospitality, recipients should consider the extent of the economic impact as compared to tourism, travel, and hospitality, the industries enumerated in the statute. For example, on net, the leisure and hospitality industry has experienced an approximately 24 percent decline in revenue and approximately 17 percent decline in employment nationwide due to the COVID–19 public health emergency.[89] Recipients should also consider whether impacts were due to the COVID–19 pandemic, as opposed to longer-term economic or industrial trends unrelated to the pandemic.

To facilitate transparency and accountability, the interim final rule requires that State, local, and Tribal governments publicly report assistance provided to private-sector businesses under this eligible use, including tourism, travel, hospitality, and other impacted industries, and its connection to negative economic impacts of the pandemic. Recipients also should maintain records to support their assessment of how businesses or business districts receiving assistance were affected by the negative economic impacts of the pandemic and how the aid provided responds to these impacts.

As discussed above, economic disparities that existed prior to the COVID–19 public health emergency amplified the impact of the pandemic among low-income and minority groups. These families were more likely to face housing, food, and financial insecurity; are over-represented among low-wage workers; and many have seen their livelihoods deteriorate further during the pandemic and economic contraction. In recognition of the disproportionate negative economic impacts on certain communities and populations, the interim final rule identifies services and programs that will be presumed to be responding to the negative economic impacts of the COVID–19 public health emergency when provided in these communities.

Specifically, Treasury will presume that certain types of services, outlined below, are eligible uses when provided in a QCT, to families and individuals living in QCTs, or when these services are provided by Tribal governments.[90] Recipients may also provide these services to other populations, households, or geographic areas disproportionately impacted by the pandemic. In identifying these disproportionately impacted communities, recipients should be able to support their determination that the pandemic resulted in disproportionate public health or economic outcomes to the specific populations, households, or geographic areas to be served. The interim final rule identifies a non-exclusive list of uses that address the disproportionate negative economic effects of the COVID–19 public health emergency, including:

○ *Building Stronger Communities through Investments in Housing and Neighborhoods.* The economic impacts of COVID–19 have likely been most acute in lower-income neighborhoods, including concentrated areas of high unemployment, limited economic opportunity, and housing insecurity.[91]

[87] *See* Federal Reserve Bank of Cleveland, An Uphill Battle: COVID–19's Outsized Toll on Minority-Owned Firms (Oct. 8, 2020), *https://www.clevelandfed.org/newsroom-and-events/publications/community-development-briefs/db-20201008-misera-report.aspx* (discussing the impact of COVID–19 on minority owned businesses).

[88] U.S. Bureau of Labor Statistics, All Employees, State Government [CES9092000001] and All Employees, Local Government [CES9093000001], retrieved from FRED, Federal Reserve Bank of St. Louis, *https://fred.stlouisfed.org/series/CES9092000001* and *https://fred.stlouisfed.org/series/CES9093000001* (last visited May 8, 2021).

[89] From February 2020 to April 2021, employment in "Leisure and hospitality" has fallen by approximately 17 percent. *See* U.S. Bureau of Labor Statistics, All Employees, Leisure and Hospitality, retrieved from FRED, Federal Reserve Bank of St. Louis, *https://fred.stlouisfed.org/series/USLAH* (last visited May 8, 2021). From 2019Q4 to 2020Q4, gross output (*e.g.* revenue) in arts, entertainment, recreation, accommodation, and food services has fallen by approximately 24 percent. *See* Bureau of Economic Analysis, News Release: Gross Domestic Product (Third Estimate), Corporate Profits, and GDP by Industry, Fourth Quarter and Year 2020 (Mar. 25, 2021), Table 17, *https://www.bea.gov/sites/default/files/2021-03/gdp4q20_3rd.pdf.*

[90] HUD, *supra* note 48.

[91] Stuart M. Butler & Jonathan Grabinsky, Tackling the legacy of persistent urban inequality and concentrated poverty, Brookings Institution (Nov. 16, 2020), *https://www.brookings.edu/blog/up-front/2020/11/16/tackling-the-legacy-of-*

Continued

Services in this category alleviate the immediate economic impacts of the COVID–19 pandemic on housing insecurity, while addressing conditions that contributed to poor public health and economic outcomes during the pandemic, namely concentrated areas with limited economic opportunity and inadequate or poor-quality housing.[92] Eligible services include:

- Services to address homelessness such as supportive housing, and to improve access to stable, affordable housing among unhoused individuals;
- Affordable housing development to increase supply of affordable and high-quality living units; and
- Housing vouchers, residential counseling, or housing navigation assistance to facilitate household moves to neighborhoods with high levels of economic opportunity and mobility for low-income residents, to help residents increase their economic opportunity and reduce concentrated areas of low economic opportunity.[93]

○ *Addressing Educational Disparities.* As outlined above, school closures and the transition to remote education raised particular challenges for lower-income students, potentially exacerbating educational disparities, while increases in economic hardship among families could have long-lasting impacts on children's educational and economic prospects. Services under this prong would enhance educational supports to help mitigate impacts of the pandemic. Eligible services include:

- New, expanded, or enhanced early learning services, including pre-kindergarten, Head Start, or partnerships between pre-kindergarten programs and local education authorities, or administration of those services;
- Providing assistance to high-poverty school districts to advance equitable funding across districts and geographies;
- Evidence-based educational services and practices to address the academic needs of students, including tutoring, summer, afterschool, and other extended learning and enrichment programs; and
- Evidence-based practices to address the social, emotional, and mental health needs of students;

○ *Promoting Healthy Childhood Environments.* Children's economic and family circumstances have a long-term impact on their future economic outcomes.[94] Increases in economic hardship, material insecurity, and parental stress and behavioral health challenges all raise the risk of long-term harms to today's children due to the pandemic. Eligible services to address this challenge include:

- New or expanded high-quality childcare to provide safe and supportive care for children;
- Home visiting programs to provide structured visits from health, parent educators, and social service professionals to pregnant women or families with young children to offer education and assistance navigating resources for economic support, health needs, or child development; and
- Enhanced services for child welfare-involved families and foster youth to provide support and training on child development, positive parenting, coping skills, or recovery for mental health and substance use challenges.

State, local, and Tribal governments are encouraged to use payments from the Fiscal Recovery Funds to respond to the direct and immediate needs of the pandemic and its negative economic impacts and, in particular, the needs of households and businesses that were disproportionately and negatively impacted by the public health emergency. As highlighted above, low-income communities and workers and people of color have faced more severe health and economic outcomes during the pandemic, with pre-existing social vulnerabilities like low-wage or insecure employment, concentrated neighborhoods with less economic opportunity, and pre-existing health disparities likely contributing to the magnified impact of the pandemic. The Fiscal Recovery Funds provide resources to not only respond to the immediate harms of the pandemic but also to mitigate its longer-term impact in compounding the systemic public health and economic challenges of disproportionately impacted populations. Treasury encourages recipients to consider funding uses that foster a strong, inclusive, and equitable recovery, especially uses with long-term benefits for health and economic outcomes.

Uses Outside the Scope of this Category. Certain uses would not be within the scope of this eligible use category, although may be eligible under other eligible use categories. A general infrastructure project, for example, typically would not be included unless the project responded to a specific pandemic public health need (*e.g.*, investments in facilities for the delivery of vaccines) or a specific negative economic impact like those described above (*e.g.*, affordable housing in a QCT). The ARPA explicitly includes infrastructure if it is "necessary" and in water, sewer, or broadband. *See* Section II.D of this **SUPPLEMENTARY INFORMATION.** State, local, and Tribal governments also may use the Fiscal Recovery Funds under sections 602(c)(1)(C) or 603(c)(1)(C) to provide "government services" broadly to the extent of their reduction in revenue. *See* Section II.C of this **SUPPLEMENTARY INFORMATION.**

This category of eligible uses also would not include contributions to rainy day funds, financial reserves, or similar funds. Resources made available under this eligible use category are intended to help meet pandemic response needs and provide relief for households and businesses facing near- and long-term negative economic impacts. Contributions to rainy day funds and similar financial reserves would not address these needs or respond to the COVID–19 public health emergency but would rather constitute savings for future spending needs. Similarly, this eligible use category would not include payment of interest or principal on outstanding debt instruments, including, for example, short-term revenue or tax anticipation notes, or other debt service costs. As discussed below, payments from the Fiscal Recovery Funds are intended to be used prospectively and the interim final rule precludes use of these funds to cover the costs of debt incurred prior to March 3, 2021. Fees or issuance costs associated with the issuance of new debt would also not be covered using payments from the Fiscal Recovery Funds because such costs would not themselves have been incurred to address the needs of pandemic response or its negative economic impacts. The purpose of the Fiscal Recovery Funds is to provide fiscal relief that will permit State, local, and Tribal governments to continue to respond to the COVID–19 public health emergency.

For the same reasons, this category of eligible uses would not include satisfaction of any obligation arising under or pursuant to a settlement agreement, judgment, consent decree, or judicially confirmed debt restructuring

persistent-urban-inequality-and-concentrated-poverty/.

[92] U.S. Department of Health and Human Services (HHS), Office of Disease Prevention and Health Promotion, Quality of Housing, *https://www.healthypeople.gov/2020/topics-objectives/topic/social-determinants-health/interventions-resources/quality-of-housing#11* (last visited Apr. 26, 2021).

[93] The Opportunity Atlas, *https://www.opportunityatlas.org/* (last visited Apr. 26, 2021); Raj Chetty & Nathaniel Hendren, The Impacts of Neighborhoods on Intergenerational Mobility I: Childhood Exposure Effects, Quarterly J. of Econ. 133(3):1107–162 (2018), *available at https://opportunityinsights.org/paper/neighborhoodsi/.*

[94] *See* supra notes 52 and 84.

plan in a judicial, administrative, or regulatory proceeding, except to the extent the judgment or settlement requires the provision of services that would respond to the COVID–19 public health emergency. That is, satisfaction of a settlement or judgment would not itself respond to COVID–19 with respect to the public health emergency or its negative economic impacts, unless the settlement requires the provision of services or aid that did directly respond to these needs, as described above.

In addition, as described in Section V.III of this **SUPPLEMENTARY INFORMATION**, Treasury will establish reporting and record keeping requirements for uses within this category, including enhanced reporting requirements for certain types of uses.

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.

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?

Question 3: The interim final rule permits rehiring of public sector staff up to the government's pre-pandemic staffing level, which is measured based on employment as of January 27, 2020. Does this approach adequately measure the pre-pandemic staffing level in a manner that is both accurate and easily administrable? Why or why not?

Question 4: The interim final rule permits deposits to Unemployment Insurance Trust Funds, or using funds to pay back advances, up to the pre-pandemic balance. What, if any, conditions should be considered to ensure that funds repair economic impacts of the pandemic and strengthen unemployment insurance systems?

Question 5: Are there other types of services or costs that Treasury should consider as eligible uses to respond to the negative economic impacts of COVID–19? Describe how these respond to the COVID–19 public health emergency.

Question 6: What other measures, presumptions, or considerations could be used to assess "impacted industries" affected by the COVID–19 public health emergency?

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?

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.

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?

B. Premium Pay

Fiscal Recovery Funds payments may be used by recipients to provide premium pay to eligible workers performing essential work during the COVID–19 public health emergency or to provide grants to third-party employers with eligible workers performing essential work.[95] These are workers who have been and continue to be relied on to maintain continuity of operations of essential critical infrastructure sectors, including those who are critical to protecting the health and wellbeing of their communities.

Since the start of the COVID–19 public health emergency in January 2020, essential workers have put their physical wellbeing at risk to meet the daily needs of their communities and to provide care for others. In the course of this work, many essential workers have contracted or died of COVID–19.[96] Several examples reflect the severity of the health impacts for essential workers. Meat processing plants became "hotspots" for transmission, with 700 new cases reported at a single plant on a single day in May 2020.[97] In New York City, 120 employees of the Metropolitan Transit Authority were estimated to have died due to COVID–19 by mid-May 2020, with nearly 4,000 testing positive for the virus.[98] Furthermore, many essential workers are people of color or low-wage workers.[99] These workers, in particular, have borne a disproportionate share of the health and economic impacts of the pandemic. Such workers include:

- Staff at nursing homes, hospitals, and home care settings;
- Workers at farms, food production facilities, grocery stores, and restaurants;
- Janitors and sanitation workers;
- Truck drivers, transit staff, and warehouse workers;
- Public health and safety staff;
- Childcare workers, educators, and other school staff; and
- Social service and human services staff.

During the public health emergency, employers' policies on COVID–19-related hazard pay have varied widely, with many essential workers not yet compensated for the heightened risks they have faced and continue to face.[100]

[95] Sections 602(c)(1)(B), 603(c)(1)(B) of the Act.

[96] *See, e.g.*, Centers for Disease Control and Prevention, COVID Data Tracker: Cases & Death among Healthcare Personnel, *https://covid.cdc.gov/covid-data-tracker/#health-care-personnel* (last visited May 4, 2021); Centers for Disease Control and Prevention, COVID Data Tracker: Confirmed COVID–19 Cases and Deaths among Staff and Rate per 1,000 Resident-Weeks in Nursing Homes, by Week—United States, *https://covid.cdc.gov/covid-data-tracker/#nursing-home-staff* (last visited May 4, 2021).

[97] *See, e.g.*, The Lancet, The plight of essential workers during the COVID–19 pandemic, Vol. 395, Issue 10237:1587 (May 23, 2020), *available at https://www.thelancet.com/journals/lancet/article/PIIS0140-6736%2820%2931200-9/fulltext.*

[98] *Id.*

[99] Joanna Gaitens et al., Covid–19 and essential workers: A narrative review of health outcomes and moral injury, Int'l J. of Envtl. Research and Pub. Health 18(4):1446 (Feb. 4, 2021), *available at https://pubmed.ncbi.nlm.nih.gov/33557075/;* Tiana N. Rogers et al., Racial Disparities in COVID–19 Mortality Among Essential Workers in the United States, World Med. & Health policy 12(3):311–27 (Aug. 5, 2020), *available at https://onlinelibrary.wiley.com/doi/full/10.1002/wmh3.358* (finding that vulnerability to coronavirus exposure was increased among non-Hispanic blacks, who disproportionately occupied the top nine essential occupations).

[100] Economic Policy Institute, Only 30% of those working outside their home are receiving hazard pay (June 16, 2020), *https://www.epi.org/press/only-30-of-those-working-outside-their-home-are-receiving-hazard-pay-black-and-hispanic-workers-are-most-concerned-about-bringing-the-coronavirus-home/.*

Many of these workers earn lower wages on average and live in socioeconomically vulnerable communities as compared to the general population.[101] A recent study found that 25 percent of essential workers were estimated to have low household income, with 13 percent in high-risk households.[102] The low pay of many essential workers makes them less able to cope with the financial consequences of the pandemic or their work-related health risks, including working hours lost due to sickness or disruptions to childcare and other daily routines, or the likelihood of COVID–19 spread in their households or communities. Thus, the threats and costs involved with maintaining the ongoing operation of vital facilities and services have been, and continue to be, borne by those that are often the most vulnerable to the pandemic. The added health risk to essential workers is one prominent way in which the pandemic has amplified pre-existing socioeconomic inequities.

The Fiscal Recovery Funds will help respond to the needs of essential workers by allowing recipients to remunerate essential workers for the elevated health risks they have faced and continue to face during the public health emergency. To ensure that premium pay is targeted to workers that faced or face heightened risks due to the character of their work, the interim final rule defines essential work as work involving regular in-person interactions or regular physical handling of items that were also handled by others. A worker would not be engaged in essential work and, accordingly may not receive premium pay, for telework performed from a residence.

Sections 602(g)(2) and 603(g)(2) define eligible worker to mean "those workers needed to maintain continuity of operations of essential critical infrastructure sectors and additional sectors as each Governor of a State or territory, or each Tribal government, may designate as critical to protect the health and well-being of the residents of their State, territory, or Tribal government." [103] The rule incorporates this definition and provides a list of industries recognized as essential critical infrastructure sectors.[104] These sectors include healthcare, public health and safety, childcare, education, sanitation, transportation, and food production and services, among others as noted above. As provided under sections 602(g)(2) and 603(g)(2), the chief executive of each recipient has discretion to add additional sectors to this list, so long as additional sectors are deemed critical to protect the health and well-being of residents.

In providing premium pay to essential workers or grants to eligible employers, a recipient must consider whether the pay or grant would "respond to" to the worker or workers performing essential work. Premium pay or grants provided under this section respond to workers performing essential work if it addresses the heightened risk to workers who must be physically present at a jobsite and, for many of whom, the costs associated with illness were hardest to bear financially. Many of the workers performing critical essential services are low- or moderate-income workers, such as those described above. The ARPA recognizes this by defining premium pay to mean an amount up to $13 per hour in addition to wages or remuneration the worker otherwise receives and in an aggregate amount not to exceed $25,000 per eligible worker. To ensure the provision is implemented in a manner that compensates these workers, the interim final rule provides that any premium pay or grants provided using the Fiscal Recovery Funds should prioritize compensation of those lower income eligible workers that perform essential work.

As such, providing premium pay to eligible workers responds to such workers by helping address the disparity between the critical services and risks taken by essential workers and the relatively low compensation they tend to receive in exchange. If premium pay would increase a worker's total pay above 150 percent of their residing state's average annual wage for all occupations, as defined by the Bureau of Labor Statistics' Occupational Employment and Wage Statistics, or their residing county's average annual wage, as defined by the Bureau of Labor Statistics' Occupational Employment and Wage Statistics, whichever is higher, on an annual basis, the State, local, or Tribal government must provide Treasury and make publicly available, whether for themselves or on behalf of a grantee, a written justification of how the premium pay or grant is responsive to workers performing essential worker during the public health emergency.[105]

The threshold of 150 percent for requiring additional written justification is based on an analysis of the distribution of labor income for a sample of 20 occupations that generally correspond to the essential workers as defined in the interim final rule.[106] For these occupations, labor income for the vast majority of workers was under 150 percent of average annual labor income across all occupations. Treasury anticipates that the threshold of 150 percent of the annual average wage will be greater than the annual average wage of the vast majority of eligible workers performing essential work. These enhanced reporting requirements help to ensure grants are directed to essential workers in critical infrastructure sectors and responsive to the impacts of the pandemic observed among essential workers, namely the mis-alignment between health risks and compensation. Enhanced reporting also provides transparency to the public. Finally, using a localized measure reflects differences in wages and cost of living across the country, making this standard administrable and reflective of essential worker incomes across a diverse range of geographic areas.

Furthermore, because premium pay is intended to compensate essential workers for heightened risk due to COVID–19, it must be entirely additive to a worker's regular rate of wages and other remuneration and may not be used to reduce or substitute for a worker's normal earnings. The definition of premium pay also clarifies that premium pay may be provided retrospectively for work performed at any time since the start of the COVID–19 public health emergency, where those workers have yet to be compensated adequately for work previously performed.[107] Treasury encourages recipients to prioritize providing retrospective premium pay where possible, recognizing that many essential workers have not yet received additional compensation for work conducted over the course of many

[101] McCormack, *supra* note 37.

[102] *Id.*

[103] Sections 602(g)(2), 603(g)(2) of the Act.

[104] The list of critical infrastructure sectors provided in the interim final rule is based on the list of essential workers under The Heroes Act, H.R. 6800, 116th Cong. (2020).

[105] County median annual wage is taken to be that of the metropolitan or nonmetropolitan area that includes the county. *See* U.S. Bureau of Labor Statistics, State Occupational Employment and Wage Estimates, *https://www.bls.gov/oes/current/oessrcst.htm* (last visited May 1, 2021); U.S. Bureau of Labor Statistics, May 2020 Metropolitan and Nonmetropolitan Area Estimates listed by county or town, *https://www.bls.gov/oes/current/county_links.htm* (last visited May 1, 2021).

[106] Treasury performed this analysis with data from the U.S. Census Bureau's 2019 Annual Social and Economic Supplement. In determining which occupations to include in this analysis, Treasury excluded management and supervisory positions, as such positions may not necessarily involve regular in-person interactions or physical handling of items to the same extent as non-managerial positions.

[107] However, such compensation must be "in addition to" remuneration or wages already received. That is, employers may not reduce such workers' current pay and use Fiscal Recovery Funds to compensate themselves for premium pay previously provided to the worker.

months. Essential workers who have already earned premium pay for essential work performed during the COVID–19 public health emergency remain eligible for additional payments, and an essential worker may receive both retrospective premium pay for prior work as well as prospective premium pay for current or ongoing work.

To ensure any grants respond to the needs of essential workers and are made in a fair and transparent manner, the rule imposes some additional reporting requirements for grants to third-party employers, including the public disclosure of grants provided. *See* Section VIII of this **SUPPLEMENTARY INFORMATION**, discussing reporting requirements. In responding to the needs of essential workers, a grant to an employer may provide premium pay to eligible workers performing essential work, as these terms are defined in the interim final rule and discussed above. A grant provided to an employer may also be for essential work performed by eligible workers pursuant to a contract. For example, if a municipality contracts with a third party to perform sanitation work, the third-party contractor could be eligible to receive a grant to provide premium pay for these eligible workers.

Question 10: Are there additional sectors beyond those listed in the interim final rule that should be considered essential critical infrastructure sectors?

Question 11: What, if any, additional criteria should Treasury consider to ensure that premium pay responds to essential workers?

Question 12: What consideration, if any, should be given to the criteria on salary threshold, including measure and level, for requiring written justification?

C. Revenue Loss

Recipients may use payments from the Fiscal Recovery Funds for the provision of government services to the extent of the reduction in revenue experienced due to the COVID–19 public health emergency.[108] Pursuant to sections 602(c)(1)(C) and 603(c)(1)(C) of the Act, a recipient's reduction in revenue is measured relative to the revenue collected in the most recent full fiscal year prior to the emergency.

Many State, local, and Tribal governments are experiencing significant budget shortfalls, which can have a devastating impact on communities. State government tax revenue from major sources were down 4.3 percent in the six months ended September 2020, relative to the same period 2019.[109] At the local level, nearly 90 percent of cities have reported being less able to meet the fiscal needs of their communities and, on average, cities expect a double-digit decline in general fund revenues in their fiscal year 2021.[110] Similarly, surveys of Tribal governments and Tribal enterprises found majorities of respondents reporting substantial cost increases and revenue decreases, with Tribal governments reporting reductions in healthcare, housing, social services, and economic development activities as a result of reduced revenues.[111] These budget shortfalls are particularly problematic in the current environment, as State, local, and Tribal governments work to mitigate and contain the COVID–19 pandemic and help citizens weather the economic downturn.

Further, State, local, and Tribal government budgets affect the broader economic recovery. During the period following the 2007–2009 recession, State and local government budget pressures led to fiscal austerity that was a significant drag on the overall economic recovery.[112] Inflation-adjusted State and local government revenue did not return to the previous peak until 2013,[113] while State, local, and Tribal government employment did not recover to its prior peak for over a decade, until August 2019—just a few months before the COVID–19 public health emergency began.[114]

Sections 602(c)(1)(C) and 603(c)(1)(C) of the Act allow recipients facing budget shortfalls to use payments from the Fiscal Recovery Funds to avoid cuts to government services and, thus, enable State, local, and Tribal governments to continue to provide valuable services and ensure that fiscal austerity measures do not hamper the broader economic recovery. The interim final rule implements these provisions by establishing a definition of "general revenue" for purposes of calculating a loss in revenue and by providing a methodology for calculating revenue lost due to the COVID–19 public health emergency.

General Revenue. The interim final rule adopts a definition of "general revenue" based largely on the components reported under "General Revenue from Own Sources" in the Census Bureau's Annual Survey of State and Local Government Finances, and for purposes of this interim final rule, helps to ensure that the components of general revenue would be calculated in a consistent manner.[115] By relying on a methodology that is both familiar and comprehensive, this approach minimizes burden to recipients and provides consistency in the measurement of general revenue across a diverse set of recipients.

The interim final rule defines the term "general revenue" to include revenues collected by a recipient and generated from its underlying economy and would capture a range of different types of tax revenues, as well as other types of revenue that are available to support government services.[116] In calculating revenue, recipients should sum across all revenue streams covered as general revenue. 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

[108] ARPA, *supra* note 16.

[109] Major sources include personal income tax, corporate income tax, sales tax, and property tax. *See* Lucy Dadayan., States Reported Revenue Growth in July–September Quarter, Reflecting Revenue Shifts from the Prior Quarter, State Tax and Econ. Rev. (Q. 3, 2020), *available at https://www.urban.org/sites/default/files/publication/103938/state-tax-and-economic-review-2020-q3_0.pdf.*

[110] National League of Cities, City Fiscal Conditions (2020), *available at https://www.nlc.org/wp-content/uploads/2020/08/City_Fiscal_Conditions_2020_FINAL.pdf.*

[111] Surveys conducted by the Center for Indian Country Development at the Federal Reserve Bank of Minneapolis in March, April, and September 2020. *See* Moreno & Sobrepena, *supra* note 73.

[112] *See, e.g.,* Fitzpatrick, Haughwout & Setren, Fiscal Drag from the State and Local Sector?, Liberty Street Economics Blog, Federal Reserve Bank of New York (June 27, 2012), *https://www.libertystreeteconomics.newyorkfed.org/2012/06/fiscal-drag-from-the-state-and-local-sector.html;* Jiri Jonas, Great Recession and Fiscal Squeeze at U.S. Subnational Government Level, IMF Working Paper 12/184, (July 2012), *available at https://www.imf.org/external/pubs/ft/wp/2012/wp12184.pdf;* Gordon, *supra* note 9.

[113] State and local government general revenue from own sources, adjusted for inflation using the GDP price index. U.S. Census Bureau, Annual Survey of State Government Finances and U.S. Bureau of Economic Analysis, National Income and Product Accounts.

[114] U.S. Bureau of Labor Statistics, All Employees, State Government [CES9092000001] and All Employees, Local Government [CES9093000001], retrieved from FRED, Federal Reserve Bank of St. Louis, *https://fred.stlouisfed.org/series/CES9092000001* and *https://fred.stlouisfed.org/series/CES9093000001* (last visited Apr. 27, 2021).

[115] U.S. Census Bureau, Annual Survey of State and Local Government Finances, *https://www.census.gov/programs-surveys/gov-finances.html* (last visited Apr. 30, 2021).

[116] The interim final rule would define tax revenue in a manner consistent with the Census Bureau's definition of tax revenue, with certain changes (*i.e.,* inclusion of revenue from liquor stores and certain intergovernmental transfers). Current charges are defined as "charges imposed for providing current services or for the sale of products in connection with general government activities." It includes revenues such as public education institution, public hospital, and toll revenues. Miscellaneous general revenue comprises of all other general revenue of governments from their own sources (*i.e.,* other than liquor store, utility, and insurance trust revenue), including rents, royalties, lottery proceeds, and fines.

the COVID–19 public health emergency on a recipient's revenue, rather than relying on financial reporting prepared by each recipient, which vary in methodology used and which generally aggregates revenue by purpose rather than by source.[117]

Consistent with the Census Bureau's definition of "general revenue from own sources," the definition of general revenue in the interim final rule would exclude refunds and other correcting transactions, proceeds from issuance of debt or the sale of investments, and agency or private trust transactions. The definition of general revenue also would exclude revenue generated by utilities and insurance trusts. In this way, the definition of general revenue focuses on sources that are generated from economic activity and are available to fund government services, rather than a fund or administrative unit established to account for and control a particular activity.[118] For example, public utilities typically require financial support from the State, local, or Tribal government, rather than providing revenue to such government, and any revenue that is generated by public utilities typically is used to support the public utility's continued operation, rather than being used as a source of revenue to support government services generally.

The definition of general revenue would include all revenue from Tribal enterprises, as this revenue is generated from economic activity and is available to fund government services. Tribes are not able to generate revenue through taxes in the same manner as State and local governments and, as a result, Tribal enterprises are critical sources of revenue for Tribal governments that enable Tribal governments to provide a range of services, including elder care, health clinics, wastewater management, and forestry.

Finally, the term "general revenue" includes intergovernmental transfers between State and local governments, but excludes intergovernmental transfers from the Federal Government, including Federal transfers made via a State to a local government pursuant to the CRF or as part of the Fiscal Recovery Funds. States and local governments often share or collect revenue on behalf of one another, which results in intergovernmental transfers. When attributing revenue to a unit of government, the Census Bureau's methodology considers which unit of government imposes, collects, and retains the revenue and assigns the revenue to the unit of government that meets at least two of those three factors.[119] For purposes of measuring loss in general revenue due to the COVID–19 public health emergency and to better allow continued provision of government services, the retention and ability to use the revenue is a more critical factor. Accordingly, and to better measure the funds available for the provision of government services, the definition of general revenue would include intergovernmental transfers from States or local governments other than funds transferred pursuant to ARPA, CRF, or another Federal program. This formulation recognizes the importance of State transfers for local government revenue.[120]

Calculation of Loss. In general, recipients will compute the extent of the reduction in revenue by comparing actual revenue to a counterfactual trend representing what could have been expected to occur in the absence of the pandemic. This approach measures losses in revenue relative to the most recent fiscal year prior to the COVID–19 public health emergency by using the most recent pre-pandemic fiscal year as the starting point for estimates of revenue growth absent the pandemic. In other words, the counterfactual trend starts with the last full fiscal year prior to the COVID–19 public health emergency and then assumes growth at a constant rate in the subsequent years. Because recipients can estimate the revenue shortfall at multiple points in time throughout the covered period as revenue is collected, this approach accounts for variation across recipients in the timing of pandemic impacts.[121] Although revenue may decline for reasons unrelated to the COVID–19 public health emergency, to minimize the administrative burden on recipients and taking into consideration the devastating effects of the COVID–19 public health emergency, any diminution in actual revenues relative to the counterfactual pre-pandemic trend would be presumed to have been due to the COVID–19 public health emergency.

For purposes of measuring revenue growth in the counterfactual trend, recipients may use a *growth adjustment* of either 4.1 percent per year or the recipient's average annual revenue growth over the three full fiscal years prior to the COVID–19 public health emergency, whichever is higher. The option of 4.1 percent represents the average annual growth across all State and local government "General Revenue from Own Sources" in the most recent three years of available data.[122] This approach provides recipients with a standardized growth adjustment when calculating the counterfactual revenue trend and thus minimizes administrative burden, while not disadvantaging recipients with revenue growth that exceeded the national average prior to the COVID–19 public health emergency by permitting these recipients to use their own revenue growth rate over the preceding three years.

Recipients should calculate the extent of the reduction in revenue as of four points in time: December 31, 2020; December 31, 2021; December 31, 2022; and December 31, 2023. To calculate the extent of the reduction in revenue at each of these dates, recipients should follow a four-step process:

- *Step 1:* Identify revenues collected in the most recent full fiscal year prior to the public health emergency (*i.e.*, last full fiscal year before January 27, 2020), called the *base year revenue.*
- *Step 2:* Estimate *counterfactual revenue,* which is equal to *base year revenue* * [(1 + *growth adjustment*) ^ (*n*/12)], where *n* is the number of months elapsed since the end of the base year to the calculation date, and *growth adjustment* is the greater of 4.1 percent and the recipient's average annual revenue growth in the three full fiscal

[117] Fund-oriented reporting, such as what is used under the Governmental Accounting Standards Board (GASB), focuses on the types of uses and activities funded by the revenue, as opposed to the economic activity from which the revenue is sourced. *See* Governmental Accounting Standards Series, Statement No. 54 of the Governmental Accounting Standards Board: Fund Balance Reporting and Governmental Fund Type Definitions, No. 287–B (Feb. 2009).

[118] *Supra* note 116.

[119] U.S. Census Bureau, Government Finance and Employment Classification Manual (Dec. 2000), *https://www2.census.gov/govs/class/classfull.pdf.*

[120] For example, in 2018, state transfers to localities accounted for approximately 27 percent of local revenues. U.S. Census Bureau, Annual Survey of State and Local Government Finances, Table 1 (2018), *https://www.census.gov/data/datasets/2018/econ/local/public-use-datasets.html.*

[121] For example, following the 2007–09 recession, local government property tax collections did not begin to decline until 2011, suggesting that property tax collection declines can lag downturns. *See* U.S. Bureau of Economic Analysis, Personal current taxes: State and local: Property taxes [S210401A027NBEA], retrieved from Federal Reserve Economic Data, Federal Reserve Bank of St. Louis, *https://fred.stlouisfed.org/graph/?g=r3YI* (last visited Apr. 22, 2021). Estimating the reduction in revenue at points throughout the covered period will allow for this type of lagged effect to be taken into account during the covered period.

[122] Together with revenue from liquor stores from 2015 to 2018. This estimate does not include any intergovernmental transfers. A recipient using the three-year average to calculate their growth adjustment must be based on the definition of general revenue, including treatment of intergovernmental transfers. 2015–2018 represents the most recent available data. *See* U.S. Census Bureau, State & Local Government Finance Historical Datasets and Tables (2018), *https://www.census.gov/programs-surveys/gov-finances/data/datasets.html.*

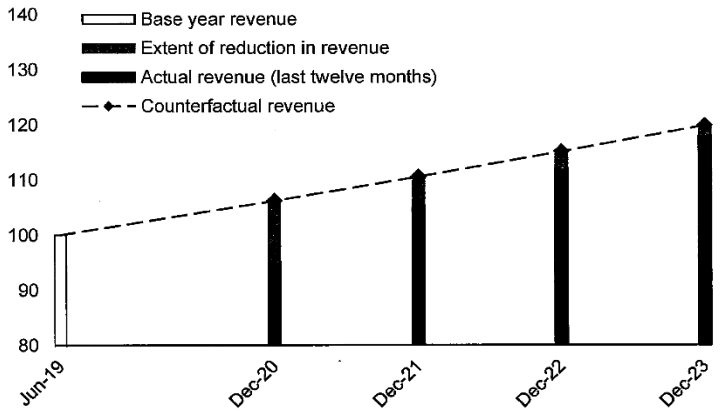
years prior to the COVID–19 public health emergency.

- *Step 3:* Identify *actual revenue,* which equals revenues collected over the past twelve months as of the calculation date.
- *Step 4:* The extent of the reduction in revenue is equal to *counterfactual revenue* less *actual revenue.* If actual revenue exceeds counterfactual revenue, the extent of the reduction in revenue is set to zero for that calculation date.

For illustration, consider a hypothetical recipient with *base year revenue* equal to 100. In Step 2, the hypothetical recipient finds that 4.1 percent is greater than the recipient's average annual revenue growth in the three full fiscal years prior to the public health emergency. Furthermore, this recipient's base year ends June 30. In this illustration, *n* (months elapsed) and *counterfactual revenue* would be equal to:

As of:	12/31/2020	12/31/2021	12/31/2022	12/31/2023
n (months elapsed)	18	30	42	54
Counterfactual revenue:	106.2	110.6	115.1	119.8

The overall methodology for calculating the reduction in revenue is illustrated in the figure below:



Upon receiving Fiscal Recovery Fund payments, recipients may immediately calculate revenue loss for the period ending December 31, 2020.

Sections 602(c)(1)(C) and 603(c)(1)(C) of the Act provide recipients with broad latitude to use the Fiscal Recovery Funds for the provision of government services. Government services can include, but are not limited to, maintenance or pay-go funded building[123] 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, expenses associated with obligations under instruments evidencing financial indebtedness for borrowed money would not be considered the provision of government services, as these financing expenses do not directly provide services or aid to citizens. Specifically, government services would not include interest or principal on any outstanding debt instrument, including, for example, short-term revenue or tax anticipation notes, or fees or issuance costs associated with the issuance of new debt. For the same reasons, government services would not include satisfaction of any obligation arising under or pursuant to a settlement agreement, judgment, consent decree, or judicially confirmed debt restructuring in a judicial, administrative, or regulatory proceeding, except if the judgment or settlement required the provision of government services. That is, satisfaction of a settlement or judgment itself is not a government service, unless the settlement required the provision of government services. In addition, replenishing financial reserves (*e.g.,* rainy day or other reserve funds) would not be considered provision of a government service, since such expenses do not directly relate to the provision of government services.

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.

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.

Question 15: Treasury is considering whether to take into account other factors, including actions taken by the recipient as well as the expiration of the COVID–19 public health emergency, in determining whether to presume that revenue losses are "due to" the COVID–

[123] Pay-go infrastructure funding refers to the practice of funding capital projects with cash-on-hand from taxes, fees, grants, and other sources, rather than with borrowed sums.

19 public health emergency. Discuss the advantages and disadvantages of this presumption, including when, if ever, during the covered period it would be appropriate to reevaluate the presumption that all losses are attributable to the COVID–19 public health emergency.

Question 16: Do recipients anticipate lagged revenue effects of the public health emergency? If so, when would these lagged effects be expected to occur, and what can Treasury to do support these recipients through its implementation of the program?

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.

D. Investments in Infrastructure

To assist in meeting the critical need for investments and improvements to existing infrastructure in water, sewer, and broadband, the Fiscal Recovery Funds provide funds to State, local, and Tribal governments to make necessary investments in these sectors. The interim final rule outlines eligible uses within each category, allowing for a broad range of necessary investments in projects that improve access to clean drinking water, improve wastewater and stormwater infrastructure systems, and provide access to high-quality broadband service. Necessary investments are designed to provide an adequate minimum level of service and are unlikely to be made using private sources of funds. Necessary investments include projects that are required to maintain a level of service that, at least, meets applicable health-based standards, taking into account resilience to climate change, or establishes or improves broadband service to unserved or underserved populations to reach an adequate level to permit a household to work or attend school, and that are unlikely to be met with private sources of funds.[124]

It is important that necessary investments in water, sewer, or broadband infrastructure be carried out in ways that produce high-quality infrastructure, avert disruptive and costly delays, and promote efficiency. Treasury encourages recipients to ensure that water, sewer, and broadband projects use strong labor standards, including project labor agreements and community benefits agreements that offer wages at or above the prevailing rate and include local hire provisions, not only to promote effective and efficient delivery of high-quality infrastructure projects but also to support the economic recovery through strong employment opportunities for workers. Using these practices in construction projects may help to ensure a reliable supply of skilled labor that would minimize disruptions, such as those associated with labor disputes or workplace injuries.

To provide public transparency on whether projects are using practices that promote on-time and on-budget delivery, Treasury will seek information from recipients on their workforce plans and practices related to water, sewer, and broadband projects undertaken with Fiscal Recovery Funds. Treasury will provide additional guidance and instructions on the reporting requirements at a later date.

1. Water and Sewer Infrastructure

The ARPA provides funds to State, local, and Tribal governments to make necessary investments in water and sewer infrastructure.[125] By permitting funds to be used for water and sewer infrastructure needs, Congress recognized the critical role that clean drinking water and services for the collection and treatment of wastewater and stormwater play in protecting public health. Understanding that State, local, and Tribal governments have a broad range of water and sewer infrastructure needs, the interim final rule provides these governments with wide latitude to identify investments in water and sewer infrastructure that are of the highest priority for their own communities, which may include projects on privately-owned infrastructure. The interim final rule does this by aligning eligible uses of the Fiscal Recovery Funds with the wide range of types or categories of projects that would be eligible to receive financial assistance through the Environmental Protection Agency's (EPA) Clean Water State Revolving Fund (CWSRF) or Drinking Water State Revolving Fund (DWSRF).[126]

Established by the 1987 amendments[127] to the Clean Water Act (CWA),[128] the CWSRF provides financial assistance for a wide range of water infrastructure projects to improve water quality and address water pollution in a way that enables each State to address and prioritize the needs of their populations. The types of projects eligible for CWSRF assistance include projects to construct, improve, and repair wastewater treatment plants, control non-point sources of pollution, improve resilience of infrastructure to severe weather events, create green infrastructure, and protect waterbodies from pollution.[129] Each of the 51 State programs established under the CWSRF have the flexibility to direct funding to their particular environmental needs, and each State may also have its own statutes, rules, and regulations that guide project eligibility.[130]

The DWSRF was modeled on the CWSRF and created as part of the 1996 amendments to the Safe Drinking Water Act (SDWA),[131] with the principal objective of helping public water systems obtain financing for improvements necessary to protect public health and comply with drinking water regulations.[132] Like the CWSRF,

[124] Treasury notes that using funds to support or oppose collective bargaining would not be included as part of "necessary investments in water, sewer, or broadband infrastructure."

[125] Sections 602(c)(1)(D), 603(c)(1)(D) of the Act.

[126] Environmental Protection Agency, Drinking Water State Revolving fund, *https://www.epa.gov/dwsrf* (last visited Apr. 30, 2021); Environmental Protection Agency, Clean Water State Revolving Fund, *https://www.epa.gov/cwsrf* (last visited Apr. 30, 2021).

[127] Water Quality Act of 1987, Public Law 100–4.

[128] Federal Water Pollution Control Act as amended, codified at 33 U.S.C. 1251 *et seq.*, common name (Clean Water Act). In 2009, the American Recovery and Reinvestment Act created the Green Project Reserve, which increased the focus on green infrastructure, water and energy efficient, and environmentally innovative projects. Public Law 111–5. The CWA was amended by the Water Resources Reform and Development Act of 2014 to further expand the CWSRF's eligibilities. Public Law 113–121. *The CWSRF's eligibilities were further expanded in 2018 by the America's Water Infrastructure Act of 2018, Public Law 115–270.*

[129] *See* Environmental Protection Agency, The Drinking Water State Revolving Funds: Financing America's Drinking Water, EPA–816–R–00–023 (Nov. 2000), *https://nepis.epa.gov/Exe/ZyPDF.cgi/200024WB.PDF?Dockey=200024WB.PDF; See also* Environmental Protection Agency, *Learn About the Clean Water State Revolving Fund, https://www.epa.gov/cwsrf/learn-about-clean-water-state-revolving-fund-cwsrf (last visited Apr. 30, 2021).*

[130] 33 U.S.C. 1383(c). *See also Environmental Protection Agency, Overview of Clean Water State Revolving Fund Eligibilities (May 2016), https://www.epa.gov/sites/production/files/2016-07/documents/overview_of_cwsrf_eligibilities_may_2016.pdf; Claudia Copeland, Clean Water Act: A Summary of the Law, Congressional Research Service (Oct. 18, 2016), https://fas.org/sgp/crs/misc/RL30030.pdf; Jonathan L Ramseur, Wastewater Infrastructure: Overview, Funding, and Legislative Developments, Congressional Research Service (May 22, 2018), https://fas.org/sgp/crs/misc/R44963.pdf.*

[131] 42 U.S.C. 300j–12.

[132] Environmental Protection Agency, Drinking Water State Revolving Fund Eligibility Handbook, (June 2017), *https://www.epa.gov/sites/production/files/2017-06/documents/dwsrf_eligibility_handbook_june_13_2017_updated_508_version.pdf;* Environmental Protection Agency, Drinking Water

the DWSRF provides States with the flexibility to meet the needs of their populations.[133] The primary use of DWSRF funds is to assist communities in making water infrastructure capital improvements, including the installation and replacement of failing treatment and distribution systems.[134] In administering these programs, States must give priority to projects that ensure compliance with applicable health and environmental safety requirements; address the most serious risks to human health; and assist systems most in need on a per household basis according to State affordability criteria.[135]

By aligning use of Fiscal Recovery Funds with the categories or types of eligible projects under the existing EPA state revolving fund programs, the interim final rule provides recipients with the flexibility to respond to the needs of their communities while ensuring that investments in water and sewer infrastructure made using Fiscal Recovery Funds are necessary. As discussed above, the CWSRF and DWSRF were designed to provide funding for projects that protect public health and safety by ensuring compliance with wastewater and drinking water health standards.[136] The need to provide funding through the state revolving funds suggests that these projects are less likely to be addressed with private sources of funding; for example, by remediating failing or inadequate infrastructure, much of which is publicly owned, and by addressing non-point sources of pollution. This approach of aligning with the EPA state revolving fund programs also supports expedited project identification and investment so that needed relief for the people and communities most affected by the pandemic can deployed expeditiously and have a positive impact on their health and wellbeing as soon as possible. Further, the interim final rule is intended to preserve flexibility for award recipients to direct funding to their own particular needs and priorities and would not preclude recipients from applying their own additional project eligibility criteria.

In addition, responding to the immediate needs of the COVID–19 public health emergency may have diverted both personnel and financial resources from other State, local, and Tribal priorities, including projects to ensure compliance with applicable water health and quality standards and provide safe drinking and usable water.[137] Through sections 602(c)(1)(D) and 603(c)(1)(D), the ARPA provides resources to address these needs. Moreover, using Fiscal Recovery Funds in accordance with the priorities of the CWA and SWDA to "assist systems most in need on a per household basis according to state affordability criteria" would also have the benefit of providing vulnerable populations with safe drinking water that is critical to their health and, thus, their ability to work and learn.[138]

Recipients may use Fiscal Recovery Funds to invest in a broad range of projects that improve drinking water infrastructure, such as building or upgrading facilities and transmission, distribution, and storage systems, including replacement of lead service lines. Given the lifelong impacts of lead exposure for children, and the widespread nature of lead service lines, Treasury encourages recipients to consider projects to replace lead service lines.

Fiscal Recovery Funds may also be used to support the consolidation or establishment of drinking water systems. With respect to wastewater infrastructure, recipients may use Fiscal Recovery Funds to construct publicly owned treatment infrastructure, manage and treat stormwater or subsurface drainage water, facilitate water reuse, and secure publicly owned treatment works, among other uses. Finally, consistent with the CWSRF and DWSRF, Fiscal Recovery Funds may be used for cybersecurity needs to protect water or sewer infrastructure, such as developing effective cybersecurity practices and measures at drinking water systems and publicly owned treatment works.

Many of the types of projects eligible under either the CWSRF or DWSRF also support efforts to address climate change. For example, by taking steps to manage potential sources of pollution and preventing these sources from reaching sources of drinking water, projects eligible under the DWSRF and the ARPA may reduce energy required to treat drinking water. Similarly, projects eligible under the CWSRF include measures to conserve and reuse water or reduce the energy consumption of public water treatment facilities. Treasury encourages recipients to consider green infrastructure investments and projects to improve resilience to the effects of climate change. For example, more frequent and extreme precipitation events combined with construction and development trends have led to increased instances of stormwater runoff, water pollution, and flooding. Green infrastructure projects that support stormwater system resiliency could include rain gardens that provide water storage and filtration benefits, and green streets, where vegetation, soil, and engineered systems are combined to direct and filter rainwater from impervious surfaces. In cases of a natural disaster, recipients may also use Fiscal Recovery Funds to provide relief, such as interconnecting water systems or rehabilitating existing wells during an extended drought.

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?

Question 19: What additional water and sewer infrastructure categories, if any, should Treasury consider to address and respond to the needs of unserved, undeserved, or rural communities? How do these projects differ from DWSFR and CWSRF eligible projects?

Question 20: What new categories of water and sewer infrastructure, if any, should Treasury consider to support State, local, and Tribal governments in mitigating the negative impacts of climate change? Discuss emerging technologies and processes that support resiliency of water and sewer infrastructure. Discuss any challenges faced by States and local governments when pursuing or implementing climate resilient infrastructure projects.

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 Needs Survey and Assessment: Sixth Report to Congress (March 2018), *https://www.epa.gov/sites/production/files/2018-10/documents/corrected_sixth_drinking_water_infrastructure_needs_survey_and_assessment.pdf.*

[133] *Id.*

[134] *Id.*

[135] 42 U.S.C. 300j–12(b)(3)(A).

[136] Environmental Protection Agency, Learn About the Clean Water State Revolving Fund, *https://www.epa.gov/cwsrf/learn-about-clean-water-state-revolving-fund-cwsrf* (last visited Apr. 30, 2021); 42 U.S.C. 300j–12.

[137] House Committee on the Budget, State and Local Governments are in Dire Need of Federal Relief (Aug. 19, 2020), *https://budget.house.gov/publications/report/state-and-local-governments-are-dire-need-federal-relief.*

[138] Environmental Protection Agency, Drinking Water State Revolving Fund (Nov. 2019), *https://www.epa.gov/sites/production/files/2019-11/documents/fact_sheet_-_dwsrf_overview_final_0.pdf;* Environmental Protection Agency, National Benefits Analysis for Drinking Water Regulations, *https://www.epa.gov/sdwa/national-benefits-analysis-drinking-water-regulations* (last visited Apr. 30, 2020).

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.

2. Broadband Infrastructure

The COVID–19 public health emergency has underscored the importance of universally available, high-speed, reliable, and affordable broadband coverage as millions of Americans rely on the internet to participate in, among critical activities, remote school, healthcare, and work. Recognizing the need for such connectivity, the ARPA provides funds to State, territorial, local, and Tribal governments to make necessary investments in broadband infrastructure.

The National Telecommunications and Information Administration (NTIA) highlighted the growing necessity of broadband in daily lives through its analysis of NTIA Internet Use Survey data, noting that Americans turn to broadband internet access service for every facet of daily life including work, study, and healthcare.[139] With increased use of technology for daily activities and the movement by many businesses and schools to operating remotely during the pandemic, broadband has become even more critical for people across the country to carry out their daily lives.

By at least one measure, however, tens of millions of Americans live in areas where there is no broadband infrastructure that provides download speeds greater than 25 Mbps and upload speeds of 3 Mbps.[140] By contrast, as noted below, many households use upload and download speeds of 100 Mbps to meet their daily needs. Even in areas where broadband infrastructure exists, broadband access may be out of reach for millions of Americans because it is unaffordable, as the United States has some of the highest broadband prices in the Organisation for Economic Co-operation and Development (OECD).[141] There are disparities in availability as well; historically, Americans living in territories and Tribal lands as well as rural areas have disproportionately lacked sufficient broadband infrastructure.[142] Moreover, rapidly growing demand has, and will likely continue to, quickly outpace infrastructure capacity, a phenomenon acknowledged by various states around the country that have set scalability requirements to account for this anticipated growth in demand.[143]

The interim final rule provides that eligible investments in broadband are those that are designed to provide services meeting adequate speeds and are provided to unserved and underserved households and businesses. Understanding that States, territories, localities, and Tribal governments have a wide range of varied broadband infrastructure needs, the interim final rule provides award recipients with flexibility to identify the specific locations within their communities to be served and to otherwise design the project.

Under the interim final rule, eligible projects are expected to be designed to deliver, upon project completion, service that reliably meets or exceeds symmetrical upload and download speeds of 100 Mbps. There may be instances in which it would not be practicable for a project to deliver such service speeds because of the geography, topography, or excessive costs associated with such a project. In these instances, the affected project would be expected to be designed to deliver, upon project completion, service that reliably meets or exceeds 100 Mbps download and between at least 20 Mbps and 100 Mbps upload speeds and be scalable to a minimum of 100 Mbps symmetrical for download and upload speeds.[144] In setting these standards, Treasury identified speeds necessary to ensure that broadband infrastructure is sufficient to enable users to generally meet household needs, including the ability to support the simultaneous use of work, education, and health applications, and also sufficiently robust to meet increasing household demands for bandwidth. Treasury also recognizes that different communities and their members may have a broad range of internet needs and that those needs may change over time.

In considering the appropriate speed requirements for eligible projects, Treasury considered estimates of typical households demands during the pandemic. Using the Federal Communication Commission's (FCC) Broadband Speed Guide, for example, a household with two telecommuters and two to three remote learners today are estimated to need 100 Mbps download to work simultaneously.[145] In households with more members, the demands may be greater, and in households with fewer members, the demands may be less.

In considering the appropriate speed requirements for eligible projects, Treasury also considered data usage patterns and how bandwidth needs have changed over time for U.S. households and businesses as people's use of technology in their daily lives has evolved. In the few years preceding the pandemic, market research data showed that average upload speeds in the United States surpassed over 10 Mbps in 2017[146] and continued to increase significantly, with the average upload speed as of November, 2019 increasing to 48.41 Mbps,[147] attributable, in part to a shift to using broadband and the internet by individuals and businesses

[139] *See, e.g., https://www.ntia.gov/blog/2020/more-half-american-households-used-internet-health-related-activities-2019-ntia-data-show; https://www.ntia.gov/blog/2020/nearly-third-american-employees-worked-remotely-2019-ntia-data-show;* and generally, *https://www.ntia.gov/data/digital-nation-data-explorer.*

[140] As an example, data from the Federal Communications Commission shows that as of June 2020, 9.07 percent of the U.S. population had no available cable or fiber broadband providers providing greater than 25 Mbps download speeds and 3 Mbps upload speeds. Availability was significantly less for rural versus urban populations, with 35.57 percent of the rural population lacking such access, compared with 2.57 percent of the urban population. Availability was also significantly less for tribal versus non-tribal populations, with 35.93 percent of the tribal population lacking such access, compared with 8.74 of the non-tribal population. Federal Communications Commission, Fixed Broadband Deployment, *https://broadbandmap.fcc.gov/#/* (last visited May 9, 2021).

[141] How Do U.S. Internet Costs Compare To The Rest Of The World?, BroadbandSearch Blog Post, *available at https://www.broadbandsearch.net/blog/internet-costs-compared-worldwide.*

[142] *See, e.g.,* Federal Communications Commission, Fourteenth Broadband Deployment Report, *available at https://docs.fcc.gov/public/attachments/FCC-21-18A1.pdf.*

[143] *See, e.g.,* Illinois Department of Commerce & Economic Opportunity, Broadband Grants, h (last visited May 9, 2021), *https://www2.illinois.gov/dceo/ConnectIllinois/Pages/BroadbandGrants.aspx;* Kansas Office of Broadband Development, Broadband Acceleration Grant, *https://www.kansascommerce.gov/wp-content/uploads/2020/11/Broadband-Acceleration-Grant.pdf* (last visited May 9, 2021); New York State Association of Counties, Universal Broadband: Deploying High Speed Internet Access in NYS (Jul. 2017), *https://www.nysac.org/files/BroadbandUpdateReport2017(1).pdf.*

[144] This scalability threshold is consistent with scalability requirements used in other jurisdictions. *Id.*

[145] Federal Communications Commission, Broadband Speed Guide, *https://www.fcc.gov/consumers/guides/broadband-speed-guide* (last visited Apr. 30, 2021).

[146] Letter from Lisa R. Youngers, President and CEO of Fiber Broadband Association to FCC, WC Docket No. 19–126 (filed Jan. 3, 2020), including an Appendix with research from RVA LLC, *Data Review Of The Importance of Upload Speeds* (Jan. 2020), and Ookla speed test data, *available at https://ecfsapi.fcc.gov/file/101030085118517/FCC%20RDOF%20Jan%203%20Ex%20Parte.pdf.* Additional information on historic growth in data usage is provided in Schools, Health & Libraries Broadband Coalition, *Common Sense Solutions for Closing the Digital Divide,* Apr. 29, 2021.

[147] *Id. See also* United States's Mobile and Broadband internet Speeds—Speedtest Global Index, *available at https://www.speedtest.net/global-index/united-states#fixed.*

to create and share content using video sharing, video conferencing, and other applications.[148]

The increasing use of data accelerated markedly during the pandemic as households across the country became increasingly reliant on tools and applications that require greater internet capacity, both to download data but also to upload data. Sending information became as important as receiving it. A video consultation with a healthcare provider or participation by a child in a live classroom with a teacher and fellow students requires video to be sent and received simultaneously.[149] As an example, some video conferencing technology platforms indicate that download and upload speeds should be roughly equal to support two-way, interactive video meetings.[150] For both work and school, client materials or completed school assignments, which may be in the form of PDF files, videos, or graphic files, also need to be shared with others. This is often done by uploading materials to a collaboration site, and the upload speed available to a user can have a significant impact on the time it takes for the content to be shared with others. [151] These activities require significant capacity from home internet connections to both download and upload data, especially when there are multiple individuals in one household engaging in these activities simultaneously.

This need for increased broadband capacity during the pandemic was reflected in increased usage patterns seen over the last year. As OpenVault noted in recent advisories, the pandemic significantly increased the amount of data users consume. Among data users observed by OpenVault, per-subscriber average data usage for the fourth quarter of 2020 was 482.6 gigabytes per month, representing a 40 percent increase over the 344 gigabytes consumed in the fourth quarter of 2019 and a 26 percent increase over the third quarter 2020 average of 383.8 gigabytes.[152] OpenVault also noted significant increases in upstream usage among the data users it observed, with upstream data usage growing 63 percent—from 19 gigabytes to 31 gigabytes—between December, 2019 and December, 2020.[153] According to an OECD Broadband statistic from June 2020, the largest percentage of U.S. broadband subscribers have services providing speeds between 100 Mbps and 1 Gbps.[154]

Jurisdictions and Federal programs are increasingly responding to the growing demands of their communities for both heightened download and upload speeds. For example, Illinois now requires 100 Mbps symmetrical service as the construction standard for its state broadband grant programs. This standard is also consistent with speed levels, particularly download speed levels, prioritized by other Federal programs supporting broadband projects. Bids submitted as part of the FCC in its Rural Digital Opportunity Fund (RDOF), established to support the construction of broadband networks in rural communities across the country, are given priority if they offer faster service, with the service offerings of 100 Mbps download and 20 Mbps upload being included in the "above baseline" performance tier set by the FCC.[155] The Broadband Infrastructure Program (BBIP) [156] of the Department of Commerce, which provides Federal funding to deploy broadband infrastructure to eligible service areas of the country also prioritizes projects designed to provide broadband service with a download speed of not less than 100 Mbps and an upload speed of not less than 20 Mbps.[157]

The 100 Mbps upload and download speeds will support the increased and growing needs of households and businesses. Recognizing that, in some instances, 100 Mbps upload speed may be impracticable due to geographical, topographical, or financial constraints, the interim final rule permits upload speeds of between at least 20 Mbps and 100 Mbps in such instances. To provide for investments that will accommodate technologies requiring symmetry in download and upload speeds, as noted above, eligible projects that are not designed to deliver, upon project completion, service that reliably meets or exceeds symmetrical speeds of 100 Mbps because it would be impracticable to do so should be designed so that they can be scalable to such speeds. Recipients are also encouraged to prioritize investments in fiber optic infrastructure where feasible, as such advanced technology enables the next generation of application solutions for all communities.

Under the interim final rule, eligible projects are expected to focus on locations that are unserved or underserved. The interim final rule treats users as being unserved or underserved if they lack access to a wireline connection capable of reliably delivering at least minimum speeds of 25 Mbps download and 3 Mbps upload as households and businesses lacking this level of access are generally not viewed as being able to originate and receive high-quality voice, data, graphics, and video telecommunications. This threshold is consistent with the FCC's benchmark for an "advanced telecommunications capability." [158] This threshold is also consistent with thresholds used in other Federal programs to identify eligible areas to be served by programs to improve broadband services. For example, in the FCC's RDOF program, eligible areas include those without current (or already funded) access to terrestrial broadband service providing 25 Mbps download and 3 Mbps upload speeds.[159] The Department of Commerce's BBIP also considers households to be "unserved" generally if they lack access to broadband service

[148] *Id.*

[149] One high definition Zoom meeting or class requires approximately 3.8 Mbps/3.0 Mbps (up/down).

[150] *See, e.g.*, Zoom, System Requirements for Windows, macOS, and Linux, *https://support.zoom.us/hc/en-us/articles/201362023-System-requirements-for-Windows-macOS-and-Linux#h_d278c327-e03d-4896-b19a-96a8f3c0c69c* (last visited May 8, 2021).

[151] By one estimate, to upload a one gigabit video file to YouTube would take 15 minutes at an upload speed of 10 Mbps compared with 1 minute, 30 seconds at an upload speed of 100 Mbps, and 30 seconds at an upload speed of 300 Mbps. *Reviews.org:* What is Symmetrical internet? (March 2020).

[152] OVBI: Covid-19 Drove 15 percent Increase in Broadband Traffic in 2020, OpenVault, Quarterly Advisory, (Feb. 10, 2021), *available at https://openvault.com/ovbi-covid-19-drove-51-increase-in-broadband-traffic-in-2020; See* OpenVault's data set incorporates information on usage by subscribers across multiple continents, including North America and Europe. Additional data and detail on increases in the amount of data users consume and the broadband speeds they are using is provided in *OpenVault Broadband Insights Report Q4,* Quarterly Advisory (Feb. 10, 2021), *available at https://openvault.com/complimentary-report-4q20/.*

[153] OVBI Special Report: 202 Upstream Growth Nearly 4X of Pre-Pandemic Years, OpenVault, Quarterly Advisory, (April 1, 20201), *available at https://openvault.com/ovbi-special-report-2020-upstream-growth-rate-nearly-4x-of-pre-pandemic-years/;* Additional data is provided in *OpenVault Broadband Insights Pandemic Impact on Upstream Broadband Usage and Network Capacity, available at https://openvault.com/upstream-whitepaper/.*

[154] Organisation for Economic Co-operation and Development, Fixed broadband subscriptions per 100 inhabitants, per speed tiers (June 2020), *https://www.oecd.org/sti/broadband/5.1-FixedBB-SpeedTiers-2020-06.xls www.oecd.org/sti/broadband/broadband-statistics.*

[155] *Rural Digital Opportunity Fund,* Report and Order, 35 FCC Rcd 686, 690, para. 9 (2020), *available at https://www.fcc.gov/document/fcc-launches-20-billion-rural-digital-opportunity-fund-0.*

[156] The BIPP was authorized by the Consolidated Appropriations Act, 2021, Section 905, Public Law 116–260, 134 Stat. 1182 (Dec. 27, 2020).

[157] Section 905(d)(4) of the Consolidated Appropriations Act, 2021.

[158] *Deployment Report, supra* note 142.

[159] *Rural Digital Opportunity Fund, supra* note 156.

with a download speed of not less than 25 Mbps download and 3 Mbps upload, among other conditions. In selecting an area to be served by a project, recipients are encouraged to avoid investing in locations that have existing agreements to build reliable wireline service with minimum speeds of 100 Mbps download and 20 Mbps upload by December 31, 2024, in order to avoid duplication of efforts and resources.

Recipients are also encouraged to consider ways to integrate affordability options into their program design. To meet the immediate needs of unserved and underserved households and businesses, recipients are encouraged to focus on projects that deliver a physical broadband connection by prioritizing projects that achieve last mile-connections. Treasury also encourages recipients to prioritize support for broadband networks owned, operated by, or affiliated with local governments, non-profits, and co-operatives—providers with less pressure to turn profits and with a commitment to serving entire communities.

Under sections 602(c)(1)(A) and 603(c)(1)(A), assistance to households facing negative economic impacts due to COVID–19 is also an eligible use, including internet access or digital literacy assistance. As discussed above, in considering whether a potential use is eligible under this category, a recipient must consider whether, and the extent to which, the household has experienced a negative economic impact from the pandemic.

Question 22: 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?

Question 23: 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?

Question 24: 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?

Question 25: 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?

Question 26: 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?

III. Restrictions on Use

As discussed above, recipients have considerable flexibility to use Fiscal Recovery Funds to address the diverse needs of their communities. To ensure that payments from the Fiscal Recovery Funds are used for these congressionally permitted purposes, the ARPA includes two provisions that further define the boundaries of the statute's eligible uses. Section 602(c)(2)(A) of the Act provides that States and territories may not "use the funds . . . to either directly or indirectly offset a reduction in . . . net tax revenue . . . resulting from a change in law, regulation, or administrative interpretation during the covered period that reduces any tax . . . or delays the imposition of any tax or tax increase." In addition, sections 602(c)(2)(B) and 603(c)(2) prohibit any recipient, including cities, nonentitlement units of government, and counties, from using Fiscal Recovery Funds for deposit into any pension fund. These restrictions support the use of funds for the congressionally permitted purposes described in Section II of this Supplementary Information by providing a backstop against the use of funds for purposes outside of the eligible use categories.

These provisions give force to Congress's clear intent that Fiscal Recovery Funds be spent within the four eligible uses identified in the statute—(1) to respond to the public health emergency and its negative economic impacts, (2) to provide premium pay to essential workers, (3) to provide government services to the extent of eligible governments' revenue losses, and (4) to make necessary water, sewer, and broadband infrastructure investments—and not otherwise. These four eligible uses reflect Congress's judgment that the Fiscal Recovery Funds should be expended in particular ways that support recovery from the COVID–19 public health emergency. The further restrictions reflect Congress's judgment that tax cuts and pension deposits do not fall within these eligible uses. The interim final rule describes how Treasury will identify when such uses have occurred and how it will recoup funds put toward these impermissible uses and, as discussed in Section VIII of this **SUPPLEMENTARY INFORMATION**, establishes a reporting framework for monitoring the use of Fiscal Recovery Funds for eligible uses.

A. Deposit Into Pension Funds

The statute provides that recipients may not use Fiscal Recovery Funds for "deposit into any pension fund." For the reasons discussed below, Treasury interprets "deposit" in this context to refer to an extraordinary payment into a pension fund for the purpose of reducing an accrued, unfunded liability. More specifically, the interim final rule does not permit this assistance to be used to make a payment into a pension fund if both:

1. The payment reduces a liability incurred prior to the start of the COVID–19 public health emergency, and
2. the payment occurs outside the recipient's regular timing for making such payments.

Under this interpretation, a "deposit" is distinct from a "payroll contribution," which occurs when employers make payments into pension funds on regular intervals, with contribution amounts based on a pre-determined percentage of employees' wages and salaries.

As discussed above, eligible uses for premium pay and responding to the negative economic impacts of the COVID–19 public health emergency include hiring and compensating public sector employees. Interpreting the scope of "deposit" to exclude contributions that are part of payroll contributions is more consistent with these eligible uses and would reduce administrative burden for recipients. Accordingly, if an employee's wages and salaries are an eligible use of Fiscal Recovery Funds, recipients may treat the employee's covered benefits as an eligible use of Fiscal Recovery Funds. For purposes of the Fiscal Recovery Funds, covered benefits include costs of all types of leave (vacation, family-related, sick, military, bereavement, sabbatical, jury duty), employee insurance (health, life, dental, vision), retirement (pensions, 401(k)), unemployment benefit plans

(Federal and State), workers' compensation insurance, and Federal Insurance Contributions Act taxes (which includes Social Security and Medicare taxes).

Treasury anticipates that this approach to employees' covered benefits will be comprehensive and, for employees whose wage and salary costs are eligible expenses, will allow all covered benefits listed in the previous paragraph to be eligible under the Fiscal Recovery Funds. Treasury expects that this will minimize the administrative burden on recipients by treating all the specified covered benefit types as eligible expenses, for employees whose wage and salary costs are eligible expenses.

Question 27: Beyond a "deposit" and a "payroll contribution," are there other types of payments into a pension fund that Treasury should consider?

B. Offset a Reduction in Net Tax Revenue

For States and territories (recipient governments [160]), section 602(c)(2)(A)—the offset provision—prohibits the use of Fiscal Recovery Funds to directly or indirectly offset a reduction in net tax revenue resulting from a change in law, regulation, or administrative interpretation [161] during the covered period. If a State or territory uses Fiscal Recovery Funds to offset a reduction in net tax revenue, the ARPA provides that the State or territory must repay to the Treasury an amount equal to the lesser of (i) the amount of the applicable reduction attributable to the impermissible offset and (ii) the amount received by the State or territory under the ARPA. *See* Section IV of this **SUPPLEMENTARY INFORMATION**. As discussed below Section IV of this **SUPPLEMENTARY INFORMATION**, a State or territory that chooses to use Fiscal Recovery Funds to offset a reduction in net tax revenue does not forfeit its entire allocation of Fiscal Recovery Funds (unless it misused the full allocation to offset a reduction in net tax revenue) or any non-ARPA funding received.

The interim final rule implements these conditions by establishing a framework for States and territories to determine the cost of changes in law, regulation, or interpretation that reduce tax revenue and to identify and value the sources of funds that will offset—*i.e.*, cover the cost of—any reduction in net tax revenue resulting from such changes. A recipient government would only be considered to have used Fiscal Recovery Funds to offset a reduction in net tax revenue resulting from changes in law, regulation, or interpretation if, and to the extent that, the recipient government could not identify sufficient funds from sources other than the Fiscal Recovery Funds to offset the reduction in net tax revenue. If sufficient funds from other sources cannot be identified to cover the full cost of the reduction in net tax revenue resulting from changes in law, regulation, or interpretation, the remaining amount not covered by these sources will be considered to have been offset by Fiscal Recovery Funds, in contravention of the offset provision. The interim final rule recognizes three sources of funds that may offset a reduction in net tax revenue other than Fiscal Recovery Funds—organic growth, increases in revenue (*e.g.*, an increase in a tax rate), and certain cuts in spending.

In order to reduce burden, the interim final rule's approach also incorporates the types of information and modeling already used by States and territories in their own fiscal and budgeting processes. By incorporating existing budgeting processes and capabilities, States and territories will be able to assess and evaluate the relationship of tax and budget decisions to uses of the Fiscal Recovery Funds based on information they likely have or can obtain. This approach ensures that recipient governments have the information they need to understand the implications of their decisions regarding the use of the Fiscal Recovery Funds—and, in particular, whether they are using the funds to directly or indirectly offset a reduction in net tax revenue, making them potentially subject to recoupment.

Reporting on both the eligible uses and on a State's or territory's covered tax changes that would reduce tax revenue will enable identification of, and recoupment for, use of Fiscal Recovery Funds to directly offset reductions in tax revenue resulting from tax relief. Moreover, this approach recognizes that, because money is fungible, even if Fiscal Recovery Funds are not explicitly or directly used to cover the costs of changes that reduce net tax revenue, those funds may be used in a manner inconsistent with the statute by indirectly being used to substitute for the State's or territory's funds that would otherwise have been needed to cover the costs of the reduction. By focusing on the cost of changes that reduce net tax revenue—and how a recipient government is offsetting those reductions in constructing its budget over the covered period—the framework prevents efforts to use Fiscal Recovery Funds to indirectly offset reductions in net tax revenue for which the recipient government has not identified other offsetting sources of funding.

As discussed in greater detail below in this preamble, the framework set forth in the interim final rule establishes a step-by-step process for determining whether, and the extent to which, Fiscal Recovery Funds have been used to offset a reduction in net tax revenue. Based on information reported annually by the recipient government:

- First, each year, each recipient government will identify and value the changes in law, regulation, or interpretation that would result in a reduction in net tax revenue, as it would in the ordinary course of its budgeting process. The sum of these values in the year for which the government is reporting is the amount it needs to "pay for" with sources other than Fiscal Recovery Funds (total value of revenue reducing changes).
- Second, the interim final rule recognizes that it may be difficult to predict how a change would affect net tax revenue in future years and, accordingly, provides that if the total value of the changes in the year for which the recipient government is reporting is below a de minimis level, as discussed below, the recipient government need not identify any sources of funding to pay for revenue reducing changes and will not be subject to recoupment.
- Third, a recipient government will consider the amount of actual tax revenue recorded in the year for which they are reporting. If the recipient government's actual tax revenue is greater than the amount of tax revenue received by the recipient for the fiscal year ending 2019, adjusted annually for inflation, the recipient government will not be considered to have violated the offset provision because there will not have been a reduction in net tax revenue.
- Fourth, if the recipient government's actual tax revenue is less than the amount of tax revenue received by the recipient government for the fiscal year ending 2019, adjusted annually for inflation, in the reporting year the recipient government will identify any sources of funds that have been used to permissibly offset the total value of covered tax changes other than Fiscal Recovery Funds. These are:
  - State or territory tax changes that would increase any source of general

[160] In this sub-section, "recipient governments" refers only to States and territories. In other sections, "recipient governments" refers more broadly to eligible governments receiving funding from the Fiscal Recovery Funds.

[161] For brevity, referred to as "changes in law, regulation, or interpretation" for the remainder of this preamble.

fund revenue, such as a change that would increase a tax rate; and

○ Spending cuts in areas not being replaced by Fiscal Recovery Funds.

The recipient government will calculate the value of revenue reduction remaining after applying these sources of offsetting funding to the total value of revenue reducing changes—that, is, how much of the tax change has not been paid for. The recipient government will then compare that value to the difference between the baseline and actual tax revenue. A recipient government will not be required to repay to the Treasury an amount that is greater than the recipient government's actual tax revenue shortfall relative to the baseline (*i.e.*, fiscal year 2019 tax revenue adjusted for inflation). This "revenue reduction cap," together with Step 3, ensures that recipient governments can use organic revenue growth to offset the cost of revenue reductions.

• Finally, if there are any amounts that could be subject to recoupment, Treasury will provide notice to the recipient government of such amounts. This process is discussed in greater detail in Section IV of this **SUPPLEMENTARY INFORMATION.**

Together, these steps allow Treasury to identify the amount of reduction in net tax revenue that both is attributable to covered changes and has been directly or indirectly offset with Fiscal Recovery Funds. This process ensures Fiscal Recovery Funds are used in a manner consistent with the statute's defined eligible uses and the offset provision's limitation on these eligible uses, while avoiding undue interference with State and territory decisions regarding tax and spending policies.

The interim final rule also implements a process for recouping Fiscal Recovery Funds that were used to offset reductions in net tax revenue, including the calculation of any amounts that may be subject to recoupment, a process for a recipient government to respond to a notice of recoupment, and clarification regarding amounts excluded from recoupment. *See* Section IV of this **SUPPLEMENTARY INFORMATION.**

The interim final rule includes several definitions that are applicable to the implementation of the offset provision.

Covered change. The offset provision is triggered by a reduction in net tax revenue resulting from "a change in law, regulation, or administrative interpretation." A covered change includes any final legislative or regulatory action, a new or changed administrative interpretation, and the phase-in or taking effect of any statute or rule where the phase-in or taking effect was not prescribed prior to the start of the covered period. Changed administrative interpretations would not include corrections to replace prior inaccurate interpretations; such corrections would instead be treated as changes implementing legislation enacted or regulations issued prior to the covered period; the operative change in those circumstances is the underlying legislation or regulation that occurred prior to the covered period. Moreover, only the changes within the control of the State or territory are considered covered changes. Covered changes do not include a change in rate that is triggered automatically and based on statutory or regulatory criteria in effect prior to the covered period. For example, a state law that sets its earned income tax credit (EITC) at a fixed percentage of the Federal EITC will see its EITC payments automatically increase—and thus its tax revenue reduced—because of the Federal Government's expansion of the EITC in the ARPA.[162] This would not be considered a covered change. In addition, the offset provision applies only to actions for which the change in policy occurs during the covered period; it excludes regulations or other actions that implement a change or law substantively enacted prior to March 3, 2021. Finally, Treasury has determined and previously announced that income tax changes—even those made during the covered period—that simply conform with recent changes in Federal law (including those to conform to recent changes in Federal taxation of unemployment insurance benefits and taxation of loan forgiveness under the Paycheck Protection Program) are permissible under the offset provision.

Baseline. For purposes of measuring a reduction in net tax revenue, the interim final rule measures actual changes in tax revenue relative to a revenue baseline (baseline). The baseline will be calculated as fiscal year 2019 (FY 2019) tax revenue indexed for inflation in each year of the covered period, with inflation calculated using the Bureau of Economic Analysis's Implicit Price Deflator.[163]

FY 2019 was chosen as the starting year for the baseline because it is the last full fiscal year prior to the COVID–19 public health emergency.[164] This baseline year is consistent with the approach directed by the ARPA in sections 602(c)(1)(C) and 603(c)(1)(C), which identify the "most recent full fiscal year of the [State, territory, or Tribal government] prior to the emergency" as the comparator for measuring revenue loss. U.S. gross domestic product is projected to rebound to pre-pandemic levels in 2021,[165] suggesting that an FY 2019 pre-pandemic baseline is a reasonable comparator for future revenue levels. The FY 2019 baseline revenue will be adjusted annually for inflation to allow for direct comparison of actual tax revenue in each year (reported in nominal terms) to baseline revenue in common units of measurement; without inflation adjustment, each dollar of reported actual tax revenue would be worth less than each dollar of baseline revenue expressed in 2019 terms.

Reporting year. The interim final rule defines "reporting year" as a single year within the covered period, aligned to the current fiscal year of the recipient government during the covered period, for which a recipient government reports the value of covered changes and any sources of offsetting revenue increases ("in-year" value), regardless of when those changes were enacted. For the fiscal years ending in 2021 or 2025 (partial years), the term "reporting year" refers to the portion of the year falling within the covered period. For example, the reporting year for a fiscal year beginning July 2020 and ending June 2021 would be from March 3, 2021 to July 2021.

Tax revenue. The interim final rule's definition of "tax revenue" is based on the Census Bureau's definition of taxes, used for its Annual Survey of State Government Finances.[166] It provides a consistent, well-established definition with which States and territories will be familiar and is consistent with the approach taken in Section II.C of this **SUPPLEMENTARY INFORMATION** describing the implementation of sections 602(c)(1)(C) and 603(c)(1)(C) of the Act, regarding revenue loss. Consistent with the approach described in Section II.C of this **SUPPLEMENTARY INFORMATION**, tax

[162] *See, e.g.*, Tax Policy Center, How do state earned income tax credits work?, *https://www.taxpolicycenter.org/briefing-book/how-do-state-earned-income-tax-credits-work/* (last visited May 9, 2021).

[163] U.S. Department of Commerce, Bureau of Economic Analysis, GDP Price Deflator, *https://www.bea.gov/data/prices-inflation/gdp-price-deflator* (last visited May 9, 2021).

[164] Using Fiscal Year 2019 is consistent with section 602 as Congress provided for using that baseline for determining the impact of revenue loss affecting the provision of government services. *See* section 602(c)(1)(C).

[165] Congressional Budget Office, An Overview of the Economic Outlook: 2021 to 2031 (February 1, 2021), *available at https://www.cbo.gov/publication/56965.*

[166] U.S. Census Bureau, Annual Survey of State and Local Government Finances Glossary, *https://www.census.gov/programs-surveys/state/about/glossary.html* (last visited Apr. 30, 2021).

revenue does not include revenue taxed and collected by a different unit of government (*e.g.*, revenue from taxes levied by a local government and transferred to a recipient government).

Framework. The interim final rule provides a step-by-step framework, to be used in each reporting year, to calculate whether the offset provision applies to a State's or territory's use of Fiscal Recovery Funds:

(1) *Covered changes that reduce tax revenue.* For each reporting year, a recipient government will identify and value covered changes that the recipient government predicts will have the effect of reducing tax revenue in a given reporting year, similar to the way it would in the ordinary course of its budgeting process. The value of these covered changes may be reported based on estimated values produced by a budget model, incorporating reasonable assumptions, that aligns with the recipient government's existing approach for measuring the effects of fiscal policies, and that measures relative to a current law baseline. The covered changes may also be reported based on actual values using a statistical methodology to isolate the change in year-over-year revenue attributable to the covered change(s), relative to the current law baseline prior to the change(s). Further, estimation approaches should not use dynamic methodologies that incorporate the projected effects of macroeconomic growth because macroeconomic growth is accounted for separately in the framework. Relative to these dynamic scoring methodologies, scoring methodologies that do not incorporate projected effects of macroeconomic growth rely on fewer assumptions and thus provide greater consistency among States and territories. Dynamic scoring that incorporates macroeconomic growth may also increase the likelihood of underestimation of the cost of a reduction in tax revenue.

In general and where possible, reporting should be produced by the agency of the recipient government responsible for estimating the costs and effects of fiscal policy changes. This approach offers recipient governments the flexibility to determine their reporting methodology based on their existing budget scoring practices and capabilities. In addition, the approach of using the projected value of changes in law that enact fiscal policies to estimate the net effect of such policies is consistent with the way many States and territories already consider tax changes.[167]

(2) *In excess of the de minimis.* The recipient government will next calculate the total value of all covered changes in the reporting year resulting in revenue reductions, identified in Step **1**. If the total value of the revenue reductions resulting from these changes is below the de minimis level, the recipient government will be deemed not to have any revenue-reducing changes for the purpose of determining the recognized net reduction. If the total is above the de minimis level, the recipient government must identify sources of in-year revenue to cover the full costs of changes that reduce tax revenue.

The de minimis level is calculated as 1 percent of the reporting year's baseline. Treasury recognizes that, pursuant to their taxing authority, States and territories may make many small changes to alter the composition of their tax revenues or implement other policies with marginal effects on tax revenues. They may also make changes based on projected revenue effects that turn out to differ from actual effects, unintentionally resulting in minor revenue changes that are not fairly described as "resulting from" tax law changes. The de minimis level recognizes the inherent challenges and uncertainties that recipient governments face, and thus allows relatively small reductions in tax revenue without consequence. Treasury determined the 1 percent level by assessing the historical effects of state-level tax policy changes in state EITCs implemented to effect policy goals other than reducing net tax revenues.[168] The 1 percent de minimis level reflects the historical reductions in revenue due to minor changes in state fiscal policies.

(3) *Safe harbor.* The recipient government will then compare the reporting year's actual tax revenue to the baseline. If actual tax revenue is greater than the baseline, Treasury will deem the recipient government not to have any recognized net reduction for the reporting year, and therefore to be in a safe harbor and outside the ambit of the offset provision. This approach is consistent with the ARPA, which contemplates recoupment of Fiscal Recovery Funds only in the event that such funds are used to offset a reduction in net tax revenue. If net tax revenue has not been reduced, this provision does not apply. In the event that actual tax revenue is above the baseline, the organic revenue growth that has occurred, plus any other revenue-raising changes, by definition must have been enough to offset the in-year costs of the covered changes.

(4) *Consideration of other sources of funding.* Next, the recipient government will identify and calculate the total value of changes that could pay for revenue reduction due to covered changes and sum these items. This amount can be used to pay for up to the total value of revenue-reducing changes in the reporting year. These changes consist of two categories:

(a) *Tax and other increases in revenue.* The recipient government must identify and consider covered changes in policy that the recipient government predicts will have the effect of increasing general revenue in a given reporting year. As when identifying and valuing covered changes that reduce tax revenue, the value of revenue-raising changes may be reported based on estimated values produced by a budget model, incorporating reasonable assumptions, aligned with the recipient government's existing approach for measuring the effects of fiscal policies, and measured relative to a current law baseline, or based on actual values using a statistical methodology to isolate the change in year-over-year revenue attributable to the covered change(s). Further, and as discussed above, estimation approaches should not use dynamic scoring methodologies that incorporate the effects of macroeconomic growth because growth is accounted for separately under the interim final rule. In general and where possible, reporting should be produced by the agency of the recipient government responsible for estimating the costs and effects of fiscal policy changes. This approach offers recipient governments the flexibility to determine their reporting methodology based on their existing budget scoring practices and capabilities.

(b) *Covered spending cuts.* A recipient government also may cut spending in certain areas to pay for covered changes that reduce tax revenue, up to the amount of the recipient government's net reduction in total spending as described below. These changes must be reductions in government outlays not in an area where the recipient government has spent Fiscal Recovery Funds. To better align with existing reporting and accounting, the interim final rule considers the department, agency, or

[167] *See, e.g.*, Megan Randall & Kim Rueben, Tax Policy Center, Sustainable Budgeting in the States: Evidence on State Budget Institutions and Practices (Nov. 2017), *available at https://www.taxpolicycenter.org/sites/default/files/publication/149186/sustainable-budgeting-in-the-states_1.pdf.*

[168] Data provided by the Urban-Brookings Tax Policy Center for state-level EITC changes for 2004–2017.

authority from which spending has been cut and whether the recipient government has spent Fiscal Recovery Funds on that same department, agency, or authority. This approach was selected to allow recipient governments to report how Fiscal Recovery Funds have been spent using reporting units already incorporated into their budgeting process. If they have not spent Fiscal Recovery Funds in a department, agency, or authority, the full amount of the reduction in spending counts as a covered spending cut, up to the recipient government's net reduction in total spending. If they have, the Fiscal Recovery Funds generally would be deemed to have replaced the amount of spending cut and only reductions in spending above the amount of Fiscal Recovery Funds spent on the department, agency, or authority would count.

To calculate the amount of spending cuts that are available to offset a reduction in tax revenue, the recipient government must first consider whether there has been a reduction in total net spending, excluding Fiscal Recovery Funds (net reduction in total spending). This approach ensures that reported spending cuts actually create fiscal space, rather than simply offsetting other spending increases. A net reduction in total spending is measured as the difference between total spending in each reporting year, excluding Fiscal Recovery Funds spent, relative to total spending for the recipient's fiscal year ending in 2019, adjusted for inflation. Measuring reductions in spending relative to 2019 reflects the fact that the fiscal space created by a spending cut persists so long as spending remains below its original level, even if it does not decline further, relative to the same amount of revenue. Measuring spending cuts from year to year would, by contrast, not recognize any available funds to offset revenue reductions unless spending continued to decline, failing to reflect the actual availability of funds created by a persistent change and limiting the discretion of States and territories. In general and where possible, reporting should be produced by the agency of the recipient government responsible for estimating the costs and effects of fiscal policy changes. Treasury chose this approach because while many recipient governments may score budget legislation using projections, spending cuts are readily observable using actual values.

This approach—allowing only spending reductions in areas where the recipient government has not spent Fiscal Recovery Funds to be used as an offset for a reduction in net tax revenue—aims to prevent recipient governments from using Fiscal Recovery Funds to supplant State or territory funding in the eligible use areas, and then use those State or territory funds to offset tax cuts. Such an approach helps ensure that Fiscal Recovery Funds are not used to "indirectly" offset revenue reductions due to covered changes.

In order to help ensure recipient governments use Fiscal Recovery Funds in a manner consistent with the prescribed eligible uses and do not use Fiscal Recovery Funds to indirectly offset a reduction in net tax revenue resulting from a covered change, Treasury will monitor changes in spending throughout the covered period. If, over the course of the covered period, a spending cut is subsequently replaced with Fiscal Recovery Funds and used to indirectly offset a reduction in net tax revenue resulting from a covered change, Treasury may consider such change to be an evasion of the restrictions of the offset provision and seek recoupment of such amounts.

(5) *Identification of amounts subject to recoupment.* If a recipient government (i) reports covered changes that reduce tax revenue (Step 1); (ii) to a degree greater than the de minimis (Step 2); (iii) has experienced a reduction in net tax revenue (Step 3); and (iv) lacks sufficient revenue from other, permissible sources to pay for the entirety of the reduction (Step 4), then the recipient government will be considered to have used Fiscal Recovery Funds to offset a reduction in net tax revenue, up to the amount that revenue has actually declined. That is, the maximum value of reduction in revenue due to covered changes which a recipient government must cover is capped at the difference between the baseline and actual tax revenue.[169] In the event that the baseline is above actual tax revenue and the difference between them is less than the sum of revenue reducing changes that are not paid for with other, permissible sources, organic revenue growth has implicitly offset a portion of the reduction. For example, if a recipient government reduces tax revenue by $1 billion, makes no other changes, and experiences revenue growth driven by organic economic growth worth $500 million, it need only pay for the remaining $500 million with sources other than Fiscal Recovery Funds. The revenue reduction cap implements this approach for permitting organic revenue growth to cover the cost of tax cuts.

Finally, as discussed further in Section IV of this **SUPPLEMENTARY INFORMATION**, a recipient government may request reconsideration of any amounts identified as subject to recoupment under this framework. This process ensures that all relevant facts and circumstances, including information regarding planned spending cuts and budgeting assumptions, are considered prior to a determination that an amount must be repaid. Amounts subject to recoupment are calculated on an annual basis; amounts recouped in one year cannot be returned if the State or territory subsequently reports an increase in net tax revenue.

To facilitate the implementation of the framework above, and in addition to reporting required on eligible uses, in each year of the reporting period, each State and territory will report to Treasury the following items:

- Actual net tax revenue for the reporting year;
- Each revenue-reducing change made to date during the covered period and the in-year value of each change;
- Each revenue-raising change made to date during the covered period and the in-year value of each change;
- Each covered spending cut made to date during the covered period, the in-year value of each cut, and documentation demonstrating that each spending cut is covered as prescribed under the interim final rule;

Treasury will provide additional guidance and instructions the reporting requirements at a later date.

Question 28: Does the interim final rule's definition of tax revenue accord with existing State and territorial practice and, if not, are there other definitions or elements Treasury should consider? Discuss why or why not.

Question 29: The interim final rule permits certain spending cuts to cover the costs of reductions in tax revenue, including cuts in a department, agency, or authority in which the recipient government is not using Fiscal Recovery Funds. How should Treasury and recipient governments consider the scope of a department, agency, or authority for the use of funds to ensure spending cuts are not being substituted with Fiscal Recovery Funds while also avoiding an overbroad definition of that captures spending that is, in fact, distinct?

Question 30: Discuss the budget scoring methodologies currently used by States and territories. How should the interim final rule take into consideration differences in approaches? Please discuss the use of

[169] This cap is applied in § 35.8(c) of the interim final rule, calculating the amount of funds used in violation of the tax offset provision.

practices including but not limited to macrodynamic scoring, microdynamic scoring, and length of budget windows.

Question 31: If a recipient government has a balanced budget requirement, how will that requirement impact its use of Fiscal Recovery Funds and ability to implement this framework?

Question 32: To implement the framework described above, the interim final rule establishes certain reporting requirements. To what extent do recipient governments already produce this information and on what timeline? Discuss ways that Treasury and recipient governments may better rely on information already produced, while ensuring a consistent application of the framework.

Question 33: Discuss States' and territories' ability to produce the figures and numbers required for reporting under the interim final rule. What additional reporting tools, such as a standardized template, would facilitate States' and territories' ability to complete the reporting required under the interim final rule?

C. Other Restrictions on Use

Payments from the Fiscal Recovery Funds are also subject to pre-existing limitations provided in other Federal statutes and regulations and may not be used as non-Federal match for other Federal programs whose statute or regulations bar the use of Federal funds to meet matching requirements. For example, payments from the Fiscal Recovery Funds may not be used to satisfy the State share of Medicaid.[170]

As provided for in the award terms, payments from the Fiscal Recovery Funds as a general matter will be subject to the provisions of the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (2 CFR part 200) (the Uniform Guidance), including the cost principles and restrictions on general provisions for selected items of cost.

D. Timeline for Use of Fiscal Recovery Funds

Section 602(c)(1) and section 603(c)(1) require that payments from the Fiscal Recovery Funds be used only to cover costs incurred by the State, territory, Tribal government, or local government by December 31, 2024. Similarly, the CARES Act provided that payments from the CRF be used to cover costs incurred by December 31, 2021.[171] The definition of "incurred" does not have a clear meaning. With respect to the CARES Act, on the understanding that the CRF was intended to be used to meet relatively short-term needs, Treasury interpreted this requirement to mean that, for a cost to be considered to have been incurred, performance of the service or delivery of the goods acquired must occur by December 31, 2021. In contrast, the ARPA, passed at a different stage of the COVID–19 public health emergency, was intended to provide more general fiscal relief over a broader timeline. In addition, the ARPA expressly permits the use of Fiscal Recovery Funds for improvements to water, sewer, and broadband infrastructure, which entail a longer timeframe. In recognition of this, Treasury is interpreting the requirement in section 602 and section 603 that costs be incurred by December 31, 2024, to require only that recipients have obligated the Fiscal Recovery Funds by such date. The interim final rule adopts a definition of "obligation" that is based on the definition used for purposes of the Uniform Guidance, which will allow for uniform administration of this requirement and is a definition with which most recipients will be familiar.

Payments from the Fiscal Recovery Funds are grants provided to recipients to mitigate the fiscal effects of the COVID–19 public health emergency and to respond to the public health emergency, consistent with the eligible uses enumerated in sections 602(c)(1) and 603(c)(1).[172] As such, these funds are intended to provide economic stimulus in areas still recovering from the economic effects of the pandemic. In implementing and interpreting these provisions, including what it means to "respond to" the COVID–19 public health emergency, Treasury takes into consideration pre-pandemic facts and circumstances (*e.g.*, average revenue growth prior to the pandemic) as well as impact of the pandemic that predate the enactment of the ARPA (*e.g.*, replenishing Unemployment Trust balances drawn during the pandemic). While assessing the effects of the COVID–19 public health emergency necessarily takes into consideration the facts and circumstances that predate the ARPA, use of Fiscal Recovery Funds is forward looking.

As discussed above, recipients are permitted to use payments from the Fiscal Recovery Funds to respond to the public health emergency, to respond to workers performing essential work by providing premium pay or providing grants to eligible employers, and to make necessary investments in water, sewer, or broadband infrastructure, which all relate to prospective uses. In addition, sections 602(c)(1)(C) and 603(c)(1)(C) permit recipients to use Fiscal Recovery Funds for the provision of government services. This clause provides that the amount of funds that may be used for this purpose is measured by reference to the reduction in revenue due to the public health emergency relative to revenues collected in the most recent full fiscal year, but this reference does not relate to the period during which recipients may use the funds, which instead refers to prospective uses, consistent with the other eligible uses.

Although as discussed above the eligible uses of payments from the Fiscal Recovery Funds are all prospective in nature, Treasury considers the beginning of the covered period for purposes of determining compliance with section 602(c)(2)(A) to be the relevant reference point for this purpose. The interim final rule thus permits funds to be used to cover costs incurred beginning on March 3, 2021. This aligns the period for use of Fiscal Recovery Funds with the period during which these funds may not be used to offset reductions in net tax revenue. Permitting Fiscal Recovery Funds to be used to cover costs incurred beginning on this date will also mean that recipients that began incurring costs in the anticipation of enactment of the ARPA and in advance of the issuance of this rule and receipt of payment from the Fiscal Recovery Funds would be able to cover them using these payments.[173]

As set forth in the award terms, the period of performance will run until December 31, 2026, which will provide recipients a reasonable amount of time to complete projects funded with payments from the Fiscal Recovery Funds.

IV. Recoupment Process

Under the ARPA, failure to comply with the restrictions on use contained in sections 602(c) and 603(c) of the Act may result in recoupment of funds.[174] The interim final rule implements these provisions by establishing a process for recoupment.

Identification and Notice of Violations. Failure to comply with the restrictions on use will be identified based on reporting provided by the

[170] *See* 42 CFR 433.51 and 45 CFR 75.306.

[171] Section 1001 of Division N of the Consolidated Appropriations Act, 2021 amended section 601(d)(3) of the Act by extending the end of the covered period for CRF expenditures from December 30, 2020 to December 31, 2021.

[172] Sections 602(a), 603(a), 602(c)(1) and 603(c)(1) of the Act.

[173] Given the nature of this program, recipients will not be permitted to use funds to cover pre-award costs, *i.e.*, those incurred prior to March 3, 2021.

[174] Sections 602(e) and 603(e) of the Act.

recipient. As discussed further in Sections III.B and VIII of this **SUPPLEMENTARY INFORMATION**, Treasury will collect information regarding eligible uses on a quarterly basis and on the tax offset provision on an annual basis. Treasury also may consider other information in identifying a violation, such as information provided by members of the public. If Treasury identifies a violation, it will provide written notice to the recipient along with an explanation of such amounts.

Request for Reconsideration. Under the interim final rule, a recipient may submit a request for reconsideration of any amounts identified in the notice provided by Treasury. This reconsideration process provides a recipient the opportunity to submit additional information it believes supports its request in light of the notice of recoupment, including, for example, additional information regarding the recipient's use of Fiscal Recovery Funds or its tax revenues. The process also provides the Secretary with an opportunity to consider all information relevant to whether a violation has occurred, and if so, the appropriate amount for recoupment.

The interim final rule also establishes requirements for the timing of a request for reconsideration. Specifically, if a recipient wishes to request reconsideration of any amounts identified in the notice, the recipient must submit a written request for reconsideration to the Secretary within 60 calendar days of receipt of such notice. The request must include an explanation of why the recipient believes that the finding of a violation or recoupable amount identified in the notice of recoupment should be reconsidered. To facilitate the Secretary's review of a recipient's request for reconsideration, the request should identify all supporting reasons for the request. Within 60 calendar days of receipt of the recipient's request for reconsideration, the recipient will be notified of the Secretary's decision to affirm, withdraw, or modify the notice of recoupment. Such notification will include an explanation of the decision, including responses to the recipient's supporting reasons and consideration of additional information provided.

The process and timeline established by the interim final rule are intended to provide the recipient with an adequate opportunity to fully present any issues or arguments in response to the notice of recoupment.[175] This process will allow the Secretary to respond to the issues and considerations raised in the request for reconsideration taking into account the information and arguments presented by the recipient along with any other relevant information.

Repayment. Finally, the interim final rule provides that any amounts subject to recoupment must be repaid within 120 calendar days of receipt of any final notice of recoupment or, if the recipient has not requested reconsideration, within 120 calendar days of the initial notice provided by the Secretary.

Question 34: Discuss the timeline for requesting reconsideration under the interim final rule. What, if any, challenges does this timeline present?

V. Payments in Tranches to Local Governments and Certain States

Section 603 of the Act provides that the Secretary will make payments to local governments in two tranches, with the second tranche being paid twelve months after the first payment. In addition, section 602(b)(6)(A)(ii) provides that the Secretary may withhold payment of up to 50 percent of the amount allocated to each State and territory for a period of up to twelve months from the date on which the State or territory provides its certification to the Secretary. Any such withholding for a State or territory is required to be based on the unemployment rate in the State or territory as of the date of the certification.

The Secretary has determined to provide in this interim final rule for withholding of 50 percent of the amount of Fiscal Recovery Funds allocated to all States (and the District of Columbia) other than those with an unemployment rate that is 2.0 percentage points or more above its pre-pandemic (*i.e.*, February 2020) level. The Secretary will refer to the latest available monthly data from the Bureau of Labor Statistics as of the date the certification is provided. Based on data available at the time of public release of this interim final rule, this threshold would result in a majority of States being paid in two tranches.

Splitting payments for the majority of States is consistent with the requirement in section 603 of the Act to make payments from the Coronavirus Local Fiscal Recovery Fund to local governments in two tranches.[176] Splitting payments to States into two tranches will help encourage recipients to adapt, as necessary, to new developments that could arise over the coming twelve months, including potential changes to the nature of the public health emergency and its negative economic impacts. While the U.S. economy has been recovering and adding jobs in aggregate, there is still considerable uncertainty in the economic outlook and the interaction between the pandemic and the economy.[177] For these reasons, Treasury believes it will be appropriate for a majority of recipients to adapt their plans as the recovery evolves. For example, a faster-than-expected economic recovery in 2021 could lead a recipient to dedicate more Fiscal Recovery Funds to longer-term investments starting in 2022. In contrast, a slower-than-expected economic recovery in 2021 could lead a recipient to use additional funds for near-term stimulus in 2022.

At the same time, the statute contemplates the possibility that elevated unemployment in certain States could justify a single payment. Elevated unemployment is indicative of a greater need to assist unemployed workers and stimulate a faster economic recovery. For this reason, the interim final rule provides that States and territories with an increase in their unemployment rate over a specified threshold may receive a single payment, with the expectation that a single tranche will better enable these States and territories to take additional immediate action to aid the unemployed and strengthen their economies.

Following the initial pandemic-related spike in unemployment in 2020, States' unemployment rates have been trending back towards pre-pandemic levels. However, some States' labor markets are healing more slowly than others. Moreover, States varied widely in their pre-pandemic levels of unemployment, and some States remain substantially further from their pre-

[175] The interim final rule also provides that Treasury may extend any deadlines.

[176] With respect to Federal financial assistance more generally, States are subject to the requirements of the Cash Management Improvement Act (CMIA), under which Federal funds are drawn upon only on an as needed basis and States are required to remit interest on unused balances to Treasury. Given the statutory requirement for Treasury to make payments to States within a certain period, these requirements of the CMIA and Treasury's implementing regulations at 31 CFR part 205 will not apply to payments from the Fiscal Recovery Funds. Providing funding in two tranches to the majority of States reflects, to the maximum extent permitted by section 602 of the Act, the general principles of Federal cash management and stewardship of Federal funding, yet will be much less restrictive than the usual requirements to which States are subject.

[177] The potential course of the virus, and its impact on the economy, has contributed to a heightened degree of uncertainty relative to prior periods. *See, e.g.*, Dave Altig et al., Economic uncertainty before and during the COVID–19 pandemic, J. of Public Econ. (Nov. 2020), *available at https://www.sciencedirect.com/science/article/abs/pii/S0047272720301389.*

pandemic starting point. Consequently, Treasury is delineating States with significant remaining elevation in the unemployment rate, based on the net difference to pre-pandemic levels.

Treasury has established that significant remaining elevation in the unemployment rate is a net change in the unemployment rate of 2.0 percentage points or more relative to pre-pandemic levels. In the four previous recessions going back to the early 1980s, the national unemployment rate rose by 3.6, 2.3, 2.0, and 5.0 percentage points, as measured from the start of the recession to the eventual peak during or immediately following the recession.[178] Each of these increases can therefore represent a recession's impact on unemployment. To identify States with significant remaining elevation in unemployment, Treasury took the lowest of these four increases, 2.0 percentage points, to indicate states where, despite improvement in the unemployment rate, current labor market conditions are consistent still with a historical benchmark for a recession.

No U.S. territory will be subject to withholding of its payment from the Fiscal Recovery Funds. For Puerto Rico, the Secretary has determined that the current level of the unemployment rate (8.8 percent, as of March 2021[179]) is sufficiently high such that Treasury should not withhold any portion of its payment from the Fiscal Recovery Funds regardless of its change in unemployment rate relative to its pre-pandemic level. For U.S. territories that are not included in the Bureau of Labor Statistics' monthly unemployment rate data, the Secretary will not exercise the authority to withhold amounts from the Fiscal Recovery Funds.

VI. Transfer

The statute authorizes State, territorial, and Tribal governments; counties; metropolitan cities; and nonentitlement units of local government (counties, metropolitan cities, and nonentitlement units of local government are collectively referred to as "local governments") to transfer amounts paid from the Fiscal Recovery Funds to a number of specified entities. By permitting these transfers, Congress recognized the importance of providing flexibility to governments seeking to achieve the greatest impact with their funds, including by working with other levels or units of government or private entities to assist recipient governments in carrying out their programs. This includes special-purpose districts that perform specific functions in the community, such as fire, water, sewer, or mosquito abatement districts.

Specifically, under section 602(c)(3), a State, territory, or Tribal government may transfer funds to a "private nonprofit organization . . . a Tribal organization . . . a public benefit corporation involved in the transportation of passengers or cargo, or a special-purpose unit of State or local government."[180] Similarly, section 603(c)(3) authorizes a local government to transfer funds to the same entities (other than Tribal organizations).

The interim final rule clarifies that the lists of transferees in sections 602(c)(3) and 603(c)(3) are not exclusive. The interim final rule permits State, territorial, and Tribal governments to transfer Fiscal Recovery Funds to other constituent units of government or private entities beyond those specified in the statute. Similarly, local governments are authorized to transfer Fiscal Recovery Funds to other constituent units of government (*e.g.*, a county is able to transfer Fiscal Recovery Funds to a city, town, or school district within it) or to private entities. This approach is intended to help provide funding to local governments with needs that may exceed the allocation provided under the statutory formula.

State, local, territorial, and Tribal governments that receive a Federal award directly from a Federal awarding agency, such as Treasury, are "recipients." A transferee receiving a transfer from a recipient under sections 602(c)(3) and 603(c)(3) will be a subrecipient. Subrecipients are entities that receive a subaward from a recipient to carry out a program or project on behalf of the recipient with the recipient's Federal award funding. The recipient remains responsible for monitoring and overseeing the subrecipient's use of Fiscal Recovery Funds and other activities related to the award to ensure that the subrecipient complies with the statutory and regulatory requirements and the terms and conditions of the award. Recipients also remain responsible for reporting to Treasury on their subrecipients' use of payments from the Fiscal Recovery Funds for the duration of the award.

Transfers under sections 602(c)(3) and 603(c)(3) must qualify as an eligible use of Fiscal Recovery Funds by the transferor. Once Fiscal Recovery Funds are received, the transferee must abide by the restrictions on use applicable to the transferor under the ARPA and other applicable law and program guidance. For example, if a county transferred Fiscal Recovery Funds to a town within its borders to respond to the COVID–19 public health emergency, the town would be bound by the eligible use requirements applicable to the county in carrying out the county's goal. This also means that county A may not transfer Fiscal Recovery Funds to county B for use in county B because such a transfer would not, from the perspective of the transferor (county A), be an eligible use in county A.

Section 603(c)(4) separately provides for transfers by a local government to its State or territory. A transfer under section 603(c)(4) will not make the State a subrecipient of the local government, and such Fiscal Recovery Funds may be used by the State for any purpose permitted under section 602(c). A transfer under section 603(c)(4) will result in a cancellation or termination of the award on the part of the transferor local government and a modification of the award to the transferee State or territory. The transferor must provide notice of the transfer to Treasury in a format specified by Treasury. If the local government does not provide such notice, it will remain legally obligated to Treasury under the award and remain responsible for ensuring that the awarded Fiscal Recovery Funds are being used in accordance with the statute and program guidance and for reporting on such uses to Treasury. A State that receives a transfer from a local government under section 603(c)(4) will be bound by all of the use restrictions set forth in section 602(c) with respect to the use of those Fiscal Recovery Funds, including the prohibitions on use of such Fiscal Recovery Funds to offset certain reductions in taxes or to make deposits into pension funds.

Question 35: What are the advantages and disadvantages of treating the list of transferees in sections 602(c)(3) and 603(c)(3) as nonexclusive, allowing States and localities to transfer funds to entities outside of the list?

Question 36: Are there alternative ways of defining "special-purpose unit of State or local government" and

[178] Includes the period during and immediately following recessions, as defined by the National Bureau of Economic Research. National Bureau of Economic Research, US Business Cycle Expansions and Contractions, *https://www.nber.org/research/data/us-business-cycle-expansions-and-contractions* (last visited Apr. 27, 2021). Based on data from U.S. Bureau of Labor Statistics, Unemployment Rate [UNRATE], retrieved from FRED, Federal Reserve Bank of St. Louis, *https://fred.stlouisfed.org/series/UNRATE* (last visited Apr. 27, 2021).

[179] U.S. Bureau of Labor Statistics, Economic News Release—Table 1. Civilian labor force and unemployment by state and selected area, seasonally adjusted, *https://www.bls.gov/news.release/laus.t01.htm* (last visited Apr. 30, 2021).

[180] Section 602(c)(3) of the Act.

"public benefit corporation" that would better further the aims of the Funds?

VII. Nonentitlement Units of Government

The Fiscal Recovery Funds provides for $19.53 billion in payments to be made to States and territories which will distribute the funds to nonentitlement units of local government (NEUs); local governments which generally have populations below 50,000. These local governments have not yet received direct fiscal relief from the Federal Government during the COVID–19 public health emergency, making Fiscal Recovery Funds payments an important source of support for their public health and economic responses. Section 603 requires Treasury to allocate and pay Fiscal Recovery Funds to the States and territories and requires the States and territories to distribute Fiscal Recovery Funds to NEUs based on population within 30 days of receipt unless an extension is granted by the Secretary. The interim final rule clarifies certain aspects regarding the distribution of Fiscal Recovery by States and territories to NEUs, as well as requirements around timely payments from the Fiscal Recovery Funds.

The ARPA requires that States and territories allocate funding to NEUs in an amount that bears the same proportion as the population of the NEU bears to the total population of all NEUs in the State or territory, subject to a cap (described below). Because the statute requires States and territories to make distributions based on population, States and territories may not place additional conditions or requirements on distributions to NEUs, beyond those required by the ARPA and Treasury's implementing regulations and guidance. For example, a State may not impose stricter limitations than permitted by statute or Treasury regulations or guidance on an NEU's use of Fiscal Recovery Funds based on the NEU's proposed spending plan or other policies. States and territories are also not permitted to offset any debt owed by the NEU against the NEU's distribution. Further, States and territories may not provide funding on a reimbursement basis—*e.g.,* requiring NEUs to pay for project costs up front before being reimbursed with Fiscal Recovery Funds payments—because this funding model would not comport with the statutory requirement that States and territories make distributions to NEUs within the statutory timeframe.

Similarly, States and territories distributing Fiscal Recovery Funds payments to NEUs are responsible for complying with the Fiscal Recovery Funds statutory requirement that distributions to NEUs not exceed 75 percent of the NEU's most recent budget. The most recent budget is defined as the NEU's most recent annual total operating budget, including its general fund and other funds, as of January 27, 2020. Amounts in excess of such cap and therefore not distributed to the NEU must be returned to Treasury by the State or territory. States and territories may rely for this determination on a certified top-line budget total from the NEU.

Under the interim final rule, the total allocation and distribution to an NEU, including the sum of both the first and second tranches of funding, cannot exceed the 75 percent cap. States and territories must permit NEUs without formal budgets as of January 27, 2020 to self-certify their most recent annual expenditures as of January 27, 2020 for the purpose of calculating the cap. This approach will provide an administrable means to implement the cap for small local governments that do not adopt a formal budget.

Section 603(b)(3) of the Social Security Act provides for Treasury to make payments to counties but provides that, in the case of an amount to be paid to a county that is not a unit of general local government, the amount shall instead be paid to the State in which such county is located, and such State shall distribute such amount to each unit of general local government within such county in an amount that bears the same proportion to the amount to be paid to such county as the population of such units of general local government bears to the total population of such county. As with NEUs, States may not place additional conditions or requirements on distributions to such units of general local government, beyond those required by the ARPA and Treasury's implementing regulations and guidance.

In the case of consolidated governments, section 603(b)(4) allows consolidated governments (*e.g.,* a city-county consolidated government) to receive payments under each allocation based on the respective formulas. In the case of a consolidated government, Treasury interprets the budget cap to apply to the consolidated government's NEU allocation under section 603(b)(2) but not to the consolidated government's county allocation under section 603(b)(3).

If necessary, States and territories may use the Fiscal Recovery Funds under section 602(c)(1)(A) to fund expenses related to administering payments to NEUs and units of general local government, as disbursing these funds itself is a response to the public health emergency and its negative economic impacts. If a State or territory requires more time to disburse Fiscal Recovery Funds to NEUs than the allotted 30 days, Treasury will grant extensions of not more than 30 days for States and territories that submit a certification in writing in accordance with section 603(b)(2)(C)(ii)(I). Additional extensions may be granted at the discretion of the Secretary.

Question 37: What are alternative ways for States and territories to enforce the 75 percent cap while reducing the administrative burden on them?

Question 38: What criteria should Treasury consider in assessing requests for extensions for further time to distribute NEU payments?

VIII. Reporting

States (defined to include the District of Columbia), territories, metropolitan cities, counties, and Tribal governments will be required to submit one interim report and thereafter quarterly Project and Expenditure reports through the end of the award period on December 31, 2026. The interim report will include a recipient's expenditures by category at the summary level from the date of award to July 31, 2021 and, for States and territories, information related to distributions to nonentitlement units. Recipients must submit their interim report to Treasury by August 31, 2021. Nonentitlement units of local government are not required to submit an interim report.

The quarterly Project and Expenditure reports will include financial data, information on contracts and subawards over $50,000, types of projects funded, and other information regarding a recipient's utilization of the award funds. The reports will include the same general data (*e.g.,* on obligations, expenditures, contracts, grants, and subawards) as those submitted by recipients of the CRF, with some modifications. Modifications will include updates to the expenditure categories and the addition of data elements related to specific eligible uses, including some of the reporting elements described in sections above. The initial quarterly Project and Expenditure report will cover two calendar quarters from the date of award to September 30, 2021, and must be submitted to Treasury by October 31, 2021. The subsequent quarterly reports will cover one calendar quarter and must be submitted to Treasury within 30 days after the end of each calendar quarter.

Nonentitlement units of local government will be required to submit

annual Project and Expenditure reports until the end of the award period on December 31, 2026. The initial annual Project and Expenditure report for nonentitlement units of local government will cover activity from the date of award to September 30, 2021 and must be submitted to Treasury by October 31, 2021. The subsequent annual reports must be submitted to Treasury by October 31 each year.

States, territories, metropolitan cities, and counties with a population that exceeds 250,000 residents will also be required to submit an annual Recovery Plan Performance report to Treasury. The Recovery Plan Performance report will provide the public and Treasury information on the projects that recipients are undertaking with program funding and how they are planning to ensure project outcomes are achieved in an effective, efficient, and equitable manner. Each jurisdiction will have some flexibility in terms of the form and content of the Recovery Plan Performance report, as long as it includes the minimum information required by Treasury. The Recovery Plan Performance report will include key performance indicators identified by the recipient and some mandatory indicators identified by Treasury, as well as programmatic data in specific eligible use categories and the specific reporting requirements described in the sections above. The initial Recovery Plan Performance report will cover the period from the date of award to July 31, 2021 and must be submitted to Treasury by August 31, 2021. Thereafter, Recovery Plan Performance reports will cover a 12-month period, and recipients will be required to submit the report to Treasury within 30 days after the end of the 12-month period. The second Recovery Plan Performance report will cover the period from July 1, 2021 to June 30, 2022, and must be submitted to Treasury by July 31, 2022. Each annual Recovery Plan Performance report must be posted on the public-facing website of the recipient. Local governments with fewer than 250,000 residents, Tribal governments, and nonentitlement units of local government are not required to develop a Recovery Plan Performance report.

Treasury will provide additional guidance and instructions on the reporting requirements outlined above for the Fiscal Recovery Funds at a later date.

IX. Comments and Effective Date

This interim final rule is being issued without advance notice and public comment to allow for immediate implementation of this program. As discussed below, the requirements of advance notice and public comment do not apply "to the extent that there is involved . . . a matter relating to agency . . . grants." [181] The interim final rule implements statutory conditions on the eligible uses of the Fiscal Recovery Funds grants, and addresses the payment of those funds, the reporting on uses of funds, and potential consequences of ineligible uses. In addition and as discussed below, the Administrative Procedure Act also provides an exception to ordinary notice-and-comment procedures "when the agency for good cause finds (and incorporates the finding and a brief statement of reasons therefor in the rules issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest." [182] This good cause justification also supports waiver of the 60-day delayed effective date for major rules under the Congressional Review Act at 5 U.S.C. 808(2). Although this interim final rule is effective immediately, comments are solicited from interested members of the public and from recipient governments on all aspects of the interim final rule.

These comments must be submitted on or before July 16, 2021.

X. Regulatory Analyses

Executive Orders 12866 and 13563

This interim final rule is economically significant for the purposes of Executive Orders 12866 and 13563. Treasury, however, is proceeding under the emergency provision at Executive Order 12866 section 6(a)(3)(D) based on the need to act expeditiously to mitigate the current economic conditions arising from the COVID–19 public health emergency. The rule has been reviewed by the Office of Management and Budget (OMB) in accordance with Executive Order 12866. This rule is necessary to implement the ARPA in order to provide economic relief to State, local, and Tribal governments adversely impacted by the COVID–19 public health emergency.

Under Executive Order 12866, OMB must determine whether this regulatory action is "significant" and, therefore, subject to the requirements of the Executive Order and subject to review by OMB. Section 3(f) of Executive Order 12866 defines a significant regulatory action as an action likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more, or adversely affect a sector of the economy; productivity; competition; jobs; the environment; public health or safety; or State, local, or Tribal governments or communities in a material way (also referred to as "economically significant" regulations);

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impacts of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles stated in the Executive order.

This regulatory action is an economically significant regulatory action subject to review by OMB under section 3(f) of Executive Order 12866. Treasury has also reviewed these regulations under Executive Order 13563, which supplements and explicitly reaffirms the principles, structures, and definitions governing regulatory review established in Executive Order 12866. To the extent permitted by law, section 1(b) of Executive Order 13563 requires that an agency:

(1) Propose or adopt regulations only upon a reasoned determination that their benefits justify their costs (recognizing that some benefits and costs are difficult to quantify);

(2) Tailor its regulations to impose the least burden on society, consistent with obtaining regulatory objectives taking into account, among other things, and to the extent practicable, the costs of cumulative regulations;

(3) Select, in choosing among alternative regulatory approaches, those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity);

(4) To the extent feasible, specify performance objectives, rather than the behavior or manner of compliance a regulated entity must adopt; and

(5) Identify and assess available alternatives to direct regulation, including providing economic incentives—such as user fees or marketable permits—to encourage the desired behavior, or providing information that enables the public to make choices.

Executive Order 13563 also requires an agency "to use the best available

[181] 5 U.S.C. 553(a)(2).

[182] 5 U.S.C. 553(b)(3)(B); *see also* 5 U.S.C. 553(d)(3) (creating an exception to the requirement of a 30-day delay before the effective date of a rule "for good cause found and published with the rule").

techniques to quantify anticipated present and future benefits and costs as accurately as possible." OMB's Office of Information and Regulatory Affairs (OIRA) has emphasized that these techniques may include "identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes."

Treasury has assessed the potential costs and benefits, both quantitative and qualitative, of this regulatory action, and is issuing this interim final rule only on a reasoned determination that the benefits exceed the costs. In choosing among alternative regulatory approaches, Treasury selected those approaches that would maximize net benefits. Based on the analysis that follows and the reasons stated elsewhere in this document, Treasury believes that this interim final rule is consistent with the principles set forth in Executive Order 13563.

Treasury also has determined that this regulatory action does not unduly interfere with States, territories, Tribal governments, and localities in the exercise of their governmental functions.

This Regulatory Impact Analysis discusses the need for regulatory action, the potential benefits, and the potential costs.

Need for Regulatory Action. This interim final rule implements the $350 billion Fiscal Recovery Funds of the ARPA, which Congress passed to help States, territories, Tribal governments, and localities respond to the ongoing COVID–19 public health emergency and its economic impacts. As the agency charged with execution of these programs, Treasury has concluded that this interim final rule is needed to ensure that recipients of Fiscal Recovery Funds fully understand the requirements and parameters of the program as set forth in the statute and deploy funds in a manner that best reflects Congress' mandate for targeted fiscal relief.

This interim final rule is primarily a transfer rule: It transfers $350 billion in aid from the Federal Government to states, territories, Tribal governments, and localities, generating a significant macroeconomic effect on the U.S. economy. In making this transfer, Treasury has sought to implement the program in ways that maximize its potential benefits while minimizing its costs. It has done so by aiming to target relief in key areas according to the congressional mandate; offering clarity to States, territories, Tribal governments, and localities while maintaining their flexibility to respond to local needs; and limiting administrative burdens.

Analysis of Benefits. Relative to a pre-statutory baseline, the Fiscal Recovery Funds provide a combined $350 billion to State, local, and Tribal governments for fiscal relief and support for costs incurred responding to the COVID–19 pandemic. Treasury believes that this transfer will generate substantial additional economic activity, although given the flexibility accorded to recipients in the use of funds, it is not possible to precisely estimate the extent to which this will occur and the timing with which it will occur. Economic research has demonstrated that state fiscal relief is an efficient and effective way to mitigate declines in jobs and output during an economic downturn.[183] Absent such fiscal relief, fiscal austerity among State, local, and Tribal governments could exert a prolonged drag on the overall economic recovery, as occurred following the 2007–09 recession.[184]

This interim final rule provides benefits across several areas by implementing the four eligible funding uses, as defined in statute: Strengthening the response to the COVID–19 public health emergency and its economic impacts; easing fiscal pressure on State, local, and Tribal governments that might otherwise lead to harmful cutbacks in employment or government services; providing premium pay to essential workers; and making necessary investments in certain types of infrastructure. In implementing the ARPA, Treasury also sought to support disadvantaged communities that have been disproportionately impacted by the pandemic. The Fiscal Recovery Funds as implemented by the interim final rule can be expected to channel resources toward these uses in order to achieve substantial near-term economic and public health benefits, as well as longer-term benefits arising from the allowable investments in water, sewer, and broadband infrastructure and aid to families.

These benefits are achieved in the interim final rule through a broadly flexible approach that sets clear guidelines on eligible uses of Fiscal Recovery Funds and provides State, local, and Tribal government officials discretion within those eligible uses to direct Fiscal Recovery Funds to areas of greatest need within their jurisdiction. While preserving recipients' overall flexibility, the interim final rule includes several provisions that implement statutory requirements and will help support use of Fiscal Recovery Funds to achieve the intended benefits. The remainder of this section clarifies how Treasury's approach to key provisions in the interim final rule will contribute to greater realization of benefits from the program.

- *Revenue Loss:* Recipients will compute the extent of reduction in revenue by comparing actual revenue to a counterfactual trend representing what could have plausibly been expected to occur in the absence of the pandemic. The counterfactual trend begins with the last full fiscal year prior to the public health emergency (as required by statute) and projects forward with an annualized growth adjustment. Treasury's decision to incorporate a growth adjustment into the calculation of revenue loss ensures that the formula more fully captures revenue shortfalls relative to recipients' pre-pandemic expectations. Moreover, recipients will have the opportunity to re-calculate revenue loss at several points throughout the program, recognizing that some recipients may experience revenue effects with a lag. This option to re-calculate revenue loss on an ongoing basis should result in more support for recipients to avoid harmful cutbacks in future years. In calculating revenue loss, recipients will look at general revenue in the aggregate, rather than on a source-by-source basis. Given that recipients may have experienced offsetting changes in revenues across sources, Treasury's approach provides a more accurate representation of the effect of the pandemic on overall revenues.
- *Premium Pay:* Per the statute, recipients have broad latitude to designate critical infrastructure sectors and make grants to third-party employers for the purpose of providing premium pay or otherwise respond to essential workers. While the interim final rule generally preserves the flexibility in the statute, it does add a requirement that recipients give written justification in the case that premium pay would increase a worker's annual pay above a certain threshold. To set this threshold, Treasury analyzed data

[183] Gabriel Chodorow-Reich et al., Does State Fiscal Relief during Recessions Increase Employment? Evidence from the American Recovery and Reinvestment Act, American Econ. J.: Econ. Policy, 4:3 118–45 (Aug. 2012), *available at https://www.aeaweb.org/articles?id=10.1257/pol.4.3.118.*

[184] *See, e.g.,* Fitzpatrick, Haughwout & Setren, Fiscal Drag from the State and Local Sector?, Liberty Street Economics Blog, Federal Reserve Bank of New York (June 27, 2012), *https://www.libertystreeteconomics.newyorkfed.org/2012/06/fiscal-drag-from-the-state-and-local-sector.html;* Jiri Jonas, Great Recession and Fiscal Squeeze at U.S. Subnational Government Level, IMF Working Paper 12/184, (July 2012), *available at https://www.imf.org/external/pubs/ft/wp/2012/wp12184.pdf;* Gordon, *supra* note 9.

from the Bureau of Labor Statistics to determine a level that would not require further justification for premium pay to the vast majority of essential workers, while requiring higher scrutiny for provision of premium pay to higher-earners who, even without premium pay, would likely have greater personal financial resources to cope with the effects of the pandemic. Treasury believes the threshold in the interim final rule strikes the appropriate balance between preserving flexibility and helping encourage use of these resources to help those in greatest need. The interim final rule also requires that eligible workers have regular in-person interactions or regular physical handling of items that were also handled by others. This requirement will also help encourage use of financial resources for those who have endured the heightened risk of performing essential work.

• *Withholding of Payments to Recipients:* Treasury believes that for the vast majority of recipient entities, it will be appropriate to receive funds in two separate payments. As discussed above, withholding of payments ensures that recipients can adapt spending plans to evolving economic conditions and that at least some of the economic benefits will be realized in 2022 or later. However, consistent with authorities granted to Treasury in the statute, Treasury recognizes that a subset of States with significant remaining elevation in the unemployment rate could face heightened additional near-term needs to aid unemployed workers and stimulate the recovery. Therefore, for a subset of State governments, Treasury will not withhold any funds from the first payment. Treasury believes that this approach strikes the appropriate balance between the general reasons to provide funds in two payments and the heightened additional near-term needs in specific States. As discussed above, Treasury set a threshold based on historical analysis of unemployment rates in recessions.

• *Hiring Public Sector Employees:* The interim final rule states explicitly that recipients may use funds to restore their workforces up to pre-pandemic levels. Treasury believes that this statement is beneficial because it eliminates any uncertainty that could cause delays or otherwise negatively impact restoring public sector workforces (which, at time of publication, remain significantly below pre-pandemic levels).

Finally, the interim final rule aims to promote and streamline the provision of assistance to individuals and communities in greatest need, particularly communities that have been historically disadvantaged and have experienced disproportionate impacts of the COVID–19 crisis. Targeting relief is in line with Executive Order 13985, "Advancing Racial Equity and Support for Underserved Communities Through the Federal Government," which laid out an Administration-wide priority to support "equity for all, including people of color and others who have been historically underserved, marginalized, and adversely affected by persistent poverty and inequality." [185] To this end, the interim final rule enumerates a list of services that may be provided using Fiscal Recovery Funds in low-income areas to address the disproportionate impacts of the pandemic in these communities; establishes the characteristics of essential workers eligible for premium pay and encouragement to serve workers based on financial need; provides that recipients may use Fiscal Recovery Funds to restore (to pre-pandemic levels) state and local workforces, where women and people of color are disproportionately represented; [186] and targets investments in broadband infrastructure to unserved and underserved areas. Collectively, these provisions will promote use of resources to facilitate the provision of assistance to individuals and communities with the greatest need.

Analysis of Costs. This regulatory action will generate administrative costs relative to a pre-statutory baseline. This includes, chiefly, costs required to administer Fiscal Recovery Funds, oversee subrecipients and beneficiaries, and file periodic reports with Treasury. It also requires States to allocate Fiscal Recovery Funds to nonentitlement units, which are smaller units of local government that are statutorily required to receive their funds through States.

Treasury expects that the administrative burden associated with this program will be moderate for a grant program of its size. Treasury expects that most recipients receive direct or indirect funding from Federal Government programs and that many have familiarity with how to administer and report on Federal funds or grant funding provided by other entities. In particular, States, territories, and large localities will have received funds from the CRF and Treasury expects them to rely heavily on established processes developed last year or through prior grant funding, mitigating burden on these governments.

Treasury expects to provide technical assistance to defray the costs of administration of Fiscal Recovery Funds to further mitigate burden. In making implementation choices, Treasury has hosted numerous consultations with a diverse range of direct recipients—States, small cities, counties, and Tribal governments—along with various communities across the United States, including those that are underserved. Treasury lacks data to estimate the precise extent to which this interim final rule generates administrative burden for State, local, and Tribal governments, but seeks comment to better estimate and account for these costs, as well as on ways to lessen administrative burdens.

Executive Order 13132

Executive Order 13132 (entitled Federalism) prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial, direct compliance costs on State, local, and Tribal governments, and is not required by statute, or preempts state law, unless the agency meets the consultation and funding requirements of section 6 of the Executive order. This interim final rule does not have federalism implications within the meaning of the Executive order and does not impose substantial, direct compliance costs on State, local, and Tribal governments or preempt state law within the meaning of the Executive order. The compliance costs are imposed on State, local, and Tribal governments by sections 602 and 603 of the Social Security Act, as enacted by the ARPA. Notwithstanding the above, Treasury has engaged in efforts to consult and work cooperatively with affected State, local, and Tribal government officials and associations in the process of developing the interim final rule. Pursuant to the requirements set forth in section 8(a) of Executive Order 13132, Treasury certifies that it has complied with the requirements of Executive Order 13132.

Administrative Procedure Act

The Administrative Procedure Act (APA), 5 U.S.C. 551 *et seq.*, generally requires public notice and an opportunity for comment before a rule

[185] Executive Order on Advancing Racial Equity and Support for Underserved Communities through the Federal Government (Jan. 20, 2021) (86 FR 7009, January 25, 2021), *https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/20/executive-order-advancing-racial-equity-and-support-for-underserved-communities-through-the-federal-government/* (last visited May 9, 2021).

[186] David Cooper, Mary Gable & Algernon Austin, Economic Policy Institute Briefing Paper, The Public-Sector Jobs Crisis: Women and African Americans hit hardest by job losses in state and local governments, *https://www.epi.org/publication/bp339-public-sector-jobs-crisis* (last visited May 9, 2021).

becomes effective. However, the APA provides that the requirements of 5 U.S.C. 553 do not apply "to the extent that there is involved . . . a matter relating to agency . . . grants." The interim final rule implements statutory conditions on the eligible uses of the Fiscal Recovery Funds grants, and addresses the payment of those funds, the reporting on uses of funds, and potential consequences of ineligible uses. The rule is thus "both clearly and directly related to a federal grant program." *National Wildlife Federation* v. *Snow,* 561 F.2d 227, 232 (D.C. Cir. 1976). The rule sets forth the "process necessary to maintain state . . . eligibility for federal funds," *id.,* as well as the "method[s] by which states can . . . qualify for federal aid," and other "integral part[s] of the grant program," *Center for Auto Safety* v. *Tiemann,* 414 F. Supp. 215, 222 (D.D.C. 1976). As a result, the requirements of 5 U.S.C. 553 do not apply.

The APA also provides an exception to ordinary notice-and-comment procedures "when the agency for good cause finds (and incorporates the finding and a brief statement of reasons therefor in the rules issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest." 5 U.S.C. 553(b)(3)(B); *see also* 5 U.S.C. 553(d)(3) (creating an exception to the requirement of a 30-day delay before the effective date of a rule "for good cause found and published with the rule"). Assuming 5 U.S.C. 553 applied, Treasury would still have good cause under sections 553(b)(3)(B) and 553(d)(3) for not undertaking section 553's requirements. The ARPA is a law responding to a historic economic and public health emergency; it is "extraordinary" legislation about which "both Congress and the President articulated a profound sense of 'urgency.'" *Petry* v. *Block,* 737 F.2d 1193, 1200 (D.C. Cir. 1984). Indeed, several provisions implemented by this interim final rule (sections 602(c)(1)(A) and 603(c)(1)(A)) explicitly provide funds to "respond to the public health emergency," and the urgency is further exemplified by Congress's command (in sections 602(b)(6)(B) and 603(b)(7)(A)) that, "[t]o the extent practicable," funds must be provided to Tribes and cities "not later than 60 days after the date of enactment." *See Philadelphia Citizens in Action* v. *Schweiker,* 669 F.2d 877, 884 (3d Cir. 1982) (finding good cause under circumstances, including statutory time limits, where APA procedures would have been "virtually impossible"). Finally, there is an urgent need for States to undertake the planning necessary for sound fiscal policymaking, which requires an understanding of how funds provided under the ARPA will augment and interact with existing budgetary resources and tax policies. Treasury understands that many states require immediate rules on which they can rely, especially in light of the fact that the ARPA "covered period" began on March 3, 2021. The statutory urgency and practical necessity are good cause to forego the ordinary requirements of notice-and-comment rulemaking.

Congressional Review Act

The Administrator of OIRA has determined that this is a major rule for purposes of Subtitle E of the Small Business Regulatory Enforcement and Fairness Act of 1996 (also known as the Congressional Review Act or CRA) (5 U.S.C. 804(2) *et seq.*). Under the CRA, a major rule takes effect 60 days after the rule is published in the **Federal Register**. 5 U.S.C. 801(a)(3). Notwithstanding this requirement, the CRA allows agencies to dispense with the requirements of section 801 when the agency for good cause finds that such procedure would be impracticable, unnecessary, or contrary to the public interest and the rule shall take effect at such time as the agency promulgating the rule determines. 5 U.S.C. 808(2). Pursuant to section 808(2), for the reasons discussed above, Treasury for good cause finds that a 60-day delay to provide public notice is impracticable and contrary to the public interest.

Paperwork Reduction Act

The information collections associated with State, territory, local, and Tribal government applications materials necessary to receive Fiscal Recovery Funds (*e.g.,* payment information collection and acceptance of award terms) have been reviewed and approved by OMB pursuant to the Paperwork Reduction Act (44 U.S.C. chapter 35) (PRA) emergency processing procedures and assigned control number 1505–0271. The information collections related to ongoing reporting requirements, as discussed in this interim final rule, will be submitted to OMB for emergency processing in the near future. Under the PRA, an agency may not conduct or sponsor and a respondent is not required to respond to, an information collection unless it displays a valid OMB control number.

Estimates of hourly burden under this program are set forth in the table below. Burden estimates below are preliminary.

Reporting	Number of respondents (estimated)	Number of responses per respondent	Total responses	Hours per response	Total burden in hours	Cost to respondent ($48.80 per hour*)
Recipient Payment Form	5,050	1	5,050	.25 (15 minutes)	1,262.5	$61,610
Acceptance of Award Terms	5,050	1	5,050	.25 (15 minutes)	1,262.5	61,610
Title VI Assurances	5,050	1	5,050	.50 (30 minutes)	2,525	123,220
Quarterly Project and Expenditure Report.	5,050	4***	20,200	25	505,000	24,644,000
Annual Project and Expenditure Report from NEUs.	TBD	1 per year	†20,000–40,000	15	300,000–600,000	14,640,000–29,280,000
Annual Recovery Plan Performance report.	418	1 per year	418	100	41,800	2,039,840
Total	(**)	N/A	55,768–75,768	141	851,850–1,151,850	41,570,280–56,210,280

*Bureau of Labor Statistics, U.S. Department of Labor, Occupational Outlook Handbook, Accountants and Auditors, on the internet at *https://www.bls.gov/ooh/business-and-financial/accountants-and-auditors.htm* (visited March 28, 2020). Base wage of $33.89/hour increased by 44 percent to account for fully loaded employer cost of employee compensation (benefits, etc.) for a fully loaded wage rate of $48.80.
**5,050–TBD.
***Per year after first year.
†(Estimate only).

Periodic reporting is required by section 602(c) of Section VI of the Social Security Act and under the interim final rule.

As discussed in Section VIII of this **SUPPLEMENTARY INFORMATION**, recipients of Fiscal Recovery Funds will be required to submit one interim report and thereafter quarterly Project and Expenditure reports until the end of the award period. Recipients must submit interim reports to Treasury by August

31, 2021. The quarterly Project and Expenditure reports will include financial data, information on contracts and subawards over $50,000, types of projects funded, and other information regarding a recipient's utilization of the award funds.

Nonentitlement unit recipients will be required to submit annual Project and Expenditure reports until the end of the award period. The initial annual Project and Expenditure report for Nonentitlement unit recipients must be submitted to Treasury by October 31, 2021. The subsequent annual reports must be submitted to Treasury by October 31 each year. States, territories, metropolitan cities, and counties with a population that exceeds 250,000 residents will also be required to submit an annual Recovery Plan Performance report to Treasury. The Recovery Plan Performance report will include descriptions of the projects funded and information on the performance indicators and objectives of the award. Each annual Recovery Plan Performance report must be posted on the public-facing website of the recipient. Treasury will provide additional guidance and instructions on the all the reporting requirements outlined above for the Fiscal Recovery Funds program at a later date.

These and related periodic reporting requirements are under consideration and will be submitted to OMB for approval under the PRA emergency provisions in the near future.

Treasury invites comments on all aspects of the reporting and recordkeeping requirements including: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information. Comments should be sent by the comment deadline to the *www.regulations.gov* docket with a copy to the Office of Information and Regulatory Affairs, U.S. Office of Management and Budget, 725 17th Street NW, Washington, DC 20503; or email to *oira_submission@omb.eop.gov.*

Regulatory Flexibility Analysis

The Regulatory Flexibility Act (RFA) generally requires that when an agency issues a proposed rule, or a final rule pursuant to section 553(b) of the Administrative Procedure Act or another law, the agency must prepare a regulatory flexibility analysis that meets the requirements of the RFA and publish such analysis in the **Federal Register**. 5 U.S.C. 603, 604.

Rules that are exempt from notice and comment under the APA are also exempt from the RFA requirements, including the requirement to conduct a regulatory flexibility analysis, when among other things the agency for good cause finds that notice and public procedure are impracticable, unnecessary, or contrary to the public interest. Since this rule is exempt from the notice and comment requirements of the APA, Treasury is not required to conduct a regulatory flexibility analysis.

List of Subjects in 31 CFR Part 35

Executive compensation, Public health emergency, State and local governments, Tribal governments.

For the reasons stated in the preamble, the Department of the Treasury amends 31 CFR part 35 as follows:

PART 35—PANDEMIC RELIEF PROGRAMS

■ 1. The authority citation for part 35 is revised to read as follows:

Authority: 42 U.S.C. 802(f); 42 U.S.C. 803(f); 31 U.S.C. 321; Division N, Title V, Subtitle B, Pub. L. 116–260, 134 Stat. 1182; Section 104A, Pub. L. 103–325, 108 Stat. 2160, as amended (12 U.S.C. 4701 *et seq.*); Pub. L. 117–2, 135 Stat. 4 (42 U.S.C. 802 *et seq.*).

■ 2. Revise the part heading to read as set forth above.

■ 3. Add subpart A to read as follows:

Subpart A—Coronavirus State and Local Fiscal Recovery Funds

Sec.

35.1 Purpose.
35.2 Applicability.
35.3 Definitions.
35.4 Reservation of authority, reporting.
35.5 Use of funds.
35.6 Eligible uses.
35.7 Pensions.
35.8 Tax.
35.9 Compliance with applicable laws.
35.10 Recoupment.
35.11 Payments to States.
35.12 Distributions to nonentitlement units of local government and units of general local government.

§ 35.1 Purpose.

This subpart implements section 9901 of the American Rescue Plan Act (Subtitle M of Title IX of Pub. L. 117–2), which amends Title VI of the Social Security Act (42 U.S.C. 801 *et seq.*) by adding sections 602 and 603 to establish the Coronavirus State Fiscal Recovery Fund and Coronavirus Local Fiscal Recovery Fund.

§ 35.2 Applicability.

This subpart applies to States, territories, Tribal governments, metropolitan cities, nonentitlement units of local government, counties, and units of general local government that accept a payment or transfer of funds made under section 602 or 603 of the Social Security Act.

§ 35.3 Definitions.

As used in this subpart:

Baseline means tax revenue of the recipient for its fiscal year ending in 2019, adjusted for inflation in each reporting year using the Bureau of Economic Analysis's Implicit Price Deflator for the gross domestic product of the United States.

County means a county, parish, or other equivalent county division (as defined by the Census Bureau).

Covered benefits include, but are not limited to, the costs of all types of leave (vacation, family-related, sick, military, bereavement, sabbatical, jury duty), employee insurance (health, life, dental, vision), retirement (pensions, 401(k)), unemployment benefit plans (Federal and State), workers' compensation insurance, and Federal Insurance Contributions Act taxes (which includes Social Security and Medicare taxes).

Covered change means a change in law, regulation, or administrative interpretation. A change in law includes any final legislative or regulatory action, a new or changed administrative interpretation, and the phase-in or taking effect of any statute or rule if the phase-in or taking effect was not prescribed prior to the start of the covered period.

Covered period means, with respect to a State, Territory, or Tribal government, the period that:

(1) Begins on March 3, 2021; and

(2) Ends on the last day of the fiscal year of such State, Territory, or Tribal government in which all funds received by the State, Territory, or Tribal government from a payment made under section 602 or 603 of the Social Security Act have been expended or returned to, or recovered by, the Secretary.

COVID–19 means the Coronavirus Disease 2019.

COVID–19 public health emergency means the period beginning on January 27, 2020 and until the termination of the national emergency concerning the COVID–19 outbreak declared pursuant to the National Emergencies Act (50 U.S.C. 1601 *et seq.*).

Deposit means an extraordinary payment of an accrued, unfunded liability. The term deposit does not refer to routine contributions made by an employer to pension funds as part of the employer's obligations related to payroll, such as either a pension contribution consisting of a normal cost component related to current employees or a component addressing the amortization of unfunded liabilities calculated by reference to the employer's payroll costs.

Eligible employer means an employer of an eligible worker who performs essential work.

Eligible workers means workers needed to maintain continuity of operations of essential critical infrastructure sectors, including health care; emergency response; sanitation, disinfection, and cleaning work; maintenance work; grocery stores, restaurants, food production, and food delivery; pharmacy; biomedical research; behavioral health work; medical testing and diagnostics; home- and community-based health care or assistance with activities of daily living; family or child care; social services work; public health work; vital services to Tribes; any work performed by an employee of a State, local, or Tribal government; educational work, school nutrition work, and other work required to operate a school facility; laundry work; elections work; solid waste or hazardous materials management, response, and cleanup work; work requiring physical interaction with patients; dental care work; transportation and warehousing; work at hotel and commercial lodging facilities that are used for COVID–19 mitigation and containment; work in a mortuary; work in critical clinical research, development, and testing necessary for COVID–19 response.

(1) With respect to a recipient that is a metropolitan city, nonentitlement unit of local government, or county, workers in any additional sectors as each chief executive officer of such recipient may designate as critical to protect the health and well-being of the residents of their metropolitan city, nonentitlement unit of local government, or county; or

(2) With respect to a State, Territory, or Tribal government, workers in any additional sectors as each Governor of a State or Territory, or each Tribal government, may designate as critical to protect the health and well-being of the residents of their State, Territory, or Tribal government.

Essential work means work that:

(1) Is not performed while teleworking from a residence; and

(2) Involves:

(i) Regular in-person interactions with patients, the public, or coworkers of the individual that is performing the work; or

(ii) Regular physical handling of items that were handled by, or are to be handled by patients, the public, or coworkers of the individual that is performing the work.

Funds means, with respect to a recipient, amounts provided to the recipient pursuant to a payment made under section 602(b) or 603(b) of the Social Security Act or transferred to the recipient pursuant to section 603(c)(4) of the Social Security Act.

General revenue means money that is received from tax revenue, current charges, and miscellaneous general revenue, excluding refunds and other correcting transactions, proceeds from issuance of debt or the sale of investments, agency or private trust transactions, and intergovernmental transfers from the Federal Government, including transfers made pursuant to section 9901 of the American Rescue Plan Act. General revenue does not include revenues from utilities. Revenue from Tribal business enterprises must be included in general revenue.

Intergovernmental transfers means money received from other governments, including grants and shared taxes.

Metropolitan city has the meaning given that term in section 102(a)(4) of the Housing and Community Development Act of 1974 (42 U.S.C. 5302(a)(4)) and includes cities that relinquish or defer their status as a metropolitan city for purposes of receiving allocations under section 106 of such Act (42 U.S.C. 5306) for fiscal year 2021.

Net reduction in total spending is measured as the State or Territory's total spending for a given reporting year excluding its spending of funds, subtracted from its total spending for its fiscal year ending in 2019, adjusted for inflation using the Bureau of Economic Analysis's Implicit Price Deflator for the gross domestic product of the United States.

Nonentitlement unit of local government means a "city," as that term is defined in section 102(a)(5) of the Housing and Community Development Act of 1974 (42 U.S.C. 5302(a)(5)), that is not a metropolitan city.

Nonprofit means a nonprofit organization that is exempt from Federal income taxation and that is described in section 501(c)(3) of the Internal Revenue Code.

Obligation means an order placed for property and services and entering into contracts, subawards, and similar transactions that require payment.

Pension fund means a defined benefit plan and does not include a defined contribution plan.

Premium pay means an amount of up to $13 per hour that is paid to an eligible worker, in addition to wages or remuneration the eligible worker otherwise receives, for all work performed by the eligible worker during the COVID–19 public health emergency. Such amount may not exceed $25,000 with respect to any single eligible worker. Premium pay will be considered to be in addition to wages or remuneration the eligible worker otherwise receives if, as measured on an hourly rate, the premium pay is:

(1) With regard to work that the eligible worker previously performed, pay and remuneration equal to the sum of all wages and remuneration previously received plus up to $13 per hour with no reduction, substitution, offset, or other diminishment of the eligible worker's previous, current, or prospective wages or remuneration; or

(2) With regard to work that the eligible worker continues to perform, pay of up to $13 that is in addition to the eligible worker's regular rate of wages or remuneration, with no reduction, substitution, offset, or other diminishment of the workers' current and prospective wages or remuneration.

Qualified census tract has the same meaning given in 26 U.S.C. 42(d)(5)(B)(ii)(I).

Recipient means a State, Territory, Tribal government, metropolitan city, nonentitlement unit of local government, county, or unit of general local government that receives a payment made under section 602(b) or 603(b) of the Social Security Act or transfer pursuant to section 603(c)(4) of the Social Security Act.

Reporting year means a single year or partial year within the covered period, aligned to the current fiscal year of the State or Territory during the covered period.

Secretary means the Secretary of the Treasury.

State means each of the 50 States and the District of Columbia.

Small business means a business concern or other organization that:

(1) Has no more than 500 employees, or if applicable, the size standard in number of employees established by the Administrator of the Small Business Administration for the industry in which the business concern or organization operates; and

(2) Is a small business concern as defined in section 3 of the Small Business Act (15 U.S.C. 632).

Tax revenue means revenue received from a compulsory contribution that is exacted by a government for public purposes excluding refunds and corrections and, for purposes of § 35.8, intergovernmental transfers. Tax revenue does not include payments for a special privilege granted or service rendered, employee or employer assessments and contributions to finance retirement and social insurance trust systems, or special assessments to pay for capital improvements.

Territory means the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, the Commonwealth of the Northern Mariana Islands, or American Samoa.

Tribal enterprise means a business concern:

(1) That is wholly owned by one or more Tribal governments, or by a corporation that is wholly owned by one or more Tribal governments; or

(2) That is owned in part by one or more Tribal governments, or by a corporation that is wholly owned by one or more Tribal governments, if all other owners are either United States citizens or small business concerns, as these terms are used and consistent with the definitions in 15 U.S.C. 657a(b)(2)(D).

Tribal government means the recognized governing body of any Indian or Alaska Native tribe, band, nation, pueblo, village, community, component band, or component reservation, individually identified (including parenthetically) in the list published by the Bureau of Indian Affairs on January 29, 2021, pursuant to section 104 of the Federally Recognized Indian Tribe List Act of 1994 (25 U.S.C. 5131).

Unemployment rate means the U–3 unemployment rate provided by the Bureau of Labor Statistics as part of the Local Area Unemployment Statistics program, measured as total unemployment as a percentage of the civilian labor force.

Unemployment trust fund means an unemployment trust fund established under section 904 of the Social Security Act (42 U.S.C. 1104).

Unit of general local government has the meaning given to that term in section 102(a)(1) of the Housing and Community Development Act of 1974 (42 U.S.C. 5302(a)(1)).

Unserved and underserved households or businesses means one or more households or businesses that are not currently served by a wireline connection that reliably delivers at least 25 Mbps download speed and 3 Mbps of upload speed.

§ 35.4 Reservation of authority, reporting.

(a) *Reservation of authority.* Nothing in this subpart shall limit the authority of the Secretary to take action to enforce conditions or violations of law, including actions necessary to prevent evasions of this subpart.

(b) *Extensions or accelerations of timing.* The Secretary may extend or accelerate any deadline or compliance date of this subpart, including reporting requirements that implement this subpart, if the Secretary determines that such extension or acceleration is appropriate. In determining whether an extension or acceleration is appropriate, the Secretary will consider the period of time that would be extended or accelerated and how the modified timeline would facilitate compliance with this subpart.

(c) *Reporting and requests for other information.* During the covered period, recipients shall provide to the Secretary periodic reports providing detailed accounting of the uses of funds, all modifications to a State or Territory's tax revenue sources, and such other information as the Secretary may require for the administration of this section. In addition to regular reporting requirements, the Secretary may request other additional information as may be necessary or appropriate, including as may be necessary to prevent evasions of the requirements of this subpart. False statements or claims made to the Secretary may result in criminal, civil, or administrative sanctions, including fines, imprisonment, civil damages and penalties, debarment from participating in Federal awards or contracts, and/or any other remedy available by law.

§ 35.5 Use of funds.

(a) *In general.* A recipient may only use funds to cover costs incurred during the period beginning March 3, 2021, and ending December 31, 2024, for one or more of the purposes enumerated in sections 602(c)(1) and 603(c)(1) of the Social Security Act, as applicable, including those enumerated in section § 35.6, subject to the restrictions set forth in sections 602(c)(2) and 603(c)(2) of the Social Security Act, as applicable.

(b) *Costs incurred.* A cost shall be considered to have been incurred for purposes of paragraph (a) of this section if the recipient has incurred an obligation with respect to such cost by December 31, 2024.

(c) *Return of funds.* A recipient must return any funds not obligated by December 31, 2024, and any funds not expended to cover such obligations by December 31, 2026.

§ 35.6 Eligible uses.

(a) *In general.* Subject to §§ 35.7 and 35.8, a recipient may use funds for one or more of the purposes described in paragraphs (b) through (e) of this section

(b) *Responding to the public health emergency or its negative economic impacts.* A recipient may use funds to respond to the public health emergency or its negative economic impacts, including for one or more of the following purposes:

(1) *COVID–19 response and prevention.* Expenditures for the mitigation and prevention of COVID–19, including:

(i) Expenses related to COVID–19 vaccination programs and sites, including staffing, acquisition of equipment or supplies, facilities costs, and information technology or other administrative expenses;

(ii) COVID–19-related expenses of public hospitals, clinics, and similar facilities;

(iii) COVID–19 related expenses in congregate living facilities, including skilled nursing facilities, long-term care facilities, incarceration settings, homeless shelters, residential foster care facilities, residential behavioral health treatment, and other group living facilities;

(iv) Expenses of establishing temporary public medical facilities and other measures to increase COVID–19 treatment capacity, including related construction costs and other capital investments in public facilities to meet COVID–19-related operational needs;

(v) Expenses of establishing temporary public medical facilities and other measures to increase COVID–19 treatment capacity, including related construction costs and other capital investments in public facilities to meet COVID–19-related operational needs;

(vi) Costs of providing COVID–19 testing and monitoring, contact tracing, and monitoring of case trends and genomic sequencing for variants;

(vii) Emergency medical response expenses, including emergency medical transportation, related to COVID–19;

(viii) Expenses for establishing and operating public telemedicine capabilities for COVID–19-related treatment;

(ix) Expenses for communication related to COVID–19 vaccination programs and communication or enforcement by recipients of public health orders related to COVID–19;

(x) Expenses for acquisition and distribution of medical and protective supplies, including sanitizing products and personal protective equipment;

(xi) Expenses for disinfection of public areas and other facilities in

response to the COVID–19 public health emergency;

(xii) Expenses for technical assistance to local authorities or other entities on mitigation of COVID–19-related threats to public health and safety;

(xiii) Expenses for quarantining or isolation of individuals;

(xiv) Expenses of providing paid sick and paid family and medical leave to public employees to enable compliance with COVID–19 public health precautions;

(xv) Expenses for treatment of the long-term symptoms or effects of COVID–19, including post-intensive care syndrome;

(xvi) Expenses for the improvement of ventilation systems in congregate settings, public health facilities, or other public facilities;

(xvii) Expenses related to establishing or enhancing public health data systems; and

(xviii) Mental health treatment, substance misuse treatment, and other behavioral health services.

(2) *Public health and safety staff.* Payroll and covered benefit expenses for public safety, public health, health care, human services, and similar employees to the extent that the employee's time is spent mitigating or responding to the COVID–19 public health emergency.

(3) *Hiring State and local government staff.* Payroll, covered benefit, and other costs associated with the recipient increasing the number of its employees up to the number of employees that it employed on January 27, 2020.

(4) *Assistance to unemployed workers.* Assistance, including job training, for individuals who want and are available for work, including those who have looked for work sometime in the past 12 months or who are employed part time but who want and are available for full-time work.

(5) *Contributions to State unemployment insurance trust funds.* Contributions to an unemployment trust fund up to the level required to restore the unemployment trust fund to its balance on January 27, 2020 or to pay back advances received under Title XII of the Social Security Act (42 U.S.C. 1321) for the payment of benefits between January 27, 2020 and May 17, 2021.

(6) *Small businesses.* Assistance to small businesses, including loans, grants, in-kind assistance, technical assistance or other services, that responds to the negative economic impacts of the COVID–19 public health emergency.

(7) *Nonprofits.* Assistance to nonprofit organizations, including loans, grants, in-kind assistance, technical assistance or other services, that responds to the negative economic impacts of the COVID–19 public health emergency.

(8) *Assistance to households.* Assistance programs, including cash assistance programs, that respond to the COVID–19 public health emergency.

(9) *Aid to impacted industries.* Aid to tourism, travel, hospitality, and other impacted industries that responds to the negative economic impacts of the COVID–19 public health emergency.

(10) *Expenses to improve efficacy of public health or economic relief programs.* Administrative costs associated with the recipient's COVID–19 public health emergency assistance programs, including services responding to the COVID–19 public health emergency or its negative economic impacts, that are not federally funded.

(11) *Survivor's benefits.* Benefits for the surviving family members of individuals who have died from COVID–19, including cash assistance to widows, widowers, or dependents of individuals who died of COVID–19.

(12) *Disproportionately impacted populations and communities.* A program, service, or other assistance that is provided in a qualified census tract, that is provided to households and populations living in a qualified census tract, that is provided by a Tribal government, or that is provided to other households, businesses, or populations disproportionately impacted by the COVID–19 public health emergency, such as:

(i) Programs or services that facilitate access to health and social services, including:

(A) Assistance accessing or applying for public benefits or services;

(B) Remediation of lead paint or other lead hazards; and

(C) Community violence intervention programs;

(ii) Programs or services that address housing insecurity, lack of affordable housing, or homelessness, including:

(A) Supportive housing or other programs or services to improve access to stable, affordable housing among individuals who are homeless;

(B) Development of affordable housing to increase supply of affordable and high-quality living units; and

(C) Housing vouchers and assistance relocating to neighborhoods with higher levels of economic opportunity and to reduce concentrated areas of low economic opportunity;

(iii) Programs or services that address or mitigate the impacts of the COVID–19 public health emergency on education, including:

(A) New or expanded early learning services;

(B) Assistance to high-poverty school districts to advance equitable funding across districts and geographies; and

(C) Educational and evidence-based services to address the academic, social, emotional, and mental health needs of students; and

(iv) Programs or services that address or mitigate the impacts of the COVID–19 public health emergency on childhood health or welfare, including:

(A) New or expanded childcare;

(B) Programs to provide home visits by health professionals, parent educators, and social service professionals to individuals with young children to provide education and assistance for economic support, health needs, or child development; and

(C) Services for child welfare-involved families and foster youth to provide support and education on child development, positive parenting, coping skills, or recovery for mental health and substance use.

(c) *Providing premium pay to eligible workers.* A recipient may use funds to provide premium pay to eligible workers of the recipient who perform essential work or to provide grants to eligible employers, provided that any premium pay or grants provided under this paragraph (c) must respond to eligible workers performing essential work during the COVID–19 public health emergency. A recipient uses premium pay or grants provided under this paragraph (c) to respond to eligible workers performing essential work during the COVID–19 public health emergency if it prioritizes low- and moderate-income persons. The recipient must provide, whether for themselves or on behalf of a grantee, a written justification to the Secretary of how the premium pay or grant provided under this paragraph (c) responds to eligible workers performing essential work if the premium pay or grant would increase an eligible worker's total wages and remuneration above 150 percent of such eligible worker's residing State's average annual wage for all occupations or their residing county's average annual wage, whichever is higher.

(d) *Providing government services.* For the provision of government services to the extent of a reduction in the recipient's general revenue, calculated according to paragraphs (d)(1) and (2) of this section.

(1) *Frequency.* A recipient must calculate the reduction in its general revenue using information as-of December 31, 2020, December 31, 2021, December 31, 2022, and December 31, 2023 (each, a calculation date) and following each calculation date.

(2) *Calculation.* A reduction in a recipient's general revenue equals:

$$Max\ \{[Base\ Year\ Revenue * (1 + Growth\ Adjustment)^{\left(\frac{n_t}{12}\right)}] - Actual\ General\ Revenue_t; 0\}$$

Where:

Base Year Revenue is the recipient's general revenue for the most recent full fiscal year prior to the COVID–19 public health emergency;

Growth Adjustment is equal to the greater of 4.1 percent (or 0.041) and the recipient's average annual revenue growth over the three full fiscal years prior to the COVID–19 public health emergency.

n equals the number of months elapsed from the end of the base year to the calculation date.

Actual General Revenue is a recipient's actual general revenue collected during 12-month period ending on each calculation date;

Subscript *t* denotes the specific calculation date.

(e) *To make necessary investments in infrastructure.* A recipient may use funds to make investments in:

(1) *Clean Water State Revolving Fund and Drinking Water State Revolving Fund investments.* Projects or activities of the type that would be eligible under section 603(c) of the Federal Water Pollution Control Act (33 U.S.C. 1383(c)) or section 1452 of the Safe Drinking Water Act (42 U.S.C. 300j–12); or,

(2) *Broadband.* Broadband infrastructure that is designed to provide service to unserved or underserved households and businesses and that is designed to, upon completion:

(i) Reliably meet or exceed symmetrical 100 Mbps download speed and upload speeds; or

(ii) In cases where it is not practicable, because of the excessive cost of the project or geography or topography of the area to be served by the project, to provide service meeting the standards set forth in paragraph (e)(2)(i) of this section:

(A) Reliably meet or exceed 100 Mbps download speed and between at least 20 Mbps and 100 Mbps upload speed; and

(B) Be scalable to a minimum of 100 Mbps download speed and 100 Mbps upload speed.

§ 35.7 Pensions.

A recipient may not use funds for deposit into any pension fund.

§ 35.8 Tax.

(a) *Restriction.* A State or Territory shall not use funds to either directly or indirectly offset a reduction in the net tax revenue of the State or Territory resulting from a covered change during the covered period.

(b) *Violation.* Treasury will consider a State or Territory to have used funds to offset a reduction in net tax revenue if, during a reporting year:

(1) *Covered change.* The State or Territory has made a covered change that, either based on a reasonable statistical methodology to isolate the impact of the covered change in actual revenue or based on projections that use reasonable assumptions and do not incorporate the effects of macroeconomic growth to reduce or increase the projected impact of the covered change, the State or Territory assesses has had or predicts to have the effect of reducing tax revenue relative to current law;

(2) *Exceeds the de minimis threshold.* The aggregate amount of the measured or predicted reductions in tax revenue caused by covered changes identified under paragraph (b)(1) of this section, in the aggregate, exceeds 1 percent of the State's or Territory's baseline;

(3) *Reduction in net tax revenue.* The State or Territory reports a reduction in net tax revenue, measured as the difference between actual tax revenue and the State's or Territory's baseline, each measured as of the end of the reporting year; and

(4) *Consideration of other changes.* The aggregate amount of measured or predicted reductions in tax revenue caused by covered changes is greater than the sum of the following, in each case, as calculated for the reporting year:

(i) The aggregate amount of the expected increases in tax revenue caused by one or more covered changes that, either based on a reasonable statistical methodology to isolate the impact of the covered change in actual revenue or based on projections that use reasonable assumptions and do not incorporate the effects of macroeconomic growth to reduce or increase the projected impact of the covered change, the State or Territory assesses has had or predicts to have the effect of increasing tax revenue; and

(ii) Reductions in spending, up to the amount of the State's or Territory's net reduction in total spending, that are in:

(A) Departments, agencies, or authorities in which the State or Territory is not using funds; and

(B) Departments, agencies, or authorities in which the State or Territory is using funds, in an amount equal to the value of the spending cuts in those departments, agencies, or authorities, minus funds used.

(c) *Amount and revenue reduction cap.* If a State or Territory is considered to be in violation pursuant to paragraph (b) of this section, the amount used in violation of paragraph (a) of this section is equal to the lesser of:

(1) The reduction in net tax revenue of the State or Territory for the reporting year, measured as the difference between the State's or Territory's baseline and its actual tax revenue, each measured as of the end of the reporting year; and,

(2) The aggregate amount of the reductions in tax revenues caused by covered changes identified in paragraph (b)(1) of this section, minus the sum of the amounts in identified in paragraphs (b)(4)(i) and (ii).

§ 35.9 Compliance with applicable laws.

A recipient must comply with all other applicable Federal statutes, regulations, and Executive orders, and a recipient shall provide for compliance with the American Rescue Plan Act, this subpart, and any interpretive guidance by other parties in any agreements it enters into with other parties relating to these funds.

§ 35.10 Recoupment.

(a) *Identification of violations*—(1) *In general.* Any amount used in violation of § 35.5, § 35.6, or § 35.7 may be identified at any time prior to December 31, 2026.

(2) *Annual reporting of amounts of violations.* On an annual basis, a recipient that is a State or Territory must calculate and report any amounts used in violation of § 35.8.

(b) *Calculation of amounts subject to recoupment*—(1) *In general.* Except as provided in paragraph (b)(2) of this section, Treasury will calculate any amounts subject to recoupment resulting from a violation of § 35.5, § 35.6, or § 35.7 as the amounts used in violation of such restrictions.

(2) *Violations of § 35.8.* Treasury will calculate any amounts subject to recoupment resulting from a violation of § 35.8, equal to the lesser of:

(i) The amount set forth in § 35.8(c); and,

(ii) The amount of funds received by such recipient.

(c) *Notice.* If Treasury calculates an amount subject to recoupment under paragraph (b) of this section, Treasury will provide the recipient a written notice of the amount subject to recoupment along with an explanation of such amounts.

(d) *Request for reconsideration.* Unless Treasury extends the time period, within 60 calendar days of receipt of a notice of recoupment provided under paragraph (c) of this section, a recipient may submit a written request to Treasury requesting reconsideration of any amounts subject to recoupment under paragraph (b) of this section. To request reconsideration of any amounts subject to recoupment, a recipient must submit to Treasury a written request that includes:

(1) An explanation of why the recipient believes all or some of the amount should not be subject to recoupment; and

(2) A discussion of supporting reasons, along with any additional information.

(e) *Final amount subject to recoupment.* Unless Treasury extends the time period, within 60 calendar days of receipt of the recipient's request for reconsideration provided pursuant to paragraph (d) of this section, the recipient will be notified of the Secretary's decision to affirm, withdraw, or modify the notice of recoupment. Such notification will include an explanation of the decision, including responses to the recipient's supporting reasons and consideration of additional information provided.

(f) *Repayment of funds.* Unless Treasury extends the time period, a recipient shall repay to the Secretary any amounts subject to recoupment in accordance with instructions provided by Treasury:

(1) Within 120 calendar days of receipt of the notice of recoupment provided under paragraph (c) of this section, in the case of a recipient that does not submit a request for reconsideration in accordance with the requirements of paragraph (d) of this section; or

(2) Within 120 calendar days of receipt of the Secretary's decision under paragraph (e) of this section, in the case of a recipient that submits a request for reconsideration in accordance with the requirements of paragraph (d) of this section.

§ 35.11 Payments to States.

(a) *In general.* With respect to any State or Territory that has an unemployment rate as of the date that it submits an initial certification for payment of funds pursuant to section 602(d)(1) of the Social Security Act that is less than two percentage points above its unemployment rate in February 2020, the Secretary will withhold 50 percent of the amount of funds allocated under section 602(b) of the Social Security Act to such State or territory until the date that is twelve months from the date such initial certification is provided to the Secretary.

(b) *Payment of withheld amount.* In order to receive the amount withheld under paragraph (a) of this section, the State or Territory must submit to the Secretary at least 30 days prior to the date referenced in paragraph (a) the following information:

(1) A certification, in the form provided by the Secretary, that such State or Territory requires the payment to carry out the activities specified in section 602(c) of the Social Security Act and will use the payment in compliance with section 602(c) of the Social Security Act; and,

(2) Any reports required to be filed by that date pursuant to this subpart that have not yet been filed.

§ 35.12 Distributions to nonentitlement units of local government and units of general local government.

(a) *Nonentitlement units of local government.* Each State or Territory that receives a payment from Treasury pursuant to section 603(b)(2)(B) of the Social Security Act shall distribute the amount of the payment to nonentitlement units of government in such State or Territory in accordance with the requirements set forth in section 603(b)(2)(C) of the Social Security Act and without offsetting any debt owed by such nonentitlement units of local governments against such payments.

(b) *Budget cap.* A State or Territory may not make a payment to a nonentitlement unit of local government pursuant to section 603(b)(2)(C) of the Social Security Act and paragraph (a) of this section in excess of the amount equal to 75 percent of the most recent budget for the nonentitlement unit of local government as of January 27, 2020. A State or Territory shall permit a nonentitlement unit of local government without a formal budget as of January 27, 2020, to provide a certification from an authorized officer of the nonentitlement unit of local government of its most recent annual expenditures as of January 27, 2020, and a State or Territory may rely on such certification for purposes of complying with this paragraph (b).

(c) *Units of general local government.* Each State or Territory that receives a payment from Treasury pursuant to section 603(b)(3)(B)(ii) of the Social Security Act, in the case of an amount to be paid to a county that is not a unit of general local government, shall distribute the amount of the payment to units of general local government within such county in accordance with the requirements set forth in section 603(b)(3)(B)(ii) of the Social Security Act and without offsetting any debt owed by such units of general local government against such payments.

(d) *Additional conditions.* A State or Territory may not place additional conditions or requirements on distributions to nonentitlement units of local government or units of general local government beyond those required by section 603 of the Social Security Act or this subpart.

Laurie Schaffer,

Acting General Counsel.

[FR Doc. 2021–10283 Filed 5–13–21; 11:15 am]

BILLING CODE 4810–AK–P

APPENDIX G:
COVENANT AGREEMENT

NO FEE FOR RECORDING

PURSUANT TO GOVERNMENT CODE

SECTION 6103

RECORDING REQUESTED BY AND

WHEN RECORDED MAIL TO:

County of Riverside

3403 10th Street, Suite 300

Riverside, CA 92501

Attn: Yvonne Suarez

SPACE ABOVE THIS LINE FOR
RECORDER'S USE

A.P.N.: 214-292-010

COVENANT AGREEMENT

This COVENANT AGREEMENT ("COVENANT AGREEMENT") is made and entered into as of this _____ by and between the COUNTY OF RIVERSIDE, a public entity, corporate and politic, ("COUNTY"), and V.I.P. TOTS, a California nonprofit corporation ("SUBRECIPIENT"), on behalf of itself, its successors and assigns and every successor in SUBRECIPIENT's interest in the PROPERTY or any part thereof. COUNTY and SUBRECIPIENT are individually referred to herein as a "Party" and collectively referred to herein as the "Parties."

RECITALS

WHEREAS, the COUNTY administers American Rescue Plan Act (ARPA) funds found at 31 CFR Part 35 and

WHEREAS, ARPA funds may be used for a wide range of housing, social services, program planning, and development costs. These include, but are not limited to, the management; acquisition; rehabilitation; or new construction of early childhood learning centers; and

WHEREAS, the COUNTY desires to use ARPA funding contract with SUBRECIPIENT to provide capacity for early childhood education services for children ages 0 – 3, which include the purchase and construction of an early childhood education building and early childhood education services; and

WHEREAS, SUBRECIPIENT is the owner of that certain real property known as 41915 Acacia Avenue, Hemet, CA 92544, and legally described in the Legal Description attached hereto and incorporated herein as Appendix "A" ("PROPERTY"); and

WHEREAS, to assist in addressing the immediate emergency need for early childhood education service in the County of Riverside, the Parties entered into a certain SUBRECIPIENT Agreement for quality early care and education: ARPA Infrastructure Development 2023 ("SUBRECIPIENT AGREEMENT") on January 25, 2023, wherein, COUNTY granted SUBRECIPIENT up to $1,000,000.00 in ARPA funds ("ARPA GRANT") and 200,000 in Proposition 10 Funds to be used to purchase the PROPERTY, pay for capital improvements to the PROPERTY and operate an early childhood education facility at the PROPERTY as more fully described in the SUBRECIPIENT AGREEMENT; and

WHEREAS, pursuant to the SUBRECIPIENT AGREEMENT, in consideration for the grant of ARPA funds, SUBRECIPIENT agreed to be bound by the covenants, conditions, and restrictions set forth in a covenant agreement; and

WHEREAS, to memorialize SUBRECIPIENT's obligation, among other things, to make the capital improvements to the PROPERTY, retain title to the PROPERTY, use the PROPERTY, maintain the PROPERTY, pay all taxes, assessments, encumbrances, charges, and liens on the PROPERTY, not

discriminate, insure the PROPERTY, and indemnify the COUNTY as more fully described in this COVENANT AGREEMENT, as set forth below; and

WHEREAS, capitalized terms not defined here in this COVENANT AGREEMENT shall have the meanings ascribed to them in the SUBRECIPIENT AGREEMENT;

NOW THEREFORE, in consideration of the mutual covenants and agreements contained in this COVENANT AGREEMENT, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, SUBRECIPIENT, on behalf of itself and its successors, assigns, and each successor in interest to the PROPERTY or any part thereof, hereby declares, covenants, agrees, and restricts the PROPERTY as follows:

1. **INCORPORATION OF RECITALS**. SUBRECIPIENT covenants and agrees for itself, its successors and assigns, and every successor in SUBRECIPIENT's interest in the PROPERTY or any part thereof, that the above recitals are true and correct and are hereby made part of this COVENANT AGREEMENT.

2. **TERM**. For a period of five (5) years commencing with the recordation of the Notice of Completion in the Official Records for the PROPERTY ("Term" or "ARPA Term") the SUBRECIPIENT, its successors and assigns, shall maintain the PROPERTY to provide early childhood care and education services in accordance with the terms of this Declaration, the SUBRECIPIENT Agreement, the Act, and applicable federal, state and local laws.

3. **RECORDS**. SUBRECIPIENT shall maintain complete, accurate, and current records pertaining to the PROPERTY, which include records pertaining to services received by students. SUBRECIPIENT shall retain copies of all materials obtained or produced with respect to occupancy of PROPERTY for a period of at least five (5) years.

4. **ARPA RECORD REQUIREMENTS**. For the period of the ARPA Term, all records maintained by SUBRECIPIENT shall be (i) maintained in compliance with all applicable records and accounting requirements and (ii) open to and available for inspection and copying by any governmental entity and its authorized representatives at reasonable intervals during normal business hours; provide however, records pertaining to program students enrolled, for five (5) years after expiration of the HOPWA Term.

5. **RESIDENTIAL USE**. The PROPERTY shall be operated for quality early childhood care and education use only.

6. **MANAGEMENT RESPONSIBILITIES**. SUBRECIPIENT is responsible for all management functions with respect to the PROPERTY.

7. **NONDISCRIMINATION**. SUBRECIPIENT shall not give preference to any particular class or group of persons in renting the PROPERTY, except to the extent that the PROPERTY is required to be leased to income-eligible households and HOPWA-Eligible Households pursuant to this COVENANT AGREEMENT. SUBRECIPIENT herein covenants by and for SUBRECIPIENT, assigns, and all persons claiming under or through the SUBRECIPIENT, that there shall be no discrimination against or segregation of, any person or group of persons on account of race, color, creed, religion, sex, sexual orientation, gender, gender identity, gender expression, marital status, national origin, source of income (e.g., SSI), ancestry, or disability, in the leasing, subleasing, transferring, use, occupancy, tenure, or enjoyment of the PROPERTY, nor shall SUBRECIPIENT or any person claiming under or through SUBRECIPIENT, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, or occupancy, of tenants, lessees, sublessees, subtenants, or vendees of the PROPERTY or in connection with the employment of persons for the operation and management of PROPERTY. Notwithstanding the above, with respect to familial status, the above should not be construed to apply to housing for older persons as defined in Section 12955.9 of the Government Code and other applicable sections of the Civil Code as identified in Cal. Health & Safety Code 33050(b).

8. **COMPLIANCE WITH PROGRAM REQUIREMENTS**

a. SUBRECIPIENT's actions with respect to the PROPERTY shall at all times be in full conformity with all requirements imposed on projects assisted under ARPA as contained in 31 CFR Part 35, and other implementing rules and regulations.

b. During the ARPA term, SUBRECIPIENT shall comply with the following for Service Eligible Households:

i) ensure the confidentiality of the name of any Eligible Household receiving assistance through this project pursuant to 24 CFR 574.440; and

ii) ensure that the PROPERTY meets all applicable local, state, and federal building codes and laws thought the Term.

9. **COVENANTS TO RUN WITH THE LAND**. COUNTY and SUBRECIPIENT hereby declare their express intent that the covenants and restrictions set forth in this COVENANT AGREEMENT shall run with the land, and shall bind all successors in title to the PROPERTY; provided, however, that on the expiration of the Term of this COVENANT AGREEMENT, said covenants and restrictions shall expire. Each and every contract, deed, or other instrument hereafter executed covering or conveying the PROPERTY or any portion thereof, shall be held conclusively to have been executed, delivered, and accepted subject to such covenants and restrictions, regardless of whether such covenants or restrictions are set forth in such contract, deed or other instrument.

10. **TRANSFER OF THE PROPERTY**. SUBRECIPIENT covenants and agrees for itself, its successors and assigns, and every successor in SUBRECIPIENT's interest in the PROPERTY or any part thereof, that SUBRECIPIENT, and its successors and assigns, shall retain title to the PROPERTY and not Transfer the PROPERTY or any portion thereof, without the written approval of COUNTY, in its sole discretion. The term "Transfer" used herein shall mean the sale, assignment, conveyance, lease, or transfer, voluntary or involuntary, of any interest in the PROPERTY, including the financing or refinancing of the PROPERTY. Any Transfer of the PROPERTY shall be memorialized in an assignment and assumption agreement the form and substance of which have been first approved in writing by the COUNTY in its sole discretion. Such assignment and assumption agreement shall, among other things, provide that the transferee has assumed in writing and in full and is reasonably capable of performing and complying with SUBRECIPIENT's duties and obligations under the SUBRECIPIENT AGREEMENT and this COVENANT AGREEMENT, provided, however, unless otherwise agreed to by the COUNTY in writing, SUBRECIPIENT shall not be released of its obligations under the SUBRECIPIENT AGREEMENT and this COVENANT AGREEMENT. Should SUBRECIPIENT, or its successors and assigns, Transfer the PROPERTY or any portion thereof, without the written approval of COUNTY, in its sole discretion, then SUBRECIPIENT, and its successors and assigns, shall be required to pay to the COUNTY an amount equal to the current market value of the PROPERTY less any portion of the value attributable to expenditures of non-HOPWA funds for the acquisition of, or improvement to, the PROPERTY.

11. **TAXES, ASSESSMENTS, ENCUMBRANCES, CHARGES, AND LIENS**. SUBRECIPIENT covenants and agrees for itself, its successors and assigns, and every successor in SUBRECIPIENT's interest in the PROPERTY or any part thereof, that SUBRECIPIENT, and its successors and assigns, shall pay before delinquency all taxes and assessments affecting said PROPERTY, when due, and all encumbrances, charges, and liens, with interest, on said PROPERTY or any part thereof. Should SUBRECIPIENT, and its successors and assigns, fail to make any payment or to do any act herein provided, then the COUNTY or its designee shall have the right but not the obligation to do so and upon written notice to or demand upon SUBRECIPIENT, and its successors and assigns, and without releasing SUBRECIPIENT, and its successors and assigns, from any obligation hereof, make or do the same in such manner and to such extent as COUNTY may deem necessary to satisfy such delinquency. The cost borne by the COUNTY from such payment shall become a charge, which SUBRECIPIENT, and its successors and assigns, shall promptly pay upon demand and, if unpaid after fifteen (15) days, shall be assessed as a lien against the PROPERTY with interest at the highest rate permitted by law.

12. **INSURANCE**. Without limiting or diminishing SUBRECIPIENT's, its successors', assigns', and each successor in interest to the PROPERTY's or any part thereof, obligation to indemnify or hold COUNTY harmless, SUBRECIPIENT covenants and agrees for itself, its successors and assigns and every successor in SUBRECIPIENT's interest in the PROPERTY or any part thereof, that SUBRECIPIENT, and its successors and assigns, shall procure and maintain or cause to be maintained, at its sole cost and expense, the following insurance coverage's during the Term of this COVENANT AGREEMENT.

a. Property Insurance: SUBRECIPIENT, and its successors and assigns, shall maintain property insurance and flood insurance on the PROPERTY, listing the COUNTY as Additional Insured for the Term of this COVENANT AGREEMENT. SUBRECIPIENT, and its successors and assigns, shall keep the improvements now existing or hereafter erected on the PROPERTY insured against loss by fire, hazards included within the term "extended coverage," and such other hazards, including floods or flooding. This insurance shall be maintained in the amount of the replacement value of the PROPERTY.

b. Worker's Compensation Insurance. If subrecipient, or its successors and assigns, have employees as defined by the State of California, SUBRECIPIENT and its successors

and assigns shall maintain statutory Workers' Compensation Insurance (Coverage A) as prescribed by the laws of the State of California. The policy shall include Employers' Liability (Coverage B) including Occupational Disease with limits not less than $1,000,000 per person per accident. The policy shall be endorsed to waive subrogation in favor of the COUNTY.

c. Commercial General Liability Insurance. Commercial General Liability insurance coverage, including but not limited to, premises liability, unmodified contractual liability, products and completed operations liability, personal and advertising injury, and cross liability coverage, covering claims which may arise from or out of SUBRECIPIENT's performance of its obligations hereunder. The policy shall name the COUNTY as Additional Insured. The policy's limit of liability shall not be less than $2,000,000 per occurrence combined single limit. If such insurance contains a general aggregate limit, it shall apply separately to this COVENANT AGREEMENT or be no less than two (2) times the occurrence limit.

d. Vehicle Liability Insurance. If vehicles or mobile equipment are used in the performance of the obligations under the SUBRECIPIENT AGREEMENT or this COVENANT AGREEMENT, then SUBRECIPIENT, and its successors and assigns, shall maintain liability insurance for all owned, non-owned, or hired vehicles so used in an amount not less than $2,000,000 per occurrence combined single limit. If such insurance contains a general aggregate limit, it shall apply separately to this COVENANT AGREEMENT or be no less than two (2) times the occurrence limit. The policy shall name the COUNTY as Additional Insured.

e. All Risk Builder's Insurance: SUBRECIPIENT, and its successors and assigns, shall cause its Contractor(s) to procure all-risk builder's insurance for the duration of the WORK to be performed to the PROPERTY. Contractor(s) shall provide a policy of builder's all risk (course of construction) insurance coverage including (if the WORK is located in an earthquake or flood zone or if required on financed or bond financing arrangements) coverage for earthquake and flood, covering the SUBRECIPIENT, Contractor and every subcontractor, of every tier, for the duration of the WORK to be performed to the PROPERTY, including property to be used in the construction of the WORK while such property is at off-site storage locations or while in transit or temporary off-site storage. Such policy shall include, but not be limited to, coverage for fire, collapse, faulty workmanship, debris removal, expediting expense, fire department service charges, valuable papers and records, trees, grass, shrubbery, and plants. If scaffolding, falsework, and temporary buildings are insured separately

by the Contractor(s) or others, evidence of such separate coverage shall be provided to SUBRECIPIENT, and its successors and assigns, prior to the start of the WORK. Such policy shall be written on a completed value form. Such policy shall also provide coverage for temporary structures (on-site offices, etc.), fixtures, machinery, and equipment being installed as part of the WORK. Contractor(s) shall be responsible for any and all deductibles under such policy. Upon request by COUNTY, SUBRECIPIENT, and its successors and assigns, shall cause its Contractor(s) to declare all terms, conditions, coverages, and limits of such policy.

f. Professional Liability: If applicable, SUBRECIPIENT, and its successors and assigns, shall cause its Contractor(s) to procure and maintain Professional Liability Insurance providing coverage for the Contractor's performance of WORK included within the SUBRECIPIENT AGREEMENT, with a limit of liability of not less than $1,000,000 per occurrence and $2,000,000 annual aggregate. If Contractor's Professional Liability Insurance is written on a claims made basis rather than an occurrence basis, such insurance shall continue through the Term of this COVENANT AGREEMENT and SUBRECIPIENT shall cause Contractor(s) to purchase at its sole expense either 1) an Extended Reporting Endorsement (also, known as Tail Coverage); or 2) Prior Dates Coverage from new insurer with a retroactive date back to the date of, or prior to, the inception of this COVENANT AGREEMENT; or 3) demonstrate through Certificates of Insurance that Contractor has maintained continuous coverage with the same or original insurer. Coverage provided under items; 1), 2), or 3) shall continue as long as the law allows.

g. General Insurance Provisions – All Lines.

i) Any insurance carrier providing insurance coverage hereunder shall be admitted to the State of California and have an A M BEST rating of not less than A: VIII (A:8) unless such requirements are waived, in writing, by the COUNTY Risk Manager. If the COUNTY Risk Manager waives a requirement for a particular insurer such waiver is only valid for that specific insurer and only for one policy term.

ii) The SUBRECIPIENT, and its successors and assigns must declare its insurance self-insured retentions for each coverage required herein. If such self-insured retentions exceed $500,000 per occurrence each such retention shall have the prior written consent of the COUNTY Risk Manager. Upon notification of self-insured retention unacceptable to COUNTY, and at the election of the COUNTY Risk Manager, SUBRECIPIENT's carriers shall either: (a) reduce or

eliminate such self-insured retention, or (b) procure a bond which guarantees payment of losses and related investigations, claims administration, and defense costs and expenses.

iii) SUBRECIPIENT, and its successors and assigns, shall cause its insurance carrier(s) to furnish the COUNTY with either 1) a properly executed original Certificate(s) of Insurance and certified original copies of Endorsements effecting coverage as required herein, and 2) if requested to do so orally or in writing by the COUNTY Risk Manager, provide original Certified copies of policies including all Endorsements and all attachments thereto, showing such insurance is in full force and effect. Further, said Certificate(s) and policies of insurance shall contain the covenant of the insurance carrier(s) that thirty (30) calendar days written notice shall be given to the COUNTY prior to any material modification, cancellation, expiration, or reduction in coverage of such insurance.

iv) It is understood and agreed to by the Parties hereto that SUBRECIPIENT's, its successors' and assigns', insurance shall be construed as primary insurance, and COUNTY'S insurance and/or deductibles and/or self-insured retentions or self-insured programs shall not be construed as contributory.

v) If, during the Term of this COVENANT AGREEMENT or any extension thereof, there is a material change in the WORK; or, there is a material change in the equipment to be used in the performance of the WORK; or, the Term of this COVENANT AGREEMENT, including any extensions thereof, exceeds five (5) years, the COUNTY reserves the right to adjust the types of insurance required under this COVENANT AGREEMENT, if in the COUNTY Risk Manager's reasonable judgment, the amount or type of insurance carried by the SUBRECIPIENT, and its successors and assigns, has become inadequate.

vi) SUBRECIPIENT, and its successors and assigns, shall pass down the insurance obligations contained herein to all tiers of subcontractors, including Contractor(s), working under the SUBRECIPIENT AGREEMENT or on the PROPERTY.

vii) The insurance requirements contained in this COVENANT AGREEMENT may be met with a program(s) of self-insurance acceptable to the COUNTY.

viii) SUBRECIPIENT, and its successors and assigns, agree to notify COUNTY in writing of any claim by a third party or any incident or event that may give rise to a claim arising from the performance of the COVENANT AGREEMENT.

13. **HOLD HARMLESS AND INDEMNIFICATION**. SUBRECIPIENT covenants and agrees for itself, its successors and assigns, and every successor in SUBRECIPIENT's interest in the PROPERTY or any part thereof, that SUBRECIPIENT, and its successors and assigns, shall indemnify and hold harmless the COUNTY and its Agencies, Districts, Special Districts and Departments, their respective directors, officers, Board of Commissioners, Board of Supervisors, elected and appointed officials, employees, agents and representatives (individually and collectively hereinafter referred to as Indemnitees) from any liability, action, claim, or damage whatsoever, based or asserted upon any acts, omissions and/or services of SUBRECIPIENT (or its successors and assigns), its officers, employees, subcontractors, agents, or representatives arising out of or in any way relating to the SUBRECIPIENT AGREEMENT or this COVENANT AGREEMENT, including but not limited to property damage, bodily injury, or death, or any other element of any kind or nature. SUBRECIPIENT, and its successors and assigns, shall defend, at its sole expense, including all costs and fees (including, but not limited to, attorney fees, cost of investigation, defense, and settlements or awards), the Indemnitees in any claim or action based upon such alleged acts, omissions, or services. With respect to any action or claim subject to indemnification herein by SUBRECIPIENT, and its successors and assigns, SUBRECIPIENT, and its successors and assigns, shall, its sole cost, have the right to use counsel of its own choice and shall have the right to adjust, settle, or compromise any such action or claim without the prior consent of COUNTY; provided, however, that any such adjustment, settlement or compromise in no manner whatsoever limits or circumscribes SUBRECIPIENT's, its successors' and assigns', indemnification to Indemnitees as set forth herein. SUBRECIPIENT's, its successors' and assigns', obligation hereunder shall be satisfied when SUBRECIPIENT, and its successors and assigns, have provided to COUNTY the appropriate form of dismissal relieving COUNTY from any liability for the action or claim involved. The specified insurance limits required in this COVENANT AGREEMENT shall in no way limit or circumscribe SUBRECIPIENT's, its successors' and assigns' obligations to indemnify and hold harmless the Indemnitees herein from third party claims. The indemnification and hold harmless obligations set forth herein shall survive the termination and expiration of this COVENANT AGREEMENT.

14. **NOTICES**. Formal notices, demands, and communications between the Parties shall be sufficiently given if, and shall not be deemed given unless, dispatched by registered or certified

mail, postage repaid, return receipt requested, or delivered by express delivery service, return receipt requested, or delivered personally, to the principal office of the Parties as follows:

COUNTY	SUBRECIPIENT
First 5 Riverside County	V.I.P. Tots
Tammi Graham, Executive Director	Jared Dobbins, Executive Director
585 Technology Ct	41915 Acacia Avenue
Riverside, CA 92507	Hemet, CA 92544

Such written notices, demands, and communications may be sent in the same manner to such other addresses as the affected Party may from time to time designate by mail as provided in this Section. Receipts shall be deemed to have occurred on the date shown on a written receipt as the date of delivery or refusal of delivery (or attempted delivery if undeliverable).

15. **REMEDIES**. COUNTY shall have the right, in the event of any breach of any agreement or covenant set forth in this COVENANT AGREEMENT, to exercise all available rights and remedies, and to maintain any actions at law or suit in equity or other proper proceedings to enforce the curing of such breach of agreement or covenant. The remedies provided for any breach of any agreement or covenant set forth in this COVENANT AGREEMENT shall be deemed cumulative, and none of such remedies shall be deemed exclusive.

16. **NOTICE AND OPPORTUNITY TO CURE**. COUNTY shall give SUBRECIPIENT, and its successors and assigns, notice of such default pursuant to section 10 above. SUBRECIPIENT covenants and agrees for itself, its successors and assigns, and every successor in SUBRECIPIENT's interest in the PROPERTY or any part thereof, that any monetary default shall be cured within ten (10) days of delivery of written notice. Except as otherwise set forth herein, if a non-monetary default is reasonably capable of being cured within thirty (30) days of delivery of written notice, SUBRECIPIENT, and its successors and assigns, shall have such period to effect a cure prior to exercise of remedies by COUNTY. If the non-monetary default is such that it is not reasonably capable of being cured within thirty (30) days of delivery of written notice, and SUBRECIPIENT, and its successors and assigns, (a) initiates corrective action within said period, and (b) diligently, continually, and in good faith works to effect a cure as soon as possible, then SUBRECIPIENT, and its successors and assigns, shall have such additional time as is reasonably necessary to cure the default prior to exercise of any remedies by the COUNTY; but in no event no later than ninety (90) days from delivery of such written notice.

If a violation of any of the covenants or provisions of this COVENANT AGREEMENT remains uncured after the respective time period set forth in this section, COUNTY and its successors and assigns, without regard to whether COUNTY or its successors and assigns is an owner of any land or interest therein to which these covenants relate, may institute and prosecute any proceedings at law or in equity to abate, prevent or enjoin any such violation or attempted violation or to compel specific performance by SUBRECIPIENT, and its successors and assigns, of its obligations hereunder. No delay in enforcing the provisions hereof as to any breach or violation shall impair, damage, or waive the right of the COUNTY to enforce the provisions hereof or to obtain relief against or recover for the continuation or repetition of such breach or violations or any similar breach or violation hereof at any later time.

17. **SENIOR POSITION OF COVENANT AGREEMENT**. SUBRECIPIENT covenants and agrees for itself, its successors and assigns, and every successor in SUBRECIPIENT's interest in the PROPERTY or any part thereof, that this COVENANT AGREEMENT shall be recorded in the first position senior to all liens and encumbrances against the PROPERTY, other than those expressly agreed to by COUNTY in writing.

18. **TRANSFER OF THE COVENANT AGREEMENT**. As set forth in the SUBRECIPIENT AGREEMENT, COUNTY and SUBRECIPIENT agree that SUBRECIPIENT may transfer the terms and conditions of this COVENANT AGREEMENT to another property with the prior written consent of the COUNTY, which consent shall not be unreasonably withheld, conditioned, or delayed.

19. **MODIFICATIONS OR AMENDMENTS**. This COVENANT AGREEMENT shall be modified or amended only by a written amendment signed by the duly authorized and empowered representatives of both the COUNTY and SUBRECIPIENT and its successors and assigns.

20. **GOVERNING LAW; VENUE; SEVERABILITY**. This COVENANT AGREEMENT shall be governed by the laws of the State of California. Any legal action related to the performance or interpretation of this COVENANT AGREEMENT shall be filed only in the Superior Court of the State of California located in Riverside, California, and the Parties waive any provision of law providing for a change of venue to another location. In the event any provision in this COVENANT AGREEMENT is held by a court of competent jurisdiction to be

invalid, void, or unenforceable, the remaining provisions will nevertheless continue in full force without being impaired or invalidated in any way.

21. **BINDING EFFECT**. This COVENANT AGREEMENT shall bind and inure to the benefit of the respective heirs, successors, and assigns of the Parties.

22. **ACCESS TO PROPERTY**. SUBRECIPIENT covenants and agrees for itself, its successors and assigns, and every successor in SUBRECIPIENT's interest in the PROPERTY or any part thereof, that representatives of the COUNTY shall have the right of access to the PROPERTY, upon 24 hours' written notice to SUBRECIPIENT, and its successors and assigns, (except in the case of an emergency, in which COUNTY shall provide such notice as may be practical under the circumstances), without charges or fees, during normal business hours to inspect the PROPERTY and confirm SUBRECIPIENT, and its successors and assigns, are complying with their obligations in accordance with the SUBRECIPIENT AGREEMENT and this COVENANT AGREEMENT.

23. **MONITORING**. SUBRECIPIENT covenants and agrees for itself, its successors and assigns, and every successor in SUBRECIPIENT's interest in the PROPERTY or any part thereof, that SUBRECIPIENT, and its successors and assigns, shall annually report to the COUNTY, in writing, confirming that they continue to retain title to the PROPERTY, have not Transferred the PROPERTY, providing evidence of insurance, providing evidence of the payment of taxes, and any and all other information reasonably requested by the COUNTY to ensure compliance with the terms of the SUBRECIPIENT AGREEMENT and this COVENANT AGREEMENT. Within fifteen (15) days of a written request from the COUNTY, SUBRECIPIENT, and its successors and assigns, shall respond with all information requested to allow the COUNTY to complete its monitoring responsibilities under the terms of this COVENANT AGREEMENT. Failure to completely and timely comply with requests shall be deemed a material default under the terms of this COVENANT AGREEMENT.

24. **COUNTERPARTS**. This COVENANT AGREEMENT may be signed by the different Parties hereto in counterparts, each of which shall be an original, but all of which together shall constitute one and the same agreement.

25. **NON-LIABILITY OF THE COUNTY**. SUBRECIPIENT covenants and agrees for itself, its successors and assigns, and every successor in SUBRECIPIENT's interest in the PROPERTY or any part thereof, that in no event shall the COUNTY become in any way liable or

obligated to the SUBRECIPIENT, or its successors and assigns, by reason of its rights set forth in this COVENANT AGREEMENT for the COUNTY's failure to exercise any such rights set forth herein.

26. **ENTIRE AGREEMENT**. This COVENANT AGREEMENT and the SUBRECIPIENT AGREEMENT sets forth and contains the entire understanding and agreement of the Parties hereto. There are no oral or written representations, understandings, or ancillary covenants, undertakings, or agreements, which are not contained or expressly referred to within this COVENANT AGREEMENT, and the SUBRECIPIENT AGREEMENT, including all amendments and modifications to the SUBRECIPIENT AGREEMENT.

Intentionally left blank

IN WITNESS WHEREOF, COUNTY and SUBRECIPIENT, on behalf of itself, its successors and assigns, and every successor in SUBRECIPIENT's interest in the PROPERTY or any part thereof, have executed this COVENANT AGREEMENT as of the dates written below.

COUNTY:	SUBRECIPIENT:
FIRST 5 RIVERSIDE COUNTY	V.I.P. TOTS
By: _____	By: _____
Tammi Graham, Executive Director	Jared Dobbins, Executive Director Authorized Signatory
Date:_____	Date:_____

ATTEST:

By: _____
Lynn M. Stephens, Commission Coordinator

Date:_____

(Above signatures need to be notarized)

APPROVED AS TO FORM:
MINH TRAN
County Counsel

By:_____
Kristine Bell-Valdez
Deputy County Counsel

APPENDIX "A" to EXHIBIT "G"
LEGAL DESCRIPTION OF PROPERTY

Re: An owner-operated 6,423 SF day care center property located at 41861 Acacia Avenue, in the city of Hemet, Riverside County, CA 92544, hereafter referred to as the subject property. Portion of Assessor's Parcel Number (APN) 449-090-011.

AGREEMENT TO TERMINATE FUNDING AGREEMENT

Quality Early Care and Education: ARPA Infrastructure Development

This Agreement to Terminate the Funding Agreement ("Agreement"), dated as of February 2, 2023, is entered into between V I P Tots, Inc., a California nonprofit corporation ("SUBRECIPIENT" or "OWNER"), and the Riverside County Children and Families First Commission. ("COMMISSION", "FIRST 5 RIVERSIDE COUNTY" or "COUNTY").

Recitals

A. On or about February 2, 2023, COMMISSION and SUBRECIPIENT entered into that certain Agreement for Funding the acquisition, improvement, and development of classrooms at the V.I.P. Tots facility for child care services, "PROJECT."

B. SUBRECIPIENT, located at 41915 Acacia Avenue, Hemet, CA 92544 and planned to advertise, award, and administer a public works construction contract for PROJECT during Fiscal Years 2022/2023 and 2023/24; and

C. TOTAL CONTRIBUTION for PROJECT was not to exceed a total of ONE MILLION TWO HUNDRED THOUSAND DOLLARS, **($1,200,000)**; and

D. The Parties now desire to terminate the Agreement by mutual agreement consistent with Recital L of the Agreement because the Project will not continue.

NOW, THEREFORE, in consideration of the preceding recitals and the mutual covenants hereinafter contained, the parties hereto mutually agree as follows:

Section 1. Termination of Agreement

Except as may be otherwise stated in this Agreement, COMMISSION and SUBRECIPIENT each agree that effective as of this date and pursuant to the terms of the Funding Agreement, the Agreement is hereby terminated and of no further legal effect.

Section 2. Release

Except as otherwise stated in this Agreement, COMMISSION and SUBRECIPIENT release each other from and against any and all liability, claims, damages, losses, costs, or expenses, including reasonable attorney fees and court costs relating to the Agreement upon the effective date of the Agreement and accruing with respect to the period subsequent to the date of this Agreement.

Section 3. Miscellaneous

This Agreement shall be binding on and shall inure to the benefit of COMMISSION and SUBRECIPIENT and their respective successors and assigns. This Agreement shall be governed and construed in accordance with California law.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first written above.

SUBRECIPIENT:

V I P TOTS INC. (SUBRECIPIENT)

an California non-profit corporation

By: _____

Name:

Title:

Date:

RIVERSIDE COUNTY CHILDREN AND FAMILIES FIRST COMMISSION:

By: _____

Name: Tammi Graham

Title: Executive Director

Date:

ATTEST:

By: _____

Name: Lynn M. Stephens

Title: Executive Assistant IV

Date:

APPROVED AS TO FORM:

By: _____

Name: Kristine Bell-Valdez

Title: Deputy County Counsel

Date: 10/23/23

F. **Presentations/Action Items/Public Hearings – Zachary Ginder, Commission Chair**

F.1. Presentation of First 5 Riverside County Annual Audit Report for Fiscal Year 2022/2023 (a copy of the report may be obtained at www.first5riverside.org and can be viewed at the Commission Business Office) - David Showalter, CPA, Partner, Eide Bailly, LLP

F.1.a. **Public Hearing:** Annual Audit of First 5 Riverside County Children & Families Commission for Fiscal Year 2022/2023 - Zachary Ginder, Commission Chair

F.1.b. **23-46**: Adopt First 5 Riverside County Children & Families Commission Annual Independent Audit Report for Fiscal Year 2022/2023 - Zachary Ginder, Commission Chair

AGENDA ITEM: 23-46
DATE OF MEETING: October 25, 2023
ACTION: ☒
INFORMATION: ☐

ADOPT FIRST 5 RIVERSIDE COUNTY CHILDREN & FAMILIES COMMISSION ANNUAL INDEPENDENT AUDIT REPORT FOR FISCAL YEAR 2022/2023

SUMMARY OF REQUEST

Adopt First 5 Riverside County Children & Families Commission Annual Independent Audit Report for Fiscal Year 2022-2023 after conducting the legislatively required public hearing.

A representative from Eide Bailly, LLP will present highlights and respond to questions regarding the report.

BACKGROUND

In compliance with Commission approved Financial Reporting Policy (#18-14), fourth quarter financial data reporting percentages for actual year-end expenditures ($32,149,418) as compared to the total operating budget ($51,237,691) are noted as follows: Administrative – $3,396,567 (7%); Evaluation – $925,478 (2%); and Program expenditures – $27,827,373 (54%).

Health and Safety Code Section 130140 requires that any county receiving funding and implementing the Children and Families Act (Proposition 10) prepare and adopt an annual audit and report and conduct at least one public hearing prior to adoption. The annual audit and report are due to the State Commission by October 31, 2023 (per Health & Safety Code section 130150).

A copy of the financial statements and auditor's report were included in Commission packets for review prior to the Commission meeting. A draft copy of the audit report is available at the Commission webpage at www.first5riverside.org and at the Commission's business office for public review.

RECOMMENDED ACTION

That the Commission:

1. Adopt the Riverside County Children and Families Commission Annual Audit Report as presented for Fiscal Year 2022-2023, after conducting a public hearing; and

2. Authorize the Executive Director or designee to execute the necessary documents to effectuate the foregoing action without requiring further action of the Commission.

BUDGET IMPACT

Not Applicable

STRATEGIC PLAN RELEVANCE

Not Applicable

POTENTIAL CONFLICTS OF INTEREST

None known

ATTACHMENTS

Independent Audit Report – inclusive of Management's Discussion and Analysis, Financial Statements, Notes to the Financial Statements, Supplementary Information, Other Supplementary Information, and Compliance Section – For Fiscal Year Ending June 30, 2023.

EideBailly
CPAs & BUSINESS ADVISORS

October 11, 2023

To the Board of Commissioners
First 5 Riverside County Children and Families Commission
Riverside, California

We have audited the financial statements of the governmental activities and each major fund of the First 5 Riverside County Children and Families Commission (Commission), a component unit of the County of Riverside, California as of and for the year ended June 30, 2023, and have issued our report thereon dated October 11, 2023. Professional standards require that we advise you of the following matters relating to our audit.

Our Responsibility in Relation to the Financial Statement Audit under Generally Accepted Auditing Standards and *Government Auditing Standards*

As communicated in our letter dated August 15, 2023, our responsibility, as described by professional standards, is to form and express an opinion about whether the financial statements that have been prepared by management with your oversight are presented fairly, in all material respects, in accordance with accounting principles generally accepted in the United States of America. Our audit of the financial statements does not relieve you or management of your respective responsibilities.

Our responsibility, as prescribed by professional standards, is to plan and perform our audit to obtain reasonable, rather than absolute, assurance about whether the financial statements are free of material misstatement. An audit of financial statements includes consideration of internal control over financial reporting as a basis for designing audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the entity's internal control over financial reporting. Accordingly, as part of our audit, we considered the internal control of the Commission solely for the purpose of determining our audit procedures and not to provide any assurance concerning such internal control.

We are also responsible for communicating significant matters related to the audit that are, in our professional judgment, relevant to your responsibilities in overseeing the financial reporting process. However, we are not required to design procedures for the purpose of identifying other matters to communicate to you.

Planned Scope and Timing of the Audit

We conducted our audit consistent with the planned scope and timing we previously communicated to you.

What inspires you, inspires us. | eidebailly.com

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Compliance with All Ethics Requirements Regarding Independence

The engagement team, others in our firm, as appropriate, our firm, and other firms utilized in the engagement, if applicable, have complied with all relevant ethical requirements regarding independence.

Qualitative Aspects of the Entity's Significant Accounting Practices

Significant Accounting Policies

Management has the responsibility to select and use appropriate accounting policies. A summary of the significant accounting policies adopted by the Commission is included in Note 1 to the financial statements. There have been no initial selection of accounting policies and no changes in significant accounting policies or their application during 2023. No matters have come to our attention that would require us, under professional standards, to inform you about (1) the methods used to account for significant unusual transactions and (2) the effect of significant accounting policies in controversial or emerging areas for which there is a lack of authoritative guidance or consensus.

Significant Accounting Estimates

Accounting estimates are an integral part of the financial statements prepared by management and are based on management's current judgments. Those judgments are normally based on knowledge and experience about past and current events and assumptions about future events. Certain accounting estimates are particularly sensitive because of their significance to the financial statements and because of the possibility that future events affecting them may differ markedly from management's current judgments.

The most sensitive accounting estimates affecting the financial statements are amounts related to the net pension liability, related deferred inflows of resources and deferred outflows of resources, pension expense, and disclosures, are based on actuarial valuations and a proportionate share of the collective net pension liability of the County of Riverside's miscellaneous agent employer plan. We evaluated the key factors and assumptions used to develop the estimates and determined that they it are reasonable in relation to the basic financial statements taken as a whole.

Financial Statement Disclosures

Certain financial statement disclosures involve significant judgment and are particularly sensitive because of their significance to financial statement users. The most sensitive disclosures affecting the Commission's financial statements relate to:

> The disclosure of the Commission's defined benefit pension plan, net pension liability and related deferred inflows of resources and deferred outflows of resources in Note 10 to the financial statements. The valuation of the net pension liability and related deferred outflows (inflows) of resources are sensitive to the underlying actuarial assumptions used including, but not limited to, the discount rate, and the Commission's proportionate share of the Plan's collective net pension liability. As disclosed in Note 10, a 1% increase or decrease in the discount rate has a significant effect on the Commission's net pension liability.

The financial statement disclosures are neutral, consistent, and clear.

Significant Difficulties Encountered during the Audit

We encountered no significant difficulties in dealing with management relating to the performance of the audit.

Uncorrected and Corrected Misstatements

For purposes of this communication, professional standards require us to accumulate all known and likely misstatements identified during the audit, other than those that we believe are trivial, and communicate them to the appropriate level of management. Further, professional standards require us to also communicate the effect of uncorrected misstatements related to prior periods on the relevant classes of transactions, account balances or disclosures, and the financial statements as a whole. Uncorrected misstatements or matters underlying those uncorrected misstatements could potentially cause future-period financial statements to be materially misstated, even though the uncorrected misstatements are immaterial to the financial statements currently under audit. There were no corrected misstatements identified as a result of our audit procedures.

The following summarizes an uncorrected financial statement misstatement whose effects in the current and prior periods, as determined by management, is immaterial, both individually and in the aggregate, to the financial statements taken as a whole.

Overstatement of Revenue	$35,919
Understatement of Deferred Inflows	35,919

The effect of this uncorrected misstatement is an overstatement of net income of approximately $35,919, and understatement of deferred inflows of resources of approximately $35,919.

Disagreements with Management

For purposes of this letter, professional standards define a disagreement with management as a matter, whether or not resolved to our satisfaction, concerning a financial accounting, reporting, or auditing matter, which could be significant to the the Commission's financial statements or the auditor's report. No such disagreements arose during the course of the audit.

Circumstances that Affect the Form and Content of the Auditor's Report

For purposes of this letter, professional standards require that we communicate any circumstances that affect the form and content of our auditor's report. We did not identify and circumstances that affect the form and content of the auditor's report.

Representations Requested from Management

We have requested certain written representations from management which are included in the management representation letter dated October 11, 2023.

Management's Consultations with Other Accountants

In some cases, management may decide to consult with other accountants about auditing and accounting matters. Management informed us that, and to our knowledge, there were no consultations with other accountants regarding auditing and accounting matters.

Other Significant Matters, Findings, or Issues

In the normal course of our professional association with the Commission, we generally discuss a variety of matters, including the application of accounting principles and auditing standards, significant events or transactions that occurred during the year, operating conditions affecting the entity, and operating plans and strategies that may affect the risks of material misstatement. None of the matters discussed resulted in a condition to our retention as the Commission's auditors.

This report is intended solely for the information and use of the Board of Commissioners, and management of the Commission and is not intended to be, and should not be, used by anyone other than these specified parties.

Eide Bailly LLP

Rancho Cucamonga, California

Financial Statements
June 30, 2023

First 5 Riverside
Riverside County
Children and Families Commission

(A Component Unit of the County of Riverside, California)

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First 5 Riverside County Children and Families Commission

Table of Contents

June 30, 2023

Independent Auditor's Report 1

Management's Discussion and Analysis 5

Government Wide Financial Statements

- Statement of Net Position 13
- Statement of Activities 14

Governmental Fund Financial Statements

- Balance Sheet – Governmental Funds 15
- Reconciliation of the Governmental Funds Balance Sheet to the Statement of Net Position 16
- Statement of Revenues, Expenditures, and Changes in Fund Balances – Governmental Funds 17
- Reconciliation of the Statement of Revenues, Expenditures, and Changes in Fund Balances of Governmental Funds to the Statement of Activities 18

Notes to Financial Statements 19

Required Supplementary Information

- Schedule of the Commission's Proportionate Share of the Net Pension Liability (Miscellaneous Plan) 35
- Schedule of Contributions 36
- Schedule of Revenues, Expenditures, and Changes in Fund Balance - Budget and Actual – General Fund 37
- Schedule of Revenues, Expenditures, and Changes in Fund Balance - Budget and Actual – ARPA Fund 38

Other Supplementary Information

- Schedule of First 5 California Funding 39

Compliance Section

Independent Auditor's Report on Internal Control over Financial Reporting and on Compliance and Other Matters Based on an Audit of Financial Statements Performed in Accordance with *Government Auditing Standards* 40

Independent Auditor's Report on State Compliance 42

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Financial Section



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EideBailly

CPAs & BUSINESS ADVISORS

Independent Auditor's Report

To the Board of Commissioners
First 5 Riverside County Children and Families Commission
Riverside, California

Report on the Audit of the Financial Statements

Opinions

We have audited the financial statements of the governmental activities and each major fund of the First 5 Riverside County Children and Families Commission (Commission), a component unit of the County of Riverside, California, as of and for the year ended June 30, 2023, and the related notes to the financial statements, which collectively comprise the Commission's basic financial statements as listed in the table of contents.

In our opinion, the accompanying financial statements referred to above present fairly, in all material respects, the respective financial position of the governmental activities and each major fund of the Commission, as of June 30, 2023, and the respective changes in financial position thereof for the year then ended in accordance with accounting principles generally accepted in the United States of America.

Basis for Opinions

We conducted our audit in accordance with auditing standards generally accepted in the United States of America (GAAS) and the standards applicable to financial audits contained in *Government Auditing Standards* issued by the Comptroller General of the United States (*Government Auditing Standards*). Our responsibilities under those standards are further described in the Auditor's Responsibilities for the Audit of the Financial Statements section of our report. We are required to be independent of the Commission and to meet our other ethical responsibilities, in accordance with the relevant ethical requirements relating to our audit. We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinions.

Responsibilities of Management for the Financial Statements

Management is responsible for the preparation and fair presentation of the financial statements in accordance with accounting principles generally accepted in the United States of America; and for the design, implementation, and maintenance of internal control relevant to the preparation and fair presentation of financial statements that are free from material misstatement, whether due to fraud or error.

In preparing the financial statements, management is required to evaluate whether there are conditions or events, considered in the aggregate, that raise substantial doubt about the Commission's ability to continue as a going concern for twelve months beyond the financial statement date, including any currently known information that may raise substantial doubt shortly thereafter.

Auditor's Responsibilities for the Audit of the Financial Statements

Our objectives are to obtain reasonable assurance about whether the financial statements as a whole are free from material misstatement, whether due to fraud or error, and to issue an auditor's report that includes our opinions. Reasonable assurance is a high level of assurance but is not absolute assurance and therefore is not a guarantee that an audit conducted in accordance with GAAS and *Government Auditing Standards* will always detect a material misstatement when it exists. The risk of not detecting a material misstatement resulting from fraud is higher than for one resulting from error, as fraud may involve collusion, forgery, intentional omissions, misrepresentations, or the override of internal control. Misstatements are considered material if there is a substantial likelihood that, individually or in the aggregate, they would influence the judgment made by a reasonable user based on the financial statements.

In performing an audit in accordance with GAAS and *Government Auditing Standards*, we:

- Exercise professional judgment and maintain professional skepticism throughout the audit.
- Identify and assess the risks of material misstatement of the financial statements, whether due to fraud or error, and design and perform audit procedures responsive to those risks. Such procedures include examining, on a test basis, evidence regarding the amounts and disclosures in the financial statements.
- Obtain an understanding of internal control relevant to the audit in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the Commission's internal control. Accordingly, no such opinion is expressed.
- Evaluate the appropriateness of accounting policies used and the reasonableness of significant accounting estimates made by management, as well as evaluate the overall presentation of the financial statements.
- Conclude whether, in our judgment, there are conditions or events, considered in the aggregate, that raise substantial doubt about the Commission's ability to continue as a going concern for a reasonable period of time.

We are required to communicate with those charged with governance regarding, among other matters, the planned scope and timing of the audit, significant audit findings, and certain internal control–related matters that we identified during the audit.

Required Supplementary Information

Accounting principles generally accepted in the United States of America require that the management's discussion and analysis, schedules of Commission's proportionate share of net pension liability and contributions and budgetary comparison information as listed on the table of contents, be presented to supplement the basic financial statements. Such information is the responsibility of management and, although not a part of the basic financial statements, is required by the Governmental Accounting Standards Board who considers it to be an essential part of financial reporting for placing the basic financial statements in an appropriate operational, economic, or historical context. We have applied certain limited procedures to the required supplementary information in accordance with auditing standards generally accepted in the United States of America, which consisted of inquiries of management about the methods of preparing the information and comparing the information for

consistency with management's responses to our inquiries, the basic financial statements, and other knowledge we obtained during our audit of the basic financial statements. We do not express an opinion or provide any assurance on the information because the limited procedures do not provide us with sufficient evidence to express an opinion or provide any assurance.

Supplementary Information

Our audit was conducted for the purpose of forming opinions on the financial statements that collectively comprise the Commission's basic financial statements. The Schedule of First 5 California Funding (Schedule) is presented for purposes of additional analysis and is not a required part of the basic financial statements. Such information is the responsibility of management and was derived from and relates directly to the underlying accounting and other records used to prepare the basic financial statements. The information has been subjected to the auditing procedures applied in the audit of the basic financial statements and certain additional procedures, including comparing and reconciling such information directly to the underlying accounting and other records used to prepare the basic financial statements or to the basic financial statements themselves, and other additional procedures in accordance with GAAS. In our opinion, the Schedule is fairly stated, in all material respects, in relation to the basic financial statements as a whole.

Other Reporting Required by *Government Auditing Standards*

In accordance with *Government Auditing Standards*, we have also issued our October 11, 2023, on our consideration of the Commission's internal control over financial reporting and on our tests of its compliance with certain provisions of laws, regulations, contracts, and grant agreements and other matters. The purpose of that report is solely to describe the scope of our testing of internal control over financial reporting and compliance and the results of that testing, and not to provide an opinion on the effectiveness of the Commission's internal control over financial reporting or on compliance. That report is an integral part of an audit performed in accordance with *Government Auditing Standards* in considering the Commission's internal control over financial reporting and compliance.

Eide Bailly LLP

Rancho Cucamonga, California
October 11, 2023

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First 5 Riverside County Children and Families Commission
Management's Discussion and Analysis
(Unaudited)
For Year Ended June 30, 2023

On November 3, 1998, California voters approved Proposition 10, the California Children and Families Act, which increased tobacco taxes to provide funds for early childhood development programs for children from the prenatal stage up through age five and their families.

As management of the Riverside County Children and Families Commission (Commission), we offer readers of the Commission's financial statements this overview and analysis of the financial activities for the fiscal year ended June 30, 2023. Please read in conjunction with the Commission's basic financial statements and accompanying notes.

Financial Highlights

- The Commission recognized approximately $17.2 million in revenues from First 5 California, reflecting a decrease of approximately $2.3 million or 11.7% from FY 2022-23. Total revenues for FY 2022-23 were about $31.1 million, which included revenue from Tobacco Taxes, First 5 CA initiatives (IMPACT, HV), American Rescue Plan Act (ARPA), family resource center reimbursement, investments, and other programs.

- Commission expenses totaled approximately $32.5 million in FY 2022-23, representing a 13.2% increase or $3.8 million from FY 2021-22. The increase indicates additional support for childhood development programs and increased wage enhancement payments made to the early childcare education workforce. Salaries and benefits increased due to increased staffing and the reclassification of positions.

- The Commission's assets increased from $47.8 million in FY 2021-22 to $49.8 million in FY 22-23 an increase of 4.2% as a result of cash received in advance from ARPA funding as well as increased interest income.

- Commission liabilities totaled approximately $22.0 million in FY 2022-23, representing a 43.3% increase or $6.6 million from FY 2021-22, primarily due to accounts payable that posted in the new fiscal year accrued back to FY 22-23. Net pension liability also increased due to increased staffing.

- The Commission's general fund balance decreased from $34.7 million in FY 2021-22 to $33.6 million in FY 22-23, a decrease of 3.3%.

- The Commission's Net Position decreased by 4.3% from $32.1 million in FY 2021-22 to $30.8 million in FY22-23.

Overview of the Financial Statements

The Commission's financial statements consist of three parts:

- The government-wide financial statements
- Fund financial statements
- The notes to the financial statements

The Commission's financial statements offer essential high-level financial information about its activities. This report also includes supplemental information to provide additional detail to support the basic financial statements.

First 5 Riverside County Children and Families Commission
Management's Discussion and Analysis
(Unaudited)
For Year Ended June 30, 2023

Government-Wide Financial Statements

The government-wide financial statements provide readers with a broad overview of the Commission's finances like a private-sector business. These statements offer long-term and short-term information about the Commission's financial status.

The Statement of Net Position includes information on the Commission's assets, deferred outflows of resources, and liabilities, with the difference between assets, deferred outflows of resources, and liabilities reported as net position. Changes in net position may serve as a valuable indicator of the Commission's financial position.

The Statement of Activities presents information showing how the Commission's net position changed during the fiscal year.

The governmental-wide financial statements are on pages 13-14 of this report.

Fund Financial Statements

Fund accounting ensures and demonstrates compliance with finance-related legal requirements. Governmental fund financial statements focus on near-term inflows and outflows of spendable resources and balances of spendable resources available at the end of the year.

The Commission maintains two governmental funds, the General Fund and the ARPA special revenue fund. The Commission adopts an annual budget for its General Fund and ARPA fund. A budgetary comparison schedule has been provided for the General Fund and the ARPA special revenue fund to demonstrate compliance with the budget.

The governmental fund financial statements are on pages 15-18 of this report.

Notes to the Financial Statements
The notes provide additional information that is integral to acquiring a complete understanding of the data provided in the government-wide and fund financial statements. The notes to the financial statements are on pages 19-34 of this report.

Required Supplementary Information

In addition to the basic financial statements and accompanying notes, this report contains required supplementary information related to pension and budget, found on pages 35-38 of this report.

First 5 Riverside County Children and Families Commission
Management's Discussion and Analysis
(Unaudited)
For Year Ended June 30, 2023

Government-Wide Overall Statements Analysis

The following is a summary of the Commission's assets, deferred outflows of resources, liabilities, deferred inflows of resources, and net position comparing FY 2021-2022 to FY 2022-2023:

	June 30, 2023	June 30, 2022	Dollar Increase / (Decrease)	Percent Increase / (Decrease)
Assets:				
Cash and investments	$ 44,190,041	$ 43,192,353	$ 997,688	2.3%
Interest receivable	393,567	79,223	314,344	396.8%
Due from other governments	3,452,966	2,686,219	766,747	28.5%
Capital assets	1,782,417	1,839,911	(57,494)	-3.1%
Total assets	$ 49,818,991	$ 47,797,706	$ 2,021,285	4.2%
Deferred Outflows of Resources				
Deferred outflows related to pensions	3,812,285	2,624,597	$ 1,187,688	45.3%
Total Deferred Outflows Pensions	$ 3,812,285	$ 2,624,597	$ 1,187,688	45.3%
Liabilities:				
Accounts payable	$ 4,153,692	$ 1,920,323	$ 2,233,369	116.3%
Accrued wages and benefits	297,745	240,036	57,709	24.0%
Use tax payable	87	51	36	70.6%
Unearned revenue	10,053,060	9,218,232	834,828	9.1%
Compensated absences	494,114	647,406	(153,292)	-23.7%
Net pension liability	6,901,560	3,253,591	3,647,969	112.1%
Total liabilities	$ 21,900,258	$ 15,279,639	$ 6,620,619	43.3%
Deferred Inflows of Resources				
Deferred inflows related to pensions	977,160	2,994,482	(2,017,322)	-67.4%
Net Position				
Investment in capital assets	$ 1,782,417	$ 1,839,911	$ (57,494)	-3.1%
Unrestricted	28,971,441	30,308,271	(1,336,830)	-4.4%
Total Net Position	$ 30,753,858	$ 32,148,182	$ (1,394,324)	-4.3%

The Commission's total assets of $49.8 million represent an increase of $2 million or a 4.2% increase compared with the prior year. Of this amount, cash and investments increased by approximately $1 million or 2.3% primarily due to the Commission holding $10.2 million of ARPA funding. The Commission's total liabilities increased from $15.3 million in FY 21-22 to $21.9 million in FY 22-23 because of net pension liability and accounts payable.

The 3.1% decrease in capital assets resulted from the continued depreciation of the Commission's capital assets. Additional information on capital assets is in Note 5 of this report. The decrease in Net Position from FY 21-22 to FY 22-23 was approximately $1.4 million or 4.3%.

First 5 Riverside County Children and Families Commission
Management's Discussion and Analysis
(Unaudited)
For Year Ended June 30, 2023

Governmental Activities

The following is a detailed summary of the Commission's revenue, expenses, and change in net position comparing FY 2021-22 with FY 2022-23:

	June 30, 2023	June 30, 2022	Dollar Increase / (Decrease)	Percent Increase / (Decrease)
Revenues				
Program revenues				
Tobacco taxes	$ 17,210,826	$ 19,499,728	$ (2,288,902)	-11.7%
First 5 CA (IMPACT, HV)	1,997,354	1,135,114	862,240	76.0%
Other programs	10,848,194	9,959,329	888,865	8.9%
Total Program Revenue	$ 30,056,374	$ 30,594,171	$ (537,797)	-1.8%
General Revenues				
Investment income (loss)	1,045,880	(659,195)	1,705,075	-258.7%
Total Revenues	$ 31,102,254	$ 29,934,976	$ 1,167,278	3.9%
Expenses				
Child development				
Salaries and benefits	6,578,893	5,769,516	809,377	14.0%
Professional and specialized services	24,258,728	21,056,592	3,202,136	15.2%
Services and supplies	1,601,463	1,814,100	(212,637)	-11.7%
Capital related	57,494	57,494	-	0.0%
Total Expenses	$ 32,496,578	$ 28,697,702	$ 3,798,876	13.2%
Net Change in Net Position	(1,394,324)	1,237,274	(2,631,598)	-212.7%
Net Position, Beginning of the Year	32,148,182	30,910,908	1,237,274	4.0%
Net Position, End of the Year	$ 30,753,858	$ 32,148,182	$ (1,394,324)	-4.3%

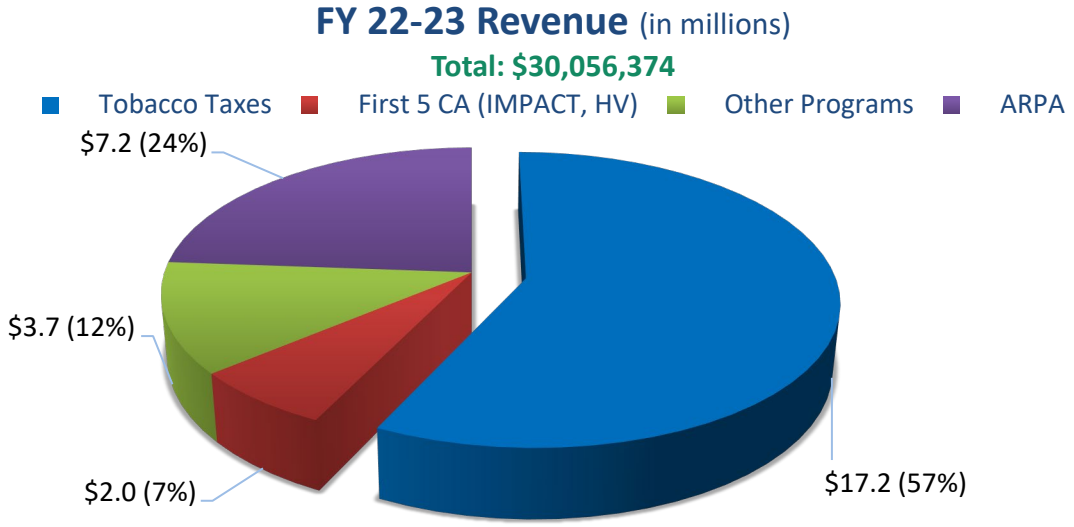
The Commission received approximately $30 million in revenues reflecting a decrease of $0.5 million or 1.8% from the prior year. Tobacco tax revenue decreased by $2.3 million, an 11.7% decrease, compared to the previous year.

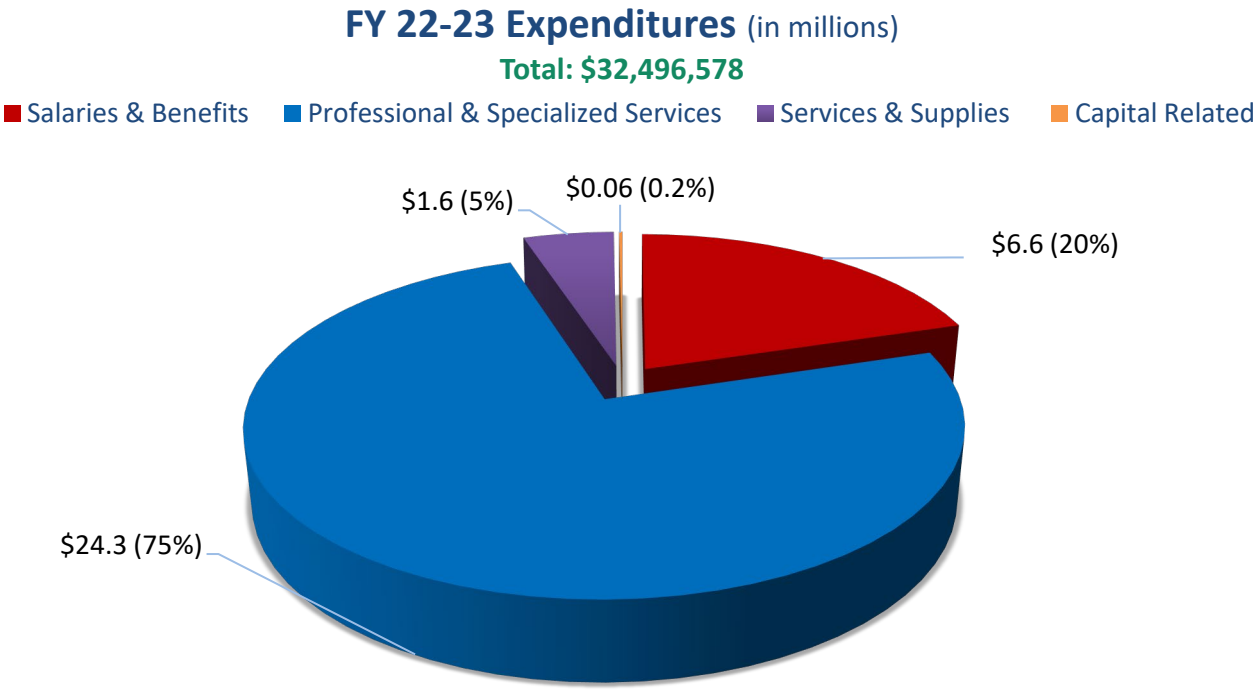
Total FY 2022-23 expenses increased by $3.8 million or 13.2% compared to the prior year. Salaries and benefits increased by $0.8 million, with more positions filled and some reclassified. Professional and Specialized Services increased by $3.2 million or 15.2% due to expanded services to the community. There was a slight decrease in Services and Supplies by $212,637 or 11.7%.

There was no change in capital-related expenses from FY 2021-22 to FY 2022-23.

First 5 Riverside County Children and Families Commission
Management's Discussion and Analysis
(Unaudited)
For Year Ended June 30, 2023

Below are revenue (not including investment income) and expenses for FY 22-23, depicting each category in millions:





First 5 Riverside County Children and Families Commission
Management's Discussion and Analysis
(Unaudited)
For Year Ended June 30, 2023

Financial Analysis of Governmental Funds

As previously stated, the Commission uses fund accounting to ensure and demonstrate compliance with finance-related legal requirements.

Governmental Funds

The focus of the Commission's general fund is to provide information on near-term inflows, outflows, and balances of spendable resources. Fund balance is a valuable measure of the Commission's committed and available net resources for future operations.

Fund Balances	June 30, 2023	June 30, 2022	Dollar Increase/ (Decrease)	Percent Increase/ (Decrease)
Committed	$ 17,584,988	$ 16,370,183	$ 1,214,805	7.4%
Unassigned	15,974,384	18,344,651	(2,370,267)	-12.9%
Total Fund Balance - General Fund	$ 33,559,372	$ 34,714,834	$ (1,155,462)	-3.3%

The general fund is the chief operating fund of the Commission. At the end of FY 22-23, the general fund balance decreased by 3.3% or approximately $1.2 million from FY 21-22. To measure the general fund's liquidity, comparing total fund balance to total general fund expenditures is useful. Total general fund expenditures of $24.9 million represent approximately 74.2% of the general fund balance of $33.6 million.

General Fund Budgetary Highlights

The Commission FY 2022-2023 amended budget was compared to the actual revenues and the differences between estimated revenues and actual revenues were as follows:

Revenues	Final Budget	Actual Revenue	Over/(Under) Estimate	Percent change
Tobacco Taxes	$ 20,051,140	$ 17,210,826	$ (2,840,314)	-14.2%
First 5 CA (IMPACT, HV)	2,118,635	1,997,354	(121,281)	-5.7%
Other programs	6,496,617	3,683,023	(2,813,594)	-43.3%
Investment income (loss)	100,000	846,897	746,897	746.9%
Total Revenue	$ 28,766,392	$ 23,738,100	$ (5,028,292)	-17.5%

Tobacco Tax revenue was $2.8 million or 14.2% less than projected due to the declining sales of tobacco products in California. Revenue includes California Electronic Cigarette Excise Tax (CECET) at the rate of 12.5 percent (12.50%) of the retail selling price of electronic cigarettes.

First 5 CA initiatives include IMPACT and home visitation. Other program revenue was 43.3% less than projected since CalWORKs home visitation services were lower than projected.

First 5 Riverside County Children and Families Commission
Management's Discussion and Analysis
(Unaudited)
For Year Ended June 30, 2023

Investment income was budgeted based on historical data and actual investment income was 746.9% higher than projected resulting in investment income.

The differences between estimated and actual expenditures were as follows:

Expenditures	Final Budgeted Expenditures	Actual Expenditures	Over/(Under) Estimate	Percent change
Salaries and Benefits	$ 7,845,900	$ 6,074,278	$ (1,771,622)	-22.6%
Professional and Specialized Services	21,864,396	17,228,397	(4,635,999)	-21.2%
Services and Supplies	4,309,164	1,590,887	(2,718,277)	-63.1%
Total Expenses	$ 34,019,460	$ 24,893,562	$ (9,125,898)	-22.8%

Actual Salary and Benefits of $6.1 million were less than the budgeted amount of $7.8 million due to staff vacancies and recruitment challenges.

Professional and Specialized Services were 21.2% less than budgeted since program expenditures were lower than projected.

ARPA Fund Budgetary Highlights – (25820)

Revenues	Final Budget	Actual Revenue	Over/(Under) Estimate	Percent change
Other programs	$ 17,218,231	$ 7,165,171	$(10,053,060)	-58.4%
Investment income (loss)	-	198,983	198,983	100%
Total Revenue	$ 17,218,231	$ 7,364,154	$ (9,854,077)	-57.2%

Expenditures	Final Budgeted Expenditures	Actual Expenditures	Over/(Under) Estimate	Percent change
Salaries and Benefits	$ -	$ 214,948	$ 214,948	100%
Professional and Specialized Services	12,015,656	7,030,331	(4,985,325)	-41.5%
Services and Supplies	5,202,575	10,576	(5,191,999)	100%
Total Expenses	$ 17,218,231	$ 7,255,855	$ (9,962,376)	-22.8%

Compensated Absences

During the fiscal year, the Commission's compensated absences had a net decrease of $153,293 due to several employees separating from the Commission who had high leave balances.

Please refer to Note 6 in the Notes to the Financial Statements for more information on compensated absences.

First 5 Riverside County Children and Families Commission
Management's Discussion and Analysis
(Unaudited)
For Year Ended June 30, 2023

Capital Assets

During FY 2022-2023, the Commission's Net Capital Assets decreased $57,494 due to accumulative depreciation. Please refer to Note 5 in the Financial Statements for more information on capital assets.

Economic Factors and Next Year's Budget

For the past ten (10) years, Proposition 10 has declined on average 6% annually. Proposition 56 continues to increase annually. Combined, total tobacco tax decreased by 16% from FY 21-22 to FY 22-23. With the flavor ban in effect this year, tobacco tax is expected to decline faster.

Additionally, the Commission has oversight and management of approximately $10 million from the American Rescue Plan Act (ARPA) in FY24 for the Early Care & Education (ECE) Recovery Fund to stabilize and expand the availability of ECE to support the return of working parents to the workforce, including expansion of ECE facilities.

Request for Information

This financial report is designed to provide a general overview of the Commission's finances. Questions concerning any information provided in this report or requests for additional information should be addressed to Yvonne Suarez, Assistant Director, Riverside County Children and Families Commission (First 5 Riverside), 585 Technology Court, Riverside, California 92507.

Basic Financial Statements

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First 5 Riverside County Children and Families Commission

Statement of Net Position

June 30, 2023

	Governmental Activities
Assets	
Cash and investments in County Treasury	$ 44,190,041
Interest receivable	393,567
Due from other governments	3,452,966
Capital assets not being depreciated	373,380
Capital assets, net of accumulated depreciation	1,409,037
Total assets	49,818,991
Deferred Outflows of Resources	
Deferred outflows related to pensions	3,812,285
Liabilities	
Accounts payable	4,153,692
Accrued wages and benefits	297,745
Use tax payable	87
Unearned revenue	10,053,060
Compensated absences	
Payable within one year	73,515
Payable after one year	420,599
Net pension liability	6,901,560
Total liabilities	21,900,258
Deferred Inflows of Resources	
Deferred inflows related to pensions	977,160
Net Position	
Investment in capital assets	1,782,417
Unrestricted	28,971,441
Total net position	$ 30,753,858

First 5 Riverside County Children and Families Commission

Statement of Activities

Year Ended June 30, 2023

Functions/Programs	Expenses	Program Revenues Operating Grants and Contributions	Net (Expense) Revenue and Change in Net Position
Governmental Activities			
Child development	$ 32,496,578	$ 30,056,374	$ (2,440,204)
Total governmental activities	$ 32,496,578	$ 30,056,374	(2,440,204)
General Revenues			
Investment income			1,045,880
Total general revenues			1,045,880
Change in Net Position			(1,394,324)
Total Net Position - Beginning			32,148,182
Total Net Position - Ending			$ 30,753,858

First 5 Riverside County Children and Families Commission

Balance Sheet – Governmental Funds

June 30, 2023

	General Fund	ARPA Fund	Total
Assets			
Cash and investments in County Treasury	$ 34,162,747	$ 10,027,294	$ 44,190,041
Interest receivable	304,499	89,068	393,567
Due from other governments	3,452,966	-	3,452,966
Total assets	$ 37,920,212	$ 10,116,362	$ 48,036,574
Liabilities and Fund Balance			
Liabilities			
Accounts payable	$ 4,063,008	$ 90,684	$ 4,153,692
Accrued wages and benefits	297,745	-	297,745
Use tax payable	87	-	87
Unearned revenue	-	10,053,060	10,053,060
Total liabilities	4,360,840	10,143,744	14,504,584
Fund Balances			
Committed	17,584,988	-	17,584,988
Unassigned	15,974,384	(27,382)	15,947,002
Total fund balance (deficit)	33,559,372	(27,382)	33,531,990
Total liabilities and fund balance	$ 37,920,212	$ 10,116,362	$ 48,036,574

First 5 Riverside County Children and Families Commission

Reconciliation of the Governmental Funds Balance Sheet to the Statement of Net Position

June 30, 2023

Amounts reported for governmental activities in the Statement of Net Position are different because	
Fund Balance of Governmental Funds	$ 33,531,990
Capital assets used for governmental activities in the amount of $2,362,362 net of $579,945 in accumulated depreciation, are not financial resources and therefore, are not reported in the funds.	1,782,417
Governmental funds report pension contributions to the plan as expenditures, however in the statement of net position contributions are recorded as deferred outflows of resources to reduce the net pension liability at a future date. Additionally, the net pension liability is recorded in the statement of net position as a long-term liability. The following reconciles adjustments related to the net pension liability	
Net pension liability	(6,901,560)
Deferred outflows of resources	3,812,285
Deferred inflows of resources	(977,160)
Compensated absences liability is not reported in the fund financial statements.	(494,114)
Net Position of Governmental Activities	$ 30,753,858

First 5 Riverside County Children and Families Commission

Statement of Revenues, Expenditures, and Changes in Fund Balances – Governmental Funds

Year Ended June 30, 2023

	General Fund	ARPA Fund	Total
Revenues			
Tobacco taxes	$ 17,210,826	$ -	$ 17,210,826
IMPACT	1,997,354	-	1,997,354
Other programs	3,683,023	7,165,171	10,848,194
Investment income	846,897	198,983	1,045,880
Total revenues	23,738,100	7,364,154	31,102,254
Expenditures			
Current			
Child development			
Salaries and benefits	6,074,278	214,948	6,289,226
Professional and specialized services	17,228,397	7,030,331	24,258,728
Services and supplies	1,590,887	10,576	1,601,463
Total expenditures	24,893,562	7,255,855	32,149,417
Net Change in Fund Balance	(1,155,462)	108,299	(1,047,163)
Fund Balance (Deficit), Beginning of Year	34,714,834	(135,681)	34,579,153
Fund Balance (Deficit), End of Year	$ 33,559,372	$ (27,382)	$ 33,531,990

First 5 Riverside County Children and Families Commission

Reconciliation of the Statement of Revenues, Expenditures, and Changes in Fund Balances of Governmental Funds to the Statement of Activities

Year Ended June 30, 2023

Amounts reported for Governmental Activities in the Statement of Activities are different because	
Net Change in Fund Balance - Total Governmental Funds	$ (1,047,163)
Governmental funds report capital outlays as expenditures. However, in the Statement of Activities, the cost of those assets is allocated over their estimated useful lives as depreciation expense. This is the amount by which depreciation expense exceeded capital outlays in the current period.	(57,494)
Governmental funds report pension contributions as expenditures. However, in the statement of activities, pension expense is measured as the change in net pension liabilility and the amortization of deferred outflows and inflows related to pensions. This amount represents the net change in pension related amounts.	(442,959)
Compensated absences expenses reported in the Statement of Activities do not require the use of current financial resources and therefore are not reported as expenditures in governmental funds. This amount represents the net change in the compensated absences liability.	153,292
Change in Net Position of Governmental Activities	$ (1,394,324)

Notes to Financial Statements



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Note 1 - Summary of Significant Accounting Policies

A. Reporting Entity

The Riverside County Board of Supervisors established First 5 Riverside, also known as Riverside County Children and Families Commission ("the Commission") in 1999 under the provisions of the California Children and Families Act of 1998 (Act). The Commission provides support for all children, prenatal through five years, and their families to improve early childhood development. The Commission is funded through cigarette tax revenue generated as a result of the California voter approval of the Proposition 10 Act ("Prop 10") in November 1998. A governing board of nine members, which are appointed by the County Board of Supervisors, administers the Commission. The composition of the Commission is consistent with the requirements set forth in the Proposition 10 legislation and the local Riverside County Ordinance No. 784.

The Commission is a component unit of the County of Riverside, California. The Commission implements comprehensive and integrated systems for children to thrive in supportive, nurturing and loving environments; enter school healthy and ready to learn and become productive and well- adjusted as members of society. The Commission developed a strategic plan to guide activities and funding for the period of July 2018 through June 2023. The Commission extended the strategic plan three more years through June 30, 2026. The Commission's primary goals are: 1) to foster a healthy community and provide access to affordable, comprehensive and preventive mental and physical health services 2) to expand the availability of quality, accessible and affordable Child Care services and 3) to educate Riverside County residents about the lifelong implication of optimal development through age 5.

Upon termination of the Commission, all assets of the Commission shall be returned to the State of California. The liabilities of the Commission shall not become liabilities of the County upon either termination of the Commission or the liquidation or disposition of the Commission's remaining assets.

B. Government-wide and Fund Financial Statements

The government-wide financial statements (e.g., the statement of net position and the statement of activities) report information on all of the activities of the reporting entity. Governmental activities are supported by taxes and intergovernmental revenues.

The statement of activities demonstrates the degree to which the direct expenses of a given function or segment is offset by program revenues. Direct expenses are those that are clearly identifiable with a specific function or segment. Program revenues include 1) charges to customers or applicants who purchase, use, or directly benefit from goods, services, or privileges provided by a given function or segment, and 2) grants and contributions that are restricted to meeting the operational or capital requirements of a particular function or segment. Taxes and other items not included among program revenues are reported instead as general revenues.

C. Measurement Focus, Basis of Accounting, and Financial Statement Presentation

The government-wide financial statements (i.e., the Statement of Net Position and the Statement of Activities on pages 13 and 14 are reported using the economic resources measurement focus and the accrual basis of accounting. Revenues are recorded when earned and expenses are recorded when a liability is incurred, regardless of the timing of related cash flows. Contributions to local grantee organizations are recognized as expense when criteria for grant payments are met by the grantee organization. The *Statement of Net Position* presents the Commission's overall financial position. The *Statement of Activities* reports the change in net position in a net program cost format to demonstrate the degree to which the expenses of the Commission are offset by its program revenues. The Commission's principal activity is child development.

Governmental fund financial statements, presented after the government-wide financial statements, are reported using the current financial resources measurement focus and the modified accrual basis of accounting. Revenues are recognized as soon as they are both measurable and available. Revenues are considered to be available when they are collectible within the current period or soon enough thereafter to pay liabilities of the current period. Revenues are generally considered to be available when they are collected within 90 days of the end of the current fiscal period. Expenditures generally are recognized in the accounting period in which the liability is incurred, if measurable. However, expenditures related to compensated absences are recorded only when payment is due. Revenues collected in advance are recorded as advances (Unearned Revenue) and recognized in the period to which they apply.

The government reports the following major governmental funds:

The *general fund* is the government's primary operating fund. It accounts for all financial resources of the Commission.

The Coronavirus State and Local Fiscal Recovery Funds (*ARPA fund)* is a special revenue fund. This fund supports the resilience of the overall economy by allowing more parents to access early care and education (childcare) so that they are able to return to work after experiencing the negative impacts of COVID-19 within Riverside County.

D. Accounting and Reporting Policies

The accounting policies of the Commission conform to accounting principles generally accepted in the United States of America as applicable to governments. The Governmental Accounting Standards Board (GASB) is the accepted standard setting body for governmental accounting and financial reporting principles.

E. Cash and Investments

The Commission categorizes the fair value measurements of its investments based on the hierarchy established by generally accepted accounting principles. The fair value hierarchy, which has three levels, is based on the valuation inputs used to measure an asset's fair value: Level 1 inputs are quoted prices in active markets for identical assets; Level 2 inputs are significant other observable inputs; Level 3 inputs are significant unobservable inputs.

F. Capital Assets

Capital assets are recorded at historical cost. The capitalization threshold for equipment is $5,000; buildings, land and land improvements is $150,000. Betterments result in a more productive, efficient or long-lived asset. Significant betterments are considered capital assets when they result in an improvement of $2,500 or more. Capital assets used in operations are depreciated using the straight-line method over their estimated useful lives in the government-wide statements. The estimated useful lives are as follows: Buildings 25-60 years, Improvements 10-20 years, Equipment 3-20 years. Maintenance and repairs are charged to operations when incurred. Betterments and major improvements, which significantly increase values, change capacities, or extend useful lives, are capitalized. Upon sale or retirement of capital assets, the cost and related accumulated depreciation are removed from the respective accounts and any resulting gain or loss is included in the changes in financial position.

G. Deferred Outflow/Inflows of Resources

In addition to assets, the statement of financial position includes a separate section for deferred outflows of resources. Deferred outflows of resources represent a consumption of net assets that applies to a future period(s) and so will *not* be recognized as an outflow of resources (expense/expenditure) until then. The Commission has one item that qualifies for reporting in this category: Deferred outflows related to pensions.

In addition to liabilities, the statement of financial position includes a separate section for deferred inflows of resources. Deferred inflows of resources represent an acquisition of net assets that applies to a future period(s) and so will *not* be recognized as an inflow of resources (revenue) until that time. The Commission has one item that qualifies for reporting in this category: Deferred inflows related to pensions.

H. Unearned Revenue

Revenues collected in advance of incurring eligible expenses are recorded as advances (Unearned Revenue) and recognized in the period to which they apply. As of June 30, 2023, the Commission has unearned revenues of $10,053,060.

I. Use of Estimates

The preparation of financial statements in conformity with accounting principles generally accepted in the United States of America requires management to make estimates and assumptions that affect the reported amounts and disclosures at the date of the financial statements and the reported amounts of revenues and expenditures during the reporting period. Actual results could differ from those estimates.

J. Restricted Resources

When both restricted and unrestricted resources are available for use, it is the Commission's policy to use restricted resources first, and then unrestricted resources as they are needed.

K. Pensions

For purposes of measuring the net pension liability and deferred outflows/inflows of resources related to pensions, and pension expense, information about the fiduciary net position of the County of Riverside's Miscellaneous Pension Plan and additions to/deductions from the Plan's fiduciary net position have been determined on the same basis as they are reported by California Public Employees Retirement System (CalPERS). For this purpose, benefit payments (including refunds of employee contributions) are recognized when due and payable in accordance with the benefit terms. Investments are reported at fair value.

L. Net Position and Fund Balance

Net Position

In the government-wide financial statements, net position represents the difference between assets, liabilities and deferred outflows (inflows) of resources, and may be classified into three components:

- Investment in Capital Assets – This balance reflects the net position of the Commission that are invested in capital assets. This amount is generally not accessible for other purposes.
- Restricted Net Position – This balance represents net position that is not accessible for general use because their use is subject to restrictions enforceable by third parties. At June 30, 2023, no amounts are reported under this category.
- Unrestricted Net Position – This balance represents the net position that is available for general use.

Fund Balance

The following classifications describe the relative strength of the constraints placed on the purposes for which resources can be used:

- Nonspendable Fund Balance – Amounts that cannot be spent either because they are in nonspendable form or are required to be maintained intact.
- Restricted Fund Balance – Amounts that are constrained to specific purposes by state or federal laws, or externally imposed conditions by grantors or creditors.
- Committed Fund Balance – Amounts with self-imposed limitations and require both the approval of the highest level of decision-making authority (Commissioners) and the same formal action to remove or modify limitations. The formal action required by the Commissioners for funds to be committed is action by the way of a formal action item allocating funding for a specific purpose, program or initiative.
- Assigned Fund Balance – Amounts that are constrained by the Commission's intent to be used for specific purposes, but are neither restricted nor committed. The Commission is the only authority allowed to assign amounts to be used for specific purposes.
- Unassigned Fund Balances – These are residual resources of the General Fund in excess of what can properly be classified in one of the other four categories, or negative fund balance of special revenue funds.

When both restricted and unrestricted resources are available for use, it is the Commission's policy to use restricted resources first and then unrestricted resources, as they are needed. For unrestricted resources, decreases in fund balance first reduce committed fund balance, in the event that committed fund balance becomes zero, then assigned and unassigned fund balances are used in that order.

M. Effect of New Governmental Accounting Standards Board (GASB) Pronouncements

Effective in Current Fiscal Year

GASB Statement No. 91 – In May 2019, GASB issued Statement No. 91, *Conduit Debt Obligations.* The objective of this Statement is to make financial statements more useful to end users by eliminating this diversity of practice in Conduit Debt Obligation reporting. Additionally, GASB 91 enhances financial statement note disclosures regarding issuers' commitments and the likelihood that they will fulfill them. This Statement is effective for reporting periods beginning after December 15, 2021. The Commission has determined this Statement did not have an impact on the financial statements.

GASB Statement No. 94 – In March 2020, GASB issued Statement No. 94, *Public-Private and Public-Public Partnerships and Availability Payment Arrangements.* The objective of this Statement is to improve financial reporting by addressing issues related to public-private and public-public partnership arrangements (PPPs). This Statement is effective for reporting periods beginning after June 15, 2022. The Commission has determined this Statement did not have an impact on the financial statements.

GASB Statement No. 96 – In May 2020, GASB issued Statement No. 96, *Subscription-Based Information Technology Arrangements.* The objective of this Statement is to establish uniform accounting and financial reporting requirements for subscription-based information technology arrangements (SBITAs); improve comparability of government's financial statements; and enhance the understandability, reliability, relevance, and consistency of information about SBITAs. This Statement is effective for reporting periods beginning after June 15, 2022. The Commission has determined this Statement did not have an impact on the financial statements.

GASB Statement No. 99 – In April 2022, the GASB issued Statement No. 99, *Omnibus 2022*. The objectives of this Statement are to enhance comparability in account and financial reporting and to improve the consistency of authoritative literature by addressing (1) practice issues that have been identified during implementation and application of certain GASB Statements and (2) accounting and financial reporting for financial guarantees. The requirements of this Statement related to the extension of the use of LIBOR, accounting for SNAP distributions, disclosures of nonmonetary transactions, pledges of future revenues by pledging governments, clarification of certain provisions in Statement 34, as amended, and terminology updates related to Statement 53 and Statement 63 are effective upon issuance. The requirements related to leases, PPPs, and SBITAs are effective for fiscal years beginning after June 15, 2022. The Commission has determined that there was no material impact on the Commission's financial statements.

Effective in Future Fiscal Years

The GASB has issued the following pronouncements that have effective dates which may impact future financial statement presentation. The Commission has not determined the effect of the following Statements:

GASB Statement No. 99 - *Omnibus 2022* - The requirements related to financial guarantees and the classification and reporting of derivative instruments within the scope of Statement 53 are effective for fiscal years beginning after June 15, 2023.
GASB Statement No. 100 - *Accounting Changes and Error Corrections*
GASB Statement No. 101 - *Compensated Absences*

Note 2 - Stewardship, Compliance, and Accountability

Deficit fund equity

At June 30, 2023, the ARPA fund, has a deficit fund balance of $27,382. The reason for the deficit is due to the fair market value adjustment for the investment pool. This deficit will be eliminated in future periods.

Note 3 - Cash and Investments

Cash and Investments are classified in the accompanying financial statements as follows:

Cash and Investments in County Treasury	$ 44,190,041
Total cash and investments	$ 44,190,041

Investments Authorized by the California Government Code

The Commission is authorized under the California Government Code to make direct investments and has adopted the Riverside County Statement of Investment Policy and any amendments, therein. The Commission maintains policies for exposure to interest rate risk, credit risk, and concentration of credit risk, as stated in the policy. The following are investments authorized under the Riverside County Statement of investment Policy, which is more limited than those authorized under the California Government Code:

Authorized Investment Type	Maximum Maturity	Maximum Percentage of Portfolio
Municipal Bonds (Muni)	4 years	15%
U.S. Treasury	5 years	100%
Local Agency Obligations (LAO)	3 years	2.5%
Federal Agencies	5 years	100%
Commercial Paper	270 days	40%
Certificate & Time Deposits (NCD & TCD)	1 years	25% Combined
International Bank for Reconstruction and Development and International Finance Corporation	4 years	20%
Repurchase Agreements (REPO)	45 days	40% max/25% in term repo over 7 days
Medium Term Notes (MTNO)	3 years	20%
CalTRUST Short Term Fund	Daily Liquidity	1%
Money Market Mutual Funds (MMF)	Daily Liquidity	20%
Local Agency Investment Funds (LAIF)	Daily Liquidity	Max $75 million
Cash/Deposit Account	NA	NA

Investment in Riverside County Treasurer's Pooled Investment Fund

The Commission maintains all of its funds with the Riverside County Treasurer. For information regarding interest rate risk, credit risk, concentration of credit risk, and custodial credit risk of the Riverside County Treasurer's Pool refer to the County of Riverside Annual Comprehensive Financial Report.

The Riverside County Treasurer maintains a cash and investment pool for all funds of the County and other agencies for which the County treasury is the depository. Interest earned on the pooled funds is allocated and credited to these funds quarterly. Interest is apportioned to the Commission based on the average daily balances on deposit with the Riverside County Treasurer.

The Commission is an involuntary participant in the pool regulated by the California Government Code, under the oversight of the Treasurer of the County of Riverside and Treasury Oversight Committee. The fair value of the Commission's investment in this pool is reported in the accompanying financial statements at amounts based upon the Commission's pro-rata share of the fair value provided by the County of Riverside for the entire pool portfolio (in relation to the amortized cost of that portfolio). The balance available for withdrawal is based on the accounting records maintained by the pool, which are recorded on an amortized cost basis. The weighted average maturity of the pool was 1.15 years at June 30, 2023. The County pool investment fund is rated AAA-bf by Moody's Investor Service and AAA/V1 by Fitch Ratings.

Fair Value Measurements

The Commission categorizes its fair value measurements within the fair value hierarchy established by generally accepted accounting principles. The hierarchy is based on the valuation inputs used to measure the fair value of the asset. Level 1 inputs are quoted prices in active markets for identical assets, Level 2 inputs are significant other observable inputs; Level 3 inputs are significant unobservable inputs. As of June 30, 2023, the Commission held no individual investments. All funds are invested in the Riverside County Investment Pool.

Deposits and withdrawals are made on the basis of $1 and not fair value. Accordingly, the Commission's investment in the Riverside County Investment Pool at June 30, 2023 is uncategorized and not defined as a Level 1, Level 2, or Level 3 input.

Note 4 - Due from Other Governments

Due from other governments represents amounts due to the Commission from the California Children and Families Commission ("State Commission") for Prop 10 related revenues. The amounts due at June 30, 2023, were as follows:

Prop 10 Revenue For May & June-2023	$ 2,051,206
IMPACT	174,506
SMIF (interest)	63,015
Other	1,164,239
Total due from other governments	$ 3,452,966

Note 5 - Capital Assets

Capital assets activity for the year ended June 30, 2023, is shown below:

	Beginning	Increases	Decreases	Ending
Capital Assets Not Depreciated				
Land	$ 373,380	$ -	$ -	$ 373,380
Capital Assets Depreciated				
Building and improvements	1,897,938	-	-	1,897,938
Machinery and equipment	91,044	-	-	91,044
Total depreciable assets	1,988,982	-	-	1,988,982
Less - Accumulated Depreciation For				
Building and improvements	(436,257)	(53,827)	-	(490,084)
Machinery and equipment	(86,194)	(3,667)	-	(89,861)
Total accumulated depreciation	(522,451)	(57,494)	-	(579,945)
Total capital assets depreciated, net	1,466,531	(57,494)	-	1,409,037
Total capital assets, net	$ 1,839,911	$ (57,494)	$ -	$ 1,782,417

Depreciation expense for the year ended June 30, 2023 totaled $57,494 and is included in child development in the statement of activities.

Note 6 - Compensated Absences

County policy permits employees in some bargaining units to accumulate earned, but unused vacation, holiday, and sick pay benefits. Vacation and holiday pay are accrued when incurred. For other bargaining units, annual leave is earned and accrued, but not vacation or sick leave. Governmental funds record amounts that are due and payable at year-end as a liability of the fund and amounts due in the future as a liability in the government-wide financial statements. At June 30, 2023, the amount of accrued vacation, holiday pay, and sick leave reported in the government-wide statement of net position was $494,114.

The County allows unlimited accumulation of sick leave. Upon service retirement, disability retirement, or death of an employee or officer, and subject to the provisions of any applicable agreement between the employing agency and the Public Employee's Retirement System, unused accumulated sick leave for most employees with at least five (5) but less than 15 years of service shall be credited at the rate of 50% of current salary value thereof provided, however, that the total payment shall not exceed a sum equal to 960 hours of full pay. Unused accumulated sick leave for employees with more than fifteen or more years of service shall be credited at the rate of the current salary value provided, however, that the total payment shall not exceed a sum equal to 960 hours of full pay. In addition, the employee may also elect to place the payable amount of sick leave into a VEBA (Voluntary Employee Beneficiary Association) account which may be used for future health care costs.

	Beginning Balance	Increases	Decreases	Ending Balance	Amount Due in one year
Compensated Absences	$ 647,406	$ 32,469	$ 185,761	$ 494,114	$ 73,515

Note 7 - Net Position and Fund Balance

The details of the fund balances as of June 30, 2023, are presented below:

	General Fund	ARPA Fund	Total
Fund Balance			
Committed to			
Budgetary Stabilization Reserve	$ 6,000,000	$ -	$ 6,000,000
Capital Acquistion Reserve	800,000	-	800,000
RUHS-MC MFM Capacity Building	1,295,000	-	1,295,000
IMPACT Legacy Match	2,000,000	-	2,000,000
Inland Southern California United Way	2,500,000	-	2,500,000
ECE Facility Projects	4,989,988	-	4,989,988
Total committed	17,584,988	-	17,584,988
Unassigned			
Unassigned Fund Balance	15,974,384	(27,382)	15,947,002
Total fund balance	$ 33,559,372	$ (27,382)	$ 33,531,990

Stabilization Arrangement

In May 2018, the Commission approved Action Item #18-12. Under the formal action, a portion of the fund balance of the General Fund is committed for budget stabilization arrangement, such as might be needed when revenue shortages or budgetary imbalances occur. The Policy states that, at fiscal year-end, an amount equal $6,000,000 of the General Fund is to be committed for use to maintain services at the same level as was contracted in the event of revenue budgetary shortfall (revenue fall 10% below budget). At June 30, 2023, $6,000,000 was committed for the budgetary stabilization reserve.

Minimum Fund Balance Policy

In May 2018, the Commission approved Action Item #18-12, which created a minimum fund balance reserve policy. The minimum fund balance reserve is set at an amount equal $4,000,000. The reserve is to be replenished as soon as economic conditions allow. As of June 30, 2023, the Commission had $4,000,000 of the targeted reserve amount of $4,000,000 in unassigned fund balance, pursuant to the policy.

Note 8 - Special Funding – Other Programs

The Riverside IMPACT (Improve and Maximize Programs so All Children Thrive) program focuses on improving the quality of early learning sites and is inclusive of voluntary settings across the early learning continuum, including licensed centers and family child-care homes (FCCH); legally exempt centers; family, friend, and neighbor (FFN) care; and alternative settings for children ages 0 to 5. First 5 California funding for IMPACT is $3,412,988 for a three-year period that began July 1, 2020. Funds claimed for the year ending June 30, 2023 totaled $1,083,522. The First 5 IMPACT program requires a match and leveraging of funds. The matching requirement ratio for the Commission is two to one program partner match of two dollars of First 5 California funding to every dollar of local funding. Also funded through First 5 California and identified in this revenue line is the Home Visitation – $42,232. Total funding from First 5 California for all initiatives – $1,125,754. The Commission also received IMPACT related funding from Riverside County Office of Education in the amount of $96,101.

First 5 California provided additional funding for regional coordination, training, and technical assistance for the quality improvement of early education programs and systems. As the regional fiscal agent for the Hub program, funds claimed for the period ending June 30, 2023 totaled $871,601.

California Family Resource Association provided additional funding in the amount of $2,423,320 to support foster families and tribal families in the County's family resource center network in response to family needs in context of COVID-19.

Note 9 - Related Party Transactions

The required composition of the Board of Commissioners is consistent with the Children and Families Act of 1998 and Riverside County Ordinance 784. Some of the programs funded by First 5 Riverside are operated by organizations associated with the Commissioners. Commissioners must abstain from discussion and voting on issues directly related to their respective organizations. The Commission also utilizes the County Counsel for its legal services.

The following is a summary of expenditures and payables at June 30, 2023 for each related party:

Organization	Expenditure Amount	Payable Amounts
Department of Public Health Riverside County	$ 144,298	$ -
Consortium for Early Learning Services	137,076	9,900
Jurupa Unified School District	1,186,313	232,323
Riverside County Office of Education	4,208,128	870,777
County Counsel	27,600	-
Total	$ 5,703,415	$ 1,113,000

The expenditure amounts are included in Professional and Specialized Services. Payable amounts are included in accounts payable.

Note 10 - Program Evaluation

In accordance with the *Standards and Procedures for Audits of California Counties Participating in the California Children and Families Program*, issued by the California State Controller, the Commission is required to disclose the amounts expended during the fiscal year on program evaluation. Program evaluation costs pertain to those activities undertaken to support the collection, production, analysis and presentation of evaluation information for Commission management, Commissioners and other interested parties.

For the year ended June 30, 2023, the Commission expended $925,478 on program evaluation.

Note 11 - Retirement Plan

A. General Information about the Pension Plan

Plan Descriptions – The County contracts with CalPERS to provide retirement benefits to its employees. CalPERS is a common investment and administrative agent for participating public entities with the State of California. All qualified permanent and probationary employees are eligible to participate in the County's Miscellaneous (all other) Employee Pension Plans, an agent multiple employer defined benefit pension plan administered by the California Public Employees Retirement System (CalPERS). Benefit provisions under the Plans are established by State statute and County resolution. CalPERS issues publicly available reports that include a full description of the pension plans regarding benefit provisions, assumptions and membership information may be obtained from: California Public Employee's Retirement System, 400 Q Street, P.O. Box 942701, Sacramento, California 94229-2701 or can be found on the CalPERS website at: http://www.calpers.ca.gov.

The employees of the Commission are employees of the County. The Commission reimburses the County for all pension plan costs and participates in the County's agent employer plan. For financial reporting purposes, the Commission reports a proportionate share of the County's collective net pension liability, pension expense, and deferred outflows and inflows of resources. Accordingly, the disclosures and required supplementary information have been reported for the Commission as a cost-sharing participant. For additional details of the County's pension plan, refer to the County of Riverside Annual Comprehensive Financial Report.

Benefits Provided – CalPERS provides retirement and disability benefits, annual cost of living adjustments and death benefits to plan members, who must be public employees and beneficiaries. Benefits are based on years of credited service, equal to one year of full-time employment. Members with five years of total service are eligible to retire at age 50 with statutorily reduced benefits. All members are eligible for non-duty disability benefits after 10 years of service. The death benefit is one of the following: the Basic Death Benefit, the 1957 Survivor Benefit, or the Optional Settlement 2W Death Benefit. The cost-of-living adjustments for each plan are applied as specified by the Public Employees' Retirement Law.

The Plan's provisions and benefits in effect at June 30, 2023, are summarized as follows:

	Miscellaneous		
	Tier I	Tier II	Tier III
Hire Date	Prior to 8/23/2012	8/23/2012 through 12/31/2012	On or after 1/1/2013
Formula	3% at 60	2% @ 60	2% @ 62
Benefit Vesting Schedule	5 years of service	5 years of service	5 years of service
Final Compensation	12 months	36 months	36 months
PEPRA Compensation Limit	N/A	N/A	$ 117,020
Benefit Payments	monthly for life	monthly for life	monthly for life
Earliest Retirement Age	50	50	52
Required Employee Contribution Rates	8.0%	7.0%	7.25%
Required Employer Contribution Rates	23.05%	23.05%	23.05%

Contributions - Section 20814(c) of the California Public Employees' Retirement Law requires that the employer contribution rates for all public employers must be determined on an annual basis by the actuary and shall be effective on the July 1 following notice of a change in the rate. Funding contributions for both Plans are determined annually on an actuarial basis as of June 30 by CalPERS. Beginning in fiscal year 2016, CalPERS collects employer contributions for the Plan as a percentage of payroll for the normal cost portion as noted in the rates above and as a dollar amount for contributions toward the unfunded liability and side fund. The dollar amounts are billed on a monthly basis.

Active plan members in CalPERS are required to contribute up to 8% (Miscellaneous employees) of their annual covered salary as specified in the governing Memorandum of Understanding or as provided by state statue. The Commission's contributions to the County plan were $924,394 for the year ended June 30, 2023.

B. Pension Liabilities, Pension Expenses and Deferred Outflows/Inflows of Resources Related to Pensions

As of June 30, 2023, the Commission reported a net pension liability for its proportionate share of the County's miscellaneous plan net pension liability of $6,901,560.

The Commission's net pension liability was measured as the proportionate share of the County's net pension liability based on its actual 2023 contributions in relation to all County contributions to the Plan.

The net pension liability of the Plan was measured as of June 30, 2022, and the total pension liability for the Plan used to calculate the net pension liability was determined by an actuarial valuation as of June 30, 2021, rolled forward to June 30, 2022, using standard update procedures. The Commission's proportionate share of the County's miscellaneous pension plan's net pension liability, measured as of June 30, 2021, and 2022 was 0.322377% and 0.285902%, respectively.

For the year ended June 30, 2023, the Commission recognized pension expense is $1,199,624. At June 30, 2023, the Commission reported deferred outflows of resources and deferred inflows of resources related to pensions from the following sources:

	Deferred Outflows of Resources	Deferred Inflows of Resources
Differences Between Actual and Expected Experience	$ 10,838	$ (383,578)
Changes In Assumptions	812,801	-
Net Differences Between Projected and Actual Earnings On Plan investments	1,108,456	-
Changes In Proportion and Difference Between Commission's Contributions and Proportionate Share of Contributions	955,796	(593,582)
Contributions Subsequent To The Measurement Date	924,394	-
Total	$ 3,812,285	$ (977,160)

The amount of $924,394 reported as deferred outflow of resources related to contributions subsequent to the measurement date will be recognized as a reduction of the net pension liability in the year ended June 30, 2024. Other amounts reported as deferred outflows of resources related to pensions will be recognized as pension expense as follows:

Year ended June 30	
2024	$ 723,724
2025	392,342
2026	107,798
2027	686,867
	$ 1,910,731

Actuarial Assumptions – The Commission's proportion of the County's total pension liabilities in the June 30, 2021, actuarial valuations were determined using the following actuarial assumptions:

Valuation Date	June 30, 2021
Measurement Date	June 30, 2022
Actuarial Cost Method	Entry-Age Normal Cost Method
Actuarial Assumptions	
Discount rate	6.90%
Inflation	2.30%
Salary increases	Varies by Entry Age and Service
Mortality rate table (1)	Derived using CalPERS' Membership Data for all Funds
Post retirement benefit increase	Lesser of Contract COLA up to 2.30% until Purchasing Power Protection Allowance Floor on Purchasing Power applies, 2.30% thereafter

(1) The mortality table used was developed based on CalPERS-specific data. The probabilities of mortality are based on the 2021 CalPERS Experience Study for the period from 2001 to 2019. Pre-retirement and Post-retirement mortality rates include generational mortality improvement using 80% of Scale MP-2020 published by the Society of Actuaries. For more details on this table, please refer to the CalPERS Experience Study and Review of Actuarial Assumptions report from November 2021 that can be found on the CalPERS website.

Discount Rate – The discount rate used to measure the total pension liability was 6.90% for the Plan. The projection of cash flows used to determine the discount rate assumed that employee contributions will be made at the current contribution rate and that the County's contributions will be made at rates equal to the difference between actuarially determined contributions rates and the employee rate. Based on those assumptions, the pension plan's fiduciary net position was projected to be available to make all projected future benefit payments of current active and inactive employees. Therefore, the long-term expected rate of return on pension plan investments was applied to all periods of projected benefit payments to determine the total pension liability.

In determining the long-term expected rate of return, CalPERS took into account both short-term and long-term market return expectations as well as the expected pension fund (PERF) cash flows. Taking into account historical returns of all the Public Employees Retirement Funds' asset classes (which includes the agent plan and two cost-sharing plans or PERF A, B, and C funds), expected compound (geometric) returns were calculated over the short-term (first 10 years) and the long-term (11-60 years) using a building-block approach. Using the expected nominal returns for both short-term and long-term, the present value of benefits was calculated for each PERF fund. The expected rate of return was set by calculating the single equivalent expected return that arrived at the same present value of benefits for cash flows as the one calculated using both short-term and long-term returns. The expected rate of return was then set equal to the single equivalent rate calculated above and rounded down to the nearest one quarter of one percent.

The table below reflects long-term expected real rate of return by asset class. The rate of return was calculated using the capital market assumptions applied to determine the discount rate and asset allocation.

Asset Class	Target Allocation	Real Return[1,2]
Global Equity	30.0%	4.54%
Global Equity - Non-Cap-weighted	12.0%	3.84%
Private Equity	13.0%	7.28%
Treasury	5.0%	0.27%
Mortgage-backed Securities	5.0%	0.50%
Investment Grade Corporates	10.0%	1.56%
High Yield	5.0%	2.27%
Emerging Market Debt	5.0%	2.48%
Private Debt	5.0%	3.57%
Real Estate	15.0%	3.21%
Leverage	-5.0%	-59.00%
Total	100%	

(1) An expected inflation of 2.30% used for this period
(2) Figures are based on the 2021 Asset Liability Management study

Sensitivity of the Net Pension Liability to Changes in the Discount Rate – The following presents the proportionate share of the net pension liability of the Commission, calculated using the discount rate for the Plan, as well as what the Commission's proportionate share of the net pension liability would be if it were calculated using a discount rate that is 1-percentage point lower or 1-Percentage point higher than the current rate:

	Discount Rate -1% (5.90%)	Current Discount Rate (6.90%)	Discount Rate + 1% (7.90%)
Commission's Proportionate Share of the Net Pension Liability	$ 11,092,698	$ 6,901,560	$ 3,472,857

Pension Plan Fiduciary Net Position – Detailed information about the pension plan's fiduciary net position is available in the separately issued CalPERS financial report and the County Annual Comprehensive Financial Report (ACFR). The County's financial statements may be found on the Auditor-Controller's Website: http://www.auditorcontroller.org/.

Note 12 - Risk Management

The Commission is part of the County of Riverside's insurance programs including coverage for general liability and auto liability. The County's insurance program for general and auto liability is a combination of self-insurance and excess insurance providing limits of liability of $25,000,000 per occurrence.

The employees at the Commission are considered to be employees of the County of Riverside and are covered by the County's workers' compensation program. The County's workers' compensation program is a combination of self- insurance and excess insurance providing statutory limits of coverage as required by the State of California.

For the past three years, settlements or judgment amounts have not exceeded insurance provided for Commission.

Note 13 - Contingencies

The Commission participates in state and federal programs, the principal of which are subject to program compliance. The amount of expenditures which may be disallowed, if any, by the granting agencies (First 5 California or State of California or federal awarding agencies) are anticipated to be immaterial.

The Commission is involved in various legal proceedings from time to time in the normal course of business. In management’s opinion, the Commission is not involved in any legal proceeding that will have a material adverse effect on financial position or changes in financial position of the Commission.

Required Supplementary Information
June 30, 2023

First 5 Riverside County Children and Families Commission



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First 5 Riverside County Children and Families Commission

Schedule of the Commission's Proportionate Share of the Net Pension Liability (Miscellaneous Plan)

Last Ten Years*

	2023	2022	2021	2020	2019	2018	2017	2016	2015
Commission's proportion of the net pension liability	0.285902%	0.322377%	0.303069%	0.214360%	0.243538%	0.240294%	0.181543%	0.157307%	0.141167%
Commission's proportionate share of the net pension liability	$ 6,901,560	$ 3,253,591	$ 6,463,224	$5,065,275	$ 5,301,689	$ 5,231,069	$ 2,987,791	$ 1,777,256	$ 1,340,526
Covered payroll	$ 3,734,131	$ 3,481,611	$ 2,638,451	$ 2,660,118	$ 2,581,044	$ 1,944,230	$ 1,590,991	$ 1,339,400	$ 1,341,771
Commission's proportionate share of the net pension liability as a percentage of covered payroll	184.82%	93.45%	244.96%	190.42%	205.41%	269.06%	187.79%	132.69%	99.91%
Plan fiduciary net position as a percentage of the total pension liability	75.92%	89.13%	76.03%	72.08%	72.12%	71.03%	74.51%	80.89%	83.16%
Measurement date	June 30, 2022	June 30, 2021	June 30, 2020	June 30, 2019	June 30, 2018	June 30, 2017	June 30, 2016	June 30, 2015	June 30, 2014

192

* Fiscal year 2015 was the first year of implementation.

First 5 Riverside County Children and Families Commission

Schedule of Contributions

Last Ten Years*

	2023	2022	2021	2020	2019	2018	2017	2016	2015
Required Commission contributions	$ 924,394	$ 948,918	$ 866,994	$ 523,854	$ 505,552	$ 438,501	$ 325,821	$ 252,313	$ 195,972
Contributions in relation to the actuarially determined contribution	924,394	948,918	866,994	523,854	505,552	438,501	325,821	252,313	195,972
Contribution deficiency (excess)	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Covered payroll	$ 3,327,557	$ 3,734,131	$ 3,481,611	$ 2,638,451	$ 2,660,118	$ 2,581,044	$ 1,944,230	$ 1,590,991	$ 1,339,400
Contributions as a percentage of covered payroll	27.78%	25.41%	24.90%	19.85%	19.00%	16.99%	16.76%	15.86%	14.63%

193

* Fiscal year 2015 was the first year of implementation.

First 5 Riverside County Children and Families Commission

Schedule of Revenues, Expenditures, and Changes in Fund Balance - Budget and Actual – General Fund

Year Ended June 30, 2023

	Budgeted Amounts		Actual	Variance with Final Budget Positive
	Original	Final	Amounts	(Negative)
Revenues				
Tobacco taxes	$ 20,051,140	$ 20,051,140	$ 17,210,826	$ (2,840,314)
IMPACT	1,816,443	2,118,635	1,997,354	(121,281)
Other programs	5,746,617	6,496,617	3,683,023	(2,813,594)
Investment loss	100,000	100,000	846,897	746,897
Total revenues	27,714,200	28,766,392	23,738,100	(5,028,292)
Expenditures				
Current				
Salaries and benefits	7,845,900	7,845,900	6,074,278	1,771,622
Professional and specialized services	22,588,276	21,864,396	17,228,397	4,635,999
Services and supplies	3,585,284	4,309,164	1,590,887	2,718,277
Total expenditures	34,019,460	34,019,460	24,893,562	9,125,898
Net Changes in Fund Balance	$ (6,305,260)	$ (5,253,068)	(1,155,462)	$ 4,097,606
Fund Balance, Beginning of Year			34,714,834	
Fund Balance, Ending			$ 33,559,372	

First 5 Riverside County Children and Families Commission

Schedule of Revenues, Expenditures, and Changes in Fund Balance -
Budget and Actual – ARPA Fund
Year Ended June 30, 2023

	Budgeted Amounts		Actual	Variance with Final Budget Positive
	Original	Final	Amounts	(Negative)
Revenues				
Other programs	$ 8,797,425	$ 17,218,231	$ 7,165,171	$ (10,053,060)
Investment income	-	-	198,983	198,983
Total revenues	8,797,425	17,218,231	7,364,154	(9,854,077)
Expenditures				
Current				
Salaries and benefits	-	-	214,948	(214,948)
Professional and specialized services	3,594,850	12,015,656	7,030,331	4,985,325
Services and supplies	5,202,575	5,202,575	10,576	5,191,999
Total expenditures	8,797,425	17,218,231	7,255,855	9,962,376
Net Changes in Fund Balance	$ -	$ -	108,299	$ 108,299
Fund Balance (Deficit), Beginning of Year			(135,681)	
Fund Balance, Ending			$ (27,382)	

Note to Required Supplementary Information

Budget and Budgetary Process

The annual budget is adopted on a basis consistent with Generally Accepted Accounting Principles for the general fund and ARPA fund. The appropriated budget is prepared utilizing fund and department categories. Transfer of appropriations between categories must be approved by the Commission. The legal level of budgetary control (i.e., the level at which expenditures may not legally exceed appropriations) is the fund level.

The Commission adopts an annual budget, which can be amended by the Commission throughout the year. The basis used to prepare the budget is the same as the basis used to reflect actual revenues and expenditures.

Other Supplementary Information
June 30, 2023

First 5 Riverside County Children and Families Commission



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First 5 Riverside County Children and Families Commission

Schedule of First 5 California Funding

Year Ended June 30, 2023

Program	Source	Revenue	Expenses
IMPACT	F5CA Program Funds	$ 1,997,354	$ 1,997,354

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Compliance Section
June 30, 2023

First 5 Riverside County Children and Families Commission



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Independent Auditor's Report on Internal Control over Financial Reporting and on Compliance and Other Matters Based on an Audit of Financial Statements Performed in Accordance with *Government Auditing Standards*

To the Board of Commissioners
First 5 Riverside County Children and Families Commission
Riverside, California

We have audited, in accordance with the auditing standards generally accepted in the United States of America and the standards applicable to financial audits contained in *Government Auditing Standards* issued by the Comptroller General of the United States, the financial statements of the governmental activities and each major fund of the First 5 Riverside County Children and Families Commission (Commission), a component unit of the County of Riverside, California, as of and for the year ended June 30, 2023, and the related notes to the financial statements, which collectively comprise the Commission's basic financial statements, and have issued our report thereon dated October 11, 2023.

Report on Internal Control over Financial Reporting

In planning and performing our audit of the financial statements, we considered the Commission's internal control over financial reporting (internal control) as a basis for designing audit procedures that are appropriate in the circumstances for the purpose of expressing our opinions on the financial statements, but not for the purpose of expressing an opinion on the effectiveness of the Commission's internal control. Accordingly, we do not express an opinion on the effectiveness of the Commission's internal control.

A *deficiency in internal control* exists when the design or operation of a control does not allow management or employees, in the normal course of performing their assigned functions, to prevent, or detect and correct, misstatements on a timely basis. A *material weakness* is a deficiency, or a combination of deficiencies, in internal control, such that there is a reasonable possibility that a material misstatement of the entity's financial statements will not be prevented, or detected and corrected, on a timely basis. A *significant deficiency* is a deficiency, or a combination of deficiencies, in internal control that is less severe than a material weakness, yet important enough to merit attention by those charged with governance.

Our consideration of internal control was for the limited purpose described in the first paragraph of this section and was not designed to identify all deficiencies in internal control that might be material weaknesses or significant deficiencies. Given these limitations, during our audit we did not identify any deficiencies in internal control that we consider to be material weaknesses. However, material weaknesses or significant deficiencies may exist that have not been identified.

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Report on Compliance and Other Matters

As part of obtaining reasonable assurance about whether the Commission's financial statements are free from material misstatement, we performed tests of its compliance with certain provisions of laws, regulations, contracts, and grant agreements, noncompliance with which could have a direct and material effect on the financial statements. However, providing an opinion on compliance with those provisions was not an objective of our audit, and accordingly, we do not express such an opinion. The results of our tests disclosed no instances of noncompliance or other matters that are required to be reported under *Government Auditing Standards*.

Purpose of this Report

The purpose of this report is solely to describe the scope of our testing of internal control and compliance and the results of that testing, and not to provide an opinion on the effectiveness of the entity's internal control or on compliance. This report is an integral part of an audit performed in accordance with *Government Auditing Standards* in considering the entity's internal control and compliance. Accordingly, this communication is not suitable for any other purpose.



Rancho Cucamonga, California
October 11, 2023

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CPAs & BUSINESS ADVISORS

Independent Auditor's Report on State Compliance

To the Board of Commissioners
First 5 Riverside County Children and Families Commission
Riverside, California

Report on Compliance

Opinion

We have audited the First 5 Riverside County Children and Families Commission (Commission), a component unit of the County of Riverside, California, compliance with the requirements specified in the State of California's *Standards and Procedures for Audits of Local Entities Administering the California Children and Families Act*, issued by the State Controller's Office, applicable to the Commission's statutory requirements identified below for the year ended June 30, 2023.

In our opinion, the Commission complied, in all material respects, with the compliance requirements referred to above that could have a direct and material effect on the California Children and Families Program for the year ended June 30, 2023.

Basis for Opinion

We conducted our audit of compliance in accordance with auditing standards generally accepted in the United States of America (GAAS), the standards applicable to financial audits contained in *Government Auditing Standards,* issued by the Comptroller General of the United States, and the State of California's *Standards and Procedures for Audits of Local Entities Administering the California Children and Families Act*, issued by the State Controller's Office. Our responsibilities under those standards are further described in the Auditor's Responsibilities for the Audit of Compliance section of our report.

We are required to be independent of the Commission and to meet our other ethical responsibilities, in accordance with the relevant ethical requirements relating to our audit. We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our opinion. Our audit does not provide a legal determination of the Commission's compliance with the compliance requirements referred to above.

Responsibilities of Management for Compliance

Management is responsible for compliance with the requirements referred to above, and for the design, implementation, and maintenance of effective internal control over compliance with the requirements of laws, statutes, regulations, rules, and provisions of contracts or grant agreements applicable to the California Children and Families Program.

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Auditor's Responsibilities for the Audit of Compliance

Our objectives are to obtain reasonable assurance about whether the material noncompliance with the compliance requirements referred to above occurred, whether due to fraud or error, and express an opinion on the Commission's compliance based on our audit. Reasonable assurance is a high level of assurance but is not absolute assurance and therefore is not a guarantee that an audit conducted in accordance with GAAS, *Government Auditing Standards*, and the *State of California's Standards and Procedures for Audits of Local Entities Administering the California Children and Families Act* will always detect a material misstatement when it exists. The risk of not detecting a material misstatement resulting from fraud is higher than for one resulting from error, as fraud may involve collusion, forgery, intentional omissions, misrepresentations, or the override of internal control. Noncompliance with the compliance requirements referred to above is considered material if there is a substantial likelihood that, individually or in the aggregate, it would influence the judgment made by a reasonable user of the report on compliance about the Commission's compliance with the requirements of the California Children and Families Program as a whole.

In performing an audit in accordance with GAAS, *Government Auditing Standards*, and the *Standards and Procedures for Audits of Local Entities Administering the California Children and Families Act*, we:

- Exercise professional judgment and maintain professional skepticism throughout the audit;
- Identify and assess the risks of material noncompliance, whether due to fraud or error, and design and perform audit procedures responsive to those risks. Such procedures include examining, on a test basis, evidence regarding the Commission's compliance with the compliance requirements referred to above and performing such other procedures as we consider necessary in the circumstances;
- Obtain an understanding of the Commission's internal control over compliance relevant to the audit in order to design audit procedures that are appropriate in the circumstances and to test and report on internal control over compliance in accordance with the *State of California's Standards and Procedures for Audits of Local Entities Administering the California Children and Families Act*, but not for the purpose of expressing an opinion on the effectiveness of the Commission's internal controls over compliance. Accordingly, we express no such opinion; and
- Select and test transactions and records to determine the Commission's compliance with the state laws and regulations applicable to the following items:

Description	Audit Guide Procedures	Procedures Performed
Contracting and Procurement	6	Yes
Administrative Costs	3	Yes
Conflict-of-Interest	3	Yes
County Ordinance	4	Yes
Long-range Financial Plans	2	Yes
Financial Condition of the Commission	1	Yes
Program Evaluation	3	Yes
Salaries and Benefits Policies	2	Yes

We are required to communicate with those charged with governance regarding, among other matters, the planned scope and timing of the audit and any significant deficiencies and material weaknesses in internal control over compliance that we identify during the audit.

Internal Control over Compliance

A *deficiency in internal control over compliance* exists when the design or operation of a control over compliance does not allow management or employees, in the normal course of performing their assigned functions, to prevent, or detect and correct, noncompliance on a timely basis. A *material weakness in internal control over compliance* is a deficiency, or a combination of deficiencies, in internal control over compliance, such that there is a reasonable possibility that a material noncompliance with a compliance requirement will not be prevented, or detected and corrected, on a timely basis. A *significant deficiency in internal control over compliance* is a deficiency, or a combination of deficiencies, in internal control over compliance that is less severe than a material weakness in internal control over compliance, yet important enough to merit attention from those charged with governance.

Our consideration of internal control over compliance was for the limited purpose described in the Auditor's Responsibilities for the Audit of Compliance section above and was not designed to identify all deficiencies in internal control over compliance that might be material weaknesses or significant deficiencies in internal control over compliance. Given these limitations, during our audit, we did not identify any deficiencies in internal control over compliance that we consider to be material weaknesses, as defined above. However, material weaknesses or significant deficiencies in internal control over compliance may exist that were not identified.

Our audit was not designed for the purpose of expressing an opinion on the effectiveness of internal control over compliance. Accordingly, no such opinion is expressed.

The purpose of this report on internal control over compliance is solely to describe the scope of our testing of internal control over compliance and the results of that testing based on the *State of California's Standards and Procedures for Audits of Local Entities Administering the California Children and Families Act*. Accordingly, this report is not suitable for any other purpose.

Eide Bailly LLP

Rancho Cucamonga, California
October 11, 2023

F.2. Presentation of First 5 Riverside County Children and Families Commission Annual Report and First 5 Riverside County Children and Families Commission Agency Progress Report July 1, 2022-June 30, 2023 for Fiscal Year 2022/2023 (a copy of the report may be obtained at www.first5riverside.org and can be viewed at the Commission Business Office) - Yvonne Suarez, Assistant Director

F.2.a. **Public Hearing:** Annual Report of First 5 Riverside County Children & Families Commission for Fiscal Year 2022/2023 - Zachary Ginder, Commission Chair

F.2.b. **23-47:** Adopt First 5 Riverside County Children & Families Commission Annual Report and Receive and File Agency Progress Report for Fiscal Year 2022/2023 - Zachary Ginder, Commission Chair

AGENDA ITEM: 23-47
DATE OF MEETING: October 25, 2023
ACTION: ☒
INFORMATION: ☐

ADOPT FIRST 5 RIVERSIDE COUNTY CHILDREN & FAMILIES COMMISSION ANNUAL REPORT AND RECEIVE AND FILE ANGENCY PROGRESS REPORT FOR FISCAL YEAR 2022/2023

SUMMARY OF REQUEST

Adopt First 5 Riverside County Children & Families Commission Annual Report for the period of July 1, 2022, through June 30, 2023, following a public hearing to allow for comments and input.

Receive and file First 5 Riverside County Agency Progress Report for fiscal year 2022/2023 as required by Commission policy.

BACKGROUND

Health and Safety Code Section 130150 requires that on or before November 1 of each year, the State Commission and each County Commission submit to the State Commission an audit of the implementation and performance of program goals and objectives for the preceding fiscal year and issue a written report. At a minimum, the annual report is to include the manner in which funds were expended, progress toward and achievement of program goals and objectives, and the population served.

The report provides a comprehensive overview of program funding and results and is completed in the design and format required by the State Commission for entry into the State's online data collection system. The State Commission compiles and summarizes data collected from local commissions for their purposes and subsequent reporting for a statewide summary to the legislature. A draft copy of the report is available on the Commission website at http://www.first5riverside.org/ and at the Commission's business office for public viewing prior to the Commission meeting. Once adopted, the final report is available on the Commission website.

RECOMMENDED ACTION

That the Commission:

1. Adopt the First 5 Riverside County Children and Families Commission Annual Report for Fiscal Year 2022/2023 as presented; and
2. Receive and file First 5 Riverside County Agency Progress report for Fiscal Year 2022/2023.
3. Authorize the Executive Director or designee to execute the necessary actions to submit the report and meet legislative requirements without requiring further action of the Commission.

BUDGET IMPACT

None

STRATEGIC PLAN RELEVANCE

All Strategic Goal Areas

POTENTIAL CONFLICTS OF INTEREST

None known

ATTACHMENTS

Attachment A: First 5 Riverside County Children & Families Commission FY 2022-2023 Annual Report – includes AR-1 (Revenue & Expenditure Summary); AR-2 (Demographic Worksheet); and AR-3 (County Evaluation Summary & Highlights).

Annual Report AR-1

Riverside Revenue and Expenditure Summary

July 1, 2022 - June 30, 2023

Revenue Detail

Category	Amount
Tobacco Tax Funds	$17,210,826
First 5 IMPACT 2020 Funds	$1,083,521
Small Population County Augmentation Funds	$0
Home Visiting Coordination Funds	$42,232
Refugee Family Support Funds	$0
Other First 5 California Funds	$871,601
Other First 5 California Funds Description Hub Region 9	
Other Public Funds	$10,752,093
Other Public Funds Description Cal-WORKs, American Rescue Plan Act, DPSS FRC pass through	
Donations	$0
Revenue From Interest Earned	$1,045,880
Grants	$0
Grants Description	
Other Funds	$96,101
Other Funds Riverside County Office of Education (IMPACT-related supports)	
Total Revenue	**$31,102,254**

Improved Family Functioning

Service	Grantee	Program(s)	Children	Caregivers	Providers	Amount
General Family Support	CBO/Non-Profit	• Not Applicable (LENA Start, LENA Grow, LENA Home)	275	59	0	$25,800
General Family Support	CBO/Non-Profit	• Not Applicable (ParentPowered Ready4k)	4961	1262	0	$24,305
General Family Support	County Health & Human Services	• Not Applicable (Family Resource Centers)	34	4942	0	$2,142,835
Intensive Family Support	County Health & Human Services	• Incredible Years • Nurturing Parenting Program • Triple P 4-5	1735	263	0	$1,406,565
Family Literacy and Book Programs	CBO/Non-Profit	• Reach Out and Read	44586	0	0	$115,216
Family Literacy and Book Programs	CBO/Non-Profit	• Raising a Reader	1605	1605	0	$59,258
					Total	**$3,773,979**

Improved Child Development

Service	Grantee	Program(s)	Children	Caregivers	Providers	Amount
Quality Early Learning Supports	CBO/Non-Profit	• Not Applicable (ECE Professional Development Training)	0	0	41	$137,076
Early Learning Program Direct Costs	County Office of Education/School District	• Preschool/Childcare	3302	172	0	$4,117,445
Early Learning Program Direct Costs	Family Child Care	• Not Applicable (ARPA Wage Enhancement ECE AP Workforce)	0	0	2210	$7,095,525
Early Learning Program Direct Costs	Research/Consulting Firm	• Not Applicable (ECE SME - Development of Programming)	0	0	1	$2,212
Early Learning Program Direct Costs	Research/Consulting Firm	• Not Applicable (ECE Facilities Landscape & Convening (Developers), Mapping)	0	0	100	$254,187
Early Learning Program Direct Costs	County Office of Education/School District	• Not Applicable (AP Provider Recruitment - ARPA Funding - Incentives)	0	0	55	$90,684
Early Learning Program Direct Costs	Other Private/For Profit	• Not Applicable (Database for IMPACT iPinwheel/Hubbe)	0	0	566	$398,728
Early Learning Program Direct Costs	Other Private/For Profit	• Not Applicable (ARPA Wage Enhancement Database (Hubbe) Module for Stipends)	0	0	3218	$69,646
					Total	**$12,165,503**

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Improved Child Health

Service	Grantee	Program(s)	Children	Caregivers	Providers	Unique Families	Amount
General Health Education and Promotion	Other Private/For Profit	• Safety Education	1695	387	0	0	$308,877
Early Intervention	First 5 County Commission	• Not Applicable (Help Me Grow Regional - Developmental Screenings)	3967	0	0	0	$470,205
Early Intervention	Research/Consulting Firm	• Care Coordination and Linkage	0	0	3	0	$54,451
Perinatal and Early Childhood Home Visiting	CBO/Non-Profit	• Parents as Teachers	30	35	0	0	$244,814
Perinatal and Early Childhood Home Visiting	CBO/Non-Profit	• Not Applicable (SafeCare)	18	47	0	0	$144,046
Perinatal and Early Childhood Home Visiting	CBO/Non-Profit	• Healthy Families America	307	325	0	0	$560,478
Perinatal and Early Childhood Home Visiting	County Office of Education/School District	• Parents as Teachers	320	344	0	0	$1,186,313
Perinatal and Early Childhood Home Visiting	County Health & Human Services	• Nurse Family Partnership	18	23	0	0	$144,298
Perinatal and Early Childhood Home Visiting	Hospital/Health Plan	• Nurse Family Partnership	105	142	0	0	$1,045,577
						Total	**$6,357,786**

Service	Grantee	Program(s)	Children	Caregivers	Providers	Unique Families	Amount
Prenatal and Infant/Toddler Pediatric Support	Hospital/Health Plan	• Healthy Steps	10755	3047	0	0	$1,473,241
Prenatal and Infant/Toddler Pediatric Support	County Health & Human Services	• Local Model	0	222	0	0	$725,486
						Total	**$6,357,786**

Improved Systems Of Care

Service	Grantee	Program(s)	Amount
Policy and Public Advocacy	Research/Consulting Firm	• Child Health • Revenue Sustainability	$43,344
Systems Building	Child Care Centers	• Not Applicable (Facilities Improvement)	$10,012
Systems Building	Child Care Centers	• Not Applicable (Infrastructure - expansion child care slots)	$1,024,156
Systems Building	Child Care Centers	• Not Applicable (Infrastructure - expansion child care slots)	$540,897
Systems Building	Child Care Centers	• Not Applicable (Infrastructure - expansion child care slots)	$72,418
Systems Building	Child Care Centers	• Not Applicable (Infrastructure - expansion child care slots)	$78,340
Systems Building	Family Child Care	• Not Applicable (Facilities Improvement - External Environment)	$103,684
Systems Building	CBO/Non-Profit	• Family Resiliency	$61,967
Systems Building	Research/Consulting Firm	• Family Resiliency	$1,306
Systems Building	CBO/Non-Profit	• Family Resiliency	$101,534
Systems Building	CBO/Non-Profit	• Family Resiliency	$59,424
Systems Building	CBO/Non-Profit	• Not Applicable (Program & Systems Improvement)	$45,020
Systems Building	CBO/Non-Profit	• Family Resiliency	$29,078
		Total	**$5,530,104**

Service	Grantee	Program(s)	Amount
Systems Building	First 5 County Commission	• Not Applicable (Program & Systems Improvement Comprehensive Health & Development)	$310,592
Systems Building	First 5 County Commission	• Not Applicable (Program & Systems Improvement - Countywide Programs)	$166,174
Systems Building	First 5 County Commission	• Family Resiliency	$100,762
Systems Building	First 5 County Commission	• Not Applicable (HUB - Improved Systems of Care)	$141,576
Systems Building	First 5 County Commission	• Not Applicable (IMPACT Program & Systems Improvement)	$959,971
Systems Building	First 5 County Commission	• Not Applicable (Quality Early Learning Program & Systems Improvement)	$447,335
Systems Building	County Office of Education/School District	• Not Applicable (ECE Program & Systems Improvement)	$40,282
Systems Building	First 5 County Commission	• Family Resiliency	$440,856
Systems Building	Higher Education	• Not Applicable (Dental Health - ECOHA - HV Training)	$111,394
Systems Building	Hospital/Health Plan	• Early Identification and Intervention	$28,852
Systems Building	Research/Consulting Firm	• Not Applicable (Home Visitation - Program & Systems Improvement)	$87,777
		Total	**$5,530,104**

Service	Grantee	Program(s)	Amount
Systems Building	Research/Consulting Firm	• Not Applicable (Region 9 HUB Training - Program & Systems Improvement)	$10,000
Systems Building	Research/Consulting Firm	• Not Applicable (Region 9 Hub - Training Program & Systems Improvement)	$17,550
Systems Building	Research/Consulting Firm	• Not Applicable (Landscape Analysis - Program & Systems Improvement)	$46,790
Systems Building	Other Private/For Profit	• Family Resiliency	$25,750
Systems Building	Other Private/For Profit	• Not Applicable (Region 9 Hub - Professional Development Training)	$13,800
Systems Building	Other Private/For Profit	• Not Applicable (Region 9 Hub Training - Systems Improvement)	$5,000
Systems Building	Other Private/For Profit	• Early Identification and Intervention	$74,700
Systems Building	First 5 County Commission	• Not Applicable (Region 9 HUB pass through DB Support)	$19,658
Systems Building	First 5 County Commission	• Not Applicable (Region 9 Hub Pass Through - DB Support)	$165,946
Systems Building	Research/Consulting Firm	• Not Applicable (ECE Wage Enhancement SME)	$100,832
Systems Building	First 5 County Commission	• Not Applicable (Region 9 Hub Pass Thru DB Support)	$8,327
Emergency and Disaster Relief	CBO/Non-Profit	• Direct Material Support	$35,000
		Total	**$5,530,104**

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Expenditure Details

Category	Amount
Program Expenditures	$27,827,372
Administrative Expenditures	$3,396,567
Evaluation Expenditures	$925,478
Total Expenditures	$32,149,417
Excess (Deficiency) Of Revenues Over (Under) Expenses	($1,047,163)

Other Financing Details

Category	Amount
Sale(s) of Capital Assets	$0
Other	$0
Total Other Financing Sources	**$0**

Net Change in Fund Balance

Category	Amount
Fund Balance - Beginning	$34,579,153
Fund Balance - Ending	$33,531,990
Net Change In Fund Balance	($1,047,163)

Fiscal Year Fund Balance

Category	Amount
Nonspendable	$0
Restricted	$0
Committed	$17,584,988
Assigned	$0
Unassigned	$15,947,002
Total Fund Balance	$33,531,990

Expenditure Note

Additional funding is tied to American Rescue Plan Act funding ($23M) to support ECE workforce and facilities across multiple fiscal years.

Annual Report AR-2

Riverside Demographic Worksheet

July 1, 2022 - June 30, 2023

Population Served

Category	Number
Children Less than 3 Years Old	969
Children from 3rd to 6th Birthday	5,099
Primary Caregivers	12,875
Children – Ages Unknown (birth to 6th Birthday)	67,645
Total Population Served	**86,588**

Primary Languages Spoken in the Home

Category	Number of Children	Number of Primary Caregivers
English	15,336	7,495
Spanish	2,715	4,842
Cantonese	1	0
Mandarin	30	1
Vietnamese	6	1
Korean	1	1
Other - Specify with text box Urdu/Farsi/Arabic/German/Tagalog/Zapoteco/Tarasco	139	55
Unknown	55,485	480
Totals	**73,713**	**12,875**

Race/Ethnicity of Population Served

Category	Number of Children	Number of Primary Caregivers
Alaska Native/American Indian	94	75
Asian	641	248
Black/African-American	959	748
Totals	**73,713**	**12,875**

Category	Number of Children	Number of Primary Caregivers
Hispanic/Latino	7,947	7,183
Native Hawaiian or Other Pacific Islander	49	41
Other – Specify with text box	454	86
Two or more races	263	185
White	4,676	1,946
Unknown	58,630	2,363
Totals	**73,713**	**12,875**

Duplication Assessment

Category	Data
Degree of Duplication	20%
Confidence in Data	Moderately confident
Additional Details (Optional)	Children may receive multiple services through First 5 funding.

F5CA Annual Report 2022-23
County Highlights & Evaluation Summary (AR-3)
First 5 Riverside County

COUNTY HIGHLIGHTS

First 5 Riverside County's investments promote an integrated system of prevention and early intervention services and coordinated care in diverse settings to meet families where they are. First 5's HealthySteps sites integrate HealthySteps specialists in pediatric primary care teams to ensure universal screening of all families, provide referrals, and additional intensive services as needed. Coordinated care provided by HealthySteps Specialists improve engagement in preventive services and connection to community resources such as Home Visiting and other First 5 investments. HealthySteps (HS) sites partner with Help Me Grow IE to ensure families are connected to the resources they need when they need them. Participating sites reached over 10,000 children with 40% of children requiring referrals for early intervention, mental health, and other family services. First 5's engagement with Health Management Associates supports the integration of HS in managed care plans and supports participating agencies' plan for sustainability leveraging new Medi-Cal benefits such as dyadic care and the community health worker benefit.

COUNTY HIGHLIGHTS

Improved Family Functioning: Reach Out and Read prioritized serving traditionally hard-to-reach populations in low-income and high-need community settings and benefitting 44,586 children. At 27 sites, a 3-part model was implemented to support and promote early literacy, school readiness, and parental engagement during regular pediatric visits providing doctors and nurses with books to assess a child's developmental progress. United Way of the Desert provided the Raising A Reader (RAR) program serving 1,605 children through coordinated book-bag deliveries at Coachella Valley, Desert Sands, and Palm Springs School Districts. LENA Start, Home, and Grow served 59 families to engage and increase conversation with their child(ren).

Improved Child Development: The Riverside Hybrid Alternate Payment (RHAP) Program, administered by Riverside County Office of Education (RCOE), supported 171 children through RHAP scholarships, referring families with immediate needs or special populations for enrollment. 3,302 children benefited from Quality Start Riverside County (QSRC) sites that received incentives. 566 QSRC providers continued to participate in the local Quality Rating Improvement System (QRIS). 41 trainings provided for QRIS participating sites.

Improved Child Health: 798 children and 916 parents were served through 10,292 visits provided through evidence-based home visiting models by six grantees. HealthySteps provided services to 10,755 children and 3,047 caregivers across all three funded pilot programs. RUHS – Maternal Fetal Medicine served 222 patients with ultrasound for intervention services for high-risk pregnancies. Family Resource Centers served as a centralized and accessible location with 4,942 families supported with resources and referrals.

Improved Systems of Care: Help Me Grow Inland Empire (HMGIE) has developed a platform to expand the Electronic Data System that will allow screening partners to log in through the HMG-

IE website, issue developmental screenings to families of young children, view results, and make referrals to HMG-IE's Central Access Point. HMG-IE began partnering with QSRC sites to support developmental screenings for children ages 0-5, which has resulted in more than 1,000 children receiving screenings from 53 family childcare homes and 10 centers. Six early childhood and education centers were awarded funding to expand childcare spaces with a focus on 0-3, adding 177 additional spaces. Funding for family resource center network specialists within nine existing organizations to provide continuity to support families from broader population groups by increasing and expanding resources, and by providing linkages to prevention services and direct support to families with young children ages 0 through 5.

Annual Report AR-3

Riverside County Evaluation Summary and Highlights

July 1, 2022 - June 30, 2023

County Evaluation Summary

Evaluation Activities Completed, Findings, and Policy Impact

Improved Family Functioning: Reach Out and Read prioritized serving traditionally hard-to-reach populations in low-income and high-need community settings and benefitting 44,586 children. At 27 sites, a 3-part model was implemented to support and promote early literacy, school readiness, and parental engagement during regular pediatric visits providing doctors and nurses with books to assess a child's developmental progress. United Way of the Desert provided the Raising A Reader (RAR) program serving 1,605 children through coordinated book-bag deliveries at Coachella Valley, Desert Sands, and Palm Springs School Districts. LENA Start, Home, and Grow served 59 families to engage and increase conversation with their child(ren). Improved Child Development: The Riverside Hybrid Alternate Payment (RHAP) Program, administered by Riverside County Office of Education (RCOE), supported 171 children through RHAP scholarships, referring families with immediate needs or special populations for enrollment. 3,302 children benefited from Quality Start Riverside County (QSRC) sites that received incentives. 566 QSRC providers continued to participate in the local Quality Rating Improvement System (QRIS). 41 trainings provided for QRIS participating sites. Improved Child Health: 798 children and 916 parents were served through 10,292 visits provided through evidence-based home visiting models by six grantees. HealthySteps provided services to 10,755 children and 3,047 caregivers across all three funded pilot programs. RUHS – Maternal Fetal Medicine served 222 patients with ultrasound for intervention services for high-risk pregnancies. Family Resource Centers served as a centralized and accessible location with 4,942 families supported with resources and referrals. Improved Systems of Care: Help Me Grow Inland Empire (HMGIE) has developed a platform to expand the Electronic Data System that will allow screening partners to log in through the HMG-IE website, issue developmental screenings to families of young children, view results, and make referrals to HMG-IE's Central Access Point. HMG-IE began partnering with QSRC sites to support developmental screenings for children ages 0-5, which has resulted in more than 1,000 children receiving screenings from 53 family childcare homes and 10 centers. Six early childhood and education centers were awarded funding to expand childcare spaces with a focus on 0-3, adding 177 additional spaces. Funding for family resource center network specialists within nine existing organizations to provide continuity to support families from broader population groups by increasing and expanding resources, and by providing linkages to prevention services and direct support to families with young children ages 0 through 5.

County Highlights

County Highlight

First 5 Riverside County's investments promote an integrated system of prevention and early intervention services and coordinated care in diverse settings to meet families where they are. First 5's HealthySteps sites integrate HealthySteps specialists in pediatric primary care teams to ensure universal screening of all families, provide referrals, and additional intensive services as needed. Coordinated care provided by HealthySteps Specialists improve engagement in preventive services and connection to community resources such as Home Visiting and other First 5 investments. HealthySteps sites partner with Help Me Grow IE to ensure families are connected to the resources they need when they need them. Participating sites reached over 10,000 children with 40% of children requiring referrals for early intervention, mental health, and other family services. First 5's engagement with Health Management Associates supports integration of HS in managed care plans and supports participating agencies plan for sustainability leveraging new Medi-Cal benefits such as dyadic care and the community health worker benefit.

F.2.c. **Receive and File -** First 5 Riverside County Agency Progress Report July 1, 2022 - June 30, 2023

FY 22/23 FINAL AGENCY REPORT

RIVERSIDE COUNTY CHILDREN AND FAMILIES COMMISSION

AGENCY NAME	CONTRACT #	Primary Target Description	Target #	Result #
American Academy of Pediatrics	CF21105	# Children Received books	70,000	44,278
ParentPowered PBC (Ready4K)	CF22117	# of Licenses	15,000	2,798
Riverside University Health System - Behavioral Health Early Identification & Early Intervention	CF22103	Children received PCIT	240	905
United Way of the Desert - Raising A Reader	CF22120	Book kits distributed	1,860	1,605
Blindness Support	CF22105	Home Visits	492	345
Family Service Association - Home Visitation	CF22106	Home Visits	971	811
John F. Kennendy Memorial Foundation	CF22107	Home Visits	6,291	2,946
Jurupa Unified School District	CF22108	Home Visits	5,834	3,998
Riverside University Health System - Public Health Nurse Family Partnership	CF22104	Home Visits	922	217
Yoo, Jeung Choo MD Inc.	CF22111	Home Visits	2,036	1,975
Inland SoCal United Way	CF23102	Concrete Supports for Foster/Tribal Families	2,517	2,516
Riverside County Office of Education (RCOE) - ARPA - Recruitment AP Providers	CF22139	Recruitment AP Providers	250	217
Riverside County Office of Education (RCOE) - RHAP Program	CF22116	Scholarships	150	171
Riverside County Office of Education (RCOE) - RHAP Program	CF22116	Children who benifited from Tiered Incentives		3,302
Consortium for Early Learning Services - Training (IMPACT Match and IMPACT)	CF22123	Training Sessions	30	41
City of Temecula (Swim Scholarships)	Scholarships	Swim lessons	30	49
Corona-Norco YMCA	CF22145	Swim lessons	1,180	1,071
Desert Recreation Center (Swim Lessons)	CF23118	Swim lessons	291	298
Jurupa Area Recreation & Park District (Swim Lessons)	Scholarships	Swim lessons	50	49
SoCal Water Babies (Cathryn Van Der Linden)	CF22102	Swim lessons	170	228
Borrego Community Health Foundation HealthySteps	CF22113	Tier 1 Visits-total # of children 0-3 in practice/# of total children receiving Tier 3 visits	2946/1350	2254/1114
Rady Children's Hospital HealthySteps	CF22100	Tier 1 Visits-total # of children 0-3 in practice/# of total children receiving Tier 3 visits	4761/1800	5365/2132
Riverside University Health System - Medical Center HealthySteps	CF22101	Tier 1 Visits-total # of children 0-3 in practice/# of total children receiving Tier 3 visits	1948/600	2594/591
Systems and Capacity Building				
California Family Life Center Family Resource Center Network Specialist	CF23104	California Northstate University College of Dentistry-Dental Screening		CF22112
Family Service Association Family Resource Center Network Specialist	CF23106	F5SB/F5R Collaborative Agreement (LLU) Help Me Grow		SA-20-03
Greater Hope Foundation Family Resource Center Network Specialist	CF23103	Riverside University Health System Help Me Grow-Outreach		CF22114
Soboba Band of Luiseno Indians Family Resource Center Network Specialist	CF23105	Riverside University Health System Foundation (Medical Center) Maternal Fetal Medicine		CF21100

G. **Future Agenda Items:**
   G.1. First 5 Riverside County Chair and Vice-chair Election Process
   G.2. First 5 Riverside County Family Resource Centers Presentation
   G.3. First 5 Riverside County Strategic Plan Review and Adoption
   G.4. First 5 Riverside County Annual Appointment of Finance Subcommittee
   G.5. Autism and Developmental Delay Systems Landscape Report and Recommendations
   G.6. First 5 Riverside County 2023 Communications Plan

H. **Adjournment**: Adjournment to the next Regular Meeting of the Riverside County Children and Families Commission to be held on December 13, 2023 beginning at 2:00 p.m.at:
   First 5 Riverside County Children and Families Commission Office
   585 Technology Court - Conference Room A
   Riverside, CA 92507

I. **Call to Order – Zachary Ginder, Commission Chair**
   I.1. Pledge of Allegiance
   I.2. Roll Call – Lynn Stephens, Executive Assistant IV

J. **Public Comments (for items not listed on the agenda) – Zachary Ginder, Chair**

K. **Commission and Advisory Committee Business – Zachary Ginder, Chair**
   K.1. Director's Report – Tammi Graham, Executive Director; Yvonne Suarez, Assistant Director; Ricardo Quezada, Deputy Director, Charna Widby, Deputy Director
   K.2. Commissioner Comments

L. **Presentation/Information Item – Zachary Ginder, Chair**
   L.1. Champion for Children Award Presentation to Betty Bash - Sean Pravica, Senior Public Information Specialist

First 5 Riverside County
Champion for Children Award
2023 Recipient

Nominee Profile: Betty Bash

Ms. Bash founded the Norco-based child care center, Town and Country Day School, in 1961 and continues to work there today as she approaches 90 years of age. The center has always been ahead of its time as it provided a curriculum that focused on child development. While years of research since the school's opening have clearly shown the critical importance of providing children with the tools to support their early-brain development, this was not always common practice. Head Start began in 1965, making significant strides in helping to refocus child care around education and not just supervision, several years after Town and Country Day School first opened its doors. Ms. Bash is not just a long-time advocate for children, but an early pioneer in bringing quality child care to Riverside County.

Town and Country Facilities Director, Kevin Bash, said, "Betty Bash overcame banking and governmental bias against a woman-owned business and fulfilled a vision of moving the accepted care of children from simple babysitting services to establishing and pioneering a professional-based, quality early childhood developmental program."

Today, Town and Country Day School has hosted dozens of preschool teachers in training to complete their observation hours. It has also helped launch the careers of many new educators who got their start working as child care providers for Ms. Bash, whose influence helped many of them not only finish high school but also earn college degrees.

In addition to founding Town and Country Day School, Ms. Bash founded the Inland Empire Preschool Association. In this position, she has assisted multiple fledgling child care centers begin their operations. This work included her assistance in designing preschool programs as well as playgrounds and outdoor classrooms to foster active learning and healthy activity.

Ms. Bash is regularly recognized in the community by adults who attended Town and Country Day School decades ago. In many cases, parents and grandparents now enroll their own children and grandchildren in her program. She has been recognized by many different organizations over 60 years, including the Corona and Norco Chambers of Commerce, American Legion, the Corona Norco Unified School District, the State and Federal Legislatures.

FIRST 5
Riverside County
Children & Families Commission

Champion for Children

First 5 Riverside County's Champion for Children Award was created to honor, sponsor, and bring awareness to people and organizations whose leadership and advocacy embody the vision of First 5 Riverside County, where all children in Riverside County are healthy and thrive in supportive, nurturing, and loving environments and enter school ready to learn and embrace lifelong learning.

Award Winners



2020 - Carmela Garnica

Carmela is the Program Director at Escuela de la Raza Unida (ERU), a non-profit organization in Blythe that is dedicated to serving the needs of low-income families with young children in the Palo Verde Valley.



2021 - Desiray Taylor

Desiray was selected as Champion for Children for her work as the director of a child care center where she organized many community events and introduced the center's first lunch program to ensure all children had food to eat.



2022 - Solange Signoret

Solange is the youngest-awarded Champion for Children at 17 years old, and was recognized for her work as Youth Ambassador for the Palm Springs-based nonprofit Boo2Bullying that promotes inclusivity, tolerance, and kindness through anti-bullying campaigns.



2023 - Betty Bash

Betty is the Executive Director of Town & Country Day school in Norco that provides preschool and daycare since 1961 focusing on creativity, nature, friends, academics, fresh air and fun.

L.2. Riverside County Office of Education (RCOE) Update - Jennifer Beggs, Executive Director, Early Care and Education

Division of Early Education Services
Early Care and Education

RIVERSIDE COUNTY OFFICE OF EDUCATION
EDWIN GOMEZ, Ed.D.
County Superintendent of Schools

Updates from Riverside County Office of Education and California Department of Social Services (CDSS)

October 25, 2023

RIVERSIDE COUNTY OFFICE OF EDUCATION
EDWIN GOMEZ, Ed.D. | County Superintendent of Schools

OCTOBER 2023

EARLY EDUCATION SERVICES UPDATE

EARLY EDUCATION SERVICES ENROLLMENT



1,732
Total Children on Eligibility List (All Ranks)
As of October 1, 2023

717 Families
1,080 Children
September Outreach for CAPP Enrollment

Children enrolled in Early Head Start/ Head Start (EHS/HS), Migrant Head Start Program (MHSP), California State Preschool Program (CSPP), and California Center-Base California Center-Base Program (CCTR).

Children enrolled in California Alternative Payment Program (CAPP), CalWORKs Stages 2 and 3 (C2AP and C3AP), Riverside Hybrid Alternative Payment Program (RHAP), and Foster Bridge (Bridge).

SUBSIDIZED CARE PROGRAM SUPPORTS

American Rescue Plan Act (ARPA) on Boarding New Providers (program totals)

7 Centers + **265** Family Child Care Homes = **3,031** Child Care Slots

Riverside Hybrid Alternative Payment Program (RHAP) Incentives – Number of Quality Start Sites Receiving RHAP Incentives - Fiscal YTD

168 Unduplicated Providers **1,629** Children

RHAP Service Supports for Migrant Head Start Program Transition to CAPP - Fiscal YTD

185 Families **232** Children

COMMUNITY SUPPORT

Workforce Development

351 YTD
Early Education Teacher Development Grant Applications Processed

133 hours of training
provided for 38 participan

Resource & Referral

2,065
Child Care Referrals Completed

Family and Provider Support – Family Resource Centers
(Mecca and Desert Hot Springs)

543 Parent/Providers
Fiscal YTD

RHAP Incentives Bridging to Rate Reform from CDSS

Incentive Structure: Flat Rate per full time week*	
Center-Based	Family Child Care
$40	$25

*The Flat rate is the same regardless of the child's age and based on a F/T scholarship. Rates are half the amount for P/T scholarship.

The flat rate RHAP quality incentive, effective 7/1/2023, was designed as a continuation of financial support for maintenance of quality in Alternative Payment (AP) program settings. This funding is intended to support approximately 200 QSRC providers, previously on Tiers 3-5, and is received for each enrolled AP child, ages 0 through 4, as a bridge to State rate reform.

This quality incentive amount funded by Prop 10 will be decreased in conjunction with the State increases in the rate reimbursement structure.

RHAP Incentives Bridging to Rate Reform from CDSS

CDSS Cost of Care Plus Rate, effective 1/1/2024

Through SB 140, effective January 1, 2024, through June 30, 2025, all providers will receive a monthly "Cost of Care Plus Rate“ based on the region in which they live and their licensing status.

243

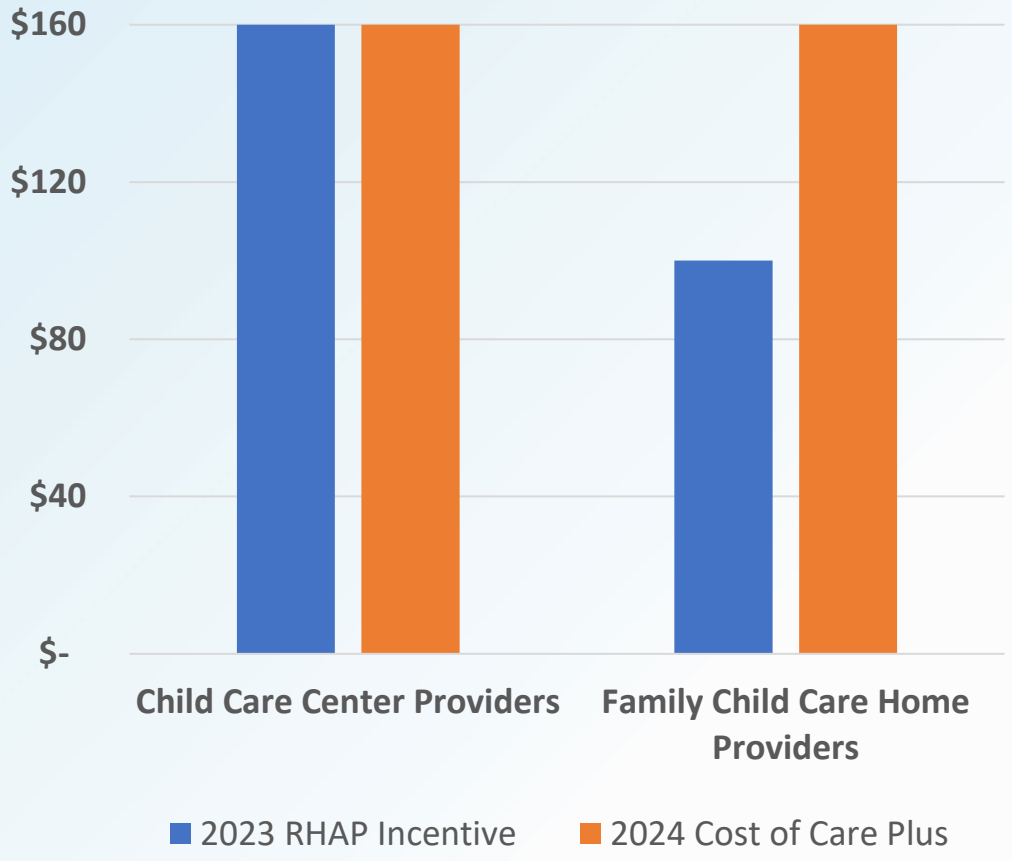
Southern region:

- Licensed Family Child Care Homes and Child Care Centers to receive $160 per child (ages 0-13), per month.
- Unlicensed Family Friend and Neighbor Providers (FFN) to receive $112 per child (ages 0-13), per month.

RHAP Incentives Bridging to Rate Reform from CDSS

Comparison of the forthcoming "Cost of Care Plus Rate" and existing RHAP Incentives:

- "Cost of Care Plus Rate" applies to all providers serving children in AP (ages 0-13); RHAP incentive only applies to QSRC providers and only for children ages 0-4.
- "Cost of Care Plus Rate" of $160 per month, per child, exceeds the current RHAP incentive of $25 per week, per child for Family Child Care Home providers.
- "Cost of Care Plus Rate" of $160 per month, per child, offsets the current RHAP incentive of $40 per week, per child for Child Care Center providers.

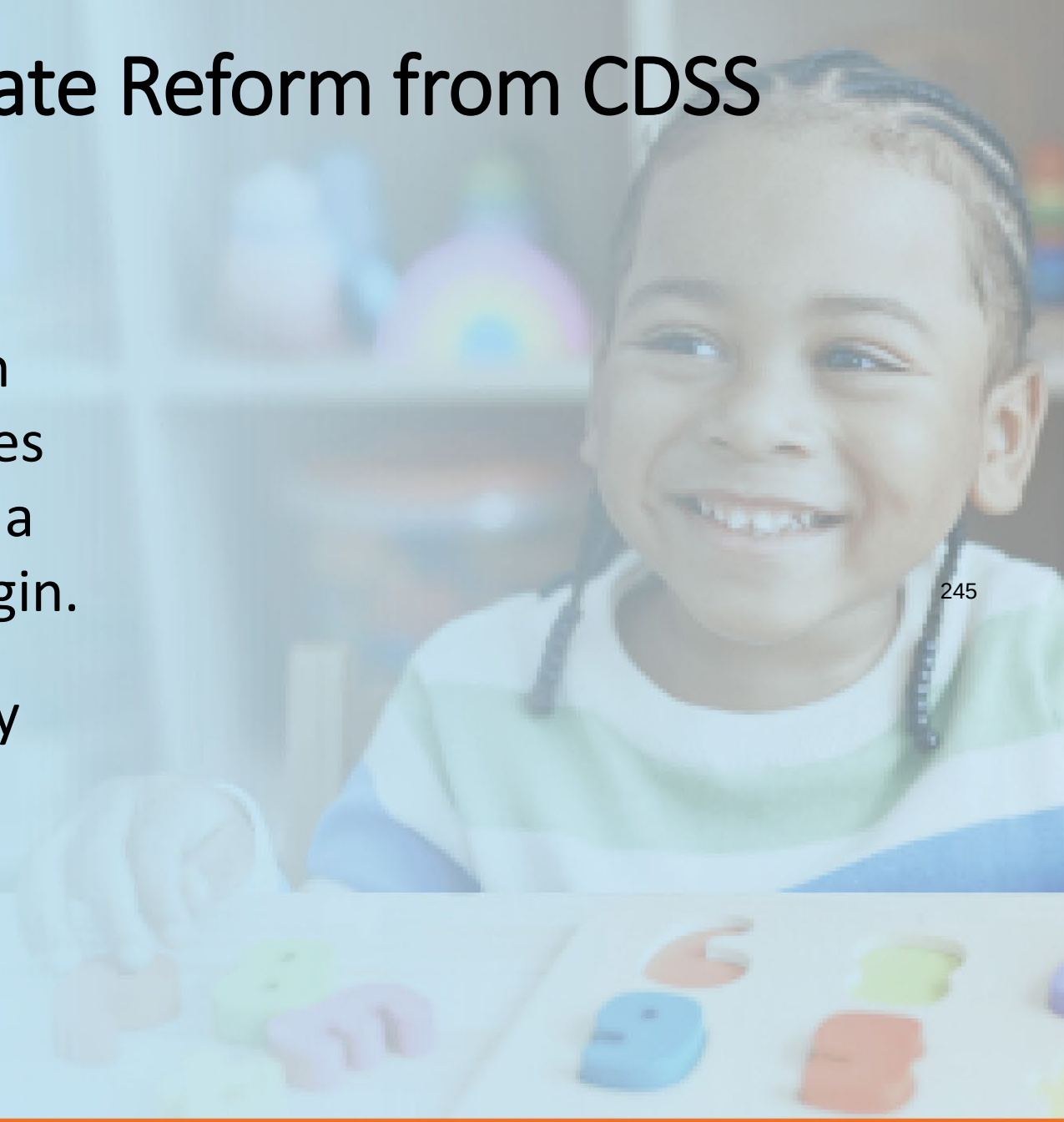


244

RHAP Incentives Bridging to Rate Reform from CDSS

Considerations for effective 1/1/2024:

- Ending RHAP incentives effective with January 2024 services as the incentives have served their purpose to provide a bridge until the State investments begin.
- Messaging to the provider community and stakeholders to ensure understanding.





QUESTIONS?

Division of Early Education Services
Early Care and Education

RIVERSIDE COUNTY OFFICE OF EDUCATION
EDWIN GOMEZ, Ed.D.
County Superintendent of Schools

Thank you FOR ATTENDING!



Jennifer Beggs
Executive Director, Early Care and Education
(951) 826-6608
jbeggs@rcoe.us

M. **Consent Items – Zachary Ginder, Chair** (a copy of all action items and attachments can be viewed at www.rccfc.org and at the Commission Business Office)
M.1. Approve First 5 Riverside County Commission 2024 Meeting Schedule

FIRST 5 Riverside County Children & Families Commission

Commission Members	Advisory Committee Members	Commission Administrative Staff
Zachary Ginder, PsyD, MSW, **Dist. I (Chair)**	Antonia Eli Mast, **Dist. II**	Tammi Graham, Executive Director
Jose Campos, **Dist. II (Vice Chair)**	Malinda Margiotta, **Dist. III**	Yvonne Suarez, Assistant Director
V. Manuel Perez **County Supervisor Dist. IV** Chuck Washington **Supervisor Alternate, Dist. III**	Kari Middleton-Hendrix, **Dist. IV**	Ricardo Quezada, Deputy Director
Edwin Gomez, Ed.D. **Ord. 784.11**	Agam Patel, **District IV**	Charna Widby, Deputy Director
Kimberly Saruwatari, **Ord.784.11**	**VACANCIES IN DISTRICTS I, II, III, V**	Lynn Stephens, Executive Assistant IV
Kimberly Britt, **Ord. 784.11**		Martina Guevara, Commission Coordinator
Stephanie Yost, **Dist. III**		Kristine Bell-Valdez, Supervising Deputy County Counsel
Elizabeth Romero, **Dist. IV**		
Angelica Hurtado, **Dist. V**		

The CFC meets regularly on the 2nd Wednesday as scheduled below except for January and October meetings which are held on the 4th Wednesday of the month. The open session of the Board meeting shall begin at 2:00 p.m. unless changed by consent of a quorum of the Commission Members. Meetings are held at First 5 Riverside County Children & Families Commission located at 585 Technology Court in Riverside. ***Any "Special" meetings of the CFC are noticed in advance in accordance with the Brown Act.*** ***Closed Sessions will be scheduled as needed. Meeting dates may be modified as needed.***

Schedule of Commission Meetings 2024

Wednesday, **Jan 24,** 2024 **(4th Wednesday)** .....First 5 Riverside County

Wednesday, **March 13,** 2024 ..... First 5 Riverside County

Wednesday, **May 8,** 2024 .... First 5 Riverside County

Wednesday**, July 10,** 2024 ..... First 5 Riverside County

Wednesday, **September 11,** 2024 ..... First 5 Riverside County

Wednesday, **October 23,** 2024 **(4th Wednesday)** ..... First 5 Riverside County

M.2. Approve First 5 Riverside County Draft Commission Meeting Minutes - July 17, 2023 Session

MINUTES
FIRST 5 RIVERSIDE COUNTY
Regular Meeting
Monday, July 17, 2023
2:00 PM

Present: Kimberly Britt, Jose Campos, Zachary Ginder, Edwin Gomez, Angelica Hurtado, Supervisor V. Manuel Perez, Elizabeth Romero, and Stephanie Yost

Absent: Kim Saruwatari

Administrative Staff Present: Tammi Graham, Executive Director; Yvonne Suarez, Assistant Director; Lynn Stephens, Executive Assistant IV; Carol Abella, Jill Kowalski, and Jennifer Maresh, Regional Managers; Erica Williams and Patricia Perez, Administrative Services Manager I; Sean Pravica, Senior Public Information Specialist; Michelle Rodriguez, Public Information Specialist; Martina Guevara, Commission Coordinator; Marinus (Rens) Van Eenennaam, Reyshawn Bobo and Yolanda Bernal, Contracts & Grants Analysts; and Victor Lopez; Administrative Services Analyst

Legal Counsel: Paula Salcido, Supervising Deputy County Counsel

A. **Call to Order – Zachary Ginder, Commission Chair**

1. Pledge of Allegiance – Vice Chair Campos
2. Roll Call – Lynn Stephens, Executive Assistant IV

B. **Public Comments (for items not listed on the agenda) – Zachary Ginder, Chair**
None

C. **Consent Items – Zachary Ginder, Chair** (a copy of all action items and attachments can be viewed at www.rccfc.org and at the Commission Business Office)

1. Approve First 5 Riverside County Draft Commission Meeting Minutes – May 10, 2023 Session
2. **23-31:** Approve 2023 Champion for Children Nominee Betty Bash as Recommended by the Advisory Committee
3. **23-32:** Approve and Ratify Contract with Loma Linda University Children's Hospital for Help Me Grow-Inland Empire from July 1, 2023 to June 30, 2025 **(CONTRACT NO. CF24126) [$1,128,762-PROP 10 FUNDS]**
4. **23-33:** Approve and Ratify Contract with Family Services Association for Transition Funding to support Safecare Home Visitation from July 1, 2023 - September 30, 2023 **(CONTRACT NO. CF24128) [$25,831 PROP 10 FUNDS]**
5. **23-34:** Approve and Ratify Contract with John F. Kennedy Memorial Foundation for Transition Funding to support Safecare Home Visitation from July 1, 2023 - December 31, 2023 **(CONTRACT NO. CF24127) [$254,280 - PROP 10 FUNDS]**
6. **23-35:** Approve and Ratify Contract with Rady's Children's Hospital for HealthySteps Sustainability Services from July 1, 2023 - December 31, 2024 **(CONTRACT NO.CF24102) [$1,059,663 PROP 10 FUNDS]**

7. **23-36:** Approve and Ratify Contract with Riverside University Health System - Community Health Clinics (RUHS-CHC) for HealthySteps Expansion from July 1, 2023 - June 30, 2024 **(CONTRACT NO. CF24103) [$804,802 - PROP 10 FUNDS]**
8. **23-37:** Approve IMPACT Legacy Pass-Through Funding Agreement Template
9. **23-38:** Approve and Ratify Contract with American Academy of Pediatrics (AAP) District IX, Chapter 2 to Implement Reach Out and Read Initiative in Riverside County **(CONTRACT NO. CF24109)** from July 1, 2023 - June 30, 2024 **[$320,000 - PROP 10 FUNDS]**

Consent Items 10 and 11 were pulled from the block and taken separately due to conflicts.

Commissioner Perez moved to approve Consent Items 1-9. *Commissioner Yost second the motion.* **Absent:** Commissioner Saruwatari. ***Motion carried unanimously.***

Chair Ginder reported Commissioners Gomez and Romero have a conflict of interest with Action Item 23-29. Commissioners Gomez and Romero left the chamber due to conflict and were not part of the discussion or vote.

10. **23-39:** Approve Agreement with Riverside County Office of Education (RCOE) for Quality Start Riverside County (QSRC) Collaborative Support Services **(AGREEMENT NO. C1009211) from July 1, 2023 - June 30, 2024 [$175,000 - RCOE STATE FUNDS]**

Commissioner Britt moved to approve action item 23-29 as presented. Vice Chair Campos second the motion. **Conflict:** Commissioners Gomez and Romero. **Absent:** Commissioner Saruwatari. ***Motion Carried unanimously.***

Commissioners Gomez and Romero returned to the meeting. Chair Ginder noted Commissioner Perez has a conflict of interest on action item 23-40 and he will not be in the chamber or part of discussion and vote. Commissioner Perez left the chambers.

11. **23-40** Approve Acceptance of Unincorporated Communities Initiative Funding Allocated from County of Riverside for Funding Needs for Various ChildCare Centers within the Fourth District **[$250,000 - REVENUE - UNINCORPORATED COMMUNITIES INITIATIVE FUNDS]**

Commissioner Romero moved to approved action item 23-40 as presented. Commissioner Gomez second the motion. ***Conflict:*** *Commissioner Perez****. Absent:*** *Commissioner Saruwatari.* ***Motion carried unanimously.***

Commissioner Perez returned to the meeting.

D. **Action Item – Zachary Ginder, Chair**

1. **23-41:** Approve Acceptance of Riverside County Third District Community Improvement Designation (CID) Funds Infant Survival Swim Lesson Scholarships and Training of Three Instructors **[$60,000 COMMUNITY IMPROVEMENT DESIGNATION FUNDS]**

Commissioner Yost moved to approved action item 23-41 as presented. Vice Chair Campos second the motion. ***Absent:*** *Commissioner Saruwatari.* ***Motion carried unanimously.***

2. **23-42:** Approve Proposition 10 Funds and Allocate ARPA Funds for Child Care Infrastructure Project Adjacent to the French Valley Library - District 3 **[NOT TO EXCEED $2,000,000 PROP 10 FUNDS AND NOT TO EXCEED $2,000,000 ARPA FUNDS]**

Commissioner Perez moved to approved action item 23-42 as presented. Commissioner Britt second the motion. ***Absent:*** *Commissioner Saruwatari.* ***Motion carried unanimously.***

E. **Commission Business – Zachary Ginder, Chair**

1. Director's Report – Tammi Graham, Executive Director; and Yvonne Suarez, Assistant Director

Ms. Graham reported on highlights in her Director's Report:

Governor's Update/Childcare

California continues investing in the youngest learners and the adults who care for them. California has agreed to make preschool free for all 4-year-olds by funding the expansion of transitional kindergarten. The budget provides temporary rate increases to childcare providers and commits to developing an alternative methodology for a reimbursement system.

The First 5 Riverside County Commission and the County of Riverside Board of Supervisors have advocated for rate reform over the past few years and has invested in our early care and education system in partnership with the Riverside County Office of Education through Quality Start Riverside County, Riverside Hybrid Alternate Payment Program, child care for essential workers, infrastructure, facilities, and wage enhancements paid directly to eligible educators.

Key specifics:

- Authorizing the Department of Social Services to develop an alternative methodology to California's reimbursement rate system in order to provide a more equitable reimbursement rate system that works towards covering the real cost of providing state-subsidized child care.
- Ensuring family fees will not be more than one percent of a family's monthly income and charging no family fee for families whose adjusted monthly family income is below 75 percent of the state median family income, starting October 1, 2023.
- An investment of $20 million to support the Bilingual Teacher Professional Development Program to help address the shortage of qualified bilingual teachers by supporting them with grants to receive their bilingual authorization to teach in bilingual classrooms.

First 5 will be working closely with Riverside County Office of Education on the impacts of rate reform on the RHAP program.

The governor's master plan for kids' mental health: nine agencies that support Riverside County have been funded through the Department of Health Care Services. They have awarded $30,000,000 to 63 entities throughout the state for the Children and Youth Behavioral Health Initiative. A few of the agencies awarded are Rady's Children's Hospital, Riverside University Health System - Behavioral Health, and Greater Hope Foundation for Children Inc.

Drowning Prevention

Partner agencies have done great work with drowning prevention this year. So far, First 5 has served 1,666 children through Southern California Water Babies, Corona-Norco Family YMCA, Desert Recreation District, Jurupa Area Recreation and Park District, and the City of Temecula. Since the Commission began investing in survival swim float swim and swim lessons, more than 3,200 children have learned to swim.

Parent story from Julieta, mother of Catalina and Diego:
In May we had the opportunity to participate in the First 5 and SoCal Water Babies Low-Income Scholarship Program, so I wanted to share our experience.

We are very happy with the swimming lessons because we can definitely see the amazing progress that our 4-year-old daughter Catalina made during the 14 lessons she was able to get through this program. She fell in a pool at a hotel in 2021 when she was 3-years-old and I (mom) had to jump in to rescue her. It was an extremely scary experience. Thanks to your program we were able to enroll Catalina in swimming lessons and it's been a blessing for our family. She started the lessons very scared and she didn't even want to get in the pool. But thanks to Cathryn Van Der Linden's great swimming program and patience with little kids, Catalina went from being terrified to get in the water to be excited to go to her swimming class. She finished the lessons with confidence and enjoyed the pool so much that she was crying because the classes were done and she was not coming to her swimming lessons anymore.

This was a great experience not only for her but very important survival swimming skills that she learned but also for her confidence to face her fears and succeed. She was very happy and thankful for this opportunity, we are looking forward to participation in the program one more time with her little brother, almost 2-years-old, his name Diego. Thank you so much for offering this program!

-Julieta and Bryan (parents of Catalina)

Employee Giving Campaign
Ms. Graham served as the Riverside County Employee Giving Campaign Chair. First 5 was recognized for the highest participation rate of a small department. Over 66% of F5 staff contributed to the Employee Giving Campaign - a 50% increase from previous years. County departments, collectively raised over $400,000, with 1,341 Donors and over 165 of those donors were Landmark Donors, 100% of the departments participated and their funds go to more than 250 charities. Ms. Graham thanked Ms. Stephens who was the lead campaign coordinator. Ms. Stephens supported more than 120 department coordinators and she will continue to provide guidance as she moves forward with various opportunities with other county coordinators in supporting departments with donations and fundraiser events.

New Parent Kits
Senior Public Information Specialist, Sean Pravica has been promoting new parent kits. More than 11,000 kits have been distributed in Riverside County during fiscal year 22-23. This equates to approximately 33% of families with newborns. New Parent Kits are free through First 5 California and available in English, Spanish, Korean, Mandarin, and Vietnamese. Kits include F5CA parent guide which has information about developmental milestones children reach through age 5 as well as resource links and phone numbers correlating to each milestone; a book about treatment and identification for illnesses and injuries children may suffer; children's books; dental information for babies including a teething gum massagers; a KN95 mask; poison control information; Talk Read Sing tote bag.

Sean, increased outreach to agencies to educate about contents and purpose of kits and how to receive them. This has led to an increase in kit orders.
Sean is presenting on new parent kits to agency meetings which so far include DPSS Child Services Regional Meeting, RUHS Public Health Practice Management Meeting, FRC Network Meeting, and FRC Service Provider meeting. Orders from new agencies include those from social service practitioners, community clinics, Office of Aging (Grandparents Raising Granchildren), and RUSD FRC.
New parent kit email set up for ease of ordering for partner and community agencies: F5RC-ParentKits@rivco.org. Multiple F5RC staff have access to ensure timely orders. Staff at FRCs promote New Parent Kits to families and service providers and encourage placing orders through the new parent kit email.

Safe Spaces
Dr. Diana Ramos, Calfornia's Surgeon General, will be visiting F5 Riverside Country child care sites in the fall. Staff is waiting to hear back in August to confirm which site(s) she will be visiting. Suggested sites are: Storyland Preschool Thousand Palms, First Step Preschool Coachella, First School of the Desert Palm Desert Palm Desert, Big Sky Preschool Riverside, Concilio Child Development Center Riverside, Moreno Valley USD Moreno Valley

Commissioner Yost thanked Ms. Graham for her update and for sharing the family story. Commissioner Hurtado thanked staff for having the New Parent Toolkit in other languages besides English and Spanish.

2. Commissioner Comments
None.

F. **Presentation/Information Item** – **Zachary Ginder, Chair**

1. Family Resource Center/HARC Community Convening Presentation - Ricardo Quezada, Deputy Director

Mr. Quezada shared updates from the May 23 and May 25 community convenings with HARC. Desert Hot Springs had 17 participants and Mecca had 18 participants. There were 58 participants in the virtual convening with community based partners.

HARC presented data at the three meetings and gave community members an opportunity to engage in discussion and provide feedback. HARC posed a series of questions, asking community members/providers to reflect on the data and give their feedback. These community convenings were organized by F5 staff. F5 staff also conducted outreach to FRC clients to recruit participants for the convenings.

Top Issues: Educational Attainment, Poverty, School Safety, Affordable Housing, Internet Access

In Mecca, the group identified clean air, water, education and accessing reliable internet service as the top needs.

The DHS community members said they do not feel safe and do not want to go to parks where crime is high.

Next Steps: F5 staff will extend HARC's contract so they are able to complete and mail the surveys in each supervisorial district. At a future meeting, HARC will present a report of the survey findings and how they will be used to develop an action plan.

A brief discussion ensued. Commissioner Britt commented on the top issues noted in the word cloud. Mr. Quezada noted that attendees are currently utilizing FRC services.
Commissioner Yost volunteered to help with expanding services in her hometown of Idywild. Anyone interested should reach out to her.

Commissioner Perez asked Mr. Quezada how many FRCs we have in the 4th District? Mr. Quezada responded to Commissioner Perez's question noting First 5 has a total of five brick-and-mortar FRCs. Two (Mecca and DHS) are located in District 4, with the remaining in Mead Valley, Jurupa Valley and Riverside.

Commissioner Perez asked if there's any consideration of expanding the number of FRCs in County. Mr.Quezada replied staff is looking at leveraging current resources that are already in the community to see how First 5 can partner with them to ensure that our services are also available within those partners. Ms. Graham reported on the current pilot to stand up the FRC in the Jurupa Valley Community Health Clinic, which will be the model for expanding family resource centers in other areas of the county. First 5 has created an FRC Network since we began operating the FRCs in July, 2020. Funding for brick-and-mortar sites is up for discussion between First 5 and DPSS, as that is where the primary funding and matching funds come from. The current budget for FRC sites is $4.5M.

Commissioner Perez inquired about the possibility of staff looking at decentralizing efforts and utilizing county and city buildings to integrate FRCs and reach other communities. Ms. Graham noted the FRC Network strategy is built on expanding capacities to decentralize efforts and expand resources for FRCs and community hubs. The 4th district currently has the most county operated brick-and-mortar FRC sites.

Commissioner Britt commented on the amazing things happening with Riverside County. The Integrated Service Delivery Model and Jurupa Valley Piliot are building the vision to incorporate FRCs with partner agencies throughout the county with clinics so community members can receive support in multiple areas. She participates in the ISD meetings and is impressed with the vision of residents going to a clinic with healthcare issues and then getting support in other areas.

Commissioner Yost informed the Commission that Idywild is getting their first mobile clinic this Wednesday. She offered to help in getting the word out to families about services available.

Vice Chair Campos reminded Commissioners that First 5 brought the Family Resource Centers under our umbrella in 2020, at the start of the COVID-19 Pandemic and that the sites were closed for over a year due to COVID. Currently there is the Home Visitng Expansion, and FRC Expansion, nine in network sites, and five brick-and-mortar sites for a total of 13 that represent the current Family Resource Center Network. He agreed that the five brick-and-mortar sites that were in place before First 5 took over the FRCs were not sufficient for a county of our size. Vice Chair Campos noted the network taking place with the support of the Office of Integrated Services work with expansion agencies, mobile clinics, and strengthening the work we all do with school districts, RUHS, RCOE, and the consistent integrated efforts in Riverside County. Vice Chair Campos acknowledged staff

has made great strides. He is thankful for the conversations taking place regarding this topic and the integrated efforts in working together and looks forward to more discussion.

Commissioner Perez left the meeting at 2:41 pm.

G. **Future Agenda Items:**

1. Autism Services Presentation
2. First 5 Riverside County Annual Report Presentation and Public Hearing
3. First 5 Riverside County Annual Audit Presentation and Public Hearing
4. First 5 Riverside County Family Resource Centers Presentation
5. First 5 Riverside County 2023 Communications Plan Presentation
6. Champion for Children Award Presentation to Recipient

H. **Adjournment** At 2:44 pm to the next Regular Meeting of the Riverside County Children and Families Commission to be held on September 13, 2023 beginning at 2:00 p.m.at:

First 5 Riverside County Children and Families Commission Office
585 Technology Court - Conference Room A
Riverside, CA 92507

Meeting Minutes Recorded by Lynn M. Stephens, Executive Assistant IV.

DRAFT

M.3. **23-43:** Ratify and Approve the Second Amendment to the Restated Memorandum of Understanding (MOU) with Riverside County Department of Social Services (DPSS) for Family Resource Centers from July 1, 2022 - June 30, 2024 **(MOU NO. DPSS-0001997) [DPSS FUNDS FY 22/23 - $2,740,259, FY 23/24 - $2,599,500, FY 24/25 and beyond - $2,500,000]**

AGENDA ITEM: 23-43
DATE OF MEETING: October 25, 2023
ACTION: ☒
INFORMATION: ☐

RATIFY AND APPROVE THE SECOND AMENDMENT TO THE RESTATED MEMORANDUM OF UNDERSTANDING (MOU) WITH RIVERSIDE COUNTY DEPARTMENT OF PUBLIC SOCIAL SERVICES (DPSS) FOR FAMILY RESOURCE CENTERS FROM JULY 1, 2022 – JUNE 30, 2024 (MOU NO. DPSS-0001997) [DPSS FUNDS FY 22/23 - $2,740,259, FY 23/24 - $2,599,500, FY 24/25 and beyond - $2,500,000]

SUMMARY OF REQUEST

Ratify and Approve the Second Amendment to the Restated Memorandum of Understanding (MOU) with Riverside County Department of Social Services (DPSS) for Family Resource Centers from July 1, 2022 - June 30, 2024 (MOU NO. DPSS-0001997) [DPSS FUNDS FY 22/23 - $2,740,259, FY 23/24 - $2,599,500, FY 24/25 and beyond - $2,500,000]**.** Approval of this amendment increases the budget in FY 23/24 by $99,500 from $2,500,000 to $2,599,500 to fund staff that provide support for the Integrated Delivery System framework.

This amendment also ratifies the revised FY 2022/2023 annual budget to recognize an adjustment for additional expenditures not originally included in the budget. Ratification will increase the FY 2022/2023 budget by $165,759 from $2,574,500 to $2,740,259 to fund staff designated to support the Integrated Delivery System framework.

BACKGROUND

September 14, 2022 (Action Item No. 22-29): Riverside County Children & Families Commission approved Amendment No. 1 to the Restated Memorandum of Understanding (DPSS-0001997) between DPSS and First 5 Riverside County adding $500,000 in additional DPSS funds for FRC consultant services.

RECOMMENDED ACTION

That the Commission:

1. Ratify the revised FY 2022/2023 annual budget to recognize adjustments to the additional expenditures not originally included in the budget, increasing the budget an additional $169,759 from $2,574,500 to $2,740,259.
2. Approve Amendment No. 2 to the First Amended and Restated Memorandum of Understanding (MOU) No. DPSS-0001997, increasing the budget an additional $99,500, from $2,500,000 to $2,599,500 including FY 24/25 and beyond - $2,500, 000.
3. Authorize the Executive Director, based on the availability of fiscal funding and as approved by County Counsel to sign amendments that exercise the options of the executed MOU, including modifications of the statement of work that stay within the intent of said MOU without requiring further action from the Commission.

BUDGET IMPACT

Authorize budget adjustment with Auditor Controller's Office to recognize additional revenue ($99,500) from $2,500,000 to $2,599,500, not previously included in the FY 23/24 budget (938001-25800-**777540**-92975/92980-ISD).

STRATEGIC PLAN RELEVANCE

Goal Area 3: Resilient Families

POTENTIAL CONFLICTS OF INTEREST

None

ATTACHMENT

First Amended and Restate MOU DPSS-0001997

RIVERSIDE COUNTY DEPARTMENT OF PUBLIC SOCIAL SERVICES
AMENDMENT No. 2 TO THE
FIRST AMENDED AND RESTATED MOU DPSS-0001997
WITH
FIRST 5 RIVERSIDE
FOR
OPERATION AND ADMINISTRATION OF FRCS AND
INTEGRATED SERVICE DELIVERY SYSTEM

MEMORANDUM OF UNDERSTANDING:	DPSS-0001997
PERIOD OF PERFORMANCE:	July 1, 2020 – Perpetual
EFFECTIVE DATE OF RATIFICATION AND AMENDMENT:	July 1, 2022
ANNUAL MAXIMUM REIMBURSABLE AMOUNT:	FY 20/21 - $2,000,000 FY 21/22 - $2,404,500 FY 22/23 - $2,740,259 FY 23/24 - $2,599,500 FY 24/25 and beyond - $2,500,000

This Ratification and Amendment No. 02 to the First Amended and Restated Memorandum of Understanding DPSS-0001997, is made by and between Riverside County Children and Families Commission, First 5 Riverside, ("First 5 Riverside"), and the County of Riverside's Department of Public Social Services ("DPSS"), both as departments of the County of Riverside, political subdivision of the State of California.

RECITALS

WHEREAS, DPSS and First 5 Riverside previously entered into that certain MOU, DPSS-0001997, executed on June 4, 2020 and effective July 1, 2020, for operation and administration of the Family Resource Centers (FRCs) ("Original MOU"); and,

WHEREAS, DPSS and First 5 Riverside previously entered into that certain First Amended and Restated MOU, DPSS-0001997 ("MOU"), executed on September 23, 2021, effective July 1, 2020; and

WHEREAS, DPSS and First 5 Riverside previously entered into that certain Amendment No. 1 to the MOU, executed on October 17, 2022, effective July 1, 2021; and

WHEREAS, notwithstanding the terms of the Original MOU and Amendments, the parties acknowledge and agree that they increased spending for Fiscal Years 2022-2023, without a written amendment; and,

WHEREAS, the parties agree that the additional positions for spending shall be deemed to have been in effect from the effective date of July 1, 2022; and,

WHEREAS, all actions taken by both First 5 Riverside and DPSS prior to the date hereof are hereby confirmed and ratified by way of execution of this Amendment; and,

WHEREAS, DPSS and First 5 Riverside now desire to amend the MOU to increase the maximum reimbursable amount for fiscal year 22/23, all in accordance with terms and conditions (T&C) attached hereto and incorporated herein by this reference. The T&C specify the responsibilities for DPSS and First 5 Riverside; and,

WHEREAS, Section 24 of the MOU allows for modifications by written amendment signed by both parties; and,

NOW THEREFORE, in consideration of their mutual covenants, DPSS and First 5 Riverside agree to ratify and amend the MOU according to the terms and in the manner set forth herein:

1. **Recitals**. The recitals set forth above are true and correct and incorporated herein by this reference.

2. **Ratification**. All actions taken by both DPSS and First 5 Riverside prior to the date hereof were in compliance with, and pursuant to the terms and conditions of the MOU and Amendments and are hereby confirmed and ratified.

3. **Amend Schedule A, "Schedule, Terms, and Method of Payment," Subsection 1.A. "Maximum Reimbursable Amount," "Table 2" to read:**

Table 2
Integrated Service Delivery
July 1, 2021 – June 30, 2024

BUDGET ITEM	PAYMENT
Integrated Service Delivery July 1, 2021-June 30, 2022	$49,500
Integrated Service Delivery July 1, 2022-June 30, 2023	$215,259
Integrated Service Delivery July 1, 2023-June 30, 2024 (FY23/24 Line to cover .5 FTE Salary, Benefits and Mileage)	$99,500
Total	$364,259

4. **Effective Date.** This Amendment is effective July 1, 2022.

5. **Miscellaneous.** All other terms and conditions of the MOU and Amendments not modified herein shall remain unchanged and in full force and effect.

6. **Electronic Signatures.** This Amendment No. may be executed in any number of counterparts, each of which will be an original, but all of which together will constitute one instrument. Each party to this Amendment agrees to the use of electronic signatures, such as digital signatures that meet the requirements of the California Uniform Electronic Transactions Act (("CUETA") Cal. Civ. Code §§ 1633.1 to 1633.17), for executing this Amendment. The parties further agree that the electronic signatures of the parties included

in this Amendment are intended to authenticate this writing and to have the same force and effect as manual signatures. Electronic signature means an electronic sound, symbol, or process attached to or logically associated with an electronic record and executed or adopted by a person with the intent to sign the electronic record pursuant to the CUETA as amended from time to time. The CUETA authorizes use of an electronic signature for transactions and contracts among parties in California, including a government agency. Digital signature means an electronic identifier, created by computer, intended by the party using it to have the same force and effect as the use of a manual signature, and shall be reasonably relied upon by the parties. For purposes of this section, a digital signature is a type of "electronic signature" as defined in subdivision (i) of Section 1633.2 of the Civil Code.

IN WITNESS WHEREOF, the undersigned authorized representatives of the parties have executed this ratification and amendment No. 02 to the First Amended and Restated MOU DPSS-0001997.

County of Riverside, a political Subdivision of the State of California

Charity Douglas
Director, DPSS

Date

Approval as to Form
Minh C. Tran
County Counsel
By: _____
Katherine Wilkins
Deputy County Counsel
Date: _____

First 5 Riverside, a political Subdivision of the State of California

Tammi Graham
Executive Director

Date

Approval as to Form
Minh C. Tran
County Counsel
By: _____
Kristine Bell-Valdez
Deputy County Counsel
Date: _____

M.4. **23-44:** Approve Contract with Simpler North America, LLC for the Provision of Lean Leadership Training and Coaching from October 25, 2023 - June 30, 2025 **(CONTRACT NO. CF24138) [$800,000 - PROP 10 FUNDS]**

AGENDA ITEM: 23-44
DATE OF MEETING: October 25, 2023
ACTION: ☒
INFORMATION: ☐

APPROVE CONTRACT WITH SIMPLER NORTH AMERICA, LLC FOR THE PROVISION OF LEAN TRAINING AND COACHING (CONTRACT NO. CF24138) [$800,000 - PROP 10 FUNDS]

SUMMARY OF REQUEST

Approve Contract No. CF24138 with Simpler North America, LLC for an amount not to exceed $800,000 effective October 25, 2023 – June 30, 2025, for introduction to the Greenbelt quality improvement framework and facilitation of lean principles, tools, and methods in alignment with County of Riverside transformation.

BACKGROUND

Simpler North America, LLC (Simpler) will coach and facilitate First 5 Riverside County (F5RC) workgroups on how to use lean thinking, tools, methods, and principles. During the agreement with Simpler, a designated coach will engage and develop teams to deliver and sustain outstanding results, develop process improvement solutions, and align strategy and resources to optimize operations and resources. The lean Greenbelt primer will be introduced at the F5RC all-staff meeting on November 16, 2023. The continued lean methods will support standardized approaches to performance improvement and implement lean-management measures throughout the department.

Building upon and ensuring alignment with the County's Integrated Service Delivery initiative, F5RC seeks to establish a customer-driven, prevention and early intervention-focused service delivery system.

The Agreement with Simpler North America, LLC for Lean Leadership and Delivery Support for County of Riverside in support of Integrated Services Delivery Model was originally procured through an active United States General Services Administration (GSA) Federal contract (GS-10F-0359S) which was entered into by the GSA and Simpler North America, LLC on August 1, 2006 and will be in effect until July 31, 2026.

RECOMMENDED ACTION

That the Commission:

1. Approve Contract No. CF24138 with Simpler North America, LLC for an amount not to exceed $800,000 effective October 25, 2023 – June 30, 2025, for the provision of lean training and coaching in substantially the same form as the attached hereto and authorize the Executive Director or Designee to sign the contract on behalf of the Commission, subject to County Counsel approval as to form; and

2. Authorize the Executive Director or Designee, based on the availability of fiscal funding and as approved by County Counsel to sign amendments that exercise the options of Contract No. CF24138, on behalf of the Commission including modifications of the statement of work that stay within the intent of said contract without requiring further action from the Commission.

BUDGET IMPACT

Adequate appropriation is included in the revised budget (938001-25800-92980-525440). Additional funding will be included in the subsequent fiscal year's proposed budget.

STRATEGIC PLAN RELEVANCE

Goal Area 4 - Countywide (92980)

POTENTIAL CONFLICTS OF INTEREST

None known.

ATTACHMENTS

1. CF24138_A0_Simpler NORTH AMERICA LLC

County of Riverside
First 5 Riverside County Children and Families Commission (RCCFC)
Contracts & Grants Unit
585 Technology Court
Riverside, CA 92507

and

SIMPLER NORTH AMERICA, LLC
Lean Leadership Training
CF24138

TABLE OF CONTENTS

1. RECITALS 3
2. DEFINITIONS 3
3. DESCRIPTION OF SERVICES 3
4. PERIOD OF PERFORMANCE 4
5. COMPENSATION 4
6. AVAILABILITY OF FUNDS/NON-APPROPRIATION OF FUNDS 4
7. TERMINATION 4
8. REQUEST FOR WAIVER AND WAIVER OF BREACH 5
9. OWNERSHIP, PUBLICATION, REPRODUCTION, AND USE OF MATERIAL 5
10. CONDUCT OF CONTRACTOR/ CONFLICT OF INTEREST 5
11. RECORDS, INSPECTIONS, AND AUDITS 6
12. CONFIDENTIALITY 6
13. HOLD HARMLESS/INDEMNIFICATION AND CONTRACTOR'S LIMITATION OF LIABILITY 7
INDEMNIFICATION 7
14. INSURANCE 8
15. WORKER'S COMPENSATION 10
16. VEHICLE LIABILITY INSURANCE 10
17. COMMERCIAL GENERAL LIABILITY 10
18. INDEPENDENT CONTRACTOR 10
19. USE BY POLITICAL ENTITIES 10
20. LICENSES AND PERMITS 10
21. NO DEBARMENT OR SUSPENSION 11
22. COMPLIANCE WITH RULES, REGULATIONS, AND DIRECTIVES 11
23. PERSONNEL 11
24. EMPLOYMENT PRACTICES 12
25. LOBBYING 12
26. ADVERSE GOVERNMENT ACTION 13
27. SUBCONTRACTS 13
28. SUPPLANTATION 14
29. ASSIGNMENT 14
30. FORCE MAJEURE 14
31. GOVERNING LAW 14
32. DISPUTES 14
33. ADMINISTRATIVE/CONTRACT LIAISON 15
34. CIVIL RIGHTS COMPLIANCE 15
35. NOTICES 15
36. SIGNED IN COUNTERPARTS 16
37. NO SOLICIT 16
38. ELECTRONIC SIGNATURES 16
39. MODIFICATION OF TERMS 17
40. ENTIRE AGREEMENT 18

List of Schedules
Schedule A – "Payment Provisions"
Schedule B – "Scope of Services"

This Agreement is made and entered into upon execution by and between SIMPLER NORTH AMERICA, LLC, a Delaware Corporation (herein referred to as "CONTRACTOR"), and the County of Riverside, a political subdivision of the State of California, on behalf of its First 5 Riverside County, Children and Families Commission (herein referred to as "COUNTY"). The parties agree as follows:

1. RECITALS

WHEREAS, the COUNTY has the legal authority to "piggyback" onto a contract procured by another governmental entity when seeking to utilize the same or similar goods and services provided for in said contract in the interest of the public;

WHEREAS, the COUNTY requires the goods and services of a vendor who can provide Business Program and Project Management Services for Lean Leadership and ongoing support as recommended during the Integrated Services Delivery initiative for the COUNTY;

WHEREAS, the CONTRACTOR has previously entered into an agreement with the Department of General Services, to provide Business Program and Project Management Services for Lean Leadership and Ongoing Support dated August 01, 2006 through July 31, 2026, a copy of which is attached separately as "Attachment III," which those parties entered into upon the Simpler North America, LLC Agency award for Business Program and Project Management Services, CONTRACT No. # GS-10F-0359S;

WHEREAS, the COUNTY desires to "piggyback" onto CONTRACT No. # GS-10F-0359S between Simpler North America, LLC Agency and the State of California Department of General Services for Business Program and Project Management Services; and

WHEREAS, CONTRACTOR consents to the aforesaid "piggybacking."

2. DEFINITIONS

A. "Agreement" refers to the terms and conditions, schedules, and attachments included herein.

B. "CONTRACTOR" or "SIMPLER" refers to SIMPLER NORTH AMERICA, LLC, including its employees, agents, representatives, subcontractors, and suppliers.

C. "RCCFC" or "COUNTY" refers to the County of Riverside and Riverside County Children and Families Commission, First 5 Riverside County, which has administrative responsibility for this Agreement. RCCFC and COUNTY are used interchangeably in this Agreement.

D. "ISD" refers to the County of Riverside Integrated Services Delivery Transformation Initiative. The county-wide initiative seeks to establish a customer-driven, prevention- and early intervention-focused service delivery system.

3. DESCRIPTION OF SERVICES

CONTRACTOR shall provide all services at the prices stated in Schedule A, Payment Provisions, and as outlined and specified in Schedule B, Scope of Services

4. PERIOD OF PERFORMANCE
This Agreement shall be effective upon signature by both parties and approval by the RCCFC Commission on October 25, 2023 (herein referred to as "Effective Date") and continues in effect through June 30, 2025. CONTRACTOR shall commence performance upon the Effective Date and shall diligently perform thereafter.

5. COMPENSATION
COUNTY shall pay CONTRACTOR for services performed, products provided, or expenses incurred in accordance with Schedule A, "Payment Provisions. COUNTY is not responsible for any fees or costs incurred above or beyond the contracted amount and shall have no obligation to purchase any specified amount of services or product. Unless otherwise specifically stated in Schedule A, COUNTY shall not be responsible for payment of any of CONTACTOR's expenses related to this Agreement. At the expiration of the term of this Agreement, or upon termination prior to the expiration of the Agreement, any funds paid to CONTRACTOR, but not used for purposes of this Agreement shall revert to COUNTY within thirty (30) calendar days of the expiration or termination.

6. AVAILABILITY OF FUNDS/NON-APPROPRIATION OF FUNDS
The obligation of COUNTY for payment under this Agreement beyond the current fiscal year is contingent upon and limited by the availability of county funding from which payment can be made. There shall be no legal liability for payment on the part of COUNTY beyond June 30 of each year unless funds are made available for such payment by the RCCFC (Commission). In the event such funds are not forthcoming for any reason, COUNTY shall promptly notify CONTRACTOR in writing and this Agreement shall be deemed terminated and be of no further force or effect. COUNTY shall make all payments to CONTRACTOR that were properly earned prior to the unavailability of funding.

7. TERMINATION
A. Either party may terminate this Agreement without cause upon giving thirty (30) calendar days written notice served to the other stating the extent and effective date of termination.

B. Either party may, upon five (5) calendar days written notice to the other, terminate this Agreement for the other's default, if 1) CONTRACTOR refuses or fails to materially perform pursuant to the terms of this Agreement, or fails to make progress that may endanger performance and does not promptly cure such failure; or 2) COUNTY fails to pay CONTRACTOR, a material breach and grounds for CONTRACTOR'S termination for cause.

C. After CONTRACTOR's receipt of the notice of termination, CONTRACTOR shall:

(1) Stop all work under this Agreement on the date specified in the notice of termination; and

(2) Transfer to COUNTY and deliver in the manner directed by COUNTY any materials, reports or other products, which, if the Agreement had been completed or continued, would be required to be furnished to COUNTY.

D. After termination, COUNTY shall make payment only for CONTRACTOR's performance up to the date of termination in accordance with this Agreement.

E. CONTRACTOR's rights under this Agreement shall terminate (except for fees accrued prior to the date of termination) upon dishonestly or willful and material breach of this Agreement by CONTRACTOR; or in the event of CONTRACTOR's unwillingness or inability, for any reason whatsoever, to perform the terms of this Agreement. In such an event, CONTRACTOR shall not be entitled to any further compensation under this Agreement.

F. The rights and remedies of COUNTY provided in this section shall not be exclusive and are in addition to any other rights or remedies provided by law or this Agreement.

8. REQUEST FOR WAIVER AND WAIVER OF BREACH

Waiver of any provision of this Agreement must be in writing and signed by authorized representatives of the parties. No waiver or breach of any provision of the terms and conditions herein shall be deemed, for any purpose, to be a waiver or a breach of any other provision hereof, or of a continuing or subsequent waiver or breach. Failure of COUNTY to require exact, full compliance with any terms of this Agreement shall not be construed as making any changes to the terms of this Agreement and does not prevent COUNTY from enforcing the terms of this Agreement.

9. OWNERSHIP, PUBLICATION, REPRODUCTION, AND USE OF MATERIAL

CONTRACTOR agrees that all Deliverables created by CONTRACTOR for which CONTRACTOR has been compensated by COUNTY pursuant to this Agreement shall be the sole property of COUNTY with a non-exclusive license to CONTRACTOR. Deliverables exclude works of authorship delivered to COUNTY, but not created, under the SOW, and any modifications or enhancements of such works made under the SOW (Existing Works). COUNTY will not acquire any ownership or other rights or licenses to any tools, techniques, methodologies, documentation, software or other material of CONTRACTOR, including without limitation, the Simpler Business System®, the Simpler Design SystemSM or Integrated Facility Design ("Simpler Property") under this engagement. Simpler Property includes all proprietary methods and processes by which Simpler provides Lean enterprise consulting services and includes, without limitation, assessments, training presentations and material, implementation documents and a structure of activities. Provided COUNTY has paid the fees as set forth in this Agreement and subject to the terms and conditions of this Agreement, if any Simpler Property is incorporated as part of any deliverable under the terms and conditions of this Agreement or if a deliverable requires the use of Simpler Property, Simpler hereby grants to COUNTY a non-exclusive, fully-paid, perpetual, non-transferable, non-sublicensable, irrevocable (except under the "Termination for Cause" section, above) license to use the Simpler Property solely for COUNTY's own internal business purposes. COUNTY may not export or re-export any Simpler Property except as authorized by United States laws. Simpler Property may not be exported or re-exported: (a) into any U.S. embargoed countries; or (b) to anyone on the U.S. Treasury Department's list of Specially Designated Nationals or the U.S. Department of Commerce Denied Person's List or Entity List. By execution of this Agreement, COUNTY represents and warrants that COUNTY is not located in any such country or identified on any such list.

10. CONDUCT OF CONTRACTOR/ CONFLICT OF INTEREST

A. CONTRACTOR covenants that it presently has no interest, including but not limited to, other projects or contracts, and shall not acquire any such interest, direct or indirect, which would conflict in any manner or degree with CONTRACTOR's performance under this

Agreement. CONTRACTOR further covenants that no person or subcontractor having any such interest shall be employed or retained by CONTRACTOR under this Agreement. CONTRACTOR agrees to inform the COUNTY of all CONTRACTOR's interest, if any, which are or may be perceived as incompatible with COUNTY's interests.

B. CONTRACTOR shall not, under any circumstances which could be perceived as an to influence the recipient in the conduct or his/her duties, accept any gratuity or special favor from individuals or firms with whom CONTRACTOR is doing business or proposing to do business, in fulfilling this Agreement.

11. RECORDS, INSPECTIONS, AND AUDITS

A. All performance, including services, workmanship and materials, utilized in the performance of this Agreement, shall be subject to inspection and test by COUNTY or any other regulatory agencies at all times. CONTRACTOR shall cooperate with any inspector or COUNTY representative reviewing compliance with this Agreement.

B. CONTRACTOR shall maintain auditable books, records, documents, and other evidence relating to compliance with this Agreement ("Records"). CONTRACTOR shall maintain these Records for at least three (3) years after final payment has been made or until pending county, state, and federal audits are completed, whichever is later.

C. If CONTRACTOR disagrees with the results an audit of the Records, CONTRACTOR may employ a Certified Public Accountant (CPA) to prepare and file with COUNTY its own certified financial and compliance audit. CONTRACTOR shall not be reimbursed by COUNTY for such an audit regardless of the audit outcome.

D. CONTRACTOR shall establish procedures to self-monitor the quality of services/products under this Agreement and shall permit COUNTY or other inspector to assess and evaluate CONTRACTOR's performance at any time, upon reasonable notice to the CONTRACTOR.

12. CONFIDENTIALITY

A. As required by applicable law, COUNTY and CONTRACTOR shall maintain the privacy and confidentiality of all information and records, regardless of format, received pursuant to the Agreement ("Confidential Information"). Confidential Information shall be identified at the time of disclosure and includes, but is not limited to, unpublished or sensitive technological or scientific information; medical, personnel, or security records; material requirements or pricing/purchasing actions; COUNTY information or data which is not subject to public disclosure; COUNTY operational procedures; and knowledge of contractors, subcontractors or suppliers in advance of official announcement. The parties shall ensure that no person will publish, disclose, use or cause to be disclosed such confidential information of the other party or Confidential Information pertaining to any applicant or recipient of services. The parties shall protect Confidential Information from disclosure using the same standard of care that it uses to protect its own Confidential Information but no less than a reasonable standard of care. Disclosure of Confidential Information by the receiving party will not be precluded if the disclosure is required by law, but the receiving party will give the disclosing party reasonable notice to allow the disclosing party an opportunity to obtain a protective order. The obligations of this Article 12 shall not

apply to information that is: (a) already in the possession of the receiving party without obligation of confidence, (b) independently developed by the receiving party, or (c) publicly available.

B. CONTRACTOR shall take commercially reasonable precautions, including but not limited to, sufficient training of CONTRACTOR's staff before they begin work, to protect such confidential information from loss or unauthorized use, access, disclosure, modification or destruction.

C. It is not the intent of the COUNTY to share information that identifies an individual by name, address, or other specific information (personally identifiable information, PII) or protected health information (PHI), however in the event that PHI or PII is inadvertently shared, CONTRACTOR agrees to treat such information as confidential.

D. CONTRACTOR shall promptly transmit to COUNTY all third-party requests for disclosure of confidential information. CONTRACTOR shall not disclose such information to anyone other than COUNTY except when disclosure is specifically permitted by this Agreement, required by legal proceeding or court order or as authorized in writing in advance by COUNTY.

13. HOLD HARMLESS/INDEMNIFICATION AND CONTRACTOR'S LIMITATION OF LIABILITY INDEMNIFICATION

A. CONTRACTOR will defend and indemnify the COUNTY (including its Agencies, Districts, Special Districts and Departments, their respective directors, officers, Board of Supervisors, elected and appointed officials, and employees for all claims asserted by third parties and arising from CONTRACTOR's acts or omissions or breaches of this Agreement, which acts, omissions or breaches have resulted in or caused the following; (a) bodily injury (including death); (b) damages to real property and tangible personal property; (c) infringement by the services of such third party's patent or copyright, as described in Section 13.B below; or (d) CONTRACTOR's violation of laws that apply to CONTRACTOR as a provider of information technology products and services.

B. If a third party asserts a claim against the County of Riverside that services acquired under the Agreement infringes a patent or copyright, CONTRACTOR will defend the County of Riverside against that claim and pay all amounts finally awarded by a court against the County of Riverside or included in a settlement approved by CONTRACTOR, provided that the County of Riverside promptly: i) notifies CONTRACTOR in writing of the claim; ii) supplies information requested by CONTRACTOR; and iii) allows CONTRACTOR to control, and reasonably cooperates in, the defense and settlement, including mitigation efforts. CONTRACTOR has no responsibility for claims based on non-Contractor products and services, items not provided by CONTRACTOR, or any violation of law or third-party rights caused by the County of Riverside content, materials, designs, or specifications.

C. With respect to any action or claim subject to indemnification herein by CONTRACTOR, CONTRACTOR shall, at their sole cost, have the right to use counsel of their own choice and shall have the right to adjust, settle, or compromise any such action or claim without the

prior consent of COUNTY; provided, however, that any such adjustment, settlement or compromise in no manner whatsoever limits or circumscribes CONTRACTOR indemnification to Indemnitees as set forth herein.

D. CONTRACTOR'S obligation hereunder shall be satisfied when CONTRACTOR has provided to COUNTY the appropriate form of dismissal relieving COUNTY from any liability for the action or claim involved.

E. The specified insurance limits required in this Agreement shall in no way limit or circumscribe CONTRACTOR'S obligations to indemnify and hold harmless the Indemnitees herein from third party claims.

Limitation of Liability

Except as expressly excluded herein, each party's entire liability to the other party for all claims related to the Agreement will not exceed the amount of $1,000,000. Neither party will be liable to the other for special, incidental, exemplary, indirect or economic consequential damages, or lost profits, business, value, revenue, goodwill, or anticipated savings. Notwithstanding the foregoing, the following are not subject to the foregoing limitation: (a) damages for body injury (including death); (b) damages to real property and tangible personal property, (c) CONTRACTOR's indemnification obligations set forth in Section 13.A above, (d) COUNTY's obligations to pay charges and fees for Services as set forth in Exhibit B: Fee Schedule and Price or other mutually agreed upon schedule of charges and fees; and (e) damages that cannot be limited by law. These limitations apply to CONTACTOR and its affiliates including International Business Machines Corporation, and to COUNTY (including its Agencies, Districts, Special Districts and Departments, their respective directors, officers, Board of Supervisors, elected and appointed officials, and employees).

14. INSURANCE

A. CONTRACTOR shall procure and maintain or cause to be maintained, at its sole cost and expense, the following insurance coverage's during the term of this Agreement. As respects to the insurance section only, the COUNTY herein refers to the County of Riverside, its Agencies, Districts, Special Districts, and Departments, their respective directors, officers, Board of Supervisors, employees, elected or appointed officials, agents or representatives as Additional Insureds for Commercial General Liability and Automobile Liability only.

B. Any insurance carrier providing insurance coverage hereunder shall be admitted to the State of California and have an AM BEST rating of not less than A: VII (A:7) unless such requirements are waived, in writing, by the County Risk Manager. If the County's Risk Manager waives a requirement for a particular insurer such waiver is only valid for that specific insurer and only for one policy term.

C. CONTRACTOR's insurance carrier(s) must disclose its insurance self-insured retentions when applicable. If such self-insured retentions exceed $500,000 per occurrence such retentions shall have the written consent of the COUNTY, which consent will not be

unreasonably withheld, before the continuation of operations under this Agreement. Upon notification of self-insured retention unacceptable to COUNTY, and at the election of the County's Risk Manager, CONTRACTOR's carriers shall either; 1) reduce or eliminate such self-insured retention as respects to this Agreement with COUNTY, or 2) procure a bond which guarantees payment of losses and related investigations, claims administration, and defense costs and expenses.

D. CONTRACTOR shall cause CONTRACTOR's insurance carrier(s) to furnish the COUNTY with Certificate(s) of Insurance and any applicable endorsements or 2) if requested to do so orally or in writing by the County Risk Manager, provide clarification of the Certificate of Insurance and any applicable endorsements showing such insurance is in full force and effect. CONTRACTOR shall provide thirty (30) calendar days written notice to the COUNTY prior to any material modification, cancellation, expiration or reduction in coverage of such insurance. In the event of a material modification, cancellation, expiration, or reduction in coverage, this Agreement shall terminate forthwith, unless the COUNTY receives, prior to such effective date, another Certificate of Insurance and any applicable endorsements thereto evidencing coverages set forth herein and the insurance required herein is in full force and effect. CONTRACTOR shall not commence operations until the COUNTY has been furnished certificate(s) of insurance and any applicable endorsements and any or all other attachments as required in this section.

E. It is understood and agreed to by the parties hereto that CONTRACTOR's insurance shall be construed as primary insurance, and COUNTY's insurance and/or deductibles and/or self-insured retentions or self-insured programs shall not be construed as contributory.

F. If, during the term of this Agreement or any extension thereof, there is a material change in the scope of services, or there is a material change in the equipment to be used in the performance of the scope of work which will add additional exposures (such as the use of aircraft, watercraft, cranes, etc.), or the term of this Agreement, including any extensions thereof, exceeds five (5) years, the COUNTY reserves the right to adjust the types of insurance required under this Agreement and the monetary limits of liability for the insurance coverages currently required herein if, in the County Risk Manager's reasonable judgment, the amount or type of insurance carried by the CONTRACTOR has become inadequate.

G. CONTRACTOR shall pass down the insurance obligations contained herein to all tiers of subcontractors working under this Agreement.

H. The insurance requirements contained in this Agreement may be met with a program(s) of self-insurance acceptable to COUNTY.

I. CONTRACTOR agrees to notify COUNTY of any claim by a third party or any incident or event that may give rise to a claim arising from the performance of this Agreement.

15. WORKER'S COMPENSATION

If the CONTRACTOR has employees as defined by the State of California, the CONTRACTOR shall maintain statutory Workers' Compensation Insurance (Coverage A) as prescribed by the laws of the State of California. Policy shall include Employers' Liability (Coverage B) including Occupational Disease with limits not less than $1,000,000 per person per accident. The policy shall be endorsed to waive subrogation in favor of The County of Riverside, except in instances of gross negligence on the part of the COUNTY, where gross negligence is defined to mean carelessness that is reckless disregard for the safety of others and/or a failure to use the slightest degree of care.

16. VEHICLE LIABILITY INSURANCE

If vehicles or mobile equipment are used in the performance of the obligations under this Agreement, then CONTRACTOR shall maintain liability insurance for all owned, non-owned or hired vehicles so used in an amount not less than $2,000,000 per occurrence combined single limit. If such insurance contains a general aggregate limit, it shall apply separately to this agreement or be no less than $2,000,000 per occurrence and $4,000,000 in the aggregate. Only with respect to liability arising out of this Agreement, policy shall name the COUNTY as Additional Insureds.

17. COMMERCIAL GENERAL LIABILITY

Commercial General Liability insurance coverage, including but not limited to, premises liability, unmodified contractual liability, products and completed operations liability, personal and advertising injury, and cross liability coverage, covering claims which may arise from or out of CONTRACTOR'S performance of its obligations hereunder. Only with respect to liability arising out of this Agreement, policy shall name the COUNTY as Additional Insured. Policy's limit of liability shall not be less than $2,000,000 per occurrence combined single limit. If such insurance contains a general aggregate limit, it shall be no less than $2,000,000 per occurrence and $4,000,000 in the aggregate.

18. INDEPENDENT CONTRACTOR

The parties intend that their relationship shall be that of independent contractors who shall each have no liability for the acts or omissions of the other. It is agreed that CONTRACTOR is an independent contractor and that no relationship of employer-employee exists between the parties. CONTRACTOR and its employees shall not be entitled to any benefits payable to employees of COUNTY, including but not limited to, workers' compensation, retirement, or health benefits. COUNTY shall not be required to make any deductions for CONTRACTOR employees from the compensation payable to CONTRACTOR under this Agreement.

19. USE BY POLITICAL ENTITIES

CONTRACTOR agrees to extend the same pricing, terms, and conditions as stated in this Agreement to each and every political entity, special district, and related non-profit entity in Riverside County, and to every political entity located in the State of California. It is understood that other entities shall make purchases in their own name, make direct payment, and be liable directly to CONTRACTOR; and COUNTY shall in no way be responsible to CONTRACTOR for other entities' purchases.

20. LICENSES AND PERMITS

If applicable, CONTRACTOR shall be licensed and have all permits as required by Federal, State, County, or other regulatory authorities at the time the proposal is submitted to COUNTY and throughout the term of this Agreement. CONTRACTOR warrants that it has all necessary permits, approvals, certificates, waivers, and exceptions necessary for performance of this Agreement.

21. NO DEBARMENT OR SUSPENSION

CONTRACTOR certifies that it is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by a federal department or agency; has not within a three-year period preceding this Agreement been convicted of or had a civil judgment rendered against it for the commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state or local) transaction; violation of federal or state anti-trust status; commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property; is not presently indicted or otherwise criminally or civilly charged by a government entity (federal, state or local) with commission of any of the offenses enumerated herein; and has not within a three-year period preceding this Agreement had one or more public transactions (federal, state or local) terminated for cause or default.

22. COMPLIANCE WITH RULES, REGULATIONS, AND DIRECTIVES

CONTRACTOR shall comply with all applicable rules, regulations, requirements and directives of the California Department of Social Services, other applicable State or Federal agencies, funding sources and other governing regulatory authorities which impose duties and regulations upon COUNTY related to this Agreement. These shall be equally applicable to and binding upon CONTRACTOR to the same extent as they are upon COUNTY.

23. PERSONNEL

A. Upon request by COUNTY, CONTRACTOR agrees to make available to COUNTY a current list of personnel that are providing services under this Agreement who have contact with children or adult Clients. The list shall include:

(1) All staff who work full or part-time positions by title, including volunteer positions;

(2) A brief description of the functions of each position and hours each position worked;

(3) The professional degree, if applicable and experience required for each position.

B. COUNTY has the sole discretion to approve or not approve any person on the CONTRACTOR's list that has been convicted of any crimes involving sex, drugs or violence, or who is known to have a substantiated report of child abuse, as defined in Penal Code Section 11165.12, who occupies positions with supervisory or disciplinary power over minors, or who occupies supervisory or teaching positions over adult Clients. COUNTY shall notify CONTRACTOR in writing of any person not approved, but to protect Client confidentiality, may not be able to disclose the reason(s) for non-approval. Upon

notification, CONTRACTOR shall immediately remove that person from providing services under this Agreement.

C. Background Checks
CONTRACTOR shall conduct criminal background records checks on all individuals providing services under this Agreement. Prior to these individuals providing services to Clients, CONTRACTOR shall have received a criminal records clearance from the State of California Department of Justice (DOJ). A signed certification of such clearance shall be retained in each individual's personnel file. The use of criminal records for the purposes of employment decisions must comply with the Office of Federal Contract Compliance Programs Directive 2013-02 "Complying with Nondiscrimination Provisions: Criminal Record Restrictions and Discrimination Based on Race and National Origin" and California Government Code § 12952.

24. EMPLOYMENT PRACTICES

A. CONTRACTOR shall comply with all applicable federal and state statutes and regulations in the hiring of its employees.

B. CONTRACTOR shall not discriminate in its recruiting, hiring, promoting, demoting, or terminating practices on the basis of race, religious creed, color, national origin, ancestry, physical handicap, medical condition, marital status, age, or sex in the performance of this Agreement; if applicable, with the provisions of the Fair Employment and Housing Act (FEHA) and the Federal Civil Rights Act of 1964 (P. L. 88-352).

C. In the provision of benefits, CONTRACTOR shall certify and comply with Public Contract Code 10295.3 and not discriminate between employees with spouses and employees with domestic partners or discriminate between the domestic partners and spouses of those employees. For the purpose of this section "domestic partner" means one of two persons who have filed a declaration of domestic partnership with the Secretary of State pursuant to Division 2.5 (commencing with Section 297) of the Family Code.

D. By signing this Agreement or accepting funds under this Agreement, CONTRACTOR shall comply with Executive Order 11246 of September 24, 1965, entitled " Equal Employment Opportunity," as amended by Department of Labor regulations (41 CFR Chapter 60).

E. Employment Development Department reporting requirements: If applicable, CONTRACTOR shall provide required data and certification to COUNTY in order to comply with child support enforcement requirements. The documentation will be provided within ten (10) days of notification of award of this Agreement when required by the Employment Development Department. Failure to submit the documentation or failure to comply with all federal and state reporting requirement for child support enforcement shall constitute a material breach of this Agreement.

25. LOBBYING

A. CONTRACTOR shall ensure no federal appropriated funds have been paid or will be paid by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the awarding of

any federal contract, continuation, renewal, amendment, or modification of any federal contract, grant loan or cooperative agreement.

B. If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with such federal contract, grant, loan, or cooperative agreement, CONTRACTOR shall complete and submit Standard Form LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

C. CONTRACTOR shall require that the language of this certification be included in the award document for sub-awards at all tiers, including subcontracts, sub-grants, and contract under grants, loans, and cooperative agreements, and that all sub-recipients shall certify and disclose accordingly.

26. ADVERSE GOVERNMENT ACTION

In the event any action of any department, branch or bureau of the federal, state, or local government has a material adverse effect on either party in the performance of their obligations hereunder, then that party shall notify the other of the nature of this action, including in the notice a copy of the adverse action. The parties shall meet within thirty (30) calendar days and shall, in good faith, attempt to negotiate a modification to this Agreement that minimizes the adverse effect. Notwithstanding the provisions herein, if the parties fail to reach a negotiated modification concerning the adverse action, then the affected party may terminate this Agreement by giving at least one hundred eighty (180) calendar days' notice or may terminate sooner if agreed to by both parties.

27. SUBCONTRACTS

A. CONTRACTOR shall not enter into any subcontract with any subcontractor who:

(1) Is presently debarred, suspended, proposed for debarment or suspension, or declared ineligible or voluntarily excluded from covered transactions by a federal department or agency;

(2) Has within a three-year period preceding this Agreement been convicted of or had a civil judgment rendered against them for the commission of fraud, a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state or local) transaction, violation of federal or state anti-trust status, commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(3) Is presently indicted or otherwise criminally or civilly charged by a government entity (federal, state or local) with commission of any of the offenses enumerated in the paragraph above; and

(4) Has within a three-year period preceding this Agreement had one or more public transactions (federal, state or local) terminated for cause or default.

B. CONTRACTOR shall be fully responsible for the acts or omissions of its subcontractors and the subcontractors' employees.

C. CONTRACTOR shall insert clauses in all subcontracts to bind its subcontractors to the terms and conditions of this Agreement.

D. Nothing contained in this Agreement shall create a contractual relationship between any subcontractor or supplier of CONTRACTOR and COUNTY.

28. SUPPLANTATION
CONTRACTOR shall not supplant any federal, state or county funds intended for the purpose of this Agreement with any funds made available under any other agreement. CONTRACTOR shall not claim reimbursement from COUNTY for any sums which have been paid by another source of revenue. CONTRACTOR agrees that it will not use funds received pursuant to this Agreement, either directly or indirectly, as a contribution or compensation for purposes of obtaining state funds under any state program or COUNTY funds under any county programs without prior approval of COUNTY.

29. ASSIGNMENT
Neither party shall assign or transfer any interest in this Agreement without the prior written consent of the other. Any attempt to assign or transfer any interest without written consent of the other party shall be deemed void and of no force or effect. Assignment of CONTRACTOR rights to receive payments is not restricted.

30. FORCE MAJEURE
If either party is unable to comply with any provision of this Agreement due to causes beyond its reasonable control and which could not have been reasonably anticipated, such as acts of God, acts of war, civil disorders, or other similar acts, such party shall not be held liable for such failure to comply.

31. GOVERNING LAW
This Agreement shall be governed by the laws of the State of California. Any legal action related to the interpretation or performance of this Agreement shall be filed only in the Superior Court for the State of California or the U.S. District Court located in Riverside, California.

32. DISPUTES
A. The parties shall attempt to resolve any disputes amicably at the working level. If that is not successful, the dispute shall be referred to the senior management of the parties.

B. Prior to the filing of any legal action related to this Agreement, the parties shall be obligated to attend a mediation session in Riverside County before a neutral third party mediator. A second mediation session shall be required if the first session is not successful. The parties shall share the cost of the mediations.

33. ADMINISTRATIVE/CONTRACT LIAISON
Each party shall designate a liaison that will be the primary point of contact regarding this Agreement.

34. CIVIL RIGHTS COMPLIANCE

A. Assurance of Compliance
CONTRACTOR shall complete the "Vendor Assurance of Compliance with Riverside County Department of Public Social Services Non-Discrimination in State and Federally Assisted Programs," attached as Attachment I. CONTRACTOR will sign and date Attachment I and return it to COUNTY along with the executed agreement.

B. CONTRACTOR shall not discriminate in the provision of services, allocation of benefits, accommodation in facilities, or employment of personnel on the basis of ethnic group identification, race, religious creed, color, national origin, ancestry, physical handicap, medical condition, marital status or sex in the performance of this Agreement; and, to the extent they shall be found to be applicable hereto, shall comply with the provisions of the California Fair Employment and Housing Act (Gov. Code 12900 et. seq), the Federal Civil Rights Act of 1964 (P.L. 88-352), the Americans with Disabilities Act of 1990 (42 U.S.C. **S**1210 et seq.) and all other applicable laws or regulations

35. NOTICES
All notices, claims, correspondence, or statements authorized or required by this Agreement shall be deemed effective three (3) business days after they are made in writing and deposited in the United States mail addressed as follows:

COUNTY:
First 5 Riverside County
585 Technology Court
Riverside, CA 92507

Invoices and other financial documents:
First 5 Riverside County
Fiscal/Contracts & Grants Unit
4060 County Circle Drive
Riverside, CA 92503
Email: RCCFC-accountspayable@rivco.org (fiscal/invoice related inquiries)
Email: RCCFC-CGA-Team@rivco.org (contract related inquiries)

CONTRACTOR:
Email: lpallisco@ibm.com
With notices of a legal nature also to be sent to:
Simpler North America, LLC
1 New Orchard Rd
Armonk, New York 10504
United States
Attn: General Counsel

CONTRACTOR “Remit To” address:
Electronic Transfer (*preferred*):
Bank: PNC Bank N.A.
Pittsburgh, PA
Routing: 043000096
Account: Simpler North America LLC
Account: 1026391374

Physical:
Simpler North America, LLC
PO Box 643979
Pittsburgh, PA 15264-3979
Email:
receivables@simpler.com
Contact: Rhaeanne Hussman
724-934-4600 x122

36. SIGNED IN COUNTERPARTS

This agreement may be executed in any number of counterparts, each of which when executed shall constitute a duplicate original, but all counterparts together shall constitute a single agreement.

37. NO SOLICIT

During the term of the engagement and for a period of 12 months thereafter, COUNTY agrees that it will not actively solicit, any CONTRACTOR employee (or former employee who was employed by CONTRACTOR during the term of the engagement) or contractor of CONTRACTOR without CONTRACTOR’s prior written consent. Such consent is not required if CONTRACTOR employees, former employees (who were employed by CONTRACTOR during the term of the project) or contractors answer a general advertisement for employment made by COUNTY in public media channels.

38. ELECTRONIC SIGNATURES

Each party of this Agreement agrees to the use of electronic signatures, such as digital signatures that meet the requirements of the California Uniform Electronic Transactions Act ((“CUETA”) Cal. Civ. Code §§ 1633.1 to 1633.17), for executing this Agreement. The parties further agree that the electronic signature(s) included herein are intended to authenticate this writing and to have the same force and effect as manual signatures. Electronic signature means an electronic sound, symbol, or process attached to or logically associated with an electronic record and executed or adopted by a person with the intent to sign the electronic record pursuant to the CUETA as amended from time to time. Digital signature means an electronic identifier, created by computer, intended by the party using it to have the same force and effect as the use of a manual signature, and shall be reasonably relied upon by the parties. For purposes of this section, a digital signature is a type of "electronic signature" as defined in subdivision (i) of Section 1633.2 of the Civil Code.

39. MODIFICATION OF TERMS

This Agreement may be modified only by a written amendment signed by authorized representatives of both parties. Requests to modify fiscal provisions shall be submitted no later than April 1.

40. ENTIRE AGREEMENT
This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof. All prior or contemporaneous agreements of any kind or nature relating to the same subject matter shall be of no force or effect.

Authorized Signature for COMMISSION:	**Authorized Signature for CONTRACTOR:**
Tammi Graham, Executive Director	Kyle Freeman, Vice President, Healthcare
Date Signed:	Date Signed:
585 Technology Court Riverside, CA 92507-2423	7888 Mission Grove Pkwy South, STE 120 Riverside, CA 92508
ATTEST SIGNATURE:	
Lynn M. Stephens Executive Assistant IV	
Date Signed:	
APPROVED AS TO FORM SIGNATURE:	
Kristine Bell-Valdez Supervising Deputy County Counsel	
Date Signed:	

Schedule A
Payment Provisions

A.1 MAXIMUM AMOUNTS –ANNUAL AND AGGREGATE TOTALS
The total annual payments to CONTRACTOR shall not exceed:

FISCAL YEAR PERIOD	TOTAL PAYMENT
Upon Signature and Commission Approval on October 25, 2023 through June 30, 2025	Not to Exceed $800,000.00
Total	Not to Exceed $800,000.00

A.2 UNIT OF SERVICE
The total fixed price for this Statement of Work is Not to Exceed $800,000, based upon an approved annual budget. This Not to Exceed amount is inclusive of consulting fee services (as listed below) and Travel Expenses (capped at 10% and inclusive of total expenses).

Consulting Service Fees are as follows:

- SME billed at a daily rate of $3,369
- Gemba Coach billed at a daily rate of $2,725
- Lean Engineer billed at a daily rate of $1,650

The schedule for days of services shall be reduced to writing and agreed upon by both COUNTY AND CONTRACTOR. Travel expenses are allowable for in-person services. Any additional services other than those listed in Schedule B or dollar amounts exceeding the NTE as listed in this Schedule A will be established in a separate Statement of Work or Schedule to be mutually agreed to by the parties.

A.3 METHOD, TIME, AND CONDITIONS OF PAYMENT

a. CONTRACTOR shall be paid only in accordance with an invoice submitted to COUNTY by CONTRACTOR within fifteen (15) days from the last day of each calendar month, and COUNTY shall pay the invoice within thirty (30) working days from the date of receipt of the invoice. COUNTY may delay payment if the required supporting documentation is not provided, or other requirements are not met. Supporting documentation must include:

    1. Travel expenses - shall be billed at CONTRACTORS actual cost incurred and invoiced on a monthly basis as charges are incurred. The expense shall be without any costs for having advanced for the funds or for expenses generally considered as overhead already reflected in the Daily Per Task Rate.
    2. All receipts and invoices related to travel expenses are required for reimbursement. This includes mileage log sheet for mileage reimbursement.
    3. Detailed breakdown of dates, location, attendance, description or service and type of task as relevant to each billing.
    4. Invoice to be approved by RCCFC established approval workflow.

b. CONTRACTOR invoice estimates for May and June are due no later than June 5. Actual CONTRACTOR invoices for May and June are due no later than July 30.

A.4 FINANCIAL RESOURCES

During the term of this Agreement, CONTRACTOR shall maintain sufficient financial resources necessary to fully perform its obligations. CONTRACTOR confirms there has been no material financial change in CONTRACTOR (including any parent company) since its last financial statement that has resulted in a negative impact to its financial condition.

A.5 DISALLOWANCE

If CONTRACTOR receives payment under this Agreement which is later disallowed by COUNTY for billing errors or discrepancies with the Agreement, CONTRACTOR shall promptly refund the disallowed amount to COUNTY, or, at its option, COUNTY may offset the amount disallowed from any payment due to CONTRACTOR.

Schedule B
Scope of Services

B1. COUNTY RESPONSIBILITIES

COUNTY shall:

A. Provide designated personnel to coordinate leadership coaching and ongoing support, make decisions on behalf of the COUNTY, review, and accept the CONTRACTOR invoice and other administrative activities.

B.2 CONTRACTOR RESPONSIBILITIES

CONTRACTOR shall:

A. Provide designated personnel to coordinate leadership coaching and ongoing support, make decisions on behalf of the CONTRACTOR, and submit the CONTRACTOR invoice and other administrative activities.
B. Proposal for Transformation Services
   - **Training:**
     - Basic Green training for all staff.
     - Bronze training for leaders that are directly connected to the Value Stream work.

   - **Daily Management:**
     - Development and Deployment of Managing for Daily Improvement (MDI Huddles) for the value stream area to provide transparency and discipline around KPI and overall, First Five Metric
   - **Value Stream:**
     - Contracts and Grants VS – to ensure standard processes with standard work to reduce variation and improve timeliness.
     - Support the integration of the “Help Me Grow "and Health Steps Pilots into the ISD pilot at Jurupa Valley Clinic.

M.5. **23-45:** Approve Mutual Recission of Contract with V.I.P. Tots from January 25, 2023 - June 30, 2024 **(CONTRACT NO. CF23110) [$200,000 - PROP 10 FUNDS and $1,000,000 - ARPA FUNDS]**

AGENDA ITEM: 23-45
DATE OF MEETING: October 25, 2023
ACTION: ☒
INFORMATION: ☐

APPROVE MUTUAL RESCISSION OF CONTRACT (CF23110) WITH V.I.P. TOTS FROM JANUARY 25, 2023 – JUNE 30, 2024 [$200,000 – PROP 10 FUNDS AND $1,000,000 – ARPA FUNDS]

SUMMARY OF REQUEST

Approve mutual rescission of Contract No. CF 23110 with V.I.P. Tots for $1,200,000. First 5 Riverside County and V.I.P. Tots agreed to the rescission of the agreement.

BACKGROUND

January 25, 2023 (Action Item No. 23-07) Commission approved Contract No. CF23110 with the Covenant of Restriction as attached with V.I.P. Tots for an amount not to exceed $1,200,000 effective January 25, 2023 – June 30, 2024, for the Infrastructure Development project.

RECOMMENDED ACTION

That the Commission:

1. Approved mutual rescission of contract CF23110 with V.I.P. Tots, project period from January 25, 2023 – June 30, 2024, for an amount not to exceed $1,200,000; and
2. Authorize the Executive Director or designee to execute the necessary actions, including formal notification and documentation of said recession, upon County Counsel approval as to form, without requiring further action of the Commission.

BUDGET IMPACT

None

STRATEGIC PLAN RELEVANCE

Goal Area 1 – Quality Early Learning (92950)

POTENTIAL CONFLICTS OF INTEREST

None known

ATTACHMENTS

Attachment A: Contract
Attachment B: Agreement Letter

FUNDING AGREEMENT

Quality Early Care and Education: ARPA Infrastructure Development

The RIVERSIDE COUNTY CHILDREN AND FAMILIES COMMISSION, ("COMMISSION", “FIRST 5 RIVERSIDE COUNTY” or "COUNTY") and the V.I.P. TOTS., a California nonprofit corporation ("SUBRECIPIENT" or "OWNER") hereby enter into this Funding Agreement ("Agreement") and agree as follows:

1.1 RECITALS

A. SUBSUBRECIPIENT has prepared plans and specifications ("IMPROVEMENT PLANS") for the acquisition, improvement, and development of classrooms at the V.I.P. Tots facility for child care services, “PROJECT,” shown in concept in Exhibit "A" attached hereto and made a part hereof; and

B. V.I.P. Tots, located at 41915 Acacia Avenue, Hemet, CA 92544 and is hereinafter called “OWNER FACILITY”; and

C. SUBRECIPIENT plans to advertise, award, and administer a public works construction contract for PROJECT during Fiscal Years 2022/2023 and 2023/24; and

D. SUBRECIPIENT desires that COMMISSION contribute funding for the construction of PROJECT; and

E. COMMISSION has reviewed IMPROVEMENT PLANS.

F. COMMISSION wishes to support SUBRECIPIENT's efforts to construct PROJECT by providing a financial contribution toward PROJECT's construction costs as set forth herein; and

G. COMMISSION's financial contributions shall be up to one hundred percent (100%) of the proposal amount for the construction of PROJECT ("TOTAL CONTRIBUTION") and as detailed in Exhibit B: Budget;

H. TOTAL CONTRIBUTION for PROJECT shall not exceed a total of ONE MILLION TWO HUNDRED THOUSAND DOLLARS, **($1,200,000)**; and

I. COMMISSION wishes to provide only financial assistance to SUBRECIPIENT and have no other role;

J. The purpose of this Agreement is to memorialize the mutual understandings by and between SUBRECIPIENT and COMMISSION with respect to the construction, ownership, operation, and maintenance of PROJECT and the payment of TOTAL CONTRIBUTION.

K. The term of this Agreement shall be effective **January 25, 2023,** through **June 30, 2024,** unless terminated earlier as provided herein.

L. This Agreement may be terminated by SUBRECIPIENT or COMMISSION, without cause upon thirty (30) days written notice served upon the non-terminating party, as provided herein. In addition, it is

mutually agreed and understood that the obligation of the COMMISSION for payment under this Agreement is limited and contingent upon the availability of Proposition 10 funds from which payment can be made; and that this Agreement may be immediately terminated by the COMMISSION if funds are no longer available. In the event of termination, the COMMISSION shall make payment for all services provided by SUBRECIPIENT up to the date of written notice of termination.

NOW, THEREFORE, in consideration of the preceding recitals and the mutual covenants hereinafter contained, the parties hereto mutually agree as follows:

1.2 SECTION I

SUBRECIPIENT shall:

1. Obtain, at its sole cost and expense, all necessary permits, approvals, or agreements required by any federal, state, and local resource or regulatory agencies pertaining to PROJECT ("REGULATORY PERMITS").

2. Secure, at its sole cost and expense, all necessary rights of way, rights of entry, and temporary construction easements necessary to construct, inspect, operate and maintain PROJECT.

3. Advertise PROJECT for bids. At the time of advertising for bids, provide COMMISSION with a copy of PROJECT plans, specifications, contracts, and any subsequent addenda thereto.

4. Construct or cause to be constructed PROJECT pursuant to a SUBRECIPIENT-administered public works contract in accordance with IMPROVEMENT PLANS.

5. Supervise and inspect all aspects of PROJECT construction.

6. SUBRECIPIENT recognizes and understands that any improvements installed pursuant to this agreement must be completed by SUBRECIPIENT during the term of this Agreement.

7. SUBRECIPIENT shall require that all Sub-Contractors will comply with prevailing wage requirements and be subject to restrictions and penalties in accordance with §1770 et seq. of the Labor Code which requires prevailing wages be paid to appropriate work classifications in all bid specifications and subcontracts.

a. The SUBRECIPIENT shall require that Sub-Contractors shall furnish all subcontractors/employees a copy of the Department of Industrial Relations prevailing wage rates at which the Lessor will post at the job site. All prevailing wages shall be obtained by the SUBRECIPIENT from:

Department of Industrial Relations
Division of Labor Statistics and Research
455 Golden Gate Avenue, 8th Floor
San Francisco, CA 94102

b. SUBRECIPIENT shall require that Sub-Contractors comply with the payroll record keeping and availability requirement of §1776 of the Labor Code.

c. SUBRECIPIENT shall require that Sub-Contractor shall make travel and subsistence payments to workers needed for the performance of work in accordance with §1773.8 of the Labor Code.

d. Prior to the commencement of work, SUBRECIPIENT shall require that Sub-Contractor shall contact the Division of Apprenticeship Standards and comply with §1777.5, §1777.6, and §1777.7 of the Labor Code and applicable regulations.

e. SUBRECIPIENT shall comply and stay current with all applicable local, state, and federal building codes and laws as from time to time amended, including, but not limited to, the Americans with Disabilities Act requirements in providing the County with any requested County improvements.

8. If any agency, division, or department of any governmental entity with appropriate jurisdiction condemns the Premises or any part of the Premises as unsafe or not in conformity with any of the laws or regulations controlling their construction, occupation, or use, or orders or requires any alteration, repair or reconstruction of the Premises the responsible party shall be the SUBRECIPIENT who at its sole cost and expense (and without any right of reimbursement from COMMISSION) immediately effect all necessary alterations and repairs required for the Premises full and exact compliance.

9. Upon completion of PROJECT construction and SUBRECIPIENT's acceptance thereof, accept ownership and sole responsibility for the design, operation, and maintenance of PROJECT.

10. Upon completion of PROJECT construction, provide COMMISSION with a copy of SUBRECIPIENT's Notice of Completion.

2.1 SECTION II

COMMISSION shall:

1. Within forty-five (45) days of receiving SUBRECIPIENT 's appropriate invoice, pay PROJECT costs to SUBRECIPIENT;

2. COMMISSION shall only provide financial assistance to SUBRECIPIENT and have no other role.

3.1 SECTION III

It is further mutually agreed:

1. TOTAL CONTRIBUTION shall not exceed a total of ONE MILLION TWO HUNDRED THOUSAND DOLLARS, **($1,200,000)** and shall be used by SUBRECIPIENT solely for the purpose of constructing PROJECT as set forth herein. No additional funding whatsoever shall be provided by COMMISSION for any subsequent PROJECT modifications, extensions, or repairs.

2. Under the provisions of this Agreement, COMMISSION shall bear no responsibility whatsoever for the design, construction, ownership, operation, or maintenance of PROJECT;

3. The term of this Agreement shall be effective **January 25, 2023**, through **June 30, 2024**, unless terminated earlier as provided herein.

4. SUBRECIPIENT shall indemnify, defend, save and hold harmless County of Riverside (including their agencies, special districts, and departments, their respective directors, officers, Board of Supervisors, elected and appointed officials, commissioners, employees, agents, representatives, independent contractors, and subcontractors) from any liabilities, claim, damage, proceeding or action, present or future, based upon, arising out of or in any way relating to SUBRECIPIENT's (including its officers, elected and appointed officials, employees, agents, representatives, independent contractors, and subcontract) actual or alleged acts or omissions related to this Agreement, performance under this Agreement or failure to comply with the requirements of this Agreement including, but not limited to (a) property damage; (b) bodily injury or death; (c) payment of attorney fees; or (d) any other element of any kind or nature whatsoever. This section shall survive any termination of this agreement until the statute of limitations period has run for any claims that could be asserted under this agreement.

5. If any provision in this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions will nevertheless continue in full force without being impaired or invalidated in any way.

6. This Agreement is to be construed in accordance with the laws of the State of California. Neither SUBRECIPIENT nor COMMISSION shall assign this Agreement without the written consent of the other party.

7. This Agreement is made and entered into for the sole protection and benefit of the parties hereto. No other person or entity shall have any right of action based upon the provisions of this Agreement.

8. Any and all notices sent or required to be sent to the parties of this Agreement will be mailed by first class mail, postage prepaid, to the following addresses:

Riverside County Children & Families Commission	SUBRECIPIENT/OWNER
First 5 Riverside County	V.I.P. TOTS.
585 Technology Court	41915 Acacia Avenue
Riverside, CA 92507	Hemet, CA 92544
Attn: Tammi Graham	Attn: Jared Dobbins,
Executive Director	Executive Director

9. This Agreement is the result of negotiations between the parties hereto and the advice and assistance of their respective counsel. The fact that this Agreement was prepared as a matter of convenience by COMMISSION shall have no import or significance. Any uncertainty or ambiguity in this Agreement shall not be construed against COMMISSION because COMMISSION prepared this Agreement in its final form.

10. Any waiver by COMMISSION or SUBRECIPIENT of any breach by any other party of any provision of this Agreement shall not be construed to be a waiver of any subsequent or other breach of the same

or any other provision hereof. Failure on the part of COMMISSION or SUBRECIPIENT to require from any other party exact, full, and complete compliance with any of the provisions of this Agreement shall not be construed as in any manner changing the terms hereof or estopping COMMISSION or SUBRECIPIENT from enforcing this Agreement.

11. The obligations of COMMISSION are limited by and contingent upon the availability of COMMISSION funds for COMMISSION's financial contribution towards the PROJECT as set forth herein. In the event that such funds are not forthcoming for any reason, COMMISSION shall immediately notify SUBRECIPIENT in writing. AGREEMENT shall be deemed terminated and have no further force and effect immediately upon receipt of COMMISSION's notification by SUBRECIPIENT.

12. This Agreement is intended by the parties hereto as a final expression of their understanding with respect to the subject matter hereof and as a complete and exclusive statement of the terms and conditions thereof and supersedes any and all prior and contemporaneous agreements and understandings, oral or written, in connection therewith. This Agreement may be changed or modified only upon the written consent of the parties hereto.

13. No alternation or variation of the terms of this Agreement shall be valid unless made in writing and signed by both parties and no oral understanding or agreement not incorporated herein shall be binding on either party hereto.

14. Nothing in the provisions of this Agreement is intended to create duties or obligations to or rights in third parties not parties to this Agreement.

Intentionally left blank

IN WITNESS WHEREOF, the parties hereto have executed this Funding Agreement:

V.I.P. TOTS, INC. (SUBRECIPIENT):

By: _____
Jared Dobbins
Executive Director
Authorized Signatory

Date: _____

RIVERSIDE COUNTY CHILDREN AND FAMILIES COMMISSION:

By: _____
Tammi Graham
Executive Director

Date: _____

ATTEST:

By: _____
Lynn M. Stephens
Commission Coordinator

Date: _____

APPROVED AS TO FORM:

_____
Kristine Bell-Valdez
Supervising Deputy County Counsel

Date: _____

EXHIBIT A:

PROJECT SCOPE OF WORK & TIMELINE

Project Scope of Work

Funds will be used for eligible expenses as accepted in the application and subsequent application clarification submitted to the COMMISSION in response to RFQu #CFARC-0020 for V.I.P. Tots, Inc., 41915 Acacia Avenue, Hemet, CA 92544 and PROJECT Site 41861 Acacia Avenue, Hemet, CA 92544.

Project Description

V.I.P. Tots seeks support in the amount of $1,200,000 for a capital project to purchase and improve the property in order to develop and implement a new Early Learning Center in the Hemet/San Jacinto area, providing inclusive classroom environments for approximately 280 infants, toddlers and preschool children, including those with special needs. Currently, V.I.P. Tots is leasing ten (10) classrooms as well as administrative office space from Pilgrim Community Church which is located at 41861 Acacia Ave, Hemet, next to our main building located at 41915 Acacia Avenue. The current V.I.P. Tots facility has been used for more than 40 years and is licensed for 140 children. V.I.P. Tots serves as a subcontractor with numerous outside agencies, the bulk of which are contracts to provide services through the CSPP and CCTR Programs.

According to the most recent data from the Local Planning Council for Riverside County, there are more than 2,500 children aged 0-35 months in the three primary zip codes served by V.I.P. Tots that are currently eligible for subsidized childcare services, who are not currently being served. These numbers indicate that the area surrounding V.I.P. Tots is what is often referred to as a "childcare desert", notably being labeled as a COE Priority 1 area within the 3rd Supervisorial District. With the eventual arrival of Universal Pre-K it is more imperative than ever for key stakeholders to work to provide more physical space in order to accommodate the growing need for childcare in the Hemet/San Jacinto Valley Area and other known childcare deserts. Over the last year alone, V.I.P. Tots has maintained a lengthy waitlist, mostly comprised of families seeking care for their children aged 18-35 months. If funding is awarded through the grant, the bulk of the additional 140 spots will be allocated through the CCTR Program, which will provide much-needed services to children under three years of age.

The new facility located at 41861 Acacia Avenue, Hemet, CA will expand the agency's capacity to serve additional target groups - children under 3 years old - through the CCTR Program, including children with special needs. The current facility has two buildings providing less than 4,000 square feet of classroom space. By securing the property being offered to V.I.P. Tots, once renovations and addition of the portable classrooms are completed, the physical classroom space will be doubled and the licensed capacity dramatically increased from 140 to an estimated 280. This enhances access to child development and early learning services for Hemet/San Jacinto families, including those with special needs children. Among the unique and innovative aspects of the project, V.I.P. Tots has been offering inclusive services for children with and without special needs since 1978. Currently, 45% of children served by V.I.P. Tots have special needs. Starting at a very young age, V.I.P. Tots seeks to model diversity and inclusion and is unique among other competitors in its ability to deliver inclusive learning environments for nearly 40 years. V.I.P. Tots extends beyond the classroom by working closely with families at home, educating and guiding families through the complex issue of having a child with special needs. Additional space will also allow V.I.P. Tots to continue to offer the dynamic "Positive Solutions for Families Classes" and other supportive services to serve families with parenting guidance.

As the Hemet/San Jacinto Valley Area continues to recover from the COVID-19 Pandemic, it is vital that additional childcare spaces are provided in order to allow parents to return to the workforce. A recent services expansion. survey commissioned by V.I.P. Tots found that less than 10% of the jobs available in the Hemet/San Jacinto Valley Area provided enough financial capacity for families to afford unsubsidized childcare.

Additionally, we found that the Leisure and Retail Industry make up almost 35% of available jobs in the area, thereby making it all the more important for adequate physical space in childcare centers to be provided in order to allow essential workers to return or continue to work by providing more affordable high-quality care for their children.

Over the course of the last several months, V.I.P. Tots was approached by Pilgrim Community Church with an offer to purchase property located at 41861 Acacia Avenue, Hemet, CA adjacent to our current site. The purchase proposal includes three buildings:

1. A 6,423 square foot building that V.I.P. Tots is currently using under a lease agreement including 10 classrooms for children 3-5 years old
2. A 1,291 square foot building that is currently occupied by Pilgrim Community Church, and
3. A 1,186 square foot building that is currently occupied by Pilgrim Community Church

Through conversations with various outside agencies and partners, if secured, V.I.P. Tots would undertake a plan to renovate the classrooms in the 6,423 square foot building that is currently being leased and demolish the other two buildings purchased and place portable classrooms.

The outcome of this additional space is expected to double the licensed capacity of V.I.P. Tots from 140 licensed childcare slots to 280 licensed childcare slots, thereby positioning V.I.P. Tots to meet the immense need for childcare in the Hemet/San Jacinto Valley Area.

Project Timeline and Deliverables

Phase I: Months 1 – 3
1. Acquisition of Property at 41861 Acacia Avenue, Hemet, CA
2. Design Documents

Phase II: Months 3 – 6
3. Construction Documents
4. Permitting

Phase III: Months 6 – 9
5. Construction (demolition and site preparation for Portable Classrooms)

Phase IV: Months 9 – 10
6. Furniture, Fixtures & Equipment procurement, and installation

Phase V: Month 11
7. Certificate of Occupancy

Phase VI: Month 12
8. Licensing

Site Visits

The V.I.P. Tots, Inc. project funded under this Agreement will be subject to a site visit review prior to the commencement of the project to be scheduled on a mutually agreed upon date and time.

Quarterly Progress Reports

SUBRECIPIENT shall submit Program Progress Reports (PPR) which includes quarterly and year-to-date progress on actual achievement of PROJECT milestones as detailed in Exhibit A and other data collection information as requested by the COMMISSION. The PPR shall include narrative information on lessons learned, course corrections, client success stories, sustainability, and public awareness/policy change activities

for the quarter. SUBRECIPIENT is required by the COMMISSION to complete and submit PPR electronically via the COMMISSION'S data management system.

For each reporting period, SUBRECIPIENT shall provide the COMMISSION with a PPR within thirty (30) calendar days from the end of the reporting period. In rare and justifiable circumstances, an extension may be requested by the SUBRECIPIENT. Such requests are to be submitted in writing prior to the due date and shall be directed through the COMMISSION'S Contracts and Grants Analyst assigned to the SUBRECIPIENT. Quarterly Program Progress Reporting due dates for each period as follows:

• Quarter 1 (January 1 – March 31): Report Due April 20, 2023
• Quarter 2 (April 1 – June 30): Report Due July 11, 2023
• Quarter 3 (July 1 – September 30): Report Due October 20, 2023
• Quarter 4 (October 1 – December 30): Report Due January 20, 2024
• Quarter 5 (January 1 – March 31): Report Due April 20, 2024
• Quarter 6 (April 1 – June 30): Report Due July 11, 2024 (Final Cumulative Program Progress Report)

If the due date falls on a weekend or County, State, or nationally recognized holiday, the due date will be on the following business day. The first quarterly report is due **April 20, 2023**.

SUBRECIPIENT agrees that failure to submit reports as specified will be sufficient cause for the COMMISSION to withhold any payment due until reporting requirements have been fulfilled.

EXHIBIT B:
BUDGET

January 25, 2023 – June 30, 2024

USE OF FUNDS:		TOTAL REQUESTED:
Development Costs		
1. Acquisition Cost		
1.1	Acquisition Cost 41861 Acacia Ave, Hemet, CA 92544	$870,000
1.2	VIP Tots Funded portion	-$250,000
	Sub-Total:	**$620,000**
2.		
2.1	Architect/Consulting Fees	$40,000
2.2	Permits	$4,500
2.3	Demolition/Preparation	$130,500
2.4	Portable Classrooms	$125,000
2.5	Upgrade Cost	$75,000
2.6	Certificate of Occupancy	$4,500
2.7	Licensing	$500
	Sub-Total:	**$1,000,000**
3. Project-Contingency		
3.1	Contingency (20%)	$200,000
		$1,200,000

Funding

The amount funded consists of:

ARPA (25820) Infrastructure funds for District 3	$1,000,000
Proposition 10 (25800) funds for District 3	$ 200,000
Total Funded:	$1,200,000

EXHIBIT C:
PAYMENT PROVISIONS

1. FISCAL

The maximum amount reimbursable over the life of this Agreement is not to exceed ONE MILLION TWO HUNDRED THOUSAND DOLLARS, **($1,200,000)** for the duration of the Agreement period as funded by the Riverside County Children and Families Commission, also known as First 5 Riverside, (hereinafter the "COMMISSION" or "COUNTY"), provided pursuant to the American Rescue Plan Act and California Children and Families Act of 1998, also known as Proposition 10.

AGREEMENT PERIOD: **January 25, 2023 – June 30, 2024**

1. Method, Time, and Schedule Conditions of Payment

   a. The COMMISSION will disburse funds on a reimbursement payment process based on the Exhibit B (Budget) amount for the applicable fiscal year and monthly report submissions. Payment will be rendered thirty (30) business days from submission of all required documentation and/or the reporting deadline.

   b. Disbursement of any payment of funds to SUBRECIPIENT shall be made so long as all of the following conditions have been met:

      1. The Agreement has been fully executed by all parties;

      2. All applicable licenses to comply with the terms of the SOW are current and valid; and

      3. The SUBRECIPIENT submits monthly itemized invoices, via the data management system to include the supporting documentation separated by a cover sheet in front of each expense category. Documentation shall include, but not limited to; statement of costs, copy of invoice or receipt, and proof payment.

   c. Under special circumstances, SUBRECIPIENT may request advance disbursements. A supplemental disbursement request along with justification must be submitted, in writing, to the Executive Director or designee.

   d. The COMMISSION Executive Director, or designee, reserves the right to withhold or reduce disbursement of funds if SUBRECIPIENT fails to 1) comply with monthly and/or quarterly reports by the indicated due date as set forth in Exhibit A; 2) if results achieved are not as projected and no COMMISSION approved plan is in place for improvement; or 3) if the SUBRECIPIENT is not in compliance with any provision contained within this Agreement.

   e. The final funding period amount approved for the applicable fiscal year will be paid based on final expenditures as of June 30th and reported as of July 11th, which is the final deadline to submit Project expenditures. Expenditures made after June 30th will not be accepted.

2. Allowable Costs

   Funds provided pursuant to this Agreement shall be expended by SUBRECIPIENT in accordance with the Budget.

a. Such specified expenditures will be further limited to those that are considered both reasonable and necessary as determined by the COMMISSION. SUBRECIPIENT agrees COMMISSION may recover any payments for services or goods, which were not reasonable and necessary, or which exceeded the fair market value. The recovery shall be limited to payments over and above reasonable or fair market amounts and any costs of recovery.

b. **Stored Materials.** COMMISSION may, in the exercise of its sole and absolute discretion, approve or disapprove for inclusion in SUBRECIPIENT's invoice the cost of materials to be incorporated, but not yet incorporated, in the Work and delivered and suitably stored either at the Site or at some other appropriate location acceptable to the COMMISSION. As part of any request for such approval, SUBRECIPIENT shall furnish evidence satisfactory to COMMISSION: (1) of the cost of such materials; (2) that such materials are under the exclusive control of SUBRECIPIENT, or if not, that title to the materials is in the COMMISSION, free of any lien or encumbrance; and (3) with respect to materials stored off-Site, that the materials are safely and suitably stored in a bonded warehouse with appropriate insurance coverage satisfactory to COMMISSION. No payment or approval by COMMISSION pursuant to this Paragraph shall (a) be construed as an inspection or acceptance of the materials; (b) relieve SUBRECIPIENT of its continuing and sole responsibility for the care and protection of, and sole responsibility for any Loss to, such materials, from any cause whatsoever; or (c) operate as a waiver of rights by COMMISSION.

c. Notwithstanding any other provision herein, SUBRECIPIENT agrees to reimburse, in full, any and all funds received from the COMMISSION, upon request of the COMMISSION, where such funds as determined by the COMMISSION are not, or have not been utilized by SUBRECIPIENT for services provided to children ages 0 through 5 and their families. The terms and conditions of reimbursement shall be at the sole discretion of the COMMISSION.

d. Any capital improvement projects with an aggregate cost of $25,000 or more funded by Proposition 10 funds shall be maintained by the SUBRECIPIENT for services provided to children ages 0 through 5 and their families. SUBRECIPIENT will ensure any capital improvement projects with an aggregate cost of $25,000 or more is utilized for a minimum of five (5) years from the date that the capital-improvement project is complete. SUBRECIPIENT will submit proof of completion of the improvement project to the COMMISSION. The value of the improvement project is listed in the BUDGET as attached and will be amortized over the 5-year period. If SUBRECIPIENT fails to utilize the improvement project as set forth in EXHIBIT A, SUBRECIPIENT will immediately reimburse the COMMISSION upon COMMISSION's written request, based on the following schedule:

Failure to use for 0-5 purposes Required Compensation

0 Months - 1 year after Completion	100% of the amounts paid under this agreement
1 year - 2 years after Completion	80% of the amounts paid under this agreement
2 years – 3 years after Completion	60% of the amounts paid under this agreement
3 years - 4 years after Completion	40% of the amounts paid under this agreement
4 years – 5 years after Completion	0% of the amounts paid under this agreement

EXHIBIT D:
COMPREHENSIVE TOBACCO CONTROL POLICY

As a material condition of the Contract, the SUBRECIPIENT shall agree that the SUBRECIPIENT and the SUBRECIPIENT'S employees, while receiving funding from the COMMISSION:

1. Shall not use tobacco products while using the SUBRECIPIENT'S property e.g., vehicle, equipment; and

2. Shall not sell, offer, or provide tobacco products on SUBRECIPIENT'S premises; and

3. Shall have tobacco education and cessation materials visibly available and accessible to clients participating in activities funded by Proposition 10 funds; and

4. Shall assure that the SUBRECIPIENT and its employees have no current business association or relationship with the tobacco industry, and further agrees to neither accept nor solicit financial contributions, sponsorships, gifts, or services from any tobacco company, executive, or tobacco-related function; and

5. Shall make a reasonable effort to divest of all investments in companies that derive fifteen percent (15%) or more of revenues from tobacco.

The COMMISSION may terminate for default or breach of this Contract and any other Contract SUBRECIPIENT has with the COMMISSION, if the SUBRECIPIENT or SUBRECIPIENT'S employees are determined by the COMMISSION Executive Director (or designee), not to be in compliance with the conditions set forth herein.

If SUBRECIPIENT or SUBRECIPIENT'S employees are determined by the COMMISSION Executive Director (or designee) not to be in compliance with the conditions set forth herein, the COMMISSION may terminate for default or breach of this Contract and any other Contract the COMMISSION has with the SUBRECIPIENT.

In instances where the SUBRECIPIENT is part of a larger entity, and where the entity has an investment policy set by governance officials other than the SUBRECIPIENT, and the SUBRECIPIENT is not directly involved in such investment decisions, SUBRECIPIENT agrees to the provisions herein as required in the programs and activities under the direct control of the SUBRECIPIENT to the satisfaction of the COMMISSION Executive Director (or designee). Activities of the larger entity other than investment decisions, which are not under the direct control of SUBRECIPIENT, shall not be considered to be in violation of SUBRECIPIENT'S activities pursuant to the policy.

EXHIBIT E:
FEDERAL PROVISIONS

1. ORDERS OF LOCAL, STATE, OR FEDERAL HEALTH OFFICIALS; EXECUTIVE ORDERS. County and SUBRECIPIENT mutually acknowledge that local, state, or federal authorities may issue official orders related to the COVID-19 epidemic, or take other official actions, subsequent to the execution of this Agreement that Parties to this Agreement cannot presently predict. County and Sub SUBRECIPIENT mutually acknowledge and agree that this Agreement shall be subject to the provisions of any such official action or order, particularly but not limited to Executive Orders of the Governor of the State of California and Orders of the County Public Health Officer, and the like ("Official Actions"), and if the provisions of any such Official Actions materially impact the terms of this Agreement, the provisions of those Official Actions shall govern.

    a. In the event that such Official Actions make the services provided to the County under this Agreement illegal, unlawful, or contrary to public policy, County shall provide written notice to SUBRECIPIENT in the manner described herein, and County and SUBRECIPIENT mutually agree that this Agreement shall terminate as of the date of that Official Action, at no penalty to County. In such an event, County shall pay outstanding fees to due to SUBRECIPIENT pro-rated from the date of the Official Action, along with all other remaining sums due to SUBRECIPIENT, within thirty (30) calendar days from the date of that Official Action.

    b. The parties acknowledge that SUBRECIPIENT is providing the services for emergency purposes at the request of the County under the California Emergency Services Act (the "Act" (California Government Code §§ 8550 et seq.)). Pursuant to California Government Code §8655, the County and as such, is subject to certain immunities with respect thereto and shall not be liable for any claim based upon the exercise or performance, or the failure to exercise or perform, a discretionary function or duty on the part of the County or any employee of the County in carrying out the provisions of the Act.

    c. SUBRECIPIENT acknowledges and agrees that this Agreement is subject to the federal Uniform Administrative Requirements, Cost principles, and Audit Requirements for Federal Awards (**2 C.F.R. Part 200),** including the federal provisions attached hereto, and incorporated herein. Should there be any conflict between the provisions of this Agreement and Exhibit F, the terms and conditions in Exhibit F shall govern, unless the more restrictive provision herein is otherwise required to control as a condition of FEMA funding.

    d. Should funding be allocated through American Rescue Plan Act (ARPA; (Title VI of the Social Security Act Section 602 et seq.), the COUNTY will administer and distribute those funds in accordance with ARPA. ARPA requires that payments from the Coronavirus Fiscal Recovery Fund be used to respond to the public health emergency or its negative economic impacts, to respond to workers performing essential work during the COVID-19 public health emergency by providing premium pay, provide government services to the

extent the reduction of revenue due to COVID-19 public health emergency, and to make necessary investments in water, sewer or broadband infrastructure. It is effective beginning May 17, 2021, and ends on December 31, 2024.

2. NON-DISCRIMINATION. SUBRECIPIENT shall not discriminate in the provision of services, allocation of benefits, accommodation in facilities, or employment of personnel on the basis of ethnic group identification, race, religious creed, color, national origin, ancestry, physical handicap, medical condition, marital status or sex in the performance of this Agreement; and, to the extent they shall be found to be applicable hereto, shall comply with the provisions of the California Fair Employment and Housing Act (Gov. Code 12900 et. seq), the Federal Civil Rights Act of 1964 (P.L. 88-352), the Americans with Disabilities Act of 1990 (42 U.S.C. S1210 et seq.) and all other applicable laws or regulations.

3. EQUAL EMPLOYMENT OPPORTUNITY/ FAIR EMPLOYMENT PRACTICES/ FEDERAL PROVISIONS. During the performance of this Agreement, the SUBRECIPIENT shall not deny benefits to any person on the basis of religion, color, ethnic group identification, sex, age, physical or mental disability, nor shall they discriminate unlawfully against any employee or applicant for employment because of race, religion, color, national origin, ancestry, physical handicap, mental disability, medical condition, marital status, age, or sex. SUBRECIPIENT shall ensure that the evaluation and treatment of employees and applicants for employment are free of such discrimination.

   a. SUBRECIPIENT shall comply with the provisions of the Fair Employment and Housing Act (Government Code, Section 12900 et seq.), the regulations promulgated thereunder (California Code of Regulations, Title 2, Section 11000 et seq.), the provisions of Executive Order 11246 of Sept. 23, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor, the provisions of Article 9.5, Chapter 1, Part 1, Division 3, Title 2 of the Government Code (Government Code, Sections 11135-11139.8), and of the rules, regulations or standards adopted by the County to implement such article.

   b. The SUBRECIPIENT shall comply with the provisions of the Copeland "Anti-Kickback" Act, 18 U.S.C. § 874, 40 U.S.C. § 3145, and the requirements of 29 C.F.R. pt. 3 as may be applicable, which are incorporated by reference into this Agreement.

4. OTHER FEDERAL PROVISIONS. SUBRECIPIENT acknowledges and agrees that this Agreement is subject to the federal requirements for seeking FEMA reimbursements, including the federal provisions provided below.

4.1 CLEAN AIR ACT.

The SUBRECIPIENT agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. Section 7401 et seq.

The SUBRECIPIENT agrees to report each violation to the County and understands and agrees that the County will, in turn, report each violation as required to assure notification to

the California Governor's Office of Emergency Services, Federal Emergency Management Agency (FEMA), and the appropriate Environmental Protection Agency Regional Office.

SUBRECIPIENT agrees to include these requirements in each sub-contract exceeding $150,000 financed in whole or in part with Federal assistance provided by FEMA.

4.2. FEDERAL WATER POLLUTION CONTROL ACT

SUBRECIPIENT agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. Sections 1251 et seq.

SUBRECIPIENT agrees to report each violation to the County and understands and agrees that the County will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency (FEMA) and the appropriate Environmental Protection Agency Regional Office.

SUBRECIPIENT agrees to include these requirements in each subcontract exceeding $150,000 financed in whole or in part with Federal assistance provided by FEMA.

4.3. DEBARMENT AND SUSPENSION CLAUSE

This Agreement is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such the SUBRECIPIENT is required to verify that none of the SUBRECIPIENT, its principals (defined at 2 C.F.R. § 180.995), or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).

SUBRECIPIENT must comply with 2 C.F.R. pt. 180, subpart C, and 2 C.F.R. pt. 3000, subpart C and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.

This certification is a material representation of fact relied upon by the County. If it is later determined that the SUBRECIPIENT did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to the County, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.

The bidder or proposer agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower-tier covered transactions.

4.4. BYRD ANTI- LOBBYING AMENDMENT, 31 U.S.C. § 1352 (AS AMENDED)

SUBRECIPIENTS who apply or bid for an award of $100,000 or more shall file the required certification. Each tier certifies to the tier above that it will not and has not used Federal

appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to SUBRECIPIENT who in turn will forward the certification(s) to the County.

Intentionally left blank

APPENDIX A, 44 C.F.R. PART 18- CERTIFICATION REGARDING LOBBYING

The undersigned SUBRECIPIENT certifies, to the best of his or her knowledge, that:

A. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

B. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

C. The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all SUBRECIPIENTS shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31, U.S.C. § 1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

SUBRECIPIENT certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure if any. In addition, SUBRECIPIENT understands and agrees that the provisions of 31 U.S.C. § 3801 et seq., apply to this certification and disclosure if any.

VIP TOTS, INC. SUBRECIPIENT

By _____
AUTHORIZED SIGNATORY
Date _____

4.5. PROCUREMENT OF RECOVERED MATERIALS

In the performance of this Agreement, the SUBRECIPIENT shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired:

i. Competitively within a timeframe providing for compliance with the contract performance schedule;
ii. Meeting contract performance requirements; or
iii. At a reasonable price.

Information about this requirement, along with the list of EPA-designated items, is available at EPA's Comprehensive Procurement Guidelines web-site, https://www.epa.gov/smm/product-resource-guides-comprehensive-procurement-guideline-cpg-program

SUBRECIPIENT also agrees to comply with all other applicable requirements of Section 6002 of the Solid Waste Disposal Act.

4.6. ACCESS TO RECORDS

The following access to records requirements apply to this Agreement:

i. The SUBRECIPIENT agrees to provide the County, the FEMA Administrator, the Comptroller General of the United States, or any of their authorized representatives access to any books, documents, papers, and records of the SUBRECIPIENT which are directly pertinent to this Agreement for the purposes of making audits, examinations, excerpts, and transcriptions.
ii. The SUBRECIPIENT agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
iii. The SUBRECIPIENT agrees to provide the FEMA Administrator or his or her authorized representatives access to construction or other work sites pertaining to the work being completed under the contract.
iv. In compliance with the Disaster Recovery Act of 2018, the County and the SUBRECIPIENT acknowledge and agree that no language in this contract is intended to prohibit audits or internal reviews by the FEMA Administrator or the Comptroller General of the United States.

4.7. DEPARTMENT OF HOMELAND SECURITY SEAL, LOGO, FLAGS

The SUBRECIPIENT shall not use the DHS seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific FEMA pre-approval.

4.8. COMPLIANCE WITH FEDERAL LAW, REGULATIONS, AND EXECUTIVE ORDERS

This is an acknowledgment that FEMA financial assistance will be used to fund all or a portion of the contract. The SUBRECIPIENT will comply with all applicable Federal law, regulations, executive orders, FEMA policies, procedures, and directives.

4.9. NO OBLIGATION BY FEDERAL GOVERNMENT

The Federal Government is not a party to this Agreement and is not subject to any obligations or liabilities to the non-Federal entity, SUBRECIPIENT, or any other party pertaining to any matter resulting from the contract.

4.10. PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS OR RELATED ACTS

The SUBRECIPIENT acknowledges that 31 U.S.C. Chapter 38 (Administrative Remedies for False Claims and Statements) applies to the Contractor's actions pertaining to this Agreement.

4.11. FEDERAL PREVAILING WAGE

A. DAVIS-BACON ACT COMPLIANCE (applicable to construction contracts in excess of $2,000 awarded by grantees and subgrantees when required by Federal grant program legislation)

B. To the extent required by any Federal grant programs applicable to expected funding or reimbursement expenses incurred in connection with the services provided under this Agreement, SUBRECIPIENT agrees to comply with the Davis-Bacon Act (40 U.S.C. §§ 3141-3144 and §§ 3146-3148) as supplemented by Department of Labor regulations (29 CFR Part 5) as set forth below.

C. The Contractor shall be bound to the provisions of the Davis-Bacon Act and agrees to be bound by all the provisions of Labor Code section 1771 regarding prevailing wages. All labor on this project shall be paid neither less than the greater of the minimum wage rates established by the U.S. Secretary of Labor (Federal Wage Rates), or by the State of California Director of Department of Industrial Relations (State Wage Rates). Current DIR requirements may be found at http://www.dir.ca.gov/lcp.asp. Additionally, wages are required to be paid not less than once a week.

D. The general prevailing wage rates may be accessed at the Department of Labor Home Page at www.wdol.gov. Under the Davis Bacon heading, click on "Selecting DBA WDs." In the drop-down menu for State, select, "California." In the drop-down menu for County, select "Riverside." In the drop-down menu for Construction Type, make the appropriate selection. Then, click Search.

E. The Federal minimum wage rates for this project are predetermined by the United States Secretary of Labor. If there is a difference between the minimum wage rates predetermined by the Secretary of Labor and the general prevailing wage rates determined by the Director of the California DIR for similar classifications of labor, the Contractor and subcontractors shall pay not less than the higher wage rate. The County will not accept lower State wage rates not specifically included in the Federal minimum wage determinations. This includes "helper" (or other classifications based on hours of experience) or any other classification not appearing in the Federal wage determinations. Where Federal wage determinations do not contain the State wage rate determination otherwise available for use by the Contractor and subcontractors, the Contractor and subcontractors shall pay not less than the Federal minimum wage rate which most closely approximates the duties of the employees in question.

4.12. CONTRACT WORK HOURS AND SAFETY STANDARDS (applicable to all contracts in excess of $100,000 that involve the employment of mechanics or laborers, but not to purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence)

A. Compliance: Subrecipient agrees that it shall comply with Sections 3702 and 3704 of the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 3701–3708) as supplemented by Department of Labor regulations (29 CFR Part 5), which are incorporated herein.

B. Overtime: No contractor or subcontractor contracting for any part of the work under this Agreement which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

C. Violation; liability for unpaid wages; liquidated damages: In the event of any violation of the provisions of paragraph B of this section, the Contractor and any subcontractor responsible therefore shall be liable for the unpaid wages. In addition, such Contractor and subcontractor shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic employed in violation of the provisions of paragraph B, in the sum of $10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by paragraph B.

D. Withholding for unpaid wages and liquidated damages: SUBRECIPIENT shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the SUBRECIPIENT or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or

subcontractor for unpaid wages and liquidated damages as provided in the clause set for in paragraph C of this section.

E. Subcontracts: SUBRECIPIENT or its subcontractor shall insert in any subcontracts the clauses set forth in paragraphs A through D of this section and also a clause requiring the subcontractors to include these clauses in any lower-tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower-tier subcontractor with the clauses set forth in paragraphs A through D of this section.

4.13. RIGHTS TO INVENTIONS MADE UNDER A CONTRACT OR AGREEMENT— Contracts or agreements for the performance of experimental, developmental, or research work shall provide for the rights of the Federal Government and the SUBRECIPIENT in any resulting invention in accordance with 37 CFR part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by HUD.

414. RIGHTS TO DATA AND COPYRIGHTS – SUBRECIPIENT, its Contractors, sub-contractors, and consultants agree to comply with all applicable provisions pertaining to the use of data and copyrights pursuant to 48 CFR Part 27.4, Federal Acquisition Regulations (FAR).

4.15. PROHIBITION ON CONTRACTING FOR COVERED TELECOMMUNICATIONS EQUIPMENT OR SERVICES

(a) Definitions. As used in this clause, the terms backhaul; covered foreign country; covered telecommunications equipment or services; interconnection arrangements; roaming; substantial or essential component; and telecommunications equipment or services have the meaning as defined in FEMA Policy, #405-143-1 Prohibitions on Expending FEMA Award Funds for Covered Telecommunications Equipment or Services As used in this clause.

(b) Prohibitions.
(1) Section 889(b) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019, Pub. L. No. 115-232, and 2 C.F.R. § 200.216 prohibit the head of an executive agency on or after Aug.13, 2020, from obligating or expending grant, cooperative agreement, loan, or loan guarantee funds on certain telecommunications products or from certain entities for national security reasons.
(2) Unless an exception in paragraph (c) of this clause applies, the contractor and its subcontractors may not use grant, cooperative agreement, loan, or loan guarantee funds from the Federal Emergency Management Agency to:
(i) Procure or obtain any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology of any system;
(ii) Enter into, extend, or renew a contract to procure or obtain any equipment, system, or service that uses covered telecommunications equipment or services as a

substantial or essential component of any system, or as critical technology of any system;

(iii) Enter into, extend, or renew contracts with entities that use covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system; or

(iv) Provide, as part of its performance of this contract, subcontract, or other contractual instrument, any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system.

(c) Exceptions.

(1) This clause does not prohibit contractors from providing:

a. A service that connects to the facilities of a third party, such as backhaul, roaming, or interconnection arrangements; or

b. Telecommunications equipment that cannot route or redirect user data traffic or permit visibility into any user data or packets that such equipment transmits or otherwise handles.

(2) By necessary implication and regulation, the prohibitions also do not apply to:

a. Covered telecommunications equipment or services that:

i. Are not used as a substantial or essential component of any system; and

ii. Are not used as critical technology of any system.

b. Other telecommunications equipment or services that are not considered covered telecommunications equipment or services.

(d) Reporting requirement.

(1) In the event the contractor identifies covered telecommunications equipment or services used as a substantial or essential component of any system, or as critical technology as part of any system, during contract performance, or the contractor is notified of such by a subcontractor at any tier or by any other source, the contractor shall report the information in paragraph (d)(2) of this clause to the SUBRECIPIENT or SUBRECIPIENT, unless elsewhere in this contract are established procedures for reporting the information.

(2) The Contractor shall report the following information pursuant to paragraph (d)(1) of this clause:

i) Within one business day from the date of such identification or notification: The contract number; the order number(s), if applicable; supplier name; supplier unique entity identifier (if known); supplier Commercial and Government Entity (CAGE) code (if known); brand; model number (original equipment manufacturer number, manufacturer part number, or wholesaler number); item description; and any readily available information about mitigation actions undertaken or recommended.

ii) Within 10 business days of submitting the information in paragraph (d)(2)(i) of this clause: Any further available information about mitigation actions undertaken or recommended. In addition, the contractor shall describe the efforts it undertook to

prevent use or submission of covered telecommunications equipment or services, and any additional efforts that will be incorporated to prevent future use or submission of covered telecommunications equipment or services.

(e) Subcontracts. The Contractor shall insert the substance of this clause, including this paragraph (e), in all subcontracts and other contractual instruments.

4.16 REPORTING OF MATTERS RELATED TO SUBRECIPIENT INTEGRITY AND PERFORMANCE

1. General Reporting Requirement

If the total value of your currently active grants, cooperative agreements, and procurement contracts from all Federal awarding agencies exceeds $10,000,000 for any period of time during the period of performance of this Federal award, then you as the SUBRECIPIENT during that period of time must maintain the currency of information reported to the System for Award Management (SAM) that is made available in the designated integrity and performance system (currently the Federal Awardee Performance and Integrity Information System (FAPIIS)) about civil, criminal, or administrative proceedings described in paragraph 2 of this award term and condition. This is a statutory requirement under section 872 of Public Law 110-417, as amended (41 U.S.C. 2313). As required by section 3010 of Public Law 111-212, all information posted in the designated integrity and performance system on or after April 15, 2011, except past performance reviews required for Federal procurement contracts, will be publicly available.

2. Proceedings About Which You Must Report

Submit the information required about each proceeding that:

a. Is in connection with the award or performance of a grant, cooperative agreement, or procurement contract from the Federal Government;
b. Reached its final disposition during the most recent five-year period; and
c. Is one of the following:
   (1) A criminal proceeding that resulted in a conviction, as defined in paragraph 5 of this award term and condition;
   (2) A civil proceeding that resulted in a finding of fault and liability and payment of a monetary fine, penalty, reimbursement, restitution, or damages of $5,000 or more;
   (3) An administrative proceeding, as defined in paragraph 5. of this award term and condition, that resulted in a finding of fault and liability and your payment of either a monetary fine or penalty of $5,000 or more or reimbursement, restitution, or damages in excess of $100,000; or
   (4) Any other criminal, civil, or administrative proceeding if:
      (i) It could have led to an outcome described in paragraph 2.c.(1), (2), or (3) of this award term and condition;
      (ii) It had a different disposition arrived at by consent or compromise with an acknowledgment of fault on your part; and

(iii) The requirement in this award term and condition to disclose information about the proceeding does not conflict with applicable laws and regulations.

3. Reporting Procedures

Enter in the SAM Entity Management area the information that SAM requires about each proceeding described in paragraph 2 of this award term and condition. You do not need to submit the information a second time under assistance awards that you received if you already provided the information through SAM because you were required to do so under Federal procurement contracts that you were awarded.

4. Reporting Frequency

During any period of time when you are subject to the requirement in paragraph 1 of this award term and condition, you must report proceedings information through SAM for the most recent five-year period, either to report new information about any proceeding(s) that you have not reported previously or affirm that there is no new information to report. SUBRECIPIENTs that have Federal contract, grant, and cooperative agreement awards with a cumulative total value greater than $10,000,000 must disclose semiannually any information about the criminal, civil, and administrative proceedings.

5. Definitions

For purposes of this award term and condition:

a. Administrative proceeding means a non-judicial process that is adjudicatory in nature in order to make a determination of fault or liability (*e.g.,* Securities and Exchange Commission Administrative proceedings, Civilian Board of Contract Appeals proceedings, and Armed Services Board of Contract Appeals proceedings). This includes proceedings at the Federal and State level but only in connection with performance of a Federal contract or grant. It does not include audits, site visits, corrective plans, or inspection of deliverables.

b. Conviction, for purposes of this award term and condition, means a judgment or conviction of a criminal offense by any court of competent jurisdiction, whether entered upon a verdict or a plea, and includes a conviction entered upon a plea of nolo contendere.

c. Total value of currently active grants, cooperative agreements, and procurement contracts includes –
   (1) Only the Federal share of the funding under any Federal award with a SUBRECIPIENT cost share or match; and
   (2) The value of all expected funding increments under a Federal award and options, even if not yet exercised.

EXHIBIT F:
AMERICAN RESCUE PLAN ACT – FINAL RULE

DEPARTMENT OF THE TREASURY

31 CFR Part 35

RIN 1505–AC77

Coronavirus State and Local Fiscal Recovery Funds

AGENCY: Department of the Treasury.

ACTION: Interim final rule.

SUMMARY: The Secretary of the Treasury (Treasury) is issuing this interim final rule to implement the Coronavirus State Fiscal Recovery Fund and the Coronavirus Local Fiscal Recovery Fund established under the American Rescue Plan Act.

DATES: *Effective date:* The provisions in this interim final rule are effective May 17, 2021.

Comment date: Comments must be received on or before July 16, 2021.

ADDRESSES: Please submit comments electronically through the Federal eRulemaking Portal: *http://www.regulations.gov.* Comments can be mailed to the Office of the Undersecretary for Domestic Finance, Department of the Treasury, 1500 Pennsylvania Avenue NW, Washington, DC 20220. Because postal mail may be subject to processing delay, it is recommended that comments be submitted electronically. All comments should be captions with "Coronavirus State and Local Fiscal Recovery Funds Interim Final Rule Comments." Please include your name, organization affiliation, address, email address and telephone number in your comment. Where appropriate, a comment should include a short executive summary.

In general, comments received will be posted on *http://www.regulations.gov* without change, including any business or personal information provided. Comments received, including attachments and other supporting materials, will be part of the public record and subject to public disclosure. Do not enclose any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

FOR FURTHER INFORMATION CONTACT: Katharine Richards, Senior Advisor, Office of Recovery Programs, Department of the Treasury, (844) 529–9527.

SUPPLEMENTARY INFORMATION:

I. Background Information

A. Overview

Since the first case of coronavirus disease 2019 (COVID–19) was discovered in the United States in January 2020, the disease has infected over 32 million and killed over 575,000 Americans.[1] The disease has impacted every part of life: As social distancing became a necessity, businesses closed, schools transitioned to remote education, travel was sharply reduced, and millions of Americans lost their jobs. In April 2020, the national unemployment rate reached its highest level in over seventy years following the most severe month-over-month decline in employment on record.[2] As of April 2021, there were still 8.2 million fewer jobs than before the pandemic.[3] During this time, a significant share of households have faced food and housing insecurity.[4] Economic disruptions impaired the flow of credit to households, State and local governments, and businesses of all sizes.[5] As businesses weathered closures and sharp declines in revenue, many were forced to shut down, especially small businesses.[6]

Amid this once-in-a-century crisis, State, territorial, Tribal, and local governments (State, local, and Tribal governments) have been called on to respond at an immense scale. Governments have faced myriad needs to prevent and address the spread of COVID–19, including testing, contact tracing, isolation and quarantine, public communications, issuance and enforcement of health orders, expansions to health system capacity like alternative care facilities, and in recent months, a massive nationwide mobilization around vaccinations. Governments also have supported major efforts to prevent COVID–19 spread through safety measures in settings like nursing homes, schools, congregate living settings, dense worksites, incarceration settings, and public facilities. The pandemic's impacts on behavioral health, including the toll of pandemic-related stress, have increased the need for behavioral health resources.

At the same time, State, local and Tribal governments launched major efforts to address the economic impacts of the pandemic. These efforts have been tailored to the needs of their communities and have included expanded assistance to unemployed workers; food assistance; rent, mortgage, and utility support; cash assistance; internet access programs; expanded services to support individuals experiencing homelessness; support for individuals with disabilities and older adults; and assistance to small businesses facing closures or revenue loss or implementing new safety measures.

In responding to the public health emergency and its negative economic impacts, State, local, and Tribal governments have seen substantial increases in costs to provide these services, often amid substantial declines in revenue due to the economic downturn and changing economic patterns during the pandemic.[7] Facing these budget challenges, many State, local, and Tribal governments have been forced to make cuts to services or their workforces, or delay critical investments. From February to May of 2020, State, local, and Tribal governments reduced their workforces by more than 1.5 million jobs and, in April of 2021, State, local, and Tribal government employment remained nearly 1.3 million jobs below pre-pandemic levels.[8] These cuts to State, local, and Tribal government workforces

[1] Centers for Disease Control and Prevention, COVID Data Tracker, *http://www.covid.cdc.gov/covid-data-tracker/#datatracker-home* (last visited May 8, 2021).

[2] U.S. Bureau of Labor Statistics, Unemployment Rate [UNRATE], retrieved from FRED, Federal Reserve Bank of St. Louis; *https://fred.stlouisfed.org/series/UNRATE,* May 3, 2021. U.S. Bureau of Labor Statistics, Employment Level [LNU02000000], retrieved from FRED, Federal Reserve Bank of St. Louis; *https://fred.stlouisfed.org/series/LNU02000000,* May 3, 2021.

[3] U.S. Bureau of Labor Statistics, All Employees, Total Nonfarm [PAYEMS], retrieved from FRED, Federal Reserve Bank of St. Louis; *https://fred.stlouisfed.org/series/PAYEMS,* May 7, 2021.

[4] Nirmita Panchal et al., The Implications of COVID–19 for Mental Health and Substance Abuse (Feb. 10, 2021), https://www.kff.org/coronavirus-covid-19/issue-brief/the-implications-of-covid-19-for-mental-health-and-substance-use/#:~:text=Older%20adults%20are%20also%20more,prior%20to%20the%20current%20crisis; U.S. Census Bureau, Household Pulse Survey: Measuring Social and Economic Impacts during the Coronavirus Pandemic, https://www.census.gov/programs-surveys/household-pulse-survey.html (last visited Apr. 26, 2021); Rebecca T. Leeb et al., Mental Health-Related Emergency Department Visits Among Children Aged <18 Years During the COVID Pandemic—United States, January 1—October 17, 2020, Morb. Mortal. Wkly. Rep. 69(45):1675–80 (Nov. 13, 2020), *https://www.cdc.gov/mmwr/volumes/69/wr/mm6945a3.htm.*

[5] Board of Governors of the Federal Reserve System, Monetary Policy Report (June 12, 2020), *https://www.federalreserve.gov/monetarypolicy/2020-06-mpr-summary.htm.*

[6] Joseph R. Biden, Remarks by President Biden on Helping Small Businesses (Feb. 22, 2021), *https://www.whitehouse.gov/briefing-room/speeches-remarks/2021/02/22/remarks-by-president-biden-on-helping-small-businesses/.*

[7] Michael Leachman, House Budget Bill Provides Needed Fiscal Aid for States, Localities, Tribal Nations, and Territories (Feb. 10, 2021), *https://www.cbpp.org/research/state-budget-and-tax/house-budget-bill-provides-needed-fiscal-aid-for-states-localities.*

[8] U.S. Bureau of Labor Statistics, All Employees, State Government [CES9092000001] and All Employees, Local Government [CES9093000001], retrieved from FRED, Federal Reserve Bank of St. Louis, *https://fred.stlouisfed.org/series/CES9092000001* and *https://fred.stlouisfed.org/series/CES9093000001* (last visited May 8, 2021).

come at a time when demand for government services is high, with State, local, and Tribal governments on the frontlines of fighting the pandemic. Furthermore, State, local, and Tribal government austerity measures can hamper overall economic growth, as occurred in the recovery from the Great Recession.[9]

Finally, although the pandemic's impacts have been widespread, both the public health and economic impacts of the pandemic have fallen most severely on communities and populations disadvantaged before it began. Low-income communities, people of color, and Tribal communities have faced higher rates of infection, hospitalization, and death,[10] as well as higher rates of unemployment and lack of basic necessities like food and housing.[11] Pre-existing social vulnerabilities magnified the pandemic in these communities, where a reduced ability to work from home and, frequently, denser housing amplified the risk of infection. Higher rates of pre-existing health conditions also may have contributed to more severe COVID–19 health outcomes.[12] Similarly, communities or households facing economic insecurity before the pandemic were less able to weather business closures, job losses, or declines in earnings and were less able to participate in remote work or education due to the inequities in access to reliable and affordable broadband infrastructure.[13] Finally, though schools in all areas faced challenges, those in high poverty areas had fewer resources to adapt to remote and hybrid learning models.[14] Unfortunately, the pandemic also has reversed many gains made by communities of color in the prior economic expansion.[15]

B. The Statute and Interim Final Rule

On March 11, 2021, the American Rescue Plan Act (ARPA) was signed into law by the President.[16] Section 9901 of ARPA amended Title VI of the Social Security Act[17] (the Act) to add section 602, which establishes the Coronavirus State Fiscal Recovery Fund, and section 603, which establishes the Coronavirus Local Fiscal Recovery Fund (together, the Fiscal Recovery Funds).[18] The Fiscal Recovery Funds are intended to provide support to State, local, and Tribal governments (together, recipients) in responding to the impact of COVID–19 and in their efforts to contain COVID–19 on their communities, residents, and businesses. The Fiscal Recovery Funds build on and expand the support provided to these governments over the last year, including through the Coronavirus Relief Fund (CRF).[19]

Through the Fiscal Recovery Funds, Congress provided State, local, and Tribal governments with significant resources to respond to the COVID–19 public health emergency and its economic impacts through four categories of eligible uses. Section 602 and section 603 contain the same eligible uses; the primary difference between the two sections is that section 602 establishes a fund for States, territories, and Tribal governments and section 603 establishes a fund for metropolitan cities, nonentitlement units of local government, and counties. Sections 602(c)(1) and 603(c)(1) provide that funds may be used:

(a) To respond to the public health emergency or its negative economic impacts, including assistance to households, small businesses, and nonprofits, or aid to impacted industries such as tourism, travel, and hospitality;

(b) To respond to workers performing essential work during the COVID–19 public health emergency by providing premium pay to eligible workers;

(c) For the provision of government services to the extent of the reduction in revenue due to the COVID–19 public health emergency relative to revenues collected in the most recent full fiscal year prior to the emergency; and

(d) To make necessary investments in water, sewer, or broadband infrastructure.

In addition, Congress clarified two types of uses which do not fall within these four categories. Sections 602(c)(2)(B) and 603(c)(2) provide that these eligible uses do not include, and thus funds may not be used for, depositing funds into any pension fund. Section 602(c)(2)(A) also provides, for States and territories, that the eligible uses do not include "directly or indirectly offset[ting] a reduction in the net tax revenue of [the] State or territory resulting from a change in law, regulation, or administrative interpretation."

The ARPA provides a substantial infusion of resources to meet pandemic response needs and rebuild a stronger, more equitable economy as the country recovers. First, payments from the Fiscal Recovery Funds help to ensure that State, local, and Tribal governments have the resources needed to continue to take actions to decrease the spread of COVID–19 and bring the pandemic under control. Payments from the Fiscal Recovery Funds may also be used by recipients to provide support for costs incurred in addressing public health and economic challenges resulting from the pandemic, including resources to offer premium pay to essential workers, in recognition of their sacrifices over the

[9] Tracy Gordon, State and Local Budgets and the Great Recession, Brookings Institution (Dec. 31, 2012), *http://www.brookings.edu/articles/state-and-local-budgets-and-the-great-recession.*

[10] Sebastian D. Romano et al., Trends in Racial and Ethnic Disparities in COVID–19 Hospitalizations, by Region—United States, March–December 2020, MMWR Morb Mortal Wkly Rep 2021, 70:560–565 (Apr. 16, 2021), *https://www.cdc.gov/mmwr/volumes/70/wr/mm7015e2.htm?s_cid=mm7015e2_w.*

[11] Center on Budget and Policy Priorities, Tracking the COVID–19 Recession's Effects on Food, Housing, and Employment Hardships, *https://www.cbpp.org/research/poverty-and-inequality/tracking-the-covid-19-recessions-effects-on-housing-and* (last visited May 4, 2021).

[12] Lisa R. Fortuna et al., Inequity and the Disproportionate Impact of COVID–19 on Communities of Color in the United States: The Need for Trauma-Informed Social Justice Response, Psychological Trauma Vol. 12(5):443–45 (2020), *available at https://psycnet.apa.org/fulltext/2020-37320-001.pdf.*

[13] Emily Vogles et al., 53% of Americans Say the internet Has Been Essential During the COVID–19 Outbreak (Apr. 30, 2020), *https://www.pewresearch.org/internet/2020/04/30/53-of-americans-say-the-internet-has-been-essential-during-the-covid-19-outbreak/.*

[14] Emma Dorn et al., COVID–19 and student learning in the United States: The hurt could last a lifetime (June 2020), *https://webtest.childrensinstitute.net/sites/default/files/documents/COVID-19-and-student-learning-in-the-United-States_FINAL.pdf;* Andrew Bacher-Hicks et al., Inequality in Household Adaptation to Schooling Shocks: Covid-Induced Online Engagement in Real Time, J. of Public Econ. Vol. 193(C) (July 2020), *available at https://www.nber.org/papers/w27555.*

[15] *See, e.g.,* Tyler Atkinson & Alex Richter, Pandemic Disproportionately Affects Women, Minority Labor Force Participation, *https://www.dallasfed.org/research/economics/2020/1110* (last visited May 9, 2021); Jared Bernstein & Janelle Jones, The Impact of the COVID19 Recession on the Jobs and Incomes of Persons of Color, *https://www.cbpp.org/sites/default/files/atoms/files/6-2-20bud_0.pdf* (last visited May 9, 2021).

[16] American Rescue Plan Act of 2021 (ARPA), sec. 9901, Public Law 117–2, codified at 42 U.S.C. 802 *et seq.* The term "state" as used in this **SUPPLEMENTARY INFORMATION** and defined in section 602 of the Act means each of the 50 States and the District of Columbia. The term "territory" as used in this **SUPPLEMENTARY INFORMATION** and defined in section 602 of the Act means the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, the Commonwealth of Northern Mariana Islands, and American Samoa. Tribal government is defined in the Act and the interim final rule to mean "the recognized governing body of any Indian or Alaska Native tribe, band, nation, pueblo, village, community, component band, or component reservation, individually identified (including parenthetically) in the list published most recently as of the date of enactment of the [American Rescue Plan Act] pursuant to section 104 of the Federally Recognized Indian Tribe List Act of 1994 (25 U.S.C. 5131)." See section 602(g)(7) of the Social Security Act, as added by the American Rescue Plan Act. On January 29, 2021, the Bureau of Indian Affairs published a current list of 574 Tribal entities. See 86 FR 7554, January 29, 2021. The term "local governments" as used in this **SUPPLEMENTARY INFORMATION** includes metropolitan cities, counties, and nonentitlement units of local government.

[17] 42 U.S.C. 801 *et seq.*

[18] Sections 602, 603 of the Act.

[19] The CRF was established by the section 601 of the Act as added by the Coronavirus Aid, Relief, and Economic Security Act (CARES Act), Public Law 116–136, 134 Stat. 281 (2020).

last year. Recipients may also use payments from the Fiscal Recovery Funds to replace State, local, and Tribal government revenue lost due to COVID–19, helping to ensure that governments can continue to provide needed services and avoid cuts or layoffs. Finally, these resources lay the foundation for a strong, equitable economic recovery, not only by providing immediate economic stabilization for households and businesses, but also by addressing the systemic public health and economic challenges that may have contributed to more severe impacts of the pandemic among low-income communities and people of color.

Within the eligible use categories outlined in the Fiscal Recovery Funds provisions of ARPA, State, local, and Tribal governments have flexibility to determine how best to use payments from the Fiscal Recovery Funds to meet the needs of their communities and populations. The interim final rule facilitates swift and effective implementation by establishing a framework for determining the types of programs and services that are eligible under the ARPA along with examples of uses that State, local, and Tribal governments may consider. These uses build on eligible expenditures under the CRF, including some expansions in eligible uses to respond to the public health emergency, such as vaccination campaigns. They also reflect changes in the needs of communities, as evidenced by, for example, nationwide data demonstrating disproportionate impacts of the COVID–19 public health emergency on certain populations, geographies, and economic sectors. The interim final rule takes into consideration these disproportionate impacts by recognizing a broad range of eligible uses to help States, local, and Tribal governments support the families, businesses, and communities hardest hit by the COVID–19 public health emergency.

Implementation of the Fiscal Recovery Funds also reflect the importance of public input, transparency, and accountability. Treasury seeks comment on all aspects of the interim final rule and, to better facilitate public comment, has included specific questions throughout this **SUPPLEMENTARY INFORMATION.** Treasury encourages State, local, and Tribal governments in particular to provide feedback and to engage with Treasury regarding issues that may arise regarding all aspects of this interim final rule and Treasury's work in administering the Fiscal Recovery Funds. In addition, the interim final rule establishes certain regular reporting requirements, including by requiring State, local, and Tribal governments to publish information regarding uses of Fiscal Recovery Funds payments in their local jurisdiction. These reporting requirements reflect the need for transparency and accountability, while recognizing and minimizing the burden, particularly for smaller local governments. Treasury urges State, territorial, Tribal, and local governments to engage their constituents and communities in developing plans to use these payments, given the scale of funding and its potential to catalyze broader economic recovery and rebuilding.

II. Eligible Uses

A. Public Health and Economic Impacts

Sections 602(c)(1)(A) and 603(c)(1)(A) provide significant resources for State, territorial, Tribal governments, and counties, metropolitan cities, and nonentitlement units of local governments (each referred to as a recipient) to meet the wide range of public health and economic impacts of the COVID–19 public health emergency.

These provisions authorize the use of payments from the Fiscal Recovery Funds to respond to the public health emergency with respect to COVID–19 or its negative economic impacts. Section 602 and section 603 also describe several types of uses that would be responsive to the impacts of the COVID–19 public health emergency, including assistance to households, small businesses, and nonprofits and aid to impacted industries, such as tourism, travel, and hospitality.[20]

Accordingly, to assess whether a program or service is included in this category of eligible uses, a recipient should consider whether and how the use would respond to the COVID–19 public health emergency. Assessing whether a program or service "responds to" the COVID–19 public health emergency requires the recipient to, first, identify a need or negative impact of the COVID–19 public health emergency and, second, identify how the program, service, or other intervention addresses the identified need or impact. While the COVID–19 public health emergency affected many aspects of American life, eligible uses under this category must be in response to the disease itself or the harmful consequences of the economic disruptions resulting from or exacerbated by the COVID–19 public health emergency.

The interim final rule implements these provisions by identifying a non-exclusive list of programs or services that may be funded as responding to COVID–19 or the negative economic impacts of the COVID–19 public health emergency, along with considerations for evaluating other potential uses of the Fiscal Recovery Funds not explicitly listed. The interim final rule also provides flexibility for recipients to use payments from the Fiscal Recovery Funds for programs or services that are not identified on these non-exclusive lists but that fall under the terms of section 602(c)(1)(A) or 603(c)(1)(A) by responding to the COVID–19 public health emergency or its negative economic impacts. As an example, in determining whether a program or service responds to the negative economic impacts of the COVID–19 public health emergency, the interim final rule provides that payments from the Fiscal Recovery Funds should be designed to address an economic harm resulting from or exacerbated by the public health emergency. Recipients should assess the connection between the negative economic harm and the COVID–19 public health emergency, the nature and extent of that harm, and how the use of this funding would address such harm.

As discussed, the pandemic and the necessary actions taken to control the spread had a severe impact on households and small businesses, including in particular low-income workers and communities and people of color. While eligible uses under sections 602(c)(1)(A) and 603(c)(1)(A) provide flexibility to recipients to identify the most pressing local needs, Treasury encourages recipients to provide assistance to those households, businesses, and non-profits in communities most disproportionately impacted by the pandemic.

1. Responding to COVID–19

On January 21, 2020, the Centers for Disease Control and Prevention (CDC) identified the first case of novel coronavirus in the United States.[21] By late March, the virus had spread to many States and the first wave was growing rapidly, centered in the northeast.[22] This wave brought acute

[20] Sections 602(c)(1)(A), 603(c)(1)(A) of the Act.

[21] Press Release, Centers for Disease Control and Prevention, First Travel-related Case of 2019 Novel Coronavirus Detected in United States (Jan. 21, 2020), *https://www.cdc.gov/media/releases/2020/p0121-novel-coronavirus-travel-case.html.*

[22] Anne Schuchat et al., Public Health Response to the Initiation and Spread of Pandemic COVID–19 in the United States, February 24–April 21, 2021, MMWR Morb Mortal Wkly Rep 2021, 69(18):551–56 (May 8, 2021), *https://www.cdc.gov/mmwr/volumes/69/wr/mm6918e2.htm.*

strain on health care and public health systems: Hospitals and emergency medical services struggled to manage a major influx of patients; response personnel faced shortages of personal protective equipment; testing for the virus was scarce; and congregate living facilities like nursing homes and prisons saw rapid spread. State, local, and Tribal governments mobilized to support the health care system, issue public health orders to mitigate virus spread, and communicate safety measures to the public. The United States has since faced at least two additional COVID–19 waves that brought many similar challenges: The second in the summer, centered in the south and southwest, and a wave throughout the fall and winter, in which the virus reached a point of uncontrolled spread across the country and over 3,000 people died per day.[23] By early May 2021, the United States has experienced over 32 million confirmed COVID–19 cases and over 575,000 deaths.[24]

Mitigating the impact of COVID–19, including taking actions to control its spread and support hospitals and health care workers caring for the sick, continues to require a major public health response from State, local and Tribal governments. New or heightened public health needs include COVID–19 testing, major expansions in contact tracing, support for individuals in isolation or quarantine, enforcement of public health orders, new public communication efforts, public health surveillance (*e.g.,* monitoring case trends and genomic sequencing for variants), enhancement to health care capacity through alternative care facilities, and enhancement of public health data systems to meet new demands or scaling needs. State, local, and Tribal governments have also supported major efforts to prevent COVID–19 spread through safety measures at key settings like nursing homes, schools, congregate living settings, dense worksites, incarceration settings, and in other public facilities. This has included implementing infection prevention measures or making ventilation improvements in congregate settings, health care settings, or other key locations.

Other response and adaptation costs include capital investments in public facilities to meet pandemic operational needs, such as physical plant improvements to public hospitals and health clinics or adaptations to public buildings to implement COVID–19 mitigation tactics. In recent months, State, local, and Tribal governments across the country have mobilized to support the national vaccination campaign, resulting in over 250 million doses administered to date.[25]

The need for public health measures to respond to COVID–19 will continue in the months and potentially years to come. This includes the continuation of the vaccination campaign for the general public and, if vaccinations are approved for children in the future, eventually for youths. This also includes monitoring the spread of COVID–19 variants, understanding the impact of these variants (especially on vaccination efforts), developing approaches to respond to those variants, and monitoring global COVID–19 trends to understand continued risks to the United States. Finally, the long-term health impacts of COVID–19 will continue to require a public health response, including medical services for individuals with "long COVID," and research to understand how COVID–19 impacts future health needs and raises risks for the millions of Americans who have been infected.

Other areas of public health have also been negatively impacted by the COVID–19 pandemic. For example, in one survey in January 2021, over 40 percent of American adults reported symptoms of depression or anxiety, up from 11 percent in the first half of 2019.[26] The proportion of children's emergency department visits related to mental health has also risen noticeably.[27] Similarly, rates of substance misuse and overdose deaths have spiked: Preliminary data from the CDC show a nearly 30 percent increase in drug overdose mortality from September 2019 to September 2020.[28] Stay-at-home orders and other pandemic responses may have also reduced the ability of individuals affected by domestic violence to access services.[29] Finally, some preventative public health measures like childhood vaccinations have been deferred and potentially forgone.[30]

While the pandemic affected communities across the country, it disproportionately impacted some demographic groups and exacerbated health inequities along racial, ethnic, and socioeconomic lines.[31] The CDC has found that racial and ethnic minorities are at increased risk for infection, hospitalization, and death from COVID–19, with Hispanic or Latino and Native American or Alaska Native patients at highest risk.[32]

Similarly, low-income and socially vulnerable communities have seen the most severe health impacts. For example, counties with high poverty rates also have the highest rates of infections and deaths, with 223 deaths per 100,000 compared to the U.S. average of 175 deaths per 100,000, as of May 2021.[33] Counties with high social vulnerability, as measured by factors such as poverty and educational attainment, have also fared more poorly than the national average, with 211 deaths per 100,000 as of May 2021.[34]

[23] Centers for Disease Control and Prevention, COVID Data Tracker: Trends in Number of COVID–19 Cases and Deaths in the US Reported to CDC, by State/Territory, *https://covid.cdc.gov/covid-data-tracker/#trends_dailytrendscases* (last visited May 8, 2021).

[24] *Id.*

[25] Centers for Disease Control and Prevention, COVID Data Tracker: COVID–19 Vaccinations in the United States, *https://covid.cdc.gov/covid-data-tracker/#vaccinations* (last visited May 8, 2021).

[26] Panchal, *supra* note 4; Mark É. Czeisler et al., Mental Health, Substance Abuse, and Suicidal Ideation During COVID–19 Pandemic– United States, June 24–30 2020, Morb. Mortal. Wkly. Rep. 69(32):1049–57 (Aug. 14, 2020), *https://www.cdc.gov/mmwr/volumes/69/wr/mm6932a1.htm.*

[27] Leeb, *supra* note 4.

[28] Centers for Disease Prevention and Control, National Center for Health Statistics, Provisional Drug Overdose Death Counts, *https://www.cdc.gov/nchs/nvss/vsrr/drug-overdose-data.htm* (last visited May 8, 2021).

[29] Megan L. Evans, et al., A Pandemic within a Pandemic—Intimate Partner Violence during Covid–19, N. Engl. J. Med. 383:2302–04 (Dec. 10, 2020), *available at https://www.nejm.org/doi/full/10.1056/NEJMp2024046.*

[30] Jeanne M. Santoli et al., Effects of the COVID–19 Pandemic on Routine Pediatric Vaccine Ordering and Administration—United States, Morb. Mortal. Wkly. Rep. 69(19):591–93 (May 8, 2020), *https://www.cdc.gov/mmwr/volumes/69/wr/mm6919e2.htm;* Marisa Langdon-Embry et al., Notes from the Field: Rebound in Routine Childhood Vaccine Administration Following Decline During the COVID–19 Pandemic—New York City, March 1–June 27, 2020, Morb. Mortal. Wkly. Rep. 69(30):999–1001 (Jul. 31 2020), *https://www.cdc.gov/mmwr/volumes/69/wr/mm6930a3.htm.*

[31] Office of the White House, National Strategy for the COVID–19 Response and Pandemic Preparedness (Jan. 21, 2021), *https://www.whitehouse.gov/wp-content/uploads/2021/01/National-Strategy-for-the-COVID-19-Response-and-Pandemic-Preparedness.pdf.*

[32] In a study of 13 states from October to December 2020, the CDC found that Hispanic or Latino and Native American or Alaska Native individuals were 1.7 times more likely to visit an emergency room for COVID–19 than White individuals, and Black individuals were 1.4 times more likely to do so than White individuals. *See* Romano, *supra* note 10.

[33] Centers for Disease Control and Prevention, COVID Data Tracker: Trends in COVID–19 Cases and Deaths in the United States, by County-level Population Factors, *https://covid.cdc.gov/covid-data-tracker/#pop-factors_totaldeaths* (last visited May 8, 2021).

[34] The CDC's Social Vulnerability Index includes fifteen variables measuring social vulnerability, including unemployment, poverty, education levels, single-parent households, disability status, non-English speaking households, crowded housing, and transportation access.

Centers for Disease Control and Prevention, COVID Data Tracker: Trends in COVID–19 Cases

Continued

Over the last year, Native Americans have experienced more than one and a half times the rate of COVID–19 infections, more than triple the rate of hospitalizations, and more than double the death rate compared to White Americans.[35] Low-income and minority communities also exhibit higher rates of pre-existing conditions that may contribute to an increased risk of COVID–19 mortality.[36]

In addition, individuals living in low-income communities may have had more limited ability to socially distance or to self-isolate when ill, resulting in faster spread of the virus, and were over-represented among essential workers, who faced greater risk of exposure.[37] Social distancing measures in response to the pandemic may have also exacerbated pre-existing public health challenges. For example, for children living in homes with lead paint, spending substantially more time at home raises the risk of developing elevated blood lead levels, while screenings for elevated blood lead levels declined during the pandemic.[38] The combination of these underlying social and health vulnerabilities may have contributed to more severe public health outcomes of the pandemic within these communities, resulting in an exacerbation of pre-existing disparities in health outcomes.[39]

Eligible Public Health Uses. The Fiscal Recovery Funds provide resources to meet and address these emergent public health needs, including through measures to counter the spread of COVID–19, through the provision of care for those impacted by the virus, and through programs or services that address disparities in public health that have been exacerbated by the pandemic. To facilitate implementation and use of payments from the Fiscal Recovery Funds, the interim final rule identifies a non-exclusive list of eligible uses of funding to respond to the COVID–19 public health emergency. Eligible uses listed under this section build and expand upon permissible expenditures under the CRF, while recognizing the differences between the ARPA and CARES Act, and recognizing that the response to the COVID–19 public health emergency has changed and will continue to change over time. To assess whether additional uses would be eligible under this category, recipients should identify an effect of COVID–19 on public health, including either or both of immediate effects or effects that may manifest over months or years, and assess how the use would respond to or address the identified need.

The interim final rule identifies a non-exclusive list of uses that address the effects of the COVID–19 public health emergency, including:

- *COVID–19 Mitigation and Prevention.* A broad range of services and programming are needed to contain COVID–19. Mitigation and prevention efforts for COVID–19 include vaccination programs; medical care; testing; contact tracing; support for isolation or quarantine; supports for vulnerable populations to access medical or public health services; public health surveillance (*e.g.*, monitoring case trends, genomic sequencing for variants); enforcement of public health orders; public communication efforts; enhancement to health care capacity, including through alternative care facilities; purchases of personal protective equipment; support for prevention, mitigation, or other services in congregate living facilities (*e.g.*, nursing homes, incarceration settings, homeless shelters, group living facilities) and other key settings like schools;[40] ventilation improvements in congregate settings, health care settings, or other key locations; enhancement of public health data systems; and other public health responses.[41] They also include capital investments in public facilities to meet pandemic operational needs, such as physical plant improvements to public hospitals and health clinics or adaptations to public buildings to implement COVID–19 mitigation tactics. These COVID–19 prevention and mitigation programs and services, among others, were eligible expenditures under the CRF and are eligible uses under this category of eligible uses for the Fiscal Recovery Funds.[42]
- *Medical Expenses.* The COVID–19 public health emergency continues to have devastating effects on public health; the United States continues to average hundreds of deaths per day and the spread of new COVID–19 variants has raised new risks and genomic surveillance needs.[43] Moreover, our understanding of the potentially serious and long-term effects of the virus is growing, including the potential for symptoms like shortness of breath to continue for weeks or months, for multi-organ impacts from COVID–19, or for post-intensive care syndrome.[44] State and local governments may need to continue to provide care and services to address these near- and longer-term needs.[45]

and Deaths in the United States, by Social Vulnerability Index, *https://covid.cdc.gov/covid-data-tracker/#pop-factors_totaldeaths* (last visited May 8, 2021).

[35] Centers for Disease Control and Prevention, Risk for COVID–19 Infection, Hospitalization, and Death By Race/Ethnicity, *https://www.cdc.gov/coronavirus/2019-ncov/covid-data/investigations-discovery/hospitalization-death-by-race-ethnicity.html* (last visited Apr. 26, 2021).

[36] *See, e.g.*, Centers for Disease Control and Prevention, Risk of Severe Illness or Death from COVID–19 (Dec. 10, 2020), *https://www.cdc.gov/coronavirus/2019-ncov/community/health-equity/racial-ethnic-disparities/disparities-illness.html* (last visited Apr. 26, 2021).

[37] Milena Almagro et al., Racial Disparities in Frontline Workers and Housing Crowding During COVID–19: Evidence from Geolocation Data (Sept. 22, 2020), NYU Stern School of Business (forthcoming), *available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3695249;* Grace McCormack et al., Economic Vulnerability of Households with Essential Workers, JAMA 324(4):388–90 (2020), *available at https://jamanetwork.com/journals/jama/fullarticle/2767630.*

[38] *See, e.g.*, Joseph G. Courtney et al., Decreases in Young Children Who Received Blood Lead Level Testing During COVID–19—34 Jurisdictions, January–May 2020, Morb. Mort. Wkly. Rep. 70(5):155–61 (Feb. 5, 2021), *https://www.cdc.gov/mmwr/volumes/70/wr/mm7005a2.htm;* Emily A. Benfer & Lindsay F. Wiley, Health Justice Strategies to Combat COVID–19: Protecting Vulnerable Communities During a Pandemic, Health Affairs Blog (Mar. 19, 2020), *https://www.healthaffairs.org/do/10.1377/hblog20200319.757883/full/.*

[39] *See, e.g.*, Centers for Disease Control and Prevention, *supra* note 34; Benfer & Wiley, *supra* note 38; Nathaniel M. Lewis et al., Disparities in COVID–19 Incidence, Hospitalizations, and Testing, by Area-Level Deprivation—Utah, March 3–July 9, 2020, Morb. Mortal. Wkly. Rep. 69(38):1369–73 (Sept. 25, 2020), *https://www.cdc.gov/mmwr/volumes/69/wr/mm6938a4.htm.*

[40] This includes implementing mitigation strategies consistent with the Centers for Disease Control and Prevention's (CDC) Operational Strategy for K–12 Schools through Phased Prevention, *available at https://www.cdc.gov/coronavirus/2019-ncov/community/schools-childcare/operation-strategy.html.*

[41] Many of these expenses were also eligible in the CRF. Generally, funding uses eligible under CRF as a response to the direct public health impacts of COVID–19 will continue to be eligible under the ARPA, including those not explicitly listed here (*e.g.*, telemedicine costs, costs to facilitate compliance with public health orders, disinfection of public areas, facilitating distance learning, increased solid waste disposal needs related to PPE, paid sick and paid family and medical leave to public employees to enable compliance with COVID–19 public health precautions), with the following two exceptions: (1) The standard for eligibility of public health and safety payrolls has been updated (see section II.A of this **SUPPLEMENTARY INFORMATION**) and (2) expenses related to the issuance of tax-anticipation notes are no longer an eligible funding use (see discussion of debt service in section II.B of this **SUPPLEMENTARY INFORMATION**).

[42] Coronavirus Relief Fund for States, Tribal Governments, and Certain Eligible Local Governments, 86 FR 4182 (Jan. 15, 2021), *available at https://home.treasury.gov/system/files/136/CRF-Guidance-Federal-Register_2021-00827.pdf.*

[43] Centers for Disease Control and Prevention, *supra* note 24.

[44] Centers for Disease Control and Prevention, Long-Term Effects (Apr. 8, 2021), *https://www.cdc.gov/coronavirus/2019-ncov/long-term-effects.html* (last visited Apr. 26, 2021).

[45] Pursuant to 42 CFR 433.51 and 45 CFR 75.306, Fiscal Recovery Funds may not serve as a State or locality's contribution of certain Federal funds.

• *Behavioral Health Care.* In addition, new or enhanced State, local, and Tribal government services may be needed to meet behavioral health needs exacerbated by the pandemic and respond to other public health impacts. These services include mental health treatment, substance misuse treatment, other behavioral health services, hotlines or warmlines, crisis intervention, overdose prevention, infectious disease prevention, and services or outreach to promote access to physical or behavioral health primary care and preventative medicine.

• *Public Health and Safety Staff.* Treasury recognizes that responding to the public health and negative economic impacts of the pandemic, including administering the services described above, requires a substantial commitment of State, local, and Tribal government human resources. As a result, the Fiscal Recovery Funds may be used for payroll and covered benefits expenses for public safety, public health, health care, human services, and similar employees, to the extent that their services are devoted to mitigating or responding to the COVID–19 public health emergency.[46] Accordingly, the Fiscal Recovery Funds may be used to support the payroll and covered benefits for the portion of the employee's time that is dedicated to responding to the COVID–19 public health emergency. For administrative convenience, the recipient may consider public health and safety employees to be entirely devoted to mitigating or responding to the COVID–19 public health emergency, and therefore fully covered, if the employee, or his or her operating unit or division, is primarily dedicated to responding to the COVID–19 public health emergency. Recipients may consider other presumptions for assessing the extent to which an employee, division, or operating unit is engaged in activities that respond to the COVID–19 public health emergency, provided that the recipient reassesses periodically and maintains records to support its assessment, such as payroll records, attestations from supervisors or staff, or regular work product or correspondence demonstrating work on the COVID–19 response. Recipients need not routinely track staff hours.

• *Expenses to Improve the Design and Execution of Health and Public Health Programs.* State, local, and Tribal governments may use payments from the Fiscal Recovery Funds to engage in planning and analysis in order to improve programs addressing the COVID–19 pandemic, including through use of targeted consumer outreach, improvements to data or technology infrastructure, impact evaluations, and data analysis.

Eligible Uses to Address Disparities in Public Health Outcomes. In addition, in recognition of the disproportionate impacts of the COVID–19 pandemic on health outcomes in low-income and Native American communities and the importance of mitigating these effects, the interim final rule identifies a broader range of services and programs that will be presumed to be responding to the public health emergency when provided in these communities. Specifically, Treasury will presume that certain types of services, outlined below, are eligible uses when provided in a Qualified Census Tract (QCT),[47] to families living in QCTs, or when these services are provided by Tribal governments.[48] Recipients may also provide these services to other populations, households, or geographic areas that are disproportionately impacted by the pandemic. In identifying these disproportionately-impacted communities, recipients should be able to support their determination that the pandemic resulted in disproportionate public health or economic outcomes to the specific populations, households, or geographic areas to be served.

Given the exacerbation of health disparities during the pandemic and the role of pre-existing social vulnerabilities in driving these disparate outcomes, services to address health disparities are presumed to be responsive to the public health impacts of the pandemic. Specifically, recipients may use payments from the Fiscal Recovery Funds to facilitate access to resources that improve health outcomes, including services that connect residents with health care resources and public assistance programs and build healthier environments, such as:

• Funding community health workers to help community members access health services and services to address the social determinants of health;[49]

• Funding public benefits navigators to assist community members with navigating and applying for available Federal, State, and local public benefits or services;

• Housing services to support healthy living environments and neighborhoods conducive to mental and physical wellness;

• Remediation of lead paint or other lead hazards to reduce risk of elevated blood lead levels among children; and

• Evidence-based community violence intervention programs to prevent violence and mitigate the increase in violence during the pandemic.[50]

2. Responding to Negative Economic Impacts

Impacts on Households and Individuals. The public health emergency, including the necessary measures taken to protect public health, resulted in significant economic and financial hardship for many Americans. As businesses closed, consumers stayed home, schools shifted to remote

[46] In general, if an employee's wages and salaries are an eligible use of Fiscal Recovery Funds, recipients may treat the employee's covered benefits as an eligible use of Fiscal Recovery Funds. For purposes of the Fiscal Recovery Funds, covered benefits include costs of all types of leave (vacation, family-related, sick, military, bereavement, sabbatical, jury duty), employee insurance (health, life, dental, vision), retirement (pensions, 401(k)), unemployment benefit plans (Federal and state), workers compensation insurance, and Federal Insurance Contributions Act (FICA) taxes (which includes Social Security and Medicare taxes).

[47] Qualified Census Tracts are a common, readily-accessible, and geographically granular method of identifying communities with a large proportion of low-income residents. Using an existing measure may speed implementation and decrease administrative burden, while identifying areas of need at a highly-localized level.

While QCTs are an effective tool generally, many tribal communities have households with a wide range of income levels due in part to non-tribal member, high income residents living in the community. Mixed income communities, with a significant share of tribal members at the lowest levels of income, are often not included as eligible QCTs yet tribal residents are experiencing disproportionate impacts due to the pandemic. Therefore, including all services provided by Tribal governments is a more effective means of ensuring that disproportionately impacted Tribal members can receive services.

[48] U.S. Department of Housing and Urban Development (HUD), Qualified Census Tracts and Difficult Development Areas, *https://www.huduser.gov/portal/datasets/qct.html* (last visited Apr. 26, 2021); U.S. Department of the Interior, Bureau of Indian Affairs, Indian Lands of Federally Recognized Tribes of the United States (June 2016), *https://www.bia.gov/sites/bia.gov/files/assets/bia/ots/webteam/pdf/idc1-028635.pdf* (last visited Apr. 26, 2021).

[49] The social determinants of health are the social and environmental conditions that affect health outcomes, specifically economic stability, health care access, social context, neighborhoods and built environment, and education access. *See, e.g.,* U.S. Department of Health and Human Services, Office of Disease Prevention and Health Promotion, Healthy People 2030: Social Determinants of Health, *https://health.gov/healthypeople/objectives-and-data/social-determinants-health* (last visited Apr. 26, 2021).

[50] National Commission on COVID–19 and Criminal Justice, Impact Report: COVID–19 and Crime (Jan. 31, 2021), *https://covid19.councilonci.org/2021/01/31/impact-report-covid-19-and-crime-3/* (showing a spike in homicide and assaults); Brad Boesrup et al., Alarming Trends in US domestic violence during the COVID–19 pandemic, Am. J. of Emerg. Med. 38(12): 2753–55 (Dec. 1, 2020), *available at https://www.ajemjournal.com/article/S0735-6757(20)30307-7/fulltext* (showing a spike in domestic violence).

education, and travel declined precipitously, over 20 million jobs were lost in March and April 2020.[51] Although many have returned to work, as of April 2021, the economy remains 8.2 million jobs below its pre-pandemic peak,[52] and more than 3 million workers have dropped out of the labor market altogether relative to February 2020.[53]

Rates of unemployment are particularly severe among workers of color and workers with lower levels of educational attainment; for example, the overall unemployment rate in the United States was 6.1 percent in April 2021, but certain groups saw much higher rates: 9.7 percent for Black workers, 7.9 percent for Hispanic or Latino workers, and 9.3 percent for workers without a high school diploma.[54] Job losses have also been particularly steep among low wage workers, with these workers remaining furthest from recovery as of the end of 2020.[55] A severe recession—and its concentrated impact among low-income workers—has amplified food and housing insecurity, with an estimated nearly 17 million adults living in households where there is sometimes or often not enough food to eat and an estimated 10.7 million adults living in households that were not current on rent.[56] Over the course of the pandemic, inequities also manifested along gender lines, as schools closed to in-person activities, leaving many working families without child care during the day.[57] Women of color have been hit especially hard: The labor force participation rate for Black women has fallen by 3.2 percentage points [58] during the pandemic as compared to 1.0 percentage points for Black men [59] and 2.0 percentage points for White women.[60]

As the economy recovers, the effects of the pandemic-related recession may continue to impact households, including a risk of longer-term effects on earnings and economic potential. For example, unemployed workers, especially those who have experienced longer periods of unemployment, earn lower wages over the long term once rehired.[61] In addition to the labor market consequences for unemployed workers, recessions can also cause longer-term economic challenges through, among other factors, damaged consumer credit scores [62] and reduced familial and childhood wellbeing.[63] These potential long-term economic consequences underscore the continued need for robust policy support.

Impacts on Businesses. The pandemic has also severely impacted many businesses, with small businesses hit especially hard. Small businesses make up nearly half of U.S. private-sector employment [64] and play a key role in supporting the overall economic recovery as they are responsible for two-thirds of net new jobs.[65] Since the beginning of the pandemic, however, 400,000 small businesses have closed, with many more at risk.[66] Sectors with a large share of small business employment have been among those with the most drastic drops in employment.[67] The negative outlook for small businesses has continued: As of April 2021, approximately 70 percent of small businesses reported that the pandemic has had a moderate or large negative effect on their business, and over a third expect that it will take over 6 months for their business to return to their normal level of operations.[68]

This negative outlook is likely the result of many small businesses having faced periods of closure and having seen declining revenues as customers stayed home.[69] In general, small businesses can face greater hurdles in accessing credit,[70] and many small businesses were already financially fragile at the outset of the pandemic.[71] Non-profits, which provide vital services to communities, have similarly faced

[51] U.S. Bureau of Labor Statistics, All Employees, Total Nonfarm (PAYEMS), retrieved from FRED, Federal Reserve Bank of St. Louis; *https://fred.stlouisfed.org/series/PAYEMS* (last visited May 8, 2021).

[52] *Id.*

[53] U.S. Bureau of Labor Statistics, Civilian Labor Force Level [CLF16OV], retrieved from FRED, Federal Reserve Bank of St. Louis, *https://fred.stlouisfed.org/series/CLF16OV* (last visited May 8, 2021).

[54] U.S. Bureau of Labor Statistics, Labor Force Statistics from the Current Population Survey: Employment status of the civilian population by sex and age (May 8 2021), *https://www.bls.gov/news.release/empsit.t01.htm* (last visited May 8, 2021); U.S. Bureau of Labor Statistics, Labor Force Statistics from the Current Population Survey: Employment status of the civilian noninstitutional population by race, Hispanic or Latino ethnicity, sex, and age (May 8, 2021), *https://www.bls.gov/web/empsit/cpseea04.htm* (last visited May 8, 2021); U.S. Bureau of Labor Statistics, Labor Force Statistics from the Current Population Survey: Employment status of the civilian noninstitutional population 25 years and over by educational attainment (May 8, 2021), *https://www.bls.gov/web/empsit/cpseea05.htm* (last visited May 8, 2021).

[55] Elise Gould & Jori Kandra, Wages grew in 2020 because the bottom fell out of the low-wage labor market, Economic Policy Institute (Feb. 24, 2021), *https://files.epi.org/pdf/219418.pdf. See also,* Michael Dalton et al., The K-Shaped Recovery: Examining the Diverging Fortunes of Workers in the Recovery from the COVID–19 Pandemic using Business and Household Survey Microdata, U.S. Bureau of Labor Statistics Working Paper Series (Feb. 2021), *https://www.bls.gov/osmr/research-papers/2021/pdf/ec210020.pdf.*

[56] Center on Budget and Policy Priorities, Tracking the COVID–19 Recession's Effects on Food, Housing, and Employment Hardships, *https://www.cbpp.org/research/poverty-and-inequality/tracking-the-covid-19-recessions-effects-on-food-housing-and* (last visited May 8, 2021).

[57] Women have carried a larger share of childcare responsibilities than men during the COVID–19 crisis. *See, e.g.,* Gema Zamarro & María J. Prados, Gender differences in couples' division of childcare, work and mental health during COVID–19, Rev. Econ. Household 19:11–40 (2021), *available at https://link.springer.com/article/10.1007/s11150-020-09534-7;* Titan Alon et al., The Impact of COVID–19 on Gender Equality, National Bureau of Economic Research Working Paper 26947 (April 2020), *available at https://www.nber.org/papers/w26947.*

[58] U.S. Bureau of Labor Statistics, Labor Force Participation Rate—20 Yrs. & Over, Black or African American Women [LNS11300032], retrieved from FRED, Federal Reserve Bank of St. Louis; *https://fred.stlouisfed.org/series/LNS11300032* (last visited May 8, 2021).

[59] U.S. Bureau of Labor Statistics, Labor Force Participation Rate—20 Yrs. & Over, Black or African American Men [LNS11300031], retrieved from FRED, Federal Reserve Bank of St. Louis; *https://fred.stlouisfed.org/series/LNS11300031* (last visited May 8, 2021).

[60] U.S. Bureau of Labor Statistics, Labor Force Participation Rate—20 Yrs. & Over, White Women [LNS11300029], retrieved from FRED, Federal Reserve Bank of St. Louis; *https://fred.stlouisfed.org/series/LNS11300029* (last visited May 8, 2021).

[61] *See, e.g.,* Michael Greenstone & Adam Looney, Unemployment and Earnings Losses: A Look at Long-Term Impacts of the Great Recession on American Workers, Brookings Institution (Nov. 4, 2021), *https://www.brookings.edu/blog/jobs/2011/11/04/unemployment-and-earnings-losses-a-look-at-long-term-impacts-of-the-great-recession-on-american-workers/.*

[62] Chi Chi Wu, Solving the Credit Conundrum: Helping Consumers' Credit Records Impaired by the Foreclosure Crisis and Great Recession (Dec. 2013), *https://www.nclc.org/images/pdf/credit_reports/report-credit-conundrum-2013.pdf.*

[63] Irwin Garfinkel, Sara McLanahan, Christopher Wimer, eds., Children of the Great Recession, Russell Sage Foundation (Aug. 2016), *available at https://www.russellsage.org/publications/children-great-recession.*

[64] Board of Governors of the Federal Reserve System, *supra* note 5.

[65] U.S. Small Business Administration, Office of Advocacy, Small Businesses Generate 44 Percent of U.S. Economic Activity (Jan. 30, 2019), *https://advocacy.sba.gov/2019/01/30/small-businesses-generate-44-percent-of-u-s-economic-activity/.*

[66] Biden, *supra* note 6.

[67] Daniel Wilmoth, U.S. Small Business Administration Office of Advocacy, The Effects of the COVID–19 Pandemic on Small Businesses, Issue Brief No. 16 (Mar. 2021), *available at https://cdn.advocacy.sba.gov/wp-content/uploads/2021/03/02112318/COVID-19-Impact-On-Small-Business.pdf.*

[68] U.S. Census Bureau, Small Business Pulse Survey, *https://portal.census.gov/pulse/data/* (last visited May 8, 2021).

[69] Olivia S. Kim et al., Revenue Collapses and the Consumption of Small Business Owners in the Early Stages of the COVID–19 Pandemic (Nov. 2020), *https://www.nber.org/papers/w28151.*

[70] *See e.g.,* Board of Governors of the Federal Reserve System, Report to Congress on the Availability of Credit to Small Businesses (Sept. 2017), *available at https://www.federalreserve.gov/publications/2017-september-availability-of-credit-to-small-businesses.htm.*

[71] Alexander W. Bartik et al., The Impact of COVID–19 on small business outcomes and expectations, PNAS 117(30): 17656–66 (July 28, 2020), *available at https://www.pnas.org/content/117/30/17656.*

economic and financial challenges due to the pandemic.[72]

Impacts to State, Local, and Tribal Governments. State, local, and Tribal governments have felt substantial fiscal pressures. As noted above, State, local, and Tribal governments have faced significant revenue shortfalls and remain over 1 million jobs below their pre-pandemic staffing levels.[73] These reductions in staffing may undermine the ability to deliver services effectively, as well as add to the number of unemployed individuals in their jurisdictions.

Exacerbation of Pre-existing Disparities. The COVID–19 public health emergency may have lasting negative effects on economic outcomes, particularly in exacerbating disparities that existed prior to the pandemic.

The negative economic impacts of the COVID–19 pandemic are particularly pronounced in certain communities and families. Low- and moderate-income jobs make up a substantial portion of both total pandemic job losses,[74] and jobs that require in-person frontline work, which are exposed to greater risk of contracting COVID–19.[75] Both factors compound pre-existing vulnerabilities and the likelihood of food, housing, or other financial insecurity in low- and moderate-income families and, given the concentration of low- and moderate-income families within certain communities,[76] raise a substantial risk that the effects of the COVID–19 public health emergency will be amplified within these communities.

These compounding effect of recessions on concentrated poverty and the long-lasting nature of this effect were observed after the 2007–2009 recession, including a large increase in concentrated poverty with the number of people living in extremely poor neighborhoods more than doubling by 2010–2014 relative to 2000.[77] Concentrated poverty has a range of deleterious impacts, including additional burdens on families and reduced economic potential and social cohesion.[78] Given the disproportionate impact of COVID–19 on low-income households discussed above, there is a risk that the current pandemic-induced recession could further increase concentrated poverty and cause long-term damage to economic prospects in neighborhoods of concentrated poverty.

The negative economic impacts of COVID–19 also include significant impacts to children in disproportionately affected families and include impacts to education, health, and welfare, all of which contribute to long-term economic outcomes.[79] Many low-income and minority students, who were disproportionately served by remote or hybrid education during the pandemic, lacked the resources to participate fully in remote schooling or live in households without adults available throughout the day to assist with online coursework.[80] Given these trends, the pandemic may widen educational disparities and worsen outcomes for low-income students,[81] an effect that would substantially impact their long-term economic outcomes. Increased economic strain or material hardship due to the pandemic could also have a long-term impact on health, educational, and economic outcomes of young children.[82] Evidence suggests that adverse conditions in early childhood, including exposure to poverty, food insecurity, housing insecurity, or other economic hardships, are particularly impactful.[83]

The pandemic's disproportionate economic impacts are also seen in Tribal communities across the country—for Tribal governments as well as families and businesses on and off Tribal lands. In the early months of the pandemic, Native American unemployment spiked to 26 percent and, while partially recovered, remains at nearly 11 percent.[84] Tribal enterprises are a significant source of revenue for Tribal governments to support the provision of government services. These enterprises, notably concentrated in gaming, tourism, and hospitality, frequently closed, significantly reducing both revenues to Tribal governments and employment. As a result, Tribal governments have reduced essential services to their citizens and communities.[85]

Eligible Uses. Sections 602(c)(1)(A) and 603(c)(1)(A) permit use of payments from the Fiscal Recovery Funds to respond to the negative economic impacts of the COVID–19 public health emergency. Eligible uses that respond to the negative economic impacts of the public health emergency must be designed to address an economic harm resulting from or exacerbated by the public health emergency. In considering whether a program or service would be

[72] Federal Reserve Bank of San Francisco, Impacts of COVID–19 on Nonprofits in the Western United States (May 2020), *https://www.frbsf.org/community-development/files/impact-of-covid-nonprofits-serving-western-united-states.pdf.*

[73] Bureau of Labor Statistics, *supra* note 8; Elijah Moreno & Heather Sobrepena, Tribal entities remain resilient as COVID–19 batters their finances, Federal Reserve Bank of Minneapolis (Nov. 10, 2021), *https://www.minneapolisfed.org/article/2020/tribal-entities-remain-resilient-as-covid-19-batters-their-finances.*

[74] Kim Parker et al., Economic Fallout from COVID–19 Continues to Hit Lower-Income Americans the Hardest, Pew Research Center (Sept. 24, 2020), *https://www.pewresearch.org/social-trends/2020/09/24/economic-fallout-from-covid-19-continues-to-hit-lower-income-americans-the-hardest/;* Gould, *supra* note 55.

[75] *See infra* Section II.B of this Supplementary Information.

[76] Elizabeth Kneebone, The Changing geography of US poverty, Brookings Institution (Feb. 15, 2017), *https://www.brookings.edu/testimonies/the-changing-geography-of-us-poverty/.*

[77] Elizabeth Kneebone & Natalie Holmes, U.S. concentrated poverty in the wake of the Great Recession, Brookings Institution (Mar. 31, 2016), *https://www.brookings.edu/research/u-s-concentrated-poverty-in-the-wake-of-the-great-recession/.*

[78] David Erickson et al., The Enduring Challenge of Concentrated Poverty in America: Case Studies from Communities Across the U.S. (2008), *available at https://www.frbsf.org/community-development/files/cp_fullreport.pdf.*

[79] Educational quality, as early as Kindergarten, has a long-term impact on children's public health and economic outcomes. *See, e.g.,* Tyler W. Watts et al., The Chicago School Readiness Project: Examining the long-term impacts of an early childhood intervention, PLoS ONE 13(7) (2018), *available at https://journals.plos.org/plosone/article?id=10.1371/journal.pone.0200144;* Opportunity Insights, How Can We Amplify Education as an Engine of Mobility? Using big data to help children get the most from school, *https://opportunityinsights.org/education/* (last visited Apr. 26, 2021); U.S. Department of Health and Human Services (HHS), Office of Disease Prevention and Health Promotion, Early Childhood Development and Education, *https://www.healthypeople.gov/2020/topics-objectives/topic/social-determinants-health/interventions-resources/early-childhood-development-and-education* (last visited Apr. 26, 2021).

[80] *See, e.g.,* Bacher-Hicks, *supra* note 14.

[81] A Department of Education survey found that, as of February 2021, 42 percent of fourth grade students nationwide were offered only remote education, compared to 48 percent of economically disadvantaged students, 54 percent of Black students and 57 percent of Hispanic students. Large districts often disproportionately serve low-income students. *See* Institute of Education Sciences, Monthly School Survey Dashboard, *https://ies.ed.gov/schoolsurvey/* (last visited Apr. 26, 2021). In summer 2020, a review found that 74 percent of the largest 100 districts chose remote learning only. *See* Education Week, School Districts' Reopening Plans: A Snapshot (Jul. 15, 2020), *https://www.edweek.org/leadership/school-districts-reopening-plans-a-snapshot/2020/07* (last visited May 4, 2021).

[82] HHS, *supra* note 79.

[83] Hirokazu Yoshikawa, Effects of the Global Coronavirus Disease—2019 Pandemic on Early Childhood Development: Short- and Long-Term Risks and Mitigating Program and Policy Actions, J. of Pediatrics Vol. 223:188–93 (Aug. 1, 2020), *available at https://www.jpeds.com/article/S0022-3476(20)30606-5/abstract.*

[84] Based on calculations conducted by the Minneapolis Fed's Center for Indian Country Development using Flood et al. (2020)'s Current Population Survey." Sarah Flood, Miriam King, Renae Rodgers, Steven Ruggles and J. Robert Warren. Integrated Public Use Microdata Series, Current Population Survey: Version 8.0 [dataset]. Minneapolis, MN: IPUMS, 2020. *https://doi.org/10.18128/D030.V8.0; see also* Donna Feir & Charles Golding, Native Employment During COVID–19: Hard hit in April but Starting to Rebound? (Aug. 5, 2020), *https://www.minneapolisfed.org/article/2020/native-employment-during-covid-19-hit-hard-in-april-but-starting-to-rebound.*

[85] Moreno & Sobrepena, *supra* note 73.

eligible under this category, the recipient should assess whether, and the extent to which, there has been an economic harm, such as loss of earnings or revenue, that resulted from the COVID–19 public health emergency and whether, and the extent to which, the use would respond or address this harm.[86] A recipient should first consider whether an economic harm exists and whether this harm was caused or made worse by the COVID–19 public health emergency. While economic impacts may either be immediate or delayed, assistance or aid to individuals or businesses that did not experience a negative economic impact from the public health emergency would not be an eligible use under this category.

In addition, the eligible use must "respond to" the identified negative economic impact. Responses must be related and reasonably proportional to the extent and type of harm experienced; uses that bear no relation or are grossly disproportionate to the type or extent of harm experienced would not be eligible uses. Where there has been a negative economic impact resulting from the public health emergency, States, local, and Tribal governments have broad latitude to choose whether and how to use the Fiscal Recovery Funds to respond to and address the negative economic impact. Sections 602(c)(1)(A) and 603(c)(1)(A) describe several types of uses that would be eligible under this category, including assistance to households, small businesses, and nonprofits and aid to impacted industries such as tourism, travel, and hospitality.

To facilitate implementation and use of payments from the Fiscal Recovery Funds, the interim final rule identifies a non-exclusive list of eligible uses of funding that respond to the negative economic impacts of the public health emergency. Consistent with the discussion above, the eligible uses listed below would respond directly to the economic or financial harms resulting from and or exacerbated by the public health emergency.

- *Assistance to Unemployed Workers.* This includes assistance to unemployed workers, including services like job training to accelerate rehiring of unemployed workers; these services may extend to workers unemployed due to the pandemic or the resulting recession, or who were already unemployed when the pandemic began and remain so due to the negative economic impacts of the pandemic.
- *State Unemployment Insurance Trust Funds.* Consistent with the approach taken in the CRF, recipients may make deposits into the state account of the Unemployment Trust Fund established under section 904 of the Social Security Act (42 U.S.C. 1104) up to the level needed to restore the pre-pandemic balances of such account as of January 27, 2020 or to pay back advances received under Title XII of the Social Security Act (42 U.S.C. 1321) for the payment of benefits between January 27, 2020 and May 17, 2021, given the close nexus between Unemployment Trust Fund costs, solvency of Unemployment Trust Fund systems, and pandemic economic impacts. Further, Unemployment Trust Fund deposits can decrease fiscal strain on Unemployment Insurance systems impacted by the pandemic. States facing a sharp increase in Unemployment Insurance claims during the pandemic may have drawn down positive Unemployment Trust Fund balances and, after exhausting the balance, required advances to fund continuing obligations to claimants. Because both of these impacts were driven directly by the need for assistance to unemployed workers during the pandemic, replenishing Unemployment Trust Funds up to the pre-pandemic level responds to the pandemic's negative economic impacts on unemployed workers.
- *Assistance to Households.* Assistance to households or populations facing negative economic impacts due to COVID–19 is also an eligible use. This includes: Food assistance; rent, mortgage, or utility assistance; counseling and legal aid to prevent eviction or homelessness; cash assistance (discussed below); emergency assistance for burials, home repairs, weatherization, or other needs; internet access or digital literacy assistance; or job training to address negative economic or public health impacts experienced due to a worker's occupation or level of training. As discussed above, in considering whether a potential use is eligible under this category, a recipient must consider whether, and the extent to which, the household has experienced a negative economic impact from the pandemic. In assessing whether a household or population experienced economic harm as a result of the pandemic, a recipient may presume that a household or population that experienced unemployment or increased food or housing insecurity or is low- or moderate-income experienced negative economic impacts resulting from the pandemic. For example, a cash transfer program may focus on unemployed workers or low- and moderate-income families, which have faced disproportionate economic harms due to the pandemic. Cash transfers must be reasonably proportional to the negative economic impact they are intended to address. Cash transfers grossly in excess of the amount needed to address the negative economic impact identified by the recipient would not be considered to be a response to the COVID–19 public health emergency or its negative impacts. In particular, when considering the appropriate size of permissible cash transfers made in response to the COVID–19 public health emergency, State, local and Tribal governments may consider and take guidance from the per person amounts previously provided by the Federal Government in response to the COVID–19 crisis. Cash transfers that are grossly in excess of such amounts would be outside the scope of eligible uses under sections 602(c)(1)(A) and 603(c)(1)(A) and could be subject to recoupment. In addition, a recipient could provide survivor's benefits to surviving family members of COVID–19 victims, or cash assistance to widows, widowers, and dependents of eligible COVID–19 victims.
- *Expenses to Improve Efficacy of Economic Relief Programs.* State, local, and Tribal governments may use payments from the Fiscal Recovery Funds to improve efficacy of programs addressing negative economic impacts, including through use of data analysis, targeted consumer outreach, improvements to data or technology infrastructure, and impact evaluations.
- *Small Businesses and Non-profits.* As discussed above, small businesses and non-profits faced significant challenges in covering payroll, mortgages or rent, and other operating costs as a result of the public health emergency and measures taken to contain the spread of the virus. State, local, and Tribal governments may provide assistance to small businesses to adopt safer operating procedures, weather periods of closure, or mitigate financial hardship resulting from the COVID–19 public health emergency, including:
  - Loans or grants to mitigate financial hardship such as declines in revenues or impacts of periods of business closure, for example by supporting payroll and benefits costs, costs to retain employees, mortgage, rent, or utilities costs, and other operating costs;
  - Loans, grants, or in-kind assistance to implement COVID–19 prevention or mitigation tactics, such as physical

[86] In some cases, a use may be permissible under another eligible use category even if it falls outside the scope of section (c)(1)(A) of the Act.

plant changes to enable social distancing, enhanced cleaning efforts, barriers or partitions, or COVID–19 vaccination, testing, or contact tracing programs; and

○ Technical assistance, counseling, or other services to assist with business planning needs.

As discussed above, these services should respond to the negative economic impacts of COVID–19. Recipients may consider additional criteria to target assistance to businesses in need, including small businesses. Such criteria may include businesses facing financial insecurity, substantial declines in gross receipts (*e.g.*, comparable to measures used to assess eligibility for the Paycheck Protection Program), or other economic harm due to the pandemic, as well as businesses with less capacity to weather financial hardship, such as the smallest businesses, those with less access to credit, or those serving disadvantaged communities. Recipients should consider local economic conditions and business data when establishing such criteria.[87]

• *Rehiring State, Local, and Tribal Government Staff.* State, local, and Tribal governments continue to see pandemic impacts in overall staffing levels: State, local, and Tribal government employment remains more than 1 million jobs lower in April 2021 than prior to the pandemic.[88] Employment losses decrease a state or local government's ability to effectively administer services. Thus, the interim final rule includes as an eligible use payroll, covered benefits, and other costs associated with rehiring public sector staff, up to the pre-pandemic staffing level of the government.

• *Aid to Impacted Industries.* Sections 602(c)(1)(A) and 603(c)(1)(A) recognize that certain industries, such as tourism, travel, and hospitality, were disproportionately and negatively impacted by the COVID–19 public health emergency. Aid provided to tourism, travel, and hospitality industries should respond to the negative economic impacts of the pandemic on those and similarly impacted industries. For example, aid may include assistance to implement COVID–19 mitigation and infection prevention measures to enable safe resumption of tourism, travel, and hospitality services, for example, improvements to ventilation, physical barriers or partitions, signage to facilitate social distancing, provision of masks or personal protective equipment, or consultation with infection prevention professionals to develop safe reopening plans.

Aid may be considered responsive to the negative economic impacts of the pandemic if it supports businesses, attractions, business districts, and Tribal development districts operating prior to the pandemic and affected by required closures and other efforts to contain the pandemic. For example, a recipient may provide aid to support safe reopening of businesses in the tourism, travel, and hospitality industries and to business districts that were closed during the COVID–19 public health emergency, as well as aid for a planned expansion or upgrade of tourism, travel, and hospitality facilities delayed due to the pandemic.

When considering providing aid to industries other than tourism, travel, and hospitality, recipients should consider the extent of the economic impact as compared to tourism, travel, and hospitality, the industries enumerated in the statute. For example, on net, the leisure and hospitality industry has experienced an approximately 24 percent decline in revenue and approximately 17 percent decline in employment nationwide due to the COVID–19 public health emergency.[89] Recipients should also consider whether impacts were due to the COVID–19 pandemic, as opposed to longer-term economic or industrial trends unrelated to the pandemic.

To facilitate transparency and accountability, the interim final rule requires that State, local, and Tribal governments publicly report assistance provided to private-sector businesses under this eligible use, including tourism, travel, hospitality, and other impacted industries, and its connection to negative economic impacts of the pandemic. Recipients also should maintain records to support their assessment of how businesses or business districts receiving assistance were affected by the negative economic impacts of the pandemic and how the aid provided responds to these impacts.

As discussed above, economic disparities that existed prior to the COVID–19 public health emergency amplified the impact of the pandemic among low-income and minority groups. These families were more likely to face housing, food, and financial insecurity; are over-represented among low-wage workers; and many have seen their livelihoods deteriorate further during the pandemic and economic contraction. In recognition of the disproportionate negative economic impacts on certain communities and populations, the interim final rule identifies services and programs that will be presumed to be responding to the negative economic impacts of the COVID–19 public health emergency when provided in these communities.

Specifically, Treasury will presume that certain types of services, outlined below, are eligible uses when provided in a QCT, to families and individuals living in QCTs, or when these services are provided by Tribal governments.[90] Recipients may also provide these services to other populations, households, or geographic areas disproportionately impacted by the pandemic. In identifying these disproportionately impacted communities, recipients should be able to support their determination that the pandemic resulted in disproportionate public health or economic outcomes to the specific populations, households, or geographic areas to be served. The interim final rule identifies a non-exclusive list of uses that address the disproportionate negative economic effects of the COVID–19 public health emergency, including:

○ *Building Stronger Communities through Investments in Housing and Neighborhoods.* The economic impacts of COVID–19 have likely been most acute in lower-income neighborhoods, including concentrated areas of high unemployment, limited economic opportunity, and housing insecurity.[91]

[87] *See* Federal Reserve Bank of Cleveland, An Uphill Battle: COVID–19's Outsized Toll on Minority-Owned Firms (Oct. 8, 2020), *https://www.clevelandfed.org/newsroom-and-events/publications/community-development-briefs/db-20201008-misera-report.aspx* (discussing the impact of COVID–19 on minority owned businesses).

[88] U.S. Bureau of Labor Statistics, All Employees, State Government [CES9092000001] and All Employees, Local Government [CES9093000001], retrieved from FRED, Federal Reserve Bank of St. Louis, *https://fred.stlouisfed.org/series/CES9092000001* and *https://fred.stlouisfed.org/series/CES9093000001* (last visited May 8, 2021).

[89] From February 2020 to April 2021, employment in "Leisure and hospitality" has fallen by approximately 17 percent. *See* U.S. Bureau of Labor Statistics, All Employees, Leisure and Hospitality, retrieved from FRED, Federal Reserve Bank of St. Louis, *https://fred.stlouisfed.org/series/USLAH* (last visited May 8, 2021). From 2019Q4 to 2020Q4, gross output (*e.g.* revenue) in arts, entertainment, recreation, accommodation, and food services has fallen by approximately 24 percent. *See* Bureau of Economic Analysis, News Release: Gross Domestic Product (Third Estimate), Corporate Profits, and GDP by Industry, Fourth Quarter and Year 2020 (Mar. 25, 2021), Table 17, *https://www.bea.gov/sites/default/files/2021-03/gdp4q20_3rd.pdf.*

[90] HUD, *supra* note 48.

[91] Stuart M. Butler & Jonathan Grabinsky, Tackling the legacy of persistent urban inequality and concentrated poverty, Brookings Institution (Nov. 16, 2020), *https://www.brookings.edu/blog/up-front/2020/11/16/tackling-the-legacy-of-*

Continued

Services in this category alleviate the immediate economic impacts of the COVID–19 pandemic on housing insecurity, while addressing conditions that contributed to poor public health and economic outcomes during the pandemic, namely concentrated areas with limited economic opportunity and inadequate or poor-quality housing.[92] Eligible services include:

- Services to address homelessness such as supportive housing, and to improve access to stable, affordable housing among unhoused individuals;
- Affordable housing development to increase supply of affordable and high-quality living units; and
- Housing vouchers, residential counseling, or housing navigation assistance to facilitate household moves to neighborhoods with high levels of economic opportunity and mobility for low-income residents, to help residents increase their economic opportunity and reduce concentrated areas of low economic opportunity.[93]

○ *Addressing Educational Disparities.* As outlined above, school closures and the transition to remote education raised particular challenges for lower-income students, potentially exacerbating educational disparities, while increases in economic hardship among families could have long-lasting impacts on children's educational and economic prospects. Services under this prong would enhance educational supports to help mitigate impacts of the pandemic. Eligible services include:

- New, expanded, or enhanced early learning services, including pre-kindergarten, Head Start, or partnerships between pre-kindergarten programs and local education authorities, or administration of those services;
- Providing assistance to high-poverty school districts to advance equitable funding across districts and geographies;
- Evidence-based educational services and practices to address the academic needs of students, including tutoring, summer, afterschool, and other extended learning and enrichment programs; and
- Evidence-based practices to address the social, emotional, and mental health needs of students;

○ *Promoting Healthy Childhood Environments.* Children's economic and family circumstances have a long-term impact on their future economic outcomes.[94] Increases in economic hardship, material insecurity, and parental stress and behavioral health challenges all raise the risk of long-term harms to today's children due to the pandemic. Eligible services to address this challenge include:

- New or expanded high-quality childcare to provide safe and supportive care for children;
- Home visiting programs to provide structured visits from health, parent educators, and social service professionals to pregnant women or families with young children to offer education and assistance navigating resources for economic support, health needs, or child development; and
- Enhanced services for child welfare-involved families and foster youth to provide support and training on child development, positive parenting, coping skills, or recovery for mental health and substance use challenges.

State, local, and Tribal governments are encouraged to use payments from the Fiscal Recovery Funds to respond to the direct and immediate needs of the pandemic and its negative economic impacts and, in particular, the needs of households and businesses that were disproportionately and negatively impacted by the public health emergency. As highlighted above, low-income communities and workers and people of color have faced more severe health and economic outcomes during the pandemic, with pre-existing social vulnerabilities like low-wage or insecure employment, concentrated neighborhoods with less economic opportunity, and pre-existing health disparities likely contributing to the magnified impact of the pandemic. The Fiscal Recovery Funds provide resources to not only respond to the immediate harms of the pandemic but also to mitigate its longer-term impact in compounding the systemic public health and economic challenges of disproportionately impacted populations. Treasury encourages recipients to consider funding uses that foster a strong, inclusive, and equitable recovery, especially uses with long-term benefits for health and economic outcomes.

Uses Outside the Scope of this Category. Certain uses would not be within the scope of this eligible use category, although may be eligible under other eligible use categories. A general infrastructure project, for example, typically would not be included unless the project responded to a specific pandemic public health need (*e.g.*, investments in facilities for the delivery of vaccines) or a specific negative economic impact like those described above (*e.g.*, affordable housing in a QCT). The ARPA explicitly includes infrastructure if it is "necessary" and in water, sewer, or broadband. *See* Section II.D of this **SUPPLEMENTARY INFORMATION.** State, local, and Tribal governments also may use the Fiscal Recovery Funds under sections 602(c)(1)(C) or 603(c)(1)(C) to provide "government services" broadly to the extent of their reduction in revenue. *See* Section II.C of this **SUPPLEMENTARY INFORMATION.**

This category of eligible uses also would not include contributions to rainy day funds, financial reserves, or similar funds. Resources made available under this eligible use category are intended to help meet pandemic response needs and provide relief for households and businesses facing near- and long-term negative economic impacts. Contributions to rainy day funds and similar financial reserves would not address these needs or respond to the COVID–19 public health emergency but would rather constitute savings for future spending needs. Similarly, this eligible use category would not include payment of interest or principal on outstanding debt instruments, including, for example, short-term revenue or tax anticipation notes, or other debt service costs. As discussed below, payments from the Fiscal Recovery Funds are intended to be used prospectively and the interim final rule precludes use of these funds to cover the costs of debt incurred prior to March 3, 2021. Fees or issuance costs associated with the issuance of new debt would also not be covered using payments from the Fiscal Recovery Funds because such costs would not themselves have been incurred to address the needs of pandemic response or its negative economic impacts. The purpose of the Fiscal Recovery Funds is to provide fiscal relief that will permit State, local, and Tribal governments to continue to respond to the COVID–19 public health emergency.

For the same reasons, this category of eligible uses would not include satisfaction of any obligation arising under or pursuant to a settlement agreement, judgment, consent decree, or judicially confirmed debt restructuring

persistent-urban-inequality-and-concentrated-poverty/.

[92] U.S. Department of Health and Human Services (HHS), Office of Disease Prevention and Health Promotion, Quality of Housing, *https://www.healthypeople.gov/2020/topics-objectives/topic/social-determinants-health/interventions-resources/quality-of-housing#11* (last visited Apr. 26, 2021).

[93] The Opportunity Atlas, *https://www.opportunityatlas.org/* (last visited Apr. 26, 2021); Raj Chetty & Nathaniel Hendren, The Impacts of Neighborhoods on Intergenerational Mobility I: Childhood Exposure Effects, Quarterly J. of Econ. 133(3):1107–162 (2018), *available at https://opportunityinsights.org/paper/neighborhoodsi/.*

[94] *See* supra notes 52 and 84.

plan in a judicial, administrative, or regulatory proceeding, except to the extent the judgment or settlement requires the provision of services that would respond to the COVID–19 public health emergency. That is, satisfaction of a settlement or judgment would not itself respond to COVID–19 with respect to the public health emergency or its negative economic impacts, unless the settlement requires the provision of services or aid that did directly respond to these needs, as described above.

In addition, as described in Section V.III of this **SUPPLEMENTARY INFORMATION**, Treasury will establish reporting and record keeping requirements for uses within this category, including enhanced reporting requirements for certain types of uses.

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.

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?

Question 3: The interim final rule permits rehiring of public sector staff up to the government's pre-pandemic staffing level, which is measured based on employment as of January 27, 2020. Does this approach adequately measure the pre-pandemic staffing level in a manner that is both accurate and easily administrable? Why or why not?

Question 4: The interim final rule permits deposits to Unemployment Insurance Trust Funds, or using funds to pay back advances, up to the pre-pandemic balance. What, if any, conditions should be considered to ensure that funds repair economic impacts of the pandemic and strengthen unemployment insurance systems?

Question 5: Are there other types of services or costs that Treasury should consider as eligible uses to respond to the negative economic impacts of COVID–19? Describe how these respond to the COVID–19 public health emergency.

Question 6: What other measures, presumptions, or considerations could be used to assess "impacted industries" affected by the COVID–19 public health emergency?

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?

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.

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?

B. Premium Pay

Fiscal Recovery Funds payments may be used by recipients to provide premium pay to eligible workers performing essential work during the COVID–19 public health emergency or to provide grants to third-party employers with eligible workers performing essential work.[95] These are workers who have been and continue to be relied on to maintain continuity of operations of essential critical infrastructure sectors, including those who are critical to protecting the health and wellbeing of their communities.

Since the start of the COVID–19 public health emergency in January 2020, essential workers have put their physical wellbeing at risk to meet the daily needs of their communities and to provide care for others. In the course of this work, many essential workers have contracted or died of COVID–19.[96] Several examples reflect the severity of the health impacts for essential workers. Meat processing plants became "hotspots" for transmission, with 700 new cases reported at a single plant on a single day in May 2020.[97] In New York City, 120 employees of the Metropolitan Transit Authority were estimated to have died due to COVID–19 by mid-May 2020, with nearly 4,000 testing positive for the virus.[98] Furthermore, many essential workers are people of color or low-wage workers.[99] These workers, in particular, have borne a disproportionate share of the health and economic impacts of the pandemic. Such workers include:

- Staff at nursing homes, hospitals, and home care settings;
- Workers at farms, food production facilities, grocery stores, and restaurants;
- Janitors and sanitation workers;
- Truck drivers, transit staff, and warehouse workers;
- Public health and safety staff;
- Childcare workers, educators, and other school staff; and
- Social service and human services staff.

During the public health emergency, employers' policies on COVID–19-related hazard pay have varied widely, with many essential workers not yet compensated for the heightened risks they have faced and continue to face.[100]

[95] Sections 602(c)(1)(B), 603(c)(1)(B) of the Act.

[96] *See, e.g.*, Centers for Disease Control and Prevention, COVID Data Tracker: Cases & Death among Healthcare Personnel, *https://covid.cdc.gov/covid-data-tracker/#health-care-personnel* (last visited May 4, 2021); Centers for Disease Control and Prevention, COVID Data Tracker: Confirmed COVID–19 Cases and Deaths among Staff and Rate per 1,000 Resident-Weeks in Nursing Homes, by Week—United States, *https://covid.cdc.gov/covid-data-tracker/#nursing-home-staff* (last visited May 4, 2021).

[97] *See, e.g.*, The Lancet, The plight of essential workers during the COVID–19 pandemic, Vol. 395, Issue 10237:1587 (May 23, 2020), *available at https://www.thelancet.com/journals/lancet/article/PIIS0140-6736%2820%2931200-9/fulltext.*

[98] *Id.*

[99] Joanna Gaitens et al., Covid–19 and essential workers: A narrative review of health outcomes and moral injury, Int'l J. of Envtl. Research and Pub. Health 18(4):1446 (Feb. 4, 2021), *available at https://pubmed.ncbi.nlm.nih.gov/33557075/;* Tiana N. Rogers et al., Racial Disparities in COVID–19 Mortality Among Essential Workers in the United States, World Med. & Health policy 12(3):311–27 (Aug. 5, 2020), *available at https://onlinelibrary.wiley.com/doi/full/10.1002/wmh3.358* (finding that vulnerability to coronavirus exposure was increased among non-Hispanic blacks, who disproportionately occupied the top nine essential occupations).

[100] Economic Policy Institute, Only 30% of those working outside their home are receiving hazard pay (June 16, 2020), *https://www.epi.org/press/only-30-of-those-working-outside-their-home-are-receiving-hazard-pay-black-and-hispanic-workers-are-most-concerned-about-bringing-the-coronavirus-home/.*

Many of these workers earn lower wages on average and live in socioeconomically vulnerable communities as compared to the general population.[101] A recent study found that 25 percent of essential workers were estimated to have low household income, with 13 percent in high-risk households.[102] The low pay of many essential workers makes them less able to cope with the financial consequences of the pandemic or their work-related health risks, including working hours lost due to sickness or disruptions to childcare and other daily routines, or the likelihood of COVID–19 spread in their households or communities. Thus, the threats and costs involved with maintaining the ongoing operation of vital facilities and services have been, and continue to be, borne by those that are often the most vulnerable to the pandemic. The added health risk to essential workers is one prominent way in which the pandemic has amplified pre-existing socioeconomic inequities.

The Fiscal Recovery Funds will help respond to the needs of essential workers by allowing recipients to remunerate essential workers for the elevated health risks they have faced and continue to face during the public health emergency. To ensure that premium pay is targeted to workers that faced or face heightened risks due to the character of their work, the interim final rule defines essential work as work involving regular in-person interactions or regular physical handling of items that were also handled by others. A worker would not be engaged in essential work and, accordingly may not receive premium pay, for telework performed from a residence.

Sections 602(g)(2) and 603(g)(2) define eligible worker to mean "those workers needed to maintain continuity of operations of essential critical infrastructure sectors and additional sectors as each Governor of a State or territory, or each Tribal government, may designate as critical to protect the health and well-being of the residents of their State, territory, or Tribal government." [103] The rule incorporates this definition and provides a list of industries recognized as essential critical infrastructure sectors.[104] These sectors include healthcare, public health and safety, childcare, education, sanitation, transportation, and food production and services, among others as noted above. As provided under sections 602(g)(2) and 603(g)(2), the chief executive of each recipient has discretion to add additional sectors to this list, so long as additional sectors are deemed critical to protect the health and well-being of residents.

In providing premium pay to essential workers or grants to eligible employers, a recipient must consider whether the pay or grant would "respond to" to the worker or workers performing essential work. Premium pay or grants provided under this section respond to workers performing essential work if it addresses the heightened risk to workers who must be physically present at a jobsite and, for many of whom, the costs associated with illness were hardest to bear financially. Many of the workers performing critical essential services are low- or moderate-income workers, such as those described above. The ARPA recognizes this by defining premium pay to mean an amount up to $13 per hour in addition to wages or remuneration the worker otherwise receives and in an aggregate amount not to exceed $25,000 per eligible worker. To ensure the provision is implemented in a manner that compensates these workers, the interim final rule provides that any premium pay or grants provided using the Fiscal Recovery Funds should prioritize compensation of those lower income eligible workers that perform essential work.

As such, providing premium pay to eligible workers responds to such workers by helping address the disparity between the critical services and risks taken by essential workers and the relatively low compensation they tend to receive in exchange. If premium pay would increase a worker's total pay above 150 percent of their residing state's average annual wage for all occupations, as defined by the Bureau of Labor Statistics' Occupational Employment and Wage Statistics, or their residing county's average annual wage, as defined by the Bureau of Labor Statistics' Occupational Employment and Wage Statistics, whichever is higher, on an annual basis, the State, local, or Tribal government must provide Treasury and make publicly available, whether for themselves or on behalf of a grantee, a written justification of how the premium pay or grant is responsive to workers performing essential worker during the public health emergency.[105]

The threshold of 150 percent for requiring additional written justification is based on an analysis of the distribution of labor income for a sample of 20 occupations that generally correspond to the essential workers as defined in the interim final rule.[106] For these occupations, labor income for the vast majority of workers was under 150 percent of average annual labor income across all occupations. Treasury anticipates that the threshold of 150 percent of the annual average wage will be greater than the annual average wage of the vast majority of eligible workers performing essential work. These enhanced reporting requirements help to ensure grants are directed to essential workers in critical infrastructure sectors and responsive to the impacts of the pandemic observed among essential workers, namely the mis-alignment between health risks and compensation. Enhanced reporting also provides transparency to the public. Finally, using a localized measure reflects differences in wages and cost of living across the country, making this standard administrable and reflective of essential worker incomes across a diverse range of geographic areas.

Furthermore, because premium pay is intended to compensate essential workers for heightened risk due to COVID–19, it must be entirely additive to a worker's regular rate of wages and other remuneration and may not be used to reduce or substitute for a worker's normal earnings. The definition of premium pay also clarifies that premium pay may be provided retrospectively for work performed at any time since the start of the COVID–19 public health emergency, where those workers have yet to be compensated adequately for work previously performed.[107] Treasury encourages recipients to prioritize providing retrospective premium pay where possible, recognizing that many essential workers have not yet received additional compensation for work conducted over the course of many

[101] McCormack, *supra* note 37.

[102] *Id.*

[103] Sections 602(g)(2), 603(g)(2) of the Act.

[104] The list of critical infrastructure sectors provided in the interim final rule is based on the list of essential workers under The Heroes Act, H.R. 6800, 116th Cong. (2020).

[105] County median annual wage is taken to be that of the metropolitan or nonmetropolitan area that includes the county. *See* U.S. Bureau of Labor Statistics, State Occupational Employment and Wage Estimates, *https://www.bls.gov/oes/current/oessrcst.htm* (last visited May 1, 2021); U.S. Bureau of Labor Statistics, May 2020 Metropolitan and Nonmetropolitan Area Estimates listed by county or town, *https://www.bls.gov/oes/current/county_links.htm* (last visited May 1, 2021).

[106] Treasury performed this analysis with data from the U.S. Census Bureau's 2019 Annual Social and Economic Supplement. In determining which occupations to include in this analysis, Treasury excluded management and supervisory positions, as such positions may not necessarily involve regular in-person interactions or physical handling of items to the same extent as non-managerial positions.

[107] However, such compensation must be "in addition to" remuneration or wages already received. That is, employers may not reduce such workers' current pay and use Fiscal Recovery Funds to compensate themselves for premium pay previously provided to the worker.

months. Essential workers who have already earned premium pay for essential work performed during the COVID–19 public health emergency remain eligible for additional payments, and an essential worker may receive both retrospective premium pay for prior work as well as prospective premium pay for current or ongoing work.

To ensure any grants respond to the needs of essential workers and are made in a fair and transparent manner, the rule imposes some additional reporting requirements for grants to third-party employers, including the public disclosure of grants provided. *See* Section VIII of this **SUPPLEMENTARY INFORMATION**, discussing reporting requirements. In responding to the needs of essential workers, a grant to an employer may provide premium pay to eligible workers performing essential work, as these terms are defined in the interim final rule and discussed above. A grant provided to an employer may also be for essential work performed by eligible workers pursuant to a contract. For example, if a municipality contracts with a third party to perform sanitation work, the third-party contractor could be eligible to receive a grant to provide premium pay for these eligible workers.

Question 10: Are there additional sectors beyond those listed in the interim final rule that should be considered essential critical infrastructure sectors?

Question 11: What, if any, additional criteria should Treasury consider to ensure that premium pay responds to essential workers?

Question 12: What consideration, if any, should be given to the criteria on salary threshold, including measure and level, for requiring written justification?

C. Revenue Loss

Recipients may use payments from the Fiscal Recovery Funds for the provision of government services to the extent of the reduction in revenue experienced due to the COVID–19 public health emergency.[108] Pursuant to sections 602(c)(1)(C) and 603(c)(1)(C) of the Act, a recipient's reduction in revenue is measured relative to the revenue collected in the most recent full fiscal year prior to the emergency.

Many State, local, and Tribal governments are experiencing significant budget shortfalls, which can have a devastating impact on communities. State government tax revenue from major sources were down 4.3 percent in the six months ended September 2020, relative to the same period 2019.[109] At the local level, nearly 90 percent of cities have reported being less able to meet the fiscal needs of their communities and, on average, cities expect a double-digit decline in general fund revenues in their fiscal year 2021.[110] Similarly, surveys of Tribal governments and Tribal enterprises found majorities of respondents reporting substantial cost increases and revenue decreases, with Tribal governments reporting reductions in healthcare, housing, social services, and economic development activities as a result of reduced revenues.[111] These budget shortfalls are particularly problematic in the current environment, as State, local, and Tribal governments work to mitigate and contain the COVID–19 pandemic and help citizens weather the economic downturn.

Further, State, local, and Tribal government budgets affect the broader economic recovery. During the period following the 2007–2009 recession, State and local government budget pressures led to fiscal austerity that was a significant drag on the overall economic recovery.[112] Inflation-adjusted State and local government revenue did not return to the previous peak until 2013,[113] while State, local, and Tribal government employment did not recover to its prior peak for over a decade, until August 2019—just a few months before the COVID–19 public health emergency began.[114]

Sections 602(c)(1)(C) and 603(c)(1)(C) of the Act allow recipients facing budget shortfalls to use payments from the Fiscal Recovery Funds to avoid cuts to government services and, thus, enable State, local, and Tribal governments to continue to provide valuable services and ensure that fiscal austerity measures do not hamper the broader economic recovery. The interim final rule implements these provisions by establishing a definition of "general revenue" for purposes of calculating a loss in revenue and by providing a methodology for calculating revenue lost due to the COVID–19 public health emergency.

General Revenue. The interim final rule adopts a definition of "general revenue" based largely on the components reported under "General Revenue from Own Sources" in the Census Bureau's Annual Survey of State and Local Government Finances, and for purposes of this interim final rule, helps to ensure that the components of general revenue would be calculated in a consistent manner.[115] By relying on a methodology that is both familiar and comprehensive, this approach minimizes burden to recipients and provides consistency in the measurement of general revenue across a diverse set of recipients.

The interim final rule defines the term "general revenue" to include revenues collected by a recipient and generated from its underlying economy and would capture a range of different types of tax revenues, as well as other types of revenue that are available to support government services.[116] In calculating revenue, recipients should sum across all revenue streams covered as general revenue. 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

[108] ARPA, *supra* note 16.

[109] Major sources include personal income tax, corporate income tax, sales tax, and property tax. *See* Lucy Dadayan., States Reported Revenue Growth in July–September Quarter, Reflecting Revenue Shifts from the Prior Quarter, State Tax and Econ. Rev. (Q. 3, 2020), *available at https://www.urban.org/sites/default/files/publication/103938/state-tax-and-economic-review-2020-q3_0.pdf.*

[110] National League of Cities, City Fiscal Conditions (2020), *available at https://www.nlc.org/wp-content/uploads/2020/08/City_Fiscal_Conditions_2020_FINAL.pdf.*

[111] Surveys conducted by the Center for Indian Country Development at the Federal Reserve Bank of Minneapolis in March, April, and September 2020. *See* Moreno & Sobrepena, *supra* note 73.

[112] *See, e.g.,* Fitzpatrick, Haughwout & Setren, Fiscal Drag from the State and Local Sector?, Liberty Street Economics Blog, Federal Reserve Bank of New York (June 27, 2012), *https://www.libertystreeteconomics.newyorkfed.org/2012/06/fiscal-drag-from-the-state-and-local-sector.html;* Jiri Jonas, Great Recession and Fiscal Squeeze at U.S. Subnational Government Level, IMF Working Paper 12/184, (July 2012), *available at https://www.imf.org/external/pubs/ft/wp/2012/wp12184.pdf;* Gordon, *supra* note 9.

[113] State and local government general revenue from own sources, adjusted for inflation using the GDP price index. U.S. Census Bureau, Annual Survey of State Government Finances and U.S. Bureau of Economic Analysis, National Income and Product Accounts.

[114] U.S. Bureau of Labor Statistics, All Employees, State Government [CES9092000001] and All Employees, Local Government [CES9093000001], retrieved from FRED, Federal Reserve Bank of St. Louis, *https://fred.stlouisfed.org/series/CES9092000001* and *https://fred.stlouisfed.org/series/CES9093000001* (last visited Apr. 27, 2021).

[115] U.S. Census Bureau, Annual Survey of State and Local Government Finances, *https://www.census.gov/programs-surveys/gov-finances.html* (last visited Apr. 30, 2021).

[116] The interim final rule would define tax revenue in a manner consistent with the Census Bureau's definition of tax revenue, with certain changes (*i.e.,* inclusion of revenue from liquor stores and certain intergovernmental transfers). Current charges are defined as "charges imposed for providing current services or for the sale of products in connection with general government activities." It includes revenues such as public education institution, public hospital, and toll revenues. Miscellaneous general revenue comprises of all other general revenue of governments from their own sources (*i.e.,* other than liquor store, utility, and insurance trust revenue), including rents, royalties, lottery proceeds, and fines.

the COVID–19 public health emergency on a recipient's revenue, rather than relying on financial reporting prepared by each recipient, which vary in methodology used and which generally aggregates revenue by purpose rather than by source.[117]

Consistent with the Census Bureau's definition of "general revenue from own sources," the definition of general revenue in the interim final rule would exclude refunds and other correcting transactions, proceeds from issuance of debt or the sale of investments, and agency or private trust transactions. The definition of general revenue also would exclude revenue generated by utilities and insurance trusts. In this way, the definition of general revenue focuses on sources that are generated from economic activity and are available to fund government services, rather than a fund or administrative unit established to account for and control a particular activity.[118] For example, public utilities typically require financial support from the State, local, or Tribal government, rather than providing revenue to such government, and any revenue that is generated by public utilities typically is used to support the public utility's continued operation, rather than being used as a source of revenue to support government services generally.

The definition of general revenue would include all revenue from Tribal enterprises, as this revenue is generated from economic activity and is available to fund government services. Tribes are not able to generate revenue through taxes in the same manner as State and local governments and, as a result, Tribal enterprises are critical sources of revenue for Tribal governments that enable Tribal governments to provide a range of services, including elder care, health clinics, wastewater management, and forestry.

Finally, the term "general revenue" includes intergovernmental transfers between State and local governments, but excludes intergovernmental transfers from the Federal Government, including Federal transfers made via a State to a local government pursuant to the CRF or as part of the Fiscal Recovery Funds. States and local governments often share or collect revenue on behalf of one another, which results in intergovernmental transfers. When attributing revenue to a unit of government, the Census Bureau's methodology considers which unit of government imposes, collects, and retains the revenue and assigns the revenue to the unit of government that meets at least two of those three factors.[119] For purposes of measuring loss in general revenue due to the COVID–19 public health emergency and to better allow continued provision of government services, the retention and ability to use the revenue is a more critical factor. Accordingly, and to better measure the funds available for the provision of government services, the definition of general revenue would include intergovernmental transfers from States or local governments other than funds transferred pursuant to ARPA, CRF, or another Federal program. This formulation recognizes the importance of State transfers for local government revenue.[120]

Calculation of Loss. In general, recipients will compute the extent of the reduction in revenue by comparing actual revenue to a counterfactual trend representing what could have been expected to occur in the absence of the pandemic. This approach measures losses in revenue relative to the most recent fiscal year prior to the COVID–19 public health emergency by using the most recent pre-pandemic fiscal year as the starting point for estimates of revenue growth absent the pandemic. In other words, the counterfactual trend starts with the last full fiscal year prior to the COVID–19 public health emergency and then assumes growth at a constant rate in the subsequent years. Because recipients can estimate the revenue shortfall at multiple points in time throughout the covered period as revenue is collected, this approach accounts for variation across recipients in the timing of pandemic impacts.[121] Although revenue may decline for reasons unrelated to the COVID–19 public health emergency, to minimize the administrative burden on recipients and taking into consideration the devastating effects of the COVID–19 public health emergency, any diminution in actual revenues relative to the counterfactual pre-pandemic trend would be presumed to have been due to the COVID–19 public health emergency.

For purposes of measuring revenue growth in the counterfactual trend, recipients may use a *growth adjustment* of either 4.1 percent per year or the recipient's average annual revenue growth over the three full fiscal years prior to the COVID–19 public health emergency, whichever is higher. The option of 4.1 percent represents the average annual growth across all State and local government "General Revenue from Own Sources" in the most recent three years of available data.[122] This approach provides recipients with a standardized growth adjustment when calculating the counterfactual revenue trend and thus minimizes administrative burden, while not disadvantaging recipients with revenue growth that exceeded the national average prior to the COVID–19 public health emergency by permitting these recipients to use their own revenue growth rate over the preceding three years.

Recipients should calculate the extent of the reduction in revenue as of four points in time: December 31, 2020; December 31, 2021; December 31, 2022; and December 31, 2023. To calculate the extent of the reduction in revenue at each of these dates, recipients should follow a four-step process:

- *Step 1:* Identify revenues collected in the most recent full fiscal year prior to the public health emergency (*i.e.*, last full fiscal year before January 27, 2020), called the *base year revenue.*
- *Step 2:* Estimate *counterfactual revenue,* which is equal to *base year revenue* * [(1 + *growth adjustment*) ^ (*n*/12)], where *n* is the number of months elapsed since the end of the base year to the calculation date, and *growth adjustment* is the greater of 4.1 percent and the recipient's average annual revenue growth in the three full fiscal

[117] Fund-oriented reporting, such as what is used under the Governmental Accounting Standards Board (GASB), focuses on the types of uses and activities funded by the revenue, as opposed to the economic activity from which the revenue is sourced. *See* Governmental Accounting Standards Series, Statement No. 54 of the Governmental Accounting Standards Board: Fund Balance Reporting and Governmental Fund Type Definitions, No. 287–B (Feb. 2009).

[118] *Supra* note 116.

[119] U.S. Census Bureau, Government Finance and Employment Classification Manual (Dec. 2000), *https://www2.census.gov/govs/class/classfull.pdf.*

[120] For example, in 2018, state transfers to localities accounted for approximately 27 percent of local revenues. U.S. Census Bureau, Annual Survey of State and Local Government Finances, Table 1 (2018), *https://www.census.gov/data/datasets/2018/econ/local/public-use-datasets.html.*

[121] For example, following the 2007–09 recession, local government property tax collections did not begin to decline until 2011, suggesting that property tax collection declines can lag downturns. *See* U.S. Bureau of Economic Analysis, Personal current taxes: State and local: Property taxes [S210401A027NBEA], retrieved from Federal Reserve Economic Data, Federal Reserve Bank of St. Louis, *https://fred.stlouisfed.org/graph/?g=r3YI* (last visited Apr. 22, 2021). Estimating the reduction in revenue at points throughout the covered period will allow for this type of lagged effect to be taken into account during the covered period.

[122] Together with revenue from liquor stores from 2015 to 2018. This estimate does not include any intergovernmental transfers. A recipient using the three-year average to calculate their growth adjustment must be based on the definition of general revenue, including treatment of intergovernmental transfers. 2015–2018 represents the most recent available data. *See* U.S. Census Bureau, State & Local Government Finance Historical Datasets and Tables (2018), *https://www.census.gov/programs-surveys/gov-finances/data/datasets.html.*

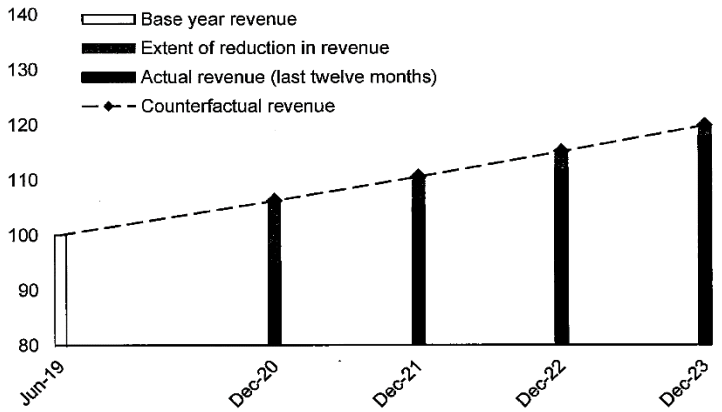
years prior to the COVID–19 public health emergency.

- *Step 3:* Identify *actual revenue,* which equals revenues collected over the past twelve months as of the calculation date.
- *Step 4:* The extent of the reduction in revenue is equal to *counterfactual revenue* less *actual revenue.* If actual revenue exceeds counterfactual revenue, the extent of the reduction in revenue is set to zero for that calculation date.

For illustration, consider a hypothetical recipient with *base year revenue* equal to 100. In Step 2, the hypothetical recipient finds that 4.1 percent is greater than the recipient's average annual revenue growth in the three full fiscal years prior to the public health emergency. Furthermore, this recipient's base year ends June 30. In this illustration, *n* (months elapsed) and *counterfactual revenue* would be equal to:

As of:	12/31/2020	12/31/2021	12/31/2022	12/31/2023
n (months elapsed)	18	30	42	54
Counterfactual revenue:	106.2	110.6	115.1	119.8

The overall methodology for calculating the reduction in revenue is illustrated in the figure below:



Upon receiving Fiscal Recovery Fund payments, recipients may immediately calculate revenue loss for the period ending December 31, 2020.

Sections 602(c)(1)(C) and 603(c)(1)(C) of the Act provide recipients with broad latitude to use the Fiscal Recovery Funds for the provision of government services. Government services can include, but are not limited to, maintenance or pay-go funded building[123] 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, expenses associated with obligations under instruments evidencing financial indebtedness for borrowed money would not be considered the provision of government services, as these financing expenses do not directly provide services or aid to citizens. Specifically, government services would not include interest or principal on any outstanding debt instrument, including, for example, short-term revenue or tax anticipation notes, or fees or issuance costs associated with the issuance of new debt. For the same reasons, government services would not include satisfaction of any obligation arising under or pursuant to a settlement agreement, judgment, consent decree, or judicially confirmed debt restructuring in a judicial, administrative, or regulatory proceeding, except if the judgment or settlement required the provision of government services. That is, satisfaction of a settlement or judgment itself is not a government service, unless the settlement required the provision of government services. In addition, replenishing financial reserves (*e.g.,* rainy day or other reserve funds) would not be considered provision of a government service, since such expenses do not directly relate to the provision of government services.

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.

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.

Question 15: Treasury is considering whether to take into account other factors, including actions taken by the recipient as well as the expiration of the COVID–19 public health emergency, in determining whether to presume that revenue losses are "due to" the COVID–

[123] Pay-go infrastructure funding refers to the practice of funding capital projects with cash-on-hand from taxes, fees, grants, and other sources, rather than with borrowed sums.

19 public health emergency. Discuss the advantages and disadvantages of this presumption, including when, if ever, during the covered period it would be appropriate to reevaluate the presumption that all losses are attributable to the COVID–19 public health emergency.

Question 16: Do recipients anticipate lagged revenue effects of the public health emergency? If so, when would these lagged effects be expected to occur, and what can Treasury to do support these recipients through its implementation of the program?

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.

D. Investments in Infrastructure

To assist in meeting the critical need for investments and improvements to existing infrastructure in water, sewer, and broadband, the Fiscal Recovery Funds provide funds to State, local, and Tribal governments to make necessary investments in these sectors. The interim final rule outlines eligible uses within each category, allowing for a broad range of necessary investments in projects that improve access to clean drinking water, improve wastewater and stormwater infrastructure systems, and provide access to high-quality broadband service. Necessary investments are designed to provide an adequate minimum level of service and are unlikely to be made using private sources of funds. Necessary investments include projects that are required to maintain a level of service that, at least, meets applicable health-based standards, taking into account resilience to climate change, or establishes or improves broadband service to unserved or underserved populations to reach an adequate level to permit a household to work or attend school, and that are unlikely to be met with private sources of funds.[124]

It is important that necessary investments in water, sewer, or broadband infrastructure be carried out in ways that produce high-quality infrastructure, avert disruptive and costly delays, and promote efficiency. Treasury encourages recipients to ensure that water, sewer, and broadband projects use strong labor standards, including project labor agreements and community benefits agreements that offer wages at or above the prevailing rate and include local hire provisions, not only to promote effective and efficient delivery of high-quality infrastructure projects but also to support the economic recovery through strong employment opportunities for workers. Using these practices in construction projects may help to ensure a reliable supply of skilled labor that would minimize disruptions, such as those associated with labor disputes or workplace injuries.

To provide public transparency on whether projects are using practices that promote on-time and on-budget delivery, Treasury will seek information from recipients on their workforce plans and practices related to water, sewer, and broadband projects undertaken with Fiscal Recovery Funds. Treasury will provide additional guidance and instructions on the reporting requirements at a later date.

1. Water and Sewer Infrastructure

The ARPA provides funds to State, local, and Tribal governments to make necessary investments in water and sewer infrastructure.[125] By permitting funds to be used for water and sewer infrastructure needs, Congress recognized the critical role that clean drinking water and services for the collection and treatment of wastewater and stormwater play in protecting public health. Understanding that State, local, and Tribal governments have a broad range of water and sewer infrastructure needs, the interim final rule provides these governments with wide latitude to identify investments in water and sewer infrastructure that are of the highest priority for their own communities, which may include projects on privately-owned infrastructure. The interim final rule does this by aligning eligible uses of the Fiscal Recovery Funds with the wide range of types or categories of projects that would be eligible to receive financial assistance through the Environmental Protection Agency's (EPA) Clean Water State Revolving Fund (CWSRF) or Drinking Water State Revolving Fund (DWSRF).[126]

Established by the 1987 amendments[127] to the Clean Water Act (CWA),[128] the CWSRF provides financial assistance for a wide range of water infrastructure projects to improve water quality and address water pollution in a way that enables each State to address and prioritize the needs of their populations. The types of projects eligible for CWSRF assistance include projects to construct, improve, and repair wastewater treatment plants, control non-point sources of pollution, improve resilience of infrastructure to severe weather events, create green infrastructure, and protect waterbodies from pollution.[129] Each of the 51 State programs established under the CWSRF have the flexibility to direct funding to their particular environmental needs, and each State may also have its own statutes, rules, and regulations that guide project eligibility.[130]

The DWSRF was modeled on the CWSRF and created as part of the 1996 amendments to the Safe Drinking Water Act (SDWA),[131] with the principal objective of helping public water systems obtain financing for improvements necessary to protect public health and comply with drinking water regulations.[132] Like the CWSRF,

[124] Treasury notes that using funds to support or oppose collective bargaining would not be included as part of "necessary investments in water, sewer, or broadband infrastructure."

[125] Sections 602(c)(1)(D), 603(c)(1)(D) of the Act.

[126] Environmental Protection Agency, Drinking Water State Revolving fund, *https://www.epa.gov/dwsrf* (last visited Apr. 30, 2021); Environmental Protection Agency, Clean Water State Revolving Fund, *https://www.epa.gov/cwsrf* (last visited Apr. 30, 2021).

[127] Water Quality Act of 1987, Public Law 100–4.

[128] Federal Water Pollution Control Act as amended, codified at 33 U.S.C. 1251 *et seq.*, common name (Clean Water Act). In 2009, the American Recovery and Reinvestment Act created the Green Project Reserve, which increased the focus on green infrastructure, water and energy efficient, and environmentally innovative projects. Public Law 111–5. The CWA was amended by the Water Resources Reform and Development Act of 2014 to further expand the CWSRF's eligibilities. Public Law 113–121. *The CWSRF's eligibilities were further expanded in 2018 by the America's Water Infrastructure Act of 2018, Public Law 115–270.*

[129] *See* Environmental Protection Agency, The Drinking Water State Revolving Funds: Financing America's Drinking Water, EPA–816–R–00–023 (Nov. 2000), *https://nepis.epa.gov/Exe/ZyPDF.cgi/200024WB.PDF?Dockey=200024WB.PDF; See also* Environmental Protection Agency, *Learn About the Clean Water State Revolving Fund, https://www.epa.gov/cwsrf/learn-about-clean-water-state-revolving-fund-cwsrf (last visited Apr. 30, 2021).*

[130] 33 U.S.C. 1383(c). *See also Environmental Protection Agency, Overview of Clean Water State Revolving Fund Eligibilities (May 2016), https://www.epa.gov/sites/production/files/2016-07/documents/overview_of_cwsrf_eligibilities_may_2016.pdf; Claudia Copeland, Clean Water Act: A Summary of the Law, Congressional Research Service (Oct. 18, 2016), https://fas.org/sgp/crs/misc/RL30030.pdf; Jonathan L Ramseur, Wastewater Infrastructure: Overview, Funding, and Legislative Developments, Congressional Research Service (May 22, 2018), https://fas.org/sgp/crs/misc/R44963.pdf.*

[131] 42 U.S.C. 300j–12.

[132] Environmental Protection Agency, Drinking Water State Revolving Fund Eligibility Handbook, (June 2017), *https://www.epa.gov/sites/production/files/2017-06/documents/dwsrf_eligibility_handbook_june_13_2017_updated_508_version.pdf;* Environmental Protection Agency, Drinking Water

the DWSRF provides States with the flexibility to meet the needs of their populations.[133] The primary use of DWSRF funds is to assist communities in making water infrastructure capital improvements, including the installation and replacement of failing treatment and distribution systems.[134] In administering these programs, States must give priority to projects that ensure compliance with applicable health and environmental safety requirements; address the most serious risks to human health; and assist systems most in need on a per household basis according to State affordability criteria.[135]

By aligning use of Fiscal Recovery Funds with the categories or types of eligible projects under the existing EPA state revolving fund programs, the interim final rule provides recipients with the flexibility to respond to the needs of their communities while ensuring that investments in water and sewer infrastructure made using Fiscal Recovery Funds are necessary. As discussed above, the CWSRF and DWSRF were designed to provide funding for projects that protect public health and safety by ensuring compliance with wastewater and drinking water health standards.[136] The need to provide funding through the state revolving funds suggests that these projects are less likely to be addressed with private sources of funding; for example, by remediating failing or inadequate infrastructure, much of which is publicly owned, and by addressing non-point sources of pollution. This approach of aligning with the EPA state revolving fund programs also supports expedited project identification and investment so that needed relief for the people and communities most affected by the pandemic can deployed expeditiously and have a positive impact on their health and wellbeing as soon as possible. Further, the interim final rule is intended to preserve flexibility for award recipients to direct funding to their own particular needs and priorities and would not preclude recipients from applying their own additional project eligibility criteria.

In addition, responding to the immediate needs of the COVID–19 public health emergency may have diverted both personnel and financial resources from other State, local, and Tribal priorities, including projects to ensure compliance with applicable water health and quality standards and provide safe drinking and usable water.[137] Through sections 602(c)(1)(D) and 603(c)(1)(D), the ARPA provides resources to address these needs. Moreover, using Fiscal Recovery Funds in accordance with the priorities of the CWA and SWDA to "assist systems most in need on a per household basis according to state affordability criteria" would also have the benefit of providing vulnerable populations with safe drinking water that is critical to their health and, thus, their ability to work and learn.[138]

Recipients may use Fiscal Recovery Funds to invest in a broad range of projects that improve drinking water infrastructure, such as building or upgrading facilities and transmission, distribution, and storage systems, including replacement of lead service lines. Given the lifelong impacts of lead exposure for children, and the widespread nature of lead service lines, Treasury encourages recipients to consider projects to replace lead service lines.

Fiscal Recovery Funds may also be used to support the consolidation or establishment of drinking water systems. With respect to wastewater infrastructure, recipients may use Fiscal Recovery Funds to construct publicly owned treatment infrastructure, manage and treat stormwater or subsurface drainage water, facilitate water reuse, and secure publicly owned treatment works, among other uses. Finally, consistent with the CWSRF and DWSRF, Fiscal Recovery Funds may be used for cybersecurity needs to protect water or sewer infrastructure, such as developing effective cybersecurity practices and measures at drinking water systems and publicly owned treatment works.

Many of the types of projects eligible under either the CWSRF or DWSRF also support efforts to address climate change. For example, by taking steps to manage potential sources of pollution and preventing these sources from reaching sources of drinking water, projects eligible under the DWSRF and the ARPA may reduce energy required to treat drinking water. Similarly, projects eligible under the CWSRF include measures to conserve and reuse water or reduce the energy consumption of public water treatment facilities. Treasury encourages recipients to consider green infrastructure investments and projects to improve resilience to the effects of climate change. For example, more frequent and extreme precipitation events combined with construction and development trends have led to increased instances of stormwater runoff, water pollution, and flooding. Green infrastructure projects that support stormwater system resiliency could include rain gardens that provide water storage and filtration benefits, and green streets, where vegetation, soil, and engineered systems are combined to direct and filter rainwater from impervious surfaces. In cases of a natural disaster, recipients may also use Fiscal Recovery Funds to provide relief, such as interconnecting water systems or rehabilitating existing wells during an extended drought.

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?

Question 19: What additional water and sewer infrastructure categories, if any, should Treasury consider to address and respond to the needs of unserved, undeserved, or rural communities? How do these projects differ from DWSFR and CWSRF eligible projects?

Question 20: What new categories of water and sewer infrastructure, if any, should Treasury consider to support State, local, and Tribal governments in mitigating the negative impacts of climate change? Discuss emerging technologies and processes that support resiliency of water and sewer infrastructure. Discuss any challenges faced by States and local governments when pursuing or implementing climate resilient infrastructure projects.

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 Needs Survey and Assessment: Sixth Report to Congress (March 2018), *https://www.epa.gov/sites/production/files/2018-10/documents/corrected_sixth_drinking_water_infrastructure_needs_survey_and_assessment.pdf.*

[133] *Id.*

[134] *Id.*

[135] 42 U.S.C. 300j–12(b)(3)(A).

[136] Environmental Protection Agency, Learn About the Clean Water State Revolving Fund, *https://www.epa.gov/cwsrf/learn-about-clean-water-state-revolving-fund-cwsrf* (last visited Apr. 30, 2021); 42 U.S.C. 300j–12.

[137] House Committee on the Budget, State and Local Governments are in Dire Need of Federal Relief (Aug. 19, 2020), *https://budget.house.gov/publications/report/state-and-local-governments-are-dire-need-federal-relief.*

[138] Environmental Protection Agency, Drinking Water State Revolving Fund (Nov. 2019), *https://www.epa.gov/sites/production/files/2019-11/documents/fact_sheet_-_dwsrf_overview_final_0.pdf;* Environmental Protection Agency, National Benefits Analysis for Drinking Water Regulations, *https://www.epa.gov/sdwa/national-benefits-analysis-drinking-water-regulations* (last visited Apr. 30, 2020).

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.

2. Broadband Infrastructure

The COVID–19 public health emergency has underscored the importance of universally available, high-speed, reliable, and affordable broadband coverage as millions of Americans rely on the internet to participate in, among critical activities, remote school, healthcare, and work. Recognizing the need for such connectivity, the ARPA provides funds to State, territorial, local, and Tribal governments to make necessary investments in broadband infrastructure.

The National Telecommunications and Information Administration (NTIA) highlighted the growing necessity of broadband in daily lives through its analysis of NTIA Internet Use Survey data, noting that Americans turn to broadband internet access service for every facet of daily life including work, study, and healthcare.[139] With increased use of technology for daily activities and the movement by many businesses and schools to operating remotely during the pandemic, broadband has become even more critical for people across the country to carry out their daily lives.

By at least one measure, however, tens of millions of Americans live in areas where there is no broadband infrastructure that provides download speeds greater than 25 Mbps and upload speeds of 3 Mbps.[140] By contrast, as noted below, many households use upload and download speeds of 100 Mbps to meet their daily needs. Even in areas where broadband infrastructure exists, broadband access may be out of reach for millions of Americans because it is unaffordable, as the United States has some of the highest broadband prices in the Organisation for Economic Co-operation and Development (OECD).[141] There are disparities in availability as well; historically, Americans living in territories and Tribal lands as well as rural areas have disproportionately lacked sufficient broadband infrastructure.[142] Moreover, rapidly growing demand has, and will likely continue to, quickly outpace infrastructure capacity, a phenomenon acknowledged by various states around the country that have set scalability requirements to account for this anticipated growth in demand.[143]

The interim final rule provides that eligible investments in broadband are those that are designed to provide services meeting adequate speeds and are provided to unserved and underserved households and businesses. Understanding that States, territories, localities, and Tribal governments have a wide range of varied broadband infrastructure needs, the interim final rule provides award recipients with flexibility to identify the specific locations within their communities to be served and to otherwise design the project.

Under the interim final rule, eligible projects are expected to be designed to deliver, upon project completion, service that reliably meets or exceeds symmetrical upload and download speeds of 100 Mbps. There may be instances in which it would not be practicable for a project to deliver such service speeds because of the geography, topography, or excessive costs associated with such a project. In these instances, the affected project would be expected to be designed to deliver, upon project completion, service that reliably meets or exceeds 100 Mbps download and between at least 20 Mbps and 100 Mbps upload speeds and be scalable to a minimum of 100 Mbps symmetrical for download and upload speeds.[144] In setting these standards, Treasury identified speeds necessary to ensure that broadband infrastructure is sufficient to enable users to generally meet household needs, including the ability to support the simultaneous use of work, education, and health applications, and also sufficiently robust to meet increasing household demands for bandwidth. Treasury also recognizes that different communities and their members may have a broad range of internet needs and that those needs may change over time.

In considering the appropriate speed requirements for eligible projects, Treasury considered estimates of typical households demands during the pandemic. Using the Federal Communication Commission's (FCC) Broadband Speed Guide, for example, a household with two telecommuters and two to three remote learners today are estimated to need 100 Mbps download to work simultaneously.[145] In households with more members, the demands may be greater, and in households with fewer members, the demands may be less.

In considering the appropriate speed requirements for eligible projects, Treasury also considered data usage patterns and how bandwidth needs have changed over time for U.S. households and businesses as people's use of technology in their daily lives has evolved. In the few years preceding the pandemic, market research data showed that average upload speeds in the United States surpassed over 10 Mbps in 2017[146] and continued to increase significantly, with the average upload speed as of November, 2019 increasing to 48.41 Mbps,[147] attributable, in part to a shift to using broadband and the internet by individuals and businesses

[139] *See, e.g., https://www.ntia.gov/blog/2020/more-half-american-households-used-internet-health-related-activities-2019-ntia-data-show; https://www.ntia.gov/blog/2020/nearly-third-american-employees-worked-remotely-2019-ntia-data-show;* and generally, *https://www.ntia.gov/data/digital-nation-data-explorer.*

[140] As an example, data from the Federal Communications Commission shows that as of June 2020, 9.07 percent of the U.S. population had no available cable or fiber broadband providers providing greater than 25 Mbps download speeds and 3 Mbps upload speeds. Availability was significantly less for rural versus urban populations, with 35.57 percent of the rural population lacking such access, compared with 2.57 percent of the urban population. Availability was also significantly less for tribal versus non-tribal populations, with 35.93 percent of the tribal population lacking such access, compared with 8.74 of the non-tribal population. Federal Communications Commission, Fixed Broadband Deployment, *https://broadbandmap.fcc.gov/#/* (last visited May 9, 2021).

[141] How Do U.S. Internet Costs Compare To The Rest Of The World?, BroadbandSearch Blog Post, *available at https://www.broadbandsearch.net/blog/internet-costs-compared-worldwide.*

[142] *See, e.g.,* Federal Communications Commission, Fourteenth Broadband Deployment Report, *available at https://docs.fcc.gov/public/attachments/FCC-21-18A1.pdf.*

[143] *See, e.g.,* Illinois Department of Commerce & Economic Opportunity, Broadband Grants, h (last visited May 9, 2021), *https://www2.illinois.gov/dceo/ConnectIllinois/Pages/BroadbandGrants.aspx;* Kansas Office of Broadband Development, Broadband Acceleration Grant, *https://www.kansascommerce.gov/wp-content/uploads/2020/11/Broadband-Acceleration-Grant.pdf* (last visited May 9, 2021); New York State Association of Counties, Universal Broadband: Deploying High Speed Internet Access in NYS (Jul. 2017), *https://www.nysac.org/files/BroadbandUpdateReport2017(1).pdf.*

[144] This scalability threshold is consistent with scalability requirements used in other jurisdictions. *Id.*

[145] Federal Communications Commission, Broadband Speed Guide, *https://www.fcc.gov/consumers/guides/broadband-speed-guide* (last visited Apr. 30, 2021).

[146] Letter from Lisa R. Youngers, President and CEO of Fiber Broadband Association to FCC, WC Docket No. 19–126 (filed Jan. 3, 2020), including an Appendix with research from RVA LLC, *Data Review Of The Importance of Upload Speeds* (Jan. 2020), and Ookla speed test data, *available at https://ecfsapi.fcc.gov/file/101030085118517/FCC%20RDOF%20Jan%203%20Ex%20Parte.pdf.* Additional information on historic growth in data usage is provided in Schools, Health & Libraries Broadband Coalition, *Common Sense Solutions for Closing the Digital Divide,* Apr. 29, 2021.

[147] *Id. See also* United States's Mobile and Broadband internet Speeds—Speedtest Global Index, *available at https://www.speedtest.net/global-index/united-states#fixed.*

to create and share content using video sharing, video conferencing, and other applications.[148]

The increasing use of data accelerated markedly during the pandemic as households across the country became increasingly reliant on tools and applications that require greater internet capacity, both to download data but also to upload data. Sending information became as important as receiving it. A video consultation with a healthcare provider or participation by a child in a live classroom with a teacher and fellow students requires video to be sent and received simultaneously.[149] As an example, some video conferencing technology platforms indicate that download and upload speeds should be roughly equal to support two-way, interactive video meetings.[150] For both work and school, client materials or completed school assignments, which may be in the form of PDF files, videos, or graphic files, also need to be shared with others. This is often done by uploading materials to a collaboration site, and the upload speed available to a user can have a significant impact on the time it takes for the content to be shared with others. [151] These activities require significant capacity from home internet connections to both download and upload data, especially when there are multiple individuals in one household engaging in these activities simultaneously.

This need for increased broadband capacity during the pandemic was reflected in increased usage patterns seen over the last year. As OpenVault noted in recent advisories, the pandemic significantly increased the amount of data users consume. Among data users observed by OpenVault, per-subscriber average data usage for the fourth quarter of 2020 was 482.6 gigabytes per month, representing a 40 percent increase over the 344 gigabytes consumed in the fourth quarter of 2019 and a 26 percent increase over the third quarter 2020 average of 383.8 gigabytes.[152] OpenVault also noted significant increases in upstream usage among the data users it observed, with upstream data usage growing 63 percent—from 19 gigabytes to 31 gigabytes—between December, 2019 and December, 2020.[153] According to an OECD Broadband statistic from June 2020, the largest percentage of U.S. broadband subscribers have services providing speeds between 100 Mbps and 1 Gbps.[154]

Jurisdictions and Federal programs are increasingly responding to the growing demands of their communities for both heightened download and upload speeds. For example, Illinois now requires 100 Mbps symmetrical service as the construction standard for its state broadband grant programs. This standard is also consistent with speed levels, particularly download speed levels, prioritized by other Federal programs supporting broadband projects. Bids submitted as part of the FCC in its Rural Digital Opportunity Fund (RDOF), established to support the construction of broadband networks in rural communities across the country, are given priority if they offer faster service, with the service offerings of 100 Mbps download and 20 Mbps upload being included in the "above baseline" performance tier set by the FCC.[155] The Broadband Infrastructure Program (BBIP) [156] of the Department of Commerce, which provides Federal funding to deploy broadband infrastructure to eligible service areas of the country also prioritizes projects designed to provide broadband service with a download speed of not less than 100 Mbps and an upload speed of not less than 20 Mbps.[157]

The 100 Mbps upload and download speeds will support the increased and growing needs of households and businesses. Recognizing that, in some instances, 100 Mbps upload speed may be impracticable due to geographical, topographical, or financial constraints, the interim final rule permits upload speeds of between at least 20 Mbps and 100 Mbps in such instances. To provide for investments that will accommodate technologies requiring symmetry in download and upload speeds, as noted above, eligible projects that are not designed to deliver, upon project completion, service that reliably meets or exceeds symmetrical speeds of 100 Mbps because it would be impracticable to do so should be designed so that they can be scalable to such speeds. Recipients are also encouraged to prioritize investments in fiber optic infrastructure where feasible, as such advanced technology enables the next generation of application solutions for all communities.

Under the interim final rule, eligible projects are expected to focus on locations that are unserved or underserved. The interim final rule treats users as being unserved or underserved if they lack access to a wireline connection capable of reliably delivering at least minimum speeds of 25 Mbps download and 3 Mbps upload as households and businesses lacking this level of access are generally not viewed as being able to originate and receive high-quality voice, data, graphics, and video telecommunications. This threshold is consistent with the FCC's benchmark for an "advanced telecommunications capability." [158] This threshold is also consistent with thresholds used in other Federal programs to identify eligible areas to be served by programs to improve broadband services. For example, in the FCC's RDOF program, eligible areas include those without current (or already funded) access to terrestrial broadband service providing 25 Mbps download and 3 Mbps upload speeds.[159] The Department of Commerce's BBIP also considers households to be "unserved" generally if they lack access to broadband service

[148] *Id.*

[149] One high definition Zoom meeting or class requires approximately 3.8 Mbps/3.0 Mbps (up/down).

[150] *See, e.g.*, Zoom, System Requirements for Windows, macOS, and Linux, *https://support.zoom.us/hc/en-us/articles/201362023-System-requirements-for-Windows-macOS-and-Linux#h_d278c327-e03d-4896-b19a-96a8f3c0c69c* (last visited May 8, 2021).

[151] By one estimate, to upload a one gigabit video file to YouTube would take 15 minutes at an upload speed of 10 Mbps compared with 1 minute, 30 seconds at an upload speed of 100 Mbps, and 30 seconds at an upload speed of 300 Mbps. *Reviews.org:* What is Symmetrical internet? (March 2020).

[152] OVBI: Covid-19 Drove 15 percent Increase in Broadband Traffic in 2020, OpenVault, Quarterly Advisory, (Feb. 10, 2021), *available at https://openvault.com/ovbi-covid-19-drove-51-increase-in-broadband-traffic-in-2020; See* OpenVault's data set incorporates information on usage by subscribers across multiple continents, including North America and Europe. Additional data and detail on increases in the amount of data users consume and the broadband speeds they are using is provided in *OpenVault Broadband Insights Report Q4,* Quarterly Advisory (Feb. 10, 2021), *available at https://openvault.com/complimentary-report-4q20/.*

[153] OVBI Special Report: 202 Upstream Growth Nearly 4X of Pre-Pandemic Years, OpenVault, Quarterly Advisory, (April 1, 20201), *available at https://openvault.com/ovbi-special-report-2020-upstream-growth-rate-nearly-4x-of-pre-pandemic-years/;* Additional data is provided in *OpenVault Broadband Insights Pandemic Impact on Upstream Broadband Usage and Network Capacity, available at https://openvault.com/upstream-whitepaper/.*

[154] Organisation for Economic Co-operation and Development, Fixed broadband subscriptions per 100 inhabitants, per speed tiers (June 2020), *https://www.oecd.org/sti/broadband/5.1-FixedBB-SpeedTiers-2020-06.xls www.oecd.org/sti/broadband/broadband-statistics.*

[155] *Rural Digital Opportunity Fund,* Report and Order, 35 FCC Rcd 686, 690, para. 9 (2020), *available at https://www.fcc.gov/document/fcc-launches-20-billion-rural-digital-opportunity-fund-0.*

[156] The BIPP was authorized by the Consolidated Appropriations Act, 2021, Section 905, Public Law 116–260, 134 Stat. 1182 (Dec. 27, 2020).

[157] Section 905(d)(4) of the Consolidated Appropriations Act, 2021.

[158] *Deployment Report, supra* note 142.

[159] *Rural Digital Opportunity Fund, supra* note 156.

with a download speed of not less than 25 Mbps download and 3 Mbps upload, among other conditions. In selecting an area to be served by a project, recipients are encouraged to avoid investing in locations that have existing agreements to build reliable wireline service with minimum speeds of 100 Mbps download and 20 Mbps upload by December 31, 2024, in order to avoid duplication of efforts and resources.

Recipients are also encouraged to consider ways to integrate affordability options into their program design. To meet the immediate needs of unserved and underserved households and businesses, recipients are encouraged to focus on projects that deliver a physical broadband connection by prioritizing projects that achieve last mile-connections. Treasury also encourages recipients to prioritize support for broadband networks owned, operated by, or affiliated with local governments, non-profits, and co-operatives—providers with less pressure to turn profits and with a commitment to serving entire communities.

Under sections 602(c)(1)(A) and 603(c)(1)(A), assistance to households facing negative economic impacts due to COVID–19 is also an eligible use, including internet access or digital literacy assistance. As discussed above, in considering whether a potential use is eligible under this category, a recipient must consider whether, and the extent to which, the household has experienced a negative economic impact from the pandemic.

Question 22: 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?

Question 23: 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?

Question 24: 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?

Question 25: 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?

Question 26: 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?

III. Restrictions on Use

As discussed above, recipients have considerable flexibility to use Fiscal Recovery Funds to address the diverse needs of their communities. To ensure that payments from the Fiscal Recovery Funds are used for these congressionally permitted purposes, the ARPA includes two provisions that further define the boundaries of the statute's eligible uses. Section 602(c)(2)(A) of the Act provides that States and territories may not "use the funds . . . to either directly or indirectly offset a reduction in . . . net tax revenue . . . resulting from a change in law, regulation, or administrative interpretation during the covered period that reduces any tax . . . or delays the imposition of any tax or tax increase." In addition, sections 602(c)(2)(B) and 603(c)(2) prohibit any recipient, including cities, nonentitlement units of government, and counties, from using Fiscal Recovery Funds for deposit into any pension fund. These restrictions support the use of funds for the congressionally permitted purposes described in Section II of this Supplementary Information by providing a backstop against the use of funds for purposes outside of the eligible use categories.

These provisions give force to Congress's clear intent that Fiscal Recovery Funds be spent within the four eligible uses identified in the statute—(1) to respond to the public health emergency and its negative economic impacts, (2) to provide premium pay to essential workers, (3) to provide government services to the extent of eligible governments' revenue losses, and (4) to make necessary water, sewer, and broadband infrastructure investments—and not otherwise. These four eligible uses reflect Congress's judgment that the Fiscal Recovery Funds should be expended in particular ways that support recovery from the COVID–19 public health emergency. The further restrictions reflect Congress's judgment that tax cuts and pension deposits do not fall within these eligible uses. The interim final rule describes how Treasury will identify when such uses have occurred and how it will recoup funds put toward these impermissible uses and, as discussed in Section VIII of this **SUPPLEMENTARY INFORMATION**, establishes a reporting framework for monitoring the use of Fiscal Recovery Funds for eligible uses.

A. Deposit Into Pension Funds

The statute provides that recipients may not use Fiscal Recovery Funds for "deposit into any pension fund." For the reasons discussed below, Treasury interprets "deposit" in this context to refer to an extraordinary payment into a pension fund for the purpose of reducing an accrued, unfunded liability. More specifically, the interim final rule does not permit this assistance to be used to make a payment into a pension fund if both:

1. The payment reduces a liability incurred prior to the start of the COVID–19 public health emergency, and
2. the payment occurs outside the recipient's regular timing for making such payments.

Under this interpretation, a "deposit" is distinct from a "payroll contribution," which occurs when employers make payments into pension funds on regular intervals, with contribution amounts based on a pre-determined percentage of employees' wages and salaries.

As discussed above, eligible uses for premium pay and responding to the negative economic impacts of the COVID–19 public health emergency include hiring and compensating public sector employees. Interpreting the scope of "deposit" to exclude contributions that are part of payroll contributions is more consistent with these eligible uses and would reduce administrative burden for recipients. Accordingly, if an employee's wages and salaries are an eligible use of Fiscal Recovery Funds, recipients may treat the employee's covered benefits as an eligible use of Fiscal Recovery Funds. For purposes of the Fiscal Recovery Funds, covered benefits include costs of all types of leave (vacation, family-related, sick, military, bereavement, sabbatical, jury duty), employee insurance (health, life, dental, vision), retirement (pensions, 401(k)), unemployment benefit plans

(Federal and State), workers' compensation insurance, and Federal Insurance Contributions Act taxes (which includes Social Security and Medicare taxes).

Treasury anticipates that this approach to employees' covered benefits will be comprehensive and, for employees whose wage and salary costs are eligible expenses, will allow all covered benefits listed in the previous paragraph to be eligible under the Fiscal Recovery Funds. Treasury expects that this will minimize the administrative burden on recipients by treating all the specified covered benefit types as eligible expenses, for employees whose wage and salary costs are eligible expenses.

Question 27: Beyond a "deposit" and a "payroll contribution," are there other types of payments into a pension fund that Treasury should consider?

B. Offset a Reduction in Net Tax Revenue

For States and territories (recipient governments [160]), section 602(c)(2)(A)—the offset provision—prohibits the use of Fiscal Recovery Funds to directly or indirectly offset a reduction in net tax revenue resulting from a change in law, regulation, or administrative interpretation [161] during the covered period. If a State or territory uses Fiscal Recovery Funds to offset a reduction in net tax revenue, the ARPA provides that the State or territory must repay to the Treasury an amount equal to the lesser of (i) the amount of the applicable reduction attributable to the impermissible offset and (ii) the amount received by the State or territory under the ARPA. *See* Section IV of this **SUPPLEMENTARY INFORMATION**. As discussed below Section IV of this **SUPPLEMENTARY INFORMATION**, a State or territory that chooses to use Fiscal Recovery Funds to offset a reduction in net tax revenue does not forfeit its entire allocation of Fiscal Recovery Funds (unless it misused the full allocation to offset a reduction in net tax revenue) or any non-ARPA funding received.

The interim final rule implements these conditions by establishing a framework for States and territories to determine the cost of changes in law, regulation, or interpretation that reduce tax revenue and to identify and value the sources of funds that will offset—*i.e.*, cover the cost of—any reduction in net tax revenue resulting from such changes. A recipient government would only be considered to have used Fiscal Recovery Funds to offset a reduction in net tax revenue resulting from changes in law, regulation, or interpretation if, and to the extent that, the recipient government could not identify sufficient funds from sources other than the Fiscal Recovery Funds to offset the reduction in net tax revenue. If sufficient funds from other sources cannot be identified to cover the full cost of the reduction in net tax revenue resulting from changes in law, regulation, or interpretation, the remaining amount not covered by these sources will be considered to have been offset by Fiscal Recovery Funds, in contravention of the offset provision. The interim final rule recognizes three sources of funds that may offset a reduction in net tax revenue other than Fiscal Recovery Funds—organic growth, increases in revenue (*e.g.*, an increase in a tax rate), and certain cuts in spending.

In order to reduce burden, the interim final rule's approach also incorporates the types of information and modeling already used by States and territories in their own fiscal and budgeting processes. By incorporating existing budgeting processes and capabilities, States and territories will be able to assess and evaluate the relationship of tax and budget decisions to uses of the Fiscal Recovery Funds based on information they likely have or can obtain. This approach ensures that recipient governments have the information they need to understand the implications of their decisions regarding the use of the Fiscal Recovery Funds—and, in particular, whether they are using the funds to directly or indirectly offset a reduction in net tax revenue, making them potentially subject to recoupment.

Reporting on both the eligible uses and on a State's or territory's covered tax changes that would reduce tax revenue will enable identification of, and recoupment for, use of Fiscal Recovery Funds to directly offset reductions in tax revenue resulting from tax relief. Moreover, this approach recognizes that, because money is fungible, even if Fiscal Recovery Funds are not explicitly or directly used to cover the costs of changes that reduce net tax revenue, those funds may be used in a manner inconsistent with the statute by indirectly being used to substitute for the State's or territory's funds that would otherwise have been needed to cover the costs of the reduction. By focusing on the cost of changes that reduce net tax revenue—and how a recipient government is offsetting those reductions in constructing its budget over the covered period—the framework prevents efforts to use Fiscal Recovery Funds to indirectly offset reductions in net tax revenue for which the recipient government has not identified other offsetting sources of funding.

As discussed in greater detail below in this preamble, the framework set forth in the interim final rule establishes a step-by-step process for determining whether, and the extent to which, Fiscal Recovery Funds have been used to offset a reduction in net tax revenue. Based on information reported annually by the recipient government:

- First, each year, each recipient government will identify and value the changes in law, regulation, or interpretation that would result in a reduction in net tax revenue, as it would in the ordinary course of its budgeting process. The sum of these values in the year for which the government is reporting is the amount it needs to "pay for" with sources other than Fiscal Recovery Funds (total value of revenue reducing changes).
- Second, the interim final rule recognizes that it may be difficult to predict how a change would affect net tax revenue in future years and, accordingly, provides that if the total value of the changes in the year for which the recipient government is reporting is below a de minimis level, as discussed below, the recipient government need not identify any sources of funding to pay for revenue reducing changes and will not be subject to recoupment.
- Third, a recipient government will consider the amount of actual tax revenue recorded in the year for which they are reporting. If the recipient government's actual tax revenue is greater than the amount of tax revenue received by the recipient for the fiscal year ending 2019, adjusted annually for inflation, the recipient government will not be considered to have violated the offset provision because there will not have been a reduction in net tax revenue.
- Fourth, if the recipient government's actual tax revenue is less than the amount of tax revenue received by the recipient government for the fiscal year ending 2019, adjusted annually for inflation, in the reporting year the recipient government will identify any sources of funds that have been used to permissibly offset the total value of covered tax changes other than Fiscal Recovery Funds. These are:
  - State or territory tax changes that would increase any source of general

[160] In this sub-section, "recipient governments" refers only to States and territories. In other sections, "recipient governments" refers more broadly to eligible governments receiving funding from the Fiscal Recovery Funds.

[161] For brevity, referred to as "changes in law, regulation, or interpretation" for the remainder of this preamble.

fund revenue, such as a change that would increase a tax rate; and

○ Spending cuts in areas not being replaced by Fiscal Recovery Funds.

The recipient government will calculate the value of revenue reduction remaining after applying these sources of offsetting funding to the total value of revenue reducing changes—that, is, how much of the tax change has not been paid for. The recipient government will then compare that value to the difference between the baseline and actual tax revenue. A recipient government will not be required to repay to the Treasury an amount that is greater than the recipient government's actual tax revenue shortfall relative to the baseline (*i.e.*, fiscal year 2019 tax revenue adjusted for inflation). This "revenue reduction cap," together with Step 3, ensures that recipient governments can use organic revenue growth to offset the cost of revenue reductions.

• Finally, if there are any amounts that could be subject to recoupment, Treasury will provide notice to the recipient government of such amounts. This process is discussed in greater detail in Section IV of this **SUPPLEMENTARY INFORMATION.**

Together, these steps allow Treasury to identify the amount of reduction in net tax revenue that both is attributable to covered changes and has been directly or indirectly offset with Fiscal Recovery Funds. This process ensures Fiscal Recovery Funds are used in a manner consistent with the statute's defined eligible uses and the offset provision's limitation on these eligible uses, while avoiding undue interference with State and territory decisions regarding tax and spending policies.

The interim final rule also implements a process for recouping Fiscal Recovery Funds that were used to offset reductions in net tax revenue, including the calculation of any amounts that may be subject to recoupment, a process for a recipient government to respond to a notice of recoupment, and clarification regarding amounts excluded from recoupment. *See* Section IV of this **SUPPLEMENTARY INFORMATION.**

The interim final rule includes several definitions that are applicable to the implementation of the offset provision.

Covered change. The offset provision is triggered by a reduction in net tax revenue resulting from "a change in law, regulation, or administrative interpretation." A covered change includes any final legislative or regulatory action, a new or changed administrative interpretation, and the phase-in or taking effect of any statute or rule where the phase-in or taking effect was not prescribed prior to the start of the covered period. Changed administrative interpretations would not include corrections to replace prior inaccurate interpretations; such corrections would instead be treated as changes implementing legislation enacted or regulations issued prior to the covered period; the operative change in those circumstances is the underlying legislation or regulation that occurred prior to the covered period. Moreover, only the changes within the control of the State or territory are considered covered changes. Covered changes do not include a change in rate that is triggered automatically and based on statutory or regulatory criteria in effect prior to the covered period. For example, a state law that sets its earned income tax credit (EITC) at a fixed percentage of the Federal EITC will see its EITC payments automatically increase—and thus its tax revenue reduced—because of the Federal Government's expansion of the EITC in the ARPA.[162] This would not be considered a covered change. In addition, the offset provision applies only to actions for which the change in policy occurs during the covered period; it excludes regulations or other actions that implement a change or law substantively enacted prior to March 3, 2021. Finally, Treasury has determined and previously announced that income tax changes—even those made during the covered period—that simply conform with recent changes in Federal law (including those to conform to recent changes in Federal taxation of unemployment insurance benefits and taxation of loan forgiveness under the Paycheck Protection Program) are permissible under the offset provision.

Baseline. For purposes of measuring a reduction in net tax revenue, the interim final rule measures actual changes in tax revenue relative to a revenue baseline (baseline). The baseline will be calculated as fiscal year 2019 (FY 2019) tax revenue indexed for inflation in each year of the covered period, with inflation calculated using the Bureau of Economic Analysis's Implicit Price Deflator.[163]

FY 2019 was chosen as the starting year for the baseline because it is the last full fiscal year prior to the COVID–19 public health emergency.[164] This baseline year is consistent with the approach directed by the ARPA in sections 602(c)(1)(C) and 603(c)(1)(C), which identify the "most recent full fiscal year of the [State, territory, or Tribal government] prior to the emergency" as the comparator for measuring revenue loss. U.S. gross domestic product is projected to rebound to pre-pandemic levels in 2021,[165] suggesting that an FY 2019 pre-pandemic baseline is a reasonable comparator for future revenue levels. The FY 2019 baseline revenue will be adjusted annually for inflation to allow for direct comparison of actual tax revenue in each year (reported in nominal terms) to baseline revenue in common units of measurement; without inflation adjustment, each dollar of reported actual tax revenue would be worth less than each dollar of baseline revenue expressed in 2019 terms.

Reporting year. The interim final rule defines "reporting year" as a single year within the covered period, aligned to the current fiscal year of the recipient government during the covered period, for which a recipient government reports the value of covered changes and any sources of offsetting revenue increases ("in-year" value), regardless of when those changes were enacted. For the fiscal years ending in 2021 or 2025 (partial years), the term "reporting year" refers to the portion of the year falling within the covered period. For example, the reporting year for a fiscal year beginning July 2020 and ending June 2021 would be from March 3, 2021 to July 2021.

Tax revenue. The interim final rule's definition of "tax revenue" is based on the Census Bureau's definition of taxes, used for its Annual Survey of State Government Finances.[166] It provides a consistent, well-established definition with which States and territories will be familiar and is consistent with the approach taken in Section II.C of this **SUPPLEMENTARY INFORMATION** describing the implementation of sections 602(c)(1)(C) and 603(c)(1)(C) of the Act, regarding revenue loss. Consistent with the approach described in Section II.C of this **SUPPLEMENTARY INFORMATION**, tax

[162] *See, e.g.*, Tax Policy Center, How do state earned income tax credits work?, *https://www.taxpolicycenter.org/briefing-book/how-do-state-earned-income-tax-credits-work/* (last visited May 9, 2021).

[163] U.S. Department of Commerce, Bureau of Economic Analysis, GDP Price Deflator, *https://www.bea.gov/data/prices-inflation/gdp-price-deflator* (last visited May 9, 2021).

[164] Using Fiscal Year 2019 is consistent with section 602 as Congress provided for using that baseline for determining the impact of revenue loss affecting the provision of government services. *See* section 602(c)(1)(C).

[165] Congressional Budget Office, An Overview of the Economic Outlook: 2021 to 2031 (February 1, 2021), *available at https://www.cbo.gov/publication/56965.*

[166] U.S. Census Bureau, Annual Survey of State and Local Government Finances Glossary, *https://www.census.gov/programs-surveys/state/about/glossary.html* (last visited Apr. 30, 2021).

revenue does not include revenue taxed and collected by a different unit of government (*e.g.*, revenue from taxes levied by a local government and transferred to a recipient government).

Framework. The interim final rule provides a step-by-step framework, to be used in each reporting year, to calculate whether the offset provision applies to a State's or territory's use of Fiscal Recovery Funds:

(1) *Covered changes that reduce tax revenue.* For each reporting year, a recipient government will identify and value covered changes that the recipient government predicts will have the effect of reducing tax revenue in a given reporting year, similar to the way it would in the ordinary course of its budgeting process. The value of these covered changes may be reported based on estimated values produced by a budget model, incorporating reasonable assumptions, that aligns with the recipient government's existing approach for measuring the effects of fiscal policies, and that measures relative to a current law baseline. The covered changes may also be reported based on actual values using a statistical methodology to isolate the change in year-over-year revenue attributable to the covered change(s), relative to the current law baseline prior to the change(s). Further, estimation approaches should not use dynamic methodologies that incorporate the projected effects of macroeconomic growth because macroeconomic growth is accounted for separately in the framework. Relative to these dynamic scoring methodologies, scoring methodologies that do not incorporate projected effects of macroeconomic growth rely on fewer assumptions and thus provide greater consistency among States and territories. Dynamic scoring that incorporates macroeconomic growth may also increase the likelihood of underestimation of the cost of a reduction in tax revenue.

In general and where possible, reporting should be produced by the agency of the recipient government responsible for estimating the costs and effects of fiscal policy changes. This approach offers recipient governments the flexibility to determine their reporting methodology based on their existing budget scoring practices and capabilities. In addition, the approach of using the projected value of changes in law that enact fiscal policies to estimate the net effect of such policies is consistent with the way many States and territories already consider tax changes.[167]

(2) *In excess of the de minimis.* The recipient government will next calculate the total value of all covered changes in the reporting year resulting in revenue reductions, identified in Step **1**. If the total value of the revenue reductions resulting from these changes is below the de minimis level, the recipient government will be deemed not to have any revenue-reducing changes for the purpose of determining the recognized net reduction. If the total is above the de minimis level, the recipient government must identify sources of in-year revenue to cover the full costs of changes that reduce tax revenue.

The de minimis level is calculated as 1 percent of the reporting year's baseline. Treasury recognizes that, pursuant to their taxing authority, States and territories may make many small changes to alter the composition of their tax revenues or implement other policies with marginal effects on tax revenues. They may also make changes based on projected revenue effects that turn out to differ from actual effects, unintentionally resulting in minor revenue changes that are not fairly described as "resulting from" tax law changes. The de minimis level recognizes the inherent challenges and uncertainties that recipient governments face, and thus allows relatively small reductions in tax revenue without consequence. Treasury determined the 1 percent level by assessing the historical effects of state-level tax policy changes in state EITCs implemented to effect policy goals other than reducing net tax revenues.[168] The 1 percent de minimis level reflects the historical reductions in revenue due to minor changes in state fiscal policies.

(3) *Safe harbor.* The recipient government will then compare the reporting year's actual tax revenue to the baseline. If actual tax revenue is greater than the baseline, Treasury will deem the recipient government not to have any recognized net reduction for the reporting year, and therefore to be in a safe harbor and outside the ambit of the offset provision. This approach is consistent with the ARPA, which contemplates recoupment of Fiscal Recovery Funds only in the event that such funds are used to offset a reduction in net tax revenue. If net tax revenue has not been reduced, this provision does not apply. In the event that actual tax revenue is above the baseline, the organic revenue growth that has occurred, plus any other revenue-raising changes, by definition must have been enough to offset the in-year costs of the covered changes.

(4) *Consideration of other sources of funding.* Next, the recipient government will identify and calculate the total value of changes that could pay for revenue reduction due to covered changes and sum these items. This amount can be used to pay for up to the total value of revenue-reducing changes in the reporting year. These changes consist of two categories:

(a) *Tax and other increases in revenue.* The recipient government must identify and consider covered changes in policy that the recipient government predicts will have the effect of increasing general revenue in a given reporting year. As when identifying and valuing covered changes that reduce tax revenue, the value of revenue-raising changes may be reported based on estimated values produced by a budget model, incorporating reasonable assumptions, aligned with the recipient government's existing approach for measuring the effects of fiscal policies, and measured relative to a current law baseline, or based on actual values using a statistical methodology to isolate the change in year-over-year revenue attributable to the covered change(s). Further, and as discussed above, estimation approaches should not use dynamic scoring methodologies that incorporate the effects of macroeconomic growth because growth is accounted for separately under the interim final rule. In general and where possible, reporting should be produced by the agency of the recipient government responsible for estimating the costs and effects of fiscal policy changes. This approach offers recipient governments the flexibility to determine their reporting methodology based on their existing budget scoring practices and capabilities.

(b) *Covered spending cuts.* A recipient government also may cut spending in certain areas to pay for covered changes that reduce tax revenue, up to the amount of the recipient government's net reduction in total spending as described below. These changes must be reductions in government outlays not in an area where the recipient government has spent Fiscal Recovery Funds. To better align with existing reporting and accounting, the interim final rule considers the department, agency, or

[167] *See, e.g.*, Megan Randall & Kim Rueben, Tax Policy Center, Sustainable Budgeting in the States: Evidence on State Budget Institutions and Practices (Nov. 2017), *available at https://www.taxpolicycenter.org/sites/default/files/publication/149186/sustainable-budgeting-in-the-states_1.pdf.*

[168] Data provided by the Urban-Brookings Tax Policy Center for state-level EITC changes for 2004–2017.

authority from which spending has been cut and whether the recipient government has spent Fiscal Recovery Funds on that same department, agency, or authority. This approach was selected to allow recipient governments to report how Fiscal Recovery Funds have been spent using reporting units already incorporated into their budgeting process. If they have not spent Fiscal Recovery Funds in a department, agency, or authority, the full amount of the reduction in spending counts as a covered spending cut, up to the recipient government's net reduction in total spending. If they have, the Fiscal Recovery Funds generally would be deemed to have replaced the amount of spending cut and only reductions in spending above the amount of Fiscal Recovery Funds spent on the department, agency, or authority would count.

To calculate the amount of spending cuts that are available to offset a reduction in tax revenue, the recipient government must first consider whether there has been a reduction in total net spending, excluding Fiscal Recovery Funds (net reduction in total spending). This approach ensures that reported spending cuts actually create fiscal space, rather than simply offsetting other spending increases. A net reduction in total spending is measured as the difference between total spending in each reporting year, excluding Fiscal Recovery Funds spent, relative to total spending for the recipient's fiscal year ending in 2019, adjusted for inflation. Measuring reductions in spending relative to 2019 reflects the fact that the fiscal space created by a spending cut persists so long as spending remains below its original level, even if it does not decline further, relative to the same amount of revenue. Measuring spending cuts from year to year would, by contrast, not recognize any available funds to offset revenue reductions unless spending continued to decline, failing to reflect the actual availability of funds created by a persistent change and limiting the discretion of States and territories. In general and where possible, reporting should be produced by the agency of the recipient government responsible for estimating the costs and effects of fiscal policy changes. Treasury chose this approach because while many recipient governments may score budget legislation using projections, spending cuts are readily observable using actual values.

This approach—allowing only spending reductions in areas where the recipient government has not spent Fiscal Recovery Funds to be used as an offset for a reduction in net tax revenue—aims to prevent recipient governments from using Fiscal Recovery Funds to supplant State or territory funding in the eligible use areas, and then use those State or territory funds to offset tax cuts. Such an approach helps ensure that Fiscal Recovery Funds are not used to "indirectly" offset revenue reductions due to covered changes.

In order to help ensure recipient governments use Fiscal Recovery Funds in a manner consistent with the prescribed eligible uses and do not use Fiscal Recovery Funds to indirectly offset a reduction in net tax revenue resulting from a covered change, Treasury will monitor changes in spending throughout the covered period. If, over the course of the covered period, a spending cut is subsequently replaced with Fiscal Recovery Funds and used to indirectly offset a reduction in net tax revenue resulting from a covered change, Treasury may consider such change to be an evasion of the restrictions of the offset provision and seek recoupment of such amounts.

(5) *Identification of amounts subject to recoupment.* If a recipient government (i) reports covered changes that reduce tax revenue (Step 1); (ii) to a degree greater than the de minimis (Step 2); (iii) has experienced a reduction in net tax revenue (Step 3); and (iv) lacks sufficient revenue from other, permissible sources to pay for the entirety of the reduction (Step 4), then the recipient government will be considered to have used Fiscal Recovery Funds to offset a reduction in net tax revenue, up to the amount that revenue has actually declined. That is, the maximum value of reduction in revenue due to covered changes which a recipient government must cover is capped at the difference between the baseline and actual tax revenue.[169] In the event that the baseline is above actual tax revenue and the difference between them is less than the sum of revenue reducing changes that are not paid for with other, permissible sources, organic revenue growth has implicitly offset a portion of the reduction. For example, if a recipient government reduces tax revenue by $1 billion, makes no other changes, and experiences revenue growth driven by organic economic growth worth $500 million, it need only pay for the remaining $500 million with sources other than Fiscal Recovery Funds. The revenue reduction cap implements this approach for permitting organic revenue growth to cover the cost of tax cuts.

Finally, as discussed further in Section IV of this **SUPPLEMENTARY INFORMATION**, a recipient government may request reconsideration of any amounts identified as subject to recoupment under this framework. This process ensures that all relevant facts and circumstances, including information regarding planned spending cuts and budgeting assumptions, are considered prior to a determination that an amount must be repaid. Amounts subject to recoupment are calculated on an annual basis; amounts recouped in one year cannot be returned if the State or territory subsequently reports an increase in net tax revenue.

To facilitate the implementation of the framework above, and in addition to reporting required on eligible uses, in each year of the reporting period, each State and territory will report to Treasury the following items:

- Actual net tax revenue for the reporting year;
- Each revenue-reducing change made to date during the covered period and the in-year value of each change;
- Each revenue-raising change made to date during the covered period and the in-year value of each change;
- Each covered spending cut made to date during the covered period, the in-year value of each cut, and documentation demonstrating that each spending cut is covered as prescribed under the interim final rule;

Treasury will provide additional guidance and instructions the reporting requirements at a later date.

Question 28: Does the interim final rule's definition of tax revenue accord with existing State and territorial practice and, if not, are there other definitions or elements Treasury should consider? Discuss why or why not.

Question 29: The interim final rule permits certain spending cuts to cover the costs of reductions in tax revenue, including cuts in a department, agency, or authority in which the recipient government is not using Fiscal Recovery Funds. How should Treasury and recipient governments consider the scope of a department, agency, or authority for the use of funds to ensure spending cuts are not being substituted with Fiscal Recovery Funds while also avoiding an overbroad definition of that captures spending that is, in fact, distinct?

Question 30: Discuss the budget scoring methodologies currently used by States and territories. How should the interim final rule take into consideration differences in approaches? Please discuss the use of

[169] This cap is applied in § 35.8(c) of the interim final rule, calculating the amount of funds used in violation of the tax offset provision.

practices including but not limited to macrodynamic scoring, microdynamic scoring, and length of budget windows.

Question 31: If a recipient government has a balanced budget requirement, how will that requirement impact its use of Fiscal Recovery Funds and ability to implement this framework?

Question 32: To implement the framework described above, the interim final rule establishes certain reporting requirements. To what extent do recipient governments already produce this information and on what timeline? Discuss ways that Treasury and recipient governments may better rely on information already produced, while ensuring a consistent application of the framework.

Question 33: Discuss States' and territories' ability to produce the figures and numbers required for reporting under the interim final rule. What additional reporting tools, such as a standardized template, would facilitate States' and territories' ability to complete the reporting required under the interim final rule?

C. Other Restrictions on Use

Payments from the Fiscal Recovery Funds are also subject to pre-existing limitations provided in other Federal statutes and regulations and may not be used as non-Federal match for other Federal programs whose statute or regulations bar the use of Federal funds to meet matching requirements. For example, payments from the Fiscal Recovery Funds may not be used to satisfy the State share of Medicaid.[170]

As provided for in the award terms, payments from the Fiscal Recovery Funds as a general matter will be subject to the provisions of the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (2 CFR part 200) (the Uniform Guidance), including the cost principles and restrictions on general provisions for selected items of cost.

D. Timeline for Use of Fiscal Recovery Funds

Section 602(c)(1) and section 603(c)(1) require that payments from the Fiscal Recovery Funds be used only to cover costs incurred by the State, territory, Tribal government, or local government by December 31, 2024. Similarly, the CARES Act provided that payments from the CRF be used to cover costs incurred by December 31, 2021.[171] The definition of "incurred" does not have a clear meaning. With respect to the CARES Act, on the understanding that the CRF was intended to be used to meet relatively short-term needs, Treasury interpreted this requirement to mean that, for a cost to be considered to have been incurred, performance of the service or delivery of the goods acquired must occur by December 31, 2021. In contrast, the ARPA, passed at a different stage of the COVID–19 public health emergency, was intended to provide more general fiscal relief over a broader timeline. In addition, the ARPA expressly permits the use of Fiscal Recovery Funds for improvements to water, sewer, and broadband infrastructure, which entail a longer timeframe. In recognition of this, Treasury is interpreting the requirement in section 602 and section 603 that costs be incurred by December 31, 2024, to require only that recipients have obligated the Fiscal Recovery Funds by such date. The interim final rule adopts a definition of "obligation" that is based on the definition used for purposes of the Uniform Guidance, which will allow for uniform administration of this requirement and is a definition with which most recipients will be familiar.

Payments from the Fiscal Recovery Funds are grants provided to recipients to mitigate the fiscal effects of the COVID–19 public health emergency and to respond to the public health emergency, consistent with the eligible uses enumerated in sections 602(c)(1) and 603(c)(1).[172] As such, these funds are intended to provide economic stimulus in areas still recovering from the economic effects of the pandemic. In implementing and interpreting these provisions, including what it means to "respond to" the COVID–19 public health emergency, Treasury takes into consideration pre-pandemic facts and circumstances (*e.g.*, average revenue growth prior to the pandemic) as well as impact of the pandemic that predate the enactment of the ARPA (*e.g.*, replenishing Unemployment Trust balances drawn during the pandemic). While assessing the effects of the COVID–19 public health emergency necessarily takes into consideration the facts and circumstances that predate the ARPA, use of Fiscal Recovery Funds is forward looking.

As discussed above, recipients are permitted to use payments from the Fiscal Recovery Funds to respond to the public health emergency, to respond to workers performing essential work by providing premium pay or providing grants to eligible employers, and to make necessary investments in water, sewer, or broadband infrastructure, which all relate to prospective uses. In addition, sections 602(c)(1)(C) and 603(c)(1)(C) permit recipients to use Fiscal Recovery Funds for the provision of government services. This clause provides that the amount of funds that may be used for this purpose is measured by reference to the reduction in revenue due to the public health emergency relative to revenues collected in the most recent full fiscal year, but this reference does not relate to the period during which recipients may use the funds, which instead refers to prospective uses, consistent with the other eligible uses.

Although as discussed above the eligible uses of payments from the Fiscal Recovery Funds are all prospective in nature, Treasury considers the beginning of the covered period for purposes of determining compliance with section 602(c)(2)(A) to be the relevant reference point for this purpose. The interim final rule thus permits funds to be used to cover costs incurred beginning on March 3, 2021. This aligns the period for use of Fiscal Recovery Funds with the period during which these funds may not be used to offset reductions in net tax revenue. Permitting Fiscal Recovery Funds to be used to cover costs incurred beginning on this date will also mean that recipients that began incurring costs in the anticipation of enactment of the ARPA and in advance of the issuance of this rule and receipt of payment from the Fiscal Recovery Funds would be able to cover them using these payments.[173]

As set forth in the award terms, the period of performance will run until December 31, 2026, which will provide recipients a reasonable amount of time to complete projects funded with payments from the Fiscal Recovery Funds.

IV. Recoupment Process

Under the ARPA, failure to comply with the restrictions on use contained in sections 602(c) and 603(c) of the Act may result in recoupment of funds.[174] The interim final rule implements these provisions by establishing a process for recoupment.

Identification and Notice of Violations. Failure to comply with the restrictions on use will be identified based on reporting provided by the

[170] *See* 42 CFR 433.51 and 45 CFR 75.306.

[171] Section 1001 of Division N of the Consolidated Appropriations Act, 2021 amended section 601(d)(3) of the Act by extending the end of the covered period for CRF expenditures from December 30, 2020 to December 31, 2021.

[172] Sections 602(a), 603(a), 602(c)(1) and 603(c)(1) of the Act.

[173] Given the nature of this program, recipients will not be permitted to use funds to cover pre-award costs, *i.e.*, those incurred prior to March 3, 2021.

[174] Sections 602(e) and 603(e) of the Act.

recipient. As discussed further in Sections III.B and VIII of this **SUPPLEMENTARY INFORMATION**, Treasury will collect information regarding eligible uses on a quarterly basis and on the tax offset provision on an annual basis. Treasury also may consider other information in identifying a violation, such as information provided by members of the public. If Treasury identifies a violation, it will provide written notice to the recipient along with an explanation of such amounts.

Request for Reconsideration. Under the interim final rule, a recipient may submit a request for reconsideration of any amounts identified in the notice provided by Treasury. This reconsideration process provides a recipient the opportunity to submit additional information it believes supports its request in light of the notice of recoupment, including, for example, additional information regarding the recipient's use of Fiscal Recovery Funds or its tax revenues. The process also provides the Secretary with an opportunity to consider all information relevant to whether a violation has occurred, and if so, the appropriate amount for recoupment.

The interim final rule also establishes requirements for the timing of a request for reconsideration. Specifically, if a recipient wishes to request reconsideration of any amounts identified in the notice, the recipient must submit a written request for reconsideration to the Secretary within 60 calendar days of receipt of such notice. The request must include an explanation of why the recipient believes that the finding of a violation or recoupable amount identified in the notice of recoupment should be reconsidered. To facilitate the Secretary's review of a recipient's request for reconsideration, the request should identify all supporting reasons for the request. Within 60 calendar days of receipt of the recipient's request for reconsideration, the recipient will be notified of the Secretary's decision to affirm, withdraw, or modify the notice of recoupment. Such notification will include an explanation of the decision, including responses to the recipient's supporting reasons and consideration of additional information provided.

The process and timeline established by the interim final rule are intended to provide the recipient with an adequate opportunity to fully present any issues or arguments in response to the notice of recoupment.[175] This process will allow the Secretary to respond to the issues and considerations raised in the request for reconsideration taking into account the information and arguments presented by the recipient along with any other relevant information.

Repayment. Finally, the interim final rule provides that any amounts subject to recoupment must be repaid within 120 calendar days of receipt of any final notice of recoupment or, if the recipient has not requested reconsideration, within 120 calendar days of the initial notice provided by the Secretary.

Question 34: Discuss the timeline for requesting reconsideration under the interim final rule. What, if any, challenges does this timeline present?

V. Payments in Tranches to Local Governments and Certain States

Section 603 of the Act provides that the Secretary will make payments to local governments in two tranches, with the second tranche being paid twelve months after the first payment. In addition, section 602(b)(6)(A)(ii) provides that the Secretary may withhold payment of up to 50 percent of the amount allocated to each State and territory for a period of up to twelve months from the date on which the State or territory provides its certification to the Secretary. Any such withholding for a State or territory is required to be based on the unemployment rate in the State or territory as of the date of the certification.

The Secretary has determined to provide in this interim final rule for withholding of 50 percent of the amount of Fiscal Recovery Funds allocated to all States (and the District of Columbia) other than those with an unemployment rate that is 2.0 percentage points or more above its pre-pandemic (*i.e.*, February 2020) level. The Secretary will refer to the latest available monthly data from the Bureau of Labor Statistics as of the date the certification is provided. Based on data available at the time of public release of this interim final rule, this threshold would result in a majority of States being paid in two tranches.

Splitting payments for the majority of States is consistent with the requirement in section 603 of the Act to make payments from the Coronavirus Local Fiscal Recovery Fund to local governments in two tranches.[176] Splitting payments to States into two tranches will help encourage recipients to adapt, as necessary, to new developments that could arise over the coming twelve months, including potential changes to the nature of the public health emergency and its negative economic impacts. While the U.S. economy has been recovering and adding jobs in aggregate, there is still considerable uncertainty in the economic outlook and the interaction between the pandemic and the economy.[177] For these reasons, Treasury believes it will be appropriate for a majority of recipients to adapt their plans as the recovery evolves. For example, a faster-than-expected economic recovery in 2021 could lead a recipient to dedicate more Fiscal Recovery Funds to longer-term investments starting in 2022. In contrast, a slower-than-expected economic recovery in 2021 could lead a recipient to use additional funds for near-term stimulus in 2022.

At the same time, the statute contemplates the possibility that elevated unemployment in certain States could justify a single payment. Elevated unemployment is indicative of a greater need to assist unemployed workers and stimulate a faster economic recovery. For this reason, the interim final rule provides that States and territories with an increase in their unemployment rate over a specified threshold may receive a single payment, with the expectation that a single tranche will better enable these States and territories to take additional immediate action to aid the unemployed and strengthen their economies.

Following the initial pandemic-related spike in unemployment in 2020, States' unemployment rates have been trending back towards pre-pandemic levels. However, some States' labor markets are healing more slowly than others. Moreover, States varied widely in their pre-pandemic levels of unemployment, and some States remain substantially further from their pre-

[175] The interim final rule also provides that Treasury may extend any deadlines.

[176] With respect to Federal financial assistance more generally, States are subject to the requirements of the Cash Management Improvement Act (CMIA), under which Federal funds are drawn upon only on an as needed basis and States are required to remit interest on unused balances to Treasury. Given the statutory requirement for Treasury to make payments to States within a certain period, these requirements of the CMIA and Treasury's implementing regulations at 31 CFR part 205 will not apply to payments from the Fiscal Recovery Funds. Providing funding in two tranches to the majority of States reflects, to the maximum extent permitted by section 602 of the Act, the general principles of Federal cash management and stewardship of Federal funding, yet will be much less restrictive than the usual requirements to which States are subject.

[177] The potential course of the virus, and its impact on the economy, has contributed to a heightened degree of uncertainty relative to prior periods. *See, e.g.*, Dave Altig et al., Economic uncertainty before and during the COVID–19 pandemic, J. of Public Econ. (Nov. 2020), *available at https://www.sciencedirect.com/science/article/abs/pii/S0047272720301389.*

pandemic starting point. Consequently, Treasury is delineating States with significant remaining elevation in the unemployment rate, based on the net difference to pre-pandemic levels.

Treasury has established that significant remaining elevation in the unemployment rate is a net change in the unemployment rate of 2.0 percentage points or more relative to pre-pandemic levels. In the four previous recessions going back to the early 1980s, the national unemployment rate rose by 3.6, 2.3, 2.0, and 5.0 percentage points, as measured from the start of the recession to the eventual peak during or immediately following the recession.[178] Each of these increases can therefore represent a recession's impact on unemployment. To identify States with significant remaining elevation in unemployment, Treasury took the lowest of these four increases, 2.0 percentage points, to indicate states where, despite improvement in the unemployment rate, current labor market conditions are consistent still with a historical benchmark for a recession.

No U.S. territory will be subject to withholding of its payment from the Fiscal Recovery Funds. For Puerto Rico, the Secretary has determined that the current level of the unemployment rate (8.8 percent, as of March 2021[179]) is sufficiently high such that Treasury should not withhold any portion of its payment from the Fiscal Recovery Funds regardless of its change in unemployment rate relative to its pre-pandemic level. For U.S. territories that are not included in the Bureau of Labor Statistics' monthly unemployment rate data, the Secretary will not exercise the authority to withhold amounts from the Fiscal Recovery Funds.

VI. Transfer

The statute authorizes State, territorial, and Tribal governments; counties; metropolitan cities; and nonentitlement units of local government (counties, metropolitan cities, and nonentitlement units of local government are collectively referred to as "local governments") to transfer amounts paid from the Fiscal Recovery Funds to a number of specified entities. By permitting these transfers, Congress recognized the importance of providing flexibility to governments seeking to achieve the greatest impact with their funds, including by working with other levels or units of government or private entities to assist recipient governments in carrying out their programs. This includes special-purpose districts that perform specific functions in the community, such as fire, water, sewer, or mosquito abatement districts.

Specifically, under section 602(c)(3), a State, territory, or Tribal government may transfer funds to a "private nonprofit organization . . . a Tribal organization . . . a public benefit corporation involved in the transportation of passengers or cargo, or a special-purpose unit of State or local government."[180] Similarly, section 603(c)(3) authorizes a local government to transfer funds to the same entities (other than Tribal organizations).

The interim final rule clarifies that the lists of transferees in sections 602(c)(3) and 603(c)(3) are not exclusive. The interim final rule permits State, territorial, and Tribal governments to transfer Fiscal Recovery Funds to other constituent units of government or private entities beyond those specified in the statute. Similarly, local governments are authorized to transfer Fiscal Recovery Funds to other constituent units of government (*e.g.*, a county is able to transfer Fiscal Recovery Funds to a city, town, or school district within it) or to private entities. This approach is intended to help provide funding to local governments with needs that may exceed the allocation provided under the statutory formula.

State, local, territorial, and Tribal governments that receive a Federal award directly from a Federal awarding agency, such as Treasury, are "recipients." A transferee receiving a transfer from a recipient under sections 602(c)(3) and 603(c)(3) will be a subrecipient. Subrecipients are entities that receive a subaward from a recipient to carry out a program or project on behalf of the recipient with the recipient's Federal award funding. The recipient remains responsible for monitoring and overseeing the subrecipient's use of Fiscal Recovery Funds and other activities related to the award to ensure that the subrecipient complies with the statutory and regulatory requirements and the terms and conditions of the award. Recipients also remain responsible for reporting to Treasury on their subrecipients' use of payments from the Fiscal Recovery Funds for the duration of the award.

Transfers under sections 602(c)(3) and 603(c)(3) must qualify as an eligible use of Fiscal Recovery Funds by the transferor. Once Fiscal Recovery Funds are received, the transferee must abide by the restrictions on use applicable to the transferor under the ARPA and other applicable law and program guidance. For example, if a county transferred Fiscal Recovery Funds to a town within its borders to respond to the COVID–19 public health emergency, the town would be bound by the eligible use requirements applicable to the county in carrying out the county's goal. This also means that county A may not transfer Fiscal Recovery Funds to county B for use in county B because such a transfer would not, from the perspective of the transferor (county A), be an eligible use in county A.

Section 603(c)(4) separately provides for transfers by a local government to its State or territory. A transfer under section 603(c)(4) will not make the State a subrecipient of the local government, and such Fiscal Recovery Funds may be used by the State for any purpose permitted under section 602(c). A transfer under section 603(c)(4) will result in a cancellation or termination of the award on the part of the transferor local government and a modification of the award to the transferee State or territory. The transferor must provide notice of the transfer to Treasury in a format specified by Treasury. If the local government does not provide such notice, it will remain legally obligated to Treasury under the award and remain responsible for ensuring that the awarded Fiscal Recovery Funds are being used in accordance with the statute and program guidance and for reporting on such uses to Treasury. A State that receives a transfer from a local government under section 603(c)(4) will be bound by all of the use restrictions set forth in section 602(c) with respect to the use of those Fiscal Recovery Funds, including the prohibitions on use of such Fiscal Recovery Funds to offset certain reductions in taxes or to make deposits into pension funds.

Question 35: What are the advantages and disadvantages of treating the list of transferees in sections 602(c)(3) and 603(c)(3) as nonexclusive, allowing States and localities to transfer funds to entities outside of the list?

Question 36: Are there alternative ways of defining "special-purpose unit of State or local government" and

[178] Includes the period during and immediately following recessions, as defined by the National Bureau of Economic Research. National Bureau of Economic Research, US Business Cycle Expansions and Contractions, *https://www.nber.org/research/data/us-business-cycle-expansions-and-contractions* (last visited Apr. 27, 2021). Based on data from U.S. Bureau of Labor Statistics, Unemployment Rate [UNRATE], retrieved from FRED, Federal Reserve Bank of St. Louis, *https://fred.stlouisfed.org/series/UNRATE* (last visited Apr. 27, 2021).

[179] U.S. Bureau of Labor Statistics, Economic News Release—Table 1. Civilian labor force and unemployment by state and selected area, seasonally adjusted, *https://www.bls.gov/news.release/laus.t01.htm* (last visited Apr. 30, 2021).

[180] Section 602(c)(3) of the Act.

"public benefit corporation" that would better further the aims of the Funds?

VII. Nonentitlement Units of Government

The Fiscal Recovery Funds provides for $19.53 billion in payments to be made to States and territories which will distribute the funds to nonentitlement units of local government (NEUs); local governments which generally have populations below 50,000. These local governments have not yet received direct fiscal relief from the Federal Government during the COVID–19 public health emergency, making Fiscal Recovery Funds payments an important source of support for their public health and economic responses. Section 603 requires Treasury to allocate and pay Fiscal Recovery Funds to the States and territories and requires the States and territories to distribute Fiscal Recovery Funds to NEUs based on population within 30 days of receipt unless an extension is granted by the Secretary. The interim final rule clarifies certain aspects regarding the distribution of Fiscal Recovery by States and territories to NEUs, as well as requirements around timely payments from the Fiscal Recovery Funds.

The ARPA requires that States and territories allocate funding to NEUs in an amount that bears the same proportion as the population of the NEU bears to the total population of all NEUs in the State or territory, subject to a cap (described below). Because the statute requires States and territories to make distributions based on population, States and territories may not place additional conditions or requirements on distributions to NEUs, beyond those required by the ARPA and Treasury's implementing regulations and guidance. For example, a State may not impose stricter limitations than permitted by statute or Treasury regulations or guidance on an NEU's use of Fiscal Recovery Funds based on the NEU's proposed spending plan or other policies. States and territories are also not permitted to offset any debt owed by the NEU against the NEU's distribution. Further, States and territories may not provide funding on a reimbursement basis—*e.g.,* requiring NEUs to pay for project costs up front before being reimbursed with Fiscal Recovery Funds payments—because this funding model would not comport with the statutory requirement that States and territories make distributions to NEUs within the statutory timeframe.

Similarly, States and territories distributing Fiscal Recovery Funds payments to NEUs are responsible for complying with the Fiscal Recovery Funds statutory requirement that distributions to NEUs not exceed 75 percent of the NEU's most recent budget. The most recent budget is defined as the NEU's most recent annual total operating budget, including its general fund and other funds, as of January 27, 2020. Amounts in excess of such cap and therefore not distributed to the NEU must be returned to Treasury by the State or territory. States and territories may rely for this determination on a certified top-line budget total from the NEU.

Under the interim final rule, the total allocation and distribution to an NEU, including the sum of both the first and second tranches of funding, cannot exceed the 75 percent cap. States and territories must permit NEUs without formal budgets as of January 27, 2020 to self-certify their most recent annual expenditures as of January 27, 2020 for the purpose of calculating the cap. This approach will provide an administrable means to implement the cap for small local governments that do not adopt a formal budget.

Section 603(b)(3) of the Social Security Act provides for Treasury to make payments to counties but provides that, in the case of an amount to be paid to a county that is not a unit of general local government, the amount shall instead be paid to the State in which such county is located, and such State shall distribute such amount to each unit of general local government within such county in an amount that bears the same proportion to the amount to be paid to such county as the population of such units of general local government bears to the total population of such county. As with NEUs, States may not place additional conditions or requirements on distributions to such units of general local government, beyond those required by the ARPA and Treasury's implementing regulations and guidance.

In the case of consolidated governments, section 603(b)(4) allows consolidated governments (*e.g.,* a city-county consolidated government) to receive payments under each allocation based on the respective formulas. In the case of a consolidated government, Treasury interprets the budget cap to apply to the consolidated government's NEU allocation under section 603(b)(2) but not to the consolidated government's county allocation under section 603(b)(3).

If necessary, States and territories may use the Fiscal Recovery Funds under section 602(c)(1)(A) to fund expenses related to administering payments to NEUs and units of general local government, as disbursing these funds itself is a response to the public health emergency and its negative economic impacts. If a State or territory requires more time to disburse Fiscal Recovery Funds to NEUs than the allotted 30 days, Treasury will grant extensions of not more than 30 days for States and territories that submit a certification in writing in accordance with section 603(b)(2)(C)(ii)(I). Additional extensions may be granted at the discretion of the Secretary.

Question 37: What are alternative ways for States and territories to enforce the 75 percent cap while reducing the administrative burden on them?

Question 38: What criteria should Treasury consider in assessing requests for extensions for further time to distribute NEU payments?

VIII. Reporting

States (defined to include the District of Columbia), territories, metropolitan cities, counties, and Tribal governments will be required to submit one interim report and thereafter quarterly Project and Expenditure reports through the end of the award period on December 31, 2026. The interim report will include a recipient's expenditures by category at the summary level from the date of award to July 31, 2021 and, for States and territories, information related to distributions to nonentitlement units. Recipients must submit their interim report to Treasury by August 31, 2021. Nonentitlement units of local government are not required to submit an interim report.

The quarterly Project and Expenditure reports will include financial data, information on contracts and subawards over $50,000, types of projects funded, and other information regarding a recipient's utilization of the award funds. The reports will include the same general data (*e.g.,* on obligations, expenditures, contracts, grants, and subawards) as those submitted by recipients of the CRF, with some modifications. Modifications will include updates to the expenditure categories and the addition of data elements related to specific eligible uses, including some of the reporting elements described in sections above. The initial quarterly Project and Expenditure report will cover two calendar quarters from the date of award to September 30, 2021, and must be submitted to Treasury by October 31, 2021. The subsequent quarterly reports will cover one calendar quarter and must be submitted to Treasury within 30 days after the end of each calendar quarter.

Nonentitlement units of local government will be required to submit

annual Project and Expenditure reports until the end of the award period on December 31, 2026. The initial annual Project and Expenditure report for nonentitlement units of local government will cover activity from the date of award to September 30, 2021 and must be submitted to Treasury by October 31, 2021. The subsequent annual reports must be submitted to Treasury by October 31 each year.

States, territories, metropolitan cities, and counties with a population that exceeds 250,000 residents will also be required to submit an annual Recovery Plan Performance report to Treasury. The Recovery Plan Performance report will provide the public and Treasury information on the projects that recipients are undertaking with program funding and how they are planning to ensure project outcomes are achieved in an effective, efficient, and equitable manner. Each jurisdiction will have some flexibility in terms of the form and content of the Recovery Plan Performance report, as long as it includes the minimum information required by Treasury. The Recovery Plan Performance report will include key performance indicators identified by the recipient and some mandatory indicators identified by Treasury, as well as programmatic data in specific eligible use categories and the specific reporting requirements described in the sections above. The initial Recovery Plan Performance report will cover the period from the date of award to July 31, 2021 and must be submitted to Treasury by August 31, 2021. Thereafter, Recovery Plan Performance reports will cover a 12-month period, and recipients will be required to submit the report to Treasury within 30 days after the end of the 12-month period. The second Recovery Plan Performance report will cover the period from July 1, 2021 to June 30, 2022, and must be submitted to Treasury by July 31, 2022. Each annual Recovery Plan Performance report must be posted on the public-facing website of the recipient. Local governments with fewer than 250,000 residents, Tribal governments, and nonentitlement units of local government are not required to develop a Recovery Plan Performance report.

Treasury will provide additional guidance and instructions on the reporting requirements outlined above for the Fiscal Recovery Funds at a later date.

IX. Comments and Effective Date

This interim final rule is being issued without advance notice and public comment to allow for immediate implementation of this program. As discussed below, the requirements of advance notice and public comment do not apply "to the extent that there is involved . . . a matter relating to agency . . . grants." [181] The interim final rule implements statutory conditions on the eligible uses of the Fiscal Recovery Funds grants, and addresses the payment of those funds, the reporting on uses of funds, and potential consequences of ineligible uses. In addition and as discussed below, the Administrative Procedure Act also provides an exception to ordinary notice-and-comment procedures "when the agency for good cause finds (and incorporates the finding and a brief statement of reasons therefor in the rules issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest." [182] This good cause justification also supports waiver of the 60-day delayed effective date for major rules under the Congressional Review Act at 5 U.S.C. 808(2). Although this interim final rule is effective immediately, comments are solicited from interested members of the public and from recipient governments on all aspects of the interim final rule.

These comments must be submitted on or before July 16, 2021.

X. Regulatory Analyses

Executive Orders 12866 and 13563

This interim final rule is economically significant for the purposes of Executive Orders 12866 and 13563. Treasury, however, is proceeding under the emergency provision at Executive Order 12866 section 6(a)(3)(D) based on the need to act expeditiously to mitigate the current economic conditions arising from the COVID–19 public health emergency. The rule has been reviewed by the Office of Management and Budget (OMB) in accordance with Executive Order 12866. This rule is necessary to implement the ARPA in order to provide economic relief to State, local, and Tribal governments adversely impacted by the COVID–19 public health emergency.

Under Executive Order 12866, OMB must determine whether this regulatory action is "significant" and, therefore, subject to the requirements of the Executive Order and subject to review by OMB. Section 3(f) of Executive Order 12866 defines a significant regulatory action as an action likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more, or adversely affect a sector of the economy; productivity; competition; jobs; the environment; public health or safety; or State, local, or Tribal governments or communities in a material way (also referred to as "economically significant" regulations);

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impacts of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles stated in the Executive order.

This regulatory action is an economically significant regulatory action subject to review by OMB under section 3(f) of Executive Order 12866. Treasury has also reviewed these regulations under Executive Order 13563, which supplements and explicitly reaffirms the principles, structures, and definitions governing regulatory review established in Executive Order 12866. To the extent permitted by law, section 1(b) of Executive Order 13563 requires that an agency:

(1) Propose or adopt regulations only upon a reasoned determination that their benefits justify their costs (recognizing that some benefits and costs are difficult to quantify);

(2) Tailor its regulations to impose the least burden on society, consistent with obtaining regulatory objectives taking into account, among other things, and to the extent practicable, the costs of cumulative regulations;

(3) Select, in choosing among alternative regulatory approaches, those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity);

(4) To the extent feasible, specify performance objectives, rather than the behavior or manner of compliance a regulated entity must adopt; and

(5) Identify and assess available alternatives to direct regulation, including providing economic incentives—such as user fees or marketable permits—to encourage the desired behavior, or providing information that enables the public to make choices.

Executive Order 13563 also requires an agency "to use the best available

[181] 5 U.S.C. 553(a)(2).

[182] 5 U.S.C. 553(b)(3)(B); *see also* 5 U.S.C. 553(d)(3) (creating an exception to the requirement of a 30-day delay before the effective date of a rule "for good cause found and published with the rule").

techniques to quantify anticipated present and future benefits and costs as accurately as possible." OMB's Office of Information and Regulatory Affairs (OIRA) has emphasized that these techniques may include "identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes."

Treasury has assessed the potential costs and benefits, both quantitative and qualitative, of this regulatory action, and is issuing this interim final rule only on a reasoned determination that the benefits exceed the costs. In choosing among alternative regulatory approaches, Treasury selected those approaches that would maximize net benefits. Based on the analysis that follows and the reasons stated elsewhere in this document, Treasury believes that this interim final rule is consistent with the principles set forth in Executive Order 13563.

Treasury also has determined that this regulatory action does not unduly interfere with States, territories, Tribal governments, and localities in the exercise of their governmental functions.

This Regulatory Impact Analysis discusses the need for regulatory action, the potential benefits, and the potential costs.

Need for Regulatory Action. This interim final rule implements the $350 billion Fiscal Recovery Funds of the ARPA, which Congress passed to help States, territories, Tribal governments, and localities respond to the ongoing COVID–19 public health emergency and its economic impacts. As the agency charged with execution of these programs, Treasury has concluded that this interim final rule is needed to ensure that recipients of Fiscal Recovery Funds fully understand the requirements and parameters of the program as set forth in the statute and deploy funds in a manner that best reflects Congress' mandate for targeted fiscal relief.

This interim final rule is primarily a transfer rule: It transfers $350 billion in aid from the Federal Government to states, territories, Tribal governments, and localities, generating a significant macroeconomic effect on the U.S. economy. In making this transfer, Treasury has sought to implement the program in ways that maximize its potential benefits while minimizing its costs. It has done so by aiming to target relief in key areas according to the congressional mandate; offering clarity to States, territories, Tribal governments, and localities while maintaining their flexibility to respond to local needs; and limiting administrative burdens.

Analysis of Benefits. Relative to a pre-statutory baseline, the Fiscal Recovery Funds provide a combined $350 billion to State, local, and Tribal governments for fiscal relief and support for costs incurred responding to the COVID–19 pandemic. Treasury believes that this transfer will generate substantial additional economic activity, although given the flexibility accorded to recipients in the use of funds, it is not possible to precisely estimate the extent to which this will occur and the timing with which it will occur. Economic research has demonstrated that state fiscal relief is an efficient and effective way to mitigate declines in jobs and output during an economic downturn.[183] Absent such fiscal relief, fiscal austerity among State, local, and Tribal governments could exert a prolonged drag on the overall economic recovery, as occurred following the 2007–09 recession.[184]

This interim final rule provides benefits across several areas by implementing the four eligible funding uses, as defined in statute: Strengthening the response to the COVID–19 public health emergency and its economic impacts; easing fiscal pressure on State, local, and Tribal governments that might otherwise lead to harmful cutbacks in employment or government services; providing premium pay to essential workers; and making necessary investments in certain types of infrastructure. In implementing the ARPA, Treasury also sought to support disadvantaged communities that have been disproportionately impacted by the pandemic. The Fiscal Recovery Funds as implemented by the interim final rule can be expected to channel resources toward these uses in order to achieve substantial near-term economic and public health benefits, as well as longer-term benefits arising from the allowable investments in water, sewer, and broadband infrastructure and aid to families.

These benefits are achieved in the interim final rule through a broadly flexible approach that sets clear guidelines on eligible uses of Fiscal Recovery Funds and provides State, local, and Tribal government officials discretion within those eligible uses to direct Fiscal Recovery Funds to areas of greatest need within their jurisdiction. While preserving recipients' overall flexibility, the interim final rule includes several provisions that implement statutory requirements and will help support use of Fiscal Recovery Funds to achieve the intended benefits. The remainder of this section clarifies how Treasury's approach to key provisions in the interim final rule will contribute to greater realization of benefits from the program.

- *Revenue Loss:* Recipients will compute the extent of reduction in revenue by comparing actual revenue to a counterfactual trend representing what could have plausibly been expected to occur in the absence of the pandemic. The counterfactual trend begins with the last full fiscal year prior to the public health emergency (as required by statute) and projects forward with an annualized growth adjustment. Treasury's decision to incorporate a growth adjustment into the calculation of revenue loss ensures that the formula more fully captures revenue shortfalls relative to recipients' pre-pandemic expectations. Moreover, recipients will have the opportunity to re-calculate revenue loss at several points throughout the program, recognizing that some recipients may experience revenue effects with a lag. This option to re-calculate revenue loss on an ongoing basis should result in more support for recipients to avoid harmful cutbacks in future years. In calculating revenue loss, recipients will look at general revenue in the aggregate, rather than on a source-by-source basis. Given that recipients may have experienced offsetting changes in revenues across sources, Treasury's approach provides a more accurate representation of the effect of the pandemic on overall revenues.
- *Premium Pay:* Per the statute, recipients have broad latitude to designate critical infrastructure sectors and make grants to third-party employers for the purpose of providing premium pay or otherwise respond to essential workers. While the interim final rule generally preserves the flexibility in the statute, it does add a requirement that recipients give written justification in the case that premium pay would increase a worker's annual pay above a certain threshold. To set this threshold, Treasury analyzed data

[183] Gabriel Chodorow-Reich et al., Does State Fiscal Relief during Recessions Increase Employment? Evidence from the American Recovery and Reinvestment Act, American Econ. J.: Econ. Policy, 4:3 118–45 (Aug. 2012), *available at https://www.aeaweb.org/articles?id=10.1257/pol.4.3.118.*

[184] *See, e.g.,* Fitzpatrick, Haughwout & Setren, Fiscal Drag from the State and Local Sector?, Liberty Street Economics Blog, Federal Reserve Bank of New York (June 27, 2012), *https://www.libertystreeteconomics.newyorkfed.org/2012/06/fiscal-drag-from-the-state-and-local-sector.html;* Jiri Jonas, Great Recession and Fiscal Squeeze at U.S. Subnational Government Level, IMF Working Paper 12/184, (July 2012), *available at https://www.imf.org/external/pubs/ft/wp/2012/wp12184.pdf;* Gordon, *supra* note 9.

from the Bureau of Labor Statistics to determine a level that would not require further justification for premium pay to the vast majority of essential workers, while requiring higher scrutiny for provision of premium pay to higher-earners who, even without premium pay, would likely have greater personal financial resources to cope with the effects of the pandemic. Treasury believes the threshold in the interim final rule strikes the appropriate balance between preserving flexibility and helping encourage use of these resources to help those in greatest need. The interim final rule also requires that eligible workers have regular in-person interactions or regular physical handling of items that were also handled by others. This requirement will also help encourage use of financial resources for those who have endured the heightened risk of performing essential work.

• *Withholding of Payments to Recipients:* Treasury believes that for the vast majority of recipient entities, it will be appropriate to receive funds in two separate payments. As discussed above, withholding of payments ensures that recipients can adapt spending plans to evolving economic conditions and that at least some of the economic benefits will be realized in 2022 or later. However, consistent with authorities granted to Treasury in the statute, Treasury recognizes that a subset of States with significant remaining elevation in the unemployment rate could face heightened additional near-term needs to aid unemployed workers and stimulate the recovery. Therefore, for a subset of State governments, Treasury will not withhold any funds from the first payment. Treasury believes that this approach strikes the appropriate balance between the general reasons to provide funds in two payments and the heightened additional near-term needs in specific States. As discussed above, Treasury set a threshold based on historical analysis of unemployment rates in recessions.

• *Hiring Public Sector Employees:* The interim final rule states explicitly that recipients may use funds to restore their workforces up to pre-pandemic levels. Treasury believes that this statement is beneficial because it eliminates any uncertainty that could cause delays or otherwise negatively impact restoring public sector workforces (which, at time of publication, remain significantly below pre-pandemic levels).

Finally, the interim final rule aims to promote and streamline the provision of assistance to individuals and communities in greatest need, particularly communities that have been historically disadvantaged and have experienced disproportionate impacts of the COVID–19 crisis. Targeting relief is in line with Executive Order 13985, "Advancing Racial Equity and Support for Underserved Communities Through the Federal Government," which laid out an Administration-wide priority to support "equity for all, including people of color and others who have been historically underserved, marginalized, and adversely affected by persistent poverty and inequality." [185] To this end, the interim final rule enumerates a list of services that may be provided using Fiscal Recovery Funds in low-income areas to address the disproportionate impacts of the pandemic in these communities; establishes the characteristics of essential workers eligible for premium pay and encouragement to serve workers based on financial need; provides that recipients may use Fiscal Recovery Funds to restore (to pre-pandemic levels) state and local workforces, where women and people of color are disproportionately represented; [186] and targets investments in broadband infrastructure to unserved and underserved areas. Collectively, these provisions will promote use of resources to facilitate the provision of assistance to individuals and communities with the greatest need.

Analysis of Costs. This regulatory action will generate administrative costs relative to a pre-statutory baseline. This includes, chiefly, costs required to administer Fiscal Recovery Funds, oversee subrecipients and beneficiaries, and file periodic reports with Treasury. It also requires States to allocate Fiscal Recovery Funds to nonentitlement units, which are smaller units of local government that are statutorily required to receive their funds through States.

Treasury expects that the administrative burden associated with this program will be moderate for a grant program of its size. Treasury expects that most recipients receive direct or indirect funding from Federal Government programs and that many have familiarity with how to administer and report on Federal funds or grant funding provided by other entities. In particular, States, territories, and large localities will have received funds from the CRF and Treasury expects them to rely heavily on established processes developed last year or through prior grant funding, mitigating burden on these governments.

Treasury expects to provide technical assistance to defray the costs of administration of Fiscal Recovery Funds to further mitigate burden. In making implementation choices, Treasury has hosted numerous consultations with a diverse range of direct recipients—States, small cities, counties, and Tribal governments—along with various communities across the United States, including those that are underserved. Treasury lacks data to estimate the precise extent to which this interim final rule generates administrative burden for State, local, and Tribal governments, but seeks comment to better estimate and account for these costs, as well as on ways to lessen administrative burdens.

Executive Order 13132

Executive Order 13132 (entitled Federalism) prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial, direct compliance costs on State, local, and Tribal governments, and is not required by statute, or preempts state law, unless the agency meets the consultation and funding requirements of section 6 of the Executive order. This interim final rule does not have federalism implications within the meaning of the Executive order and does not impose substantial, direct compliance costs on State, local, and Tribal governments or preempt state law within the meaning of the Executive order. The compliance costs are imposed on State, local, and Tribal governments by sections 602 and 603 of the Social Security Act, as enacted by the ARPA. Notwithstanding the above, Treasury has engaged in efforts to consult and work cooperatively with affected State, local, and Tribal government officials and associations in the process of developing the interim final rule. Pursuant to the requirements set forth in section 8(a) of Executive Order 13132, Treasury certifies that it has complied with the requirements of Executive Order 13132.

Administrative Procedure Act

The Administrative Procedure Act (APA), 5 U.S.C. 551 *et seq.*, generally requires public notice and an opportunity for comment before a rule

[185] Executive Order on Advancing Racial Equity and Support for Underserved Communities through the Federal Government (Jan. 20, 2021) (86 FR 7009, January 25, 2021), *https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/20/executive-order-advancing-racial-equity-and-support-for-underserved-communities-through-the-federal-government/* (last visited May 9, 2021).

[186] David Cooper, Mary Gable & Algernon Austin, Economic Policy Institute Briefing Paper, The Public-Sector Jobs Crisis: Women and African Americans hit hardest by job losses in state and local governments, *https://www.epi.org/publication/bp339-public-sector-jobs-crisis* (last visited May 9, 2021).

becomes effective. However, the APA provides that the requirements of 5 U.S.C. 553 do not apply "to the extent that there is involved . . . a matter relating to agency . . . grants." The interim final rule implements statutory conditions on the eligible uses of the Fiscal Recovery Funds grants, and addresses the payment of those funds, the reporting on uses of funds, and potential consequences of ineligible uses. The rule is thus "both clearly and directly related to a federal grant program." *National Wildlife Federation* v. *Snow,* 561 F.2d 227, 232 (D.C. Cir. 1976). The rule sets forth the "process necessary to maintain state . . . eligibility for federal funds," *id.,* as well as the "method[s] by which states can . . . qualify for federal aid," and other "integral part[s] of the grant program," *Center for Auto Safety* v. *Tiemann,* 414 F. Supp. 215, 222 (D.D.C. 1976). As a result, the requirements of 5 U.S.C. 553 do not apply.

The APA also provides an exception to ordinary notice-and-comment procedures "when the agency for good cause finds (and incorporates the finding and a brief statement of reasons therefor in the rules issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest." 5 U.S.C. 553(b)(3)(B); *see also* 5 U.S.C. 553(d)(3) (creating an exception to the requirement of a 30-day delay before the effective date of a rule "for good cause found and published with the rule"). Assuming 5 U.S.C. 553 applied, Treasury would still have good cause under sections 553(b)(3)(B) and 553(d)(3) for not undertaking section 553's requirements. The ARPA is a law responding to a historic economic and public health emergency; it is "extraordinary" legislation about which "both Congress and the President articulated a profound sense of 'urgency.'" *Petry* v. *Block,* 737 F.2d 1193, 1200 (D.C. Cir. 1984). Indeed, several provisions implemented by this interim final rule (sections 602(c)(1)(A) and 603(c)(1)(A)) explicitly provide funds to "respond to the public health emergency," and the urgency is further exemplified by Congress's command (in sections 602(b)(6)(B) and 603(b)(7)(A)) that, "[t]o the extent practicable," funds must be provided to Tribes and cities "not later than 60 days after the date of enactment." *See Philadelphia Citizens in Action* v. *Schweiker,* 669 F.2d 877, 884 (3d Cir. 1982) (finding good cause under circumstances, including statutory time limits, where APA procedures would have been "virtually impossible"). Finally, there is an urgent need for States to undertake the planning necessary for sound fiscal policymaking, which requires an understanding of how funds provided under the ARPA will augment and interact with existing budgetary resources and tax policies. Treasury understands that many states require immediate rules on which they can rely, especially in light of the fact that the ARPA "covered period" began on March 3, 2021. The statutory urgency and practical necessity are good cause to forego the ordinary requirements of notice-and-comment rulemaking.

Congressional Review Act

The Administrator of OIRA has determined that this is a major rule for purposes of Subtitle E of the Small Business Regulatory Enforcement and Fairness Act of 1996 (also known as the Congressional Review Act or CRA) (5 U.S.C. 804(2) *et seq.*). Under the CRA, a major rule takes effect 60 days after the rule is published in the **Federal Register**. 5 U.S.C. 801(a)(3). Notwithstanding this requirement, the CRA allows agencies to dispense with the requirements of section 801 when the agency for good cause finds that such procedure would be impracticable, unnecessary, or contrary to the public interest and the rule shall take effect at such time as the agency promulgating the rule determines. 5 U.S.C. 808(2). Pursuant to section 808(2), for the reasons discussed above, Treasury for good cause finds that a 60-day delay to provide public notice is impracticable and contrary to the public interest.

Paperwork Reduction Act

The information collections associated with State, territory, local, and Tribal government applications materials necessary to receive Fiscal Recovery Funds (*e.g.,* payment information collection and acceptance of award terms) have been reviewed and approved by OMB pursuant to the Paperwork Reduction Act (44 U.S.C. chapter 35) (PRA) emergency processing procedures and assigned control number 1505–0271. The information collections related to ongoing reporting requirements, as discussed in this interim final rule, will be submitted to OMB for emergency processing in the near future. Under the PRA, an agency may not conduct or sponsor and a respondent is not required to respond to, an information collection unless it displays a valid OMB control number.

Estimates of hourly burden under this program are set forth in the table below. Burden estimates below are preliminary.

Reporting	Number of respondents (estimated)	Number of responses per respondent	Total responses	Hours per response	Total burden in hours	Cost to respondent ($48.80 per hour*)
Recipient Payment Form	5,050	1	5,050	.25 (15 minutes)	1,262.5	$61,610
Acceptance of Award Terms	5,050	1	5,050	.25 (15 minutes)	1,262.5	61,610
Title VI Assurances	5,050	1	5,050	.50 (30 minutes)	2,525	123,220
Quarterly Project and Expenditure Report.	5,050	4***	20,200	25	505,000	24,644,000
Annual Project and Expenditure Report from NEUs.	TBD	1 per year	†20,000–40,000	15	300,000–600,000	14,640,000–29,280,000
Annual Recovery Plan Performance report.	418	1 per year	418	100	41,800	2,039,840
Total	(**)	N/A	55,768–75,768	141	851,850–1,151,850	41,570,280–56,210,280

*Bureau of Labor Statistics, U.S. Department of Labor, Occupational Outlook Handbook, Accountants and Auditors, on the internet at *https://www.bls.gov/ooh/business-and-financial/accountants-and-auditors.htm* (visited March 28, 2020). Base wage of $33.89/hour increased by 44 percent to account for fully loaded employer cost of employee compensation (benefits, etc.) for a fully loaded wage rate of $48.80.
**5,050–TBD.
***Per year after first year.
†(Estimate only).

Periodic reporting is required by section 602(c) of Section VI of the Social Security Act and under the interim final rule.

As discussed in Section VIII of this **SUPPLEMENTARY INFORMATION**, recipients of Fiscal Recovery Funds will be required to submit one interim report and thereafter quarterly Project and Expenditure reports until the end of the award period. Recipients must submit interim reports to Treasury by August

31, 2021. The quarterly Project and Expenditure reports will include financial data, information on contracts and subawards over $50,000, types of projects funded, and other information regarding a recipient's utilization of the award funds.

Nonentitlement unit recipients will be required to submit annual Project and Expenditure reports until the end of the award period. The initial annual Project and Expenditure report for Nonentitlement unit recipients must be submitted to Treasury by October 31, 2021. The subsequent annual reports must be submitted to Treasury by October 31 each year. States, territories, metropolitan cities, and counties with a population that exceeds 250,000 residents will also be required to submit an annual Recovery Plan Performance report to Treasury. The Recovery Plan Performance report will include descriptions of the projects funded and information on the performance indicators and objectives of the award. Each annual Recovery Plan Performance report must be posted on the public-facing website of the recipient. Treasury will provide additional guidance and instructions on the all the reporting requirements outlined above for the Fiscal Recovery Funds program at a later date.

These and related periodic reporting requirements are under consideration and will be submitted to OMB for approval under the PRA emergency provisions in the near future.

Treasury invites comments on all aspects of the reporting and recordkeeping requirements including: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information. Comments should be sent by the comment deadline to the *www.regulations.gov* docket with a copy to the Office of Information and Regulatory Affairs, U.S. Office of Management and Budget, 725 17th Street NW, Washington, DC 20503; or email to *oira_submission@omb.eop.gov.*

Regulatory Flexibility Analysis

The Regulatory Flexibility Act (RFA) generally requires that when an agency issues a proposed rule, or a final rule pursuant to section 553(b) of the Administrative Procedure Act or another law, the agency must prepare a regulatory flexibility analysis that meets the requirements of the RFA and publish such analysis in the **Federal Register**. 5 U.S.C. 603, 604.

Rules that are exempt from notice and comment under the APA are also exempt from the RFA requirements, including the requirement to conduct a regulatory flexibility analysis, when among other things the agency for good cause finds that notice and public procedure are impracticable, unnecessary, or contrary to the public interest. Since this rule is exempt from the notice and comment requirements of the APA, Treasury is not required to conduct a regulatory flexibility analysis.

List of Subjects in 31 CFR Part 35

Executive compensation, Public health emergency, State and local governments, Tribal governments.

For the reasons stated in the preamble, the Department of the Treasury amends 31 CFR part 35 as follows:

PART 35—PANDEMIC RELIEF PROGRAMS

■ 1. The authority citation for part 35 is revised to read as follows:

Authority: 42 U.S.C. 802(f); 42 U.S.C. 803(f); 31 U.S.C. 321; Division N, Title V, Subtitle B, Pub. L. 116–260, 134 Stat. 1182; Section 104A, Pub. L. 103–325, 108 Stat. 2160, as amended (12 U.S.C. 4701 *et seq.*); Pub. L. 117–2, 135 Stat. 4 (42 U.S.C. 802 *et seq.*).

■ 2. Revise the part heading to read as set forth above.

■ 3. Add subpart A to read as follows:

Subpart A—Coronavirus State and Local Fiscal Recovery Funds

Sec.

35.1 Purpose.
35.2 Applicability.
35.3 Definitions.
35.4 Reservation of authority, reporting.
35.5 Use of funds.
35.6 Eligible uses.
35.7 Pensions.
35.8 Tax.
35.9 Compliance with applicable laws.
35.10 Recoupment.
35.11 Payments to States.
35.12 Distributions to nonentitlement units of local government and units of general local government.

§ 35.1 Purpose.

This subpart implements section 9901 of the American Rescue Plan Act (Subtitle M of Title IX of Pub. L. 117–2), which amends Title VI of the Social Security Act (42 U.S.C. 801 *et seq.*) by adding sections 602 and 603 to establish the Coronavirus State Fiscal Recovery Fund and Coronavirus Local Fiscal Recovery Fund.

§ 35.2 Applicability.

This subpart applies to States, territories, Tribal governments, metropolitan cities, nonentitlement units of local government, counties, and units of general local government that accept a payment or transfer of funds made under section 602 or 603 of the Social Security Act.

§ 35.3 Definitions.

As used in this subpart:

Baseline means tax revenue of the recipient for its fiscal year ending in 2019, adjusted for inflation in each reporting year using the Bureau of Economic Analysis's Implicit Price Deflator for the gross domestic product of the United States.

County means a county, parish, or other equivalent county division (as defined by the Census Bureau).

Covered benefits include, but are not limited to, the costs of all types of leave (vacation, family-related, sick, military, bereavement, sabbatical, jury duty), employee insurance (health, life, dental, vision), retirement (pensions, 401(k)), unemployment benefit plans (Federal and State), workers' compensation insurance, and Federal Insurance Contributions Act taxes (which includes Social Security and Medicare taxes).

Covered change means a change in law, regulation, or administrative interpretation. A change in law includes any final legislative or regulatory action, a new or changed administrative interpretation, and the phase-in or taking effect of any statute or rule if the phase-in or taking effect was not prescribed prior to the start of the covered period.

Covered period means, with respect to a State, Territory, or Tribal government, the period that:

(1) Begins on March 3, 2021; and

(2) Ends on the last day of the fiscal year of such State, Territory, or Tribal government in which all funds received by the State, Territory, or Tribal government from a payment made under section 602 or 603 of the Social Security Act have been expended or returned to, or recovered by, the Secretary.

COVID–19 means the Coronavirus Disease 2019.

COVID–19 public health emergency means the period beginning on January 27, 2020 and until the termination of the national emergency concerning the COVID–19 outbreak declared pursuant to the National Emergencies Act (50 U.S.C. 1601 *et seq.*).

Deposit means an extraordinary payment of an accrued, unfunded liability. The term deposit does not refer to routine contributions made by an employer to pension funds as part of the employer's obligations related to payroll, such as either a pension contribution consisting of a normal cost component related to current employees or a component addressing the amortization of unfunded liabilities calculated by reference to the employer's payroll costs.

Eligible employer means an employer of an eligible worker who performs essential work.

Eligible workers means workers needed to maintain continuity of operations of essential critical infrastructure sectors, including health care; emergency response; sanitation, disinfection, and cleaning work; maintenance work; grocery stores, restaurants, food production, and food delivery; pharmacy; biomedical research; behavioral health work; medical testing and diagnostics; home- and community-based health care or assistance with activities of daily living; family or child care; social services work; public health work; vital services to Tribes; any work performed by an employee of a State, local, or Tribal government; educational work, school nutrition work, and other work required to operate a school facility; laundry work; elections work; solid waste or hazardous materials management, response, and cleanup work; work requiring physical interaction with patients; dental care work; transportation and warehousing; work at hotel and commercial lodging facilities that are used for COVID–19 mitigation and containment; work in a mortuary; work in critical clinical research, development, and testing necessary for COVID–19 response.

(1) With respect to a recipient that is a metropolitan city, nonentitlement unit of local government, or county, workers in any additional sectors as each chief executive officer of such recipient may designate as critical to protect the health and well-being of the residents of their metropolitan city, nonentitlement unit of local government, or county; or

(2) With respect to a State, Territory, or Tribal government, workers in any additional sectors as each Governor of a State or Territory, or each Tribal government, may designate as critical to protect the health and well-being of the residents of their State, Territory, or Tribal government.

Essential work means work that:

(1) Is not performed while teleworking from a residence; and

(2) Involves:

(i) Regular in-person interactions with patients, the public, or coworkers of the individual that is performing the work; or

(ii) Regular physical handling of items that were handled by, or are to be handled by patients, the public, or coworkers of the individual that is performing the work.

Funds means, with respect to a recipient, amounts provided to the recipient pursuant to a payment made under section 602(b) or 603(b) of the Social Security Act or transferred to the recipient pursuant to section 603(c)(4) of the Social Security Act.

General revenue means money that is received from tax revenue, current charges, and miscellaneous general revenue, excluding refunds and other correcting transactions, proceeds from issuance of debt or the sale of investments, agency or private trust transactions, and intergovernmental transfers from the Federal Government, including transfers made pursuant to section 9901 of the American Rescue Plan Act. General revenue does not include revenues from utilities. Revenue from Tribal business enterprises must be included in general revenue.

Intergovernmental transfers means money received from other governments, including grants and shared taxes.

Metropolitan city has the meaning given that term in section 102(a)(4) of the Housing and Community Development Act of 1974 (42 U.S.C. 5302(a)(4)) and includes cities that relinquish or defer their status as a metropolitan city for purposes of receiving allocations under section 106 of such Act (42 U.S.C. 5306) for fiscal year 2021.

Net reduction in total spending is measured as the State or Territory's total spending for a given reporting year excluding its spending of funds, subtracted from its total spending for its fiscal year ending in 2019, adjusted for inflation using the Bureau of Economic Analysis's Implicit Price Deflator for the gross domestic product of the United States.

Nonentitlement unit of local government means a "city," as that term is defined in section 102(a)(5) of the Housing and Community Development Act of 1974 (42 U.S.C. 5302(a)(5)), that is not a metropolitan city.

Nonprofit means a nonprofit organization that is exempt from Federal income taxation and that is described in section 501(c)(3) of the Internal Revenue Code.

Obligation means an order placed for property and services and entering into contracts, subawards, and similar transactions that require payment.

Pension fund means a defined benefit plan and does not include a defined contribution plan.

Premium pay means an amount of up to $13 per hour that is paid to an eligible worker, in addition to wages or remuneration the eligible worker otherwise receives, for all work performed by the eligible worker during the COVID–19 public health emergency. Such amount may not exceed $25,000 with respect to any single eligible worker. Premium pay will be considered to be in addition to wages or remuneration the eligible worker otherwise receives if, as measured on an hourly rate, the premium pay is:

(1) With regard to work that the eligible worker previously performed, pay and remuneration equal to the sum of all wages and remuneration previously received plus up to $13 per hour with no reduction, substitution, offset, or other diminishment of the eligible worker's previous, current, or prospective wages or remuneration; or

(2) With regard to work that the eligible worker continues to perform, pay of up to $13 that is in addition to the eligible worker's regular rate of wages or remuneration, with no reduction, substitution, offset, or other diminishment of the workers' current and prospective wages or remuneration.

Qualified census tract has the same meaning given in 26 U.S.C. 42(d)(5)(B)(ii)(I).

Recipient means a State, Territory, Tribal government, metropolitan city, nonentitlement unit of local government, county, or unit of general local government that receives a payment made under section 602(b) or 603(b) of the Social Security Act or transfer pursuant to section 603(c)(4) of the Social Security Act.

Reporting year means a single year or partial year within the covered period, aligned to the current fiscal year of the State or Territory during the covered period.

Secretary means the Secretary of the Treasury.

State means each of the 50 States and the District of Columbia.

Small business means a business concern or other organization that:

(1) Has no more than 500 employees, or if applicable, the size standard in number of employees established by the Administrator of the Small Business Administration for the industry in which the business concern or organization operates; and

(2) Is a small business concern as defined in section 3 of the Small Business Act (15 U.S.C. 632).

Tax revenue means revenue received from a compulsory contribution that is exacted by a government for public purposes excluding refunds and corrections and, for purposes of § 35.8, intergovernmental transfers. Tax revenue does not include payments for a special privilege granted or service rendered, employee or employer assessments and contributions to finance retirement and social insurance trust systems, or special assessments to pay for capital improvements.

Territory means the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, the Commonwealth of the Northern Mariana Islands, or American Samoa.

Tribal enterprise means a business concern:

(1) That is wholly owned by one or more Tribal governments, or by a corporation that is wholly owned by one or more Tribal governments; or

(2) That is owned in part by one or more Tribal governments, or by a corporation that is wholly owned by one or more Tribal governments, if all other owners are either United States citizens or small business concerns, as these terms are used and consistent with the definitions in 15 U.S.C. 657a(b)(2)(D).

Tribal government means the recognized governing body of any Indian or Alaska Native tribe, band, nation, pueblo, village, community, component band, or component reservation, individually identified (including parenthetically) in the list published by the Bureau of Indian Affairs on January 29, 2021, pursuant to section 104 of the Federally Recognized Indian Tribe List Act of 1994 (25 U.S.C. 5131).

Unemployment rate means the U–3 unemployment rate provided by the Bureau of Labor Statistics as part of the Local Area Unemployment Statistics program, measured as total unemployment as a percentage of the civilian labor force.

Unemployment trust fund means an unemployment trust fund established under section 904 of the Social Security Act (42 U.S.C. 1104).

Unit of general local government has the meaning given to that term in section 102(a)(1) of the Housing and Community Development Act of 1974 (42 U.S.C. 5302(a)(1)).

Unserved and underserved households or businesses means one or more households or businesses that are not currently served by a wireline connection that reliably delivers at least 25 Mbps download speed and 3 Mbps of upload speed.

§ 35.4 Reservation of authority, reporting.

(a) *Reservation of authority.* Nothing in this subpart shall limit the authority of the Secretary to take action to enforce conditions or violations of law, including actions necessary to prevent evasions of this subpart.

(b) *Extensions or accelerations of timing.* The Secretary may extend or accelerate any deadline or compliance date of this subpart, including reporting requirements that implement this subpart, if the Secretary determines that such extension or acceleration is appropriate. In determining whether an extension or acceleration is appropriate, the Secretary will consider the period of time that would be extended or accelerated and how the modified timeline would facilitate compliance with this subpart.

(c) *Reporting and requests for other information.* During the covered period, recipients shall provide to the Secretary periodic reports providing detailed accounting of the uses of funds, all modifications to a State or Territory's tax revenue sources, and such other information as the Secretary may require for the administration of this section. In addition to regular reporting requirements, the Secretary may request other additional information as may be necessary or appropriate, including as may be necessary to prevent evasions of the requirements of this subpart. False statements or claims made to the Secretary may result in criminal, civil, or administrative sanctions, including fines, imprisonment, civil damages and penalties, debarment from participating in Federal awards or contracts, and/or any other remedy available by law.

§ 35.5 Use of funds.

(a) *In general.* A recipient may only use funds to cover costs incurred during the period beginning March 3, 2021, and ending December 31, 2024, for one or more of the purposes enumerated in sections 602(c)(1) and 603(c)(1) of the Social Security Act, as applicable, including those enumerated in section § 35.6, subject to the restrictions set forth in sections 602(c)(2) and 603(c)(2) of the Social Security Act, as applicable.

(b) *Costs incurred.* A cost shall be considered to have been incurred for purposes of paragraph (a) of this section if the recipient has incurred an obligation with respect to such cost by December 31, 2024.

(c) *Return of funds.* A recipient must return any funds not obligated by December 31, 2024, and any funds not expended to cover such obligations by December 31, 2026.

§ 35.6 Eligible uses.

(a) *In general.* Subject to §§ 35.7 and 35.8, a recipient may use funds for one or more of the purposes described in paragraphs (b) through (e) of this section

(b) *Responding to the public health emergency or its negative economic impacts.* A recipient may use funds to respond to the public health emergency or its negative economic impacts, including for one or more of the following purposes:

(1) *COVID–19 response and prevention.* Expenditures for the mitigation and prevention of COVID–19, including:

(i) Expenses related to COVID–19 vaccination programs and sites, including staffing, acquisition of equipment or supplies, facilities costs, and information technology or other administrative expenses;

(ii) COVID–19-related expenses of public hospitals, clinics, and similar facilities;

(iii) COVID–19 related expenses in congregate living facilities, including skilled nursing facilities, long-term care facilities, incarceration settings, homeless shelters, residential foster care facilities, residential behavioral health treatment, and other group living facilities;

(iv) Expenses of establishing temporary public medical facilities and other measures to increase COVID–19 treatment capacity, including related construction costs and other capital investments in public facilities to meet COVID–19-related operational needs;

(v) Expenses of establishing temporary public medical facilities and other measures to increase COVID–19 treatment capacity, including related construction costs and other capital investments in public facilities to meet COVID–19-related operational needs;

(vi) Costs of providing COVID–19 testing and monitoring, contact tracing, and monitoring of case trends and genomic sequencing for variants;

(vii) Emergency medical response expenses, including emergency medical transportation, related to COVID–19;

(viii) Expenses for establishing and operating public telemedicine capabilities for COVID–19-related treatment;

(ix) Expenses for communication related to COVID–19 vaccination programs and communication or enforcement by recipients of public health orders related to COVID–19;

(x) Expenses for acquisition and distribution of medical and protective supplies, including sanitizing products and personal protective equipment;

(xi) Expenses for disinfection of public areas and other facilities in

response to the COVID–19 public health emergency;

(xii) Expenses for technical assistance to local authorities or other entities on mitigation of COVID–19-related threats to public health and safety;

(xiii) Expenses for quarantining or isolation of individuals;

(xiv) Expenses of providing paid sick and paid family and medical leave to public employees to enable compliance with COVID–19 public health precautions;

(xv) Expenses for treatment of the long-term symptoms or effects of COVID–19, including post-intensive care syndrome;

(xvi) Expenses for the improvement of ventilation systems in congregate settings, public health facilities, or other public facilities;

(xvii) Expenses related to establishing or enhancing public health data systems; and

(xviii) Mental health treatment, substance misuse treatment, and other behavioral health services.

(2) *Public health and safety staff.* Payroll and covered benefit expenses for public safety, public health, health care, human services, and similar employees to the extent that the employee's time is spent mitigating or responding to the COVID–19 public health emergency.

(3) *Hiring State and local government staff.* Payroll, covered benefit, and other costs associated with the recipient increasing the number of its employees up to the number of employees that it employed on January 27, 2020.

(4) *Assistance to unemployed workers.* Assistance, including job training, for individuals who want and are available for work, including those who have looked for work sometime in the past 12 months or who are employed part time but who want and are available for full-time work.

(5) *Contributions to State unemployment insurance trust funds.* Contributions to an unemployment trust fund up to the level required to restore the unemployment trust fund to its balance on January 27, 2020 or to pay back advances received under Title XII of the Social Security Act (42 U.S.C. 1321) for the payment of benefits between January 27, 2020 and May 17, 2021.

(6) *Small businesses.* Assistance to small businesses, including loans, grants, in-kind assistance, technical assistance or other services, that responds to the negative economic impacts of the COVID–19 public health emergency.

(7) *Nonprofits.* Assistance to nonprofit organizations, including loans, grants, in-kind assistance, technical assistance or other services, that responds to the negative economic impacts of the COVID–19 public health emergency.

(8) *Assistance to households.* Assistance programs, including cash assistance programs, that respond to the COVID–19 public health emergency.

(9) *Aid to impacted industries.* Aid to tourism, travel, hospitality, and other impacted industries that responds to the negative economic impacts of the COVID–19 public health emergency.

(10) *Expenses to improve efficacy of public health or economic relief programs.* Administrative costs associated with the recipient's COVID–19 public health emergency assistance programs, including services responding to the COVID–19 public health emergency or its negative economic impacts, that are not federally funded.

(11) *Survivor's benefits.* Benefits for the surviving family members of individuals who have died from COVID–19, including cash assistance to widows, widowers, or dependents of individuals who died of COVID–19.

(12) *Disproportionately impacted populations and communities.* A program, service, or other assistance that is provided in a qualified census tract, that is provided to households and populations living in a qualified census tract, that is provided by a Tribal government, or that is provided to other households, businesses, or populations disproportionately impacted by the COVID–19 public health emergency, such as:

(i) Programs or services that facilitate access to health and social services, including:

(A) Assistance accessing or applying for public benefits or services;

(B) Remediation of lead paint or other lead hazards; and

(C) Community violence intervention programs;

(ii) Programs or services that address housing insecurity, lack of affordable housing, or homelessness, including:

(A) Supportive housing or other programs or services to improve access to stable, affordable housing among individuals who are homeless;

(B) Development of affordable housing to increase supply of affordable and high-quality living units; and

(C) Housing vouchers and assistance relocating to neighborhoods with higher levels of economic opportunity and to reduce concentrated areas of low economic opportunity;

(iii) Programs or services that address or mitigate the impacts of the COVID–19 public health emergency on education, including:

(A) New or expanded early learning services;

(B) Assistance to high-poverty school districts to advance equitable funding across districts and geographies; and

(C) Educational and evidence-based services to address the academic, social, emotional, and mental health needs of students; and

(iv) Programs or services that address or mitigate the impacts of the COVID–19 public health emergency on childhood health or welfare, including:

(A) New or expanded childcare;

(B) Programs to provide home visits by health professionals, parent educators, and social service professionals to individuals with young children to provide education and assistance for economic support, health needs, or child development; and

(C) Services for child welfare-involved families and foster youth to provide support and education on child development, positive parenting, coping skills, or recovery for mental health and substance use.

(c) *Providing premium pay to eligible workers.* A recipient may use funds to provide premium pay to eligible workers of the recipient who perform essential work or to provide grants to eligible employers, provided that any premium pay or grants provided under this paragraph (c) must respond to eligible workers performing essential work during the COVID–19 public health emergency. A recipient uses premium pay or grants provided under this paragraph (c) to respond to eligible workers performing essential work during the COVID–19 public health emergency if it prioritizes low- and moderate-income persons. The recipient must provide, whether for themselves or on behalf of a grantee, a written justification to the Secretary of how the premium pay or grant provided under this paragraph (c) responds to eligible workers performing essential work if the premium pay or grant would increase an eligible worker's total wages and remuneration above 150 percent of such eligible worker's residing State's average annual wage for all occupations or their residing county's average annual wage, whichever is higher.

(d) *Providing government services.* For the provision of government services to the extent of a reduction in the recipient's general revenue, calculated according to paragraphs (d)(1) and (2) of this section.

(1) *Frequency.* A recipient must calculate the reduction in its general revenue using information as-of December 31, 2020, December 31, 2021, December 31, 2022, and December 31, 2023 (each, a calculation date) and following each calculation date.

(2) *Calculation.* A reduction in a recipient's general revenue equals:

$$Max\ \{[Base\ Year\ Revenue * (1 + Growth\ Adjustment)^{\left(\frac{n_t}{12}\right)}] - Actual\ General\ Revenue_t; 0\}$$

Where:

Base Year Revenue is the recipient's general revenue for the most recent full fiscal year prior to the COVID–19 public health emergency;

Growth Adjustment is equal to the greater of 4.1 percent (or 0.041) and the recipient's average annual revenue growth over the three full fiscal years prior to the COVID–19 public health emergency.

n equals the number of months elapsed from the end of the base year to the calculation date.

Actual General Revenue is a recipient's actual general revenue collected during 12-month period ending on each calculation date;

Subscript *t* denotes the specific calculation date.

(e) *To make necessary investments in infrastructure.* A recipient may use funds to make investments in:

(1) *Clean Water State Revolving Fund and Drinking Water State Revolving Fund investments.* Projects or activities of the type that would be eligible under section 603(c) of the Federal Water Pollution Control Act (33 U.S.C. 1383(c)) or section 1452 of the Safe Drinking Water Act (42 U.S.C. 300j–12); or,

(2) *Broadband.* Broadband infrastructure that is designed to provide service to unserved or underserved households and businesses and that is designed to, upon completion:

(i) Reliably meet or exceed symmetrical 100 Mbps download speed and upload speeds; or

(ii) In cases where it is not practicable, because of the excessive cost of the project or geography or topography of the area to be served by the project, to provide service meeting the standards set forth in paragraph (e)(2)(i) of this section:

(A) Reliably meet or exceed 100 Mbps download speed and between at least 20 Mbps and 100 Mbps upload speed; and

(B) Be scalable to a minimum of 100 Mbps download speed and 100 Mbps upload speed.

§ 35.7 Pensions.

A recipient may not use funds for deposit into any pension fund.

§ 35.8 Tax.

(a) *Restriction.* A State or Territory shall not use funds to either directly or indirectly offset a reduction in the net tax revenue of the State or Territory resulting from a covered change during the covered period.

(b) *Violation.* Treasury will consider a State or Territory to have used funds to offset a reduction in net tax revenue if, during a reporting year:

(1) *Covered change.* The State or Territory has made a covered change that, either based on a reasonable statistical methodology to isolate the impact of the covered change in actual revenue or based on projections that use reasonable assumptions and do not incorporate the effects of macroeconomic growth to reduce or increase the projected impact of the covered change, the State or Territory assesses has had or predicts to have the effect of reducing tax revenue relative to current law;

(2) *Exceeds the de minimis threshold.* The aggregate amount of the measured or predicted reductions in tax revenue caused by covered changes identified under paragraph (b)(1) of this section, in the aggregate, exceeds 1 percent of the State's or Territory's baseline;

(3) *Reduction in net tax revenue.* The State or Territory reports a reduction in net tax revenue, measured as the difference between actual tax revenue and the State's or Territory's baseline, each measured as of the end of the reporting year; and

(4) *Consideration of other changes.* The aggregate amount of measured or predicted reductions in tax revenue caused by covered changes is greater than the sum of the following, in each case, as calculated for the reporting year:

(i) The aggregate amount of the expected increases in tax revenue caused by one or more covered changes that, either based on a reasonable statistical methodology to isolate the impact of the covered change in actual revenue or based on projections that use reasonable assumptions and do not incorporate the effects of macroeconomic growth to reduce or increase the projected impact of the covered change, the State or Territory assesses has had or predicts to have the effect of increasing tax revenue; and

(ii) Reductions in spending, up to the amount of the State's or Territory's net reduction in total spending, that are in:

(A) Departments, agencies, or authorities in which the State or Territory is not using funds; and

(B) Departments, agencies, or authorities in which the State or Territory is using funds, in an amount equal to the value of the spending cuts in those departments, agencies, or authorities, minus funds used.

(c) *Amount and revenue reduction cap.* If a State or Territory is considered to be in violation pursuant to paragraph (b) of this section, the amount used in violation of paragraph (a) of this section is equal to the lesser of:

(1) The reduction in net tax revenue of the State or Territory for the reporting year, measured as the difference between the State's or Territory's baseline and its actual tax revenue, each measured as of the end of the reporting year; and,

(2) The aggregate amount of the reductions in tax revenues caused by covered changes identified in paragraph (b)(1) of this section, minus the sum of the amounts in identified in paragraphs (b)(4)(i) and (ii).

§ 35.9 Compliance with applicable laws.

A recipient must comply with all other applicable Federal statutes, regulations, and Executive orders, and a recipient shall provide for compliance with the American Rescue Plan Act, this subpart, and any interpretive guidance by other parties in any agreements it enters into with other parties relating to these funds.

§ 35.10 Recoupment.

(a) *Identification of violations*—(1) *In general.* Any amount used in violation of § 35.5, § 35.6, or § 35.7 may be identified at any time prior to December 31, 2026.

(2) *Annual reporting of amounts of violations.* On an annual basis, a recipient that is a State or Territory must calculate and report any amounts used in violation of § 35.8.

(b) *Calculation of amounts subject to recoupment*—(1) *In general.* Except as provided in paragraph (b)(2) of this section, Treasury will calculate any amounts subject to recoupment resulting from a violation of § 35.5, § 35.6, or § 35.7 as the amounts used in violation of such restrictions.

(2) *Violations of § 35.8.* Treasury will calculate any amounts subject to recoupment resulting from a violation of § 35.8, equal to the lesser of:

(i) The amount set forth in § 35.8(c); and,

(ii) The amount of funds received by such recipient.

(c) *Notice.* If Treasury calculates an amount subject to recoupment under paragraph (b) of this section, Treasury will provide the recipient a written notice of the amount subject to recoupment along with an explanation of such amounts.

(d) *Request for reconsideration.* Unless Treasury extends the time period, within 60 calendar days of receipt of a notice of recoupment provided under paragraph (c) of this section, a recipient may submit a written request to Treasury requesting reconsideration of any amounts subject to recoupment under paragraph (b) of this section. To request reconsideration of any amounts subject to recoupment, a recipient must submit to Treasury a written request that includes:

(1) An explanation of why the recipient believes all or some of the amount should not be subject to recoupment; and

(2) A discussion of supporting reasons, along with any additional information.

(e) *Final amount subject to recoupment.* Unless Treasury extends the time period, within 60 calendar days of receipt of the recipient's request for reconsideration provided pursuant to paragraph (d) of this section, the recipient will be notified of the Secretary's decision to affirm, withdraw, or modify the notice of recoupment. Such notification will include an explanation of the decision, including responses to the recipient's supporting reasons and consideration of additional information provided.

(f) *Repayment of funds.* Unless Treasury extends the time period, a recipient shall repay to the Secretary any amounts subject to recoupment in accordance with instructions provided by Treasury:

(1) Within 120 calendar days of receipt of the notice of recoupment provided under paragraph (c) of this section, in the case of a recipient that does not submit a request for reconsideration in accordance with the requirements of paragraph (d) of this section; or

(2) Within 120 calendar days of receipt of the Secretary's decision under paragraph (e) of this section, in the case of a recipient that submits a request for reconsideration in accordance with the requirements of paragraph (d) of this section.

§ 35.11 Payments to States.

(a) *In general.* With respect to any State or Territory that has an unemployment rate as of the date that it submits an initial certification for payment of funds pursuant to section 602(d)(1) of the Social Security Act that is less than two percentage points above its unemployment rate in February 2020, the Secretary will withhold 50 percent of the amount of funds allocated under section 602(b) of the Social Security Act to such State or territory until the date that is twelve months from the date such initial certification is provided to the Secretary.

(b) *Payment of withheld amount.* In order to receive the amount withheld under paragraph (a) of this section, the State or Territory must submit to the Secretary at least 30 days prior to the date referenced in paragraph (a) the following information:

(1) A certification, in the form provided by the Secretary, that such State or Territory requires the payment to carry out the activities specified in section 602(c) of the Social Security Act and will use the payment in compliance with section 602(c) of the Social Security Act; and,

(2) Any reports required to be filed by that date pursuant to this subpart that have not yet been filed.

§ 35.12 Distributions to nonentitlement units of local government and units of general local government.

(a) *Nonentitlement units of local government.* Each State or Territory that receives a payment from Treasury pursuant to section 603(b)(2)(B) of the Social Security Act shall distribute the amount of the payment to nonentitlement units of government in such State or Territory in accordance with the requirements set forth in section 603(b)(2)(C) of the Social Security Act and without offsetting any debt owed by such nonentitlement units of local governments against such payments.

(b) *Budget cap.* A State or Territory may not make a payment to a nonentitlement unit of local government pursuant to section 603(b)(2)(C) of the Social Security Act and paragraph (a) of this section in excess of the amount equal to 75 percent of the most recent budget for the nonentitlement unit of local government as of January 27, 2020. A State or Territory shall permit a nonentitlement unit of local government without a formal budget as of January 27, 2020, to provide a certification from an authorized officer of the nonentitlement unit of local government of its most recent annual expenditures as of January 27, 2020, and a State or Territory may rely on such certification for purposes of complying with this paragraph (b).

(c) *Units of general local government.* Each State or Territory that receives a payment from Treasury pursuant to section 603(b)(3)(B)(ii) of the Social Security Act, in the case of an amount to be paid to a county that is not a unit of general local government, shall distribute the amount of the payment to units of general local government within such county in accordance with the requirements set forth in section 603(b)(3)(B)(ii) of the Social Security Act and without offsetting any debt owed by such units of general local government against such payments.

(d) *Additional conditions.* A State or Territory may not place additional conditions or requirements on distributions to nonentitlement units of local government or units of general local government beyond those required by section 603 of the Social Security Act or this subpart.

Laurie Schaffer,

Acting General Counsel.

[FR Doc. 2021–10283 Filed 5–13–21; 11:15 am]

BILLING CODE 4810–AK–P

APPENDIX G:
COVENANT AGREEMENT

NO FEE FOR RECORDING

PURSUANT TO GOVERNMENT CODE

SECTION 6103

RECORDING REQUESTED BY AND

WHEN RECORDED MAIL TO:

County of Riverside

3403 10th Street, Suite 300

Riverside, CA 92501

Attn: Yvonne Suarez

SPACE ABOVE THIS LINE FOR
RECORDER'S USE

A.P.N.: 214-292-010

COVENANT AGREEMENT

This COVENANT AGREEMENT ("COVENANT AGREEMENT") is made and entered into as of this _____by and between the COUNTY OF RIVERSIDE, a public entity, corporate and politic, ("COUNTY"), and V.I.P. TOTS, a California nonprofit corporation ("SUBRECIPIENT"), on behalf of itself, its successors and assigns and every successor in SUBRECIPIENT's interest in the PROPERTY or any part thereof. COUNTY and SUBRECIPIENT are individually referred to herein as a "Party" and collectively referred to herein as the "Parties."

RECITALS

WHEREAS, the COUNTY administers American Rescue Plan Act (ARPA) funds found at 31 CFR Part 35 and

WHEREAS, ARPA funds may be used for a wide range of housing, social services, program planning, and development costs. These include, but are not limited to, the management; acquisition; rehabilitation; or new construction of early childhood learning centers; and

WHEREAS, the COUNTY desires to use ARPA funding contract with SUBRECIPIENT to provide capacity for early childhood education services for children ages 0 – 3, which include the purchase and construction of an early childhood education building and early childhood education services; and

WHEREAS, SUBRECIPIENT is the owner of that certain real property known as 41915 Acacia Avenue, Hemet, CA 92544, and legally described in the Legal Description attached hereto and incorporated herein as Appendix "A" ("PROPERTY"); and

WHEREAS, to assist in addressing the immediate emergency need for early childhood education service in the County of Riverside, the Parties entered into a certain SUBRECIPIENT Agreement for quality early care and education: ARPA Infrastructure Development 2023 ("SUBRECIPIENT AGREEMENT") on January 25, 2023, wherein, COUNTY granted SUBRECIPIENT up to $1,000,000.00 in ARPA funds ("ARPA GRANT") and 200,000 in Proposition 10 Funds to be used to purchase the PROPERTY, pay for capital improvements to the PROPERTY and operate an early childhood education facility at the PROPERTY as more fully described in the SUBRECIPIENT AGREEMENT; and

WHEREAS, pursuant to the SUBRECIPIENT AGREEMENT, in consideration for the grant of ARPA funds, SUBRECIPIENT agreed to be bound by the covenants, conditions, and restrictions set forth in a covenant agreement; and

WHEREAS, to memorialize SUBRECIPIENT's obligation, among other things, to make the capital improvements to the PROPERTY, retain title to the PROPERTY, use the PROPERTY, maintain the PROPERTY, pay all taxes, assessments, encumbrances, charges, and liens on the PROPERTY, not

discriminate, insure the PROPERTY, and indemnify the COUNTY as more fully described in this COVENANT AGREEMENT, as set forth below; and

WHEREAS, capitalized terms not defined here in this COVENANT AGREEMENT shall have the meanings ascribed to them in the SUBRECIPIENT AGREEMENT;

NOW THEREFORE, in consideration of the mutual covenants and agreements contained in this COVENANT AGREEMENT, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, SUBRECIPIENT, on behalf of itself and its successors, assigns, and each successor in interest to the PROPERTY or any part thereof, hereby declares, covenants, agrees, and restricts the PROPERTY as follows:

1. **INCORPORATION OF RECITALS**. SUBRECIPIENT covenants and agrees for itself, its successors and assigns, and every successor in SUBRECIPIENT's interest in the PROPERTY or any part thereof, that the above recitals are true and correct and are hereby made part of this COVENANT AGREEMENT.

2. **TERM**. For a period of five (5) years commencing with the recordation of the Notice of Completion in the Official Records for the PROPERTY ("Term" or "ARPA Term") the SUBRECIPIENT, its successors and assigns, shall maintain the PROPERTY to provide early childhood care and education services in accordance with the terms of this Declaration, the SUBRECIPIENT Agreement, the Act, and applicable federal, state and local laws.

3. **RECORDS**. SUBRECIPIENT shall maintain complete, accurate, and current records pertaining to the PROPERTY, which include records pertaining to services received by students. SUBRECIPIENT shall retain copies of all materials obtained or produced with respect to occupancy of PROPERTY for a period of at least five (5) years.

4. **ARPA RECORD REQUIREMENTS**. For the period of the ARPA Term, all records maintained by SUBRECIPIENT shall be (i) maintained in compliance with all applicable records and accounting requirements and (ii) open to and available for inspection and copying by any governmental entity and its authorized representatives at reasonable intervals during normal business hours; provide however, records pertaining to program students enrolled, for five (5) years after expiration of the HOPWA Term.

5. **RESIDENTIAL USE**. The PROPERTY shall be operated for quality early childhood care and education use only.

6. **MANAGEMENT RESPONSIBILITIES**. SUBRECIPIENT is responsible for all management functions with respect to the PROPERTY.

7. **NONDISCRIMINATION**. SUBRECIPIENT shall not give preference to any particular class or group of persons in renting the PROPERTY, except to the extent that the PROPERTY is required to be leased to income-eligible households and HOPWA-Eligible Households pursuant to this COVENANT AGREEMENT. SUBRECIPIENT herein covenants by and for SUBRECIPIENT, assigns, and all persons claiming under or through the SUBRECIPIENT, that there shall be no discrimination against or segregation of, any person or group of persons on account of race, color, creed, religion, sex, sexual orientation, gender, gender identity, gender expression, marital status, national origin, source of income (e.g., SSI), ancestry, or disability, in the leasing, subleasing, transferring, use, occupancy, tenure, or enjoyment of the PROPERTY, nor shall SUBRECIPIENT or any person claiming under or through SUBRECIPIENT, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, or occupancy, of tenants, lessees, sublessees, subtenants, or vendees of the PROPERTY or in connection with the employment of persons for the operation and management of PROPERTY. Notwithstanding the above, with respect to familial status, the above should not be construed to apply to housing for older persons as defined in Section 12955.9 of the Government Code and other applicable sections of the Civil Code as identified in Cal. Health & Safety Code 33050(b).

8. **COMPLIANCE WITH PROGRAM REQUIREMENTS**

a. SUBRECIPIENT's actions with respect to the PROPERTY shall at all times be in full conformity with all requirements imposed on projects assisted under ARPA as contained in 31 CFR Part 35, and other implementing rules and regulations.

b. During the ARPA term, SUBRECIPIENT shall comply with the following for Service Eligible Households:

i) ensure the confidentiality of the name of any Eligible Household receiving assistance through this project pursuant to 24 CFR 574.440; and

ii) ensure that the PROPERTY meets all applicable local, state, and federal building codes and laws thought the Term.

9. **COVENANTS TO RUN WITH THE LAND**. COUNTY and SUBRECIPIENT hereby declare their express intent that the covenants and restrictions set forth in this COVENANT AGREEMENT shall run with the land, and shall bind all successors in title to the PROPERTY; provided, however, that on the expiration of the Term of this COVENANT AGREEMENT, said covenants and restrictions shall expire. Each and every contract, deed, or other instrument hereafter executed covering or conveying the PROPERTY or any portion thereof, shall be held conclusively to have been executed, delivered, and accepted subject to such covenants and restrictions, regardless of whether such covenants or restrictions are set forth in such contract, deed or other instrument.

10. **TRANSFER OF THE PROPERTY**. SUBRECIPIENT covenants and agrees for itself, its successors and assigns, and every successor in SUBRECIPIENT's interest in the PROPERTY or any part thereof, that SUBRECIPIENT, and its successors and assigns, shall retain title to the PROPERTY and not Transfer the PROPERTY or any portion thereof, without the written approval of COUNTY, in its sole discretion. The term "Transfer" used herein shall mean the sale, assignment, conveyance, lease, or transfer, voluntary or involuntary, of any interest in the PROPERTY, including the financing or refinancing of the PROPERTY. Any Transfer of the PROPERTY shall be memorialized in an assignment and assumption agreement the form and substance of which have been first approved in writing by the COUNTY in its sole discretion. Such assignment and assumption agreement shall, among other things, provide that the transferee has assumed in writing and in full and is reasonably capable of performing and complying with SUBRECIPIENT's duties and obligations under the SUBRECIPIENT AGREEMENT and this COVENANT AGREEMENT, provided, however, unless otherwise agreed to by the COUNTY in writing, SUBRECIPIENT shall not be released of its obligations under the SUBRECIPIENT AGREEMENT and this COVENANT AGREEMENT. Should SUBRECIPIENT, or its successors and assigns, Transfer the PROPERTY or any portion thereof, without the written approval of COUNTY, in its sole discretion, then SUBRECIPIENT, and its successors and assigns, shall be required to pay to the COUNTY an amount equal to the current market value of the PROPERTY less any portion of the value attributable to expenditures of non-HOPWA funds for the acquisition of, or improvement to, the PROPERTY.

11. **TAXES, ASSESSMENTS, ENCUMBRANCES, CHARGES, AND LIENS**. SUBRECIPIENT covenants and agrees for itself, its successors and assigns, and every successor in SUBRECIPIENT's interest in the PROPERTY or any part thereof, that SUBRECIPIENT, and its successors and assigns, shall pay before delinquency all taxes and assessments affecting said PROPERTY, when due, and all encumbrances, charges, and liens, with interest, on said PROPERTY or any part thereof. Should SUBRECIPIENT, and its successors and assigns, fail to make any payment or to do any act herein provided, then the COUNTY or its designee shall have the right but not the obligation to do so and upon written notice to or demand upon SUBRECIPIENT, and its successors and assigns, and without releasing SUBRECIPIENT, and its successors and assigns, from any obligation hereof, make or do the same in such manner and to such extent as COUNTY may deem necessary to satisfy such delinquency. The cost borne by the COUNTY from such payment shall become a charge, which SUBRECIPIENT, and its successors and assigns, shall promptly pay upon demand and, if unpaid after fifteen (15) days, shall be assessed as a lien against the PROPERTY with interest at the highest rate permitted by law.

12. **INSURANCE**. Without limiting or diminishing SUBRECIPIENT's, its successors', assigns', and each successor in interest to the PROPERTY's or any part thereof, obligation to indemnify or hold COUNTY harmless, SUBRECIPIENT covenants and agrees for itself, its successors and assigns and every successor in SUBRECIPIENT's interest in the PROPERTY or any part thereof, that SUBRECIPIENT, and its successors and assigns, shall procure and maintain or cause to be maintained, at its sole cost and expense, the following insurance coverage's during the Term of this COVENANT AGREEMENT.

a. Property Insurance: SUBRECIPIENT, and its successors and assigns, shall maintain property insurance and flood insurance on the PROPERTY, listing the COUNTY as Additional Insured for the Term of this COVENANT AGREEMENT. SUBRECIPIENT, and its successors and assigns, shall keep the improvements now existing or hereafter erected on the PROPERTY insured against loss by fire, hazards included within the term "extended coverage," and such other hazards, including floods or flooding. This insurance shall be maintained in the amount of the replacement value of the PROPERTY.

b. Worker's Compensation Insurance. If subrecipient, or its successors and assigns, have employees as defined by the State of California, SUBRECIPIENT and its successors

and assigns shall maintain statutory Workers' Compensation Insurance (Coverage A) as prescribed by the laws of the State of California. The policy shall include Employers' Liability (Coverage B) including Occupational Disease with limits not less than $1,000,000 per person per accident. The policy shall be endorsed to waive subrogation in favor of the COUNTY.

c. Commercial General Liability Insurance. Commercial General Liability insurance coverage, including but not limited to, premises liability, unmodified contractual liability, products and completed operations liability, personal and advertising injury, and cross liability coverage, covering claims which may arise from or out of SUBRECIPIENT's performance of its obligations hereunder. The policy shall name the COUNTY as Additional Insured. The policy's limit of liability shall not be less than $2,000,000 per occurrence combined single limit. If such insurance contains a general aggregate limit, it shall apply separately to this COVENANT AGREEMENT or be no less than two (2) times the occurrence limit.

d. Vehicle Liability Insurance. If vehicles or mobile equipment are used in the performance of the obligations under the SUBRECIPIENT AGREEMENT or this COVENANT AGREEMENT, then SUBRECIPIENT, and its successors and assigns, shall maintain liability insurance for all owned, non-owned, or hired vehicles so used in an amount not less than $2,000,000 per occurrence combined single limit. If such insurance contains a general aggregate limit, it shall apply separately to this COVENANT AGREEMENT or be no less than two (2) times the occurrence limit. The policy shall name the COUNTY as Additional Insured.

e. All Risk Builder's Insurance: SUBRECIPIENT, and its successors and assigns, shall cause its Contractor(s) to procure all-risk builder's insurance for the duration of the WORK to be performed to the PROPERTY. Contractor(s) shall provide a policy of builder's all risk (course of construction) insurance coverage including (if the WORK is located in an earthquake or flood zone or if required on financed or bond financing arrangements) coverage for earthquake and flood, covering the SUBRECIPIENT, Contractor and every subcontractor, of every tier, for the duration of the WORK to be performed to the PROPERTY, including property to be used in the construction of the WORK while such property is at off-site storage locations or while in transit or temporary off-site storage. Such policy shall include, but not be limited to, coverage for fire, collapse, faulty workmanship, debris removal, expediting expense, fire department service charges, valuable papers and records, trees, grass, shrubbery, and plants. If scaffolding, falsework, and temporary buildings are insured separately

by the Contractor(s) or others, evidence of such separate coverage shall be provided to SUBRECIPIENT, and its successors and assigns, prior to the start of the WORK. Such policy shall be written on a completed value form. Such policy shall also provide coverage for temporary structures (on-site offices, etc.), fixtures, machinery, and equipment being installed as part of the WORK. Contractor(s) shall be responsible for any and all deductibles under such policy. Upon request by COUNTY, SUBRECIPIENT, and its successors and assigns, shall cause its Contractor(s) to declare all terms, conditions, coverages, and limits of such policy.

f. Professional Liability: If applicable, SUBRECIPIENT, and its successors and assigns, shall cause its Contractor(s) to procure and maintain Professional Liability Insurance providing coverage for the Contractor's performance of WORK included within the SUBRECIPIENT AGREEMENT, with a limit of liability of not less than $1,000,000 per occurrence and $2,000,000 annual aggregate. If Contractor's Professional Liability Insurance is written on a claims made basis rather than an occurrence basis, such insurance shall continue through the Term of this COVENANT AGREEMENT and SUBRECIPIENT shall cause Contractor(s) to purchase at its sole expense either 1) an Extended Reporting Endorsement (also, known as Tail Coverage); or 2) Prior Dates Coverage from new insurer with a retroactive date back to the date of, or prior to, the inception of this COVENANT AGREEMENT; or 3) demonstrate through Certificates of Insurance that Contractor has maintained continuous coverage with the same or original insurer. Coverage provided under items; 1), 2), or 3) shall continue as long as the law allows.

g. General Insurance Provisions – All Lines.

i) Any insurance carrier providing insurance coverage hereunder shall be admitted to the State of California and have an A M BEST rating of not less than A: VIII (A:8) unless such requirements are waived, in writing, by the COUNTY Risk Manager. If the COUNTY Risk Manager waives a requirement for a particular insurer such waiver is only valid for that specific insurer and only for one policy term.

ii) The SUBRECIPIENT, and its successors and assigns must declare its insurance self-insured retentions for each coverage required herein. If such self-insured retentions exceed $500,000 per occurrence each such retention shall have the prior written consent of the COUNTY Risk Manager. Upon notification of self-insured retention unacceptable to COUNTY, and at the election of the COUNTY Risk Manager, SUBRECIPIENT's carriers shall either: (a) reduce or

eliminate such self-insured retention, or (b) procure a bond which guarantees payment of losses and related investigations, claims administration, and defense costs and expenses.

iii) SUBRECIPIENT, and its successors and assigns, shall cause its insurance carrier(s) to furnish the COUNTY with either 1) a properly executed original Certificate(s) of Insurance and certified original copies of Endorsements effecting coverage as required herein, and 2) if requested to do so orally or in writing by the COUNTY Risk Manager, provide original Certified copies of policies including all Endorsements and all attachments thereto, showing such insurance is in full force and effect. Further, said Certificate(s) and policies of insurance shall contain the covenant of the insurance carrier(s) that thirty (30) calendar days written notice shall be given to the COUNTY prior to any material modification, cancellation, expiration, or reduction in coverage of such insurance.

iv) It is understood and agreed to by the Parties hereto that SUBRECIPIENT's, its successors' and assigns', insurance shall be construed as primary insurance, and COUNTY'S insurance and/or deductibles and/or self-insured retentions or self-insured programs shall not be construed as contributory.

v) If, during the Term of this COVENANT AGREEMENT or any extension thereof, there is a material change in the WORK; or, there is a material change in the equipment to be used in the performance of the WORK; or, the Term of this COVENANT AGREEMENT, including any extensions thereof, exceeds five (5) years, the COUNTY reserves the right to adjust the types of insurance required under this COVENANT AGREEMENT, if in the COUNTY Risk Manager's reasonable judgment, the amount or type of insurance carried by the SUBRECIPIENT, and its successors and assigns, has become inadequate.

vi) SUBRECIPIENT, and its successors and assigns, shall pass down the insurance obligations contained herein to all tiers of subcontractors, including Contractor(s), working under the SUBRECIPIENT AGREEMENT or on the PROPERTY.

vii) The insurance requirements contained in this COVENANT AGREEMENT may be met with a program(s) of self-insurance acceptable to the COUNTY.

viii) SUBRECIPIENT, and its successors and assigns, agree to notify COUNTY in writing of any claim by a third party or any incident or event that may give rise to a claim arising from the performance of the COVENANT AGREEMENT.

13. **HOLD HARMLESS AND INDEMNIFICATION**. SUBRECIPIENT covenants and agrees for itself, its successors and assigns, and every successor in SUBRECIPIENT's interest in the PROPERTY or any part thereof, that SUBRECIPIENT, and its successors and assigns, shall indemnify and hold harmless the COUNTY and its Agencies, Districts, Special Districts and Departments, their respective directors, officers, Board of Commissioners, Board of Supervisors, elected and appointed officials, employees, agents and representatives (individually and collectively hereinafter referred to as Indemnitees) from any liability, action, claim, or damage whatsoever, based or asserted upon any acts, omissions and/or services of SUBRECIPIENT (or its successors and assigns), its officers, employees, subcontractors, agents, or representatives arising out of or in any way relating to the SUBRECIPIENT AGREEMENT or this COVENANT AGREEMENT, including but not limited to property damage, bodily injury, or death, or any other element of any kind or nature. SUBRECIPIENT, and its successors and assigns, shall defend, at its sole expense, including all costs and fees (including, but not limited to, attorney fees, cost of investigation, defense, and settlements or awards), the Indemnitees in any claim or action based upon such alleged acts, omissions, or services. With respect to any action or claim subject to indemnification herein by SUBRECIPIENT, and its successors and assigns, SUBRECIPIENT, and its successors and assigns, shall, its sole cost, have the right to use counsel of its own choice and shall have the right to adjust, settle, or compromise any such action or claim without the prior consent of COUNTY; provided, however, that any such adjustment, settlement or compromise in no manner whatsoever limits or circumscribes SUBRECIPIENT's, its successors' and assigns', indemnification to Indemnitees as set forth herein. SUBRECIPIENT's, its successors' and assigns', obligation hereunder shall be satisfied when SUBRECIPIENT, and its successors and assigns, have provided to COUNTY the appropriate form of dismissal relieving COUNTY from any liability for the action or claim involved. The specified insurance limits required in this COVENANT AGREEMENT shall in no way limit or circumscribe SUBRECIPIENT's, its successors' and assigns' obligations to indemnify and hold harmless the Indemnitees herein from third party claims. The indemnification and hold harmless obligations set forth herein shall survive the termination and expiration of this COVENANT AGREEMENT.

14. **NOTICES**. Formal notices, demands, and communications between the Parties shall be sufficiently given if, and shall not be deemed given unless, dispatched by registered or certified

mail, postage repaid, return receipt requested, or delivered by express delivery service, return receipt requested, or delivered personally, to the principal office of the Parties as follows:

COUNTY	SUBRECIPIENT
First 5 Riverside County	V.I.P. Tots
Tammi Graham, Executive Director	Jared Dobbins, Executive Director
585 Technology Ct	41915 Acacia Avenue
Riverside, CA 92507	Hemet, CA 92544

Such written notices, demands, and communications may be sent in the same manner to such other addresses as the affected Party may from time to time designate by mail as provided in this Section. Receipts shall be deemed to have occurred on the date shown on a written receipt as the date of delivery or refusal of delivery (or attempted delivery if undeliverable).

15. **REMEDIES**. COUNTY shall have the right, in the event of any breach of any agreement or covenant set forth in this COVENANT AGREEMENT, to exercise all available rights and remedies, and to maintain any actions at law or suit in equity or other proper proceedings to enforce the curing of such breach of agreement or covenant. The remedies provided for any breach of any agreement or covenant set forth in this COVENANT AGREEMENT shall be deemed cumulative, and none of such remedies shall be deemed exclusive.

16. **NOTICE AND OPPORTUNITY TO CURE**. COUNTY shall give SUBRECIPIENT, and its successors and assigns, notice of such default pursuant to section 10 above. SUBRECIPIENT covenants and agrees for itself, its successors and assigns, and every successor in SUBRECIPIENT's interest in the PROPERTY or any part thereof, that any monetary default shall be cured within ten (10) days of delivery of written notice. Except as otherwise set forth herein, if a non-monetary default is reasonably capable of being cured within thirty (30) days of delivery of written notice, SUBRECIPIENT, and its successors and assigns, shall have such period to effect a cure prior to exercise of remedies by COUNTY. If the non-monetary default is such that it is not reasonably capable of being cured within thirty (30) days of delivery of written notice, and SUBRECIPIENT, and its successors and assigns, (a) initiates corrective action within said period, and (b) diligently, continually, and in good faith works to effect a cure as soon as possible, then SUBRECIPIENT, and its successors and assigns, shall have such additional time as is reasonably necessary to cure the default prior to exercise of any remedies by the COUNTY; but in no event no later than ninety (90) days from delivery of such written notice.

If a violation of any of the covenants or provisions of this COVENANT AGREEMENT remains uncured after the respective time period set forth in this section, COUNTY and its successors and assigns, without regard to whether COUNTY or its successors and assigns is an owner of any land or interest therein to which these covenants relate, may institute and prosecute any proceedings at law or in equity to abate, prevent or enjoin any such violation or attempted violation or to compel specific performance by SUBRECIPIENT, and its successors and assigns, of its obligations hereunder. No delay in enforcing the provisions hereof as to any breach or violation shall impair, damage, or waive the right of the COUNTY to enforce the provisions hereof or to obtain relief against or recover for the continuation or repetition of such breach or violations or any similar breach or violation hereof at any later time.

17. **SENIOR POSITION OF COVENANT AGREEMENT**. SUBRECIPIENT covenants and agrees for itself, its successors and assigns, and every successor in SUBRECIPIENT's interest in the PROPERTY or any part thereof, that this COVENANT AGREEMENT shall be recorded in the first position senior to all liens and encumbrances against the PROPERTY, other than those expressly agreed to by COUNTY in writing.

18. **TRANSFER OF THE COVENANT AGREEMENT**. As set forth in the SUBRECIPIENT AGREEMENT, COUNTY and SUBRECIPIENT agree that SUBRECIPIENT may transfer the terms and conditions of this COVENANT AGREEMENT to another property with the prior written consent of the COUNTY, which consent shall not be unreasonably withheld, conditioned, or delayed.

19. **MODIFICATIONS OR AMENDMENTS**. This COVENANT AGREEMENT shall be modified or amended only by a written amendment signed by the duly authorized and empowered representatives of both the COUNTY and SUBRECIPIENT and its successors and assigns.

20. **GOVERNING LAW; VENUE; SEVERABILITY**. This COVENANT AGREEMENT shall be governed by the laws of the State of California. Any legal action related to the performance or interpretation of this COVENANT AGREEMENT shall be filed only in the Superior Court of the State of California located in Riverside, California, and the Parties waive any provision of law providing for a change of venue to another location. In the event any provision in this COVENANT AGREEMENT is held by a court of competent jurisdiction to be

invalid, void, or unenforceable, the remaining provisions will nevertheless continue in full force without being impaired or invalidated in any way.

21. **BINDING EFFECT**. This COVENANT AGREEMENT shall bind and inure to the benefit of the respective heirs, successors, and assigns of the Parties.

22. **ACCESS TO PROPERTY**. SUBRECIPIENT covenants and agrees for itself, its successors and assigns, and every successor in SUBRECIPIENT's interest in the PROPERTY or any part thereof, that representatives of the COUNTY shall have the right of access to the PROPERTY, upon 24 hours' written notice to SUBRECIPIENT, and its successors and assigns, (except in the case of an emergency, in which COUNTY shall provide such notice as may be practical under the circumstances), without charges or fees, during normal business hours to inspect the PROPERTY and confirm SUBRECIPIENT, and its successors and assigns, are complying with their obligations in accordance with the SUBRECIPIENT AGREEMENT and this COVENANT AGREEMENT.

23. **MONITORING**. SUBRECIPIENT covenants and agrees for itself, its successors and assigns, and every successor in SUBRECIPIENT's interest in the PROPERTY or any part thereof, that SUBRECIPIENT, and its successors and assigns, shall annually report to the COUNTY, in writing, confirming that they continue to retain title to the PROPERTY, have not Transferred the PROPERTY, providing evidence of insurance, providing evidence of the payment of taxes, and any and all other information reasonably requested by the COUNTY to ensure compliance with the terms of the SUBRECIPIENT AGREEMENT and this COVENANT AGREEMENT. Within fifteen (15) days of a written request from the COUNTY, SUBRECIPIENT, and its successors and assigns, shall respond with all information requested to allow the COUNTY to complete its monitoring responsibilities under the terms of this COVENANT AGREEMENT. Failure to completely and timely comply with requests shall be deemed a material default under the terms of this COVENANT AGREEMENT.

24. **COUNTERPARTS**. This COVENANT AGREEMENT may be signed by the different Parties hereto in counterparts, each of which shall be an original, but all of which together shall constitute one and the same agreement.

25. **NON-LIABILITY OF THE COUNTY**. SUBRECIPIENT covenants and agrees for itself, its successors and assigns, and every successor in SUBRECIPIENT's interest in the PROPERTY or any part thereof, that in no event shall the COUNTY become in any way liable or

obligated to the SUBRECIPIENT, or its successors and assigns, by reason of its rights set forth in this COVENANT AGREEMENT for the COUNTY's failure to exercise any such rights set forth herein.

26. **ENTIRE AGREEMENT**. This COVENANT AGREEMENT and the SUBRECIPIENT AGREEMENT sets forth and contains the entire understanding and agreement of the Parties hereto. There are no oral or written representations, understandings, or ancillary covenants, undertakings, or agreements, which are not contained or expressly referred to within this COVENANT AGREEMENT, and the SUBRECIPIENT AGREEMENT, including all amendments and modifications to the SUBRECIPIENT AGREEMENT.

Intentionally left blank

IN WITNESS WHEREOF, COUNTY and SUBRECIPIENT, on behalf of itself, its successors and assigns, and every successor in SUBRECIPIENT's interest in the PROPERTY or any part thereof, have executed this COVENANT AGREEMENT as of the dates written below.

COUNTY:
FIRST 5 RIVERSIDE COUNTY

By: _____
Tammi Graham, Executive Director

Date:_____

SUBRECIPIENT:
V.I.P. TOTS

By: _____
Jared Dobbins, Executive Director
Authorized Signatory

Date:_____

ATTEST:

By: _____
Lynn M. Stephens, Commission Coordinator

Date:_____

(Above signatures need to be notarized)

APPROVED AS TO FORM:
MINH TRAN
County Counsel

By:_____
Kristine Bell-Valdez
Deputy County Counsel

APPENDIX "A" to EXHIBIT "G"
LEGAL DESCRIPTION OF PROPERTY

Re: An owner-operated 6,423 SF day care center property located at 41861 Acacia Avenue, in the city of Hemet, Riverside County, CA 92544, hereafter referred to as the subject property. Portion of Assessor's Parcel Number (APN) 449-090-011.

AGREEMENT TO TERMINATE FUNDING AGREEMENT

Quality Early Care and Education: ARPA Infrastructure Development

This Agreement to Terminate the Funding Agreement ("Agreement"), dated as of February 2, 2023, is entered into between V I P Tots, Inc., a California nonprofit corporation ("SUBRECIPIENT" or "OWNER"), and the Riverside County Children and Families First Commission. ("COMMISSION", "FIRST 5 RIVERSIDE COUNTY" or "COUNTY").

Recitals

A. On or about February 2, 2023, COMMISSION and SUBRECIPIENT entered into that certain Agreement for Funding the acquisition, improvement, and development of classrooms at the V.I.P. Tots facility for child care services, "PROJECT."

B. SUBRECIPIENT, located at 41915 Acacia Avenue, Hemet, CA 92544 and planned to advertise, award, and administer a public works construction contract for PROJECT during Fiscal Years 2022/2023 and 2023/24; and

C. TOTAL CONTRIBUTION for PROJECT was not to exceed a total of ONE MILLION TWO HUNDRED THOUSAND DOLLARS, **($1,200,000)**; and

D. The Parties now desire to terminate the Agreement by mutual agreement consistent with Recital L of the Agreement because the Project will not continue.

NOW, THEREFORE, in consideration of the preceding recitals and the mutual covenants hereinafter contained, the parties hereto mutually agree as follows:

Section 1. Termination of Agreement

Except as may be otherwise stated in this Agreement, COMMISSION and SUBRECIPIENT each agree that effective as of this date and pursuant to the terms of the Funding Agreement, the Agreement is hereby terminated and of no further legal effect.

Section 2. Release

Except as otherwise stated in this Agreement, COMMISSION and SUBRECIPIENT release each other from and against any and all liability, claims, damages, losses, costs, or expenses, including reasonable attorney fees and court costs relating to the Agreement upon the effective date of the Agreement and accruing with respect to the period subsequent to the date of this Agreement.

Section 3. Miscellaneous

This Agreement shall be binding on and shall inure to the benefit of COMMISSION and SUBRECIPIENT and their respective successors and assigns. This Agreement shall be governed and construed in accordance with California law.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first written above.

SUBRECIPIENT:

V I P TOTS INC. (SUBRECIPIENT)

an California non-profit corporation

By: _____

Name:

Title:

Date:

RIVERSIDE COUNTY CHILDREN AND FAMILIES FIRST COMMISSION:

By: _____

Name: Tammi Graham

Title: Executive Director

Date:

ATTEST:

By: _____

Name: Lynn M. Stephens

Title: Executive Assistant IV

Date:

APPROVED AS TO FORM:

By: _____

Name: Kristine Bell-Valdez

Title: Deputy County Counsel

Date: 10/23/23

N. **Presentations/Action Items/Public Hearings – Zachary Ginder, Commission Chair**

N.1. Presentation of First 5 Riverside County Annual Audit Report for Fiscal Year 2022/2023 (a copy of the report may be obtained at www.first5riverside.org and can be viewed at the Commission Business Office) - David Showalter, CPA, Partner, Eide Bailly, LLP

N.1.a. **Public Hearing:** Annual Audit of First 5 Riverside County Children & Families Commission for Fiscal Year 2022/2023 - Zachary Ginder, Commission Chair

N.1.b. **23-46**: Adopt First 5 Riverside County Children & Families Commission Annual Independent Audit Report for Fiscal Year 2022/2023 - Zachary Ginder, Commission Chair

AGENDA ITEM: 23-46
DATE OF MEETING: October 25, 2023
ACTION: ☒
INFORMATION: ☐

ADOPT FIRST 5 RIVERSIDE COUNTY CHILDREN & FAMILIES COMMISSION ANNUAL INDEPENDENT AUDIT REPORT FOR FISCAL YEAR 2022/2023

SUMMARY OF REQUEST

Adopt First 5 Riverside County Children & Families Commission Annual Independent Audit Report for Fiscal Year 2022-2023 after conducting the legislatively required public hearing.

A representative from Eide Bailly, LLP will present highlights and respond to questions regarding the report.

BACKGROUND

In compliance with Commission approved Financial Reporting Policy (#18-14), fourth quarter financial data reporting percentages for actual year-end expenditures ($32,149,418) as compared to the total operating budget ($51,237,691) are noted as follows: Administrative – $3,396,567 (7%); Evaluation – $925,478 (2%); and Program expenditures – $27,827,373 (54%).

Health and Safety Code Section 130140 requires that any county receiving funding and implementing the Children and Families Act (Proposition 10) prepare and adopt an annual audit and report and conduct at least one public hearing prior to adoption. The annual audit and report are due to the State Commission by October 31, 2023 (per Health & Safety Code section 130150).

A copy of the financial statements and auditor's report were included in Commission packets for review prior to the Commission meeting. A draft copy of the audit report is available at the Commission webpage at www.first5riverside.org and at the Commission's business office for public review.

RECOMMENDED ACTION

That the Commission:

1. Adopt the Riverside County Children and Families Commission Annual Audit Report as presented for Fiscal Year 2022-2023, after conducting a public hearing; and

2. Authorize the Executive Director or designee to execute the necessary documents to effectuate the foregoing action without requiring further action of the Commission.

BUDGET IMPACT

Not Applicable

STRATEGIC PLAN RELEVANCE

Not Applicable

POTENTIAL CONFLICTS OF INTEREST

None known

ATTACHMENTS

Independent Audit Report – inclusive of Management's Discussion and Analysis, Financial Statements, Notes to the Financial Statements, Supplementary Information, Other Supplementary Information, and Compliance Section – For Fiscal Year Ending June 30, 2023.

EideBailly
CPAs & BUSINESS ADVISORS

October 11, 2023

To the Board of Commissioners
First 5 Riverside County Children and Families Commission
Riverside, California

We have audited the financial statements of the governmental activities and each major fund of the First 5 Riverside County Children and Families Commission (Commission), a component unit of the County of Riverside, California as of and for the year ended June 30, 2023, and have issued our report thereon dated October 11, 2023. Professional standards require that we advise you of the following matters relating to our audit.

Our Responsibility in Relation to the Financial Statement Audit under Generally Accepted Auditing Standards and *Government Auditing Standards*

As communicated in our letter dated August 15, 2023, our responsibility, as described by professional standards, is to form and express an opinion about whether the financial statements that have been prepared by management with your oversight are presented fairly, in all material respects, in accordance with accounting principles generally accepted in the United States of America. Our audit of the financial statements does not relieve you or management of your respective responsibilities.

Our responsibility, as prescribed by professional standards, is to plan and perform our audit to obtain reasonable, rather than absolute, assurance about whether the financial statements are free of material misstatement. An audit of financial statements includes consideration of internal control over financial reporting as a basis for designing audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the entity's internal control over financial reporting. Accordingly, as part of our audit, we considered the internal control of the Commission solely for the purpose of determining our audit procedures and not to provide any assurance concerning such internal control.

We are also responsible for communicating significant matters related to the audit that are, in our professional judgment, relevant to your responsibilities in overseeing the financial reporting process. However, we are not required to design procedures for the purpose of identifying other matters to communicate to you.

Planned Scope and Timing of the Audit

We conducted our audit consistent with the planned scope and timing we previously communicated to you.

What inspires you, inspires us. | eidebailly.com

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Compliance with All Ethics Requirements Regarding Independence

The engagement team, others in our firm, as appropriate, our firm, and other firms utilized in the engagement, if applicable, have complied with all relevant ethical requirements regarding independence.

Qualitative Aspects of the Entity's Significant Accounting Practices

Significant Accounting Policies

Management has the responsibility to select and use appropriate accounting policies. A summary of the significant accounting policies adopted by the Commission is included in Note 1 to the financial statements. There have been no initial selection of accounting policies and no changes in significant accounting policies or their application during 2023. No matters have come to our attention that would require us, under professional standards, to inform you about (1) the methods used to account for significant unusual transactions and (2) the effect of significant accounting policies in controversial or emerging areas for which there is a lack of authoritative guidance or consensus.

Significant Accounting Estimates

Accounting estimates are an integral part of the financial statements prepared by management and are based on management's current judgments. Those judgments are normally based on knowledge and experience about past and current events and assumptions about future events. Certain accounting estimates are particularly sensitive because of their significance to the financial statements and because of the possibility that future events affecting them may differ markedly from management's current judgments.

The most sensitive accounting estimates affecting the financial statements are amounts related to the net pension liability, related deferred inflows of resources and deferred outflows of resources, pension expense, and disclosures, are based on actuarial valuations and a proportionate share of the collective net pension liability of the County of Riverside's miscellaneous agent employer plan. We evaluated the key factors and assumptions used to develop the estimates and determined that they it are reasonable in relation to the basic financial statements taken as a whole.

Financial Statement Disclosures

Certain financial statement disclosures involve significant judgment and are particularly sensitive because of their significance to financial statement users. The most sensitive disclosures affecting the Commission's financial statements relate to:

> The disclosure of the Commission's defined benefit pension plan, net pension liability and related deferred inflows of resources and deferred outflows of resources in Note 10 to the financial statements. The valuation of the net pension liability and related deferred outflows (inflows) of resources are sensitive to the underlying actuarial assumptions used including, but not limited to, the discount rate, and the Commission's proportionate share of the Plan's collective net pension liability. As disclosed in Note 10, a 1% increase or decrease in the discount rate has a significant effect on the Commission's net pension liability.

The financial statement disclosures are neutral, consistent, and clear.

Significant Difficulties Encountered during the Audit

We encountered no significant difficulties in dealing with management relating to the performance of the audit.

Uncorrected and Corrected Misstatements

For purposes of this communication, professional standards require us to accumulate all known and likely misstatements identified during the audit, other than those that we believe are trivial, and communicate them to the appropriate level of management. Further, professional standards require us to also communicate the effect of uncorrected misstatements related to prior periods on the relevant classes of transactions, account balances or disclosures, and the financial statements as a whole. Uncorrected misstatements or matters underlying those uncorrected misstatements could potentially cause future-period financial statements to be materially misstated, even though the uncorrected misstatements are immaterial to the financial statements currently under audit. There were no corrected misstatements identified as a result of our audit procedures.

The following summarizes an uncorrected financial statement misstatement whose effects in the current and prior periods, as determined by management, is immaterial, both individually and in the aggregate, to the financial statements taken as a whole.

Overstatement of Revenue	$35,919
Understatement of Deferred Inflows	35,919

The effect of this uncorrected misstatement is an overstatement of net income of approximately $35,919, and understatement of deferred inflows of resources of approximately $35,919.

Disagreements with Management

For purposes of this letter, professional standards define a disagreement with management as a matter, whether or not resolved to our satisfaction, concerning a financial accounting, reporting, or auditing matter, which could be significant to the the Commission's financial statements or the auditor's report. No such disagreements arose during the course of the audit.

Circumstances that Affect the Form and Content of the Auditor's Report

For purposes of this letter, professional standards require that we communicate any circumstances that affect the form and content of our auditor's report. We did not identify and circumstances that affect the form and content of the auditor's report.

Representations Requested from Management

We have requested certain written representations from management which are included in the management representation letter dated October 11, 2023.

Management's Consultations with Other Accountants

In some cases, management may decide to consult with other accountants about auditing and accounting matters. Management informed us that, and to our knowledge, there were no consultations with other accountants regarding auditing and accounting matters.

Other Significant Matters, Findings, or Issues

In the normal course of our professional association with the Commission, we generally discuss a variety of matters, including the application of accounting principles and auditing standards, significant events or transactions that occurred during the year, operating conditions affecting the entity, and operating plans and strategies that may affect the risks of material misstatement. None of the matters discussed resulted in a condition to our retention as the Commission's auditors.

This report is intended solely for the information and use of the Board of Commissioners, and management of the Commission and is not intended to be, and should not be, used by anyone other than these specified parties.

Eide Bailly LLP

Rancho Cucamonga, California

Financial Statements
June 30, 2023

First 5 Riverside
Riverside County
Children and Families Commission

(A Component Unit of the County of Riverside, California)

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First 5 Riverside County Children and Families Commission

Table of Contents

June 30, 2023

Independent Auditor's Report 1

Management's Discussion and Analysis 5

Government Wide Financial Statements

- Statement of Net Position 13
- Statement of Activities 14

Governmental Fund Financial Statements

- Balance Sheet – Governmental Funds 15
- Reconciliation of the Governmental Funds Balance Sheet to the Statement of Net Position 16
- Statement of Revenues, Expenditures, and Changes in Fund Balances – Governmental Funds 17
- Reconciliation of the Statement of Revenues, Expenditures, and Changes in Fund Balances of Governmental Funds to the Statement of Activities 18

Notes to Financial Statements 19

Required Supplementary Information

- Schedule of the Commission's Proportionate Share of the Net Pension Liability (Miscellaneous Plan) 35
- Schedule of Contributions 36
- Schedule of Revenues, Expenditures, and Changes in Fund Balance - Budget and Actual – General Fund 37
- Schedule of Revenues, Expenditures, and Changes in Fund Balance - Budget and Actual – ARPA Fund 38

Other Supplementary Information

- Schedule of First 5 California Funding 39

Compliance Section

Independent Auditor's Report on Internal Control over Financial Reporting and on Compliance and Other Matters Based on an Audit of Financial Statements Performed in Accordance with *Government Auditing Standards* 40

Independent Auditor's Report on State Compliance 42

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Financial Section



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EideBailly

CPAs & BUSINESS ADVISORS

Independent Auditor's Report

To the Board of Commissioners
First 5 Riverside County Children and Families Commission
Riverside, California

Report on the Audit of the Financial Statements

Opinions

We have audited the financial statements of the governmental activities and each major fund of the First 5 Riverside County Children and Families Commission (Commission), a component unit of the County of Riverside, California, as of and for the year ended June 30, 2023, and the related notes to the financial statements, which collectively comprise the Commission's basic financial statements as listed in the table of contents.

In our opinion, the accompanying financial statements referred to above present fairly, in all material respects, the respective financial position of the governmental activities and each major fund of the Commission, as of June 30, 2023, and the respective changes in financial position thereof for the year then ended in accordance with accounting principles generally accepted in the United States of America.

Basis for Opinions

We conducted our audit in accordance with auditing standards generally accepted in the United States of America (GAAS) and the standards applicable to financial audits contained in *Government Auditing Standards* issued by the Comptroller General of the United States (*Government Auditing Standards*). Our responsibilities under those standards are further described in the Auditor's Responsibilities for the Audit of the Financial Statements section of our report. We are required to be independent of the Commission and to meet our other ethical responsibilities, in accordance with the relevant ethical requirements relating to our audit. We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinions.

Responsibilities of Management for the Financial Statements

Management is responsible for the preparation and fair presentation of the financial statements in accordance with accounting principles generally accepted in the United States of America; and for the design, implementation, and maintenance of internal control relevant to the preparation and fair presentation of financial statements that are free from material misstatement, whether due to fraud or error.

In preparing the financial statements, management is required to evaluate whether there are conditions or events, considered in the aggregate, that raise substantial doubt about the Commission's ability to continue as a going concern for twelve months beyond the financial statement date, including any currently known information that may raise substantial doubt shortly thereafter.

Auditor's Responsibilities for the Audit of the Financial Statements

Our objectives are to obtain reasonable assurance about whether the financial statements as a whole are free from material misstatement, whether due to fraud or error, and to issue an auditor's report that includes our opinions. Reasonable assurance is a high level of assurance but is not absolute assurance and therefore is not a guarantee that an audit conducted in accordance with GAAS and *Government Auditing Standards* will always detect a material misstatement when it exists. The risk of not detecting a material misstatement resulting from fraud is higher than for one resulting from error, as fraud may involve collusion, forgery, intentional omissions, misrepresentations, or the override of internal control. Misstatements are considered material if there is a substantial likelihood that, individually or in the aggregate, they would influence the judgment made by a reasonable user based on the financial statements.

In performing an audit in accordance with GAAS and *Government Auditing Standards*, we:

- Exercise professional judgment and maintain professional skepticism throughout the audit.
- Identify and assess the risks of material misstatement of the financial statements, whether due to fraud or error, and design and perform audit procedures responsive to those risks. Such procedures include examining, on a test basis, evidence regarding the amounts and disclosures in the financial statements.
- Obtain an understanding of internal control relevant to the audit in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the Commission's internal control. Accordingly, no such opinion is expressed.
- Evaluate the appropriateness of accounting policies used and the reasonableness of significant accounting estimates made by management, as well as evaluate the overall presentation of the financial statements.
- Conclude whether, in our judgment, there are conditions or events, considered in the aggregate, that raise substantial doubt about the Commission's ability to continue as a going concern for a reasonable period of time.

We are required to communicate with those charged with governance regarding, among other matters, the planned scope and timing of the audit, significant audit findings, and certain internal control–related matters that we identified during the audit.

Required Supplementary Information

Accounting principles generally accepted in the United States of America require that the management's discussion and analysis, schedules of Commission's proportionate share of net pension liability and contributions and budgetary comparison information as listed on the table of contents, be presented to supplement the basic financial statements. Such information is the responsibility of management and, although not a part of the basic financial statements, is required by the Governmental Accounting Standards Board who considers it to be an essential part of financial reporting for placing the basic financial statements in an appropriate operational, economic, or historical context. We have applied certain limited procedures to the required supplementary information in accordance with auditing standards generally accepted in the United States of America, which consisted of inquiries of management about the methods of preparing the information and comparing the information for

consistency with management's responses to our inquiries, the basic financial statements, and other knowledge we obtained during our audit of the basic financial statements. We do not express an opinion or provide any assurance on the information because the limited procedures do not provide us with sufficient evidence to express an opinion or provide any assurance.

Supplementary Information

Our audit was conducted for the purpose of forming opinions on the financial statements that collectively comprise the Commission's basic financial statements. The Schedule of First 5 California Funding (Schedule) is presented for purposes of additional analysis and is not a required part of the basic financial statements. Such information is the responsibility of management and was derived from and relates directly to the underlying accounting and other records used to prepare the basic financial statements. The information has been subjected to the auditing procedures applied in the audit of the basic financial statements and certain additional procedures, including comparing and reconciling such information directly to the underlying accounting and other records used to prepare the basic financial statements or to the basic financial statements themselves, and other additional procedures in accordance with GAAS. In our opinion, the Schedule is fairly stated, in all material respects, in relation to the basic financial statements as a whole.

Other Reporting Required by *Government Auditing Standards*

In accordance with *Government Auditing Standards*, we have also issued our October 11, 2023, on our consideration of the Commission's internal control over financial reporting and on our tests of its compliance with certain provisions of laws, regulations, contracts, and grant agreements and other matters. The purpose of that report is solely to describe the scope of our testing of internal control over financial reporting and compliance and the results of that testing, and not to provide an opinion on the effectiveness of the Commission's internal control over financial reporting or on compliance. That report is an integral part of an audit performed in accordance with *Government Auditing Standards* in considering the Commission's internal control over financial reporting and compliance.

Eide Bailly LLP

Rancho Cucamonga, California
October 11, 2023

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First 5 Riverside County Children and Families Commission
Management's Discussion and Analysis
(Unaudited)
For Year Ended June 30, 2023

On November 3, 1998, California voters approved Proposition 10, the California Children and Families Act, which increased tobacco taxes to provide funds for early childhood development programs for children from the prenatal stage up through age five and their families.

As management of the Riverside County Children and Families Commission (Commission), we offer readers of the Commission's financial statements this overview and analysis of the financial activities for the fiscal year ended June 30, 2023. Please read in conjunction with the Commission's basic financial statements and accompanying notes.

Financial Highlights

- The Commission recognized approximately $17.2 million in revenues from First 5 California, reflecting a decrease of approximately $2.3 million or 11.7% from FY 2022-23. Total revenues for FY 2022-23 were about $31.1 million, which included revenue from Tobacco Taxes, First 5 CA initiatives (IMPACT, HV), American Rescue Plan Act (ARPA), family resource center reimbursement, investments, and other programs.

- Commission expenses totaled approximately $32.5 million in FY 2022-23, representing a 13.2% increase or $3.8 million from FY 2021-22. The increase indicates additional support for childhood development programs and increased wage enhancement payments made to the early childcare education workforce. Salaries and benefits increased due to increased staffing and the reclassification of positions.

- The Commission's assets increased from $47.8 million in FY 2021-22 to $49.8 million in FY 22-23 an increase of 4.2% as a result of cash received in advance from ARPA funding as well as increased interest income.

- Commission liabilities totaled approximately $22.0 million in FY 2022-23, representing a 43.3% increase or $6.6 million from FY 2021-22, primarily due to accounts payable that posted in the new fiscal year accrued back to FY 22-23. Net pension liability also increased due to increased staffing.

- The Commission's general fund balance decreased from $34.7 million in FY 2021-22 to $33.6 million in FY 22-23, a decrease of 3.3%.

- The Commission's Net Position decreased by 4.3% from $32.1 million in FY 2021-22 to $30.8 million in FY22-23.

Overview of the Financial Statements

The Commission's financial statements consist of three parts:

- The government-wide financial statements
- Fund financial statements
- The notes to the financial statements

The Commission's financial statements offer essential high-level financial information about its activities. This report also includes supplemental information to provide additional detail to support the basic financial statements.

First 5 Riverside County Children and Families Commission
Management's Discussion and Analysis
(Unaudited)
For Year Ended June 30, 2023

Government-Wide Financial Statements

The government-wide financial statements provide readers with a broad overview of the Commission's finances like a private-sector business. These statements offer long-term and short-term information about the Commission's financial status.

The Statement of Net Position includes information on the Commission's assets, deferred outflows of resources, and liabilities, with the difference between assets, deferred outflows of resources, and liabilities reported as net position. Changes in net position may serve as a valuable indicator of the Commission's financial position.

The Statement of Activities presents information showing how the Commission's net position changed during the fiscal year.

The governmental-wide financial statements are on pages 13-14 of this report.

Fund Financial Statements

Fund accounting ensures and demonstrates compliance with finance-related legal requirements. Governmental fund financial statements focus on near-term inflows and outflows of spendable resources and balances of spendable resources available at the end of the year.

The Commission maintains two governmental funds, the General Fund and the ARPA special revenue fund. The Commission adopts an annual budget for its General Fund and ARPA fund. A budgetary comparison schedule has been provided for the General Fund and the ARPA special revenue fund to demonstrate compliance with the budget.

The governmental fund financial statements are on pages 15-18 of this report.

Notes to the Financial Statements
The notes provide additional information that is integral to acquiring a complete understanding of the data provided in the government-wide and fund financial statements. The notes to the financial statements are on pages 19-34 of this report.

Required Supplementary Information

In addition to the basic financial statements and accompanying notes, this report contains required supplementary information related to pension and budget, found on pages 35-38 of this report.

First 5 Riverside County Children and Families Commission
Management's Discussion and Analysis
(Unaudited)
For Year Ended June 30, 2023

Government-Wide Overall Statements Analysis

The following is a summary of the Commission's assets, deferred outflows of resources, liabilities, deferred inflows of resources, and net position comparing FY 2021-2022 to FY 2022-2023:

	June 30, 2023	June 30, 2022	Dollar Increase / (Decrease)	Percent Increase / (Decrease)
Assets:				
Cash and investments	$ 44,190,041	$ 43,192,353	$ 997,688	2.3%
Interest receivable	393,567	79,223	314,344	396.8%
Due from other governments	3,452,966	2,686,219	766,747	28.5%
Capital assets	1,782,417	1,839,911	(57,494)	-3.1%
Total assets	$ 49,818,991	$ 47,797,706	$ 2,021,285	4.2%
Deferred Outflows of Resources				
Deferred outflows related to pensions	3,812,285	2,624,597	$ 1,187,688	45.3%
Total Deferred Outflows Pensions	$ 3,812,285	$ 2,624,597	$ 1,187,688	45.3%
Liabilities:				
Accounts payable	$ 4,153,692	$ 1,920,323	$ 2,233,369	116.3%
Accrued wages and benefits	297,745	240,036	57,709	24.0%
Use tax payable	87	51	36	70.6%
Unearned revenue	10,053,060	9,218,232	834,828	9.1%
Compensated absences	494,114	647,406	(153,292)	-23.7%
Net pension liability	6,901,560	3,253,591	3,647,969	112.1%
Total liabilities	$ 21,900,258	$ 15,279,639	$ 6,620,619	43.3%
Deferred Inflows of Resources				
Deferred inflows related to pensions	977,160	2,994,482	(2,017,322)	-67.4%
Net Position				
Investment in capital assets	$ 1,782,417	$ 1,839,911	$ (57,494)	-3.1%
Unrestricted	28,971,441	30,308,271	(1,336,830)	-4.4%
Total Net Position	$ 30,753,858	$ 32,148,182	$ (1,394,324)	-4.3%

The Commission's total assets of $49.8 million represent an increase of $2 million or a 4.2% increase compared with the prior year. Of this amount, cash and investments increased by approximately $1 million or 2.3% primarily due to the Commission holding $10.2 million of ARPA funding. The Commission's total liabilities increased from $15.3 million in FY 21-22 to $21.9 million in FY 22-23 because of net pension liability and accounts payable.

The 3.1% decrease in capital assets resulted from the continued depreciation of the Commission's capital assets. Additional information on capital assets is in Note 5 of this report. The decrease in Net Position from FY 21-22 to FY 22-23 was approximately $1.4 million or 4.3%.

First 5 Riverside County Children and Families Commission
Management's Discussion and Analysis
(Unaudited)
For Year Ended June 30, 2023

Governmental Activities

The following is a detailed summary of the Commission's revenue, expenses, and change in net position comparing FY 2021-22 with FY 2022-23:

	June 30, 2023	June 30, 2022	Dollar Increase / (Decrease)	Percent Increase / (Decrease)
Revenues				
Program revenues				
Tobacco taxes	$ 17,210,826	$ 19,499,728	$ (2,288,902)	-11.7%
First 5 CA (IMPACT, HV)	1,997,354	1,135,114	862,240	76.0%
Other programs	10,848,194	9,959,329	888,865	8.9%
Total Program Revenue	$ 30,056,374	$ 30,594,171	$ (537,797)	-1.8%
General Revenues				
Investment income (loss)	1,045,880	(659,195)	1,705,075	-258.7%
Total Revenues	$ 31,102,254	$ 29,934,976	$ 1,167,278	3.9%
Expenses				
Child development				
Salaries and benefits	6,578,893	5,769,516	809,377	14.0%
Professional and specialized services	24,258,728	21,056,592	3,202,136	15.2%
Services and supplies	1,601,463	1,814,100	(212,637)	-11.7%
Capital related	57,494	57,494	-	0.0%
Total Expenses	$ 32,496,578	$ 28,697,702	$ 3,798,876	13.2%
Net Change in Net Position	(1,394,324)	1,237,274	(2,631,598)	-212.7%
Net Position, Beginning of the Year	32,148,182	30,910,908	1,237,274	4.0%
Net Position, End of the Year	$ 30,753,858	$ 32,148,182	$ (1,394,324)	-4.3%

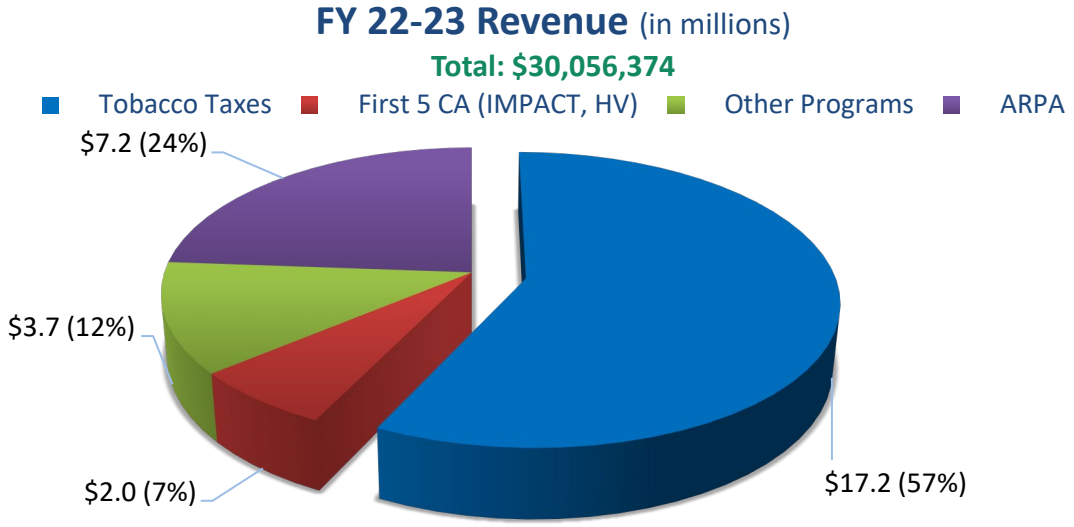
The Commission received approximately $30 million in revenues reflecting a decrease of $0.5 million or 1.8% from the prior year. Tobacco tax revenue decreased by $2.3 million, an 11.7% decrease, compared to the previous year.

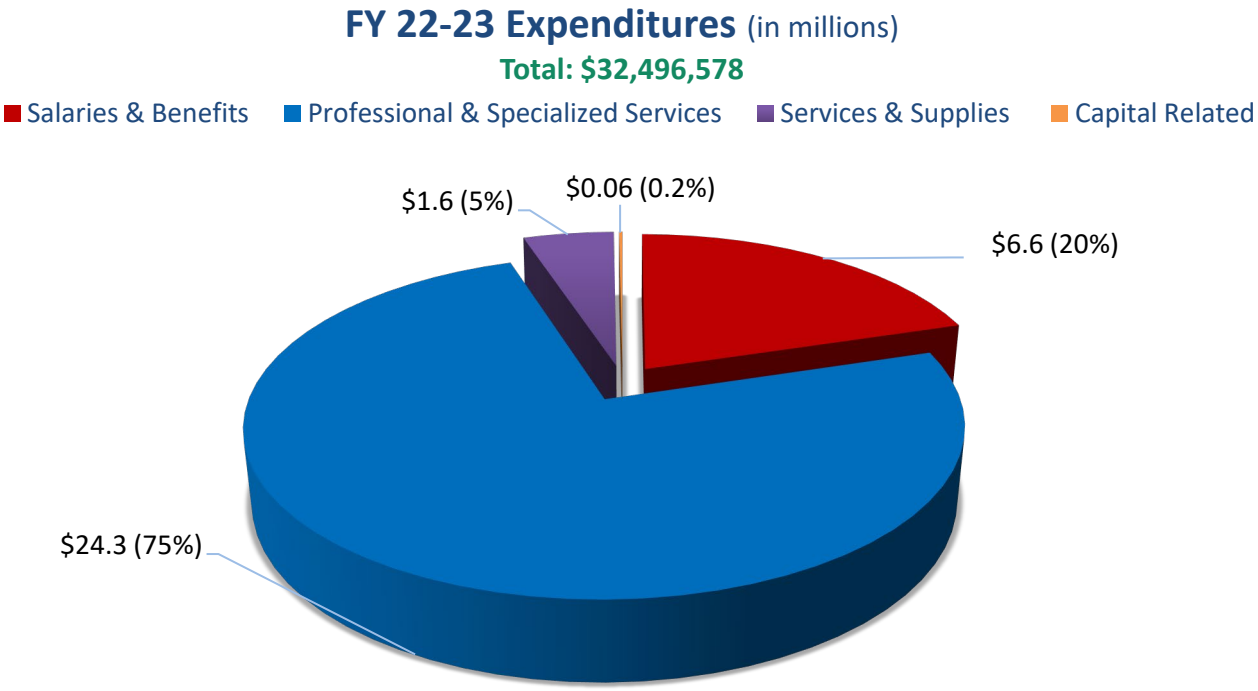
Total FY 2022-23 expenses increased by $3.8 million or 13.2% compared to the prior year. Salaries and benefits increased by $0.8 million, with more positions filled and some reclassified. Professional and Specialized Services increased by $3.2 million or 15.2% due to expanded services to the community. There was a slight decrease in Services and Supplies by $212,637 or 11.7%.

There was no change in capital-related expenses from FY 2021-22 to FY 2022-23.

First 5 Riverside County Children and Families Commission
Management's Discussion and Analysis
(Unaudited)
For Year Ended June 30, 2023

Below are revenue (not including investment income) and expenses for FY 22-23, depicting each category in millions:





First 5 Riverside County Children and Families Commission
Management's Discussion and Analysis
(Unaudited)
For Year Ended June 30, 2023

Financial Analysis of Governmental Funds

As previously stated, the Commission uses fund accounting to ensure and demonstrate compliance with finance-related legal requirements.

Governmental Funds

The focus of the Commission's general fund is to provide information on near-term inflows, outflows, and balances of spendable resources. Fund balance is a valuable measure of the Commission's committed and available net resources for future operations.

Fund Balances	June 30, 2023	June 30, 2022	Dollar Increase/ (Decrease)	Percent Increase/ (Decrease)
Committed	$ 17,584,988	$ 16,370,183	$ 1,214,805	7.4%
Unassigned	15,974,384	18,344,651	(2,370,267)	-12.9%
Total Fund Balance - General Fund	$ 33,559,372	$ 34,714,834	$ (1,155,462)	-3.3%

The general fund is the chief operating fund of the Commission. At the end of FY 22-23, the general fund balance decreased by 3.3% or approximately $1.2 million from FY 21-22. To measure the general fund's liquidity, comparing total fund balance to total general fund expenditures is useful. Total general fund expenditures of $24.9 million represent approximately 74.2% of the general fund balance of $33.6 million.

General Fund Budgetary Highlights

The Commission FY 2022-2023 amended budget was compared to the actual revenues and the differences between estimated revenues and actual revenues were as follows:

Revenues	Final Budget	Actual Revenue	Over/(Under) Estimate	Percent change
Tobacco Taxes	$ 20,051,140	$ 17,210,826	$ (2,840,314)	-14.2%
First 5 CA (IMPACT, HV)	2,118,635	1,997,354	(121,281)	-5.7%
Other programs	6,496,617	3,683,023	(2,813,594)	-43.3%
Investment income (loss)	100,000	846,897	746,897	746.9%
Total Revenue	$ 28,766,392	$ 23,738,100	$ (5,028,292)	-17.5%

Tobacco Tax revenue was $2.8 million or 14.2% less than projected due to the declining sales of tobacco products in California. Revenue includes California Electronic Cigarette Excise Tax (CECET) at the rate of 12.5 percent (12.50%) of the retail selling price of electronic cigarettes.

First 5 CA initiatives include IMPACT and home visitation. Other program revenue was 43.3% less than projected since CalWORKs home visitation services were lower than projected.

First 5 Riverside County Children and Families Commission
Management's Discussion and Analysis
(Unaudited)
For Year Ended June 30, 2023

Investment income was budgeted based on historical data and actual investment income was 746.9% higher than projected resulting in investment income.

The differences between estimated and actual expenditures were as follows:

Expenditures	Final Budgeted Expenditures	Actual Expenditures	Over/(Under) Estimate	Percent change
Salaries and Benefits	$ 7,845,900	$ 6,074,278	$ (1,771,622)	-22.6%
Professional and Specialized Services	21,864,396	17,228,397	(4,635,999)	-21.2%
Services and Supplies	4,309,164	1,590,887	(2,718,277)	-63.1%
Total Expenses	$ 34,019,460	$ 24,893,562	$ (9,125,898)	-22.8%

Actual Salary and Benefits of $6.1 million were less than the budgeted amount of $7.8 million due to staff vacancies and recruitment challenges.

Professional and Specialized Services were 21.2% less than budgeted since program expenditures were lower than projected.

ARPA Fund Budgetary Highlights – (25820)

Revenues	Final Budget	Actual Revenue	Over/(Under) Estimate	Percent change
Other programs	$ 17,218,231	$ 7,165,171	$(10,053,060)	-58.4%
Investment income (loss)	-	198,983	198,983	100%
Total Revenue	$ 17,218,231	$ 7,364,154	$ (9,854,077)	-57.2%

Expenditures	Final Budgeted Expenditures	Actual Expenditures	Over/(Under) Estimate	Percent change
Salaries and Benefits	$ -	$ 214,948	$ 214,948	100%
Professional and Specialized Services	12,015,656	7,030,331	(4,985,325)	-41.5%
Services and Supplies	5,202,575	10,576	(5,191,999)	100%
Total Expenses	$ 17,218,231	$ 7,255,855	$ (9,962,376)	-22.8%

Compensated Absences

During the fiscal year, the Commission's compensated absences had a net decrease of $153,293 due to several employees separating from the Commission who had high leave balances.

Please refer to Note 6 in the Notes to the Financial Statements for more information on compensated absences.

First 5 Riverside County Children and Families Commission
Management's Discussion and Analysis
(Unaudited)
For Year Ended June 30, 2023

Capital Assets

During FY 2022-2023, the Commission's Net Capital Assets decreased $57,494 due to accumulative depreciation. Please refer to Note 5 in the Financial Statements for more information on capital assets.

Economic Factors and Next Year's Budget

For the past ten (10) years, Proposition 10 has declined on average 6% annually. Proposition 56 continues to increase annually. Combined, total tobacco tax decreased by 16% from FY 21-22 to FY 22-23. With the flavor ban in effect this year, tobacco tax is expected to decline faster.

Additionally, the Commission has oversight and management of approximately $10 million from the American Rescue Plan Act (ARPA) in FY24 for the Early Care & Education (ECE) Recovery Fund to stabilize and expand the availability of ECE to support the return of working parents to the workforce, including expansion of ECE facilities.

Request for Information

This financial report is designed to provide a general overview of the Commission's finances. Questions concerning any information provided in this report or requests for additional information should be addressed to Yvonne Suarez, Assistant Director, Riverside County Children and Families Commission (First 5 Riverside), 585 Technology Court, Riverside, California 92507.

Basic Financial Statements

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First 5 Riverside County Children and Families Commission

Statement of Net Position

June 30, 2023

	Governmental Activities
Assets	
Cash and investments in County Treasury	$ 44,190,041
Interest receivable	393,567
Due from other governments	3,452,966
Capital assets not being depreciated	373,380
Capital assets, net of accumulated depreciation	1,409,037
Total assets	49,818,991
Deferred Outflows of Resources	
Deferred outflows related to pensions	3,812,285
Liabilities	
Accounts payable	4,153,692
Accrued wages and benefits	297,745
Use tax payable	87
Unearned revenue	10,053,060
Compensated absences	
Payable within one year	73,515
Payable after one year	420,599
Net pension liability	6,901,560
Total liabilities	21,900,258
Deferred Inflows of Resources	
Deferred inflows related to pensions	977,160
Net Position	
Investment in capital assets	1,782,417
Unrestricted	28,971,441
Total net position	$ 30,753,858

First 5 Riverside County Children and Families Commission

Statement of Activities

Year Ended June 30, 2023

Functions/Programs	Expenses	Program Revenues Operating Grants and Contributions	Net (Expense) Revenue and Change in Net Position
Governmental Activities			
Child development	$ 32,496,578	$ 30,056,374	$ (2,440,204)
Total governmental activities	$ 32,496,578	$ 30,056,374	(2,440,204)
General Revenues			
Investment income			1,045,880
Total general revenues			1,045,880
Change in Net Position			(1,394,324)
Total Net Position - Beginning			32,148,182
Total Net Position - Ending			$ 30,753,858

First 5 Riverside County Children and Families Commission

Balance Sheet – Governmental Funds

June 30, 2023

	General Fund	ARPA Fund	Total
Assets			
Cash and investments in County Treasury	$ 34,162,747	$ 10,027,294	$ 44,190,041
Interest receivable	304,499	89,068	393,567
Due from other governments	3,452,966	-	3,452,966
Total assets	$ 37,920,212	$ 10,116,362	$ 48,036,574
Liabilities and Fund Balance			
Liabilities			
Accounts payable	$ 4,063,008	$ 90,684	$ 4,153,692
Accrued wages and benefits	297,745	-	297,745
Use tax payable	87	-	87
Unearned revenue	-	10,053,060	10,053,060
Total liabilities	4,360,840	10,143,744	14,504,584
Fund Balances			
Committed	17,584,988	-	17,584,988
Unassigned	15,974,384	(27,382)	15,947,002
Total fund balance (deficit)	33,559,372	(27,382)	33,531,990
Total liabilities and fund balance	$ 37,920,212	$ 10,116,362	$ 48,036,574

First 5 Riverside County Children and Families Commission

Reconciliation of the Governmental Funds Balance Sheet to the Statement of Net Position

June 30, 2023

Amounts reported for governmental activities in the Statement of Net Position are different because	
Fund Balance of Governmental Funds	$ 33,531,990
Capital assets used for governmental activities in the amount of $2,362,362 net of $579,945 in accumulated depreciation, are not financial resources and therefore, are not reported in the funds.	1,782,417
Governmental funds report pension contributions to the plan as expenditures, however in the statement of net position contributions are recorded as deferred outflows of resources to reduce the net pension liability at a future date. Additionally, the net pension liability is recorded in the statement of net position as a long-term liability. The following reconciles adjustments related to the net pension liability	
Net pension liability	(6,901,560)
Deferred outflows of resources	3,812,285
Deferred inflows of resources	(977,160)
Compensated absences liability is not reported in the fund financial statements.	(494,114)
Net Position of Governmental Activities	$ 30,753,858

First 5 Riverside County Children and Families Commission

Statement of Revenues, Expenditures, and Changes in Fund Balances – Governmental Funds

Year Ended June 30, 2023

	General Fund	ARPA Fund	Total
Revenues			
Tobacco taxes	$ 17,210,826	$ -	$ 17,210,826
IMPACT	1,997,354	-	1,997,354
Other programs	3,683,023	7,165,171	10,848,194
Investment income	846,897	198,983	1,045,880
Total revenues	23,738,100	7,364,154	31,102,254
Expenditures			
Current			
Child development			
Salaries and benefits	6,074,278	214,948	6,289,226
Professional and specialized services	17,228,397	7,030,331	24,258,728
Services and supplies	1,590,887	10,576	1,601,463
Total expenditures	24,893,562	7,255,855	32,149,417
Net Change in Fund Balance	(1,155,462)	108,299	(1,047,163)
Fund Balance (Deficit), Beginning of Year	34,714,834	(135,681)	34,579,153
Fund Balance (Deficit), End of Year	$ 33,559,372	$ (27,382)	$ 33,531,990

First 5 Riverside County Children and Families Commission

Reconciliation of the Statement of Revenues, Expenditures, and Changes in Fund Balances of Governmental Funds to the Statement of Activities

Year Ended June 30, 2023

Amounts reported for Governmental Activities in the Statement of Activities are different because	
Net Change in Fund Balance - Total Governmental Funds	$ (1,047,163)
Governmental funds report capital outlays as expenditures. However, in the Statement of Activities, the cost of those assets is allocated over their estimated useful lives as depreciation expense. This is the amount by which depreciation expense exceeded capital outlays in the current period.	(57,494)
Governmental funds report pension contributions as expenditures. However, in the statement of activities, pension expense is measured as the change in net pension liabilility and the amortization of deferred outflows and inflows related to pensions. This amount represents the net change in pension related amounts.	(442,959)
Compensated absences expenses reported in the Statement of Activities do not require the use of current financial resources and therefore are not reported as expenditures in governmental funds. This amount represents the net change in the compensated absences liability.	153,292
Change in Net Position of Governmental Activities	$ (1,394,324)

Notes to Financial Statements



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Note 1 - Summary of Significant Accounting Policies

A. Reporting Entity

The Riverside County Board of Supervisors established First 5 Riverside, also known as Riverside County Children and Families Commission ("the Commission") in 1999 under the provisions of the California Children and Families Act of 1998 (Act). The Commission provides support for all children, prenatal through five years, and their families to improve early childhood development. The Commission is funded through cigarette tax revenue generated as a result of the California voter approval of the Proposition 10 Act ("Prop 10") in November 1998. A governing board of nine members, which are appointed by the County Board of Supervisors, administers the Commission. The composition of the Commission is consistent with the requirements set forth in the Proposition 10 legislation and the local Riverside County Ordinance No. 784.

The Commission is a component unit of the County of Riverside, California. The Commission implements comprehensive and integrated systems for children to thrive in supportive, nurturing and loving environments; enter school healthy and ready to learn and become productive and well- adjusted as members of society. The Commission developed a strategic plan to guide activities and funding for the period of July 2018 through June 2023. The Commission extended the strategic plan three more years through June 30, 2026. The Commission's primary goals are: 1) to foster a healthy community and provide access to affordable, comprehensive and preventive mental and physical health services 2) to expand the availability of quality, accessible and affordable Child Care services and 3) to educate Riverside County residents about the lifelong implication of optimal development through age 5.

Upon termination of the Commission, all assets of the Commission shall be returned to the State of California. The liabilities of the Commission shall not become liabilities of the County upon either termination of the Commission or the liquidation or disposition of the Commission's remaining assets.

B. Government-wide and Fund Financial Statements

The government-wide financial statements (e.g., the statement of net position and the statement of activities) report information on all of the activities of the reporting entity. Governmental activities are supported by taxes and intergovernmental revenues.

The statement of activities demonstrates the degree to which the direct expenses of a given function or segment is offset by program revenues. Direct expenses are those that are clearly identifiable with a specific function or segment. Program revenues include 1) charges to customers or applicants who purchase, use, or directly benefit from goods, services, or privileges provided by a given function or segment, and 2) grants and contributions that are restricted to meeting the operational or capital requirements of a particular function or segment. Taxes and other items not included among program revenues are reported instead as general revenues.

C. Measurement Focus, Basis of Accounting, and Financial Statement Presentation

The government-wide financial statements (i.e., the Statement of Net Position and the Statement of Activities on pages 13 and 14 are reported using the economic resources measurement focus and the accrual basis of accounting. Revenues are recorded when earned and expenses are recorded when a liability is incurred, regardless of the timing of related cash flows. Contributions to local grantee organizations are recognized as expense when criteria for grant payments are met by the grantee organization. The *Statement of Net Position* presents the Commission's overall financial position. The *Statement of Activities* reports the change in net position in a net program cost format to demonstrate the degree to which the expenses of the Commission are offset by its program revenues. The Commission's principal activity is child development.

Governmental fund financial statements, presented after the government-wide financial statements, are reported using the current financial resources measurement focus and the modified accrual basis of accounting. Revenues are recognized as soon as they are both measurable and available. Revenues are considered to be available when they are collectible within the current period or soon enough thereafter to pay liabilities of the current period. Revenues are generally considered to be available when they are collected within 90 days of the end of the current fiscal period. Expenditures generally are recognized in the accounting period in which the liability is incurred, if measurable. However, expenditures related to compensated absences are recorded only when payment is due. Revenues collected in advance are recorded as advances (Unearned Revenue) and recognized in the period to which they apply.

The government reports the following major governmental funds:

The *general fund* is the government's primary operating fund. It accounts for all financial resources of the Commission.

The Coronavirus State and Local Fiscal Recovery Funds (*ARPA fund)* is a special revenue fund. This fund supports the resilience of the overall economy by allowing more parents to access early care and education (childcare) so that they are able to return to work after experiencing the negative impacts of COVID-19 within Riverside County.

D. Accounting and Reporting Policies

The accounting policies of the Commission conform to accounting principles generally accepted in the United States of America as applicable to governments. The Governmental Accounting Standards Board (GASB) is the accepted standard setting body for governmental accounting and financial reporting principles.

E. Cash and Investments

The Commission categorizes the fair value measurements of its investments based on the hierarchy established by generally accepted accounting principles. The fair value hierarchy, which has three levels, is based on the valuation inputs used to measure an asset's fair value: Level 1 inputs are quoted prices in active markets for identical assets; Level 2 inputs are significant other observable inputs; Level 3 inputs are significant unobservable inputs.

F. Capital Assets

Capital assets are recorded at historical cost. The capitalization threshold for equipment is $5,000; buildings, land and land improvements is $150,000. Betterments result in a more productive, efficient or long-lived asset. Significant betterments are considered capital assets when they result in an improvement of $2,500 or more. Capital assets used in operations are depreciated using the straight-line method over their estimated useful lives in the government-wide statements. The estimated useful lives are as follows: Buildings 25-60 years, Improvements 10-20 years, Equipment 3-20 years. Maintenance and repairs are charged to operations when incurred. Betterments and major improvements, which significantly increase values, change capacities, or extend useful lives, are capitalized. Upon sale or retirement of capital assets, the cost and related accumulated depreciation are removed from the respective accounts and any resulting gain or loss is included in the changes in financial position.

G. Deferred Outflow/Inflows of Resources

In addition to assets, the statement of financial position includes a separate section for deferred outflows of resources. Deferred outflows of resources represent a consumption of net assets that applies to a future period(s) and so will *not* be recognized as an outflow of resources (expense/expenditure) until then. The Commission has one item that qualifies for reporting in this category: Deferred outflows related to pensions.

In addition to liabilities, the statement of financial position includes a separate section for deferred inflows of resources. Deferred inflows of resources represent an acquisition of net assets that applies to a future period(s) and so will *not* be recognized as an inflow of resources (revenue) until that time. The Commission has one item that qualifies for reporting in this category: Deferred inflows related to pensions.

H. Unearned Revenue

Revenues collected in advance of incurring eligible expenses are recorded as advances (Unearned Revenue) and recognized in the period to which they apply. As of June 30, 2023, the Commission has unearned revenues of $10,053,060.

I. Use of Estimates

The preparation of financial statements in conformity with accounting principles generally accepted in the United States of America requires management to make estimates and assumptions that affect the reported amounts and disclosures at the date of the financial statements and the reported amounts of revenues and expenditures during the reporting period. Actual results could differ from those estimates.

J. Restricted Resources

When both restricted and unrestricted resources are available for use, it is the Commission's policy to use restricted resources first, and then unrestricted resources as they are needed.

K. Pensions

For purposes of measuring the net pension liability and deferred outflows/inflows of resources related to pensions, and pension expense, information about the fiduciary net position of the County of Riverside's Miscellaneous Pension Plan and additions to/deductions from the Plan's fiduciary net position have been determined on the same basis as they are reported by California Public Employees Retirement System (CalPERS). For this purpose, benefit payments (including refunds of employee contributions) are recognized when due and payable in accordance with the benefit terms. Investments are reported at fair value.

L. Net Position and Fund Balance

Net Position

In the government-wide financial statements, net position represents the difference between assets, liabilities and deferred outflows (inflows) of resources, and may be classified into three components:

- Investment in Capital Assets – This balance reflects the net position of the Commission that are invested in capital assets. This amount is generally not accessible for other purposes.
- Restricted Net Position – This balance represents net position that is not accessible for general use because their use is subject to restrictions enforceable by third parties. At June 30, 2023, no amounts are reported under this category.
- Unrestricted Net Position – This balance represents the net position that is available for general use.

Fund Balance

The following classifications describe the relative strength of the constraints placed on the purposes for which resources can be used:

- Nonspendable Fund Balance – Amounts that cannot be spent either because they are in nonspendable form or are required to be maintained intact.
- Restricted Fund Balance – Amounts that are constrained to specific purposes by state or federal laws, or externally imposed conditions by grantors or creditors.
- Committed Fund Balance – Amounts with self-imposed limitations and require both the approval of the highest level of decision-making authority (Commissioners) and the same formal action to remove or modify limitations. The formal action required by the Commissioners for funds to be committed is action by the way of a formal action item allocating funding for a specific purpose, program or initiative.
- Assigned Fund Balance – Amounts that are constrained by the Commission's intent to be used for specific purposes, but are neither restricted nor committed. The Commission is the only authority allowed to assign amounts to be used for specific purposes.
- Unassigned Fund Balances – These are residual resources of the General Fund in excess of what can properly be classified in one of the other four categories, or negative fund balance of special revenue funds.

When both restricted and unrestricted resources are available for use, it is the Commission's policy to use restricted resources first and then unrestricted resources, as they are needed. For unrestricted resources, decreases in fund balance first reduce committed fund balance, in the event that committed fund balance becomes zero, then assigned and unassigned fund balances are used in that order.

M. Effect of New Governmental Accounting Standards Board (GASB) Pronouncements

Effective in Current Fiscal Year

GASB Statement No. 91 – In May 2019, GASB issued Statement No. 91, *Conduit Debt Obligations.* The objective of this Statement is to make financial statements more useful to end users by eliminating this diversity of practice in Conduit Debt Obligation reporting. Additionally, GASB 91 enhances financial statement note disclosures regarding issuers' commitments and the likelihood that they will fulfill them. This Statement is effective for reporting periods beginning after December 15, 2021. The Commission has determined this Statement did not have an impact on the financial statements.

GASB Statement No. 94 – In March 2020, GASB issued Statement No. 94, *Public-Private and Public-Public Partnerships and Availability Payment Arrangements.* The objective of this Statement is to improve financial reporting by addressing issues related to public-private and public-public partnership arrangements (PPPs). This Statement is effective for reporting periods beginning after June 15, 2022. The Commission has determined this Statement did not have an impact on the financial statements.

GASB Statement No. 96 – In May 2020, GASB issued Statement No. 96, *Subscription-Based Information Technology Arrangements.* The objective of this Statement is to establish uniform accounting and financial reporting requirements for subscription-based information technology arrangements (SBITAs); improve comparability of government's financial statements; and enhance the understandability, reliability, relevance, and consistency of information about SBITAs. This Statement is effective for reporting periods beginning after June 15, 2022. The Commission has determined this Statement did not have an impact on the financial statements.

GASB Statement No. 99 – In April 2022, the GASB issued Statement No. 99, *Omnibus 2022*. The objectives of this Statement are to enhance comparability in account and financial reporting and to improve the consistency of authoritative literature by addressing (1) practice issues that have been identified during implementation and application of certain GASB Statements and (2) accounting and financial reporting for financial guarantees. The requirements of this Statement related to the extension of the use of LIBOR, accounting for SNAP distributions, disclosures of nonmonetary transactions, pledges of future revenues by pledging governments, clarification of certain provisions in Statement 34, as amended, and terminology updates related to Statement 53 and Statement 63 are effective upon issuance. The requirements related to leases, PPPs, and SBITAs are effective for fiscal years beginning after June 15, 2022. The Commission has determined that there was no material impact on the Commission's financial statements.

Effective in Future Fiscal Years

The GASB has issued the following pronouncements that have effective dates which may impact future financial statement presentation. The Commission has not determined the effect of the following Statements:

GASB Statement No. 99 - *Omnibus 2022* - The requirements related to financial guarantees and the classification and reporting of derivative instruments within the scope of Statement 53 are effective for fiscal years beginning after June 15, 2023.
GASB Statement No. 100 - *Accounting Changes and Error Corrections*
GASB Statement No. 101 - *Compensated Absences*

Note 2 - Stewardship, Compliance, and Accountability

Deficit fund equity

At June 30, 2023, the ARPA fund, has a deficit fund balance of $27,382. The reason for the deficit is due to the fair market value adjustment for the investment pool. This deficit will be eliminated in future periods.

Note 3 - Cash and Investments

Cash and Investments are classified in the accompanying financial statements as follows:

Cash and Investments in County Treasury	$ 44,190,041
Total cash and investments	$ 44,190,041

Investments Authorized by the California Government Code

The Commission is authorized under the California Government Code to make direct investments and has adopted the Riverside County Statement of Investment Policy and any amendments, therein. The Commission maintains policies for exposure to interest rate risk, credit risk, and concentration of credit risk, as stated in the policy. The following are investments authorized under the Riverside County Statement of investment Policy, which is more limited than those authorized under the California Government Code:

Authorized Investment Type	Maximum Maturity	Maximum Percentage of Portfolio
Municipal Bonds (Muni)	4 years	15%
U.S. Treasury	5 years	100%
Local Agency Obligations (LAO)	3 years	2.5%
Federal Agencies	5 years	100%
Commercial Paper	270 days	40%
Certificate & Time Deposits (NCD & TCD)	1 years	25% Combined
International Bank for Reconstruction and Development and International Finance Corporation	4 years	20%
Repurchase Agreements (REPO)	45 days	40% max/25% in term repo over 7 days
Medium Term Notes (MTNO)	3 years	20%
CalTRUST Short Term Fund	Daily Liquidity	1%
Money Market Mutual Funds (MMF)	Daily Liquidity	20%
Local Agency Investment Funds (LAIF)	Daily Liquidity	Max $75 million
Cash/Deposit Account	NA	NA

Investment in Riverside County Treasurer's Pooled Investment Fund

The Commission maintains all of its funds with the Riverside County Treasurer. For information regarding interest rate risk, credit risk, concentration of credit risk, and custodial credit risk of the Riverside County Treasurer's Pool refer to the County of Riverside Annual Comprehensive Financial Report.

The Riverside County Treasurer maintains a cash and investment pool for all funds of the County and other agencies for which the County treasury is the depository. Interest earned on the pooled funds is allocated and credited to these funds quarterly. Interest is apportioned to the Commission based on the average daily balances on deposit with the Riverside County Treasurer.

The Commission is an involuntary participant in the pool regulated by the California Government Code, under the oversight of the Treasurer of the County of Riverside and Treasury Oversight Committee. The fair value of the Commission's investment in this pool is reported in the accompanying financial statements at amounts based upon the Commission's pro-rata share of the fair value provided by the County of Riverside for the entire pool portfolio (in relation to the amortized cost of that portfolio). The balance available for withdrawal is based on the accounting records maintained by the pool, which are recorded on an amortized cost basis. The weighted average maturity of the pool was 1.15 years at June 30, 2023. The County pool investment fund is rated AAA-bf by Moody's Investor Service and AAA/V1 by Fitch Ratings.

Fair Value Measurements

The Commission categorizes its fair value measurements within the fair value hierarchy established by generally accepted accounting principles. The hierarchy is based on the valuation inputs used to measure the fair value of the asset. Level 1 inputs are quoted prices in active markets for identical assets, Level 2 inputs are significant other observable inputs; Level 3 inputs are significant unobservable inputs. As of June 30, 2023, the Commission held no individual investments. All funds are invested in the Riverside County Investment Pool.

Deposits and withdrawals are made on the basis of $1 and not fair value. Accordingly, the Commission's investment in the Riverside County Investment Pool at June 30, 2023 is uncategorized and not defined as a Level 1, Level 2, or Level 3 input.

Note 4 - Due from Other Governments

Due from other governments represents amounts due to the Commission from the California Children and Families Commission ("State Commission") for Prop 10 related revenues. The amounts due at June 30, 2023, were as follows:

Prop 10 Revenue For May & June-2023	$ 2,051,206
IMPACT	174,506
SMIF (interest)	63,015
Other	1,164,239
Total due from other governments	$ 3,452,966

Note 5 - Capital Assets

Capital assets activity for the year ended June 30, 2023, is shown below:

	Beginning	Increases	Decreases	Ending
Capital Assets Not Depreciated				
Land	$ 373,380	$ -	$ -	$ 373,380
Capital Assets Depreciated				
Building and improvements	1,897,938	-	-	1,897,938
Machinery and equipment	91,044	-	-	91,044
Total depreciable assets	1,988,982	-	-	1,988,982
Less - Accumulated Depreciation For				
Building and improvements	(436,257)	(53,827)	-	(490,084)
Machinery and equipment	(86,194)	(3,667)	-	(89,861)
Total accumulated depreciation	(522,451)	(57,494)	-	(579,945)
Total capital assets depreciated, net	1,466,531	(57,494)	-	1,409,037
Total capital assets, net	$ 1,839,911	$ (57,494)	$ -	$ 1,782,417

Depreciation expense for the year ended June 30, 2023 totaled $57,494 and is included in child development in the statement of activities.

Note 6 - Compensated Absences

County policy permits employees in some bargaining units to accumulate earned, but unused vacation, holiday, and sick pay benefits. Vacation and holiday pay are accrued when incurred. For other bargaining units, annual leave is earned and accrued, but not vacation or sick leave. Governmental funds record amounts that are due and payable at year-end as a liability of the fund and amounts due in the future as a liability in the government-wide financial statements. At June 30, 2023, the amount of accrued vacation, holiday pay, and sick leave reported in the government-wide statement of net position was $494,114.

The County allows unlimited accumulation of sick leave. Upon service retirement, disability retirement, or death of an employee or officer, and subject to the provisions of any applicable agreement between the employing agency and the Public Employee's Retirement System, unused accumulated sick leave for most employees with at least five (5) but less than 15 years of service shall be credited at the rate of 50% of current salary value thereof provided, however, that the total payment shall not exceed a sum equal to 960 hours of full pay. Unused accumulated sick leave for employees with more than fifteen or more years of service shall be credited at the rate of the current salary value provided, however, that the total payment shall not exceed a sum equal to 960 hours of full pay. In addition, the employee may also elect to place the payable amount of sick leave into a VEBA (Voluntary Employee Beneficiary Association) account which may be used for future health care costs.

	Beginning Balance	Increases	Decreases	Ending Balance	Amount Due in one year
Compensated Absences	$ 647,406	$ 32,469	$ 185,761	$ 494,114	$ 73,515

Note 7 - Net Position and Fund Balance

The details of the fund balances as of June 30, 2023, are presented below:

	General Fund	ARPA Fund	Total
Fund Balance			
Committed to			
Budgetary Stabilization Reserve	$ 6,000,000	$ -	$ 6,000,000
Capital Acquistion Reserve	800,000	-	800,000
RUHS-MC MFM Capacity Building	1,295,000	-	1,295,000
IMPACT Legacy Match	2,000,000	-	2,000,000
Inland Southern California United Way	2,500,000	-	2,500,000
ECE Facility Projects	4,989,988	-	4,989,988
Total committed	17,584,988	-	17,584,988
Unassigned			
Unassigned Fund Balance	15,974,384	(27,382)	15,947,002
Total fund balance	$ 33,559,372	$ (27,382)	$ 33,531,990

Stabilization Arrangement

In May 2018, the Commission approved Action Item #18-12. Under the formal action, a portion of the fund balance of the General Fund is committed for budget stabilization arrangement, such as might be needed when revenue shortages or budgetary imbalances occur. The Policy states that, at fiscal year-end, an amount equal $6,000,000 of the General Fund is to be committed for use to maintain services at the same level as was contracted in the event of revenue budgetary shortfall (revenue fall 10% below budget). At June 30, 2023, $6,000,000 was committed for the budgetary stabilization reserve.

Minimum Fund Balance Policy

In May 2018, the Commission approved Action Item #18-12, which created a minimum fund balance reserve policy. The minimum fund balance reserve is set at an amount equal $4,000,000. The reserve is to be replenished as soon as economic conditions allow. As of June 30, 2023, the Commission had $4,000,000 of the targeted reserve amount of $4,000,000 in unassigned fund balance, pursuant to the policy.

Note 8 - Special Funding – Other Programs

The Riverside IMPACT (Improve and Maximize Programs so All Children Thrive) program focuses on improving the quality of early learning sites and is inclusive of voluntary settings across the early learning continuum, including licensed centers and family child-care homes (FCCH); legally exempt centers; family, friend, and neighbor (FFN) care; and alternative settings for children ages 0 to 5. First 5 California funding for IMPACT is $3,412,988 for a three-year period that began July 1, 2020. Funds claimed for the year ending June 30, 2023 totaled $1,083,522. The First 5 IMPACT program requires a match and leveraging of funds. The matching requirement ratio for the Commission is two to one program partner match of two dollars of First 5 California funding to every dollar of local funding. Also funded through First 5 California and identified in this revenue line is the Home Visitation – $42,232. Total funding from First 5 California for all initiatives – $1,125,754. The Commission also received IMPACT related funding from Riverside County Office of Education in the amount of $96,101.

First 5 California provided additional funding for regional coordination, training, and technical assistance for the quality improvement of early education programs and systems. As the regional fiscal agent for the Hub program, funds claimed for the period ending June 30, 2023 totaled $871,601.

California Family Resource Association provided additional funding in the amount of $2,423,320 to support foster families and tribal families in the County's family resource center network in response to family needs in context of COVID-19.

Note 9 - Related Party Transactions

The required composition of the Board of Commissioners is consistent with the Children and Families Act of 1998 and Riverside County Ordinance 784. Some of the programs funded by First 5 Riverside are operated by organizations associated with the Commissioners. Commissioners must abstain from discussion and voting on issues directly related to their respective organizations. The Commission also utilizes the County Counsel for its legal services.

The following is a summary of expenditures and payables at June 30, 2023 for each related party:

Organization	Expenditure Amount	Payable Amounts
Department of Public Health Riverside County	$ 144,298	$ -
Consortium for Early Learning Services	137,076	9,900
Jurupa Unified School District	1,186,313	232,323
Riverside County Office of Education	4,208,128	870,777
County Counsel	27,600	-
Total	$ 5,703,415	$ 1,113,000

The expenditure amounts are included in Professional and Specialized Services. Payable amounts are included in accounts payable.

Note 10 - Program Evaluation

In accordance with the *Standards and Procedures for Audits of California Counties Participating in the California Children and Families Program*, issued by the California State Controller, the Commission is required to disclose the amounts expended during the fiscal year on program evaluation. Program evaluation costs pertain to those activities undertaken to support the collection, production, analysis and presentation of evaluation information for Commission management, Commissioners and other interested parties.

For the year ended June 30, 2023, the Commission expended $925,478 on program evaluation.

Note 11 - Retirement Plan

A. General Information about the Pension Plan

Plan Descriptions – The County contracts with CalPERS to provide retirement benefits to its employees. CalPERS is a common investment and administrative agent for participating public entities with the State of California. All qualified permanent and probationary employees are eligible to participate in the County's Miscellaneous (all other) Employee Pension Plans, an agent multiple employer defined benefit pension plan administered by the California Public Employees Retirement System (CalPERS). Benefit provisions under the Plans are established by State statute and County resolution. CalPERS issues publicly available reports that include a full description of the pension plans regarding benefit provisions, assumptions and membership information may be obtained from: California Public Employee's Retirement System, 400 Q Street, P.O. Box 942701, Sacramento, California 94229-2701 or can be found on the CalPERS website at: http://www.calpers.ca.gov.

The employees of the Commission are employees of the County. The Commission reimburses the County for all pension plan costs and participates in the County's agent employer plan. For financial reporting purposes, the Commission reports a proportionate share of the County's collective net pension liability, pension expense, and deferred outflows and inflows of resources. Accordingly, the disclosures and required supplementary information have been reported for the Commission as a cost-sharing participant. For additional details of the County's pension plan, refer to the County of Riverside Annual Comprehensive Financial Report.

Benefits Provided – CalPERS provides retirement and disability benefits, annual cost of living adjustments and death benefits to plan members, who must be public employees and beneficiaries. Benefits are based on years of credited service, equal to one year of full-time employment. Members with five years of total service are eligible to retire at age 50 with statutorily reduced benefits. All members are eligible for non-duty disability benefits after 10 years of service. The death benefit is one of the following: the Basic Death Benefit, the 1957 Survivor Benefit, or the Optional Settlement 2W Death Benefit. The cost-of-living adjustments for each plan are applied as specified by the Public Employees' Retirement Law.

The Plan's provisions and benefits in effect at June 30, 2023, are summarized as follows:

	Miscellaneous		
	Tier I	Tier II	Tier III
Hire Date	Prior to 8/23/2012	8/23/2012 through 12/31/2012	On or after 1/1/2013
Formula	3% at 60	2% @ 60	2% @ 62
Benefit Vesting Schedule	5 years of service	5 years of service	5 years of service
Final Compensation	12 months	36 months	36 months
PEPRA Compensation Limit	N/A	N/A	$ 117,020
Benefit Payments	monthly for life	monthly for life	monthly for life
Earliest Retirement Age	50	50	52
Required Employee Contribution Rates	8.0%	7.0%	7.25%
Required Employer Contribution Rates	23.05%	23.05%	23.05%

Contributions - Section 20814(c) of the California Public Employees' Retirement Law requires that the employer contribution rates for all public employers must be determined on an annual basis by the actuary and shall be effective on the July 1 following notice of a change in the rate. Funding contributions for both Plans are determined annually on an actuarial basis as of June 30 by CalPERS. Beginning in fiscal year 2016, CalPERS collects employer contributions for the Plan as a percentage of payroll for the normal cost portion as noted in the rates above and as a dollar amount for contributions toward the unfunded liability and side fund. The dollar amounts are billed on a monthly basis.

Active plan members in CalPERS are required to contribute up to 8% (Miscellaneous employees) of their annual covered salary as specified in the governing Memorandum of Understanding or as provided by state statue. The Commission's contributions to the County plan were $924,394 for the year ended June 30, 2023.

B. Pension Liabilities, Pension Expenses and Deferred Outflows/Inflows of Resources Related to Pensions

As of June 30, 2023, the Commission reported a net pension liability for its proportionate share of the County's miscellaneous plan net pension liability of $6,901,560.

The Commission's net pension liability was measured as the proportionate share of the County's net pension liability based on its actual 2023 contributions in relation to all County contributions to the Plan.

The net pension liability of the Plan was measured as of June 30, 2022, and the total pension liability for the Plan used to calculate the net pension liability was determined by an actuarial valuation as of June 30, 2021, rolled forward to June 30, 2022, using standard update procedures. The Commission's proportionate share of the County's miscellaneous pension plan's net pension liability, measured as of June 30, 2021, and 2022 was 0.322377% and 0.285902%, respectively.

For the year ended June 30, 2023, the Commission recognized pension expense is $1,199,624. At June 30, 2023, the Commission reported deferred outflows of resources and deferred inflows of resources related to pensions from the following sources:

	Deferred Outflows of Resources	Deferred Inflows of Resources
Differences Between Actual and Expected Experience	$ 10,838	$ (383,578)
Changes In Assumptions	812,801	-
Net Differences Between Projected and Actual Earnings On Plan investments	1,108,456	-
Changes In Proportion and Difference Between Commission's Contributions and Proportionate Share of Contributions	955,796	(593,582)
Contributions Subsequent To The Measurement Date	924,394	-
Total	$ 3,812,285	$ (977,160)

The amount of $924,394 reported as deferred outflow of resources related to contributions subsequent to the measurement date will be recognized as a reduction of the net pension liability in the year ended June 30, 2024. Other amounts reported as deferred outflows of resources related to pensions will be recognized as pension expense as follows:

Year ended June 30	
2024	$ 723,724
2025	392,342
2026	107,798
2027	686,867
	$ 1,910,731

Actuarial Assumptions – The Commission's proportion of the County's total pension liabilities in the June 30, 2021, actuarial valuations were determined using the following actuarial assumptions:

Valuation Date	June 30, 2021
Measurement Date	June 30, 2022
Actuarial Cost Method	Entry-Age Normal Cost Method
Actuarial Assumptions	
Discount rate	6.90%
Inflation	2.30%
Salary increases	Varies by Entry Age and Service
Mortality rate table (1)	Derived using CalPERS' Membership Data for all Funds
Post retirement benefit increase	Lesser of Contract COLA up to 2.30% until Purchasing Power Protection Allowance Floor on Purchasing Power applies, 2.30% thereafter

(1) The mortality table used was developed based on CalPERS-specific data. The probabilities of mortality are based on the 2021 CalPERS Experience Study for the period from 2001 to 2019. Pre-retirement and Post-retirement mortality rates include generational mortality improvement using 80% of Scale MP-2020 published by the Society of Actuaries. For more details on this table, please refer to the CalPERS Experience Study and Review of Actuarial Assumptions report from November 2021 that can be found on the CalPERS website.

Discount Rate – The discount rate used to measure the total pension liability was 6.90% for the Plan. The projection of cash flows used to determine the discount rate assumed that employee contributions will be made at the current contribution rate and that the County's contributions will be made at rates equal to the difference between actuarially determined contributions rates and the employee rate. Based on those assumptions, the pension plan's fiduciary net position was projected to be available to make all projected future benefit payments of current active and inactive employees. Therefore, the long-term expected rate of return on pension plan investments was applied to all periods of projected benefit payments to determine the total pension liability.

In determining the long-term expected rate of return, CalPERS took into account both short-term and long-term market return expectations as well as the expected pension fund (PERF) cash flows. Taking into account historical returns of all the Public Employees Retirement Funds' asset classes (which includes the agent plan and two cost-sharing plans or PERF A, B, and C funds), expected compound (geometric) returns were calculated over the short-term (first 10 years) and the long-term (11-60 years) using a building-block approach. Using the expected nominal returns for both short-term and long-term, the present value of benefits was calculated for each PERF fund. The expected rate of return was set by calculating the single equivalent expected return that arrived at the same present value of benefits for cash flows as the one calculated using both short-term and long-term returns. The expected rate of return was then set equal to the single equivalent rate calculated above and rounded down to the nearest one quarter of one percent.

The table below reflects long-term expected real rate of return by asset class. The rate of return was calculated using the capital market assumptions applied to determine the discount rate and asset allocation.

Asset Class	Target Allocation	Real Return[1,2]
Global Equity	30.0%	4.54%
Global Equity - Non-Cap-weighted	12.0%	3.84%
Private Equity	13.0%	7.28%
Treasury	5.0%	0.27%
Mortgage-backed Securities	5.0%	0.50%
Investment Grade Corporates	10.0%	1.56%
High Yield	5.0%	2.27%
Emerging Market Debt	5.0%	2.48%
Private Debt	5.0%	3.57%
Real Estate	15.0%	3.21%
Leverage	-5.0%	-59.00%
Total	100%	

(1) An expected inflation of 2.30% used for this period
(2) Figures are based on the 2021 Asset Liability Management study

Sensitivity of the Net Pension Liability to Changes in the Discount Rate – The following presents the proportionate share of the net pension liability of the Commission, calculated using the discount rate for the Plan, as well as what the Commission's proportionate share of the net pension liability would be if it were calculated using a discount rate that is 1-percentage point lower or 1-Percentage point higher than the current rate:

	Discount Rate -1% (5.90%)	Current Discount Rate (6.90%)	Discount Rate + 1% (7.90%)
Commission's Proportionate Share of the Net Pension Liability	$ 11,092,698	$ 6,901,560	$ 3,472,857

Pension Plan Fiduciary Net Position – Detailed information about the pension plan's fiduciary net position is available in the separately issued CalPERS financial report and the County Annual Comprehensive Financial Report (ACFR). The County's financial statements may be found on the Auditor-Controller's Website: http://www.auditorcontroller.org/.

Note 12 - Risk Management

The Commission is part of the County of Riverside's insurance programs including coverage for general liability and auto liability. The County's insurance program for general and auto liability is a combination of self-insurance and excess insurance providing limits of liability of $25,000,000 per occurrence.

The employees at the Commission are considered to be employees of the County of Riverside and are covered by the County's workers' compensation program. The County's workers' compensation program is a combination of self- insurance and excess insurance providing statutory limits of coverage as required by the State of California.

For the past three years, settlements or judgment amounts have not exceeded insurance provided for Commission.

Note 13 - Contingencies

The Commission participates in state and federal programs, the principal of which are subject to program compliance. The amount of expenditures which may be disallowed, if any, by the granting agencies (First 5 California or State of California or federal awarding agencies) are anticipated to be immaterial.

The Commission is involved in various legal proceedings from time to time in the normal course of business. In management’s opinion, the Commission is not involved in any legal proceeding that will have a material adverse effect on financial position or changes in financial position of the Commission.

Required Supplementary Information
June 30, 2023

First 5 Riverside County Children and Families Commission



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First 5 Riverside County Children and Families Commission

Schedule of the Commission's Proportionate Share of the Net Pension Liability (Miscellaneous Plan)

Last Ten Years*

	2023	2022	2021	2020	2019	2018	2017	2016	2015
Commission's proportion of the net pension liability	0.285902%	0.322377%	0.303069%	0.214360%	0.243538%	0.240294%	0.181543%	0.157307%	0.141167%
Commission's proportionate share of the net pension liability	$ 6,901,560	$ 3,253,591	$ 6,463,224	$5,065,275	$ 5,301,689	$ 5,231,069	$ 2,987,791	$ 1,777,256	$ 1,340,526
Covered payroll	$ 3,734,131	$ 3,481,611	$ 2,638,451	$ 2,660,118	$ 2,581,044	$ 1,944,230	$ 1,590,991	$ 1,339,400	$ 1,341,771
Commission's proportionate share of the net pension liability as a percentage of covered payroll	184.82%	93.45%	244.96%	190.42%	205.41%	269.06%	187.79%	132.69%	99.91%
Plan fiduciary net position as a percentage of the total pension liability	75.92%	89.13%	76.03%	72.08%	72.12%	71.03%	74.51%	80.89%	427 83.16%
Measurement date	June 30, 2022	June 30, 2021	June 30, 2020	June 30, 2019	June 30, 2018	June 30, 2017	June 30, 2016	June 30, 2015	June 30, 2014

* Fiscal year 2015 was the first year of implementation.

First 5 Riverside County Children and Families Commission

Schedule of Contributions

Last Ten Years*

	2023	2022	2021	2020	2019	2018	2017	2016	2015
Required Commission contributions	$ 924,394	$ 948,918	$ 866,994	$ 523,854	$ 505,552	$ 438,501	$ 325,821	$ 252,313	$ 195,972
Contributions in relation to the actuarially determined contribution	924,394	948,918	866,994	523,854	505,552	438,501	325,821	252,313	195,972
Contribution deficiency (excess)	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Covered payroll	$ 3,327,557	$ 3,734,131	$ 3,481,611	$ 2,638,451	$ 2,660,118	$ 2,581,044	$ 1,944,230	$ 1,590,991	$ 1,339,400
Contributions as a percentage of covered payroll	27.78%	25.41%	24.90%	19.85%	19.00%	16.99%	16.76%	15.86%	14.63%

428

* Fiscal year 2015 was the first year of implementation.

First 5 Riverside County Children and Families Commission

Schedule of Revenues, Expenditures, and Changes in Fund Balance - Budget and Actual – General Fund

Year Ended June 30, 2023

	Budgeted Amounts		Actual	Variance with Final Budget Positive
	Original	Final	Amounts	(Negative)
Revenues				
Tobacco taxes	$ 20,051,140	$ 20,051,140	$ 17,210,826	$ (2,840,314)
IMPACT	1,816,443	2,118,635	1,997,354	(121,281)
Other programs	5,746,617	6,496,617	3,683,023	(2,813,594)
Investment loss	100,000	100,000	846,897	746,897
Total revenues	27,714,200	28,766,392	23,738,100	(5,028,292)
Expenditures				
Current				
Salaries and benefits	7,845,900	7,845,900	6,074,278	1,771,622
Professional and specialized services	22,588,276	21,864,396	17,228,397	4,635,999
Services and supplies	3,585,284	4,309,164	1,590,887	2,718,277
Total expenditures	34,019,460	34,019,460	24,893,562	9,125,898
Net Changes in Fund Balance	$ (6,305,260)	$ (5,253,068)	(1,155,462)	$ 4,097,606
Fund Balance, Beginning of Year			34,714,834	
Fund Balance, Ending			$ 33,559,372	

First 5 Riverside County Children and Families Commission

Schedule of Revenues, Expenditures, and Changes in Fund Balance -
Budget and Actual – ARPA Fund
Year Ended June 30, 2023

	Budgeted Amounts		Actual	Variance with Final Budget Positive
	Original	Final	Amounts	(Negative)
Revenues				
Other programs	$ 8,797,425	$ 17,218,231	$ 7,165,171	$ (10,053,060)
Investment income	-	-	198,983	198,983
Total revenues	8,797,425	17,218,231	7,364,154	(9,854,077)
Expenditures				
Current				
Salaries and benefits	-	-	214,948	(214,948)
Professional and specialized services	3,594,850	12,015,656	7,030,331	4,985,325
Services and supplies	5,202,575	5,202,575	10,576	5,191,999
Total expenditures	8,797,425	17,218,231	7,255,855	9,962,376
Net Changes in Fund Balance	$ -	$ -	108,299	$ 108,299
Fund Balance (Deficit), Beginning of Year			(135,681)	
Fund Balance, Ending			$ (27,382)	

Note to Required Supplementary Information

Budget and Budgetary Process

The annual budget is adopted on a basis consistent with Generally Accepted Accounting Principles for the general fund and ARPA fund. The appropriated budget is prepared utilizing fund and department categories. Transfer of appropriations between categories must be approved by the Commission. The legal level of budgetary control (i.e., the level at which expenditures may not legally exceed appropriations) is the fund level.

The Commission adopts an annual budget, which can be amended by the Commission throughout the year. The basis used to prepare the budget is the same as the basis used to reflect actual revenues and expenditures.

Other Supplementary Information
June 30, 2023

First 5 Riverside County Children and Families Commission



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First 5 Riverside County Children and Families Commission

Schedule of First 5 California Funding

Year Ended June 30, 2023

Program	Source	Revenue	Expenses
IMPACT	F5CA Program Funds	$ 1,997,354	$ 1,997,354

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Compliance Section
June 30, 2023

First 5 Riverside County Children and Families Commission



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Independent Auditor's Report on Internal Control over Financial Reporting and on Compliance and Other Matters Based on an Audit of Financial Statements Performed in Accordance with *Government Auditing Standards*

To the Board of Commissioners
First 5 Riverside County Children and Families Commission
Riverside, California

We have audited, in accordance with the auditing standards generally accepted in the United States of America and the standards applicable to financial audits contained in *Government Auditing Standards* issued by the Comptroller General of the United States, the financial statements of the governmental activities and each major fund of the First 5 Riverside County Children and Families Commission (Commission), a component unit of the County of Riverside, California, as of and for the year ended June 30, 2023, and the related notes to the financial statements, which collectively comprise the Commission's basic financial statements, and have issued our report thereon dated October 11, 2023.

Report on Internal Control over Financial Reporting

In planning and performing our audit of the financial statements, we considered the Commission's internal control over financial reporting (internal control) as a basis for designing audit procedures that are appropriate in the circumstances for the purpose of expressing our opinions on the financial statements, but not for the purpose of expressing an opinion on the effectiveness of the Commission's internal control. Accordingly, we do not express an opinion on the effectiveness of the Commission's internal control.

A *deficiency in internal control* exists when the design or operation of a control does not allow management or employees, in the normal course of performing their assigned functions, to prevent, or detect and correct, misstatements on a timely basis. A *material weakness* is a deficiency, or a combination of deficiencies, in internal control, such that there is a reasonable possibility that a material misstatement of the entity's financial statements will not be prevented, or detected and corrected, on a timely basis. A *significant deficiency* is a deficiency, or a combination of deficiencies, in internal control that is less severe than a material weakness, yet important enough to merit attention by those charged with governance.

Our consideration of internal control was for the limited purpose described in the first paragraph of this section and was not designed to identify all deficiencies in internal control that might be material weaknesses or significant deficiencies. Given these limitations, during our audit we did not identify any deficiencies in internal control that we consider to be material weaknesses. However, material weaknesses or significant deficiencies may exist that have not been identified.

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Report on Compliance and Other Matters

As part of obtaining reasonable assurance about whether the Commission's financial statements are free from material misstatement, we performed tests of its compliance with certain provisions of laws, regulations, contracts, and grant agreements, noncompliance with which could have a direct and material effect on the financial statements. However, providing an opinion on compliance with those provisions was not an objective of our audit, and accordingly, we do not express such an opinion. The results of our tests disclosed no instances of noncompliance or other matters that are required to be reported under *Government Auditing Standards*.

Purpose of this Report

The purpose of this report is solely to describe the scope of our testing of internal control and compliance and the results of that testing, and not to provide an opinion on the effectiveness of the entity's internal control or on compliance. This report is an integral part of an audit performed in accordance with *Government Auditing Standards* in considering the entity's internal control and compliance. Accordingly, this communication is not suitable for any other purpose.



Rancho Cucamonga, California
October 11, 2023

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CPAs & BUSINESS ADVISORS

Independent Auditor's Report on State Compliance

To the Board of Commissioners
First 5 Riverside County Children and Families Commission
Riverside, California

Report on Compliance

Opinion

We have audited the First 5 Riverside County Children and Families Commission (Commission), a component unit of the County of Riverside, California, compliance with the requirements specified in the State of California's *Standards and Procedures for Audits of Local Entities Administering the California Children and Families Act*, issued by the State Controller's Office, applicable to the Commission's statutory requirements identified below for the year ended June 30, 2023.

In our opinion, the Commission complied, in all material respects, with the compliance requirements referred to above that could have a direct and material effect on the California Children and Families Program for the year ended June 30, 2023.

Basis for Opinion

We conducted our audit of compliance in accordance with auditing standards generally accepted in the United States of America (GAAS), the standards applicable to financial audits contained in *Government Auditing Standards,* issued by the Comptroller General of the United States, and the State of California's *Standards and Procedures for Audits of Local Entities Administering the California Children and Families Act*, issued by the State Controller's Office. Our responsibilities under those standards are further described in the Auditor's Responsibilities for the Audit of Compliance section of our report.

We are required to be independent of the Commission and to meet our other ethical responsibilities, in accordance with the relevant ethical requirements relating to our audit. We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our opinion. Our audit does not provide a legal determination of the Commission's compliance with the compliance requirements referred to above.

Responsibilities of Management for Compliance

Management is responsible for compliance with the requirements referred to above, and for the design, implementation, and maintenance of effective internal control over compliance with the requirements of laws, statutes, regulations, rules, and provisions of contracts or grant agreements applicable to the California Children and Families Program.

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Auditor's Responsibilities for the Audit of Compliance

Our objectives are to obtain reasonable assurance about whether the material noncompliance with the compliance requirements referred to above occurred, whether due to fraud or error, and express an opinion on the Commission's compliance based on our audit. Reasonable assurance is a high level of assurance but is not absolute assurance and therefore is not a guarantee that an audit conducted in accordance with GAAS, *Government Auditing Standards*, and the *State of California's Standards and Procedures for Audits of Local Entities Administering the California Children and Families Act* will always detect a material misstatement when it exists. The risk of not detecting a material misstatement resulting from fraud is higher than for one resulting from error, as fraud may involve collusion, forgery, intentional omissions, misrepresentations, or the override of internal control. Noncompliance with the compliance requirements referred to above is considered material if there is a substantial likelihood that, individually or in the aggregate, it would influence the judgment made by a reasonable user of the report on compliance about the Commission's compliance with the requirements of the California Children and Families Program as a whole.

In performing an audit in accordance with GAAS, *Government Auditing Standards*, and the *Standards and Procedures for Audits of Local Entities Administering the California Children and Families Act*, we:

- Exercise professional judgment and maintain professional skepticism throughout the audit;
- Identify and assess the risks of material noncompliance, whether due to fraud or error, and design and perform audit procedures responsive to those risks. Such procedures include examining, on a test basis, evidence regarding the Commission's compliance with the compliance requirements referred to above and performing such other procedures as we consider necessary in the circumstances;
- Obtain an understanding of the Commission's internal control over compliance relevant to the audit in order to design audit procedures that are appropriate in the circumstances and to test and report on internal control over compliance in accordance with the *State of California's Standards and Procedures for Audits of Local Entities Administering the California Children and Families Act*, but not for the purpose of expressing an opinion on the effectiveness of the Commission's internal controls over compliance. Accordingly, we express no such opinion; and
- Select and test transactions and records to determine the Commission's compliance with the state laws and regulations applicable to the following items:

Description	Audit Guide Procedures	Procedures Performed
Contracting and Procurement	6	Yes
Administrative Costs	3	Yes
Conflict-of-Interest	3	Yes
County Ordinance	4	Yes
Long-range Financial Plans	2	Yes
Financial Condition of the Commission	1	Yes
Program Evaluation	3	Yes
Salaries and Benefits Policies	2	Yes

We are required to communicate with those charged with governance regarding, among other matters, the planned scope and timing of the audit and any significant deficiencies and material weaknesses in internal control over compliance that we identify during the audit.

Internal Control over Compliance

A *deficiency in internal control over compliance* exists when the design or operation of a control over compliance does not allow management or employees, in the normal course of performing their assigned functions, to prevent, or detect and correct, noncompliance on a timely basis. A *material weakness in internal control over compliance* is a deficiency, or a combination of deficiencies, in internal control over compliance, such that there is a reasonable possibility that a material noncompliance with a compliance requirement will not be prevented, or detected and corrected, on a timely basis. A *significant deficiency in internal control over compliance* is a deficiency, or a combination of deficiencies, in internal control over compliance that is less severe than a material weakness in internal control over compliance, yet important enough to merit attention from those charged with governance.

Our consideration of internal control over compliance was for the limited purpose described in the Auditor's Responsibilities for the Audit of Compliance section above and was not designed to identify all deficiencies in internal control over compliance that might be material weaknesses or significant deficiencies in internal control over compliance. Given these limitations, during our audit, we did not identify any deficiencies in internal control over compliance that we consider to be material weaknesses, as defined above. However, material weaknesses or significant deficiencies in internal control over compliance may exist that were not identified.

Our audit was not designed for the purpose of expressing an opinion on the effectiveness of internal control over compliance. Accordingly, no such opinion is expressed.

The purpose of this report on internal control over compliance is solely to describe the scope of our testing of internal control over compliance and the results of that testing based on the *State of California's Standards and Procedures for Audits of Local Entities Administering the California Children and Families Act*. Accordingly, this report is not suitable for any other purpose.

Eide Bailly LLP

Rancho Cucamonga, California
October 11, 2023

N.2. Presentation of First 5 Riverside County Children and Families Commission Annual Report and First 5 Riverside County Children and Families Commission Agency Progress Report July 1, 2022-June 30, 2023 for Fiscal Year 2022/2023 (a copy of the report may be obtained at www.first5riverside.org and can be viewed at the Commission Business Office) - Yvonne Suarez, Assistant Director

N.2.a. **Public Hearing:** Annual Report of First 5 Riverside County Children & Families Commission for Fiscal Year 2022/2023 - Zachary Ginder, Commission Chair

N.2.b. **23-47:** Adopt First 5 Riverside County Children & Families Commission Annual Report and Receive and File Agency Progress Report for Fiscal Year 2022/2023 - Zachary Ginder, Commission Chair

AGENDA ITEM: 23-47
DATE OF MEETING: October 25, 2023
ACTION: ☒
INFORMATION: ☐

ADOPT FIRST 5 RIVERSIDE COUNTY CHILDREN & FAMILIES COMMISSION ANNUAL REPORT AND RECEIVE AND FILE ANGENCY PROGRESS REPORT FOR FISCAL YEAR 2022/2023

SUMMARY OF REQUEST

Adopt First 5 Riverside County Children & Families Commission Annual Report for the period of July 1, 2022, through June 30, 2023, following a public hearing to allow for comments and input.

Receive and file First 5 Riverside County Agency Progress Report for fiscal year 2022/2023 as required by Commission policy.

BACKGROUND

Health and Safety Code Section 130150 requires that on or before November 1 of each year, the State Commission and each County Commission submit to the State Commission an audit of the implementation and performance of program goals and objectives for the preceding fiscal year and issue a written report. At a minimum, the annual report is to include the manner in which funds were expended, progress toward and achievement of program goals and objectives, and the population served.

The report provides a comprehensive overview of program funding and results and is completed in the design and format required by the State Commission for entry into the State's online data collection system. The State Commission compiles and summarizes data collected from local commissions for their purposes and subsequent reporting for a statewide summary to the legislature. A draft copy of the report is available on the Commission website at http://www.first5riverside.org/ and at the Commission's business office for public viewing prior to the Commission meeting. Once adopted, the final report is available on the Commission website.

RECOMMENDED ACTION

That the Commission:

1. Adopt the First 5 Riverside County Children and Families Commission Annual Report for Fiscal Year 2022/2023 as presented; and
2. Receive and file First 5 Riverside County Agency Progress report for Fiscal Year 2022/2023.
3. Authorize the Executive Director or designee to execute the necessary actions to submit the report and meet legislative requirements without requiring further action of the Commission.

BUDGET IMPACT

None

STRATEGIC PLAN RELEVANCE

All Strategic Goal Areas

POTENTIAL CONFLICTS OF INTEREST

None known

ATTACHMENTS

Attachment A: First 5 Riverside County Children & Families Commission FY 2022-2023 Annual Report – includes AR-1 (Revenue & Expenditure Summary); AR-2 (Demographic Worksheet); and AR-3 (County Evaluation Summary & Highlights).

Annual Report AR-1

Riverside Revenue and Expenditure Summary

July 1, 2022 - June 30, 2023

Revenue Detail

Category	Amount
Tobacco Tax Funds	$17,210,826
First 5 IMPACT 2020 Funds	$1,083,521
Small Population County Augmentation Funds	$0
Home Visiting Coordination Funds	$42,232
Refugee Family Support Funds	$0
Other First 5 California Funds	$871,601
Other First 5 California Funds Description Hub Region 9	
Other Public Funds	$10,752,093
Other Public Funds Description Cal-WORKs, American Rescue Plan Act, DPSS FRC pass through	
Donations	$0
Revenue From Interest Earned	$1,045,880
Grants	$0
Grants Description	
Other Funds	$96,101
Other Funds Riverside County Office of Education (IMPACT-related supports)	
Total Revenue	**$31,102,254**

Improved Family Functioning

Service	Grantee	Program(s)	Children	Caregivers	Providers	Amount
General Family Support	CBO/Non-Profit	• Not Applicable (LENA Start, LENA Grow, LENA Home)	275	59	0	$25,800
General Family Support	CBO/Non-Profit	• Not Applicable (ParentPowered Ready4k)	4961	1262	0	$24,305
General Family Support	County Health & Human Services	• Not Applicable (Family Resource Centers)	34	4942	0	$2,142,835
Intensive Family Support	County Health & Human Services	• Incredible Years • Nurturing Parenting Program • Triple P 4-5	1735	263	0	$1,406,565
Family Literacy and Book Programs	CBO/Non-Profit	• Reach Out and Read	44586	0	0	$115,216
Family Literacy and Book Programs	CBO/Non-Profit	• Raising a Reader	1605	1605	0	$59,258
					Total	**$3,773,979**

Improved Child Development

Service	Grantee	Program(s)	Children	Caregivers	Providers	Amount
Quality Early Learning Supports	CBO/Non-Profit	• Not Applicable (ECE Professional Development Training)	0	0	41	$137,076
Early Learning Program Direct Costs	County Office of Education/School District	• Preschool/Childcare	3302	172	0	$4,117,445
Early Learning Program Direct Costs	Family Child Care	• Not Applicable (ARPA Wage Enhancement ECE AP Workforce)	0	0	2210	$7,095,525
Early Learning Program Direct Costs	Research/Consulting Firm	• Not Applicable (ECE SME - Development of Programming)	0	0	1	$2,212
Early Learning Program Direct Costs	Research/Consulting Firm	• Not Applicable (ECE Facilities Landscape & Convening (Developers), Mapping)	0	0	100	$254,187
Early Learning Program Direct Costs	County Office of Education/School District	• Not Applicable (AP Provider Recruitment - ARPA Funding - Incentives)	0	0	55	$90,684
Early Learning Program Direct Costs	Other Private/For Profit	• Not Applicable (Database for IMPACT iPinwheel/Hubbe)	0	0	566	$398,728
Early Learning Program Direct Costs	Other Private/For Profit	• Not Applicable (ARPA Wage Enhancement Database (Hubbe) Module for Stipends)	0	0	3218	$69,646
					Total	**$12,165,503**

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Improved Child Health

Service	Grantee	Program(s)	Children	Caregivers	Providers	Unique Families	Amount
General Health Education and Promotion	Other Private/For Profit	• Safety Education	1695	387	0	0	$308,877
Early Intervention	First 5 County Commission	• Not Applicable (Help Me Grow Regional - Developmental Screenings)	3967	0	0	0	$470,205
Early Intervention	Research/Consulting Firm	• Care Coordination and Linkage	0	0	3	0	$54,451
Perinatal and Early Childhood Home Visiting	CBO/Non-Profit	• Parents as Teachers	30	35	0	0	$244,814
Perinatal and Early Childhood Home Visiting	CBO/Non-Profit	• Not Applicable (SafeCare)	18	47	0	0	$144,046
Perinatal and Early Childhood Home Visiting	CBO/Non-Profit	• Healthy Families America	307	325	0	0	$560,478
Perinatal and Early Childhood Home Visiting	County Office of Education/School District	• Parents as Teachers	320	344	0	0	$1,186,313
Perinatal and Early Childhood Home Visiting	County Health & Human Services	• Nurse Family Partnership	18	23	0	0	$144,298
Perinatal and Early Childhood Home Visiting	Hospital/Health Plan	• Nurse Family Partnership	105	142	0	0	$1,045,577
						Total	**$6,357,786**

Service	Grantee	Program(s)	Children	Caregivers	Providers	Unique Families	Amount
Prenatal and Infant/Toddler Pediatric Support	Hospital/Health Plan	• Healthy Steps	10755	3047	0	0	$1,473,241
Prenatal and Infant/Toddler Pediatric Support	County Health & Human Services	• Local Model	0	222	0	0	$725,486
						Total	**$6,357,786**

Improved Systems Of Care

Service	Grantee	Program(s)	Amount
Policy and Public Advocacy	Research/Consulting Firm	• Child Health • Revenue Sustainability	$43,344
Systems Building	Child Care Centers	• Not Applicable (Facilities Improvement)	$10,012
Systems Building	Child Care Centers	• Not Applicable (Infrastructure - expansion child care slots)	$1,024,156
Systems Building	Child Care Centers	• Not Applicable (Infrastructure - expansion child care slots)	$540,897
Systems Building	Child Care Centers	• Not Applicable (Infrastructure - expansion child care slots)	$72,418
Systems Building	Child Care Centers	• Not Applicable (Infrastructure - expansion child care slots)	$78,340
Systems Building	Family Child Care	• Not Applicable (Facilities Improvement - External Environment)	$103,684
Systems Building	CBO/Non-Profit	• Family Resiliency	$61,967
Systems Building	Research/Consulting Firm	• Family Resiliency	$1,306
Systems Building	CBO/Non-Profit	• Family Resiliency	$101,534
Systems Building	CBO/Non-Profit	• Family Resiliency	$59,424
Systems Building	CBO/Non-Profit	• Not Applicable (Program & Systems Improvement)	$45,020
Systems Building	CBO/Non-Profit	• Family Resiliency	$29,078
		Total	**$5,530,104**

Service	Grantee	Program(s)	Amount
Systems Building	First 5 County Commission	• Not Applicable (Program & Systems Improvement Comprehensive Health & Development)	$310,592
Systems Building	First 5 County Commission	• Not Applicable (Program & Systems Improvement - Countywide Programs)	$166,174
Systems Building	First 5 County Commission	• Family Resiliency	$100,762
Systems Building	First 5 County Commission	• Not Applicable (HUB - Improved Systems of Care)	$141,576
Systems Building	First 5 County Commission	• Not Applicable (IMPACT Program & Systems Improvement)	$959,971
Systems Building	First 5 County Commission	• Not Applicable (Quality Early Learning Program & Systems Improvement)	$447,335
Systems Building	County Office of Education/School District	• Not Applicable (ECE Program & Systems Improvement)	$40,282
Systems Building	First 5 County Commission	• Family Resiliency	$440,856
Systems Building	Higher Education	• Not Applicable (Dental Health - ECOHA - HV Training)	$111,394
Systems Building	Hospital/Health Plan	• Early Identification and Intervention	$28,852
Systems Building	Research/Consulting Firm	• Not Applicable (Home Visitation - Program & Systems Improvement)	$87,777
		Total	**$5,530,104**

Service	Grantee	Program(s)	Amount
Systems Building	Research/Consulting Firm	• Not Applicable (Region 9 HUB Training - Program & Systems Improvement)	$10,000
Systems Building	Research/Consulting Firm	• Not Applicable (Region 9 Hub - Training Program & Systems Improvement)	$17,550
Systems Building	Research/Consulting Firm	• Not Applicable (Landscape Analysis - Program & Systems Improvement)	$46,790
Systems Building	Other Private/For Profit	• Family Resiliency	$25,750
Systems Building	Other Private/For Profit	• Not Applicable (Region 9 Hub - Professional Development Training)	$13,800
Systems Building	Other Private/For Profit	• Not Applicable (Region 9 Hub Training - Systems Improvement)	$5,000
Systems Building	Other Private/For Profit	• Early Identification and Intervention	$74,700
Systems Building	First 5 County Commission	• Not Applicable (Region 9 HUB pass through DB Support)	$19,658
Systems Building	First 5 County Commission	• Not Applicable (Region 9 Hub Pass Through - DB Support)	$165,946
Systems Building	Research/Consulting Firm	• Not Applicable (ECE Wage Enhancement SME)	$100,832
Systems Building	First 5 County Commission	• Not Applicable (Region 9 Hub Pass Thru DB Support)	$8,327
Emergency and Disaster Relief	CBO/Non-Profit	• Direct Material Support	$35,000
		Total	**$5,530,104**

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Expenditure Details

Category	Amount
Program Expenditures	$27,827,372
Administrative Expenditures	$3,396,567
Evaluation Expenditures	$925,478
Total Expenditures	$32,149,417
Excess (Deficiency) Of Revenues Over (Under) Expenses	($1,047,163)

Other Financing Details

Category	Amount
Sale(s) of Capital Assets	$0
Other	$0
Total Other Financing Sources	**$0**

Net Change in Fund Balance

Category	Amount
Fund Balance - Beginning	$34,579,153
Fund Balance - Ending	$33,531,990
Net Change In Fund Balance	($1,047,163)

Fiscal Year Fund Balance

Category	Amount
Nonspendable	$0
Restricted	$0
Committed	$17,584,988
Assigned	$0
Unassigned	$15,947,002
Total Fund Balance	$33,531,990

Expenditure Note

Additional funding is tied to American Rescue Plan Act funding ($23M) to support ECE workforce and facilities across multiple fiscal years.

Annual Report AR-2

Riverside Demographic Worksheet

July 1, 2022 - June 30, 2023

Population Served

Category	Number
Children Less than 3 Years Old	969
Children from 3rd to 6th Birthday	5,099
Primary Caregivers	12,875
Children – Ages Unknown (birth to 6th Birthday)	67,645
Total Population Served	**86,588**

Primary Languages Spoken in the Home

Category	Number of Children	Number of Primary Caregivers
English	15,336	7,495
Spanish	2,715	4,842
Cantonese	1	0
Mandarin	30	1
Vietnamese	6	1
Korean	1	1
Other - Specify with text box Urdu/Farsi/Arabic/German/Tagalog/Zapoteco/Tarasco	139	55
Unknown	55,485	480
Totals	**73,713**	**12,875**

Race/Ethnicity of Population Served

Category	Number of Children	Number of Primary Caregivers
Alaska Native/American Indian	94	75
Asian	641	248
Black/African-American	959	748
Totals	**73,713**	**12,875**

Category	Number of Children	Number of Primary Caregivers
Hispanic/Latino	7,947	7,183
Native Hawaiian or Other Pacific Islander	49	41
Other – Specify with text box	454	86
Two or more races	263	185
White	4,676	1,946
Unknown	58,630	2,363
Totals	**73,713**	**12,875**

Duplication Assessment

Category	Data
Degree of Duplication	20%
Confidence in Data	Moderately confident
Additional Details (Optional)	Children may receive multiple services through First 5 funding.

F5CA Annual Report 2022-23
County Highlights & Evaluation Summary (AR-3)
First 5 Riverside County

COUNTY HIGHLIGHTS

First 5 Riverside County's investments promote an integrated system of prevention and early intervention services and coordinated care in diverse settings to meet families where they are. First 5's HealthySteps sites integrate HealthySteps specialists in pediatric primary care teams to ensure universal screening of all families, provide referrals, and additional intensive services as needed. Coordinated care provided by HealthySteps Specialists improve engagement in preventive services and connection to community resources such as Home Visiting and other First 5 investments. HealthySteps (HS) sites partner with Help Me Grow IE to ensure families are connected to the resources they need when they need them. Participating sites reached over 10,000 children with 40% of children requiring referrals for early intervention, mental health, and other family services. First 5's engagement with Health Management Associates supports the integration of HS in managed care plans and supports participating agencies' plan for sustainability leveraging new Medi-Cal benefits such as dyadic care and the community health worker benefit.

COUNTY HIGHLIGHTS

Improved Family Functioning: Reach Out and Read prioritized serving traditionally hard-to-reach populations in low-income and high-need community settings and benefitting 44,586 children. At 27 sites, a 3-part model was implemented to support and promote early literacy, school readiness, and parental engagement during regular pediatric visits providing doctors and nurses with books to assess a child's developmental progress. United Way of the Desert provided the Raising A Reader (RAR) program serving 1,605 children through coordinated book-bag deliveries at Coachella Valley, Desert Sands, and Palm Springs School Districts. LENA Start, Home, and Grow served 59 families to engage and increase conversation with their child(ren).

Improved Child Development: The Riverside Hybrid Alternate Payment (RHAP) Program, administered by Riverside County Office of Education (RCOE), supported 171 children through RHAP scholarships, referring families with immediate needs or special populations for enrollment. 3,302 children benefited from Quality Start Riverside County (QSRC) sites that received incentives. 566 QSRC providers continued to participate in the local Quality Rating Improvement System (QRIS). 41 trainings provided for QRIS participating sites.

Improved Child Health: 798 children and 916 parents were served through 10,292 visits provided through evidence-based home visiting models by six grantees. HealthySteps provided services to 10,755 children and 3,047 caregivers across all three funded pilot programs. RUHS – Maternal Fetal Medicine served 222 patients with ultrasound for intervention services for high-risk pregnancies. Family Resource Centers served as a centralized and accessible location with 4,942 families supported with resources and referrals.

Improved Systems of Care: Help Me Grow Inland Empire (HMGIE) has developed a platform to expand the Electronic Data System that will allow screening partners to log in through the HMG-

IE website, issue developmental screenings to families of young children, view results, and make referrals to HMG-IE's Central Access Point. HMG-IE began partnering with QSRC sites to support developmental screenings for children ages 0-5, which has resulted in more than 1,000 children receiving screenings from 53 family childcare homes and 10 centers. Six early childhood and education centers were awarded funding to expand childcare spaces with a focus on 0-3, adding 177 additional spaces. Funding for family resource center network specialists within nine existing organizations to provide continuity to support families from broader population groups by increasing and expanding resources, and by providing linkages to prevention services and direct support to families with young children ages 0 through 5.

Annual Report AR-3

Riverside County Evaluation Summary and Highlights

July 1, 2022 - June 30, 2023

County Evaluation Summary

Evaluation Activities Completed, Findings, and Policy Impact

Improved Family Functioning: Reach Out and Read prioritized serving traditionally hard-to-reach populations in low-income and high-need community settings and benefitting 44,586 children. At 27 sites, a 3-part model was implemented to support and promote early literacy, school readiness, and parental engagement during regular pediatric visits providing doctors and nurses with books to assess a child's developmental progress. United Way of the Desert provided the Raising A Reader (RAR) program serving 1,605 children through coordinated book-bag deliveries at Coachella Valley, Desert Sands, and Palm Springs School Districts. LENA Start, Home, and Grow served 59 families to engage and increase conversation with their child(ren). Improved Child Development: The Riverside Hybrid Alternate Payment (RHAP) Program, administered by Riverside County Office of Education (RCOE), supported 171 children through RHAP scholarships, referring families with immediate needs or special populations for enrollment. 3,302 children benefited from Quality Start Riverside County (QSRC) sites that received incentives. 566 QSRC providers continued to participate in the local Quality Rating Improvement System (QRIS). 41 trainings provided for QRIS participating sites. Improved Child Health: 798 children and 916 parents were served through 10,292 visits provided through evidence-based home visiting models by six grantees. HealthySteps provided services to 10,755 children and 3,047 caregivers across all three funded pilot programs. RUHS – Maternal Fetal Medicine served 222 patients with ultrasound for intervention services for high-risk pregnancies. Family Resource Centers served as a centralized and accessible location with 4,942 families supported with resources and referrals. Improved Systems of Care: Help Me Grow Inland Empire (HMGIE) has developed a platform to expand the Electronic Data System that will allow screening partners to log in through the HMG-IE website, issue developmental screenings to families of young children, view results, and make referrals to HMG-IE's Central Access Point. HMG-IE began partnering with QSRC sites to support developmental screenings for children ages 0-5, which has resulted in more than 1,000 children receiving screenings from 53 family childcare homes and 10 centers. Six early childhood and education centers were awarded funding to expand childcare spaces with a focus on 0-3, adding 177 additional spaces. Funding for family resource center network specialists within nine existing organizations to provide continuity to support families from broader population groups by increasing and expanding resources, and by providing linkages to prevention services and direct support to families with young children ages 0 through 5.

County Highlights

County Highlight

First 5 Riverside County's investments promote an integrated system of prevention and early intervention services and coordinated care in diverse settings to meet families where they are. First 5's HealthySteps sites integrate HealthySteps specialists in pediatric primary care teams to ensure universal screening of all families, provide referrals, and additional intensive services as needed. Coordinated care provided by HealthySteps Specialists improve engagement in preventive services and connection to community resources such as Home Visiting and other First 5 investments. HealthySteps sites partner with Help Me Grow IE to ensure families are connected to the resources they need when they need them. Participating sites reached over 10,000 children with 40% of children requiring referrals for early intervention, mental health, and other family services. First 5's engagement with Health Management Associates supports integration of HS in managed care plans and supports participating agencies plan for sustainability leveraging new Medi-Cal benefits such as dyadic care and the community health worker benefit.

N.2.c. **Receive and File -** First 5 Riverside County Agency Progress Report July 1, 2022 - June 30, 2023

FY 22/23 FINAL AGENCY REPORT

RIVERSIDE COUNTY CHILDREN AND FAMILIES COMMISSION

AGENCY NAME	CONTRACT #	Primary Target Description	Target #	Result #
American Academy of Pediatrics	CF21105	# Children Received books	70,000	44,278
ParentPowered PBC (Ready4K)	CF22117	# of Licenses	15,000	2,798
Riverside University Health System - Behavioral Health Early Identification & Early Intervention	CF22103	Children received PCIT	240	905
United Way of the Desert - Raising A Reader	CF22120	Book kits distributed	1,860	1,605
Blindness Support	CF22105	Home Visits	492	345
Family Service Association - Home Visitation	CF22106	Home Visits	971	811
John F. Kennendy Memorial Foundation	CF22107	Home Visits	6,291	2,946
Jurupa Unified School District	CF22108	Home Visits	5,834	3,998
Riverside University Health System - Public Health Nurse Family Partnership	CF22104	Home Visits	922	217
Yoo, Jeung Choo MD Inc.	CF22111	Home Visits	2,036	1,975
Inland SoCal United Way	CF23102	Concrete Supports for Foster/Tribal Families	2,517	2,516
Riverside County Office of Education (RCOE) - ARPA - Recruitment AP Providers	CF22139	Recruitment AP Providers	250	217
Riverside County Office of Education (RCOE) - RHAP Program	CF22116	Scholarships	150	171
Riverside County Office of Education (RCOE) - RHAP Program	CF22116	Children who benifited from Tiered Incentives		3,302
Consortium for Early Learning Services - Training (IMPACT Match and IMPACT)	CF22123	Training Sessions	30	41
City of Temecula (Swim Scholarships)	Scholarships	Swim lessons	30	49
Corona-Norco YMCA	CF22145	Swim lessons	1,180	1,071
Desert Recreation Center (Swim Lessons)	CF23118	Swim lessons	291	298
Jurupa Area Recreation & Park District (Swim Lessons)	Scholarships	Swim lessons	50	49
SoCal Water Babies (Cathryn Van Der Linden)	CF22102	Swim lessons	170	228
Borrego Community Health Foundation HealthySteps	CF22113	Tier 1 Visits-total # of children 0-3 in practice/# of total children receiving Tier 3 visits	2946/1350	2254/1114
Rady Children's Hospital HealthySteps	CF22100	Tier 1 Visits-total # of children 0-3 in practice/# of total children receiving Tier 3 visits	4761/1800	5365/2132
Riverside University Health System - Medical Center HealthySteps	CF22101	Tier 1 Visits-total # of children 0-3 in practice/# of total children receiving Tier 3 visits	1948/600	2594/591
Systems and Capacity Building				
California Family Life Center Family Resource Center Network Specialist	CF23104	California Northstate University College of Dentistry-Dental Screening		CF22112
Family Service Association Family Resource Center Network Specialist	CF23106	F5SB/F5R Collaborative Agreement (LLU) Help Me Grow		SA-20-03
Greater Hope Foundation Family Resource Center Network Specialist	CF23103	Riverside University Health System Help Me Grow-Outreach		CF22114
Soboba Band of Luiseno Indians Family Resource Center Network Specialist	CF23105	Riverside University Health System Foundation (Medical Center) Maternal Fetal Medicine		CF21100

O. **Future Agenda Items:**
   O.1. First 5 Riverside County Chair and Vice-chair Election Process
   O.2. First 5 Riverside County Family Resource Centers Presentation
   O.3. First 5 Riverside County Strategic Plan Review and Adoption
   O.4. First 5 Riverside County Annual Appointment of Finance Subcommittee
   O.5. Autism and Developmental Delay Systems Landscape Report and Recommendations
   O.6. First 5 Riverside County 2023 Communications Plan

P. **Adjournment**: Adjournment to the next Regular Meeting of the Riverside County Children and Families Commission to be held on December 13, 2023 beginning at 2:00 p.m.at:
First 5 Riverside County Children and Families Commission Office
585 Technology Court - Conference Room A
Riverside, CA 92507

Conflict of Interest: Any person, or group of persons present at this meeting, who wish (es) to speak on a matter may be required to state for the record any contributions, in excess of $250.00 made in the past (12) twelve months, made to any Commission member, the Commission member receiving the contribution, and the matter of consideration with which they are involved.

Agenda Posting: Agendas will be posted at the Clerk of the Board of Riverside County and the Commission Business Office.

All public record documents for matters on the open session of the Agenda are available for inspection at the meeting listed in this Agenda, and at the following location beginning three (3) days prior to the meeting date:

Riverside County Children and Families Commission
585 Technology Court
Riverside, CA 92507

If a public record document that relates to a matter on the open session of the Agenda is distributed less than 72 hours prior to the meeting date, the public record document shall be available for inspection, at the same time it is distributed, at the address listed above. Upon request, this agenda will be made available in appropriate alternative formats to persons with disabilities, as required by Section 202 of the Americans with Disabilities Act of 1990.