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

Re: Federal Register Notice 2021-10283, Coronavirus State and Local Fiscal Recovery Funds Interim Final Rule Comments

Dear Agency Officials:

Thank you for the opportunity to offer comment on the U.S. Department of the Treasury (Treasury)'s Coronavirus State and Local Fiscal Recovery Funds Interim Final Rule (IFR) in response to Public Law 117-2, the American Rescue Plan Act (ARPA). On behalf of the State of Montana, I offer the following recommendations and questions regarding the rule as well as the interpretations reached by Treasury:

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.

Treasury should clarify that assistance to workers who are underemployed because they are working in jobs below their education and experience level is an eligible use.

Treasury should also clarify that creation of a revolving loan fund, or a grant to an entity to establish a revolving loan fund, made by December 31, 2024 to address an economic harm to small businesses resulting from the COVID-19 public health emergency is an eligible use (even if the fund continues beyond December 31, 2024 and December 31, 2026) and will be deemed to be within the timeline for use of Fiscal Recovery Funds. Treasury should also clarify how funds in such a loan fund can be used upon termination of the fund.

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-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.

Treasury should not take other factors into account in determining whether to presume that revenue losses are due to the COVID-19 public health emergency. States and local governments need to be able to predict the total amount of revenue losses in order to plan for eligible uses of the funds.

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?

The IFR should also define as eligible: water and sewer projects that address community growth; repair and rehabilitation of high hazard dams; and repair and rehabilitation of dams and reservoirs generally.

Water and sewer projects addressing community growth should be an eligible use. With the influx of new residents to Montana, including those coming as a result of COVID-19, many Montana communities, particularly smaller ones, are struggling to keep up with the need to fund water and sewer infrastructure projects that address the growth and consider affordable housing. DWSRF and CWSRF's restrictions on eligible projects that address growth leaves those needs unaddressed and unfairly penalizes these communities. Growth that is unsupported by wastewater systems degrades surface and groundwater quality and compromises public health, contrary to the purpose of the ARPA.

Repair and rehabilitation of high-hazard dams should also be an eligible use. A high-hazard dam is one with potential for loss of life downstream if the dam fails during normal operating conditions. High-hazard dams are important to Montana's infrastructure for managing water resources. Many are upstream of municipal water and wastewater systems, and provide irrigation water to farming operations. Operation of these dams allows for late season water releases to mitigate the impacts of drought. However, their failure could be lethal and their repair and rehabilitation should be an eligible use for public safety purposes.

Finally, repair and rehabilitation of dams and reservoirs generally should be an eligible use. Many of Montana's drinking water systems are served by dams and reservoirs. Their failure would put those users at risk of losing their water as other sources deplete late in the year. Reservoirs store water that is released late in the summer and during the fall to meet user needs and to replenish groundwater for wells that provide drinking water for those not served by municipal systems. Fish and wildlife habit also rely on replenishment of fresh water in the late summer months.

Funding rehabilitation of dams and reservoirs corrects and prevents damage which can release sediment or debris into drinking water treatment plants, resulting in failure of those systems and serious health impacts. Irrigation in rural states is another critical purpose for dams and reservoirs, not only for downstream municipal drinking water, but also for food security and economic stability in rural and tribal communities. In addition, management of water storage is important in Montana, and throughout the West, to protect against drought.

The IFR places western and rural states that are reliant on dams and reservoirs for safe and clean drinking water and other critical uses at a significant disadvantage. The IFR should be broadened to address these critical needs.

In addition, Treasury should clarify to what extent rehabilitating separate but related components for dams and reservoirs constitutes an eligible use. For example, would replacing a fish screen associated with a reservoir project constitute an eligible use?

Treasury should also clarify whether replacing interior lead service lines in public schools past the curb stop is an eligible use. The IFR provides that replacing lead service lines is an eligible use, but does not clarify whether replacing them beyond the curb stop is also an eligible use.

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

See comments to Question 18.

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

See comments to Question 18.

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?

The decision whether to set minimum speeds should be left to state and local governments as different standards may be all that is practical in different areas of the country. For example, in very rural areas, download and upload speeds of 100 Mbps may not be financially practical. This “all or nothing” approach will undoubtedly leave some rural communities with no improvement in infrastructure. State and local governments already have a strong interest in ensuring speeds are as high as practical. They need flexibility to provide the best service practical to the most people, and that may require different speeds.

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?

See comments to Question 22.

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?

As stated in the comments to Question 22, the decision whether to set minimum speeds should be left to state and local governments. If minimum standards are to be imposed by the federal government, then those standards should be as low as possible to give state and local governments as much flexibility as possible. If asymmetrical standards would permit lower minimum standards, then they should also be permitted.

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?

The decision whether to focus these investments on households and businesses below a maximum speed should be left to state and local governments as different standards may be appropriate in different areas of the country. For example, it may be appropriate to focus investments in some areas where a high percentage of users are below somewhat higher speeds, such as 100 Mbps download and 20 Mbps upload, and in some areas where there is a smaller number and lower percentage of users below lower speed thresholds. Distances, and varying topography and population density are also important factors to consider. State and local governments already have a strong interest in addressing the needs of their unserved and underserved citizens. State and local governments need flexibility to maximize that service which may require targeting areas with different numbers and percentages of users with access to different maximum speed thresholds.

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?

See comments to Question 25.

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.

Generally, yes. Any differences in categorization of revenue sources as "taxes" between the IFR and the state is not material enough to necessitate a change to the IFR definition.

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?

Montana has the ability to produce the requested figures and numbers. A standardized template would facilitate consistent reporting across states and years. Additionally, it would help states understand what exactly is required to be reported under the IFR. Specifically, the template should request estimated or actual revenue data for base year 2019 and comparable estimated or actual data for relevant, subsequent reporting years. The template should request that citations of data sources and other applicable information supporting reported data.