ARPA COORDINATORS NETWORK

HOW TO DESIGN & IMPLEMENT COMPLIANT PROGRAMS

WITH HAGERTY CONSULTING

MARCH 14, 2022

ICMA

How to Design and Implement ARPA Compliant Programs

ICMA Roundtable

March 14, 2022

HAGERTY

Goals of today's program

- Discuss practical and tangible actions that leaders can take to design and implement programs that are compliant with the Final Rule and the Uniform Guidance (2 CFR Part 200), which govern use of Coronavirus State and Local Fiscal Recovery Funds (CSLFRF)

- Review several recent changes to CSLFRF program regulations that are relevant to program design and implementation

- Through three practical examples, explore the design of eligible programs that can be funded by CSLFRF in response to community needs

- Highlight key compliance requirements that influence program administration and management

- Discuss reporting and highlight the importance of documenting the successful impacts of this unprecedented funding opportunity.

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General Update: CSLFRF Final Rule

The CSLFRF Final Rule delivers more flexibility and simplicity than the Interim Final Rule across several categories. Key modified topics include:

- Revenue Loss - a standard allowance of $10 million was added for all recipients, without the need for calculation

- Capital Expenditures - new rules were created for capital expenditures responsive to pandemic impacts

- Negative Economic Impacts - a distinction was made between "impacted" and "disproportionately impacted" and new enumerated eligibilities were added

- Public Sector Capacity - the ability to restore staffing to pre-pandemic levels or to augment staffing was provided

Recipients can choose to use the provisions of either the Interim Final Rule or the Final Rule between January 6, 2022 and April 1, 2022

Update 1: Revenue Loss

- Recipients may now make a one-time election of a "standard allowance" revenue loss of $10 million to spend on government services through the period of performance

  - Allocations are not impacted by this standard allowance; recipients receiving less than $10 million may simply choose to apply their entire allocation to the provision of government services

- If choosing this option, there is no need to calculate your municipality's revenue loss

- Recipients should be prepared to select whether they are "electing the standard allowance of up to $10 million" as part of their initial Project and Expenditure Report due to Treasury by April 30, 2022

- Recipients may still calculate lost revenue through an updated formula

Update 1: Revenue Loss (cont)

- Recipients can use revenue replacement funds "for any service traditionally provided by a government, unless Treasury has stated otherwise"

- Recipients are only required to provide a written explanation of "how revenue replacement funds are allocated to government services", and are not required to report information on individual projects or programmatic data*

- Recipients may use funds for the non-federal share for most federal programs**

- Maintaining a robust compliance framework throughout the program remains critical

Treasury will release an additional Project and Expenditure Report User Guide for NEUs and smaller municipalities, with further guidance on reporting requirements through the Portal for Recipient Reporting.

**Certain restrictions apply, and these funds cannot be used for match on Medicaid or CHIP programs*

Update 2: Capital Expenditures

- Clarifies that recipients can use funds for capital expenditures that respond to public health or negative economic impacts of the pandemic

- Clarifies that expenditures must be reasonable and proportional to the harm being addressed

- Provides additional examples that Treasury has enumerated as eligible

- Introduces requirement for additional written justification for capital expenditures over $1 million to guide recipients' analysis of whether expenditures are eligible

  - For projects that are under $1 million, no written justification is required, although eligibility analysis must still be conducted

Update 3: Compliance and Reporting Guidance

On February 28, Treasury published the updated Compliance and Reporting Guidance document to reflect Final Rule modifications. Key updates include:

- Starting April 30, 2022, (1) metropolitan cities and counties with a population below 250,000 residents that are allocated more than $10 million, and (2) NEUs that are allocated more than $10 million, are required to submit **quarterly** Project and Expenditure Reports

    - Recipients with allocations under $10 million will continue to submit **annual** Project and Expenditure Reports

- Recipients will report on a broader set of eligible uses and associated Expenditure Categories (ECs)

    - Local governments that submitted reports in January must re-categorize any ECs that were updated in the new guidance

    - Treasury also created EC 6.2 within the Revenue Replacement category to identity funds used as non-federal match for other federal programs

    - Certain administrative costs for staff focused on effective program delivery are now reclassified

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Eligible Use Categories

01

Support public health expenditures / address negative economic impacts

02

Replace lost public sector revenue

Eligible Use Categories

03

Provide premium pay for essential workers

04

Invest in water, sewer, and broadband infrastructure

Maintaining a strong compliance framework remains critical

- As local governments design and implement projects, establishing a compliance framework that is strong enough to ensure compliance with the Final Rule and Uniform Guidance (2 CFR 200) is key
  - This is particularly relevant for local governments who have limited experience with federal funding and reporting
- While the Final Rule increased flexibility and broadened eligibility for recipients, compliance requirements remain the same

Items that may be particularly challenging to recipients include:

- Internal controls and management practices
- Procurement and contracting
- Risk-based assessment for subawards and monitoring of subrecipients
- Civil rights and promoting equal opportunity
- Programmatic and financial reporting
- Closeout and audit

Introduction to Recovery Town

- Recovery Town is a Non-Entitlement Unit of Local Government (NEU) with a population of 45,000. Generally, they provide local fire and police services, manage a municipal water and sewer utility, and have several economic and community development services available to residents and local businesses

- It received a total CSLFRF allocation of $40 million.

- Recovery Town's Executive Office recently received responses to a survey issued on use of CSLFRF funding

Most of the respondent's support:

- Helping small businesses given the pandemic's impact

- Constructing a new childcare center

- Replacing existing water and sewer infrastructure

Recovery Town's Spending Plan

Recovery Town elects the standard allowance available under the revenue loss provision and claims the full allowance of $10 million. They decide to allocate funding among the following projects:

Project	Project Name	Allocation
RT001	Small business assistance program	$7 million
RT002	Water Distribution System Improvements	$8 million
RT003	Child Care Center	$10 million
RT004	Provision of Government Services	$10 million
RT005	Administrative Costs	$500,000
NA	Unallocated	$4.5 million
Total:		**$40 million**

Recovery Town's Program Design and Implementation

- Following the development of its spending plan, Recovery Town is considering how to transition from project prioritization to design and implementation

- To account for each projects' scope, expenditure category, estimated time of completion, and intended objectives, Recovery Town needs to ensure that it has a strong compliance framework to adequately carry out each activity and be able to report on it

The following processes will inform Recovery Town's approach to design and implementation:

- Small business assistance program: Program implementation

- Construction of a new childcare center: Capital expenditures

- Water distribution system replacement: Procurement and contracting

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Breakout Sections

SESSION 1:

Small Business Assistance Program

Focuses on program implementation and distributing federal funds outside the government

SESSION 2:

Construction of a New Childcare Center

Focuses on capital expenditures, including project development, written justifications, and compliance considerations

SESSION 3:

Water Distribution System Replacement

Focuses on infrastructure project, including project development, eligibility criteria, procurement and contracting

BREAKOUT SESSION 1

Small Business Assistance Program

Breakout Session 1: Small Business Assistance Program

Project Name:	Small business assistance program
Project ID Number:	RT001
Project Expenditure Category:	Assistance to Small Businesses - Loans or Grants to Mitigate Financial Hardship (2.29)
Project Status:	Not Started
Project Description:	Funding will be used to support small businesses in Recovery Town that have been impacted during the public health emergency. Funds will be provided through capped grants that may be used to support payroll and other operating expenditures. Recovery Town plans to hire a contractor to verify applicant eligibility requirements and assist in administering funds, as well as ensure that beneficiaries meet relevant criteria

Small Business Assistance Program: Design and Planning

1. Develop eligibility criteria and a streamlined application intake and risk assessment process (document all established processes). Eligibility criteria may include:

   - Size of business

   - Eligible uses of funds, such as payroll and operating expenditures

   - Minority/Women-owned Business Enterprises status

   - Covid-19 Financial Impacts (e.g., Last 3 years of financial statements)

   Identify disproportionately impacted small businesses that:

   a. Are located within a Qualified Census Tract

   b. Qualify as a microbusiness (five or fewer employees)

   c. Have primary operations that fall under one of the following sectors: Arts, entertainment, and recreation, Accommodation and food services, Retail Trade, Other Services (Except Public Administration)

2. Identify a vendor to support in administering the grant program:

   - First, identify whether the Town has an existing contract with a broad scope to support federal funds administration.

   - If not, consider a competitive Request for Proposals. Developing a scope should be broad enough to support the full range of design and implementation needs

Small Business Assistance Program: Implementation

1. Develop marketing tools and workshops to inform small businesses about the grant program and application process

2. Organize a working group across functions to effectively streamline review and approval process, which may include procurement, budget, finance, attorney, and auditor's offices

3. Contractor to review grant applications to verify required documentation, conduct risk assessment, and provide a recommendation for approval/denial

4. Develop and maintain a real-time interactive dashboard for awarded grants and consider community transparency

5. Prepare award notifications and grant agreements for approved grantees

Small Business Assistance Program: Oversight and Closeout

1. Communicate U.S. Treasury reporting requirements to small business grantees

   a. Number of workers enrolled in sectoral job training programs, Number of workers completing sectoral job training programs, and Number of people participating in summer youth employment programs

2. While not required, if Recovery Town implements the program on a reimbursement basis, Recovery Town may want to consider collecting invoices and supporting documentation to verify programmatic costs prior to closeout and final payment

3. Recovery Town may want to consider utilizing the reporting process to identify if there will be unspent funds to be returned to the Town prior to December 31, 2024. Recovery Town can reprogram unused funds for other CSLFRF eligible projects. This should be communicated upfront as a part of the award notification process

BREAKOUT SESSION 2

Construction of a New Childcare Center

Breakout Section 2: New Childcare Center

Project Name:	Recovery Town Childcare Center
Project ID Number:	RT003
Project Expenditure Category:	Healthy Childhood Environments: Child Care (2.11) and Health Childhood Environments: Early Learning (2.14)
Project Status:	Not Started
Project Description:	Funding will be used to develop a new centralized childcare and early learning facility, to be in Recovery Town's Central Park. Once constructed, the facility will house the full-day and after-school care programs operated by the Town's Department of Parks and Recreation and will serve as a location for a Head Start program. Preconstruction planning needs include site design and addressing floodplain management and stormwater concerns. The proposed cost of the project is expected to be $12.5 million, with funding drawn from a variety of sources, including $10 million in CSLFRF funding

New Childcare Center - Project Development

The project development process for a CSLFRF capital expenditure has several steps, including:

- Need Identification
- Identification of Options
- Preliminary Project Scoping
- Preliminary CSLFRF Eligibility Determination

- Alternative Funding Analysis
- Preliminary Design
- Go/No Go
- Project Planning/Design
- Procurement

- Construction
- SLFRF Compliance
- Audit

New Childcare Center - Compliance Considerations

Planning and Design

- Recipients can use CSLFRF funds for pre-project development costs that are tied to or reasonably expected to lead to an eligible capital expenditure. For example, pre-project costs associated with planning and engineering for an eligible project are considered eligible

Implementation

- Uniform Guidance provisions on procurement, contracting, cost principles and oversight all apply. State and local laws are general applicable

- Civil Rights compliance and reporting is mandated

- Procurement preferences may be applicable and may be enhanced due to provisions contained in the Bipartisan Infrastructure Law

- Use of CSLFRF funds alone does not trigger the Davis-Bacon Act. Prevailing wage requirements may be triggered by use of other federal funds or by similar state laws

New Childcare Center - Written Justification

All capital expenditures funded using CSLFRF need to be justified through criteria laid out in the Final Rule. As the total cost of the Capital Project exceeds $10 Million, written justification including is to be submitted as part of Recovery Town's regular reports

1. Describe the harm or need to be addressed

2. Explain why a capital expenditure is appropriate to address the harm or need, including how the capital expenditure is proportionate to the harm or need created by the COVID-19 pandemic

3. Compare the proposed capital expenditure against two alternative capital expenditures that could be made to achieve the same ends. Quantitative standards should be using to the extent possible

Recovery Town will need to document the harm experienced by parents and early childhood learners as a result of the COVID-19 pandemic or the way the need for such facilities has been exacerbated and show how this new facility will address the harm or need

BREAKOUT SESSION 3

Water Distribution System Improvements

Breakout Section 3: Water Distribution System Improvements

Project Name:	Water Distribution System Improvements
Project ID Number:	RT002
Project Expenditure Category:	Water and Sewer Infrastructure - Drinking water: Transmission & Distribution (5.11)
Project Status:	Not Started
Project Description:	Funding will be used to replace the transmission and distribution pipes throughout Recovery Town to improve water pressure to safe levels, and also to prevent contamination caused by leaks or breaks in the pipes that will benefit residents, businesses and other consumers. Following planning and design work, a procurement will be conducted, and a contract will be awarded in accordance with the Town's procurement policy. Recovery Town will ensure that the awarded contract will meet with all federal, state and local procurement requirements as well all CSLFRF program requirements. Recovery Town will be responsible for appropriate reporting and monitoring.

Water Distribution System Improvements - Project Development

The project development process for a CSLFRF infrastructure project has several steps, including:

- Need Identification
- Preliminary Project Scoping and Estimated Budget
- Preliminary CSLFRF Eligibility Determination

- Preliminary Design
- Project Planning/Design
- Procurement
- Construction

- CSLFRF Compliance Monitoring and Reporting
- Audit

Water Distribution System Improvements - CSLFRF Infrastructure Eligibility

The following questions must be considered:

- Is the investment (necessary)?

- Does the investment meet the Drinking Water State Revolving Fund (DWSRF) eligibility criteria?

- Is the project cost-effective?

Water Distribution System Improvements - Estimated Project Budget

Project Name	Allocation
Planning	$500,000
Engineering and Design	$1.5 million
Construction	$6 million
Total:	**$8 million**

Procurement Overview: Procurement Policy

Recovery Town should ensure that the following items are included in either as part of their purchasing policy or a stand-alone policy that is used for procurement purposes, language and associated controls covering:

- Competitive bidding, and the circumstances under which non-competitive procurements are allowable

- Standards of conduct for contractors, including a conflict-of-interest policy

- Prohibitions on dealing with suspended or debarred parties

- Procedures to avoid acquisition of unnecessary items

- Record retention

- Allowable use of time and materials contracts

- Dispute resolution

- Contracting with small & minority businesses, women's business enterprises and labor surplus area firms (Federal Requirements found in 2 CFR 200.321)

- Bonding requirements

Procurement Overview: Contract Provisions

Recovery Town must ensure that each contract includes provisions as set forth in Appendix II to 2 CFR Part 200, including:

- Remedies and sanctions
- Termination for cause and convenience
- Equal Employment Opportunity
- Contract Work Hours and Safety Standards;
- Right to Inventions
- Clean Air Act

- Debarment and Suspension
- Byrd Anti-Lobbying Amendment
- Procurement of recovered materials
- Prohibition on certain services or equipment
- Domestic preference

Note: Not all procurement involves a contract. However, Recovery Town will have a contract with Company A to install the replacement water lines.

Procurement Overview: Additional Best Practices

- Review local requirements in addition to federal and state

- Review Treasury Guidance

- Establish CSLFRF-specific internal controls

  - Policies and procedures

  - Explicit responsible parties

  - Leverage existing expertise

- Comply with the Cost Principles found in 2 CFR Part 200, Subpart E

- Be aware of the period of performance and any relevant deadlines

- Focus on documentation

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BREAKOUT

Section Summary

Small Business Assistance Program

This breakout session identified steps Recovery Town can take to fully design and implement a small business assistance program.

1. Provided a description of the small business assistance program

2. Explained program design and planning considerations such as establishing eligibility criteria and an application process and identifying mechanisms to hire a contractor to administer the program

3. Identified steps for program implementation including marketing the program, assisting small businesses applicants, developing transparency tools, and drafting grant agreements and award notification letters

4. Provided considerations for ongoing oversight and program closeout

Construction of a New Childcare Center

This breakout session walked through Recovery Town's design of a capital expenditure that was responsive to a critical need.

1. Provided a description of the proposed CSLFRF capital expenditure

2. Explained the steps in the project development process for an CSLFRF capital expenditure

3. Provided details on the Final Rule's requirement for written justification for capital expenditures

4. Highlighted certain considerations that are key components of applying a robust compliance infrastructure to CSLFRF capital expenditures

Water Distribution System Improvements

This breakout session explored the process and elements of designing a compliant infrastructure project to meet Recovery Town's need for investment in their drinking water distribution system:

1. Provided a description of the proposed infrastructure project

2. Explained the steps in the project development process for an CSLFRF infrastructure project

3. Provides details on the Final Rule's eligibility requirements for infrastructure projects and highlights the relationship to the state revolving fund eligibility guidance

4. Provides compliance considerations and best practices related to procurement and contracting

Reporting and Telling your Story

Reporting

On a Quarterly basis, Recovery Town must demonstrate a clear picture of:

- How CSLFRF funds are spent

- CSLFRF project budgets and spending progress via financial data

- Performance of CSLFRF funds via "programmatic indicators"

- Additional details (e.g., demographics served, capital expenditures) based on assigned Treasury Expenditure Category

Because Recovery Town is an NEU, they should expect additional information from Treasury on upcoming reporting requirements.

Telling your Story

Throughout program implementation, Recovery Town should consider building mechanisms to:

- Document successes

- Record program outcomes, outputs, and impact

- Gather feedback from the community on program impact

- Publicize efforts and tell the story on use of funds
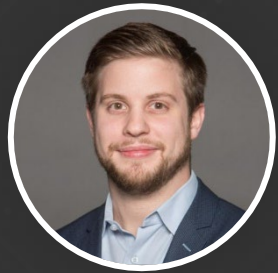
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Questions?

John Hageman

Senior Manager, Recovery Programs

John.Hageman@hagertyconsulting.com

WHAT'S NEXT

- Watch for recording link and follow up materials

- Future sessions in development

- Reach out to ICMA at research@icma.org with questions, suggestions for future sessions, etc.

- Visit icma.org/events and icma.org/arpa for upcoming sessions and archived resources

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