



**DEPARTMENT OF THE TREASURY
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TO: Richard L. Revesz, Administrator
Office of Information and Regulatory Affairs
Office of Management and Budget

FROM: Ryan Law, Deputy Assistant Secretary
Office of Privacy, Transparency, and Records
U.S. Department of the Treasury

SUBJECT: Justification for PRA Emergency Processing: State and Local Fiscal Recovery Funds Updated Compliance and Reporting Guidance

Pursuant to the Office of Management and Budget (OMB) procedures established by the Paperwork Reduction Act of 1995 (5 C.F.R. § 1320.13), the U.S. Department of the Treasury (Treasury) requests emergency processing of a revision to OMB Control Number 1505-0271 for the State and Local Fiscal Recovery Funds (SLFRF) program's Supplemental Guidance for Environmental Review Compliance and for approval to collect a new National Environmental Policy Act (NEPA) Environmental Review Certification form for SLFRF Title I projects.

Collection is essential to the mission of the Department.

On March 11, 2021, the American Rescue Plan Act was signed into law and established the Coronavirus State Fiscal Recovery Fund and Coronavirus Local Fiscal Recovery Funds, which together make up the SLFRF program, administered by the Department of the Treasury. This program is intended to provide support to State, territorial, local, and Tribal governments in responding to the economic and public health impacts of the COVID-19 pandemic and in their efforts to contain the impacts on their communities, residents, and businesses. This work is critical to Treasury's mission to maintain a strong economy and create economic and job opportunities for the nation.

Since the establishment of this program, Treasury has awarded \$350 billion in funding to recipient governments and issued Compliance and Reporting Guidance detailing how these SLFRF recipients must fulfill reporting requirements in accordance with the terms and conditions of their SLFRF financial assistance agreements.

Unanticipated events prevented Treasury from complying with normal clearance procedures for the requested revision.

On December 29, 2022, Congress amended the SLFRF program in the Consolidated Appropriations Act, 2023 (CAA) to add three new eligible use categories for: emergency relief from natural disasters, Surface Transportation projects, and Title I (Community Development Block Grant (CDBG)) projects. The CAA imposes requirements on SLFRF funds used for

Surface Transportation projects and Title I projects beyond those requirements that apply to all other SLFRF eligible use categories, necessitating substantial updates to program rules and guidance. Accomplishing this required Treasury to seek expertise from and coordinate extensively with other Federal agencies.

Treasury worked closely with the U.S. Department of Transportation (DOT), the Federal Emergency Management Agency (FEMA), and the Department of Housing and Urban Development (HUD) throughout 2023 to craft an interim final rule (IFR) and lay out a strategy for implementing the three new eligible uses of SLFRF funds. This IFR implementing the three new eligible use categories was published in the *Federal Register* on September 20, 2023 (88 FR 64986) and started a 60-day public comment period that closed on November 20, 2023.

Additionally, on November 20, 2023, Treasury published the Obligation interim final rule (Obligation IFR) in the *Federal Register* (88 FR 80584), which revised the definition of “obligation” in Treasury’s implementing regulations for the SLFRF program and provided related guidance to give additional flexibility and clarity to recipients to support their use of SLFRF award funds. This was necessary as the CAA amendments provided that funds may be obligated for Surface Transportation projects, and Title I projects until December 31, 2024, and must be expended by September 30, 2026. Public comments were solicited on the Obligation IFR for 30 days (ending Dec 20, 2023).

Upon review of comments on these IFRs, Treasury entered into memorandums of agreement (MOAs) with DOT and HUD articulating how the agencies would coordinate to implement new eligible uses. DOT signed and returned their MOA on January 10, 2024, and HUD signed and returned their MOA on Title I project spending to Treasury on February 9, 2024.

While these rules provided a framework for implementing the three new uses, they noted that Treasury would need to amend the SLFRF Compliance and Reporting Guidance to describe in detail how recipients would provide the additional information required. Diligent work with other federal agencies on the best path forward with the least administrative burden to recipients has meant that Treasury relied heavily on the federal agency partners and did not have sole control of the timeline to get the interim final rules published and of getting final MOAs executed. Only after MOA execution could the final updated guidance be drafted for consideration.

The SLFRF program has over 30,000 local government recipients, including non-entitlement units of government (NEUs), which are typically not direct recipients of DOT or HUD Title I CDBG funding, and thus are not familiar with the reporting requirements associated with those funds and programs. The guidance Treasury provided, therefore, needed to be crafted with these recipients in mind and taking into account the comments and questions they provided in response to the IFRs.

Treasury submitted an emergency revision to 1505-0271 in September 2023 alongside the IFR in order to address the three new eligible uses, however it could not include the increased burden and full details of the new information to be collected in connection with Title I projects

as those MOAs had not yet been executed and thus the new supplemental guidance could not have been created.

The use of normal clearance procedures is reasonably likely to prevent or disrupt the collection of information and is reasonably likely to cause a statutory deadline to be missed.

Treasury has recently completed the supplemental guidance for recipients wishing to use SLFRF funds to pursue projects and activities under the three new eligible use categories, however time is very limited for SLFRF recipients to complete all the necessary steps to obligate funds for these projects before December 31, 2024. Following normal PRA clearance procedures before issuing the revised guidance would consume approximately half of the remaining eight months before the statutory deadline to obligate funds, making it reasonably likely that most recipients would be unable to do so.

For example, this guidance outlines the process that recipients must undertake to satisfy NEPA environmental review requirements for Title I projects, including how to submit an Environmental Review Certification to Treasury for approval. (NEPA compliance is waived for other SLFRF projects.) The MOA with HUD lays out that SLFRF recipients will use the HUD Environmental Review Online System (HEROS) to complete their environmental reviews for Title I projects just as any Title I recipient would, however due to technical constraints, it does not require HUD to automatically provide environmental review records completed by SLFRF recipients to Treasury.¹ Treasury must rely on SLFRF recipients to notify Treasury when they need project approval. Further, the MOA delegates to Treasury responsibility to provide approvals to SLFRF recipients on projects that require it.² Per the CAA, this pre-approval from Treasury must be obtained before projects can commence. This is the first time that Treasury has had to pre-approve project spending through the SLFRF program, and if those novel reviews could not commence until mid-to-late 2024 it would likely leave insufficient time following approval for recipients to execute their projects to the degree needed to obligate funds before the end of the year.

Treasury is also nearing completion on updates to the reporting portal that recipients will use to transmit the necessary information required for NEPA and under the Obligation interim final rule. The online portal is expected to go live around April 1, 2024, with 2,000 recipients required to file quarterly Project and Expenditure Reports and 26,000 recipients required to submit annual Project and Expenditure Reports by April 30, 2024. This is in accordance with the timelines for the program as set out in the Reporting Guidance and which have been utilized since the program started requiring reporting. This timeline for reporting was developed with input and approval from the Pandemic Response Accountability Committee (PRAC) – the statutorily-authorized independent oversight committee for pandemic-related programs. Treasury will need to provide guidance to recipients ahead of or soon after the portal launch date so that

¹ Using the HEROS system for environmental reviews—a known and workable system with all the necessary statutory guidelines in place--was more efficient than building a new system within Treasury, thus the agreement to allow SLFRF recipients to use this system is a key component of implementation for Title I eligible uses as contemplated in the CAA.

² Title I projects requiring Treasury approval before SLFRF funds can be spent include projects that qualify as Categorically Excluded Subject To (CEST) and projects requiring an Environmental Assessment.

they can start gathering the necessary information needed to be submitted both for quarterly and annual reports due April 30 and prior to the Obligation deadline of December 31, 2024. Without emergency approval, Treasury's ability to collect this information would be disrupted.

Public harm is reasonably likely to result if normal clearance procedures are followed.

As noted previously, the clarification provided in the supplemental guidance related to environmental reviews for Title I projects will require small revisions to the information to be provided in recipients' Project and Expenditure Report submissions, and in the online portal on the same timeline. It will also require an incremental data collection by Treasury of an Environmental Review Certification form, which Treasury will need to approve before recipients may use SLFRF award funds on certain Title I projects (in accordance with the 2023 interim final rule). Treasury developed the Environmental Review Certification in close consultation with HUD, and the HUD regulations for environmental review at 24 CFR part 58 generally apply to the Title I projects eligible use category. Given recipients' need to submit and gain approval of the certification before using SLFRF funds on certain Title I projects and the December 31, 2024 deadline to obligate SLFRF funds, Treasury will need to solicit these certifications expeditiously in order to provide recipients with sufficient time to obligate funds for Title I projects.

If this emergency processing is not granted, Treasury will likely not be able to solicit Environmental Review Certifications from SLFRF recipients for Title I projects needing approval until fall 2024. Particularly for any NEU undertaking Title I spending for the very first time, this would result in a very short time frame to be in compliance with NEPA reporting and receive project approval before the obligation deadline. The inability of Treasury to collect the information and provide the necessary pre-approval may reasonably result in some unobligated funds by the deadline if timely approval for these projects to move to construction phase are not provided. This would harm recipients contemplating projects under the Title I eligible uses who would not be able to fully execute these projects for the benefit of their communities. Treasury would also face potential litigation risk from recipients who may challenge the Department if it failed to practically enable SLFRF funds to be applied to these additional eligible uses as Congress' intended.

Practicable steps have been taken to consult with interested agencies and members of the public to minimize the burden of the collection of information.

Treasury has taken all practical steps to consult with the public and other relevant agencies in developing both the existing and new SLFRF collections of information and minimizing the burden on the public. The Department solicited public comment on SLFRF reporting and recordkeeping requirements on Sept 16, 2021 (86 FR 51727) and Feb 25, 2022 (87 FR 10896), following normal clearance procedures and subsequently received a full 3-year OMB approval for the SLFRF program's data collections under 1505-0271

As noted above, Treasury also solicited public comment for 60 days on the Sept 20, 2023 IFR and for 30 days on the Nov 20, 2023 Obligation IFR, in addition to extensive consultation with other federal agencies. Comments on these rules included many questions from SLFRF

program participants regarding how to handle their individual situations, which both informed and highlighted the need for detailed updates to the Compliance and Reporting Guidance.

Given the public comments that have already been collected on the interim final rules, seeking further public comment on the updated guidance following normal PRA clearance procedures would be more likely to harm rather than enhance public interest due to the additional delays it would entail.

Because the submission of NEPA forms and updated quarterly reporting is needed sooner than could be obtained following non-emergency procedures, Treasury requests emergency processing and approval by April 10, 2024 of the updated Compliance and Reporting Guidance as well as the Environmental Review Certification. Given the impracticality of soliciting comment during such a short timeframe, Treasury requests a waiver from the requirement to publish notice in the *Federal Register* seeking public comment during OMB review.