



Berryville Town Council

MEETING AGENDA

Berryville-Clarke County Government Center

101 Chalmers Court, Second Floor

Main Meeting Room

Regular Session

July 13, 2021

7:00 PM

Item

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1. **Call to Order**

2. **Pledge of Allegiance**

3. **Approval of Agenda**

4. **Presentations/Awards and Recognitions**

5. **Public Hearings**

Adoption of the Town of Berryville American Rescue Plan Act of 2021 Implementation Plan 4

6. **Discussion of Public Hearing Items**

7. **Citizens' Forum**

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Budget and Finance	

Community Development

Discussion: Update of www.berryvilleva.gov

Personnel, Appointments, and Policy

Public Safety

Streets and Utilities

14. Closed Session

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The Council of the Town of Berryville will enter closed session in accordance with §2.2-3711-A-1 of the Code of Virginia, to discuss and evaluate the performance of a specific individual and to discuss prospective candidates for employment.

1. Adopt motion to enter closed session.
2. Reconvene in open session.
3. Adopt resolution by roll-call vote.

15. Adjourn

American Rescue Plan Act of 2021

July 13, 2021 Report

The full draft Plan is available for public review on the Town's website. A public hearing notice was published in the *Winchester Star*.

The Town Office has received no comments about the Plan.

The Plan has been modified in several ways since the Council's last review. The draft Plan attached to this report has been modified in the following manner:

Section I Overview

Section modified to reflect the fact that the Town has received the first ARPA payment.*

Section IV.b.ii Response to the pandemic and its negative effects in order to assist households, businesses, and non-profits

Section modified to remove the specific months for which water/sewer account credits will be provided.

Appendix B Cost Estimates, Category Expenditure Limits, and Implementation Schedules

This document was modified to address the cost of water and sewer administrative and facilities fee credits alone (eliminating usage credits).**

Appendix D Necessary water and sewer (including stormwater) infrastructure projects

This document was modified to add "Complete work to improve stormwater management on Crow Street" as a project that may be considered for completion.

* The Town received the first ARPA payment on June 30, 2021. The payment totaled \$2,267,493.

** Despite what staff had been told, the Town's software provider is unable to support credits for water/sewer usage. The current draft Plan provides for 6 months of water and sewer administrative and facilities fees credits. Funds not slated for this use were moved to Section VII Complete necessary water and sewer infrastructure projects.

Requested Action

Staff requests that the Council either adopt an implementation plan at the July 13 meeting or set another meeting for later in the month to consider the matter.

Attachments

- Draft Town of Berryville American Rescue Plan Act of 2021 Implementation Plan

Sample motion

I move that the Council of the Town of Berryville adopt the attached Town of Berryville American Rescue Plan Act of 2021 Implementation Plan. I further move that the Town Manager is directed to take steps necessary to effect and fulfil plan elements.

June 8, 2021 Report

History

After the passage of the ARPA, the Town Council directed staff to develop a preliminary framework for expenditure of grant funds provided to the Town in accordance with the legislation.

The Town Council reviewed the matter in detail at a work session on May 5, 2021. The Council made no determination regarding the disposition of the funds because many questions about project eligibility remained unanswered.

Additional guidance has been received and staff is reviewing this matter in detail. It also appears that the allocation for which the Town is eligible has increased to \$4,534,985 (\$562,504 more than originally reported).

Staff intends to provide the Council with a revised draft framework for expenditure of the funds within the next two weeks. If possible, it would be helpful if the Council can adopt a framework in July.

Requested Action

Staff requests that the Council provide any additional guidance or direction it has in this matter. This additional guidance or direction can be incorporated into discussions about finalizing a framework for expenditure of ARPA funds.

Staff recommends consideration of the following changes in the draft framework:

- increasing the maximum grant available for accessibility improvements, façade improvements, etc. (\$7,500 to \$12,000) and increasing the total amount of funds dedicated to this purpose (\$120,000 to \$240,000),
- establishing a list of non-profits that would receive funding and eliminate a selection process in the future,
- increasing funds available for infrastructure/capital projects.

Attachments

- American Rescue Plan Act of 2021 memorandum dated March 29, 2021
- Revised statement of non-entitlement units of local government allocations
- Guidance on Distribution of Funds to non-entitlement units of local government
- Non-entitlement unit of local government award terms and conditions
- Non-entitlement unit of local government definitional and data methodology
- Coronavirus State and Local Fiscal Recovery Funds Frequently Asked Questions

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**Town of Berryville
American Rescue Plan Act of 2021
Implementation Plan
ADOPTED _____**

I. Overview

The Town of Berryville is slated to receive \$4,534,986 as a result of the passage of the American Rescue Plan Act of 2021 (ARPA).

The Town is ~~expected to received~~ 50% of the funds (\$2,267,493) in the ~~near term~~ on **June 30, 2021** and the remaining funds (\$2,267,493) a year after the first grant is provided.

The period of performance for this grant ends on December 31, 2026, but funds may only be used to cover eligible costs from March 3, 2021 through December 31, 2024 (NOTE: This information is taken from Department of the Treasury, Appendix C Award Terms and Conditions. Other guidance also provided by the Department of Treasury states that funds committed by December 31, 2024 must be spent by December 31 2026). Accordingly, the Town will likely expend ARPA funds in the following fiscal years:

- FY22
- FY23
- FY24
- FY25
- FY26
- FY27 (first half)

ARPA funds must be used to:

- respond to the COVID-19 pandemic and its negative effects in order to assist households, businesses, and non-profits;
- provide for premium or hazard pay for employees;
- address reduced government revenues; and
- make necessary investments in water, sewer, and broadband infrastructure.

II. Approach to properly expending ARPA funds

After review of applicable federal regulations (31 CFR Part 35, RIN 1505-AC77 Coronavirus State and Local Fiscal Recovery Funds, Department of the Treasury, Interim final rule) the Town Council has made findings

regarding community needs and determined how ARPA funds awarded to the Town will be expended.

The Council has made every effort to structure its American Rescue Plan Act of 2021 Implementation Plan (Plan) in a manner that complies with federal laws and regulations and meets the needs of the citizens of Berryville.

Categories of expenditure under the Plan include: response to the pandemic and its negative effects in order to assist households, businesses, and non-profits; provision of premium pay to employees; addressing reduction in revenues to the Town; making necessary investments in water and sewer infrastructure; and pay for administrative costs related to the implementation of the Plan and associated projects.

The Council will monitor the expenditure of funds to ensure that the requirements of the Plan are met. The Council reserves the right to amend the Plan at any time as it deems such amendments necessary. The Council will also provide oversight of Plan implementation and make changes to administrative determinations as it considers such changes necessary.

The Council hereby tasks the Town Manager with management and oversight and management of the Plan. The Council acknowledges that the Manager will develop and adopt regulations, procedures, forms, agreements, and the like that are necessary to fully implement the Plan. The Council acknowledges that the Manager has tasked the Treasurer with compliance with record keeping and reporting requirements under the Plan and ARPA.

The Manager will provide a report on ARPA and the Plan at each regular meeting of the Town Council and at other times as considered necessary by the Council or the Manager. The Manager will cause a page on the Town website to be created and maintained where the Plan and Town Council updates will be posted.

Appeals of determinations and decisions of the Manager made in accordance with the Plan shall be made in writing to the Council within 15 days of the determination or decision in question. Such appeals will be heard by the Council within 60 days of receipt of the appeal. The Council

will issue a written determination on the appeal within 90 days of receipt of the appeal.

III. Attachments

Appendix A

31 CFR Part 35, RIN 1505-AC77 Coronavirus State and Local Fiscal Recovery Funds, Department of the Treasury, Interim final rule

Appendix B

Cost Estimates, Category Expenditure Limits, and Implementation Schedules

Appendix C

Description of Central Business District

Appendix D

Non-prioritized list of necessary water, sewer, and stormwater infrastructure projects approved for consideration

IV. Response to the pandemic and its negative effects in order to assist households, businesses, and non-profits

a. Findings

The Council finds that the Town's utility customers experienced difficulties meeting the challenges of paying bills during the pandemic and that credits toward utility bills over a period of time will mitigate some of the negative effects of the COVID-19 pandemic.

The Council finds that the Town's central business district was negatively affected by COVID-19 pandemic. The Council also finds that directional signage directing traffic into the central business district and façade/signage/accessibility improvements to central business district business occupancies will support that district and mitigate some of the negative effects of the COVID-19 pandemic.

The Council finds that non-profit organizations that are located in Town or serve the citizens of Berryville were negatively

affected by the COVID-19 pandemic. The Council also finds that non-profits can, in some instances, best mitigate the negative effects of the COVID-19 pandemic. The Council also finds that John H. Enders Volunteer Fire Department Company and Rescue Squad is an essential part of the response to the COVID-19 pandemic. Accordingly, the Council has determined that grants should be provided to non-profits that serve the citizens of the Town.

The Council finds that the COVID-19 pandemic revealed weaknesses in local government's ability to communicate with and serve the needs of its citizens. The Council also finds that that the COVID-19 pandemic revealed weaknesses in local government's ability to support its essential employees during emergencies, thus revealing a weakness in how well local government can serve its citizens during time of crisis. Accordingly, the Council has determined that emergency communications, cleaning/disinfecting equipment and supplies, life-sustaining supplies for essential employees, and communications with the general public should be improved through the use of ARPA funds.

b. Proposed projects/expenditures

- i. Pay balance on delinquent water and sewer account delinquencies that were 60 days or more in arrears as of June 22, 2021.

Implementation

Qualified account delinquencies would be paid within 10 business days of receipt of first payment from federal government.

- ii. Credit each water and sewer account in the Town system an amount equal to cost of 1,000 gallons of usage (water and sewer) and monthly administrative and facilities fees for the following 6 months.

- ~~August 2021~~
- ~~September 2021~~
- ~~October 2021~~
- ~~November 2021~~

~~December 2021~~
~~January 2022~~

Implementation

Credits would be applied to all qualifying accounts after meters are read in a given billing period.

- iii. Complete a wayfinding sign project to direct traffic to points of interest in central business district.

Implementation

A wayfinding (VDOT program) sign package will be planned and installed and complementary signage will be planned and installed at public parking facilities and Rose Hill Park.

- iv. Provide reimbursement funds for qualifying improvements to eligible commercial buildings in the central business district.

Implementation

Reimbursements of up to \$12,500 will be offered to owners of commercial buildings in the central business district for:

- accessibility improvements (with primary focus on providing access into businesses),
- business sign replacement or refurbishment,
- building façade beautification and improvement, and
- site cleaning and beautification

- v. Provide grants for non-profits that assisted Berryville residents through the difficulties of the COVID-19 pandemic and those non-profits that serve the citizens of Berryville and were negatively affected by the COVID-19 pandemic.

Implementation

Grants would be provided to non-profits serving the citizens of Berryville.

Grants for the following non-profits would be provided in two cycles over two years. Each year of the two-year cycle, the following grants will be available:

John H. Enders Volunteer Fire Department Company and Rescue Squad will receive \$40,000. The grant funds must be used for equipment purchase or maintenance and training.

Barns of Rose Hill will receive \$20,000.* Grant funds must be used as follows:

One-half of the grant must be used to provide reduced-cost or no-cost programming to the community. Such programming must endeavor to support businesses within the Central Business District.

One half of the grant must be used for building and property improvement or maintenance.

*Non-profit must demonstrate financial harm from COVID-19 pandemic and that such financial harm was not already addressed under the CARES Act.

Grants for housing assistance would be provided in three cycles over three years. Each year of the three-year cycle, the following grants will be available:

A non-profit (or non-profits) will receive \$40,000 for completion of necessary improvements to owner-occupied dwellings within the Town. Household income of owners

receiving assistance from non-profit may not exceed 80% of this community's adjusted medium income (AMI) for the last year information is available. Qualifying improvements include:

accessibility improvements,
sanitation improvements,
roof repair or replacement,
weatherization,
window repair or replacement,
site grading to divert water from dwelling foundation, and
property cleanup.

- vi. Purchase equipment and supplies to aid in pandemic and other disaster response.

Implementation

The Town of Berryville will purchase items such as: disinfection and cleaning equipment and supplies, personal protective equipment, and material and supplies to sustain employees when working through emergencies.

- vii. Improve emergency communications/response and improve communication with the residents of Town.

Implementation

The Town will purchase both portable and mobile radios for its Police Department, contract to have the Town's website rebuilt, and make improvements in Town/County emergency communications/response.

V. Provide premium pay to qualifying Town employees

a. Findings

The Council finds that all Town employees were relied on to maintain continuity of operations of essential infrastructure sectors that are critical to protect the health and well-being of the residents of Berryville.

The Council also finds that all employees working on-site (excludes teleworking) during the period of time in question were involved in essential work and eligible for premium pay.

b. Proposed projects/expenditures

Implementation

Premium pay of \$400 per month for the period of time from January 1, 2020 to May 31, 2021.

To qualify for this payment, employees must:
have been full-time regular employees or introductory employees during the subject period of time;
be in the employ of the Town as of August 1, 2021;
have worked (excluding remote work) at least fourteen days in a month for which leave is paid; and
have not received other hazard pay for the same period of time.

VI. Address reduction in revenues to Town

a. Findings

After review of the matter, the Council finds that the Town experienced no significant loss as a result of the COVID-19 pandemic.

b. Proposed projects/expenditures

No project/expenditure is expected under this category.

Implementation

No action will be taken.

VII. Complete necessary water and sewer infrastructure projects

a. Findings

The Council finds that the projects enumerated in Appendix D, as may be amended by the Council, are necessary infrastructure projects that may be completed with ARPA funds.

b. Proposed projects/expenditures

Projects enumerated in Appendix D will be completed as funds and administrative capacity permit.

Implementation

The Town Manager will take actions to plan, initiate, and have completed the projects enumerated in Appendix D within the limitations of the Town of Berryville Procurement Policy.

VIII. Pay for administrative costs related to the implementation of the Plan and associated projects

a. Findings

The Council finds that administrative costs associated with implementation of the Plan may be paid from ARPA funds.

b. Proposed projects/expenditures

The Council directs staff to track staff and contractor time that is expended to develop and implement the Plan and manage associated projects, and to provide for required record-keeping and reporting.

Implementation

The Town Manager will cause administrative costs to be tracked and charged against ARPA funds at the end of each month.

IX. Unexpended Funds

Funds remaining unspent for projects or programs enumerated in Sections IV (Response to the pandemic and its negative effects in order to assist households, businesses, and non-profits), V (Provide premium pay to qualifying Town employees), VI (Address reduction in revenues to Town), and VIII (Pay for administrative costs related to the implementation of the Plan and associated projects), may be utilized for programs and projects enumerated in Section VII (Complete necessary water and sewer infrastructure projects).

American Rescue Plan Act of 2021 Implementation Plan Tracking
4/5/21 Town Council Work Session
6/22/21 Town Council Work Session (public hearing set for 7/13/21)

Appendix A

Interim 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 (if applicable), 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 Panohal 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. 19, 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 [CES9002000001] and All Employees, Local Government [CES9003000001], retrieved from FRED, Federal Reserve Bank of St. Louis, <https://fred.stlouisfed.org/series/CES9002000001> and <https://fred.stlouisfed.org/series/CES9003000001> (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 Act¹⁷ (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

⁹ Ifotme (June 2020), https://webtest.childrensinstitute.net/sites/default/files/documents/COVID-19-and-student-learning-in-the-United-States_FINAL.pdf; Andrew Bacher-Fricks 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>.

¹⁰ 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 COVID-19 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).

¹¹ 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.

¹² 42 U.S.C. 801 *et seq.*

¹³ Sections 602, 603 of the Act.

¹⁴ 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. 201 (2020).

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[ing] 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/mm7015a2.htm?cid=mm7015a2_uv.

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(6):443–45 (2020), available at <https://psycenet.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

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.

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

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

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(10):551–56 (May 8, 2021), <https://www.cdc.gov/mmwr/volumes/69/wr/mm6910e2.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 Megau 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>.

²⁴ 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/mm6919a2.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):899–1001 (Jul. 31 2020), <https://www.cdc.gov/mmwr/volumes/69/wr/mm6930a3.htm>.

²⁵ 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>.

²⁶ 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.

²⁷ 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).

²⁸ 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

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 6, 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 Panchol, *supra* note 4; Mark E. Czoisler 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).

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

and Deaths in the United States, by Social Vulnerability Index, https://covid.cdc.gov/covid-data-tracker/#pop-factors_totaldeaths (last visited May 6, 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 Almogro 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):165–61 (Feb. 5, 2021), <https://www.cdc.gov/mmwr/volumes/70/wr/mm7005a2.htm>; Emily A. Benfer & Lindsay F. Wiloy, Health Justice Strategies to Combat COVID-19: Protecting Vulnerable Communities During a Pandemic, *Health Affairs Blog* (Mar. 19, 2020), <https://www.healthaffairs.org/doi/10.1377/hlbg.20200319.757083/full>.

³⁹ See, e.g., Centers for Disease Control and Prevention, *supra* note 34; Benfer & Wiloy, *supra*

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

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. Mort. Wkly. Rep.* 69(36):1369–73 (Sept. 25, 2020), <https://www.cdc.gov/mmwr/volumes/69/wr/mm6930a1.htm>.

⁴⁰ This includes implementing mitigation strategies consistent with the Centers for Disease Control and Prevention's (CDC) Operational

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

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 payroll 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

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).

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

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/dotusets/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).

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

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.counciloncj.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/S0735-0757\(20\)30307-7/fulltext](https://www.ajemjournal.com/article/S0735-0757(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 points⁵⁸ during the pandemic as compared to 1.0 percentage points for Black men⁵⁹ 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 scores⁶² and reduced familial and childhood wellbeing.⁶³

Food, Housing, and Employment Hardships, <https://www.cbpp.org/research/poverty-and-inequality/track-the-covid-19-recessions-effects-on-food-housing-and> (last visited May 8, 2021).

⁵¹ Women have carried a larger share of childcare responsibilities than men during the COVID-19 crisis. See, e.g., Gema Zamarró & 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>.

⁵² 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).

⁵³ 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).

⁵⁴ 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).

⁵⁵ See, e.g., Michael Graustone & 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/>.

⁵⁶ 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/Imoges/pdf/credit_reports/report-credit-conundrum-2013.pdf.

⁵⁷ Irwin Garfinkel, Sara McLanahan, Christopher Wimer, eds., Children of the Great Recession,

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 employment⁶⁴ 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

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/w26151>.

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): 17056–66 (July 20, 2020), available at <https://www.pnas.org/content/117/30/17056>.

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/empst1.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/empst/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/empst/cpseea05.htm> (last visited May 8, 2021).

⁵⁵ Blise Gould & Jori Kandra, Wages grow in 2020 because the bottom fell out of the low-wage labor market, Economic Policy Institute (Feb. 24, 2021), <https://files.epi.org/pdf/219410.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/osmf/research-papers/2021/pdf/ec210020.pdf>.

⁵⁶ Center on Budget and Policy Priorities, Tracking the COVID-19 Recession's Effects on

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

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. 223:106–93 (Aug. 1, 2020), available at [https://www.jpeds.com/article/S0022-3476\(20\)30600-5/abstract](https://www.jpeds.com/article/S0022-3476(20)30600-5/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.⁸⁵ Sarah Flood, Miriam King, Renae Rodgers, Steven Ruggles and J. Robert Warren, Integrated Public Use Microdata Series, Current Population Survey: Version 6.0 [dataset], Minneapolis, MN: IPUMS, 2020. <https://doi.org/10.18128/0030.V6.0>; 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 & Sobropena, *supra* note 73.

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 Sobropena, 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.

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.⁶⁶ 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

⁶⁶ 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-miseta-report.aspx> (discussing the impact of COVID-19 on minority owned businesses).

⁸⁸ U.S. Bureau of Labor Statistics, All Employees, State Government [CES909200001] and All Employees, Local Government [CES9093000001], retrieved from FRED, Federal Reserve Bank of St. Louis, <https://fred.stlouisfed.org/series/CES909200001> 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 I.I.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 I.I.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 Hendron, *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 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 10237:1507 (May 23, 2020), available at <https://www.thelancet.com/journals/lancet/article/PIIS0140-6736%2020%2931200-9/fulltext>.

⁹⁸ *Id.*

⁹⁹ Joanna Gatens 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):1440 (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/wmh3.350> (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/>.

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

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 telowork 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

of Labor Statistics, May 2020 Metropolitan and Nonmetropolitan Area Estimates listed by county or town, https://www.bls.gov/oes/current/county_hnks.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.

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/oesrcst.htm> (last visited May 1, 2021); U.S. Bureau

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

¹⁰⁸ 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/103930/state-tax-and-economic-review-2020-q3_0.pdf.

¹⁰⁹ National League of Cities, City Fiscal Conditions (2020), available at https://www.nlc.org/wp-content/uploads/2020/00/City_Fiscal_Conditions_2020_FINAL.pdf.

¹¹⁰ Surveys conducted by the Center for Indian Country Development at the Federal Reserve Bank of Minneapolis in March, April, and September 2020. See Moreno & Sobrepona, *supra* note 73.

¹¹¹ See, e.g., Fitzpatrick, Haughtwout & 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.

¹¹² 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.

¹¹³ U.S. Bureau of Labor Statistics, All Employees, State Government [CES9092000001] and All Employees, Local Government [CES9093000001],

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

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.

¹⁰⁸ ARPA, *supra* note 16.

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* * $[(1 + \text{growth adjustment})^n]$, 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 U.S. Census Bureau, Government Finance and Employment Classification Manual (Dec. 2000), <https://www2.census.gov/govs/class/classfull.pdf>.

¹¹⁸ 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>.

¹¹⁹ 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>.

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.

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*

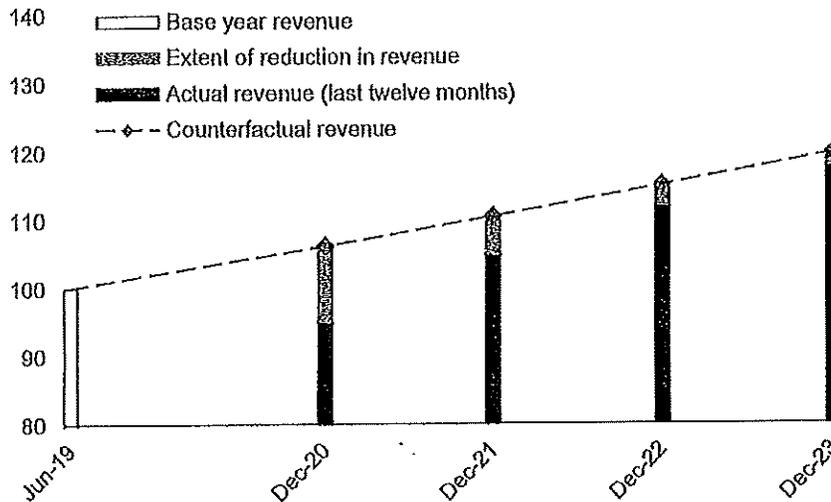
revenue less actual revenue. If actual revenue exceeds counterfactual revenue, the extent of the reduction in revenue is set to zero for that calculation date.

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
<i>n</i> (months elapsed)	18	30	42	54
<i>Counterfactual revenue:</i>	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 building¹²³ 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 do to 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 amendments¹²⁷ 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,

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 113-21. *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/ftp/zy/pdf.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_mny_2016.pdf; Claudia Copeland, *Clean Water Act: A Summary of the Law, Congressional Research Service* (Oct. 18, 2016), <https://fas.org/sgp/crs/misc/RL30930.pdf>; Jonathan L. Romseur, *Wastewater Infrastructure: Overview, Funding, and Legislative Developments, Congressional Research Service* (May 22, 2018), <https://fas.org/sgp/crs/misc/R44063.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_500_version.pdf; Environmental Protection Agency, *Drinking Water*

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).

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 be 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, underserved, or rural communities? How do these projects differ from DWSRF 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. 18, 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_o.pdf; Environmental Protection Agency, National Benefits Analysis for Drinking Water Regulations, <https://www.epa.gov/swda/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

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 6.74 of the non-tribal population. Federal Communications Commission, Fixed Broadband Deployment, <https://broadbandmap.fcc.gov/#/> (last visited May 9, 2021).

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

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://daas.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](https://www.nysac.org/files/BroadbandUpdateReport2017(1).pdf).

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 2017¹⁴⁶ 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

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://ecsapi.fcc.gov/file/101030085118517/FCC%20RDP%20Jan%203%20Rx%20Porte.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

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-4698-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).

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

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-15-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, 2021), 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-Fixed-Broadband-Tiers-2020-06.xls> www.oecd.org/sti/broadband/broadband-statistics.

¹⁵⁵ Rural Digital Opportunity Fund, Report and Order, 35 FCC Red 686, 690, para. 8 (2020), available at <https://www.fcc.gov/document/fcc-launches-20-billion-rural-digital-opportunity-fund-0>.

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

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

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 predetermined 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 governments¹⁰⁰), 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 interpretation¹⁰¹ 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

¹⁰⁰In 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.

¹⁰¹For 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 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).

¹⁶³ Congressional Budget Office, *An Overview of the Economic Outlook: 2021 to 2031* (February 1, 2021), available at <https://www.cbo.gov/publication/56965>.

¹⁶⁴ 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).

¹⁶⁵ 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).

¹⁶⁶ 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).

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.¹⁰⁷

(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.¹⁰⁸ 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

¹⁰⁷ 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/149106/sustainable-budgeting-in-the-states_1.pdf.

¹⁰⁸ 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.¹⁰⁰ 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

¹⁰⁰ 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.¹⁷⁶ This process will allow the Secretary to respond to the

¹⁷⁶ The interim final rule also provides that Treasury may extend any deadlines.

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

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

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-

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.¹⁷⁰ 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 2021¹⁷⁹) 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

¹⁷⁰ 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/lans.101.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."¹⁰¹ 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."¹⁰² 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

¹⁰¹ 5 U.S.C. 553(a)(2).

¹⁰² 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.¹⁶³ 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.¹⁶⁴

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.

¹⁶³ 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>.

¹⁶⁴ See, e.g., Fitzpatrick, Haughwout & Satron, 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.

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

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."¹⁰⁵ 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;¹⁰⁶ 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

¹⁰⁵ 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).

¹⁰⁶ 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/lp339-public-sector-jobs-crisis/> (last visited May 9, 2021).

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 GRF 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

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 ^a)
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	5,050,000	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	2,039,040
Total	(^{**})	N/A	55,760-75,768	141	851,850-1,151,850	41,570,280-56,210,280

^aBureau of Labor Statistics, U.S. Department of Labor, Occupational Outlook Handbook, Accountants and Auditors, on the internet at <https://www.bls.gov/ool/occupational-outlook/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:

- Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information has practical utility;
- the accuracy of the estimate of the burden of the collection of information;
- ways to enhance the quality, utility, and clarity of the information to be collected;
- ways to minimize the burden of the collection of information; and
- 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 oha_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 (42 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.	Purpose.
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;

(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:

$$\text{Max} \{ [\text{Base Year Revenue} * (1 + \text{Growth Adjustment})^{\frac{n}{12}}] - \text{Actual General Revenue}_t; 0 \}$$

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(e) 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 4910-AK-P

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Appendix B
Cost Estimates, Category Expenditure Limits, and
Implementation Schedules

7/17/21 changes

Response to the pandemic and its negative effects in order to assist,
households, businesses, and non - profits

Water and sewer bill accounts

Estimated cost of these actions:

- Payment of delinquent accounts	\$ 10,000.00
- Water and sewer account credits	\$ 169,100.00
- Total	\$ 179,100.00

Fiscal year (s)

FY22

Percentage of total federal grant	3.73%
Funds used from first payment	\$ 179,100.00
Funds used from second payment	\$ -
Funds remaining from first payment	\$ 2,088,393.00
Funds remaining from second payment	\$ 2,267,493.00

Signage

Estimated cost of these actions

- Signage	\$ 140,000.00
- Total	\$ 140,000.00

Fiscal year (s)

FY22, FY23&FY24

Percentage of total federal grant	3.00%
Funds used from first payment	\$ 60,000.00
Funds used from second payment	\$ 80,000.00
Funds remaining from first payment	\$ 2,028,393.00
Funds remaining from second payment	\$ 2,187,493.00

Improvements in Central Business District

Estimated cost of these actions	
- Facades, signs, accessibility	\$ 250,000.00
- Total	\$ 250,000.00

Fiscal year (s)	FY22, FY23&FY24
Percentage of total federal grant	5.50%
Funds used from first payment	\$ 125,000.00
Funds used from second payment	\$ 125,000.00
Funds remaining from first payment	\$ 1,903,393.00
Funds remaining from second payment	\$ 2,062,493.00

Non- Profits

Estimated cost of these actions	
- John H Enders FD	\$ 80,000.00
- Barns of Rose Hill	\$ 40,000.00
- Housing assistance	\$ 120,000.00
- Total	\$ 240,000.00

Fiscal year (s)	FY22, FY23 & FY24
Percentage of total federal grant	5.20%
Funds used from first payment	\$ 160,000.00
Funds used from second payment	\$ 80,000.00
Funds remaining from first payment	\$ 1,743,393.00
Funds remaining from second payment	\$ 1,982,493.00

Purchase of equipment and supplies

Estimated cost of these actions	
- Purchase of equipment, etc	\$ 25,000.00
- Total	\$ 25,000.00

Fiscal year (s)	FY22
Percentage of total federal grant	0.50%
Funds used from first payment	\$ 25,000.00
Funds used from second payment	\$ -
Funds remaining from first payment	\$ 1,718,393.00
Funds remaining from second payment	\$ 1,982,493.00

Improve Communications

Estimated cost of these actions

- Website	\$	8,000.00
- Radios	\$	60,000.00
- Other imp.	\$	60,000.00
- Total	\$	128,000.00

Fiscal year (s)

FY22 & FY23

Percentage of total federal grant		2.82%
Funds used from first payment	\$	128,000.00
Funds used from second payment	\$	-
Funds remaining from first payment	\$	1,590,393.00
Funds remaining from second payment	\$	1,982,493.00

Premium Pay

Estimated cost of these actions

- Provide premium pay	\$	172,000.00
- Total	\$	172,000.00

Fiscal year (s)

FY22

Percentage of total federal grant		3.70%
Funds used from first payment	\$	172,000.00
Funds used from second payment	\$	-
Funds remaining from first payment	\$	1,418,393.00
Funds remaining from second payment	\$	1,982,493.00

Address reduction in revenues to Town

Estimated cost of these actions

-	\$	-
- Total	\$	-

Fiscal year (s)

Percentage of total federal grant		
Funds used from first payment	\$	-
Funds used from second payment	\$	-
Funds remaining from first payment	\$	1,418,393.00
Funds remaining from second payment	\$	1,982,493.00

Complete necessary water and sewer infrastructure projects

Estimated cost of these actions

- Cost of the projects	\$ 3,077,986.00
- Total	\$ 3,077,986.00

Fiscal year (s)

FY22,FY23,FY24, FY25,FY26 & FY27

Percentage of total federal grant

67.90%

Funds used from first payment	\$ 1,278,393.00
Funds used from second payment	\$ 1,792,493.00
Funds remaining from first payment	\$ 140,000.00
Funds remaining from second payment	\$ 190,000.00

Pay for administrative costs

Estimated cost of these actions

- Administrative costs per FY (5.5)	\$ 60,000.00
- Total	\$ 330,000.00

Fiscal year (s)

FY22,FY23,FY24, FY25,FY26 & FY27

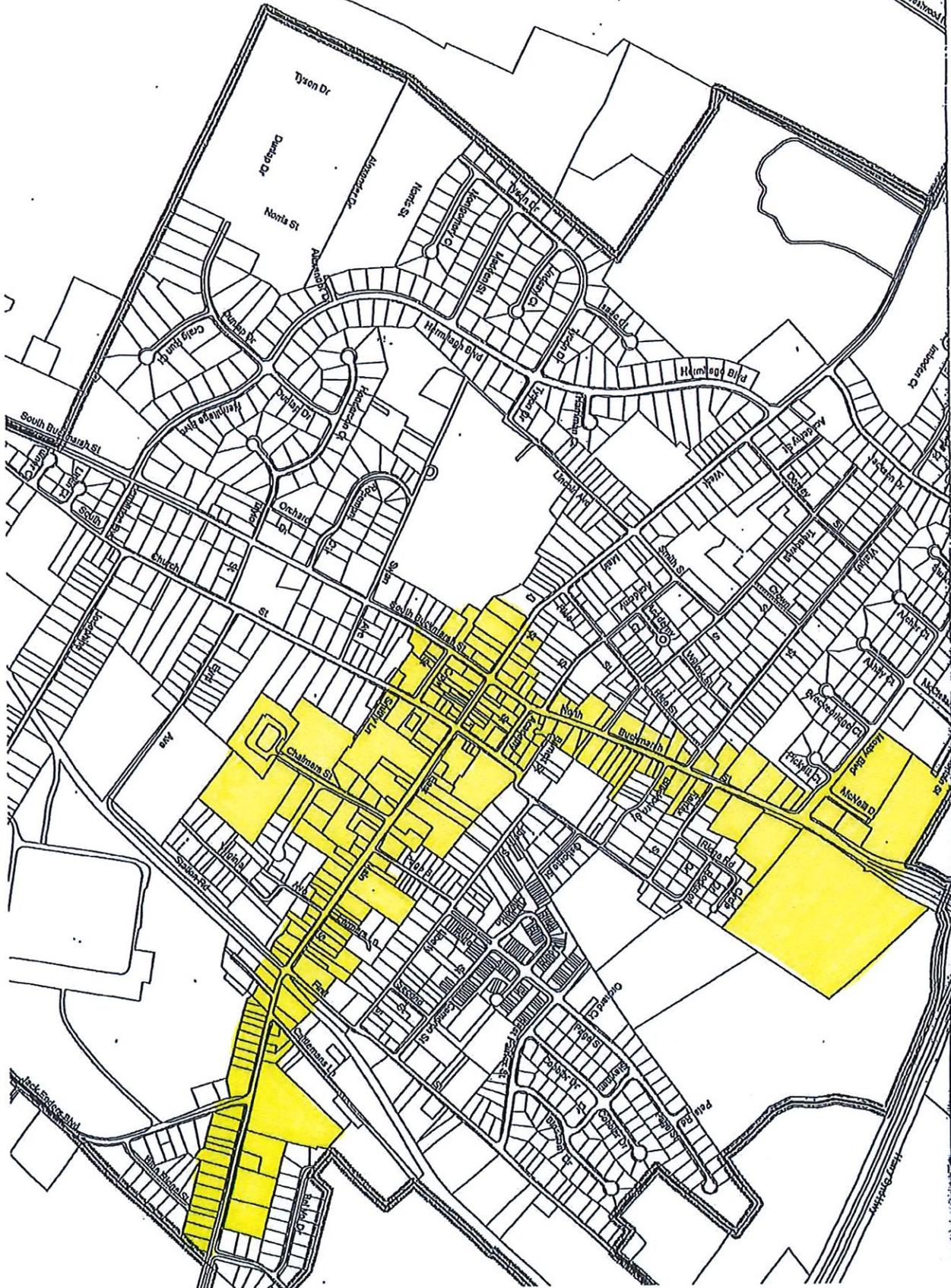
Percentage of total federal grant

7.27%

Funds used from first payment	\$ 140,000.00
Funds used from second payment	\$ 190,000.00
Funds remaining from first payment	\$ -
Funds remaining from second payment	\$ -

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Appendix C Description of Central Business District



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Appendix D
Necessary water and sewer (including stormwater)
infrastructure projects

7/7/21 *Chunwee S*

The following is a list of projects that should be prioritized for completion as a part of the Plan.

Water and sewer

Purchase and install security improvements at water and sewer facilities

Osborne Street, North Church, Bundy Street water and sewer improvements

Purchase and install upgrades to the water and sewer system monitoring and communication network

Computer upgrades at Business Office, Water Treatment Plant, and Wastewater Treatment Plant

Water

Conduct a leak study on the water distribution system to identify problems and provide additional information regarding infrastructure projects that need to be completed and which projects should be prioritized over others

Josephine Street water system improvements

Replace water meter retrofitters/meter setters

Provide for biproduct stripping, aeration, and/or power venting in storage facilities

Booster building repairs (includes pump replacement, pump control, valve replacement, and ventilation)

Water treatment plant improvements (includes replacement of lagoon liners, replacement of pumps, repair of settling basins, eliminating river pump disconnects, and addressing erosion from road stormwater runoff at water intake)

Replace water meters

Rockcroft subdivision water improvements

Bel Voi Street water improvements, including water improvements through True Value property

Battletown Drive water improvements

Replace South Church Street water main from Taylor Street to Crow Street

Construct a water main in Crow Street connecting the mains in Buckmarsh and Church Streets

Acquire and deploy meter reading technology

Replace transmission main from WTP

Sanitary Sewer

Conduct an inflow and infiltration (I&I) study in sewer collection system to identify problems and provide additional information regarding infrastructure projects that need to be completed and which projects should be prioritized over others.

Create a sump pump/sewer system connection abatement program

Upgrade Hermitage sewer pump station and add emergency generator

Upgrade Berryville Glen sewer pump station and add emergency generator

Upgrade First Street (Boom Road) pump station and replace or overhaul emergency generator.

Water treatment plant improvements (including replacement of membranes, crane repair/replacement, elimination of blower disconnects, replacement/refurbishment of pumps, lagoon cleaning and repair

Rehabilitate manholes (may be identified as needing repair or replacement in I&I study)

Repair/replace sewer mains (may be identified as needing repair or replacement in I&I study)

Storm Sewer

Complete work to eliminate ponding on Virginia Avenue

Complete work to modify Jackson Drive pond to divert stormwater from Dorsey Street

Complete piping to convey stormwater from Academy Street Extended to a defined channel

Complete work to convey stormwater from the end of Ashby and Archer Courts to a defined channel

Complete work to convey stormwater from Dorsey and Treadwell Streets to the stormwater collection system in Main Street and upgrade the storm structure that conveys water from a point west of Smith Street to the Town Run at Lincoln Avenue

Improve storm structure in Main Street west of 36 and 37 East Main Street to convey stormwater to the Town Run at Chalmers Court

Address necessary maintenance of Town Run and its tributaries to ensure proper flow of stormwater

Modify stormwater management areas to improve performance

Repair or modify stormwater conduits under sidewalks to address blockages

Reconstruct bridge in Rose Hill Park to reduce restriction of Town Run

Complete work to improve stormwater management on Crow Street

Berryville Town Council Item Report Summary
July 13, 2021

Item Title

Consent Agenda - Approval of Minutes

Prepared By

Background/History/General Information

A consent agenda is a tool utilized by the Town Council for grouping routine business and reports into one agenda item.

Any Council member may, as a matter of privilege, remove an item from the consent agenda and have it replaced with another agenda item.

Findings/Current Activity

The consent agenda comprises three items to be considered for approval:

Minutes of the June 8 regular meeting of the Town Council.

Minutes of the June 22 Town Council work session.

Minutes of the June 28 Community Development Committee meeting.

Financial Considerations

None.

Schedule/Deadlines

Timely approval of minutes is preferable, but no deadline for such approval exists.

Other Considerations

None.

Attachments

1. Consent Agenda

Recommendation

Approval.

Sample Motion

I move that the Council of the Town of Berryville approve the consent agenda.

MINUTES
BERRYVILLE TOWN COUNCIL
Berryville-Clarke County Government Center
Regular Meeting
June 8, 2021
7:00 p.m.

Town Council: Present—Harry Lee Arnold, Jr., Mayor; Erecka L. Gibson, Recorder; Donna McDonald; Diane Harrison; Grant Mazzarino; Kara Rodriguez

Staff: Present--Keith Dalton, Town Manager; Christy Dunkle, Community Development Director; Chief Neal White, Berryville Police Department; Paul Culp, Town Clerk; Cynthia Poulin, Finance Clerk

Press: Mickey Powell, *The Winchester Star*.

1. Call to Order

Mayor Arnold called the meeting to order at 7:00 p.m.

2. Pledge of Allegiance

3. Approval of Agenda

Mayor Arnold noted the need to add a presentation under item four.

Ms. McDonald moved to approve the agenda. The motion passed by unanimous voice vote.

4. Presentations/Awards/Recognitions

The Council presented to Mrs. Leona Fritts Cain the **attached** resolution honoring her on her upcoming 100th birthday.

5. Public Hearings

None.

6. Discussion of Public Hearing Items

None.

7. Citizens' Forum

Berryville Main Street president Kim Ragland gave a brief presentation on the organization's activities including decoration of flower boxes, the parking meter contest, Berryville Bucks, the yard sale, Music in the Park, and rebranding efforts. She said BMS is fiscally healthy despite the pandemic, and introduced several officers who were present at the meeting.

Pam Kelly addressed the Council regarding the drive-up mailbox on Academy Street, which she said presents a safety hazard because of motorists driving on the wrong side of the street in order to access the box. There was a discussion of how the Town might intervene with the Post Office, and of alternative locations.

8. Consent Agenda

The consent agenda comprised the minutes of the May 11 Town Council regular meeting, the May 17 Town Council special session, the May 18 meeting of the Community Development Committee, and the May 25 meeting of the Personnel Committee.

Ms. Harrison moved to adopt the consent agenda as presented. The motion passed by unanimous voice vote.

9. Unfinished Business

Proposed Amendment to the FY21 Budget

Mr. Dalton explained that the FY21 budget as amended on July 14, 2020, had provided \$85,000 for the final payment for work done on the Town's three water storage tanks, with the amount budgeted having been based on a payment plan developed before the addition to the scope of additional work addressing damage to the ground reservoir floor and top section. He said the payment due in FY21 was actually \$155,700.

Recorder Gibson made the attached motion amending the budget and appropriating the necessary funds, with the motion passing by unanimous voice vote.

Proposed Reserves Policy and Reserves Specifics

Mr. Dalton noted that the Town creates self-encumbered reserves in its general, water, and sewer funds to equalize revenue shortfalls, pay for unexpected expenses, and pay for planned projects and purchases. He said the proposed policy was intended to structure Town reserves to accomplish this in a transparent manner. He said it would provide for the Council to establish a Fund Reserve Specifics document outlining the purpose of reserves and the amount encumbered in each, with the treasurer providing the Council with regular reports on the status of reserve funds.

Mr. Dalton reviewed the proposed policy for the Council.

Mr. Dalton said he recommended identifying a specific reserve for Town-maintained streets and that this change could be made the next time the Council reviews the matter.

Ms. Rodriguez said the proposed policy was a good start and that the Town should plan for adding reserves annually. Mr. Dalton said this should be part of the budget discussion each year.

Recorder Gibson said the Budget and Finance Committee would discuss budget categories again soon after the passage of the budget, with particular reference to the influx of funds provided by the American Rescue Plan Act (ARPA).

Recorder Gibson, Mr. Dalton, and Ms. Poulin discussed the provision of updates in monthly reports to the Council. There was also a brief discussion of the need for updates to the capital improvements program analysis and of what should be in it.

Ms. Rodriguez moved that the Council of the Town of Berryville adopt the **attached reserve policy and reserve specifics document. The motion passed by unanimous voice vote.**

Approval of the FY22 Budget and Appropriation of Funds

Recorder Gibson made the **attached motion for approval of the FY21-22 budget. The motion passed by unanimous voice vote.**

American Rescue Plan Act of 2021

Mr. Dalton said he was still in the process of reading federal documents in search of guidance on acceptable uses of the expected funds. He recommended that the Council make findings and then decide usage on the basis of those findings. He said he had determined that expenditures on stormwater projects were permissible. He said hazard pay for employees was a matter of local governments determining which personnel were considered essential. He said he would provide his conclusions in a document to be distributed for the next Council meeting.

Ms. Rodriguez ascertained from Mr. Dalton that the Town had not yet received the first 50 percent of the expected funding. Mr. Dalton explained that a jurisdiction of Berryville's size must apply through the Commonwealth rather than receiving the funds directly from the federal government as larger jurisdictions do.

Ms. Rodriguez and Mr. Dalton discussed his suggestion, from a previous meeting, that the Town minimize administrative burdens and costs by compiling a list of non-profits eligible for assistance

and working from that list rather than deciding eligibility and compliance on an *ad hoc* basis. There was a discussion of façade improvements in the downtown area. Mr. Dalton suggested accessibility as another worthwhile matter.

Recorder Gibson urged avoidance of a process that might result in the exclusion of any non-profits. She also suggested some means of learning what Covid-related aid non-profits might have received from other sources.

10. New Business

No new business came before Council.

11. Council Member Reports

Mayor Arnold said he was pleased for the Council and staff to return to normal seating arrangements after many months of observing pandemic protocols. He also said he had recently had the opportunity to speak about Town matters in an address to the Rotary Club.

Ms. Rodriguez congratulated Blue Ridge Studio on the success of its first recital at the fairgrounds, and also congratulated local graduates.

12. Staff Reports

Public Works

Mr. Dalton said the Virginia Department of Transportation was repairing sidewalks on Main and Buckmarsh streets, reducing trip hazards.

There was a discussion of whether Rappahannock Electric Cooperative could place poles behind sidewalks when carrying out pole replacement. Mr. Dalton said he would contact REC about the matter.

Public Utilities

Ms. Harrison if water system demand has increased with new development occurring, and Mr. Dalton said it has but that the utility system is keeping up.

Police

Nothing was added to the written report.

Community Development

Ms. Dunkle added nothing to her written report.

Administration and Finance

Ms. Harrison and Ms. Poulin briefly discussed details of the cash balance cited in the monthly report.

Recorder Gibson and Mr. Dalton briefly discussed the closure of particular bank accounts.

Town Manager

Mr. Dalton said he and Ms. Dunkle had been discussing the annexation of a particular property in the annexation area that had attracted developmental interest and therefore required prompt action by the Town if the Town wished to proceed with annexation. He said annexation of the Public Works facility would also be desirable.

Mr. Dalton briefly described annexation activity since 1992, and there was brief discussion of the process involved.

The Council agreed to hold a work session on June 22 at 3:00 p.m. to discuss the matter.

13. Committee Updates

Budget and Finance

Recorder Gibson had nothing to add.

Community Development

Ms. Rodriguez said the committee, having met with a representative of the Town's website designer and host to discuss possible improvements, would like for the Council to approve funding for a redesign package priced at \$7,880, with the funds coming from ARPA, if the matter is eligible, or from the general fund contingency funds otherwise.

Ms. Harrison said the website is the Town's public face and a key element in economic development and that it has not been updated since 2014. She said it should be refurbished for integration with current branding and marketing efforts, improvement of navigation, elimination of unneeded pages, and enhancement of phone compatibility.

Recorder Gibson asked Mr. Dalton what the Town currently pays the contractor. He said that it currently pays only for hosting and that he would check on the precise figure.

Recorder Gibson asked whether the Town had received negative feedback about the website. Ms. Rodriguez said she sees social media posts indicating that residents are confused about policy changes when they occur, especially regarding trash. Recorder Gibson said the website prominently displays announcements about such developments. Ms. Rodriguez explained improvements that would be possible with a redesign. Recorder Gibson said people would find out what they need to know if they would merely look at the website.

Ms. Rodriguez said the website should have a more prominent means of providing comprehensive information for people considering moving to or opening a business in Berryville.

Recorder Gibson suggested that a website upgrade represented a hidden cost of implementing the branding program already agreed upon. Ms. Rodriguez said the matter had been under consideration for quite some time in conjunction with the branding initiative and other development measures such as wayfinding signs.

Ms. Harrison concurred with Ms. Rodriguez, saying that the website redesign had first been suggested several years ago but that proceeding with it would have been inefficient and more expensive if undertaken before the branding and its effects on content. She said ARPA funding created an opportunity to proceed in the near future.

Recorder Gibson said she would not support use of contingency funds, which she said were by definition set aside for unanticipated emergencies as opposed to desires not provided for in a budget. She said ARPA funds would be appropriate. Ms. Harrison concurred.

Recorder Gibson ascertained from Ms. Harrison that the reasons for the redesign could be summed up in terms of branding, navigation, and technological enhancement.

There was a discussion of whether to have a calendar of community events on the website and how to manage it. Mayor Arnold suggested linkage with County postings and expressed misgivings about the possibility of staff being unduly burdened by the screening of events and the need for frequent updates.

Mayor Arnold asked Mr. Dalton whether a website redesign would be ARPA-eligible. Mr. Dalton said he was not sure. Mayor Arnold said the matter should be kept under consideration if so.

Ms. McDonald said the current treatment of events is adequate and that a redesign would result in perpetual revision and recurring expense. She said she opposed using relief funds for a website redesign and that it would not be helpful to residents. She said she was not opposed to an upgrade but that the timing was not right and that a website redesign was not a worthwhile expenditure of ARPA funds.

Ms. Harrison said the website attracts businesses and tourists and therefore should logically be ARPA-eligible as an economic development expense.

Recorder Gibson asked to see a copy of the PowerPoint presentation given by the CivicPlus representative. Mr. Mazzarino said he would like to see it also, and cautioned that it would necessary to plan for the amount of site maintenance and updating involved in a thorough overhaul. He also noted that the website is optimized for an outdated browser.

The committee agreed to meet on June 28 at 9:00 a.m. for further discussion.

Personnel

Mayor Arnold said the Personnel Committee recommended the appointment of Tom Parker to the Planning Commission to fill the unexpired term of Deb Zimmerman, and that John Hudson be appointed to fill the seat on the Berryville Area Development Authority that Mr. Parker would be vacating.

Recorder Gibson moved that the Council of the Town of Berryville appoint Thomas R. Parker, Jr., to the Berryville Planning Commission to fill the unexpired term of Deb Zimmerman, which expires on November 12, 2021. The motion passed by unanimous voice vote.

Recorder Gibson moved that the Council of the Town of Berryville appoint John Hudson to the Berryville Area Development Authority to fill the unexpired term of Tom Parker, which expires on December 30, 2021. The motion passed by unanimous voice vote.

Public Safety

Ms. McDonald said the committee would not meet in June.

Streets and Utilities

Ms. Harrison said the committee would not meet in June.

14. Closed Session

Ms. Harrison moved that the Council of the Town of Berryville enter closed session in accordance with §2.2-3711-A-1 of the Code of Virginia, to discuss and evaluate the performance of a specific individual.

The Council entered closed session at 8:52 p.m. and reconvened in open session at 9:47 p.m.

Ms. Rodriguez moved that that the Council of the Town of Berryville adopt the **attached resolution certifying it has convened a closed meeting on this date pursuant to an affirmative**

recorded vote and in accordance with the provisions of The Virginia Freedom of Information Act.
The motion passed by unanimous roll-call vote.

15. Other

No other business came before the Council.

16. Adjourn

The Council adjourned by unanimous voice vote on a motion by Recorder Gibson at 9:49 p.m.

Erecka L. Gibson, Recorder

Paul Culp, Town Clerk

Berryville – Clarke County
Government Center
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BERRYVILLE
EST. 1798 *Genuine* VIRGINIA

**A RESOLUTION OF THE COUNCIL OF THE TOWN OF BERRYVILLE, VIRGINIA
HONORING THE 100TH BIRTHDAY OF LEONA FRITTS CAIN**

WHEREAS, Leona Fritts Cain was born on June 26, 1921 in Harpers Ferry, WV; and

WHEREAS, after graduating from Shepherd College in 1943, Mrs. Cain taught junior high English in several Maryland school districts; and

WHEREAS, Mrs. Cain moved to Berryville in 1952 with her husband Dr. Joseph Cain when he joined the dental practice of Dr. Blanton Allen; and

WHEREAS, Dr. and Mrs. Cain have three children (Carolyn Clotzman of Clarke County, Deborah Wine of Greencastle, PA, and Judith Oliver of Powhatan, VA), six grandchildren, and seven great-grandchildren with another due in July; and

WHEREAS, Mrs. Cain has been a member of Duncan Memorial United Methodist Church since 1952 and has served as an officer of the church, member of several committees, and Sunday school teacher; and

WHEREAS, Mrs. Cain was President of the American Cancer Society of Clarke County and was awarded the President's Cup from the Commonwealth of Virginia American Cancer Society chapter for raising over \$10,000 for the organization; and

WHEREAS, Mrs. Cain was a member and officer of the Battletown Garden Club, Berryville Mothers Club, and Berryville Women's Club; and

WHEREAS, Mrs. Cain enjoys playing bridge, golfing, and cooking and entertaining for her family and friends;

NOW, THEREFORE, BE IT RESOLVED, that the Council of the Town of Berryville congratulates Mrs. Leona Cain on her one hundredth birthday.

By order of the Town Council on this eighth day of June, 2021.

Harry Lee Arnold, Jr., Mayor

Erecka L. Gibson, Recorder

Donna Marie McDonald
Ward 1

Diane Harrison
Ward 2

Grant Mazzarino
Ward 3

Kara C. Rodriguez
Ward 4

Keith R. Dalton
Town Manager

Motion for Approval
Amending the 2020-2021 Fiscal Year Budget
of the Town of Berryville

Date: June 8, 2021

Motion By: *Gibson*

I hereby move that the Council of the Town of Berryville amend the FY 2021 Budget and appropriate funds as follows:

Water Fund

Revenues

Fund Balance (Line Item # 501-3000000-0000) increase item from \$0 to \$70,700

Expenses

Tank Repair and Maint (Line Item # 501-4094200-8102) increase item from \$85,000 to \$155,700

VOTE

Aye: *Unanimous voice vote.*

Nay:

Absent:

Abstain:

ATTEST

Erecka Gibson, Recorder

Motion for Approval
Reserves Policy and Reserves Specifics

Date: June 8, 2021

Motion By: *Rodriguez*

I hereby move that the Council of the Town of Berryville adopt the attached reserve policy and reserves specifics document.

VOTE

Aye: *Unanimous voice vote*

Nay:

Absent:

Abstain:

ATTEST

Erecka Gibson, Recorder

Motion for Approval
2021-2022 Fiscal Year Budget
of the Town of Berryville

Date: June 8, 2021

Motion By: Gibson

I hereby move that the Council of the Town of Berryville adopt the attached budget for fiscal year 2021-2022, an approved copy of which shall be incorporated into the and become a part of the official minutes of this meeting, and further as set forth in this approved budget shall hereby be appropriated for fiscal year 2021-2022.

VOTE

Aye: Unanimous voice vote.

Nay:

Absent:

Abstain:

ATTEST


Erecka Gibson, Recorder

Motion to Enter Closed Session

I move that the Council of the Town of Berryville enter closed session in accordance with §2.2-3711-A-1 of the Code of Virginia, to discuss and evaluate the performance of a specific individual.

DATE: June 8, 2021

MOTION: *Harrison*

VOTE:

Aye: *Unanimous roll-call vote.*

Nay:

Absent/Abstain:

ATTEST: _____

Erecka Gibson, Recorder

TOWN COUNCIL
MOTION
CLOSED SESSION RESOLUTION

DATE: June 8, 2021

MOTION BY: *Rodriguez*

SECOND BY: _____

I move that the Council of the Town of Berryville adopt the following resolution certifying it has convened a closed meeting on this date pursuant to an affirmative recorded vote and in accordance with the provisions of The Virginia Freedom of Information Act:

Resolution

WHEREAS, Section 2.2-3712.D of the Code of Virginia requires a certification by this Council that such closed meeting was conducted in conformity with Virginia law,

NOW, THEREFORE, BE IT RESOLVED that the Council hereby certifies that, to the best of each member's knowledge, (i) only public business matters lawfully exempted from open meeting requirements by Virginia law were discussed in the closed meeting to which this certification resolution applies, and (ii) only such public business matters as were identified in the motion convening the closed meeting were heard, discussed or considered by the Council.

VOTE:

Aye: *Unanimous roll-call vote.*

Nay:

Absent/Abstain:

ATTEST: _____

Erecka Gibson, Recorder

Town Council Policies

Reserves

2021- 01

Approved: 6/8/21

Purpose

The Town Council creates reserves in all three funds (general, water, and sewer). These reserves are self-encumbered to enable the Council to equalize revenue shortfalls, pay for unexpected expenses, and pay for planned projects and purchases.

This policy is intended to structure the Town's reserves in a manner that prepares for the scenarios enumerated above in a manner that is transparent and easily accessed by the public.

Because the reserve funds are self-encumbered, the Council reserves the right to utilize these funds at any time as it deems appropriate, provided that such use conforms to the laws of the Commonwealth of Virginia and the Town of Berryville.

Policy

I. Reserve Policy and Fund Reserve Specifics

The Town Council establishes this policy in order to provide a framework for self-encumbering funds to meet the Town's needs. These funds are encumbered to enable the Council to equalize revenue shortfalls, pay for unexpected expenses, and pay for planned projects and purchases.

The Council will establish a Fund Reserve Specifics document in which it outlines the purpose of reserves and the amount encumbered in each reserve.

During the annual budget review and approval process and at other times it deems necessary, the Town Council will review this policy and the Funds Reserve Specifics to determine whether the Town's needs are met.

II. Use of Reserved Funds

Reserved funds may, in accordance with applicable provisions of law and the procedures contained in this policy, be expended as specifically enumerated within an approved budget or as needed during a budget year when the need for the funds was not expected.

III. Reporting

The Treasurer will provide the Council with regular reports regarding the status of reserved funds.

Procedure

I. Reserve Policy and Fund Reserve Specifics

As a part of the annual budgeting process, the Budget and Finance Committee of the Town Council will review this policy and the Fund Reserve Specifics and recommend any changes that it determines appropriate to the Town Council.

The Town Council will review the Fund Reserve Specifics as a part of its budget preparation and review. The Fund Reserve Specifics will be included in the approved budget document.

Changes may be made to the Fund Reserve Specifics at any time by an affirmative vote of the majority of the Council duly assembled.

II. Use of Reserve Funds

Reserve funds to be expended in a given year may be budgeted and appropriated as a part of a budget or budget amendment. The reserve to be used will be shown as a revenue and the project for which the funds will be used will be shown as an expense.

Reserve funds may be utilized within a budget year at the discretion of the Town Manager, provided that:

- a. the threshold requiring the advertisement of a budget amendment is not met and
- b. a full accounting of the expenditure or proposed expenditure is provided to the Council for review at its next regularly scheduled meeting.

Reserve funds may be utilized within a budget year at the discretion of the Council, provided that the use is approved by an affirmative vote of the majority of the Council duly assembled, and all budget amendment advertising requirements are met, if applicable.

III. Reporting

The Treasurer will provide the Council with an up-to-date account of reserves as a part of the Treasurer's monthly Town Council meeting packet report.

Fund Reserve Specifics

Adopted: June 8, 2021

This document was adopted in accordance with the Town Council's Reserves Policy.

General Fund

General fund reserve

This reserve is established in order to provide funding for unforeseen expenses and to supplement revenues as the Council deems necessary. General fund monies budgeted in a given year that are neither spent nor otherwise encumbered will be placed in this reserve. The interest income from all general fund reserves is placed in this reserve.

Current reserve	\$112,788.52
Reserve goal	100% of annual debt service + 15% of annual GF operational expenses

Property Maintenance Reserve

The Town owns several properties for which the maintenance costs fall solely on the general fund. These properties include 23 East Main Street (includes Livery), Hogan's Alley, Crow Street Parking Lot, Rose Hill Park (including the John Rixey Moore Playground, Smithy Cottage but excluding the Barns of Rose Hill), Rixey Moore Parking Lot, and the old kennel located on the Wastewater Treatment Plant property.

The maintenance costs for the Public Works Facility and the Berryville-Clarke County Government Center are shared by all three funds. The Berryville-Clarke County Government Center is jointly owned with Clarke County; therefore, a separate fund is established for that property.

These funds may be made available for improvements to or maintenance of town properties.

Current reserve	\$325,000
Reserve goal	\$500,000

Berryville-Clarke County Government Center reserve

The Town and Clarke County constructed the Berryville-Clarke County Government Center in 2008. The facility is owned and maintained by both jurisdictions.

These funds may be made available for improvements to or maintenance of the Berryville-Clarke County Government Center.

Current reserve	\$100,000
Reserve goal	\$150,000

Flood Plain/Stormwater mitigation reserve

Berryville contains three major drainage areas. Each of these drainage areas contains a perennial stream: Town Run (known as Dog Run in the rest of Clarke County), Craig's Run, and Buckmarsh Run. Each of these drainage areas contains smaller contributing sub-drainage areas.

The flood plain and floodway have been identified and mapped within the Town Run drainage area. Stormwater management concerns have been identified in several sub-drainage areas of the Town Run drainage area.

These funds would be available for use on flood plain/stormwater mitigation projects.

Current reserve	\$150,000
Reserve goal	\$500,000

Wayfinding sign program reserve

In recognition of the economic benefits of marketing through specialty direction signage, the Virginia Department of Transportation developed the Community Wayfinding Signs program.

The Town created this reserve to plan for the design, siting, purchase, and installation of integrated directional signage.

Phases 1 and 2 of the project (which address design and siting) are estimated to cost \$19,000 and \$13,000 respectively. The exact cost of the last phase (purchase and installation of signs) is unknown. Phase 3 costs estimates will be developed as a part of Phases 1 and 2, but is estimated at between \$75,000 and \$100,000.

Current reserve	\$ 25,000
Reserve goal	\$135,000

Economic Development reserve

This reserve was established to provide for savings that can be used to address economic development opportunities or needs that the Town Council determines should be funded.

Current reserve	\$ 20,000
Reserve goal	\$100,000

Blight abatement reserve

The Berryville Code provides the Town Council and the Town Manager with authority to demolish/secure unsafe structures and abate blight. If the Town must address such problems, then the work is paid for with public funds and the cost billed to the property owner. If the property owner fails to pay for the work, then a tax lien is placed on the property. Generally, it takes several years for the Town to recoup any of the costs incurred addressing the unsafe conditions.

These funds would be available to pay for work required to secure or demolish unsafe structures and abate blight.

Current reserve	\$50,000
Reserve goal	\$80,000

John H. Enders Vol. Fire Department reserve

This reserve was established to provide savings that can be used to assist the John H. Enders Volunteer Fire Department and Rescue Squad; which the Town Council has declared to be an integral part of the official safety program of the Town, with capital projects.

Current reserve	\$ 30,000
Reserve goal	\$100,000

Police Equipment Replacement Reserve

This reserve was established in FY20 to fund replacement of five mobile and 10 portable radios. Funds may be used for a large purchase of equipment, but may also be used to replace radios that fail prior to the anticipated FY22 purchase.

After the radio purchase this reserve would be funded to provide monies necessary to replace departmental equipment.

Current reserve	\$55,000
Reserve goal	\$75,000

Annexation Reserve

This reserve was established to provide savings that can be used to complete work required to affect annexations.

Current reserve	\$50,000
Reserve goal	\$75,000

Water Fund

Water fund reserve

This reserve is established in order to provide funding for unforeseen expenses and to supplement revenues as the Council deems necessary. Water fund monies budgeted in a given year that are neither spent nor otherwise encumbered will be placed in this reserve. The interest income from all water fund reserves is placed in this reserve.

Current reserve	\$177,257.95
Reserve goal	100% of annual debt service + 15% of annual WF operational expenses

Water storage tank reserve

The Town maintains three water tanks within its water distribution system. The Town has maintenance contracts for the three tanks, but given the importance of these improvements it is vital to provide a reserve to address unforeseen problems that may not be covered under the annual maintenance contract.

Current reserve	\$150,000
Reserve goal	\$500,000

Water treatment plant reserve

The Town's water treatment plant was constructed in 1984.

The Town of Berryville Utility Rate Study completed in 2019 identified expenses related to the replacement/upgrade of this facility and the pumping station at the Shenandoah River. The plant and pumping station projects are planned for FY 2026 and are expected to cost an estimated \$22.6 M. Engineering work for these projects should commence in FY 2025 with an estimated cost of \$2.2 M.

These funds may be made available to address unforeseen costs at the plant or begin a replacement/upgrade project.

Current reserve	\$1,300,000
Reserve goal	\$2,200,000

Water distribution system reserve

The Town maintains a system of pipes through which water is distributed from the water plant and throughout the Town. This system includes improvements such as water mains, laterals, meters and related improvements, valves, pumps, and fire hydrants. The Town of Berryville Utility Rate Study completed in 2019 identified expenses related to the replacement/upgrade of portions of the distribution system.

Current reserve	\$ 800,000
Reserve goal	\$1,200,000

Sewer Fund

Sewer fund reserve

This reserve is established in order to provide funding for unforeseen expenses and to supplement revenues as the Council deems necessary. Sewer fund monies budgeted in a given year that are neither spent nor otherwise encumbered will be placed in this reserve. The interest income from all sewer fund reserves is placed in this reserve.

Current reserve	\$327,130.75
Reserve goal	100% of annual debt service + 15% of annual SF operational expenses

Wastewater treatment plant reserve

The Town's wastewater treatment plant became operational in 2012. The useful life of the plant is expected to be at least 25 years.

These funds may be made available to address unforeseen costs at the plant or begin a replacement/upgrade project.

Current reserve	\$1,100,000
Reserve goal	\$5,000,000

Collection system reserve

The Town maintains a system of pipes and other improvements through which wastewater is collected from customers and transmitted to the wastewater treatment plant. This system includes improvements such as sewer mains, manholes, and pump stations.

The Town of Berryville Utility Rate Study completed in 2019 identified expenses related to the replacement/upgrade of portions of the collection system.

Current reserve	\$1,500,000
Reserve goal	\$2,000,000

Membrane replacement reserve

The Town's wastewater treatment plant utilizes ultrafiltration membranes as a part of the treatment process. These membranes have an expected useful life of eight to 12 years.

These funds may be made available to address the cost of membrane maintenance and replacement. A large portion of this reserve may not need to be established if the Town enters into a pre-purchase program.

Current reserve	\$ 600,000
Reserve goal	\$1,320,000

FY 21-22 BUDGET REVENUES

<u>Account Number</u>	<u>Account Description</u>	<u>FY 2020-2021</u>	<u>FY 21-22 REQUESTED 2021-2022</u>
GENERAL FUND			
	FUND BALANCE		
100-3000000-0000	FUND BALANCE FORWARD	\$ 145,235.00	\$ 152,000.00
	TOTAL FUND BALANCE	\$ 145,235.00	\$ 152,000.00
REVENUE FROM LOCAL SOURCES			
100-3110101-0000	CURRENT REAL ESTATE TAXES	\$ 1,006,000.00	\$ 1,147,000.00
100-3110102-0000	DEL REAL ESTATE TAXES	\$ 5,000.00	\$ -
100-3110201-0000	UTILITY REAL ESTATE TAXES	\$ 11,200.00	\$ 11,200.00
100-3110301-0000	CURRENT PERS PROP TAXES	\$ 300,000.00	\$ 346,000.00
100-3110302-0000	DEL PERS PROP TAXES	\$ 3,500.00	\$ -
100-3110401-0000	MACHINERY & TOOLS	\$ 155,000.00	\$ 175,000.00
100-3110601-0000	TAX PENALTIES	\$ 6,000.00	\$ 6,000.00
100-3110602-0000	TAX INTEREST	\$ 2,000.00	\$ 2,000.00
	TOTAL REV FROM LOCAL SOURCES	\$ 1,488,700.00	\$ 1,687,200.00
OTHER LOCAL TAXES			
100-3120101-0000	LOCAL SALES TAX	\$ 208,000.00	\$ 240,000.00
100-3120201-0000	CONSUMER UTILITY TAX	\$ 85,000.00	\$ 90,000.00
100-3120300-0000	BUSINESS LICENSE	\$ 200,000.00	\$ 200,000.00
100-3120402-0000	REC FRANCHISE FEES	\$ 35,000.00	\$ 35,000.00
100-3120501-0000	AUTO LICENSE	\$ 90,000.00	\$ 90,000.00
100-3120601-0000	BANK FRANCHISE TAXES	\$ 140,000.00	\$ 140,000.00
100-3120801-0000	CIGARETTE TAX (10¢)	\$ 18,000.00	\$ 15,000.00
100-3121001-0000	LODGING TAX (2%)	\$ 10,000.00	\$ 5,000.00
100-3121101-0000	MEALS TAX (4%)	\$ 312,000.00	\$ 312,000.00
	TOTAL OTHER LOCAL TAXES	\$ 1,098,000.00	\$ 1,127,000.00
PERMITS, FEES & LICENSES			
100-3130304-0000	LAND USE APPLICATION FEES	\$ 5,000.00	\$ 1,500.00
100-3130307-0000	ZONING & SUBDIVISION FEES	\$ 10,000.00	\$ 7,500.00
	TOTAL PERMITS, FEES & LICENSES	\$ 15,000.00	\$ 9,000.00
FINES & FORFEITURES			
100-3140101-0000	COURT FINES	\$ 25,000.00	\$ 16,000.00
100-3140102-0000	PARKING METER FINES	\$ 4,000.00	\$ 2,000.00
100-3140103-0000	BSUMMONS	\$ 1,500.00	\$ 1,000.00
	TOTAL FINES & FORFEITURES	\$ 30,500.00	\$ 19,000.00
REVENUE FROM MONEY OR PROP			
100-3150101-0000	INTEREST ON DEPOSITS	\$ 100,000.00	\$ 95,000.00
100-3150201-0000	RENTAL OF PROPERTY	\$ 12,000.00	\$ 12,000.00
100-3150205-0000	WATER TANK SITE LEASE	\$ 82,000.00	\$ 84,000.00
100-3150206-0000	CHARGE CARD REBATE	\$ 14,000.00	\$ 19,000.00
	TOTAL FROM MONEY OR PROP	\$ 208,000.00	\$ 210,000.00
CHARGES FOR SERVICES			
100-3160703-0000	PARKING METERS	\$ 16,000.00	\$ 10,000.00
100-3161502-0000	SALE OF PUBLICATIONS	\$ -	\$ -
	TOTAL CHARGES FOR SERVICES	\$ 16,000.00	\$ 10,000.00

100-3189905-0000	MISCELLANEOUS REVENUES SALE OF SURPLUS	\$	18,000.00	\$	5,000.00
	TOTAL MISC REVENUES	\$	18,000.00	\$	5,000.00
100-3190203-0000	RECOVERED COSTS REIMBURSABLE FBES	\$	-	\$	-
	TOTAL RECOVERED COSTS	\$	-	\$	-

TOTAL LOCAL REVENUES \$ 3,019,435.00 \$ 3,219,200.00

REVENUE FROM THE COMMONWEALTH

100-3220107-0000	NON-CATEGORICAL AID ROLLING STOCK TAX	\$	1,850.00	\$	1,850.00
100-3220109-0000	PPTRA	\$	209,917.00	\$	209,917.00
100-3220201-0000	COMMUNICATION TAX	\$	77,000.00	\$	77,000.00
	TOTAL NON-CATEGORICAL AID	\$	288,767.00	\$	288,767.00

100-3220108-0000	CATEGORICAL AID 599 LAW ENFORCEMENT GRANT	\$	82,350.00	\$	82,350.00
100-3240103-0000	LE BLOCK GRANT	\$	1,000.00	\$	1,000.00
100-3240201-0000	FIRE FUND PROGRAM	\$	15,250.00	\$	15,250.00
100-3240300-0000	VDOT LANE MILE ALLOWANCE	\$	558,618.00	\$	558,615.00
100-3240301-0000	VDOT ROAD MAINTENANCE	\$	5,000.00	\$	-
100-3240302-0000	LITTER CONTROL GRANT	\$	2,000.00	\$	1,900.00
100-3240311-0000	ST EMERGENCY R&R	\$	-	\$	-
100-3240312-0000	VA COMMISSION FOR THE ARTS	\$	-	\$	4,500.00
100-3240710-0000	DMV ANIMAL FRIENDLY PLATES	\$	-	\$	-
	TOTAL CATEGORICAL AID	\$	664,218.00	\$	663,615.00

TOTAL FROM THE COMMONWEALTH \$ 952,985.00 \$ 952,382.00

REVENUE FROM THE FEDERAL GOVERNMENT

100-3340102-0000	CATEGORICAL AID FEDERAL FIRE FUND PROGRAM	\$	-	\$	-
100-3340311-0000	FEDERAL EMERGENCY R&R	\$	-	\$	-
	TOTAL CATEGORICAL AID	\$	-	\$	-

TOTAL FROM FEDERAL GOVERNMENT \$ - \$ -

REVENUE FROM OTHER SOURCES

100-3410201-0000	NON-REVENUE RECEIPTS MISCELLANEOUS REVENUES	\$	1,000.00	\$	1,000.00
	TOTAL FROM OTHER SOURCES	\$	1,000.00	\$	1,000.00

TOTAL FROM OTHER SOURCES \$ 1,000.00 \$ 1,000.00

TOTAL GENERAL FUND REVENUES \$ 3,973,420.00 \$ 4,172,582.00

WATER FUND

501-3000000-0000	FUND BALANCE	\$	-	\$	550,500.00
	FUND BALANCE				
	TOTAL FUND BALANCE	\$	-	\$	550,500.00
501-3150102-0000	REVENUE FROM MONEY OR PROP INTEREST ON INVESTMENTS	\$	30,000.00	\$	30,000.00
	TOTAL FROM USE OF MONEY OR PROP	\$	30,000.00	\$	30,000.00
501-3160110-0000	CHARGES FOR SERVICES TREATMENT FEES	\$	1,040,000.00	\$	913,000.00
501-3160111-0000	DELINQUENT ACCT PENALTIES	\$	30,000.00	\$	30,000.00
501-3160112-0000	SECURITY DEPOSITS	\$	-	\$	-
501-3160113-0000	AVAILABILITY CHARGES	\$	337,500.00	\$	346,000.00
501-3160114-0000	CONNECTION CHARGES	\$	8,125.00	\$	8,125.00
501-3160115-0000	METER FEES	\$	8,125.00	\$	8,125.00
	TOTAL CHARGES FOR SERVICES	\$	1,415,625.00	\$	1,297,125.00

TOTAL WATER FUND \$ 1,445,625.00 \$ 1,877,625.00

SEWER FUND

502-3000000-0000	FUND BALANCE	\$	-	\$	-
	FUND BALANCE				
	TOTAL FUND BALANCE	\$	-	\$	-
502-3150101-0000	REVENUE FROM MONEY OR PROP INTEREST INCOME	\$	50,000.00	\$	50,000.00
	TOTAL REVENUE FROM MONEY OR PROP	\$	50,000.00	\$	50,000.00
502-3160110-0000	CHARGES FOR SERVICES TREATMENT FEES	\$	1,800,000.00	\$	1,790,000.00
502-3160112-0000	SECURITY DEPOSITS	\$	-	\$	-
502-3160113-0000	AVAILABILITY CHARGES	\$	362,500.00	\$	371,625.00
	TOTAL CHARGES FOR SERVICES	\$	2,162,500.00	\$	2,161,625.00

REVENUE FROM OTHER SOURCES

502-3410401-0000	NON-REVENUE RECEIPTS VRA LOAN	\$	-	\$	-
502-3410402-0000	WQIF Grant	\$	-	\$	-
502-3410404-0000	NUTRIENT CREDIT REBATE	\$	-	\$	-
	TOTAL NON-REVENUE RECEIPTS	\$	-	\$	-

TOTAL FROM OTHER SOURCES \$ - \$ -

TOTAL SEWER FUND \$ 2,212,500.00 \$ 2,211,625.00

TOTAL REVENUES ALL FUNDS \$ 7,631,545.00 \$ 8,261,832.00

FY 21-22 BUDGET EXPENSES

Account Number	Account Description	FY 2020-2021	FY 21-22 REQUESTED 2021-2022
GENERAL FUND			
TOWN COUNCIL			
100-4011100-1111	EXPENSE COMPENSATION	\$ 18,900.00	\$ 18,900.00
100-4011100-2100	MATCHING FICA EXPENSE (7.65 %)	\$ 1,450.00	\$ 1,450.00
100-4011100-5540	TRAINING	\$ 4,000.00	\$ 4,000.00
100-4011100-5699	LOCAL CONTRIBUTIONS	\$ -	\$ -
100-4011100-5800	MISCELLANEOUS	\$ 5,000.00	\$ 5,000.00
100-4011100-5810	DUES	\$ 3,000.00	\$ 3,000.00
100-4011100-6017	TOWN CODE SUPPLEMENTS	\$ 2,000.00	\$ 2,000.00
100-4011100-6018	STATE CODE SUPPLEMENTS	\$ -	\$ -
	TOTAL TOWN COUNCIL	\$ 34,350.00	\$ 34,350.00
TOWN CLERK			
100-4011200-1114	SALARIES/WAGES/TNCLK	\$ 44,600.00	\$ 45,900.00
100-4011200-2100	MATCHING FICA EXPENSE (7.65 %)	\$ 3,400.00	\$ 3,520.00
100-4011200-5510	MILEAGE	\$ 250.00	\$ 250.00
100-4011200-5540	EDUCATION/TRAINING	\$ 1,000.00	\$ 1,000.00
100-4011200-5810	DUES	\$ 100.00	\$ 100.00
	TOTAL TOWN CLERK	\$ 49,350.00	\$ 50,770.00
TOWN MANAGER			
100-4012110-1112	COMPENSATION	\$ 140,500.00	\$ 141,400.00
100-4012110-2100	MATCHING FICA EXPENSE (7.65 %)	\$ 10,740.00	\$ 10,820.00
100-4012110-3399	BLIGHT ABATEMENT	\$ 17,000.00	\$ 20,000.00
100-4012110-5230	TELECOMMUNICATIONS	\$ 600.00	\$ 600.00
100-4012110-5510	MILEAGE	\$ -	\$ 150.00
100-4012110-5540	TRAINING	\$ -	\$ 1,000.00
100-4012110-5810	DUES	\$ 500.00	\$ 500.00
	TOTAL TOWN MANAGER	\$ 169,340.00	\$ 174,470.00
LEGAL SERVICES			
100-4012210-3150	PROFESSIONAL SERVICES	\$ 35,000.00	\$ 50,000.00
	TOTAL LEGAL SERVICES	\$ 35,000.00	\$ 50,000.00
PERSONNEL			
100-4012220-2210	VRS	\$ 147,950.00	\$ 154,400.00
100-4012220-2220	VMLIP - STD	\$ 700.00	\$ 740.00
100-4012220-2230	VMLIP - LTD	\$ 6,559.00	\$ 6,675.00
100-4012220-2250	Line of Duty Act	\$ 8,500.00	\$ 8,500.00
100-4012220-2300	HEALTH INSURANCE	\$ 216,400.00	\$ 227,000.00
100-4012220-2400	LIFE INSURANCE	\$ 15,850.00	\$ 16,550.00
100-4012220-2600	UNEMPLOYMENT INSURANCE	\$ 205.00	\$ 645.00
100-4012220-2700	WORKER'S COMPENSATION	\$ 39,000.00	\$ 64,000.00
100-4012220-3110	RANDOM DRUG SCREENING	\$ 750.00	\$ 750.00
100-4012220-9001	EMPLOYEE RECOGNITION	\$ -	\$ 2,000.00
	TOTAL PERSONNEL	\$ 435,914.00	\$ 481,260.00

100-4012240-3120	INDEPENDENT AUDITOR CONTRACTUAL SERVICES	\$	16,050.00	\$	16,500.00
	TOTAL INDEPENDENT AUDITOR	\$	16,050.00	\$	16,500.00
	TOWN TREASURER				
100-4012410-1113	COMPENSATION	\$	93,000.00	\$	93,700.00
100-4012410-2100	MATCHING FICA EXPENSE (7.65 %)	\$	7,100.00	\$	7,170.00
100-4012410-3130	PROFESSIONAL SER/TAX CONV	\$	2,500.00	\$	2,500.00
100-4012410-3150	PROFESSIONAL SER/VEC	\$	-	\$	-
100-4012410-5306	SURETY BONDS	\$	500.00	\$	500.00
100-4012410-5540	TRAINING	\$	2,000.00	\$	2,000.00
100-4012410-5810	DUES	\$	1,050.00	\$	1,000.00
100-4012410-6015	AUTO DECALS	\$	-	\$	-
100-4012410-6020	CIGARETTE TAX STAMPS	\$	-	\$	-
	TOTAL TOWN TREASURER	\$	106,150.00	\$	106,870.00
	FINANCE/ACCOUNTING				
100-4012430-1113	COMPENSATION	\$	132,400.00	\$	135,500.00
100-4012430-2100	MATCHING FICA EXPENSE (7.65 %)	\$	10,127.00	\$	10,346.00
100-4012430-5540	TRAINING	\$	3,500.00	\$	3,400.00
	TOTAL FINANCE/ACCOUNTING	\$	146,027.00	\$	149,246.00
	CENTRAL ADM/PURCHASING				
100-4012530-3320	MAINTENANCE CONTRACTS	\$	46,000.00	\$	47,500.00
100-4012530-3400	WEBSITE RESERVE	\$	1,000.00	\$	1,000.00
100-4012530-3501	NEWSLETTER	\$	1,000.00	\$	1,000.00
100-4012530-3600	ADVERTISING	\$	8,000.00	\$	8,000.00
100-4012530-5210	POSTAGE	\$	12,000.00	\$	11,500.00
100-4012530-5230	TELECOMMUNICATIONS	\$	2,000.00	\$	3,000.00
100-4012530-5250	SOCIAL MEDIA ARCHIVING	\$	2,700.00	\$	2,700.00
100-4012530-5415	COPIER LEASE	\$	4,500.00	\$	4,700.00
100-4012530-5540	TRAINING	\$	2,500.00	\$	2,500.00
100-4012530-5699	CONTRIBUTION / CC SOCIAL MEDIA	\$	5,000.00	\$	5,000.00
100-4012530-5810	DUES	\$	500.00	\$	500.00
100-4012530-6001	OFFICE SUPPLIES	\$	10,250.00	\$	10,150.00
	TOTAL CENTRAL ADM/PURCHASING	\$	95,450.00	\$	97,550.00
	RISK MANAGEMENT				
100-4012550-5304	BLANKET EXCESS LIABILITY	\$	16,000.00	\$	16,000.00
100-4012550-5305	AUTOMOBILE INSURANCE	\$	11,000.00	\$	12,000.00
100-4012550-5308	SEMI-MULTI PERIL INS	\$	27,700.00	\$	27,700.00
100-4012550-5800	INSURANCE DEDUCTIBLES	\$	-	\$	-
	TOTAL RISK MANAGEMENT	\$	54,700.00	\$	55,700.00
	ENGINEERING SERVICES				
100-4012600-3140	ENGINEERING SERVICES	\$	5,000.00	\$	5,000.00
	TOTAL ENGINEERING SERVICES	\$	5,000.00	\$	5,000.00
	ELECTIONS				
100-4013100-1125	ELECTION OFFICIALS	\$	2,500.00	\$	2,000.00
100-4013100-6001	OFFICE SUPPLIES	\$	2,500.00	\$	1,400.00
	TOTAL ELECTIONS	\$	5,000.00	\$	3,400.00
	PUBLIC DEFENDER FEES				

100-4021500-3150	PUBLIC DEFENDER FEES	\$	2,000.00	\$	2,000.00
	TOTAL PUBLIC DEFENDER FEES	\$	2,000.00	\$	2,000.00
	POLICE DEPARTMENT				
100-4031100-1139	COMPENSATION	\$	598,300.00	\$	663,000.00
100-4031100-2100	MATCHING FICA EXPENSE (7.65 %)	\$	45,770.00	\$	50,800.00
100-4031100-3110	MEDICAL EXAMINATIONS	\$	500.00	\$	500.00
100-4031100-3115	PRE EMPLOYMENT DRUG SCREEN	\$	500.00	\$	500.00
100-4031100-3190	INTERPRETER	\$	400.00	\$	400.00
100-4031100-3310	REPAIR & MAINTENANCE	\$	12,000.00	\$	12,000.00
100-4031100-3320	MAINTENANCE CONTRACTS	\$	14,500.00	\$	17,800.00
100-4031100-4082	WILDLIFE MANAGEMENT	\$	500.00	\$	500.00
100-4031100-5210	POSTAGE	\$	500.00	\$	500.00
100-4031100-5230	TELECOMMUNICATIONS	\$	4,600.00	\$	3,000.00
100-4031100-5415	COPIER LEASE	\$	3,400.00	\$	3,400.00
100-4031100-5540	TRAINING	\$	21,500.00	\$	14,000.00
100-4031100-5545	ACCREDITATION	\$	1,700.00	\$	1,000.00
100-4031100-5810	DUES	\$	700.00	\$	700.00
100-4031100-5815	COMMUNITY RELATIONS	\$	2,000.00	\$	2,000.00
100-4031100-6001	OFFICE SUPPLIES	\$	2,350.00	\$	1,600.00
100-4031100-6008	GASOLINE & OIL	\$	14,500.00	\$	15,500.00
100-4031100-6010	SUPPLIES	\$	13,500.00	\$	13,500.00
100-4031100-6011	UNIFORMS	\$	4,000.00	\$	4,000.00
	TOTAL POLICE DEPARTMENT	\$	741,220.00	\$	804,700.00
	TRAFFIC CONTROL				
100-4031300-5699	COUNTY CONTR/CROSSING CD	\$	2,500.00	\$	2,500.00
	TOTAL TRAFFIC CONTROL	\$	2,500.00	\$	2,500.00
	EMERGENCY SERVICES				
100-4031400-5699	CONTRIBUTION/CC CENT ALRM	\$	5,000.00	\$	5,000.00
	TOTAL EMERGENCY SERVICES	\$	5,000.00	\$	5,000.00
	VOLUNTEER FIRE DEPARTMENT				
100-4032200-5699	CONTRIBUTION/WHEVED	\$	30,000.00	\$	30,000.00
100-4032200-5707	FIRE FUND PROGRAM	\$	14,500.00	\$	15,250.00
100-4032200-88411	CAPITAL PROJECT RESERVE	\$	10,000.00	\$	10,000.00
	TOTAL VOLUNTEER FIRE DEPT	\$	54,500.00	\$	55,250.00
	CORRECTION & DETENTION				
100-4033200-5550	CONFINEMENT OF PRISONERS	\$	250.00	\$	-
	TOTAL CORRECTION & DETENTION	\$	250.00	\$	-
	PUBLIC WORKS ADMINISTRATION				
100-4041100-1140	COMPENSATION	\$	69,950.00	\$	71,300.00
100-4041100-2100	MATCHING FICA EXPENSE (7.65 %)	\$	5,350.00	\$	5,455.00
100-4041100-3110	MEDICAL EXAMS	\$	1,000.00	\$	1,000.00
100-4041100-3310	VEHICLE REP & MAINTENANCE	\$	11,000.00	\$	7,000.00
100-4041100-5120	PROPANE	\$	1,500.00	\$	2,000.00
100-4041100-5230	TELECOMMUNICATIONS	\$	5,000.00	\$	5,000.00
100-4041100-5415	COPIER LEASE	\$	2,665.00	\$	2,700.00
100-4041100-5540	TRAINING	\$	3,500.00	\$	1,500.00
100-4041100-6001	OFFICE SUPPLIES	\$	500.00	\$	500.00
	TOTAL PUBLI WKS ADMINISTRATION	\$	100,465.00	\$	96,455.00

	HWYS, STS BRIDGES & SDWLKS				
100-4041200-1183	COMPENSATION	\$	157,000.00	\$	165,000.00
100-4041200-2100	MATCHING FICA EXPENSE (7.65 %)	\$	12,000.00	\$	12,450.00
100-4041200-3310	EQUIPMENT MAINTENANCE	\$	12,000.00	\$	12,000.00
100-4041200-3315	SIDEWALK MAINTENANCE	\$	15,000.00	\$	15,000.00
100-4041200-3316	STREET SIGN MAINTENANCE	\$	-	\$	1,000.00
100-4041200-5425	NORFOLK/SOUTHERN R-O-W'S	\$	1,100.00	\$	1,100.00
100-4041200-6007	MATERIALS & SUPPLIES	\$	4,000.00	\$	4,000.00
100-4041200-6008	GASOLINE & OIL	\$	20,000.00	\$	20,600.00
100-4041200-6011	UNIFORMS	\$	6,000.00	\$	5,000.00
	TOTAL HWYS, STS BRIDGES & SWLKS	\$	227,100.00	\$	236,150.00
	VDOT STREET MAINTENANCE				
100-4041250-3300	VDOT STREET MAINTENANCE	\$	411,618.00	\$	473,615.00
100-4041250-3310	EQUIPMENT MAINTENANCE (VDOT)	\$	10,000.00	\$	10,000.00
100-4041250-8801	EQUIPMENT PURCHASE (VDOT)	\$	137,000.00	\$	75,000.00
	TOTAL VDOT STREET MAINTENANCE	\$	558,618.00	\$	558,615.00
	STREET LIGHTS				
100-4041320-5110	ELECTRICITY	\$	66,500.00	\$	69,200.00
	TOTAL STREET LIGHTS	\$	66,500.00	\$	69,200.00
	SNOW REMOVAL				
100-4041330-3220	CONTRACTUAL SBRVCS	\$	16,000.00	\$	16,000.00
100-4041330-6007	MATERIALS & SUPPLIES	\$	2,000.00	\$	2,000.00
	TOTAL SNOW REMOVAL	\$	18,000.00	\$	18,000.00
	PARKING METERS & LOTS				
100-4041340-6007	MATERIALS & SUPPLIES	\$	1,500.00	\$	1,500.00
	TOTAL PARKING METERS & LOTS	\$	1,500.00	\$	1,500.00
	STREET & ROAD CLEANING				
100-4042200-6007	MATERIALS & SUPPLIES	\$	500.00	\$	1,000.00
	TOTAL STREET & ROAD CLEANING	\$	500.00	\$	1,000.00
	REFUSE COLLECTION				
100-4042300-3220	CONTRACTUAL SERVICES	\$	203,000.00	\$	211,000.00
100-4042300-6225	RECYCLING SERVICES	\$	75,000.00	\$	77,000.00
	TOTAL REFUSE COLLECTION	\$	278,000.00	\$	288,000.00
	REFUSE DISPOSAL				
100-4042400-3800	FCO LANDFILL CHARGES	\$	40,000.00	\$	40,000.00
	TOTAL REFUSE DISPOSAL	\$	40,000.00	\$	40,000.00
	GENERAL PROPERTIES				
100-4043200-3310	REPAIR & MAINTENANCE	\$	15,000.00	\$	15,000.00
100-4043200-3325	HERMITAGE SWPOND MAINT	\$	4,100.00	\$	4,100.00
100-4043200-6007	MATERIALS & SUPPLIES	\$	500.00	\$	500.00
100-4043200-6017	HOLIDAY DÉCORATION	\$	500.00	\$	500.00
	TOTAL GENERAL PROPERTIES	\$	20,100.00	\$	20,100.00
	BUILDING SERVICES				
100-4064200-3150	PROFESSIONAL SERVICES	\$	2,500.00	\$	2,600.00

100-4064200-3200	CONTRACTURAL SERVICES	\$	19,500.00	\$	20,000.00
100-4064200-5110	ELECTRICITY	\$	19,800.00	\$	20,600.00
100-4064200-5120	NATURAL GAS/HEAT	\$	3,200.00	\$	3,350.00
100-4064200-5130	WATER/SEWER	\$	800.00	\$	820.00
100-4064200-5230	TELECOMMUNICATIONS	\$	7,800.00	\$	9,000.00
100-4064200-5304	LIABILITY INSURANCE	\$	2,500.00	\$	2,700.00
100-4064200-7113	IN KIND COSTS	\$	13,000.00	\$	13,000.00
100-4064200-7115	SHARED MAINTENANCE	\$	19,000.00	\$	19,000.00
100-4064200-8411	CAPITAL ASSET RESERVES	\$	7,000.00	\$	7,000.00
	TOTAL BUILDING SERVICES	\$	95,100.00	\$	98,070.00
	PARKS & RECREATION				
100-4071310-3160	CONTRACTURAL SER/VN BLUE	\$	1,000.00	\$	1,000.00
100-4071310-5699	CONTRIBUTION/CCP&R	\$	-	\$	-
100-4071310-6017	HOLIDAY DECORATIONS ROSE HILL PARK	\$	1,500.00	\$	1,500.00
100-4071310-6018	ROSE HILL PARK MAINTENANCE	\$	5,000.00	\$	5,000.00
	TOTAL PARKS & RECREATION	\$	7,500.00	\$	7,500.00
	PLANNING				
100-4081100-1155	COMPENSATION	\$	93,350.00	\$	95,975.00
100-4081100-2100	MATCHING FICA EXPENSE (7.65 %)	\$	7,150.00	\$	7,345.00
100-4081100-3190	PROFESSIONAL SERVICES	\$	5,000.00	\$	3,000.00
100-4081100-3195	PREPAID APPLICATION FEES	\$	-	\$	-
100-4081100-3500	PRINTING	\$	200.00	\$	200.00
100-4081100-5510	MILEAGE	\$	100.00	\$	100.00
100-4081100-5540	TRAINING	\$	500.00	\$	200.00
100-4081100-5810	DUES	\$	500.00	\$	500.00
100-4081100-6001	OFFICE EQUIPMENT	\$	100.00	\$	100.00
100-4081100-6012	PUBLICATIONS	\$	100.00	\$	-
	TOTAL PLANNING	\$	107,000.00	\$	107,420.00
	BOARD OF ZONING APPEALS				
100-4081400-1110	EXPENSE COMPENSATION	\$	500.00	\$	500.00
100-4081400-5540	TRAINING	\$	500.00	\$	500.00
	TOTAL BOARD OF ZONING APPEALS	\$	1,000.00	\$	1,000.00
	ECONOMIC DEVELOPMENT				
100-4081500-3400	WEB SITE REDESIGN	\$	-	\$	-
100-4081500-3450	SE COLLECTOR EVALUATION	\$	-	\$	-
100-4081500-3650	MARKETING & BRANDING	\$	-	\$	-
100-4081500-5693	ARTS FUNDING MATCH	\$	4,500.00	\$	4,500.00
100-4081500-5695	TOWN/COUNTY ECONOMIC DEV	\$	17,500.00	\$	17,500.00
100-4081500-5696	ECONOMIC DEVELOPMENT RESERVE	\$	-	\$	2,500.00
100-4081500-5698	GRANT AND MATCHING FUNDS	\$	-	\$	-
100-4081500-5699	DBI/BCO DEV PROF SERVICES	\$	4,000.00	\$	-
100-4081500-5700	ANNEXATION AREA PROF SERVICES	\$	25,000.00	\$	10,000.00
	TOTAL ECONOMIC DEVELOPMENT	\$	51,000.00	\$	34,500.00
	PLANNING COMMISSION				
100-4081600-1111	EXPENSE COMPENSATION	\$	5,000.00	\$	5,000.00
100-4081600-5540	TRAINING	\$	1,000.00	\$	1,000.00
100-4081600-5810	DUES	\$	250.00	\$	250.00
	TOTAL PLANNING COMMISSION	\$	6,250.00	\$	6,250.00
	D'VILLE AREA DEV AUTHORITY				
100-4081700-1111	EXPENSE COMPENSATION	\$	2,500.00	\$	2,500.00

100-4081700-1111	MATCHING FICA EXPENSE (7.65 %)	\$	-	\$	-
100-4081700-5540	TRAINING	\$	250.00	\$	250.00
100-4081700-5810	DUES	\$	125.00	\$	-
	TOTAL B'VILLE AREA DEV AUTHORITY	\$	2,875.00	\$	2,750.00
	ARCHITECTURAL REVIEW BOARD				
100-4081800-5540	TRAINING	\$	500.00	\$	500.00
	TOTAL ARCHITECTURAL REVIEW BD	\$	500.00	\$	500.00
	TREE BOARD				
100-4081900-5800	MISCELLANEOUS	\$	500.00	\$	500.00
	TOTAL TREE BOARD	\$	500.00	\$	500.00
	CAPITAL OUTLAY				
100-4094200-8207	SOFTWARE UPGRADES	\$	-	\$	-
100-4094200-8225	COMPUTER REPLACEMENT/UPGRADES	\$	7,500.00	\$	7,500.00
100-4094200-8230	REPAIRS TO 23 E MAIN-LS RESERVE	\$	44,235.00	\$	-
100-4094200-8231	PATROL VEHICLE	\$	52,600.00	\$	56,000.00
100-4094200-8338	SNOW PLOW	\$	-	\$	13,000.00
100-4094200-8340	MOWER	\$	-	\$	-
100-4094200-8345	PW TON DUMP	\$	-	\$	27,500.00
100-4094200-8411	CAPITAL RESERVE	\$	-	\$	10,462.00
100-4094200-8602	3/4 TON TRUCK (PW)	\$	-	\$	12,000.00
100-4094200-8603	PD SERVBR RBPLACEMENT RESERVE	\$	6,000.00	\$	-
100-4094200-8702	WAYFINDING SIGNS RESERVE	\$	5,000.00	\$	5,000.00
100-4094200-8803	PUBLIC WORKS IMPROVEMENTS	\$	-	\$	-
100-4094200-8910	PD BODY CAMERA REPLACEMENTS	\$	-	\$	-
100-4094200-8911	VIRGINIA AVENUE	\$	55,000.00	\$	-
100-4094200-8912	POLICE MDT REPLACEMENT	\$	-	\$	-
100-4094200-8913	POLICE AV EQUIPMENT	\$	-	\$	-
100-4094200-8914	RIXEY MOOR PLAYGROUND IMP	\$	-	\$	-
100-4094200-8915	HOGAN'S ALLEY IMPROVE RESERVE	\$	1,000.00	\$	-
100-4094200-8919	STORM WATER MITIGATION	\$	-	\$	-
100-4094200-8950	FOUR WHEELER	\$	-	\$	-
100-4094200-8951	PD RADIO REPLACEMENT RESERVE	\$	20,000.00	\$	55,000.00
100-4094200-8955	TOWN RUN PER	\$	-	\$	-
100-4094200-8956	ASHBY/ARCHER PER	\$	-	\$	-
100-4094200-8958	ENDERS PROFFER RESERVES	\$	-	\$	-
100-4094200-8959	HOLIDAY DECOR REPLACEMENT	\$	10,000.00	\$	-
100-4094200-9002	JACKSON DR SWMA/DORSEY ST STMWATER	\$	-	\$	25,000.00
100-4094200-9003	BACKHOE (PW)	\$	-	\$	22,500.00
100-4094200-9004	MOSBY BOULEVARD SIDEWALK	\$	-	\$	25,000.00
	TOTAL CAPITAL OUTLAY	\$	201,335.00	\$	258,962.00
	CONTINGENCY				
100-4094300-5800	CONTINGENCY (3.00%)	\$	110,300.00	\$	110,544.00
	TOTAL CONTINGENCY	\$	110,300.00	\$	110,544.00
	DEBT SERVICE				
100-4095000-9110	RDA PRINCIPAL	\$	40,988.00	\$	43,200.00
100-4095000-9120	RDA INTEREST	\$	80,488.00	\$	77,800.00
100-4095000-9130	RDA DEBT SER RESERVE	\$	-	\$	-
	TOTAL DEBT SERVICE	\$	121,476.00	\$	121,000.00

TOTAL GENERAL FUND OPERATIONAL	\$	3,540,309.00	\$	3,682,076.00
TOTAL GENERAL FUND CONTINGENCY	\$	110,300.00	\$	110,544.00
TOTAL GENERAL FUND CAP OUTLAY	\$	201,335.00	\$	258,962.00
TOTAL GENERAL FUND DEBT SERVICE	\$	121,476.00	\$	121,000.00

TOTAL GENERAL FUND EXPENSES \$ 3,973,420.00 \$ 4,172,582.00

WATER FUND

	PERSONNEL			
501-4012220-1140	COMPENSATION	\$	39,350.00	\$ 40,600.00
501-4012220-2100	MATCHING FICA EXPENSE (7.65 %)	\$	3,010.00	\$ 3,110.00
501-4012220-2210	VRS	\$	32,810.00	\$ 33,262.00
501-4012220-2220	VMLIP - STD	\$	154.00	\$ 158.00
501-4012220-2230	VMLIP - LTD	\$	1,415.00	\$ 1,438.00
501-4012220-2300	HEALTH INSURANCE	\$	47,910.00	\$ 48,700.00
501-4012220-2400	LIFE INSURANCE	\$	3,510.00	\$ 3,560.00
501-4012220-2600	UNEMPLOYMENT INSURANCE	\$	46.00	\$ 139.00
501-4012220-2700	WORKER'S COMPENSATION	\$	8,500.00	\$ 14,000.00
501-4012220-3170	MISS UTILITY	\$	1,500.00	\$ 1,500.00
501-4012220-3320	HANDHELD MAINT	\$	4,500.00	\$ 4,600.00
501-4012220-5210	POSTAGE	\$	4,400.00	\$ 4,400.00
501-4012220-5540	TRAINING	\$	2,500.00	\$ 2,500.00
501-4012220-6001	OFFICE SUPPLIES	\$	500.00	\$ 500.00
	TOTAL PERSONNEL	\$	150,105.00	\$ 158,467.00
	TREATMENT			
501-4012222-1147	COMPENSATION	\$	147,122.00	\$ 160,100.00
501-4012222-2100	MATCHING FICA EXPENSE (7.65 %)	\$	11,255.00	\$ 11,551.00
501-4012222-2830	CERTIFICATION FEES	\$	900.00	\$ 600.00
501-4012222-2840	STATE CONNECTION FEES	\$	5,400.00	\$ 5,700.00
501-4012222-2850	LAB TESTING	\$	8,500.00	\$ 9,000.00
501-4012222-3110	MBDICAL EXAMS	\$	200.00	\$ 200.00
501-4012222-3145	PROFESSIONAL SERVICES	\$	15,000.00	\$ 10,000.00
501-4012222-3146	UTILITY RATE STUDY	\$	-	\$ -
501-4012222-3210	SLUDGE REMOVAL	\$	30,000.00	\$ 27,000.00
501-4012222-3220	CLBAN RIVER INTAKE	\$	2,000.00	\$ 2,000.00
501-4012222-3310	REPAIR & MAINTBNANCE	\$	60,000.00	\$ 60,000.00
501-4012222-3510	CONSUMER CONFIDENCE RPT	\$	500.00	\$ 1,000.00
501-4012222-5110	ELECTRICITY	\$	61,500.00	\$ 65,000.00
501-4012222-5120	PROPANE HEAT WTP	\$	3,500.00	\$ 3,600.00
501-4012222-5230	TELECOMMUNICATIONS	\$	3,800.00	\$ 4,200.00
501-4012222-5415	COPIER LEASE	\$	670.00	\$ 700.00
501-4012222-5540	TRAINING	\$	2,500.00	\$ 3,500.00
501-4012222-5690	DISCHARGE PERMIT RENEWAL	\$	650.00	\$ 700.00
501-4012222-5810	DUES	\$	1,100.00	\$ 1,000.00
501-4012222-6001	OFFICE SUPPLIES	\$	1,000.00	\$ 1,000.00
501-4012222-6004	LAB SUPPLIES	\$	4,500.00	\$ 4,500.00
501-4012222-6005	JANITORIAL SUPPLIES	\$	1,000.00	\$ 1,000.00
501-4012222-6008	GASOLINE & OIL	\$	6,200.00	\$ 6,200.00
501-4012222-6011	UNIFORMS	\$	1,300.00	\$ 1,000.00
501-4012222-6014	TOOLS	\$	500.00	\$ 500.00
501-4012222-6019	SAFETY EQUIPMENT	\$	2,000.00	\$ 2,000.00
501-4012222-6020	PERSONAL EQUIPMENT	\$	600.00	\$ 600.00
501-4012222-6025	CHEMICALS	\$	40,000.00	\$ 40,000.00
	TOTAL TREATMENT	\$	411,697.00	\$ 422,651.00

	DISTRIBUTION & MAINTENANCE			
501-4012224-1183	COMPENSATION	\$	138,300.00	\$ 139,000.00
501-4012224-2100	MATCHING FICA EXPENSE (7.65 %)	\$	10,600.00	\$ 10,600.00
501-4012224-3330	LINE REPAIR & MAINTENANCE	\$	50,000.00	\$ 50,000.00
501-4012224-6007	MATERIALS & SUPPLIES	\$	30,000.00	\$ 30,000.00
501-4012224-6019	SAFETY EQUIPMENT	\$	700.00	\$ 700.00
501-4012224-6030	NEW SERVICE SUPPLIES	\$	9,000.00	\$ 9,000.00
501-4012224-9008	STORAGE TANK MAINTENANCE CONTRACT	\$	-	\$ 8,466.00
	TOTAL DISTRIBUTION & MAINT	\$	238,600.00	\$ 247,766.00

	CAPITAL OUTLAY			
501-4094200-8102	TANK REPAIR & MAINT	\$	85,000.00	\$ 155,700.00
501-4094200-8105	PICKUP (1/2)	\$	15,000.00	\$ -
501-4094200-8118	WTP BACKWASH LAGOON REPAIR	\$	-	\$ 86,000.00
501-4094200-8167	SCADA			
501-4094200-8211	CAPITAL RESERVES	\$	208,488.00	\$ 149,674.48
501-4094200-8225	COMPUTER UPGRADE	\$	-	\$ 2,000.00
501-4094200-8340	MOWER (1/2)			
501-4094200-8345	PW ONE TON DUMP TRUCK			\$ 13,500.00
501-4094200-8360	HANDHELD METER READER	\$	7,000.00	\$ -
501-4094200-8361	WATER DIST SYSTEM UPGRADES	\$	115,000.00	\$ 400,000.00
501-4094200-8550	EQUIPMENT REPAIR RESERVE	\$	25,000.00	\$ -
501-4094200-8602	3/4 TON TRUCK	\$	-	\$ 12,000.00
501-4094200-8605	WTP BUILDING MAINTENANCE			
501-4094200-8704	WATER FINISH PUMP REPLACEMENT			
501-4094200-8953	UTILITY PLANT GATES			
501-4094200-8954	STORAGE BUILDING	\$	-	\$ -
501-4094200-8957	WTP EVALUATION & REPAIRS	\$	-	\$ -
501-4094200-8958	WATER METER REPLACEMENT	\$	165,000.00	\$ 165,000.00
501-4094200-9003	BACKHOE(PW)	\$	-	\$ 22,500.00
501-4094200-9004	SECURITY IMPROVEMENTS	\$	-	\$ 10,500.00
501-4094200-9005	WATER RIVER PUMP DISCONNECT ELIMINATION	\$	-	\$ 7,000.00

	TOTAL CAPITAL OUTLAY	\$	620,488.00	\$ 1,023,874.48
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	CONTINGENCY			
501-4094300-5800	CONTINGENCY (3.00%)	\$	24,735.00	\$ 24,866.52
	TOTAL CONTINGENCY	\$	24,735.00	\$ 24,866.52

	TOTAL WATER FUND OPERATIONAL	\$	800,402.00	\$ 828,884.00
	TOTAL WATER FUND CONTINGENCY	\$	24,735.00	\$ 24,866.52
	TOTAL WATER FUND CAP OUTLAY	\$	620,488.00	\$ 1,023,874.48

	TOTAL WATER FUND EXPENSES	\$	1,445,625.00	\$ 1,877,625.00
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SEWER FUND

	PERSONNEL			
502-4012220-1114	COMPENSATION	\$	39,350.00	\$ 40,560.00
502-4012220-2100	MATCHING FICA EXPENSE (7.65 %)	\$	3,010.00	\$ 3,105.00
502-4012220-2210	VRS	\$	51,785.00	\$ 52,500.00
502-4012220-2220	VMLIP - STD	\$	243.00	\$ 250.00
502-4012220-2230	VMLIP - LTD	\$	2,236.00	\$ 2,270.00
502-4012220-2300	HEALTH INSURANCE	\$	75,608.00	\$ 76,860.00
502-4012220-2400	LIFE INSURANCE	\$	5,545.00	\$ 5,620.00
502-4012220-2600	UNEMPLOYMENT INSURANCE	\$	71.00	\$ 220.00
502-4012220-2700	WORKER'S COMPENSATION	\$	13,500.00	\$ 22,000.00

502-4012220-3320	HANDHELD MAINT	\$	2,800.00	\$	3,000.00
502-4012220-5210	POSTAGE	\$	7,500.00	\$	7,500.00
502-4012220-6001	OFFICE SUPPLIES	\$	1,000.00	\$	1,000.00
	TOTAL PERSONNEL	\$	202,648.00	\$	214,885.00
	TREATMENT				
502-4012222-1147	COMPENSATION	\$	323,614.00	\$	363,445.00
502-4012222-2100	MATCHING FICA EXPENSE (7.65 %)	\$	24,756.00	\$	27,800.00
502-4012222-2830	CERTIFICATION FBES	\$	500.00	\$	900.00
502-4012222-2850	LAB TESTING	\$	36,000.00	\$	36,000.00
502-4012222-3145	PROFESSIONAL SERVICES	\$	18,000.00	\$	18,000.00
502-4012222-3146	UTILITY RATE STUDY	\$	-	\$	-
502-4012222-3210	LANDFILL-SOLIDS DISPOSAL	\$	48,000.00	\$	65,000.00
502-4012222-3310	REPAIR & MAINTENANCE	\$	110,000.00	\$	120,000.00
502-4012222-5110	ELECTRICITY	\$	135,000.00	\$	140,000.00
502-4012222-5230	TELECOMMUNICATIONS	\$	6,000.00	\$	6,500.00
502-4012222-5415	COPIER LEASE	\$	3,900.00	\$	3,900.00
502-4012222-5540	TRAINING	\$	3,000.00	\$	3,000.00
502-4012222-5690	Discharge Permit Renewal	\$	3,000.00	\$	3,500.00
502-4012222-5810	DUES	\$	500.00	\$	600.00
502-4012222-6001	OFFICE SUPPLIES	\$	1,000.00	\$	1,200.00
502-4012222-6004	LAB SUPPLIES	\$	5,400.00	\$	5,800.00
502-4012222-6005	JANITORIAL SUPPLIES	\$	1,200.00	\$	1,500.00
502-4012222-6008	GASOLINE & DIESEL FUEL	\$	9,000.00	\$	9,300.00
502-4012222-6011	UNIFORMS	\$	1,300.00	\$	1,000.00
502-4012222-6014	TOOLS	\$	1,500.00	\$	1,500.00
502-4012222-6019	SAFETY EQUIPMENT	\$	2,000.00	\$	2,500.00
502-4012222-6020	PERSONAL EQUIPMENT	\$	800.00	\$	800.00
502-4012222-6025	CHEMICALS	\$	90,000.00	\$	80,000.00
	TOTAL TREATMENT	\$	824,470.00	\$	892,245.00
	DISTRIBUTION & MAINTENANCE				
502-4012224-1183	COMPENSATION	\$	138,250.00	\$	139,000.00
502-4012224-1183	MATCHING FICA EXPENSE (7.65 %)	\$	10,575.00	\$	10,600.00
502-4012224-3310	EQUIPMENT MAINTENANCE	\$	5,000.00	\$	5,000.00
502-4012224-3330	REPAIR & MAINTENANCE	\$	10,000.00	\$	10,000.00
502-4012224-6007	MATERIALS & SUPPLIES	\$	2,500.00	\$	2,500.00
502-4012224-6019	SAFETY EQUIPMENT	\$	-	\$	500.00
502-4012224-6030	NEW SERVICE SUPPLIES	\$	-	\$	-
	TOTAL DISTRIBUTION & MAINT	\$	166,325.00	\$	167,600.00
	CAPITAL PROJECTS				
	TOTAL CAPITAL PROJECTS	\$	-	\$	-
	CAPITAL OUTLAY				
502-4094200-8105	PICKUP (1/2)	\$	15,000.00	\$	-
502-4094200-8110	WWTP UPGRADES				
502-4094200-8123	SCADA				
502-4094200-8225	COMPUTER UPGRADE	\$	-	\$	2,000.00
502-4094200-8134	Sewer Collection Sys Rehab	\$	115,000.00	\$	100,000.00
502-4094200-8340	MOWER (1/2)			\$	13,500.00
502-4094200-8345	PW ONE TON DUMP TRUCK			\$	-
502-4094200-8360	HANDHELD METER READER	\$	7,000.00	\$	-
502-4094200-8411	CAPITAL RESERVES	\$	243,477.00	\$	115,153.10
502-4094200-8540	MEMBRANE REPLACEMENT RESERVE	\$	10,000.00	\$	-
502-4094200-8545	MEMBRANE PRE-PURCHASE	\$	90,000.00	\$	110,000.00
502-4094200-8550	EQUIPMENT REPAIR RESERVE	\$	25,000.00	\$	-
502-4094200-8602	3/4 TON PICKUP (1/2 VDOT)	\$	-	\$	12,000.00

MINUTES
BERRYVILLE TOWN COUNCIL
Berryville-Clarke County Government Center
Work Session
June 22, 2021
3:00 p.m.

Town Council: Present--Harry Lee Arnold, Jr., Mayor; Erecka L. Gibson, Recorder; Donna McDonald, Diane Harrison, Grant Mazzarino. Participating by telephone--Kara Rodriguez

Staff: Present—Keith Dalton, Town Manager; Paul Culp, Town Clerk; Cynthia Poulin, Finance Clerk.

Press: Mickey Powell, *The Winchester Star*

1. Call to Order

Mayor Arnold called the meeting to order at 3:00 p.m. and asked for a motion approving the remote participation of Ms. Rodriguez.

Ms. McDonald moved that the Council of the Town of Berryville, with a quorum present in the Main Meeting Room of the Berryville-Clarke County Government Center, approve remote participation via telephone by Council member Kara Rodriguez at this meeting because she is unable to attend in person because of personal reasons. The motion passed by unanimous voice vote.

2. Approval of Agenda

Mayor Arnold invited a motion to approve the agenda.

Recorder Gibson moved to approve the agenda. The motion passed by unanimous voice vote.

3. Unfinished Business

Discussion: Annexation

Mr. Dalton explained that in 1988 the Town of Berryville and Clarke County had entered into an annexation agreement that was subsequently amended to create the Berryville Area Development Authority (BADA). He said that Town Community Development Director Christy Dunkle had recently recommended the annexation of the Town's Public Works yard at 201 Tom Whiteacre Circle, the properties at 341 and 343 First Street, and the Bel Voi and Friant properties at 25 Battletown Drive and the two surrounding parcels. He said a developer has expressed interest in the larger of the Friant properties and that Ms. Dunkle therefore recommended that the Town act promptly in order

to achieve annexation effective January 1, 2022 rather than waiting another year for the next permissible opportunity.

Mr. Dalton said that if annexation occurs, the Council and the Planning Commission would likely need to consider revisions of the zoning ordinance and Town Code with reference to agricultural use and the number of animals on the property.

Mr. Dalton said that if the Town acts on the matter, it would recommend to the County that annexation occur by mutual agreement. He said that if the Council is interested in proceeding, the Town would communicate with the County, after which the Council and Board of Supervisors would hold a joint hearing, notices would be given, and the annexation made effective on January 1, 2022.

Ms. Harrison asked Mr. Dalton about the cost of annexation. Mr. Dalton said the only cost of annexation per se would be in staff time and the publication of public hearing notices. Ms. Harrison asked whether Battletown Drive could accommodate the additional traffic. Mr. Dalton said the subdivision process would determine whether street upgrades would be necessary.

Mr. Mazzarino and Mr. Dalton discussed the matter of agricultural activity and zoning. Mr. Dalton explained that the zoning ordinance allows exceptions for continuation of non-conforming uses, while the Town Code limitations on the number of animals per acre would apply regardless of the level of activity on the property at the time of annexation.

Mayor Arnold said the timing is favorable.

Ms. McDonald asked Mr. Dalton how many houses could be built on the residential properties under consideration. Mr. Dalton said a precise figure is not currently obtainable. Ms. McDonald said the Town should be mindful of the amount of development occurring. Mr. Dalton said a decision not to annex the property would not guarantee a lack of development, the decision that the property would be developed having been made in 1992, and that the question was whether persons living there would receive Town services.

Mayor Arnold said the Town would have more control of events if it annexed the properties.

Ms. McDonald asked how the Town would provide services to the additional territory, considering limited manpower, especially in the police department.

Mr. Dalton said the Council would need to respond to manpower needs and the expansion of Town services when deliberating on budgets.

Mayor Arnold said that without annexation the Town would have to provide certain services but would receive no taxes.

Mr. Dalton reiterated that development would not be stopped by simply refusing to annex the property under discussion. He said that if a developer submitted a plan in accordance with current zoning, there would be no impediment to development.

Ms. McDonald expressed concern about the negative effects of development on adjacent properties and asked whether screening could be required. Mr. Dalton said the zoning ordinance requires screening in certain instances but that a broadening of screening requirements by the Council would require changes to the zoning ordinance.

Recorder Gibson moved that the Council of the Town of Berryville direct staff to proceed with necessary steps to bring about an annexation effective January 1, 2022, and that the Council authorize Mayor Arnold to notify the Clarke County Board of Supervisors of the Council's intent to approve the annexation of property within Annexation Area B.

**Aye: Harrison, Mazzarino, Rodriguez, Gibson, Arnold
Nay: McDonald**

The motion passed.

4. New Business

Discussion of the American Rescue Plan Act of 2021

Mr. Dalton directed the Council's attention to the agenda packet containing a draft of the plan, based on findings by the Council, for the allocation of funds the Town reportedly is to receive under the American Rescue Plan Act, and to appendices he had produced that included figures adjusted in response to comments from members of the Council. He said the Town could expect to receive \$2,267,493 in the near term and another \$2,267,493 a year after the initial disbursement.

Mr. Dalton explained that the Town likely would spend ARPA funds in each fiscal year through mid-FY2027.

Mr. Dalton recommended that unspent funds from any category in the allocation plan be applied to infrastructure.

Mr. Dalton then went through the contents of the allocation plan, pausing for discussion as needed.

The Council agreed with the proposal that the Town pay the balance on water/sewer account delinquencies that were sixty or more days in arrears as of June 22, 2021. He said members of the Council had not endorsed the original suggestion of up to eleven months' worth of relief. Mayor Arnold suggested six months, and the other members concurred.

Ms. Harrison said the Town's recent marketing and branding efforts created favorable circumstances for proceeding with the suggested wayfinding sign project intended to direct traffic to points of interest in the central business district.

The Council then discussed the proposed provision of reimbursement of up to \$12,500 for qualifying improvements to eligible commercial buildings in the central business district, with such improvements including improved access, sign replacement or refurbishment, façade beautification, and site cleaning.

Mr. Mazzarino asked whether a property owner would be required to perform the work and then be reimbursed after approval and inspection. Mr. Dalton said yes and briefly described the process as he envisions it.

There was a discussion of whether the property owner or the occupant must apply. Mr. Dalton said he expected that either would be able to apply but that the owner would have to agree to any application made by a tenant.

There was a discussion of whether improvements would be permissible in the case of historic structures. Mr. Dalton said the Architectural Review Board would address this.

There was a discussion of the nature of façade beautification.

Mr. Dalton asked whether the Council would favor a process requiring application by occupants, with a maximum of \$25,000 available per building. Mr. Mazzarino said it would be necessary to impose an upper limit but that \$25,000 might not be sufficient in the case of a building with a large number of occupants. Mayor Arnold suggested that in such circumstances the demand for funds might exceed the supply. Mr. Mazzarino suggested leaving the limit at \$12,500 and accepting applications in multiple cycles if necessary.

There was a discussion of which non-profits might be appropriate recipients of grants provided to non-profits that had assisted residents through the COVID-19 pandemic and those that serve local citizens and were negatively affected by the pandemic.

The Council agreed with the section of the allocation plan providing for the purchase of equipment and supplies to aid in pandemic relief and emergency response.

There was a discussion of the appropriate amount to spend on reconstruction of the Town website as recently discussed in meetings of the Council and the Community Development Committee. Ms. Rodriguez, as chair of the committee, said she favored \$8,000 over the \$15,000 suggested as a possibility. She concurred with Mayor Arnold's suggestion of \$10,000 in order to provide a small cushion but said doubling the original \$8,000 seemed excessive. Recorder Gibson noted that the website provider had already provided firm quotes, rendering a cushion unnecessary. The Council agreed on \$8,000.

There was a discussion of the Council's finding that all Town employees had contributed to the continuity of operations and essential infrastructure sectors during the pandemic and therefore should receive premium pay of \$400 per month per employee for the period from January 1, 2020 to May 31, 2021.

Mr. Mazzarino said that office workers had incurred fewer risks than was the case with police officers and Public Works personnel. Ms. Harrison noted that association with other office workers constituted a risk and that cases of COVID had occurred among office staff. Mayor Arnold noted that office staff had worked for several months without the barriers eventually deployed to reduce the risk of contagion. Ms. McDonald said that all Town workers were essential but that those working on an on-call basis had incurred greater risk.

Mayor Arnold said Public Works personnel do not receive calls for service without the involvement of office staff. He noted that staff members are not numerous and had not received any other form of pandemic compensation.

Mr. Mazzarino said that Town employees perform well and that the Town should strive to retain them. Ms. McDonald suggested a larger premium payment for employees in departments that work around the clock. Mayor Arnold noted that the police department had received previous COVID funding while the rest of the staff had not.

Ms. Harrison suggested abiding by the \$400-per-month figure in the implementation plan. Mr. Mazzarino concurred. Mayor Arnold said this would be a good opportunity to reward Town staff. The consensus of the Council was that the premium compensation should occur as planned.

The Council agreed with the suggestion that the Town take no action regarding reduction in revenues during the pandemic, as no significant loss had occurred.

There was a discussion of the implementation plan's provision for completion of necessary water and sewer infrastructure projects as enumerated in an appendix provided by Mr. Dalton.

Mr. Dalton said the Council must define what a necessary infrastructure project is. Mayor Arnold noted that the list of stormwater projects provided by Mr. Dalton was of items already identified as necessary. Mr. Dalton said the Council could consider other needs in addition to those enumerated.

There was a discussion of the Council's finding that ARPA funds could be used to cover administrative costs related to implementation of the plan and associated projects. Mr. Dalton said the estimate of \$60,000 might be a bit low and that the administrative costs could be blended with infrastructure costs if the administrative costs are generated by infrastructure work. Mayor Arnold suggested the possibility of hiring an outside project manager, and Mr. Dalton agreed that assistance would be needed.

Mr. Dalton said a public hearing on the Town's allocation of ARPA funds was not strictly necessary but might be desirable. Ms. Harrison and Mayor Arnold concurred.

Mr. Dalton and Ms. Harrison discussed plans for publishing monthly implementation plans on the Town website.

Recorder Gibson moved that the Council of the Town of Berryville hold a public hearing on July 13 to receive public comment on the draft American Rescue Plan Act of 2021 Implementation Plan. The motion passed by unanimous voice vote.

A discussion established that the Council can amend the plan at any time.

Mr. Dalton said ARPA could still change before assuming its final form in July.

5. Other

No further business came before the Council.

6. Closed Session

There was no closed session.

7. Adjourn

Mayor Arnold requested a motion to adjourn.

Adjournment occurred by unanimous voice vote at 4:57 p.m. on a motion by Ms. Harrison.

Erecka L. Gibson, Recorder

Paul Culp, Town Clerk

BERRYVILLE TOWN COUNCIL COMMUNITY DEVELOPMENT COMMITTEE
Berryville-Clarke County Government Center
MINUTES
June 28, 2021

A meeting of the Berryville Town Council Community Development Committee was held on Monday, June 28, 2021 at 9:00 a.m. in the Berryville-Clarke County Government Center, located at 101 Chalmers Court in Berryville, Virginia.

Attendance:

Members of the committee present: Kara Rodriguez, chair; Diane Harrison

Staff participating: Christy Dunkle, Community Development Director; Paul Culp, Town Clerk

1. Call to Order

Ms. Rodriguez called the meeting to order at 9:00.

2. Approval of Agenda

The agenda was approved by consensus on a motion by Ms. Harrison.

3. Unfinished Business

Discussion: Town Website

The committee agreed that its members understood the full Council to have agreed in its June 8 regular meeting and June 22 work session to a reconstruction of the Town website at a cost of \$8,000, with funds provided by a grant under the American Rescue Plan Act.

Ms. Harrison displayed on her laptop several templates offered by the Town's website contractor, and Ms. Rodriguez suggested that the choices be narrowed and then submitted to the full Council during the committee's report in the July 13 regular meeting. Ms. Harrison concurred.

Ms. Dunkle counseled avoidance of excessive complexity or the use of examples appropriate only for larger jurisdictions. The committee concurred.

4. New Business

None.

5. Other

Ms. Harrison said she had discussed with Town Manager Keith Dalton the possibility of a community project involving placement in the downtown area of small benches similar to those she had seen in Shepherdstown. She said artists could use them as vehicles for public art and that the benches would add a welcoming touch to local establishments.

There was a brief discussion of costs and of the possible involvement of community organizations.

The committee agreed that further meetings before October likely would be unnecessary.

6. Adjournment

The committee adjourned by consensus at 9:21 a.m. on a motion by Ms. Harrison.

Report of the Department of Public Works July 7, 2021

Water

We experienced two water leaks this past month.

The first leak occurred on a meter setter as we were trying to set a new meter. While we were turning the water back on the service line supplying water to the setter broke. We excavated outside the meter box and froze the service line and replaced the meter setter.

The second leak was called into the water plant on Sunday morning June 27, 2021. The caller stated a large volume of water was running across the road on Bundy Street. We responded and found the fire hydrant located in front of 15 Bundy was apparently hit by vehicle during the night. We determined fairly quickly we would need to do a water shut down in order to abate the problem. Prior to the shutdown, we delivered water interruption notices to all the residents that would be without water. During excavation we removed the old fire hydrant and the cast iron tee and fittings associated with the hydrant.

The water line improvement project for Rockcroft Subdivision is finishing up. All private side water lateral connections were completed by a plumbing company of the homeowner's choice. Within the next month we plan on extending an eight-inch water main and set a new fire hydrant at the intersection of Ride Road and Rockcroft Drive.

Sewer

Josephine East Pump Station experienced a pump failure last month. It appears during a recent thunderstorm a power surge occurred in the power panel and burnt out the breakers. A contractor was brought in to repair and replace the breaker and the station was put back into service.

**Berryville Town Council Item Report Summary
July 13, 2021**

Item Title

Staff Reports - Public Utilities

Prepared By

Background/History/General Information

June has been very busy for the Utilities Department. We delivered 11.462 MG of water to the distribution system with a daily average production of 0.441 MGD. The Wastewater facility has treated a total of 9.37 MG with a daily average of 0.31 MGD.

To keep up with the water demand we are again having to increase our run time of the water treatment facility to 18 hours per day on week days.

River conditions have been at or slightly above historical averages and there is no concern of drought at this time.

Findings/Current Activity

Water Treatment

Lead and Copper sampling was completed with the assistance of 20 residents. All who participated have been informed of the results for their locations. All samples were below the EPA action levels and Berryville is in compliance through the next sampling event in 2023.

The new sub-monitors for river pumps 1 and 3 have been installed and are monitoring the power usage of the pumps. The new monitors have the ability to shut down the pumps under low amp conditions preventing them from running without load. This will help protect the equipment should river screens clog. The monitors also display pump amperage giving the operator a visual on how well the pumps are running. We are still working to fine tune the controls to prevent unwanted shut downs.

To maintain water quality we have flushed the dead end lines in the Hermitage and Darby Brook subdivisions as well as on Church and Main streets.

At the booster building we have replaced much of the chlorine feed lines as leaks were developing in the piping. We also replaced the disinfectant injection point and the hypochlorite pump. Also we had a failure of the Variable Frequency Drive for high service pump #1 that feeds water to the Northwest tower. It took some work but we were able to trouble shoot the system then pull the VFD, find the non-working part and return it to service in only two days.

Wastewater Plant

Waste treatment has also kept us hoping. We replaced the electronics in one of the air control valves on the bio-system, tracked down and repaired a signal loss to the air valve, rebuilt the portable compressor's gas motor, cleaned the gutters on all buildings, and pulled a nitrate probe for repairs. The inlet and outlet channels for the membrane trains were cleaned of scum and other debris, and both EQ tanks cleaned

out. We returned one tank to service for membrane recovery cleans.

We have also worked with vendors to complete most of the repairs to the 5 ton crane. We still need to get the bridge rails realigned and serviced before we can return the crane to service. Also worked with vendors on several of the AC units that were in various levels of failure found during a routine service call.

We have processed 414,815 gallons of biosolids, dealt with solids press failures, and completed 184 maintenance workorders between the two facilities.

Attached to this report are the first page of the MOR for the water facility and the DMR data sheet for the wastewater facility for review.

Financial Considerations

Schedule/Deadlines

Other Considerations

Attachments

1. 2021-06 Council Report Attachment

Recommendation

Sample Motion

June 2021

No. Connections Served: 1738
 Population Served: 4185

Flows and Chemical Dosages

DATE	Raw Water Treated MGD	Finished Water Produced MGD	Finished Water Delivered MGD	Hours in Services	Raw Water Chemicals										Finished Water Chemicals							
					Alum	Carbon	Chlorine	Fluoride	Polymer	KMnO4	Soda Ash	Chlorine	Corr Inhibitor									
	Lbs per Day	Lbs per Day	Lbs per Day		mg/L	mg/L	mg/L	mg/L	mg/L	mg/L	mg/L	mg/L	mg/L	mg/L	mg/L	mg/L	mg/L	mg/L				
1	0.447		0.403	12.8	45	12.1	2	0.5														
2	0.477		0.416	12.8	45	11.3	2	0.5														
3	0.510		0.460	14.8	50	11.8	2	0.4														
4	0.494		0.427	13.5	46	11.1	2	0.4														
5	0.314		0.294	9.0	25	9.7	2	0.6														
6																						
7	0.610		0.536	16.8	55	10.8	4	0.8														
8	0.624		0.535	17.5	66	12.7	2	0.5														
9	0.625		0.566	16.5	76	14.6	5	1.0														
10	0.598		0.496	15.3	76	15.2	2	0.5														
11	0.544		0.493	15.0	66	14.5	4	0.9														
12	0.185		0.150	5.0	20	13.0	1	0.5														
13																						
14	0.601		0.554	18.5	86	17.2	2	0.5														
15	0.589		0.496	15.8	60	12.2	3	0.6														
16	0.543		0.487	16.5	51	11.2	2	0.5														
17	0.532		0.466	16.2	61	13.7	2	0.5														
18																						
19	0.242		0.224	7.0	20	10.0	1	0.5														
20	0.239		0.207	7.5	25	12.7	1	0.6														
21	0.562		0.475	17.0	56	11.9	2	0.5														
22	0.586		0.521	17.8	51	10.4	2	0.4														
23	0.585		0.530	17.8	56	11.4	2	0.4														
24	0.587		0.512	17.7	61	12.4	2	0.5														
25	0.597		0.525	17.8	66	13.2	2	0.3														
26																						
27	0.067		0.062	2.0	5	9.1	1	1.1														
28	0.594		0.520	18.0	61	12.3	3	0.5														
29	0.641		0.557	17.9	61	11.4	3	0.5														
30	0.633		0.551	19.0	61	11.5	3	0.6														
31																						
Total	13.025	0.000	11.462	375.1	1350	317.4	59	14.5	0.0	0.00	174.0	44.3	1.53	0.396	122	29.2	0.0	0.00	476.9	116.08	0.0	0.00
Maximum	0.641	0.000	0.566	19.0	86	17.2	5	1.1	0.0	0.00	20.0	3.9	0.10	0.334	6	1.3	0.0	0.00	25.8	5.86	0.0	0.00
Minimum	0.067	0.000	0.062	2.0	5	9.1	1	0.3	0.0	0.00	0.9	0.5	0.01	0.304	1	0.9	0.0	0.00	3.2	2.25	0.0	0.00
Average	0.501	0.000	0.441	14.4	52	12.2	2	0.6	#DIV/0!	#DIV/0!	6.7	1.7	0.06	0.015	5	1.1	#DIV/0!	#DIV/0!	18.3	4.46	#DIV/0!	#DIV/0!

SIGNED: (OPERATOR IN RESPONSIBLE CHARGE)

RAW WATER SOURCE(S) USED DURING MONTH: (SOURCE/DATES)

PRINTED NAME

David A Tyrell

Shenandoah River - Entire Month

TITLE: OPERATOR CLASSIFICATION
 DPOR CERTIFICATION NO.

Class 1
 1955002813

Berryville STP Monthly DMR Data

June 2021

Date	Effluent Flow MGD	Eff pH SU	Eff Temp Deg C	Eff CBOD mg/l	Eff CBOD KG/D	Eff TSS mg/l	Eff TSS KG/D	Effluent DO River mg/l	Effluent DO WWTP mg/l	Eff NO2 / mg/l	Eff TKN mg/l	Eff TKN KG/D	Eff Total N mg/l
6/1/2021	0.278	7.6	20.8	3.00	3.16				8.5				
6/2/2021	0.284	7.6	21.2						7.9				
6/3/2021	0.303	7.5	21.7	4.00	4.59			8.6	8.4	2.62	1.03	1.18	3.65
6/4/2021	0.440	7.5	21.9						8.1				
6/5/2021	0.395	7.4	23.6						7.7				
6/6/2021	0.369	8.2	21.6						8.2				
6/7/2021	0.292	7.4	23.3	2.00	2.21				7.8	1.42	1.14	1.26	2.56
6/8/2021	0.243	7.4	23.8	2.00	1.84				7.6				
6/9/2021	0.273	7.4	24.0						7.8				
6/10/2021	0.260	7.5	24.2	2.00	1.97	0.00	0.00	7.8	7.9	1.64	1.09	1.07	2.73
6/11/2021	0.427	7.5	24.1						7.6				
6/12/2021	0.447	7.5	23.1						8.2				
6/13/2021	0.321	7.6	24.2						7.9				
6/14/2021	0.286	7.6	23.1	3.00	3.25				8.1	1.03	0.99	1.07	2.02
6/15/2021	0.263	7.5	23.5	1.00	1.00				7.9				
6/16/2021	0.322	7.6	23.3						7.8				
6/17/2021	0.322	7.5	23.0	1.00	1.22			7.9	8.3	0.85	1.07	1.30	1.92
6/18/2021	0.323	7.5	23.2						7.3				
6/19/2021	0.271	7.5	23.7						7.6				
6/20/2021	0.258	7.5	24.2						7.3				
6/21/2021	0.266	7.6	24.6	4.00	4.03				6.8	2.17	1.05	1.06	3.22
6/22/2021	0.334	7.4	24.5	3.00	3.79				7.3				
6/23/2021	0.295	7.4	23.5						7.3				
6/24/2021	0.351	7.5	23.4	4.00	5.31			8.3	7.2	1.78	0.35	0.46	2.13
6/25/2021	0.317	7.3	23.3						7.6				
6/26/2021	0.271	7.5	23.7						7.4				
6/27/2021	0.274	7.5	22.6						7.1				
6/28/2021	0.282	7.4	24.6	4.00	4.27				7.6	2.79	1.12	1.20	3.91
6/29/2021	0.293	7.5	24.8	2.00	2.22				7.5				
6/30/2021	0.305	7.4	25.3						7.1				
Minimum	0.24	7.3	20.8	1.00	1.00	0.00	0.00	7.8	6.8	0.85	0.35	0.46	1.92
Maximum	0.45	8.2	25.3	4.00	5.31	0.00	0.00	8.6	8.5	2.79	1.14	1.30	3.91
Total	9.37	225.3	701.8	35.00	38.85	0.00	0.00	32.6	230.8	14.30	7.84	8.61	22.14
Average	0.31	7.5	23.4	2.69	2.99	0.00	0.00	8.2	7.7	1.79	0.98	1.08	2.77
Geo Mean	0.31	7.5	23.4	2.44	2.67	1.00	1.00	8.1	7.7	1.66	0.9	1.03	2.68

Berryville STP Monthly DMR Data

June 2021

Date	Eff Total N KG/D	Eff Total P mg/l	Eff Total P KG/D	E-Coli No/100ml
6/1/2021				1
6/2/2021				
6/3/2021	4.19	0.28	0.32	1
6/4/2021				
6/5/2021				
6/6/2021				
6/7/2021	2.83	0.20	0.22	1
6/8/2021				1
6/9/2021				
6/10/2021	2.69	0.21	0.21	1
6/11/2021				
6/12/2021				
6/13/2021				
6/14/2021	2.19	0.19	0.21	1
6/15/2021				1
6/16/2021				
6/17/2021	2.34	0.12	0.15	1
6/18/2021				
6/19/2021				
6/20/2021				
6/21/2021	3.25	0.27	0.27	1
6/22/2021				1
6/23/2021				
6/24/2021	2.83	0.25	0.33	1
6/25/2021				
6/26/2021				
6/27/2021				
6/28/2021	4.18	0.41	0.44	1
6/29/2021				1
6/30/2021				
Minimum	2.19	0.12	0.15	1
Maximum	4.19	0.41	0.44	1
Total	24.51	1.93	2.15	13
Average	3.06	0.24	0.27	1
Geo Mean	2.99	0.23	0.25	1

**Berryville Town Council Item Report Summary
July 13, 2021**

Item Title

Staff Reports - Police Department

Prepared By

Background/History/General Information

Monthly Activity Report

The activity report for the month of June 2021 is attached to this memo.

Public Safety Committee

The Public Safety Committee did not meet in June 2021.

National Night Out

The department will be hosting a National Night Out event in Rose Hill Park on August 3, 2021 from 06:00 pm until 08:00 pm. This is an international event bring communities together with their law enforcement partners to take a stand against crime

Findings/Current Activity

Financial Considerations

Schedule/Deadlines

Other Considerations

Attachments

1. Copy of Police and Security Report June 2021

Recommendation

Sample Motion



BERRYVILLE POLICE DEPARTMENT

101 Chalmers Ct., Suite A, Berryville VA 22611

(T) 540.955.3863 (F) 540.955.0207

policeadmin@berryvilleva.gov

W. Neal White – Chief of Police

Police and Security Report

Month/Year: June 2021	Year To Date 2021	June 2021	May 2021
<u>Complaints Answered</u>			
911 Hang Up:	8	3	3
Alarms:	56	12	7
Animal Complaint:	48	9	7
Assault:	12	2	3
Assist County:	23	7	7
Assist EMS and Fire:	79	11	14
Auto Larceny:	1	0	1
Burglary:	0	0	0
Civil Complaints:	32	5	6
Disturbance:	12	1	5
Domestic Disturbance:	12	2	1
Driving Under the Influence	4	2	1
Drunk In Public:	2	0	0
Fraud:	10	0	2
Larceny:	23	2	3
Harassment/Intimidation:	14	1	1
Homicide:	0	0	0
Identity Theft	7	0	2
Juvenile Related:	10	0	4
Mental Health Crisis:	34	2	8
Narcotics Related:	2	0	1
Noise:	32	4	3
Public Service:	4	0	1
Sexual Assault:	0	0	0
Robbery:	0	0	0
Shoplifting:	0	0	0
Suspicious Activity:	64	8	10
Trespassing:	11	2	3
Vandalism:	33	2	6
Welfare Check:	51	6	8
Miscellaneous Complaints:	252	44	48
Total Complaints Answered:	836	125	155



BERRYVILLE POLICE DEPARTMENT

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policeadmin@berryvilleva.gov

W. Neal White – Chief of Police

Police and Security Report (Continued)

	Year To Date 2021	June 2021	May 2021
<u>Traffic</u>			
Accidents Investigated:	28	7	8
Assist Motorist:	0	0	0
Child Safety Seat Install:	11	4	0
Funeral Escort:	12	3	3
Hit & Run:	9	1	2
Parking Tickets:	61	10	17
Traffic Warnings:	46	4	14
<u>Traffic Summons Issued</u>			
Defective Equipment:	0	0	0
Driving Suspended:	1	0	0
Expired Inspection:	5	0	4
Expired Registration:	1	0	0
Fail to Obey Highway Sign:	22	2	3
Fail to Obey Traffic Signals:	1	0	0
Fail to Stop/Lights & Siren:	0	0	0
Fail to Yield Right of Way:	6	0	1
Hit and Run:	1	0	0
No Liability Insurance:	0	0	0
No Operator's License:	2	0	2
No Seat Belt:	0	0	0
Reckless Driving:	4	0	1
Speeding:	20	1	11
Miscellaneous Summons:	7	1	3
Total Traffic Summons Issued:	70	4	25
<u>Found Open at Businesses in Town</u>			
Doors:	8	0	2
Windows:	0	0	0
Garage Doors:	0	0	0



BERRYVILLE POLICE DEPARTMENT

101 Chalmers Ct., Suite A, Berryville VA 22611
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policeadmin@berryvilleva.gov
 W. Neal White – Chief of Police

Police and Security Report (Continued)

	Year To Date	June	May
	2021	2021	2021
<u>Criminal Arrests Made</u>			
Abduction:	0	0	0
Arson:	0	0	0
Assault and Battery:	7	2	0
Assault and Battery on Police Officer:	0	0	0
Auto Larceny:	0	0	0
Breaking and Entering:	0	0	0
Capias:	2	0	0
Disorderly Conduct:	1	0	0
Driving Under the Influence:	4	1	2
Drunk In Public:	2	0	0
Fail to Obey Police Officer:	0	0	0
Fail to Pay Parking Ticket:	0	0	0
Forgery:	0	0	0
Fraud:	1	1	0
Homicide:	0	0	0
Illegal Drugs/Paraphernalia:	0	0	0
Larceny:	1	1	0
Possess Alcohol Underage:	0	0	0
Protective Order Violations:	1	0	0
Rape:	0	0	0
Resisting Arrest:	0	0	0
Robbery:	0	0	0
Shoplifting:	0	0	0
Trespassing:	1	0	0
Vandalism:	2	0	0
Weapons Violation:	0	0	0
Miscellaneous Criminal Arrests:	16	3	2
Juvenile Detention Order Totals:	1	0	0
Total Criminal Arrests:	39	8	4



BERRYVILLE POLICE DEPARTMENT

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 W. Neal White – Chief of Police

Police and Security Report (Continued)

	Year To Date 2021	June 2021	May 2021
<u>Response to Resistance</u>			
Total Community Interface	883	149	155
Total Enforcement Contacts	118	16	38
Physical Custody	18	2	1
Reported Force Involved	0	0	0
Administrative Review - Justified	0	0	0
Administrative Review - Not Justified	0	0	0
Complaint of Injury - Arrestee	0	0	0
Medical Treatment for Injury - Arrestee	0	0	0
Complaint of Injury - Officer	0	0	0
Medical Treatment for Injury - Officer	0	0	0
<u>Type of Force Involved</u>			
Compliance Hold / Open Hands	0	0	0
Takedown	0	0	0
Strikes (Hands / Knees)	0	0	0
Chemical Sprays (O.C.)	0	0	0
Impact Weapon (Baton)	0	0	0
Mechanical Non-Lethal	0	0	0
Firearm	0	0	0
<u>Arrestee Demographics</u>			
White Male	12	0	1
Black Male	0	0	0
Other Male	1	1	0
White Female	2	1	0
Black Female	4	0	0
Other Female	0	0	0

**Berryville Town Council Item Report Summary
July 13, 2021**

Item Title

Community Development - Monthly Departmental Report

Construction Update

Prepared By

Background/History/General Information

Findings/Current Activity

Financial Considerations

Schedule/Deadlines

Other Considerations

Attachments

1. ComDev

Recommendation

Sample Motion

Town Council Agenda Item Report Summary

July 13, 2021

Item Title

Community Development Update

Prepared By

Christy Dunkle

Planning Commission

The Planning Commission did not hold a meeting in June. Their next meeting is scheduled for Tuesday, July 27, at 7:00 p.m.

Berryville Area Development Authority

The BADA did not hold a meeting in June. Their next meeting is scheduled for Wednesday, July 28 at 7:00 p.m.

Architectural Review Board

The Architectural Review Board held a meeting on Wednesday, July 7, 2021 and discussed the following items:

Sign Review

Mucharin Channarongchai, Owner, The Zen of Sushi, Inc., is requesting a Certificate of Appropriateness for signage for Zen Ramen at the property located at 32 West Main Street, identified as Tax Map Parcel number 14A2-((A))-56 zoned C General Commercial.
Approved as presented.

Sign Review

Keith Wagner, Talley Sign Company, is requesting a Certificate of Appropriateness for an updated sign package for F&M Bank Winchester located at 23 North Church Street, identified as Tax Map Parcel number 14A2-((A))-62, zoned C General Commercial.
Approved as presented.

The next Architectural Review Board meeting is scheduled for Wednesday, August 4, at 12:30 p.m.

Tree Board

The Tree Board met on Wednesday, July 7, 2021 at 7:00 p.m. and discussed activities for the upcoming year including a recommendation on street trees and upgrades to Hogan's Alley. Their next meeting is scheduled for Wednesday, August 4 at 5:00 p.m. when they will tour the downtown and continue the street tree discussion.

Board of Zoning Appeals

The BZA has not held a meeting since the last Council meeting.

Town Council Agenda Item Report Summary

July 13, 2021

Item Title

Construction Project Update

Prepared By

Christy Dunkle

Shenandoah Crossing Subdivision

- 82 single-family homes
- Owned by D.R. Horton, Inc.
- To be developed by D.R. Horton, Inc.
- Zoned DR-2 Detached Residential
- Cluster layout
- HOA-maintained facilities
- Utility and paving installation under way
- Home construction and sales underway

Fellowship Square Subdivision

- 50 single-family homes
- Zoned DR-4 Detached Residential
- Cluster layout
- HOA maintained facilities
- The first Certificate of Occupancy and sale occurred in November
- Fairfax Street opened to the public on December 14, 2020 connecting First Street to North Buckmarsh Street
- 49 lots are either completed, under construction, or have grading plans submitted for review (the parking lot for the sales home is the only lot without applications submitted)

Hermitage Phase V

- 71 single-family homes
- Final phase of Hermitage subdivision (started 2000)
- Zoned R-1 and DR-1
- Phase V will have HOA oversight, other phases will not be affected
- Property purchased by D.R. Horton, Inc. in March 2021
- Pre-construction meeting was held on April 8, 2021
- Pre-blast surveys have been completed
- Land disturbance underway
- It is anticipated that grading plans will be submitted for individual lot development by September

Cash Balance Report

Period Ending 6/30/2021

Town of Berryville
7/8/2021 10:49 AM

Page 1/3

Bank 1	Bank of Clarke Operating Acct#- 1138499		
	Account		Balance
	100-1140000-0000 B/C OPR		-\$29,949.25
	501-1140000-0000 B/C OPR		\$5,155.12
	502-1140000-0000 B/C OPR		-\$9,087.29
		Bank 1	Total: -\$33,881.42
Bank 2	Bank of Clarke NOW Acct#- 1138502		
	Account		Balance
	100-1149000-0000 B/C NOW		\$5,929,110.07
	501-1149000-0000 B/C NOW		\$1,849,391.22
	502-1149000-0000 B/C NOW		\$4,797,366.13
		Bank 2	Total: \$12,575,867.42
Bank 3	Bank of Clarke Payroll Acct#- 1139510		
	Account		Balance
	100-1121000-0000 CASH/ BC PAYROLL		\$40,041.43
	501-1121000-0000 CASH/BC PAYROLL		\$0.00
	502-1121000-0000 CASH/BC PAYROLL		\$0.00
		Bank 3	Total: \$40,041.43
Bank 4	Bank of Clarke CIP Acct#- 1138405		
	Account		Balance
	100-1123000-0000 BC/CIP CD		\$550,504.80
	501-1123000-0000 BC/CIP		\$2,051,156.28
	502-1123000-0000 BC/CIP		\$3,270,109.65
		Bank 4	Total: \$5,871,770.73
Bank 5	Bank of Clarke SW Acct#- 1138413		
	Account		Balance
	100-1128000-0000 BC/SWMGT CD		\$463,619.82
		Bank 5	Total: \$463,619.82
Bank 6	Bank of Clarke PDAF Acct#- 1138421		
	Account		Balance
	100-1131000-0000 PD ASSET FORFEITURE		\$5,814.85
		Bank 6	Total: \$5,814.85
Bank 7	Bank of Clarke DSR Acct#- 1138456		
	Account		Balance
	100-1124000-0000 BC/RDA DEBT SER RES		\$111,284.20
		Bank 7	Total: \$111,284.20
Bank 8	Bank of Clarke PPTRA Acct#- 1138464		
	Account		Balance

Cash Balance Report

Period Ending 6/30/2021

Town of Berryville
7/8/2021 10:49 AM

Page 2/3

	100-1125000-0000 BC/PPTRA RES	\$403,529.19
	501-1125000-0000 BC/PPTRA RESERVE	\$0.00
	502-1125000-0000 BC/PPTRA RESERVE	\$0.00
	Bank 8 Total:	\$403,529.19
Bank 9	Bank of Clarke RAU Acct# 1138472 Account	Balance
	100-1145000-0000 BCC Rau Account	\$944.23
	Bank 9 Total:	\$944.23
Bank 10	Bank of Clarke VRA Reserve Acct# 6041647 Account	Balance
	502-1155000-0000 BCVRA Reserve Account	\$470,001.00
	Bank 10 Total:	\$470,001.00
Bank 11	Bank of Clarke Proffer Reserve Acct# 1897098 Account	Balance
	100-1126000-0000 Cash BC/Proffers Reserve	\$90,333.55
	501-1126000-0000 CASH/BC Proffers Reserve	\$0.00
	502-1126000-0000 CASH/BC Proffers Reserve	\$0.00
	Bank 11 Total:	\$90,333.55
Bank 12	Bank of Clarke Performance Bonds Acct# 1910841 Account	Balance
	100-1135000-0000 B/C PERFORMANCE BONDS	\$11,288.92
	Bank 12 Total:	\$11,288.92
Bank 13	BB&T Acct# 6137523525 Account	Balance
	100-1130000-0000 CASH/BB&T MM+	\$68,518.55
	501-1130000-0000 CASH/BB&T MM+	\$0.00
	502-1130000-0000 CASH/BB&T MM+	\$0.00
	Bank 13 Total:	\$68,518.55
Bank 14	Bank of Clarke PD Contributions Acct# 5759859 Account	Balance
	100-1133000-0000 PD Contributions	\$2,657.57
	Bank 14 Total:	\$2,657.57
Bank 15	Bank of Clarke PSN Refund/Pmt Acct Acct# 6079334 Account	Balance
	100-1146000-0000 BC PSN Refund Acct	\$0.00
	Bank 15 Total:	\$0.00
Bank 16	Bank of Clarke PSN Dep Acct Acct# 6079326 Account	Balance

Cash Balance Report
Period Ending 6/30/2021

Town of Berryville
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100-1147000-0000 BC PSN Deposit Acct	-	\$30.42	
501-1147000-0000 BC PSN Deposit Acct.		\$10.65	
502-1147000-0000 BC PSN Deposit Acct.		\$19.77	
	Bank 16	Total:	\$0.00

Total Cash Balance:	\$20,081,790.04
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Check Listing

Date From: 6/1/2021 Date To: 6/30/2021

Vendor Range: 4IMPRINT, INC. - ZENON ENVIRONMENTAL CORPORATION

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Check Number	Bank	Vendor	Date	Amount
6714	1	BERRYVILLE UNITED METHODIST HOUSING LP 5372	06/03/2021	<u>\$24,947.32</u>
6715	1	CLARKE COUNTY GENERAL DISTRICT COURT	06/03/2021	<u>\$120.00</u>
6716	1	DIANE M HARRISON VOIDED	06/03/2021	<u>\$40.00</u>
6717	1	H. Allen Kitselman	06/03/2021	<u>\$40.00</u>
6718	1	Nationwide Retirement Solutions	06/03/2021	<u>\$740.00</u>
6719	1	ROSEMBERT, MARIE ANNE RACHELLE 8828	06/03/2021	<u>\$129.69</u>
6720	1	The Hall Company	06/03/2021	<u>\$1,225.02</u>
6721	1	Thomas Randall Parker Jr.	06/03/2021	<u>\$40.00</u>
6722	1	VIRGINIA NUTRIENT CREDIT EXCHANGE ASSOC	06/03/2021	<u>\$625.00</u>
6723	1	ALLEN DANDRIDGE B & GAY M 1587	06/11/2021	<u>\$137.05</u>
6724	1	ANDERSON LAWN CARE, INC.	06/11/2021	<u>\$1,100.00</u>
6725	1	Bureau for Child Support Enforcement	06/11/2021	<u>\$875.00</u>
6726	1	COMBS WASTEWATER MANAGEMENT LLC	06/11/2021	<u>\$75.00</u>
6727	1	CORE & MAIN LP	06/11/2021	<u>\$26,924.80</u>
6728	1	Douglas A. Shaffer	06/11/2021	<u>\$75.00</u>
6729	1	H. Allen Kitselman	06/11/2021	<u>\$75.00</u>
6730	1	Hall, Monahan, Engle, Mahan & Mitchell	06/11/2021	<u>\$1,205.00</u>
6731	1	Keith Dalton	06/11/2021	<u>\$50.00</u>
6732	1	Michelle M. Jones	06/11/2021	<u>\$1,050.00</u>
6733	1	THE POLICE AND SHERIFFS PRESS	06/11/2021	<u>\$17.55</u>
6734	1	The Winchester Star	06/11/2021	<u>\$696.30</u>
6735	1	Treasurer of Frederick County	06/11/2021	<u>\$4,501.82</u>
6736	1	Virginia Municipal League	06/11/2021	<u>\$2,646.00</u>
6737	1	VUPS	06/11/2021	<u>\$276.15</u>
6738	1	Wilson's Asphalt Maint, L.C.	06/11/2021	<u>\$3,946.10</u>
6739	1	Stuart M. Perry, Inc	06/14/2021	<u>\$119,826.28</u>
6740	1	Minnesota Life Insurance Co.	06/23/2021	<u>\$239.48</u>
6741	1	Nationwide Retirement Solutions	06/23/2021	<u>\$740.00</u>
6742	1	The Police & Sheriffs Press	06/23/2021	<u>\$100.57</u>
6743	1	The Winchester Star	06/23/2021	<u>\$1,250.11</u>
6744	1	TOYOTA MOTOR CREDIT CORP 07 4792	06/23/2021	<u>\$458.06</u>

Check Listing

Date From: 6/1/2021 Date To: 6/30/2021

Vendor Range: 4IMPRINT, INC. - ZENON ENVIRONMENTAL CORPORATION

Town of Berryville
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Check Number	Bank	Vendor	Date	Amount
6745	1	UNIVERSITY OF VIRGINIA	06/23/2021	\$250.00
6746	1	VIRASEC IT Support Services, Inc.	06/23/2021	\$21,353.52
6747	1	Virginia Housing Dev Authority	06/23/2021	\$1,183.30
6748	1	Virginia Municipal Clerks Association	06/23/2021	\$25.00
6749	1	Bureau for Child Support Enforcement	06/29/2021	\$875.00
6750	1	Green's Septic Service	06/29/2021	\$400.00
6751	1	Nationwide Retirement Solutions	06/29/2021	\$740.00
6752	1	REPUBLIC SERVICES # 976	06/29/2021	\$24,636.00
6753	1	Southern Software, Inc.	06/29/2021	\$1,125.00
40 Checks Totalling -				\$244,760.12

Totals By Fund

	Checks	Voids	Total
100	\$211,704.12	\$40.00	\$211,664.12
501	\$28,446.63		\$28,446.63
502	\$4,609.37		\$4,609.37
Totals:	\$244,760.12	\$40.00	\$244,720.12

June 2021 Deposits

Deposit Date	Batch Date	Batch #	Deposit	PayPal	ACH/EFT	ADJ	Bk Reg Trans	TOTAL	
6/2/2021	6/1/2021	17249	71,618.49	0.00				71,618.49	Daily Receipts from Tuesday 6/1/2021 deposited to bank lobby on 6/2/2021 Batch#17249
6/2/2021	6/1/2021	17243	392,687.03	594.83				393,281.86	Daily receipts from Tuesday 6/1/2021 deposited to bank lobby on 6/2/2021 Batch#17243
6/4/2021	6/2/2021	17256	45,708.06	210.94				45,919.00	Daily Receipts from Wednesday 6/2/21 deposited to bank lobby on 6/4/2021 Batch#17256
6/4/2021	6/2/2021	17257	8,928.10	0.00				8,928.10	Daily receipts from Wednesday 6/2/2021 deposited to bank lobby on 6/4/2021 Batch#17257
6/4/2021	6/3/2021	17296	40,590.09	1,022.42				41,612.51	Daily receipts from Thursday 6/3/2021 deposited to bank lobby on 6/4/2021 Batch#17296
6/4/2021	6/3/2021	17300	73,023.44	0.00				73,023.44	Daily receipts from Thursday 6/3/2021 deposited to bank lobby on 6/4/2021 Batch#17300
6/7/2021	6/4/2021	17303	105,050.68					105,050.68	Daily Receipts from Friday 6/4/2021 deposited to bank lobby on 6/7/2021 Batch#17303
6/7/2021	6/4/2021	17304	35,224.90	878.70				36,103.60	Daily receipts from Friday 6/4/2021 deposited to bank lobby on 6/7/2021 Batch# 17304
6/8/2021	6/7/2021	17314	62,622.55	454.79				63,077.34	Daily receipts from Monday 6/7/2021 deposited to bank lobby on 6/8/2021 Batch#17314
6/10/2021	6/8/2021	17322	44,291.48	151.00				44,442.48	Daily Receipts from Tuesday 6/8/2021 deposited to bank lobby 6/10/2021 Batch#17322
6/10/2021	6/9/2021	17332	8,007.01	151.00				8,158.01	Daily receipts from Wednesday 6/9/2021 deposited to bank lobby 6/10/2021 Batch#17332
6/14/2021	6/10/2021	17348	7,378.47	0.00				7,378.47	Daily receipts from Thursday 6/10/21 deposited to bank lobby on 6/14/21 Batch#17348
6/14/2021	6/11/2021	17383	23,887.91	388.46				24,276.37	Daily receipts from Friday 6/11/21 deposited to bank lobby on 6/14/21 Batch #17383
6/15/2021	6/15/2021				63,163.00			63,163.00	ACH Draft for 6/15/2021
6/17/2021	6/14/2021	17436	18,700.82	885.06				19,585.88	Daily Receipts from 6/14/2021 deposited to bank lobby on 6/17/2021 Batch#17436
6/17/2021	6/15/2021	17468	20,013.69	278.10				20,291.79	Daily receipts from 6/15/2021 deposited to bank lobby on 6/17/2021 Batch#17468
6/17/2021	6/16/2021	17480	9,799.83	754.71				10,554.54	Daily receipts from 6/16/2021 deposited to bank lobby on 6/17/2021 Batch #17480
6/17/2021	6/16/2021	17483	0.00	0.00	356.68			356.68	EDI debts set off from 6/16/2021 Batch#17483
6/23/2021	6/17/2021	17495	4,469.66	81.59				4,551.25	Daily Receipts from 6/17/2021 deposited to bank lobby on 6/23/2021 Batch#17495
6/23/2021	6/21/2021	17500	29,721.39	249.17				29,970.56	Daily Receipts from 6/21/2021 deposited to bank lobby on 6/23/2021 Batch#17500
6/23/2021	6/22/2021	17515	2,251.67	204.05				2,455.72	Daily Receipts from 6/22/2021 deposited to bank lobby on 6/23/2021 Batch#17515
6/25/2021	6/23/2021	17521	1,812.58	0.00				1,812.58	Daily receipts from 6/23/2021 deposited to bank lobby on 6/25/2021 Batch#17521
6/25/2021	6/24/2021	17535	2,177.79	340.68				2,518.47	Daily receipts from 6/24/2021 deposited to bank lobby on 6/25/2021 Batch#17535
6/29/2021	6/25/2021	17541	5,447.97	241.69				5,689.66	Daily receipts from 6/25/2021 deposited to bank lobby on 6/29/2021 Batch#17541
6/29/2021	6/28/2021	17627	292,074.87	0.00				292,074.87	Daily receipts from 6/28/2021 deposited to bank lobby on 6/29/2021 Batch#17627
6/30/2021	6/29/2021	17635	12,064.65	19.06				12,083.71	Daily receipts from 6/29/2021 deposited to bank lobby on 6/30/2021 Batch#17635
7/2/2021	6/30/2021	17645	7,256.96	880.96				8,137.92	Daily receipts from 6/30/2021 deposited to bank lobby on 7/2/2021 Blahc#17645
								0.00	
								0.00	
								-8,156.98	
			<u>1,324,810.09</u>	<u>7,787.21</u>	<u>63,519.68</u>	<u>0.00</u>		<u>1,387,960.00</u>	

On-Line Pmts - June 2021

Deposit Date	On Line Batch date	Checks		Credit Card		Total	BkA Reg Trans
		Date to bnk	Amount	Date to Bnk	Amount		
6/7/2021	6/1/2021		642.89		560.89	1,203.78	UB Online Pmt deposited on 6/1/2021 Batch#17255
6/7/2021	6/1/2021		0.00		267.90	267.90	TAX(RE) Online Pmt deposited on 6/1/2021 Batch#17254
6/7/2021	6/2/2021		564.40		0.00	564.40	TAX(PP) Online Pmt deposited on 6/2/2021 Batch#17293
6/7/2021	6/2/2021		1,810.31		0.00	1,810.31	TAX(RE) Online Pmt deposited on 6/2/2021 Batch#17294
6/7/2021	6/2/2021		592.13		1,565.95	2,158.08	UB Online Pmt deposited on 6/2/2021 Batch#17295
6/7/2021	6/3/2021		315.47		343.37	658.84	UB Online Pmt deposited on 6/3/2021 Batch#17299
6/7/2021	6/3/2021		351.80		152.30	504.10	TAX(RE) Pmt deposited on 6/3/2021 Batch#17301
6/8/2021	6/4/2021		409.70		360.30	770.00	TAX(RE) Pmt deposited on 6/4/2021 Batch #17310
6/8/2021	6/4/2021		568.15		491.89	1,060.04	UB Online Pmt deposited on 6/4/2021 Batch#17312
6/9/2021	6/5/2021		290.05		100.16	390.21	UB Online Pmt deposited on 6/5/2021 Batch#17313
6/10/2021	6/5/2021		537.30		117.10	654.40	TAX(RE) Online Pmt deposited on 6/5/2021 Batch#17311
6/11/2021	6/7/2021		419.30		0.00	419.30	TAX(RE) Online Pmt deposited on 6/11/2021 Batch#17327
6/11/2021	6/7/2021		529.45		130.00	659.45	UB Online Pmt deposited on 6/11/2021 Batch#17324
6/14/2021	6/8/2021		0.00		125.58	125.58	UB Online Pmt deposited on 6/14/2021 Batch#17329
6/14/2021	6/8/2021		0.00		284.70	284.70	TAX(RE) Online Pmt deposited on 6/14/2021 Batch#17328
6/14/2021	6/9/2021		505.84		227.26	733.10	UB Online Pmt deposited on 6/14/21 Batch#17347
6/14/2021	6/10/2021		227.26		426.94	654.20	UB Online Pmt deposited on 6/14/21 Batch#17380
6/15/2021	6/11/2021		569.67		239.21	808.88	UB Online Pmt deposited on 6/15/21 Batch#17433
6/16/2021	6/12/2021		174.74		243.36	418.10	UB Online Pmt deposited on 6/16/21 Batch#17434
6/16/2021	6/12/2021		0.00		101.59	101.59	TAX(PP) Online Pmt deposited on 6/16/21 Batch#17431
6/17/2021	6/13/2021		332.07		-	332.07	TAX(PP) Online Pmt deposited on 6/17/21 Batch#17432
6/17/2021	6/13/2021		315.47		239.21	554.68	UB Online Pmt deposited on 6/17/21 Batch#17435
6/18/2021	6/14/2021		1,573.83		269.42	1,843.25	UB Online Pmt deposited on 6/14/21 Batch#17467
6/18/2021	6/14/2021		0.00		253.62	253.62	TAX(PP) Online Pmt deposited on 6/14/21 Batch#17465
6/18/2021	6/14/2021		640.09		-	640.09	TAX(RE) Online Pmt deposited on 6/14/21 Batch#17466
6/21/2021	6/15/2021		1,439.71		1,991.17	3,430.88	UB Online Pmt deposited on 6/21/21 Batch#17474
6/21/2021	6/15/2021		0.00		183.37	183.37	TAX(PP) Online Pmt deposited on 6/21/21 Batch#17472
6/21/2021	6/15/2021		780.32		168.72	949.04	TAX(RE) Online Pmt deposited on 6/21/21 Batch#17473
6/21/2021	6/16/2021		215.31		480.41	695.72	UB Online Pmt deposited on 6/21/21 Batch#17496
6/21/2021	6/17/2021		602.39		621.99	1,224.38	UB Online Pmt deposited on 6/21/21 Batch#17501
6/21/2021	6/17/2021		0.00		47.07	47.07	TAX(PP) Online Pmt deposited on 6/21/21 Batch#17504
6/21/2021	6/17/2021		0.00		825.00	825.00	TAX(RE) Online Pmt deposited on 6/21/21 Batch#17507
6/22/2021	6/18/2021		216.59		-	216.59	TAX(RE) Online Pmt deposited on 6/22/21 Batch#17508
6/22/2021	6/18/2021		0.00		48.40	48.40	TAX(PP) Online Pmt deposited on 6/22/2021 Batch#17505
6/22/2021	6/18/2021		328.94		345.49	674.43	UB Online Pmt deposited on 6/22/2021 Batch#17502
6/23/2021	6/19/2021		1.94		233.95	235.89	TAX(PP) Online Pmt deposited on 6/23/2021 Batch#17506
6/24/2021	6/19/2021		0.00		164.47	164.47	UB Online Pmt deposited on 6/24/2021 Batch#17503
6/25/2021	6/21/2021		0.00		35.00	35.00	TAX(PP) Online Pmt deposited on 6/25/2021 Batch#17510
6/25/2021	6/21/2021		702.45		-	702.45	TAX(RE) Online Pmt deposited on 6/25/2021 Batch#17511
6/25/2021	6/21/2021		0.00		62.79	62.79	UB Online Pmt deposited on 6/25/2021 Batch#17512
6/28/2021	6/22/2021		284.30		114.87	399.17	TAX(PP) Online Pmt deposited on 6/28/2021 Batch#17522
6/28/2021	6/22/2021		0.00		77.55	77.55	TAX(RE) Online Pmt deposited on 6/28/2021 Batch#17523
6/28/2021	6/22/2021		0.00		290.63	290.63	UB Online Pmt deposited on 6/28/2021 Batch#17524
6/28/2021	6/23/2021		97.03		31.95	128.98	UB Online Pmt deposited on 6/28/2021 Batch#17534
6/28/2021	6/24/2021		0.00		175.05	175.05	UB Online Pmt deposited on 6/28/2021 Batch#17540
6/29/2021	6/25/2021		0.00		454.37	454.37	UB Online Pmt deposited on 6/29/2021 Batch#17631
6/29/2021	6/25/2021		0.00		134.23	134.23	TAX(PP) Online Pmt deposited on 6/29/2021 Batch#17630
6/29/2021	6/25/2021		0.00		161.74	161.74	UB Online Pmt deposited on 7/1/0221 Batch#17632
7/1/2021	6/27/2021		37.37		-	37.37	UB Online Pmt deposited on 7/2/2021 Batch#17634
7/2/2021	6/28/2021		45.05		-	45.05	TAX(PP) Online Pmt deposited on Batch#17642
7/2/2021	6/29/2021		0.00		188.63	188.63	UB Online Pmt deposited on Batch#17643
7/2/2021	6/29/2021		851.29		-	851.29	TAX(PP) Online Pmt deposited on Batch#17649
7/2/2021	6/30/2021		0.00		364.79	364.79	UB Online Pmt deposited on Batch#17650
						-1,648.87	
						27,576.37	

Berryville Town Council Item Report

July 2021

Berryville Auto Parts

May/June Activity Paid In June

<u>Department</u>	<u>Date</u>	<u>Description of Transaction</u>	<u>Invoice Amount</u>
Police Dept	5/20/2021	2017 EXPLORER #05: SVC OIL & FILTER, CK FLUID, ROTATE TIRES, CK BRAKES	\$ 64.00
			<u>\$ 64.00</u>
	5/20/2021	2018 EXPLORER #03: MOUNTED RADAR ANTENNA VA. STATE INSPECTION, N/C	\$ 9.52
			<u>\$ 9.52</u>
	5/25/2021	2020 EXPLORER #04: SVC OIL& FILTER, CK FLUID,NO TIRE ROTATION CK BRAKES	\$ 56.40
			<u>\$ 56.40</u>
			\$ 129.92
Utilities	6/17/2021	CQ H1TMP GREASE 14OZ X 10	\$ 43.00
			<u>\$ 43.00</u>
			<u>\$ 43.00</u>
			<u>\$ 172.92</u>
		Total spent In May/ June 2021	
		Previous Months Balance forward	\$ 8,448.10
		Total spent fiscal year to date	<u>\$ 8,621.02</u>

NOTES:

ALL STATE INSPECTIONS ARE DONE AT NO CHARGE

Total Shop Supplies to date	1290.93
Total Vehicle charges to date	7330.09

**Berryville Town Council Item Report Summary
July 13, 2021**

Item Title

Town Manager - American Rescue Plan Act of 2021

Prepared By

Background/History/General Information

Findings/Current Activity

Financial Considerations

Schedule/Deadlines

Other Considerations

Attachments

1. 12a

Recommendation

Sample Motion

American Rescue Plan Act of 2021

History

The Town Council began work on this matter in May 2021 and held its first work session on this matter in early April 2021. The Council held its second work session on the matter on June 22, 2021 and determined that it would hold a public hearing on the draft Town of Berryville American Rescue Plan Act of 2021 Implementation Plan (Plan). The public hearing was scheduled for July 13, 2021.

It is expected that the Council will adopt some version of the Plan in July 2021.

The Plan, which provides a framework for expenditure of ARPA funds, will be implemented by the Town Manager and Town staff. The Town Manager will regularly update the Council on Plan implementation. The Council will provide additional direction to the Town Manager as it sees fit.

Monthly Update

Staff efforts in June 2021

- Staff is working to prioritize the infrastructure projects currently included in Appendix D of the draft Plan.
- Staff is working with the Town's engineer to prepare required plans and contract documents for projects.

Staff initiatives expected in the near-term

- Staff will develop a list of the first infrastructure projects to be pursued under the Plan. If the Plan is adopted on July 13, 2021, it is expected that the list in question will be provided to the Town Council by August 23, 2021.
- Staff will meet with the Town's engineer to proceed with priority infrastructure projects as soon as possible.
- Staff will develop the framework for grant programs. If the Plan is adopted on July 13, 2021, it is expected that the framework in question will be provided to the Town Council by September 6, 2021.

Funds expended over the past month

The funds expended prior to July 1, 2021, which include staff time, legal costs, and public hearing notice publication costs, will be included with the July 2021 expense report.

This expense report will be provided by the Treasurer and attached to this monthly update.

**Berryville Town Council Item Report Summary
July 13, 2021**

Item Title

Town Manager - Proposed Amendment to the Schedule of Water and Sewer Fees and Charges

Prepared By

Background/History/General Information

Findings/Current Activity

Financial Considerations

Schedule/Deadlines

Other Considerations

Attachments

1. 12b

Recommendation

Sample Motion

July 13, 2021

Proposed Amendment to the Schedule of Water and Sewer
Fees and Charges

Set Public Hearing

History

The Town maintains a general fund and two enterprise funds. The water and the sewer enterprise funds operate in a manner that is very similar to a private business. These funds must operate in a manner that meets capital and operating expenses with the revenues available from user fees (monthly customer bills), availability fees (paid for new or enlarged system connections), borrowing, or grants.

In 2019 an engineering firm completed a utility rate study (Study) that identified water and sewer system needs over the next two decades and provided the Town Council with a schedule of recommended fee and rate increases that should be considered over the subsequent five-year period to provide sufficient income to meet system needs.

The Council adjusted water and sewer fees in 2019 and 2020. The newly adopted FY2022 Budget anticipated income from adjusted fees (effective in November 2021). The attached amended fee schedule was used in the development of the FY2022 Budget.

Highlights of the schedule adjustments include:

Water

- An increase of \$5.21 in the monthly administrative fee charge
- A 2% increase in availability fees

Sewer

- An increase of \$2.40 in the monthly administrative fee charge
- A 2% increase in availability fees

Requested Action

Staff requests that the Council set a public hearing on this matter for its September 14, 2021 meeting.

Attachments

- Draft Schedule of Water and Sewer Fees and Charges
- Utility Rate Study Town of Berryville July 2019

Sample Motion

I move that the Council of the Town of Berryville set a public hearing for its regular meeting in September to receive public comment on the attached draft Schedule of Water and Sewer Fees and Charges.

TOWN OF BERRYVILLE
SCHEDULE OF WATER AND SEWER FEES AND CHARGES

~~Effective November 19, 2020~~

Proposed to be effective November 18, 2021

I. USER FEES

A. WATER

1. Within corporate limits or the limits of an approved annexation area: \$8.15 per 1,000 gallons of usage. Minimum charge \$5.00 per month for usage under 1,000 gallons during billing period.
2. Other: \$10.18 per 1,000 gallons of usage. Minimum charge \$6.25 per month for usage under 1,000 gallons during billing period.

B. SEWER

1. Within corporate limits or the limits of an approved annexation area: \$17.27 per 1,000 gallons of usage. Minimum charge \$15.00 per month for usage under 1,000 gallons during billing period.
2. Other: \$21.58 per 1,000 gallons of usage. Minimum charge \$18.75 per month for usage under 1,000 gallons during billing period.

II. ADMINISTRATIVE AND FACILITIES FEES AND DEPOSITS

A. ADMINISTRATIVE AND FACILITIES FEES

Monthly Administrative and Facilities Fees, charged with usage:

Water ~~\$7.13~~ 12.34

Sewer ~~\$4.82~~ 7.22

Late Fee: 10% of bill amount

Service Disconnection/Reconnection Fee: \$50

Returned Check/ACH Fee: \$50

B. DEPOSITS

Residential: individually metered single-family units, town homes, and duplexes: ~~\$240~~ 255

Residential: multi-family with master meter: ~~\$185~~ 200 per unit

Business/Commercial excluding restaurants and laundries: ~~\$240~~ 255

Restaurant: \$835 850*

Laundry: \$4,560 4,575*

Institutional: \$1,580 1,595*

Industrial: \$5,600 5,615*

*Town Manager may increase or decrease on the basis of actual usage.

Note: Town Manager may establish reasonable deposit amounts for use types not anticipated by this schedule.

III. AVAILABILITY FEES

A. WATER

Meter Size (Inches)	Demand Ratio	Avail. Fee (Corp. Limits or Annex. Area)	Avail. Fee (Other)	Meter Cost
5/8	1	\$ 13,840.00	\$ 17,300.00	Meter Fee
3/4	1.5	\$ 20,760.00	\$ 25,950.00	Meter Fee
1	2.5	\$ 34,600.00	\$ 43,250.00	Meter Fee
1.5	4.375	\$ 60,550.00	\$ 75,688.00	Meter Fee
2	8	\$ 110,720.00	\$ 138,400.00	Meter Fee
3	16	\$ 221,144.00	\$ 276,800.00	Meter Fee
4	25	\$ 346,000.00	\$ 432,500.00	Meter Fee
6	50	\$ 692,000.00	\$ 865,000.00	Meter Fee

Greater than 6", Demand Ratio (AWWA M22) multiplied by fee for Demand Ratio 1.

Meter Size (Inches)	Demand Ratio	Avail. Fee (Corp. Limits or Annex. Area)	Avail. Fee (Other)	Meter Cost
5/8	1	\$ 14,118	\$ 17,648	Meter Fee
3/4	1.5	\$ 21,177	\$ 26,472	Meter Fee
1	2.5	\$ 35,295	\$ 44,120	Meter Fee
1.5	4.375	\$ 61,766	\$ 77,210	Meter Fee
2	8	\$ 112,944	\$ 141,184	Meter Fee
3	16	\$ 225,888	\$ 282,368	Meter Fee
4	25	\$ 352,950	\$ 441,200	Meter Fee
6	50	\$ 705,900	\$ 882,400	Meter Fee

Greater than 6", Demand Ratio (AWWA M22) multiplied by fee for Demand Ratio 1.

Notes:

(a) Multi-family residences are defined as any master-metered group of apartment, townhouse, condominium, or other residential units with each unit having separate kitchen facilities.

(b) In cases in which a master meter serves multi-family residences or a combination of multi-family and commercial units, the applicant will pay a fee based on the higher of A) an amount derived by multiplying the unit charge of \$11,072.8 by the applicable water availability fee for demand ratio 1 for a multi-family residence times the total number of residential and commercial units to be served by a single meter, or B) an amount based on the meter size as specified above.

(c) Meter fee is calculated by adding the cost of the meter and a 30% (of meter cost) handling fee.

B. SEWER

Meter Size (Inches)	Demand Ratio	Avail. Fee (Corp. Limits or Annex. Area)	Avail. Fee (Other)
5/8	1	\$ 14,865.00	\$ 18,581.00
3/4	1.5	\$ 22,298.00	\$ 27,872.00
1	2.5	\$ 37,163.00	\$ 46,453.00
1.5	4.375	\$ 64,960.00	\$ 81,200.00
2	8	\$ 118,920.00	\$ 148,650.00
3	16	\$ 237,84.00	\$ 297,300.00
4	25	\$ 371,625.00	\$ 464,531.00
6	50	\$ 743,250.00	\$ 929,050.00

Greater than 6", Demand Ratio (AWWA M22) multiplied by fee for Demand Ratio 1.

Meter Size (Inches)	Demand Ratio	Avail. Fee (Corp. Limits or Annex. Area)	Avail. Fee (Other)
5/8	1	\$ 15,162	\$ 18,952
3/4	1.5	\$ 22,743	\$ 28,428
1	2.5	\$ 37,905	\$ 47,380
1.5	4.375	\$ 66,334	\$ 82,915
2	8	\$ 121,296	\$ 151,616
3	16	\$ 242,592	\$ 303,232
4	25	\$ 379,050	\$ 473,800
6	50	\$ 758,100	\$ 947,600

Greater than 6", Demand Ratio (AWWA M22) multiplied by fee for Demand Ratio 1.

IV. LATERAL OR CONNECTION FEES

Connection to the Town's water distribution and/or sewer collection system may be completed only if the following conditions are met:

- Party applying to connect to the system agrees to assume all costs associated with connection to the systems, including excavation, taps, vaults, traffic control, restoration (including pavement), testing, inspections, etc.
- Contractor responsible for completing work has been vetted and approved by the Town.

- Plans for the work, including restoration, have been approved by the Town.
- Required surety has been approved and provided to the Town.
- Required insurance coverage is in place and documentation thereof provided to the Town.
- Required permits have been issued by the Town, Virginia Department of Transportation, or other applicable agency.

V. INSPECTIONS

A. Sanitary Sewer Camera Service and Storm Sewer Camera Inspection Service

1. Mains and Laterals Over 4 Inches in Diameter

Mobilization Fee: \$300

Camera Fee: ~~\$2.50~~ 3.00 per linear foot

2. 4-Inch Laterals

Laterals Under 50 Feet in Length: \$150

Laterals 50 Feet in Length or Greater: \$150 plus ~~\$2.50~~ 3.00 per linear foot

B. Inspections

Town staff: \$65 per hour (1 hour minimum for any inspection then billed at ½ hr. increments thereafter)

Licensed professional engineer or approved third-party inspector: Cost

C. Hydrant Flow Tests

\$65 per hour (1 hour minimum for any test then billed at ½ hr. increments thereafter) plus cost of water (includes water and sewer charges)

Notes:

Cleaning of lines will be required prior to camera use: Line cleaning is the responsibility of the applicant. If lines are not clean and camera crew must remobilize later to perform the inspection, a second mobilization fee will be charged.

Hydrant flow tests: Hydrant flow tests must be scheduled with the Director of Public Works no less than three work days in advance of test. Contractor will supply gauges and will be responsible for recording results. Town personnel will operate hydrant.

VI. SIGNIFICANT INDUSTRIAL USER FEES

Sewer system discharge permit: \$500

VII. WATER METER TESTING

5/8" meter: \$100

All other meters: \$100 + cost

Note: Fee is refunded if meter is found to be over-registering.

VIII. HYDRANT METERS

Nonrefundable account establishment fee: \$50

Meter deposit: ~~\$1,200~~ 1,500 (deposit refunded upon return of undamaged meter)

Note: Usage metered through hydrant meters will be billed for both water and sewer user fees.

IX. UNAUTHORIZED USE OF SERVICE

For unauthorized water withdrawals from fire hydrants or any other part of the Town water system, or when a customer willfully takes steps to reactivate service after service has been disconnected by the Town because of nonpayment of any charge owed to the Town, and the Town must take action to discontinue service again by removal of the meter or by any other necessary measures, a \$250 charge for unauthorized use of services will be imposed. This charge will be in addition to any other charge for water and sewer services owed to the Town, and in addition to any legal remedies the Town may pursue for unauthorized use of service.

Approved by Town Council on September 8, 2020. EXPECTED on or about September 14, 2021.

Utility Rate Study
Town of Berryville, Virginia
Utility Rate Study
Pennoni Associates, Inc., Winchester VA
July 2019



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1. Introduction

The Town of Berryville operates a water system to supply, treat, and distribute water for human consumption and 5* other uses and operates a wastewater system to collect and treat sewage. Town billing data for the period September 2017 through August 2018 would conclude there were an average 1,515 homes served water and 208 other water accounts during that period. Most of these same accounts are served both water and wastewater, but the Town reports that as of September 2018 there were 45 water-only accounts, including 20 residential, six commercial, and three industrial accounts inside the Town limits, with the remaining 16 water-only accounts being outside the Town limits including 12 residential, two commercial, and two institutional accounts. In order to continue to operate this system adequately and provide the level of service expected by these customers, the water and wastewater systems will need to maintain adequate financing.

In order to maintain adequate funding for daily operations, maintenance and renewal of assets, and meet the increasingly stringent regulatory requirements, the Town is undertaking an important study to forecast future service demands, perform an initial evaluation of its water and wastewater assets, review its financial condition, and provide options for water and wastewater rate setting to provide sufficient capital to maintain its assets and meet customer and regulatory requirements. This report summarizes the findings of this study.

According to the American Water Works Association of Denver, Colorado in a Manual of Practice for Developing Rates for Small Systems, several underlying principles are suggested:

- A. That water utilities provide sufficient revenue for annual operations and maintenance expenses, capital costs and debt service, and working capital and reserves. This study addresses all these issues.
- B. Water utilities should account for its funds separate from other governmental entity operations. The Town has achieved this principle through establishing and maintaining a Water Fund and a Sewer Fund separate from the General Fund.
- C. That water systems adopt a uniform system of accounts for accounting and management controls. The Town has developed such a system.
- D. Financial reporting should meet requirements of legislative, judicial, or regulatory bodies. This requirement is audited annually by the Town through a Certified Public Accountant.
- E. Water rate schedules should be designed to distribute the cost of water service equitably among each function and class of service. This study and report follow this principle; where segregation of data for this purpose is not available, assumptions are used based on industry norms.
- F. Water utilities should maintain asset records with sufficient information to monitor and manage the physical condition of infrastructure and should support planned and preventive maintenance programs and budgets adequate to maintain and rehabilitate/renew assets at levels of service consistent with good utility practice. This study initiates a structure to provide asset listing and condition based upon basic data to include age, size, material specifications, and engineering judgment reflecting known maintenance history and past design work. The rate structure proposed by this study incorporates judgment on the future need to replace existing assets and is a starting point in identifying large financial impact where more detailed analyses beyond this study may be appropriate to continue to optimize costs of asset performance and reliability.

Background on Water System

The Town supplies its water through an intake facility on the Shenandoah River which receives and screens river water and then pumps the untreated ("raw") water to the Berryville Water Treatment Facility. The Treatment Facility treats the water to excel beyond federal and state drinking water standards through a Neptune Microfloc package system built in 1984 that includes conventional filtration to remove particles, after which the water is disinfected and pumped through a high service pumping station to the Town's transmission and distribution system. The water supply, treatment, and pumping system is permitted by the Virginia Department of Health for a capacity of 864,000 gallons per day, and the water intake and pumping and water treatment facility can achieve that capacity. The high service pump station is limited to 754,000 gallons per day as a result of internal constraints, thereby this limitation becomes the "choking" point on how much treated water can be delivered into the distribution system.

From a review of Town water production records between 2013 and 2018, the monthly average daily water pumped into the distribution system varied from 261,000 gallons per day in April 2018 to 394,000 gallons per day in April 2014. For the period between September 2017 through August 2018, the annual average daily volume of water pumped to the distribution system was 325,000 gallons per day. During that same one-year period, billed consumption averaged 282,000 gallons per day. From this data one would conclude that 13.2% of the treated water pumped to the distribution system is not metered and billed, referred to in the industry as the non-revenue water rate. All water distribution systems have a component of non-revenue water which can be contributed from numerous sources, including water use from a fire hydrant, leaks from water system assets including water main breaks, water theft, and under-registration of water consumed by meters not accurately calibrated. The water industry sets a standard of striving for non-revenue water below 10%, and above 15% is a "flag" for the need of significant improvement. The Town of Berryville falls in an adequate range but can still strive to improve water accountability. A key place to start is accurate meter registration. It is noted the Town plans to replace the water meters in its system in 2022 and the performance of this action is favorably recommended in this study.

There are also expected water "losses" between the quantity of water filtered or purified and the quantity of water pumped into the distribution system. The largest uses in this category include essential backwashing of the water filters and clean "make-up" water for diluting chemicals, as well as other water used in the treatment process. Plant production records between September 2017 and August 2018 suggest that an average 10.5% of water treated is used within the treatment process, therefore, to pump 325,000 gallons per day into the distribution system, a total of 363,000 gallons per day is treated and filtered.

Based on operational records reported monthly to the Virginia Department of Health and the data distributed by the Town through its annual consumer confidence reports, its treated water is currently meeting all quality drinking water standards of federal and state regulations.

The water transmission and distribution systems consist of an interconnected network of water mains, most within public street rights-of-way, within two pressure zones, and include two elevated water tanks, one ground storage tank, and a booster pump station. The two pressure zones are identified as the 758 Zone and the 808 Zone, where 758 and 808 represent the static head elevations of the two zones in reference to mean sea level. Most of the water distribution system and service connections are on the 758 Zone, with the 808 Zone serving the northwest corner of the system near Route 7 West where the Town's natural ground elevations are highest. One elevated tank and one ground storage tank are located in the 758 Zone, and a second elevated tank serves to maintain water pressure in the 808 Zone as water demand in that zone fluctuates. All treated water at the water plant is pumped into the 758 Zone, a separately located booster pump station transfers water from the 758 Zone to the 808 Zone.

More detailed information on the water system assets is provided under the Evaluation of Assets chapter of this report.

Background on Wastewater System

The Town collects wastewater through a system of underground pipes sloped to allow flow by gravity to the wastewater treatment plant, supplemented by four wastewater pump stations that pump or lift sewage from isolated low points through a "force main" back into the gravity system.

The Berryville Wastewater Treatment Plant is a 700,000 gallons per day (monthly average) state-of-the art facility constructed in 2010 that consists of 4-Stage Bardenpho Bioreactor Basins and a Membrane Bioreactor for advanced nutrient removal to meet stringent nutrient discharge limits for Chesapeake Bay watersheds. The facility also includes a flow equalization tank of 0.7 million gallons to hold incoming peak sewer flows and allow the Bioreactors to operate optimally at a steady rate. Berryville is consistently meeting its stringent effluent limits and is a member of the Virginia Nutrient Credit Exchange Association whereby nutrient removal in excess of the facility's allocation can be sold on an exchange for a modest amount of revenue. Most importantly, this membership also allows the Town to purchase credits at the member rates should circumstances ever be necessary for the Town to maintain regulatory compliance.

Metered sales records from the Town between September 2017 and August 2018 indicate that an average 279,000 gallons of wastewater per day was registered for billing purposes.

2. Water and Wastewater Demand Projections

This chapter of the report summarizes the review of historical water and wastewater system demand, including treatment plant metering and reporting data, customer billing data, and reported growth trends. A long-term growth projection is provided in 5-, 10-, 15- and 20-year intervals based upon information provided by the Town of Berryville's Planning and Zoning Department. This chapter also discusses capacities of water and wastewater system components and the abilities of these capacities to meet growth needs.

This study reviewed development information from the Town's Department of Planning and Zoning, including recent development activity and forecasted ultimate growth in water and wastewater use through build-out of undeveloped land by zoning sub areas. Table 2-1 summarizes recent development activity, and Table 2-2 summarizes growth in demand by potential long-term build-out. Potential quantities in additional water demand from build-out in gallons per day are taken directly from the Town's Planning and Zoning projections and suggest the very long-term potential that the Town's metered water consumption could increase from the present 283,000 gallons per day annual average to up to as high as 816,000 gallons per day. This data also suggests that although current consumption from outside Town limits is a very small percentage, a significant amount of future growth to water and wastewater demand could come from property presently outside of the Town's corporate limits. The Town has a defined Annexation Area and may intend to annex much of this property at some future date, but to the extent future service increases beyond the Town limits, ratemaking may need to consider more closely the equity of charges to outside vs. inside customers.

Table 2-1

Recent Commercial Activity

Source: Town of Berryville Department of Planning and Zoning, October 15, 2018

Date of Approval	Planning Area	Development	Data from Capacity of Waterworks: 12 VAC 5-590-690	
			VDH Criteria	Capacity Added (gpd)
January 25, 2017	Sub Area 7	McDonald's (assumes 60 seats)	Restaurant - 50 gpd/seat	3,000
August 9, 2017	Sub Area 6	67-bed assisted care	Nursing Home - 200 gpd/bed	13,400
October 24, 2018	Sub Area 6A	120 age-income restricted apartments	Residential - 100 per unit	12,000
Total Capacity Added (gpd):				28,400

Note: Capacity is how VDH looks at what excess capacity the water system needs to assure service to a specific new project at the time of application. It may be conservative and therefore not reflective of long-term consumption and revenue.

Table 2-2

Future Activity - Long-Term Build-Out

Source: Town of Berryville Department of Planning and Zoning, October 15, 2018

	Total Build-Out Flow (gpd)	Build-Out Flow Added by User Class				Town Limits	Comments
		Residential Flow (gpd)	Commercial Flow (gpd)	Institutional Flow (gpd)	Industrial Flow (gpd)		
Sub Areas 1 and 2	189,700	170,730		18,970		Outside	Zoned to allow Institutional but forecasted likely mostly residential. Assume 90% Institutional; 10% Residential
Sub Area 6A	24,000	14,400		9,600		Inside	Mostly residential; includes 120 income restricted apartments; limited small commercial
Sub Areas 6 and 7	182,800		182,800			Inside	Business Commercial, includes grocery store and bank
Sub Area 12B	7,500		7,500			Outside	Business Park
Sub Area 19A	11,000		11,000			Inside	Business Park
Sub Area 27A	24,850	24,850				Partial	Residential - Hermitage V
Sub Area 9	47,600	47,600				Inside	Residential - Includes 22,050 gpd for Fellowship Square; also includes Shenandoah Crossing
Sub Areas 13, 14, 15	45,300	45,300				Outside	Identified by Town as likely Residential

Totals					
Inside Town Limits	277,800	74,400	193,800	9,600	-
Outside Town Limits	255,000	228,500	7,500	19,000	-
Totals	532,800	302,900	201,300	28,600	-

Historical growth trends and qualified population projections should be strongly considered in forecasting future growth in water and wastewater demands over a 20 to 30-year horizon. The best sources of information in Virginia on population trends and growth projections are the U. S. Census Bureau, Virginia Employment Commission and The Weldon Cooper Center at the University of Virginia. Table 2-3 summarizes historical population trends for both the Town of Berryville and Clarke County, from census information reported by *World Population Review*. Also shown is Weldon Cooper Center for Clarke County (The Weldon Cooper Center does not report data for Towns < 5,000 population). The data reflects “up and down” patterns of growth typical for actual historical data over the past 57 years, with higher growth in the 1980s and the 2000s. Recent growth averaged over several years fall into a range of 0.28% to 1.25% per year.

Table 2-3
Berryville and Clarke County Population

Source 1: *World Population Review: Reporting Claims Using U S Census Data and Census Estimates*

Source 2: *University of Virginia Weldon Cooper Center, Demographics Research Group (2017), Virginia Population Projections. Retrieved from https://demographics_coopercenter.org/virginia-population-projection*

Year	Population			Average Annual Growth		
	Town Population	County Population		Town	County	
	Source 1	Source 1	Source 2		Source 1	Source 2
1960			7,942			
1970			8,102			0.20%
1980			9,965			2.09%
1990	3,097	12,101	12,101			1.96%
2000	2,963	Not Provided	12,652	-0.44%		0.45%
2010	4,179	14,011	14,034	3.50%		1.04%
2011	4,222	14,187	14,211	1.03%	1.26%	1.26%
2012	4,237	14,242	14,276	0.36%	0.39%	0.46%
2013	4,246	14,250	14,148	0.21%	0.06%	-0.90%
2014	4,264	14,320	14,323	0.42%	0.49%	1.24%
2015	4,266	14,255	14,206	0.05%	-0.45%	-0.82%
2016	4,286	14,322	14,240	0.47%	0.47%	0.24%
2017	4,338	14,508	14,312	1.21%	1.30%	0.51%
Total 1990 to 2017				1.25%	0.67%	0.62%
Total 2000 to 2017				2.27%	Not Available	0.73%
Total 2010 to 2017				0.54%	0.50%	0.28%

Table 2-4 provides future population growth projections published by the Virginia Employment Commission and The Weldon Cooper Center for Clarke County (projections on Town of Berryville were not found within the data published by these agencies). The computation of average annual growth rates over periods of 20 to 30 years from these projections are highly consistent, varying between 0.42% per year to 0.47% per year. The Town of Berryville Planning and Zoning Department reports that in recent years growth within the Town's utility service area has been observed to be "slightly" higher than Clarke County. For the purpose of this rate study, it will be assumed that the growth of demand for water and wastewater within the Town's systems will be forecasted as 0.50% per year.

Table 2-4

Forecasted Growth Rate - Clarke County

Source 1: Town of Berryville Planning and Zoning, October 15, 2018,

Quoted from Clarke County Community Profile at Virginia Employment Commission

Source 2: University of Virginia Weldon Cooper Center, Demographics

Research Group (2017), Virginia Population Projections. Retrieved from

https://demographics_coopercenter.org/virginia-population-projection

	Population		Annual Average Growth Rate	
	Source 1	Source 2	Source 1	Source 2
2010	14,034	14,034		
2015		14,206		0.24%
2020	14,337		0.21%	
2025		14,801		0.41%
2030	15,266		0.63%	
2035		15,615		0.54%
2040	15,965		0.45%	
2045		16,315		0.44%

Average Rate 2010 - 2030	0.42%	
Average Rate 2010 - 2040	0.43%	
Average Rate 2015 - 2035		0.47%
Average Rate 2015 - 2045		0.46%

Table 2-5 uses this 0.50% per year average demand to forecast water and sewer metered customer consumption demands over the next 20 years. Current demand is segregated by customer class and represented as inside or outside the Town's limits based on customer billing data provided by the Town. Forecast growth is assigned to customer class and inside or outside Town limits based on a straight-line projection from current class of use toward build-out using the current classification of land use for future development provided by the Town's Planning and Zoning Department. As noted previously in this report, a greater amount of the future growth is projected on land that is presently outside Town limits.

Table 2-5
Forecasted Future Average Day Billed Consumption for Town of Berryville

Customer Class	Current Annual Average Daily Billed		Forecasted Annual Average Daily Billed Consumption (MGD)							
			2025		2030		2035		2040	
	Inside Town Limits	Outside Town Limits	Inside Town Limits	Currently Outside Town Limits	Inside Town Limits	Currently Outside Town Limits	Inside Town Limits	Currently Outside Town Limits	Inside Town Limits	Currently Outside Town Limits
Water Service										
SF Residential	0.169	0.002	0.170	0.005	0.171	0.008	0.172	0.011	0.173	0.014
MF Residential	0.015	0.000	0.015	0.000	0.015	0.001	0.016	0.001	0.016	0.002
Commercial	0.022	0.000	0.025	0.000	0.028	0.000	0.032	0.000	0.035	0.000
Institutional	0.031	0.013	0.031	0.013	0.031	0.014	0.031	0.014	0.032	0.014
Industrial	0.030	0.000	0.030	0.000	0.030	0.000	0.030	0.000	0.030	0.000
Totals	0.267	0.015	0.271	0.018	0.276	0.023	0.281	0.026	0.285	0.030
	0.282		0.289		0.299		0.307		0.316	
Wastewater Service										
SF Residential	0.167	0.000	0.168	0.003	0.169	0.006	0.170	0.009	0.171	0.012
MF Residential	0.015	0.000	0.015	0.000	0.015	0.001	0.016	0.001	0.016	0.002
Commercial	0.021	0.000	0.024	0.000	0.027	0.000	0.031	0.000	0.034	0.000
Institutional	0.032	0.014	0.032	0.014	0.032	0.015	0.032	0.015	0.033	0.015
Industrial	0.030	0.000	0.030	0.000	0.030	0.000	0.030	0.000	0.030	0.000
Totals	0.265	0.014	0.269	0.017	0.273	0.022	0.279	0.025	0.284	0.029
	0.279		0.286		0.295		0.304		0.313	

An important part of capital planning is an understanding if the capacity of the utility system can meet projected future demands. The projected 2040 average day customer metered consumption of 315,000 gallons per day for water and 313,000 gallons per day for wastewater are both well within the current capacities for the treatment facilities (864,000 gallons per day water treatment and 700,000 gallons per day wastewater treatment) and further provide adequate excess capacity to meet expected peak demands. The Town is presently updating its analysis of the full capacity of the water distribution system through a calibrated computer model and it is recommended the Town consider a similar updated analysis of its sewer collection system.

3. Evaluation of Assets

Water and wastewater utilities are capital intensive. Expensive underground pipelines, pumping stations, storage tanks, river intake facilities, and treatment facilities require significant funding for construction, operation and maintenance, and for adequate repair, renewal or replacement as facilities age. Without proper assets and asset care, the utility will fail to continuously provide a reliable level of service. Community citizens expect this high level of service to be maintained 24 hours per day, 7 days per week, and every day of the calendar year. Operation and maintenance should be planned, executed and documented, and a condition of the assets should be regularly assessed.

The Town of Berryville is to be commended for initiating an asset management program through this study to provide an initial assessment of the condition of the assets of the water and wastewater systems. The scope of this work includes relying upon a review of existing available information provided by the Town together with some engineering judgment from Pennoni's Senior Engineer who has performed previous inspection and design work for the Town. The scope of this study did not include a visual inspection of the assets or a detailed assessment. The review did include review of the Town's fixed asset data and available information regarding initial construction, material, age, and reported significant improvements made after initial construction. Data on underground water distribution and sewer collection system assets were obtained from the Town's water and wastewater data within the Clarke County GIS database. Expected service life was estimated from engineering judgment using experience within the water and wastewater industry based on basic types of material or design, understanding of the quality of manufacture at time of installation, maintenance history available, and any other known related factors. This study then provides a budget that assumes the full replacement of the asset once the estimated remaining life is complete. This evaluation is considered a useful guide to preparing an initial financial estimate to maintain the reliability of aging assets, but beyond this study it is recommended that a more detailed condition assessment be considered, particularly as assets approach the time of expected replacement, to confirm the appropriate actions that are optimal in the actual expenditure of funds. Sometimes full replacement is the optimal solution, whereas other times some significant repair or partial replacement that extends the life of the asset can be more cost-effective over the long-term. The optimal solution comes through later detailed assessment.

Water System

The assets of the Berryville water system generally function adequately to meet the system demand and level of service with limited interruptions. Small local interruptions are sometimes necessary to isolate small areas of the system for repair of water main breaks, but large-scale interruptions are minimal. Like many water systems across the United States, some of the water system assets are aging at or near the expected service life. Table 3-1 provides a 20-Year replacement schedule for water system assets estimated to reach the end of life within the next 20 years in their present condition. The assets in this table have significant above-ground structures, referred to as vertical assets. Table 3-2 provides a separate 20-Year replacement schedule for underground water main pipe and appurtenances referred to as horizontal assets. The combination of vertical and horizontal assets provides the complete fixed assets of the water system.

Tables 3-1 and 3-2 are summarized from an Excel spreadsheet with the summary listing only those assets expected to reach end of life within the next 20 years, based on available information. The larger spreadsheet provides a listing of all water system vertical and horizontal assets, along with estimated remaining service life, date of replacement, and estimated cost of replacement in 2019=\$. The spreadsheet is being provided separately in electronic form to the Town of Berryville, providing a way that these spreadsheets become a living document to be amended as further conditions are assessed and adjustment to the schedules are made.

Table 3-1
Vertical Assets of the Berryville Water System - 20-Year Replacement
Schedule

	Type of Asset	Estimated Replacement Year	Budgeted Replacement Cost (2019=\$)
Shenandoah River Intake	Equipment	2026	\$ 520,000
Raw Water Pumping Station	Land	2026	\$ 50,000
	Equipment	2026	\$ 340,000
Berryville Water Treatment Plant	Building	2026	\$ 2,500,000
	Equipment	2026	\$ 13,000,000
Finished Water Pumping Station	Equipment	2019	\$ 260,000
Booster Pump Station to Zone 808	Building	2032	\$ 250,000
	Equipment	2032	\$ 715,000
			\$ 17,635,000

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Table 3-2
Horizontal Assets of the Berryville Water System - 20-Year Replacement Schedule

	Diameter (in)	Total Length (linear feet) or Quantity (Ea)	Budgeted Replacement Year	Budgeted Replacement Cost (2019=\$)	Comments
Cast Iron Water Main	2	350	2024	\$ 30,000	To be replaced with 6"/8" DI
	4	1500	2024	\$ 204,750	To be replaced with 12" DI
		4000	2028	\$ 338,000	To be replaced with 6"/8" DI
		5000	2028	\$ 422,500	To be replaced with 6"/8" DI
		4000	2035	\$ 338,000	To be replaced with 6"/8" DI
		3000	2026	\$ 253,500	To be replaced with 6"/8" DI
	6	3000	2028	\$ 253,500	To be replaced with 6"/8" DI
		3000	2025	\$ 253,500	To be replaced with 6"/8" DI
		1500	2035	\$ 135,200	To be replaced with 6"/8" DI
		8	1000	2026	\$ 84,500
	2000		2028	\$ 169,000	
	5000		2030	\$ 422,500	
	3000		2035	\$ 253,500	
	PVC Water Main	10	20100	2040	\$ 1,829,100
Transite Water Main	4	1500	2022	\$ 126,750	To be replaced with 8" DI
	4	1500	2024	\$ 126,750	To be replaced with 8" DI.
Galvanized Steel Water Main	1	500	2024	\$ 76,050	To be replaced with 6" DI
	2	1500	2024	\$ 126,750	To be replaced with 6" DI
Water Meters: Option 1		1700	2022	\$ 600,000	With installation, retain current function
Water Meters: Option 2		1700	2022	\$ 1,200,000	With installation, software and training to operate smart meter system

Total with Meter Option 1 \$ 6,043,850
Total with Meter Option 2 \$ 6,643,850

Notes:

1. Water main appurtenances such as gate valve and other fittings are included with main replacement. Service connections and meter boxes
2. The Town of Berryville presently provides \$400,000 in its Capital Improvement Program to replace all water meters in 2022 with meters using similar reading technology. The water industry today also offers "smart" meters which transmit data continuously and electronically, eliminating the need for personnel for most meter reading, providing data for trending of peak use and prompt leak detection, and allowing for advanced customer service when combined with a web-based customer portal. A "smart" system for a community the size of the Town of Berryville would cost about \$1.2 million plus \$20,000 per year in licensing costs.

The most significant asset in Tables 3-1 and 3-2 shown for replacement in the next 20 years is the Water Treatment Plant, at a cost of \$15,500,000, scheduled for 2026. Also included are replacement of aging cast iron, galvanized iron, and Transite water mains. These projects will require considerable funding and could have a significant effect on the Town's water rates. Possible strategies for funding will be further discussed below and in the next chapter of this report. Total replacement cost for end life assets within 20 years is estimated to be \$23.5 million, or an average of \$1.18 million per year. This compares to a capital improvement investment by the Town in its FY 2018-19 budget of \$500,845, of which \$300,000 was funded by reserves.

Another significant asset obtaining much attention in the discussions of this study are the water meters, which the Town has scheduled in its CIP for replacement in 2022 at a budget of \$400,000. In today's market the specifications for water meters can vary significantly depending upon whether a utility desires to know customer consumption only once per billing cycle or obtain data on weekly, daily, and even hourly patterns through "smart" meters that are digital and can transmit data electronically from the meter to a database server. "Smart" meters allow better understanding of usage

patterns for faster leak detection, better customer service, and better water system planning, and though they cost more initially they can lead to cost savings in the longer run.

Through a "budget" level review of water meter options it was concluded that \$400,000 is sufficient to cover the capital cost of replacing all water meters in the Town's system with meters performing an equal function to the present, however, \$600,000 would be a more appropriate budget if the Town intends to also contract the cost of installation. Option 1 in Table 3-2 summarizes this option.

Option 2 describes a "smart" meter option. In order to provide the capability for all new meters to transmit meter reading by an electronic signal, an additional \$350,000 to \$400,000 is recommended to be budgeted depending on whether the transmission is a fixed polling system that can read all meters nearly continuously, or transmission is to a mobile vehicle with local polling capability. With the further addition of software and personnel training and licensing to provide customer service and analytical capability, it would be suggested that a total budget of up to \$1,200,000 be considered.

Wastewater System

Similar to the water system assets, all the wastewater system assets have been identified on an Excel spreadsheet, that includes an estimated service life and replacement costs in 2019=\$. Table 3-3 summarizes vertical assets and Table 3-4 summarizes horizontal assets expected to reach end of life within 20 years. The Berryville Wastewater Treatment Plant is less than 10 years old and generally expected to be in very good condition, but the advanced filtering membranes are expected to be replaced every 10 years, at a pre-purchased cost of \$1,120,000 (2019=), and some plant process equipment will reach end of life within the next 20 years. Several horizontal assets, including aging concrete gravity sewer pipe, aging cast iron force main, and up to 275 older manholes are shown for replacement within 20 years. Total replacement cost for end life assets within 20 years is estimated to be \$11.3 million, or an average of near \$565,000 per year. This compares to a capital improvement investment by the Town in its FY 2018-19 budget of \$300,225, of which \$15,000 was funded by reserves.

Table 3-3
Vertical Assets of the Berryville Wastewater System - 20-Year Replacement
Schedule

	Type of Asset	Estimated Replacement Year	Budgeted Replacement Cost (2019=)
Lift Station 1	Building	2021	\$ 75,000
	Equipment		\$ 130,000
Lift Station 2	Building	2022	\$ 75,000
	Equipment		\$ 130,000
Lift Station 3	Equipment	2030	\$ 260,000
Lift Station 4	Equipment	2030	\$ 260,000
Lift Station 5	Equipment	2030	\$ 130,000
Lift Station 6	Equipment	2030	\$ 325,000
Berryville Wastewater Treatment Plant	Membranes	2023	\$ 1,120,000
	Equipment	2029	\$ 150,000
	Membranes	2033	\$ 1,120,000
	Equipment	2034	\$ 1,950,000
			\$ 5,725,000

Table 3-4

Horizontal Assets of the Berryville Wastewater System - 20-Year Replacement Schedule

	Diameter (in)	Total Length (linear feet) or Quantity (each)	Budgeted Replacement Year	Budgeted Replacement Cost (2019=\$)	Comments
PVC Sewer Gravity Main	6	1000	2025	\$ 124,000	To be replaced with 8" PVC
Concrete Gravity Sewer Main	4	500	2026	\$ 62,000	To be replaced with 8" PVC
	8	15000	2026	\$ 1,853,000	To be replaced with 8" PVC
		4000	2026	\$ 494,000	To be replaced with 8" PVC
		3000	2026	\$ 371,000	To be replaced with 8" PVC
		1000	2026	\$ 124,000	To be replaced with 8" PVC
Concrete Gravity Sewer Main (Lined)	4	1000	2035	\$ 124,000	To be replaced with 8" PVC
	8	3000	2026	\$ 371,000	To be replaced with 8" PVC
		2000	2026	\$ 124,000	To be replaced with 8" PVC
		2000	2026	\$ 247,000	To be replaced with 8" PVC
		1000	2035	\$ 247,000	To be replaced with 8" PVC
Sanitary Sewer Manholes		225	2026	\$ 900,000	
		50	2035	\$ 200,000	
Cast Iron Sanitary Sewer Force Main	8	2500	2035	\$ 334,000	
				\$ 5,575,000	

4. Revenue Requirements and Future Rates

A very important component of utility rate setting is to understand the operating and capital renewal goals of the Town for its utility systems, and perform the following: (1) analyze existing budget and audit data to thoroughly understand existing costs; (2) develop revenues and costs under existing rates for a test year or normalized year valued as typical and average for the Town without anomalies such as weather that may skew costs or revenues during unusual periods; then (3) use the test year to predict future financial performance under the existing rates and establish the amount of the need for additional revenue. A further part of developing utility rates is public acceptance, which in part can be understood by comparing the Town's existing rates to nearby communities similar in characteristics to the Town. This chapter of the report begins with a comparison of rates with other communities, addresses water availability fees, then presents the results of the financial review and quantifies the need for additional revenue to meet the Town's objectives. These objectives include implementing a prudent replacement program for assets at the end of service life as addressed in Chapter 3.

Comparison of Rates with Other Communities

Utility rates must generate sufficient financial capital to maintain water and sewer system assets to a reliable level of performance that meets community expectations. To the extent consistent with this goal, the rates themselves should attempt to be acceptable to the community and should be fair and reasonable. An important part of rate consideration is to make comparisons with the utility rates and rate structure of other nearby communities that demographically and geographically similar to the Town of Berryville. For comparison purposes, the following eight communities were selected for this study — In Virginia: Frederick County Sanitation Authority (Frederick Water); Town of Front Royal; Town of Luray; Town of Purcellville; Town of Round Hill; and City of Winchester. In West Virginia: Charles Town Utility Board and City of Martinsburg.

Similar to the current Town of Berryville rates, each of the eight communities has a minimum charge for a customer account per billing cycle with a consumption allowance, and a volumetric charge for consumption above the minimum allowance. The Town of Round Hill has a flat volumetric charge that remains the same for each additional 1,000 gallons of consumption, like Berryville, but the other seven communities have tiered volumetric rates where the rate per 1,000 gallons changes as consumption moves from one block to the next block. Four of the tiered rates are declining, and three are inclining. Four of the eight communities charge higher rates to customers outside of the corporate limits of the city or town providing the service.

All eight communities, like Berryville, require a system development charge (sometimes called "availability fee", "capital cost fee", or "facility fee") for new connections to the system, to help defray the costs of providing the higher system capacity required for the new service. Seven of the eight communities determine the fee for the new connection based upon the capacity of the water meter needed for the service, like Berryville. Charles Town uses a schedule listing types of facilities (e.g., restaurant, office building, etc.) and size of the development to determine the fee. System Development Charges (Town of Berryville calls "Availability Fee") are often based on water meter size and AWWA declares this an acceptable method. Some would argue that a schedule of facilities is more accurate, but implementing that approach comes with higher administrative costs and is rarely used by smaller communities.

Since fee structures are designed differently, the best means to compare the cost of water and sewer service between multiple communities is by selecting specific values of monthly metered consumption and comparing the cost in each community for that particular volume of use. Table 4-1, and Figures 4-1 and 4-2 compare the Town of Berryville to each of the eight communities for monthly water and sewer charges for a metered consumption of 3,000 gallons per month, 10,000 gallons per month, and 20,000 gallons per month.

Table 4-1
Comparison of Water and Sewer Charges for Selected Monthly Consumption
Based on Rate Schedules Published on Internet as of February 2019

	3,000 Gallons Per Month			10,000 Gallons Per Month			20,000 Gallons Per Month		
	Water	Sewer	Total	Water	Sewer	Total	Water	Sewer	Total
Town of Berryville VA	\$ 25.20	\$ 51.00	\$ 76.20	\$ 84.00	\$ 170.00	\$ 254.00	\$ 168.00	\$ 340.00	\$ 508.00
Charles Town Utility Board WV	30.99	38.26	69.25	103.30	99.79	203.09	191.20	187.69	378.89
Frederick Water VA	30.41	51.64	82.05	60.65	87.83	148.48	103.85	139.53	243.38
Town of Front Royal VA	29.76	48.51	78.27	89.33	145.88	235.21	174.43	284.98	459.41
Town of Luray VA	35.67	47.24	82.91	72.07	96.03	168.10	125.07	167.13	292.20
City of Martinsburg WV	23.32	30.13	53.45	73.16	94.46	167.62	144.36	186.36	330.72
Town of Purcellville VA	34.41	61.47	95.88	90.50	169.90	260.40	204.40	324.80	529.20
Town of Round Hill VA	24.90	28.83	53.73	83.00	96.10	179.10	166.00	192.20	358.20
City of Winchester VA	45.58	34.89	80.47	90.24	116.30	206.54	154.04	232.60	386.64

Figure 4-1: Comparison of Water Charges/Month (\$)

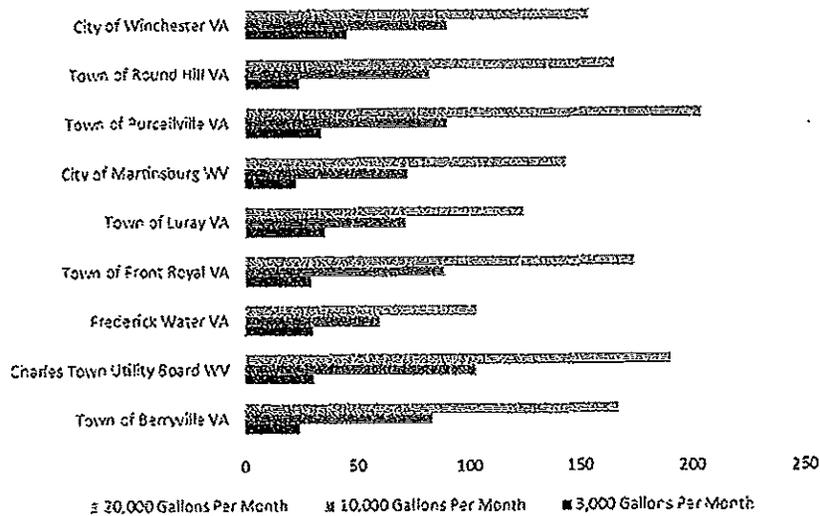
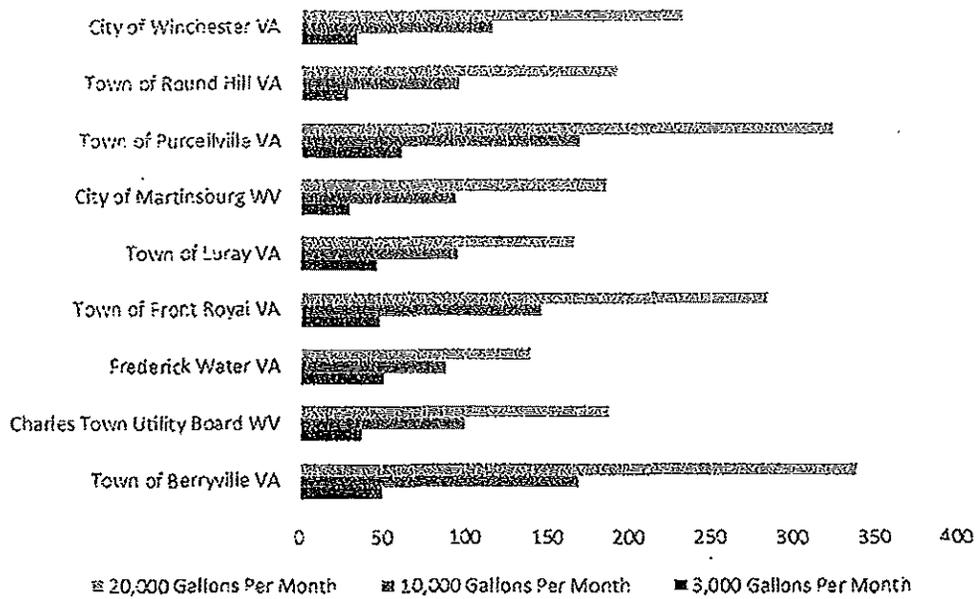


Figure 4-2: Comparison of Sewer Charges/Month (\$)



At a consumption of 3,000 gallons per month, which is slightly above the median residential water bill, the Town of Berryville has the third lowest water rates and the third highest sewer rates of the nine communities shown in Table 4-1. The total water and sewer bill at 3,000 gallons per month use is fourth of nine from the lowest, or near the median. At a consumption of 10,000 gallons per month, Berryville's water rates are the fourth highest of nine, and the sewer rates are the highest, with the total bill the second highest. At 20,000 gallons per month, Berryville remains near the median for water service and highest for sewer service, and second highest overall. This comparison would suggest that the Town of Berryville has very competitive rates at 3,000 gallons per month consumption but becomes less competitive based on the higher sewer charges for customers whose use approaches or exceeds 10,000 gallons per month.

Table 4-2 shows the distribution of water consumption by number of accounts within each major customer class for the Town of Berryville, from billing data averaged over a one-year period between September 2017 and August 2018. Customer classes shown include Residential both within and outside the Town limits, Commercial both within and outside the Town limits, and Industrial. Within this table Multi-Family and Institutional customers are shown as a part of the Commercial class. Within the one-year period as defined above, all Industrial customers were inside the Town limits. Most of the Town customers are Inside residential. Looking more closely at the Residential – Inside Town class, 60% of these customers use 3,000 gallons per month or less, and 90% use 6,000 customers or less. So, while the data suggests the Town's rates become less competitive at consumption of 10,000 gallons per month and higher, these higher rates affect only a small number of the highest consumers of water and sewer service.

Table 4-2

Town of Berryville - Distribution of Water Consumption by Account for Typical Month

Source: Town of Berryville Utility Billing System - Averaged from Meter Reading and Billing Data from September 2017 through September 2018

Metered Consumption (1000 gallons)	Residential - Inside Town Limits		Residential - Outside Town Limits		Commercial ¹ - Inside Town Limits		Commercial - Outside Town Limits		Industrial ²	
	No. of Accounts	Percent of Accounts Consuming Less Than or Equal to	No. of Accounts	Percent of Accounts Consuming Less Than or Equal to	No. of Accounts	Percent of Accounts Consuming Less Than or Equal to	No. of Accounts	Percent of Accounts Consuming Less Than or Equal to	No. of Accounts	Percent of Accounts Consuming Less Than or Equal to
-	92	6.1%	1	7.7%	39	21.4%	2	11.8%	3	25.0%
1	209	20.0%	3	30.8%	38	42.3%	0	11.8%	2	41.7%
2	312	40.7%	3	53.8%	19	52.7%	1	17.6%	1	50.0%
3	296	60.4%	2	69.2%	13	59.9%	1	23.5%	1	58.3%
4	223	75.2%	2	84.6%	9	64.8%	1	29.4%	0	58.3%
5	147	84.9%	1	92.3%	7	68.7%	1	35.3%	0	58.3%
6	89	90.8%	0	92.3%	6	72.0%	1	41.2%	1	66.7%
7	53	94.4%	0	92.3%	6	75.3%	1	47.1%	0	66.7%
8	34	96.6%	0	92.3%	3	76.9%	1	52.9%	0	66.7%
9	20	97.9%	0	92.3%	4	79.1%	1	58.8%	0	66.7%
10	12	98.7%	0	92.3%	3	80.8%	1	64.7%	0	66.7%
11 - 20	16	99.8%	1	100.0%	16	89.6%	2	76.5%	1	75.0%
21 - 50	2	99.9%	0	100.0%	10	95.1%	2	88.2%	1	83.3%
51 - 100	1	100.0%	0	100.0%	5	97.8%	1	94.1%	0	83.3%
Greater Than 100	0	100.0%	0	100.0%	4	100.0%	1	100.0%	2	100.0%

Notes:

¹For purposes of this table, accounts in billing system identified as Multi-Family and Institutional are grouped with Commercial.

²There were no industrial accounts in the billing system identified as Outside Town Limits

With respect to Availability Fees, the Town of Berryville is at the median by comparison with the other eight communities for the water utility (for an equivalent residential unit four communities charge higher fees and four charge lower fees) but is the highest of all nine communities with respect to wastewater fees. Table 4-3 depicts this comparison.

Table 4-3

Comparison of System Development Charges¹ (Availability Fee) for New Service Connection Equivalent to One Residential Unit (5/8-inch Water Meter)

	Water	Sewer	Total
Town of Berryville VA	\$ 5,250.00	\$ 22,750.00	\$ 28,000.00
Charles Town Utility Board WV	2,576.00	1,127.00	3,703.00
Frederick Water VA	14,115.00	2,461.00	16,576.00
Town of Front Royal VA	4,340.00	9,750.00	14,090.00
Town of Luray VA	3,320.00	5,940.00	9,260.00
City of Martinsburg WV	1,301.00	2,260.00	3,561.00
Town of Purcellville VA	25,754.00	21,600.00	47,354.00
Town of Round Hill VA	8,197.23	12,676.23	20,873.46
City of Winchester VA	5,300.00	7,200.00	12,500.00

¹Separate Fees for cost of service lateral and meter/meter box not included

When considering the future need to raise additional revenue, the Town should also consider what actions other communities are likely to take. One of the eight communities surveyed, the City of Winchester, has published its proposed rates through FY 2022-23. Winchester proposed annual increases over the next four years compounding to a total of 34%, or an average of 7.5% per year. Studies published nationally by organizations such as the American Water Works Association suggest that water and sewer rates are increasing an average of about 4% per year nationally, in response to new regulations, growth, and aging infrastructure.

Water System Availability Fees

The Town's Availability Fees, referenced generically by the American Water Works Associations (AWWA) as System Development Charges, represent the costs of providing the additional systemwide capacity to serve new customers. The laws of the Commonwealth of Virginia permit these charges but require that the charges are "fair and reasonable". AWWA provides discussion in its manual of practice on Principles of Water Rates, Fees, and Charges that offer additional guidance toward what the industry considers fair and reasonable, but also defers water utilities specifically to its legal counsel regarding specific questions of legal interpretation. The proposal offered in this report regarding Availability Fees follows guidance in the AWWA manual but it is also strongly recommended that the Town review this proposal with the Town Attorney for an opinion on the appropriate application of the law to the specific and unique circumstances of the Town's water and wastewater systems before any action is taken regarding the proposal herein or any other proposal.

AWWA suggests there should be a rational nexus between Availability Fees and the reasonable expected added costs to a particular water system to provide expanded capacity for new service to its system. AWWA goes on to list several factors to consider in providing that a "proportionate share be borne by new development." Three methods are defined: a "buy-in" method, an incremental cost method, and a combined cost method. The "buy-in" method is the best and fairest approach for a community like Berryville that has sufficient capacity already provided by existing customers for capacity expansion over a reasonable period, the incremental method works best for a utility at or near existing capacity and facing the need for a capital program that would not be necessary except to expand capacity, and the combined method is best for communities where some functions of its system have extra capacity and other functions need capital improvements to expand.

From the review of assets summarized in the previous chapter, the Town of Berryville has available capacity in all major functional aspects to provide additional capacity to and beyond 2040. From Table 2-5, the future forecast for annual average daily billed water consumption for the Town in 2040 is 0.315 million gallons per day, or 315,000 gallons per day. The existing water system for the Town of Berryville has a river intake and water treatment capacity of 864,000 gallons per day and a raw water pumping station capacity of 786,000 gallons per day, and a treatment water pumping station capacity of 754,000 gallons per day. Though the capacity of pumping and treatment facilities must also consider non-revenue water uses, water plant uses, and peak daily capacity needs, as shown in Table 4-4, the existing system capacities remain sufficient to provide future needs. It is also understood that the water distribution system has excess capacity, which should be confirmed by updated calibration and analysis of water system modeling, to confirm the specific capacity available.

Table 4-4
Capacity of Water System Functions

Demand Factors:

<i>Assumed Losses in Raw Water Transmission</i>	2%
<i>Water Supplied and Treated but Not Pumped to Transmission (%)</i>	10.5%
<i>Water Supplied and Treated but Not Metered to Customer (%)</i>	13.3%
<i>Maximum Day to Average Day Ratio</i>	1.6
<i>Annual Growth Rate</i>	0.5%

	Capacity (MGD)	Demand Factor	Average Current Monthly Metered Consumption (MGD)	Capacity Used by Existing Customers (MGD)	Capacity Available for New Customers (MGD)	% of Capacity Available	Current Capacity Forecasted Available in Future Years Based Upon 0.5% Growth Per Year			
							2030	2040	2050	2060
Water Supply	0.786	2.04		0.576	0.210	26.7%	22.6%	18.6%	14.5%	10.1%
Water Treatment	0.864	2.00		0.565	0.299	34.6%	30.9%	27.4%	23.7%	19.8%
Water Transmission Pumping	0.754	1.81	0.282	0.511	0.243	32.2%	28.4%	24.7%	20.9%	16.9%

Given the Town of Berryville system has reasonable excess capacity and is not planning capital improvements for increasing its existing capacity except for upsizing on three minor projects replacing water distribution mains, the “buy-in” method is the proper method for looking at Availability Fees. This study constructs that method though the listing of assets summarized in chapter 3 of this report and valuing them based on the current replacement cost. AWWA accepts this method and refers to it as “Replacement Cost New”.

The value obtained from this method is then divided by the number of equivalent residential units (ERUs) in the system to determine a cost per ERU. The Town’s billing system separates customers into classes, and by evaluating the single-family residential class through billing data between September 2017 through August 2018, which was an average and typical year, average consumption per account was 113 gallons per day inside the Town limits and 123 gallons per day outside the Town limits. As stated previously, water system assets also need to account for peaking factors and unmetered water in developing system capacity to serve existing and new customers, and using measured or reasonable assumptions for these added factors, it is reasonable to conclude that the water and wastewater systems must provide a capacity of 230 gallons per day for each single-family residence, which is also a 5/8-inch meter connection as an equivalent residential unit. Based on current system capacity, we would conclude that the utility systems have 3,320 capacity units at a 5/8-inch meter size, and the estimated cost of providing system capacity per equivalent residential unit (a 5/8-inch meter) is approximately \$12,100 for the water system and \$13,100 for the wastewater system. The Town should consider its policy objectives, including comparative rates with other communities, and consult with legal advice, in considering if the Town desires to amend its current fees by the amount identified above.

This study also evaluated the water consumption of Multiple-Family residential units as compared to Single-Family residential units, based on data from the Town regarding the number of Multiple-Family units within each billed account. It was concluded from that evaluation that with respect to the Town of Berryville, consumption per residential unit for Multi-Family is about 80% of Single-Family. The Town's current Availability Fee Schedule uses 90%, and it is recommended that the schedule be adjusted to 80%.

In the event the Town wishes to adjust its Availability Fees by the adjustment calculated above, the current and proposed fees for the 5/8-inch meter are shown in Table 4-5. The fees for other meter sizes, like the Town's current Availability Fee structure, can be derived by applying the same multiplication factors as are used for the current fees.

Table 4-5
Existing and Proposed Availability Fees (Meter Charges and Administrative Fees Not Included)

Water Meter Size	Water		Sewer	
	Current Availability Fee	Proposed Availability Fee	Current Availability Fee	Proposed Availability Fee
Single Family Residential: 5/8-inch	\$ 5,250	\$ 12,100	\$ 22,750	\$ 13,100
Townhouse/Duplex: 5/8-inch	5,250	12,100	22,750	13,100
Multi-Family Per Unit	4,725	9,700	20,475	10,500
3/4-inch	7,825	18,000	34,125	20,000
1-inch	13,125	30,300	56,875	33,000
1-1/2-inch	22,970	52,900	99,535	57,000
2-inch	42,000	96,800	182,000	105,000
3-inch	84,000	193,600	364,000	210,000
4-inch	131,250	302,500	568,750	328,000
6-inch	262,500	605,000	1,137,500	655,000

Development of Multiple Year Flow of Funds and Determination of Revenue Requirements

The two core pieces of the scope of this rate study are developing the asset tables with condition assessment and a replacement schedule (summarized in Chapter 3) and the determination of future revenue requirements to maintain operations and implement the asset renewal. The first step in determining future revenue requirements is to determine the revenues and expenses under current rates and current consumption for a typical or average fiscal year, which AWWA refers as a "test year". From the test year, escalating factors are then used to account for future growth in consumption from new connections, expected changes over time in consumption patterns, inflation, salary increases, and other anticipating factors that will increase costs or revenues (at current rates).

In order to develop a test year, this study reviewed six adopted budgets provided by the Town for the Water Fund and Sewer Fund from FY 2014 through FY 2019 at the detailed line-item level, identifying trends as well as anomalies, in order to assess a reasonable test year value. Where expenses or revenues were showing a reasonable and progressive upward trend, more value was placed in the final year as indicative of a test year, but where a line-item showed a haphazard or declining trend, and there was no other explanation of the changes over time, six-year averages were identified for the test year.

The review also included operating and non-operating revenues and operating expenses by line-items reported in the audited financial statements for FY 2013 through FY 2017 (the audit for FY 2018 was not available), and trends from the audited statements were compared to the budgeted forecast for the same line-item or function. In some cases, the audited actual revenues and expenses closely tracked the budgeted amounts, but in many cases audited actual expenses were 10% to 20% below the budgeted amounts. This phenomenon is not unusual, as it is natural in the day-to-day world to manage operations with the overall budget serving as a "not-to-exceed" amount except under extraordinary circumstances. For purposes of developing a test year, audited trends were matched closely with budgeted trends, and the test year was adjusted accordingly, as it is desired that the test year be as true an indication of actual expenditures as is feasible as a base in forecasting future financial performance. Finally, expenses were placed into broader categories. The test year was developed on a cash basis, typical of rate studies performed for most local government agencies.

Table 4-6 shows the test year identified for both the water fund and the sewer (wastewater) fund, in 2019=\$.

Table 4-6
Town of Berryville - Test Year for Revenue and Expense Forecasting

	Water System	Wastewater System
<u>Operating Revenues</u>		
Water Service at Existing Rates	850,000	-
Wastewater Service at Existing Rates	-	1,660,000
Other Fees and Charges	33,000	2,000
<i>Total Operating Revenues</i>	883,000	1,662,000
<u>Operating Expenses</u>		
Wages and Fringe Benefits	(344,000)	(522,000)
Power	(58,000)	(135,000)
Chemicals	(40,000)	(90,000)
Repairs and Maintenance	(136,000)	(141,000)
Other Materials and Supplies	(37,000)	(22,000)
Other Purchases	(56,000)	(84,000)
<i>Total Operating Expenses</i>	(671,000)	(994,000)
<u>Non-Operating Revenues</u>		
Interest on Investments	6,000	9,000
Availability Fees (Existing Rates)	33,000	143,000
Grants and Other Funds	-	-
<i>Non-Operating Revenues</i>	39,000	152,000

With the test year in place, forecasts for revenues (at existing rates) and expenses for future years were developed using the following escalation factors:

- Growth in metered sales = 0.5% per year;
- Increases in salaries and benefits = 3% per year
- Increases in other expenses = 2% per year, except that expenses varying with meter sales (chemicals and electricity) reflect both the 2% per unit cost increase and the 0.5% volume increase = 2.5% per year
- When new debt is incurred it is assumed the terms of a new loan will be 30 years at an interest rate of 4% with uniform annual principle and interest payments

Table 4-7 shows a five-year forecast for the water system as a flow of funds using the test year as a base with the escalation factors above. For capital outlay or contributions, the existing Town of Berryville 2018-23 Capital Improvements Program (CIP) adopted by the Town Council in 2018 was used. As reflected by that CIP, an issuance of new debt with a principal of \$1.75 million is shown in fiscal year 2022.

Table 4-7
Water System Current Year Plus Five-Year Flow of Funds with Existing Capital Improvement Plan at Existing Rates

	<u>2019</u>	<u>2020</u>	<u>2021</u>	<u>2022</u>	<u>2023</u>	<u>2024</u>
Operating Revenues						
Water Service at Existing Rates	850,000	854,000	858,000	862,000	866,000	870,000
Other Fees and Charges	33,000	33,000	33,000	33,000	33,000	33,000
Total Operating Revenues	883,000	887,000	891,000	895,000	899,000	903,000
Operating Expenses						
Wages and Fringe Benefits	(344,000)	(354,000)	(365,000)	(376,000)	(387,000)	(399,000)
Power	(58,000)	(59,000)	(60,000)	(62,000)	(64,000)	(66,000)
Chemicals	(40,000)	(41,000)	(42,000)	(43,000)	(44,000)	(45,000)
Repairs and Maintenance	(136,000)	(139,000)	(142,000)	(145,000)	(148,000)	(151,000)
Other Materials and Supplies	(37,000)	(38,000)	(39,000)	(40,000)	(41,000)	(42,000)
Other Purchases	(56,000)	(57,000)	(58,000)	(59,000)	(60,000)	(61,000)
Total Operating Expenses	(671,000)	(688,000)	(706,000)	(725,000)	(744,000)	(764,000)
Net Operating Revenue	212,000	199,000	185,000	170,000	155,000	139,000
Non-Operating Revenues						
Interest on Investments	6,000	6,000	6,000	6,000	6,000	6,000
Availability Fees (Existing Rates)	33,000	37,000	37,000	37,000	37,000	37,000
Grants and Other Funds	-	-	-	-	-	-
Non-Operating Revenues	39,000	43,000	43,000	43,000	43,000	43,000
Total Revenue Minus Operating Expenses (Net Revenue)	251,000	242,000	228,000	213,000	198,000	182,000
Debt Service						
Payment on Outstanding Bonds	-	-	-	-	-	-
Payment on Proposed Bonds	-	-	-	(35,000)	(129,000)	(129,000)
Total Debt Service	-	-	-	(35,000)	(129,000)	(129,000)
Debt Service Coverage (Net Revenue/Total Debt Service) <i>(Minimum 1.5 Recommended)</i>	NA	NA	NA	6.1	1.5	1.4
Existing CIP Contribution to Capital Expense	(501,000)	(215,000)	(200,000)	(1,750,000)	(120,000)	-
Sale of Bonds	-	-	-	1,750,000	-	-

The end of year balance shows a deficit for 2019 (expected and planned as set aside reserves were programmed for some capital expenses) and a small deficit for 2023, with small surpluses in the other years. Overall, through the end of fiscal year 2024, forecasted revenues fall \$15,000 short of meeting forecasted expenses, which is well below 1% of the total expenses for the period. Only one need is identified which would require further action. In 2024, two years following the forecasted sale of \$1.75 million in new debt, the debt service coverage, which is a ratio of net revenues to debt expenses, falls to 1.4, slightly below the 1.5 minimum recommended as a good financial practice. The coverage ratio could be corrected by an increase in water rates in 2024 by 2%, which would also correct the \$15,000 overall deficit for the 2019-2024 period.

Table 4-8 provided a similar analysis for the wastewater system. Payments on an existing VRA Loan for the new wastewater treatment plant are shown in this table, but no new debt was programmed into the adopted CIP through 2023. This forecast shows one year in deficit, but all other years in surplus, with an overall surplus for the period of \$42,000.

Table 4-8
Wastewater System Current Year Plus Five-Year Flow of Funds with Existing Capital Improvement Plan at Existing Rates

	<u>2019</u>	<u>2020</u>	<u>2021</u>	<u>2022</u>	<u>2023</u>	<u>2024</u>
Operating Revenues						
Wastewater Service at Existing Rates	1,660,000	1,668,000	1,676,000	1,684,000	1,692,000	1,700,000
Other Fees and Charges	2,000	2,000	2,000	2,000	2,000	2,000
Total Operating Revenues	1,662,000	1,670,000	1,678,000	1,686,000	1,694,000	1,702,000
Operating Expenses						
Wages and Fringe Benefits	(522,000)	(538,000)	(554,000)	(571,000)	(588,000)	(606,000)
Power	(135,000)	(138,000)	(141,000)	(145,000)	(149,000)	(153,000)
Chemicals	(90,000)	(92,000)	(94,000)	(96,000)	(98,000)	(100,000)
Repairs and Maintenance	(141,000)	(144,000)	(147,000)	(150,000)	(153,000)	(156,000)
Other Materials and Supplies	(22,000)	(22,000)	(22,000)	(22,000)	(22,000)	(22,000)
Other Purchases	(84,000)	(86,000)	(88,000)	(90,000)	(92,000)	(94,000)
Total Operating Expenses	(994,000)	(1,020,000)	(1,046,000)	(1,074,000)	(1,102,000)	(1,131,000)
Net Operating Revenue	668,000	650,000	632,000	612,000	592,000	571,000
Non-Operating Revenues						
Interest on Investments	9,000	9,000	9,000	9,000	9,000	9,000
Availability Fees (Existing Rates)	143,000	159,000	159,000	159,000	159,000	159,000
Grants and Other Funds	-	-	-	-	-	-
Non-Operating Revenues	152,000	168,000	168,000	168,000	168,000	168,000
Total Revenue Minus Operating Expenses (Net Revenue)	820,000	818,000	800,000	780,000	760,000	739,000
Debt Service						
Payment on Outstanding Bonds	(470,000)	(470,000)	(470,000)	(470,000)	(470,000)	(470,000)
Payment on Proposed Bonds	-	-	-	-	-	-
Total Debt Service	(470,000)	(470,000)	(470,000)	(470,000)	(470,000)	(470,000)
Debt Service Coverage (Net Revenue/Total Debt Service) <i>(Minimum 1.5 Recommended)</i>	1.7	1.7	1.7	1.7	1.6	1.6
Existing CIP Contribution to Capital Expense	(300,000)	(255,000)	(240,000)	(810,000)	(250,000)	-
End of Year Balance (Surplus/Deficit)	50,000	93,000	90,000	(500,000)	40,000	269,000

The overall financial performance in Tables 4-7 and 4-8 looks good, but the existing CIP behind this performance does not include the asset replacement program developed in Chapter 3 of this report. The pathway portrayed in these two tables would continue to postpone the renewal of aging assets, which would ultimately lead to a failure of assets, including critical assets that may result in significant consequences to public health, the environment, or interruptions in metered sales and financial performance. In short, though appealing in the short-term, the performance shown in Tables 4-7 and 4-8 is not sustainable in the long-term. The Town recognized this shortfall in requesting that an evaluation of assets be conducted as a part of this study.

Tables 4-9 and 4-10 produce a similar multi-year view of water system financial performance but is different from Table 4-7 in reflecting the asset capital replacement program from Chapter 3 as the Capital Improvement Program instead of the currently adopted one. An additional escalation factor was added: the asset replacement tables in Chapter 3 provide estimates for all projects in 2019=\$, these estimates are escalated in Tables 4-9 and 4-10 by 2% per year for every year

after 2019. Further, inasmuch as the asset replacement program shows a large expenditure in 2026 which would require the building of additional financial reserves in earlier years, Tables 4-9 and 4-10 are extended to forecast performance through 2027. A line is added to Operating Revenues to identify additional revenue to be derived by increasing water rates, and a line at the bottom of the Tables shows the increase as a percentage of the rates in place before each increase. The objective in these tables were to deliver the asset replacement program developed in Chapter 3 for all years through 2027, maintain uniform annual percentage increases of water rate revenue optimized to produce the lowest percentage increase that maintains positive reserves and maintains adequate debt coverage (ratio = 1.5 or greater). In order to achieve each of those objectives, an iterative process ensued to determine the optimal balance of capital reserves and bond funds to be used to meet the large capital expenditures forecasted in 2026. The 2026 expenditures include replacement of the water treatment plant, raw water pumping station, and the intake on the Shenandoah River.

To achieve the entire asset replacement program, significant uniform annual rate increases are required. Table 4-9 is based upon Option 1 for water meter replacements, budgeted at \$600,000 in FY 2022 using available water capital reserves, and Table 4-10 is based upon Option 2 for water meter replacements, upgrading to "Smart Meters" in FY 2022 at a budget of \$1,200,000 using debt financing. Table 4-9 concludes that annual water revenue increases of 9.6% are required through 2027, whereas in Table 4-10 annual water revenue increases of 10.1% are required.

Table 4-11 produces a forecast for the wastewater system using the asset replacement schedule, which also shows bond funding for a significant capital expenditure programmed for 2026. The 2026 wastewater expenditures are shown for replacement of end-of-life concrete sewer mains, cast iron force mains, and aging sanitary sewer manholes. The wastewater treatment plant is relatively new and does not require significant capital replacement, other than the anticipated replacement of tertiary membranes which have already been factored into the Town's maintenance and collection of financial reserves. The uniform annual rate increase for sewer is 2.4%.

Separate from this report, the Town of Berryville will receive the actual Excel spreadsheets that include the data in Tables 4-9 through 4-11, allowing the Town to make further assumptions and look at multiple "what-if" scenarios.

For a Town customer at the 60th percentile using 3,000 gallons per month, the current water and sewer bill would equal \$76.20 per month. If increases of 10.1% for water and 2.4% for wastewater were adopted for one year, assuming consumption remains unchanged, the total bill would increase to \$79.98, or an additional 5.0% overall. If the same percentage increases were adopted in a second year, the overall bill would increase to \$84.03, or 5.0%. In summary, the impact on the total bill would be about 5% per year.

Table 4-9
Water System Flow of Funds - Asset Replacement Plan Option 1 with Equal Annual Water Rate Increase

	2019	2020	2021	2022	2023	2024	2025	2026	2027
Operating Revenues									
Water Service at Existing Rates	850,000	854,000	858,000	862,000	866,000	870,000	874,000	878,000	882,000
Water Service from Increased Rates	-	82,000	173,000	274,000	385,000	508,000	644,000	794,000	960,000
Other Fees and Charges	33,000	33,000	33,000	33,000	33,000	33,000	33,000	33,000	33,000
Total Operating Revenues	883,000	969,000	1,064,000	1,169,000	1,284,000	1,411,000	1,551,000	1,705,000	1,875,000
Operating Expenses									
Wages and Fringe Benefits	(344,000)	(354,000)	(365,000)	(376,000)	(387,000)	(399,000)	(411,000)	(423,000)	(436,000)
Power	(58,000)	(59,000)	(60,000)	(62,000)	(64,000)	(66,000)	(68,000)	(70,000)	(72,000)
Chemicals	(40,000)	(41,000)	(42,000)	(43,000)	(44,000)	(45,000)	(46,000)	(47,000)	(48,000)
Repairs and Maintenance	(136,000)	(139,000)	(142,000)	(145,000)	(148,000)	(151,000)	(154,000)	(157,000)	(160,000)
Other Materials and Supplies	(37,000)	(38,000)	(39,000)	(40,000)	(41,000)	(42,000)	(43,000)	(44,000)	(45,000)
Other Purchases	(56,000)	(57,000)	(58,000)	(59,000)	(60,000)	(61,000)	(62,000)	(63,000)	(64,000)
Total Operating Expenses	(671,000)	(688,000)	(706,000)	(725,000)	(744,000)	(764,000)	(784,000)	(804,000)	(825,000)
Net Operating Revenue	212,000	281,000	358,000	444,000	540,000	647,000	767,000	901,000	1,050,000
Non-Operating Revenues									
Interest on Investments	6,000	6,000	6,000	6,000	6,000	6,000	6,000	6,000	6,000
Availability Fees (Proposed Rates)	33,000	84,700	84,700	84,700	84,700	84,700	84,700	84,700	84,700
Grants and Other Funds	-	-	-	-	-	-	-	-	-
Total Non-Operating Revenues	39,000	90,700							
Total Revenue Minus Operating Expenses (Net Revenue)	251,000	371,700	448,700	534,700	630,700	737,700	857,700	991,700	1,140,700
Debt Service									
Payment on Outstanding Bonds	-	-	-	-	-	-	-	-	-
Payment on Proposed Bonds	-	-	-	-	-	-	-	(272,000)	(786,000)
Total Debt Service	-	(272,000)	(786,000)						
Debt Service Coverage (Net Revenue/Total Debt Service):									
Minimum 1.5 Recommended	NA	3.6	1.5						
Capital Contributions and Expenses									
Capital Expense Need (from Asset Tables)	(501,000)	-	(31,000)	(741,000)	(32,000)	(861,000)	(413,000)	(16,528,000)	-
"Pay-Go" Contribution to Capital Expense	501,000	-	31,000	741,000	32,000	861,000	413,000	2,928,000	-
Contribution of Bond Sale to Capital Expense	-	-	-	-	-	-	-	13,600,000	-
Contribution from Grants/ Other/Outside Capital Revenue	-	-	-	-	-	-	-	-	-
Net Balance	-								
Capital Reserve Balances									
Prior Year End Capital Reserves	1,987,141	1,737,141	2,108,841	2,526,541	2,920,241	2,918,941	2,795,641	3,240,341	1,082,041
"Pay-Go" Contribution to Capital Expense	(501,000)	-	(31,000)	(741,000)	(32,000)	(861,000)	(413,000)	(2,928,000)	-
Addition of Current Year Net Revenues Less Debt Service Payments	251,000	371,700	448,700	534,700	630,700	737,700	857,700	991,700	354,700
New Capital Reserve Balance	1,737,141	2,108,841	2,526,541	2,920,241	2,918,941	2,795,641	3,240,341	1,082,041	1,386,741
Capital Reserves Restricted by Debt Indenture	-	-	-	-	-	-	-	(944,000)	(944,000)
Capital Reserves Available	1,737,141	2,108,841	2,526,541	2,920,241	2,918,941	2,795,641	3,240,341	88,041	442,741
Percent Rate Increase/(Decrease)									
		9.6%	9.6%	9.6%	9.6%	9.6%	9.6%	9.6%	9.6%

Table 4-10
Water System Flow of Funds - Asset Replacement Plan Option 2 with Equal Annual Water Rate Increase

	2019	2020	2021	2022	2023	2024	2025	2026	2027
Operating Revenues									
Water Service at Existing Rates	850,000	854,000	858,000	862,000	866,000	870,000	874,000	878,000	882,000
Water Service from Increased Rates	-	86,000	182,000	289,000	408,000	540,000	686,000	848,000	1,028,000
Other Fees and Charges	33,000	33,000	33,000	33,000	33,000	33,000	33,000	33,000	33,000
Total Operating Revenues	883,000	973,000	1,073,000	1,184,000	1,307,000	1,443,000	1,593,000	1,759,000	1,943,000
Operating Expenses									
Wages and Fringe Benefits	(344,000)	(354,000)	(365,000)	(376,000)	(387,000)	(399,000)	(411,000)	(423,000)	(436,000)
Power	(58,000)	(59,000)	(60,000)	(62,000)	(64,000)	(66,000)	(68,000)	(70,000)	(72,000)
Chemicals	(40,000)	(41,000)	(42,000)	(43,000)	(44,000)	(45,000)	(46,000)	(47,000)	(48,000)
Repairs and Maintenance	(136,000)	(139,000)	(142,000)	(145,000)	(148,000)	(151,000)	(154,000)	(157,000)	(160,000)
Other Materials and Supplies	(37,000)	(38,000)	(39,000)	(40,000)	(41,000)	(42,000)	(43,000)	(44,000)	(45,000)
Other Purchases	(56,000)	(57,000)	(58,000)	(59,000)	(60,000)	(61,000)	(62,000)	(63,000)	(64,000)
Total Operating Expenses	(671,000)	(688,000)	(706,000)	(725,000)	(744,000)	(764,000)	(784,000)	(804,000)	(825,000)
Net Operating Revenue	212,000	285,000	367,000	459,000	563,000	679,000	809,000	955,000	1,118,000
Non-Operating Revenues									
Interest on Investments	6,000	6,000	6,000	6,000	6,000	6,000	6,000	6,000	6,000
Availability Fees (Proposed Rates)	33,000	84,700	84,700	84,700	84,700	84,700	84,700	84,700	84,700
Grants and Other Funds	-	-	-	-	-	-	-	-	-
Total Revenue Minus Operating Expenses (Net Revenue)	251,000	375,700	457,700	549,700	653,700	769,700	899,700	1,045,700	1,208,700
Debt Service									
Payment on Outstanding Bonds	-	-	-	-	-	-	-	-	-
Payment on Proposed Bonds	-	-	-	(24,000)	(69,000)	(69,000)	(69,000)	(192,504)	(827,000)
Total Debt Service	-	-	-	(24,000)	(69,000)	(69,000)	(69,000)	(192,504)	(827,000)
Debt Service Coverage (Net Revenue/Total Debt Service):									
Minimum 1.5 Recommended	NA	NA	NA	22.9	9.5	11.2	13.0	5.4	1.5
Capital Contributions and Expenses									
Capital Expense Need (from Asset Tables)	(501,000)	-	(31,000)	(1,484,000)	(52,000)	(861,000)	(413,000)	(16,528,000)	-
"Pay-Go" Contribution to Capital Expense	501,000	-	31,000	284,000	32,000	861,000	413,000	3,428,000	-
Contribution of Bond Sale to Capital Expense	-	-	-	1,200,000	-	-	-	13,100,000	-
Contribution from Grants/ Other Outside Capital Revenue	-	-	-	-	-	-	-	-	-
Net Balance	-								
Capital Reserve Balances									
Prior Year End Capital Reserves	1,987,141	1,737,141	2,112,841	2,539,541	2,781,241	3,333,941	3,173,641	3,591,341	1,016,437
"Pay-Go" Contribution to Capital Expense	(501,000)	-	(31,000)	(284,000)	(32,000)	(861,000)	(413,000)	(3,428,000)	-
Addition of Current Year Net Revenues Less Debt Service Payments	251,000	375,700	457,700	549,700	563,700	679,700	809,700	853,096	381,700
New Capital Reserve Balance	1,737,141	2,112,841	2,539,541	2,781,241	3,333,941	3,173,641	3,591,341	1,016,437	1,398,137
Capital Reserves Restricted by Debt Indenture									
Capital Reserves Available	1,737,141	2,112,841	2,539,541	2,698,241	3,250,941	3,090,641	3,508,341	24,437	(992,000)
									406,137

Prepared by: [Name]

Table 4-11
Wastewater System Flow of Funds - Asset Replacement Plan with Equal Annual Water Rate Increase

	2019	2020	2021	2022	2023	2024	2025	2026	2027
Operating Revenues									
Wastewater Service at Existing Rates	1,660,000	1,668,000	1,676,000	1,684,000	1,692,000	1,700,000	1,709,000	1,718,000	1,727,000
Wastewater Service from Increased Rates	-	40,000	82,000	125,000	170,000	216,000	263,000	311,000	361,000
Other Fees and Charges	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000
Total Operating Revenues	1,662,000	1,710,000	1,760,000	1,811,000	1,864,000	1,918,000	1,974,000	2,031,000	2,090,000
Operating Expenses									
Wages and Fringe Benefits	(522,000)	(538,000)	(554,000)	(571,000)	(588,000)	(606,000)	(624,000)	(643,000)	(662,000)
Power	(135,000)	(138,000)	(141,000)	(145,000)	(149,000)	(153,000)	(157,000)	(161,000)	(165,000)
Chemicals	(90,000)	(92,000)	(94,000)	(96,000)	(98,000)	(100,000)	(103,000)	(106,000)	(109,000)
Repairs and Maintenance	(141,000)	(144,000)	(147,000)	(150,000)	(153,000)	(156,000)	(159,000)	(162,000)	(165,000)
Other Materials and Supplies	(23,000)	(23,000)	(23,000)	(23,000)	(23,000)	(23,000)	(23,000)	(23,000)	(23,000)
Other Purchases	(84,000)	(86,000)	(88,000)	(90,000)	(92,000)	(94,000)	(96,000)	(98,000)	(100,000)
Total Operating Expenses	(995,000)	(1,021,000)	(1,047,000)	(1,075,000)	(1,103,000)	(1,132,000)	(1,162,000)	(1,193,000)	(1,224,000)
Net Operating Revenue	667,000	689,000	713,000	736,000	761,000	786,000	812,000	838,000	866,000
Non-Operating Revenues									
Interest on Investments	9,000	9,000	9,000	9,000	9,000	9,000	9,000	9,000	9,000
Availability Fees (Existing Rates)	143,000	92,000	92,000	92,000	92,000	92,000	92,000	92,000	92,000
Grants and Other Funds	-	-	-	-	-	-	-	-	-
Total Revenue Minus Operating Expenses (Net Revenue)	819,000	790,000	814,000	837,000	862,000	887,000	913,000	933,000	967,000
Debt Service									
Payment on Outstanding Bonds	(470,000)	(470,000)	(470,000)	(470,000)	(470,000)	(470,000)	(470,000)	(470,000)	(470,000)
Payment on Proposed Bonds	-	-	-	-	-	-	-	(66,000)	(191,000)
Total Debt Service	(470,000)	(470,000)	(470,000)	(470,000)	(470,000)	(470,000)	(470,000)	(536,000)	(661,000)
Debt Service Coverage (Net Revenue/Total Debt Service):	1.7	1.7	1.7	1.8	1.8	1.9	1.9	1.8	1.5
<i>Minimum 1.5 Recommended</i>									
Capital Contributions and Expenses									
Capital Expense Need (from Asset Tables)	(200,000)	-	(284,000)	(274,000)	(1,436,000)	(960,000)	(699,000)	(5,923,000)	(35,000)
"Pay-Go" Contribution to Capital Expense	200,000	-	284,000	274,000	1,436,000	960,000	699,000	2,523,000	35,000
Contribution of Bond Sale to Capital Expense	-	-	-	-	-	-	-	3,300,000	-
Contribution from Grants/ Other Outside Capital Revenue	-	-	-	-	-	-	-	-	-
Net Balance	-	-	-	-	-	-	-	-	-
Capital Reserve Balances									
Prior Year End Capital Reserves	3,705,161	3,854,161	4,174,161	4,234,161	4,327,161	3,283,161	3,340,161	3,084,161	864,161
"Pay-Go" Contribution to Capital Expense	(200,000)	-	(284,000)	(274,000)	(1,436,000)	(960,000)	(699,000)	(2,623,000)	(35,000)
Addition of Current Year Net Revenues Less Debt Service Payments	349,000	320,000	344,000	367,000	392,000	417,000	443,000	403,000	306,000
New Capital Reserve Balance	3,854,161	4,174,161	4,234,161	4,327,161	3,283,161	3,340,161	3,084,161	1,185,161	-
Capital Reserves Restricted by Debt Indenture	(470,000)	(470,000)	(470,000)	(470,000)	(470,000)	(470,000)	(470,000)	(699,000)	(699,000)
Capital Reserves Available	3,384,161	3,704,161	3,764,161	3,857,161	2,813,161	2,870,161	2,614,161	165,161	436,161
Percent Rate Increase/(Decrease)	2.4%	2.4%	2.4%	2.4%	2.4%	2.4%	2.4%	2.4%	2.4%

Review of Adequacy of Financial Reserves

The Town of Berryville provided a calculation of its financial reserves as of September 30, 2018 for purposes of this study and asked that they be evaluated for adequacy. The Town reported "liquid accounts" with \$665,425 from the Water Fund and \$2,726,742 for the Sewer Fund. The Town also reported it has a "CIP Account" with \$1,987,141 from the Water Fund and \$3,235,161 from the Sewer Fund. Some of the funds in the CIP Account were designated for a particular future project and other funds were represented as "Capital Reserve", "Unencumbered", or "VRA Reserve". Future projects included Clearwell Expansion, Membrane Replacement, Water Line Improvements, Sewer Collection System Rehabilitation, SCADA, Equipment Repair Reserve, Water Plant Building Maintenance, and Utility Rate Study. Designating capital reserve funds to future projects can be a useful internal management tool to guide in assuring future needs are adequate but can be reviewed in the future and revised and are not binding on the Town. From the information reviewed in the analysis of financial reserves, the only funds binding on the Town from parties outside the Town were the VRA Reserve and Membrane Replacement. It is not necessary to evaluate the condition of financial reserves at the project level, and this review combined the funds into simpler categories of operating reserves (which represents the "liquid accounts") and capital reserves (which represents the CIP Account).

Two conditions are recommended for consideration in maintaining operating reserves: a minimum operating reserve for short-term cash flow, and a "rate stabilization" reserve for unanticipated conditions. For operating cash flow, best practices suggest a minimum of "60-days cash" and preferably "90-days cash". As 90 days represents approximately three months or one-fourth of a year, the minimum required for this reserve is derived by computing 25% of the projected annual expenditures. Rate stabilization can provide a cushion for events such as a significant emergency repair, an emergency declaration, a drought, or other similar unanticipated conditions that dramatically increase expenses and/or decrease revenues. The rate stabilization is calculated as 20% of operating revenues for the year. To identify the necessary minimum operating reserves, the cash flow reserve and the rate stabilization reserve are added.

The Town of Berryville presently conforms to best management practices and maintains adequate operating reserves and it is forecasted that by maintaining current levels, operating reserves will be adequate through 2027 based on the flow of funds predicted in Tables 4-10 and 4-11. Table 4-12 illustrates the adequacy of operating reserves both for the Water and Wastewater systems.

An analysis of the capital reserves is included as a part of Tables 4-10 and 4-11 and the use of such reserves are critical to the identification of additional revenue requirements. *The Town's current capital reserve levels are strong, and the Town should be commended for its excellent fiscal discipline in developing strong reserves and the tools to manage them appropriately for future capital expenses.* In the Flow of Funds shown in Tables 4-10 and 4-11, reserves are used toward funding of major capital expenditures in the year 2026 together with acquiring a loan or bonds to optimize financial performance that yields the benefits of the asset program. The Town's capital reserves in its Sewer Fund are especially useful to keep down the increases in rates required to meet revenue requirements. Table 4-10 shows a slow building of additional capital reserves in anticipation of the revenue required in 2026 to hold down the amount of funds borrowed and meet debt coverage requirements without large spikes in water rate increases.

Table 4-12
Analysis of Operating Reserves

	2019	2020	2021	2022	2023	2024	2025	2026	2027
WATER									
<u>Minimum Recommended:</u>									
Minimum Operating Reserve by Policy (90 days cash)	(168,000)	(172,000)	(177,000)	(181,000)	(186,000)	(191,000)	(196,000)	(201,000)	(206,000)
Minimum Rate Stabilization Reserve (20% of Operating Revenues)	(177,000)	(195,000)	(215,000)	(237,000)	(261,000)	(288,000)	(319,000)	(352,000)	(389,000)
Total as Minimum Required	(345,000)	(367,000)	(392,000)	(418,000)	(447,000)	(480,000)	(515,000)	(553,000)	(595,000)
<u>Operating Reserves Available</u>									
Operating Cash Balance Beginning of Year	665,000	665,000	665,000	665,000	665,000	665,000	665,000	665,000	665,000
Budgeted Use During Year	-	-	-	-	-	-	-	-	-
Operating Cash Balance End of Year	665,000	665,000	665,000	665,000	665,000	665,000	665,000	665,000	665,000
Operating Cash Reserve Surplus/(Deficit)	320,000	298,000	278,000	247,000	218,000	185,000	150,000	112,000	70,000
WASTEWATER									
<u>Minimum Recommended:</u>									
Minimum Operating Reserve by Policy (90 days cash)	(249,000)	(255,000)	(262,000)	(269,000)	(276,000)	(283,000)	(291,000)	(298,000)	(306,000)
Minimum Rate Stabilization Reserve (20% of Operating Revenues)	(332,000)	(342,000)	(351,000)	(361,000)	(371,000)	(382,000)	(392,000)	(403,000)	(415,000)
Total as Minimum Required	(581,000)	(597,000)	(613,000)	(630,000)	(647,000)	(665,000)	(683,000)	(701,000)	(721,000)
<u>Operating Reserves Available</u>									
Operating Cash Balance Beginning of Year	2,727,000	2,727,000	2,727,000	2,727,000	2,727,000	2,727,000	2,727,000	2,727,000	2,727,000
Budgeted Use During Year	-	-	-	-	-	-	-	-	-
Operating Cash Balance End of Year	2,727,000	2,727,000	2,727,000	2,727,000	2,727,000	2,727,000	2,727,000	2,727,000	2,727,000
Operating Cash Reserve Surplus/(Deficit)	2,146,000	2,130,000	2,114,000	2,097,000	2,080,000	2,062,000	2,044,000	2,026,000	2,006,000

5. Future Rate Design Options and Recommendations for Meeting Additional Revenue Requirements

The Town of Berryville is taking an important step in total management and sustainability of the assets of its water and wastewater system through an analysis of the age and general condition of the assets, with a schedule for replacing assets at the expected end of their service life. Further, this report has developed a schedule for replacing those assets in which the service life will come due within the next 20 years and has provided a financial analysis through the year 2027 of the revenues that would be required to achieve the asset replacement scheduled within those years, including obtaining a loan in 2026.

This analysis should be viewed as a starting point for further discussion and may inform but not fully represent the final decisions made by the Town over the next 8 to 10 years. First, the analysis in this report assumes that the only source of revenue for this asset program will be local water and wastewater revenues from fee increases. Every effort should be made to find other potential sources of revenue, possibly in the form of grants or below-market interest rates on loans, even though the market for grant opportunities is very difficult. A few years ago, the Town was successful in obtaining an interest-free loan from the Virginia Resource Authority toward financing a new wastewater treatment plant and was also able to take advantage of grants from the Virginia Water Quality Improvement Fund.

Second, the asset evaluation described in this report should be a starting point for further steps toward sustainable asset management, with the ultimate goal of optimizing expenses for asset renewal and reliability. It is recommended that a next step be a more detailed asset evaluation of large projects scheduled for replacement within the next 10 years. These projects include the water treatment plant, raw water pumping station, and river intake facility for the water system, and the replacement of aging concrete and cast-iron pipe and aging manholes in the wastewater system. The goal of a detailed evaluation would be to identify if there are any strategies whereby assets could be modified or extended to increase their service life at less overall life-cycle cost than the replacement of the asset. For the water plant and the intake and pumping facilities, this would be accomplished through a detailed engineering study well beyond the scope of this study. Its conclusions could better inform the Town as to the optimal strategy for long-term asset performance. For the wastewater system, it is suggested that a sewer system evaluation survey using closed circuit cameras and physical manhole inspections be conducted in an engineering study to determine if alternative renewal strategies may be more cost-effective. Numerous "in-situ" strategies today provide lining systems without excavation and replacement that could provide extended service life.

For all discussions within this Chapter 5 regarding rate designs, it is assumed that Water Meter Option 2 is selected for the asset replacement schedule.

Even though additional engineering studies may refine the asset management program developed by this study, which may then refine the financial strategy, it is very clear that the Town of Berryville has aging water and wastewater assets that will require capital expenditures within the next 5 to 10 years and beyond, and these expenditures will require greater revenues than the Town is currently collecting. There are numerous directions in which the Town Council and management could choose to initiate the collection of revenues that will ultimately be required. This report suggests one strategy as implementing the changes in the Town's water and wastewater rates identified by the analysis herein (increase overall operating revenue by 10.1% for water per year and 2.4% for wastewater per year) for a 5-year period while conducting the additional engineering studies recommended to refine the asset management program. It will require several months to perform these engineering studies, and once they are completed, to the extent the recommendations modify the revenue requirements, the water and wastewater rates can be revisited and modified as appropriate.

Rate Design Options

Several different forms or rate designs are accepted within the water industry and used to obtain sufficient revenue to meet future operating and capital needs. The specific design selected by any given community is a choice reflective of the community's strategic plan, vision and goals as much or more than any technical or management need for the water and wastewater utility. Different rate designs can produce the same amount of overall annual revenue, each satisfying the utility's need. The difference between rate designs is in the weight that different classes of customers carry in providing that revenue, based on the size, class, or volume of use by the customer.

Three different types of rate designs are the most commonly used and each is evaluated in this Chapter. The three designs include: (1) Flat Rates; (2) Declining Rates; and (3) Inclining Rates. The methodologies for calculating each of these types of rate design are well accepted and defined by AWWA. For each type of rate design a minimum charge can be overlaid; for purposes of comparing rate designs the discussion of minimum charge is postponed until a later part of this Chapter.

Flat Rates describes a condition where one rate is set per unit of consumption (the Town uses 1,000 gallons as a unit of consumption) and applies to each and every unit registered without respect to the size of the customer or the amount of water or wastewater service used. The Town presently uses this design. For example, the current Town water rate is \$8.40 per 1,000 gallons. A customer using 3,000 gallons or 3 units in a month pays \$8.40 for each unit, for a total of \$25.20 – the customer pays the same amount for each unit. Likewise, a customer using 100,000 gallons or 100 units still pays the same for each unit, including an added \$8.40 for the last 1,000 gallons consumed.

Declining Rates describe a condition where the unit cost of water declines with a greater number of units consumed within a billing cycle and is commonly provided in three to four blocks of consumption. An example would be that a customer pays \$10 each 1,000 gallons for the first 4,000 gallons, then pays \$9 per 1,000 gallons for the next 4,000 gallons, etc. Inclining Rates describe the opposite condition, where the unit cost of water increases for higher consumption within a billing cycle.

Each rate design has its own advantages as well as disadvantages, which may or may not be in harmony with the community goals, thereby a public policy choice. Advantages of Flat Rates include the ease of use and understanding, and a strong appearance of fairness in that each unit of consumption costs the same. Declining Rates have an advantage of reflecting the reality that customers using higher quantities of water through larger meters, including commercial, institutional and industrial accounts, more often than not use water at a more steady rate with lower peaks than smaller (residential) customers, and higher peaks require greater utility system capacity and higher costs to manage. Declining Rates also signal as public policy an encouragement for the growth and development of new business that can produce jobs in the community but require larger volumes of water. Inclining Rates, properly designed, speak to the sustainability of water and encouragement of conservation practice, and if they are successful in reducing consumption can be financially favorable to utilities nearing system capacity by postponing the need for system expansion. The caution with Inclining Rates is that they must apply only within a relatively homogeneous customer class. Comparing water use of one single-family residence to another single-family residence is fairly homogeneous, whereas comparing water use by a single-family residence to water consumed through one meter and account serving a 100-unit hotel can never be homogeneous.

To overcome this caution with Inclining Rates, this report suggests its use only within the residential class, applied as water and wastewater use per residential unit.

Flat Rate Design Option for the Town of Berryville Revenue Needs

All Rate Designs provided in this section of the report are targeted to achieve the forecasted annual revenue requirements shown in Table 4-10 (Water) and Table 4-11 (Wastewater) and provide funding for the schedule of asset replacements shown in Chapter 3. The Flat Rate Design is the simplest, once the total operating revenues required for a given year and the forecasted total consumption are both determined, the expected total consumption is simply divided into the total revenue needed. Table 4-10 and Table 4-11 provide both the revenue needed and consumption anticipated (as a percent of growth from the "test year"). The Flat Rate Design for a 5-Year period for the Town of Berryville is provided in Table 5-1.

Table 5-1
Flat Rate Design for Town of Berryville Water and Wastewater Rates

	Current	FY 2020	FY 2021	FY 2022	FY 2023	FY 2024
WATER						
Per 1,000 gallons of usage	\$ 8.40	\$ 9.26	\$ 10.20	\$ 11.24	\$ 12.39	\$ 13.65
SEWER						
Per 1,000 gallons of usage	\$ 17.00	\$ 17.39	\$ 17.79	\$ 18.20	\$ 18.62	\$ 19.05

Declining Rate Design Option for the Town of Berryville Revenue Needs

The design of the Declining Rate Option followed the guidelines and recommendations published in Manual of Practice M1 published by AWWA. The Base-Extra Capacity Method was chosen and a distribution of water consumption by customer class and account was provided through billing data by the Town of Berryville. Billing data from the 12-month period of September 2017 through August 2018 was chosen. Customer classes evaluated included Residential, Commercial, Institutional, and Industrial. When it was determined that Commercial and Institutional were similar, these two classes were combined into one. The Industrial class was retained separately though it was noted that this database is much smaller as the Town of Berryville has a limited number of industrial accounts. As is typical of most utilities, the Town of Berryville did not have real-time data on maximum day and maximum hour peak uses for individual customer classes, accordingly these peak conditions were assumed from examples provided in the AWWA Manual as typical.

Table 5-2 provides the results of the Declining Rate Design. By comparison to the Flat Rates in Table 5-1, customers will pay more for the first 3,000 gallons of water under declining rates, but for larger customers the cost of water decreases as use increases. Most residential customers, which is a significant percentage of the Town's accounts, will pay more per month for water under Declining Rates than Flat Rates, and most Commercial, Institutional and Industrial customers will pay less.

Table 5-2

Declining Block Rate Design for Town of Berryville Water and Wastewater Rates

	Current	FY 2020	FY 2021	FY 2022	FY 2023	FY 2024
WATER						
First 6,000 gallons of usage	\$ 8.40	\$ 10.24	\$ 11.28	\$ 12.44	\$ 13.70	\$ 15.10
Next 8,000 gallons of usage	\$ 8.40	\$ 8.54	\$ 9.41	\$ 10.37	\$ 11.43	\$ 12.59
Next 46,000 gallons of usage	\$ 8.40	\$ 7.53	\$ 8.30	\$ 9.14	\$ 10.08	\$ 11.11
Usage beyond 60,000 gallons	\$ 8.40	\$ 6.18	\$ 6.81	\$ 7.51	\$ 8.27	\$ 9.11
SEWER						
First 6,000 gallons of usage	\$ 17.00	\$ 18.20	\$ 18.62	\$ 19.05	\$ 19.48	\$ 19.93
Next 8,000 gallons of usage	\$ 17.00	\$ 15.70	\$ 16.06	\$ 16.43	\$ 16.81	\$ 17.20
Next 46,000 gallons of usage	\$ 17.00	\$ 15.10	\$ 15.45	\$ 15.80	\$ 16.17	\$ 16.54
Usage beyond 60,000 gallons	\$ 17.00	\$ 11.95	\$ 12.22	\$ 12.51	\$ 12.79	\$ 13.09

Note: Usage is as measured within a single billing cycle. Billing is monthly. All rates are cost per 1,000 gallons.

Inclining Rate Design Option for the Town of Berryville Revenue Needs

The design of the Inclining Rate Option followed the guidelines and recommendations published in Manual of Practice M1 published by AWWA. First and foremost, AWWA recommends this type design apply only to a homogeneous class of customers of similar size and required usage patterns. As a result, inclining rates are rarely used within the water industries for customer classes other than residential. A review of the Town’s commercial, institutional, and industrial accounts confirms that these customers are of varying sizes and usage patterns (e.g., a commercial laundry will by nature of its business have a very different water use pattern compared to a retail store. For simplicity of administration of the rate design, Inclining Rates proposed to the Town of Berryville will apply only to residential customers, and other classes of customers will be charged Flat Rates.

Multiple-Family accounts may be billed as Residential Customers, provided the Rate Table is applied as per dwelling unit. This does require the Town to maintain within its billing records the number of dwelling units applied to a single account, and a billing system that is able to calculate an individual account rate table using the adopted rates applied to multiple dwelling units; some billing systems require program modification for this calculation to occur. As an example, assume an Inclining Rate Block is adopted as \$8.95 per 1,000 gallons for the first 3,000 gallons then \$9.86 per 1,000 gallons for the next 3,000 gallons used per dwelling unit. Then assume a meter is read and 5,000 gallons is consumed in a billing cycle. If that meter were attached to a single-family dwelling, \$8.95 would apply to the first 3,000 gallons and \$9.86 to the next 2,000 gallons. However, if that meter were attached to a triplex serving three separate dwellings, \$8.95 would apply to all 5,000 gallons as the first 3,000 gallons per unit is 3,000 x 3 equals the first 9,000 gallons on the meter.

Further, on occasion water piping within a Multiple-Family complex may be looped to serve multiple buildings and include fire protection, connected to the multiple system through two or more meters. If such situations exist within the Town, it may be necessary to combine multiple meters into a single account for billing purposes and define how billing is adjusted when there is water use for fire protection.

The principle behind Inclining Rates is that among users of similar size and usage patterns, a customer who chooses to use more water places a higher burden on the cost of peak capacity of the water and wastewater system than a customer who conserves and uses less water. AWWA methodology allows a degree of flexibility in how this peaking capacity is charged. For this study, only the depreciation cost of the replacement of the future assets is weighted based on water use, in increments of 3,000-gallon blocks, to establish the inclining rates.

There is a financial risk in converting from Flat Rates to Inclining Rates that is extremely difficult to measure as foresight. The risk is that residential customers presently using higher volumes of water (e.g., irrigation of lawns) may reduce consumption to avoid the charges in the higher blocks. This may be a desirable outcome from the standpoint of sustainability, but it can also mean lower actual operating revenues than forecasted. Some attempt to plan for this possibility has been built into the design of rates in this report, as it was assumed that residential customers now using greater than 6,000 gallons per month per dwelling will reduce consumption by 5% under the Inclining Rates. If Inclining Rates are adopted, this trend should be monitored, and rates adjusted if needed.

Table 5-3 provides the results of the Inclining Rate Table design.

Table 5-3
Inclining Block Rate Design for Town of Berryville Water and Wastewater Rates

Residential Customers Only - Usage is per dwelling unit within a single monthly billing cycle

	Current	FY 2020	FY 2021	FY 2022	FY 2023	FY 2024
WATER						
First 3,000 gallons of usage	\$ 8.40	\$ 8.95	\$ 9.86	\$ 10.87	\$ 11.98	\$ 13.20
Next 3,000 gallons of usage	\$ 8.40	\$ 9.75	\$ 10.74	\$ 11.84	\$ 13.05	\$ 14.38
Next 3,000 gallons of usage	\$ 8.40	\$ 11.35	\$ 12.51	\$ 13.78	\$ 15.19	\$ 16.74
Usage beyond 9,000 gallons	\$ 8.40	\$ 14.85	\$ 16.36	\$ 18.03	\$ 19.87	\$ 21.90

SEWER						
First 3,000 gallons of usage	\$ 17.00	\$ 17.15	\$ 17.54	\$ 17.95	\$ 18.36	\$ 18.78
Next 3,000 gallons of usage	\$ 17.00	\$ 18.10	\$ 18.52	\$ 18.94	\$ 19.38	\$ 19.82
Next 3,000 gallons of usage	\$ 17.00	\$ 19.40	\$ 19.85	\$ 20.30	\$ 20.77	\$ 21.25
Usage beyond 9,000 gallons	\$ 17.00	\$ 23.00	\$ 23.53	\$ 24.07	\$ 24.62	\$ 25.19

Commercial, Institutional and Industrial Customers

WATER						
Per 1,000 gallons of usage	\$ 8.40	\$ 9.26	\$ 10.20	\$ 11.24	\$ 12.39	\$ 13.65

SEWER						
Per 1,000 gallons of usage	\$ 17.00	\$ 17.39	\$ 17.79	\$ 18.20	\$ 18.62	\$ 19.05

Note: Multiple-Family accounts use Residential Customers table with rates calculated per dwelling unit

Discussion Regarding Rate Design Options

Three different rate designs have been provided above, each of which are designed to achieve the same revenue requirements. Each design serves a different purpose, and the purposes are embedded in community goals and public policy. In that sense there is no right or wrong answer as long as the objectives of each design are understood and the rate design that is adopted is in harmony with community goals. This discussion does not attempt to make a firm recommendation as to which option the Town Council should adopt but does make a few observations as suggestions toward the Council's deliberation.

- The Town's current Flat Rates are very competitive with nearby communities for accounts with 3,000 gallons per month or less water use, but its fees are higher than most nearby communities at higher levels of consumption. A shift to Inclining Rates will increase that effect with respect to residential customers. A shift to Declining Rates will reduce that effect.

- Inclining Rates work best for a water or wastewater system that is approaching its capacity and facing major capital costs to expand its infrastructure that can be delayed through conservation – if revenue declines as a result of Inclining Rates, it can be offset by a reduced short-term capital improvement program. This structure does not work as well for a utility with plenty of excess capacity in its infrastructure but facing a need for renewal of end of life assets. Revenue is needed for renewal without respect to reductions in consumption, thereby lower consumption requires higher rates in an attempt to retain the needed revenue, and customers who expect to pay less as a reward for conservation can be frustrated.
- The Town of Berryville average consumption per residential unit is 113 gallons per day. This quantity is lower than current averages in published statistics throughout North America, indicating that some reasonable level of conservation is already a part of the fabric in the community. Approximately 60% of single dwelling households in the Town use 3,000 gallons per month or less.
- Trends within the water industry today are moving in the direction of Flat Rates to Inclining Rates and away from Declining Rates. Most communities used Declining Rates in the 1960s through 1980s, but many moved away from this design in a greater promotion of sustainability and conservation. Interestingly, Declining Rates are still a part of a majority of the nearby communities surveyed as part of this study.
- Flat Rates are the simplest and easiest to administer. Greater complexity can make customer understandability and satisfaction more complex and can increase the risk of billing errors.

Through its review of data as a part of this study, Pennoni did not identify any compelling reasons to recommend that the Town of Berryville shift its rate design from the current Flat Rates to either the Declining or Inclining Rate structures. At the same time, each of the rate structures presented in this Chapter represent fair and reasonable approaches with acceptable and proven methods to obtain the revenue the Town requires to effectively maintain and replace its assets to maintain an acceptable level of service to the community. Most important is that the rate design selected be aligned with the strategic vision and goals of the community.

Review of Minimum Charge in the Current Rate Structure

Expenses for water and wastewater operations can be segregated into two-types: expenses that are variable with the quantity of water or wastewater conveyed and treated, and expenses that are fixed without respect to quantity of flow or treatment. General administrative costs are considered fixed costs as are some of the costs of operation and maintenance. For the most part, personnel costs in operation and maintenance are considered fixed costs. By example, an appropriately certified treatment plant operator is required by permitting to be on-site to operate most water treatment and wastewater treatment facilities when the facilities are in operation. Except for extraordinary circumstances, the number of personnel on-site do not vary with flow.

AWWA rate methodology endorses a strategy whereby water and wastewater utilities can establish a minimum charge per account in order to assure that all customers are contributing reasonably to the fixed costs of the utility regardless of metered consumption. Many utilities, including the Town of Berryville and the utilities represented in the comparative analysis performed in this study, include a minimum charge per bill as well as a charge per unit volume of water or wastewater service provided. This study included a review of the Town of Berryville's current minimum charges of \$5.00 per bill for water service and \$15.00 per bill for wastewater service.

To conduct this review, operating expenses for the "test year" were reviewed at a budget summary level to identify a percentage of expenses to be labeled as "fixed". Fixed costs included all general administration expenses, all personnel wages and fringe benefits, and select operating costs that included 20% of electricity costs (representing demand and customer components of electric rates), permit, fees and laboratory testing costs, Miss Utility costs, and professional services costs. If only general administrative expenses are considered, a fixed cost would be \$3.00 per bill for water and \$3.00 per bill for wastewater service. If operating personnel and select operating costs are added, fixed costs could be as high as \$13.75 per bill for water service and \$30.25 per bill for wastewater service.

There are two widely accepted practices for applying fixed costs in utility bills. One method is to establish a specific fixed cost for every bill that is added to a variable cost based on consumption, with the bill being the sum of a fixed cost and a variable cost. The second method is to calculate all bills based on the variable cost (\$ per 1,000 gallons), and then apply the unit of consumption times the variable cost as the bill except when this calculation is below the minimum amount, in which case the minimum applies. The Town presently uses the second method, with a minimum charge, and in the comparative analysis it was identified that other nearby communities' trend toward the second method as well. When using the second method, the minimum bill is generally set higher than the fixed cost calculation, recognizing that within the minimum amount is an allowance for some consumption within the variable costs.

In reviewing the Town of Berryville's accounts, this study recommends that the Town retain the current method of a minimum charge that includes an allowance for consumption, but further recommends that the minimum charge be increased from the current \$5.00 for water and \$15.00 for wastewater to an amount equivalent to the first 2,000 gallons of consumption. This increased allowance is a very reasonable and good fit when considering all administrative and operating fixed costs as defined above. For simplicity, the minimum charge equivalent to 2,000 gallons of consumption could apply to whichever rate design the Town selected.

If the Town were to prefer a fixed cost per bill separate from consumption allowance, this study would suggest that fixed amount be set at \$3.00 per bill for water and \$3.00 per bill for wastewater, considering only the general administrative costs. A fixed charge as high as \$13.75 per bill for water and \$30.25 for wastewater is not recommended, as it would result in an unintended significant increase in cost to customers using between 2,000 gallons and 4,000 gallons per month, which represents 51% of the customer base.

Rates for Customers Outside Town Limits

The Town of Berryville currently does not include a surcharge for customers who are outside of the Town's corporate limits, but such practice is allowed both by AWWA's defined practices and under laws of the Commonwealth of Virginia, and many municipalities in the Commonwealth of Virginia do adopt this surcharge. The legal test is that such surcharges be fair and reasonable. The Town has a very limited number of customers outside the Town's limits, but review of the billing data on these limited accounts within the residential category does show about 10% higher consumption than per dwelling consumption for accounts within the Town. Furthermore, it is known within the industry that suburban residential areas have larger lots on average and higher peak water use as a ratio to average consumption compared to in-town lots and residences. Finally, AWWA suggest that a rate of return should be considered by the Town for outside Town customers, similar to how a private sector water utility may expect a return for its investors, as property owners outside the Town are not contributing to tax revenues and ultimately it is the Town and its residences who bear the burden for the risks and consequences of risk failure should they occur in operating an water and wastewater utility.

Considering all these factors, it would be reasonable for the Town to consider a 25% surcharge on all accounts outside the Town's corporate limits as a part of monthly billing. This surcharge would apply to the rate calculated by whatever rate design the Town Council chooses and would apply to every class of customer.

The 25% surcharge could also apply to Availability Fees for a new service approved outside the Town's corporate limits, if there are no current plans to annex the property in the foreseeable future. Since Availability Fees are a one-time "buy-in" for a new customer proposed to be added to the system for the long-term, the Town should consider waiving the surcharge on the Availability Fee for new customers within the proposed Annexation Area, although surcharges would apply to monthly billing until the month when the property served effectively becomes a part of the Town limits.

"Crystal Balling" the Future of Water and Wastewater Regulations

The advance of federal and state regulations regarding drinking water and water discharge to streams and rivers has made a dramatic impact on the quality of both public health and the environment over the past 50 years, starting with the passage of the federal Clean Water Act and the Safe Drinking Water Act in the 1970s as well as the creation of the Environmental Protection Agency. At the same time, the emerging regulatory environment has often created a significant challenge to long-term financial planning for water and wastewater utilities. As advancement in public health and the environment has occurred, new issues were often discovered, and the public interest in quick results has produced new regulations, often requiring significant capital improvement, with a short timeline for implementation and compliance. A case-in-point is the development of wastewater regulations and impact on wastewater treatment facilities, with primary treatment in the 1960s growing to secondary treatment in the 1980s, advanced ammonia removal in the 1990s, and enhanced nitrogen and phosphorus removal in the 2000s to the present. Although developing a "crystal ball" for future regulations can be very tricky and speculative, it has become a part of today's rate studies.

There are no specific changes in capital improvement planning currently being recommended to the Town of Berryville based on anticipating future recommendations, but this section of the report does discuss some trends that the Town should keep in its vision. One is a trend toward requiring utilities to adopt and maintain asset management programs as a condition in federal and state revolving fund low-interest financing, and even some trends toward making asset management a regulatory requirement in permitting. The Evaluation of Assets in this report makes a strong effort in this direction, but today's discussion within the water industry is moving toward asset management as a continuing program integrating maintenance and performance in contrast to a study performed periodically. This report recommends efforts toward asset renewal and maintenance, which is aligned with this regulatory trend.

Another trend to watch is the development of new drinking water regulations that may result from EPA's Contaminant Candidate List and Regulatory determinations, an ongoing process of regulating new contaminants incorporated into the Safe Drinking Water Act. One current topic of significant conversation is perfluoroalkyl and polyfluoroalkyl substances, expected to be regulated at the federal level within the next two years. These substances are not known to be in the Town's water supply but is an area of awareness, as special removal technology is required. Other organic compounds and a class of "emerging contaminants" that include by-products of endocrines or personal care products are on the EPA's current Candidate List. EPA published its Candidate Lists at <https://www.epa.gov/ccl/basic-information-ccl-and-regulatory-determination>.

On the wastewater side, clean water regulations in Virginia have seen significant changes within the past 15 years, largely as a result of the public goal of "cleaning up" the Chesapeake Bay. Nitrogen and phosphorus allocations were established for most wastewater plants in Virginia in 2005, including the Town's facility, and significant capital expenditures have been required to address these regulations. EPA adopted a Total Maximum Daily Load (TMDL) standard for the Chesapeake Bay in 2010, and is under an ongoing review presently, but most expectations are that there will not be significant changes, if any, in wastewater plant allocations within the Potomac/Shenandoah river basin. The Town of Berryville constructed a new wastewater treatment plant about 2010 and is in compliance with the current nitrogen and phosphorus standards.

The Virginia Division of Environmental Quality (DEQ) has recently proposed new ammonia standards for wastewater treatment plants, but the Town's current advanced facility should meet the ammonia criteria. Other current DREQ initiatives have focused more on stormwater.

Similar to the Contaminant List for Drinking Water, the federal Clean Water Act requires a Tri-Annual Review for Clean Water in which states report to EPA on the health of the nation's rivers and invite public comment, and the Clean Water Act has provisions for developing TMDL's for rivers that are not meeting designated use standards. These processes bear watching to be abreast as early as possible if trends develop that may affect local capital needs.

**Berryville Town Council Item Report Summary
July 13, 2021**

Item Title

Community Development - Discussion: Update of www.berryvilleva.gov

Prepared By

Background/History/General Information

Findings/Current Activity

Financial Considerations

Schedule/Deadlines

Other Considerations

Attachments

Recommendation

Sample Motion

Motion to Enter Closed Session

I move that the Council of the Town of Berryville enter closed session in accordance with §2.2-3711-A-1 of the Code of Virginia, to discuss the performance of a specific individual and to discuss prospective candidates for employment.

DATE: July 13, 2021

MOTION:

VOTE:

Aye:

Nay:

Absent/Abstain:

ATTEST: _____

Erecka Gibson, Recorder

TOWN COUNCIL
MOTION
CLOSED SESSION RESOLUTION

DATE: July 13, 2021

MOTION BY:

SECOND BY:

I move that the Council of the Town of Berryville adopt the following resolution certifying it has convened a closed meeting on this date pursuant to an affirmative recorded vote and in accordance with the provisions of The Virginia Freedom of Information Act:

Resolution

WHEREAS, Section 2.2-3712.D of the Code of Virginia requires a certification by this Council that such closed meeting was conducted in conformity with Virginia law,

NOW, THEREFORE, BE IT RESOLVED that the Council hereby certifies that, to the best of each member's knowledge, (i) only public business matters lawfully exempted from open meeting requirements by Virginia law were discussed in the closed meeting to which this certification resolution applies, and (ii) only such public business matters as were identified in the motion convening the closed meeting were heard, discussed or considered by the Council.

VOTE:

Aye:

Nay:

Absent/Abstain:

ATTEST: _____
Erecka Gibson, Recorder