

**CORONAVIRUS LOCAL FISCAL RECOVERY FUND:
UPDATE ON INTERPRETATION FOR THE 75 PERCENT BUDGET CAP CALCULATION
(NONENTITLEMENT UNITS OF LOCAL GOVERNMENT)**

U.S. DEPARTMENT OF THE TREASURY

Section 603 of the Social Security Act, as added by the American Rescue Plan Act of 2021 (ARPA), provides a cap on payments to NEUs at “75 percent of the most recent budget for the nonentitlement unit of local government as of January 27, 2020.” On May 10, 2021, Treasury adopted an [Interim Final Rule](#) (IFR) that implemented this provision. In the preamble to the IFR and the [Guidance on Distribution of Funds to Non-entitlement Units of Local Government](#) (NEU Guidance), Treasury further defined the NEU’s “most recent budget” for the purposes of calculating the “75 percent budget cap” under section 603(b)(2)(C)(iii) as the NEU’s “annual total operating budget, including general fund and other funds, in effect as of January 27, 2020,” and encouraged stakeholders to provide input on alternative ways to enforce the 75 percent cap while reducing the administrative burden on states and territories.

Since the release of the IFR and the NEU Guidance, Treasury has received a diverse set of input from state and local governments, including those that detailed challenges in implementing the definition given the variance in local financial accounting practices. Based on this feedback and to facilitate states’ distribution to NEUs, Treasury is updating its guidance to define an NEU’s “most recent budget” as an NEU’s total annual budget, including both operating and capital expenditure budgets, in effect as of January 27, 2020. For multi-year budgets without year-by-year breakouts, NEUs should report a straight annualized average of the multi-year budget. Treasury believes that the updated, more inclusive definition will capture a more complete picture of an NEU’s ability to spend ARPA funds and will be more administrable, given the wide range of financial accounting practices across local governments.

Treasury understands that there are additional complexities to operationalizing the budget cap, including whether certain types of funds (e.g., enterprise funds) or certain budget line items should be included as part of the NEU’s budget. Given the wide range of financial accounting practices across local governments, Treasury is providing states with flexibility to provide further guidance to their NEUs consistent with Treasury’s updated framework and the state’s applicable established practices. In doing so, states should adopt a uniform standard across all NEUs in the state. Treasury will ask states to provide a description of their standards in their reports to Treasury.

Each state should communicate to NEUs how this update will be implemented within the state, including providing technical assistance to small local governments, if appropriate. As outlined in the NEU guidance, NEUs are ultimately responsible for the submission of accurate budget data to the state, including any data submitted as a result of this updated guidance. As part of their first report to Treasury, NEUs will be required to submit copies of the actual budget documents validating the top-line budget total provided to the state.

Treasury understands that some states may have issued NEU payments, begun to collect budget information from NEUs, or taken other significant steps to implement the budget cap by the time of this revision. These states must provide an option for NEUs that have already submitted budget information under the former definition to submit new budget information reflecting the revised definition within a

reasonable amount of time, and, if applicable, receive an additional payment.¹ However, these states may choose to complete the initial distribution of payments under the previous cap definition and correct for the change in definition (i.e., by collecting updated budget information and issuing top-up payments to reflect revised award amounts under the updated cap definition) at a later date, including as part of any subsequent distribution of remaining First Tranche funds (as outlined in the NEU guidance) or as part of the Second Tranche distributions.

Treasury will not consider a state's deferral of a top-up payment until the time that the state's Second Tranche distributions are made to constitute a violation of the requirement to make payments of the First Tranche within the distribution period outlined in section 603(b)(2)(C)(i).

¹ Since the updated definition is more inclusive than the former definition, states need only provide the option for NEUs to come forward with new budget information if they wish to receive an additional "top-up" payment. Treasury does not expect states to collect new budget information from NEUs whose allocations were not affected by the 75 percent cap, as the collection of updated information will not affect their payment amount. States should keep records of all budget submissions for their report to Treasury.