



Jim Pillen, Governor

GUIDANCE DOCUMENT FOR ARPA FUNDING

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This guidance document is advisory in nature but is binding on an agency until amended by such agency. A guidance document does not include internal procedural documents that only affect the internal operations of the agency and does not impose additional requirements or penalties on regulated parties or include confidential information or rules and regulations made in accordance with the Administrative Procedure Act. If you believe that this guidance document imposes additional requirements or penalties on regulated parties, you may request a review of the document. Neb. Rev. Stat. § 84-901.03.

SUMMARY

The American Rescue Plan Act (“ARPA”) is the result of a federal stimulus bill passed by Congress in the spring of 2021. The Nebraska Department of Natural Resources (“Department”) has been appropriated funds under LB1014 (2022) and LB814 (2023). In 2022, LB1014 appropriated funds into two programs: **Program 314 – Critical Infrastructure Facilities was appropriated \$23,100,000 and Program 319 – Water Projects was appropriated \$20,000,000.** In 2023, LB814 appropriated funds into two programs for three projects: **Program 319 – Water Projects was appropriated \$179,200,000 and Program 334 – Soil and Water Conservation was appropriated \$1,200,000 in FY2023-24 and \$1,200,000 in FY2024-25.**

The legislature stipulated the following requirements to ensure federal compliance, accountability, and reporting obligations are met:

All grants utilizing Federal Funds allocated to the State of Nebraska from the federal Coronavirus State Fiscal Recovery Fund shall meet the eligible uses under the federal American Rescue Plan Act of 2021 and any relevant guidance on the use of such funds by the United States Department of the Treasury.

PROJECT GOALS FOR PROGRAM 314 – Critical Infrastructure Facilities:

The purpose of this program is as follows (excerpt from LB1014, 2022):

There is included in the amount shown as aid for this program for FY2021-22 \$23,100,000 Federal Funds to provide a grant to an irrigation district which is part of an

interstate irrigation system that experienced a failure, to satisfy matching requirements for a project authorized by the United States Bureau of Reclamation for construction and repairs on any tunnel or canal pursuant to the federal American Rescue Plan Act of 2021 and will contract with GFLID on specific terms of the grant.

GUIDELINES FOR ELIGIBLE FUND RECIPIENTS:

The Department has reviewed the eligibility criteria established in LB1014 and determined that the Gering-Fort Laramie Irrigation District (“GFLID”) is the only eligible applicant for these funds. The Department is currently working with GFLID to determine total project costs and those funds that are necessary to satisfy matching requirements for the repair and construction costs associated with tunnel repairs that are integral to the operations of their irrigation system. The Department will continue to work with GFLID and the United States Bureau of Reclamation to determine final matching fund requirements for the project. No further action is required by GFLID to be determined as the eligible recipient under LB1014.

ELIGIBILITY CRITERIA UNDER ARPA:

The Department has reviewed the final rule published by the Department of The Treasury [31 CFR Part 35 RIN 1505-AC77]. The Secretary of the Treasury (“Treasury”) adopted as final the interim final rule published on May 17, 2021, with amendments. This rule has been revised, based in part, on provisions of the Infrastructure Investment and Jobs Act in the fall of 2021 (“IIJA”). The provisions of the final rule reviewed by the Department are effective as of April 1, 2022. The eligibility for the expenditures of GFLID have been reviewed in the context of this rule.

The Infrastructure Investment and Jobs Act amended sections 602(c) and 603(c) of the Social Security Act to add an additional eligible use of SLFRF funds, providing that SLFRF funds “may be used for purposes of satisfying **any non-Federal matching requirement required for [an authorized Bureau of Reclamation project].**” This amendment permitted the use of SLFRF funds to meet non-federal matching requirements of any authorized Bureau of Reclamation project, regardless of whether the underlying project would be an eligible use of SLFRF funds under the water and sewer infrastructure eligible use category. These amendments are effective as of March 11, 2021, as if included in the ARPA at the time of its enactment. Treasury will provide further guidance to recipients on the scope of Bureau of Reclamation water projects and expenses covered by this provision. The provisions cited for eligibility under the final Treasury rule are contained on **page 291** of the rule.

REPORTING AND FUND ADMINISTRATION:

All recipients are required to submit Quarterly Project and Expenditure Reports.

Quarterly Reporting:

Recipients are required to submit financial and programmatic reports to the Coronavirus State and Local Fiscal Recovery Funds (“SLFRF”) as a condition of their award acceptance throughout the period of performance, including partial calendar quarters, as well as for periods where no

grant award activity occurs. Future awards and fund drawdowns may be withheld if these reports are delinquent, demonstrate a lack of progress, or are insufficient in detail.

The following reporting periods and due dates apply:

Reporting Period	Report Due Date
October 1-December 31	January 31
January 1-March 31	April 30
April 1-June 30	July 31
July 1-September 30	October 31

Other Required information to report:

Obligations and Expenditures: Once a project is entered the recipient will be able to report on the project’s obligations and expenditures. Recipients will be asked to report:

- Current period obligation
- Cumulative obligation
- Current period expenditure
- Cumulative expenditure

Project Status: Once a project is entered the recipient will be asked to report on project status each reporting period, in four categories:

- Not Started
- Completed less than 50 percent
- Completed 50 percent or more
- Completed

Program Income: Recipients should report the program income earned and expended to cover eligible project costs, if applicable.

In addition, because SLFRF funds must be obligated by December 31, 2024, and recipients must expend all funds under the award no later than December 31, 2026, recipients must be able to, at a minimum, determine and report to Treasury on the amount of SLFRF funds obligated and expended and when such funds were obligated and expended.

PROJECT GOALS FOR PROGRAM 319 – Water Projects:

The purpose of this program is as follows (excerpt from LB1014, 2022):

There is included in the amount shown as aid for this program for FY2021-22 \$20,000,000 Federal Funds to provide a grant to a city of the primary class that utilizes more than thirty million gallons per day of water to be used for the design, construction, and implementation of additional water supply projects, which shall only be used for such purpose. Eligible project costs shall include, but not be limited to, costs for a water treatment plant, land acquisition, acquiring permits, a wellfield, pumping, and transportation of water over twenty-five miles for the purpose of providing potable water to the city. The Department of Natural Resources may award a grant to a city of the

primary class based on criteria and procedures established by the department.

GUIDELINES FOR ELIGIBLE FUND RECIPIENTS:

The Department has reviewed the eligibility criteria established in LB1014 and determined that the City of Lincoln (“Lincoln”) is the only eligible applicant for these funds. The Department will be working with Lincoln to determine total project costs and the specific expenditures that will be planned for these funds within the limitations established in LB1014. No further action is required by Lincoln to be determined as the eligible recipient under LB1014.

ELIGIBILITY CRITERIA UNDER ARPA:

The Department has reviewed the final rule published by the Department of The Treasury [31 CFR Part 35 RIN 1505-AC77]. The Secretary of the Treasury (“Treasury”) adopted as final the interim final rule published on May 17, 2021, with amendments. This rule has been revised, based in part, on provisions of the Infrastructure Investment and Jobs Act in the fall of 2021 (“IIJA”). The provisions of the final rule reviewed by the Department are effective as of April 1, 2022. The eligibility for the expenditures of Lincoln have been reviewed in the context of this rule.

The final Treasury rule provides for opportunities to make necessary investments in water, sewer, or broadband infrastructure. The rule creates limitations on certain investments in water infrastructure but does provide for eligibility for drinking water projects needed to support increased population. Projects of the type that meet the eligibility requirements of 40 CFR § 35.3520 if the following conditions are met: (A) The project is needed to support increased population, with need assessed as of the time the project is undertaken; (B) The project is designed to support no more than a reasonable level of projected increased need, whether due to population growth or otherwise; (C) The project is a cost-effective means for achieving the desired level of service; and (D) The project is projected to continue to provide an adequate level of drinking water over its estimated useful life. 31 CFR § 35.6(e)(1)(v).

Drinking Water State Revolving Fund projects or activities of the type that meet the eligibility requirements of section 1452 of the Safe Drinking Water Act (42 U.S.C. 300j-12) as implemented by the regulations adopted by the Environmental Protection Agency (“EPA”) under 40 CFR § 35.3520 are also eligible, provided that: (A) The recipient is not required to comply with the limitation under 40 CFR § 35.3520(c)(2) to acquisitions of land from willing sellers or the prohibition under 40 CFR § 35.3520(e)(6) on uses of funds for certain Tribal projects; and (B) In the case of lead service line replacement projects, the recipient must replace the full length of the service line and may not replace only a partial portion of the service line. 31 CFR § 35.6(e)(1)(iii).

Expenditures by Lincoln consistent with the limitations expressed in LB1014 and the eligibility criteria described above would be eligible uses of the funds. To be allowable, all costs charged to the award or applied to the cost-share must be reasonable in nature and amount and allocable to the award. Eligible costs are limited by LB1014 to:

- Cost for water treatment plant
- Land acquisition
- Acquiring permits
- A wellfield
- Pumping
- Transportation of water

REPORTING AND FUND ADMINISTRATION:

Quarterly Reporting:

Recipients are required to submit financial and programmatic reports to the Coronavirus State and Local Fiscal Recovery Funds (“SLFRF”) as a condition of their award acceptance throughout the period of performance, including partial calendar quarters, as well as for periods where no grant award activity occurs. Future awards and fund drawdowns may be withheld if these reports are delinquent, demonstrate a lack of progress, or are insufficient in detail.

The following reporting periods and due dates apply:

Reporting Period	Report Due Date
October 1-December 31	January 31
January 1-March 31	April 30
April 1-June 30	July 31
July 1-September 30	October 31

Other Required information to report:

Obligations and Expenditures: Once a project is entered the recipient will be able to report on the project’s obligations and expenditures. Recipients will be asked to report:

- Current period obligation
- Cumulative obligation
- Current period expenditure
- Cumulative expenditure

Project Status: Once a project is entered the recipient will be asked to report on project status each reporting period, in four categories:

- Not Started
- Completed less than 50 percent
- Completed 50 percent or more
- Completed

Program Income: Recipients should report the program income earned and expended to cover eligible project costs, if applicable.

In addition, because SLFRF funds must be obligated by December 31, 2024, and recipients must expend all funds under the award no later than December 31, 2026, recipients must be able to, at a minimum, determine and report to Treasury on the amount of SLFRF funds obligated and expended and when such funds were obligated and expended.

PROJECT GOALS FOR PROGRAM 319 – Water Projects:

Project #1:

The purpose of this program is as follows (excerpt from LB814, 2023):

There is included in the appropriation to this program for FY2023-24 \$177,200,000 Federal Funds to provide a grant to a city of the primary class that utilizes more than thirty million gallons per day of water to be used for the design, construction, and implementation of additional water supply projects, which shall only be used for such purpose. Eligible project costs shall include, but not be limited to, costs for a water treatment plant, land acquisition, acquiring permits, a wellfield, pumping, and transportation of water over twenty-five miles for the purpose of providing potable water to the city. The Department of Natural Resources may award a grant to a city of the primary class based on criteria and procedures established by the department.

GUIDELINES FOR ELIGIBLE FUND RECIPIENTS:

The Department has reviewed the eligibility criteria established in LB814 and determined that the City of Lincoln (“Lincoln”) is the only eligible applicant for these funds. The Department will be working with Lincoln to modify their existing contract (funds received from LB1014, 2022), and determine total project costs and the specific expenditures that will be planned for these funds within the limitations established in LB814. No further action is required by Lincoln to be determined as the eligible recipient under LB814.

ELIGIBILITY CRITERIA UNDER ARPA:

The Department has reviewed the final rule published by the Department of The Treasury [31 CFR Part 35 RIN 1505-AC77]. The Secretary of the Treasury (“Treasury”) adopted as final the interim final rule published on May 17, 2021, with amendments. This rule has been revised, based in part, on provisions of the Infrastructure Investment and Jobs Act in the fall of 2021 (“IIJA”). The provisions of the final rule reviewed by the Department are effective as of April 1, 2022. The eligibility for the expenditures of Lincoln have been reviewed in the context of this rule.

The final Treasury rule provides for opportunities to make necessary investments in water, sewer, or broadband infrastructure. The rule creates limitations on certain investments in water infrastructure but does provide for eligibility for drinking water projects needed to support increased population. Projects of the type that meet the eligibility requirements of 40 CFR § 35.3520 if the following conditions are met: (A) The project is needed to support increased population, with need assessed as of the time the project is undertaken; (B) The project is designed to support no more than a reasonable level of projected increased need, whether due to population growth or otherwise; (C) The project is a cost-effective means for achieving the desired level of service; and (D) The project is projected to continue to provide an adequate level of drinking water over its estimated useful life. 31 CFR § 35.6(e)(1)(v).

Drinking Water State Revolving Fund projects or activities of the type that meet the eligibility requirements of section 1452 of the Safe Drinking Water Act (42 U.S.C. 300j-12) as implemented by the regulations adopted by the Environmental Protection Agency (“EPA”) under 40 CFR § 35.3520 are also eligible, provided that: (A) The recipient is not required to comply with the limitation under 40 CFR § 35.3520(c)(2) to acquisitions of land from willing sellers or the prohibition under 40 CFR § 35.3520(e)(6) on uses of funds for certain Tribal projects; and (B) In the case of lead service line replacement projects, the recipient must replace the full length of the service line and may not replace only a partial portion of the service line. 31 CFR § 35.6(e)(1)(iii).

Expenditures by Lincoln consistent with the limitations expressed in LB814 and the eligibility criteria described above would be eligible uses of the funds. To be allowable, all costs charged to the award or applied to the cost-share must be reasonable in nature and amount and allocable to the award. Eligible costs are limited by LB814 to:

- Cost for water treatment plant
- Land acquisition
- Acquiring permits
- A wellfield
- Pumping
- Transportation of water

REPORTING AND FUND ADMINISTRATION:

Quarterly Reporting:

Recipients are required to submit financial and programmatic reports to the Coronavirus State and Local Fiscal Recovery Funds (“SLFRF”) as a condition of their award acceptance throughout the period of performance, including partial calendar quarters, as well as for periods where no grant award activity occurs. Future awards and fund drawdowns may be withheld if these reports are delinquent, demonstrate a lack of progress, or are insufficient in detail.

The following reporting periods and due dates apply:

Reporting Period	Report Due Date
October 1-December 31	January 31
January 1-March 31	April 30
April 1-June 30	July 31
July 1-September 30	October 31

Other Required information to report:

Obligations and Expenditures: Once a project is entered the recipient will be able to report on the project’s obligations and expenditures. Recipients will be asked to report:

- Current period obligation
- Cumulative obligation
- Current period expenditure

- Cumulative expenditure

Project Status: Once a project is entered the recipient will be asked to report on project status each reporting period, in four categories:

- Not Started
- Completed less than 50 percent
- Completed 50 percent or more
- Completed

Program Income: Recipients should report the program income earned and expended to cover eligible project costs, if applicable.

In addition, because SLFRF funds must be obligated by December 31, 2024, and recipients must expend all funds under the award no later than December 31, 2026, recipients must be able to, at a minimum, determine and report to Treasury on the amount of SLFRF funds obligated and expended and when such funds were obligated and expended.

Project #2:

The purpose of this program is as follows (excerpt from LB814, 2023):

There is included in the appropriation to this program for FY2023-24 \$2,000,000 Federal Funds to provide a grant to a city of the first class located in the first congressional district that is constructing riverfront improvement projects, including water recreational facilities, arts and entertainment facilities, and other projects associated with riverfront improvement.

GUIDELINES FOR ELIGIBLE FUND RECIPIENTS:

The Department has reviewed the eligibility criteria established in LB814 and determined that the City of Norfolk (“Norfolk”) is the only eligible applicant for these funds. The Department will be working with Norfolk to determine total project costs and the specific expenditures that will be planned for these funds within the limitations established in LB814. No further action is required by Norfolk to be determined as the eligible recipient under LB814.

ELIGIBILITY CRITERIA UNDER ARPA:

The Department has reviewed the final rule published by the Department of The Treasury [35 CFR Part 35 RIN 1505-AC77]. The Treasury adopted as final the interim final rule published on May 17, 2021, with amendments. This rule has been revised, based in part, on provisions of the IJA in the fall of 2021. The provisions of the final rule reviewed by the Department are effective as of April 1, 2022. The eligibility for the expenditures of Norfolk have been reviewed in the context of this rule.

The final Treasury rule provides for opportunities for responding to the negative economic impacts of the COVID-19 public health emergency for purposes including a program, service,

capital expenditure or other assistance that is provided to a disproportionately impacted household, population, or community, including: investments in communities to promote improved health outcomes and public safety such as parks and recreation facilities and facilities and equipment related to the provision of these services to the disproportionately impacted household, population, or community. 31 CFR § 35.6(b)(3)(ii)(A)(11). The final rule specifies the following households and communities are presumed to be disproportionately impacted by the COVID-19 public health emergency or its negative economic impacts: households and populations residing in a qualified census tract and low-income households and populations. 31 CFR § 35.6(b)(2)(iii)(A). Per the United States Census Bureau, 12.9% of persons within the City of Norfolk have income below the poverty level which is higher than rest of the state at 10.8%. The City of Norfolk also contains parts of two Qualified Census Tracts, as designated by the U.S. Department of Housing and Urban Development: Census Tract 9607 in the north and northeastern portion of Norfolk, and Census Tract 9611 in the southern portion of Norfolk.

REPORTING AND FUND ADMINISTRATION:

Quarterly Reporting:

Recipients are required to submit financial and programmatic reports to the Coronavirus State and Local Fiscal Recovery Funds (“SLFRF”) as a condition of their award acceptance throughout the period of performance, including partial calendar quarters, as well as for periods where no grant award activity occurs. Future awards and fund drawdowns may be withheld if these reports are delinquent, demonstrate a lack of progress, or are insufficient in detail.

The following reporting periods and due dates apply:

Reporting Period	Report Due Date
October 1-December 31	January 31
January 1-March 31	April 30
April 1-June 30	July 31
July 1-September 30	October 31

Other Required information to report:

Obligations and Expenditures: Once a project is entered the recipient will be able to report on the project’s obligations and expenditures. Recipients will be asked to report:

- Current period obligation
- Cumulative obligation
- Current period expenditure
- Cumulative expenditure

Project Status: Once a project is entered the recipient will be asked to report on project status each reporting period, in four categories:

- Not Started
- Completed less than 50 percent
- Completed 50 percent or more
- Completed

Program Income: Recipients should report the program income earned and expended to cover eligible project costs, if applicable.

In addition, because SLFRF funds must be obligated by December 31, 2024, and recipients must expend all funds under the award no later than December 31, 2026, recipients must be able to, at a minimum, determine and report to Treasury on the amount of SLFRF funds obligated and expended and when such funds were obligated and expended.

PROJECT GOALS FOR PROGRAM 334 – Soil and Water Conservation:

The purpose of this program is as follows (excerpt from LB814, 2023):

There is included in the appropriation to this program \$1,200,000 from Federal Funds in FY2023-24 and \$1,200,000 from Federal Funds in FY2024-25 from funds allocated to the State of Nebraska from the federal Coronavirus State Fiscal Recovery Fund pursuant to the federal American Rescue Plan Act of 2021, 42 U.S.C. 802, as amended, for enhanced data collection.

GUIDELINES FOR ELIGIBLE FUND RECIPIENTS:

The Department has reviewed the eligibility criteria established in LB814 and determined that the Nebraska legislature intended for the Nebraska Department of Natural Resources (Department) to be the recipient of these funds to Program No. 334 – Soil and Water Conservation for the purpose of enhanced data collection. The Department will work to determine total project costs and specific expenditures that will be planned for these funds within the limitations established in LB814. No further action is required by the Department to be determined as the eligible recipient under LB814.

ELIGIBILITY CRITERIA UNDER ARPA:

The Department has reviewed the final rule published by the Department of The Treasury [31 CFR Part 35 RIN 1505-AC77]. The Secretary of the Treasury (“Treasury”) adopted as final the interim final rule published on May 17, 2021, with amendments. This rule has been revised, based in part, on provisions of the Infrastructure Investment and Jobs Act in the fall of 2021 (“IIJA”). The provisions of the final rule reviewed by the Department are effective as of April 1, 2022. The eligibility for the expenditures of the Department Program No. 334 have been reviewed in the context of this rule.

The final Treasury rule provides for opportunities to provide emergency relief from natural disasters that are threatened to occur in the future or their negative economic impacts. The interim final rule explains that for purposes of the SLFRF program, a natural disaster is defined as inter alia, “flood, high water, or drought...in each case attributable to natural causes, that causes or may cause substantial damage, injury, or imminent threat to civilian property or persons.” Further, if providing assistance to **lessen or avert the threat of a future natural disaster**, recipients should document evidence of historical patterns or predictions of natural

disasters that would reasonably demonstrate the likelihood of future occurrence of such natural disaster in its community. Expenditures by the Department for enhanced data collection consistent with the limitations expressed in LB814 and the eligibility criteria described above would be eligible uses of the funds.

In addition, the final Treasury rule provides for opportunities to make necessary investments in water, sewer, or broadband infrastructure, including Clean Water State Revolving Fund projects or activities of the type that meet the eligibility requirements of Section 603(c) of the Clean Water Act. Expenditures by the Department for enhanced data collection consistent with the limitations expressed in LB814 and the eligibility criteria described in the requirements of Section 603(c) of the Clean Water Act would be eligible uses of the funds.

REPORTING AND FUND ADMINISTRATION:

Quarterly Reporting:

Recipients are required to submit financial and programmatic reports to the Coronavirus State and Local Fiscal Recovery Funds (“SLFRF”) as a condition of their award acceptance throughout the period of performance, including partial calendar quarters, as well as for periods where no grant award activity occurs. Future awards and fund drawdowns may be withheld if these reports are delinquent, demonstrate a lack of progress, or are insufficient in detail.

The following reporting periods and due dates apply:

Reporting Period	Report Due Date
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April 1-June 30	July 31
July 1-September 30	October 31

Other Required information to report:

Obligations and Expenditures: Once a project is entered the recipient will be able to report on the project’s obligations and expenditures. Recipients will be asked to report:

- Current period obligation
- Cumulative obligation
- Current period expenditure
- Cumulative expenditure

Project Status: Once a project is entered the recipient will be asked to report on project status each reporting period, in four categories:

- Not Started
- Completed less than 50 percent
- Completed 50 percent or more
- Completed

Program Income: Recipients should report the program income earned and expended to cover eligible project costs, if applicable.

In addition, because SLFRF funds must be obligated by December 31, 2024, and recipients must expend all funds under the award no later than December 31, 2026, recipients must be able to, at a minimum, determine and report to Treasury on the amount of SLFRF funds obligated and expended and when such funds were obligated and expended.

CONTACT INFORMATION:

For questions regarding the contents of this guidance document, please contact Jesse Bradley jesse.bradley@nebraska.gov or (402-219-1357).