



Pete Ricketts, Governor

GUIDANCE DOCUMENT FOR ARPA FUNDING

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. (Statute 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 into two programs. **Program 314 – Critical Infrastructure Facilities was appropriated \$23,100,000 and Program 319 – Water Projects was appropriated \$20,000,000.** As part of LB 1014e, the legislation stipulates the following requirements to ensure federal compliance, accountability, and reporting obligations are met:

- 1) *"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."*
- 2) *"Each agency, board, or commission shall complete guidance documents related to the distribution of the Federal Funds appropriated pursuant to this act within sixty days after the effective date of this act."*
- 3) *"Each such agency, board, or commission shall provide a report to the Executive Board of the Legislative Council within ninety days after the effective date of this act that outlines whether the projects or appropriations assigned to the agency, board, or commission by the Legislature comply with the federal act or regulations."*

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PROJECT GOALS FOR PROGRAM 314 – Critical Infrastructure Facilities:

The purpose of this program is as follows (excerpt from LB 1014):

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 LB 1014 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 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 30
July 1-September 30	October 30

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 LB 1014):

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 LB 1014 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 (page 427).

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. **(Page 427).**

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 LB 1014 to:

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

REPORTING AND FUND ADMINISTRATION:

Quarterly Reporting:

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CONTACT INFORMATION:

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

