



April 11, 2023

Joseph Wender
Director
Capital Projects Fund
Via email: capitalprojectsfund@treasury.gov
Cc: joseph.wender@treasury.gov

Re: Proposed SLFRF and CPF Supplementary Broadband Guidance

Dear Mr. Wender:

NTCA- The Rural Broadband Association, as the representative of approximately 850 providers of high-quality voice and broadband services in the most rural parts of the United States, appreciates Treasury's willingness to take a close look at the Uniform Guidance and attempt to help reduce unnecessary regulatory burden, confusion and uncertainty associated with funding awards. The Guidance, once finalized, will help accelerate the deployment of broadband infrastructure in accordance with funding goals. NTCA's members value the opportunity offered by the funding awards administered by Treasury to offer high-quality, fiber-fed broadband services to the remaining unserved and underserved households, businesses, and anchor institutions in their rural communities and the many more lacking sufficient broadband access in neighboring rural areas. NTCA wholeheartedly supports the Proposed Guidance but suggests additional clarification.

Treasury Should Clarify that Pre-Award Costs are Reimbursable to the Extent that They Would Have Been Allowable if Incurred After the Date of the Federal Award or Subaward

NTCA requests that Treasury confirm explicitly that relevant owner-supplied materials purchased prior to the grant of an award are reimbursable, provided that the goods or equipment would have been allowable if the costs of procuring them had been incurred after the date of the Federal award or subaward. It has come to NTCA's attention that some expenses may be disallowed if the equipment (e.g., network electronics or fiber) was purchased in advance of an award contract. While it is likely that the determination by Treasury that fixed award subawards are not required to comply with the cost principles and procurement practices of the Uniform Guidance is intended to settle this issue, further clarification would alleviate any remaining confusion. Section 200.403(h) states, "Costs must be incurred during the approved budget period." And while section 200.458 regarding pre-award costs states that costs incurred prior to the effective date of the Federal award or subaward in anticipation of the Federal award are allowed if such costs are "necessary for efficient and timely performance of the scope of work," they are allowable only with the written approval of the Federal awarding agency.

The lead times for purchase of certain equipment are such that supplies often must be ordered and purchased in anticipation of need, and the ability to leverage existing inventory to “hit the ground running” advances the substantive broadband objectives of the programs in terms of connecting more Americans more quickly to better broadband. By contrast, delays in delivery can undermine a company’s ability to meet programmatic and/or internal deployment goals. Moreover, companies must have the ability to take advantage of the price discounts often available through bulk purchases, which may mean stockpiling certain equipment until it is ready to deploy. It is efficient and timesaving to permit broadband providers to utilize their existing inventory and seek cost reimbursement from the funding programs, and it is consistent with Treasury’s goals in providing relief from certain cost principles and procurement practices that if applied strictly would undermine the deployment goals of the funding programs. NTCA therefore requests in an abundance of caution that Treasury provide in writing clarification that states, “Pre-award costs are reimbursable to the extent that they would have been allowable if incurred after the date of the Federal award or subaward.”

Treasury Should Clarify that the Guidance Applies Uniformly to All Subrecipients, Including in Those Situations Where a Non-Federal Legislative or Regulatory Body May Impose a Cost Sharing or Match Requirement to A Fixed Amount Subaward

There is potential ambiguity in the application of Treasury’s determination that subrecipients are not required to comply with the cost principles and procurement practices of the Uniform Guidance where a state or other non-federal regulatory authority attaches a cost sharing or match requirement to an award. Section 200.201(b)(2) states that a fixed amount award cannot be used in programs which require mandatory cost sharing or match. Meanwhile, the draft guidance states, “ISPs that receive fixed amount subawards are not required to comply with the cost principle and procurement practices of the Uniform Guidance.” While the intent of the guidance should be clear, if a fixed amount subaward has any cost sharing or match requirement, even if it is a non-Federal requirement, a State or Territory could perceive that the guidance from Treasury does not apply and subrecipients must therefore comply with the cost principles and procurement practices of the Uniform Guidance. This reading would undermine the guidance from Treasury and create unnecessary and wasteful processes and approval procedures. Therefore, NTCA requests that Treasury make clear that the guidance applies uniformly to all subrecipients, including in those situations where a cost sharing or match requirement applies to a fixed amount award or subaward.

Treasury Should Clarify that an Award of a Set Amount to a Recipient is a “Fixed Amount Award” Even if the Recipient Reimburses Subrecipients or Contractors Based on Costs or Other Measures Associated with a Project

Similarly, there is potential confusion about how the guidance might apply if a recipient reimburses a subrecipient or contractor based on costs incurred. According to section 200.1, a “fixed amount award” means “a type of grant or cooperative agreement under which the Federal awarding agency or pass-through entity provides a specific level of support without regard to actual costs incurred under the Federal award.” While a state or other entity may

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receive a fixed amount award, it may have performance objectives or cost reimbursement requirements for its subrecipients or contractors, in addition to cost sharing or matching obligations. An award to a subrecipient or contractor may include identifiable and measurable goals and objectives and accountability, and the subrecipient or contractor may be reimbursed up to, but not more than, its initial award from the initial recipient (*i.e.*, the state). It would therefore be helpful and consistent with the intent of the draft guidance for Treasury to clarify that, "An award of a set amount to a recipient is a 'fixed amount award,' even if the recipient reimburses subrecipients or contractors based on costs or other measures associated with a project."

Treasury Should Make Clear that its Guidance Applies Retroactively

Several broadband service providers have already signed agreements with their states for funding distributed pursuant to Treasury programs. Those agreements may be based on interpretations of the funding rules and regulations that are inconsistent with the final guidance. To avoid confusing and uneven application of funding requirements, Treasury should clarify that its final guidance applies to all awards made using State and Local Fiscal Recovery Funds and/or the Capital Projects Fund, including those made in advance of the final guidance release date.

NTCA and its members appreciate the efforts by Treasury to clarify how certain rules apply within its programs and to help promote the more efficient and effective deployment of broadband networks leveraging these programs. We look forward to a continued dialogue on this and other matters.

Respectfully,



By: /s/ Jill Canfield

Jill Canfield

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