Economic harm to small businesses and nonprofits and list of enumerated capital expenditures

The Final Rule enumerated a short list of capital expenditures which are presumed reasonably proportional and are considered appropriate assistance to address economic harm to certain small businesses and nonprofits. Any other use of SLFRF for capital expenditures must be subject to assessment/analysis per the Final Rule. See Table 1.

Table 1: Enumerated Capital Expenditures for Small Businesses/Nonprofits that Experienced Negative Economic Impact from COVID-19 and Required Assessments/Analyses.

Beneficiary	Assessment of negative economic impacts required?	Enumerated use: capital expenditures	Analysis required to demonstrate that capital expenditure responds to the harm, benefits the beneficiaries that experienced harm, and is reasonably proportional to the harm?	SAO comments
Impacted small businesses and nonprofits	Yes	• COVID-19 mitigation measures such as installation and improvements of ventilation systems and developing outdoor spaces.	No - for enumerated capital expenditures. Yes - for all other proposed capital expenditures.	The list of capital expenditures that Treasury designated as enumerated uses for small businesses and nonprofits is limited and signifies that modest, not transformational, capital projects may be considered related to and reasonably proportional to negative economic impacts from COVID-19.
Impacted industries – tourism, travel, and hospitality.[A]	No – presumed. Must be documented for industries other than tourism, travel, and hospitality.[C]	• COVID-19 mitigation measures such as installation and improvements of ventilation systems and developing outdoor spaces. • Maintenance of existing equipment and facilities.	No - for enumerated capital expenditures. Yes - for all other proposed capital expenditures.	
Disproportionally impacted small businesses and nonprofits.[B]	Presumed for those in qualified census tracts (QCT). Must be documented for other than QCT.[C]	• COVID-19 mitigation measures such as installation and improvements of ventilation systems and developing outdoor spaces. • Maintenance of existing equipment and facilities. • Rehabilitation of commercial properties, storefront improvements, and façade improvements.	No - for enumerated capital expenditures. Yes - for all other proposed capital expenditures.	

[A] Other industries are presumed impacted if the industry experienced employment loss of at least eight percent. To determine employment loss, calculate the percent change in the number of employees in the identified industry by comparing data from the most recent three-month period available as of the date of adoption of the final rule to data from the three-month period immediately before the public health emergency. If an industry does not have 8 percent employment loss or data are unavailable, a State may still designate the industry as impacted by showing that the totality of relevant major economic indicators demonstrates the industry is experiencing comparable or worse economic impacts as the national tourism, travel, and hospitality industries at the time of the publication of the final rule, and that the impacts were generally due to the COVID–19 public health emergency.

[B] Per Final Rule, small businesses and nonprofits in QCTs are presumed disproportionately impacted. The State may perform and document analysis to demonstrate that other groups/geographic areas experienced a disproportionate impact from COVID-19. “Disproportionately impacted” entities are those that experienced disproportionate public health or economic outcomes from the pandemic. U.S. Treasury recognizes that preexisting disparities, in many cases, amplified the impacts of the pandemic, causing more severe impacts in underserved communities.

[C] States may identify impacted and disproportionately impacted groups, but larger and less-specific classes are less likely to have experienced similar harms and thus the responses are less likely to be responsive to the harms identified. That is, as the group of entities being served by a program has a wider set of fact patterns, or the type of entities, their circumstances, or their pandemic experiences differ more substantially, it may be more difficult to determine that the class has actually experienced the same or similar negative economic impact and that the response is appropriately tailored to address that impact.

Economic harm to households and populations and enumerated capital expenditures

The Final Rule included capital expenditures which are presumed reasonably proportional and are considered appropriate assistance to address economic harm to impacted[1] and disproportionately impacted[2] households and populations per the final rule. Table 2 lists capital expenditures that are considered an enumerated use. There are additional capital expenditures, not included in Table 2, that are in Treasury's list of enumerated uses for other groups of eligible beneficiaries such as those that are unemployed or experienced increased food insecurity.

Table 2: Enumerated Capital Expenditures for Small Businesses/Nonprofits that Experienced Negative Economic Impact from COVID-19 and Required Assessments/Analyses.

Beneficiary	Assessment of negative economic impacts required?	Enumerated use: capital expenditures	Analysis required to demonstrate capital expenditure responds to the harm, benefits the beneficiaries that experienced harm, and is reasonably proportional to the harm?
Impacted households and populations	Presumed for households and populations determined by Treasury. Must be documented for other households/populations the State designates as impacted.	• Development of affordable housing projects that would be eligible for funding under with the National Housing Trust Fund or the Home Investment Partnerships Program. • Development of childcare facilities.	No - for enumerated capital expenditures. Yes – must be documented for all other proposed capital expenditures.
Disproportionately impacted households and populations	Presumed for households and populations determined by Treasury. Must be documented for other households/populations the State designates as disproportionately impacted.	• Development of affordable housing projects that would be eligible for funding under with the National Housing Trust Fund or the Home Investment Partnerships Program. • Development of childcare facilities. • Remediation of lead paint or other lead hazards. • Improvements to vacant and abandoned properties and conversion to affordable housing. • Demolition or deconstruction of vacant or abandoned buildings paired with greening or other lot improvement as part of a strategy for neighborhood revitalization. • Investments in parks and other public outdoor recreation spaces.	No - for enumerated capital expenditures. Yes – must be documented for all other proposed capital expenditures.

[1] Impacted households or communities: low- or moderate- income, experienced unemployment, or experienced increased food or housing insecurity. Moderate-income: income at or below 300 percent of the Federal Poverty Guidelines for the size of the household per the most recently published poverty guidelines or income at or below 65 percent of the area median income for the county and size of household per the most recently published data.

[2] Disproportionately impacted households or communities: low-income, reside in a qualified census tract, or qualify for certain federal benefits such as Temporary Assistance to Needy Families. Low-income: income at or below 185 percent of the Federal Poverty Guidelines for the size of the household per the most recently published poverty guidelines or income at or below 40 percent of the area median income for the county and size of household per the most recently published data.

Additional relevant guidance in the Final Rule:

- **Capital investment must be reasonably connected to and proportional to economic harm caused by COVID-19**

  The rule emphasizes that services and programs are preferable response (efficient and efficacy) to economic harm caused by pandemic and that its unlikely that large capital expenditures are a reasonably proportional response to economic harm caused by the pandemic.

- **Threshold for requirement for a written justification**

  ACCD has proposed reducing the maximum award in the CIP program to $999,999 however it is not just the State's award that counts toward the $1,000,000 threshold, it is the total project costs, including costs funded through other means.

  According to the U.S. Treasury guidance, the requirement for a written justification reflects the fact that 1) the time required for a large construction project may make capital expenditures less responsive to pandemic-related needs relative to other types of responses, 2) larger projects may be less likely to be reasonably proportional to the harm identified, and 3) the fact that infrastructure projects are generally not within scope of this eligible use category.

  Per the Final Rule, projects that exceed $1 million in total expected capital expenditures must undergo additional analysis to justify their capital expenditure, including an extensive written justification. For those projects with a use that is not enumerated by Treasury as eligible, the written justification must be submitted as part of the regular reporting to Treasury.

  Enumerated uses:
  Per footnote 254 of the Final Rule, whether or not a written justification is required, the State should still determine that the response is related and reasonably proportional to the public health emergency and its negative economic impacts. Further, Treasury recognizes that enumerated eligible uses are ‘‘related’’ to the public health emergency and its negative economic impacts and presumed to be reasonably proportional, except if the State pursues projects with expected total capital expenditures equal to or greater than $1 million it should still independently determine that the expenditures are a reasonably proportional response.

  Enumerated projects with total expected capital expenditures under $1 million receive a safe harbor and are deemed to meet the related and reasonably proportional standard.

  Uses beyond those enumerated by Treasury as eligible:
  Per footnote 255 of the Final Rule, whether or not a written justification is required, recipients should still determine that the response is related and reasonably proportional to the public health emergency and its negative economic impacts.

Treasury presumes that projects with total expected capital expenditures under $1 million are reasonably proportional in size to responding to the public health emergency and its negative economic impacts; however, the State should determine that the response otherwise meets the requirements of the standard, including that the response is related to the public health emergency and its negative economic impacts.

SAO note: The text of the Final Rule that follows these footnotes (p. 4393 of Final Rule) indicates that a determination as to whether the capital expenditure is part of a response that is related and reasonably proportional to the public health emergency or its negative economic impacts should be made for projects with total expected capital expenditures under $1 million. This is inconsistent with footnote 255 which indicates that the only determination required is with regard to whether the response is related to the public health emergency and its negative economic impacts. Given this inconsistency, for those projects the State determines are related to the public health emergency, it would be prudent for the State to assess whether they are reasonably proportional to the economic harm experienced.

- **Duplication of benefits**

Given that at least $3.4 billion of COVID-19 financial assistance already has flowed to businesses in Vermont, there is risk that businesses and nonprofits applying for additional assistance at this time already received sufficient funding to address economic harm experienced due to COVID-19.

Footnote 20 under the General Provisions: Structure and Standards section of the final rule indicates that expenses which have already been reimbursed through another federal program, are not reasonably designed to address a negative economic impact to a beneficiary.