## Instructions for Development of Eligible Use, Allowable Cost, and Non-Discrimination Policy

The subgrantee agreement requires the subgrantee to put in place policies and procedures to ensure compliance with all state and federal regulations.

The following sample policy was developed specifically for the Rural Water Association Infrastructure Grant program. If your organization adopts this policy, it will be expected to implement the policy for transactions related to the RWAIG funding only.

Subgrantees are not required to adopt the sample policy and are welcome to use existing policies or to develop their own policies. Subgrantees may also modify the sample policy if desired by the governing board to additional control elements. We do not recommend removing elements from the policy. Once again, grantee must submit a policy to Mississippi State Department of Health (MSDH) before funding request(s) will be processed. Non-federal entities should review their own local policies and consult with their attorneys to make modifications as needed when adopting this policy. For individual contracts, non-federal entities also should consult their grant award documents and with their federal grantor agency to determine whether additional procurement requirements apply.

In order to adopt the policy, organizations will need to make the following updates:

* Amend any highlighted portions of the policy.
* Delete the words ‘Sample Non-federal Entity’ from the title
* Update header, adding organization name
* Provide a copy of the board minutes where this policy or similar was adopted

Eligible Use, Allowable Cost, and Non-Discrimination Policy

# I. PURPOSE

The policy set forth in this document establishes standards and guidelines for eligibility determination, allowable costs and cost Principles, and nondiscrimination for expenditure of the Rural Water Associations Infrastructure Grant (RWAIG) program for the American Rescue Plan Act of 2021 Coronavirus State and Local Fiscal Recovery Funds. This policy defines and outlines the permissible and prohibited uses, the allowable costs and cost principles as outlined in 2 CFR 200.400 – 200.476, and how the ARPA funds are subject to the U.S. Department of Treasury regulations including Final Rule, the Award Terms and Conditions, and the Title VII implementing regulations at 31 CFR Part 22. of the Coronavirus State and Local Fiscal Recovery Funds of H.R. 1319 American Rescue Plan Act of 2021 (ARPA/CSLFRF) funds.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ [Non-federal Entity] shall adhere to all applicable cost principles governing the use of federal grants. This policy addresses the proper classification of direct charges to ARP/CSLFRF funded projects and enacts procedures to ensure that proposed and actual expenditures are consistent with the ARP/CSLFRF grant award terms and all federal regulations in the UG. Indirect charges are not eligible in the RWAIG Program.

It is the policy of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ [Non-federal Entity]to ensure that no person shall, on the ground of race, color, national origin (including limited English Proficiency), familial status, sex, age, or disability, be excluded from participation in, be denied the benefits of, or the otherwise subject to discrimination under any program or activity administered by \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ [Non-federal Entity] , including programs or activities that are funded in whole or part, with Coronavirus State and Local Fiscal Recovery Funds (CSLFRF), which \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ [Non-federal Entity]  received from the Mississippi Department of Health Rural Water Infrastructure Grant Program (MSDH RWAIG) with funds originating from the U.S. Department of Treasury pursuant to Section 602 and 603 of the Social Security Act, as added by Section 9901 of the American Rescue Plan Act of 2021, Pub. L. No. 117-2 (herein the “ARP/CSLFRF award”).

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# II. POLICY OVERVIEW

 **1)** **Eligibility Determination**:

The ARP/CSLFRF are subject to the provisions of the Federal Uniform Grant Guidance, 2 CFR Sect. 200 (UG) as provided in the Assistance Listing and the US Treasury has issued a Compliance and Reporting Guidance v.2.1 (November 15, 2021) dictating implementation of the ARP/CSLFRF award terms and compliance requirements. The Compliance and Reporting Guidance states on page 6 that, per 2 CFR Part 200.303, your organization must develop and implement effective internal controls to ensure that funding decisions under the SLFRF award constitute eligible uses of funds, and document determinations.

**BE IT RESOLVED** that the \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ [Non-federal Entity] hereby adopts and enacts the following Eligibility Determination Policy for ARP/CSLFRF funds.

 2) Allowable Costs/Cost Principles:

Title 2 U.S. Code of Federal Regulations Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, commonly called Uniform Guidance (UG), defines those items of cost that are allowable and those items of cost which are unallowable. Allowable costs are based on the premise that a recipient is responsible for the effective administration of federal awards, application of sound management practices, and administration of federal funds in a manner consistent with the program objectives and terms and conditions of the award. Recipients must implement controls and effective monitoring to ensure compliance with the cost principles, which are important for building trust and accountability. Treasury’s Interim Final Rule and guidance and the Uniform Guidance outline the types of costs that are allowable, including certain audit costs. For example, per 2 CFR 200.425, a reasonably proportionate share of the costs of audits required by the Single Audit Acts Amendments of 1996 are allowable; however, costs for audits that were not performed in accordance with 2 CFR Part 200, Subpart F are not allowable.

**BE IT RESOLVED** that the governing board of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ [Non-federal Entity]] hereby adopts and enacts thefollowing UGAllowable Costs and Cost Principles Policy for the expenditure of ARP/CSLFRF funds.

 3) Nondiscrimination

As required by the CSLFRF Award Terms and Conditions, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ [Non-federal Entity] shall ensure that each “activity,” “facility,” or “program” that is funded in whole, or in part, with CSLFRF and administered under the ARP/CSLFRF award, will be facilitated, operated, or conducted in compliance with the following federal statues and federal regulations prohibiting discrimination. Per 2 CFR Part 200.303, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ [Non-federal Entity] must develop and implement effective internal controls to ensure that funding decisions under the SLFRF award constitute eligible uses of funds, and document determinations.

BE IT RESOLVED that the governing board of the \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ [Non-federal Entity] hereby adopts and enacts the following nondiscrimination policy, which shall apply to the operations of any program, activity, or facility that is supported in whole, or in part, by expenditures CSLFRF pursuant to the ARP/CSLFRF award.

III. ELIGIBILITY DETERMINATION CRITERIA:

 **1) Permissible Uses of ARP/CSLFRF Funding:**

 The US Treasury issued its Final Rule regarding use of ARPA funds on January 6, 2022. (The Final Rule is effective as of April 1, 2022. Until that date, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ [Non-federal Entity] may proceed under the regulation promulgated by US Department of the Treasury in its Interim Final Rule or the Final Rule.) The Final Rule (and the Interim Final Rule) identify permissible uses of ARP/CSLFRF funds and certain limitations and process requirements. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ [Non-federal Entity] must allocate ARP/CSLFRF funds no later than December 31, 2024, and disburse all funding no later than December 31, 2026. Failure of an entity to expend all funds by December 31, 2026, will result in forfeiture of ARPA funds.Eligible fund uses are detailed in the MSDH RWAIG regulations and the MSDH RWAIG Subgrant Agreement.

 **2) Prohibited Uses of ARPA Funding**:

The ARP/CSLFRF and US Treasury’s Final Rule prohibit certain uses of ARP/CSLFRF funds. Specifically, ARP/CSLFRF funds may not be used for projects within the following categories of expenditures.

 a. To make a deposit into a pension fund constitutes an extraordinary payment of an accrued, unfunded liability.

 NOTE: Routine contributions as part of a payroll obligation for an eligible project are allowed.

 b. To borrow money or make debt service payments.

 c. To replenish rainy day funds or to fund other financial reserves.

 d. To satisfy an obligation arising from a settlement agreement, judgement, consent decree, or judicially confirmed debt restricting in a judicial, administrative, or regulatory proceeding.

NOTE: There is an exception to this prohibition. If the settlement or judgement requires \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ [Non-federal Entity] to provide services to respond to the COVID-19 public health emergency or its negative economic impacts or to provide government services, then the costs of those otherwise ARP/CSLFRF-eligible projects are allowed.

e. For a project that includes a term or condition that undermines efforts to stop the spread of COVID- 19 or discourages compliance with recommendations and guidelines in CDC guidance for stopping the spread of COVID-19.

f. In violation of the conflict-of-interest requirements imposed by the award terms and 2 CFR 200.318(c). \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ [Non-federal Entity], and any of its contractors or subrecipients, may not expend any ARP/CSLFRF funds for these purposes.

g. For any expenditure that would violate other applicable federal, state, and local laws and regulations.

In addition to these prohibitions, program specific unallowable costs are as detailed in the MSDH RWAIG regulations and the MSDH RWAIG Subgrant Agreement.

**IV. ALLOWABLE COSTS AND COSTS PRINCIPLES CRITERIA**

Recipients may use funds for administering the SLFRF program, including costs of consultants to support effective management and oversight, including consultation for ensuring compliance with legal, regulatory, and other requirements. Further costs must be reasonable and allocable as outlined in 2 CFR 200.404 and 2 CFR 200.405. Recipients are permitted to charge only direct costs to their SLFRF award

ARP/CSLFRF funds may be used for projects within the following categories of expenditures:

 i. Cost is needed for the proper and efficient performance of the grant project.

ii. Cost is identified in the approved project budget or application.

iii. Cost aligns with identified needs based on results and findings from a needs assessment

 iv. Cost addresses project goals and objectives and is based on program data.

 When determining reasonableness of a cost, consideration must be given to:

 i. Whether the cost is a type generally recognized as ordinary and necessary for the operation of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ [Non-federal Entity] or the proper and efficient performance of the federal award.

ii. The restraints or requirements imposed by factors, such as: sound business practices, federal, state, and other laws and regulations, and terms and conditions of the ARP/CSLFRF award.

iii. Market prices for comparable goods or services for the geographic area. Whether individuals concerned acted with prudence in the circumstances considering their responsibilities to \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ [Non-federal Entity], its employees, the public at large, and the state and federal government.

 1) Allocable Costs:

 a. A cost is allocable to the ARP/CSLFRF award if the goods or services involved are chargeable or assignable to the ARP/CSLFRF award in accordance with the relative benefits received.

b. ARP/CSLFRF funds may be, but are not required to be, used along with the other funding sources or a given project. Note that (ARP/CSLFRF) funds may not be used for a non-Federal cost share or match, where prohibited by other Federal programs.

 2) Direct Costs:

 a. Expenses that are specifically associated with a particular ARP/CSLFRF-eligible project and that can be directly assigned to such activities relatively easily with a high degree of accuracy.

 3) Indirect Costs:

 a. Costs incurred for a common or joint purpose, benefiting more than on ARP/CSLFR-eligible project.

 b. Not readily assignable to the project specifically benefited, without effort disproportionate to the results achieved.

 c. Expenses that benefit more than one project or even more than one federal grant.

 d. Indirect costs are not eligible costs under the MSDH RWAIG program.

 4) Post-Expenditure Cost Allowability Review

a. Once an expenditure is incurred related to an eligible project, and an invoice or other demand for payment is submitted to \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ [Non-federal Entity] , the\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ [Non-federal Entity] must perform a second review to ensure that actual expenditures comprise allowable costs.

b. All invoices or other demands for payment must include a breakdown by cost item. The cost items should mirror those presented in the proposed budget for the project. If an invoice or other demand for payment does not include a breakdown by cost item, the \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ [Non-federal Entity] will return the invoice to the project manager and/or vendor, contractor, or subrecipient for correction.

c. The \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ [Non-federal Entity] must review the individual cost items listed on the invoice or other demand for payment to determine their allowability and allocability.

d. If all cost items are deemed allowable and properly allocable, the \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ [Non-federal Entity] must proceed through the MSDH RWAIG’s normal disbursement process.

e. If any cost item is deemed unallowable, the\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ [Non-federal Entity] will notify the project management and/or vendor, contractor, or subrecipient that a portion of the invoice or other demand for payment will not be paid with ARP/CSLFRF funds. The \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ [Non-federal Entity] may at their discretion, and consistent with this policy, allow an invoice or other demand for payment to be resubmitted with a revised cost allocation.

f. If \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ [Non-federal Entity] remains legally obligated by contract or otherwise to pay the disallowed cost item, it must identify other funds to cover the disbursement. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ [Non-federal Entity] governing board must approve any allocation of other funds for this purpose.

g. The \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ [Non-federal Entity] must retain appropriate documentation of budgeted cost items per project and actual obligations and expenditures of cost items per project.

# V. NON-DISCRIMINATION COMPLIANCE

 **1)** **Discriminatory Practices Prohibited in the Administration of the ARP/CSLFRF Award**

To ensure compliance with Title VII of the Civil Rights Act of 1964, and Title 31 Code of Federal Regulations, Part 22, the Civil Rights Restoration Act of 1987, and other pertinent nondiscrimination authorities, the \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ [Non-federal Entity] shall prohibit, at a minimum, the following practices in its administration of CSLFRF pursuant to the ARP/CSLFRF award:

1. Denying to a person any service, financial aid, or other program benefit without good cause
2. Providing to a person any service, financial aid, or another benefit which is different in quantity or quality, or is provided in a different manner, from that provided to others under the program.
3. Subjecting a person to segregation or separate treatment in any matter related to the receipt of any service, financial aid, or other benefit under the program.
4. Restricting a person in the enjoyment of any advantages, privileges, or other benefits enjoyed by others receiving any service, financial aid, or other benefit under the program.
5. Treating a person differently from others in determining whether that person satisfies any admission, enrollment, quota, eligibility, membership, or other requirement or condition which persons must meet to be provided any service, financial aid, or other benefit provided under the program.
6. Implementing different standards, criteria, or other requirements for admission, enrollment, or participation in planning, advisory, contractual, or other integral activities to the program.

g. Adopting methods of administration which, directly or through contractual relationships, would defeat or substantially impair the accomplishment of effective nondiscrimination.

h. Selecting a site or location of facilities with the purpose or effect of excluding persons from, denying them the benefits of, subjecting them to discrimination, or with the purpose or effect of defeating or substantially impairing the accomplishment of the objectives of Title VI or related acts and regulations.

i. Discriminating against any person, either directly or through a contractual agreement, in any employment resulting from the program, a primary objective of which is to provide employment.

j. Committing acts of intimidation or retaliation, including threatening, coercing, or discriminating against any individual for the purpose of interfering with any right or privilege secured by any pertinent nondiscrimination law, or because an individual made a complaint, testified, assisted, or participated in an investigation, proceeding, or hearing.

 **2) Reporting & Enforcement**

a. The \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ [Non-federal Entity] shall cooperate in any enforcement or compliance review activities by the Department of the Treasury. Enforcement may include investigation, arbitration, mediation, litigation, and monitoring of any settlement agreements that may result from these actions. The \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ [Non-federal Entity] shall comply with information requests, on-site compliance reviews, and reporting requirements.

b. The\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ [Non-federal Entity]] shall maintain a complaint log and inform the MSDH of any complaints of discrimination on the grounds of race, color, or national origin (including limited English proficiency covered by Title VI of the Civil Rights Act of 1964 and implementing regulations and provide, upon request, a list of all such reviews or proceedings based on the complaint, whether pending or completed, including the outcome. The\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ [Non-federal Entity] shall inform the Treasury if it has received no complaints under Title VI.

c. Any person who believes they have been aggrieved by a discriminatory practice under Title VI has a right to file a formal complaint with the MDSH. Any such complaint must be in writing and filed with MSDH within one hundred eighty (180) days following the date of the alleged discriminatory occurrence.

d. Any person who believes that because of that person’s race, color, national origin, limited English proficiency, familial status, sex, age, religion, or disability that he/she/they have been discriminated against or unfairly treated by the \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ [Non-federal Entity] in violation of this policy should contact the following office within 180 days from the date of the alleged discriminatory occurrence:

Civil Rights Coordinator
570 East Woodrow Wilson Boulevard
Post Office Box 1700
Jackson, MS 39215-1700
Toll-free: 1-866-HLTHY4U
E-mail: CivilRights@msdh.ms.gov

# VI. IMPLEMENTATION OF POLICY

a. Following approval \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ [Non-federal Entity] will be responsible for implementing the project and must conform actual obligations and expenditures to the pre-approved project budget.

b. Changes in project budgets must be approved by \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ [Non-federal Entity] and MSDH.

c. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ [Non-federal Entity] must maintain written project requests and approvals, all supporting documentation, and financial information at least until December 31, 2031, or the date specified in the subgrant agreement, whichever is later.