**FRF Capital Expenditure Definition:**

Final Rule pg. 207-208 "Treasury adopts several definitions from the Uniform Guidance at 2 C.F.R. 200.1 under this section, including for capital expenditures, capital assets, equipment, and supplies. Per the Uniform Guidance, the term "capital expenditures" means "**expenditures to acquire capital assets or expenditures to make additions, improvements, modifications, replacements, rearrangements, reinstallations, renovations, or alterations to capital assets that materially increase their value or useful life.**" The term "capital assets" means "tangible or 208 intangible assets used in operations having a useful life of more than one year which are capitalized in accordance with [Generally Accepted Accounting Principles]." **Capital assets include lands, facilities, equipment, and intellectual property.** Equipment means "tangible personal property (including information technology systems) having a useful life of more than one year and a per-unit acquisition cost which equals or exceeds the lesser of the capitalization level established by the non-Federal entity for financial statement purposes, or $5,000." Supplies, which means all tangible personal property other than those included as "equipment," are not considered capital expenditures. Recipients may also use SLFRF funds for pre-project development costs that are tied to or reasonably expected to lead to an eligible capital expenditure. For example, pre-project costs associated with planning and engineering for an eligible project are considered an eligible use of funds."

See pages 27 -28 of Compliance and Reporting Guidance for FRF capital expenditure enumerated use.

Capital Expenditures: the need for Written Justification, labor reporting, and a reasonable response.
Like other eligible uses of SLFRF funds, capital expenditures should be a related and reasonably proportional response to a public health or negative economic impact of the pandemic. Recipients should choose the most cost-effective option unless it substantively reduces the effectiveness of the capital investment in addressing the harm.

Written Justifications for projects greater than $1M:
The Written Justification provides the U.S. Treasury with an explanation for how the capital expenditure is reasonably designed, related, and proportional to the harm or impact identified. **The needs of communities differ, and recipients are responsible for identifying uses of SLFRF funds that best respond to these needs**. The Written Justification recognizes this while also establishing consistent documentation and reporting to support monitoring and compliance with the ARPA and final rule.

Treasury will require projects with total expected capital expenditure costs of $1 million or greater to undergo additional analysis to justify their capital expenditure. Increased reporting requirements will be required for larger projects, as well as projects that are not enumerated as eligible by Treasury

- Capital Expenditures > $1M:
  - For enumerated uses by Treasury, Written Justification is required, but recipients are not required to submit it as part of regular reporting to Treasury.
  - For uses beyond those enumerated by Treasury as eligible, then, Written Justification is required, and recipients must submit it **as part of regular reporting to Treasury**
- Capital Expenditures > $10M:
  - Ten million dollars or more, and is enumerated or beyond those enumerated by Treasury, Written Justification is required, and recipients must submit as **part of regular reporting to Treasury.**

Projects with Capital Expenditures greater than $10M will undergo greater scrutiny

Treasury recognizes that projects with expected total capital expenditures of at least $10 million may be less likely to meet eligibility requirements and **therefore requires recipients to provide an enhanced level of information to Treasury.** These projects likely constitute significant improvements or construction **and may be less likely to be reasonably proportional responses.** Recipients should balance the effectiveness and costs of the proposed capital expenditure against alternatives and demonstrate that their proposed capital expenditure is superior.
<u>The Written Justification should provide:</u>

1. Description of harm or need to be addressed.
    a. When describing the harm or need to be addressed, recipients **should provide quantitative information describing the extent and type of harm that was exacerbated by the pandemic.**
2. Explain why capital expenditure is appropriate.
    - When explaining why the capital expenditure is appropriate and that other interventions would be inefficient, costly, or otherwise not reasonably designed to remedy the harm without additional capital expenditures. **The recipient should provide quantitative data to support the explanation.**

- **Comparison of the proposed capital expenditure against alternative capital expenditures**.
    - When addressing the comparison, the recipient should **compare against at least two alternatives and demonstrate why its project is superior. The comparison should be proportionally effective, reasonably feasible, and, where relevant, compared against the alternative of improving existing capital assets already owned or leased.** When available, recipients should use quantitative data, although they are encouraged to supplement with qualitative information and narrative description.

<u>Labor reporting requirements:</u>

- Final Rule on Strong Labor Standards in Construction: Treasury encourages recipients to use strong labor standards, including project labor agreements (PLAs) and community benefits agreements that offer wages at or above the prevailing rate and include local hire provisions.
- Labor Reporting Capital Expenditures (EC 1.1-3.5) - For projects with total expected capital expenditures of over $10 million, provide labor reporting as outlined for infrastructure projects on pages 26 and 27 (This field is optional in April 2022; required in July 2022).
- Projects will need to provide written Justification (Details on pg. 30/31 of F.R. overview) and will need to provide documentation of wages and labor standards for infrastructure projects over $10 million, and that that these requirements can be met with certifications that the project is in compliance with the Davis-Bacon Act (or related state laws, commonly known as "baby Davis-Bacon Acts") and subject to a project labor agreement.

- Infrastructure project (E.C. 5) For projects over $10 million (based on expected total cost): will need to provide documentation of wages and labor standards for infrastructure projects over $10 million, and that that these requirements can be met with certifications that the project is in compliance with the Davis-Bacon Act (or related state laws, commonly known as "baby Davis-Bacon Acts") and subject to a project labor agreement.

<u>Definition:</u>

- For ease of administration, the final rule identifies enumerated types of capital expenditures that Treasury has identified as responding to the pandemic's impacts; these are listed in the applicable sub-category of eligible uses (e.g., public health, assistance to households, etc.). Recipients may also identify other responsive capital expenditures. Similar to other eligible uses in the SLFRF program, no pre-approval is required for capital expenditures.

- Treasury adopts several definitions from the Uniform Guidance at 2 C.F.R. 200.1 under this section, including for capital expenditures, capital assets, equipment, and supplies. Per the Uniform Guidance, the term **"capital expenditures"** means "expenditures to acquire capital assets or expenditures to make additions, improvements, modifications, replacements, rearrangements, reinstallations, renovations, or alterations to capital assets that materially increase their value or useful life. The term **"capital assets"** means "tangible or intangible assets used in operations having a useful life of more than one year which are capitalized in accordance with [Generally Accepted Accounting Principles]." **Capital assets include lands, facilities, equipment, and intellectual property. Equipment** means "tangible personal property (including information technology systems) having a useful life of more than one year and a per-unit acquisition cost which equals or exceeds the lesser of the capitalization level established by the non-Federal entity for financial statement purposes, or $5,000."
- **Supplies,** which means all tangible personal property other than those included as "equipment," **are not considered capital expenditures.**

In the case with all projects using SLFRF funds, all projects must comply with applicable federal, state, and local law. In the case of capital expenditures in particular, this includes environmental and permitting laws and regulations. Likewise, as with all capital expenditure projects using the SLFRF funds, projects must be completed in a manner that is technically sound, meaning that it must meet design and construction methods and use materials that are approved, codified, recognized, fall under standard or acceptable levels of practice, or otherwise are determined to be generally acceptable by the design and construction industry.

Further, as with all other uses of funds under the SLFRF program, the Uniform Guidance at 2 C.F.R. 200 applies to capital expenditures unless stated otherwise. Importantly, this includes 2 C.F.R. 200 Subpart D on post-federal award requirements, including property standards pertaining to insurance coverage, real property, and equipment; procurement standards; sub-recipient monitoring and management; and record retention and access.