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Ms. Richards,

Thank you for the opportunity to comment on the Coronavirus State and Local Fiscal Recovery Funds Interim Final Rule ("IFR"). For years, Associated General Contractors of America ("AGC") has worked with the Department of the Treasury ("Treasury") and other federal entities to ensure that our nation has the high-quality infrastructure it needs now and in the future. Federal investment in infrastructure can play an essential role in rebuilding our economy and creating well-paying jobs for the American people.

AGC is the leading association in the construction industry representing more than 27,000 firms, including union and open-shop general contractors and specialty-contracting firms. Many of the nation's service providers and suppliers are associated with AGC through a nationwide network of chapters. AGC contractors are engaged in the construction of the nation's commercial buildings, factories, warehouses, highways, bridges, tunnels, airports, water infrastructure facilities, locks, dams, defense facilities, multi-family housing projects, and more.

An outline of AGC's recommendations is as follows:

<u>Treasury Should Explicitly Include "Fuel Tax" Revenues as an Example of "General Revenue" that Can be Eligible for Relief Funds to Cover "General Revenue" Losses.</u>
<u>Clarify and Expand the List of Eligible Capital Investments in Public Facilities and Buildings.</u>

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Treasury Should Abandon any Efforts to Include Reporting Requirements that Expand Davis-Bacon Prevailing Wages Beyond the Status Quo Established under Existing Federal Laws.

Provide the Option of a Narrative Explanation in Substitution-or in Addition-to any Formula which Treasury has Promulgated.
Publish on a Public-Facing Website Treasury's Decision Whether to Recoup Recovery Funds on Every "Request for Reconsideration."
Treasury Should Extend the Period Local Government Must Pay Recoupment to a Minimum of One Calendar Year from the Final Notice of Recoupment.

AGC provides the following recommendations to ensure these reporting requirements do not upend the expeditious and efficient distribution of recovery funds while providing for free and open competition to our nation's businesses and workers.

Investment in our nation's infrastructure is critical to rebuilding our economy and creating well-paying jobs for the American people. AGC commends Treasury for its recognition that capital investments are important to create safe and efficient working environments. Much of our nation's public infrastructure is aging and ill-suited to protect against the spread of airborne diseases like COVID-19. Likewise, the COVID-19 pandemic and accompanying travel restrictions negatively impacted many sources of state, local, territorial, and Tribal sources of revenue.

AGC provides the following recommendations for Treasury to clarify in the IFR regarding capital infrastructure investment eligibility and ensure the expeditious of recovery funds.

Treasury Should Explicitly Include "Fuel Tax" Revenues as an Example of "General Revenue" that Can be Eligible for Relief Funds to Cover "General Revenue" Losses.

Treasury should explicitly state that the terms 7 (y)1 ( )8 2840.004 Tc -0.004 TpJ0 Tc 0 Tw (f)7 (ai)85.81 0(l)1 refunds and other correcting transactions, proceeds from issuance of debt or the sale of investments, agency or private trust transactions, and revenue generated by utilities and insurance trusts. According to the Census Bureau's Annual Survey, "motor fuel tax"—listed as T13—under general revenue as a "selective sales tax."[1] Like the IFR the Census Bureau also separates taxes—like the fuel tax—from utilities and insurance trust revenue, two revenue generating sources the IFR prohibits these recovery funds from being eligible to use by local governments. AGC agrees that fuel tax is separate and distinct from revenue sources like utilities and insurance trusts.

Such an explicit reference to "fuel tax" makes sense given Treasury's preamble statement allowing for the use of these funds to cover revenue losses for government services, including roads. As noted in the preamble of the IFR, "Government services can include, but are not limited to, maintenance or pay-go funded building of infrastructure, including roads. . ."[2] Many recipient governments utilize fuel tax-generated revenues to fund, at least in some part, investment in maintaining or building roads. Explicitly including lost fuel tax revenues as an example of "general revenue" would help reduce confusion among government recipients.

Furthermore, an equivalent tax to the fuel tax is explicitly listed an example of eligible use by Treasury in its Frequently Asked Questions ("FAQ"). Treasury's FAQ gives the example that "…parking fees would be classified as a Current Charge for the purpose of the Census Bureau's Annual Survey, and the IFR concept of "General Revenue" includes all Current Charges. Therefore, parking fees would be included in the Interim Final Rule's concept of "General Revenue."" Likewise, the fuel tax is similar to the parking fee example as both rely on the public to travel for it to generate revenue, are derived from the public's use of automobiles, and were directly and negatively diminished by the COVID-19 pandemic and accompanying restrictions on travel.

Congress specifically allowed for these recovery funds to be used "[f]or the provision of

Maryland's Transportation Trust Fund. That Fund was negatively impacted by as much as a fifty percent decline in traffic. Maryland DOT estimates that its budget will be out of balance in both state fiscal years 2020 and 2021, requiring significant spending reductions to bring it back into balance.[3] In many states, the decline in transportation revenues translated into real delays in undertaking new transportation projects. For instance, the Kentucky Transportation Cabinet did not hold bid lettings for new transportation construction contracts in April or May of 2020.[4]

Investing in transportation infrastructure increases productivity, as new efficiencies in failing to protect people from COVID-19 and other air-borne diseases. Capital investments should be made to retrofit these types of buildings.

Likewise, many public schools are several decades old and face the same structural challenges. Furthermore, many public buildings were designed without taking into account the need for social distancing. In many of these buildings, social distancing is practically impossible. For
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previous year.[8] This decline was a direct result of COVID-19 causing a decrease in the number of people driv

projects because it would go beyond the authority granted to Treasury under ARPA and congressional intent.

Despite Treasury's assertion, there are no widely published studies establishing that the use of PLAs has consistently lowered the cost, shortened the completion time, or improved the quality of construction of public projects. While case studies have had varying results, research regarding the impact of PLA use on the economy or efficiency of projects in general is inconclusive. In a 1998 study by the agency then called the Government Accounting Office, the agency reported that it could not document the alleged benefits of past mandates for PLAs on federal projects and that it doubted such benefits could ever be documented due to the difficulty of finding projects similar enough to compare and the difficulty of conclusively demonstrating that performance differences were due to the PLA versus other factors.[16] The Congressional Research Service reached the same conclusion in a report issued in July 2010.[17] Government mandates for PLAs—even when competition, on its face, is open to all contractors—can have the effect of limiting the number of competitors on a project, increasing costs to the government and, ultimately, the taxpayers.

More importantly, nowhere in the text of the ARPA is there any reference to encouraging project labor agreements or to its efficiency as described in the preamble of the IFR. Treasury appears to make these assertions on its own accord without any statutory or qualitative support. If a PLA would benefit the construction of a particular project, the construction contractors otherwise qualified to perform the work would be the first to recognize that fact, and they would be the most qualified to negotiate such an agreement in the course of collective bargaining.

Treasury Should Abandon any Efforts to include Reporting Requirements that Establish Local Hire Goals.

Treasury should abandon any reporting requirement that encourages local hire mandates in connection with infrastructure projects because it would go beyond the authority granted to Treasury under ARPA and congressional intent. AGC and its members are committed1 (nfit)1 (o1 (nfi)]TJ-0.0

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requirements—which will be used to not only inform taxpayers, but also allow Treasury to conduct oversight to potentially claw back what it deems inappositely utilized funds—neither provide any details as to what those requirements are. This is incredibly problematic.

Yet-to-be released reporting requirements will serve as a barrier to putting these funds to work in an expeditious and efficient manner. The preamble states that "[i]n order to provide public transparency on whether projects are using practices that promote on-time and on-budget delivery, Treasury will seek information from recipients on their workforce plans and practices related to water, sewer, and broadband projects undertaken with Fiscal Recovery Funds. Treasury will provide additional guidance and instructions on the reporting requirements at a later date." Consequently, critical questions are immediately raised regarding the yet-to-be released reporting requirements. What type of information will on workforce and practices will Treasury require? How long will the information remain on the public-facing website? Will Treasury guarantee the protection of proprietary information? How frequently will Treasury require updates on such information? Will Treasury veto certain contractors or will it defer to eligible governments' decision?

Treasury states the IFR's purpose is to "facilitate swift and effective implementation." However, Treasury risks jeopardizing these goals with vague or evolving reporting requirements. Recent examples of the negative effects of these requirements are easily shown. As many experienced under the Paycheck Protection Program ("PPP"), the ever-changing requirements issued by Treasury and the Small Business Administration ("SBA") needlessly caused delays, diminished recovery efforts, and ultimately slowed the implementation of the program.

It began with a series of Frequently Asked Questions ("FAQs") that SBA has posted on its website, many of which had to do more about the certification of small business borrowers. As time went btification of the during this crisis.

AGC appreciates the extensive lengths Treasury has gone to help state, local, territorial, and Tribal governments develop a clear methodology for calculating revenue lost due to the COVID-19 public health emergency. As explained below AGC recommends some additional improvements to this analysis to ensure that fairness is applied to the diverse characteristics and experiences of the recipient governments. The American people deserve transparency and accountability in how these recovery funds are spent. Likewise, Treasury can take steps to increase its own transparency in its decisions. AGC provides the following recommendations regarding Treasury's formulas and recoupment process

Provide the Option of a Narrative Explanation in Substitution—or in Addition—to any Formula which Treasury has Promulgated.

The ARPA restricts the use of recovery funds to the amount a recipient government's reduction in revenue. This reduction is measured relative to the revenue collected in the most recent full fiscal year prior to the emergency. In order to assist recipient governments, the IFR sets forth mathematical formulas to calculate the extent of the reduction in revenue, as well as formulas to determine whether use of funds would be subject to recoupment. While these formulas are helpful in local entities to determine how best to allocate recovery funds, it may be too rigid for the diverse number of State, local, and Tribal governments to capture the true nature of revenue loss. Allowing these state, local, territorial and Tribal governments ample opportunity to explain its use of recovery funds is key to ensuring equity. This is especially important considering the IFR implements a process for recouping under certain conditions. The unexpected fiscal burden on recipient governments that are made to repay recovery funds could place these governments in a worse position than it was before taking the funds.

Publish on a Public-Facing Website Treasury's Decision Whether to Recoup Recovery Funds on Every "Request for Reconsideration."

The IFR sets out an appeal process for recipients to "request for reconsideration" any amounts that Treasury has deemed failure to comply with the restrictions that results in recoupment of recovery funds. The reconsideration process should be more transparent for recoupment of funds from the recipient governments. As it is written, the request for reconsideration is less transparent than Treasury is requiring from private recipients related to water, sewer, and broadband infrastructure projects.

This increased transparency will ensure consistency in Treasury's decisions and equity among the recipient governments. This transparency will allow other governments to understand the