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To: Senator Michael Sirotkin, Chair, Committee on Economic Development
Re: Concerns about Potentially Impermissible Use of Federal Funds Proposed in S.263 – SLFRF and the Capital Investment Program
Date: March 9, 2022

"I wish we'd known about these issues *before* we spent the money." I've heard variations of this sentiment from various auditees throughout my nine years as Vermont's State Auditor. While pre-expenditure reviews are difficult in the legislative sphere – changes from one draft of a bill to another can substantially alter a program creating a moving target – there are instances when it is possible and especially important. Namely, when both the appropriations and program risks are significant.

This memo amplifies concerns I've shared with some legislators regarding the Administration's proposal to award $90 million of federal State and Local Fiscal Recovery Funds (SLFRF) to businesses and nonprofits for capital investments, $10 million of which was already appropriated in Act 74 (2021). <u>To state it plainly, the program design does not appear to comply with updated federal rules</u>. Failure to address my office's concerns will place Vermont at risk of appropriating tens of millions of dollars for ineligible uses. Either the award recipients or Vermont taxpayers could be forced to repay the federal government.

The most emergent crisis period for COVID-19 is behind us Therefore, in light of the recent Final Rule requirements, additional due diligence and risk reduction is both warranted and possible even if it elongates the period needed to consider the initial applications for CIP.

<u>Background</u>: Vermont businesses and nonprofits have received $3.4 billion in federal and state grants and low-interest loans to address economic harm caused by COVID-19. Another $91 million of state grants to businesses and nonprofits was appropriated in Act 9 (2021) and Act 74 (2021) and an additional $57 million of low-interest loans will be administered by the Vermont Economic Development Agency through U.S. Treasury's State Small Business Credit Initiative.[1] The Administration is proposing another $80 million of assistance to businesses in S.263 for the Capital Investment Program (CIP) and a newly conceived Grand List Enhancement Program (GLEP).

<u>The Final Rule</u>: The U.S. Treasury's January 2022 Final Rule prohibits use of SLFRF for capital investments for the purpose of general economic development and makes it clear that large capital projects are generally not within the scope of an eligible use for addressing economic harm to small businesses.[2] Yet Act 74 (2021), the enabling legislation for CIP, and S.263, which proposes changes to CIP and establishes GLEP, both tout the benefits of general economic development to be gained from

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[1] The State Small Business Credit Initiative is a federal program created as a response to the economic effects of the COVID-19 pandemic intended to strengthen state programs that support private financing to small businesses.

[2] "Large capital expenditures intended for general economic development or to aid the travel, tourism, and hospitality industries—such as convention centers and stadiums—are, on balance, generally not reasonably proportional to addressing the negative economic impacts of the pandemic, as the efficacy of a large capital expenditure intended for general economic development in remedying pandemic harms may be very limited compared to its cost." Coronavirus State and Local Fiscal Recovery Funds Final Rule, Supplementary Information, Section II.4.b. Capital Expenditures.

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providing grants to businesses for capital investment. In each program, the Administration's emphasis is on large capital projects.

Per the Agency of Commerce and Community Development's (ACCD) interim report on CIP, the program goal is "to provide funding for transformational projects that will provide regions of the State the opportunity to attract and retain businesses, create jobs, and make capital investments…to promote economic growth." <u>However well intentioned, this is not permitted by the Final Rule</u>.

The application period for $10 million of CIP appropriated in Act 74 ended before the release of the Final Rule. Based on the records available to the State Auditor's Office, ACCD has not requested information from applicants that is necessary to assess eligibility under the Final Rule, nor do we have any indication that ACCD has adjusted its grant processes to reflect Final Rule requirements.

The Final Rule established a limited list of capital expenditures that are presumed to address negative economic impacts of COVID-19 for certain small businesses, nonprofits, and households and are deemed eligible uses ("enumerated uses"). For example, development of affordable housing for households in a qualified census tract is presumed to be an eligible use of SLFRF.[3] If ACCD believes CIP awards should be directed to this enumerated use, the Legislature may want to consider involving the State's affordable housing partners as this may be the most effective way to make decisions about investments in affordable housing. See Attachment II for the list of capital expenditures that are deemed enumerated uses by the Final Rule.

Outside the enumerated uses, the State is required to follow the framework established in the rule which makes clear that the State must:

- identify a beneficiary or class of beneficiaries that experienced a negative economic impact due to the pandemic, and
- design uses of funds that respond to the harm, benefit the beneficiaries that experienced it, <u>and are related and reasonably proportional to that harm</u>.

In other words, the following questions must be asked, and the answers documented:

- ➢ Who experienced harm from the COVID–19 public health emergency and to what extent?
- ➢ Does the proposed use of SLFRF address the harm identified and to what extent (e.g., is the response reasonably proportional to the harm)?

Neither Act 74 nor the current version of S.263 attend to these questions.

SAO reviewed publicly available information about ACCD's CIP grant process– the Notice of Funding Opportunity, application instructions, Capital Investment Program application workflow, and a listing of Vermont's qualified census tracts. None of these materials provide insight as to how ACCD is assessing economic harm and whether capital expenditures are an appropriate and proportional response.

[3] Qualified census tract means any census tract which is designated by the Secretary of Housing and Urban Development, and for the most recent year for which census data are available on household income in such tract, either in which 50 percent or more of the households have an income which is less than 60 percent of the area median gross income for such year or which has a poverty rate of at least 25 percent. 26 U.S.C. 42(d)(5)(B)(ii)(I).

ACCD's December 2021 interim CIP report shows that nine of eighty-eight applicants are for childcare and housing projects while others are for projects in food and beverage manufacturing (10), hospitality and lodging (10),[4] arts & culture (8), etc.[5] However, ACCD did not include information about the economic harm(s) identified and the types of capital investments planned by the existing CIP applicant pool. As a result, I'm concerned that awards for capital expenditures will be unrelated to and not proportional to the harm experienced.

For example: a business that has experienced revenue declines due to labor shortages or supply chain issues requests a grant to expand its facilities. Investment in facility expansion doesn't appear to address the harm experienced and the revenue declines may not be proportional to the investment required to expand operations.

In addition, none of ACCD's materials indicate that applicants are required to provide information about previous assistance received, or that ACCD is using existing public information to gather this data and use it in its eligibility assessment. This is problematic because 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.

For example: a business experienced COVID-19-related revenue declines totaling $100,000, and subsequently received Federal and State COVID-19 financial assistance totaling $100,000. The business applies to the CIP for a $500,000 facility expansion.

SAO made numerous information requests of ACCD regarding its processes for assessing eligibility of the use of SLFRF for capital expenditures and any guidance that Guidehouse has provided. We also requested ACCD's State Revolving Fund (SRF) Questionnaire which is the form the State requires to be completed to document how intended uses are eligible under SLFRF and to address program risks, if any. Per the State's policies, the COVID-19 Financial Office's (CFO) approval of the SRF Questionnaire is required before CIP awards may be distributed.

ACCD did not answer SAO's questions about the processes being used to assess eligibility under the Final Rule, and SAO has not received the SRF Questionnaire which we understand is being revised to reflect the current program design. From an auditor's standpoint these non-responses are red flags. The Agency did send guidance they'd received from Guidehouse (see Attachment III), but it is general in nature. The Commissioner of Economic Development testified that Guidehouse had been consulted on specific applications, but the material provided to the SAO deals only with broad categories of proposed capital projects, which does not address the considerable nuance in the Final Rule.

Because of ACCD's continued focus on large capital projects and the lack of information about ACCD's grant process, <u>I'm concerned there is significant risk that ACCD's intended awards to small businesses for capital investment are largely not eligible under the Final Rule</u>. As significant federal and state assistance has already flowed to businesses and nonprofits in Vermont, there also is risk that CIP and GLEP awards will duplicate assistance previously received which further renders such projects ineligible.

See Attachment I for suggestions addressing the concerns and risks I've highlighted. In addition, we offer a straightforward CIP "pivot" alternative which would do away with nearly all program risk.

[4] Note on impacted industries

[5] Table "CIP Application Projects by Type (as of 12/15/2021)," p. 9 of ACCD CIP Interim Report December 16, 2021.

SAO offers the following suggestions for the Legislature's consideration in order to reduce the risk that ineligible projects will receive awards:

Alternative approach: The Committee could eliminate nearly all program risk with a fairly straightforward pivot of the CIP by limiting eligibility to federally "enumerated uses." These uses, which include affordable housing, childcare, and housing rehabilitation depending upon community conditions, seem consistent with legislative and Administration priorities. Nearly all of the risk described in our memo is associated with the highly variable, non-enumerated uses currently envisioned by the Agency.

Prior to further consideration of appropriations for Capital Investment Program and Grand List Enhancement Program

1. Require ACCD to provide written documentation to the committees of jurisdiction (Senate Committee on Economic Development, Housing and General Affairs, House Commerce, House and Senate Appropriations) that addresses the risks we have identified in our pre-expenditure analysis including the following:
    a. An itemized list of applications with a brief summary of the proposed project (the name of the applicant may be withheld but the corporate type should be provided. For each of these applications, the following shall be provided:
        - Intended beneficiary of the capital expenditure
        - The specific economic harm(s) identified for small businesses/nonprofits and/or households and description of the evidence that the applicant provided to substantiate the harm
        - The total amount of capital investments planned, and the CIP amount requested
        - A determination of whether the capital investments qualify as an enumerated use
        - For unenumerated uses, describe factors that demonstrate the use is related and proportional to the harm.
        - Whether and how duplication of benefits was assessed for the applicant
    b. Draft and final plans for program design and implementation, including the draft SRF questionnaire submitted to the CFO for approval, application review manuals, and other documents that show how ACCD is assessing economic harm and analyzing whether proposed capital investments are related to and proportional to the economic harm caused by COVID-19.
2. Require ACCD to provide answers to SAO regarding the questions posed about current CIP applicants and CIP and GLEP eligibility review processes.

Additional "Safeguard" Amendments to S.263 to Reduce Risk of Ineligible Awards

Require ACCD to document analysis of impacted industries, beyond tourism, travel, and hospitality, if any, and to reach consensus with the legislative economist on impacted industries.

Require ACCD to document analysis of disproportionately impacted groups of small businesses or geographic areas beyond QCTs, if any, and to reach consensus with the legislative economist on disproportionately impacted groups of small businesses or geographic areas.

Attachment I: SAO Suggestions for Information Requests to ACCD and Legislative Changes

Require ACCD to document analysis of disproportionately impacted households beyond low-income households (as defined in Final Rule) and households residing in QCTs, if any, and to reach consensus with the legislative economist.

Require CFO approval of SRF Questionnaire for CIP prior to finalization of awards to applicants under Act 74(2021).

Require CFO approval of SRF Questionnaire for CIP and GLEP prior to commencement of any additional or new application periods under S.263.

Require an additional review, by one of the State's affordable housing partners, for proposed awards of $250,000 or more for construction of new affordable housing or conversion of vacant or abandoned properties to affordable housing. The partner also should be consulted to ensure affordable housing projects are eligible under the National Housing Trust Fund or the Home Investment Partnerships Program as required by the Final Rule.

Require an additional review, by one of the State's childcare partners, for proposed awards of $250,000 or more for childcare facility projects.

Note: The recommendation regarding consultation with housing and childcare partners is intended to ensure that the award would not be in conflict with other state-funded activity in those two sectors.

Require applicants seeking $250,000 or more for unenumerated uses to provide a written justification modeled on that required under the Final Rule and that ACCD make the written justification available to the Joint Fiscal Office prior to approval of an award.

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.

<table>
<tr><th>Beneficiary</th><th>Assessment of negative economic impacts required?</th><th>Enumerated use: capital expenditures</th><th>Analysis required to demonstrate that capital expenditure responds to the harm, benefits the beneficiaries that experienced harm, and is reasonably proportional to the harm?</th><th>SAO comments</th></tr>
<tr><td>Impacted small businesses and nonprofits</td><td>Yes</td><td>• COVID-19 mitigation measures such as installation and improvements of ventilation systems and developing outdoor spaces.</td><td>No - for enumerated capital expenditures.
Yes - for all other proposed capital expenditures.</td><td rowspan="3">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.</td></tr>
<tr><td>Impacted industries – tourism, travel, and hospitality.[A]</td><td>No – presumed. Must be documented for industries other than tourism, travel, and hospitality.[C]</td><td>• COVID-19 mitigation measures such as installation and improvements of ventilation systems and developing outdoor spaces.
• Maintenance of existing equipment and facilities.</td><td>No - for enumerated capital expenditures.
Yes - for all other proposed capital expenditures.</td></tr>
<tr><td>Disproportionally impacted small businesses and nonprofits.[B]</td><td>Presumed for those in qualified census tracts (QCT). Must be documented for other than QCT.[C]</td><td>• 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.</td><td>No - for enumerated capital expenditures.
Yes - for all other proposed capital expenditures.</td></tr>
</table>

[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.

Attachment III: Guidehouse guidance on the Capital Investment Program per Commissioner Goldstein

i. Enumerated Capital Expenditures

As it relates to the Capital Investment Grant Program, the Final Rule establishes four categories of use that include enumerated eligible capital expenditures.

Assistance to Small Businesses

- *Impacted Small Businesses*
    - *Installation and improvements of ventilation systems*
    - *COVID-19 mitigation measures in small businesses (e.g., developing outdoor spaces)*
- *Impacted Small Business Startups and Microbusinesses*
    - *Negative economic impact of COVID-19; for example, if small business startups or microbusinesses in a locality faced greater difficulty accessing credit than prior to the pandemic or faced increased costs to starting the business due to the pandemic or if particular small businesses or microbusinesses had lost expected startup capital due to the pandemic*
- *Disproportionally Impacted Small Businesses (those in QCTs)*
    - *Certain capital investments (ex. rehabilitation of commercial properties, storefront improvements, and façade improvements) for disproportionally impacted businesses*

Assistance to Nonprofits *– same activities listed for Small Businesses should apply*

Impacted Industries

- *Maintenance of existing equipment and facilities*
- *Installation and improvements of ventilation systems*
- *COVID-19 mitigation measures in entities within impacted industries (e.g., developing outdoor spaces, ventilation)*

Assistance to Households

- *Job and workforce training centers*
- *Improvements to or new construction of childcare, daycare, and early learning facilities*

ii. Capital Expenditures Beyond Enumerated Uses

Beyond the enumerated capital expenditures, SFR recipients can identify impact or disproportionate impact to a specific household, business or nonprofit or to a class of households, businesses or nonprofits, and design a response that addresses or responds to the impact including responses with capital expenditures.

The following guidance can be used to identify a COVID-19 public health or negative economic impact on an entity or a class of entities:

- *"Impacted" entities are those impacted by the disease itself or the harmful consequences of the economic disruptions resulting from or exacerbated by the COVID19 public health emergency. For example, a small business that saw lower revenue during a period of closure would have experienced impacts of the pandemic*

Attachment III: Guidehouse guidance on the Capital Investment Program per Commissioner Goldstein

- *"Disproportionately impacted" entities are those that experienced disproportionate public health or economic outcomes from the pandemic; Treasury recognizes that preexisting disparities, in many cases, amplified the impacts of the pandemic, causing more severe impacts in underserved communities*

These impacts may be identified at either the entity level or at a class level. If impacts are identified at the entity level, documentation supporting the impact the entity experienced (e.g., documentation of lost revenues from a small business) should be retained. If impacts are identified for a class, – a group of small businesses, or nonprofits – first the class and the impact that the class faced should be identified. Then, recipients only need to document that the entities served fall within that class. For example, an SFR recipient could identify that restaurants in the downtown area faced substantial declines in revenue due to decreased foot traffic from workers; the recipient could develop a program to respond to the impact on that class and only needs to document that the businesses being served are restaurants in the downtown area.

The response should be related and reasonably proportional to the extent and type of impact experienced, and reasonably designed to benefit the impacted population or class. Any capital expenditure should follow the relevant documentation and reporting guidelines.

"Reasonably proportional" refers to the scale of the response compared to the scale of the harm, as well as the targeting of the response to beneficiaries compared to the amount of harm they experienced. Recipients should consider relevant factors about the harm identified and the response to evaluate whether the response is reasonably proportional.

- *For example, recipients may consider the size of the population impacted and the severity, type, and duration of the impact. Recipients may also consider the efficacy, cost, cost-effectiveness, and time to delivery of the response.*
- *For disproportionately impacted communities, recipients may design interventions that address broader pre-existing disparities that contributed to more severe health and economic outcomes during the pandemic*

Certain capital expenditures are considered generally ineligible

- *construction of convention centers, stadiums or other large capital projects intended for general economic development or to aid impacted industries*

iii. Capital Expenditures Documentation and Reporting Requirements

SFR Recipients must complete and meet the requirements of a written justification for capital expenditures equal to or greater than $1 million.

Attachment III: Guidehouse guidance on the Capital Investment Program per Commissioner Goldstein

<table>
<tr><th>If a project has total capital expenditures of</th><th>and the use is enumerated by Treasury as eligible, then</th><th>and the use is beyond those enumerated by Treasury as eligible, then</th></tr>
<tr><td>Less than $1 million</td><td>No Written Justification required</td><td>No Written Justification required</td></tr>
<tr><td>Greater than or equal to $1 million, but less than $10 million</td><td>Written Justification required but recipients are not required to submit as part of regular reporting to Treasury</td><td rowspan="2">Written Justification required and recipients must submit as part of regular reporting to Treasury</td></tr>
<tr><td>$10 million or more</td><td>Written Justification required and recipients must submit as part of regular reporting to Treasury</td></tr>
</table>

(Table from Overview of the Final Rule, pg. 30)