

**The following policy was approved at the June 20, 2022 Board of Commissioner’s meeting.**

**Cumberland County**

**Section I – Board Approved Policies**

**Subsection 3: Cumberland County Financial / Audit**

**Policy No. 3-12: Policy for Subaward & Monitoring for Expenditures of American Rescue Plan Act Coronavirus State and Local Fiscal Recovery Funds (ARPA/CSLFRF)**

**1.0 PURPOSE**

Cumberland County has received an allocation of funds from the Coronavirus State and Local Fiscal Recovery Funds of H.R. 1319 American Rescue Plan Act of 2021 (ARPA/CSLFRF).

**2.0 SCOPE**

These funds may be used for the following categories of expenditures, to the extent authorized by state law.

1. Support public health expenditures, by funding COVID-19 mitigation efforts, medical expenses, behavioral healthcare, and certain public health and safety staff;
2. Address negative economic impacts caused by the public health emergency, including economic harms to workers, households, small businesses, impacted industries, and the public sector;
3. Provide services to disproportionately impacted communities to include providing housing support, healthy childhood environments, social, emotional and mental health services;
4. Provide premium pay for essential workers offering additional support to those who have borne and will bear the greatest health risks because of their service in critical infrastructure sectors;
5. Invest in water, sewer, and broadband infrastructure, making necessary investments to improve access to clean drinking water, support vital wastewater and stormwater infrastructure, and to expand access to broadband internet.
6. Revenue replacement; and,
7. Administrative expenses.

These funds are subject to the provisions of the federal Uniform Grant Guidance, 2 CFR Part 200 (UG), as provided in the Assistance Listing (21.027). ARP/CSLFRF rules authorize the Cumberland County to enter subaward agreements with subrecipients to assist in carrying out the terms of the ARP/CSLFRF. When Cumberland County enters into a subaward as a subrecipient, it acts as a pass-through entity, as described in 2 CFR 200.1, and the Compliance and Reporting Guidance for the State and Local Fiscal Recovery Funds (v.3.0 February 2022) provides, in relevant part:

*Subrecipient Monitoring: SLFRF recipients that are pass-through entities as described under 2 CFR 200.1 are required to manage and monitor their subrecipients to ensure compliance with requirements of the SLFRF award pursuant to 2 CFR 200.332 regarding requirements for pass-through entities.*

*First, your organization must clearly identify to the subrecipient: (1) that the award is a subaward of SLFRF funds; (2) any and all compliance requirements for use of SLFRF funds; and (3) any and all reporting requirements for expenditures of SLFRF funds.*

*Next, your organization will need to evaluate each subrecipient's risk of noncompliance based on a set of common factors. These risk assessments may include factors such as prior experience in managing Federal funds, previous audits, personnel, and policies or procedures for award execution and oversight. Ongoing monitoring of any given subrecipient should reflect its assessed risk and include monitoring, identification of deficiencies, and follow-up to ensure appropriate remediation.*

*Accordingly, your organization should develop written policies and procedures for subrecipient monitoring and risk assessment and maintain records of all award agreements identifying or otherwise documenting subrecipients' compliance obligations.*

*Recipients should note that non-entitlement units of local government (NEUs) are not subrecipients under the SLFRF program. They are SLFRF recipients that will report directly to Treasury.*

*Recipients should also note that subrecipients do not include individuals and organizations that received SLFRF funds as end users to respond to the negative economic impacts of COVID-19 on these organizations. Such individuals and organizations are beneficiaries and not subject to audit pursuant to the Single Audit Act and 2 C.F.R. Part 200, Subpart F.*

*Separately or in addition, many recipients may choose to provide a subaward (e.g., via contract or grant) to other entities to provide services to other end—users. For example, a recipient may provide a grant to a nonprofit to provide homeless services to individuals experiencing homelessness. In this case, the subaward to a nonprofit is based on the services that the Recipient intends to provide, assistance to households experiencing homelessness, and the nonprofit is serving as the subrecipient, providing services on behalf of the recipient. Subrecipients are subject to audit pursuant to the Single Audit Act and 2 CFR part 200, subpart F regarding audit requirements.*

In addition, Subpart D of the UG dictates subrecipient and award requirements for expenditure of ARP/CSLFRF funds. 2 CFR 200.332 states that:

*All pass-through entities must:*

*(a) Ensure that every subaward is clearly identified to the subrecipient as a subaward and includes the [required] information at the time of the subaward . . . When some of [the required information] is not available, the pass-through entity must provide the best information available to describe the Federal award and subaward.*

*(b) Evaluate each subrecipient's risk of noncompliance with Federal statutes, regulations, and the terms and conditions of the subaward for purposes of determining the appropriate subrecipient monitoring.*

*(c) Consider imposing specific subaward conditions upon a subrecipient if appropriate as described by 2 CFR 200.208.*

*(d) Monitor the activities of the subrecipient as necessary to ensure that the subaward is used for authorized purposes, in compliance with Federal statutes, regulations, and the terms and conditions of the subaward; and that subaward performance goals are achieved.*

*(e) Depending upon the pass-through entity's assessment of risk posed by the subrecipient, [specific] monitoring tools may be useful for the pass-through entity to ensure proper accountability and compliance with program requirements an achievement of performance goals.*

*(f) Verify that every subrecipient is audited as required by [2 CFR 200, Subpart F] when it is expected that the subrecipient's Federal awards expended during the respective fiscal year equaled or exceeded the threshold set forth in 2 CFR 200.501.*

*(g) Consider whether the results of the subrecipient's audits, on-site reviews, or other monitoring indicate conditions that necessitate adjustments to the pass-through entity's own records.*

*(h) Consider taking enforcement action against noncompliant subrecipients as described in 2 CFR 200.339 and in program regulations.*

### **3.0 STATEMENT OF THE POLICY**

Cumberland County hereby adopts and enacts the following Subaward and Monitoring Policy for the expenditure of ARPA/CSLFRF funds.

#### **SUBAWARD AND MONITORING POLICY FOR EXPENDITURE OF AMERICAN RESCUE PLAN ACT OF 2021 CORONAVIRUS STATE AND LOCAL FISCAL RECOVERY FUNDS**

##### **I. POLICY OVERVIEW**

Title 2 U.S. Code of Federal Regulations Part 200, (2 CFR 200) Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, commonly called Uniform Guidance (UG), specifically Subpart D, defines requirements of pass-through entities initiating subaward agreements with Coronavirus State and Local Fiscal Recovery Funds of H.R. 1319 American Rescue Plan Act of 2021 (ARP/CSLFRF). Cumberland County (hereinafter [COUNTY]) shall adhere to all applicable subaward and monitoring requirements governing the use of ARP/CSLFRF. This policy establishes procedures for classifying, making an award to, and monitoring a sub-recipient consistent with ARP/CSLFRF grant award terms and all applicable federal regulations in the UG.

Responsibility for following these guidelines lies with Cumberland County's ARPA Staff Committee who are charged with the administration and financial oversight of the ARP/CSLFRF funds.

##### **II. DEFINITIONS**

The definitions in 2 CFR 200.1 apply to this policy, including the following:

Contract: for the purpose of Federal financial assistance, a legal instrument by which a recipient or subrecipient purchases property or services needed to carry out the project or program under a federal award. For additional information on subrecipient and contractor determinations, see § 200.331. See also the definition of subaward in this section.

Contractor: an entity that receives a contract as defined in this section.

Pass-through Entity: a non-Federal entity that provides a subaward to a subrecipient to carry out part of a federal program. The COUNTY is the pass-through entity when it awards a subaward to a subrecipient.

Recipient: an entity, usually but not limited to non-Federal entities that receives a federal award directly from a federal awarding agency. The term recipient does not include subrecipients or individuals that are beneficiaries of the award.

Subaward: an award provided by a pass-through entity to a subrecipient for the subrecipient to carry out part of a federal award received by the pass-through entity. It does not include payments to a contractor or payments to an individual that is a beneficiary of a federal program. A subaward may be provided through any form of legal agreement, including an agreement that the pass-through entity considers a contract.

Subrecipient: an entity, usually but not limited to non-Federal entities, that receives a subaward from a pass-through entity to carry out part of a federal award; but does not include an individual that is a beneficiary of such award. A subrecipient may also be a recipient of other Federal awards directly from a federal awarding agency.

### III. SUBRECIPIENT CLASSIFICATION

The COUNTY must make a case-by-case determination whether an agreement with another government entity or private entity, that is not a beneficiary, casts the party receiving the funds in the role of a subrecipient or contractor. 2 CFR 200.331.

A subaward is for the purpose of carrying out a portion of a federal award and creates a federal assistance relationship with the subrecipient. Characteristics which support the classification of the non-Federal entity as a subrecipient include when the non-Federal entity:

- (1) Determines who is eligible to receive what federal assistance;
- (2) Has its performance measured in relation to whether objectives of a federal program were met;
- (3) Has responsibility for programmatic decision-making;
- (4) Is responsible for adherence to applicable Federal program requirements specified in the Federal award; and
- (5) In accordance with its agreement, uses the federal funds to carry out a program for a public purpose specified in authorizing statute, as opposed to providing goods or services for the benefit of the pass-through entity.

A contract is for the purpose of obtaining goods and services for the non-Federal entity's own use and creates a procurement relationship with the contractor. Characteristics indicative of a procurement relationship between the non-federal entity and a contractor are when the contractor:

- (1) Provides the goods and services within normal business operations;
- (2) Provides similar goods or services to many different purchasers;
- (3) Normally operates in a competitive environment;
- (4) Provides goods or services that are ancillary to the operation of the Federal program; and
- (5) Is not subject to compliance requirements of the Federal program as a result of the agreement, though similar requirements may apply for other reasons.

In determining whether an agreement between a pass-through entity and another non-federal entity casts the latter as a subrecipient or a contractor, the substance of the relationship is more important than the form of the agreement. All the characteristics listed above may not be present in all cases, and the pass-through entity must use judgment in classifying each agreement as a subaward or a procurement contract.

The COUNTY will use the above criteria to determine if an agreement involving the expenditure of ARP/CSLFRF is a contract or subaward. The County Attorney's Office will document the determination in the Subrecipient or Contractor Classification Checklist in Appendix 1. (Appendix 1: Subrecipient or Contractor Classification Checklist.)

If the agreement involves a contractor relationship (including a contract for services), the COUNTY must follow its UG Procurement Policy when entering into a contract.

If the agreement involves a subrecipient relationship, the COUNTY must proceed to Sections IV. through VII. below.

#### IV. ASSESSMENT OF RISK

Before engaging in a subaward, the COUNTY must evaluate a subrecipient's risk of noncompliance with Federal statutes, regulations, and the terms and conditions of the subaward to determine whether to award the subaward and the appropriate subrecipient monitoring.

Finance Department staff will conduct the risk assessment, which will include consideration of the following factors:

- (1) The subrecipient's prior experience with the same or similar subawards;
- (2) The results of previous audits including whether or not the subrecipient receives a Single Audit in accordance with 2 CFR 200 Subpart F and the extent to which the same or similar subaward has been audited as a major program;
- (3) Whether the subrecipient has new personnel or new or substantially changed systems; and

(4) The extent and results of federal awarding agency monitoring (e.g., if the subrecipient also receives Federal awards directly from a federal awarding agency). 2 CFR 200.332(b).

The results of the risk assessment must be documented in the Subrecipient Assessment of Risk form in Appendix 2 and will be used to dictate the types and degree of subrecipient monitoring. (Appendix 2: Subrecipient Assessment of Risk) The COUNTY will assign an overall risk level to the subrecipient indicating the following:

Low Risk / Moderate Risk / High Risk

There is a low risk that the subrecipient will fail to meet project or programmatic objectives or incur significant deficiencies in financial, regulatory, reporting, or other compliance requirements. There is moderate risk that the subrecipient will fail to meet project or programmatic objectives or incur significant deficiencies in financial, regulatory, reporting, or other compliance requirements. There is high risk that the subrecipient will fail to meet project or programmatic objectives or incur significant deficiencies in financial, regulatory, reporting, or other compliance requirements.

If a proposed subrecipient is deemed high risk, the ARPA Program Manager must provide written justification to proceed with the subaward. The justification must be approved by the County Attorney's Office.

## V. SUBRECIPIENT MONITORING

The COUNTY will develop and implement a subrecipient monitoring plan for the particular subaward based on the findings of the Subrecipient Assessment of Risk. According to 2 CFR 200.332(d). The monitoring plan must involve:

- (1) Reviewing financial and performance reports required by the pass-through entity.
- (2) Following-up and ensuring that the subrecipient takes timely and appropriate action on all deficiencies pertaining to the Federal award provided to the subrecipient from the pass-through entity detected through audits, on-site reviews, and written confirmation from the subrecipient, highlighting the status of actions planned or taken to address Single Audit findings related to the particular subaward.
- (3) Issuing a management decision for applicable audit findings pertaining only to the Federal award provided to the subrecipient from the pass-through entity as required by 2 CFR 200.521.
- (4) The pass-through entity is responsible for resolving audit findings specifically related to the subaward and not responsible for resolving crosscutting findings. If a subrecipient has a current Single Audit report posted in the Federal Audit Clearinghouse and has not otherwise been excluded from receipt of Federal funding (e.g., has been debarred or suspended), the pass-through entity may rely on the subrecipient's cognizant audit agency or cognizant oversight agency to perform audit follow-up and make management decisions related to cross-cutting findings in accordance with section 2 CFR 200.513(a)(3)(vii). Such reliance does not eliminate the responsibility of the pass-through entity to issue subawards that conform to agency and award-specific requirements, to manage risk through ongoing subaward monitoring, and to monitor the status of the findings that are specifically related to the subaward.

The COUNTY’s monitoring plan will vary based on the overall subrecipient risk assessment as low risk, medium risk, or high risk, detailed as follows:

Subrecipient Deemed Low Risk	Subrecipient Deemed Medium Risk	Subrecipient Deemed High Risk
<ul style="list-style-type: none"> <li>• Payment validations (monthly)</li> <li>• Report reviews (quarterly)</li> <li>• Desk reviews (at least once per year and more frequently if requested by [County/City/Town/Village] or subrecipient)</li> <li>• Onsite reviews (upon request of [County/City/Town/Village] or subrecipient)</li> <li>• Audit review (yearly)</li> </ul>	<ul style="list-style-type: none"> <li>• More detailed financial reporting</li> <li>• Payment validations (monthly)</li> <li>• Report reviews (bi-monthly)</li> <li>• Desk reviews (within 6 months of project start and every six months thereafter)</li> <li>• Onsite reviews (within 12 months of project start and annually thereafter, or more frequently as requested by [County/City/Town/Village] or subrecipient)</li> <li>• Audit review (yearly)</li> <li>• Procedures engagement (if subrecipient not subject to Single Audit Act; yearly)</li> </ul>	<ul style="list-style-type: none"> <li>• More detailed financial reporting</li> <li>• Compliance training (one-time)</li> <li>• Prior approvals for certain expenditures</li> <li>• Payment validations (monthly)</li> <li>• Report reviews (monthly)</li> <li>• Desk reviews (within 3 months of project start and at least quarterly thereafter)</li> <li>• Onsite reviews (within 6 months of project start and bi-annually thereafter, or more frequently as requested by [County/City/Town/Village] or subrecipient)</li> <li>• Audit review (yearly)</li> <li>• Procedures engagement (if subrecipient not subject to Single Audit Act; yearly)</li> </ul>

**Payment validation:** All subrecipient documentation for project expenditures must be reviewed by the ARPA Finance Accountant for compliance with subaward requirements. Any non-compliant expenditures will be denied and the subrecipient will be provided a reasonable description of the reason for denial and an opportunity to cure the deficiency. For a subrecipient on a reimbursement-based payment structure, the validation will occur before a reimbursement payment is approved. For a subrecipient that received an up-front payment, any funds found to have been expended in violation of the subaward requirements must be repaid to the COUNTY.

**Report review:** A subrecipient must submit quarterly financial and performance reports, based on the schedule set forth in the subaward. The nature and scope of the reports will depend on the project and be spelled out in the subaward. The reports will be reviewed by the ARPA Program Manager or Management Analyst. Any deficiencies or other performance concerns will be addressed with the subrecipient in a timely manner and could trigger additional monitoring requirements or other interventions, as specified in the subaward.

**Desk review:** The COUNTY will conduct a meeting to review the subrecipient’s award administration capacity and financial management. The meeting may be held virtually or in person. Topics covered will depend on project scope and subrecipient risk assessment and may include governance, budgeting, accounting, internal controls, conflict of interest, personnel,

procurement, inventory, and record keeping. The COUNTY will produce a report which summarizes the results and any corrective actions if deemed necessary. The report will be shared in a timely manner with the subrecipient.

Onsite review: The COUNTY will conduct an on-site meeting at the subrecipient's location to review the subrecipient's project performance and compliance. Topics covered will depend on project scope and subrecipient risk assessment and may include project procurement, data systems, activity and performance tracking, project reporting, inventory, and software systems. The COUNTY will produce a report which summarizes the results and any corrective actions deemed necessary. The report will be shared in a timely manner with the subrecipient.

Audit review: The COUNTY must verify that every subrecipient is audited as required by 2 CFR 200 Subpart F (Single Audit) when it is expected that the subrecipient's Federal awards expended during the respective fiscal year equaled or exceeded the threshold set forth in 2 CFR 200.501. The COUNTY must obtain a copy of the subrecipient's Single Audit from the Federal Audit Clearinghouse (FAC). Within six months of the acceptance of the audit report by the FAC, the COUNTY will issue a management decision for any audit findings related to the subaward. The decision will clearly state whether or not the audit finding is sustained, the reasons for the decision, and the expected auditee action to repay disallowed costs, make financial adjustments, or take other action. (The decision will include reference numbers the auditor assigned to each finding.) The decision will provide a timetable for responsive actions by the subrecipient. Prior to issuing the management decision, the COUNTY may request additional information or documentation from the auditee, including a request for auditor assurance related to the documentation, as a way of mitigating disallowed costs.

Procedures engagement: Applicable only to subrecipients who are not subject to the Single Audit Act. An auditor will perform specific procedures and report on findings. The scope must be limited to the following compliance requirements: activities allowed or unallowed; allowable costs/cost principles; eligibility; and reporting. The review will be arranged and paid for by the COUNTY. The COUNTY will verify completion of the procedure's engagement. Within six months of the acceptance of the procedure's engagement report, the COUNTY will issue a management decision for any findings related to the subaward. The decision will provide a timetable for responsive actions by the subrecipient. Prior to issuing the management decision, the COUNTY may request additional information or documentation from the subrecipient, including a request for auditor assurance related to the documentation, as a way of mitigating disallowed costs.

The specific monitoring plan for each subrecipient, including the type and frequency of reviews, will be detailed in the subaward agreement. For all requirements beyond those listed under the Low Risk category above, the COUNTY will notify the subrecipient of the following in the subaward:

- (1) The nature of the additional requirements;
- (2) The reason why the additional requirements are being imposed;
- (3) The nature of the action needed to remove the additional requirement, if applicable;
- (4) The time allowed for completing the actions if applicable; and
- (5) The method for requesting reconsideration of the additional requirements imposed.



To implement the monitoring plan, ARPA Program Manager or Management Analyst must perform periodic reviews and document findings in the Subrecipient Monitoring Form (Appendix 3: Subrecipient Monitoring Form).

## VI. SUBRECIPIENT INTERVENTIONS

The COUNTY may adjust specific subaward conditions as needed, in accordance with 2 CFR 200.208 and 2 CFR 200.339. If the COUNTY determines that the subrecipient is not in compliance with the subaward, the COUNTY may institute an intervention. The degree of the subrecipient's performance or compliance deficiency will determine the degree of intervention. All possible interventions must be indicated in the subaward agreement.

The COUNTY must provide written notice to the subrecipient of any intervention within thirty days of the completion of a report review, desk review, onsite review, audit review, or procedures engagement review or as soon as possible after the COUNTY otherwise learns of a subaward compliance or performance deficiency.

Pursuant to 2 CFR 200.208, the written notice must notify the subrecipient of the following related to the intervention:

- (1) The nature of the additional requirements;
- (2) The reason why the additional requirements are being imposed;
- (3) The nature of the action needed to remove the additional requirement, if applicable;
- (4) The time allowed for completing the actions if applicable; and
- (5) The method for requesting reconsideration of the additional requirements imposed.

The following interventions may be imposed on a subrecipient, based on the level of the compliance or performance deficiency:

**Level 1 Interventions.** These interventions may be required for minor compliance or performance issues.

- (1) Subrecipient addresses specific internal control, documentation, financial management, compliance, or performance issues within a specified time period
- (2) More frequent or more thorough reporting by the subrecipient
- (3) More frequent monitoring by the COUNTY
- (4) Required subrecipient technical assistance or training

**Level 2 Interventions.** These interventions may be required, in addition to Level 1 interventions, for more serious compliance or performance issues.

- (1) Restrictions on funding payment requests by subrecipient
- (2) Disallowing payments to subrecipient
- (3) Requiring repayment for disallowed cost items
- (4) Imposing probationary status on subrecipient

**Level 3 Interventions.** These interventions may be required, in addition to Level 1 and 2 interventions, for significant and/or persistent compliance or performance issues.

- (1) Temporary or indefinite funding suspension to subrecipient
- (2) Nonrenewal of funding to subrecipient in subsequent year
- (3) Terminate funding to subrecipient in the current year
- (4) Initiate legal action against subrecipient

## VII. SUBAWARD AGREEMENT & EXECUTION

The subaward agreement will be drafted by the County Attorney's Office using the Subaward Agreement Template. Contract terms and conditions may vary based on several factors, including subrecipient risk assessment findings, as documented in the Subrecipient Assessment of Risk. The County Manager may fully execute the subaward agreement, subject to any required budget amendments by the COUNTY's governing board, preaudit requirements, electronic processing through the COUNTY's financial system.