

Memo

To: Lewis County, WA ARPA Team

From: BerryDunn

Date: August , 2022

Re: Recommendation under Expenditure Category for Fox Theatre and Roxy Theatre

Background:

The County of Lewis (the County) asked us to review the Fox Theatre and Roxy Theatre projects which have recently been reviewed for funding under the County's State Local Fiscal Recovery Fund (SLFRF). Based on our review, we believe that both the Fox Theatre and Roxy Theatre projects constitute an eligible use of funds and comply with the Treasury's guidance on eligibility of expenditures using ARPA funds. The County does have some flexibility in determining which expenditure category to report these projects under. As such, BerryDunn has reviewed the applicable guidance issued by Treasury, including eligibility requirements for potential eligible use expenditure categories (ECs), and have provided the following recommendations for the County in undertaking and reporting on the two theatre projects.

Overview:

Treasury's Guidance on Assistance to Nonprofits and Aid to Impacted Industries

Assistance to Nonprofits – Nonprofits have faced significant challenges such as declines in revenue sources like donations and fees due to the pandemic's increased demand for services and changing operational needs. Treasury has clarified in the Final Rule that the Nonprofits eligible for assistance under SLFRF are those that experienced negative economic impacts or disproportionate impacts of the pandemic and meet the definition of "nonprofit" - specifically those that are 501(c)(3) or 501(c)(19) tax-exempt organizations.

Recipients can identify nonprofits impacted by the pandemic, and measures to respond, in many ways. For example, recipients could consider decreased revenue (e.g., from donations and fees); financial insecurity; increased costs (e.g., uncompensated increases in service need); capacity to weather financial hardship; challenges covering payroll; rent or mortgage and other operating costs. Assistance to nonprofits that experienced negative economic impacts includes the following enumerated uses: loans or grants to mitigate financial hardship; technical or in-kind assistance; or other services that mitigate negative economic impacts of the pandemic.

Aid to impacted industries - While nonprofits and small businesses are eligible to receive aid, the final rule provides a standalone section detailing explicit and targeted eligibility for "impacted industries".

Besides revenue replacement, aid to impacted industries is the primary eligibility use governments can utilize to provide recovery funding to the entertainment/creative/arts sector. Specifically, the “impacted industries” are named as “tourism, travel, and hospitality”. If funding any other industry besides the three mentioned above, Treasury guidance directs recipients to measure the negative economic impact to their other identified industries in comparison to tourism, travel, and hospitality.

Designating an Impacted Industry

To identify other industries comparably impacted to the tourism, travel, and hospitality industries, the County should undertake the following two-step process: identifying an industry and determining whether that industry is comparably impacted.

- **First**, the County should identify an industry to be assessed. In identifying this industry, the final rule provides recipients the flexibility to define its substantive or geographic scope. Recipients may identify a broad sector that encompasses several sub-industries, or they may identify a specific subindustry to be assessed. For example, a recipient may identify “personal care services” as an industry, or they may identify a more specific category within the “personal care services” industry (e.g., barber shops) as an industry. The County is not required to follow, but may consider following, industry classifications under the North American Industry Classification System (NAICS), (The final rule, p.164).
 - “Arts, Entertainment, and Recreation” is a NAICS industry classification that could be used if the County determines it has been comparably impacted to the tourism, travel and hospitality industries. For reporting purposes, the County will need to document how they defined the scope of the industry and how they determined that the industry was impacted.
- **Second**, to determine whether the industry is “impacted,” recipients should compare the negative economic impacts of the public health emergency on the identified industry to the impacts observed on the travel, tourism, and hospitality industries.
 1. *Simplified test.* An industry is presumed to be impacted if the industry experienced employment loss of at least 8 percent. Specifically, the County should compare the percent change in the number of employees of the County’s identified industry and the national Leisure & Hospitality sector in the three months before the pandemic’s most severe impacts began (a straight three-month average of seasonally-adjusted employment data from December 2019, January 2020, and February 2020) with the latest data as of the final rule release (a straight three-month average of seasonally-adjusted employment data from September 2021, October 2021, and November 2021). “Recipients may add to their list of impacted industries by showing that the negative economic impacts to the industry at the time of the designation are comparable to the negative economic impacts to the national tourism, travel, and hospitality sectors as of the date of the final rule adoption” (The final rule, p.167).
 - a. The national Leisure & Hospitality sector largely represents the national travel, tourism, and hospitality industries enumerated in the statute. According to the Bureau of Labor Statistics, employment has fallen by approximately 8 percent for the national Leisure & Hospitality sector when comparing the most recent three-month period available as of the date of adoption of the final rule to the three-month period immediately before the public health emergency. **Therefore, if the identified industry has suffered an employment loss of at least 8 percent, the final rule presumes the industry to be an “impacted industry”.**

2. *If simplified test is not met.* If an industry does not satisfy the test above or data is unavailable, the recipient may still designate the industry as impacted by demonstrating the following:
 - a. The County can show that the totality of relevant major economic indicators demonstrate that 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. Example economic indicators include gross output, GDP, net profits, employment levels, and projected time to restore employment back to prepandemic levels. The County may rely on available economic data, government research publications, research from academic sources, and other quantitative sources for this determination. If quantitative data is unavailable, then qualitative data can be used to show that the industry is experiencing comparable or worse economic impacts as the national tourism, travel, and hospitality industries, and the impacts were generally due to the COVID 19 public health emergency. Sources include community interviews, surveys, and research from relevant state and local government agencies.

Eligible Aid

The final rule has clarified that these eligible responses may take the form of direct spending by recipients to promote an industry or support for businesses within an “impacted” industry that experienced a negative economic impact (e.g., through a grant program) (The final rule, p.168). Examples of eligible responses include:

- Aid to mitigate financial hardship due to declines in revenue or profits by supporting payroll costs and compensation of returning employees for lost pay and the COVID benefits during 19 pandemic, as well as support of operations and maintenance of existing equipment and facilities, such as rent, leases, and utilities.
- Aid for technical assistance, counseling, and other services to assist with business planning needs; and
- Aid to implement COVID19 mitigation and infection prevention measures, such as vaccination or testing programs, is broadly eligible for many types of entities, including travel, tourism, hospitality, and other impacted industries.

The final rule maintains the interim final rule’s requirement that aid may only be considered responsive to the negative economic impacts of the pandemic if it supports businesses, attractions, and Tribal development districts operating prior to the pandemic and affected by required closures and other efforts to contain the pandemic, (The final rule, p.169).

Due to the nature of this relationship, this entity could not be classified as a subrecipient if reported under EC 2.34, since funds would be directly benefitting them as an end-user (beneficiary)

If the County can distinguish that both theatres are included in either the tourism, travel or hospitality industry, or if the County designates a different impacted industry and shows that it has been comparably impacted, then both can fall into and prove that it has been comparably impacted

Conclusion/Analysis

In conclusion, we believe that both the Fox Theatre and Roxy Theatre projects constitute an eligible use of funds based on the known scope of work and Treasury's guidance on SLFRF. The County does have some flexibility in determining which expenditure category to report these projects under. Barring that the response is grossly disproportionate to the harm identified, the County is eligible to report both projects under EC 2.36 Aid to Other Impacted Industries. The County must follow the steps highlighted by Treasury to properly identify and determine if the 'other' identified industry (Potentially: arts, entertainment, and recreation) has been comparably impacted to the tourism, travel, and hospitality industries, while ensuring that this determination is well documented.

For streamlined reporting purposes, the County has the option of combining both projects under one, all-encompassing project. However, if the County decides to go this route and combine both individual projects into one, then only one EC can be used for reporting. In such case, we recommend using EC 2.35 Aid to Impacted Industries or EC 2.36 Aid to Other Impacted Industries to report the one larger project.

Fox Theatre

EC 2.34 Assistance to Nonprofits was selected on Fox Theatre's application, however we believe that this EC is not best suited to represent the nature of the project, its scope of services and who the targeted population is. While the Historic Fox Theatre Restorations nonprofit organization may have experienced negative economic impacts from the pandemic, the goal of this project is not to award funds to the nonprofit for the impacts they've experienced, but rather to renovate a theatre which happens to be owned by the City of Centralia. Because of this, we recommend that the County report the Fox Theatre project to either EC 2.35 Aid to Tourism, Travel, or Hospitality, or EC 2.36 Aid to Other Impacted Industries. If using EC 2.35, the County will need to distinguish that the Fox Theatre is included in either the Tourism, Travel or Hospitality industries, as well as document how that decision was made. If using EC 2.36, the County will need to distinguish an "other" impacted industry and follow Treasury's guidance to ensure that the other impacted industry identified is as comparably impacted from the pandemic as the tourism, travel and hospitality industries.

Roxy Theatre

Roxy Theatre is owned by a non-profit organization and has demonstrated in their application to the County that they have experienced negative economic impacts as a result of the pandemic. This project is an eligible use of funds and could be reported under EC 2.34 Assistance to Impacted Nonprofit Organizations, or to EC 2.35 Aid to Tourism, Travel, or Hospitality /2.36 Aid to Other Impacted Industries. The Roxy Theatre happens to be located in a Qualified Census Tract; thus, they are automatically considered disproportionately impacted by the pandemic for SLFRF purposes. This fact doesn't change the project's eligibility, but it does provide the County further justification of Roxy Theatre experiencing negative economic impacts from the pandemic.