

## Executive Summary

The Treasury Department released its Interim Final Guidance on the State and Local Government funding from the American Rescue Plan Act (ARPA), **a four year long program**. The guidance places restrictions and discusses eligible uses of the funding. This document contains some examples of the types of eligible uses but not all. Our team recommends an agency or individual review of the Interim Final Rule if it seeks to fund a program or service. In addition, eligible uses that do not appear in the Interim Final Rule's non-exhaustive list of eligible uses, may still be eligible. In order to determine whether it is an eligible use this framework will:

1. Identify harmful effect of COVID-19 the activity will address (this may include effects that manifest over months or years)
2. Assess the causal or compounding connection
3. Assess for disproportionate or distressed sectors or populations
4. Determine how to prove the expense produces the expected outcome.

Eligible uses must be in response to the disease itself or the harmful consequences of the economic disruptions resulting from or exacerbated by the COVID-19 public health emergency and cannot be grossly disproportionate to the harm experienced.

The Funding can be used within four areas:

- ***Public Health and Economic Impacts***
- ***Premium Pay***
- ***Revenue Loss***
- ***Investments in Infrastructure.***

### Public Health and Economic Impacts

1. Services including **mental health treatment, substance misuse treatment, other behavioral health services, hotlines or warm lines, crisis intervention, overdose prevention, infectious disease prevention, and services or outreach to promote access to physical or behavioral health primary care and preventative medicine** are allowable.
2. Treasury will presume that certain types of services, outlined below, are eligible uses when provided in a Qualified Census Tract (QCT), to families living in QCTs, or when these services are provided by Tribal governments. Recipients may also provide these services to other populations, households, or geographic areas that are disproportionately impacted by the pandemic. In identifying these disproportionately-impacted communities, recipients should be able to support their determination that the pandemic resulted in disproportionate public health or economic outcomes to the specific populations, households, or geographic areas to be served.
  - a) Building Stronger Communities through Investments in Housing and Neighborhoods
  - b) Addressing Educational Disparities
  - c) Promoting Healthy Childhood Environments
3. Eligible uses that respond to the negative economic impacts of the public health emergency must be designed to address an economic harm resulting from or exacerbated by the public health emergency.
4. **Assistance to unemployed workers, state unemployment insurance trust funds, direct assistance to households, expenses to improve efficacy of economic relief programs, aid to**

small businesses and non-profits, rehiring state, local, and tribal government staff, and aid to impacted industries are all eligible expenses.

5. **Food assistance; rent, mortgage, or utility assistance; counseling and legal aid to prevent eviction or homelessness; cash assistance; emergency assistance for burials, home repairs, weatherization, or other needs; internet access or digital literacy assistance; or job training to address negative economic or public health impacts experienced due to a worker's occupation or level of training** are allowable.
6. Funding **public benefits navigators** to assist community members with navigating and applying for available Federal, State, and local public benefits or services is allowable.
7. **Loans or grants to mitigate financial hardship** such as declines in revenues or impacts of periods of business closure, for example by supporting payroll and benefits costs; costs to retain employees; mortgage, rent, or utilities costs; and other operating costs are allowable.
8. **Loans, grants, or in-kind assistance to implement COVID-19 prevention or mitigation tactics**, such as physical plant changes to enable social distancing, enhanced cleaning efforts, barriers or partitions; COVID-19 vaccination, testing, or contact tracing programs; and technical assistance, counseling, or other services to assist with business planning needs are allowable.
9. **Building stronger communities through investments in housing and neighborhoods** are eligible services. These include but are not exclusive to:
  - a) **Services to address homelessness** such as supportive housing, and to improve access to stable, affordable housing among unhoused individuals;
  - b) **Affordable housing development** to increase supply of affordable and high-quality living units; but cannot be used for demolition
  - c) **Housing vouchers, residential counseling, or housing navigation assistance** to facilitate household moves to neighborhoods with high levels of economic opportunity and mobility for low-income residents, to help residents increase their economic opportunity and reduce concentrated areas of low economic opportunity.
10. Educational Disparity Assistance
  - a) **New, expanded, or enhanced early learning services**, including pre-kindergarten, Head Start, or partnerships between pre-kindergarten programs and local education authorities, or administration of those services;
  - b) **Providing assistance to high-poverty school districts** to advance equitable funding across districts and geographies;
  - c) **Evidence-based educational services and practices to address the academic needs of students**, including tutoring, summer, afterschool, and other extended learning and enrichment programs;
  - d) **Evidence-based practices to address the social, emotional, and mental health needs of students**;
  - e) **New or expanded high-quality childcare** to provide safe and supportive care for children;
  - f) **Home visiting programs** to provide structured visits from health, parent educators, and social service professionals to pregnant women or families with young children to offer education and assistance navigating resources for economic support, health needs, or child development; and
  - g) **Enhanced services for child welfare-involved families and foster youth** to provide support and training on child development, positive parenting, coping skills, or recovery for mental health and substance use challenges.
11. Evidence-based **community violence intervention programs** to prevent violence and mitigate the increase in violence during the pandemic is allowable.

12. ARP eligible expenses include capital investments in public facilities to meet pandemic operational needs, such as physical plant improvements to public hospitals and health clinics or adaptations to public buildings to implement COVID-19 mitigation tactics.

### **Premium Pay**

1. The funds may be used by recipients to provide premium pay to eligible workers performing essential work during the COVID-19 public health emergency or to provide grants to third-party employees with eligible workers performing essential work. These are workers who have been and continue to be relied on to maintain continuity of operations of essential critical infrastructure sectors, including those who are critical to protecting the health and wellbeing of their communities (as designated by the Governor).
2. To ensure that premium pay is targeted to workers that faced or face heightened risks due to the character of their work, **the Interim Final Rule defines essential work as work involving regular in-person interactions or regular physical handling of items that were also handled by others.** Such workers include:
  - a) Staff at nursing homes, hospitals, and home care settings;
  - b) Workers at farms, food production facilities, grocery stores, and restaurants;
  - c) Janitors and sanitation workers;
  - d) Truck drivers, transit staff, and warehouse workers;
  - e) Public health and safety staff;
  - f) Childcare workers, educators, and other school staff; and
  - g) Social service and human services staff
3. **A worker would not be engaged in essential work and, accordingly may not receive premium pay, for telework performed from a residence.**
4. Many of the workers performing critical essential services are low or moderate income workers, such as those described above. ARPA recognizes this by defining premium pay to mean an amount up to \$13 per hour in addition to wages or remuneration the worker otherwise receives and in an aggregate amount not to exceed \$25,000 per eligible worker. If premium pay would increase a worker's total pay above 150% of their residing state's average annual wage for all occupations, as defined by the Bureau of Labor Statistics' Occupational and Wage Statistics, or their residing county's average annual wage, as defined by the Bureau of Labor Statistics' Occupational Employment and Wage Statistics, whichever is higher, on an annual basis, the City must provide Treasury and make publicly available, for themselves or on behalf of a grantee, a written justification of how the premium pay or grant is responsive to workers performing essential work during the public health emergency.
5. Grants to third-party employers include additional reporting requirements.

### **Revenue Loss**

1. **In calculating revenue, recipients should sum across all revenue streams covered as general revenue.**
2. The definition of general revenue also would **exclude** revenue generated by utilities and insurance trusts, refunds and other correcting transactions, proceeds from issuance of debt or the sale of investments, agency, and private trust transaction. "General revenue" includes intergovernmental transfers between state and local governments but excludes governmental transfers from the federal government including federal transfers made via a state to a local government pursuant to the CRF or part of the Fiscal Recovery Funds.

3. In general, recipients will compute the extent of the reduction in revenue by comparing actual revenue to a counterfactual trend representing what could have been expected to occur in the absence of the pandemic.
4. Although revenue may decline for reasons unrelated to the COVID-19 public health emergency, to minimize the administrative burden on recipients and taking into consideration the devastating effects of the COVID-19 public health emergency, any diminution in actual revenues relative to the counterfactual pre-pandemic trend would be presumed to have been due to the COVID-19 public health emergency. For purposes of measuring revenue growth in the counterfactual trend, recipients may use a growth adjustment of either 4.1 percent per year or the recipient's average annual revenue growth over the three full fiscal years prior to the COVID-19 public health emergency, whichever is higher.
5. **Recipients should calculate the extent of the reduction in revenue as of four points in time: December 31, 2020; December 31, 2021; December 31, 2022; and December 31, 2023.**
6. Upon receiving Fiscal Recovery Fund payments, recipients may immediately calculate revenue loss for the period ending December 31, 2020.

#### **Uses of Revenue Loss Funding**

1. Government services can include, but are not limited to, **maintenance or pay-go funded building of infrastructure, including roads; modernization of cybersecurity, including hardware, software, and protection of critical infrastructure; health services; environmental remediation; school or educational services; and the provision of police, fire, and other public safety services.**
2. Specifically, **government services would not include interest or principal on any outstanding debt instrument**, including, for example, short-term revenue or tax anticipation notes, or fees or issuance costs associated with the issuance of new debt.
3. In addition, **replenishing financial reserves (e.g., rainy day or other reserve funds) would not be considered provision of a government service**, since such expenses do not directly relate to the provision of government services.

### **Infrastructure Assistance**

1. Eligible projects are expected to focus on locations that are unserved or underserved. Users will be considered unserved or underserved if they lack access to a wireline connection capable of reliability delivering at least minimum speeds of 25 Mbps download and 3 Mbps upload. The Treasury suggests avoiding areas that have existing agreements to build reliable wireline service with minimum speeds of 100 Mbps download and 20 Mbps upload by December 31, 2024.
2. Understanding that State, Local, and Tribal governments have a broad range of water and sewer infrastructure needs, the Interim Final Rule provides these governments with wide latitude to identify investments in water and sewer infrastructure that are of the highest priority for their own communities, which may include projects on privately-owned infrastructure. Eligible uses of the funds are aligned with the wide range of types or categories of projects that would be eligible to receive financial assistance through the EPA's Clean Water State Revolving Fund or the Drinking Water State Revolving Fund.
3. Recipients may use Fiscal Recovery Funds to invest in a broad range of projects that **improve drinking water infrastructure, such as building or upgrading facilities and transmission,**

**distribution, and storage systems, including replacement of lead service lines.** Given the lifelong impacts of lead exposure for children, and the widespread nature of lead service lines, Treasury encourages recipients to consider projects to replace lead service lines.

4. With respect to wastewater infrastructure, recipients may use Fiscal Recovery Funds to **construct publicly owned treatment infrastructure, manage and treat storm water or subsurface drainage water, facilitate water reuse, and secure publicly owned treatment works**, among other uses.
5. Treasury encourages recipients to consider **green infrastructure investments and projects to improve resilience to the effects of climate change**.
6. The Interim Final Rule provides that eligible investments in broadband are those that are designed to provide **services meeting adequate speeds and are provided to unserved and underserved households and businesses**.
7. Under the Interim Final Rule, eligible projects are expected to be designed to deliver, upon project completion, **service that reliably meets or exceeds symmetrical upload and download speeds of 100 Mbps**. If not practicable to deliver such service speeds because of the geography, topography, or excessive costs associated with such a project, the affected project would be expected to be designed to deliver, upon project completion, service that reliably meets or exceeds 100 Mbps download and between at least 20 Mbps and 100 Mbps upload speeds and be scalable to a minimum of 100 Mbps symmetrical for download and upload speeds.
8. Treasury encourages to prioritize investments in fiber optic infrastructure where feasible.
9. Treasury encourages support for broadband networks owned, operated by, or affiliated with local governments, non-profits, and co-operatives.

### **Restrictions on Use**

1. The statute provides that **recipients may not use Fiscal Recovery Funds for “deposit into any pension fund.”** A deposit is distinct from a payroll contribution which occurs when employers make payments into pension funds on regular intervals, with contribution amounts based on a pre-determined percentage of employees’ wages and salaries.
2. The offset provision **prohibits the use of Fiscal Recovery Funds to directly or indirectly offset a reduction in net tax revenue resulting from a change in law, regulation, or administrative interpretation** during the covered period.
3. **Payments from the Fiscal Recovery Funds are also subject to pre-existing limitations provided in other Federal statutes and regulations** and may not be used as non-Federal match for other Federal programs whose statute or regulations bar the use of Federal funds to meet matching requirements.
4. May not contribute to rainy day funds, financial reserves, or similar funds.
5. May not be used for the payment of interest or principal on outstanding debt instruments, including, for example, short-term revenue or tax anticipation notes, or other debt service costs. Fees or issuance costs associated with the issuance of new debt would not be covered.
6. Funds are intended to be used prospectively and use of these funds to cover debts incurred prior to March 3, 2021, are prohibited.
7. May not be used for the satisfaction of any obligation arising under or pursuant to a settlement agreement, judgment, consent decree, or judicially confirmed debt restructuring plan in a judicial, administrative, or regulatory proceeding, except to the extent the judgment or settlement requires the provision of services that would respond to the COVID-19 public health emergency.