American Rescue Plan Spending: Recommended Guiding Principles

Signed into law on March 11, 2021, The American Rescue Plan Act of 2021 ("ARPA") provides $350 billion in additional funding for state and local governments. Please click here for GFOA's analysis of ARPA. The state funding portion is approximately $195 billion with $25.5 billion distributed equally among the 50 states and the District of Columbia and the remaining amount distributed according to a formula based on unemployment.

The local funding portion is approximately $130 billion, equally divided between cities and counties. Localities will receive the funds in two tranches–the first after the U.S. Treasury certifies the proceeds to each jurisdiction and the second one year later.

For cities, $65 billion is divided between jurisdictions that are Community Development Block Grant (CDBG) entitlement jurisdictions and those that are not. $45.5 billion of the $65 billion will be allocated to metropolitan cities utilizing a modified CDBG formula, and the remaining amount for jurisdictions that are non-entitlement CDBG, will be allocated according to population. For the non-entitlement jurisdictions, the amount will not exceed seventy- five percent of their most recent budget as of January 27, 2020. Additionally, non-entitlement jurisdictions proceeds will be allocated through the state for redistribution to local governments.

For counties, the $65 billion will be allocated based on the county's population. Counties that are CDBG recipients will receive the larger of the population or CDBG-based formula.

Eligible uses of these funds include:

- Revenue replacement for the provision of government services to the extent of the reduction in revenue due to the COVID-19 public health emergency, relative to revenues collected in the most recent fiscal year prior to the emergency,
- COVID-19 expenditures or negative economic impacts of COVID-19, including assistance to small businesses, households, and hard-hit industries, and economic recovery,
- Premium pay for essential workers,
- Investments in water, sewer, and broadband infrastructure.

Restrictions on the uses of these funds include:

- Funds allocated to states cannot be used to directly or indirectly to offset tax reductions or delay a tax or tax increase;
- Funds cannot be deposited into any pension fund.

Funding must be spent by the end of calendar year 2024.

As with previous COVID-19 relief packages, implementation will be an extensive process as new or updated guidance and FAQs are developed and released by the U.S. Treasury. For example, the legislation requires each jurisdiction's executive to "certify" that the funds will be used for eligible purposes. That process is currently under development by the U.S. Treasury.

GFOA will provide regular updates as information becomes available. If you have specific questions or need clarification, GFOA has launched an online portal to gather member questions to help shape engagement and solicit answers from the Administration.

For many jurisdictions, the funding provided under ARPA is substantial and could be transformational for states and local governments in their pandemic rescue and recovery efforts. Elected leaders will need to decide how to best use the additional funding consistent with the ARPA requirements, which are very broad. Finance officers play a critical role in advising elected leaders on the prudent spending of moneys received under ARPA. *Finance officers are best positioned to help ensure the long-term value of investments and financial stability of its*

government using this one-time infusion of resources. When considering how to best advise elected officials and plan for the prudent use of ARPA funds, we offer the following outline of Guiding Principles for the use of ARPA funds:

GFOA American Rescue Plan Act Guiding Principles

Temporary Nature of ARPA Funds. ARPA funds are non-recurring so their use should be applied primarily to non-recurring expenditures.

- Care should be taken to avoid creating new programs or add-ons to existing programs that require an ongoing financial commitment.
- Replenishing reserves used to offset revenue declines during the pandemic should be given high priority to rebuild financial flexibility/stability and restore fiscal resiliency.
- Use of ARPA funds to cover operating deficits caused by COVID-19 should be considered temporary and additional budget restraint may be necessary to achieve/maintain structural balance in future budgets.
- Investment in critical infrastructure is particularly well suited use of ARPA funds because it is a non-recurring expenditure that can be targeted to strategically important long- term assets that provide benefits over many years. However, care should be taken to assess any on-going operating costs that may be associated with the project.

ARPA Scanning and Partnering Efforts. State and local jurisdictions should be aware of plans for ARPA funding throughout their communities.

- Local jurisdictions should be cognizant of state-level ARPA efforts, especially regarding infrastructure, potential enhancements of state funding resources, and existing or new state law requirements.
- Consider regional initiatives, including partnering with other ARPA recipients. It is possible there are many beneficiaries of ARPA funding within your community, such as schools, transportation agencies and local economic development authorities. Be sure to understand what they are planning and augment their efforts; alternatively, creating cooperative spending plans to enhance the structural financial condition of your community.

Take Time and Careful Consideration. ARPA funds will be issued in two tranches to local governments. Throughout the years of outlays, and until the end of calendar year 2024, consider how the funds may be used to address rescue efforts and lead to recovery.

- Use other dedicated grants and programs first whenever possible and save ARPA funds for priorities not eligible for other federal and state assistance programs.
- Whenever possible, expenditures related to the ARPA funding should be spread over the qualifying period (through December 31, 2024) to enhance budgetary and financial stability.
- Adequate time should be taken to carefully consider all alternatives for the prudent use of ARPA funding prior to committing the resources to ensure the best use of the temporary funding.

The influx of funds will undoubtedly benefit state and local finances, and aid in the recovery from the budgetary, economic, and financial impacts of the pandemic. Rating agencies will evaluate a government's use of the ARPA funds in formulating its credit opinion and, importantly, will consider your government's level of reserves and structural budget balance, or efforts to return to structural balance, as part of their credit analysis. Finance officers will play a critical role in highlighting the need to use ARPA funds prudently with an eye towards long-term financial stability and sustainable operating performance. The funding provided under ARPA provides a unique opportunity for state and local governments to make strategic investments in long-lived assets, rebuild reserves to enhance financial stability, and cover temporary operating shortfalls until economic conditions and operations normalize.

NLC DELIVERS

May 21, 2021

Coronavirus Local Fiscal Recovery Funds Guidance:

Prohibited Expenditures

On May 10, the U.S. Treasury released an Interim Final Rule to provide guidance on cities, states and tribal governments can spend funds allocated to them by the American Rescue Plan Act ("ARPA"). The guidance is effective immediately and summarizes the prohibited uses of the funds.

In Sections 602(c)(1) and 603(c)(1) of ARPA, Congress provided four eligible uses of funds:

a) To respond to the public health emergency or its negative economic impacts, including assistance to households, small businesses, and nonprofits, or aid to impacted industries such as tourism, travel, and hospitality;

b) To respond to workers performing essential work during the COVID-19 public health emergency by providing premium pay to eligible workers;

c) For the provision of government services to the extent of the reduction in revenue due to the COVID–19 public health emergency relative to revenues collected in the most recent full fiscal year prior to the emergency; and

d) To make necessary investments in water, sewer, or broadband infrastructure.[1]

In general, any use of ARPA funds outside of these categories is prohibited. ARPA also includes explicit prohibitions on how the funds can be used. The prohibitions include:

a) Depositing funds into any pension fund.
b) Using funds to directly or indirectly offset a reduction in the net tax revenue of [the] State or territory resulting from a change in law, regulation, or administrative interpretation.

[1] Interim Final Rule: Coronavirus State and Local Fiscal Recovery Funds, U.S. Department of Treasury (hereinafter "Treasury Guidance"), 7.

The Treasury Guidance provides additional clarifications on these prohibitions as summarized below. Despite these prohibitions, a City still has significant flexibility with how it spends the ARPA funds. The Treasury Guidance provides flexibility to use funds for programs and projects that are not expressly described in the Guidance, provided that it responds to the negative economic impacts of the COVID-19 public health emergency, and/or is designed to address an economic harm resulting from or exacerbated by the public health emergency.[2]

Spending on Projects Outside ARPA Timelines

The Guidance sets parameters on when funds can be used. The funds may be used for any allowed purpose starting on March 3, 2021, and must be encumbered by December 31, 2024. Funds that were encumbered during this period must be spent by December 31, 2026.[3] Use of funds for projets outside of these dates is prohibited. Funds not spent by the end of 2026 must be returned to the federal government.[4]

Pensions

Sections 602(c)(2)(B) and 603(c)(2) prohibit any recipient, including cities, non-entitlement units of government, and counties, from using Fiscal Recovery Funds for deposit into any pension fund. The prohibition is aimed at preventing cities from using the ARPA funds to make up deficits in their public employee pension funds that may be unrelated to the Pandemic.

Treasury interprets "deposit" to mean an "extraordinary payment into a pension fund for the purpose of reducing an accrued, unfunded liability."[5] The Rule sets forth two criteria which preclude a payment as eligible assistance. A payment is not allowed into a pension fund if:

1. the payment reduces a liability incurred prior to the start of the COVID-19 public health emergency, and

2. the payment occurs outside the recipient's regular timing for making such payments.

"Deposit" and "payroll contribution" are separate payments. A "payroll contribution" is when an employer makes "payments into pension funds on regular intervals, with contribution amounts based on a pre-determined percentage of employees' wages and salaries."[6] Payroll contributions are not prohibited, and are anticipated if they are made as part of an employee's premium pay otherwise authorized under ARPA.[7]

---

[2] Treasury Guidance 11.
[3] Treasury Guidance 122.
[4] Treasury Guidance 122.
[5] Treasury Guidance 71.
[6] *Ibid.*
[7] *Ibid..*

Infrastructure that does not meet ARPA Criteria

Not all eligible infrastructure projects are within the scope of the infrastructure investment category. Funding for infrastructure projects may be related to water, sewer, broadband or respond to a "specific pandemic public health need."[8]

Water and sewer projects are allowed if they would otherwise qualify for funding under the Clean Water Act and Safe Drinking Water Act state revolving fund programs.[9] These programs are broad and will capture a variety of different types of drinking water and water quality projects. However, the Treasury Guidance provides more specific criteria for broadband projects. For example, the Guidance states that broadband projects must target underserved areas.[10] Cities will need to make sure that their broadband projects meet the requirements in the Guidance or risk losing funding.

Rainy Day Funds, Financial Reserves, and Outstanding Debt

Funds may not be used for rainy day funds, financial reserves, or funds of a similar nature. Treasury deemed these funds to be ineligible because contributions "would not address these needs or respond to the COVID-19 public health emergency but would rather constitute savings for future spending needs."[11]

Funds cannot be used for the payment of interest or principal on outstanding debt instruments. This includes short-term revenue or tax anticipation notes, or other debt service costs.[12]

Settlements, Judgements, Consent Decrees

Payments required from a settlement agreement, judgment, consent decree, or judicially confirmed debt restructuring plan in a judicial, administrative, or regulatory proceeding are not considered eligible uses of the funds. The exception to this is if "the judgment or settlement requires the provision of services that would respond to the COVID-19 public health emergency. That is, satisfaction of a settlement or judgment would not itself respond to COVID-19 with respect to the public health emergency or its negative economic impacts, unless the settlement requires the provision of services or aid that did directly respond to [those] needs."[13]

Non-essential Workers

ARPA allows cities to give Premium Pay to their essential workers. A worker is not considered to be engaged in essential work if the employee performed telework from a residence, which would exclude them from premium pay.[14] Payments to workers who do not meet these criteria are not authorized under ARPA (but of course can be made with a City's other funds).

---

[8] Treasury Guidance 37.
[9] Treasury Guidance 56.
[10] Treasury Guidance 67.
[11] Treasury Guidance 38.
[12] Treasury Guidance 54.
[13] Treasury Guidance 38.
[14] Treasury Guidance 42.

Limits to Revenue Losses

Treasury is using the Census Bureau's definition of "general revenue from own sources" As the method of measuring whether a city had lost revenue.[15] The Guidance does not allow a city to use refunds and other correcting transactions, proceeds from issuance of debt or the sale of investments, and agency or private trust transactions are excluded from the eligible use of funds. Revenue generated by utilities and insurance trusts is also excluded.

Federal Matching Requirements

Funding from the Fiscal Recovery Funds may not be used as a non-Federal match for other Federal programs whose statute or regulations bar the use of Federal funds to meet matching requirements.[16]

Note: This summary has been prepared by Best, Best & Krieger LLP

If you have general questions about the Coronavirus State and Local Fiscal Recovery Funds, please email the U.S. Department of Treasury at SLFRP@treasury.gov or call 844-529-9527.

The information contained here is not legal advice. It will be subject to change based on updates from the U.S. Department of the Treasury, and any recipients should confirm applicability to their specific situation.

[15] Treasury Guidance 49.
[16] Treasury Guidance 86.

NLC DELIVERS

May 21, 2021

Coronavirus Local Fiscal Recovery Fund Guidance:

Reduction in Revenue

Budget shortfalls are particularly problematic in the current environment as local governments work to mitigate and contain the COVID-19 pandemic and help citizens weather the economic downturn.

The American Rescue Plan Act (ARPA) will allow recipients facing budget shortfalls to use payments from the Coronavirus State and Local Fiscal Recovery Funds to avoid cuts to government services and, thus local governments to continue to provide valuable services and ensure that fiscal austerity measures do not hamper the broader economic recovery.[1]

General Revenue

The Interim Final Rule (IFR) adopts a definition of "general revenue" based largely on the components reported under "General Revenue from Own Sources" in the Census Bureau's Annual Survey of State and Local Government Finances, and for purposes of this Interim Final Rule, helps to ensure that the components of general revenue would be calculated in a consistent manner.[2]

The IFR defines the term "general revenue" to include revenues collected by a recipient and generated from its underlying economy and would capture a range of different types of tax revenues, as well as other types of revenue that are available to support government services. In calculating revenue, **recipients should sum across all revenue streams covered as general revenue**.[3]

Excluded Revenue Sources[4]

The IFR would exclude:

---

[1] Interim Final Rule: Coronavirus State and Local Fiscal Recovery Funds, U.S. Department of Treasury (hereinafter "Treasury Guidance"), 48.
[2] *Ibid.*
[3] *Ibid.*
[4] Treasury Guidance 49.

- refunds and other correcting transactions
- proceeds from issuance of debt or the sale of investments
- agency or private trust transactions
- utilities and insurance trusts

In this way, the definition of general revenue focuses on sources that are generated from economic activity and are available to fund government services, rather than a fund or administrative unit established to account for and control a particular activity.

Calculation of Loss

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.

The counterfactual trend starts with the last full fiscal year prior to the COVID-19 public health emergency and then assumes growth at a constant rate in the subsequent years.[5]

Key Point

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. 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]

Four Steps for Calculating Lost Revenue

- Step 1: Identify revenues collected in the most recent full fiscal year prior to the public health emergency (i.e., last full fiscal year before January 27, 2020), called the base year revenue.

- Step 2: Estimate counterfactual revenue, which is equal to base year revenue * [(1 + growth adjustment) ^(n/12)], where n is the number of months elapsed since the end of the base year to the calculation date, and growth adjustment is the greater of 4.1 percent and the recipient's average annual revenue growth in the three full fiscal years prior to the COVID-19 public health emergency.

- Step 3: Identify actual revenue, which equals revenues collected over the past twelve months as of the calculation date

[5] Treasury Guidance 50.
[6] Treasury Guidance 52.

- Step 4: The extent of the reduction in revenue is equal to counterfactual revenue less actual revenue. If actual revenue exceeds counterfactual revenue, the extent of the reduction in revenue is set to zero for that calculation date.[7]

If you have general questions about the Coronavirus State and Local Fiscal Recovery Funds, please email the U.S. Department of Treasury at SLFRP@treasury.gov or call 844-529-9527.

The information contained here is not legal advice. It will be subject to change based on updates from the U.S. Department of the Treasury, and any recipients should confirm applicability to their specific situation.

[7] Treasury Guidance 52.

County average wages (effective until 6/30/2021)

*Average county wages are based on Census of Employment and Wages, MERIC.
*Updates to be made annually. Use 2,080 hours per year when converting from annual to hourly wages.

County	Average Annual Wage
ADAIR	$32,905
ANDREW	$34,334
ATCHISON	$34,550
AUDRAIN	$37,289
BARRY	$40,357
BARTON	$34,323
BATES	$31,981
BENTON	$28,112
BOLLINGER	$29,995
BOONE	$42,346
BUCHANAN	$46,831
BUTLER	$32,961
CALDWELL	$35,309
CALLAWAY	$48,100
CAMDEN	$34,652
CAPE GIRARDEAU	$41,876
CARROLL	$37,832
CARTER	$24,500
CASS	$36,417
CEDAR	$27,132
CHARITON	$33,399
CHRISTIAN	$32,939
CLARK	$26,678
CLAY	$50,393
CLINTON	$36,939
COLE	$42,380
COOPER	$33,394
CRAWFORD	$37,595
DADE	$32,411
DALLAS	$25,068
DAVIESS	$27,841
DEKALB	$35,349
DENT	$29,587
DOUGLAS	$27,115
DUNKLIN	$26,839
FRANKLIN	$42,993
GASCONADE	$30,888
GENTRY	$36,840
GREENE	$44,535

County	Average Annual Wage
GRUNDY	$32,628
HARRISON	$29,326
HENRY	$35,067
HICKORY	$25,493
HOLT	$38,781
HOWARD	$31,840
HOWELL	$33,981
IRON	$40,532
JACKSON	$51,134
JASPER	$40,664
JEFFERSON	$38,541
JOHNSON	$32,945
KNOX	$31,785
LACLEDE	$34,858
LAFAYETTE	$33,742
LAWRENCE	$37,401
LEWIS	$34,482
LINCOLN	$41,708
LINN	$35,614
LIVINGSTON	$34,456
MACON	$32,356
MADISON	$29,994
MARIES	$32,984
MARION	$38,530
MCDONALD	$36,719
MERCER	$38,593
MILLER	$31,666
MISSISSIPPI	$30,868
MONITEAU	$37,155
MONROE	$30,142
MONTGOMERY	$35,984
MORGAN	$29,005
NEW MADRID	$37,742
NEWTON	$42,061
NODAWAY	$35,017
OREGON	$25,139
OSAGE	$37,251
OZARK	$24,764
PEMISCOT	$29,872

County	Average Annual Wage
PERRY	$38,263
PETTIS	$36,225
PHELPS	$36,998
PIKE	$33,716
PLATTE	$49,016
POLK	$32,083
PULASKI	$29,341
PUTNAM	$27,463
RALLS	$46,091
RANDOLPH	$38,711
RAY	$37,074
REYNOLDS	$36,843
RIPLEY	$22,995
SALINE	$36,154
SCHUYLER	$28,396
SCOTLAND	$27,796
SCOTT	$38,281
SHANNON	$25,716
SHELBY	$32,374
ST CHARLES	$48,029
ST LOUIS CITY	$51,134
ST LOUIS CO	$51,134
ST. CLAIR	$26,929
ST. FRANCOIS	$31,982
STE. GENEVIEVE	$45,297
STODDARD	$37,570
STONE	$30,253
SULLIVAN	$44,450
TANEY	$31,499
TEXAS	$30,031
VERNON	$37,399
WARREN	$39,663
WASHINGTON	$27,524
WAYNE	$24,539
WEBSTER	$33,773
WORTH	$24,444
WRIGHT	$30,662
STATEWIDE	$51,134

- Statewide average of $51,134 applicable to any county over the statewide average when determining program eligibility. (Jackson, St. Louis County and City)
- The wage represents an average for all private industries.
- If a project is moving from one Missouri county to a county with a lower county average wage, the company must obtain endorsement from the governing body of the community where the jobs are located, or the higher county average wage will be used for calculations.