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Guidelines and Reporting Requirements for Local Fiscal Recovery Fund Expenditures under the American Rescue Plan Act

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Summary of the American Rescue Plan

Today's guidance is as of **December 2021** – more to come

March 11, 2021 signed the act (H.R.1319) into law

A \$1.9 trillion package intended to combat the COVID-19 pandemic

Provides \$362 billion in federal fiscal recovery aid for state and local governments

Should read -- Interim Final Rule (page 114) and FAQ's issued November 15, 2021 – FINAL SOON

Coronavirus Local Fiscal Recovery Fund (FRF) – \$130.2 billion

- ❑ \$130.2 billion divided evenly between counties, municipalities, and metropolitan cities
 - \$65.1 billion to all counties
 - Direct recipient from Treasury
 - \$45.57 billion to metropolitan cities
 - Populations of 50,000 or more & direct recipient from Treasury
 - \$19.53 billion to non-entitlement units (NEU) or municipalities
 - populations < 50,000 & receive money from the state

- ❑ Can be used to cover eligible expenditures obligated by December 31, 2024, and performed by December 31, 2026

Timing of Funding

- ❑ Money will be provided in two payments or “tranches”
- ❑ First payment, 50% of distribution, will be received in 2021.
- ❑ Second payment will be received in 2022 approximately 12 months after the first payment
- ❑ Treasury recommends that advance payments be deposited in FDIC insured accounts whenever possible

Allowable Uses for Funds – 5 Categories

1. Support the Public Health Response;
2. Address Negative Economic Impacts;
3. Provide government services to the extent of reduction in revenue;
4. Provide “premium pay” to workers performing essential work during COVID-19;
5. Make necessary investments in water, sewer, stormwater, or broadband infrastructure

Public Health Response

Funding may be used to address broad range of public health needs including COVID-19 mitigation efforts, medical expenses, behavioral healthcare, and public health and safety staff

Covered period begins March 3, 2021

Examples of Mitigation Efforts

-
- ❑ Vaccination programs
 - ❑ Medical expenses
 - ❑ Testing
 - ❑ Contact Tracing
 - ❑ Isolation or quarantine
 - ❑ PPE Purchases
 - ❑ Support for vulnerable populations to access medical or public health services
 - ❑ Public health surveillance (e.g. monitoring for variants)
 - ❑ Enforcement of public health orders
 - ❑ Public communication efforts
 - ❑ Enhancement of healthcare capacity, including alternative care facilities
 - ❑ Support for prevention, mitigation, or other services in congregate living
 - ❑ Enhancement of public health data systems
 - ❑ Capital investments in public facilities to meet pandemic operational needs
 - ❑ Ventilation improvements in key settings like healthcare facilities and public facilities

The above is a non-exclusive list. Other programs or services may be identified for funding.

Examples of Behavioral Healthcare Needs

- ❑ Mental health treatment
- ❑ Substance misuse treatment
- ❑ Other behavioral health services
- ❑ Crisis intervention
- ❑ Services or outreach to promote access to health and social services
- ❑ Hotlines or warmlines

Public Health Payroll & Covered Benefits

- ❑ Can include payroll and covered benefit expenses for the following areas:
 - Public health
 - Healthcare
 - Human services
 - Public safety
 - And similar employees if their services are devoted to mitigating or responding to COVID-19 public health emergency

Public Health Payroll & Covered Benefits

- ❑ Public health & public safety workers may be considered entirely devoted to mitigating or responding to pandemic, and therefore fully covered, if the employee or their unit or division is considered primarily dedicated to responding to the pandemic.
- ❑ Recipient should reassess periodically and maintain records to support this assessment
- ❑ Support would include payroll records, attestations from supervisors or staff, or regular work product demonstrating work on COVID-19 response

Responding to Negative Economic Impacts

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.

Responses must be related and reasonably proportional to the extent and type of harm experienced; uses that bear no relation or are grossly disproportionate to the type or extent of harm experienced would not be eligible uses.

Eligible uses to Respond to Negative Economic Impacts

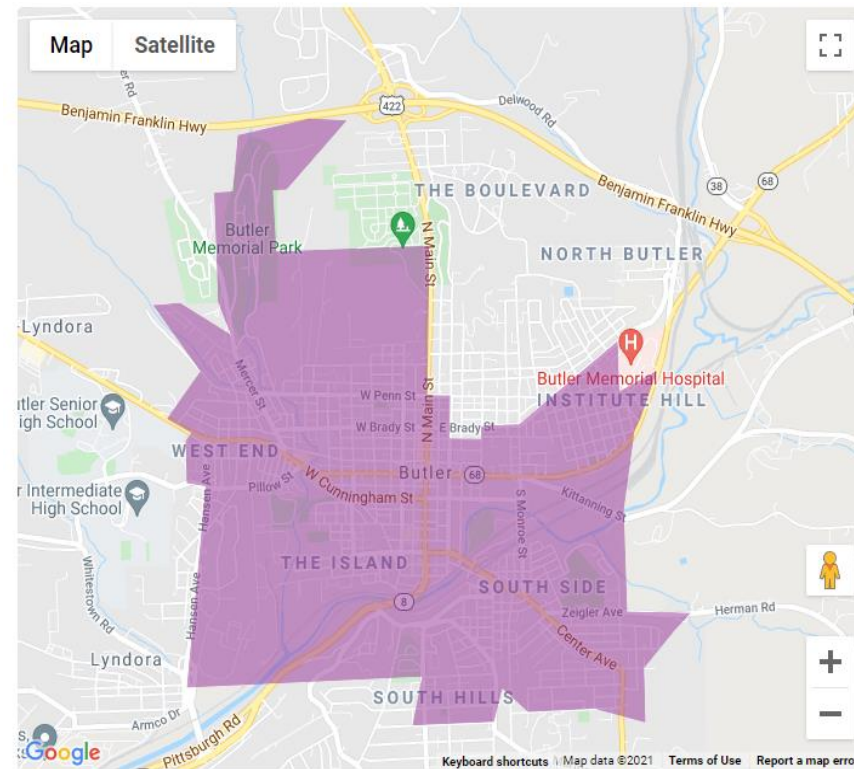
- ❑ Assistance to Unemployed Workers
- ❑ Assistance to Households
- ❑ Expenses to Improve Efficacy of Economic Relief Programs
- ❑ Small Businesses and Non-profits
- ❑ Rehiring State and Local Government Staff
- ❑ Aid to Impacted Industries

Qualified Census Tracts

- ❑ Qualified Census Tracts (QCTs) are a common, readily accessible, and geographically granular method of identifying communities with a large proportion of low-income residents.
- ❑ <https://home.treasury.gov/policy-issues/coronavirus/assistance-for-state-local-and-tribal-governments>
- ❑ Federal Register / Vol. 86, No. 93 / Monday, May 17, 2021 / Rules and Regulations page 26,791

QCT's

- ❑ https://www.huduser.gov/portal/sadda/sadda_qct.html



Eligible uses to Respond to Negative Economic Impacts

- ❑ The following are eligible expenses in QCT's or other areas disproportionately impacted by the pandemic
 - Building Stronger Communities through Investments in Housing and Neighborhoods
 - Addressing Educational Disparities
 - Promoting Healthy Childhood Environments

Premium Pay

Premium pay can be paid to eligible workers performing essential work

“Premium pay” means an additional amount up to \$13 per hour that is paid to an eligible worker during the COVID-19 pandemic.

Cap is imposed of \$25,000 for any single eligible worker

Can also provide grants to third-party employers that have eligible workers who perform essential work

Can go retroactive back to January 27, 2020 (no double dip); however, due to issues with PA Constitution recommend paying prospectively

Premium Pay Definitions

- ❑ Essential Work
 - Work involving regular in-person interactions or regular physical handling of items that were also handled by others
 - Does not include telework performed from a residence

- ❑ Eligible Workers
 - Workers needed to maintain continuity of operations of essential critical infrastructure sectors
 - Includes any work performed by an employee of a state or local government

Premium Pay Required Justification

- If premium pay increases worker's total pay above 150% of residing state's average annual wage for all occupations, the government must provide Treasury and make widely available a written justification of how the premium pay is responsive to workers performing essential work during the public health emergency

Examples of Premium Pay Eligible Workers

- ❑ Any work performed by an employee of the state, or local government
- ❑ Staff at nursing homes, hospitals, and home care settings;
- ❑ Workers at farms, food production facilities, grocery stores, and restaurants;
- ❑ Janitors and sanitation workers;
- ❑ Truck drivers, transit staff, and warehouse workers;
- ❑ Public health and safety staff;
- ❑ Childcare workers, educators, and other school staff; and
- ❑ Social service and human services staff

Revenue Loss

- ❑ Recipients may use payments from the FRF for government services to the extent of the reduction in revenue experienced due to COVID-19 public health emergency
- ❑ Reduction in revenue is measured relative to revenue collected in most full fiscal year prior to the emergency.
- ❑ If on a calendar year, revenue is measured from 2019

General Revenue Definition

- ❑ General Revenue includes revenues collected by recipient and generated from underlying economy
- ❑ Based on Census Bureau's definition of general revenue
- ❑ It would include a range of different tax revenues as well as other types of revenue that is available to support government services.
- ❑ In calculating revenue, recipient should sum across revenue streams covered as general revenue on an entity-wide basis
- ❑ Includes intergovernmental transfers between state and local governments

Exclusions from General Revenue

- ❑ The following should be excluded from general revenue
 - Refunds
 - Other correcting transactions
 - Proceeds from issuance of debt or sale of investments
 - Agency or private trust transactions (pension?)
 - Intergovernmental transfer from Federal government including amounts passed through the state
 - Revenue from utilities and insurance trusts

Measuring Revenue Growth

- ❑ To measure growth, use the higher of 4.1% or the recipient's average annual revenue growth over the 3 full fiscal years prior to the COVID-19 public health emergency

Lost Revenue Example

	2019 Revenue	2020 Revenue	4.1% or prior 3 years if higher	Eligible lost Revenue 2020
Taxes	90,000	90,500		
Permits	8,000	3,000		
Fees	2,000	500		
Total revenue	100,000	94,000	104,100.00	10,100.00

Federal Procurement (briefly)

- ❑ Micro purchase below \$10,000 (price must be reasonable)
- ❑ Small purchase below \$250,000 – 3 quotes (state law lower but Costars does not meet the federal requirements)
- ❑ Sealed bids over \$250,000
- ❑ <https://www.dgs.pa.gov/COSTARS/Member-Information/Documents/PotentialPurchaserMember1.pdf>

The purchase I am making is being paid for with federal funds. Are there any additional requirements that must be met in order to use a COSTARS-exclusive contract?

Whenever a member is using federal funds, in whole or in part, to pay for a purchase, the member must ensure compliance with any federal requirements for such purchase. One of the main requirements is that the member obtain three quotes for the goods or services. All three quotes can come from COSTARS contracted suppliers or some of the quotes could come from contractors from other cooperative purchasing programs. It does not matter if the federal funds may come directly from a federal agency or come through a Commonwealth agency; members must obtain three quotes to utilize cooperative purchasing programs like COSTARS.

Recipients of federal funds for purchases should consult with appropriate legal counsel and refer to the grant documentation and/or the source of the federal funding to ensure compliance with the federal requirements.

Eligible Government Services Expenditures to offset Revenue Loss

- ❑ Government services can include but is not limited to:
 - Maintenance of infrastructure or pay-go spending for building new infrastructure, including roads & bridges;
 - Modernization of cybersecurity, including hardware, software, and protection of critical infrastructure;
 - Health services;
 - Environmental remediation;
 - School or educational services; and
 - Police, first responders, and other public safety services

Ineligible Government Services to Offset Revenue Loss

- ❑ Government services would not include the following
 - Interest or principal on any outstanding debt instrument;
 - Generally, satisfaction of any obligation arising under or pursuant to a settlement agreement, judgment, consent decree; and
 - Replenishing financial reserves (e.g., rainy day or other reserve funds)

Investments in Infrastructure

- ❑ Allows for a broad range of necessary investments in projects that improve access to clean drinking water, improve wastewater and stormwater infrastructure systems, and provide access to high-quality broadband service.
- ❑ Necessary investments are designed to provide an adequate minimum level of service and are unlikely to be made using private sources of funds.
- ❑ Necessary investments include projects that are required to maintain a level of service that, at least, meets applicable health-based standards, considering resilience to climate change, or establishes or improves broadband service to unserved or underserved populations to reach an adequate level to permit a household to work or attend school, and that are unlikely to be met with private sources of funds.
- ❑ Projects should include strong labor standards, project labor agreements, offer wages at or above prevailing wage rates, and include local hire provisions.

Eligible Infrastructure Projects

- ❑ Includes stormwater infrastructure if it includes water quality benefits consistent with goals of Clean Water Act
- ❑ Infrastructure projects selected for FRF would also need to qualify for financial assistance through the Environmental Protection Agency (EPA)
 - Clear Water State Revolving Fund (CWSRF) or
 - Drinking Water State Revolving Fund (DWSRF)
- ❑ Broadband should support households and businesses that do not deliver 25 Mbps download/3 Mbps upload
- ❑ Fund projects that deliver reliable services a minimum 100Mbps download/100 Mbps upload speed unless impracticable due to geography, topography or excessive costs

Water Infrastructure Projects

- ❑ May invest in the following DWSRF projects to improve drinking water infrastructure such as building or upgrading facilities and transmission, distribution and storage systems.
- ❑ Includes the replacement of lead service lines
- ❑ May also develop effective cybersecurity practices and measures

Sewer Infrastructure Projects

- ❑ Types of projects eligible for CWSRF assistance include
 - Projects to construct, improve, and repair wastewater treatment plants;
 - Control non-point sources of pollution;
 - Improve resilience of infrastructure to severe weather events, create green infrastructure;
 - Protect waterbodies from pollution; and
 - And develop effective cybersecurity practices and measures

Wastewater Infrastructure Projects

- ❑ Can construct publicly owned treatment infrastructure
- ❑ Manage and treat stormwater or subsurface drainage water
- ❑ Facilitate water reuse
- ❑ Secure publicly owned treatment works

Unallowable Activities

- ❑ Pension Funds
 - Cannot make an extraordinary pension fund contributions
 - Can fund routine payroll contributions for pensions of employees whose wages or salaries are an eligible use
- ❑ Funding debt service, legal settlements or judgements
- ❑ Deposits to rainy day funds or financial reserves
- ❑ May not be used as non-federal match for federal programs whose statute bans other federal funds to meet matching requirements
- ❑ States have an additional restriction that they can't use the money to offset a net tax reduction

Recent FAQ Clarifications

- ❑ FAQ 3.14 defines dependent entities to be included in entity-wide revenue loss calculation
- ❑ FAQ 3.15 defines what utility revenue are water, electric, gas, mass transit. These are not included in revenue loss calc.
- ❑ FAQ 6.2 sets date of December 31, 2026 to finish eligible water, sewer, or broadband infrastructure projects
- ❑ FAQ 6.14 helps to define stormwater projects that are eligible for reimbursement; projects should include water quality benefits consistent with goals of Clean Water Act
- ❑ FAQ 6.15 Recipients may use funding for road repairs and upgrades directly related to eligible water and sewer projects
- ❑ FAQ 6.17 Davis-Bacon Act do not apply to projects funded solely by ARPA

U.S. Treasury Department

- ❑ The U.S. Treasury is responsible for the oversight of this funding
- ❑ Interim Final Rule published on May 10th

<https://home.treasury.gov/policy-issues/coronavirus/assistance-for-state-local-and-tribal-governments/state-and-local-fiscal-recovery-funds>

- ❑ Expect that guidance and FAQ's will be updated frequently throughout the year by Treasury
- ❑ Failure to comply with restrictions on use contained within the guidance will result in recoupment of funds by the U.S. Treasury

Treasury Reporting Requirements – NEU's

- ❑ Non-entitlement Governments (NEU)
 - NEU reporting portal and user guide released on 12/14/21
 - Account set up is required in the portal prior to submission of first project and expenditure report on 4/30/22
 - Recipients will need to confirm their accounts and designate reporting roles
 - Users will be required to register with ID.me if they were not previously registered

Treasury Reporting Requirements – NEU's

- Will be required to submit annual project and expenditure report to Treasury until 12/31/26
- Initial report will cover activity from date of award to March 31, 2022 and is due on April 30, 2022
- First report should include the following:
 - NEU Recipient Number (unique identification code; assigned by the state to the NEU as part of the request for funding)
 - Copy of signed award terms and conditions agreement
 - Copy of signed assurances of compliance with Title VI of Civil Rights Act of 1964
 - Copy of actual budget documents validating top-line budget total provided to state as part of the request for funding (should be the same as submitted to the state)
- After the initial report discussed above, reports will be required to be submitted annually by April 30th each year

Reporting Requirements – Project & Expenditure Report

- Project and Expenditure Reports
 - Filed quarterly for states, counties, and metropolitan cities that receive more than \$10 million in FRF
 - Initial report will cover 3 quarters & due on 1/31/22
 - Subsequent reports due on the month end after each calendar year end quarter
 - Filed annually for counties and metropolitan cities that receive less than \$10 million FRF and NEU's
 - First annual report due on 4/30/2022 for the period from award date to 3/31/2022
 - Subsequent reports must be submitted annually by April 30th each year

Reporting Requirements – Project & Expenditure Report

- ❑ Certain programmatic data & project demographic data will be delayed in reporting
 - Collection efforts will begin in January 2022 or April 2022
- ❑ Required to report by expenditure category and projects
- ❑ Expenditure Category (EC) is a coding system to track how funding is used and is used to identify where additional programmatic data is required
 - Appendix 1 of the Treasury Compliance & Reporting Guidance lists 66 expenditure categories
 - EC's with a * require evidence-based intervention reporting
 - EC's with a ^ must report on whether projects are primarily serving disadvantaged communities

Reporting Requirements – Project & Expenditure Report

- Project Reporting
 - Defined as closely related activities toward a common purpose/goal
 - Each project must align to one Expenditure Category
 - Will be required to report on project status (not started; less than 50%; 50% or more; and completed)

Reporting Requirements – Project & Expenditure Report

- ❑ Other Required Reporting
 - Project inventory
 - Project demographic distribution – funding in economically disadvantaged communities
 - Civil rights compliance
 - Subawards – obligations & expenditures \geq \$50,000
 - Programmatic Data

U.S. Treasury – Recovery Plan Performance Report

- ❑ Recovery Plan Performance – strategic plan on how you will spend the money
 - Required for states, counties and metropolitan cities with more than 250,000 in population
 - Will include key performance indicators as well as programmatic data
 - Initial report due August 31st
 - Will be submitted annually thereafter

Single Audit Requirements

- ❑ Federal funding is being provided under this Act
- ❑ CFDA number 21.027 has been assigned to the Coronavirus State and Local Fiscal Recovery Funds
- ❑ Reporting required based upon when the expenditures were incurred not when cash has been received
- ❑ Single Audit will need to be completed if total federal funds (including Coronavirus Local Fiscal Recovery Funds) are over the \$750,000 threshold

Single Audit Requirements (continued)

- ❑ Subject to the provisions of Uniform Administrative Requirements, Cost Principles, and Uniform Guidance including the cost principles and restrictions on general provisions for selected items of cost.
- ❑ If FRF are the only federal funds received in 2021, should consider a program specific audit instead of a single audit if they qualify
 - Can only have one CFDA number
 - Permission must be obtained from grantor (federal/state)

State, Local, Tribal, and Territorial Fiscal Recovery, Infrastructure, and Disaster Relief Flexibility Act (S.B. 3011/ H.R. 5735)

- ❑ Pending legislation that recently passed the Senate and is pending in the House of Representatives with strong bipartisan support (126 co-sponsors as of 12/15)
- ❑ The Act would permit recipients to spend up to \$10 million in the lost revenues or the government services expenditure category even if they do not have lost revenue.
- ❑ The Act would permit up to \$10 million or 30% of a recipient's FRF money, whichever is more, on an expanded list of infrastructure projects including roads or bridges and CDBG eligible projects.
- ❑ Expenditures related to disaster recovery would be permitted.

Questions or Assistance Needed Contact Us Below

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