

American Rescue Plan Act Funded Projects and Expenses

November 15, 2021

The American Rescue Plan Act

On March 11 2021, the President signed the American Rescue Plan Act (“ARPA” or the “Act”). ARPA provides billions of dollars in aid to state, local, and tribal governments. In Massachusetts, local governments will receive \$3.4 billion of the federal Coronavirus State and Local Fiscal Recovery (CSLFR) Funds provided for under ARPA. Allocation of CSLFR Funds, and the accounting and reporting of the same consistent with ARPA’s requirements, will require substantial time and consideration in the years to come. An ARPA funding recipient may use CSLFR Funds to cover eligible costs incurred between March 3, 2021 and December 31, 2024, and ARPA’s reporting requirements will continue through March 2027. Moreover, ARPA funding recipients must keep records of the use of these funds for at least five (5) years from the recipient’s last ARPA-funded expenditure.

I. Allocation of ARPA Funds

Local governments may use ARPA funds to respond to the public health emergency brought upon by COVID-19 and the negative economic impacts of the COVID-19 public health emergency, to support workers performing essential services, to recover lost revenue since the onset of the COVID-19 public health emergency, or to make necessary investments in water, sewer, and broadband infrastructure. Public Law 117-2, Section 603(c)(1). The U.S. Department of Treasury is overseeing the distribution and administration of ARPA funds, and has issued an [Interim Final Rule](#)¹ that further defines what it will deem eligible uses of ARPA funds consistent with the broad categories of eligible uses outlined in the Act.

It is important to observe, when considering an ARPA expenditure, the many caveats and conditions associated with the various eligible uses. For example, payroll expenses must be for employees mitigating or responding to the effects of the COVID-19 public health emergency, and support for households or small businesses must be provided to those households and small businesses that were actually negatively economically impacted by the pandemic. Recipients will be required to report their eligible uses of ARPA funding quarterly, and we recommend recipients compile some type of data or documentation, such as applications or staff assignments, that demonstrate the manner in which each ARPA expenditure complies with all of the conditions of the IFR’s eligible uses. While ARPA funding recipients have broad discretion to determine how to allocate its ARPA funding among the many eligible and worthy uses, the overarching goals of the Act and this relief funding must be served with each expenditure.

¹ The text of the Interim Final Rule can be found beginning at page 129 of the document provided at this link. The first 128 pages of this document provide “Supplementary Information” explaining the thought-process and intent of the Interim Final Rule, and provide additional guidance and insight with respect to the use of ARPA Funds.

II. Eligible Uses

Below we have provided a list of eligible uses under the IFR. It is important to note this is a summary list, and some items have been combined or summarized for conciseness and ease of reference. When actually relying on a listed eligible use or designing an ARPA-funded program, it is critical the full text of the IFR, and perhaps legal counsel, be consulted. The eligible uses of ARPA funds are:

- **Responding to the COVID-19 public health emergency and its negative economic impacts:**
 - Expenses related to vaccination programs and clinics and COVID-19 testing, monitoring, and contact tracing (e.g. staff, equipment and supplies, facilities, IT, and administrative expenses);
 - COVID-19-related expenses of public hospitals, temporary medical facilities, clinics, congregate care facilities, long-term care facilities, incarceration settings, homeless shelters, and group living facilities;
 - COVID-19- related emergency medical, transportation, and telemedicine expenses;
 - Expenses related to provision and distribution of personal protective equipment, sanitizing products, and supplies and equipment (including ventilation upgrades) to mitigate the risk of spreading COVID-19;
 - Expenses for quarantining and isolating individuals, including providing paid sick and paid family and medical leave to public employees; and
 - Expenses related to the treatment of long-term symptoms, mental health treatment, and behavioral health services related to COVID-19.
- **Payroll and covered benefits for:**
 - Public safety, public health, human services, and similar employees to the extent the employee's time is spent mitigating or responding to COVID-19; and
 - New employees hired to increase staffing to the level of employees employed as of January 27, 2020.
- **Unemployment Benefits and Support:**
 - Assistance and job training for individuals who are unemployed or underemployed; and
 - Contributions to the state unemployment insurance trust fund up to the level required to restore the fund to its balance as of January 27, 2020.
- **Addressing Negative Economic Impacts:**
 - Support to small businesses and nonprofits (e.g. loans, grants, in-kind assistance, technical assistance, and other services) that responds to the negative economic impacts of COVID-19;
 - Assistance to households, including cash assistance programs, that responds to the negative economic impacts of COVID-19; and
 - Aid to impacted industries, such as tourism, travel, hospitality, and other impacted industries, that responds to the negative economic impacts of COVID-19.
- **Improvements to Public Health or Economic Relief Programs:**
 - Administrative costs associated with these services and programs, including data reporting and IT improvements.

- **Lost Revenues:**

- The provision of government services in an amount equal to the reduction in the recipient's lost revenue in fiscal years 2020 to 2023.
 - "Government services" include "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."
 - "Government services" does not include payment of and expenses associated with outstanding indebtedness, satisfaction of settlement agreements or judgments, or replenishment of financial reserves.
- Revenue losses are deemed to be the difference between "Counterfactual" or estimated general revenue for a given fiscal year less actual general revenue for that fiscal year, where estimated general revenue is established as follows:
 - General revenue for the last full fiscal year prior to the COVID-19 pandemic (designated as having begun January 27, 2020) multiplied by average annual growth for the three fiscal years preceding the COVID-19 pandemic to the power of the number of years since the end of the last full fiscal year before the COVID-19 pandemic.
 - If average annual growth for the three fiscal years preceding the COVID-19 pandemic was less than 4.1%, the recipient may use 4.1% as its average annual growth.
 - **This is a very brief summary of the lost revenue calculation, and we recommend communities consult with their auditor for a complete understanding of this aspect of the IFR.**

- **Infrastructure Investments:**

- Investments in water, sewer, and broadband infrastructure
- Water and sewer projects must be eligible under certain sections of the Federal Water Pollution Control Act or Safe Drinking Water Act.
- Broadband infrastructure must be designed to reliably provide a certain level of service (e.g. 100 Mbps upload/download speed).

- **Miscellaneous:**

- Providing premium pay to essential workers or grants to certain employers that provide premium pay to essential workers, with priority of premium pay provided to low- and moderate-income workers;
- Survivor's benefits for family members of those who have died of COVID-19; and
- Programs, social services, educational improvements, or other assistance to disproportionality impacted populations, meaning those in "Qualified Census Tracts."²

² "Any census tract which is designated by the Secretary of Housing and Urban Development and, for the most recent year for which census data are available on household income in such tract, either in which 50 percent or more of the households have an income which is less than 60 percent of the area median gross income for such year or which has a poverty rate of at least 25 percent." 26 U.S.C. 42(d)(5)(B)(ii)(I).

III. Recoupment

Misuse of ARPA funds could subject the funding recipient to recoupment. The Treasury Department will be monitoring use of ARPA funds and enforcing the Act's and the IFR's requirements with respect to the use of ARPA funds through 2026. While the precise level of oversight and standards by which Treasury enforces these requirements is currently unknown, Treasury has outlined in the IFR the process by which it will seek to recoup improperly spent ARPA funds. Therefore, we strongly recommend strict compliance with the eligible uses outlined in the IFR.

In general, any ARPA funds used in violation of the Act or the IFR will be subject to recoupment **prior to December 31, 2026**. Recoupment may occur if Treasury finds or is notified, by any person, that an ARPA funding recipient has used CSLFR Funds in violation of the eligible use and lost revenue provisions of the IFR. The primary means by which Treasury will identify misuses of ARPA funds is through reporting provided by recipients. Recipients will be required to report ARPA funding expenditures quarterly, however, Treasury will also consider information from other sources, including members of the public.

Where Treasury identifies a misuse of ARPA funds, it will send the recipient a Notice of Violation. The Notice of Violation will identify and explain the amount of ARPA funding it has deemed misused and subject to recoupment. A recipient issued a Notice of Violation may request reconsideration of any amounts identified in the Notice of Violation. The recipient may provide additional information concerning the use of ARPA funds or its calculation of its tax revenue, and Treasury thereafter will consider whether the Notice of Violation was properly issued and the amount appropriate for recoupment, if any. A request for reconsideration must be submitted with **60 calendar days of the Notice of Violation**, and Treasury will respond with a decision to affirm, withdraw, or modify the Notice of Violation within **60 calendar days of receipt of the request for reconsideration**. Finally, payment of amounts subject to recoupment must be made within 120 calendar days of the initial Notice of Violation, if no request for reconsideration is made, or 120 calendar days of the final Notice of Violation if reconsideration is requested.

This eUpdate is designed to provide a broad overview of the ARPA funding process and eligible uses, but should not be relied on exclusively to make ARPA funding decisions. As noted above, even if a use is generally eligible, the manner in which the expenditure is made must still comply with all of the terms and conditions of ARPA funding, and must be properly reported to Treasury. If you have any questions concerning whether a particular use is eligible or have been issued a Notice of Violation, please do not hesitate to contact your KP Law contact at (617) 556-0007.

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