

Recent Treasury Guidance Offers New Flexibility Concerning ARPA Funds September 12, 2024

Recent guidance from the U.S. Department of the Treasury (“Treasury”) offers new flexibility to cities and towns with regard to American Rescue Plan Act (“ARPA”) funds, which funds must be “obligated” by December 31, 2024 and expended no later than December 31, 2026. As you are aware, municipalities and counties in Massachusetts received a total of \$3.4 billion in ARPA funding through ARPA’s Coronavirus Local Fiscal Recovery Fund. An important recent Treasury ruling concludes that a municipal interagency agreement, i.e., an agreement between two municipal entities in the same municipality, will constitute an obligation of funds sufficient to meet the statutory requirement.

With the exception of ARPA funds allocated through the 5 functional counties (Norfolk, Bristol, Plymouth, Barnstable, Dukes County, and Nantucket), municipal recipients of ARPA funds have full discretion to allocate ARPA funds pursuant to the rules established by Treasury. One of those rules, 31 CFR 35.3, which Congress partially codified, establishes the requirement that all ARPA funds be “obligated” by December 31, 2024 and defines “obligation” to mean:

an order placed for property and services and entering into contracts, subawards, and similar transactions that require payment. An obligation also means a requirement under federal law or regulation or provision of the award terms and conditions to which a recipient becomes subject as a result of receiving or expending funds. (Emphasis added).

This definition has been understood to mean that municipal interagency agreements (e.g., an agreement between a Select Board and a Parks Department) would be insufficient to obligate ARPA funds. The typical understanding is that such agreements are likely to be unenforceable as an entity cannot, in theory, enter into a binding contract with itself. However, Treasury recently concluded that such agreements are sufficient to “obligate” ARPA funds, so long as any such agreement does not state it is unenforceable and otherwise complies with certain rules established by Treasury.

For municipalities with internal projects that would qualify for ARPA funding but are unlikely to be concluded by December 31, 2024, interagency agreements now provide a significant tool to “obligate” those ARPA funds. An interagency agreement executed prior to December 31, 2024 that meets the requirements of applicable Treasury rules will, in effect, extend until December 31, 2026 the spending deadline for the municipal project at issue.

If you have questions about how to structure a municipal interagency agreement, or any other ARPA questions, please contact Attorney Michael D’Ortenzio (mdortenzio@k-plaw.com) at 617-654-1779 or Attorney Lauren Goldberg (lgoldberg@k-plaw.com) at 617-654-1754.

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