



U.S. Department of The Treasury Publishes Final Rule for State and Local ARPA Fund Recipients

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On Thursday, January 6, the United States Department of the Treasury published its Final Rule regarding the use and spending of the \$350 billion Coronavirus State and Local Fiscal Recovery Funds made available to state and local governments under the American Rescue Plan Act (ARPA) (“ARPA Funds”). The Treasury published its Interim Final Rule for the use of ARPA Funds in May of 2021, and had since received over 1,500 public comments. The Final Rule addresses many of these comments and makes several significant changes to the provisions of the Interim Final Rule.

Generally, the Final Rule broadly expands upon the uses originally authorized under the Interim Final Rule and makes several key clarifications. The Final Rule will go into effect on April 1, 2022; however, recipients may act according to the Final Rule now without fear of the Treasury enforcing the more restrictive Interim Final Rule. All ARPA Funds must be obligated by December 31, 2024 and spent by December 31, 2026.

What follows are key highlights of the Final Rule based on an initial review in light of issues that have been important to ARPA recipients to date.

- **\$10 Million Lost Revenue Standard Allowance.** Recipients of ARPA Funds may now elect to claim a “standard allowance” for lost revenue up to \$10 million or their entire fund allocation, which may encompass their entire award amount. The impact of this change is that recipients now have much broader latitude to allocate ARPA Funds under the “lost revenue” category, which permits recipients to utilize ARPA Funds for the “provision of government services.” Consistent with the guidance under the Interim Final Rule, the term “government services” includes a wide variety of eligible uses, including “pay-go” infrastructure and operating expenses. It is important to note that the Final Rule maintains global

restrictions on the use of ARPA Funds that continue to the “lost revenue” category. These restrictions are discussed under #8 below.

- **Subrecipient vs. Beneficiary.** For those recipients considering a transfer for ARPA Funds to a third party, the Final Rule clarifies the important distinction between “subrecipients” and “beneficiaries,” generally providing that where ARPA Funds are intended to “directly benefit” the third party that such third party is a “beneficiary.” This distinction is critical for recipients to consider when transferring ARPA Funds to third parties as the Final Rule provides that beneficiaries are “not subject to monitoring and reporting requirements,” whereas sub-recipients (and in turn recipients) will be responsible for these monitoring and reporting requirements.
- **Capital Expenditures.** The Final Rule authorizes capital expenditures that support eligible COVID-19 public health or economic responses. For example, under this category, recipients may improve or construct or support the improvement and construction of affordable housing, childcare facilities, schools, and hospitals. The Final Rule also permits recipients to use ARPA Funds to support other capital projects that are consistent with uses permitted under ARPA, including developing outdoor spaces to support impacted businesses or industries.
- **Expanded Uses for Impacted Communities.** Under the Final Rule, the Treasury has expanded its definition of “impacted” or “disproportionately impacted” communities, including making affordable housing, childcare, and early learning services eligible in all impacted communities and making community development and neighborhood revitalization activities eligible for disproportionately impacted communities.
- **Broader support for Government Employment.** The Final Rule allows for a wider variety of employment incentives, including incentives to hire government employees at salaries above pre-pandemic baselines, making ARPA Funds available to employees that experienced pay cuts or furloughs during

the COVID-19 health emergency, and providing other retention incentives to employees. As with other employment-based use of ARPA Funds, it remains advisable that recipients consider the use of ARPA Funds for these purposes in light of state and federal labor laws.

- **Expansion of Premium Pay Eligibility.** With respect to providing premium pay to eligible workers for their service during the COVID-19 health emergency, the Final Rule adds “employees that are not exempt from the Fair Labor Standards Act (FLSA)” as a class of employees that may receive premium pay under ARPA without the need for a written justification from the recipient. According to the guidance accompanying the Final Rule, the addition of this class of employees will expand the aggregate number of government employees who may be eligible to receive premium pay without the need for a written justification. Consistent with the Interim Final Rule, the Final Rule also maintains the ability for recipients to provide a written justification to Treasury for any disbursement of premium pay to an employee that is not otherwise eligible based on the employee’s salary or status under the FLSA.
- **Broader Authorization for Water, Sewer, and Broadband Infrastructure Improvements.** The Final Rule broadens eligible water, sewer, and broadband infrastructure improvements, including lead remediation and stormwater management projects. Under the Interim Final Rule, the Treasury limited eligible water and sewer infrastructure improvements to those authorized under the Environmental Protection Agency’s Clean Water State Revolving Fund or Drinking Water State Revolving Fund. The Final Rule allows investment in water or sewer infrastructure improvements that are responsive to identified needs of the recipient community, including projected population increases within the population, and provide cost-effective means for meeting that need. Water and sewer infrastructure projects meeting the EPA fund standards continue to be authorized under the Final Rule.

- **Restrictions on ARPA Fund Uses.** Under the Final Rule, restrictions on uses of ARPA Funds remain largely unchanged. The Final Rule does, however, resolve one ambiguity present in the Interim Final Rule by expressly prohibiting the use of ARPA Funds for debt-service under all eligible use categories—including the investments in water, sewer, and broadband infrastructure. The Final Rule also clarifies that recipients may not use ARPA Funds for a program, service, or capital expenditure that conflicts with or otherwise contravenes the statutory purposes of ARPA. Finally, ARPA Funds may not be used in a manner that violates certain conflict-of-interest requirements, including self-dealing or violations of ethics rules.
- **Clarification of Administrative Costs.** The Final Rule clarifies and confirms the Interim Final Rule's guidance that administrative costs of complying with the Final Rule are an eligible use of ARPA Funds provided that the costs are "reasonable and allocable as outlined in 2 CFR 200.404 and 2 CFR 200.405."
- **Federal Procurement Requirements.** Finally, the Final Rule clarifies that recipients must comply with federal procurement laws as established under the Office of Management and Budget's Uniform Administrative Requirements under 2 CFR 200, Cost Principles, and Audit Requirements for Federal Awards. Adherence to these requirements requires careful analysis of the interplay between state and federal law.

For help navigating the ARPA maze, please contact [Michael Elliott](#), [Jason Halligan](#), [Donnie Warner](#), [Amy Condaras](#), [Beau Zoeller](#), [Emmett Kelly](#), David Rogers, or any attorney with Frost Brown Todd's [Public Finance](#) practice group, or [Thad Boggs](#) with Frost Brown Todd's [Government Services](#) Practice Group.

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