EXECUTIVE SUMMARY:

OVERVIEW OF U.S. TREASURY FINAL RULE FOR ARPA FISCAL RECOVERY FUNDS FOR COUNTIES

JUNE 2022

OVERVIEW

In March of 2021, the American Rescue Plan Act of 2021 (ARPA) authorized the $350 billion State and Local Coronavirus Fiscal Recovery Fund (Recovery Fund), with $65.1 billion in direct, flexible aid to every county government in America.

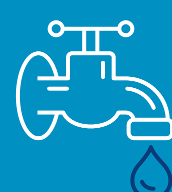
On January 6, 2022, the U.S. Department of Treasury (Treasury) released the Final Rule for the Recovery Fund. Since the Recovery Fund was established, the National Association of Counties (NACo) has worked closely with Treasury officials to ensure county recommendations and priorities are included in the Final Rule, such as increased flexibility and allocation of "revenue loss" for general county services.

Recovery funds may be used to invest in four broad categories:

REPLACE PUBLIC SECTOR LOST REVENUE

RESPOND TO PUBLIC HEALTH & NEGATIVE ECONOMIC IMPACTS

PROVIDE PREMIUM PAY FOR ESSENTIAL WORKERS



INVEST IN BROADBAND, SEWER AND WATER INFRASTRUCTURE

TOP 10 HIGHLIGHTS OF THE RECOVERY FUND FINAL RULE FOR AMERICA'S COUNTIES

1.

Final Rule went into effect on April 1, 2022

2.

Allows counties to use up to $10 million standard allowance, or an enhanced 5.2 percent growth factor under Treasury's formula, as revenue loss for the provision of general government services

3.

Clarifies eligible use of funds for capital expenditures and requires written justification for projects above $1 million cost

4.

Presumes certain populations were "impacted" and "disproportionately impacted" by the pandemic and therefore are eligible to receive a broad range of services and support which was designed to minimize administrative burden

5.

Streamlines options for premium pay by broadening the share of eligible workers who can receive premium pay

6.

Authorizes re-hiring of local government staff, either at or above pre-pandemic levels

7.

Allows Recovery Funds to be used for modernization of cybersecurity, including hardware and software, as it relates to broadband infrastructure investments

8.

Broadens water and sewer projects to include stormwater, culvert repair, dam and reservoir rehabilitation

9.

Recovery Funds may be deposited into interest-bearing accounts, with earned interest allowed for general county use

10.

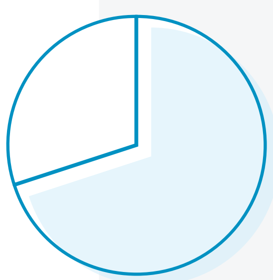
Recovery Funds shall comply with federal Uniform Guidance or 2 CFR Part 200

Scan to access

NACo's full analysis of Treasury's Final Rule for the ARPA Recovery Fund and key provisions for county officials

PUBLIC SECTOR REVENUE: FUNDAMENTALS OF REVENUE LOSS ALLOWANCE

Under the Final Rule, Treasury made substantial improvements championed by NACo that provide increased flexibility for counties. Revenue loss funds may be used to pay for most county government services while also providing fiscal relief for counties.



2,137 counties (70 percent)

are now eligible to invest the entirety of their Recovery Fund allocation for general government services

DEFINING REVENUE LOSS

Under the Final Rule, counties are required to make a **one-time decision** to calculate revenue loss according to the formula outlined in the Final Rule **or** elect a "standard allowance" of up to $10 million to spend on government services. The option to make this one-time decision was provided during the April 30, 2022 reporting deadline.

1. **Counties may elect up to $10 million of their total Recovery Fund allocation** to consider as revenue loss and use on general government services through the period of performance.
    - Counties choosing the $10 million standard allowance **are not required** to complete Treasury's revenue loss formula calculation. Under this option, Treasury presumes that those counties lost revenue due to the public health emergency
    - **Simplifies reporting requirements for counties** using the $10 million standard allowance
    - **2,137 counties (70 percent) are now eligible to invest the entirety of their Recovery Fund allocation** for general government services
2. **Counties may still calculate their revenue loss** on an **annual basis** according to the updated formula under the Final Rule.
    - Revenue loss default growth rate was **increased from 4.1% under the Interim Final Rule to 5.2% under the Final Rule**
    - Counties may calculate revenue loss on a fiscal year **OR** calendar year basis, *but are required to choose and stay with one option*
    - General revenue does not include utility revenue and liquor store revenue, *although these may be included at the discretion of the county*

ELIGIBLE USE OF FUNDS

Counties may use Recovery Funds for the provision of government services up to the amount of revenue loss (either the $10 million standard allowance, or the amount of revenue loss determined using Treasury's formula each year).

Government services is the most flexible eligible use category and includes any service typically provided by a government *(unless Treasury has stated otherwise as outlined below).* Common examples of general services include, but are not limited to:

- Construction of schools and hospitals
- Road building and maintenance and other infrastructure
- General government administration, staff and administrative facilities
- Environmental remediation
- Police, first responders and other public safety services (including purchase of fire tracks, police vehicles and other equipment)

INELIGIBLE USE OF FUNDS

Ineligible uses of revenue loss dollars and other limitations include:

- Extraordinary contribution to a pension fund
- Debt service payment
- Rainy day or reserve account
- Settlement agreement, judgment, consent decree or judicially confirmed debt
- Activity that conflicts with COVID-19 mitigation practices in line with the U.S. Centers for Disease and Control's (CDC) guidance and recommendations
- Violations of Awards and Terms and Conditions or conflict of interest under the federal Uniform Guidance

RESPONDING TO PUBLIC HEALTH & NEGATIVE ECONOMIC IMPACTS

Counties may use Recovery Funds to respond to a broad range of public health and negative economic impacts of the pandemic for households, communities, businesses, nonprofits and the public sector.

The eligible use category to respond to public health and negative economic impacts includes several sub-categories, including:

- Public health
- Assistance to households
- Assistance to small businesses
- Assistance to nonprofits
- Aid to impacted industries
- Public sector capacity

To identify eligible uses of funds in this category, as outlined by Treasury, counties shall:

1. Identify a public health or negative economic impact on an individual, household, business, non-profit or other entities
2. Design a program that responds to that impact and is both **reasonable** and **proportional**

Beyond the steps outlined above, counties also have broad flexibility to:

1. Identify and respond to other pandemic impacts
2. Serve other populations that were impacted beyond those outlined on page 7 of this executive summary

Public Health

1. **Covid-19 Mitigation and Containment:** A very broad range of services and programming that are needed to contain COVID-19, including vaccination and testing programs and other COVID mitigation tactics
2. **Medical Expenses:** Expenses to households, medical providers or others that incurred medical costs due to the pandemic
3. **Behavioral Healthcare:** A broad range of prevention, treatment, harm reduction and recovery services that may be needed to meet mental health, substance use and other behavioral health needs
4. **Prevent and Respond to Violence:** Responses to communities that experienced an increase in violence, particularly gun violence, due to the pandemic

Negative Economic Impacts

The Final Rule recognizes that the COVID-19 pandemic has caused broad-based impacts that have affected communities, households, small businesses and nonprofits. To ensure these entities receive adequate support, the Final Rule identifies and describes them as either **"impacted"** or **"disproportionately impacted,"** which are then presumed eligible for a broad range of services that respond to the impact they experienced.

Included on page 7 of this executive summary is an overview of how Treasury presumes these populations are either "impacted" or "disproportionately impacted" and what eligible services counties may provide with the help of Recovery Funds (outside of the revenue loss category).

Negative Economic Impacts: **Assistance to Households**

Counties may use funds to respond to negative economic impacts of the pandemic on ***households and communities.***

IMPACTED HOUSEHOLDS

Impacted households are those that have experienced an ***impact*** *from the COVID-19 pandemic.*

Treasury presumes the following are **impacted households:**

- Low-and-moderate income households (at or below 300% of Federal Poverty Guidelines (FPG) or 65% of Average Middle Income (AMI)) (i.e. $65,880)
- Households experiencing unemployment or food/housing insecurity
- Households that qualify for certain federal programs, such as CHIP and childcare subsidies **(NEW)**

Eligible uses include:

- Food assistance
- Re-employment and job training
- Rent, mortgage or utility assistance
- Cash assistance
- Health insurance coverage expansion
- Paid sick & family leave
- Financial services for unbanked and underbanked
- Affordable housing development and permanent supportive housing
- Childcare, early learning & addressing learning loss for students

DISPROPORTIONATELY IMPACTED HOUSEHOLDS

Disproportionately impacted households are those that have experienced a ***disproportionate impact*** *from the COVID-19 pandemic.*

Treasury presumes the following are **disproportionately impacted households**:

- Low-income households, defined as those at or below 185% of FPG or 40% of AMI (i.e. $40,626) **(NEW)**
- Households located in a Qualified Census Tract
- Households receiving services from Tribal governments
- Households residing in the U.S. territories or receiving services from territorial governments **(NEW)**
- Households that qualify for certain federal programs, such as TANF, SSI and WIC **(NEW)**

Eligible uses include (in addition to impacted households):

- Addressing health disparities (i.e. community health workers, lead remediation, health facilities)
- Investments in neighborhoods to promote health outcomes
- Addressing education disparities (i.e. enhanced funding to high-poverty schools & educational facilities)
- Improvements to vacant and abandoned property
- Housing vouchers and assistance relocating to neighborhoods with higher economic opportunity

Negative Economic Impacts: **Assistance to Small Businesses**

Treasury defines a small business, *in general, as having no more than 500 employees, is independently owned and operated and is not dominant in its field of operation.*

IMPACTED	DISPROPORTIONATELY IMPACTED
▪ Decreased revenue or gross receipts ▪ Financial insecurity ▪ Increased costs **(NEW)** ▪ Capacity to weather financial hardship ▪ Challenges covering payroll, rent or mortgage and other operating costs ▪ Other reasonable factors determined by the county	▪ Small businesses operating in Qualified Census Tract ▪ Small businesses operated by Tribal governments or on Tribal lands ▪ Small businesses operating in U.S. territories
Treasury outlines potential types of assistance for small businesses under this specific category.	*Treasury outlines potential types of assistance for small businesses under this specific category.*
Eligible uses to support **impacted** small businesses: ▪ Loans or grants to mitigate financial hardship (i.e. support payroll and benefits, costs to retain employees, mortgage, rent, utility and other operating costs) ▪ Technical assistance, counseling or other services to support business planning ▪ **WARNING:** For loans, please refer to Treatment of Loans section for additional Treasury guidance	Eligible uses to support **disproportionately impacted** small businesses: ▪ Rehabilitation of commercial properties, storefront improvements and façade improvements ▪ Technical assistance, business incubators and grants for start-up or expansion costs for small businesses ▪ Support for microbusinesses, including financial, childcare and transportation costs

Negative Economic Impacts: **Assistance to Nonprofits**

***Treasury defines a nonprofit** as 501(c)(3) (charitable) and 501(c)(19) (veteran) tax-exempt organizations.*

IMPACTED

- Decreased revenues
- Financial insecurity
- Increased costs (i.e. uncompensated services)
- Capacity to weather financial hardship
- Challenges covering payroll, rent or mortgage and other operating costs

Eligible uses include:

- Loans or grants to mitigate financial hardship
- Technical or in-kind assistance or other services that mitigate negative economic impacts of the pandemic

DISPROPORTIONATELY IMPACTED

- Nonprofits operating in Qualified Census Tracts
- Nonprofits operating in Tribal governments
- Nonprofits operating in U.S. territories

Eligible uses include:

- Responses that are related and reasonably proportional to addressing disparities that led to disproportionate impacts

***Treasury defines a nonprofit** as 501(c)(3) (charitable) and 501(c)(19)(veteran) tax-exempt organizations.*

Negative Economic Impacts: **Aid to Impacted Industries**

*Counties may use Recovery Funds to provide assistance to impacted industries like **travel, tourism and hospitality** that faced substantial pandemic impacts.*

THE FINAL RULE STATES THAT AN INDUSTRY MAY BE DESIGNATED AS IMPACTED:

1. If the industry is in the travel, tourism or hospitality sector
2. If the industry is outside of the travel, tourism or hospitality sectors, the industry is presumed impacted if:
    - The industry experienced at least **8 percent employment loss from pre-pandemic levels, or**
    - The industry is experiencing **comparable or worse economic impacts as the travel, tourism and hospitality industries as of the date the Final Rule was published (January 6, 2022)**

Beyond the above two criteria, counties also have flexibility to define other impacted industries.

Negative Economic Impacts:
Restore & Support Public Sector Capacity

*Counties may use Recovery Funds to restore and bolster public sector capacity, with the goal of supporting the **public sector's ability to deliver critical COVID-19 services.***

ELIGIBLE USES:

1. **Cover payroll and covered benefits** for existing public safety, public health, health care, human services and similar employees of a recipient government, as related and proportional to their time spent on COVID-19 response and mitigation
2. **Rehire public sector staff to pre-pandemic levels <u>OR</u> above pre-pandemic levels** with a 7.5 percent growth allowance
3. Support and retain public sector workers:
    - Provide additional funding for employees who **experienced pay reductions or were furloughed**
    - Maintain current compensation levels to prevent layoffs
    - Provide **worker retention incentives, including reasonable increases in compensation** (shall be additive to an employee's regular compensation and shall be less than 25 percent of the rate of base pay for an individual and no more than 10 percent for a group)
    - **Cover administrative costs** associated with hiring, support and retention programs
4. Provide effective service delivery including **cleanup of county services, such as court case backlogs,** program evaluations and technology upgrades

INVEST IN CAPITAL EXPENDITURES

Counties may use Recovery Funds for capital expenditures that respond to the public health and negative economic impacts of the pandemic.

- Projects must be related to public health and/or negative economic impacts and be **proportional to the pandemic impact identified**

Counties **are required to write a written justification for capital expenditures equal to or greater than $1 million** that explains why a capital expenditure is appropriate and why the proposed capital expenditure is superior to alternatives

- Depending on project size, a county may be required to submit written justification with reporting; *no pre-approval is provided by Treasury*

PROJECTS PRESUMED **ELIGIBLE** BY TREASURY

- Testing labs and equipment
- Emergency operations center & equipment
- Affordable housing
- Childcare facilities
- Schools (for disproportionately impacted communities)
- Primary care health clinics and hospitals (for disproportionately impacted communities)

PROJECTS GENERALLY PRESUMED TO BE **INELIGIBLE** BY TREASURY*

- Construction of **NEW** correctional facilities as a response to an increase in rate of crime
- Construction of **NEW** congregate facilities to decrease spread of COVID-19 in facility
- Construction of convention centers, stadiums or other large capital projects for general economic development or aid to impacted industries

**Except funds used under the revenue loss category*

PREMIUM PAY FOR ESSENTIAL WORKERS

Counties may provide premium pay (up to $13 per hour and capped at $25,000 per individual) to eligible workers performing essential work, either in public sector roles or through grants to third-party employers. Premium pay may be provided retroactively for work performed at any time since the start of the COVID-19 public health emergency on January 27, 2020.

ELIGIBLE WORKERS AND ESSENTIAL WORK

Counties shall undergo the following steps to provide premium pay to eligible workers:

A. Identify an eligible worker, as outlined in the examples to the right

B. Verify that the eligible worker performs essential work, meaning work that may:

   1. Not be performed while teleworking in a residence
   2. Include indirect exposure to COVID-19 through physical handling of items

C. Confirm that the premium pay responds to workers performing essential work during the pandemic. Counties may meet this requirement without providing a written justification in three ways:

   1. Eligible worker earns at or below 150 percent of their state or county's average annual wage, or
   2. Eligible worker is not exempt from Fair Labor Standards overtime rules, or
   3. If the worker does not meet either of the above requirements, the county must submit written justification to Treasury

Examples of Eligible Workers:

- **All county and state employees**
- Staff at nursing homes, hospitals and home-care settings
- Public health, safety and emergency response
- Workers at food production facilities, grocery stores, restaurants and food delivery services
- Janitors and sanitation workers
- Truck drivers, transit staff and warehouse workers
- Childcare workers, educators and school staff
- Social service and human services staff
- Additional sectors designated by recipients (i.e. county)

WATER AND SEWER INFRASTRUCTURE

Counties may use Recovery Funds to make necessary investments in water and sewer infrastructure to address the impacts of deferred maintenance in water systems, the management and treatment of sewage and stormwater and to implement additional resiliency measures needed to address negative impacts of climate change.

The Final Rule aligns eligible projects with those under the Environmental Protection Agency's (EPA) Clean Water State Revolving Fund (CWSRF) and Drinking Water State Revolving Fund (DWSRF) and **expands eligibility for a handful of other water and sewer projects, including stormwater as championed by NACo.**

PROJECTS ELIGIBLE UNDER EPA'S STATE REVOLVING FUNDS

- Construction of publicly owned treatment works
- Decentralized wastewater treatment systems construction, upgrades & repair
- Management & treatment of stormwater or subsurface drainage water
- Water conservation, efficiency or reuse measures
- Reuse or recycling of wastewater, stormwater or subsurface drainage water
- New facilities to improve drinking water quality
- New sources to replace contaminated drinking water or increase drought resilience
- Green infrastructure
- Storage of drinking water
- New community water systems
- Lead service line replacement

ADDITIONAL PROJECTS ELIGIBLE UNDER FINAL RULE

- **Broad suite of additional lead remediation activities,** including lead testing and lead service line replacement (including replacement of faucets, fixtures and internal plumbing in schools and childcare facilities)
- **Additional stormwater infrastructure,** including culvert repair, resizing and removal and replacement of storm sewers
- **Residential wells**
- **Certain dam and reservoir rehabilitation related to drinking water supply**

BROADBAND INFRASTRUCTURE

Recovery Funds may be used to make necessary investments in broadband infrastructure. The Final Rule broadens the set of eligible broadband infrastructure investments that counties may undertake. Flexibility in eligible areas for investment may also complement broadband funding under the Bipartisan Infrastructure Law (BIL) (P.L. 117-58). Recipients may also invest in cybersecurity for broadband infrastructure regardless of service delivery standards.

REQUIREMENTS FOR ELIGIBLE PROJECTS:

1. Identify an Eligible Area for Investment

- Counties **are encouraged** to prioritize projects that are designed to serve locations without access to reliable wireline 100 Mbps download/20 Mbps upload speeds
- Beyond the threshold, counties have broad flexibility to define need in a community. Examples of need include:
  - Lack of access to a reliable high-speed broadband connection
  - Lack of affordable broadband
  - Lack of reliable service

2. Design a Project to Meet High-Speed Technical Standards

- Projects **are required** to meet or exceed 100 Mbps download/100 Mbps upload (with flexibility for 100 Mbps/20 Mbps upgrades in more limited scenarios)

3. Requires Enrollment in Low-Income Subsidy Program

- Must offer the Federal Communications Commission's Affordable Connectivity Program (ACP) or provide access to broad-based affordability program to low-income consumers as part of the project

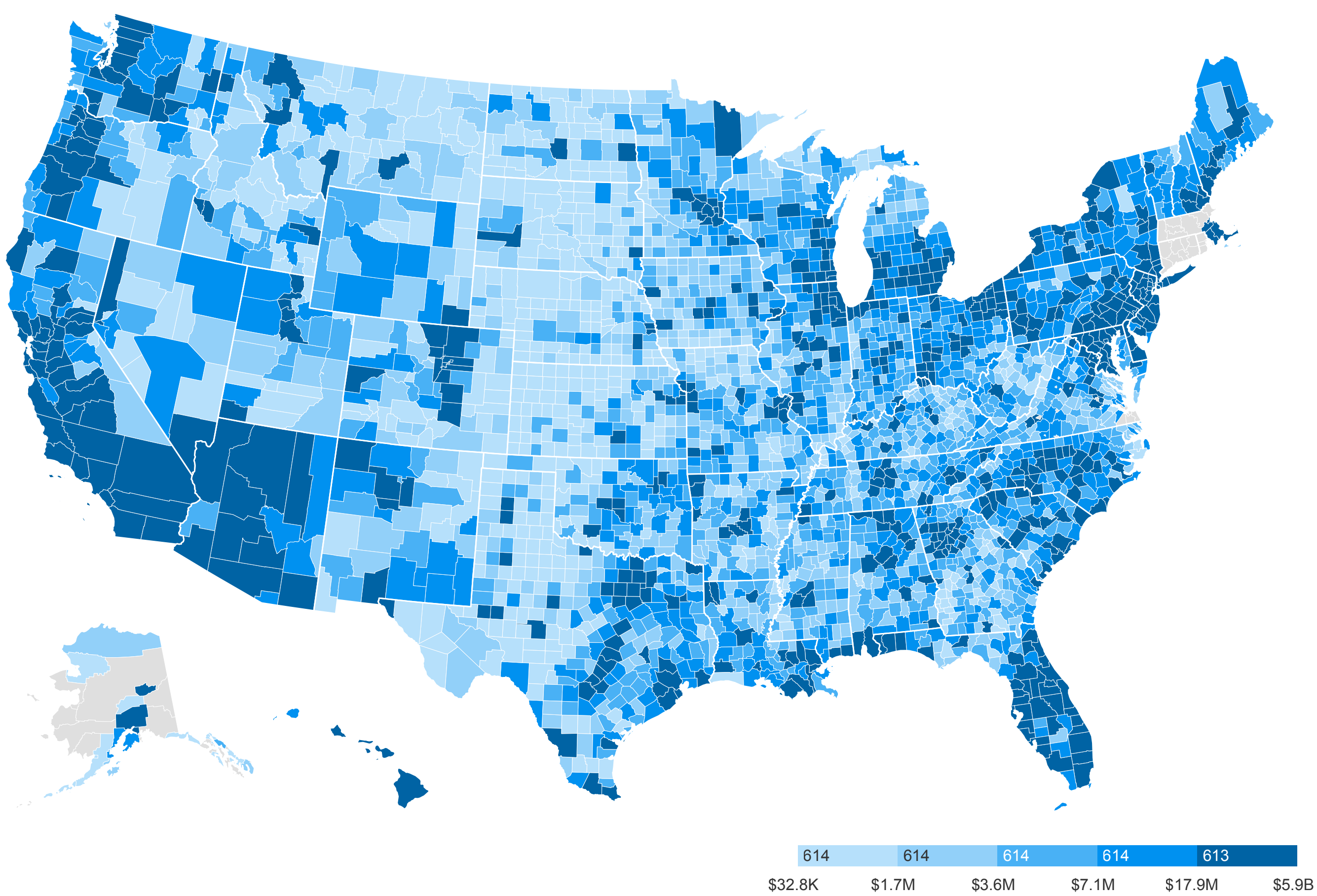
DEFINING INELIGIBLE EXPENSES

The Final Rule maintains the Interim Final Rule's restriction on use with additional clarifications:

1. **Pension Funds:** Final Rule clarifies that prohibition of "extraordinary contributions" to pension funds applies to all recipients *except for Tribal governments.* This does not apply to pension contributions that are part of regular payroll contributions for employees whose wages and salaries are an eligible use of Recovery Funds
2. **Other Restrictions on Debt Service, Rainy Day Funds and Legal Settlements:** Funding debt service, legal settlements or judgements, as well as deposits to rainy day funds or financial reserves
3. **Net Reduction in Revenue (States & Territories only):** Final Rule maintains the prohibition on states and territories for using Recovery Funds to directly or indirectly offset a reduction in net tax revenue
4. **Additional Clarification on Compliance with Other Federal Requirements:** Uses of funds **shall not** undermine COVID-19 mitigation practices in line with CDC guidance. Uses of funds shall not violate federal Uniform Guidance, conflict of interest requirements and other federal laws

TOTAL ALLOCATION FOR COUNTY FISCAL RECOVERY FUNDS

(includes consolidated funds)



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