

American Rescue Plan Act *of* 2021



New Jersey Municipal Association Annual Conference

NJ Dept. of Community Affairs, Division of Local Government Services
Jacquelyn A. Suárez, Director

Permitted Use of Grant Funds

Overview

- Costs incurred on or after March 3, 2021
- Obligated no later than December 31, 2024
- Can be passed through to authorities, fire districts, boards of education, non-profits, and individuals
 - The county or municipality will be responsible for ensuring subrecipients adhere to federal requirements

Replacing Lost Public Sector Revenue

- Calculated via formula in revenue loss calculation worksheet
 - Pre-pandemic projects cannot be used as a baseline
 - May use average annual revenue growth rate in three full fiscal years prior to the public health emergency
- Certain utilities are excluded
 - Water, electric, natural gas, public mass transit
 - Other types of utilities are permitted
- Asset sale debt proceeds excluded as revenue
- Upon receiving LFRF funds, recipients may calculate the reduction in revenue as of December 31, 2020 and deploy funds to address any shortfall
- Recipients are permitted to calculate the extent of reduction in revenue as of December 31, 2020; December 31, 2021; December 31, 2022; and December 31, 2023 to capture lagging effects of the pandemic on revenues
- Can add revenue losses from more than one period for a cumulative revenue loss total for the local unit's maximum that can be allocated toward provision of government services.

Replacing Lost Public Sector Revenue

- LFRF proceeds offsetting COVID-19 revenue losses must be applied toward provision of government services not to exceed amount of revenue loss
 - Cost of providing these government services must be incurred on or after March 3, 2021
 - Maintenance or pay-go funded building of infrastructure (e.g. roads, sidewalks)
 - Cybersecurity
 - Public safety
 - Health or educational services
 - Environmental remediation
- LFRF Funds cannot be used for principal and interest on debt service

Replacing Lost Public Sector Revenue

- Municipality would charge the provision of government services directly to the LFRF grant proceeds, up to the total amount of COVID-19 related revenue loss.
- If a municipality established a deferred charge for COVID-19 related revenue loss, using LFRF funds to offset the cost of providing government services would free up available fund balance to satisfy the deferred charge.
- State cannot mandate use for revenue loss/deferred charge offset because American Rescue Plan Act expressly preempts State law, but we nonetheless strongly recommend.

Water, Sewer & Broadband Infrastructure

- Not limited by amount of COVID-19 revenue loss
- The “period of performance” will run until December 31, 2026
- Recipients may use LFRF funds to cover costs incurred for eligible projects planned or started prior to March 3, 2021
- The Interim Final Rule encourages strong labor standards
 - Project Labor Agreements now permitted for all prevailing wage public works projects over \$5 million excluding land acquisition costs (P.L. 2021, c. 69)

Water & Sewer

- Eligible LFRF water and sewer projects align with those eligible to receive financial assistance through the Environmental Protection Agency's Clean Water and Drinking Water State Revolving Funds
- Projects can include:
 - Lead service line replacement
 - Water and/or sewer mains
 - Supply and treatment infrastructure
 - Stormwater remediation

Broadband Infrastructure

- Targeted toward underserved areas (lacking a wireline connection that reliably delivers minimum speeds of 25 Mbps download and 3 Mbps upload).
- Minimum 100 megabytes per second upload and download speed unless impracticable due to topography, geography, or financial cost.
- Feds encourage prioritizing projects that achieve last-mile connections to households and businesses.
- P.L. 2007, c. 191 (N.J.S.A. 40:9D-1 through 40:9D-8)
 - Municipalities should review law to determine whether broadband project requires Local Finance Board approval

Premium Pay for Essential Workers

- Must prioritize front-line, lower-paid workers with regular public interaction or those in janitorial roles
- Maximum \$13 per hour over and above any wages or remuneration the worker otherwise receives. Not to exceed \$25,000 per eligible worker
- May be used for retro premium pay
- Premium pay that would increase a worker's total pay above 150% of the greater of the State or county annual wage requires specific justification for how it responds to the needs of these workers
 - U.S. Bureau of Labor Statistics Occupational Employment and Wage Statistics
 - County median annual wage is taken to be that of the metropolitan or nonmetropolitan area that includes the county.

Premium Pay for Essential Workers

- The > 150% written justification must be included in the municipality's Project and Expenditure Report to U.S. Treasury
- Although premium pay may be paid retrospectively for work performed at any time since the start of the COVID-19 public health emergency on March 9, 2020, in order to be eligible a municipality must not have incurred the obligation to pay premium pay prior to March 3, 2021.
- Grants to third-party employers with eligible workers performing essential work is permitted

Supporting Public Health Expenditures

- Funding may be allocated toward a broad range of public health needs across COVID-19 containment and mitigation, medical expenses, behavioral health care, and public health resources
- Payroll and covered benefit expenses for public health, healthcare, human services, public safety, and similar employees, are eligible to the extent that these employees spend over 50% of their time on COVID-19 response

Addressing COVID-19 Related Negative Economic Impacts

- Eligible uses would include:
 - Job training
 - Household economic assistance
 - Loans or grants to small businesses and nonprofits
 - Economic assistance to industries disproportionately impacted by pandemic
 - Re-hiring public sector staff up to the government's level of pre-pandemic employment (Jan. 27, 2020)

To avoid duplication of benefits, municipalities are strongly encouraged to utilize the State's existing infrastructure in delivering business assistance (e.g. [EDA's Small Business Emergency Assistance Grant Program](#)).

Small Business Assistance: COVID-19 Negative Economic Impacts

A local unit must maintain adequate documentation supporting each small business loan or grant. U.S. Treasury requires each Project and Expenditure Report to include the following information concerning any small business economic assistance program:

- Brief description of the structure and objectives of assistance program(s).
- Number of small businesses served. If the local unit establishes multiple separate small business assistance programs, break down the number of small businesses by program.
- Brief description of the local unit's approach to ensuring that small business aid responses to a COVID-19 related negative economic impact.

Small Business Assistance: COVID-19 Negative Economic Impacts

Local units should:

- Establish a user-friendly application process where the business applicant documents the COVID-19 related negative economic impact
 - Income tax returns, payroll records and information on other programs from which the business applied for/ was granted economic assistance.
- Assess whether, and the extent to which, there is COVID-19 related economic harm and whether, and the extent to which, the use would respond or address this harm
 - Unrelated uses or those grossly disproportionate to the type or extent of harm experienced would not be eligible
- Consider hiring a grant consultant and/or an independent integrity monitor (cost of which may be LFRF eligible)

Aid to Travel, Tourism, Hospitality or Other Impacted Industries

Project and Expenditure Report must include the following information for programs aiding travel, tourism, and hospitality or other impacted industries (EC 2.11-2.12):

- Brief narrative description of how the assistance provided responds to COVID-19 related negative economic impacts.
- For each subaward:
 - Sector of the employer (U.S. Treasury will provide additional detail, including a list of sectors).
 - Purpose of funds (e.g. safe reopening of previously-closed businesses; planned facility expansion or upgrade delayed due to the pandemic).
- If the local unit is providing aid to industries other than travel, tourism, and hospitality (EC 2.12), a description of the pandemic impact on the industry and the rationale for providing aid to the industry.

Aid to Travel, Tourism, Hospitality or Other Impacted Industries

- Individual documentation of need not required for sector-based aid to travel, tourism, and hospitality-oriented businesses due to U.S. Treasury presumption of COVID-19 impact
- Businesses in these sectors must still be able to 1) document that the proceeds are being utilized for the approved purpose(s), and 2) provide information on other assistance applied for or received to avoid duplication of benefits.

For sector-based assistance to other industries, the local unit should also document

- that the negative economic impacts experienced by businesses in those other sectors are COVID-19 related, as opposed to unrelated longer-term economic or industrial trends;
- how the COVID-19 related negative impacts of the other sectors compare to those experienced by the travel, tourism, and hospitality industries; and
- how the LFRF-funded assistance responds to these COVID-19 specific negative impacts.

Addressing Disproportionate Public Health & Economic Impacts

- Qualified Census Tracts
 - Low-Income Housing Tax Credit Qualified Census Tracts must have 50% of households with incomes below 60% of the Area Median Gross Income or have a poverty rate of 25% or more
- These types of uses would include:
 - Addressing health and educational disparities
 - Investments in housing and neighborhoods
 - Promoting healthy childhood environments

Crime Prevention and Response

- Communities experiencing an increase in violence, or increased difficulty in accessing or providing services to respond to or mitigate the effects of violence, as a result of the pandemic that those communities may use LFRF funds to address that harm.
- Hiring law enforcement officials – even above pre-pandemic levels – or paying overtime where the funds are directly focused on advancing community policing strategies in those communities experiencing an increase in gun violence associated with the pandemic
- Technology for improving responses to gun violence (e.g. surveillance cameras, gunfire locating system)

Crime Prevention and Response

- Community Violence Intervention (CVI) programs
 - Street outreach; violence interrupters
- Economic assistance for crime victims
- Paid training and/or work experience for formerly incarcerated individuals
- Mental health services and substance use disorder services, including for individuals experiencing trauma exacerbated by the pandemic

Crime Prevention and Response

- Carefully consider legacy budgetary impact of hiring beyond final LFRF tranche
 - Explore shared services and technology as alternative
 - Two or more local units can pool LFRF funds for regional projects.
- Before using LFRF funds for body cameras, exercise due diligence and first confirm whether a duplication of benefits exists from other sources of funding such as the Office of the Attorney General's [Body Worn Camera Grant Program](#).

Administrative Costs

- LFRF funds may be applied toward reasonable administrative costs
 - grant consultant or an independent integrity monitor to ensure compliance with legal and regulatory requirements, including by any subrecipient entities.
- Administrative costs associated with improving the efficacy of COVID-19 public health emergency or economic assistance program (e.g. a consulting firm) are also eligible to the extent that these costs are not funded by another federal program.
- Direct costs are those specifically attributable to implementing LFRF program objectives, such as contract support, materials and project supplies.
- Indirect costs are general overhead costs of an organization where a portion of such costs are allocable to the LFRF award, such as the cost of facilities or administrative functions.

Audit Expenses

- Certain audit costs may be charged against LFRF proceeds, such as a reasonably proportionate share of costs attributable to conducting a single audit of the use of LFRF funds.
- In accordance with the provisions of 2 CFR 200, Subpart F - Audit Requirements, nonfederal entities that spend \$750,000 or more in federal awards must have a single or a program-specific audit conducted for that year.
- Non-federal entities that expend less than \$750,000 per year in federal awards are exempt from federal audit requirements for that year unless the federal government specifically requires the grant recipient to conduct one.

Prohibited Uses

- Debt
- Pure tax offsets
- Squirreling away for long-term surplus
- Pension payments

Prohibited Uses

- Responses to an identified harm must be related and reasonably proportional to the extent and type of harm experienced.
- Uses bearing no relation or are grossly disproportionate to the type or extent of harm experienced are ineligible.

Duplication of Benefits

- Review the allocation of the assistance received through the Coronavirus Relief Fund (CRF), FEMA, the Small Business Administration, other State, county, and local programs, and any other resources for COVID-19 relief.
- We will be requiring information from all county and municipal LFRF recipients on programs created to determine whether a duplication of benefits may exist between a State and local program

Recipient	Interim Report	Project & Expenditure Report	Recovery Plan Performance Report
Counties & Metropolitan Cities greater than 250,000 residents	By August 31, 2021, with expenditures by category	By October 31, 2021, and then within 30 days after the end of each quarter thereafter through December 31, 2026	By August 31, 2021, and annually thereafter by July 31 st
Counties & Metropolitan Cities below 250,000 residents receiving <u>more</u> than \$5 million in LFRF			Not required
Counties & Metropolitan Cities below 250,000 residents receiving <u>less</u> than \$5 million in LFRF		By October 31, 2021 and annually thereafter through 2026	
Non-Entitlement Units (NEUs)	Not required		

Reporting Requirements

- Part 2 of U.S. Treasury's [Compliance and Reporting Guidance](#) (starting at page 12) details the required content for all three types of reports.
- U.S. Treasury supplemental [User Guide for Online Reporting Portal](#)
- When reporting obligations and expenditures, counties and municipalities must enter the obligations and expenditures required to be reported and, for each, select the specific expenditure category from the available options.
- Supplemental guidance forthcoming re: Project & Expenditure Reports

Reporting Requirements: Racial & Economic Equity

- President Biden's [Executive Order 13985](#)
- Substantial emphasis on projects promoting racial and economic equity
 - Program design
 - Outreach
 - Access
 - Geographic & Demographic Distribution
 - Outcomes
- Equity = the consistent and systematic fair, just, and impartial treatment of all individuals, including individuals who belong to underserved communities that have been denied such treatment.
- Recovery Plan Report Template contains further details

Reporting Requirements: Evidence-Based Interventions

The Recovery Plan report must include whether ARP LFRF funds are being used for evidence-based interventions and/or rigorous program evaluations, and if so, how much is being used for such purposes. This requirement applies most to the following expenditure categories:

- Public Health (EC 1);
 - Negative Economic Impacts (EC 2); and
 - Services to Disproportionately Impacted Communities (EC 3)
- Must use evidence-based clearinghouses or be the result of rigorous program evaluation.