

# PUBLICATION

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## **BREAKING: Treasury Releases Guidance for Coronavirus State and Local Fiscal Recovery Fund**

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**This week, the U.S. Department of the Treasury announced the launch of the Coronavirus State and Local Fiscal Recovery Fund, established by the American Rescue Plan Act of 2021, to provide \$350 billion in emergency funding for eligible state, local, territorial, and Tribal governments. According to Treasury's statement accompanying its launch of the program and release of related guidance, the intent is that these funds will "provide a substantial infusion of resources to help turn the tide on the pandemic, address its economic fallout, and lay the foundation for a strong and equitable recovery."**

The American Rescue Plan Act of 2021 (Pub. L. No. 117-2) (ARP), signed into law on March 11, 2021, provides \$350 billion in emergency funding for state, local, territorial, and Tribal governments to respond to the COVID-19 public health emergency. On May 10, 2021, Treasury released a [Fact Sheet](#) and a substantial update to its [Coronavirus State and Local Fiscal Recovery Fund site](#) with information on its launch of the new program. Treasury also concurrently published an [Interim Final Rule](#) with additional detail on how the program will be administered.

### **Initial Payment and Timing of Release of Funds**

Eligible state, territorial, metropolitan city, county, and Tribal governments may request Coronavirus State and Local Fiscal Recovery Funds through the [Treasury Submission Portal](#). An entity's allocated payment will be released according to its classification:

- Local governments should expect to receive funds in two tranches, with 50% provided beginning in May 2021 and the balance delivered 12 months later.
- States that have experienced a net increase in the unemployment rate of more than 2 percentage points from February 2020 to the latest available data as of the date of certification will receive their full allocation of funds in a single payment; other states will receive funds in two equal tranches.
- Governments of U.S. territories will receive a single payment.
- Tribal governments will receive two payments, with the first payment available in May and the second payment, based on employment data, to be delivered in June 2021.

### **Eligible Use of Funds**

Eligible entities have broad flexibility to decide how best to use this funding. Treasury's guidance indicates that recipients may use Coronavirus State and Local Fiscal Recovery Funds to:

- **Support public health expenditures**, by funding COVID-19 mitigation efforts, medical expenses, behavioral healthcare, and certain public health and safety staff;
- **Address negative economic impacts caused by the public health emergency**, including economic harms to workers, households, small businesses, impacted industries, and the public

sector;

- **Replace lost public sector revenue**, using this funding to provide government services to the extent of the reduction in revenue experienced due to the pandemic;
- **Provide premium pay for essential workers**, offering additional support to those who have borne and will bear the greatest health risks because of their service in critical infrastructure sectors; and
- **Invest in water, sewer, and broadband infrastructure**, making necessary investments to improve access to clean drinking water, support vital wastewater and stormwater infrastructure, and to expand access to broadband internet.

The Interim Final Rule issued May 10 provides additional detail on eligibility and includes examples of the types of activities and costs that Treasury will consider acceptable under the new program.

### **Ineligible Use of Funds**

The Fact Sheet and Interim Final Rule also provide additional detail for activities and costs that are not eligible for coverage under the program. As noted above, eligible recipients may use a portion of their allocation to cover lost public sector revenue. However, Congress provided a critical limitation to this, one that is now echoed in the Treasury guidance for the program. States and territories may not use this funding to directly or indirectly offset a reduction in net tax revenue due to a change in law from March 3, 2021 through the last day of the fiscal year in which the funds provided have been spent. This limitation is currently the subject of multiple legal actions filed by the Attorneys General of several states, the position being that this limitation equates to an impermissible interference with states' core sovereign authority to enact and implement basic tax policy. The outcome of these actions will have significant impact on how state recipients allocate their funds, and how much of these funds is then left to allocate to other eligible uses.

There are other ineligible uses to be aware of. No recipient may use this funding to make a deposit to a pension fund. Treasury's Interim Final Rule defines a "deposit" as an extraordinary contribution to a pension fund for the purpose of reducing an accrued, unfunded liability. Also ineligible are payments for debt service, legal settlements or judgments, and deposits to rainy day funds or financial reserves. General infrastructure spending is also not covered.

Contact [Wendy Huff Ellard](#) or any member of [Baker Donelson's Disaster Recovery and Government Services Team](#) with additional questions.