

PUBLICATION

OIG Reports Lessons Learned from the CARES Act and Advises on American Rescue Plan

Authors: Michelle Faye Zaltsberg

June 02, 2021

Last year, the CARES Act authorized the U.S. Department of the Treasury (Treasury) to make \$150 billion payments to state, local, territorial, and tribal governments from the Coronavirus Relief Fund (CRF). Treasury issued guidance on how the funds could be spent, but recipients were not required to sign assistance agreements and funds were not considered by the agency to be "grants" subject to most of the requirements of 2 C.F.R. Part 200, the *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards*. With enactment of the American Rescue Plan Act (ARP), Treasury is now poised to pay \$350 billion to state, local, territorial, and tribal governments from the Coronavirus State and Local Fiscal Recovery Funds (FRF). On May 17, 2021, the Department of the Treasury Office of Inspector General (OIG) issued a Memorandum entitled *American Rescue Plan – Application of Lessons Learned from the Coronavirus Relief Fund*, recommending that Treasury implement additional controls as it provides ARP relief.

Treasury OIG identified the following lessons learned:

- **Need for Clear and Timely Guidance.** Treasury OIG notes that for CRF, Treasury's guidance and FAQs were updated several times, making it difficult for recipients to understand eligible uses for their funds. Treasury OIG recommended for ARP that guidance be finalized concurrent with funds distribution and that new guidance not be established through FAQs. Treasury has issued ARP Guidance through the Interim Final Rule published in the Federal Register, a Fact Sheet, Quick Reference Guide, and, so far, three iterations of its FAQs, the most recent issued May 27. All of these reference materials are available on Treasury's [website](#).
- **Need for Agreements with Terms and Conditions.** As noted above, Treasury did not require recipients of CRF payments to sign a funding agreement and did not treat CRF payments as "grants" subject to all of the requirements of 2 C.F.R. Part 200, including, e.g., federal procurement standards. Treasury OIG recommended that for ARP Treasury "apply the requirements of 2 C.F.R....to the maximum extent authorized by law" and to require signed agreements documenting terms and conditions of financial assistance before disbursing payments. Indeed, Treasury is requiring recipients of ARP funds to sign Award Terms and Conditions which indicate that 2 C.F.R. Part 200 applies to the award, "other than such provisions as Treasury may determine are inapplicable to this Award and subject to such exceptions as may be otherwise provided by Treasury." Meanwhile, Treasury's ARP FAQ provides that "Recipients should refer to the Assistance Listing for detail on the specific provision of the Uniform Guidance [2 C.F.R. Part 200] that do not apply to this program." FAQ at 9.3 (May 27, 2021). "Assistance Listings" are a new method by which the Federal Government is providing information about federal programs and are available on [sam.gov](#). Note that we have seen at least one ARP Award that refers to an Assistance Listing Number of 21.019, which is incorrect – this is the listing for CARES Act information, not ARP information. The correct Assistance Listing Number for ARP FRF is 21.027 and indicates that all of 2 C.F.R. Part 200 applies to these funds – including the procurement standards at 2 C.F.R. §§ 200.317-327. Treasury has also stated it will issue "subsequent guidance that will further elaborate on

recipients' compliance responsibilities."

- **Balancing Data Reporting & Transparency and Recipient Burden.** For CRF payments, Treasury OIG reported that Treasury had neither notified recipients of reporting requirements nor provided a user-friendly means to meet them. In response, Treasury OIG took on the responsibility, implementing an electronic portal called GrantSolutions. For ARP, Treasury will take on this responsibility, but has not yet determined which software it will employ for recipient reporting (e.g., GrantSolutions, Salesforce).
- **Outreach.** Treasury OIG emphasized the importance of a proactive approach to outreach and technical assistance to avoid misinterpretations regarding eligible use of funds, reporting requirements, and record retention requirements. For ARP, recipients can send general questions about the program to SLFRP@treasury.gov.
- **Need for Performance Measures.** Treasury OIG noted that no performance measures were required for CRF payments, resulting in an inability to determine whether funding assisted with the pandemic. For ARP, Treasury OIG recommends Treasury develop performance metrics to measure effectiveness of ARP funding with respect to pandemic relief and to require recipient reporting. In response, Treasury indicated it would require large FRF recipients to provide annual performance reports.

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