

# Flexibility Provided in Latest COVID Recovery Fund

Last week, the Treasury Department launched the Coronavirus State and Local Fiscal Recovery Fund, established by the \$1.9 trillion American Rescue Plan Act, to provide \$350 billion in emergency funding for state, local, territorial and tribal governments. The department also released operational guidance (via an interim final rule) on how the funds can be used to cover acute pandemic response costs, fill government revenue shortfalls and support the communities and populations hardest hit by COVID-19.

States and other recipients have considerable flexibility to use these funds to address the varying needs of their citizens in areas including public health, assistance to families and businesses, the replacement of lost public-sector revenue and “premium pay” for essential workers. Infrastructure work that is limited to water and sewer systems and broadband internet access is also an allowable use. Treasury encourages recipients to help those households, businesses and nonprofits in communities disproportionately impacted by the pandemic.

Some states will receive half the money beginning this month and the second half 12 months later. But states that have had an increase in the unemployment rate of more than 2 percentage points since February 2020 could receive the full allocation in a single lump sum, according to the guidance.

Here is a summary of clarifications of interest in the guidance:

## State and Local Revenue Loss

- **General Revenue** is based on the methodology of the Census Bureau’s annual survey of state and local government finances. It includes all revenues collected by a recipient and generated from economic activity, rather than a fund or administrative unit established to account for and control a particular activity, such

## Treasury Response

The interim final rule issued by the Department of Treasury solicited feedback on 38 questions. Over the next 45 days, NCSL will develop its response to the Treasury regarding the questions and welcomes input from state legislatures. Comments and questions can be submitted directly to [arp@ncsl.org](mailto:arp@ncsl.org). NCSL also encourages states to separately submit their own responses.

as a public utility. It also includes intergovernmental transfers between state and local governments.

- **Calculating revenue loss:** Reduction in revenue is measured relative to revenue collected in the most recent full fiscal year prior to the emergency over four points in time through Dec. 31, 2023.
- **Tax Reductions:** Establishes a framework for determining the cost of any reduction of net tax revenue from changes in law or regulation. As recovery funds are not permissible for offsetting a tax cut, it clarifies the sources of funding that would be considered acceptable for covering an offset in tax reductions—organic growth, increases in revenue and spending cuts.
- **Reporting:** allows the data collection and modeling information already used by states to assess and evaluate the relationship of tax and budget decisions to ascertain whether recovery funds were used to offset a tax reduction.
- **Timeline:** allows recovery funds to cover costs incurred (an obligation) by states through Dec. 31, 2024. Funds must be expended by Dec. 31, 2026.

## Pensions

- Restrictions on pension “deposits” are limited to extraordinary payments toward pre-COVID-19 legacy costs. Generally, if an employee’s wages and salaries are eligible expenses for recovery funds, payroll contributions for their retirement benefits are as well.

## Labor/UI Provisions

- States can use American Rescue Plan funding to replenish their state unemployment insurance trust funds.
- States can use the rescue plan funding to pay off their federal unemployment insurance trust fund loans.

## Infrastructure

- Allows states to use the money for a wide variety of important projects, such as investment in broadband infrastructure and public health measures.
- Per the Treasury Department, in the case of revenue loss, it provides recipients with broad latitude to use recovery funds for the provision of government services. Government services can include maintenance or pay-go funded building of infrastructure, including roads; modernization of cybersecurity, including hardware, software and protection of critical infrastructure; health services; environmental remediation; school or educational services; and the provision of police, fire and other public safety services. Pay-go infrastructure funding refers to the practice of funding capital projects with cash on hand from taxes, fees, grants and other sources, rather than with borrowed sums.

## Water and Wastewater

- Allows states to invest in improvements to their water and sewer infrastructure, including projects which address the impacts of climate change.
- Provides funds for a variety of water infrastructure projects that align with projects currently eligible to receive financial assistance through the Environmental Protection Agency’s clean and drinking water state revolving funds, including:
  - Drinking water infrastructure.
    - o Building or upgrading facilities and transmission, distribution and storage systems.
    - o Replacement of lead service lines.

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- Wastewater infrastructure.
  - o Construction and procurement of publicly owned treatment infrastructure.
  - o Managing and treatment of stormwater or subsurface drainage water.
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Additionally, recovery funds may be used for cybersecurity needs to protect water or sewer infrastructure, such as developing effective cybersecurity practices and measures at drinking water systems and publicly owned treatment works. In cases of a natural disaster, the guidance indicates that recipients may also use recovery funds to provide relief, such as interconnecting water systems or rehabilitating existing wells during an extended drought.

## Broadband

- Provides that investments in broadband be made in areas that are currently unserved or underserved, which is defined as areas lacking a wireline connection that reliably delivers minimum speeds of 25 Mbps download and 3 Mbps upload.
- Funds for broadband should generally build broadband infrastructure with modern technologies in mind, mainly projects that deliver services offering reliable 100 Mbps download and 100 Mbps upload speeds.
- Encourages using the funds to pursue fiber-optic investments.
- Assistance to households to support internet access or digital literacy is an eligible use of funds.

## Health and Human Services Highlights

- Supports COVID-19 response efforts to help decrease the virus, bring the pandemic under control, and address systemic public health and economic challenges that unequally impacted certain populations during

the pandemic. Eligible services also include addressing health disparities and social determinants of health through funding for community health workers and public benefits navigators.

- Funds public health services and programs including vaccination programs, PPE purchases, medical expenses, enhancement of public health data systems, support for vulnerable populations to access medical or public health services and capital investments in public facilities to meet pandemic needs.
- Allows funds to be used to address behavioral health issues that have been exacerbated by the pandemic, including mental health treatment, substance misuse treatment and services to promote access to health

and social services, among other assistance.

- Permits funds to be used to promote healthy childhood environments, including new or expanded high-quality child care, home visiting programs for families with young children and enhanced services for child welfare-involved families and foster youth. In addition, funds can be spent to provide premium pay to essential service workers, which includes child care workers, and social services and human services staff.

## Additional Resources

- [Overview of Federal Regulations and the Rulemaking Process](#) | Congressional Research Service
- [The Reg Map: Informal Rulemaking](#) | ICF Consulting