

ARPA § 602(c):

(c) REQUIREMENTS.—

“(1) USE OF FUNDS.—Subject to paragraph (2), and except as provided in paragraph (3), a State, territory, or Tribal government shall only use the funds provided under a payment made under this section, or transferred pursuant to section 603(c)(4), to cover costs incurred by the State, territory, or Tribal government, by December 31, 2024—

“(A) to respond to the public health emergency with respect to the Coronavirus Disease 2019 (COVID–19) or its negative economic impacts, including assistance to households, small businesses, and nonprofits, or aid to impacted industries such as tourism, travel, and hospitality;

“(B) to respond to workers performing essential work during the COVID–19 public health emergency by providing premium pay to eligible workers of the State, territory, or Tribal government that are performing such essential work, or by providing grants to eligible employers that have eligible workers who perform essential work;

“(C) for the provision of government services to the extent of the reduction in revenue of such State, territory, or Tribal government due to the COVID–19 public health emergency relative to revenues collected in the most recent full fiscal year of the State, territory, or Tribal government prior to the emergency; or

“(D) to make necessary investments in water, sewer, or broadband infrastructure.

“(2) FURTHER RESTRICTION ON USE OF FUNDS.—

“(A) IN GENERAL.—A State or territory shall not use the funds provided under this section or transferred pursuant to section 603(c)(4) to either directly or indirectly offset a reduction in the net tax revenue of such State or territory resulting from a change in law, regulation, or administrative interpretation during the covered period that reduces any tax (by providing for a reduction in a rate, a rebate, a deduction, a credit, or otherwise) or delays the imposition of any tax or tax increase.

“(B) PENSION FUNDS.—No State or territory may use funds made available under this section for deposit into any pension fund.

“(3) TRANSFER AUTHORITY.—A State, territory, or Tribal government receiving a payment from funds made available under this section may transfer funds to a private nonprofit organization (as that term is defined in paragraph (17) of section 401 of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11360(17)), a Tribal organization (as that term is defined in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 5304)), a public benefit corporation involved in the transportation of passengers or cargo, or a special-purpose unit of State or local government.

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§ 35.5 Use of funds.

(a) In General. A recipient may only use funds to cover costs incurred during the period beginning March 3, 2021, and ending December 31, 2024, for one or more of the purposes enumerated in sections 602(c)(1) and 603(c)(1) of the Social Security Act, as applicable, including those enumerated in section § 35.6 of this subpart, subject to the restrictions set forth in sections 602(c)(2) and 603(c)(2) of the Social Security Act, as applicable.

(b) Costs incurred. A cost shall be considered to have been incurred for purposes of paragraph (a) of this section if the recipient has incurred an obligation¹ with respect to such cost by December 31, 2024.

(c) Return of funds. A recipient must return any funds not obligated by December 31, 2024, and any funds not expended to cover such obligations by December 31, 2026.

§ 35.6 Eligible uses.

(a) In General. Subject to §§ 35.7 and 35.8 of this subpart, a recipient may use funds for one or more of the purposes described in paragraphs (b)-(e) of this section.

(b) Responding to the public health emergency or its negative economic impacts. A recipient may use funds to respond to the public health emergency or its negative economic impacts, including for one or more of the following purposes:

(1) COVID-19 response and prevention. Expenditures for the mitigation and prevention of COVID-19, including:

(i) Expenses related to COVID-19 vaccination programs and sites, including staffing, acquisition of equipment or supplies, facilities costs, and information technology or other administrative expenses;

(ii) COVID-19-related expenses of public hospitals, clinics, and similar facilities;

(iii) COVID-19 related expenses in congregate living facilities, including skilled nursing facilities, long-term care facilities, incarceration settings, homeless shelters, residential foster care facilities, residential behavioral health treatment, and other group living facilities;

(iv) Expenses of establishing temporary public medical facilities and other measures to increase COVID-19 treatment capacity, including related construction costs and other capital investments in public facilities to meet COVID-19-related operational needs;

(v) Expenses of establishing temporary public medical facilities and other measures to increase COVID-19 treatment capacity, including related construction costs and other capital investments in public facilities to meet COVID-19-related operational needs;

(vi) Costs of providing COVID-19 testing and monitoring, contact tracing, and monitoring of case trends and genomic sequencing for variants;

¹ *Obligation* means an order placed for property and services and entering into contracts, subawards, and similar transactions that require payment.

- (vii) Emergency medical response expenses, including emergency medical transportation, related to COVID-19;
- (viii) Expenses for establishing and operating public telemedicine capabilities for COVID-19-related treatment;
- (ix) Expenses for communication related to COVID-19 vaccination programs and communication or enforcement by recipients of public health orders related to COVID-19;
- (x) Expenses for acquisition and distribution of medical and protective supplies, including sanitizing products and personal protective equipment;
- (xi) Expenses for disinfection of public areas and other facilities in response to the COVID-19 public health emergency;
- (xii) Expenses for technical assistance to local authorities or other entities on mitigation of COVID-19-related threats to public health and safety;
- (xiii) Expenses for quarantining or isolation of individuals;
- (xiv) Expenses of providing paid sick and paid family and medical leave to public employees to enable compliance with COVID-19 public health precautions;
- (xv) Expenses for treatment of the long-term symptoms or effects of COVID-19, including post-intensive care syndrome;
- (xvi) Expenses for the improvement of ventilation systems in congregate settings, public health facilities, or other public facilities;
- (xvii) Expenses related to establishing or enhancing public health data systems; and
- (xviii) Mental health treatment, substance misuse treatment, and other behavioral health services.

(2) Public Health and Safety Staff. Payroll and covered benefit expenses for public safety, public health, health care, human services, and similar employees to the extent that the employee's time is spent mitigating or responding to the COVID-19 public health emergency.

(3) Hiring State and Local Government Staff. Payroll, covered benefit, and other costs associated with the recipient increasing the number of its employees up to the number of employees that it employed on January 27, 2020.

(4) Assistance to Unemployed Workers. Assistance, including job training, for individuals who want and are available for work, including those who have looked for work sometime in the past 12 months or who are employed part time but who want and are available for full-time work;

(5) Contributions to State Unemployment Insurance Trust Funds. Contributions to an Unemployment Trust Fund up to the level required to restore the Unemployment Trust Fund to its balance on January 27, 2020 or to pay back advances received under Title XII of the Social Security Act (42 U.S.C. 1321) for the payment of benefits between January 27, 2020 and [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER];

(6) Small Businesses. Assistance to small businesses, including loans, grants, in-kind assistance, technical assistance or other services, that responds to the negative economic impacts of the COVID-19 public health emergency;

(7) Nonprofits. Assistance to nonprofit organizations, including loans, grants, in-kind assistance, technical assistance or other services, that responds to the negative economic impacts of the COVID-19 public health emergency;

(8) Assistance to Households. Assistance programs, including cash assistance programs, that respond to the COVID-19 public health emergency;

(9) Aid to Impacted Industries. Aid to tourism, travel, hospitality, and other impacted industries that responds to the negative economic impacts of the COVID-19 public health emergency;

(10) Expenses to Improve Efficacy of Public Health or Economic Relief Programs. Administrative costs associated with the recipient's COVID-19 public health emergency assistance programs, including services responding to the COVID-19 public health emergency or its negative economic impacts, that are not federally funded.

(11) Survivor's Benefits. Benefits for the surviving family members of individuals who have died from COVID-19, including cash assistance to widows, widowers, or dependents of individuals who died of COVID-19;

(12) Disproportionately Impacted Populations and Communities. A program, service, or other assistance that is provided in a Qualified Census Tract, that is provided to households and populations living in a Qualified Census Tract, that is provided by a Tribal government, or that is provided to other households, businesses, or populations disproportionately impacted by the COVID-19 public health emergency, such as:

(i) Programs or services that facilitate access to health and social services, including:

- (A) Assistance accessing or applying for public benefits or services;
- (B) Remediation of lead paint or other lead hazards; and
- (C) Community violence intervention programs;

(ii) Programs or services that address housing insecurity, lack of affordable housing, or homelessness, including:

- (A) Supportive housing or other programs or services to improve access to stable, affordable housing among individuals who are homeless;
- (B) Development of affordable housing to increase supply of affordable and high-quality living units; and
- (C) Housing vouchers and assistance relocating to neighborhoods with higher levels of economic opportunity and to reduce concentrated areas of low economic opportunity;

(iii) Programs or services that address or mitigate the impacts of the COVID-19 public health emergency on education, including:

- (A) New or expanded early learning services;
- (B) Assistance to high-poverty school districts to advance equitable funding across districts and geographies; and
- (C) Educational and evidence-based services to address the academic, social, emotional, and mental health needs of students;

(iv) Programs or services that address or mitigate the impacts of the COVID-19 public health emergency on childhood health or welfare, including:

- (A) New or expanded childcare;
- (B) Programs to provide home visits by health professionals, parent educators, and social service professionals to individuals with young children to provide education and assistance for economic support, health needs, or child development; and

(C) Services for child welfare-involved families and foster youth to provide support and education on child development, positive parenting, coping skills, or recovery for mental health and substance use.

(c) Providing Premium Pay to Eligible Workers. A recipient may use funds to provide premium pay to eligible workers of the recipient who perform essential work or to provide grants to eligible employers, provided that any premium pay or grants provided under this paragraph (c) must respond to eligible workers performing essential work during the COVID-19 public health emergency. A recipient uses premium pay or grants provided under this paragraph (c) to respond to eligible workers performing essential work during the COVID-19 public health emergency if it prioritizes low- and moderate-income persons. The recipient must provide, whether for themselves or on behalf of a grantee, a written justification to the Secretary of how the premium pay or grant provided under this paragraph (c) responds to eligible workers performing essential work if the premium pay or grant would increase an eligible worker's total wages and remuneration above 150 percent of such eligible worker's residing State's average annual wage for all occupations or their residing county's average annual wage, whichever is higher.

(d) Providing Government Services. For the provision of government services to the extent of a reduction in the recipient's general revenue, calculated according to paragraphs (d)(1) and (d)(2).

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(e) To Make Necessary Investments in Infrastructure. A recipient may use funds to make investments in:

(1) Clean Water State Revolving Fund and Drinking Water State Revolving Fund investments. Projects or activities of the type that would be eligible under section 603(c) of the Federal Water Pollution Control Act (33 U.S.C. 1383(c)) or section 1452 of the Safe Drinking Water Act (42 U.S.C. 300j-12); or,

(2) Broadband. Broadband infrastructure that is designed to provide service to unserved or underserved households and businesses and that is designed to, upon completion:

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Interim Final Rule – Supplementary Information

II. Eligible Uses

A. Public Health and Economic Impacts

Sections 602(c)(1)(A) and 603(c)(1)(A) provide significant resources for State, territorial, Tribal governments, and counties, metropolitan cities, and nonentitlement units of local governments (each referred to as a recipient) to meet the wide range of public health and economic impacts of the COVID-19 public health emergency. These provisions authorize the use of payments from the Fiscal Recovery Funds to respond to the public health emergency with respect to COVID-19 or its negative economic impacts. Section 602 and section 603 also describe several types of uses that would be responsive to the impacts of the COVID-19 public health emergency, including assistance to households, small businesses, and nonprofits and aid to impacted industries, such as tourism, travel, and

hospitality. Accordingly, to assess whether a program or service is included in this category of eligible uses, a recipient should consider whether and how the use would respond to the COVID-19 public health emergency. Assessing whether a program or service “responds to” the COVID-19 public health emergency requires the recipient to, first, identify a need or negative impact of the COVID-19 public health emergency and, second, identify how the program, service, or other intervention addresses the identified need or impact. While the COVID-19 public health emergency affected many aspects of American life, eligible uses under this category must be in response to the disease itself or the harmful consequences of the economic disruptions resulting from or exacerbated by the COVID-19 public health emergency.

The Interim Final Rule implements these provisions by identifying a non-exclusive list of programs or services that may be funded as responding to COVID-19 or the negative economic impacts of the COVID-19 public health emergency, along with considerations for evaluating other potential uses of the Fiscal Recovery Funds not explicitly listed. The Interim Final Rule also provides flexibility for recipients to use payments from the Fiscal Recovery Funds for programs or services that are not identified on these non-exclusive lists but that fall under the terms of section 602(c)(1)(A) or 603(c)(1)(A) by responding to the COVID-19 public health emergency or its negative economic impacts. As an example, in determining whether a program or service responds to the negative economic impacts of the COVID-19 public health emergency, the Interim Final Rule provides that payments from the Fiscal Recovery Funds should be designed to address an economic harm resulting from or exacerbated by the public health emergency. Recipients should assess the connection between the negative economic harm and the COVID-19 public health emergency, the nature and extent of that harm, and how the use of this funding would address such harm.

As discussed, the pandemic and the necessary actions taken to control the spread had a severe impact on households and small businesses, including in particular low-income workers and communities and people of color. While eligible uses under sections 602(c)(1)(A) and 603(c)(1)(A) provide flexibility to recipients to identify the most pressing local needs, Treasury encourages recipients to provide assistance to those households, businesses, and non-profits in communities most disproportionately impacted by the pandemic.

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Eligible Uses. Sections 602(c)(1)(A) and 603(c)(1)(A) permit use of payments from the Fiscal Recovery Funds to respond to the negative economic impacts of the COVID-19 public health emergency. Eligible uses that respond to the negative economic impacts of the public health emergency must be designed to address an economic harm resulting from or exacerbated by the public health emergency. In considering whether a program or service would be eligible under this category, the recipient should assess whether, and the extent to which, there has been an economic harm, such as loss of earnings or revenue, that resulted from the COVID-19 public health emergency and whether, and the extent to which, the use would respond or address this harm. A recipient should first consider whether an economic harm exists and whether this harm was caused or made worse by the COVID-19 public health emergency. While economic impacts may either be

immediate or delayed, assistance or aid to individuals or businesses that did not experience a negative economic impact from the public health emergency would not be an eligible use under this category.

In addition, the eligible use must “respond to” the identified negative economic impact. Responses must be related and reasonably proportional to the extent and type of harm experienced; uses that bear no relation or are grossly disproportionate to the type or extent of harm experienced would not be eligible uses. Where there has been a negative economic impact resulting from the public health emergency, States, local, and Tribal governments have broad latitude to choose whether and how to use the Fiscal Recovery Funds to respond to and address the negative economic impact. Sections 602(c)(1)(A) and 603(c)(1)(A) describe several types of uses that would be eligible under this category, including assistance to households, small businesses, and nonprofits and aid to impacted industries such as tourism, travel, and hospitality.

To facilitate implementation and use of payments from the Fiscal Recovery Funds, the Interim Final Rule identifies a non-exclusive list of eligible uses of funding that respond to the negative economic impacts of the public health emergency. Consistent with the discussion above, the eligible uses listed below would respond directly to the economic or financial harms resulting from and or exacerbated by the public health emergency.

- *Assistance to Unemployed Workers.* This includes assistance to unemployed workers, including services like job training to accelerate rehiring of unemployed workers; these services may extend to workers unemployed due to the pandemic or the resulting recession, or who were already unemployed when the pandemic began and remain so due to the negative economic impacts of the pandemic.
- *State Unemployment Insurance Trust Funds.* Consistent with the approach taken in the CRF, recipients may make deposits into the state account of the Unemployment Trust Fund established under section 904 of the Social Security Act (42 U.S.C. 1104) up to the level needed to restore the pre-pandemic balances of such account as of January 27, 2020 or to pay back advances received under Title XII of the Social Security Act (42 U.S.C. 1321) for the payment of benefits between January 27, 2020 and [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER], given the close nexus between Unemployment Trust Fund costs, solvency of Unemployment Trust Fund systems, and pandemic economic impacts. Further, Unemployment Trust Fund deposits can decrease fiscal strain on Unemployment Insurance systems impacted by the pandemic. States facing a sharp increase in Unemployment Insurance claims during the pandemic may have drawn down positive Unemployment Trust Fund balances and, after exhausting the balance, required advances to fund continuing obligations to claimants. Because both of these impacts were driven directly by the need for assistance to unemployed workers during the pandemic, replenishing Unemployment Trust Funds up to the pre-pandemic level responds to the pandemic’s negative economic impacts on unemployed workers.

- *Assistance to Households*. Assistance to households or populations facing negative economic impacts due to COVID-19 is also an eligible use. This includes: food assistance; rent, mortgage, or utility assistance; counseling and legal aid to prevent eviction or homelessness; cash assistance (discussed below); emergency assistance for burials, home repairs, weatherization, or other needs; internet access or digital literacy assistance; or job training to address negative economic or public health impacts experienced due to a worker's occupation or level of training. As discussed above, in considering whether a potential use is eligible under this category, a recipient must consider whether, and the extent to which, the household has experienced a negative economic impact from the pandemic. In assessing whether a household or population experienced economic harm as a result of the pandemic, a recipient may presume that a household or population that experienced unemployment or increased food or housing insecurity or is low- or moderate-income experienced negative economic impacts resulting from the pandemic. For example, a cash transfer program may focus on unemployed workers or low- and moderate-income families, which have faced disproportionate economic harms due to the pandemic. Cash transfers must be reasonably proportional to the negative economic impact they are intended to address. Cash transfers grossly in excess of the amount needed to address the negative economic impact identified by the recipient would not be considered to be a response to the COVID-19 public health emergency or its negative impacts. In particular, when considering the appropriate size of permissible cash transfers made in response to the COVID-19 public health emergency, State, local and 33 Tribal governments may consider and take guidance from the per person amounts previously provided by the Federal government in response to the COVID-19 crisis. Cash transfers that are grossly in excess of such amounts would be outside the scope of eligible uses under section 602(c)(1)(A) and 603(c)(1)(A) and could be subject to recoupment. In addition, a recipient could provide survivor's benefits to surviving family members of COVID-19 victims, or cash assistance to widows, widowers, and dependents of eligible COVID-19 victims.
- *Expenses to Improve Efficacy of Economic Relief Programs*. State, local, and Tribal governments may use payments from the Fiscal Recovery Funds to improve efficacy of programs addressing negative economic impacts, including through use of data analysis, targeted consumer outreach, improvements to data or technology infrastructure, and impact evaluations.
- *Small Businesses and Non-profits*. As discussed above, small businesses and nonprofits faced significant challenges in covering payroll, mortgages or rent, and other operating costs as a result of the public health emergency and measures taken to contain the spread of the virus. State, local, and Tribal governments may provide assistance to small businesses to adopt safer operating procedures, weather periods of closure, or mitigate financial hardship resulting from the COVID-19 public health emergency, including:

 - Loans or grants to mitigate financial hardship such as declines in revenues or impacts of periods of business closure, for example by supporting

- payroll and benefits costs, costs to retain employees, mortgage, rent, or utilities costs, and other operating costs;
- Loans, grants, or in-kind assistance to implement COVID-19 prevention or mitigation tactics, such as physical plant changes to enable social distancing, enhanced cleaning efforts, barriers or partitions, or COVID-19 vaccination, testing, or contact tracing programs; and
 - Technical assistance, counseling, or other services to assist with business planning needs. As discussed above, these services should respond to the negative economic impacts of COVID-19. Recipients may consider additional criteria to target assistance to businesses in need, including small businesses. Such criteria may include businesses facing financial insecurity, substantial declines in gross receipts (e.g., comparable to measures used to assess eligibility for the Paycheck Protection Program), or other economic harm due to the pandemic, as well as businesses with less capacity to weather financial hardship, such as the smallest businesses, those with less access to credit, or those serving disadvantaged communities. Recipients should consider local economic conditions and business data when establishing such criteria.
- *Rehiring State, Local, and Tribal Government Staff.* State, local, and Tribal governments continue to see pandemic impacts in overall staffing levels: State, local, and Tribal government employment remains more than 1 million jobs lower in April 2021 than prior to the pandemic. Employment losses decrease a state or local government's ability to effectively administer services. Thus, the Interim Final Rule includes as an eligible use payroll, covered benefits, and other costs associated with rehiring public sector staff, up to the pre-pandemic staffing level of the government.
 - ***Aid to Impacted Industries.*** Sections 602(c)(1)(A) and 603(c)(1)(A) recognize that certain industries, such as tourism, travel, and hospitality, were disproportionately and negatively impacted by the COVID-19 public health emergency. Aid provided to tourism, travel, and hospitality industries should respond to the negative economic impacts of the pandemic on those and similarly impacted industries. For example, aid may include assistance to implement COVID-19 mitigation and infection prevention measures to enable safe resumption of tourism, travel, and hospitality services, for example, improvements to ventilation, physical barriers or partitions, signage to facilitate social distancing, provision of masks or personal protective equipment, or consultation with infection prevention professionals to develop safe reopening plans. Aid may be considered responsive to the negative economic impacts of the pandemic if it supports businesses, attractions, business districts, and Tribal development districts operating prior to the pandemic and affected by required closures and other efforts to contain the pandemic. For example, a recipient may provide aid to support safe reopening of businesses in the tourism, travel, and hospitality industries and to business districts that were closed during the COVID19 public

health emergency, as well as aid for a planned expansion or upgrade of tourism, travel, and hospitality facilities delayed due to the pandemic.

When considering providing aid to industries other than tourism, travel, and hospitality, recipients should consider the extent of the economic impact as compared to tourism, travel, and hospitality, the industries enumerated in the statute. For example, on net, the leisure and hospitality industry has experienced an approximately 24 percent decline in revenue and approximately 17 percent decline in employment nationwide due to the COVID-19 public health emergency. Recipients should also consider whether impacts were due to the COVID-19 pandemic, as opposed to longer-term economic or industrial trends unrelated to the pandemic.

To facilitate transparency and accountability, the Interim Final Rule requires that State, local, and Tribal governments publicly report assistance provided to private-sector businesses under this eligible use, including tourism, travel, hospitality, and other impacted industries, and its connection to negative economic impacts of the pandemic. Recipients also should maintain records to support their assessment of how businesses or business districts receiving assistance were affected by the negative economic impacts of the pandemic and how the aid provided responds to these impacts.

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Building Stronger Communities through Investments in Housing and Neighborhoods. The economic impacts of COVID-19 have likely been most acute in lower-income neighborhoods, including concentrated areas of high unemployment, limited economic opportunity, and housing insecurity. 91 Services in this category alleviate the immediate economic impacts of the COVID-19 pandemic on housing insecurity, while addressing conditions that contributed to poor public health and economic outcomes during the pandemic, namely concentrated areas with limited economic opportunity and inadequate or poor-quality housing. Eligible services include:

- ♣ Services to address homelessness such as supportive housing, and to improve access to stable, affordable housing among unhoused individuals;
- ♣ Affordable housing development to increase supply of affordable and high-quality living units; and
- ♣ Housing vouchers, residential counseling, or housing navigation assistance to facilitate household moves to neighborhoods with high levels of economic opportunity and mobility for low-income residents, to help residents increase their economic opportunity and reduce concentrated areas of low economic opportunity.

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Uses Outside the Scope of this Category. Certain uses would not be within the scope of this eligible use category, although may be eligible under other eligible use categories. A general infrastructure project, for example, typically would not be included unless the project responded to a specific pandemic public health need (e.g., investments in facilities for the delivery of vaccines) or a specific negative economic impact like those described

above (e.g., affordable housing in a QCT). The ARPA explicitly includes infrastructure if it is “necessary” and in water, sewer, or broadband. See Section II.D of this Supplementary Information. State, local, and Tribal governments also may use the Fiscal Recovery Funds under sections 602(c)(1)(C) or 603(c)(1)(C) to provide “government services” broadly to the extent of their reduction in revenue. See Section II.C of this Supplementary Information.