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\$350 Billion Slated for State, Local Governments as President Signs American Rescue Plan: McGuireWoods

On March 11, 2021, President Joe Biden signed into law H.R. 1319, the American Rescue Plan Act of 2021. The \$1.9 trillion stimulus plan passed in the U.S. House of Representatives by a 220-211 vote on March 10, 2021, and in the Senate by a narrow 50-49 vote on March 6, 2021.

The American Rescue Plan marks the Biden administration's first major legislative achievement working with the narrow Democratic majority in the U.S. House and Senate. President Biden requested that lawmakers prepare legislation with the goals of developing a national vaccination program; increasing COVID-19 testing, tracing and treatment; changing employment regulations; and providing financial assistance for state and local governments impacted by the COVID-19 pandemic.

The American Rescue Plan will provide \$350 billion in payments to U.S. territories, states, and local and tribal governments as crucial assistance for budgets depleted by COVID-19. Of the amounts to be provided to states and local governments, states will receive 60 percent and local governments will receive 40 percent of the distributions. Below is a breakdown of how payments will be directed.

Fiscal Recovery Funds. The American Rescue Plan establishes two fiscal recovery funds to distribute money to states, local governments, tribal governments and U.S. territories.

Coronavirus State Fiscal Recovery Fund - \$219.8 billion. States, the District of Columbia, tribal governments and U.S. territories will receive **\$219.8 billion** in aid to be distributed, as follows:

- **States** will receive a total of \$195.3 billion in aid, of which (1) \$25.5 billion will be split evenly among each state and the District of Columbia, with each state and the District of Columbia receiving \$500 million of aid; and (2) \$168.55 billion will be distributed based on each state's share of total unemployed workers over a three-month period of October 2020 to December 2020.
- **District of Columbia** will receive an additional \$1.25 billion payment.
- **Tribal governments** will receive \$20 billion in payments.
- **U.S. territories** will receive \$4.5 billion in payments.
- In addition to the above allocations, the U.S. Treasury will receive \$50 million to cover costs of administration of the fund.

Coronavirus Local Fiscal Recovery Fund - \$130.2 billion. Local governments will receive \$130.2 billion in aid to be split among counties, metropolitan cities and nonentitlement units of local government, as follows:

- **Counties** will receive \$65.1 billion in population-adjusted payments based on each county's share of U.S. population, with additional adjustments for Community Development Block Grant (CDBG) recipients.
- **Metropolitan cities** will receive \$45.57 billion in payments.
- **Nonentitlement units of local government** will receive \$19.53 billion in payments distributed by individual states and funded by the U.S. Treasury. Each jurisdiction will receive population-

adjusted payments based on such jurisdiction's share of the state population, not to exceed 75 percent of its most recent budget as of Jan. 27, 2020.

Despite requests from states, counties and cities for flexibility in use of funds, the American Rescue Plan contains restrictions on use of monies distributed from either of the fiscal recovery funds. Funds may be used only to cover costs incurred by each applicable jurisdiction by Dec. 31, 2024, for the following purposes:

- to respond to the public health emergency with respect to 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;
- to provide premium pay to eligible workers of the state, territory or tribal government, metropolitan city, nonentitlement unit of local government, or county that are performing such essential work, or to provide grants to eligible employers that have eligible workers who perform essential work;
- for the provision of government services to the extent of the reduction in revenue of such state, territory or tribal government, metropolitan city, nonentitlement unit of local government, or county due to the COVID-19 public health emergency, relative to revenues collected in the most recent full fiscal year prior to the emergency (pending Treasury guidance stating otherwise, many organizations, including NACo, have interpreted the legislative text to allow for replacing revenue that was lost, delayed or decreased as a result of COVID-19); or
- to make necessary investments in water, sewer or broadband infrastructure.

Each state and territory will be required to certify to the U.S. Treasury that it will use any payment in compliance with the use of fund restrictions before any distribution is made. Once the U.S. Treasury receives this certification, the department must make payment to the certifying entity within 60 days. While further details from the U.S. Treasury are expected in the near future, the American Rescue Plan authorizes the department to withhold up to 50 percent of the amount allocated to each state and territory for a period of up to 12 months from the date on which the state or territory provided its certification. A second certification will be required before the withheld amount is paid.

Counties, metropolitan cities and states as agents for nonentitlement units of local government will not be required to complete certifications, and will instead receive funds in tranches, with the first tranche to be paid within 60 days of the American Rescue Plan becoming law, and the second tranche to be paid at least 12 months after the date on which the county, metropolitan city or state as an agent for nonentitlement unit of local government received its first payment.

The District of Columbia will receive its first payment within 15 days of enactment of the American Rescue Plan. The remainder of the payments to the District of Columbia will be subject to the same 50 percent withholding that is authorized for states and territories. Tribal governments will be paid in full within 60 days of enactment of the law.

Coronavirus Capital Projects Fund. In addition to the recovery funds, out of any money in the U.S. Treasury not otherwise appropriated, \$10 billion will be available for making payments to states, territories and tribal governments for critical capital projects directly enabling work, education and health monitoring in response to COVID-19. Each state will receive \$100 million, the U.S. territories will receive \$100 million to be split among them, and tribal governments and the state of Hawaii as agent for native Hawaiian programs will receive \$100 million to be split among them. The remainder of the funds will be allocated to the states based on population. To provide access to these funds, the U.S. Treasury will establish an application process for grants from the fund within 60 days of enactment of the law.

Local Assistance and Tribal Consistency Fund. The U.S. Treasury will be directed to set aside \$2 billion for making payments to eligible revenue-sharing counties and eligible tribal governments. For each of fiscal years 2022 and 2023, eligible revenue-sharing counties will receive \$750 million to be allocated to each eligible revenue-sharing county based on the economic conditions of each such county. Eligible tribal governments will receive \$250 million for each of fiscal years 2022 and 2023, which will be allocated based on the economic conditions of each eligible tribe. Any payments received from this fund may be used for any governmental purpose other than a lobbying activity.

The U.S. Treasury is expected to promulgate guidance related to the distribution of funds under the American Rescue Plan.

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