

# Bond Case Briefs

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## Spending American Rescue Plan Act Funds: A Primer for Municipalities

The American Rescue Plan Act (ARPA) of 2021 is a \$1.9 trillion legislative package that includes funding for states, local governments and tribal nations to respond to the economic and public health impacts of the COVID-19 pandemic. While initially restricted, subsequent guidance from the federal government has expanded what those funds can be used for. However, to avoid being required to repay the funds, it is important that all spending complies with the act and subsequent regulations.

As we are now seeing many cities and counties using the awarded funds, this article will provide an overview of how and when the funds can be spent and identify the major compliance requirements.

### **How can the funds be spent?**

Under the ARPA, cities and counties may use funds to cover a wide range of expenses related to the pandemic, including:

- **Premium pay:** Funds can be used to provide additional compensation for “eligible workers performing essential work during the COVID-19 public health emergency or to provide grants to third-party employers [non-municipal employees] with eligible workers performing essential work.” Premium pay is designed to compensate workers who took on additional burdens or sacrifices because of the pandemic. Eligible workers include those whose work was necessary to maintain continuity of critical infrastructure sectors. A complete list of those sectors can be found in the [2020 House of Representatives HEROES Act](#). In addition to the critical infrastructure sectors, the chief executive or equivalent of a recipient may designate additional sectors as critical, provided doing so is necessary to protect the health and wellbeing of the residents of the jurisdiction.
- **Lost revenue:** Funds can be used to replace revenue lost because of the pandemic. Cities or counties can calculate the amount of revenue lost as a result of the pandemic or they can use the standard allocation of \$10 million, whichever is less.  
Water, sewer and broadband: Funds can be used for water, sewer and broadband projects. Investment in these types of projects is generally limited to those that are necessary. Necessary projects would typically include those eligible for funding under the EPA’s Clean Water State Revolving Fund or Drinking Water State Revolving Fund.
- **Public health emergency relief and negative economic impacts:** Funds can be used to address the public health emergency created by the pandemic, including aiding of households, small businesses and nonprofits, or to aid impacted industries like tourism, travel and hospitality. To determine if a program or service is eligible for funds under this provision, the city must identify the need or negative impact of the pandemic and identify how the program, service or intervention would address the need. An eligible use under this category must be in response to COVID-19 itself or a harmful consequence of the economic disruption resulting from it.

There is no requirement for preapproval of projects.

Ultimately, although it is up to each city to determine how best to use the ARPA funds, we expect

that most recipients will elect to use the funds under the “lost revenue” category. Once selected, those funds can be used for government services, which include any service traditionally provided by a government, unless the Department of the Treasury has stated otherwise.

### **What is the administrative process for spending ARPA funds?**

To ensure that funds are not used for ineligible purposes and that there is no fraud, waste or abuse of the funds, cities and counties are required to take certain administrative steps regarding their use of ARPA funds. These include the following:

- **Keeping records:** Financial records and other supporting documents related to an award and spending must be kept for a period of five years after all funds have been expended. This expressly includes those records that show the award funds were used for eligible purposes.
- **Reporting:** Recipients are required to submit an interim report, project and expenditure reports, and annual recovery plan performance reports.
  - Interim reports must identify expenditures by category. These reports were due on Aug. 31, 2021.
  - Project and expenditure reports must include the financial date, information on contracts and subawards over \$50,000, types of projects funded, and other information regarding the use of the funds. For larger recipients, with a population of more than 250,000 or receiving more than \$10 million, these reports are to be made quarterly. For all others, these reports are to be submitted annually by April 30.
  - Cities and counties with a population of more than 250,000 must submit performance reports that include a description of projects funding, performance indicators and objectives for each award. These plans must be posted on the recipient’s public-facing website.
- **Single audit:** Cities and counties spending more than \$750,000 in federal awards in a fiscal year are subject to an audit under the Single Audit Act.
- **Civil rights compliance:** Recipients receiving funds are required to meet legal requirements relating to nondiscrimination and nondiscriminatory use of federal funds. Those requirements include ensuring that entities receiving funds do not deny benefits or services, or otherwise discriminate based on race, color, national origin (including limited English proficiency), disability, age or sex (including sexual orientation and gender identity).

It is important for recipients to carefully follow the guidelines and requirements for spending ARPA funds to ensure they are using the funds in a way that is compliant with federal regulations and meets the needs of their community.

### **What is the timeline for spending ARPA funds?**

A recipient must use ARPA funds to address eligible costs incurred during the period of March 3, 2021 through Dec. 31, 2024. The funds must be obligated for spending by Dec. 31, 2024, and must be spent by Dec. 31, 2026. Costs for projects incurred before March 3, 2021 are not eligible for reimbursement.

### **What are consequences for missing a requirement?**

Beyond using the funds improperly, enforcement related to the reporting and other requirements is loose. According to guidance issued by the Treasury Department, if a city misses a reporting deadline, it should submit the necessary report as soon as possible. There is no penalty for late reporting, but it could lead to a finding of non-compliance. In that case, the city could be subject to a corrective action plan or “other consequences as appropriate.” Use of the funds for ineligible expenditures could result in a city being required to repay the funds.

The actual economic impact of the pandemic on cities and counties might be up for debate. Some saw revenues increase, but the ARPA has provided much-needed funds to address aging

infrastructure or to expand broadband. Initially, it was expected that the program would limit eligible expenses, but with the subsequent guidance, a city or county can likely use the funds for any legitimate government function. Before doing so, it is important that each use be carefully evaluated to avoid any payback requirements.

### **American City & County**

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