



**GARDINER CITY COUNCIL  
AGENDA ITEM INFORMATION SHEET**



<b>Meeting Date</b>	04/06/2022	<b>Department</b>	Planning/Economic Dev
<b>Agenda Item</b>	5.o) Consideration of adopting a conflict of interest policy pertaining to ARPA funds		
<b>Est. Cost</b>			

<b>Background Information</b>	<p>Economic Development Director Tracey Desjardins attended a Maine Municipal Association workshop that explained the reporting process of the ARPA (American Rescue Plan Act). It is highly recommended that Gardiner City Council approve a conflict of interest policy that will be consulted when funds are being expended.</p>
	<p>Director Desjardins worked with City Solicitor Jon Pottle and a sample policy is attached to this agenda item.</p>

<b>Requested Action</b>	" I move to approve adopting a conflict of interest policy pertaining to ARPA funds as presented in the sample document."
<b>City Manager and/or Finance Review</b>	Acting City Manager approves the above action.
<b>Council Vote/ Action Taken</b>	
<b>Departmental Follow-Up</b>	

<b>City Clerk Use Only</b>	1 <sup>st</sup> Reading _____	Advertised _____	<b>EFFECTIVE DATE</b> _____
	2 <sup>nd</sup> Reading _____	Advertised _____ w/in 15 Days	
	Final to Dept _____	Updated Book _____	Online _____

# American Rescue Plan: Considerations for Municipalities

## MMA Legal Services

(Current as of March 14, 2022)

**Update:** The U.S. Treasury Department issued a Final Regulation governing use of American Rescue Plan (ARPA) funds on January 6, 2022, which significantly broadens eligible uses of ARPA funds. As a result, the guidance below has been comprehensively revised.

### 1. What is the American Rescue Plan?

The American Rescue Plan Act (ARPA) is a federal law that was signed by President Biden on March 11, 2021. One portion of the ARPA amended the Social Security Act to establish a Coronavirus State Fiscal Recovery Fund (§ 602), and a Coronavirus Local Fiscal Recovery Fund (§ 603). (PL 117–2; 42 U.S.C. 802 *et seq.*).

The State and Local Fiscal Recovery Funds established by ARPA are intended to help state, local, and Tribal governments respond to the impact of COVID–19 on their communities, residents, and businesses. The Fiscal Recovery Funds provide over \$350 million in emergency funding to state and local governments, building on and expanding assistance provided to these governments over the last year, including through the Coronavirus Relief Fund (CRF).

This guidance focuses on Local Fiscal Recovery Funds (“ARPA Funds”) requirements outlined in § 603 of ARPA and corresponding provisions in the Final Rule issued by the U.S. Treasury Department. The State Fiscal Recovery Fund allocated to States, territories, and Tribal Governments under § 602 of ARPA is a separate fund, which together with regulations promulgated thereunder, governs the authorities of state Governors and Tribal governments, rather than municipal officials.

## Funding:

### 2. How much funding will our municipality receive and how will funds be distributed?

The U.S. Treasury Department issued allocations for states and “metropolitan” cities in May of 2021. Six municipalities in Maine are classified as metropolitan cities: Auburn, Bangor, Biddeford, Lewiston, Portland, and South Portland. See U.S. Treasury [Allocation for Metropolitan Cities](#).

All other municipalities in Maine are classified as “non-entitlement” units of local government (NEUs). The State of Maine will receive a total of [\\$119,223,764.00](#) for distribution to all Maine NEU municipalities in two tranches. Funding allocations for NEU municipalities were finalized [on August 25, 2021](#). The state received \$59.6 million in October, 2021 which has already been distributed to NEU municipalities, with a second tranche of equal value expected to be distributed in approximately one year. The Maine Department of Administrative & Financial Services (DAFS) administers ARPA funding distributions to Maine’s NEU municipalities. DAFS established an [online portal](#) through which Maine NEUs may request ARPA funding. See link [here](#) for instructions or contact DAFS ARPA support at 888-804-2544 or [Maine.ARPA@hornellp.com](mailto:Maine.ARPA@hornellp.com). The DAFS [online portal](#) was active as of August 25, 2021, and NEU municipalities had until **October 24, 2021** to request funds.



There are several tasks necessary before DAFS issues ARPA Funds to a municipality. These include:

- Review of U.S. Treasury’s [pre-submission checklist](#);
- Obtain a [DUNS](#) number and a registration with [Sam.gov](#) (the federal government portal for conducting financial assistance processes);
- Provide additional payment information including: taxpayer ID, authorized representative information, banking information (bank name and contact information, routing number);
- Appoint an authorized representative (select board/council member);
- Execute necessary authorization documents:
  - [U.S. Treasury Award Terms and Conditions](#) for NEUs
  - [Assurances of Compliance with Title VI of Civil Rights Act](#) of 1964
- Confirm municipal operating budget upon DAFS request;

We also recommend that municipalities consider the impacts of COVID-19 on their communities, investigate past and present COVID-19 impacts on the municipality, households and businesses, and engage the public in discussion of the community’s priorities.

### Local Approvals:

#### **3. Does the municipal legislative body need to authorize the fund transfer from the state?**

It does not appear that legislative body approval is needed to simply receive the funds from DAFS. 30-A M.R.S. § 5773(1) allows the municipal officers of a municipality to contract for and accept an “offer or a grant of federal or state aid, or both, for any purpose for which a municipality may raise or expend money.” However, municipalities will need to closely track and account for the funds within their internal bookkeeping and accounting systems both for reporting purposes and to segregate them from other unappropriated municipal funds.

#### **4. Must the municipal legislative body appropriate the ARPA funds to the specific purposes they will expended?**

Nothing in the ARPA varies the usual rules relating to municipal appropriations of funding and approval of municipal spending. Therefore, the municipality’s legislative body (town meeting or council) will need to appropriate and authorize use of ARPA Funds toward one or more eligible uses in the same way it would appropriate and authorize expenditure of any other municipal revenues. Moreover, because conditions and limitations accompany the grant funds, the municipal legislative body should affirmatively approve the municipality’s use of the funds.

The following warrant article may be used as a template for appropriation of funds toward a municipal project in municipalities where the town meeting is the legislative body:

**“Art. \_\_\_\_\_. To see if the Town will vote to appropriate \$\_\_\_\_\_ from Coronavirus Local Fiscal Recovery Funds (*aka* American Rescue Plan Act or ARPA funds) received by the Town from the federal government for the following project: (describe project).”**

Note that municipalities where a *council* is the legislative body should use language that is customary and/or required by their charters for council appropriations.

**5. If our town meeting annually approves a general warrant article allowing the municipal officers to accept all grants and spend them for any purpose allowed – is this sufficient?**

The attorneys in MMA Legal Services do not believe a general or “blanket” warrant article is sufficient to accept grants that include specific conditions limiting the use of funds, include specific terms and conditions that the municipality must adhere to, and/or that include possible penalties or repayment of funds. Our recommendation is that the use of ARPA funds and associated grant conditions be approved specifically by the municipal legislative body. Moreover, from a practical standpoint, seeking approval from the municipal legislative body for specific projects is an effective means to allow public input and participation in the process. It can also ensure that the municipal officers have sufficient authority to enter contracts and take other necessary actions to execute the use of the funds.

**6. What time limits apply to use and expenditure of the ARPA funds?**

Project costs must be incurred by December 31, 2024, but U.S. Treasury interprets this to mean only that municipalities must have “obligated” the funds by that date. To “obligate” the funds means to legally commit the funds to a specific purpose. The allowable performance period runs until December 31, 2026, so municipalities will have a reasonable amount of time to complete projects funded with ARPA Funds.

Municipalities are strongly encouraged to **be patient, strategic, and deliberate** in planning for the best use of ARPA Funds.

**7. May the municipality decline the funds?**

A municipality may decline its allocation of ARPA funds and allocate them back to the state, on a U.S. Treasury form designated for that purpose. Formally declining ARPA funding may also require authorization from the municipal legislative body (town meeting or council).

Municipalities are encouraged to wait and go through the effort of assessing eligible uses in the municipality before declining ARPA funds. As explained below, eligible uses for ARPA Funds were broadened in the Final Rule; therefore, municipalities are encouraged to re-evaluate potential project options. Municipalities have until December 31, 2024 to obligate funds; there does not appear to be a penalty for waiting until then to decide how the funds may be used.

**Eligible Use Categories- General:**

**8. What rules govern the use of ARPA funds?**

On January 6, 2022, the U.S. Treasury Department issued a [Final Rule](#) addressing eligible uses of ARPA Funds.



Previously, municipalities were guided by an [Interim Final Rule](#) issued in May 2021, which described eligible and ineligible uses of funds, sought feedback from the public, and began to distribute funds. The Interim Final Rule went into effect immediately in May 2021, and municipalities were able to rely on the temporary authority provided by the Interim Final Rule before the Final Rule was issued.

The Final Rule will replace the Interim Final Rule. As a result of stakeholder comments and suggestions, the Final Rule considerably broadens eligible uses of ARPA Funds. Key changes include offering a new standard allowance option of \$10 million worth of revenue loss in the “replacing lost public sector revenue” eligible use category, allowing capital expenditures that support eligible pandemic response actions, and broadening eligibility for broadband infrastructure investments. For more information, see an [Overview of the Final Rule](#) published by U.S. Treasury.

### 9. Do the provisions of the Final Rule apply now? (Updated 3-14-22)

Yes. Although the Final Rule formally takes effect on April 1, 2022, U.S. Treasury states that recipients may take advantage of the Final Rule’s flexibilities and simplifications now, even ahead of the effective date. The Interim Rule, will however, technically remains in effect until April 1, 2022.

Municipalities are strongly urged to thoroughly review the U.S. Treasury [“Overview of the Final Rule”](#) when considering eligible uses of ARPA Funds.

The U.S. Treasury has indicated it will not penalize recipients for expenditures made before April 1, 2022 that were made in reliance on the Interim Rule, in situations where the Final Rule has placed greater restrictions on the use of funds. The U.S. Treasury has issued a [“Statement Regarding Compliance with the Coronavirus State and Local Fiscal Recovery Funds Interim Final Rule and Final Rule”](#) that provides more information on areas where the Final Rule has added restrictions that may change recipient plans.

### 10. Have the limits on our municipality’s use of the funds changed?

Yes, the Final Rule allows a substantially greater range of projects. The Final Rule also streamlines and clarifies applicable eligibility criteria to make it easier for municipalities to determine if a specific project is an eligible use of ARPA funding.

The Final Rule retains the four broad categories of eligible uses for ARPA:

- Responding to the public health emergency or its negative economic impacts (e.g., assistance to households, small businesses, nonprofits, impacted industries – tourism, travel, hospitality);
- Providing premium pay to eligible workers responding to the public health emergency;
- Providing government services to the extent of the reduction in revenue due to COVID-19; and
- Making necessary investments in water, sewer and broadband infrastructure.

→ Eligibility criteria have been broadened and clarified in all four categories. However, the most significant change impacting Maine NEUs is in the category of “providing government services to the extent of lost government revenue.” **The Final Rule now allows every municipality to presume that it has experienced a revenue loss for purposes of the “replacing lost revenue” eligible use category**

without the need to calculate the reduction. For more details, see question 13, below, and see U.S. Treasury [Overview of Final Rule](#), pages 9 – 11.

### **11. May ARPA funds be used in more than one eligible use category? (Updated 3-14-22)**

Yes. Recipients are not required to choose only one eligible use category for use of their ARPA grant. Recipients may choose to use portions of their ARPA grant within several eligible use categories or may choose to allocate all their funding toward one eligible use category.

Note also that the eligible use categories are *separate* categories and that specific criteria applies to uses within each category. For example, under the “replacing lost revenue” eligible use category, ARPA funds may be used for any “government service” not otherwise prohibited, but not for premium pay. “Premium pay” is a separate eligible use category with specific criteria applicable to premium pay. Likewise, under the “responding to the public health emergency” eligible use category, ARPA funds must meet the specific criteria in that category and could not be used for “government services” generally (allowed only in the “replacing lost revenue” category).

Some enumerated uses of ARPA funds may qualify under more than one eligible use category. For those uses, the municipality must choose one category to classify the expenditure. Municipalities must be able justify expenditures based on the criteria that applies to the specific eligible use category that is identified. For example, certain capital expenditures could be justified as either a response to the public health or negative economic impacts of the pandemic, or they could be justified as a government service under the replacing lost revenue eligible use category. However, if the expenditure is identified as a response to the public health impacts of the pandemic, the expenditure must be justified using the “response to the public health impacts” eligible use category criteria (they must be related and reasonably proportional to the pandemic impact identified and reasonably designed to benefit the impacted population or class). It would not be sufficient to simply show that the expenditure is a government service. See question 10 and the [Overview of Final Rule](#) for information on the eligible use categories.

### **12. Are there any uses that are expressly prohibited?**

There are several uses that are expressly prohibited. They include:

- Pension funds
- Legal settlements
- Rainy day and other reserve accounts
- Existing debt service
- Federal grant match requirements for some types of projects
- Certain capital projects, such as new correctional facilities, congregate facilities, and convention centers or stadiums

See [Overview of Final Rule](#), pages 41-2.





## Replacing Lost Revenue Eligible Use Category (Added 3-14-22):

### **13. What changes does the Final Rule make to the “replacing lost revenue” eligible use category ? (Updated 3-14-22)**

The Final Rule substantially expands and simplifies the eligible use category of “Replacing Lost Public Sector Revenue.” Under this eligible use category, a municipality that has experienced a reduction in revenue may use ARPA Funds up to the amount of lost revenue or ARPA grant (whichever is less) to pay for “government services.”

The Interim Rule only allowed one option for calculating lost revenue, involving a complicated mathematical formula that, for most municipalities, did not result in a calculated loss in municipal revenue. However, the Final Rule adds a “standard allowance,” which allows a municipality to presume it has experienced a reduction in revenue.

Under the Final Rule, recipients now have two options to determine whether a revenue loss has occurred. Recipients must choose one of the two options and cannot switch between these approaches after an election is made.

Option #1: recipients may elect a “standard allowance” of \$10 million to spend on government services through the period of performance; or

Option #2, recipients may calculate their actual revenue loss according to the formula articulated in the Final Rule.

See [Overview of Final Rule](#), pages 9 – 11 for detailed discussion of these options.

Within the lost revenue category, a municipality may use ARPA Funds, up to the amount of lost revenue identified (not to exceed the award amount), to pay for “government services.” See question 15 for more information.

### **14. Can we select the revenue loss standard allowance even if we cannot demonstrate an actual loss in revenue due to the COVID-19 public health emergency? (Added 3-14-22)**

Yes. The final rule allows all recipient municipalities to elect to use the standard allowance, even if their actual revenue loss was less than \$10 million. This is true even if your municipality did not appear to have a revenue loss under the formula contained in the Interim Rule. In the Final Rule the U.S. Treasury clarifies that it presumes all recipients have experienced revenue loss because of the pandemic whether or not they can quantify the specific amount.

### **15. What are “government services”? (Added 3-14-22)**

Although the term “government services” is not expressly defined, the Final Rule states that “government services generally include any service traditionally provided by a government, unless Treasury has stated otherwise.” The “government services” spending criteria under the lost revenue eligible use category is the most flexible of any eligible use category spending criteria.

The [Overview of Final Rule](#) contains a non-exhaustive list of examples, including: construction of schools and hospitals; road building and maintenance, and other infrastructure; health services; general government administration, staff, and administrative facilities; environmental remediation; provision of police, fire, and other public safety services (including purchase of fire trucks and police vehicles).

“Government services” does not include payments to debt service or interest costs on infrastructure projects or other prohibitions listed in the Overview of Final Rule, page 41.

**16. If we select the revenue loss standard allowance, can we use the “government services” spending requirements to spend under other eligible use categories? (Added 3-14-22)**

No. Although the term “government services” would seem to apply to some enumerated uses in other eligible use categories, it is a standard that can only be used to justify expenditures made under the replacing lost revenue eligible use category.

As discussed in question 11, above, municipalities must be able justify expenditures based on the criteria that applies to the specific eligible use category that is identified. For example, certain capital expenditures could be justified as either a response to the public health or negative economic impacts of the pandemic, or they could be justified as a government service under the replacing lost revenue eligible use category. However, if the expenditure is identified as a response to the public health impacts of the pandemic, the expenditure must be justified using the “response to the public health impacts” eligible use category criteria (they must be related and reasonably proportional to the pandemic impact identified and reasonably designed to benefit the impacted population or class). It would not be sufficient to simply show that the expenditure is a government service.

**Premium Pay Eligible Use Category (Updated 3-14-22):**

**17. May premium pay be provided to municipal employees or employees of local businesses? (Updated 3-14-22)**

Yes, premium pay may be provided to eligible municipal employees and/or grants may be provided to local businesses to provide premium pay for “eligible workers” performing “essential work” during the pandemic. Volunteers are not eligible for premium pay.

Section 603(g)(2) of ARPA defines “**eligible workers**” as “those workers needed to maintain continuity of operations of essential critical infrastructure sectors.” See 42 U.S.C. § 803(g)(2); [Final Rule, § 35.3 \(scroll to page 406\)](#). **An eligible worker must work in a critical infrastructure sector**, which includes emergency response, social services, public health, local government workforces, elections and numerous other areas. The Final Rule clarifies “all public employees of local governments are already included in the definition of ‘eligible worker.’” Non-public employees can also be eligible for premium pay, and the final rule simplifies requirements on local governments governing these expenditures. To see a more complete list of critical infrastructure sectors, see [Overview of Final Rule](#), page 35.

The Final Rule clarifies that **volunteers** are not eligible to receive premium pay. See question 18, below. Elected officials are probably also not eligible for premium pay, particularly if the elected official has the authority to decide how to use the funds. See question 27, below.



**Eligible employees must also perform “essential work”** which is defined as either (1) regular in-person interactions with patients, the public, or coworkers, or (2) the regular physical handling of items handled by, or that are to be handled by patients, the public, or coworkers of the individual that is performing the work. Teleworking from a residence during the pandemic does not qualify as essential work. See [Final Rule, § 35.3](#) (scroll to page 407), and [Overview of Final Rule](#), page 35.

Finally, the Final Rule requires that the premium pay **“responds to” workers performing eligible work during the COVID-19 public health emergency**. This requirement can be met one of three ways:

- An eligible employee receiving premium pay must be earning (with the premium included) at or below 150% of their residing state or county’s average annual wage for all occupations, as defined by the Bureau of Labor Statistics’ Occupational Employment and Wage Statistics, whichever is higher, on an annual basis; or
- An eligible employee receiving premium pay is not exempt from the Fair Labor Standards Act overtime provisions; or
- If a worker does not meet either of the above requirements, the recipient must submit written justification to Treasury detailing how the premium pay is otherwise responsive to workers performing essential work during the public health emergency

See [Overview of Final Rule](#), pages 35-6 for more information on premium pay.

If your municipality is considering appropriating ARPA Funds toward premium pay for municipal employees, the appropriation should be made by the municipal legislative body. In addition, if the municipality will assist local businesses, the municipality’s legislative body should first establish a grant program through a simple ordinance or detailed warrant article outlining the basic parameters of the grant program, including maximum grant amounts, objective criteria for evaluating eligibility, and a standardized application and review process. Municipalities will need to request sufficient information from applicants to verify an eligible use of the funds and to enable reporting to U.S. Treasury as to use of the funds.

#### **18. May Premium pay be provided to volunteer firefighters and first responders? (Updated 3-14-22)**

The Final Rule clarifies that volunteers may not receive premium pay. In some municipal fire departments, firefighters are on call employees for purposes of wage and hour laws (minimum wage/overtime). If so, they might be eligible for premium pay. In contrast, firefighters, first responders or other municipal positions that receive only a nominal stipend or nominal per call payment would probably be considered volunteers under applicable wage and hour laws and probably would not be eligible for premium pay.

Whether volunteers may receive premium pay was not expressly addressed in the Interim Final Rule, and generated several questions to U.S. Treasury, which were addressed in the Final Rule. Although the Final Rule clarifies that volunteers may not receive premium pay, it leaves open the possibility that volunteers may be compensated through other eligible use categories if applicable criteria in those categories is met. The [Final Rule preamble](#), page 4387, contains the following discussion:

“A few commenters asked if premium pay could be awarded to volunteers or those in irregular and non-hourly or salaried employment positions. Similarly, various commenters asked if part-time workers were eligible for premium pay. . . . *Treasury Response:* Treasury has also made clear in the final rule that a recipient may award premium pay to non-hourly or salaried workers as well as part-time workers. Premium pay may not, however, be awarded to volunteers. If a recipient is interested in compensating volunteers with SLFRF funds, then it must do so consistent with the requirements set forth in other eligible use categories; for example, see section Public Sector Capacity and Workforce in Public Health and Negative Economic Impacts.”

### Other Eligible Use Categories/Specific Expenditure Questions (Updated 3-14-22):

#### **19. May we use ARPA funds for general governmental services, such as road maintenance, general infrastructure, improvements, equipment, staffing, etc.?(Updated 3-14-22)**

Within the **lost revenue** eligible use category the municipality may use its ARPA grant up to the amount of its “lost revenue” to pay for government services. See question 13, above, for information on how to determine if the municipality has experienced lost revenue (note: all municipalities have the option of presuming a loss as discussed in question 13). U.S. Treasury’s Overview of Final rule states that “government services” includes “any service traditionally provided by a government, unless Treasury has stated otherwise.” Traditional government services would normally include road maintenance, fire and ambulance services, recreation programs, general infrastructure, improvements, equipment, staffing expenses as long as they are connected to a government service. See [Overview of Final Rule](#), pages 9 – 11 for detailed discussion.

However, debt service or interest costs on infrastructure projects or costs relating to other prohibitions listed in the Overview of Final Rule, page 41, are not eligible government services.

Certain expenditures for government services may also qualify under other eligible use categories, such as the **responding to the public health emergency or its negative economic impacts** eligible use category. The U.S. Treasury has clarified in the Final Rule that response to public health or negative economic impacts can include capital expenditures or expenses related to public sector capacity, which would include expenditures such as improvements to public facilities and funding for public staffing. Note that expenditures on government services identified as a response to the public health or negative economic impacts must be related and reasonably proportional to the pandemic impact identified and reasonably designed to benefit the impacted population or class.

#### **20. May we use ARPA funds to reduce the tax commitment?**

Probably not. The purpose of the American Rescue Plan is to ensure that needed funding and resources are directed to the vital services, public employees, small businesses and families that have struggled during the pandemic. The U.S. Treasury has confirmed that for uses aimed at addressing the economic impact of the pandemic to households, which a reduction in property tax assessments would be considered, municipalities must demonstrate that any direct payments to individuals are reasonably



proportional to the negative economic impacts they are intended to address. Such a calculation is not possible with an across-the-board reduction in the tax commitment.

**21. May ARPA Funds be used retroactively to reimburse costs incurred in response to the COVID-19 pandemic?**

Generally, no. Use of ARPA Funds is forward looking. The Final Rule only permits ARPA Funds to cover costs incurred during the “covered period,” which begins on March 3, 2021. However, it is possible to use ARPA Funds to provide retrospective premium pay to eligible employees for essential work performed during the pandemic.

**22. May we use the funds to provide direct payments to municipal residents/households?**

Yes, such a use of funds could be considered an eligible use to respond to the public health emergency or its negative economic impacts. Also, the Final Rule has expanded the groups that U.S. Treasury will presume are negatively impacted or disproportionately impacted by the pandemic. See [Overview of Final Rule](#), pages 17 -19 for additional guidance.

It is recommended that a municipality enact an ordinance or detailed warrant article containing objective criteria for determining eligibility for pandemic related economic impacts and a standardized application and review process. Municipalities will need to request sufficient information from applicants to verify an eligible use of the funds and to enable reporting to U.S. Treasury as to use of the funds.

**23. May ARPA Funds be used to assist impacted industries, small businesses and nonprofits?**

Yes, but significant limitations apply. To be eligible for assistance, industries, small businesses and nonprofits must meet applicable U.S. Treasury definitions and guidelines. See [Overview of Final Rule](#), pages 21-25.

Generally, this assistance would include the development of grant or loan programs. To implement such a loan or grant program, the municipality’s legislative body should first enact an ordinance or detailed warrant article outlining the basic parameters of the program, including maximum grant amounts, objective criteria for evaluating eligibility, and a standardized application and review process. Municipalities will need to request sufficient information from applicants to verify an eligible use of the funds and to enable reporting to U.S. Treasury as to use of the funds.

**24. May ARPA Funds invest in broadband capability in the municipality?**

Yes. ARPA Funds may be used to invest in broadband infrastructure. The Final Rule has broadened the set of eligible broadband infrastructure investments and makes an expanded set of cybersecurity investments eligible. See [Overview of Final Rule](#), pages 39 – 40.

The State of Maine’s [ConnectMaine](#) Authority and the new [Maine Connectivity Authority](#) have a number of resources to assist communities with planning broadband projects.

## **25. May ARPA Funds be used for water and sewer improvements?**

Yes. ARPA Funds may be used to invest in necessary improvements to water and sewer infrastructure that are of the highest priority for the community. The Final Rule expands the list of eligible projects in this category.

Generally, the ARPA aligns its eligible water and sewer eligible uses with those supported by the U.S. Environmental Protection Agency's Clean Water State Revolving Fund (CWSRF) and Drinking Water State Revolving Fund (DWSRF). For more information on the types of projects supported by the EPA state revolving funds, or to contact those programs, see the following links: [CWSRF eligibilities](#) and [DWSRF eligibilities](#). In addition, the Final Rule contains a list of additional projects that are eligible under this category. See Overview of Final Rule, pages 37-38.

## **26. Are administrative costs an eligible use of ARPA Funds?**

Yes. Municipalities may use ARPA Funds to cover time and resources spent on administrative work related to disbursing payments of the ARPA Funds, managing new grant programs established using ARPA Funds, and for complying with reporting requirements.

## **Other Spending Restrictions (Updated 3-14-22):**

### **27. Are there conflict of interest restrictions on use of ARPA Funds? (Updated 3-14-22)**

Yes. Each ARPA recipient was required to agree to U.S. Treasury's standard [Award Terms and Conditions](#) (see question 2, above). Those award terms require recipients to maintain a conflict-of-interest policy consistent with 2 CFR § 200.318 that is applicable to all activities funded with the ARPA award.

The award terms require that recipients maintain written standards of conduct covering conflicts of interest and governing the actions of employees engaged in the selection, award and administration of contracts. No employee, officer, or agent may participate in the selection, award, or administration of a contract supported by a federal award if he or she has a real or apparent conflict of interest. Such a conflict of interest would arise when the employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of the parties indicated herein, has a financial or other interest in or a tangible personal benefit from a firm considered for a contract. The officers, employees, and agents of the recipient may neither solicit nor accept gratuities, favors, or anything of monetary value from contractors or parties to subcontracts. The standards of conduct must provide for disciplinary actions to be applied for violations of such standards by officers, employees, or agents of the recipient.

According to the Final Rule preamble, recipients and subrecipients are required:

“to report to Treasury or the pass-through agency, as appropriate, any potential conflict of interest related to the award funds per 2 CFR 200.112. Pursuant to this policy, decisions concerning SLFRF [ARPA] funds must be free of undisclosed personal or organizational conflicts of interest, both in fact and in appearance . . . elected officials are prohibited from using their



official position and control over SLFRF [ARPA] funds for their own private gain. This policy also prohibits, among other things, elected officials from steering funds to projects in which they have a financial interest or using funds to pay themselves premium pay.”

See Final Rule preamble, page 4400.

For municipalities that have not already adopted a compliant conflict of interest policy governing federal grants, see a [Sample Conflict of Interest Policy](#) for the purpose of complying with 2 CFR § 200.318.

## **28. Do other restrictions outside the ARPA Final Rule apply to expenditures? (Added 3-14-22)**

Yes. The Final Rule advises recipients to be cognizant that federal, state, and local laws and regulations outside of ARPA program requirements may apply. State and local procurement, contracting, and conflicts-of-interest laws and regulations may include applicable requirements, including, for example, procurement processes adopted by the town’s legislative body governing contractor selection or competitive bidding. Recipients are also required to comply with other federal, state, and local background laws, including environmental laws and federal civil rights and nondiscrimination requirements. See Final Rule, page 4431.

As discussed in question 2, the ARPA grant includes specific award terms and conditions imposed by U.S. Treasury. These requirements are listed in the [Award Terms and Conditions for NEUs](#) and [Assurances of Compliance with Title VI of the Civil Rights Act of 1964](#). For more information and guidance on the federal requirements that apply through the Award Terms, see U.S. Treasury’s [Compliance and Reporting Guide](#). The guide addresses requirements for procurement, audits, cash management, use of income earned on grant funds, and conflicts of interest among other issues.

## **Reporting:**

### **29. What type of reporting will be required?**

Reporting on the use of ARPA Funds will be required at both the state and local level.

**Metropolitan Cities:** Municipalities designated as metropolitan cities (those municipalities that received Local Fiscal Recovery Funds directly from the U.S. Treasury Department) must submit an ***interim report*** identifying expenditures by category at the summary level. The interim report will cover activity from the date of award to July 31, 2021 and must be submitted to U.S. Treasury by August 31, 2021. Metropolitan cities will also be required to submit ***quarterly Project and Expenditure reports*** detailing financial data, information on contracts and sub-awards over \$50,000, types of projects funded, and other information regarding a recipient’s utilization of award funds. The deadline for submission of the first quarterly Project and Expenditure Report was recently extended. This report will cover two calendar quarters from the date of award to December 31, 2021, and must be submitted to U.S. Treasury by **January 31, 2022**. This is a change from the previously communicated October 31, 2021 due date for the Project and Expenditure Report.

**Non-entitlement Governments:** NEUs (municipalities that received Local Fiscal Recovery Funds from DAFS) must submit an ***annual Project and Expenditure report***. The Deadline for submission of the first annual Project and Expenditure Report was also recently extended. The first NEU Project and

Expenditure report will cover activity from the date of award to March 31, 2022 and must be submitted to U.S. Treasury by **April 30, 2022**. This is a change from the previously communicated October 31, 2021 due date for the NEU Project and Expenditure Report. NEUs are not required to submit an interim report.

### **Quick Links to Resources:**

U.S. Treasury [webpage on Coronavirus State and Local Fiscal Recovery Funds](#)

NLC [Local Action Tracker](#)

### **Information for Non-entitlement communities:**

U.S. Treasury [Non-entitlement webpage](#) (includes links to allocation information)

- [FAQs \(on Distribution of Funds to NEUs\)](#)
- [Non-entitlement Unit of Local Government Checklist for Requesting Initial Payment](#)
- [Award Terms and Conditions for Non-entitlement Units of Local Government](#)
- [Assurances of Compliance with Title VI of the Civil Rights Act of 1964](#)
- [Reporting and Compliance Guide](#)

NLC [Guidance on accessing Non-entitlement funds](#).

NLC Fact Sheet: [How States Can Allocate Coronavirus State & Local Fiscal Recovery Funds to Local Governments](#)

### **Guidance on Eligible Uses:**

U.S. Treasury <https://home.treasury.gov/system/files/136/SLFRF-Final-Rule.pdf>

U.S. Treasury [Overview of Final Rule](#)

### **Guidance on Reporting:**

NLC Fact Sheet: [How to Meet Reporting Requirements for Coronavirus State & Local Fiscal Recovery Funds](#)

### **Where can we find more information?**

Members are encouraged to contact MMA Legal Services to discuss specific questions and concerns at 800-452-8786 or [legal@memun.org](mailto:legal@memun.org).

Also, visit MMA's dedicated webpage on the American Rescue Plan (<https://memun.org/Training-Resources/Local-Government/ARP-Local-Relief-Frequently-Asked-Questions>) to find links to additional resources.



## Sample Uniform Federal Grant Guidance Conflict of Interest Policy

*Note: Standard Terms & Conditions accompanying ARPA grant awards require that recipients maintain written policies governing conflicts of interest and gifts. This sample policy contains relevant language from the Uniform Guidance, 2 C.F.R. § 200.318.*

*Municipalities are strongly urged to review local charters, ordinances and policies and consult with legal counsel before adopting this policy.*

### Municipality of \_\_\_\_\_

## Conflict of Interest Policy for Local Fiscal Recovery Fund Projects

2 CFR § 200.318

### I. Purpose

The purpose of this policy is to establish conflict of interest guidelines that meet requirements under 2 C.F.R. § 200.318(c)(1) for procuring goods, services, and construction or repair projects funded in whole or part by federal Local Fiscal Recovery Funds received pursuant to the American Rescue Plan Act ("ARPA")(Pub. L. No. 117-2, March 11, 2021).

### II. Policy

This policy applies when the municipality procures goods (apparatus, supplies, materials, and equipment), services, and construction or repair projects funded in part or whole with federal Local Fiscal Recovery Funds received pursuant to the American Rescue Plan Act (ARPA). This policy also applies to any subrecipient of the ARPA funds.

The employee(s) or official(s) responsible for managing the ARPA award shall review the notice of award to identify any additional conflict of interest prohibitions or requirements associated with the award, and shall notify all employees, officers, officials and agents, including subrecipients, of the requirements of this policy and any additional prohibitions or requirements.

**A. Conflicts of Interest.** No officer, official, employee, or agent of the municipality may participate directly or indirectly in the selection, award, or administration of a contract supported by ARPA funding if he or she has a real or apparent conflict of interest. A real or apparent conflict exists when any of the following parties has a financial or other interest in or receives a tangible personal benefit from a firm considered for award of a contract:

1. the employee, officer, official or agent involved in the selection, award, or administration of a contract;
2. any member of his or her immediate family;
3. his or her partner; or
4. an organization which employs or is about to employ any of these parties.

Any officer, official, employee or agent with an actual, apparent, or potential conflict of interest as defined in this policy shall report the conflict to his or her immediate

supervisor or, in the case of a board member, shall make disclosure to at a duly noticed board meeting. Any such conflict shall be disclosed in writing to the federal award agency or pass-through entity in accordance with applicable U.S. Treasury (awarding agency) policy.

**B. Gifts.** Officers, officials, employees, and agents of the municipality are prohibited from accepting or soliciting gifts, gratuities, favors, or anything of monetary value from contractors, suppliers, or parties to subcontracts. Items of nominal value valued at less than \$25 which fall into one of the following categories may be accepted:

1. promotional items;
2. honorariums for participation in meetings; or
3. meals furnished at banquets.

Any officer, official, employee or agent who knowingly accepts an item of nominal value allowed under this policy shall report the item to his or her immediate supervisor, or in the case of a board member, to the board.

### III. Violation

Employees or appointed officials violating this policy will be subject to discipline consistent with applicable policy, charter, ordinance or law, which may include termination or removal from office. Elected officials violating the policy may be subject to censure or other penalty consistent with any municipal charter. Violation of this policy by a contractor or subrecipient may result in breach or termination of the contract and will impact the contractor's eligibility for future contract awards.

Adopted by the Municipal Officers on \_\_\_\_\_, 20\_\_\_\_\_.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date